

Mediation in Terms of Slovak Republic as a Part of the Central Europe and Her Legal System: Some Points and Might-be Inspirations Form the Mediation Practice in Slovak Republic

By

Frantisek Kutlik

Institute for Mediation

European Mediation Network Initiative

Abstract

The content of my discourse will be the information about mediation in terms of Slovak Republic as part of the central Europe and his legal system. In the year 2004, Act no. 420/2004 was introduced, regarding mediation as a crucial legal document for extra judicial settlement of disputes in Slovak Republic. The act will be analysed and divided into particular paragraphs – problem of secrecy, education of mediators, mediation centres, mediation contracts, list of mediators etc. Also a very interesting fact is cooperation with The Legal Aid Centre, which is free of charge and offered to those people, who seek legal aid. Our goal is to extend this aid with mediation services. Another possible utilization of mediation in Slovak society is the cooperation with city mayors and magistrates, the people with direct contact with citizens, who are willing to master the basic mediation principles. The last topic in my intended discourse will be the campaign to enter the EUROZONE for Slovakia, which is planned for 1.1.2009 and for mediators to participate in this campaign too.

I. Introduction

Passing The Act No. 420/2004 Slovak Republic has become one of the European countries, where mediation as such has been set up legislatively, even though in an open-administrative way so far. The Act defines particular terms in the process of mediation, for example the characterization of the mediator as a person, conditions for doing this activity, specifies the mediation agreement and its effects, as well as the beginning and the end of the mediation process.

The Act No. 420/2004 also sets conditions of the professional preparation and exams for mediators and thereafter conditions of the licence-gaining procedure and the list of mediators. Related to the Act, it includes further specified terms such as educational institution in the process of preparing mediators, mediation centre and its status as well as administering the List of mediators. The Act No. 420 regarding mediation contains also this sentence: The Court can advise the parties to reach the settlement through the process of mediation. This is *expressis verbis* how the institute of mediation penetrates the Civil Code in the paragraph, that say, that if the dispute satisfies certain criteria, the settlement can be reached by the agreement of both parties and the parties must at least try to settle it. The Court decides, whether the agreement approves, or does not approve, if it's in conflict with law and the judicial process continues. The approved agreement has all the effects of a legal verdict. It's a so called praetor reconciliation activity, with the main advantage being the case, when the agreement, following this praetor activity, approved by the court is also enforceable by the court.

These are the examples of acting before the particular case, thus before suing the party. Of course the essential question in Slovakia is the approach and the role of judge, who, when finds out, that the dispute could be settled by mediation, can instruct them about possibilities of mediation, about the list of mediators (currently only on the Internet) and set the term in which the parties must try to settle it. Not only the presentation and promotion of mediation as an institute of dispute settlement between people is important, but the question of judicial preparation, meaning the judges could guide the parties to mediation.

Unfortunately, the reality is a bit different, the mediation and its final agreement are accepted by judges with too much caution. The long expected and necessary amendment of The Act No. 420/2004 could improve this state, i.e. it should clarify the connection between the enforceability of the mediation agreement and other legal acts and codifications, then it should define the conditions, following which the judge has to offer mediation to the parties, or last but not least simplify the fulfilment of the agreement. But the main purpose is to cooperate with people and legislatively guarantee the approach and usability of mediation in all areas of legal system in our country. Great challenge are disputes not only in the most frequent fields of law – civil law, commercial law, family law, but also in health service, labour or environmental law. The principle of forced mediation, when the parties have to undertake the process of mediation, concerning some cases is acceptable. Or to look for ways how the mediation agreement could acquire the executive power similar to the judicial decision. But the stereotypes in Slovak people's thinking are truly big.

II. Cooperation With Local Government Authorities

The development and expansion of mediation can be done in many ways and can offer the people, let's say, the most perspective and most democratic form of dispute settlement. Besides, the mayors and the members of the local authorities have the closest relation with the local people, so why not use this instrument of mediation, why not help the citizens and also strengthen your authority.

It all depends on you, dear mayors, it all depends on the path you take. First, you can ignore mediation completely and preserve the current status of knowledge in settling disputes.

Second path takes you through the completion of the minimal training in this field that will not make you a mediator, following The ACT No.420/2004. You obtain some basic technique of reconciling the conflicts in your town, making your own psychological typology of people living in the city, choosing a way to communicate with them and deciding which methods you would follow while settling the dispute. You will also be able to distinguish, if a particular case is suitable for mediation process before a certified mediator, or you can send the citizen to any nearest Legal Aid Centre, concerning his current assets.

Finally, the third path, mainly for bigger towns and villages, is to go through the complete training and preparation for a mediator and employ these mediators in the local authorities. Well, in my opinion, Slovak institute for mediation has enough capacity for the second and third path, thus to build a functioning network of professionally educated people, who will try to decrease the increasing number of conflicts. We don't know yet, if the conflicts are going to grow by an arithmetic, or a geometric row, but we do know is, that the conflicts are going to alter. New conflicts will arise. According to the demographic progress, intergenerational conflicts will occur. The expected wave of immigrants will cause more challenges for mediation and we must mention the possibilities of communication with the national minorities, such as the gypsies.

The simple fact, that in these sensitive social-political matters there exists a social demand for settling them, while the mediation offers the most comprehensive solution, it would be unwise not to see mediation as overall answer for improving the civil opinion of the local authorities, making the atmosphere in towns and villages less problematic and conflictful, and last but not least mediation can influence the formation of legal consciousness in the society as whole.

III. Possibilities Of Peace Mediation In Slovakia

How is it possible that Norway, with more than 4,5 million citizens, is so successful in the peace mediation ? Well, the answer is in an image of a small, peaceful country without any major political interests, rich enough to financially handle these activities and to possess a high-class human potential. Country, of which the main priority is a peaceful way of settling disputes without using any force or duress. Recently on a conference in Podgorica, Dr. Christian Schwarz-Schilling, the former high commissary for Bosnia-Herzegovina, told me that Slovakia could become one of the small countries with big influence in mediation, using the Slovak approach, that is so demanded in the post-soviet countries and countries of Balkan Peninsula. The peaceful Slovak history,

the tender revolution, how it could be translated to English, or the gentle division of Czechoslovakia are some of the things that make Slovak Republic a potential novice in the field of international peace mediation. The next step would be a creation of a team of Slovak peace mediators, in the lead with a distinctive personality, internationally accepted by other states. The international prestige of Mr. Kubiš, Mr. Kukan, Mr. Lajčák or Mr. Lipka would be fully satisfactory. Objective of the team would not only observe and map the happening, but also to act in the case of problem. The members of the team would be professionally educated and trained to provide peace mediation daily at the level of communicating between the different ethnics or between the public authorities and institutions, authorities on one side and the citizens on the other.

Simply preventing via active mediation, control or via dialogue to escalate the dispute from a potential pressure to a real conflict with all its consequences. According to Dr. Schwarz-Schilling, whose team of peace mediators is still active in the countries of former Yugoslavia, one successful peace mediator is more effective than ten armoured vehicles. In the year 2007, following the latest info, Slovakia invested 750 million crowns for international military operations. Only a fragment of this sum could put the Slovak peace mediation in motion and direct it into the future.

IV. Slovak Act on Mediation (excerpt)

§ 1

Scope of Application

(1) This Act stipulates the execution of mediation, basic principles, organisation and effects of mediation.

(2) This Act applies to disputes arising particularly from civil-law relations¹⁾, family-law relations²⁾, trade relations of obligation³⁾ and industrial relations⁴⁾.

§ 2

Fundamental Terms

(1) Mediation means extra-judicial action in which the parties settle a dispute, arising from or concerning their contract or other legal relationship, through a mediator.

(2) For the purposes of this Act:

a) "Party to mediation" means a natural or legal person who is in a conflict, relating to the contract or other legal relationship, with another natural or legal person;

b) "Integrious" is a person who has not been lawfully convicted for a premeditated criminal act; the integrity is documented by an abstract from the Criminal Records that may not be older than three months.

§ 3

Mediator

The mediator under this Act may be any natural person, entered in the list of mediators, on which the parties to mediation shall agree and who shall assume the function of mediator.

§ 4

Execution of the Mediator's Activity

- (1) The execution of the mediator's activity is business.
- (2) The mediator is obliged to execute his activity independently, impartially, consistently, with due professional care, instruct the parties to mediation on their rights that might be affected by mediation, and without unreasonable delay inform the parties to mediation about all facts on the basis of which he could be excluded from the execution of mediation, if, with regard to his relation to the case or to the parties to mediation, his impartiality may be questioned.
- (3) The mediator is liable for damage that he has caused to the parties to mediation in the execution of his activity, under general provisions on the liability for damage⁵⁾.

§ 5

Confidentiality

The mediator, parties to mediation and other natural persons invited by the mediator or by the party to mediation are obliged to consider as confidential any facts of which they have become aware in relation to mediation; the provisions of special regulations⁶⁾ remain unaffected.

§ 6

In case of legal proceedings, arbitration procedure or other similar action on damages, conducted in terms of § 4, paragraph 3, the mediator is not bound by the obligation of confidentiality within the scope required for the assessment of the breach of obligations of the mediator.

§ 7

Mediation Contract

- (1) The mediation contract is a written agreement between the parties to mediation that they shall make an attempt at settling by mediation all or some of disputes that have arisen or will arise between them in given contractual or other legal relation.
 - (2) The written form of the mediation contract may be replaced by the declaration of the parties to mediation for the minutes to be drawn up by the mediator. The declaration of the parties to mediation should be made not later than before the beginning of mediation; the minutes must be signed by the parties to mediation.
 - (3) The parties to mediation may stipulate in the mediation contract that the mediation contract is binding for their legal successors as well.
 - (4) If the contract being subject of the dispute in mediation is null and void, the mediation contract, which is a part thereof, shall become null and void only if the reason of invalidity applies to the latter contract as well.
 - (5) If a party to mediation withdraws from a contract being subject of the dispute in mediation, such withdrawal shall not affect the mediation contract, which is a part thereof, unless the parties to mediation have agreed otherwise.
-

§ 8

Registration Procedure

(1) The Ministry of Justice of the Slovak Republic (hereinafter referred to as Ministry⁶) keeps a list of mediators, mediation centres and educational institutions.

(2) The Ministry shall enter in the list of mediators anybody who:

a) is fully apt for legal acts,

b) has completed the university studies at the university of the second degree in the Slovak Republic⁷, or holds a recognised certificate of university education of the second degree, issued by a foreign university,

c) is integrious,

e) holds the certificate of vocational training of the mediator (hereinafter referred to as certificate⁶).

(3) The Ministry shall remove from the list of mediators anybody who

a) has applied for such removal in writing,

b) has died or has been declared dead,

c) has been deprived of the aptitude for legal acts, or whose aptitude for legal acts has been limited,

d) has been lawfully convicted for a premeditated criminal act,

e) does not meet requirements for the entry in the list of mediators.

(4) The Ministry shall issue to the mediator a written certificate of the entry of a natural person in the list of mediators or of the removal from the list of mediators.

(5) The Ministry shall enter in the list of mediation centres any mediation centre that has been published in the Commercial Bulletin pursuant to § 11.

(6) The Ministry shall enter in the list of educational institutions any educational institution that

a) meets conditions under § 11, paragraph 1, or

b) has acquired the accreditation for education on the field of mediation under a special regulation.

§ 9

Vocational Training of Mediator and Professional Examination of Mediator

(1) The purpose of vocational training of the mediator is to meet special qualification requirements for the execution of the activity under this Act.

(2) Vocational training of the mediator takes 100 hours. It is aimed to the instruction on rudiments of law. Vocational training is also aimed to the area of interpersonal communication, the theory of conflicts and psychological aspects of the settlement of conflicts, as well as to the code of conduct of the mediator.

(3) Vocational training is terminated by professional examination, serving for the evaluation of the professional knowledge and skills of the mediator. If the mediator fails the professional examination, he has the right to the repeated examination without repetition of vocational training of the mediator. If the mediator fails even the repeated examination, he has the right to the re-examination by the Ministry. A mediator who fails even the re-examination by the Ministry may apply for another professional examination only following the completion of another vocational training.

(4) Natural persons with legal education of at least first degree, graduates from a university, are not obliged to undergo vocational training of the mediator from the rudiments of law, nor undergo the professional examination from the knowledge of the law. Vocational training of natural persons with legal education of at least first degree, graduates from a university, may not take more than three consecutive days. The payment for vocational training of such natural persons may not be higher than the aliquot part of the payment of other mediators for the part of their training having for the subject interpersonal communication and psychological aspects of the settlement of conflicts.

§ 10

Educational Institution

(1) Vocational training and examination of the mediator may only be executed by the educational institution accredited under a special Act⁸⁾ unless the mediator exercises the right to the re-examination by the Ministry pursuant to § 9, paragraph 3.

(2) An educational institution to which the certificate of accreditation has been withdrawn shall be removed by the Ministry from the list of educational institutions.

(3) The educational institution shall issue a certificate to each participant of vocational training who has passed the professional examination. If a graduate in vocational training of mediator passes the professional examination following the re-examination by the Ministry, the certificate shall be issued to him by the Ministry.

§ 11

Mediation Centre

(1) A natural or legal person (hereinafter referred to as „promoter“) may establish and maintain the mediation centre. The mediation centre has not legal personality.

(2) The promoter of the mediation centre is obliged to publish in the Commercial Bulletin⁹⁾:

- a) the establishment of the mediation centre,
- b) the establishment of branches of the mediation centre, if any,
- c) adopted Statute of the established mediation centre,
- d) the list of mediators, working in the established mediation centre, and any changes thereto.

§ 12

Statute of Mediation Centre

The Statute of the mediation centre shall stipulate particularly:

- a) organisational structure of the mediation centre,
- b) specialisation of the mediation centre,
- c) specific requirements to be met by the applicant for the entry in the list of mediators, kept by the mediation centre,

d) rules on remuneration of the mediator.

§ 13

List of Mediators of the Mediation Centre

(1) The mediation centre keeps a list of mediators, working in this mediation centre; this list of mediators is available to the public.

(2) The mediation centre shall put on the list of mediators any mediator who meets specific requirements under this Statute, providing they are specified therein.

(3) The list of mediators of the respective mediation centre shall indicate the first name and name of the mediator, his permanent residence and specific conditions the fulfilment of which is required for the entry.

(4) The parties to mediation may agree on the settlement of their dispute in the specified mediation centre.

§ 14

Start and End of Mediation

(1) Unless the parties to mediation agree otherwise, the mediation starts from the day on which the parties have agreed on their participation in mediation of a specific dispute and on the person of mediator.

(2) If the party to mediation, who has proposed the participation in mediation of the specific dispute, does not receive the acceptance of the proposal within period indicated in the proposal, and otherwise in 14 days from the date of delivery of the proposal to the other party, the proposal shall be deemed as rejected.

(3) Mediation ends:

- a) on the date of conclusion of agreement as result of mediation;
- b) on the day of written declaration of the mediator, following consultation with the parties to mediation, that mediation shall not continue;
- c) on the day of the delivery of the written declaration of the party to mediation, addressed to the mediator, that mediation is terminated, or
- d) on the date of delivery of written declaration of one party to mediation, addressed to the other party to mediation and to the mediator, if already chosen by the parties to mediation, that mediation is terminated.

§ 15

Effects of Mediation Contract

(1) The agreement that has resulted from mediation requires the written form and is binding for the parties to mediation.

(2) On the basis of agreement, that has resulted from mediation, the authorised party may file in a petition in judicial execution of the decision or a petition in the execution, if the agreement

- a) is executed in the form of a notarial deed;
- b) is approved as conciliation before a court, arbitration body; under conditions stipulated in special regulations.

Transitory Provision

(1) Legal persons who have acquired accreditation for education on the field of mediation prior to the date of entry into force of this Act, shall be regarded as educational institutions authorised to execute vocational training of mediators.

(2) Natural persons, who meet requirements stipulated in § 8, paragraph 2 (a) to (c), have successfully completed the accredited vocational training on the field of mediation, and on its basis have provided mediation in the territory of the Slovak Republic until prior to the date of entry into force of this Act, shall be regarded as mediators under this Act and put on the list of mediators by the Ministry.