



Croatia

Mediation in Member States - Croatia

The Government of the Republic of Croatia, through the Ministry of Justice, provides strong support (legislative, financial, technical) to the development and promotion of mediation, and it has become one of the important parts of the Judicial Reform Strategy.

Judicial and extra-judicial mediation

Mediation can be conducted in all regular and specialised first and second instance courts (municipal, county, commercial and the High Commercial Court) in all stages of the proceedings, and therefore for the duration of the appeal proceedings. Mediation is conducted exclusively by a judge of the court concerned who is trained in mediation and who is named on the list of judge mediators determined by the President of the Court by way of an annual assignment of arrangements. A judge mediator shall never conduct mediation in a dispute for which he/she is appointed as a judge.

Extra-judicial mediation has for many years been conducted very successfully by Mediation Centres at the Croatian Chamber of Economy, Croatian Chamber of Trades and Crafts and Croatian Employers' Association and by the Croatian Mediation Association, the Croatian Bar Association, the Croatian Insurance Bureau and the Office for Social Partnership of the Government of the Republic of Croatia. However, mediation with selected mediators can be conducted outside of these centres.

Pursuant to the Mediation Act (*Narodne novine* (Official Gazette of the Republic of Croatia), No 18/11 and the Rules on the Register of Mediators and Accreditation Standards for Mediation Institutions and Mediators (NN, No 59/11), the Ministry of Justice is to maintain the Register of Mediators.

Alternative Dispute Resolution Commission

The Ministry of Justice established and appointed the Alternative Dispute Resolution Commission, the composition of which includes representatives of the courts, the Public Prosecutor's Office, the Office for Social Partnership of the Government of the Republic of Croatia, the Croatian Chamber of Economy, the Croatian Employers' Association, the Croatian Chamber of Trades and Crafts and the Ministry of Justice.

The Commission's mandate is to monitor the development of alternative dispute resolution, monitor the implementation of existing programs and propose measures to promote the development of alternative dispute resolution. The Commission's mandate also encompasses providing opinions and responses to inquiries falling within its remit.

At the meeting of the Alternative Dispute Resolution Commission, held on 26 November 2009, a Code of Ethics for Mediators was adopted.

Legislative Framework

Mediation as a means of resolving disputes was regulated for the first time by special regulation - the Mediation Act (NN, No 163 /03, entered into force on 24 October 2003), which has integrated some of the guiding principles contained in the Council of Europe Recommendation on mediation in civil and commercial matters as well as the so-called Green Paper on alternative dispute resolution in civil and commercial law of the European Union. The Act was amended in 2009, and at the beginning of 2011 a new Mediation Act was passed (NN, No 18/11), which entered into force in full on the accession date of the Republic of Croatia to the European Union.

In addition to the Mediation Act, which is the most important, there are other laws governing this subject matter in part, as well as implementing regulations ensuring implementation of the law.

Mediation process

The mediation process is initiated by way of a proposal by one party to a dispute which is accepted by the other party, by way of a joint proposal by both sides for amicable resolution of the dispute, or by way of proposal by a third party (e.g. a judge in court proceedings).

Mediators are persons or several persons that based on an agreement between the parties conduct the mediation. Mediators must be trained (the expertise and skill of a mediator is one of the essential components of successful mediation), and continually undergo professional training. The Judicial Academy is of the utmost importance in organising and conducting training for mediators.

Mediation is to be conducted as agreed by the parties. The mediator, during the course of the mediation, will ensure fair and equal treatment of the parties. The mediator in the mediation procedure may meet with each party separately, and unless the parties have agreed otherwise, the mediator may disclose information and data received from one party to the other party only where permission to do so has been given. The mediator may participate in drafting the settlement and make recommendations as to its contents.

A settlement reached by way of mediation is binding on the parties that signed it. If the parties undertook certain obligations under the settlement, they are required to discharge them in a timely manner. A settlement reached by way of mediation is an enforceable document if it contains an obligation due for performance in respect of which the parties may reach a compromise, and if it contains a statement of direct permission to enforce (enforceability clause).

Unless the parties have agreed otherwise, each bears its own costs, while the parties are to bear the costs of the mediation equally, or in accordance with a special law or the rules of the mediation institutions.

According to the majority of experts in the field of mediation, any dispute relating to rights of which the parties may freely dispose is suitable for mediation and the conflicting parties should almost always be encouraged to resolve the dispute amicably. Mediation is particularly suitable for business disputes (i.e. Commercial disputes), as well as in cross-border disputes (one of the parties is domiciled or habitually resident in a Member State of the European Union) in civil and commercial matters. It should be noted that cross-border disputes do not include customs, tax or administrative proceedings or those disputes relating to state responsibility for acts or omissions in the exercise of power.

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