

# MEDIATION IN CASES OF DISCRIMINATION *-MODEL-*

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EQUINET LEGAL TRAINING

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# The Law on the Prohibition of Discrimination

(Official Gazette of the Republic of Serbia, No 22/2009)

- adopted in March 2009
- main objective - adequate legal protection against discrimination (fulfilling one of the key requirements for the European integration of Serbia)
- step forward in the protection of human rights
- Commissioner for Protection of Equality

# The Law on Mediation

(Official Gazette of the Republic of Serbia, 18/2005),

- **defines the concept of mediation, principles of procedure, the role of the mediator and the cost of procedure.**
- regulates the rules of mediation procedures in disputes and in particular:
- property - legal relations between physical persons and legal entities;
- commercial and family;
- labour and other civil law relations,
- administrative and criminal procedures, in which the parties act freely, unless the law stipulates exclusive authority of a court or other relevant authority.

## Connection...

- Commissioner shall propose a *mediation*, in accordance with the law regulating the mediation procedure, *before taking other steps in the proceedings* (Art 38)
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- Rules of Procedure of the CPE, envisage as one of the roles of the Staff of the CPE, to consider the possibility of using mediation upon receiving complaints and recommending it to the parties concerned.

# Mediation in cases of discrimination

- procedure where third, neutral party helps participants in the process (*person who suffered from discrimination or some other form of social violence, and person who committed discrimination or some other form of social violence*) to lead a dialogue which enables consideration and exchange of feelings, interests and needs, and achieves an agreement satisfying for both parties.

# Causes – conflict & violation

- **Conflict** - situation of opposite positions about same event.
- For example, the case where one person claims that his/hers resignation was based on discrimination and not on his/hers work efficiency, while, on the other hand, the employer claims that the resignation wasn't based on discrimination and feels bad because of the person's feelings.
- In the basis of comprehension of the conflict is the very important **assumption** that all parties involved in the conflict are **responsible** for its origin
- This assumption leads to several important principles of the mediation process (as equality of the parties and moral neutrality), and its conducting techniques (for example, the way of how to give parties the floor for the first time).



- **Violation** – situation when the person suffers some violation/harm (emotional, social, physical, of a property etc.), which was caused by some other person.
- For example, the situation when one person insults the other on national ground, or situations of sexual harassment, etc.
- In contrast to the conflict, in the situations of caused violation there is **no assumption of responsibility**, or moral neutrality related to the act itself (that would lead to relativization and secondary victimization of the victim)
- different procedure and conducting techniques then mediation concerning conflict.

- Having in mind both, conflict and violation, as possible causes, **mediation goals in cases of discrimination are:**
- resolving the situation/event or conflict (if there is one) between parties
- emotional benefit, especially for the person who suffered the violation
- keeping and developing relations between parties (physical persons)
- prevention of new violations, new conflicts and victimization

## Applicability criteria – first assessment

- *Act/situation/violation is committed/caused by:*
- individual (natural person) or group
- individual (natural person) in the organization (state agency, local government authority, institution, business entity, etc.) acting contrary to the rules of the organization



- *Act/situation/violation is committed/caused by:*
- a legal entity, but in terms of specific behaviors related to a person (natural person), or an individual act (eg, termination of employment), not the general organization's act (statute, ordinance, etc.. )
- person who filed the complaint and the person against whom the complaint was filed in daily life are focused on each other (associates, colleagues, neighbors, etc..)

## Applicability criteria – second assessment

- ***Person against whom the complaint was filed***
- agrees with the allegations in the complaint in terms of description of events
- takes responsibility for the committed offense and its consequences, or at least a person sees the other party was hurt (although denying that the act was discriminatory)
- during the preparatory meeting partially takes responsibility for the act committed

## Applicability criteria – second assessment

- ***Person who filed a complaint:***
- compliance of individual goals and wishes with the goals and possibilities of mediation
- degree of trauma
- vulnerability & security assessment

# Characteristics of mediation in cases of discrimination

- Preparation for a joint meeting of parties is of great importance
- Assessment of safety (primarily emotional) is an important part of the role of mediator.
- In order to increase the security, mediation can take place through separate meetings (part or whole mediation process)
- Includes specific techniques of balance of power between parties

- Mediation process is designed not to fall into the trap of secondary victimization of the person who filed the complaint
- During the mediation process, other persons may be present as support persons (if required by the party)
- Great attention is given to identifying bias and stereotypes in the process, and responding to them.

- Specialized training for mediators – two weeks ago
- 23 certified mediators, 5 days
- As heard from trainers, not more than 3 persons – certificate CPE