



Estonia

## Mediation in Member States - Estonia



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**Rather than going to court, why not try to solve your dispute through mediation? This is an alternative dispute resolution measure, whereby a mediator helps those involved in a dispute to reach an agreement. The government and legal practitioners of Estonia are aware of the advantages of mediation.**

### Whom to contact?

In Estonia the distinction must be drawn between mediation and conciliation. Mediation is a broad concept covering all activities in which an independent third party intervenes between people in disagreement on any issue, without having the rights of a court arbiter.

In some instances the mediator may be the Chancellor of Justice. Although the concept of 'ombudsman' is not used in the Chancellor of Justice Act, the Chancellor of Justice also performs the functions of an ombudsman, in monitoring whether government bodies comply with people's fundamental rights and freedoms and with the principles of good governance and also monitoring local governments, legal persons in public law and private entities performing public functions. Since 2011 the Chancellor of Justice has also performed the functions of the ombudsman for children under Article 4 of the Convention on the Rights of the Child. You can find out more on the [website](#) of the Office of the Chancellor of Justice.

Under Estonian law, conciliation refers to the activities of a conciliator or conciliation body in civil cases. Conciliation is regulated under the Conciliation Act, and mediation under a specific Act providing for mediation. The Conciliation Act was drafted to transpose Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters into Estonian law.

Under the Conciliation Act a conciliator may be any natural person whom the parties have asked to act as conciliator. Attorneys-at-law and notaries may also act as a conciliator. Under the specific Act the role of conciliator may also be assigned to a state or local government body.

A list of notaries willing to act as a conciliator can be found on the [website](#) of the Chamber of Notaries.

A list of attorneys-at-law willing to act as a conciliator can be found on the [website](#) of the Estonian Bar Association.

The Ministry of Social Affairs is planning to develop the activities of family mediators and conciliators.

You can also contact the following non-government organisations:

- The [Estonian Association of Mediators](#) provides information in both Estonian and English. The contact person is [Anneli Liivamägi](#).
- The [Estonian Union for Child Welfare](#) is a non-profit association that supports children's rights. Its activities include giving advice to parents who wish to separate or divorce, encouraging them to use the services of conciliators in order to protect their children's interests. The Union has organised training sessions on the subject of family mediation.
- The [Estonian Insurance Association](#) has set up an insurance mediator to deal with disputes between insurance holders and insurers or insurance brokers.

Under the Collective Labour Dispute Resolution Act the parties have the right of recourse to the Public Conciliator in the event of a collective labour dispute (a dispute regarding the terms of a collective agreement). The Public Conciliator is an impartial expert who helps those involved in the labour dispute to reach a compromise.

The contact address of the Public Conciliator for collective labour disputes is Henn Pärn, Public Conciliator, telephone, e-mail [Henn.Parn@riikliklepitaja.ee](mailto:Henn.Parn@riikliklepitaja.ee). You can find more information on the [website](#) of the Public Conciliator.

### **In what area is recourse to mediation admissible and/or the most common?**

The conciliation process provided for in the Conciliation Act may generally be used to resolve any civil disputes. There is a conciliation procedure in civil cases where the dispute concerns a relationship in private law and is being examined by a county court. While there are no comparative statistics, it is likely that mediation is more common in the field of family law.

The Chancellor of Justice resolves disputes concerning discrimination where an individual files a declaration that they have been discriminated against on grounds of sex, race, nationality (ethnic origin), colour, language, origin, religion, political or other beliefs, financial or social status, age, disability, sexual orientation or other characteristics laid down by law. Mediators may also act in the event of an infringement of fundamental rights.

The Public Conciliator acts as conciliator in collective labour disputes.

### **Are there specific rules to follow?**

Under Estonian law recourse to conciliation is generally voluntary.

The **Estonian Association of Mediators** has drawn up a professional standard which will be required for conciliators wishing to act as family mediators in Estonia.

The **Estonian Code of Civil Procedure** has a special rule providing for conciliation by a judge in situations where a parent violates an order relating to contact with a child. According to Section 563 of the Code, on petition by one parent, the court may summon both parents to court in order to settle such a dispute by way of an agreement. The court summons the parents to appear in person and informs them of the potential legal consequences (fine or detention) of failing to appear.

The Code of Civil Procedure also provides that if the court considers it necessary in the interests of resolving the case given the facts of the case and the proceedings thus far, it may oblige the parties to take part in a conciliation process under the Conciliation Act.

Conciliation through the Chancellor of Justice is regulated under Sections 35<sup>5</sup>-35<sup>15</sup> of the Chancellor of Justice Act.

The resolution of collective labour disputes, the activities of the Public Conciliator and the rights and obligations of the parties involved in the process are regulated by the Collective Labour Dispute Resolution Act.

The rules of procedure of the Estonian Insurance Association's insurance mediator are available [online](#).

The Ministry of Social Affairs is helping develop family mediation; this includes establishing a standard qualification for family mediation. In future, the state or local government may offer mediation and cover the costs of certain mediation services.

### **Information and training**

Information on conciliators acting under the Conciliation Act, including notaries and attorneys-at-law, can be found on the websites of those acting as a conciliator. A list of notaries willing to act as a conciliator can be found on the [website](#) of the Chamber of Notaries. The same information for attorneys-at-law can be found on the [website](#) of the Estonian Bar Association.

Information on the Chancellor of Justice's activities as a conciliator can be found on the [website](#) of the Chancellor of Justice.

Information on the Public Conciliator's activities as a conciliator can be found on the [website](#) of the Public Conciliator.

Training for mediators is provided by the private sector (e.g. the Association of Mediators). There is no specific regulation on the training of mediators.

### **What is the cost of mediation?**

Under the Conciliation Act conciliation is not free of charge; the cost of conciliation is subject to agreement between the mediator and the parties involved. According to the data on the website of the Association of Mediators, in 2013 family conciliation cost EUR 60 per session. The cost of mediation is split equally between the parties.

Where the court considers it necessary to ask a conciliator or mediator to resolve a dispute, the economically weaker party may request aid from the state in order to cover the costs.

If the Chancellor of Justice acts as conciliator no fee is payable. However, there may be additional costs connected with the conciliation process. The Chancellor of Justice decides who is to bear these costs.

The resolution of collective labour disputes by the Public Conciliator is also free of charge. The costs arising from the resolution of a collective labour dispute are borne by the guilty party or split by common agreement between the parties.

The Estonian Insurance Association's insurance mediator charges an administrative fee of EUR 50 and the insurance conciliator a maximum fee of EUR 160. If conciliation is unsuccessful only half the insurance conciliator's fee is payable.

#### **Is it possible to enforce an agreement resulting from mediation?**

Under the Conciliation Act the agreement concluded as the result of a conciliation process is enforceable after the appropriate procedure to declare it enforceable has been carried out on the basis of an application (Sections 627<sup>1</sup> and 627<sup>2</sup> of the Code of Civil Procedure). A notary may also declare enforceable a conciliation agreement concluded as the result of a conciliation process by a notary or attorney-at-law in line with the rules laid down in the Notarisation Act.

An agreement reached through the Public Conciliator to resolve a collective labour dispute is binding on both parties and is valid from the date on which it is signed, unless another deadline for entry into force is agreed upon. However, this type of agreement does not constitute an enforceable title.

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Last update: 12/12/2014