

Mediation Country Report

Estonia

by
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1) Definitions

What are the definitions for mediation and conciliation in the legal framework of your jurisdiction?

Conciliation is an activity based on voluntariness of parties, in which a neutral person (conciliator) supports communication between parties in order to help them achieve a solution to the dispute. On the basis of the circumstances of conciliation and course of the conciliation procedure conciliator may present his own proposal for solving the dispute. (Article 1(2) of Conciliation Act, RTI, 10.12.2009, 59, 385)

Estonian Conciliation Act uses only the term “conciliation” and the term “mediation” is neither defined nor used by the Conciliation Act, however, both terms can be deemed as representing the same notions in the context of the conciliation procedure.

2) Legal Framework

- *What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*
- *What is the protections provided to confidentiality of mediation proceedings under the law?*
- *Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*
- *Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

The main legal act that covers conciliation is the Conciliation Act which comprises rules regulating and promoting recourse to conciliation in civil law disputes. As Estonian Conciliation Act entered into force on January 1, 2010, we do not yet have any case law to demonstrate how intertwined conciliation is with the legal system.

Please note, however, that Conciliation Act supports solving of civil law disputes and is therefore intertwined with the whole area of civil law. According to the Code of Civil Procedure, the court may even oblige parties to solve their disputes by conciliation.

Conciliation Act addresses various general aspects of conciliation (including procedural rules). Because conciliation is considered to be voluntary and almost everyone may be a conciliator (natural persons, notaries, attorneys at law, conciliation bodies), specified procedural rules can be adopted by each conciliator or conciliation body. However, all specified procedural rules must be in correspondence with the law (rules must guarantee independence, impartiality, confidentiality, documentation etc).

Main provisions guaranteeing protection of confidentiality of the conciliation proceedings are as follows: conciliation proceeding is not public, the conciliator has a duty of confidentiality, as a rule conciliator may disclose information only to parties involved, however, conciliator may also give information to investigative bodies based on court order, third parties have a duty of confidentiality.

The conciliation agreement is enforceable if it is authorised by a conciliation body.

The conciliation agreement attested by a notary is enforceable if the conciliation agreement prescribes an obligation of the debtor to be subject to immediate compulsory execution for the satisfaction of the claim.

If the conciliation agreement is settled by a conciliator (as a person – natural person, attorney at law, notary), the conciliation agreement is enforceable only if it is authorised by the county court. In order to receive authorisation of the court, parties must file a respective petition with the county court. Please note that as a rule the court will not authorise a conciliation agreement regarding a non-proprietary dispute. Court will not authorise a conciliation agreement settling a dispute regarding validity or termination of lease agreement of residential premises (dwelling) or a dispute regarding release of residential premises.

Parties are not bound by the terms of contracts that require conciliation.

3) Mediation Schemes and Providers

- *What is the basis and the procedure for court-annexed schemes?*
- *Who are the major mediation providers in your jurisdiction?*

There are several public and private dispute settlement bodies in Estonia, but they are not considered as conciliators within the meaning of the Conciliation Act. As conciliation is voluntary (see q. 1), arbitration and some other dispute settlements are not considered as conciliation proceedings. However, it is important to point out that the court may oblige parties to solve their disputes by conciliation (regardless of court proceedings).

Conciliation providers are usually conciliation bodies, notaries and attorneys at law. Conciliation bodies are provided by law and they work as the states' or local governments' conciliation bodies (for example, the Copyright Committee is considered as a conciliator).

The list of conciliation providers will be available on the webpage of the Estonian Ministry of Justice soon.

As Estonian Conciliation Act entered into force on January 1, 2010, we do not yet have any practice/statistics which would enable us to evaluate who are the major conciliation providers in Estonia.

4) Regulation of Mediators

- *What training courses and accreditations are required for to be an accredited mediator in your jurisdiction?*
- *How many training hours are required for accreditation?*

As mentioned in q. 2, almost everyone can be a conciliator (natural persons, notaries, attorneys at law, conciliation bodies).

In order to provide conciliation services, attorneys at law must be accepted by the Estonian Bar Association and notaries must be accepted in the Chamber of Notaries.

There are no separate courses required.

5) Uptake and Future Developments

- *What is the success rate of mediation? Please reference statistics, where available.*
- *Is there any potential future legislation, plans or court-annexed schemes? If so, please discuss in detail.*

As Estonian Conciliation Act entered into force on January 1, 2010, there is no statistics available yet. Therefore we cannot provide you with the information on the success rate of conciliation proceedings in Estonia.

We are not aware of any potential future legislation, plans or court-annexed schemes.

Please note, however, that due to the high success rate of the conciliation and other alternative dispute resolution procedures in other EU countries, a considerable growth in the use of conciliation techniques and other alternative forms of dispute settlements is anticipated in the following years in Estonia.

According to the Conciliation Act, the costs of conciliation are purely contractual. Therefore, conciliators can freely determine the fees for their conciliation services. As has been mentioned before, Estonian Conciliation Act entered into force only recently and there is not enough statistics available yet.

7) Mediation Advocacy Training

Training schemes and providers are outlined, including the distinction between mandatory and optional training, length of the training and percentages of lawyers who have completed the courses.

There are no mandatory or optional training schemes for conciliators available in Estonia as of yet.