



INTERNAL REGULATION OF THE MEDIATION CENTER

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I. Introduction

This internal regulation (the Internal Regulation) provides for the rules and procedures of the operation of the mediation center (the Mediation Center), the responsibilities of the Mediation Center Administrator and of the mediators collaborating with it as well as other technical and administrative issues. The preparation of this Internal Regulation has been based, except for the legal provisions in force, on the examples of regulations used before by the Albanian Foundation for Conflict Resolution and the Alternative Dispute Resolution Center Mitrovica.

This Internal Regulation, together with the Code of Ethics attached herein as Annex 1, also provides for the rules and standards to be respected in the mediation processes taking place at the Mediation Center, from the moment of the referral of the case to the moment of termination of the mediation process.

In the context of the Mediation Center, “mediation” is a formal extrajudicial process whereby the parties voluntarily seek, with the assistance of a third neutral party (mediator), a joint agreement to resolve the dispute within the legal framework.

Unlike court or arbitration proceedings where a judge or arbitrator decides the outcome of a dispute based on rules and law, mediation is an interest-based procedure that allows parties to take ownership of the consequences and to overcome their disagreement, coming together in a safe environment to express and share options for joint solutions to their disagreements. A mediator is a professional whose aim is to support the parties in their communication and negotiation. While she/he is in control of the process, it is the parties who are responsible for the positive or negative outcome of the negotiation.

II. Legal Basis

This section provides the main legal basis regulating the functioning of a mediation process in Albania.

- Albanian Mediation Law, no. 10385, dated 24.02.2011, as amended.

The Albanian Mediation Law, which was recently amended on 17 May 2018, constitutes the main legal framework for the exercise of mediation service. It outlines the basic provisions to be followed by the mediator, as well as the basis for each step of the mediation process, starting from the referral of the case, the appointment of a mediator, the mediation procedure and the moment of reaching a mediation agreement.

Regarding the mediation cases referred by the court or the prosecution office, article 1/2 (b) of the Mediation Law provides the following:

“Mediation delegated by the court or prosecutor is a mediation procedure initiated after the litigant parties have been made aware by the court on the possibility of resolving the dispute through mediation, acceptance of the parties, and transfer by the court of the case for mediation, in accordance with this law, the Code of Civil Procedure and the Code of Criminal Justice for Juveniles”.

Regarding the scope of application of mediation, article 2 of the Mediation Law determines a general framework of the areas coverable by mediation:

“2. Mediation applies for the resolution of all the disputes in civil, commercial, labour and family law, intellectual property, consumer rights, as well as disputes between public administration organs and private entities.

3. Mediation in criminal matters applies to disputes examined by the court at the request of the accusing victim, or upon complaint of the injured party, according to article 59 and 284 of the Code of Criminal Procedure, and also to any other cases allowed by special law. For mediation in criminal cases involving children the provisions of the Code of Criminal Justice for Juveniles shall be applied.”

Regarding the mediation process in general, again article 2 of the Mediation Law determines the following:

“4. The court, or the respective state body, within the competences foreseen by the law, must notify, guide and, as applicable, clearly and understandably inform the parties to resolve disputes through mediation, in particular, but not limited to, disputes:

a) in civil and family cases, which involve interests of juveniles;

b) in conciliation cases in the instances of dissolution of marriage, foreseen in article 134 of the Family Code;

c) of a pecuniary character related to the rights of ownership or co-ownership, division of property, lawsuits for soliciting of the thing, denying lawsuits and lawsuits for the cessation of the adverse effect on possession, disputes arising from the breach of contractual obligations, as well as those that have as the subject matter the compensation for non-contractual damages;

5. In case of disputes in criminal matters where the criminal proceedings have already initiated, the court must notify and invite the parties to settle through mediation disputes foreseen in point 3 of this article.”

- Albanian Code of Civil Procedure, law no. 8116, dated 29.3.1996, as amended.

The Law on Mediation refers to the Code of Civil Procedure for the procedure to be followed by the court when referring civil cases to mediation. Article 13 of the Law on Mediation determines: *“The court, in line with the provisions of the Code of Civil Procedure shall notify and guide the parties to settle through mediation the dispute ... and when the parties agree, it suspends trial, by setting a deadline to the parties in line with the nature of the dispute, up to a time limit of 30 days.”*

In particular, articles 4, 25, 125 and 158/ç of the Code of Civil Procedures describe how the court should try to conciliate the parties and/or refer them to mediation as well as the process of doing so.

Before proceeding with the detailed provisions on the process of the court to refer cases to mediation, Article 158/ç provides: *“At each stage of the trial, the court notifies the parties on the possibility of resolving the dispute through mediation and if they agree to it, the court passes the case to mediation.”*

- Family Code, no. 9062, dated 08 May 2003.

Article 125 of the Family Code provides the following:

“Dissolution of marriage by mutual consent: When the spouses agree to dissolve the marriage, they submit to the court a request for approval, together with a draft agreement governing the consequences of dissolution of the marriage. The request may be filed by the spouses or their representatives.”

Further, articles 134 - 136 of Chapter V of the Family Code provide for reconciliation efforts undertaken by the court. This legal reference can be used by judges to direct the parties to the Mediation Center.

- Criminal Code for Juvenile Justice, law no. 37/2017, dated 30 March 2017

The Criminal Code for Juvenile Justice is a recent and very important law, where mediation is given a very important role in dispute resolution.

Such Code defines mediation in its article 3/13 as *“the process of extra-judicial and dialogue-based settlement between a child who has committed the criminal offence and the victim, led by the mediator and aiming at settling the dispute between them and the consequences emerging from the criminal offence as well as improving relations between them whether or not it is applied as a diversion measure.”*

Importance is given to mediation also in cases of the application of the measure of diversion. Article 58/3 provides as follows: *“If diversion measure is taken, the prosecutor shall decide non-initiating criminal proceedings or dismissing the criminal case and shall conclude an agreement with the child on the type of the diversion measure and/or mediation.”*

In addition, together with restorative justice, mediation is provided by the Code to be a potential alternative measure which would prevent criminal prosecution from happening.

III. General Rules of the Mediation Center

The Mediation Center aims at supporting the use of mediation as an alternative to dispute resolution in Albania, and facilitate the referral of cases from the Court, the prosecution office, the police authorities, or any other relevant public authority whenever they consider the case suitable for mediation.

The Center also operates as a space for mediators to perform mediations privately acquired, offering logistical and technical support with the aim of facilitating the positive resolution of the dispute.

The mediation service provided by the mediators within the premises of the Mediation Center is provided in accordance with the Mediation Law and is operated by CSSP in the framework of the project “ALB-18/0001 Strengthening the Mediation System in Albania”.

1) Office hours

The working hours of the Mediation Center shall be 08:00 AM – 17:00 PM, from Monday to Friday.

2) Administration

The Mediation Center is managed by an Administrator. The Administrator will be the main focal point for all institutions, mediators, partners and any other stakeholder/s that may approach the Mediation Center. The Administrator’s main tasks and responsibilities are as follows:

1. Receive in electronical or physical form the records of the cases referred to the mediation and store the related documents.
2. Cooperate with the court, prosecution office, police authorities and/or any other referring entity upon referral of the case, receiving relevant information on the referred mediation cases, as well as providing relevant information and documentation on the progress of the mediation process.
3. Take contact with the parties involved in the case and invite them to the Information Session.

4. Organize Information Session for parties of each mediation process and properly inform them on the modalities and benefits of the mediation process.
 5. Coordinate the calendar of mediation sessions to be held at the Mediation Center.
 6. Maintain a case-log database from the beginning of a case until its closure reflecting all necessary details of each mediation process. Such details will be treated with full confidentiality by the Mediation Center.
 7. Inform the referring institution, when requested, and, in any case, on a regular basis, on the statistics on the referred cases and/or on the progress of a specific mediation process.
 8. Maintain and manage the personal files of the mediators, which are composed of copy of ID, curriculum vitae, copies of licenses and similar documentation relevant to their engagement with the Mediation Center.
 9. Provide administrative and logistical assistance to the mediators conducting cases.
 10. Maintain copies of all documentation produced during a mediation process and file them in the Mediation Center's archive.
 11. Contribute to the drafting and distribute information and materials on mediation, such as leaflets, mediation law, brochures to interested parties and institutions, and promote mediation as an alternative possibility to resolve disputes in Court.
 12. Ensure that the Mediation Center provides good and appropriate conditions for mediation sessions.
 13. Perform other duties related to the management of the activity of the Mediation Center.
- 3) List of mediators

Any mediator licensed from the Albanian Ministry of Justice, registered with a VAT number for fiscal purposes and member of the National Chamber of Mediation is allowed to request to be part of the list of mediators collaborating with the Mediation Center and receive cases.

In line with the intention of the Albanian Code of Criminal Justice for Juveniles and the instructions of the Ministry of Justice requiring specific training for mediators dealing with juvenile criminal cases, the Mediation Center foresees to have, in addition to a general List, a second one for mediators specifically trained in criminal and juvenile mediation.

The distribution of cases to mediators will be carried out in full compliance with the terms and conditions determined in this Internal Regulation and its eventual future amendments.

CSSP shall organize initial and/or other special trainings for the mediators in accordance with their most sensitive needs for capacity growth, to which all mediators actively engaged with the Mediation Center are invited to participate.

During their time of engagement with the Mediation Center to provide mediation services, the mediators must follow the principles set forth in the mediation law, in other laws as relevant and in this Internal Regulation and its annexes.

4) Standard of the mediation

In order to ensure the highest standard of the mediators, it will be requested that the mediators who are willing to collaborate with the Center will participate to the trainings and capacity building activities offered by CSSP.

IV. Case management

1) Beginning of a mediation case

For cases referred by the court, prosecution office, police authorities or other state authorities, the referring authority invites the parties to mediate their case and refers them to the Mediation Center. The institution drafts an interim decision or a reference letter accompanying the case file referred to the Mediation Center. In this decision/reference letter, the institution determines the time limit within which the mediation process must be completed, while taking into due consideration the time-needs of a mediation process.

In cases referred from any other source, including lawyers, NGOs, businesses, etc., the parties are welcome to mediate their dispute at the Mediation Center. The referring entities or the parties themselves are invited to submit a notice to the Mediation Center stating their wish for the case to be managed through mediation at the Center.

The Administrator is in charge of filing copies of the referring documents in the archive of the Mediation Center.

2) Acceptance of the Case

Upon receiving a case, the Administrator registers the relevant data in the Case-Log Database, opens a case file, and signs an Acceptance Sheet together with the party submitting the case. The Acceptance Sheet is signed in two original copies, one remaining with the Mediation Center and one with the referring institution/entity.

3) Information session

After collecting contact information on the parties from the referring institution/entity, the Administrator proceeds with the preparation of notifications to invite the parties to participate at an information session. Such information session is held either at the premises of the Mediation Center or online through the professional Zoom account of the Mediation Center, depending case by case as per what is deemed the most appropriate manner by the Administrator and the parties.

The Administrator contacts the parties through electronic mail, phone calls or any other appropriate means of communication.

In case the parties do not respond to the first invitation to information session, nor do they show up at the information meeting, the Administrator invites them for a second time. In total, the Administrator invites the parties two (2) times to come to an information session.

In the information session the Administrator welcomes the parties and/or their legal representatives, gets general information regarding the case, explains the benefit of mediation and the development of the mediation process, collects the agreement to participate to the mediation (in cases of online information sessions, the Administrator relies in getting an oral agreement to

enter mediation first and agrees for a time and date as soon as possible after the online information session for the parties to sign it physically at the Mediation Center), presents the list of mediators, welcomes a joint request from the parties for a specific mediator or appoints one taken from the list on alphabetical order.

4) Agreement to participate to the mediation

Prior to the process and after the information session, the parties sign an agreement to settle their case through mediation, save for the cases falling under the provision of article 17/3 of the Mediation Law.

The template of such agreement is provided by the Mediation Center and is signed between the parties. This agreement will also contain the logos of CSSP, NCM and AFCR, as the implementing partners of the project.

5) Appointment of the mediator

During the information session and after the parties agree to enter mediation, the Administrator provides the parties with the list of mediators collaborating with the Center (the List) (including a short description of each mediator) inviting them to jointly appoint one.

The assignment of the case to a specific mediator under request of one party is allowed, provided that the other party, informed about the request and preference by the Administrator, explicitly agrees.

In case the parties have no specific preference for a mediator or are not able to agree on a specific one, the mediator is assigned by the Administrator on a rotation system respecting the alphabetical order. All the mediators collaborating with the Center are enlisted in the “General” List. Additionally, a second list of mediators specialized in Criminal and Juvenile cases is formed. Any mediator who is enrolled in the Criminal and Juvenile case list has the right to be enrolled also in the General One. To be enrolled in the Criminal and Juvenile list, the mediators will have to prove to have had followed adequate training in the field and be able to prove the attendance of such training/s.

The Administrator calls the mediators as per the aforementioned order and asks for their availability.

The Administrator shall contact the mediator in turn two (2) times in total. In case the mediator does not respond the first time, the Administrator keeps record of the call (by recording time when the mediator was called, but there was no response from his/her side) and leaves a time window of three (3) hours until the second contact attempt. After waiting again for three (3) hours, the Administrator moves on to the next mediator on the list.

In case a mediator a) *is out of the country* and/or b) *is not physically able to take a case (health reasons)*, the Administrator calls the next mediator on alphabetical order. The next case after this current case will be offered to the mediator who because of the above reasons could not be available for the mediation process.

When planning mediation sessions with the parties, the Administrator and the mediator take into consideration the time constraints, i.e. the time limits set by the referring institution/entity in his or her referral decision, legal timeframes, etc.

The mediation sessions are held either at the premises of the Mediation Center or online through the professional Zoom account of the Mediation Center. In both cases, the Administrator offers all the technical support to the mediator of the case and the parties throughout the process.

6) Co-mediation:

In cases of a) the particular complexity of the case (to be assessed by CSSP staff together with the assigned mediator), or b) mediator without previous experience, CSSP can authorize a co-mediation.

7) Completion of the mediation process

In case the Parties reach an agreement, a written copy of the latter needs to be printed and signed in as many copies as required by the case: one for each party, one for submission to the referring institution/entity and a copy held at the Mediation Center.

In case an agreement cannot be reached, a statement assessing the end of the mediation procedure and its unsuccess, also printed and signed in as many copies as required by the case, needs to be signed by one or all parties.

8) Communication of mediation results

At the end of the mediation process, the Administrator prepares a Submission Sheet informing the referring institution/entity of the outcome of the mediation (positive or negative), and attaches a copy to the mediation agreement or statement and all other relevant documentation of the case file.

The Submission Sheet is signed by the Administrator and the person receiving the case file by the respective institution/entity. Such Submission Sheet is signed in two original copies, one remaining with the Mediation Center and one with the referring institution/entity. In juvenile cases referred by the courts or prosecution, where there is a legal obligation for the mediator to notify the referring institution on the outcome of the mediation process himself/herself, the mediator proceeds to such notification directly. In these cases, the mediator makes sure to inform the Mediation Center as well.

The return of the case-file back to the referring institution/entity takes place within the timeframe provided by such institution, in any case within a maximum of 5 working days after the mediation process has ended.

9) Evaluation of the mediation process

At the end of the mediation process, the Administrator provides the parties with an anonymous evaluation questionnaire that they complete at the conclusion of the mediation procedure. The Administrator explains to the parties the purpose of the questionnaire and informs them of their confidential nature. The completion of the questionnaire is voluntary for the parties.

V. Fees

Before the start of the mediation process, during the information session, the parties and the Mediator are properly informed by the Administrator on the payment procedure and method to be used, if applicable.

1) Eligibility

The Mediation Center shall be responsible for the payment of the mediation fees directly to the mediators for all types of mediation cases except as provided for in below paragraph in this section. The typology of mediation cases shall include without being limited to civil cases, family law cases, property cases, corporate and commercial cases as well as criminal cases to the extend allowed by the Albanian Code of Criminal Procedure and other relevant legislation.

For all mediation cases where all parties in mediation are entities holding a VAT number and registered with the Albanian tax authorities, such parties shall be responsible to pay themselves the mediation fee between themselves. The Mediation Center will not be offering payment or reimbursement for the payment of the mediation fee in these cases.

2) Amount of mediation fee

The amount of each mediation fee to be handled by the Mediation Center shall be ALL 11.000 per case (not each session) for the mediator services, excluding VAT. In case of co-mediation, both mediators shall be paid individually each ALL 11.000 as per above.

Such fee might be slightly modified in written form as per this Regulation in case such modification becomes a requirement in order to stay in line with the legal prerequisites in place in the Republic of Albania.

3) Term

The current term agreed during which the Mediation Center shall continue to offer the payment of the mediation fees as determined herein above is until 28 February 2021.

In case of prolongation of this term, CSSP shall modify this section accordingly with the relevant terms and conditions as agreed with the project partners and the donor/s.

4) Payment procedure

For mediation cases referred to in the first paragraph of the section “Eligibility” herein above, the Mediation Center can cover the expenses once the parties and the case mediator make a formal request for a substitution of the costs, namely submit the: Mediation Services Funding Request (reimbursement request from the parties) and Request for Payment for Mediation (bill from the mediator). The payment is allocated by the CSSP Finance Officer once the above-mentioned forms are completed and received, and once the contractual arrangements with the mediator(s) engaged in the case/s are concluded.

For mediation cases between parties holding a VAT number as referred to herein above, the parties are responsible to pay the mediation fee directly to the mediator.

The documentation for the mediator’s fee contains: the bank proof and an invoice issued by the mediator for his/her services. This invoice form includes the following information: the personal details of the mediator, the personal details of the party(ies), the referral numbers (both, court/prosecution and mediation number), the completion dates of the mediation procedure, and the fee for payment.

In accordance with the standard practice of mediation, the mediator is entitled to the reimbursement only when the case enters the mediation process.

The payment of the mediator’ services is due also in cases where no successful agreement is reached.