

Legal basis for mediations

The process legal basis for the implementation of mediations is provided by the provisions of the Courts Act, Article 60, paragraphs IV and V (Ur.l. RS, No. 19/94, 45/95, 38/99 and 28/2000), the provisions of the Court rules, Article 171, paragraphs II, III, IV, VI in VII (Ur.l. RS, No. 17/95, 35/98, 91/98 and 22/2000), and the decision by the collegium of the heads of departments and the President of the District Court of 8 December 2000 and the decision of the District Court Ljubljana Personnel Council on the schedule of work of the judges at the District Court in Ljubljana in 2001 of 11 December 2000.

The material legal basis for the implementation of mediations in civil disputes is provided by the provision of the Civil Procedure Act, Article 11 (Official Gazette of the Republic of Slovenia, No. 26/99 of 15 April 1999), pursuant to which the court shall endeavour for the procedure to be carried out without delay and at the lowest costs possible, while preventing any abuse of rights that the parties to the proceeding have. Further on, it is laid down in the Civil Procedure Act, Article 271 that the president of the senate may put on record a court settlement during the preparations for the trial.

Amendments to the Civil Procedure Act (Ur.L.RS 96/02), Article 306, paragraph III lay down that during the entire proceedings the court shall look for the possibility of court settlement, it shall draw the parties' attention to this possibility all the time and help them to settle. Even more important is the provision of the Civil Procedure Act, Article 305b, paragraph 5, which lays down that on the basis of the proposal by the parties, who agree that they try alternative dispute resolution, the court may interrupt the civil procedure for not longer than three months. This provision provides the formal basis for the implementation of mediations as one of the ways of alternative dispute resolution.

The Act introduces also the so-called settlement hearing, which is compulsory and the purpose of which is to try the option that the parties, with the help of the court, reach agreement in the form of court settlement.

The procedure of court mediation in the dispute resolution follows completely the interpretation of the general rule on the case priority, laid down in the Court rules, Article 159, paragraph I (Official Gazette of RS, No. 17/95 of 18 March 1995 and the following), adopted on 27 March 1998 by the Supreme Court of the Republic of Slovenia, sitting as a full Court.

Further legal basis for the mediation in family-law disputes is provided by the provisions of the *Constitution of the Republic of Slovenia*, Articles 53, 54 and 56, pursuant to which the state is obliged to endeavour for such resolution of family-law disputes, which is the least burdening for the children. *United Nations Convention on Children's Rights*, Article 3 lays down that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The *Convention on the implementation of the rights of the child*, Article 13 lays down that each signatory state shall endeavour with the procedures, such as mediation, to reach consensual dispute resolution in cases, where children are involved. In February 1998 and pursuant to the Council of Europe Statute the Committee of Ministers adopted a *Council of Europe Recommendation on Mediation in*

Family-law cases. The Recommendation defines the purpose of mediation, regulates mediation procedures, status of agreements that the involved reach during the mediation procedure, the relationship between mediation and formal family-law procedures and the promotion of mediation.

Courts Act, Article 60

4. In case the court faces an increased number of unsolved cases as the consequence of the productivity, which is lower than the average productivity of the courts of the same type and level, or when the statistical data reveal that the backlog is the same as the number of cases, received in the last twelve months, the president of the court shall, in accordance with the powers, conferred to him by the Act and the Court rules, adopt a programme of solving these cases. The productivity of the court shall be monitored by the court council on the basis of the court statistics data.

5. When in spite of increased productivity and the fact that the criteria for the expected workload of judges are exceeded, it is still not possible to provide trial without undue delay, the court may be allocated additional financial means for solving these cases in accordance with the adopted program of resolving.

Court rules, Article 171

2. In case the statistical reports reveal that the backlog at court or its organisational units is the same as the number of cases, received in the last twelve months, the president of the court shall, in accordance with the powers, conferred to him by the Act and the Court rules, draw up a programme of solving the backlog (hereinafter: the programme) within one month of the date of the statistical report, which reveals the backlog.

3. The programme introduces the measures for decreasing or elimination the backlog, or timely work at court as well as regular and efficient implementation of judicial power, such as the changes in the internal organisation of the court, special resolution of mass disputes, prolonging the court working hours so that the court premises are used also in the afternoons, temporary reallocation of working time, irregular distribution of working time, working meetings and other appropriate measures in accordance with the Act and Court rules.

4. Within the preparation and implementation of the programme the president of the court may suggest the assignment of judges and amendments to the annual schedule of judges.

6. A judge, who is involved in the programme, shall endeavour to achieve a bigger extent of work than before being involved in the programme.

7. Prior to the implementation of the programme the president of the court shall obtain opinion from the judges, involved in the programme.

8. The president of the court shall inform the president of the Supreme Court of the Republic of Slovenia about the adopted programme.

9. The president of the court shall monitor and control the programme implementation on monthly basis with a view to amend the programme or cease or continue the programme implementation.