



РЕПУБЛИКА СРБИЈА  
МИНИСТАРСТВО ПРАВДЕ

# SERBIAN MEDIATION SYSTEM AND LEGAL FRAMEWORK

**kick-off event “SEE Network of Associations of Mediators”  
Bled, 7/8 June 2016**

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# STRATEGIC FRAMEWORK FOR MEDIATION IN SERBIA

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- National Judicial Reform Strategy for the period 2013-2018
  - adopted on July 1st, 2013
  - determines as one of its priorities the resolution of backlog cases on the basis of an elaborated program which should enable the taking over of a significant number of court cases by mediators;
- Action Plan for the Implementation of the National Judicial Reform Strategy for the period 2013-2018 (*„Official Gazette of the RS“, No. 71/2013 and 55/2014*)
  - determines specific measures and activities for the implementation of the NJRS;
  - Currently undergoing revision
- Draft Action Plan for Chapter 23: Judiciary and Fundamental Rights (EU Integration)
  - contains several activities related to establishing a functional and efficient system of mediation.

# Action Plan for Chapter 23: Judiciary and Fundamental Rights, in the process of EU Integration

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1. Establishment of the Commission for the revocation of the license for mediation by the Minister of Justice and systematization of an adequate number of jobs in the Ministry of Justice to conduct professional and administrative tasks for the Commission (IV quarter of 2015- completed).
2. **Raising public awareness of mediation and improvement of promotion of alternative dispute resolution** through the activities such as:
  - Publishing information on the website;
  - publication of informative brochures and public service announcements;
  - Informing the media;
  - Designing infographics;
  - Organizing round tables and workshops.

**(Continuously, commencing from III quarter of 2014)**
3. **Adoption of programs for training of mediators and their implementation** (Continuously, commencing from III quarter of 2015)
4. Continuous updating of Registry of Mediators and improvement of access to information on licensed mediators and accredited training institutions (Continuously, commencing from III quarter of 2015)

# LEGAL FRAMEWORK

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## GENERAL FRAMEWORK

- **Law on Mediation in Dispute Resolution** (*“Official Gazette of RS” no. 55/2014*)

## RELEVANT PROCEDURAL LAWS

- **Law on Civil Procedure** (*“Official Gazette of RS”, no. 72/2011, 49/2013 - Decision of Constitutional Court, 74/2013 - Decision of the CC and 55/2014*);
- **Criminal Procedure Code** (*“Official Gazette of RS”, no 72/2011 and 101/2011*);

# OTHER ADR METHODS

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## **CONCILIATION/COURT-ANNEXED MEDIATION**

- **Family Law** (*“Official Gazette of RS”, no. 18/2005, 72/2011 - Other Law and 6/2015*)

## **CONCILIATION/ARBITRATION**

- **Law on Peaceful Settlement of Labour Disputes** (*“Official Gazette of RS”, no. 125/04, 104/09*)
  - Republic Agency for Peaceful Settlement of Labour Disputes
  - peaceful settlement of individual and collective labour disputes through arbitration and conciliation
- **Law on Arbitration** (*“Official Gazette of RS”, no. 46/2006*)

# LAW ON MEDIATION IN DISPUTE RESOLUTION

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- Entered into force on 31 May 2014
- Applicable from **1 January 2015**, except the provisions of Articles 6-8 and Article 33, Paragraph 5, which will be applicable from the date of accession of the Republic of Serbia to the European Union (cross-border disputed; EU citizens as mediators);
- Replaced the former **Law on Mediation** (*Official Gazette of RS, no. 18/05*)
- **Objectives**
  - to improve and upgrade the existing normative framework of mediation as an alternative dispute resolution method
  - to enhance the use of mediation and its effectiveness with the end aim of reducing the caseload in courts and exercising the right to fair trial within a reasonable time.

# MEDIATION – FIELD OF APPLICABILITY

Mediation is a procedure, regardless of its name, where the parties voluntarily seek to settle their dispute through negotiation, facilitated by one or more mediators assisting the parties to reach an agreement (Article 2)

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- Mediation shall be applied to disputes in which the parties are free to dispose of their claims, unless another law prescribes exclusive jurisdiction of a court or another authority, regardless of whether mediation is carried out before or after the initiation of judicial or other proceedings.
- Mediation is possible especially in property-related disputes concerning the fulfilment of the obligation to act, in other property disputes, in family, commercial disputes, administrative matters, disputes relating to environmental protection issues, consumer disputes, and in all other contentious relations where mediation is appropriate to the nature of the contentious relations and can aid in their resolution.
- The Law shall also apply to mediation in criminal and misdemeanour proceedings with respect to property claims and claims for damages, as well as in labour disputes unless otherwise stipulated by a special law.

# PRINCIPLES OF MEDIATION

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- voluntariness, equality, participation and presence in person during the mediation procedure, exclusion of the public, confidentiality, neutrality and urgency.
- Issues not expressly regulated by this Law shall be resolved in accordance with the mediation standards contained in the acts of the United Nations, the European Union and the Council of Europe.

## **Voluntary but obligations of judges do exist:**

- **before scheduling a trial in connection with criminal offences which are prosecutable by private prosecution**, the judge shall summon the private prosecutor and the defendant to the court on a certain date to be informed about the possibility of being referred to a mediation procedure. (Article 505 of the Criminal Procedure Code)
- **the court shall direct the parties to mediation or to informative hearing for mediation or to instruct the parties of the option of pre-trial settlement of dispute by mediation or through another amicable manner**, the court shall inform the parties of their right that the procedure can be performed through mediation. (Articles 11 and 305 of the Law on Civil Procedure).



# MEDIATION AND COURT PROCEEDINGS

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- Mediation procedure is initiated by submission of the mediation agreement to the court or other authority conducting the proceedings;
- **Stay of judicial proceedings, no longer than 60 days;**
- Mediation procedure may be initiated:
  - before or after the judicial proceedings have been initiated
  - during the proceedings on legal remedies or
  - in the course of enforcement proceedings.
- Agreement may be reached on factual matters if agreement on legal issue not reached – they shall be considered indisputable in judicial or other proceedings (Article 26).
- monetary incentive in case of reaching an agreement to resolve the dispute through mediation after the judicial or other proceedings have been initiated and before the conclusion of the first hearing for the main trial (Article 31)
- **the court shall allow that the mediation be conducted in the court building, outside working hours, in accordance with the Court Rules of Procedure (Article 32).**

# MAJOR NOVELTIES OF THE LAW ON MEDIATION IN DISPUTE RESOLUTION

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- **Power of an enforceable document** if agreement on dispute resolution:
  - contains enforceability clause;
  - If the signatures of the parties and the mediator are certified by a court or a notary.
- Licensing system for mediators;
- Introduction of a **Registry of Mediators** kept by the Ministry of Justice as a public central electronic database;
- Establishing an effective system of training for mediators;
- Non-compulsory Tariff on Mediation Fees enacted by the Minister of Justice;
- Possibility of court tax exemption incentive (Article 31)
- Code of Ethics of Mediators (*“Official Gazette of RS”, No. 146/2014*) adopted.

# A LICENSING SYSTEM BY THE MINISTRY OF JUSTICE

Procedures for issuance, renewal and revocation of mediation licenses through which the Ministry of Justice determines whether a candidate meets the conditions for conducting mediation

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- Bylaw on the Register of Mediators (*“Official Gazette of RS”, No. 146/2014*),
- Rules of Procedure of Issuance, Renewal and Revocation of Licenses for Mediation and Form of License for Mediation (*“Official Gazette of RS”, No. 146/2014*)
- Mediators must submit to the Ministry of Justice an annual report on conducted mediations;
- Commission for Revoking Licences consisting of three members from the ranks of judges, mediators and the Ministry.
- The mediation license is renewed at the request of the mediator:
  - issued for the first time for a period of **three years**,
  - subsequently renewed for a period of **five years** (10 hours of training /year; min. 5 mediations during the period of validity of the mediation license).
- The register has been published on the MoJ website on 15 May 2015;
- MoJ issued on 6 February 2015 a call for applications for mediators to be licensed and registered
- Registry of Mediators is publicly available: <http://www.mpravde.gov.rs/intermediaries.php>.
- On 20 May 2016 a total of **328 mediators have been registered**.

# SPECIFIC LAWS AND RELATIONS RELYING ON THE MINISTRY OF JUSTICE'S LICENSING SYSTEM

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- **Law on Consumer Protection** (*“Official Gazette of RS” no. 62/2014*);
- **Law on the Protection of Financial Services Consumers** (*“Official Gazette of RS” no. 36/2011 and 139/2014*)

# SYSTEM OF TRAINING FOR MEDIATORS

- BASIC

- SPECIALISED

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- Completed basic training is a requirement for obtaining the status of mediator;
- Specialised training is organised for particular areas or types of disputes;
- The list of accredited institutions responsible for the implementation of basic and specialized training shall be determined in accordance with the Regulation on Detailed Conditions and Procedure for Issuing Permits for the Implementation of Basic and Specialized Training of Mediators and Supervision of the Implementation of Training (Article 43);
- Program of Basic Training for Mediators enacted (*“Official Gazette of RS”, No. 146/2014*).

# Licenses to conduct training for mediators have been issued to 8 organisations, among which are:

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## 1. **Centre for Constructive Conflict Resolution of Serbia**

- Mediation in resolving disputes in the area of banking services, leasing and insurance,
- Mediation in commercial disputes,
- Mediation in resolving consumer disputes, and in tourism,
- Mediation in bankruptcy proceedings and consensual financial restructuring,
- Training for trainers of basic training for mediators;

## 2. **Partners for Democratic Change in Serbia**

- Basic training and specialized training,
- Mediation in cases of discrimination,
- Mediation in family matters,
- mediation in cases of abuse at work-mobbing,

- Advanced communication and negotiation skills,

## 3. **Centre for Human Resources Development and Management MNG Center doo**

- Mediation in cases of abuse at work-mobbing,
- Negotiation and mediation in social protection;

## 4. **The National Association of Mediators of Serbia**

Advanced skills of mediation.

## 5. **Judicial Academy**

*Basic and specialised training of mediators are regularly conducted.*

# World Bank MDTF JSS in Serbia

## Judicial Functional Review (October 2014)

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**“Recent legislative amendments seek to promote mediation but there are significant implementation challenges. Due in large part to previously failed reforms, there is limited awareness of mediation among judges, attorneys, court staff, and court users. Among those who are aware of mediation services, few report it to be a useful means of dispute resolution. A significant outreach initiative to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built in to the institutional framework to encourage the use of mediation and integrate it into the court system.”**

# Judicial Functional Review recommendations

## - continued

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**Operationalize the new Mediation Law, create incentives for court users and practitioners to opt for mediation, and monitor the results. Conduct intensive training among professionals on mediation and disseminate information to potential court users.**

- **Raise public awareness of mediation through websites, brochures, and public service announcements. Introduce a Mediation Self-Help Test**, applying lessons from the Netherlands, so that parties can determine whether mediation would benefit them. (MOJ – short term)
- **Establish a formal Court-annexed mediation program in all Basic and Higher Courts and standards for determining which cases are appropriate for mediation.**
- **Create an effective mediation case referral and management system**, including: a) criteria for selecting cases; b) procedures for selecting a mediator; c) statistical monitoring and reporting; and d) coordinating activities between the court, litigants and mediators. (HJC – medium term)



# Judicial Functional Review recommendations - continued

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**Provide incentives** to potential users of mediation, including:

- **Lawyers:** provide subsidized, tiered training to familiarize attorneys with mediation and those lawyers who decide to become mediators. Require mediators who received subsidized training to provide a specified number of free mediations. Introduce a system of co-mediation and mentoring to enhance mediator skills. (MOJ, Bar Associations – medium term)
- **Judges:** develop training and printed materials for Court Presidents and judges about the advantages and mechanics of mediation. Count dispositions achieved through mediation as part of the individual judges' workload. (HJC, JA – medium term)
- **Public:** introduce legal aid for mediation<sup>59</sup> and provide a temporary financial stimulus via free mediation hours. Set fees for mediation at less than court litigation fees, reflecting likely lower court costs than through standard litigation. Reduce the mediation fee in small claims cases to bring it more in line with court fees for these cases. (MOJ – medium term)

Thank you for your attention!

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Questions?