

LITIGATION, ADR and CONTRACTS GROUP**BRUSSELS CONGRESS****Saturday 14 October 2017****MEDIATION QUESTIONNAIRE****COUNTRY: MONACO****LAWYER'S NAME: Guillaume CARDOEN**

* * *

QUESTIONS:**What is the applicable law in your country? Do you have any statistics on the use of mediation in your country?**

There is no legal definition of mediation in Monaco. Explanatory statements to the Law No. 1.401 of 5 December 2013 relating to the reform of time limits have distinguished mediation from conciliation and negotiation as follow:

“Mediation and conciliation are distinguished from negotiation by the intervention of an independent third party, the latter's role in differentiating conciliation from mediation. Indeed, conciliation differs from mediation in that the conciliator attempts to resolve the dispute between the parties by proposing a solution or, at the very least, giving his opinion, whereas the mediator only tries to resolve the parties themselves to find a solution to their dispute.”

Applicable Law

The Monegasque legislation does not provide any general provision for judicial or contractual mediation.

Family Law

Mediation in family matters has been introduced in the Monegasque Civil Code by Law No. 1.336 of 12 July 2007, and renewed by Law No. 1.450 du 4 July 2017 (Art. 202-4 and 303).

Family mediation is defined as:

“a process of building or rebuilding family ties based on the autonomy of persons affected by situations of break-up or separation in which an impartial, independent, qualified third party, with no decision-making powers – the family mediator – encourages, by organising confidential meetings, their communication and the management of their conflict in the family environment, taking account of its diversity and evolution.” (National Family Mediation Consultative Council, 2002)

The Family Mediation Unit (*Cellule de médiation familiale*), which is under the auspices of the Ministry of Health and Social Affairs, was made available to families in the Principality in January 2000.

Family Mediation is applicable to all family disputes:

- Helping couples who are separating or divorcing, whether married or not, with or without children, to make decisions themselves concerning their present and their future;
- Couples who are separating or divorcing in an international context;
- Mediation between children and parents, adolescents and step families;
- Intergenerational mediation; siblings in conflict over property and inheritance issues or the care of an elderly parent;
- Couples affected by domestic violence.

Administrative Law

The High Commissioner for the Protection of Rights, Liberties and for Mediation was created by Sovereign Ordinance No. 4.524 of 30 October 2013.

The High Commissioner is an independent, public institutional mediation body. Its role is directly inspired from that of the “Ombudsmen” in charge of mediation and the protection of citizens’ rights in a large majority of European countries.

The scope of the High Commissioner covers the functioning of all public services, whatever the administrative authority that they fall under (Ministry of State, Town Hall, Judicial Administration or Public establishment).

The High Commissioner does not intervene in:

- disputes between administrations or public establishments and their civil servants or agents;
- disputes between private individuals;
- disputes in which legal action has been taken;
- areas covered by the Control Authority for personal data protection (*Commission de contrôle des Informations Nominatives – CCIN*).

Statistics

The information collected by the Monegasque Institute of Statistics and Economic Studies (Monaco Statistics/IMSEE), mainly sourced from State departments and public bodies, does not include statistics on mediation.

What are the conditions to initiate mediation contractually and legally?

Family Law

The Family Mediation Unit may be used at any time before, during or after proceedings:

- Before any legal action, to avoid an escalation of the conflict;
- During legal proceedings; this can be requested by the people concerned or by a judge;
- After a legal decision, or new elements, to come to agreements.

The implementation of a family mediation process is applicable to residents of the Principality.

Administrative Law

The High Commissioner may be used by any person (natural or legal), who has a grievance with an administrative decision concerning their rights or freedoms or with the functioning of an administrative department can use the service, or who believes they have been the victim of unjustified discrimination within the Principality.

He can also intervene at the request of administrative authorities for mediation purposes in the context of prior administrative appeals referred to them.

Claimants may however only call on the High Commissioner after they have unsuccessfully attempted to settle the issue at stake directly with the administrative department or establishment concerned.

Apart from these cases

- Parties may include in their contract a clause to submit any future dispute to mediation;
- Parties can also establish an agreement to initiate mediation when a dispute arises.

Do mediation proceedings suspend legal proceedings?

In order to favour the amicable settlement of disputes, Art. 2059 of the Monegasque Civil Code establishes the mediation as a ground of suspension of the limitation period (inserted by Law No. 1.401 of 5 December 2013):

“The limitation period shall be suspended from the day on which, after the occurrence of a dispute, the parties agree to resort to mediation or conciliation or, in the absence of a written agreement, from the date of the first mediation meeting or of conciliation.

The limitation period shall continue to run for a period not less than six months from the date on which either or both of the parties, or the mediator or the conciliator, declare that mediation or conciliation is finished.”

In labour law, the possibility to introduce mediation was considered in case of discrimination, harassment and violence at work. Finally, the draft law No. 908 of 27 November 2012 on harassment and violence at work did not retain this proposal.

Family Law

The use of the Family Mediation Unit during legal proceedings creates a pause in the judiciary process.

Judicial mediation is for the Monegasque Bar Association a current subject of reflection. The formalisation in the court system of a mediation mechanism could include the suspension of the trial for three months to reach an amicable settlement.

What are the requirements to become a mediator?

The profession of mediator is not supervised in Monaco. No special diploma is generally required.

Family Law

The Family Mediator is a communications professional with a certified training in international family mediation (Certificat Européen en Médiation Familiale Internationale - CEMFI).

Administrative Law

The High Commissioner is appointed by sovereign order after the collection of the opinions of the Minister of State, the President of the National Council, the Director of Judicial Services, the Mayor.

The High Commissioner must carry out his duties in the service of the general interest in all impartiality, independence with neutrality, diligence, loyalty and discretion.

What is the sequence of mediation proceedings and confidentiality?

Family Law

During legal proceedings, a family mediation can be requested by a judge or the people concerned.

Mutual agreement that can be approved by the judge is valid as a legal decision.

The Family Mediator must lead the process in a strictly confidential and impartial context, and is subject to professional secrecy under the Penal Code.

Administrative Law

The High Commissioner examines complaints put before it and makes recommendations for the attention of the administrative authorities concerned.

A referral to the High Commissioner does not affect time limits for appeals.

The High Commissioner cannot contest the grounds of a judicial ruling.

The High Commissioner carries out his tasks with neutrality, impartiality and independence.

Without prejudice to the provisions of the Penal Code relating to professional secrecy, it is under an obligation of strict discretion in all matters relating to confidential information, in particular those relating to the privacy of persons, and to State affairs.

How long does the mediation process take?

Average duration: 2 to 6 months.

What are the main advantages of mediation as opposed to traditional court proceedings or arbitration?

Advantages of mediation over traditional lawsuits:

- Much less costly;
- Much faster process;
- Informal: generally less stressful; if a contract does not recognize an alternative dispute resolution option, mediation may be scheduled by mutual agreement of both parties to the contract;
- May preserve or enhancing relationships between parties;
- Risk-free: if no agreement reached, parties can pursue other options.
- Increased compliance with settlements when parties have directly participated in crafting agreements;
- Confidentiality and avoidance of publicity.

Advantages of mediation over arbitration:

- Much less costly;
- Much faster process;
- Informal: generally less stressful.
- Risk-free: parties can pursue other options if no agreement is reached, where arbitration is employed as a binding process, which replace the trial process.