



## MEDIATION IN POLAND AND CROATIA

Firstly I would like to explain what mediation actually means in law. Mediation word is derived from a latin word which is known as *mediare*. It is a way in which when two parties are having dispute and both the parties don't come on one solution or one agreement then the mediator (third party) is involved and that third party tries to resolve the dispute between the two parties. Mediation is very common in America and Australia as compared to European countries. But it has gained a lot of popularity in the past few years in Europe due to the advantages it holds. One advantages is that it is voluntary and it is not obligatory to agree on what you don't like in contrast to courts where you have to agree on the decision of the court at any cost unless you file your case in the higher court. That's why these days' people find mediation very convenient as they don't need to go to the court which is very time consuming and costly. This also gives them the control on the resolution which is completely opposite to the court where the only person who has control over the resolution is Jury/Judge.

Not everyone can become a mediator. Even lawyers need to undertake some training to properly understand what mediation is so that he/she can properly and perfectly practice the role of the mediator in the commercial disputes. Mediators can not force their decisions on any party and the dispute can only be resolved if both the parties agree on the way to resolve the dispute.

Mediation is applicable to various other areas like family (divorce, child custody, conflicts, separation, etc.), workplace, but the most common these days is the commercial one which includes contracts, landlord conflicts, etc. because businesses has increased and so is the conflicts. For example, sometimes in one business there are many partners and after sometime they don't agree to one another's condition which lead to the conflict between them and if they will go to court firstly it will take years before the court takes its decision as the litigation involves a lot of legal issues and secondly it can also happen that the court decides the result in one partners favour which leave the other partner/partners empty handed. So mostly businessmen opt for mediation which tries to put all the parties in one agreement and this also save them from the future harm that can occur. For the successful commercial mediation, one must have the consent of both parties and an excellent understanding on the part of participating lawyers of the process and its values. The best thing that the businessmen find about the mediation is that in contrast to courts public hearing it is every confidential and except the parties and the mediator no one would know what has happened. Even many mediators destroy their notes after the case is resolved. So we can say that this is the reason cases in mediation is increasing day by day. And on top of it mediation ease the overburden of cases on courts which in return will allow the court to act quickly on the other registered cases. A very good quote said by Guy A. Battequin "**The future of conflict mediation is not what will happen but what mediators will make it**".

### PROCESS OF MEDIATION:

Almost in every country the process of how the mediation works is same. It can be triggered by an agreement to mediate, by a contract, by a court or a tribunal. When the contract (which is the most common one) is concerned there must be a mediation clause included which must state the parties agree upon the mediator. In the contract there should also be a clause that both the parties agree on the 50-50 basis. To trigger the mediation in contract firstly the parties that want to resolve the dispute should give a notice of dispute to the other party and also to the mediator and in the notice of dispute it must state that the dispute has arisen and also it should state what the matter is. In order to resolve the dispute both the parties must co-operate with the mediator and they should pay the mediator their part of share. If the dispute has been resolved then the parties must sign a copy of the terms of settlement. But in case the dispute couldn't be resolved in fix period from the day the mediator had been given notice then the mediation must cease unless the parties the extended the time of mediation and that should be in written.

## **MEDIATION IN POLAND:**

In Poland mediation's first case took place in 1991 related to labor-law but the formation was laid in 1995 and in 1997 mediation was introduced to penal code and also in the same year Poland adopted mediation for the criminal proceeding and then in 2005 it adopted the mediation for the commercial and civil disputes. Unlike any other country the mediation in Poland was introduced quite late (2005) by an amendment to the code of civil procedure and some other acts. The code of civil procedure states that the mediation can be initiated by three different ways: (1) by the court order but there should not be any party objecting, (2) by the party that is applying for the mediation and the other party should also have consent to it and (3) lastly by the parties who are executing an agreement on mediation. Court can refer any case to mediation but only if both the parties have the consent to it. But still it is rarely used as an alternative to court.

Most people in Poland still prefer to go to court rather than opting for mediation. And many are even unfamiliar with the new form of resolving disputes. In Poland mediation is more often used in business matters than in criminal or family matters as in family matters people find it easier to get compensation by the judicial system for the abuse they tolerated. In order to develop mediation in the country there is the need to change the regulations and proper educational preparations for the mediators.

There are four modes of mediation in Poland:

(A) The first one is **settlement mediation** which encourages the incremental bargaining towards compromise between the parties' positional demands. The lawyers and managers can be the mediators in this mode and there is no need of any expertise. This is a very easy mode where only bit of preparation is needed and it is also widely accepted by the parties. This mode is used in commercial, injury and industrial disputes.

(B) The second one is **facilitative mediation** which avoid positions and negotiate in terms of the parties underlying needs and interests instead of their strict legal entitlements. In this type of mediation expertise as a mediators are involved to resolve the disputes. The biggest disadvantage of this type of the mediation is that sometimes it does not get any outcome and moreover it is usually very lengthy and also requires skills from the parties. This mode is used in community, family, environmental, and partnership disputes.

(C) The third type of mediation is **therapeutic mediation** which help to improve the relationship of the parties by underlying the cause of the parties' problems. In this the expertise in counselling or social work with understanding the psychological causes of conflicts are hired. But this always confuses the role of the counselling and mediation and also it can be prolonged or terminated any time without any agreement. This modes deals with the disputes from matrimonial, parents, adolescents, family networks and with the continuing disputes.

(D) The last one is **evaluative mediation** to evaluative mediation which according to the legal rights and the entitlements of the parties and within the parties. Due to this mode of mediation the mediators have to take additional responsibility and evaluative mediation does not teach the parties any skills for the future. This mode deals with the discrimination, matrimonial property disputes.

Mediation works in different way in different cases. As for examples we can take family mediation, commercial mediation, divorce mediation, etc. In the family case we can say that judges always encourage both the parties to opt for mediation which can benefit the them and they can decide on whether to come on the given agreement like whether they like what the other party is offering them or they can also give other suggestion on what they both want whereas in court does not take any suggestion and give their decision on the legal facts without letting the emotions come their way.

When the commercial mediation is concerned the businessmen can opt for mediation to avoid the lengthy process of court and they can even submit their agreement in the court which will be relatively much faster than the court

procedure. Even in the divorce case people can go to the mediator or court can suggest them to go which can help them to take final decision as sometimes people decide to divorce in anger and they don't even think that sometimes with their life, the life of their children, parents is also attached but after sometime they usually regret their decision.

### **MEDIATION IN CROATIA:**

In contrast to Poland, Mediation is very popular in Croatia. It is said to be a centre of peace and non-violence. As a famous Indian Personality Mahatma Gandhi once said "be a change that you wish to see in the world". The mission of Croatian mediation is to invest all the services like knowledge, time, money, energy and enthusiasm together for the better development and growth of the whole society. It is said that mediation is not a sign of weakness but a very smart decision.

As I said before Mediation in Croatia also aims at less time and less money but more satisfaction of each client. There are many court in Croatia that implement mediation like Municipal Court Zagreb, Community Court Zagreb, High Commercial Court of the Croatian, etc. Parties can decide to resolve their dispute in different way if they are not satisfied with court's proceeding and want to resolve their dispute in a different manner. But if the Party does not react within 60 days to the proposal for achieving the settlement by the mediation then automatically after the deadline then the civil proceeding will continue. In the recent times it has become one of the important point which helps to fight against the violence in the society. This concludes that it can have a lot of problems if the dispute is not resolved anytime sooner. Mediation proceeding can be instituted not only before mediation centre in Zagreb but also before any Regional Mediation centre as well as before the county chamber. The role of the mediator is unlock the negotiation which has been undead since. Mediators do not give legal advice but will encourage the parties to seek it if it is necessary. Parties should also be open and settlement minded. Mediation is voluntary. It is also confidential and only parties decide what information may be shared with the counter-parties or the court. It is transparent which means there are no surprises in mediation. It focus on the parties' interest rather than the rules of procedure and evidence. It enables the party to resolve the dispute by themselves.

### **CONCLUSION:**

Younger generations are keener to adopt mediation then the older generations. Mediation may be regarded as a half-way house between conciliation and arbitration. The mediator proceeds by the way of conciliation but in addition is prepared and expected to make his own formal proposals or recommendations which may be accepted. The biggest difference between the mediation in Croatia and Poland is that in Poland mediation is not so common and not known to many but in Croatia mediation is very popular. In short we can say that this difference is only due to development of mediation in these two countries as in one country it is very much developed and in the other many people don't even know what mediation actually is.

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