

# Kluwer Mediation Blog

## The Lithuanian Model of Mandatory Mediation in Family Disputes: An Updated Scheme for Overcoming the Mediation Paradox

Indre Korsakoviene (Mykolas Romeris University of Lithuania) and Agne Tvaronaviciene · Thursday, July 20th, 2023

Ongoing debates about the introduction of mandatory mediation ([UK](#) and [Bulgaria](#)) or widening the scope of mandatory mediation ([Italy](#), [Turkey](#), and [India](#)) prove the relevance of this topic across the EU and beyond. Mandatory mediation is no longer solely a categorical statutory referral to mediation but is rather evolving into an increasingly diverse range of forms. It can be a mandatory referral by the court to a mediation information session or directly to mediation, a legislative referral to mediation, or so-called quasi-mandatory mediation, which does not impose a specific obligation on parties to resolve their dispute in mediation but imposes sanctions on those who refuse to mediate without objective justification.

Further, good practices can no longer rely solely on the so-called classical [Italian model](#). Not so long ago, Greece was in the spotlight when, after several attempts, the country finally introduced mandatory mediation for family and some commercial disputes in 2020. Having opted for the “[middle-way model](#),” Greece is now awaiting results and evaluations as to whether its fairy tale has been a success and whether it can “[live happily ever after](#)” with mandatory mediation provisions on duty. Meanwhile, Lithuania, a small EU country on the shores of the Baltic Sea, can celebrate the almost identical timing of the introduction of mandatory mediation provisions and is already able to reveal official tangible results.

### A short history

Lithuania has struggled with the institutionalisation of mediation for more than a decade. The [Law on Conciliatory Mediation in Civil Disputes](#) was adopted to implement the EU Mediation Directive in 2008. Still, simply having a law – which only transposed the provisions of the Directive and delineated the formal preconditions to develop mediation services in the market – was not enough to encourage society to rely on the new method of dispute resolution. The usage of mediation in Lithuania, as well as in many [EU countries](#), was still less than 1% of all cases litigated and wasn't ensuring a ‘[balanced relationship between mediation and judicial proceedings](#)’. The new edition of the [Law on Mediation](#) adopted on 29 June 2017 introduced a substantial legal framework for the mediator profession and established the mandatory mediation provisions that entered into force on 1 January 2020. Since then the requirement to initiate mandatory mediation before submitting claims to the court is applicable to all family disputes (including divorce, child support, co-parenting arrangements, division of matrimonial property, etc.) except for matters which are

exclusively left to the prerogative of courts (adoption, custody, establishment or termination of parenthood rights, etc.). Thus, it was the introduction of a mandatory mediation requirement that actually changed the state of play.

### **The Lithuanian model of mandatory mediation in family disputes**

Since 2020, parties to a family dispute must try to resolve their dispute through mediation before applying to the court. The Lithuanian model does not refer disputants to a mandatory mediation information session (as in Italy or Greece), but instead implies a duty for the future plaintiff (the first party) to invite the future respondent (the second party) to try to resolve their dispute in mediation. If the second party refuses to mediate or fails to consent within 14 days, the first party has the right to apply to the court and initiate judicial proceedings. If the second party accepts the invitation, the parties go straight to mediation. They can either contact a private mediator at their own expense or use the free mandatory mediation services provided by the state and administered by the [State Guaranteed Legal Aid Service](#). In Lithuania, regardless of income or other criteria, parties to a family dispute can receive up to 4 hours of mediation free of charge. Mediators in Lithuania may be individuals of impeccable reputation who have attended at least 40 hours of basic mediation training, passed the mediator qualification exam, and are listed on the national list of mediators.

Mandatory mediation, in addition to its commonly highlighted benefits as a cost and time-effective dispute resolution procedure, was also intended to reduce the workload of the courts and to encourage the peaceful resolution of disputes among the public. As in many countries, the introduction of mandatory mediation has been accompanied by various discussions in Lithuanian society. Mediation was initially perceived as a threat to access to justice due to the prevailing perception that litigation is the only effective dispute resolution method. Prior to the restoration of independence of the Republic of Lithuania in 1990, the predominant method of dispute resolution was litigation. Amicable dispute resolution started being promoted only after the adoption of the new [Civil Code of the Republic of Lithuania](#) in 2001 and the new [Code of Civil Procedure](#) in 2003. However, the adoption of new legal provisions only enabled amicable settlement but did not encourage it. Lithuanian society continued to perceive courts as the primary and, most often, the only way to resolve disputes. It was obvious that effective measures to promote the peaceful dispute resolution were necessary to increase the number of mediated cases. It was only by legislatively mandating mediation that it has become a necessary pre-litigation stage in family disputes. A high number of mediated family disputes has also increased public awareness of mediation in Lithuanian society. Moreover, the results of a recent evaluation of the mandatory mediation regime also reveal a positive public perception of mediation.

### ***Ex-post* evaluation**

In 2022, the [Ministry of Justice](#) in cooperation with the [Centre for Government Strategic Analysis](#) and a group of mediation experts, carried out an *ex-post* evaluation of the impact of mandatory mediation in family disputes. This study aimed to determine whether the objectives of a specific legislative initiative have been achieved and the impact of the same.

The study involved quantitative and qualitative research, including surveys of mediators (200 respondents) and mandatory mediation participants (555 respondents), and interviews with attorneys (20 informants), judges (21 informants) and mediation participants (20 informants). The collected data has provided a clear picture of the successful implementation of mandatory

mediation in family disputes as administered by the State Guaranteed Legal Aid Service, in contrast to pre-2020, when family mediation was very rare and had no significant impact on reducing the number of court proceedings.

<b>Mandatory family mediation administered by the State Guaranteed Legal Service (data on private mandatory mediation processes is unavailable)</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Number of initiated family mediation processes	6,789	6,369	7345
Number of conducted family mediations	2,751	2,838	3183
Mediated agreements	1,045	1,587	1713
Success rate	38%	56%	54%

## To sum up

The outcomes of the *ex-post* study show that mandatory mediation in family disputes has:

1. **Encouraged the use of mediation substantially.** It has also raised the number of settlements in family matters, improved communication between the disputants and increased understanding of the counterparty's point of view. More than 57% of the participants interviewed consider mandatory mediation very useful, as it has enabled them to avoid litigation, and save time and money. 54% of the respondents recognise that mandatory mediation revealed the benefits of amicable settlement for them. They would choose mediation to resolve future disputes, beyond family conflicts, or would recommend mediation to others. Lawyers have noticed that the introduction of mandatory mediation made it easier to convince clients to resolve their disputes amicably. They can also better understand the interests of disputants and prepare for further dispute resolution processes after mediating. Judges observed that even after an unsuccessful mediation, parties are better prepared for court proceedings and have clear positions and demands, thereby making the litigation more productive and efficient. This, in turn, reduces the workload of the courts.
2. **Not had a negative impact on the right to access justice.** There has been no notable negative impact of mandatory mediation on the right to access justice. Neither attorneys, judges, nor parties to mandatory mediation described this process as a threat to the effective protection of possibly violated rights.
3. **Positively impacted the development of the mediator profession.** It has given impetus to the growing number of mediators and their enhanced qualifications. The increasing number of mediations helps mediators to improve their competencies and develop their professionalism in the field.
4. **Reduced the workload of the courts.** It has reduced the workload of courts by changing the distribution of cases: the number of family disputes settled by litigation has decreased and the number of mediated settlements presented to courts for confirmation has increased.

Mandatory mediation in family disputes has allowed Lithuanian society to become acquainted with mediation and discover its benefits. This has raised public awareness of mediation and can serve as a solid foundation for utilising mediation to resolve other kinds of disputes. It has also increased the general trust in mediators as professionals capable of helping to resolve disputes quicker, more sustainably and at a lower cost.

However, the study also revealed some weaknesses. For instance, it was noted that the public uptake of mediation is still limited, mostly due to insufficient knowledge of mediation. A large number of potential participants of mandatory mediation refuse to mediate. It allows the other party to commence judicial proceedings and the court rarely directs parties to mediate. It is, therefore, necessary to develop incentives to encourage parties to mediate. Also, while mediators in family conflicts assist in finding solutions that are in the best interests of children, Lithuania still does not sufficiently ensure the transposition of best international practices, as the child's opinion is rarely heard during mandatory mediation. Furthermore, the need to improve the qualification requirements for mediators has been identified, for example by removing the current [exemption for attorneys, having three years' professional experience as an advocate](#), to not pass the mediator's exam or by introducing a specialisation for mediators.

It may be concluded that the introduction of mandatory mediation in family disputes has been a successful measure for fostering a culture of mediation in Lithuania. Despite the identified challenges, which are necessary to overcome, *ex post* evaluation results clearly indicate that the Lithuanian mandatory mediation model is effective. This gives rise to a new question for public policy and lawmakers: is Lithuania ready to extend mandatory mediation to other areas of dispute resolution?

---

*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).*

### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

---

# Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Thursday, July 20th, 2023 at 8:05 pm and is filed under [Uncategorized](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.