

Mediation proceedings in family, divorce and separation cases

Mediation is a voluntary, confidential form of dispute resolution whereby the parties to a conflict or dispute attempt by themselves to reach an agreement with the assistance of a neutral and impartial mediator. Matters to be discussed during mediation are up to the participants. Matters to be agreed upon may relate to: reconciliation of spouses, laying down conditions for separation, exercise of parental authority, contact with children, meeting family needs, maintenance and child support, as well as property and housing issues. A mediation settlement may also provide for the issuing of a passport, choice of the child's education, contacts with extended family members and/or management of the child's property.

Benefits of mediation

Mediation helps to reduce the level of negative emotions and understand one's own and each other's needs, thus reducing the psychological burden associated with the conflict.

How is a matter referred to mediation?

Mediation may be conducted before the matter is brought before the court or after the proceedings are initiated, on the basis of a court decision.

In all cases, mediation is subject to the consent of the parties.

Each party may apply for mediation at any stage of court proceedings.

Who decides on the choice of a mediator?

A mediator is chosen jointly by the parties or appointed by the court, considering in the first place individuals from the list of permanent mediators.

How long may mediation go on for?

Mediation proceedings which have been instituted under a court decision should not last longer than 3 months, but may be extended upon a joint request or for any other valid reason if that facilitates settlement.

The mediation process

Upon receipt of a court decision, the mediator contacts the parties in order to set the date and place of a meeting.

The mediator explains the rules and the course of mediation proceedings and asks the parties if they agree to mediation.

Mediation is a discussion between the parties in the presence of a mediator. One-on-one meetings may also be held between the mediator and any of the parties.

The parties may decide not to take part in mediation.

Mediation is confidential. The mediator must not disclose details of the mediation to third parties. Mediation minutes do not contain any judgements or positions of the parties.

A mediator may not act as a witness with regard to the facts of which he or she becomes aware as a result of conducting the mediation, unless the parties release him or her from the obligation of secrecy.

What are the possible outcomes of mediation?

Mediation may result in a mutually acceptable settlement signed by the parties.

In divorce or separation cases, mediation may result in reconciliation of and/or agreement between the spouses, or in developing shared legal positions.

These provide a basis for the resolution of the case by the court.

The mediator gives the parties a copy of the minutes.

The mediator submits the minutes and any settlement reached to the court.

A mediation settlement approved by the court has the legal validity of a court settlement and ends the proceedings.

The court will refuse to approve the settlement if the settlement is contrary to the law or the principles of community life, intended to circumvent the law, confusing or contains contradictions.

If a settlement which has been declared enforceable has not been actually enforced, it may be referred to a court-appointed enforcement officer.

If no settlement is reached, the parties may seek to exercise their rights in court proceedings.

In cases concerning the return of a child under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the parties may conclude an agreement on the return or non-return of the child to the country of his or her former habitual residence. The agreement may also deal with the exercise of parental responsibility or childcare, contact with the child or maintenance and child support. Such an agreement will be the basis for a decision issued by the court examining the case (specialist court).

What is the cost of mediation?

The costs of mediation are borne by the parties. Each party usually pays half of the costs, unless the parties agree otherwise.

A party may request exemption from the costs of mediation.

Regardless of the outcome of the case, the court may order a party to reimburse the costs arising out of a manifestly unreasonable refusal to engage in mediation.

If a settlement is reached before the commencement of the court hearing, 100% of the court fee will be refunded to the party.

If a settlement is reached before the mediator at a later stage of the proceedings (following the commencement of the court hearing), 75% of the court fee will be reimbursed.

In a divorce or separation case, if the parties are reconciled before the court of first instance and withdraw the action, 100% of the court fee paid when the case was brought to court will be reimbursed. If the parties have been reconciled before the conclusion of the proceedings before the court of second instance, 50% of the fee paid for the appeal will be reimbursed.

In the case of out-of-court mediation, the mediator's remuneration is set by the mediation centre or the parties agree on it with the mediator before the mediation begins.

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