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# E-Book

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

### Chapter II

VIGITA VĖBRAITĖ

## Legal Regulation of Mediation and Involved Institutions: Lithuania

**SUMMARY:** Introduction. – 1. Normative sources of mediation regulation. – 2. Mediation organizations in Lithuania. – 3. Basic terms and definitions. – 4. Initiation of mediation: how mediation process is triggered. – 5. Regulation of mediation process. – 6. Recognition, credentialing and accreditation of mediators. – 7. Confidentiality and admissibility of mediation evidence. – 8. Mediated outcomes and enforceability. – 9. Statistics and expected developments in mediation regulation.

### Introduction

It is no secret that Lithuania was under occupation of the socialist regime of the Soviet Union for 50 years. The policy of the regime provided for the formation of a particular mentality in society. Such mentality was oriented towards obedience and full conformity to the rules and policy established by those in power and there were many restrictions in all fields of life. Creativity, pragmatism and personal interests were not the priority in those times. This led to the entrenching of court-based litigation and a rule-based dispute resolution culture. Interest-based dispute resolution was not known. Naturally, there was no place for mediation in such legal culture. After the restoration of independence in 1990 for quite a long time mediation was also has part of dispute solving. At first, the initiatives to promote mediation came from the growing non-governmental sector<sup>1</sup>. Mainly, such projects aimed to train a limited number of mediators and trainers, and several seminars with participation of foreign lecturers were organised.

After the adoption of EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, the talks about the advantages of mediation and promoting of this procedure became much more intense in Lithuania. The Law on mediation in civil disputes<sup>2</sup> was adopted and came into force on the 1<sup>st</sup> of January 2010. The word “mediation” is not used in the law, as the philologists were fiercely opposed to the use of such an international term in Lithuanian language. The words “*Taikinamasis tarpininkavimas*” are used in the law, but notwithstanding this fact in practice in Lithuania everyone, including lawyers and the public, uses the word “mediation”<sup>3</sup>.

The first developments in the area of court-annexed mediation in Lithuania came in May 2005. After intensive debates the Judicial Council of Lithuania was convinced that it was necessary to attempt

<sup>1</sup> R. SIMAITIS, *Development of mediation in Lithuania*, in *The recent tendencies of development of civil procedure law – between East and West*, Vilnius, 2007, p. 206.

<sup>2</sup> *Civilinių ginčų taikinamojo tarpininkavimo įstatymas*, in *Valstybės žinios* No. 87-3462, 15.07.2008.

<sup>3</sup> V. NEKROŠIUS, V. VĖBRAITĖ, *Baltic countries*, in C. ESPLUGUES, J.L. IGLESIAS, G. PALAO (eds.), *Civil and Commercial Mediation in Europe. I. National Mediation Rules and Procedures*, Cambridge, 2013, p. 30.

implementing mediation in one district court. That court was Vilnius City II district court. After one year of practise it was decided that court-annexed mediation had reached its goals, as the judges learnt how to mediate and the number of settlements started to grow in that court. Following these positive results, court-annexed mediation was implemented in also in the other Lithuanian courts.

During the last year, the discussions and attempts to promote mediation in different areas of disputes have finally really intensified. Ministry of Justice and Judicial Council have begun elaboration of a concept paper on how to popularize mediation, how to increase the number of mediators in Lithuania, and how to decide in which case mediation procedure could be obligatory. There are also attempts to make mediation available in some administrative or criminal matters.

## 1. Normative sources of mediation regulation

As it has been already mentioned The Law on mediation in civil disputes<sup>4</sup> was adopted and came into force on the 1<sup>st</sup> of January 2010. Since adoption some articles of the Law have been insignificantly amended. It can be seen already from the title of the Law that it is only applied for civil matters. The Law regulates such questions as mediation agreement, appointment of mediators, main principles of mediation procedure, approval of settlement agreement, etc. The Law is not applied to judicial conciliation conducted by the judge hearing the case. The Act is also not applied to extrajudicial resolution of consumer disputes, where such disputes are heard under extrajudicial dispute resolution procedures in accordance with the Law of the Republic of Lithuania on Consumer Protection or other legal acts.

Currently there are attempts to elaborate a new draft of the Law and to make it possible to apply it for the administrative and criminal matters. Studies have also stressed that there is a need for mediation in criminal or administrative matters. For instance, The Law Institute of Lithuania published a study on “Restorative justice perspectives in Lithuania”<sup>5</sup> and big part of this study was devoted to possibilities of mediation in criminal matters. It was stressed in the study that the idea to introduce mediation to some penal matters should be supported. Such opinion was endorsed by the legal scholars and also the interviewed practitioners. It was pointed out that some practical issues with current criminal proceedings could be solved by alternative procedures and participation by qualified, impartial mediators. First, mediation procedures allow the victims to solve their problems arising from the conflict. Mediation would help to ease emotional discomfort, tension and anger. While these negative emotions often appear to be one of primary drivers of criminal proceedings, such proceedings frequently do not help to solve the problems of the parties. Second, mediation could have a positive educational impact on the offender. Third, it would release the officers from serving as mediators – although mediation is outside of the officers’ duties they sometimes engage in mediation in order to help the parties to solve their problems efficiently and also in order to optimize their own workload.

There are some attempts to try mediation during probation. Such mediation is done only according to the internal rules on “Application of mediation in probation services”<sup>6</sup> and the memorandum between Norway and Lithuania for financing probation services in Lithuania.

On 20<sup>th</sup> of May 2005 the first court-annexed mediation rules<sup>7</sup> were adopted by the Judicial Council, which have since been amended several times. Mediation projects at the Quebec Court of Appeal and the Mediation Program at Ljubljana Regional Court were taken as the main examples in Lithuania<sup>8</sup>. Also it is important that from the 1<sup>st</sup> of October 2011 court-annexed mediation has been mentioned in

<sup>4</sup> Text in English can be found here: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=404617](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=404617).

<sup>5</sup> I. MICHAILOVIČ, S. BIKELIS, *Atkuriamojo teisingumo perspektyvos Lietuvoje*, 2014, available at [http://www.teise.org/data/Atkuriamjo-teisingumo-perspektyvos-Lietuvoje\\_Monografija.pdf](http://www.teise.org/data/Atkuriamjo-teisingumo-perspektyvos-Lietuvoje_Monografija.pdf).

<sup>6</sup> Rules can be found online here: [http://www.kalejimudepartamentas.lt/lt/vapt/mediacija/dokumentai\\_1620.html](http://www.kalejimudepartamentas.lt/lt/vapt/mediacija/dokumentai_1620.html).

<sup>7</sup> Court-annexed mediation rules can be found online here:

<http://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismine-mediacija/teises-aktai-reglamentuojantys-teismine-mediacija/1677>.

<sup>8</sup> V. VĖBRAITĖ, *Šalių sutaikymas civiliniame procese*, Vilnius, 2009, p. 182.

the Lithuanian Code of Civil Procedure<sup>9</sup>. Article 231 (1) of this Code states that with the consent of the parties court-annexed mediation can take place in the preliminary stage of the court hearing.

## 2. Mediation organizations in Lithuania

Up to date, there is no single institution responsible for promotion and organization of mediation in Lithuania. Only the organization of court-annexed mediation is clearly regulated. Judicial Council, National Courts' administration and Commission for court-annexed mediation have responsibility to promote such mediation, administer list of court mediators and to deal with other matters regarding court-annexed mediation<sup>10</sup>.

Private mediation is promoted and organized strictly on voluntary basis and there is no single non-governmental organization or other institution, which would take the lead in organizing mediation in Lithuania. Each arbitration court in Lithuania provides mediation services and has a list of mediators<sup>11</sup>. Also governmental institution for State legal aid provides legal aid for some persons and consults about possibilities of mediation. There are plans to make this institution the central governmental institution for organization and administration of mediation services. Similarly, there are some lawyers or academics who try to promote mediation and provide mediation services for different individuals.

## 3. Basic terms and definitions

The main terms in the field of mediation can be found in the Law on mediation in civil disputes.

According the law: **mediation** in civil disputes means civil dispute settlement procedure whereby one or several mediators in civil disputes assist the parties to a civil dispute in reaching an amicable agreement; **Mediator** means a third impartial natural person who is involved in settling a civil dispute between other persons with a view to assisting in reaching an amicable agreement; **Agency administering mediation** in civil disputes means a public or private legal person that recommends or appoints mediators, proposes or determines rules for mediation, administers the costs of mediation, provides premises for the procedure to be conducted in and/or provides other services related to mediation. **Court-annexed mediation** is a civil settlement procedure whereby one or several court mediators assist the parties to a civil dispute in court in reaching an amicable agreement.

## 4. Initiation of mediation: how mediation process is triggered

It has been already mentioned that till now in Lithuania mediation is only possible in civil disputes. Most of such disputed can be resolved by mediation. The Law on mediation only says that it is not possible to initiate mediation in the disputes that arise out of such civil rights and duties the settlement agreements concluded whereon would be considered void under the law. So it must be taken into account that according to Art. 6.984 of the Lithuanian Civil Code<sup>12</sup> the amicable settlement agreement regarding the legal status or legal capacity of persons, regarding the matters regulated by the imperative norms of law, as well as regarding the matters related to public order, is not valid. Usually it is believed that civil cases regarding family, consumer disputes, also small claims are the most suited for mediation<sup>13</sup>.

Understandably the agreement of the parties to the dispute is a key element in order to start mediation procedure. Art. 3 of the Law on mediation states that mediation must be used on the basis of a written agreement between the parties to a dispute. The parties to the dispute may agree on

<sup>9</sup> Lietuvos Respublikos civilinio proceso kodeksas, in Valstybės žinios No.85-4126, 21.06.2011.

<sup>10</sup> More information can be found online here: <http://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismine-mediacija/teises-aktai-reglamentuojantys-teismine-mediacija/1677>.

<sup>11</sup> For instance, <http://www.arbitrazas.lt/mediatoriai%20tarpininkai.htm> or <http://www.arbitrazoteismas.lt/lt/tarpininkavimas/>.

<sup>12</sup> LR Civilinis kodeksas, in Valstybės žinios No. 74-2262, 18.07.2000.

<sup>13</sup> N. KAMINSKIENĖ, A. TVARONAVIČIENĖ, R. USCILA, *Mediacija*, Vilnius, 2013, p. 35.

mediation either after the dispute has arisen or prior to it. The content of an agreement is not regulated in the Law. In the theory it is acknowledged that if the agreement on mediation is only one sentence stating that the parties agree on mediation, it can become difficult to reach an agreement on the number of mediators, concrete procedure of mediation or mediation's costs, etc.<sup>14</sup>. It is not clear if the agreement on mediation agreed electronically could be recognized. We believe that taking into account the development of modern technologies and recognition of such technologies in other laws, the agreement on mediation agreed in electronic form which can be reproduced should be recognized. For instance, Law on commercial arbitration<sup>15</sup> in Lithuania allows to conclude arbitration clause in electronic form, so the analogy of the law could also be invoked.

The agreement on mediation is obligatory for the parties, mediators or institution which performs mediation and also for the courts. The Law on mediation clearly states that where parties to a dispute agree to settle the dispute through mediation, they must attempt to settle the dispute by this procedure before referring to a State court or to arbitration. If the mediation agreement sets time limits for the termination of mediation, the party to the dispute may refer to State courts or to arbitration only after the expiry of these time limits. Where no time limits for the termination of mediation have been set forth in the mediation agreement, any party to the dispute may refer it to State courts or to arbitration one month after suggesting, in writing, to the other party or parties to the dispute to settle the dispute through mediation.

The party to the dispute may refer to State court disregarding the set time limits fixed, provided the mediation procedure is terminated in accordance with the mediation Law if, for instance, all parties to the dispute present to the mediator a written notification of termination of mediation or the mediator presents a written notification of termination of mediation to all parties to the dispute or one party to the dispute sends the other party to the dispute a written statement objecting to the settlement of the dispute through mediation.

Court-annexed mediation can be initiated by a judge hearing a civil case or by any person participating in the civil case. It can be said that judges have a duty to explain the possibilities and the essence of mediation in all cases, where such procedure can be performed. In practice we believe such explanation is not very frequent and unfortunately not every judge understands the advantages of mediation. Also, lawyers are not very well acquainted with this procedure. A dispute is assigned to mediation procedure by a ruling of the court. The written consent of the parties is also necessary. If parties agree on court-annexed mediation in a court session, such consent can be recorded in the minutes of the court session. The hearing of the case is adjourned by the same court ruling. It is also possible to assign only part of the case to the procedure of court-annexed mediation.

## 5. Regulation of mediation process

In Lithuania, parties and mediator can freely choose the exact procedure, the venue and the time for of out-of-court mediation. Electronic communication can be also used during mediation procedure. This means that online mediation is possible in Lithuania if parties to the dispute so desire. Parties to a dispute may agree that a third party or an administrator of mediation services will select or recommend a mediator for them. Where there is no agreement between the parties regarding the selection of a mediator, the mediator may, at the joint request of the parties to the dispute, be appointed by a district court in accordance with the simplified procedure set forth in the Code of Civil Procedure. A person can be appointed mediator only with his written consent.

In cases where no agreement between the parties exists on the nature and procedure of mediation or where an agreement between the parties of the dispute does not provide for specific actions to be taken by a mediator, the mediator, according to Art.5 of the Law on mediation, must perform his duties with due care, taking into account the circumstances of the dispute, including possible imbalances of power between the parties of the dispute, any wishes of the parties and the need for a prompt settlement of the dispute, and acting in compliance with law. Also, as a general rule and according to the

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<sup>14</sup> *Ibid.*, p. 209.

<sup>15</sup> *Komerčinio arbitražo įstatymas*, in *Valstybės žinios* No.76-3932, 21.06.2012.

confidentiality principle, only parties, their representatives and a mediator may be present in the process of mediation. However, at the request or with the consent of the parties, other persons may also be present in mediation. Having established that there are more parties involved in the dispute being settled, the mediator can propose to the parties participating in the mediation to agree with the other parties involved in the dispute to solve their dispute through mediation. European Code of Conduct for Mediators is also an important while regulating principles of mediation procedure, relations between parties to the dispute and mediators. Also courts of arbitration have their own rules of mediation<sup>16</sup> that can be applied if the parties to the disputes want to use them.

A mediator must inform the parties to a dispute and terminate mediation if an agreement which may be reached by the parties to the dispute is, in the mediator's opinion, unenforceable or illegal, having regard to the circumstances of the dispute and the competence of the mediator, or if the mediator recognises that continuing mediation is unlikely to result in a settlement. Understandably, any party to a dispute can withdraw from mediation without specifying the reasons for withdrawal. This does not prevent the parties to the dispute from repeatedly agreeing to settle the dispute through mediation.

For court-annexed mediation, the most important legal source are the above-mentioned rules of court-annexed mediation. According to these rules, during the procedure the equality of the parties, efficiency, confidentiality, tolerance, and fairness of the procedure must be ensured. Parties should cooperate between themselves and with the court mediator during the mediation sessions. The mediation procedure can be organised on the premises of the court or outside the court. Till now usually there are no special premises for mediation sessions in the courts in Lithuania. It is also possible to perform mediation procedure online or with different electronic means if the parties to the dispute and the court mediator agree on that. According to article 19 of the court-annexed mediation rules the court mediator must try to ascertain the interests of the parties to the dispute; the court mediator can initiate his own proposals, discuss the legal and factual arguments of the parties. The meetings of a mediator with one party of a dispute (so called caucuses) can be arranged. Such method of solving a dispute is categorically not allowed during a conciliation procedure performed by the judge in a court session. Parties to the dispute and their representatives can attend mediation sessions. On the consent or request of the parties, other participants of the civil proceedings as well as other persons can participate in the mediation procedure.

According to the most recent amendments of the rules the time limit how many hours the court-annexed procedure can last has been revoked. It is only said that the mediation should be so organized that it would be over till the date of court hearing which was set in the ruling to adjourn the hearing of the civil case and to assign dispute for the mediation. Court-annexed mediation ends if:

- the agreement is reached and signed by the parties to the dispute;
- parties to the dispute withdraw from the mediation procedure;
- the time limits for the mediation procedure ends;
- the court mediator decides to terminate the mediation procedure on the basis that the reached agreement is not enforceable or not legal or that, realistically, there is no chance that an agreement can be reached by the parties to the dispute.

## 6. Recognition, credentialing and accreditation of mediators

It has been repeatedly noted, that one of the biggest gaps in the law on mediation in Lithuania is the absence of set requirements for mediators<sup>17</sup>. It is especially important for the cases in out-of-court mediation. Till now there is also no official Bar or Register of mediators in Lithuania. Currently no accreditation is needed for mediators if they wish to perform out-of-court mediation. Also civil liability or mandatory insurance system for the mediators is not regulated in Lithuania. Likewise, the mediators do not have any duty to have some special education or to continue professional education.

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<sup>16</sup> For instance, rules of mediation and conciliation procedure of Vilnius court of commercial arbitration, can be found online at: [http://www.arbitrazas.lt/failai/VCCA%20Documents\\_ENG/VCCA%20Mediation%20and%20Conciliation%20Rules\\_ENG\\_from%20004-03-08.pdf](http://www.arbitrazas.lt/failai/VCCA%20Documents_ENG/VCCA%20Mediation%20and%20Conciliation%20Rules_ENG_from%20004-03-08.pdf).

<sup>17</sup> V. VĖBRAITĖ, *Šalių sutaikymas civiliniame procese*, cit., p. 165.

Mostly it is thought and said in public that lawyers, psychologists and bailiffs could mediate most cases. Naturally, if the mediator is a lawyer, he or she also has to abide ethics standards set for the lawyers. For instance, lawyers have to avoid conflict of interest if they wish to be mediators in the disputes. At last, there is also a draft law<sup>18</sup> to allow notaries to mediate disputes. The draft law sets the rule that if the notary successfully mediates a dispute, he or she cannot confirm the reached settlement; also the notary cannot mediate dispute which rises out of the contract or other documents which have been certified by that notary.

There are also no specific requirements for the agreement of the parties regarding the selection of the mediator. The requirements for the mediators, also as the procedure of the mediation can be agreed widely by the parties. The mediators must disclose circumstances that could generate conflict of interest. Article 4 (4) of the Law on mediation states that the mediator may accept a proposal to commence mediation or continue the mediation only when he has informed the parties to the dispute of the circumstances known to him likely to give rise to doubts regarding his impartiality. As it has been already mentioned, it is also stressed that mediator, while exercising his or her duties, adheres to the European Code of Conduct for Mediators. A mediator must inform the parties to a dispute and terminate mediation if an amicable agreement which may be reached by the parties to the dispute is, in the mediator's opinion, unenforceable or illegal, having regard to the circumstances of the dispute and the competence of the mediator, or if the mediator recognises that continuing mediation is unlikely to result in a settlement.

It should be mentioned that in order to advertise and foster the awareness about out-of-court mediation, the Law on state guaranteed legal aid<sup>19</sup> includes, as of 2014, articles on out-of-court mediation. A lawyer who provides secondary legal aid can initiate to try to solve the dispute with the help of mediator. It is necessary to have a consent of both of the parties to the dispute. In such cases the list of possible mediators and the help to organize mediation should be given by the institution responsible for secondary legal aid. The entirety of costs of mediation would be covered by the State. Unfortunately till now there is no list of possible mediators and the institution is not ready to organize proper mediation services.

Mediators in court-annexed mediation can be persons included in the lists of court mediators<sup>20</sup>. This is one of the main differences between out-of-court mediation and court-annexed mediation. Currently, more than 100 court mediators are listed and most of them have diploma in law. It can be noted that most of court mediators were enrolled in the list in 2014 or 2015. According to statistics, in 2013 there were only 47 persons on the list, but a year later, in 2014 - already more than 100. Most of them are judges, some of them are lawyers. Till now not all district courts have at least one court mediator. There is Commission district courts have at least one court mediator. There is a Commission of court-annexed mediation<sup>21</sup>, which is responsible for inclusion of persons into the list of court mediators. Persons, who wish to be included into the list of court mediators must have at least 32 academic hours' training on mediation; if a person is a judge he or she could have participated in the courses on mediation within the scope of the training program for the judges.

A consent of both parties to the dispute to appoint a person as the court mediator for the case is necessary. Also the consent of the court mediator is required. Court mediator before giving his or her consent is able to get acquainted with the case. A mediator cannot be a person who can be removed in the civil case, according to the rules of codes of civil procedure. According to the most recent amendments court-annexed mediation rules, the judge who hears the civil dispute and is on the list of court mediators is able to mediate the case personally if the parties to the dispute agree. Several court mediators can also be assigned.

<sup>18</sup> Draft law can be found online at [http://www.lrs.lt/pls/proj/dokpaieska.showdoc\\_l?p\\_id=1009688&p\\_fix=n&p\\_gov=n](http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=1009688&p_fix=n&p_gov=n).

<sup>19</sup> *Lietuvos Respublikos valstybės garantuojamos teisinės pagalbos įstatymas*, in *Valstybės žinios* No.54-2675, 09.05.2013.

<sup>20</sup> The list of court mediators in Lithuania can be found online at <http://www.teismai.lt/lt/visuomenei/teismine-mediacija/teismo-mediatoriu-sarasas/283>.

<sup>21</sup> Rules of the Commission can be found online at <https://www.e-tar.lt/portal/lt/legalAct/e1a6d9004d2e11e48ab9ed2ded7f9767>.

## 7. Confidentiality and admissibility of mediation evidence

**Confidentiality is one of the most important aspects of mediation process. That is the reason why also in Lithuania this principle is quite clearly regulated.** Art. 7 (1) of the Law on mediation once more stresses this importance, by stating that unless parties have agreed otherwise, the parties to the dispute, mediators and administrators of mediation services must keep confidential all information regarding mediation and related issues, with the exception of the information required to approve or execute a settlement agreement concluded in the course of mediation and information failure to disclose whereof would contravene the public interest (particularly where a child's interests need to be safeguarded or where a risk of damage to person's health or life needs to be prevented). In the event of nonfeasance or misfeasance of the confidentiality obligations mediators and administrators of mediation services are held liable under the Lithuanian law. Art. 189 (5) of the Code of Civil Procedure also mentions that mediators cannot be interviewed as the witnesses about their knowledge of the circumstances of the cases, obtained by them by performing duties of the mediator.

In order for the parties to the dispute to feel free during mediation there are also restrictions for the evidence obtained during mediation procedure. Rules on court-annexed mediation set that certain types of information cannot be used as evidence in a case:

- a proposal of the other party to the dispute to try to resolve a dispute by mediation;
- opinions and proposals of the other party to the dispute during mediation procedure;
- statements and acknowledgments of the other party to the dispute during mediation procedure;
- proposals of the court mediator on how to resolve the dispute;
- circumstances which had impact on reaching a settlement;
- documents prepared only for the purpose of mediation procedure.

On the other hand, it is stressed that the evidence obtained outside of court-annexed mediation procedure does not become inadmissible only because it has been used during court-annexed mediation procedure.

So far in Lithuania there is no case law on the breach of confidentiality, nor on admissibility of evidence obtained during mediation procedure.

## 8. Mediated outcomes and enforceability

If the settlement is reached and concluded by the parties to the dispute, such agreement has statutory effect on them. It is important that a settlement agreement may, at the joint request of the parties to the dispute or one of the parties to the dispute with the written consent of the other party to the dispute, be submitted to court for approval in accordance with the simplified procedure set forth in Chapter XXXIX of the Code of Civil Procedure. The application for approval of the settlement agreement must be lodged, at the choice of the parties to the dispute, with a district court at the place of residence or of the registered office of one of the parties to the dispute. An effective settlement agreement approved by a court ruling is treated as a final judgment and has *res judicata* for the parties to the dispute and its execution may be enforced coercively. Also, for instance, if the scope is appropriate, it can be enforceable in other EU Member States according to EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>22</sup> or can be certified as European enforcement order according to EU Regulation No. 805/2004 creating European Enforcement Order for uncontested claims<sup>23</sup>.

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<sup>22</sup> EU Regulation No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2012, L35, p. 1.

<sup>23</sup> Council Regulation No. 805/2004 of 21 April 2004 creating European Enforcement Order for uncontested claims, OJ 2004, L143, p. 15.

A settlement reached during court-annexed mediation must be approved by the judge who was hearing the case, but was not a mediator in the proceedings. If the same judge was the presiding judge and the court mediator, it is possible for that judge to approve the settlement. In Lithuania such approved settlement is *res judicata*.

## 9. Statistics and expected developments in mediation regulation.

It can be mentioned that till 2015 there were almost no statistics about out-of-court or about court-annexed mediation and success of such procedures. This year National Courts administration tried finally to collect data about court-annexed mediation and asked every court to send their data<sup>24</sup>. Such work had to be done because till now the court-annexed mediation is in no way reflected in electronic system of courts. According to survey, in 2014 there were 53 court-annexed mediation cases in all Lithuanian courts. In 2013 there were 37 such cases. It has to be mentioned that from 53 court-annexed mediation cases only in 12 cases settlements were reached and signed; in 2013 only 2 settlements were reached. Such statistics can imply that in some civil cases the court-annexed mediation is possibly only used to delay civil proceedings. Also it is interesting to note that more than a half of mediation proceedings take place in one court - in Kaunas district court. This could mean that other courts perhaps do not advertise court-annexed mediation enough. Also more than half of court-annexed cases have been performed in family cases.

So it can be concluded that so far mediation in Lithuania is not popular and not a wide spread phenomenon and still there are a lot of possibilities to promote mediation, to regulate such procedure more flexibly. We believe that till today the obstacles to mediation in Lithuania are mainly these: litigious culture, lack of finances devoted to promoting mediation, comparatively small number of mediation professionals. It is obvious that in order to encourage mediation, it is necessary to change the mentality of people, including the mentality of lawyers<sup>25</sup>. It is necessary to advertise mediation procedure more; it is also essential to deepen and to prolong mediation education in schools, universities, etc. Out-of-court mediation can also be promoted by arbitration institutions. It can be said that arbitration procedure is becoming more and more popular in Lithuania. One of the reasons for this is that attorneys in law and international corporations aim to popularise arbitration quite actively. This is not the case for mediation so far. Mediation in family matters perhaps has the biggest chance to become more popular, because mediators from agencies for the protection of children's rights are taught how to settle disputes in different family matters. Psychologists must almost always participate in enforcement procedures where children's interests are affected. So there is hope that the intentions to make same kind of obligatory mediation in family matters will popularize mediation overall.

It can be said that in 2015 efforts were really intensified to promote mediation and to change laws in order to make all kinds of mediation more attractive. Till now Ministry of Justice has established a working group in order to amend Law on mediation and to broaden the scope of application according to the new Conception on the promotion of mediation which was confirmed by Lithuanian Government in January 2015. There are efforts to make mediation available in the future also for administrative and criminal matters. At the same time there are plans to make obligatory mediation prior the claim submitted to the court in some civil cases: family matters, small claims (till 1500 EUR) and some other civil matters where state legal aid is necessary. Also there are arrangements to set minimum requirements for the mediators and to create a public list of mediators. Also Judicial Council is eager to promote court-annexed mediation.

<sup>24</sup> Data can be found online here: <http://www.teismai.lt/lt/teismu-savivalda/teiseju-taryba/teiseju-tarybos-posedziu-medziaga/172>.

<sup>25</sup> V. NEKROŠIUS, V. VĖBRAITĖ, *Baltic countries*, cit., p. 42.