

LAW No. 03/L-057

ON MEDIATION

The Assembly of Republic of Kosovo,

Based on Article 65, point (1) of the Constitution of Republic of Kosovo,

For the purpose of regulating, organizing, functioning and resolution of disputes in effective way through mediation;

Honoring the historic tradition of mediation in Kosovo, as well as improving justice system in Kosovo;

Adopts

LAW ON MEDIATION

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of the Law

1.1 This Law regulates the procedure of mediation in general, the establishment, organization, functioning of the Mediation Council, as well as the rights, duties and qualifications of mediators.

1.2 This law establishes rules of mediation procedure in contested relationships, in legal-assets matters, of natural and legal persons, commercial, family, labor, other civil, administrative and criminal relationships, on which the parties can freely act with their good will, if otherwise not foreseen the exclusive responsibility of a court or other competent body with a separate law.

1.3 This law recognizes the agreement reached between the parties, subject of law for initiation of the mediation procedure, in any phase of the legal procedure before the competent court.

Article 2

Definitions

For the purposes of this law, the used terms have the following meaning:

“**Mediation**” is an extra-judicial activity carried out by a third person (mediator), for the purpose of resolving by conciliation disagreements between parties subject to law in accordance with the provisions of this law.

“**Dispute**” means any dispute between parties subject to the law.

“**Mediator**” is the third neutral party, authorized to mediate between two parties aiming to resolve disputes, in accordance with the principles of mediation.

CHAPTER II

PRINCIPLES AND MEDIATION PROCEDURE

Article 3

Expression of Will

To initiate the mediation procedure the free will of the parties should exist.

Article 4 Equality of the Parties in Procedure

In mediation procedure parties are equal and they have equal rights and obligations in accordance with the law.

Article 5 Impartiality

The mediator during the mediation procedure is fully impartial and independent of any kind of impact.

Article 6 Confidentiality and Credibility

6.1 The mediation procedure is of a confidential nature. The testimonies of the parties made in the mediation procedure may not, without the approval of the parties, be used as evidence in any other procedures.

6.2 The mediator, parties and their legal representatives are obliged to keep the confidentiality of the procedure, unless the parties agree otherwise.

6.3 Only after the end of the mediation procedure, with the consent of the parties, the agreement may be made public in accordance with the applicable laws.

Article 7 Urgency

The mediation procedure is urgent.

CHAPTER III

THE PROCEDURE

Article 8 Mediation Procedure

Provisions of this law are applicable regardless from the fact if the mediation is conducted before or after the initiation of court or administrative procedure

Article 9 Initiation of the Mediation Procedure

9.1 Mediation procedure begins at the moment when parties agree to begin with it.

9.2 Party in the mediation procedure may be natural and legal persons.

9.3 If one party requests the other party to follow the mediation procedure and the latter one does not respond to this request within fifteen (15) days, from the day of its receipt, it is considered as refusal to begin the mediation procedure.

9.4 Before the mediation procedure starts, the mediator is obliged to inform the parties about the principles, rules, and expenses of the procedure as well as the legal effects of the agreement.

9.5 When the matter is with the court or the prosecution and if they consider that a dispute can be resolved successfully with mediation, they suggest the parties to follow the mediation procedure.

9.6 At any stage of the court procedure until its completion, the court may suggest the parties to follow the mediation procedure.

Article 10 Development of the Mediation Procedure

10.1 Parties in procedure are free to decide for the development of the mediation procedure.

10.2 The mediation procedure shall be conducted by only one mediator, unless the parties agree to have more than one mediator.

10.3 The mediation starts after the parties sign the agreement on commencing the procedure of mediation.

10.4 The agreement for commence of mediation shall contain: data on the parties in procedure, their legal representatives, subject of dispute, the statement of acceptance of the mediation principles, as well as the provisions on the costs of the procedure, including the mediator's fee.

10.5 After signing of the agreement on mediation, in agreement with the parties, the mediator shall schedule the time and the location for conducting the mediation.

10.6 If the matter is with the court and in the meantime the parties agree to resolve their dispute through the mediation procedure, they are obliged to inform the court, by submitting one copy of the agreement on the initiation of the mediation procedure.

10.7 Beside the parties, their representatives and the mediator, the procedure may also be attended by a third party, provided that the parties give their prior consent.

10.8 The third party attending the mediation procedure is bound to respect the principle of confidentiality of the procedure.

10.9 In the beginning of the mediation procedure, the mediator shall briefly inform the parties of the goal of mediation, of the procedure to be conducted, and the role of the mediator and the parties.

Article 11

11.1 The mediator may conduct separate meetings with each of the parties if he considers that it would in be on the interest of the procedure, and may propose options for resolution of the dispute, but not the resolution itself.

11.2 The mediator should treat the parties in the procedure equally.

11.3 The parties in procedure are obliged to present the contested matter circumstances in the truest and correct manner.

Article 12 Attainment of Agreement

12.1 Attainment of the agreement in the mediation procedure depends exclusively on the will of the parties.

12.2 The mediator is obliged to assist the parties and be committed in attaining the agreement.

12.3 Upon reaching an agreement in the mediation procedure, the mediator shall compile a written agreement, which is to be signed by the parties and the mediator.

12.4 The attained agreement referred to paragraph 3 of this article, shall have the force of a final and enforceable document.

12.5 If the case-file is with the court, the written settlement agreement should be submitted to the court, which after the approval, shall have the power of an executive document

Article 13 Duration of the Procedure

Mediation procedure lasts up to ninety (90) days.

Article 14 Completion and Termination of the Procedure

14.1 Mediation procedure is completed:

- a) with the agreement between parties is reached;
- b) with the withdrawal of any of the parties at any time during the procedure conduction, declaring that there is no interest on continuing the mediation procedure;
- c) with the confirmation of the mediator, after consultations with the parties, when it is deemed that the continuation of the procedure is not reasonable;
- d) the legal deadline for attaining the agreement has expired.

14.2 After the completion of mediation procedure, the mediator is obliged to inform in writing the court or the other competent body regarding the completion of the procedure of mediation at any occasion, when the case-file for the mediated process is with the court or the other competent body.

14.3 The mediator may terminate the mediation procedure if during the procedure the reasons for questioning his impartiality exist or appear.

14.4 The agreement attained in the mediation procedure has the power of the court agreement, if this is approved by the court, prosecution or if it is approved by the other competent body.

14.5 The Court or the prosecution may annul the agreement attained through mediation when it concludes that it has been bound against the law in force, when the will of the parties in conflict is not reflected, or when their rights and interests are impinged or when the compensation is in clear disproportion with the caused damage.

Article 15 Conflict of Interest

In case when conflict of interest occurs, the mediator is expelled from the mediation procedure, except if the parties, after being informed for the existence of such circumstances, agree that he conducts the procedure.

Article 16 Mediation Procedure Expenses and the Mediator Fee

16.1 The mediation procedure expenses shall be paid proportionally by parties, except if the parties have agreed otherwise.

16.2 The fee for the mediator will be regulated by a sub legal act, issued by the Minister of Justice.

CHAPTER IV
MEDIATION COMMITTEE

Article 17
Committee Establishment and Competencies

17.1 Mediation Committee shall be established by the Ministry of Justice.

17.2 The Committee shall consist of the Chairperson and four (4) members. The Chairperson of the Committee should be civil a servant and shall be appointed by the Ministry of Justice.

Article 18
Members of the Committee

18.1 Entities represented in the Committee are:

- a) Ministry of Justice;
- b) Kosovo Judicial Committee;
- c) Kosovo Prosecutorial Committee;
- d) Kosovo Chamber of Advocates;
- e) Ministry of Labor and Social Welfare;

18.2 The entities proposed in paragraph 1 of this article shall be represented each with one member.

18.3 The chairperson of the Committee serves for a mandate of four (4) years with a possibility for re-election for another mandate.

18.4 Members of the Committee shall serve for a mandate of three (3) years with a possibility for re-election for another mandate. The first mandates will be staggered as follows: two (2) members for two (2) years, one (1) member for three (3) years, and one member for four (4) years.

18.5 Upon termination of the mandate of each Committee member, the Minister of Justice immediately requests from the entities foreseen with paragraph 1 of this article to appoint their member. The vacant place should be filled within thirty (30) days.

Article 19
Duties and Responsibilities of the Committee

Duties and responsibilities of the Committee are:

- a) definition of the development policies regarding the mediation domain;
- b) issuance and oversight of the Code of professional ethics rules for mediators;
- c) issuance of decisions and recommendations to regulate the mediation field of activity;
- d) issuance of the Rules of procedures for the committee;
- e) drafting and keeping of the registry for mediators;

- f) provision of professional opinions;
- g) organization of training and mediation courses;
- h) information of public for the possibilities of mediation;
- i) exercise of other duties as determined by this law.

Article 20
Conditions for the Selection of the Committee Chairperson and Members

Members and the Chairperson of the Committee shall meet the following requirements:

- a) adequate university degree;
- b) at least three years of working experience;
- c) enjoy high reputation in society;
- d) not be convicted for a knowingly criminal act punishable with imprisonment over six (6) months;

Article 21
Meetings and Voting

21.1 The necessary quorum for holding the meetings of the Committee is the half of the Committee members and the Chairperson.

21.2 Decisions of the Committee are adopted with a simple majority of votes.

21.3 The overruled members are entitled to attach their dissenting opinion to the approved decision

CHAPTER V
THE MEDIATOR

Article 22
Required Conditions for Mediators

22.1 A mediator may be any person who meets the general conditions for employment in compliance with the laws in force.

22.2 Aside from the issues already mentioned in paragraph 1 of this article, the mediator shall also meet the following conditions:

- a) posses an university diploma;
- b) successfully passed the training course for mediation;
- c) have mediated under supervision of a mediator at least in six (6) sessions;
- d) not have been convicted for a knowingly criminal act which is punishable with over six (6) months imprisonment.
- e) possess high moral qualities;

f) be registered in the mediators' registry

22.3 The mediator trainings are organized by the Mediation Committee in cooperation with the Ministry of Justice.

22.4 The person who successfully completes the training for mediators shall be equipped with a certificate, which shall serve as the basis for entry in the registry of mediators.

22.5 Certification of mediators shall be conducted by the Mediation Committee.

Article 23 Certification of Mediators

23.1 The Ministry of Justice shall license the mediators who meet the conditions foreseen with this law.

23.2 With the proposal of the Committee, the Ministry of Justice suspends or revokes the license of the mediator, in compliance with this law.

Article 24 Registry of Mediators

24.1 The Committee shall maintain a public registry of certified mediators.

24.2 The registry shall contain all personal data for each mediator.

24.3 Copies of the registry shall be distributed on a regular basis to courts, prosecution and other competent institutions.

24.4 The Committee shall delete the name of each mediator from the register, after receiving a final decision from the Ministry, in accordance with paragraph 2 of article 23 of this law.

24.5 The mediator shall be deleted from the list in case of:

- a) his request;
- b) death;
- c) revocation of license;
- d) loss of the capability to act;
- e) the exercise of any other duty or function, in contradiction with the mediation or the law in force.

CHAPTER VI

RIGHTS AND LIABILITIES

Article 25 The Rights and Liabilities of the Mediators and Parties

The rights and liabilities of the mediator and of the parties on the other hand are determined before the beginning of mediation procedure. The Mediator and the parties agree regarding the rights and liabilities to be respected up to the end of procedure, in accordance with the applicable law and moral norms.

Article 26
Recognition of Foreign Mediators

A foreign citizen may serve as a mediator in Kosovo in individual cases and under the condition of reciprocity, with the prior consent from the Ministry of Justice.

Article 27
Punitive Provisions

A mediator who, while exercising his duties, illegally discloses official secrets or misuses the official duty in any manner shall be held accountable in accordance with the Criminal Code of Kosovo.

CHAPTER VII
TRANSITIONAL AND FINAL PROVISIONS

Article 28

28.1 Six months after this law enters into force, it will be followed by the enactment of sub legal acts.

28.2 This law does not regulate the mediation procedure for juveniles, and commercial arbitration. These two procedures shall be regulated by separate laws.

Article 29
Entry into force

This law enters into force fifteen (15) days after its publication in the Official Gazette of Republic of Kosovo.

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18 September 2008

Promulgated by the Decree No. DL- 048 - 2008, dated 03.10.2008, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.