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«Mediation in Civil and Criminal Cases to Foster European Wide Settlement of Disputes»

Chapter I

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Legal Regulation of Mediation and Involved Institutions: Latvia

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Introduction

The first initiatives in the area of mediation in Latvia began as early as at the start of the new millennium, when the first seminars and lecturers arrived, introducing this novel subject. On 18 February 2009, even before the transposition deadline of the Directive 2008/52/EC of the European Parliament and of the Council of May 21 2008 on certain aspects of mediation in civil and commercial matters (hereinafter – the Directive), the Cabinet of Ministers adopted Order No. 121 “*Par koncepciju “Mediācijas ieviešana civiltiesisku strīdu risināšanā”*” [Concept on introduction of mediation into the settlement of civil law disputes]¹. According to this concept the Ministry of Justice created a work group tasked to elaborate the action plan for introduction of mediation. On 6 May 2010, Order No. 253 of the Cabinet of Ministers “*Pasākumu plāns koncepcijas “Mediācijas ieviešana civiltiesisku strīdu risināšanā” īstenošanai (2010. – 2012. gadam)*” [The action plan for the concept “Mediation in civil law disputes implementation” (for years 2010 – 2012)]² was adopted. According to this action plan, a number of implementation measures for the Directive was launched. The action plan provided for initiatives to amend Civil Procedure Law and to draft a new law on mediation. At that time, the precise form of mediation was not yet set and its fine-tuning continued until the very adoption of the Mediation law.

The legal framework was significantly amended after the adoption of the Mediation law on 22 May 2014.³ Therefore this article describes both the legal regulation of mediation in Latvia, and the amendments made in other laws directly related to mediation. Civil and criminal law aspects of mediation are further analyzed.

¹ Available on: <http://likumi.lv/doc.php?id=188058>.

² Available on: <http://polsis.mk.gov.lv/view.do?id=3382>.

³ The law came in force on 18 June 2014.

The term “mediation” was introduced in Latvian law just recently by adoption of Mediation Law. Until then mediation was known as a method of alternative dispute resolution, but it had no legal regulation of primary importance.

Even before the adoption of the Mediation law, a number of governmental, municipal and non-governmental organizations promoted mediation and actively offered mediation services. For instance, the Ministry of Children and Family Affairs⁴ had a project (2007 – 2008) within the framework of which free of charge co-mediation services were provided for families in disputes over matters related to children’s welfare. A municipal social institution – Rīgas bāriņtiesa [Orphan’s Court of Riga] – provided free of charge mediation services in disputes between parents (whose child’s place of residence was in Riga)⁵. Non-governmental organizations also offered mediation services, not only in family law matters, but also in other disputes which were resolvable by the means of mediation. Among them were NGOs like “*Mediācija un ADR*”, “*Integrētā mediācija Latvijā*” and “*Cietušo atbalsta centrs*”. However, until the adoption of the Mediation Law, all these incentives lacked explicit legal regulation.

Mediation has never been prohibited in Latvia, but until adoption of the Mediation Law it lacked explicit title and rules. It lacked any specific framework and was considered to be a service. Neither rights or obligations, nor the qualifications of the mediator as service provider were set. The absence of a special law also raised questions during judicial proceedings, when parties asked the court to postpone the court hearing for mediation purposes. Due to the fact the term “mediation” was not regulated, the parties had to use a supplementary terms of “negotiations” or “conclusion of amicable agreement”. With the adoption of the Mediation law, clarity is established regarding timing, terms and conditions of the mediation process both within or outside the judicial process in the court.

Mediation becomes more popular with every year. Latvian community of mediators is professionally active and promotes their services, emphasizing the benefits of mediation. Although the number of cases resolved by means of mediation is still comparatively low, this amount increases with every year. Interest in mediation services is growing, and the tendency shows that mediation will help to reduce the workload of the courts in Latvia.

1. Normative sources of mediation regulation

Before implementation of the Directive in Latvia, the term *conciliation* or *reconciliation*⁶ was used in connection with the non-adjudicatory dispute resolution procedure in family law, specifically in divorce matters and with the aim to conciliate the spouses so the divorce proceedings would be terminated and application for divorce would be recalled. However, such conciliation process was not regulated procedurally and remained only at the discretion of the spouses. Article 74, part two of the Civil Law stipulates that “[i]f a court believes that [...] it is possible to save the marriage, for the purposes of the reconciliation of the spouses the adjudication of the matter may be adjourned for a period of up to six months.” However until coming into effect of Mediation Law and corresponding amendments in the Civil Procedure Law such conciliation was not effective.

1.1. Mediation Law

Mediation law, which was adopted on 22 May 2014 and came into force on 18 June 2014⁷ is the basis of legal regulation in this area. The purpose of the Mediation Law, as stated in its Article 2, part one,

⁴ According to the Cabinet of Ministers Order No. 359 „*Par Bērnu, ģimenes un sabiedrības integrācijas lietu ministrijas reorganizāciju*“ [On reorganization of the Ministry of the Children, Family and Society Integration Matters] adopted on 29 May 2009, which came into force on the same day, this ministry was reorganized and their functions were transferred to three other ministries – Ministry of Welfare, Ministry of Justice and Ministry of Education and Science.

⁵ Mediation services in the Riga Orphans’ Court are provided according to the Riga City Council Statutes No. 97 „*Rīgas bāriņtiesas nolikums*“ [Statutes of the Riga city Orphans’ Court] adopted on November 25, 2014.

⁶ Two articles of the Civil Law still refer to conciliation - Articles 74(2) and 75.

⁷ Published in the official gazette „*Latvijas Vēstnesis*“ No. 108 (5168) on 4 June 2014. Available in internet at: <http://likumi.lv/doc.php?id=266615> with non-official translation in English.

is to lay down the judicial preconditions to promote the use of mediation as an alternative way for the settlement of disputes by facilitating harmonization of social relationship. Mediation law is divided into five chapters. Four basic principles of mediation, mediation process, court – annexed mediation and status of certified mediator are described in the law. The Mediation law shall be read and interpreted together with the Cabinet of Ministers Regulations No. 433 and Civil Procedure Law. Due to the fact that the Mediation law is in force for a rather short period of time, no case-law on its application is available as yet.

1.2. Cabinet of Ministers Regulations No. 433

On the basis of the Mediation Law, the Cabinet of Ministers Regulations No. 433 “*Mediatoru sertifikācijas un atestācijas kārtība*” [Order of certification and attestation of mediators] were adopted on 5 August 2014 and came into force on 12 August 2014⁸. These regulations stipulate several important rules. First, they provide the order in which persons wishing to become certified mediator apply for certification test. Second, they determine the contents and order of the certification and attestation tests. Third, they provide the rules of procedure and define the competence of the certification and attestation commissions. Forth, the amount of payment for certification and attestation is set by these Regulations. And finally, sample certificate of the mediator is provided in the Regulations. On 22 September 2015 amendments were introduced in these regulations⁹, clarifying rules on examination and increasing the educational standards for candidate certified mediators and attestation process of mediators.

1.3. Civil Procedure Law

Simultaneously with the adoption of the Mediation Law, amendments to Civil Procedure Law were passed. These amendments came into force on 18 June 2014¹⁰. Around dozen articles were amended with the aim to clarify the use of mediation in the litigation process. In particular, Article 23 on jurisdiction and Article 74 on rights of the parties were changed. These articles now provide that besides rights to submit a civil legal dispute to court or arbitration, the parties are not deprived of the rights to apply, upon mutual agreement, to mediation in order to settle a dispute. Article 164 now provides that as long as the adjudicating of a matter on the merits is not completed, it shall be possible for the parties not only to withdraw a claim, admit a claim, enter into a settlement or an agreement to transfer the dispute for it to be adjudicated in an arbitration court, but also to agree to use the mediation.

Also Article 37 was amended on repayment of state fee. State fee paid by the party to the court shall be repaid back in amount of 50% from the paid fee, if the court by its decision approves an amicable agreement between the parties, or if grounds for termination of the case is refusal of the claimant to continue the case because of concluded agreement in mediation, provided a written confirmation regarding result of a mediation is received from the mediator. However rights to receive back the state fee are effective only within three years after the state fee is paid into the state budget.

Amendments also extended the scope of the Articles 84 and 106 on the persons who may not act as representatives or witnesses in the civil procedure. Besides other exceptions, mediators now are also not allowed to act in capacity of representatives or witnesses, if they have acted in mediation in a particular or related case.

Civil Procedure Law provides requirements of contents for the claim to the court. After amendments to the Article 128, the claim should include *inter alia* information whether the claimant has used or wishes to use mediation before litigation.

Amended Article 132 provides for an additional reason for the court not to accept a submitted claim.

⁸ Available at: <http://likumi.lv/ta/id/268136-mediatoru-sertifikācijas-un-atestācijas-kārtība>.

⁹ Available at: <http://likumi.lv/ta/id/276694-grozījumi-ministru-kabineta-2014-gada-5-augusta-noteikumos-nr-433-mediatoru-sertifikācijas-un-atestācijas-kārtība>.

¹⁰ Amendments are available on: <http://likumi.lv/ta/id/266611-grozījumi-civilprocesa-likuma>.

Namely, now if the parties have, in accordance with procedures laid down by law, agreed to settle their disputes in the procedure of mediation, the disputes can be submitted to the court only in the case of failure of mediation. Therefore, in order to submit such a case to the court, the claimant must provide evidence that his proposal to the defendant to settle the dispute in the process of mediation has been rejected, or that the mediation agreement is not concluded, or that the mediation process has ended without reaching an agreement. Article 219 corresponds to the Article 132 and after amendments provides one more ground for the court in the case of which it shall leave the case adjudicated. Namely, if the parties have agreed to the procedures on settlement of the dispute through mediation (except in the case of the employee claims arising from employment legal relations), and no evidence has been submitted that the proposal to resolve the dispute through mediation has been rejected or mediation contract has not been concluded, or that the mediation has ended without reaching an agreement.

Similarly, Articles 148 and 149 are amended regarding contents of the information letter which the court sends to the parties after initiation of a civil case. The court shall inform the parties in written form about their rights to settle dispute by means of mediation, as well as to notify to the court, within a given period of time, about their decision to agree on mediation. Both parties shall notify to the court their willingness to proceed with the mediation. If the claimant and the defendant agree to the use the mediation, the judge, when taking its decision, shall determine the time period (not exceeding six months) for the use of mediation and the obligation to submit the evidence of the results to the court not later than seven days after the termination of mediation. The decision of the judge about the use of mediation cannot be appealed. Simultaneously with the decision on the term for mediation, the judge appoints the next hearing day at the court, this day being after the term for mediation has expired.

If before the adoption of the amendments to the Mediation law the judge was obliged to offer the parties an opportunity to conclude amicable agreement and to strive to reconcile them, then with amendments to Articles 149¹ and 151 the judge now shall also offer the parties to settle their dispute by means of mediation.

Mutual agreement of the parties engage in mediation is a legal ground for the court to postpone adjudication of the matter. This obligation was introduced by amending Article 209 of the Civil Procedure Law. In its decision on postponement of adjudication of a matter, the court shall indicate the term for use of mediation, which may not exceed six months. This decision of the court is not appealable.

1.4. Criminal Procedure Law

Mediation or, as it is also called, conciliation process in criminal cases is regulated in the Criminal Procedure Law, which was adopted on 21 April 2005 and came into force on 1 October 2005.¹¹

According to the Article 97, part eight of the Criminal Procedure Law, a victim may settle, in all stages of proceedings and in all types thereof, with the person who caused harm to him or her. In the cases provided for in the Criminal Procedure Law, a settlement shall be the grounds for the termination of criminal proceedings.

Article 121, part six of the Criminal Procedure Law gives rights to a mediator of the State Probation Service not to testify about the mediation process as well as about the behaviour of the parties and of third persons during the mediation meeting, except for the cases when the mediation process reveals information about another criminal offence. Therefore confidentiality is respected also in criminal cases' mediation.

According to the Article 379, part one, clause 2 of the Criminal Procedure Law, an investigator, with a consent of a supervising public prosecutor, public prosecutor or a court may terminate criminal proceedings, if [...] the person who has committed a criminal violation or a less serious crime has reached a settlement with the victim or his or her representative in the cases determined in the Criminal Law. However the termination of criminal proceedings on the basis of a settlement shall not be permitted, if information has been acquired that the settlement was achieved as a result of threats or violence, or by the use of other illegal means.

¹¹ Available at: <http://likumi.lv/doc.php?id=107820>.

Article 381 of the Criminal Procedure Law provides rules for mediation in criminal cases. It stipulates that in the case of a settlement, an intermediary trained by the State Probation Service may facilitate the conciliation of a victim and the person who has the right to defense. However also other persons, not only mediators trained by the State Probation Service, may help in the mediation process, even advocates or other third parties. In determining that a settlement is possible in criminal proceedings, and that the involvement of an intermediary is useful, a person directing the proceedings may inform the State Probation Service regarding such possibility or regarding the usefulness of mediation. However, if the criminal offence has been committed by a minor, the State Probation Service shall be informed at any case, except the case when the settlement has already been entered into. A settlement shall indicate that such settlement has been entered into voluntarily, with each party understanding the consequences and conditions thereof. A settlement shall be attached to a criminal case. During a court session, a settlement may be read out and it shall be entered in the minutes of the court session. A settlement shall be signed by both parties – the victim and the person who has the right to defense – in the presence of a person directing the proceedings or an intermediary trained by the State Probation Service, who shall certify the signatures of the parties. The parties may also submit a settlement certified by notary public to the person directing the proceedings.

The name of the Chapter 48 of the Criminal Procedure Law is „Special Features of Court Proceedings in the Case of a Settlement between a Victim and an Accused“. In its articles it is determined that a victim and an accused may notify regarding a settlement in the case provided for in the Law up to the retirement of the court to the deliberation room.¹² If a settlement has been submitted in writing, such settlement shall be attached to a case. The settlement shall indicate that it has been entered into voluntarily and that the victim understands the consequences of the settlement¹³. If an accused submits a written settlement without the presence of a victim, and the victim is a natural person, the settlement must be certified by a notary or by an intermediary trained by the State Probation Service¹⁴. If a victim and an accused notify orally regarding a settlement during a court session, an entry shall be made regarding the settlement in the minutes of the court session, and the victim and the accused shall sign them.¹⁵ Before the signing of a settlement or after receipt of a written settlement, a court shall verify whether such settlement has been entered into voluntarily, and whether the victim understands the consequences of the settlement¹⁶. Further Article 537 regulates the examination of the materials of a case if a settlement is concluded. If a settlement is submitted, or the minutes of a court session are signed regarding such settlement, after a court investigation has been commenced, and if the court has no doubts regarding the guilt of the accused, the court may interrupt the investigation and commence the court debates¹⁷. If a victim and an accused notify regarding a settlement during court debates or after discussions, the court shall interrupt the discussion, find out whether a settlement is of his or her own free will, explain the consequences thereof and take a decision¹⁸. Finally Article 538 of the Criminal Procedure Law provides for consequences of a settlement, stating that if a victim and an accused notify regarding a settlement up to the retirement of a court to the deliberation room, the court may take a decision, without examining court materials, on releasing of the accused from criminal liability and the termination of criminal proceedings.

2. Mediation organizations in Latvia

Before describing the organizations involved in mediation in Latvia, some words should be said about the types of mediators. There are two types of mediators in Latvia – certified mediators and other mediators. Both categories of mediators may provide mediation services, however the court can recommend the parties to settle their dispute at a certified mediator. However the parties are free to

¹² Article 536, part one of the Criminal Procedure Law.

¹³ Article 536, part two of the Criminal Procedure Law.

¹⁴ Article 536, part three of the Criminal Procedure Law.

¹⁵ Article 536, part four of the Criminal Procedure Law.

¹⁶ Article 536, part five of the Criminal Procedure Law.

¹⁷ Article 537, part one of the Criminal Procedure Law.

¹⁸ Article 537, part two of the Criminal Procedure Law.

choose either a certified mediator or a mediator who has not been certified. All mediators are free to participate in the work of the NGOs, including those NGOs who specialise in mediation support matters. Only certified mediators are admitted to the General Meeting of the certified mediators, as provided in Latvian Mediation Law.

The umbrella organization of mediation organizations in Latvia is the non-governmental organization *Biedrība "Mediācijas padome"*. It was registered in the public Register of Societies and Establishments on 25 July 2011. The aim of this NGO is to unite non-governmental organizations of Latvia acting in the field of mediation, to promote their cooperation, to elaborate code of conduct of mediators, standards of quality and education of mediators, to certify mediators, keep the register of certified mediators and promote beneficial environment for mediation in Latvia. This NGO was established by four other non-governmental organizations active in the field of mediation:

- 1) *Biedrība "Mediācija un ADR"*;
- 2) *Biedrība "Integrētā mediācija Latvijā"*;
- 3) *Biedrība "Integrācija sabiedrībai" (Cietušo atbalsta centrs)*; and
- 4) *Biedrība "Latvijas Komerctrīdu mediatoru asociācija"*.

The main body for certified mediators is the General Meeting of Certified Mediators. All mediators who have passed the exam of certified mediators and received a certificate shall participate in the General Meeting of Certified Mediators. A general meeting of certified mediators is a self-governance body of certified mediators, in the work of which participate all the certificated mediators with the right to vote. A general meeting of certified mediators shall:

- 1) approve the by-law of the general meeting of certified mediators;
- 2) elect members of the Council of Certified Mediators from amongst certified mediators;
- 3) approve the by-law of the Council of Certified Mediators;
- 4) approve the Code of Ethics of Certified Mediators;
- 5) examine other issues related to the work organization of certified mediators;
- 6) hear reports on the work of the Council of Certified Mediators.

A general meeting of certified mediators shall be convened by the Council of Certified Mediators at least once a year¹⁹.

Daily work for the benefit of certified mediators is performed by the Council of Certified Mediators. The Council of Certified Mediators shall have five members elected for three years by the general meeting of certified mediators. The Council of Certified Mediators is an autonomous self-governance body subject to public law. The Council of Certified Mediators shall carry out the following tasks:

- 1) ensure the issuance of a certificate to the mediator who has passed the certification examination;
- 2) organise certification examinations of mediators and attestation examinations of certified mediators;
- 3) keep a list of certified mediators;
- 4) supervise the mediation quality, examining complaints regarding activities of certified mediators;
- 5) represent certified mediators and express an opinion in contacts with State and local government institutions, other institutions and officials, as well as provide opinions on legislative issues related to mediations and on issues related to mediation practice;
- 6) perform other functions laid down in the Mediation Law.

In carrying out these tasks, the Council of Certified Mediators has the right to request and receive the information and documents determined in the Mediation Law from a certified mediator, a person who wishes to become a certified mediators, and State institutions²⁰.

Mediation and conciliation in criminal cases is mostly organized by mediators working in the State Probation Service or volunteer mediators acting under supervision of the State Probation Service. This is a governmental institution under supervision of the Ministry of Justice²¹. Article 381 of the Criminal Procedure Law provides that in the case of a settlement, an intermediary trained by the State Probation Service may facilitate the conciliation of a victim and the person who has the right to defense.

¹⁹ Article 24 of the Mediation Law.

²⁰ Article 25 of the Mediation Law.

²¹ *Valsts probācijas dienesta nolikums* [Charter of the State Probation Service]. – Cabinet of Ministers Regulations No. 1010 adopted on December 27, 2005. In force since 1 January 2006. Published in official gazette "Latvijas Vēstnesis" on 30 December 2005 No. 210 (3368). Available at: <http://likumi.lv/doc.php?id=124795>.

Some municipal bodies in Latvia – *Rīgas bāriņtiesa, Jūrmalas bāriņtiesa, Jelgavas bāriņtiesa* – used to provide free of charge mediation services in family law disputes until 2016, when it was cancelled because of stricter divisions of functions of the municipal bodies.. These institutions are independent municipal bodies established by the city councils and they are responsible for custody and guardianship matters with the aim to protect rights and interests of children and persons under guardianship²².

3. Basic terms and definitions

Mediation terms and definitions are set out in the Article 1 of the Mediation Law. Although similar to the terminology of the Directive, Mediation law defines the terms slightly different. The Mediation law defines the following terms:

- 1) mediation – a structured co-operation process on voluntary basis whereby the parties attempt to reach a mutually acceptable agreement on the settlement of their dispute with the assistance of a mediator;
- 2) parties – persons who are willing to settle a dispute by using a mediation;
- 3) participants of mediation – parties and persons on the participation of which in the mediation the parties have agreed;
- 4) mediator – a natural person selected freely by the parties who has agreed to conduct the mediation;
- 5) certified mediator – a mediator who in accordance with the procedures laid down in the laws and regulations has acquired mediation and received a certificate which gives the right to be included in the list of certified mediators;
- 6) mediation contract – a contract entered into by and between the parties on the use of mediation, which may be drawn up in the form of a separate written document;
- 7) contract with a mediator – a contract entered into by and between the parties and mediator on the use of mediation;
- 8) confirmation regarding result of a mediation – a written document issued by a mediator in which the parties, the subject-matter of the dispute, the date of terminating the mediation is indicated and which in the cases laid down in this Law confirms termination of the mediation with or without agreement by the parties;
- 9) agreement – result of mediation by which the parties settle their disputes and which may be drawn up in the form of a separate written document.

The same terminology is used in the Cabinet of Ministers Regulations No. 433 “*Mediatoru sertifikācijas un atestācijas kārtība*” [Order of certification and attestation of mediators] which were adopted on 5 August 2014 and came into force on 12 August 2014. However the Civil Procedure Law and the Criminal Procedure Law have their own terminology.

4. Initiation of mediation: how mediation process is triggered

In civil law cases one or both parties can apply for mediation process either before or during the litigation. Mediation is completely voluntary process, there is no mandatory mediation in Latvia. In the case of litigation the judge must inform the parties about existence of mediation, however there is no obligation to participate in it. The only case when the parties are obliged to settle their dispute through the process of mediation is in cases when mediation contract is concluded between them. A mediation clause in the agreement is also sufficient for proceeding with mediation process. The parties may agree in oral or written form regarding the use of mediation to settle disputes already arisen or which may arise in the future. Such agreement may be incorporated into any written contract as a separate provision – so called mediation clause. If the parties have included a mediation clause in a contract or have entered into a separate mediation contract, a claim in case of a dispute may be brought

²² Riga City Council Statutes No. 97 „*Rīgas bāriņtiesas nolikums*“ [Statutes of the Riga city Orphans’ Court] adopted on 25 November 2014. Available at: https://www.riga.lv/NR/rdonlyres/74C8E7BE-C9B6-4E32-81C2-36DB7F82F705/55133/Nolikums_Nr97.pdf.

to a court only after one of three further cases occur. First, one party has informed the other party in writing regarding withdrawal from the agreement included in the contract. Second, one party has rejected the proposal of the other party to settle their dispute by using mediation. Third, the mediation has been terminated without agreement and the mediator has issued a certification regarding the outcome of mediation.

According to Article 9 of the Mediation Law a proposal of one party to settle disputes by using mediation shall be considered as rejected if the consent by the other party to the use of mediation has not been received. Unless the parties have agreed otherwise, the time period for providing a consent shall be 30 days from the day of sending a proposal for mediation. If a consent for mediation is received, but a contract with a mediator is not entered into within 30 days from the day of receipt thereof, then it shall be considered that the proposal for mediation is rejected unless the party has requested the Council of Certified Mediators, during the time period, to recommend a mediator.

The parties are free to choose either a mediator or a certified mediator for the coming mediation process. According to the Article 7 of the Mediation Law if the parties themselves are not able to agree on the selection of a mediator or have not reached an agreement regarding the principles for selecting a mediator, the Council of Certified Mediators has the right to recommend a mediator from the list of certified mediators. As stipulated in Article 10 of the Mediation Law. if a consent for mediation is received, but the parties are not able to reach an agreement on the selection of a mediator or other issues related to mediation and a contract with a mediator is not entered into within 30 days from the day when a consent for mediation has been received or a court decision to postpone the review of the matter has been rendered, the party may request that the Council of Certified Mediators recommends a mediator. The Council of Certified Mediators, within 10 days from the day of receipt of the request, shall select a mediator from the list of certified mediators and notify his or her given name, surname, phone number, address and time for entering into a contract with the mediator. Further the Council of Certified Mediators shall determine the time period for entering into the contract as not later than the fourteenth day from the day of sending its notification. If the party which cannot arrive within a specified time notifies the mediator regarding justifying reasons for absence in advance, the mediator shall determine a new time within subsequent 14 days for entering into a contract and shall notify the parties thereof. If a party fails to arrive unjustifiably or repeatedly for entering into a contract with the mediator or if it is not possible to enter into a contract with the mediator due to other reasons, the mediator shall issue without delay a written certification that it was not possible to enter into a contract with the mediator. After issuing the certification it shall be considered that the proposal for mediation has been rejected.

A mediation proposed by the court or so called court-annexed mediation is mediation conducted by a mediator, if during court proceedings while adjudication of a matter on the merits has not been completed, the parties have expressed a willingness to settle the dispute using mediation upon recommendation of a court or a judge. As provided in Article 17 of the Mediation Law, a court-annexed mediation shall be applicable to settlement of civil disputes that in accordance with the Civil Procedure Law are to be examined in accordance with the claim court proceedings. A judge or a court shall invite the parties to select a mediator from the list of certified mediators. Upon reaching an agreement as a result of court-annexed mediation, the parties may choose one of the following three solutions. First, enter into amicable agreement that conforms to the norms of the Civil Procedure Law, to submit it to the court and to request the court to approve it. Second, refuse from the claim. And the third, recognize the claim fully or partly. In order to refuse from the claim in relation to an agreement reached through mediation, a party shall submit a certification to the court, issued by the mediator, on the outcome of the mediation. If an agreement is not reached as a result of court-annexed mediation, the mediator shall prepare a certification on the outcome of mediation and shall issue it to the parties.

Specifically it should be mentioned that in litigation over family law cases where interests of the child are involved in the terms of access rights of parents or custody rights, municipal social institution *bāriņtiesa* is obliged to write a reference to the court with an opinion about the disputed matter. To prepare such reference this social institution invites for pre-trial hearing process both parents and at some stages organizes psychological examination of both parents and the child. To promote amicable and out-of-court settlement of disputes in family law cases, some municipalities provided until 2016

free of charge mediation services. For instance in the cities of Riga, Jelgava and Jūrmala mediation services were available and therefore social institution's hearings and further court hearings could be postponed for a reasonable period of time to facilitate effective continuation of mediation process between the parties. Since 2016 mediation is still possible, however it is provided by mediators practicing independently outside of municipal and state institutions.

5. Regulation of mediation process

Mediation process is regulated by normative enactments, as well as by contract concluded among the mediator and the parties. Mediation shall be commenced by entering into a contract with a mediator. The following shall be indicated in a contract with a mediator: a consent by the parties and the mediator for the use of mediation, brief essence of the dispute, the rights and obligations of the parties and the mediator, and the provisions for payment of mediator services and mediation expenses. A contract with a mediator may contain also other information that the parties and mediator consider as necessary. The contract with the mediator may be amended during mediation, if the parties and mediator have agreed thereon.

Prior to commencement of mediation, mediator shall explain the procedures of mediation, mediator's functions, the rights and obligations of the participants of mediation, as well as the basic principles of mediation to the parties. However these issues can already be explained in the contract with a mediator. A mediator shall conduct mediation in accordance with the Mediation Law, the basic principles of mediation and the contract entered into.

Regarding normative enactments, mediation in civil law cases is regulated by Mediation Law, Civil Procedure Law and the Cabinet of Ministers Regulations No. 433. For criminal cases mediation is regulated by the Criminal Procedure Law.

6. Recognition / Credentialing / Accreditation of Mediators

As it was already mentioned above, there are two types of mediators in Latvia – certified mediators and mediators. A certified mediator is a mediator who in accordance with the procedures laid down in the laws and regulations has studied mediation and received a certificate which gives the right to be included in the list of certified mediators. In contrast, a mediator is a natural person selected freely by the parties who has agreed to conduct the mediation. There are no legal requirements raised for the status of mediator. Only the status of certified mediator is regulated by the law.

A certified mediator may be a natural person who:

- 1) has reached 25 years of age;
- 2) has impeccable reputation;
- 3) has acquired an education document attesting a State recognised higher education;
- 4) is fluent in the official language at the highest level;
- 5) has attended a mediator's training course;
- 6) has obtained a mediator's certificate.

A certified mediator may not be a person who does not conform to the above requirements, or who has been convicted of committing an intentional criminal offence or against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration. Also a person who is a suspect or accused in a criminal matter can't become a certified mediator. And finally a certified mediator may not be a person who in accordance with a judgment of a court may not provide mediation services.

A candidate who complies with the above requirements and to whom the restrictions are not applicable is entitled to take an examination of a certified mediator after lodging a relevant submission to the Council of Certified Mediators. To apply for examination a candidate must pay a state fee in amount of EUR 205, as well as submit documents confirming level of education and attendance of at least 100 academic hours of mediation courses. A certification examination of a mediator and an

attestation examination of a certified mediator is organized by the Council of Certified Mediators. The exam consists of three parts, where multiple choice test of 30 questions, essay on mediation issues and mock mediation session is included. If a mediator has passed a certification examination, the Council of Certified Mediators decides on issuing a certificate. A certificate is valid for five years.

To prolong validity of the certificate a certified mediator shall undergo an attestation. Attestation of a certified mediator shall be performed at least once every five years. The procedures for application of a candidate, the content and procedures for a certification examination of a mediator and an attestation examination of a certified mediator, as well as the fee for certification and attestation is determined by the Cabinet of Ministers Regulations No. 433. To apply for attestation a candidate must pay a state fee in amount of EUR 51. The candidate must also submit review over at least 15 mediation processes organized during previous 5 years, as well as the evidence about participation in mediation courses of at least 100 academic hours. A decision of the Council of Certified Mediators on the outcome of the certification or attestation examination (in relation to infringements of examination procedures made during the certification or attestation examination, which could affect assessment), may be appealed within a month after notification of the outcome of certification or attestation examination by lodging a relevant submission to the Ministry of Justice. A decision of the Ministry of Justice may be appealed to a court within a month in accordance with the procedures laid down in the laws and regulations governing the administrative procedure.

The validity of a certificate is terminated if a certified mediator:

- 1) has provided false information in order to receive a certificate;
- 2) has been found guilty of committing an intentional criminal offence or against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration;
- 3) in accordance with a court judgment he or she may not provide mediation services;
- 4) has lodged a submission to the Council of Certified Mediators regarding termination of fulfilling the duties of a certified mediator;
- 5) has infringed the norms of the Mediation Law or the norms of professional ethics of a mediator;
- 6) has not passed or has failed to pass the attestation examination;
- 7) has died.

The Council of Certified Mediators takes a decision to terminate the validity of a certificate on the basis of a submission by a certified mediator or information received from a court, investigative institution or another competent authority or person, on the basis of an opinion of the Commission in the case referred above. A decision of the Council of Certified Mediators to terminate the validity of a certificate may be appealed to a court within a month by lodging a relevant submission to the Ministry of Justice. A decision of the Ministry of Justice may be appealed to a court within a month in accordance with the procedures laid down in the laws and regulations governing the administrative procedure.

If a certified mediator has been recognized as a suspect or an accused in criminal proceedings regarding committing an intentional criminal offence, the operation of his or her certificate is suspended from the moment when the Council of Certified Mediators has received the relevant information of the person directing proceedings, until the final adjustment of criminal legal relationship in criminal proceedings.

7. Confidentiality and admissibility of mediation evidence

According to the Article 4 of the Mediation law, information that is obtained through mediation or is related thereto is confidential, unless the parties have agreed otherwise. A mediator is not allowed to disclose to a party the information provided by the other party unless the other party has consented to it.

It is prohibited to question a mediator as a witness regarding the facts arising out of or in connection with a mediation process. However, as stipulated in the Mediation Law, confidentiality obligation is not effective in cases, when disclosure of information is required in accordance with laws and

regulations in order to ensure public order, particularly the protection of the rights or interests of a child, as well as to prevent danger to the life, health, freedom or sexual inviolability of a person. Also confidentiality rule is not effective when disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce this agreement.

8. Mediated outcomes and enforceability

Agreement reached by the parties in mediation process has the same legal force as any other agreement. It is not automatically enforceable. However, if the agreement is reached during litigation process, the parties have rights to submit such agreement to the court with a request to approve it as amicable agreement according to the Article 226 of the Civil Procedure Law. If such amicable agreement is drafted in the form stipulated in that Article, the court approves it in the form of court decision. Accordingly, court decision is enforceable by means and help of the sworn court bailiff.

Amicable agreement is not permitted in four cases:

- 1) in disputes in connection with amendments in registers of documents of civil status;
- 2) in disputes in connection with the inheritance rights of persons under guardianship or trusteeship;
- 3) in disputes regarding immovable property, if among the participants are persons whose rights to own or possess immovable property are restricted in accordance with procedures laid down in law;
or
- 4) if the terms of the settlement infringe on the rights of another person or on interests protected by law.

9. Duties and obligations during mediation

During mediation parties and a mediator are obliged to obey requirements of the law, mediation principles and agreement between the parties and the mediator. Mediator is obliged to explain to the parties the procedures of mediation, the mediator's functions, the rights and obligations of the participants of mediation, as well as the basic principles of mediation. A mediator shall conduct mediation in accordance with the Mediation Law, the basic principles of mediation and the contract entered into. A mediator may meet with the parties jointly or with each party individually. A mediator in his or her activities shall observe the norms of professional ethics of the mediator.

There are no sanctions for the parties for any breach of duties and obligations during mediation, because mediation is voluntary. However, theoretically, if behaviour of a party causes damages to the other party, there would be legal ground to claim damages. For instance, if the party would breach principle of confidentiality and disclose information obtained during mediation process about the other party, the damages could be demanded through another litigation process.

10. Expected developments in mediation regulation

On 22 September 2015 amendments to Cabinet of Ministers Regulations No. 433 were adopted. Amendments were made on the basis of the Cabinet of Ministers Regulations No. 536 and they came into effect on 25 September 2015²³. These amendments set higher demands for candidate certified mediators and attestation of mediators. Also, the mediation examination process was improved to make it more clear in the terms of procedure. Currently there are no new developments towards amending of mediation laws.

²³ Available on: <http://likumi.lv/ta/id/276694-grozijumi-ministru-kabineta-2014-gada-5-augusta-noteikumos-nr-433-mediatoru-sertifikacijas-un-atestacijas-kartiba->.

11. Available statistics on mediation

Regarding number of certified mediators in Latvia, the data is precisely known after results of exam of certified mediator are announced. So in November 2014 there were 24 certified mediators in Latvia. Since October 30, 2015 there are 38 certified mediators in Latvia. A list of certified mediators is available on internet²⁴.

Other mediation statistics are accumulated by non-governmental organizations and data on a regular basis are provided by practicing mediators.

Number of national and international mediation processes in Latvia²⁵:

Mediation cases in total	National mediation cases		International mediation cases	
	2012	2013	2012	2013
Mediation processes	333	529	13	4
From them – finished with an agreement	184	396	11	4
Effectiveness	55%	75%	85%	100%

²⁴ Available at: http://www.mediacija.lv/?Mediatoru_sertifik%C4%81cija:Sertific%C4%93to_mediatoru_saraksts.

²⁵ Data obtained from: <http://www.mediacija.lv/?Aktualit%C4%81tes&id=145>.