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Supreme Court of Cassation
I Su 1 no. 196/2017

High Court Council
no: 021-05-66/2017-01

Ministry of Justice
no: 021-01-82/2017-22

Having in mind Article 31, 70 Paragraph 3 and 4 of the Law on Organisation of Courts (“Official Gazette of RS” no, 116/08, 104/2009, 101/2010, 31/2011 – other Law, 78/2011 – other Law, 101/2011, 101/2013, 106/2015, 40/2015 – other Law, 13/2016 and 108/2016, Article 3, 6, 101 and 102 of Court Rules of Procedure (“Official Gazette of RS” no. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 – amendment, Art. 39/2016, 56/2016 and 77/2016), measure no. 5.3.1.3 contained in the revised Action Plan for the Implementation of the National Judicial Reform Strategy for the Period 2013-2018 (“Official Gazette of RS” no. 106/2016), activity no. 1.3.6.29 of the Action Plan for Chapter 23, and Amended Unified Backlog Reduction Programme in the Republic of Serbia for the Period 2016-2020 of the Supreme Court of Cassation, I Su 1 116/16 of 10.08.2016, the President of the Supreme Court of Cassation and the High Court Council and the Minister of Justice of the Republic of Serbia, hereby issue

GUIDELINES FOR ENHANCING THE USE OF MEDIATION IN THE REPUBLIC OF SERBIA

according to the Law on Mediation in Dispute Resolution (“Official Gazette of RS” no 55/2014)

I

INTRODUCTION

The new Law on Mediation in Dispute Resolution (hereinafter the “Law”), which became applicable on January 1st, 2015, enhances the legal framework in the area of mediation, harmonising it with the EU *acquis* and with the best contemporary international and comparative practices. However, the results of the implementation of this Law have not been satisfactory, which is why it is necessary to adopt systematic measures which will substantially support mediation as alternative dispute resolution, including by the courts.

In accordance with Article 9 Paragraph 2 of the Law, the court is obliged to provide all necessary information to the parties in dispute about the possibilities of mediation, which can also be done by referring the parties to the mediator; however, these provisions are essentially never applied. The courts should, in the early phases of proceedings, solve disputes by referring the parties to mediation or by encouraging them to reach a court settlement, to alleviate the burden on the court and allow for more efficient procedure in other cases where amicable resolution is not possible.

The Civil Procedure Law (“Official Gazette of the Republic of Serbia” no. 72/2011, 49/2013 - decision of Constitutional Court, 74/2013 - decision of Constitutional Court and 55/2014), in Art. 11 proscribes that the court will refer parties to mediation or to an informative hearing regarding mediation, in accordance with the law, as well as that the court will indicate to the parties the possibility that they can reach an out-of-court settlement through mediation or in another suitable way. The court will stay the proceedings and refer parties to mediation, if it is so proscribed in the law, or when the parties themselves willingly propose to settle the dispute through mediation (The Civil Procedure Law, Art. 340).

The National Judicial Reform Strategy for the Period 2013-2018 provides for strategic guideline 5.3.1. regarding broader application of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation), whenever possible under the legal framework. This strategic guideline is refined by measure no. 5.3.1.3. on the broader application of alternative dispute resolution methods, which should be conducted as a regular activity, by the Ministry of Justice, Judicial Academy and the courts. This activity is also achieved through strategic measure no. 2.9.3.1., which provides for the need of easy access to contacts of non-judicial staff (including organisations and legal entities which have been issued a licence to conduct trainings for mediators).

The Action Plan for Chapter 23 provides for activity 1.3.6.29 relating to the enhancement of the promotion of alternative dispute resolution through publishing of information on webpages and informational pamphlets, media promotion, drafting of infographics, or organisation of round tables and workshops. This activity has been conducted regularly since the third quarter of 2014.

The Amended Unified Backlog Reduction Programme of the Supreme Court of Cassation envisages that the implementation of the Law on Mediation in Dispute Resolution is enhanced by applying systematic measures, both general and individual, especially by conducting regular training, as an indispensable precondition for the application of alternative dispute resolution and for the reduction of the number of backlogged cases. The amended Unified Program proscribes an obligation for the presidents of the courts to take individual measures regarding increasing the number of resolved cases through application of individual programs for resolving case backlog (better organisation of work in the preparatory department or in the preparatory procedure, i.e. during preparation of the cases for trials, especially in the so-called “mass cases”, drafting decisions based on templates etc.)

Comparative data on received cases in all of the courts in the Republic of Serbia (inflow of new cases) contained in the Supreme Court of Cassation Annual Report on the Work of the Courts for 2016, indicates a significant increase of inflow of cases in 2015 and 2016 compared to the previous years. The expected inflow, according to the indicators, in the period from 2012 to 2014 was 1.500.000 cases per year, excluding enforcement cases. However, in 2015, the courts received 1.902.475 cases, which is 415.840 more cases than in 2014, i.e. above expected. In 2016, inflow was again above expected, even greater than in 2015. Therefore, the system received, during 2015 and 2016, 850.000 cases more than the expected annual inflow, which affected the realisation of the planned goals for resolving backlog cases contained in the strategic documents of the Supreme Court of Cassation¹. The increased inflow of cases mainly impacted the basic courts, where the increased inflow has been attributed also to repetitive, so called “mass dispute claims” against the State, local authorities, public enterprises founded by the State and other organisations and legal entities that are funded from the budget.

Considering the activities contained in the previously mentioned strategic documents and the fact that in the interim benchmarks contained in the European Union Common Position on Judiciary and Fundamental rights, adopted by the Committee of Permanent Representatives in the European Union, the EU highlights the need for further consideration and promotion of the use of various alternative dispute resolution methods, for the purpose of improvement of access to justice and decreasing the number of backlog cases, as well as that the further negotiations within the scope of Chapter 23 and other chapters depend, among other things, on the successful development of this area, the issuers of these Guidelines find it necessary that the courts decisively participate in the enhancing of the use of mediation through the following proposed measures:

II

MEASURES FOR THE IMPROVEMENT OF MEDIATION

Amendments to the individual programs for resolving backlog for 2017 and the Annual Schedule of Tasks

1. Presidents of courts will review the reasons that led to the increasing number of backlog cases in civil matters, amend and supplement the individual programs for backlog reduction with measures that will ensure that cases will be resolved according to the received timeline, to prevent the situation where only new cases are being solved

¹ „ Annual Report on the Work of the Courts for 2016 “, Supreme Court of Cassation, March 2017; page 6 http://www.vk.sud.rs/sites/default/files/attachments/GODISNJI%20IZVESTAJ%20O%20RADU%20SUDOVA%20U%20REPUBLICI%20SRBIJI%20ZA%202016.%20GODINU_V6_0.pdf; accessed on 17.04.2017.

while the old cases are put aside (deadline 01.10.2017), including measures for enhancing the use of mediation to prevent backlog.²

2. For the purpose of preparing the annual schedule of tasks for judges and judicial staff, an analysis should be made regarding the burdening of judges according to their departments in first instances and, based on the results of the analysis, arrange suitable schedule of tasks for judges and judicial staff.
3. It is necessary to determine special measures for resolving cases through mediation and determine which cases can be subjected to mediation considering the circumstances of the case, and in which the referral of parties to mediation would be successful. The president of the court or the presiding judge should invite parties in the selected cases suitable for mediation and provide them with the possibility of solving the dispute by mediation or by reaching a court settlement.
4. Courts will keep updated records of judges and judicial assistants from their court or the court that is territorially linked (High or Appellate court) enlisted in the Register of Mediators, who possess a license to mediate, from which parties can choose a mediator for the purposes of resolving a case through mediation.

Establishing an Info-Service for the Support of Alternative Dispute Resolution Methods within all basic, higher and commercial courts

5. All basic, higher and commercial courts will establish info-services with the goal to support alternative dispute resolution methods within the court (hereinafter “Info-Service to Support ADR”) and to provide information on the possibilities and procedure of alternative dispute resolution.
6. Within the Annual Schedule of Tasks, the president of the court will select a judge who will be in charge of the Info-Service to Support ADR and of judicial assistants that will be working in the Info-Service to Support ADR. The designated judge will manage the mediation programs, monitor and evaluate the progress of the program, promote the activities of the service and be responsible for all questions related to development of mediation within the court territory.
7. According to Articles 3, 6 and 101. Para. 2 of the Court Rules of Procedure and the Annual Schedule of Tasks, the president of the court can issue an „Instruction on the methods of work, procedures and the role of the Info-Service for the Support of ADR”, by using the experience of the Second Basic Court in Belgrade. This Instruction, among other things, contains information about the mediators, providers of mediation

² Within amendments of the individual programs for resolving backlog cases, courts should include the mediation programs in order to prevent backlog cases, or adopt a special program for the implementation of the Law.

services, methods of selecting mediators in the particular case as well as the notice on how the mediator is chosen, monitoring and evaluation of the mediator work, collecting the data and managing the statistics, complaints on the work of the mediator, etc.

8. The presidents of courts, should determine the approximate number of cases which could be referred to mediation on an annual basis, considering the average inflow of cases according to separate categories, the total number of unsolved cases in the court as well as the number of backlog cases.
9. The mediation proceeding initiated during court proceedings will be conducted in the building of the court, outside of working hours, in accordance with the Court Rules of Procedure. Depending on the accommodation capacities of the court, mediation proceedings can also be conducted in specially modified court spaces (so-called Mediation Centers) or based on signed agreements with external partners, in their designated spaces.
10. Within the working scope of the Info-Service to Support ADR, the court should provide parties all necessary information regarding the choice of ADR and suitable mediator.

Info-Desk

11. Article 101 of the Court Rules of Procedure states that legal assistance to citizens will be provided by the courts, in accordance with the law and this rulebook. Every court is responsible, outside of court proceedings, on specially designated and visually marked spaces in the court building (info-desk), to provide the citizens with basic legal information (among others, about the possibilities of amicable dispute resolution, information regarding the court proceeding itself and the individual phases of proceedings, about the jurisdiction of the court, certain regulations of the proceeding, proceeding expenses, methods and places of enforcement of decision, and information of the register of mediators for dispute resolution). Legal aid can be provided by judicial assistants and other court staff, in accordance with other jobs they perform. Certain information can be published by printing, public announcement or by handing out of written text in the court building or by means of informing the public (through webpage or other suitable way).
12. Info-desk contains the records of judges and judicial assistants from that court that are enlisted in the Register of Mediators, as well as the list of mediators from the territory of the court enlisted in the same Register, which is managed by the Ministry of Justice. This data needs to be visually highlighted on the bulletin board of the court or be accessible in another suitable way.

Encouraging active cooperation with external partners of the court, i.e. providers of services based on signed protocols of cooperation

13. The court can adopt and implement a program of alternative dispute resolution as an activity which is organized within the court (mediation annexed to the court – department/service of mediation within court) or based on a signed agreement of cooperation with another suitable provider of mediation service (mediation connected to the court).

For example, based on the cooperation agreement, courts can implement the programs in the following way:

- One court can implement a program for more basic courts on the territory of the same higher court,
 - A higher court can implement a program for one or more basic courts within its territory, etc.
14. Courts should encourage active cooperation with centers for social work, mediation centers, local authorities, local chamber, depending on the type of dispute (for example, commercial courts with the Serbian Chamber of Commerce and centers of ADR in the area of commercial law).
15. Court, based on the cooperation agreement with Chamber of Notaries, can provide signature verification of parties and mediators by the notary in the offices of the court, if the parties consent that the agreement has the power of an enforceable document.

Hearing for the purposes of attempting to resolve the dispute, by referring the parties to mediation, before preparatory hearing or the first main court hearing

16. In accordance with the goal of resolving cases in the early phase of the proceeding, courts should assess whether the cases are suitable for mediation in the early phase of the proceeding, and to actively guide the parties towards mediation, before the preparatory hearing, i.e. first main court hearing.
17. Article 102. in the Court Rule Book states that in civil proceedings, the court can submit written notification which contains legal explanations on exemption from payment of litigation costs, as well as on the right to mediation. Notification from Paragraph 1 of this article can be submitted with the invitation to a preparatory or first main hearing, personally or through an attorney, as well as in the proceeding of the

preliminary examination of the complaint, if the court deems it necessary, in accordance with related provisions of the procedural law.

Promotion

18. Courts will undertake activities for raising awareness on the advantages of alternative dispute resolution.
19. Courts will organize one week to promote settlement, mediation, and alternative dispute resolution, in which hearings will be held with the attempt to reach court settlement or to resolve the dispute by mediation.
20. If this week covers 25th of October, courts can mark the European Day of Justice through ensuring that the work of court is more accessible to citizens.

Training of judges and presidents of the courts

21. Training of the first instance judges, who preside in civil matters related to the implementation of the Law on Mediation in Dispute Resolution, as well as the other related laws (Law on Amicable Labor Dispute Resolution, Labor Law, Code of Civil Procedure, Law on Protection of Whistleblowers) is a necessary condition for the application of the mechanism for alternative dispute resolution and decreasing the number of backlog cases.
22. Based on the decision of the High Court Council, the Judicial Academy will provide support to the presidents of the courts in implementing these Guidelines.

III

STATISTICAL DATA

In accordance with the Court Rule Book and the Instruction of the High Court Council, the court is obligated to keep records of parties which are referred to mediation and which have completed mediation proceedings, which must contain: data on the types of dispute (matter, types of dispute) and the method of termination of the mediation procedure, while respecting the principle of confidentiality.

**PRESIDENT OF THE SUPREME COURT
OF CASSATION AND THE
HIGH COURT COUNCIL**

Dragomir Milojević [signed]

MINISTER OF JUSTICE

Nela Kuburović [signed]