

NACIONALINĖ TEISMŲ ADMINISTRACIJA

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Teisėjų tarybai

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DĖL TEISMINĖS MEDIACIJOS SKATINIMO PRIEMONIŲ

Vykdam 2009 – 2014 m. Norvegijos finansinio mechanizmo programos LT13 „Efektyvumas, kokybė ir skaidrumas Lietuvos teismuose“ Dvišalio bendradarbiavimo fondo veiklą „Teisminės mediacijos pilotinis projektas“, 2014 m. lapkričio mėn. Norvegijos Karalystės bei Lietuvos Respublikos teisėjai kartu su Nacionalinės teismų administracijos atstove parengė ataskaitą dėl teisminės mediacijos praktikos Lietuvos Respublikoje ir Norvegijos Karalystėje su rekomendacijomis dėl galimų priemonių, skatinant teisminės mediacijos procedūras Lietuvos Respublikoje (toliau – Ataskaita), kurią teikiame susipažinimui bei svarstymui.

Ataskaitoje analizuojama ne tik Lietuvos Respublikos ir Norvegijos Karalystės patirtis teisminės mediacijos srityje, bet ir apžvelgiama Norvegijos Karalystės praktika dėl alternatyvių ginčų sprendimo būdų, pateikiami pasiūlymai, galimai paskatinsiantys teisminės mediacijos procesus Lietuvos Respublikoje. Sėkmingam teisminės mediacijos procesui Lietuvos Respublikoje Ataskaitoje išskirtos šios rekomendacijos:

1. Atsižvelgiant į tai, kad teismų darbo krūvis Lietuvos Respublikoje yra didelis bei siekiant mažinti teisėjų, teisėjų padėjėjų krūvius, valstybėje turėtų būti skatinamos mediacijos paslaugos. Valstybė turėtų užtikrinti šių paslaugų kokybę ir investuoti į tokias paslaugas. Privaloma mediacija prieš kreipiantis į teismą šeimos bylose, sutuoktinių skyrybų klausimai taip pat galėtų būti perduoti kitoms institucijoms, pvz., notarams, metrikacijos įstaigoms, tam tikra procedūra galėtų būti numatyta ne ginčo bylose, teismo įsakymų atžvilgiu.

2. Svarbu išskirti bylas, kurios yra tinkamos mediacijai. Teismai turėtų perduoti teisminei mediacijai sudėtingesnes bylas (pvz. statybų, komercines bylas), kuriose šalys yra atstovaujamos advokatų (nes teisėjai ir advokatai kalba "ta pačia kalba"). Be to, advokatai žino savo šalių silpnąsias ir stipriąsias puses, todėl būtų linkę nusileisti tam tikrais klausimais. Teisėjas, nagrinėjantis tokią bylą, bus suinteresuotas, kad šalys surastų taikų sprendimą, jeigu jis/ji žinos, kad jam/jai nebereikės rašyti sprendimo ir kad šis sprendimas nebus apskūstas aukštesniam teismui, taip pat, kad teisėjo vertinimo metu ji(jis) bus įvertinta(s) kaip mediatorius.

3. Norvegijos Ginčų įstatyme (Skyrius 5-4) įtvirtinta pareiga šalims pabandyti taikiai susitarti. Jeigu šalis nesutiko su kitos šalies pagrįstu pasiūlymu dėl ginčo išsprendimo, teisėjas gali apriboti tokios šalies teisę reikalauti bylos išlaidų atlyginimo iš kitos šalies. Manytina, kad tokia sankcija, įtvirtinta įstatyme, galėtų turėti teigiamą įtaką šalims, siekiant greičiau ir taikiai išspręsti ginčą.

4. Norvegijoje parengiamieji posėdžiai rengiami telekonferenciniu būdu (susiekama su abiejų šalių advokatais). Kadangi tokie parengiamieji posėdžiai yra itin efektyvūs, šalims (advokatams) nereikia vykti į teismą, siūlytina svarstyti įdiegti tokį parengiamųjų posėdžių modelį.

5. Siūlytina teisės aktuose įtvirtinti pareigą teisėjams paklausti šalių nuomonės spręsti ginčą teisminės mediacijos būdu, informuoti šalis apie teisminės mediacijos galimybę, paaiškinti, kaip vykdoma mediacija.

6. Turėtų būti apsvartyta, ar reikia taikyti Teismo mediatoriaus statuso suteikimo ir jo panaikinimo asmenims tvarkos apraše nurodytą procedūrą dėl teisėjų, pageidaujančių vykdyti teisminę

mediaciją, įrašymo į Teismo mediatorių sąrašą. Visi teisėjai, jei jie nori, turi turėti galimybę vykdyti teisminę mediaciją, netaikant reikalavimo būti įrašytam į Teismo mediatorių sąrašą. Manoma, kad teisėjai turėtų būti apmokyti prieš pradėdant medijuoti, tačiau nėra poreikio jiems taikyti specialių reikalavimų dėl įtraukimo į Teismo mediatorių sąrašą.

7. Jeigu būtų nuspręsta, kad teisminę mediaciją galės ir toliau vykdyti ne tik teisėjai, bet ir išorės teismo mediatoriai, įrašyti į Teismo mediatorių sąrašą, jie turi turėti daug žinių bei įgyti šalių, advokatų, teisėjų pasitikėjimą. Tik jeigu šalys, advokatai pasitikės mediatoriumi ir jį vertins kaip gerą mediatorių, teisminės mediacijos procesai šalyje bus sėkmingi. Šalys ir advokatai nenorės rinktis teisminės mediacijos, jeigu teisėjas byloje paskirs nepakankamai kvalifikuotą mediatorių. Todėl jeigu būtų nuspręsta, kad išorės mediatoriai taip pat gali medijuoti, šie asmenys turi būti apmokomi. Pažymėtina, kad teisminę mediaciją Norvegijoje gali vykdyti teisėjai (nemokamai) bei išorės mediatoriais (šalys moka už jų paslaugas pačios). Kadangi pačios šalys turi mokėti už išorės mediatorių paslaugas, šiomis paslaugomis šalys nesinaudoja, o renkasi teisminę mediaciją, kai mediatoriumi yra teisėjas.

Vertinant esamą situaciją, siūlytina, kad teisminę mediaciją vykdytų teisėjai, o kiti asmenys, esantys Teismo mediatorių sąraše, būtų skiriami antriniais mediatoriais (kaip ekspertai, turintys tam tikrų žinių, pvz., psichologas, statybų specialistas).

Šiame teisminės mediacijos etape siūlytina bylas perdavinėti geriausiems teismo mediatoriams, kad šalys įgytų pasitikėjimą teismine mediacija. Kadangi Lietuvos Respublikoje teismo mediatoriumi gali būti skiriamas ir aukštesniojo teismo teisėjas, įrašytas į Teismo mediatorių sąrašą, galbūt galima šalims siūlyti tokius teisėjus.

8. Siūlytina įtvirtinti, kad teisminė mediacija nėra skaidoma sesijomis. Šalys turi žinoti, kad jos turi išspręsti ginčą sutartą dieną. Norvegijoje teisminei mediacijai paskiriama viena diena, jei per tą dieną nerandamas sprendimas, byla nagrinėjama teisme.

9. Svarbu teisėjus mokyti praktinių dalykų (mokymasis per praktiką), įvertinant kitų šalių praktiką.

10. Teismo mediatoriaus rezultatai taip pat turi būti vertinami vertinimo metu. Turi būti vertinama ne tik teisminei mediacijai pateiktų bylų skaičius ar išnagrinėtų bylų skaičius, bet ir teisminės mediacijos rezultatai, šio mediatoriaus veikla.

11. Dėl mediacijos bylų žymėjimo, teisėjų darbo krūvių: rekomenduojama teisminės mediacijos bylas traktuoti kaip paprastas civilines bylas. Turėtų būti vieninga sistema dėl mediacijos bylų žymėjimo LITEKO sistemoje. LITEKO sistema turėtų būti patobulinta, atsižvelgiant į teisminės mediacijos bylas (statistikos tikslais).

12. Su teismo šaukimu siūlytina siųsti lankstinukus apie teisminę mediaciją. Informacija apie teisminę mediaciją turi būti platinama, atkreipiant dėmesį į gerąją praktiką.

13. Kadangi ne visi teisėjai gali būti mediatoriais byloje, o tik tie, kurie įrašyti į Teismo mediatorių sąrašą, be to, kiti asmenys, ne teisėjai, esantys Teismo mediatorių sąraše, taip pat gali medijuoti, svarbu mokyti teismo mediatorius.

14. Pripažįstama, kad teismo mediatoriai turi būti mokomi. Teisėjams, kitam teismo personalui (teismo mediatoriams) turi būti organizuojami mokymai teismuose. Mokymai teismuose nereikalauja investicijų, nes teisėjai, kurie jau yra apmokyti ir yra aktyvūs teisminėje mediacijoje gali mokyti kitus, dalintis savo patirtimi per bylų analizę (žaidimą rolėmis). Mokymus taip pat turėtų vykdyti ir Nacionalinė teismų administracija. Mokymų temos galėtų būti panašios į Norvegijoje taikomą praktiką.

15. Siekiant pakeisti mąstymą ir požiūrį į teisminę mediaciją, naujai skiriamiems teisėjams turėtų būti sudaryta teisminės mediacijos mokymų programa. Šie mokymai turėtų būti privalomi.

16. Teisminės mediacijos sėkmė priklauso ne tik nuo teismo mediatorių kompetencijos, bet ir nuo advokatų požiūrio. Todėl advokatai taip pat galėtų būti įtraukiami į mokymus. Tokiu būdu advokatai ir teisėjai, teismo mediatoriai dalintųsi savo patirtimi, advokatai galėtų pasakyti, kokius trūkumus jie mato mediatorių veikloje, pačiame procese.

17. Siekiant, kad šalys nemanipuliuotų teismo mediatoriumi, teismo mediatorius turi būti ne tik tam tikros srities specialistas, bet ir turėti teisinių žinių. Todėl rekomenduojami mokymai teisės srityje teismo mediatoriams, neturintiems teisinio išsilavinimo.

Atitinkamai pridedame pagal Ataskaitą parengtą apibendrinimą dėl alternatyvių ginčų sprendimų būdų Norvegijos Karalystėje.

Siekiant įvertinti Ataskaitoje pateiktas rekomendacijas ir imtis veiksmų, skatinant teisminę mediaciją teismuose, siūlytina pavesti Teisminės mediacijos komisijai, savo veiklą pradėsiančiai vykdyti nuo 2015 m. sausio 1 d., įvertinti Ataskaitoje pateiktas rekomendacijas dėl galimų priemonių, skatinant teisminės mediacijos procedūras Lietuvos Respublikoje ir iki 2015 m. balandžio 1 d. pateikti Teisėjų tarybai pasiūlymus dėl jų įgyvendinimo.

PRIDEDAMA:

1. Ataskaita, 17 lapų;
2. Apibendrinimas „Alternatyvūs ginčų sprendimų būdai Norvegijos Karalystėje“, 3 lapai;
3. Protokolinio sprendimo projektas, 1 lapas.

Direktorė

Reda Molienė

REPORT

on the practices of the Republic of Lithuania and the Kingdom of Norway in respect of judicial mediation with the recommendations on possible tools of improving the system of the Republic of Lithuania in respect to mediation procedures

The Report is carried out under the Pilot project on in-court mediation, financed under the Bilateral Fund for Programme LT13 "Efficiency, Quality and Transparency in Lithuanian Courts" under the Norwegian Financial Mechanism 2009-2014



**NORWEGIAN
COURTS ADMINISTRATION**

The report is prepared under the Pilot project on in-court mediation. This report contains the summary of practice of the Republic of Lithuania and the Kingdom of Norway in respect of mediation with the recommendations on possible tools of improving the system of the Republic of Lithuania in respect to mediation procedures. The recommendations were drafted in close cooperation between the representatives of both countries and entails the main findings of the discussions during the visit of respective judges of Oslo District Court in the Republic of Lithuania in May 2014, visit of judges from the Republic of Lithuania and representative of the National Courts Administration in the Kingdom of Norway in September/October 2014, as well as video conference between the representatives of both countries.

THE BASIS FOR JUDICIAL MEDIATION IN THE REPUBLIC OF LITHUANIA AND THE PRESENT SITUATION

As mediation procedures in the Republic of Lithuania are in the development stage, i.e. not only the Judicial Council adopted new regulations concerning the judicial mediation, but also the Ministry of Justice of the Republic of Lithuania is finalising the conception on mediation procedures, before giving recommendations on trainings on mediation, it is important to examine the situation concerning mediation in the Republic of Lithuania and the Kingdom of Norway.

The mediation process in the Republic of Lithuania is governed by the Law of the Republic of Lithuania on Conciliatory mediation in civil disputes (*liet. Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymas*) (later referred as the Law).

According to Article 10 of the Law, judicial conciliatory mediation shall be carried out in courts of general jurisdiction in the cases and according to the procedure established by the Judicial Council. The rules on judicial mediation have been adopted in May 20th, 2005, when the Pilot project on judicial mediation started. In 2005 the Pilot project on judicial mediation started in one court, i.e. Vilnius city 2nd district court. By the regulation of the Judicial Council of January 26th, 2007 No. 13P-15 the Pilot project has expanded into the Court of Appeal of Lithuania, the Vilnius city 3rd district court, the district court of Kaišiadoriai region and other courts, which will be prepared to proceed with the judicial mediation. It was suggested for the Chairpersons of other courts to make conditions to expand the Pilot project on judicial mediation into their courts, taking into consideration the opinions and wishes of judges, assistants of judges and parties to the proceedings, also considering the readiness of mediators to mediate.

According to the Judicial Mediation Rules (*liet. Teisminės mediacijos taisyklės*) adopted by the Judicial Council in 29th April, 2011¹, the judicial mediation is free of charge and it takes place in court premises. Exclusively a dispute which can be subjected to an amicable agreement by the laws can be transferred for judicial mediation. Also a part of the claims made in the case can be transferred for mediation. The judicial mediation can be initiated by a judge hearing the civil case or any other person involved in the case. Dispute will be transferred for judicial mediation by the decision of the judge trying the civil case, once the judge explains the essence of the judicial mediation procedure to the parties and a written consent of both parties is received or a written request of both parties for transferring the dispute for judicial mediation is received. A consent or request orally expressed in the course of case hearing can be recorded in the minutes of the meeting and signed by the parties. Case hearing will be postponed by the same decision establishing precise time of the next meeting. A judge, assistant judge or any other person included in the List of judicial mediators can be appointed as a judicial mediator. If needed, two mediators can be appointed. When

¹ The rules valid until the 1st January, 2015.

appointing a mediator(s), parties' opinion expressed when requesting or agreeing with dispute assignment to mediation is taken into consideration. Decision on mediator's appointment and replacement will be made by the Chairperson of the court, Chairperson of the Civil Cases Division or their assigned judge. It is established that mediator cannot take part in the capacity of a judge, assistant judge or any other party to the proceedings, if the case is further tried in essence. Judicial mediation can be attended exclusively by the parties to the procedure, third parties and their representatives. Several mediation sessions can be held. Total duration of judicial mediation sessions is under 4 hours. At the request or consent of both parties, the mediator can prolong the mediation duration, provided it is decided that such prolongation may make amicable agreement achievable and prolongation of the mediation will not result in delay of case trial. When prolonging the mediation term, the mediator will define the exact prolongation term to be notified to the parties. Any party can withdraw from the judicial mediation procedures. There is no obligation to name reasons for withdrawal.

The working group on coordination of the implementation of the Pilot project on judicial mediation and evaluation of its' results (later on referred as Working group), which was set up by the Judicial Council, in July of 2014 acknowledged that although there are not so many cases dealt by the procedure of judicial mediation, there are positive trends. For example, in 2012 the judicial mediation was applied only in 17 cases and in 2013 - in 37 cases. Only 6 amicable agreements were reached in 2012-2013 (4 agreements in 2012 and 2 agreements in 2013). It should be noted that 5 cases were still being under consideration in the judicial mediations proceedings in time period the statistics have been provided.

There is no data for the judicial mediation statistics for 2014, but according to the courts information system LITEKO data and data, provided by the judicial mediators², there were in total 32 judicial mediation cases in Kaunas district court, Kaunas regional court, Panevėžys regional court, district court of Vilkaviškis region, district court of Alytus region, district court of Utena region, Vilnius city district court. Accordingly, 5 agreements were reached and 6 cases are still under consideration in judicial mediation proceedings. It should be noted, that in one case, although the agreement was not reached in judicial mediation procedure due to the time limits, but the agreement was signed in the first meeting of the main hearings. Most of the cases dealt in the judicial mediation proceedings were family cases.

Therefore considering the trends, i.e. the support of the Ministry of Justice of the Republic of Lithuania in mediation processes, and the need to support the judicial mediation among the courts the Working group proposed some amendments to the judicial mediation processes in the Republic of Lithuania, which were evaluated by the Judicial Council and after consideration of the drafts of regulations on judicial mediation by the working group, the courts, on 26th September, 2014 the Judicial Council adopted new regulations concerning the judicial mediation in the courts of the Republic of Lithuania. These regulations will come into force on the 1st January, 2015.

The main changes in the judicial mediation proceedings from the 1st January, 2015 should be distinguished:

- the judicial mediation is available in all the courts of the Republic of Lithuania in civil disputes;
- upon the agreement with the parties, the judge, who is on the list of judicial mediators, can act as a judicial mediator in the case he deals with. If the agreement is reached such judge will also confirm the agreement; In case no agreement is reached, the judge will have to opt out of the case;

² Data up to 30 September, 2014.

- considering the opinion of the parties to the proceedings, the judge or the panel of judges, dealing with the case will appoint the judicial mediator in a case (not the Chairperson of the court);
- the date, when the judicial mediation proceedings have to end, will be fixed in the court decision setting the date for the main proceedings; before the date of the main hearing, the judicial mediation time period can be extended upon the written request of the judicial mediator.
- the parties to the proceedings have to attend the session of judicial mediation; they can also bring their lawyers to the sessions;
- the judicial mediation session can take place outside the court; the time limit for judicial mediation sessions has been withdrawn;
- during the period of judicial mediation the court allows the judicial mediator to familiarise with the case or the case file can be transmitted to him/her upon the signature; the judicial mediator is obliged to return the case file before the scheduled main hearing. The judicial mediator has an obligation to inform a court by motivated letter about the basis of termination of the judicial mediation procedures.

In addition to these rules, it can be noted that only persons, who are certified as judicial mediators by the Working group³ (from the 1st January 2015 - the Judicial Mediation Commission, composed by the Judicial Council for the term of the Judicial Council of 9 members) can mediate cases in the courts. The list of judicial mediators is public and can be found in the internet site www.teismai.lt, also in the courts' intranet, which is available for court staff. 66 judicial mediators are on the list.

When the Judicial Council has adopted Rules on granting and terminating the status of the judicial mediator to persons (*liet. Teismo mediatoriaus statuso suteikimo ir jo panaikinimo asmenims tvarkos aprašas*), which will come into force in 1st January, 2015, the formal requirements for judicial mediator were laid down. This is important in building the confidence of the parties, the lawyers in the quality they are going to expect from the mediators.

Besides, the Civil Procedure Code of the Republic of Lithuania also sets the requirements for conciliation, e.g. Articles 228, 229, 231. These rules are of importance, because the main difference between mediation and conciliation is that the judge can't talk with the parties separately in the conciliation proceedings.

Article 228 (Preparations for a Preliminary Hearing) of the Civil Procedure Code of the Republic of Lithuania establishes that on satisfying itself that an agreement of lawsuit is possible in the proceedings, or in case if the court is obliged, under the law, to take measures to reconcile the parties, or if this would allow a better and more comprehensive preparation for the hearing, the court shall arrange for a preliminary hearing. The court shall resolve the matter of a preliminary hearing not later than within fourteen days from the date of receipt of the defendant's and third parties' replies or upon expiry of the time limit for the submission of replies. The preparatory hearing shall take place not later than within thirty days from the date of rendering of the decision whereby the preliminary hearing is arranged. Upon giving of the decision to prepare for a preliminary hearing, the court may not additionally arrange for the preparations by way of preparatory documents. Upon giving a decision to prepare by way of preparatory documents, the court may not additionally arrange for a preliminary hearing.

Article 229 (Number of Preliminary Hearings) of the Civil Procedure Code of the Republic of Lithuania sets, that the preparations for the hearing shall be completed during one preliminary

³ The Working group by the decision of the Judicial Council is composed of 16 members.

hearing, however, in exceptional cases, or in case if, in the opinion of the court, an agreement of lawsuit is possible, the court may, at the preliminary hearing, schedule the second preliminary hearing, which must take place not later than within thirty days. The number of preliminary hearings may not exceed two.

Article 231 (Reconciliation Procedure) of the Civil Procedure Code of the Republic of Lithuania states, that upon establishing the merits of the dispute at a preliminary hearing, the court shall offer the parties to reach a mutually acceptable agreement and to conclude an agreement of lawsuit. The court shall take measures to reconcile the parties. Judicial reconciliatory intermediation may be conducted at the request of the parties or subject to the parties' consent, in accordance with the procedure established by the Judicial Council. The reconciliatory intermediary may not take part in the consideration of the merits. The agreement of lawsuit may resolve the dispute in full or in part (i. e. individual demands). The agreement of lawsuit concluded by the parties at a preliminary hearing shall be approved by the court. In case of failure to conclude an agreement of lawsuit, the court shall, having regard to the opinions of participants in the proceedings and upon preparations for the hearing, schedule the place and time of the hearing and notify this to the participants in the proceedings. Should it come to light at a preliminary hearing that no additional acts are necessary to prepare for the hearing; the court shall be entitled to start the oral procedure and decide the case on the merits immediately after the preparatory hearing. In this case the consideration of the case shall be continued from the court hearing phase.

Article 140 (Waiving a Claim, Recognising a Claim and Agreement of Lawsuit) of the Civil Procedure Code of the Republic of Lithuania establishes that the parties may close the case by an agreement of lawsuit at any stage of the proceedings. It also states the requirements and the consequences of filling an agreement.

It should be noted that the rules of the of the Civil Procedure Code of the Republic of Lithuania are of importance in the topic, because the statistics show that judges of the Republic of Lithuania apply mediation techniques (mediation) more widely, than applying judicial mediation as it is regulated by the regulations of the Judicial Council.

According to the data from the court information system LITEKO on 2013, 2014 first half of the year, the settlements reached in the court proceedings (agreements confirmed by the court) make about 3 % of cases in the district courts, 4-5 % of cases in regional courts as the first instance courts, 0.5-1 % of cases in the courts of appeal and 0-0.1 % in the Supreme Court of Lithuania:

Court	Cases received		Cases heard		Cases terminated after approval of peace agreement	
	2013	2014 (until 1 st July)	2013	2014 (until 1 st July)	2013	2014 (until 1 st July)
District courts	177 772	92 730	175 998	93 113	4 914	2 672
Regional courts (I instance)	7 378	3 631	7 064	3 520	296	171
Regional courts and Court of Appeal of Lithuania (courts of appeal)	14 262	7 789	15 747	7 986	126	44
Supreme Court of Lithuania	766	349	693	343	1	0

THE IMPACT OF ALTERNATIVE DISPUTE RESOLUTION ON COURT WORKLOAD IN THE KINGDOM OF NORWAY

There are 66 district courts, 6 courts of appeals, the Supreme Court and Land Consolidation Courts in the Kingdom of Norway. Besides the regular court procedures, other alternative dispute resolution procedures are available in the Kingdom of Norway.

The Conciliation board is a mediation organ with a limited authority to render a judgement. Each municipality in the Kingdom of Norway has a Conciliation board. These Conciliation boards handle only civil cases (except family cases). Most of civil cases have to be tried in the Conciliation boards before they can be tried in the district court. The Conciliation board is composed of 3 lay members, who are elected by the municipality board for a period of 4 years. These members are very known and respected people, with experience in life and mostly they will be politicians. These members are paid by the Ministry of Justice and Public Security and they work 2 days per week. The idea upon setting this kind of procedure before going to court was to offer simple, fast and cheap way of solving a dispute through mediation. There are relatively few requirements for a formal complaint, it's not complicated, the law provides that the meeting should be held within 3 months from the complaint being registered by the Conciliation board. The fee per date is 860 NOK (about 100 EUR). The fee will be paid after the meeting in the Conciliation board, the bill will be sent to the plaintiff/complainant by post. A judgement of the Conciliation board or a settlement between the parties made in the meeting is enforceable. The main objective of the Conciliation board is to reach an agreement (settlement). If a settlement is not reached, the Conciliation board has authority to render a judgment in the following cases:

- if both parties give their consent, the Conciliation board can always render a judgement if all members agree that they have sufficient basis and enough information to do so;
- if only one party gives his/her consent, the Conciliation board can render a judgment if the subject matter is valued at less than 125 000 NOK.

Within a month of being served the judgement, the parties can appeal the judgment in a district court. If the judgment is not appealed, it is enforceable.

As the members of the Conciliation board are not lawyers (with few exceptions), they don't have legal background, the Conciliation board has an option to terminate the proceedings if it finds that the case is too complex or that they don't have sufficient information. In this case the plaintiff can bring his/her case to the district court.

These proceedings are efficient, because lots of cases are handled without going to the court, before court proceedings. In 2013 the Conciliation board in Trondheim heard 3 706 cases. 170 settlements were reached, in 183 cases the defendants agreed with the suit and 2 365 decisions were rendered *in absentio*. Annually Conciliation boards handle about 110 000 cases per year. It should be noted that due to the amendment of the Enforcement Act, according to which uncontested claims can be submitted directly to bailiff for enforcement, not in the Conciliation boards, the number of cases has dropped (218 157 in 2004 to 105 558 in 2013).

Family Welfare Centres⁴ provide mediation services to parents, who separate. In these proceedings father and mother have talks with a mediator in order to reach an agreement. The mediator is a qualified family therapist or psychologist and has the knowledge and "tools" to help parents resolve

⁴ Information provided from the Oslo district court leaflet "Parents in conflict". You can find it on: <http://www.domstol.no/upload/OBYR/Internett/Brosjyrer/Brosjyre%20ENGELSK%20FAMILIESAKER%202011%20trykkeri.pdf>

the conflict. The Family Welfare Centre personnel have a duty of confidentiality. Up to seven hours of counselling by the Family Welfare Centre are free of charge. It is recommended that this offer be taken up. One hour's mediation is also needed to obtain a mediation certificate. Under Section 51 of the Children Act, you are required to have such a certificate if you want to take case further to the district court. If the other party fails to attend the appointment, you are still issued with the certificate, which is valid for six months. If mediation at the Family Welfare Centre does not succeed, you can take the case further to the district court.

Mediation by the court in family cases⁵. Families also receive help here in finding a solution through mediation. Parties take part actively in the process together with a judge and an expert, who normally is a psychologist, who has specialised in children. It should be noted that some cases are not suitable for mediation, e.g. cases where violence or intoxicants are a part of the conflict. As long as the case is under mediation, the State pays for the expert's work. As a rule the expert talks to the mother, father and child at home and also attends the court hearings. If the court wants to know more about the child, it may obtain information from the kinder garden, school, health centre, doctor or social services. It is usually the expert who does this.

The method the court uses during the mediation is to try out solutions over a period of time. The judge leads the mediation and the expert also plays an active role. The expert visits the family to see how things are working out. Then you meet up again in a fresh mediation hearing and discuss how it has gone. It is usual to have up to three meetings. It may take some time for the mother and father to reach agreement. The most important is to think about the best interests of the child and not about the conflict between the parents. The method used by the court is called "conflict and reconciliation". It has been tried out by several courts over a long period of time and is a form of mediation that very often produces good results. A difference from judicial mediation conducted in other civil cases is that the judge will not have separate meetings with the parties, so that he or she can still be the judge in a main hearing should the discussions of reconciliation be unsuccessful.

It should be noted that the mediation process in family cases before going to a court is an important tool of reducing the workload of the courts and making parents find a solution between themselves in discussing the issues, talking with each other.

In 2013 there were 19 627 cases dealt in mediation proceedings. Out of this number 16 233 cases were dealt in the Family Welfare Centres and 3 394 cases were handled by external mediators, who are paid by the State:

Type of a case	Family cases handled in mediation	No. of cases handled in Family Welfare Centres	No. of cases deal by the external mediators
Separation/divorce	6 684	5 559	1 125
When parents are cohabitants	6 187	5 110	1 077
Lawsuits (cases that were brought to the court)	<u>6 723</u>	5 532	1 191
Court has sent the case back to mediation	33	32	1

⁵ See footnote No. 3.

These figures show, that out of 19 627 cases in 2013 only 6 723 cases reached the court.

It should be also noted, that the County Governor, not the court, deals with separations. A married couple who no longer wish to live together may petition for a decree of separation. The petition should be sent to the County Governor of the county in which the couple last cohabited. If neither of them still live in that county, the petition should be sent to the County Governor of the current county of residence of either the petitioner or a spouse. If they are the joint parents of children who are still aged under 16, the petition must be accompanied by a certificate of mediation dated within the last six months. The separation decree will be sent to the party by the County Governor.

Regional Mediation Services. Besides the other mediation forms that exist in the Kingdom of Norway, there is a National Mediation Service under the Ministry of Justice and the Public Security with its 22 Regional Mediation Services. 700 volunteer mediators with low payment (22-77 year old) work in 435 municipalities. Persons, who want to be mediators, are assessed by the Police and municipality (there are some requirements for the appointment) and they are appointed for a period of 4 years. These Regional Mediation Services handle mostly criminal cases, which are sent by the Police or the court. Also the victims, offenders, other public bodies, sheriff can refer the matter to the Regional Mediation service. A successfully mediated criminal case shall not be noted on the criminal record. If a criminal case has been successfully mediated with an agreement, the prosecuting authority may only reinstitute criminal justice proceedings if the person charged commits a significant breach of an agreement. For example 8 684 cases were handled in the Regional Mediation Services in 2010: shoplifting (1 174), other petty theft (396), aggravated theft (299), theft of vehicle (75), vandalism (1 125), burglary (82), bullying/threats (1 248), violence (1 829), economic offences (676), serial offences (51), neighbourhood conflicts (466), family conflicts (382), other conflicts (565).

Although most of the cases are criminal cases, but there are also civil cases referred to the Regional Mediation Services and the number of the cases brought to these services is increasing, e.g. 3 272 cases (1 963 criminal cases and 1309 civil cases) were referred to in 1994 and already 8 684 cases (4 371 criminal cases and 4 313 civil cases) in 2010. It should be noted that in 88,1% of cases agreements were signed. The Regional Mediation Services also observe the implementation processes of the agreement and 81,2% of agreements are fulfilled. The types of agreements varies, but it can be reconciliation (39%), work (11%), compensation (33%), compensation/work (4 %), other (e.g. symbolic gestures, 13%).

Considering, how many cases are settled in these Regional Mediation Services, it should be noted that they also contribute significantly in reducing the workload of courts.

Recommendation No. 1:

The workload of the courts in the Republic of Lithuania is heavy, therefore in order to reduce the workload of the courts (judges, assistants of judges), besides the judicial mediation, other mediation services should be promoted within the State. The State should ensure the quality of these services and invest into these arrangements. Considering the statistics of 2013 and the first half of 2014 (see attachment), it must be considered to have an obligatory mediation procedures in family cases before going to court, the separation of couples should also be considered not at the court, but by e.g. the notaries or registry offices, some procedure for uncontested claims, judicial/court orders.

THE JUDICIAL MEDIATION IN CIVIL CASES IN THE KINGDOM OF NORWAY

District courts in the Kingdom of Norway handle about 16 000 civil cases per year (Oslo district court - about 2 615 civil cases in 2013), about 50 000 criminal cases, heard in the summary proceedings (one judge hears the case), and 15 000 criminal cases, heard in the panel of one judge and 2 lay judges. Therefore in average a judge hears 30 civil cases per year (besides the criminal cases). In average a main hearing will take 1-3 days and then again 2-5 days to write the verdict.

The in-court mediation development in the Kingdom of Norway started from the Pilot project on mediation in 6 courts in 1997. In 2006 all courts were included in the mediation processes. Following the outcomes of the Pilot project, the Act of 17 June 2005 No. 90 relating to mediation and procedure in civil disputes (later on referred as the Dispute Act) was adopted and came into force on 2008. It should be noted, that about 20% of cases are dealt with using the judicial mediation procedure. Out of these cases 60-80% are settled by an agreement. It should be noted that mediators handle about 8-12 cases per year in the judicial mediation proceedings.

There are two types of mediation:

- Mediation (Section 8-2 of the Dispute Act); this type of mediation can be used, if the parties wish an external mediator. The parties pay for their services;
- Judicial mediation (Section 8-3 to 8-7 of the Dispute Act); judges are mediators in this type of mediation and it's free of charge.

The judicial mediation is available in district courts and the courts of appeal. The family cases (because they are handled in other procedure) and small claim cases (value of the claim is less than 125 000 NOK) will not be dealt by the judicial mediation procedure.



An example of a mediation room in Norway

Recommendation No. 2:

It is important to select the cases that are good for mediation. The courts should select the more complicated cases (e.g. construction, commercial cases), where the parties are represented by the lawyers (because judges and lawyers speak the same language). Judges, who would deal with the case would have an incentive to reach a settlement if he/she will know, that he/she will not have to write a judgement and his/her decision will not be appealed and in the evaluation procedure he/she will be evaluated in mediating.

Section 5-4 of the Dispute Act states the duty of the parties to try to reach an amicable agreement. If a party neglected a reasonable offer for settlement from the other party, the judge may limit the party's right to have expenses of the case, covered by the other party.

Recommendation No. 3:

As such sanction could have positive effect on parties to settle the dispute quicker and with amicable settlement, this kind of provision in the law could have positive effect towards better trends on peaceful settlements.

Section 8-1(1) of the Dispute Act establishes that the court shall at each stage of the case consider the possibility of a full or partial amicable settlement to the legal dispute through mediation or judicial mediation, unless the nature of the case or other circumstances suggest otherwise.

Section 8-3 of the Dispute Act states that the judge shall immediately after the defendants' reply arrange a preparatory court meeting with the parties (usually the lawyers). These meetings usually take place via teleconference.

One of the mandatory topics is the possibility of judicial mediation (subsection 2a of the Dispute Act).

Recommendation No. 4:

Considering the usefulness (time and money saving process, no need for travel for parties (lawyers)) of arranging preparatory meetings with the parties (lawyers) via teleconference, it is suggested to consider arranging this kind of preparatory meetings in the Republic of Lithuania.

Recommendation No. 5:

The mandatory requirement to ask parties (lawyers) on their opinion about the possibility to settle the dispute in the judicial mediation, to inform the parties about the possibility of judicial mediation, how it will be done, could be incorporated in the regulations.

The judicial mediators are usually judges of the court. As parties have to pay for the external mediators, they don't use this possibility. All judges in the Kingdom of Norway can be judicial mediators without any list. It is acknowledged that mediator has to be specialized in law, has to have authority in order to gain the confidence of the parties and in order to avoid manipulation by the lawyers. Only a person, experienced enough in law, can have enough tools to solve the dispute.

Besides, the court appoints the mediator on its own. The parties only agree upon the judicial mediation and then it's up to a court to decide, who will suit best for the case.

Recommendation No. 6:

The need to have judges in a List of judicial mediators should be considered. In principle, all judges should be mediators if they wish to without any other formal requirements. It is believed that judges should have some training before they start mediation, but it's not necessary to have a list.

Recommendation No. 7:

The quality of judicial mediator is of importance. As the judicial mediators in the Republic of Lithuania, that are on the List of the judicial mediators, are unknown to the judges, the parties (lawyers), they are not paid, their work is not evaluated, there is no need to have legal background, in practice they are hardly used. If it would be decided, that external mediators, who are on the List of judicial mediators are also to mediate, they need to have lots of knowledge and trust of the parties, lawyers and judges. Only if the parties, lawyers will trust the mediator and assess him/her as a good mediator, the judicial mediation in the country will be successful. The parties and lawyers will lose the desire to settle the case in judicial mediation, if the judge will send the case for a not qualified enough person, it will not be popular tool in settling the case. Therefore in case there would still be the case, that other persons, not only judges, would be judicial mediators, there is a need to train also these mediators.

Considering the current situation, it would be advised that judges could handle the case in the judicial mediation (as mentors) and other persons on the List of judicial mediators could be

appointed as a second mediator (expert, person with certain knowledge in a case, e.g. psychologist, constructor etc.).

At this stage of development of judicial mediation, in order to show the effectiveness of judicial mediation, to make it more attractive to parties (lawyers) the mediators have to be chosen from among the best. One of the proposals could be to ask judges from higher instance court to mediate the case (the incentive for a party to have an opinion of a judge of a higher level, could be a tool for a success).

The parties are normally represented by the lawyers. Parties with their lawyers attend the judicial mediation meetings. The judicial mediation meetings will usually take one day. During this day the dispute should be resolved. Therefore the judicial mediators usually arrange the meetings so that they would not be disturbed during the day, so that they would not be in a hurry to some meeting, etc. After the parties agreed on the settlement, the mediator will make the written settlement and the parties will sign it. After the settlement is signed the case will be withdrawn upon the agreement.

Recommendation No. 8:

At this stage of development in the Republic of Lithuania the judges should carefully scrutinize, which cases are best for mediation. The cases, where parties are represented by lawyers are the best cases, as the lawyers know the weaknesses of a case and can propose the party to yield at some point. Only those cases, in which the parties are prepared to make some arrangements can be mediated in general.

Recommendation No. 9:

It is advised that the judicial mediator should not arrange mediation in sessions. It should be clear, that the parties have to reach the agreement in one exact day, so that they would not have to wait more days waiting for the judicial decision

Therefore suitable cases, contacts with lawyers (attorneys) and competent mediator in the field are the key factors for the success of judicial mediation.

Another factor, which is important for the success of mediation, is a positive attitude towards mediation from judges. Judges should believe in mediation. Trainings on positive features on judicial mediation, e.g. practice of other countries (e.g. practice of the courts of the Kingdom of Norway), can also be an inspiring tool for judges. Judges should learn in the practice, role plays, the lectures on the trainings without practical experience will not be sufficient.

Recommendation No. 10:

It is important to train judges on practical tools of the judicial mediation (learning through doing), the practice of other countries is important.

Judges in the Kingdom of Norway find the judicial mediation attractive even though they don't get bonuses for doing it. The attractiveness of this dispute resolution tool lies upon understanding, that you solved a dispute quicker; you have reduced the workload of the court. If the judge get a settlement in a mediated case he/she will get new cases to fill up the time reserved for writing a judgment and the parties after mediation get more satisfaction, therefore in will have a positive impact on the confidence in courts.

Considering the workloads in the Republic of Lithuania, judges should receive some kind of satisfaction.

The performance of judges in the Kingdom of Norway is not evaluated, but as this is performed in the Republic of Lithuania, it could be an incentive for judges. According to the Description of the Assessment of Judges' Activities, which was adopted by resolution No. 13P-162-(7.1.2) of 19th September, 2008 the Judicial Council (last amendments of 25th May 2012), the data concerning the concluded peace agreements while examining civil cases, number of cases transferred to the examination by way of judicial mediation and number of cases examined by the judge – the mediator by way of judicial mediation are also taken into account when evaluating the performance of judges (7.5 paragraph). This is considered to be a positive factor, but also the results of the judicial mediator in mediation should be taken into account (how many cases were settled in mediation).

Recommendation No. 11:

The results of the judicial mediator (judge) should also be considered in the evaluation process, the number of cases transferred to the judicial mediation or the number of cases examined doesn't show the judges' results in mediation, its' performance.

As only judges of the court can mediate the case in the court in the Kingdom of Norway and the judge, hearing the case usually will mediate his/her own case, there are no problems as to the incentives, because the judge knows, that he/she will not have to spend time on the case, writing the decision and it's a good thing for the court. If the judge in that case is not successful in mediation, then the case will be handed to another judge. In case another judge from the court is appointed as a judicial mediator, the case is handed to that judge and if he/she will settle the case, it will appear on the list of his/her settled cases. In such a system there is no need to approve the peace agreement by the other judge; the case is removed from the court on the basis of the settlement.

Since the system of judicial mediation is under development in the Republic of Lithuania, only judges, who are on the List of judicial mediators, can mediate, judges from other courts can also mediate the case (judges of higher instance courts can be mediators in the cases of courts of lower instance), other external persons can act as judicial mediators, therefore the system of case allocation should also be elaborated. Taking into consideration, that the mediator need to prepare for the mediation in advance, so that he/she knows everything in the case, there should be a meeting with the parties without considering the time spent (it can take the whole day in order to reach an agreement, the average time spent is 5 hours (from 09.00 till 14.00), the practice in the Kingdom of Norway is that such a case is treated the same as other cases (there are no special arrangements made, e.g. treating the settled case as half of the ordinary case etc.).

As there are various approaches used in the courts of the Republic of Lithuania as to the mediation cases and the equalization of the caseloads, e.g. Chairpersons of the courts have the possibility with the help of LITEKO system to decrease the caseload of the judge in % (equalizing of the caseload), some courts (e.g. Kaunas city district court, Kaunas regional court) use LITEKO system tools and out of the civil case create new case (mediation case M2), which is dealt as the case heard in summary procedure (under the Chapter XXXIX of the Code of Civil Procedure), the system should be unified so that all courts should use the same system of dealing with judicial mediation cases.

The LITEKO system should also be improved in order to get the statistics on the judicial mediation cases more easily, quicker with accurate data. At this point the National Courts Administration has no tools in the LITEKO system in order to analyze data on judicial mediation.

Recommendation No. 12:

The judicial mediation cases should be considered to be normal cases. There should be a unified system, used by all the courts, dealing with judicial mediation cases. The caseload for mediators should be reduced. The LITEKO system should be improved as to the judicial mediation cases (with respect to statistics).

Other measures, that are used in the courts of the Kingdom of Norway, in order to parties (lawyers) start thinking about judicial mediation, is that together with the summons the information about the possibility of judicial mediation is being sent. The parties (lawyers) have to answer the letter and if no answer is received, the judge can call and talk about the possibility once more.

Recommendation No. 13:

Together with the summons, it is recommended to send at least the leaflets about the judicial mediation. Advertise the possibility of judicial mediation (taking into consideration the good practice).

It is important to know, that even if the settlement is not reached in the judicial mediation, there are positive sides:

- the parties have already talked/discussed with each other, therefore it is easier to adopt the judgement at the hearing, parties are calmer and they can more easily reach a settlement in the hearings;
- during the mediation, the judicial mediator gains more professional skills, he/she practices.

THE PRACTICE OF THE KINGDOM OF NORWAY ON TRAININGS IN JUDICIAL MEDIATION AND RECOMMENDATIONS ON TRAININGS

The trainings on mediation in the Kingdom of Norway are offered at local (court) level and at regional level. The Chairperson of the court is responsible for trainings in the court and the Norwegian Court Administration is responsible for trainings at regional level.

Taking into consideration the practice of Oslo district court, which is the largest first instance court in the Kingdom of Norway, judges are able to attend the local trainings on judicial mediation once every year. Judges, who are acknowledged as very good mediators, are the lecturers in these trainings (for free). During these trainings the role play is played: judges get the prepared case and they play their role. It is important to note, that lawyers play a role in promoting the judicial mediation too, because it is acknowledged that if they will not be interested in handling the case, the judicial mediation will not succeed. Therefore lawyers sometimes also attend the trainings offered in court. During these meetings judges can get an overview what are the expectations from lawyers in respect of judges' actions and what judges should change in the process how they handle the case in judicial mediation. The trust between the lawyers and judges is very important in the process.

The Norwegian Court Administration offers three types of trainings on judicial mediation:

- Initial training for newly appointed judges;
- Initial training for newly appointed deputy judges;
- Regional seminars for judges, practitioners and lawyers.

The initial training on judicial mediation for newly appointed judges is a three day training: During the first day the judges get introduced to judicial mediation, particular features of judicial mediation, the phase of preparation to mediation, how to find cases for mediation, how to prepare for mediation, tools to introduce yourself to the parties in the mediation proceedings, introduction at mediation meeting, how to start the meeting. Afterwards there is a role play: the participants get the prepared case for mediation, then they gather to review the information in the case, discuss what kind of information does the mediator need about the case, where and how to get this information (techniques used). Then the role play starts and afterwards the participants sum up the results. The second day is the evaluation of the first day, focus on settlement of the dispute, as the dispute can have one or several solutions, there is a need to find the solution in a case. The creative approach of finding the solution can be taken into account, the parties could be invited to brainstorm or the approach, when mediator is leading the case, could be a way to find an agreement between the parties. Therefore judges are trained, how to build (come up with) the consensus, what is the role of mediator in building the consensus. Then the role play starts. The participants get the second case. The attention is focused on how to end the mediation, what to do, if agreement is not reached, how to deal with such a case afterwards. What happens if the partial agreement is reached? How to proceed with the other part of disagreement? How to proceed, if the process stops, is in one place? The focus on different types of mediations: level of activity from the mediator, pressure. Also ethical problems are discussed: the mediators' responsibilities for the outcome (is mediator obliged to reach an agreement in accordance with the law, or the parties can choose the outcome themselves). The responsibility of the mediator to protect the weaker party is also taken into consideration. Also confidentiality issues are discussed in the trainings. The last day is devoted to mediation in child custody cases, as the judge in these cases has to take into account the interests of a child.

The Norwegian system has the system of judges, deputy judges and lay judges. As lay judges are not lawyers (they are members of the public or experts with the same vote in a case as a judge), the deputy judges are judges, who are appointed for 2 years with one year possible extension. In Oslo district court they can be appointed for up to 5 years. After the expiry of their term as a deputy judge, they have to work for some years as lawyers or other professionals before they can apply to become a judge. The deputy judges are judges, dealing with the case as a regular judge.

Therefore there are initial trainings, offered by the Norwegian Court Administration, and out of 4 days of trainings one day is devoted to judicial mediation. During this day there are lectures on preparation to mediation, introductory phases to mediation, gathering information, finding alternatives for a solution, building consensus, how to deal with complicated mediations, ending the mediation by adopting the settlement, ethical problems and challenges.

Norwegian Court Administration has prepared also a programme for judges and lawyers (advocates). It should be noted that in 2014 six regional seminars were offered, but only one seminar will take place, as not enough participants applied for the seminar.

Considering the Lithuanian system, where judges in 2013-2014 were offered to participate in only one day 7 hour training on judicial mediation per year and that the judicial mediation is under developments, there is a need for further trainings.

Recommendation Nr. 14:

As not all judges can mediate the case in the Republic of Lithuania, but only those, who are on the List of judicial mediators, and external people (not judges), who are on the List of judicial mediators, it is important to train the judicial mediators.

Recommendation No. 15:

It is invited that the trainings of judges, other court staff (who are judicial mediators) should take place locally (in the courts) and regionally. The local trainings don't require investments, because judges, who are already trained and are active in judicial mediation can act as mentors (trainers) and share their practice among themselves. The case role can be played during these trainings, so that everybody could be active and interested (learning through practice). topics for trainings can be similar to Norwegians practice. The regional trainings should be organized by the National Courts Administration and the topics for trainings could be similar to the Norwegian practice (mentioned above).

Recommendation No. 16:

As the finances are limited, it is recommended to train judges, who have already some skills in mediation, invest into the trainings of these judges, so that they would be prepared to train other judges and court staff in their courts. These judges should be selected carefully, considering their personality and personal qualities. It is recommended that there should be not only one judge trained on mediation in a court.

Recommendation Nr. 17:

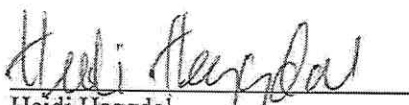
In order to change the culture and attitude towards mediation, there should be a training programme developed for newly appointed judges (initial trainings), which should be mandatory.

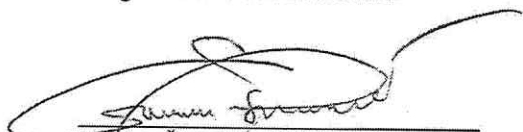
Recommendation No. 18:

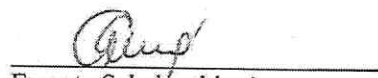
The success of judicial mediation lies not only on skills of judicial mediators, judges, but also on attitude of lawyers towards judicial mediation. Therefore the lawyers should also be included in the trainings, so that mediators would get to know, what the lawyers think about mediation, mediator, what the mediator should improve in dealing with the case from the lawyers perspective.

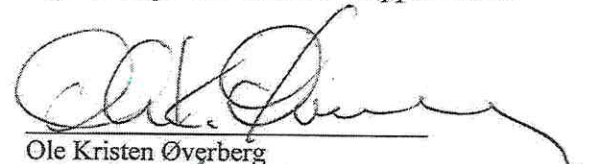
Recommendation No. 19:


The judicial mediator has to have knowledge in law, so that the parties could not manipulate. The judicial mediator has to be good in law, in legal issues he/she is dealing with. Therefore, the trainings on the law for judicial mediators who don't have legal background should be appreciated.


Heidi Heggdal
Judge of Oslo District Court


Giedrė Česnienė
Judge, deputy Chairperson of the
Vilnius City District court


Ernesta Sakalauskienė
Head of the Legal division of the
National Courts Administration


Ole Kristen Øverberg
Judge of Oslo District Court


Andrzej Maciejewski
Judge of Vilnius Regional Court

The statistics on civil cases handles and peace agreements approved in 2013 and from 2014-01-01 till 2014-06-30 (first half year)

	Cases received	Cases heard	Cases to issue the judicial/court order	Approved peace agreements on the judicial orders	Cases heard in summary proceedings	Approved peace agreements, reached not in the courts in cases heard in the summary proceedings	Family cases heard	Approved peace agreements in family cases	Approved peace agreements in other cases
	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half	2013 2014 I half*
In district courts	177772	93113	78816	275	185	10044	271	227	2391
In regional courts as the first instance courts	7378	7064	3520						296
In regional courts as the appeal court and the Court of Appeal of the Republic of Lithuania	14262	15747	7986						126
In the Supreme Court of Lithuania	766	693	343						44

APIBENDRINIMAS

ALTERNATYVŲ GINČŲ SPRENDIMŲ BŪDAI NORVEGIJOS KARALYSTĖJE

2014 m. lapkričio 11 d. Nr. 38 - 1497- (6. 2a)
Vilnius

Apibendrinimas parengtas naudojant Norvegijos Karalystės bei Lietuvos Respublikos teisėjų, Nacionalinės teismų administracijos atstovės 2014 m. lapkričio mėn. ataskaitoje dėl teisminės mediacijos praktikos Lietuvos Respublikoje ir Norvegijos Karalystėje su rekomendacijomis dėl galimų priemonių, skatinant teisminės mediacijos procedūras Lietuvos Respublikoje, pateiktą informaciją.

Norvegijos Karalystėje (toliau – Norvegija) yra 66 apylinkių teismai, 6 apeliaciniai teismai, Aukščiausiasis teismas ir žemės konsolidacijos teismai (angl. *Land Consolidation courts*). Be to, Norvegijoje egzistuoja ir šie alternatyvūs ginčų sprendimo būdai:

Taikinamosios komisijos (angl. *Conciliation board*) yra mediacijos organas, turintis teisę priimti vykdytinus sprendimus. Kiekvienoje Norvegijos savivaldybėje yra įsteigtos Taikinamosios komisijos. Šios komisijos nagrinėja tik civilines bylas, išskyrus šeimos bylas. Daugelis civilinių bylų turi būti nagrinėjamos Taikinamosiose komisijose, tik vėliau gali būti nagrinėjamos apylinkių teismuose. Taikinamoji komisija sudaroma iš 3 neprofesionalių narių. Šiuos narius renka savivaldybės 4 metams. Šie nariai yra gerai žinomi, gerbiami asmenys, asmenys su patirtimi, dažniausiai tai yra vyresnio amžiaus, patyrę politikai. Šiems asmenims yra mokamas atlyginimas (Teisingumo ir visuomenės saugumo ministerija atsakinga) ir jie dirba 2 dienas per savaitę. Idėja, paskatinusi šalyje įdiegti procedūrą prieš kreipiantis į teismą, buvo pasiūlyti nesudėtingą, greitą ir pigų būdą išspręsti ginčą. Tik keli formalūs reikalavimai taikomais skundams, procedūra nesudėtinga ir įstatymas reglamentuoja, kad posėdis turi įvykti per 3 mėn. nuo skundo užregistravimo Taikinamojoje komisijoje. Mokestis už šią paslaugą – 860 NOK (apie 100 EUR) už dieną. Mokestis turės būti sumokamas po posėdžio, išsiunčiant sąskaitą ieškovui/pareiškėjui. Taikinamosios komisijos sprendimas ar susitarimas tarp šalių yra vykdytinas. Pagrindinis Taikinamosios komisijos tikslas – taikiai išspręsti ginčą. Jeigu nepasiekiamas susitarimas, Taikinamoji komisija gali priimti sprendimą, jei:

- abi šalys sutinka bei visi Taikinamosios komisijos nariai sutinka, kad jie turi pakankamai informacijos, Taikinamoji komisija visada gali priimti sprendimą;
- jeigu tik viena šalis sutinka, Taikinamojo komisija gali priimti sprendimą, jei ieškinys yra mažesnis nei 125 000 NOK.

Per mėnesį nuo sprendimo pateikimo šalims šalys gali skusti sprendimą apylinkės teismui. Jeigu per šį laikotarpį sprendimas nebuvo apskustas, galima kreiptis į antstolius dėl sprendimo vykdymo.

Kadangi Taikinamosios komisijos nariai paprastai nėra teisininkai, paprastai šie asmenys neturi teisinio išsilavinimo, Taikinamoji komisija gali nuspręsti nenagrinėti bylos, jeigu ji nusprendžia, kad byla pernelyg sudėtinga ir jie turi per mažai informacijos. Tokiu atveju pareiškėjas gali pateikti ieškinį apylinkės teismui, sumokėtas mokestis įskaitomas į žyminio mokesčio dydį.

Ši procedūra yra efektyvi, nes daugelis civilinių bylų yra išnagrinėjama taikant šią procedūrą, nesikreipiant į teismą. Pavyzdžiui, 2013 m. Trondheimo Taikinamoji komisija išnagrinėjo 3 706 bylų. 170 bylose buvo pasirašyti susitarimai, 183 bylose atsakovai sutiko su ieškiniu ir 2 365 buvo priimti sprendimai *in absentio*. Kasmet Taikinamosios komisijos išnagrinėja apie 110 000 bylų. Galima paminėti, kad pakeitus Vykdyto įstatymą ir įtvirtinus nuostatą, kad neginčijami ieškiniai gali būti tiesiogiai pateikti antstoliui vykdymui, bylų skaičius sumažėjo, pvz., 2004 m. buvo išnagrinėjama 218 157 bylos, o 2013 m. jau tik 105 558 bylos.

Šeimos gerovės centrai (angl. *Family Welfare Centres*) teikia mediacijos paslaugas sutuoktiniams, kurie skiriasi. Šiose procedūrose tėtis ir mama bendrauja su mediatoriumi su tikslu susitarti. Mediatoriumi šiose bylose yra kvalifikuotas šeimos terapeutas ar psichologas, turintis žinių ir priemonių padėti tėvams išspręsti ginčą. Šeimos gerovės centro personalas privalo laikytis konfidencialumo reikalavimo. Šeimos gerovės centro paslaugos iki 7 val. yra nemokamos. Be to, 1 val. mediacija yra privaloma, siekiant gauti mediacijos sertifikatą. Toks sertifikatas yra reikalaujamas, norint pateikti ieškinį apylinkės teismui (Vaikų įstatymo 51 skyrius). Jeigu kita šalis neatvyksta į susitikimą, šaliai išduodamas mediacijos sertifikatas, galiojantis 6 mėn. Jeigu mediacija Šeimos gerovės centre yra nesėkminga, galima kreiptis į apylinkės teismą.

Teismo vykdoma mediacija šeimos bylose. Šeimoms suteikiama pagalba ieškant sprendimo mediacijos pagalba ir teismuose. Šalys aktyviai dalyvauja procese su teisėju ir ekspertu, kuris paprastai yra psichologas, besispecializuojantis darbe su vaikais. Galima paminėti, kad tam tikros bylos yra netinkamos mediacijai, pvz., jeigu tai susiję su smurtu ar svaigalais. Kuomet byla yra mediacijoje, valstybė apmoka už eksperto darbą. Paprastai ekspertas kalbasi su mama, tėvu, vaiku namuose, taip pat dalyvauja teismo posėdžiuose. Jeigu teismas nori sužinoti daugiau apie vaiką, jis gali kreiptis į vaikų darželį, mokyklą, sveikatos įstaigą, gydytoją ar socialines tarnybas. Tai paprastai daro ekspertas.

Metodas, kurį taiko teismas mediacijos procese, yra pabandyti įvairius sprendimus per tam tikrą laikotarpį. Teisėjas vadovauja mediacijai, be to, ir ekspertas aktyviai dalyvauja šiame procese. Ekspertas lanko šeimas, siekdamas pamatyti, kaip šalims sekasi laikytis nustatyto režimo. Tuomet susitinkama mediacijos posėdyje ir diskutuojama, kaip šalims sekėsi. Šiame procese yra svarbiausia mąstyti apie vaiką, jo interesus, o ne apie ginčą tarp sutuoktinių. Skirtumas tarp teisminės mediacijos ir šio proceso yra tas, kad teisėjas nerengia atskirų susitikimų su šalimis, todėl toks teisėjas ir toliau gali nagrinėti ginčą teisme, nepasisėkus mediacijai.

Pabrėžtina, kad mediacijos procesas šeimos bylose prieš kreipiantis į teismą yra svarbi priemonė, mažinant teismų darbo krūvį, skatinant tėvus ieškoti sprendimų bendraujant.

2013 m. 19 627 bylose buvo taikoma mediacija. Iš šio skaičiaus 16 233 bylos buvo išnagrinėtos Šeimos gerovės centruose ir 3 394 bylos buvo išnagrinėtos išorės mediatorių, už kurių paslaugas apmoka valstybė.

Bylos tipas	Šeimos bylos, išnagrinėtos mediacijoje	Bylos, išnagrinėtos Šeimos gerovės centruose	Bylos, išnagrinėtos išorės mediatorių
Skyrybos	6 684	5 559	1 125
Kuomet tėvai yra sugyventiniai	6 187	5 110	1 077
Ieškiniai teismuose	6 723	5 532	1 191
Teismas grąžino bylą atgal mediacijai	33	32	1

Skaiciai parodo, kad iš 19 627 bylų 2013 metais tik 6 723 bylos pasiekė teismą.

Paminėtina, kad apygardos gubernatorius (angl. *County Governor*), ne teismas, nagrinėja skyrybų klausimus. Susituokusi pora, kuri nenori gyventi kartu, gali kreiptis dėl skyrybų sprendimo (angl. *decree of separation*). Prašymas turi būti pateikiamas apygardos, kurioje pora paskutinį kartą gyveno, gubernatoriui. Jeigu nė viena iš šalių šioje apygardoje nebegyvena, prašymas turi būti siunčiamas apygardos, kurios teritorijoje gyvena prašantysis arba sutuoktinis, gubernatoriui. Jeigu jie turi bendrų vaikų, kurie yra jaunesni nei 16 metų, prie prašymo turi būti pridėtas mediacijos sertifikatas, galiojantis 6 mėn. Apygardos gubernatorius šalims atsiųs skyrybų sprendimą.

Regioninės mediacijos tarnybos. Be Norvegijoje egzistuojančių aukščiau minėtų alternatyvių ginčų sprendimų būdų, Norvegijoje yra įsteigta Nacionalinė mediacijos tarnyba, pavaldi Teisingumo ir visuomenės saugumo ministerijai, su jos 22 regioninėmis mediacijos tarnybomis. 700 savanorių

mediatorių (22-77 metų amžiaus), kuriems mokamas nedidelis atlyginimas dirba 425 savivaldybėse. Policija ir savivaldybė vertina asmenis, norinčius tapti mediatoriais. Yra tam tikri reikalavimai, įtvirtinti asmenims, norintiems tapti mediatoriais. Mediatoriai skiriami 4 metams. Šios regioninės mediacijos tarnybos nagrinėja daugiausia baudžiamąsias bylas, kurias siunčia policija ar teismas. Taip pat nukentėjusieji, pažeidėjai, kitos valstybės institucijos, šerifas gali pateikti klausimą spręsti šioms tarnyboms. Jeigu mediacija šioje tarnyboje yra sėkminga, pažeidėjo byloje nebus įrašo apie pažeidimą. Jeigu baudžiamoji byla buvo sėkmingai išnagrinėta mediacijos pagalba, prokuratūra galės atnaujinti bylos nagrinėjimą tik jeigu asmuo grubiai pažeis susitarimą. Pavyzdžiui, 8 684 bylos buvo išnagrinėtos regioninėse mediacijos tarnybose 2010 m.: vagystės parduotuvėse (1 174 bylos), kitos smulkios vagystės (396 bylos), apysunkės vagystės (299 bylos), automobilių vagystės (75 bylos), chuliganizmas (676 bylos), serijiniai nusižengimai (51 bylos), ginčai tarp kaimynų (466 bylos), apiplėšimai (82 bylos), grasinimai (1 248 bylos), smurtas (1 829 bylos), ekonominiai nusižengimai (676 bylos), šeimos konfliktai (382 bylos), kiti konfliktai (565 bylos).

Nors daugelis bylų yra baudžiamosios bylos, tačiau civilinės bylos taip pat gali būti pateikiamos regioninėms mediacijos tarnyboms ir šie skaičiai auga, pvz., 1994 metais buvo 1 309 civilinės bylos, o 2010 m. – 8 684 bylos. Pažymėtina, kad 88,1 proc. bylų buvo pasirašyti susitarimai. Pažymėtina, kad regioninės mediacijos tarnybos taip pat kontroliuoja susitarimų įgyvendinimą.

NORVEGIJOS PRAKTIKA TEISMINĖS MEDIACIJOS CIVILINĖSE BYLOSE KLAUSIMAIS

Norvegijos apylinkių teismai kasmet išnagrinėja apie 16 000 civilinių (Oslo apylinkės teismas – apie 2 615 bylų 2013 m.), apie 50 000 baudžiamųjų bylų, kuomet vienas teisėjas nagrinėja bylą, bei 15 000 baudžiamųjų bylų, kurias nagrinėja kolegija, sudaryta iš 1 teisėjo ir 2 taikos teisėjų. Todėl vidutiniškai teisėjas išnagrinėja apie 30 civilinių bylų per metus (neskaičiuojant baudžiamųjų bylų).

Ginčų įstatyme (angl. *Dispute Act*) yra įtvirtintos dvi mediacijos formos:

- mediacija (Ginčų įstatymo Skyrius 8-2); taikoma, jeigu šalys nori, kad išorės mediatorius medijuotų jų byloje; šalys pačios moka už mediatoriaus paslaugas;
- teisminė mediacija (Ginčų įstatymo Skyriai nuo 8-3 iki 8-7); teisėjai- mediatoriai.

Teisminė mediacija galima apylinkių ir apeliaciniuose teismuose. Teisminė mediacija galima civilinėse bylose, išskyrus šeimos bylas (kadangi jos nagrinėjamos taikant kitą procedūrą) bei bylose, kai ieškinio suma mažesnė nei 125 000 NOK.

Ginčų įstatymo 5-4 skirsnis įtvirtina šalims pareigą pabandyti pasiekti taikų susitarimą. Ginčo šaliai, kuri nepaisė pagrįsto, protingo kitos šalies pasiūlymo, teisėjas gali apriboti galimybę išsieleškoti bylinėjimosi išlaidas iš kitos šalies.

Norvegijoje visi teisėjai gali būti mediatoriais bylose. Nėra atskiro teisėjų-mediatorių sąrašo. Suvokiama, kad mediatorius turi būti teisės specialistas, turi būti autoritetas, siekiant įgauti šalių pasitikėjimą ir išvengti šalių manipuliacijos. Tik asmuo, turintis patirties teisės srityje, gal turėti pakankamai priemonių išspręsti ginčą.

Teismo mediatorių skiria teismas. Šalys tik išreiškia norą ginčą perduoti teisminei mediacijai, o teismo mediatoriaus parinkimas yra teismo prerogatyva.

Šalys teisminės mediacijos metu paprastai yra atstovaujamos advokatų.

Teisės skyriaus vedėja



Ernesta Sakalauskienė

TEISĖJŲ TARYBA

Protokolinis sprendimas

2014 m. lapkričio d. Nr.
Vilnius

Pavesti Teisminės mediacijos komisijai, savo veiklą pradėsiančiai vykdyti nuo 2015 m. sausio 1 d., įvertinti Norvegijos Karalystės ir Lietuvos Respublikos teisėjų bei Nacionalinės teismų administracijos atstovės ataskaitoje pateiktas rekomendacijas dėl galimų priemonių, skatinant teisminės mediacijos procedūras Lietuvos Respublikoje ir iki 2015 m. balandžio 1 d. pateikti Teisėjų tarybai pasiūlymus dėl jų įgyvendinimo.

Pirmininkas