

Cross-border family mediation - Croatia



MEDIATION

On 1 November 2015, the new Family Act (*Obiteljski zakon; Narodne novine* (Official Gazette) No 103/15) entered into force in the Republic of Croatia. It consists of 10 separate parts, with the seventh separate part regulating the area of mandatory counselling and family mediation.

Mandatory counselling is a way of helping family members to reach agreements on family relations, while taking special care about the protection of family relations which involve a child and about the legal consequences of failure to reach an agreement and the launch of legal proceedings in which the personal rights of the child are decided. Mandatory counselling is carried out by an expert team of a competent social welfare centre according to the child's permanent or temporary residence or the place of the last joint permanent or temporary residence of spouses or extramarital partners. In accordance with the Family Act, mandatory counselling is not to be carried out prior to initiating enforcement and security proceedings. Members of the family participate in mandatory counselling personally and without proxy.

Mandatory counselling is carried out: 1. before initiating divorce proceedings between spouses who have a common minor child and 2. before initiating other court proceedings for exercising parental custody and a personal relationship with a child. Prior to initiating divorce proceedings, mandatory counselling is not carried out with respect to a spouse or both spouses who are: 1. deprived of contractual capacity, if they are unable to understand the meaning and consequences of the proceedings even with expert assistance, 2. judgment impaired or 3. of unknown permanent or temporary residence.

Mandatory counselling is initiated by way of application of one party, which is submitted to a social welfare centre in written form or registered orally. Upon receipt of the application for mandatory counselling, the social welfare centre is obligated to schedule a meeting and summon the parties. By way of derogation, if the social welfare centre considers that in the given circumstances a joint meeting would not be useful or if one or both parties so request for justifiable reasons, separate interviews with parties are scheduled and carried out.

Family mediation is a process in which family members participate voluntarily. By way of derogation, the first meeting of family mediation prior to initiating divorce proceedings is mandatory.

Family mediation is a process in which parties attempt to reach an agreement on a family dispute with the assistance of one or more family mediators. A family mediator is an impartial and specially trained person entered in the register of family mediators. The main purpose of the family mediation process is to achieve a plan of shared parental custody and other agreements with regard to the child. Besides achieving that purpose, in the process of family mediation the parties can also agree on all other issues relating to assets and other issues.

Family mediation is not carried out: 1. in cases in which the expert team of a social welfare centre or the family mediator assesses that the equal participation of spouses in the process of family mediation is not possible due to domestic violence, 2. if one or both spouses are deprived of contractual capacity, and are not able to understand the meaning and legal consequences of the process even with expert assistance, 3. if the judgment of one or both spouses is impaired and 4. if the temporary or permanent residence of a spouse is unknown.

Family mediation may be carried out regardless of court proceedings prior to initiating court proceedings, during or after the court proceedings have ended. In accordance with the Family Act, family mediation is not carried out prior to initiating enforcement and

security proceedings. By way of derogation, during the process of enforcement for the purpose of exercising a personal relationship with the child, the court may propose to the parties that they enter family mediation. Thus, after interviewing the parties and taking into account the circumstances of the case, the court may postpone the enforcement for thirty days and order that a professional person talk to the child or propose to the parties that they enter family mediation to reach an agreement on the dispute; if needed, the court may specify the exercise of a personal relationship by special decision in more detail during the interview with a professional person or family mediation, and the court will not proceed in such a way if the family mediation was attempted unsuccessfully or if urgent action is necessary.

The family mediator and other persons involved in the process of family mediation are obligated to safeguard confidential information and data which they became aware of during the process of family mediation in relation to third persons, except: 1. if it is necessary to communicate information for the purpose of conducting or executing the agreement or 2. if it is necessary to communicate information in order to protect a child whose well-being is endangered or in order to remove the danger of a serious violation of a person's mental and physical integrity. The family mediator is obligated to inform the parties of the scope of the principle of confidentiality.

As regards the agreement reached during family mediation, the Family Act prescribes that the plan on joint parental custody or other agreements reached in the process of family mediation must be in written form and be signed by all parties and that they will be equivalent to an enforceable document if the court approves them in non-contentious proceedings at the proposal of the parties.

If the parties do not reach an agreement on the plan of joint parental custody, or on another contentious family relationship, the family mediator will indicate in the report on the suspension of the process of family mediation whether both parties have participated actively. The report on the suspension of family mediation is delivered to participants. The family mediator will deliver a report on the suspension of family mediation to the court which stayed the proceedings due to the process of family mediation being carried out.

In the event that during court proceedings the parties propose by consensual agreement to resolve the dispute by way of the process of family mediation, the court may stay the proceedings, in which case it will set a three-month time limit in which the parties may attempt to resolve the dispute in the process of family mediation. In the event that during court proceedings the court considers that there is a possibility of reaching a consensual agreement on the family dispute, it may also propose the process of family mediation to the parties. If the parties agree to enter the process of family mediation, the court will stay the proceedings and set a three-month time limit in which the parties may attempt to resolve the dispute in the process of family mediation. If the parties, within the three-month time limit for conducting family mediation set by a court, do not succeed in resolving the dispute in the process of family mediation or if the parties propose the continuation of court proceedings before the expiry of that time limit, the court will continue with the proceedings. Before deciding on the stay of the proceedings, the court is obligated to assess whether the stay is appropriate in view of the need for urgent action in cases in which a child's rights and interests are being decided.

In the process of family mediation, the family mediator is obligated to inform the participants to take care of the well-being of the child, and he or she can allow children to express their opinion in the process of family mediation with the consent of their parents.

The family mediator who conducted the process of family mediation may not participate in writing expert opinions or family assessments or participate in any other way in court proceedings in which the dispute of the parties who participated in family mediation is being decided, except in cases prescribed by law.

If the family mediation is carried out by family mediators employed in the social welfare system, the parties do not pay fees for the work of family mediators. If the family mediation is carried out by family mediators outside the social welfare system, the parties bear the cost of their participation.

The provisions which regulate mediation are applied in the process of family mediation in an appropriate manner.

For further information see:

The Family Act (Official Gazette No 103/15)

Rules on family mediation (*Pravilnik o obiteljskoj medijaciji*; Official Gazette No 106/14)

The Mediation Act (*Zakon o mirenju*; Official Gazette No 18/11)

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