



New Law on Mediation

The Parliament of Georgia adopted a new law on Mediation and approved a package of legislative amendments to relevant codes and laws of Georgia. The Law on Mediation has been developed within the framework of the Private Law Reform Interagency Coordination Council of the Ministry of Justice of Georgia (MoJ) with the support of USAID/PROLoG and other donors.

USAID/JILEP and USAID/PROLoG contribution

Both PROLoG and its predecessor JILEP made a considerable contribution to the development of mediation in Georgia. JILEP helped draft amendments to the Civil Procedure Code that allowed the introduction of court-annexed mediation into the legal system – mandatory referral in cases of family, inheritance or neighborhood, and recommended referral in commercial disputes. In 2016 and 2017, PROLoG contracted mediation expert Aleš Zalar to analyze the draft mediation law and High Council of Justice (HCOJ) regulation, and to prepare a report addressing matters such as compliance of the drafts with the EU Mediation Directive, the UNCITRAL Model Law on International Commercial Arbitration, and other relevant recommendations/guidelines, as well as its feasibility in the Georgian context, and then to review the finalized draft and other proposed changes related to the mediation law (e.g. relevant changes to the Civil Procedure Code and Civil Code). MoJ agreed to the majority of recommendations provided by Mr. Zalar, and those recommendations have resulted in significant new articles in the final draft of the law.

The main essence of the Law

With a view to promote alternative dispute resolution, the Law on Mediation establishes principles of mediation proceedings; rules of organization and functioning of a mediator's professional association; competences of mediators; and other matters relating to the mediation process. The Law applies to both mediations based on an agreement entered into by parties and court-annexed mediation envisaged in Chapter XXI1 of the Civil Procedure Code.

Several key elements to be introduced by the Law

- Establishment of a self-regulating body –Mediators' Association– that will create a firm institutional basis for the development of mediation;
- Creation of legal basis for the development of a mediator's profession and establishment of mediation as alternative means for dispute resolution;
- Establishment of mandatory requirements for those who wish to become mediators, and creation of a unified registry of mediators;
- Establishment of mediation procedures for all types of mediation (initiation of the process, selection of mediators, conflict of interest and challenging a mediator, enforcement of mediation agreements, etc.).
- Introduction of a duty for mediators to adhere to the principles of confidentiality and ethics, and definition of general principles for disciplinary liability.

Apart from this new law, amendments are made to the Civil Procedure Code of Georgia, Civil Code of Georgia, Law of Georgia on State Duty, Law of Georgia on Arbitration, Law of Georgia on Accounting, Reporting and Audit, General Administrative Code of Georgia, Criminal Procedure Code of Georgia, Law of Georgia on Enforcement Proceedings and Organic Law of Georgia on General Courts.

Major amendments made to these Codes/Laws can be summarized as follows:

- List of disputes subject to mandatory mediation will now include:
 - Labor disputes;
 - Disputes related to the exercise of shared rights;
 - Property disputes (provided subject of the dispute does not exceed GEL 20.000);
 - Disputes with banking institutions and micro-finance organizations (provided subject of the dispute does not exceed GEL 10.000);
 - Non-property disputes.
- Role of a judge will be increased to popularize mediation; in complaint, counter-claim and appeal forms there will be a new column where a party may express its position concerning settlement of a case through court mediation.
- It will be possible to refer cases to mediation by consent of the parties at the first stage of case proceedings.
- A party may apply to a court before the start of court or private mediation (or during this process) with a request to apply a mediation agreement as a provisional measure.
- An efficient mechanism for the execution of agreements reached as a result of mediation shall be created; Court shall be entitled to refuse the execution of a mediation agreement if 1) contents of the mediation agreement contradict the Georgian legislation or 2) if it is impossible to execute the agreement because of its contents.

Amendments related to the HCOJ are as follows:

- HCOJ should approve a form for a unified registry of mediators before October 1, 2019. It should provide for enrollment of those natural persons in the unified registry of mediators who have no criminal records; have at least 40 hours of training in mediation and have a relevant certificate; and have conducted at least 1 court mediation during the last 2 years by December 1, 2019. The HCOJ should provide for organization of the first meeting of the persons registered in the unified registry of mediators before December 15, 2019. The meeting shall approve a charter of the association of mediators, elect relevant bodies and persons in charge stipulated by the law;
- HCOJ should provide for approval of court mediation programs and the remuneration procedure for mediators before January 1, 2020. The court mediation program shall define communication standards between courts and the Georgian Association of Mediators, procedures for conducting court mediation, as well as other issues necessary for the proper operation of court mediation which are not regulated by the Law of Georgia on Mediation.

 5 Marjanishvili street, 3rd floor, Tbilisi, Georgia

 (+995 32) 250 54 04

 info.prolog@ewmi.org

 www.ewmi-prolog.org

 www.facebook.com/EWMIPROLoG/

 @ewmiprolog