

Mediation Reform in Lithuania: Has It Failed?

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Mediation as a means to resolve disputes without the assistance of the court has become more and more popular in the post-Soviet bloc countries, for example Ukraine, Poland and Lithuania. The Law on Mediation in Lithuania was adopted by Parliament in 2008. Although enthusiasts of mediation welcomed the new law, mediation has not accelerated as fast as it was hoped. Nevertheless, mediation is growing in Lithuania step by step, in particular judicial mediation. For instance, if one looks at the judicial mediation statistics, there were only 17 mediation proceedings in 2012 and 95 proceedings in 2015.

In order to increase the popularity of mediation, Lithuania decided to adopt a new and modern Law on Mediation in 2015. A group of mediation experts joined the Working Group under the Ministry of Justice and worked on the new law. Finally, it was submitted to Parliament for adoption on May 26, 2016. If it had been adopted, the law would have come into force on January 1, 2017.

However, the law has not yet been adopted or even discussed in the committees of Parliament. While it is difficult to say precisely why, there may be many reasons for this: last year Parliament was concerned with the package of draft laws reforming the labour law of Lithuania. Also, a general election was held in October so the new members of Parliament did not have time to familiarise themselves with all the earlier draft laws. Furthermore, mediation is still a new tool in Lithuania and not that popular (as mentioned, there were less than a hundred mediation proceedings in 2015. Yet in 2016, 206,127 cases were initiated in the courts of first instance). Also parliamentarians are more concerned with the length and quality of judicial proceedings rather than with mediation issues.

Although the new Law on Mediation did not come into force at the beginning of 2017, it is hoped that sooner or later it will be adopted. Therefore, it is interesting to examine some of its provisions. By way of background, when drafting the law, the experience of other countries such as France, Croatia and Poland, were taken into account.

First, in order to ensure the quality of mediation services, the draft law provides that a person can only be a mediator if he is enrolled on the Lithuanian mediators' list. For a person to be added to this list, he must meet the following criteria: 1) have a university degree; 2) complete at least 40 hours of training on mediation no earlier than five years before applying; 3) pass a qualification exam and 4) have a clean sheet including no criminal convictions. Further, if the mediator fails to comply with the ethics of mediation (as listed in the draft law) during a mediation, he may be warned by the official state's body or removed from the list as a last resort.

A person who is allowed to provide mediation services in any other Member State of the European Union can also be a mediator in Lithuania if he informs the respective state institutions. It follows that if parties to a mediation had agreed that their disagreements would be mediated by a well-known American mediator in Lithuania, he could not accept such an appointment because he would not be allowed to provide his mediation services in Lithuania.

Secondly, the provisions of the draft law allow the parties to choose a mediator themselves. It also permits parties to agree on the order of the mediation or to choose existing rules of mediation (for example, Rules of Mediation of the Vilnius Court of Commercial Arbitration). The central principles of mediation, such as confidentiality, are also stated in the draft Law.

Thirdly, the draft law provides for mandatory mediation in certain types of disputes. Family disputes or disputes regarding small amounts of money shall be mediated before going to the court. For other types of dispute, the judge trying the case will also have a right to send parties to mediation if he believes that there is a high possibility of reconciliation. Mandatory mediation will be paid for by the state.

Thus, the new draft law aims to create better conditions to develop mediation in Lithuania. Now, though not the main method of alternative dispute resolution, mediation – particularly judicial mediation – is growing in Lithuania. For it to progress faster, new rules are necessary. Although the new rules have disadvantages, they are more modern than the existing regulation and create better conditions for mediation to develop.

After the general election in October last year, a new government of Greens and Social democrats was formed in Lithuania. One of the goals of this Government, as stated in their programme, is to promote mediation in order to increase the number of disputes that are solved peacefully. However, it is just one of many goals among other objectives in the field of judicial activities.

To summarise, mediation reform has not yet failed and the parliamentarians still have a chance to pass the law. However, if Parliament continues to delay the adoption of the new law and the law is not adopted in 2017, the reform on which the Working Group of the Ministry of Justice has worked long and hard may fail and Lithuania may not be ready to develop mediation as fast as it had wished.

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