MEDIATION AND ACTIVITIES OF AN ADVOCATE: LITHUANIA

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Mediation

• Why? Less work for the courts and more social and legal peace.

• Lawyers in the mediation process have the opportunity to perform two roles: as legal representatives of the parties to a dispute and as mediators.

• Mediation for lawyers: two sides
  - threat for the lawyers’ status in the society and their financial earnings;
  - a new opportunity for the lawyers to provide legal services for a wide circle of clients.
Some main facts – development in Lithuania:

• In 1999 first seminars on mediation were organized
• New Code of Civil Procedure in 2003 provided obligatory stage of judicial conciliation in the preliminary hearing of every civil case
• The possibility of the mediation is indicated in the Law of the Conciliatory mediation in the civil disputes (year 2008).
• Pilot project of mediation is started in the Lithuanian courts in 2005.
• From 2011, in the Civil procedure code the procedures of court mediation was adopted.
Main principles in Lithuanian mediation:

- Parties can use the mediation for the dispute resolution in the case where the dispute has not examined in court (non-judicial mediation) and in the case where the case is already pending before a court (judicial mediation).

- Mediation conducted by a written agreement between the parties to the dispute. The parties shall jointly appoint a mediator.

- Mediator can be person who meet for impartiality, professionalism and self-responsibility requirements. Depending on the agreement, the mediator provide their services for a fee or free of charge. The parties also agree to the resolution of the dispute and procedures.

- Article 231 of Civil Procedure Code says that with the consent of the parties the mediation can take place in the preliminary stage of the court hearing.
Main principles in Lithuanian mediation:

• The initiation of the mediation suspends procedural terms to take an action to the court. In case of the failure to peacefully resolve the dispute, the parties retain their right to address to the courts.

• If the parties manage to peacefully resolve the dispute, the agreement (almost not regulated) is concluded. This agreement, approved by a court in summary proceedings may be carried out by force.

• The law also constitutes one of the fundamental principles of mediation – confidentiality, impartiality and avoid conflict of interests. The mediators can not be witnesses.

• If no time limit for termination of mediation has been set in the agreement, the party can refer to court or arbitration one month after proposing to the other party to the dispute in writing to resolve the dispute by way of mediation.
Advocate and mediation in Lithuania

• From the 11 of January 2007, advocates can be mediators in civil cases (Article No. 4 of the Law on the Bar).
• From 1 of September 2013, advocates can be mediators in all cases (Article No. 4 of the Law on the Bar).
• Example in the penal law: during 3 months in 2015, 14 mediators dealt with 436 cases. Consensus reached in 149 cases. Mediation in the penal cases is free.
Advocate in the mediation procedure—when?

• General principle: parties of dispute participate personally and parties free to choose a mediator and mediation is flexible procedure

• **When the advocate is needed?**
  - Not only psychological but also legal side of dispute is important for the parties (mediator can not be the legal consultant of the parties)
  - When mediator is not lawyer
  - When parties can not formulate the position and defend the position
  - When one party is in the unfavorable position
Advocate in the mediation procedure: problems and solutions

• **Problems:**
  A) Opposition of advocates:
  - low understanding of the mediation
  - lucrative interests of advocates (the dispute in the courts can generate longer and continuous income)
  - “weakness” of advocate (“bad representation” of client’s interests)

• **Solutions:**
  - education of advocates
  - determination of the ethical duty of an advocate to inform the client about the possibility of mediation, clarification of weaknesses and strength of mediation to the client
Advocate in the mediation procedure: problems and solutions

• **Problems**
  
  B) Advocate’s abuses in the mediation procedure:
  - Using the meditation as a toll to prolong dispute’s resolution
  - Using the mediation as a toll to obtain the information from the other party
  - Using the mediation as a tool to intimidate other party or to provoke other party

• **Solutions**
  - Stronger legislation
  - Changes in the Ethics code of advocates
Advocate in the mediation procedure: problems and solutions

• **Problems**

C) Keeping the principle of the independence of an advocate:
- no conflict before the mediation, in the mediation process and after mediation
- advocate can not push the parties
- advocate can not be legal adviser of the parties

• **Solutions**

- Stronger legislation
- Changes in the Ethics code of advocates
Advocate in the mediation procedure: problems and solutions

• **Problems**
  D) Other general problems
  - no litigious culture
  - lack of public finances devoted to promoting mediation
  - quite small number of mediation professionals
  - no obligatory mediation (example: mediation in family)
  - courts should promote mediation more actively

• **Solutions**
  - New legislation
  - Financial resources
  - Education
Future development

• In February 2015, the Government adopted new Concept of Mediation.
• In order to ensure better mediation services, it is proposed to establish additional requirements for the provision of mediation services: mediation services for the state's projects can be provided only by the mediators who will be included in the list of mediators.
• In this Concept it is proposed to introduce a mandatory mediation for certain categories of civil disputes before resorting dispute to the court. It is proposed to introduce a mandatory mediation in family disputes (for example, for minor child maintenance or for a minor child's place of residence), disputes concerning small amounts (below € 1500).
Future development

• In some cases, when there is a chance of a peaceful settlement of the dispute, the mandatory mediation in civil cases should be applied in the cases with the state guaranteed legal aid element.

• Mandatory mediation should be in criminal cases in the private prosecution cases. In other cases, this procedure may be applied if: with the consent of the victim, with the consent of the suspect person or accused person (if the accused person recognise the crime and if there is an evident offense)

• In some criminal cases (for example, crimes against humanity and war crimes) mediation application would not be permitted.

• It is also proposed to apply the mediation in the administrative disputes.
Future development

• The concept of mediation should be implemented in phases, through a number of pilot projects to develop best practices.
THANK YOU!