

LAW No. 06/L –009**ON MEDIATION**

Assembly of Republic of Kosovo,

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

Approves

LAW ON MEDIATION**CHAPTER I
GENERAL PROVISIONS****Article 1
Purpose**

1. This Law regulates the manner, functioning, procedures and organization of mediation, as well as the rights, duties and responsibilities of mediators in terms of facilitating access to alternative settlement of disputes and contests, and also promotes their amicable settlement.
2. This Law is in compliance with the Directive 2008/52/EC of the European Parliament and of the Council dated 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters.

**Article 2
Scope**

1. The provisions of this Law shall be applied in mediation procedure of contested relations of subjects of the law in legal-property, commercial, family, labour relations and other cases of ownership disputes such as rights related to acquiring ownership rights through contractual relations or rights acquired by virtue of inheritance, bankruptcy procedures, and other civil, administrative and criminal relations, whereby parties can freely discharge their free will, unless a special law has foreseen the exclusive responsibility of the court, prosecution office or any other competent body.
2. Mediation in the criminal field shall be applied in cases where there is foreseen the punishment by fine and the punishment by imprisonment up to three (3) years, except the cases foreseen in paragraph 3 of this Article.
3. Mediation and mediation procedure shall not be applied in cases of domestic violence, in accordance with the Law against Domestic Violence or in any other dispute for which the exclusive responsibility of the court or any other competent body has been foreseen.

Article 3

Definitions

1. For the purposes of this Law, terms used shall have the following meaning:

1.1. **Mediation** – an extra-judicial procedure for settling contests and disputes between the subjects of law in accordance with the conditions foreseen under this Law;

1.2. **Mandatory mediation** - the mediation procedure initiated by the competent judge that obliges parties to try the mediation procedure, as foreseen under this Law;

1.3. **Mediation Clerk** – the official of the court or basic prosecution office. Official of the court who administers cases referred for mediation by the court and administrative bodies as well as the official of the prosecution office who administers the cases referred by the prosecution office. The mediation clerk may assist parties with self-initiated cases;

1.4. **Mediator** - the impartial third person, licensed by the Ministry of Justice, who has been selected to mediate between parties with the purpose of settling disputes, in accordance with principles of mediation;

1.5. **Enforcement document (Enforcement Title)** - the document as foreseen in the Law on Enforcement Procedure;

1.6. **Mediation Agreement** – agreement reached in writing signed by the parties and mediator for settling the dispute between the parties in mediation procedure. Notwithstanding the manner of referring the case, mediation agreement shall have the power of executive-enforcement title and is binding for the parties.

1.7. **Chamber of Mediators** - an independent non-profit legal person acting in compliance with this Law and its statute adopted by the General Assembly of the Chamber of Mediators and approved by the Ministry of Justice.

1.8. **Working area** – office or suitable environment for holding the mediation session according to mediation principles, which shall be within the court, prosecution office or other location set by the Chamber of Mediators, taking into consideration the will of the parties.

1.9. **Registry**- registry of the mediators licensed by the Ministry of Justice.

CHAPTER II

MEDIATION PRINCIPLES

Article 4

Expression of will

The mediation procedure shall be developed with the free will of the parties, expressed both orally and in writing, in accordance with the Law.

Article 5
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 6
Impartiality and independence

The mediator during the mediation procedure shall be fully independent and impartial.

Article 7
Privacy and Confidentiality

1. Audience should be excluded from a mediation procedure.
2. The mediation procedure is of confidential nature. The testimonies of the parties and all other information given in the mediation procedure may not be used as evidence in any other procedures, without the consent of the parties.
3. Mediator, parties and their representatives are obliged to maintain the confidentiality of the mediation procedure, except if the parties agree otherwise.
4. The mediation agreement, with the consent of the parties, may be made public in accordance with the Law.

CHAPTER III
PROCEDURE

Article 8
Initiation of a Mediation procedure

1. The mediation procedure can be initiated by the parties, court, prosecution office or a competent administrative body, in accordance with the applicable legislation.
2. If the case is before the court, prosecution office or in the competent administrative body and the parties agree to undergo mediation, the court, prosecution office, or competent administrative body shall inform and instruct parties to the mediation procedure.
3. If one of the parties requests the other party to commence the mediation procedure, but the latter fails to respond to the invitation within fifteen (15) days from the date of receiving the request for mediation, it shall be considered as rejection to commence mediation procedures.
4. Kosovo Judicial Council shall issue a sub-legal act defining the procedure for referral of cases by the court under paragraph 1 of this Article;
5. Kosovo Prosecutorial Council shall issue a sub-legal act defining the referral procedure of

cases by the prosecution under paragraph 1 of this Article.

6. The Ministry of Justice shall issue a sub-legal act defining the self-initiated procedure of cases, as well as cases of referral by the administrative body under paragraph 1 of this Article.

7. Based on this Law, the agreement between parties to commence the mediation procedure, at any phase of the procedure before the competent court or any other competent body, shall be accepted.

Article 9 **Mandatory mediation**

1. When parties submit a statement of claim before the court, regarding disputes deriving from family relations such as alimony, custody, visits, child support and division of marital property, the judge in the preliminary hearing, after the preliminary review of the indictment, must inform and oblige the parties to mediation procedure.

2. When parties file a statement of claim before a court regarding ownership contests related to rights and obligations deriving from the rights of servitudes and compensation of expropriated properties, the judge in the preliminary hearing, after the preliminary review, is obliged to inform and direct parties to mediation procedure.

3. Under such circumstances, the parties shall meet with a mediator, and will have thirty (30) days to try the commencement of mediation, starting from the day when the judge obliges the parties to try mediation.

4. Parties may chose not to continue with the mediation procedure and they can return to judicial proceedings, not longer than thirty (30) days.

5. Prior to returning the case in judicial proceedings, parties must provide a written evidence, signed by the parties and the mediator, proving that parties have tried mediation procedure.

6. Mandatory mediation does not deprive parties of their right to appear before the court, or employ arbitration procedure, and if no agreement is reached in the mediation procedure, the case shall be sent again to court or arbitration.

7. Parties are not obliged to reach an agreement through mediation against their free will.

8. Additional time limits for mediation are in accordance with Article 16 of this Law.

Article 10 **Selection of a mediator**

1. Based on the agreement reached between the parties in the mediation procedure, parties shall voluntarily choose a mediator from the registry of mediators licensed by the Ministry of Justice.

2. In mediation cases initiated by court, prosecution or a competent administrative body, the mediation clerk shall immediately contact the mediator chosen by the parties. The selected

mediator will have to confirm his availability and accept the case within three (3) days. If the selected mediator does not respond to the invitation for mediation within the aforementioned deadline, the mediation clerk shall contact another mediator.

3. If the other mediator fails to respond to the invitation to mediate within three (3) days from the day of being called to mediate, the mediation clerk shall inform the parties thereto, and present the parties with the list containing the names of other mediators.

4. If a mediator cannot be selected as foreseen under paragraphs 2 and 3 of this Article, then the mediation clerk shall select mediator according to the region order covered by the court or prosecution office.

5. If parties agree to engage a co-mediator in the mediation procedure, then such co-mediator shall be proposed by the mediator selected by the parties, with their prior consent.

6. The procedure for selecting the co-mediator is the same as that for selecting the mediators.

Article 11

Consent for commencing the mediation procedure

1. Prior to commencing the mediation procedure, the mediator is obliged to inform the parties on the principles, rules, procedure expenditures and legal effects of the agreement.

2. The mediation procedures, in all cases foreseen under the provisions of this Law, shall commence at the time when parties in the proceedings sign the written mediation agreement for commencing the mediation procedure.

3. The agreement from paragraph 2 of this Article shall contain the following data:

3.1. parties in the procedure and their representatives;

3.2. the subject of mediation;

3.3. the statement of accepting mediation; and

3.4. the mediation procedure expenditures and the fee for the mediator.

4. In the mediation procedure, the natural person must be physically present, through technology or representation with the consent of the parties, while the legal entity is represented by the authorized person.

Article 12

Development of the mediation procedure

1. In case the parties agree to settle their dispute through mediation, the mediation clerk shall inform the initiating body, by submitting a copy of the signed agreement for the initiation of the mediation procedure, in which case the initiating body shall suspend the procedure until the expiration of the mediation period.

2. Parties in the procedure are free to decide on the development of the mediation procedure.
3. Parties are obliged to present in the most realistic and truthful way the circumstances of the contested case during the mediation procedure.
4. The mediation procedure is carried out by a single mediator, except for the cases when parties agree to have a co-mediator.
5. After signing the agreement for initiation of mediation, the mediator in accordance with the parties shall determine the time and venue of the mediation procedure.
6. If the mediator considers that it would be in favour of the mediation procedure, he may conduct separate meetings with the purpose of finding the alternatives for settling the dispute, but not the solution itself.
7. In addition to the parties, their representatives and the mediator, the mediation procedure can also be attended by a third party as well, upon the prior consent of the parties in procedure.
8. The third party participating at the mediation procedure is obliged to respect the principle of confidentiality of the procedure.

Article 13

The effect of mediation on limitation and on the period of statutory limitation

In mediation cases referred by court, prosecution office or a competent administrative body, the court, prosecution office or competent administrative body shall ensure that parties who choose mediation in an attempt to settle a dispute will not be prevented from initiating and continuing the judicial proceedings or arbitration in relation to this dispute upon the expiry of limitation or in the period of statutory limitation during the mediation process.

Article 14

Agreement on the mediated settlement

1. The Agreement on the mediated settlement depends exclusively on the willingness of the parties.
2. The mediator must assist the parties and stay devoted to reaching an agreement.
3. After the parties reach an agreement of mediation, the mediator drafts the agreement in writing, which has to be signed by the parties and the mediator.
4. The agreement is binding only to the parties in dispute and only to the subject of the agreement.
5. The agreement must be in accordance with the Law on Obligational Relationship and suitable for enforcement.

Article 15

Legal effect of the mediation agreement

1. If the case is referred by the court, the written settlement agreement is submitted to the court, which upon its approval shall have the power of an enforcement document pursuant to the respective law on enforcement procedure.
2. If the case is referred by the prosecution, the written settlement agreement is sent to the prosecution, which upon approval by the Chief Prosecutor has the power of final decision.
3. If the case is referred by the competent administrative body, the agreement reached in writing should be sent to the competent administrative body, which after approval by the head of the administrative body has the power of an enforcement document.
4. If the mediation commences with self- initiation by the parties, the agreement reached in writing signed by the parties and the mediator, which contains the clause (certificate) on the validity and enforceability of the agreement, shall have the power of enforcement document in accordance with the relevant Law on enforcement procedure.

Article 16

Duration of the procedure

1. If the case is referred by the court or prosecution office, or any other competent authority, or in cases of self-initiated, the parties must reach an agreement within ninety (90) days from the day of signing of the agreement between the parties to commence mediation procedure;
2. If parties cannot reach an agreement on a mediated solution pursuant to paragraph 1 of this Article, through the mediators or co-mediators of the contest in mediation they can address the competent authority which approved the reference of the case to mediation to prolong the period for an additional period of thirty (30) days. The competent body may approve such an additional period if the same does not cause legal consequences in loss of right or acquisition of rights to one party over time.
3. In cases where parties to the dispute with self-initiation have failed to resolve the dispute within ninety (90) days, the parties together with the mediator can sign an agreements for an additional period of thirty (30) days provided that the mediator of the case ensures that a continuation of such term does not bring legal consequences in the loss of right or acquisition of rights to one party over the time.

Article 17

Termination and suspension of procedure

1. The mediation procedure terminates upon:
 - 1.1. reaching an agreement between the parties;
 - 1.2. withdrawal of any party, at any time during the procedure, stating that there is no interest on continuing the mediation procedure;
 - 1.3. confirmation by the mediator, after consultation with the parties, when it is

considered that the continuation of the procedure is unreasonable;

1.4. expiration of the legal deadline for reaching an agreement.

2. After completion of the mediation procedure, the mediator through the clerk is obliged to inform the court, prosecution office or competent authority in writing regarding the termination of the mediation procedure in any case when the court, the prosecution office or any other competent body has a case-file for which the mediation was carried out.

3. Upon completion of the mediation procedure, in cases of self-initiation, the parties must act pursuant to Article 16, paragraph 3 of this Law.

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

5. The court or the prosecution office can cancel the agreement reached through mediation, when it ascertains that such an agreement was signed in contradiction to the applicable law and when the free will of parties in mediation has not been reflected.

Article 18

Conflict of interest

1. The mediator during the entire procedure should ensure in such a way that if he believes that his position or any circumstance known by him puts into question his impartiality, the same should declare those circumstances and undertake actions which avoid potential conflicts of interest.

2. In case of a conflict of interest, the mediator shall terminate the mediation procedure and request that the mediation procedure proceeds with another mediator, unless the parties, even after being informed of the existence of such circumstances, have expressly agreed in writing that the same mediator performs the mediation proceedings.

3. The mediator can not be engaged for any of the parties in the same dispute or contest where he has mediated, whether during or after the completion of mediation procedure.

Article 19

Procedure costs and fees for mediators

1. The costs of mediation procedure shall be paid proportionally by the parties, except if otherwise agreed.

2. The fee for the mediator shall be regulated by the sub-legal act, which shall be issued by the Ministry of Justice and shall be equivalent or approximate with the fees of services offered within other free professions.

Article 20

Professional Training

1. The Ministry of Justice is responsible for defining the development policies related to the field

of mediation, supervising or imposing disciplinary measures deriving from the Code of Conduct.

2. Mediators are obliged to attend the trainings continuously in order to gain new knowledge for exercising the mediation in compliance with the legislation into force, general acts and training programmes drafted by the Ministry of Justice.

3. Ministry of Justice is engaged in organization of various campaigns with the purpose of informing the public about the possibilities of using the mediation, as well as promotion of mediation process.

CHAPTER IV CHAMBER OF MEDIATORS, MEDIATOR AND REGISTRY

Article 21 Chamber of Mediators

1. Chamber of Mediators shall be an independent non-profit legal person acting in compliance with this Law and its statute adopted by the General Assembly of the Chamber of Mediators and approved by the Ministry of Justice.

2. The manner of organization and functioning shall be regulated by internal act of the Chamber.

Article 22 Criteria required for mediators, their certification and licensing

1. A mediator may be any person who meets the conditions:

1.1. shall possess a university degree;

1.2. shall have the capacity to act;

1.3. shall have successfully passed the training course for mediation, including the solution of practical cases within the training and under the supervision of a licensed mediator.

2. 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.

3. Certification of mediators shall be conducted by the Minister of Justice.

4. The Ministry of Justice licenses mediators who fulfil the following criteria:

4.1. is certified as a mediator;

4.2. not have been convicted of a criminal offense;

- 4.3. have high professional reputation and moral integrity.
5. The Ministry of Justice suspend or revokes the license of a mediator, in accordance with this Law.
6. A mediator's license shall be revoked in the following cases:
 - 6.1. if against him/her was initiated a criminal procedure, respectively, he/she has been convicted for a criminal offence by a final judgement;
 - 6.2. for a serious violation of the Code of Ethics.
7. Decision of the Minister from paragraph 4 and 5 of this Article is final in the administrative procedure.
8. Trainings for mediators is organized by the Ministry of Justice.

Article 23 **Registry of mediators**

1. The Ministry of Justice and Chamber of Mediators maintain a public registry of licensed mediators.
2. The Registry contains all personal data for each mediator and the nature of cases that they have mediated.
3. Copies of the mediators' registry are distributed to courts, prosecution offices and other competent institutions, depending upon the changes.
4. Ministry of Justice shall delete from the registry the name of each mediator, after receiving a final decision by the Minister in accordance with this Article.
5. The mediator shall be deleted from the list in case of:
 - 5.1. his request;
 - 5.2. death;
 - 5.3. revocation of license;
 - 5.4. loss of the capability to act;
 - 5.5. the exercise of any other duty or function, which is in contradiction with the mediation or the Law in force.

CHAPTER V RIGHTS AND OBLIGATIONS

Article 24 Rights and obligations of mediators and parties

The rights and obligations of the mediator on one hand and parties on the other hand are specified before the commencement of the mediation procedure. The mediators and the parties agree on the rights and obligations to be respected until the end of the procedure, in accordance with applicable law and moral norms.

Article 25 Recognition of foreign mediators

1. A foreign national can serve as a mediator in Kosovo on individual cases and under the condition of reciprocity, after receiving the prior consent from the Ministry of Justice.
2. Reciprocity is assumed to exist, as one party in the proceedings objects the foreign mediator based on lack of reciprocity. If such occurs, the party objecting has the burden of proof for the lack of reciprocity related the country of origin of the mediator.
3. Proceedings for recognition of qualifications of the foreign mediator by the Ministry of Justice shall be regulated by a sub-legal act.

Article 26 Punitive provisions

The mediator, who during the exercise of his duty illegally discloses official secrets or in any form misuses the official duty, will be held accountable according to the Criminal Code of the Republic of Kosovo.

CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS

Article 27

1. Six (6) months after this Law enters into force, the Ministry of Justice shall issue sub-legal acts on the:
 - 1.1. training and certification of mediators;
 - 1.2. licensing of mediators;
 - 1.3. supervision, liability and disciplinary proceedings of the mediators;
 - 1.4. registry of mediators;

1.5. the Code of Conduct of Mediators.

2. Until the issuance of new sub-legal acts, there shall apply the existing sub-legal acts.

3. The mediation procedure for juveniles and commercial arbitration are governed by special laws.

Article 28
Revocation

With the entry into force of this Law, the Law No.03/L-057 on Mediation shall be revoked.

Article 29
Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of Republic of Kosovo.

Law No.06/L - 009
23 July 2018

Promulgated by Decree No.DL-032-2018, dated 08.08.2018, President of the Republic of Kosovo Hashim Thaçi.