



## **SUMMARY ABOUT ANSWERS TO QUESTIONNAIRE FROM RESPONDENTS IN LITHUANIA ABOUT TRAINING NEEDS AND PRACTICE EXPERIENCE FOR LAWYERS AND MEDIATORS IN CROSS BORDER FAMILY CASES**

Mykolas Romeris University sent the questionnaire to more than 100 lawyers, more than 70 mediators and Lithuanian Bar Association and Lithuanian Chamber of Mediators. We received answers from 27 lawyers and 20 mediators.

To the question "Which country are you from" we received the following numbers and answers:

- Latvia
- Lithuania
- Austria
- Italy
- Other:

### **Questions for mediators**

1. To the question No. 1 "What are your needs in further mediation trainings? Please write 3 topics in which you want to develop your further expertise in the field of mediation" we received the following answers:

Common themes suggested were:

- over three quarters of respondents (70%) reported that they want to develop further expertise in the field of family mediation.
- 50 % mentioned need of practical skills and techniques of mediation.
- 40% role of lawyers and third parties in mediation process.
- 30 % cross border mediation.
- And small number (15%) business mediation.

Respondents who indicated that they would like to improve their skills in the field of family mediation, underlined the need of knowledge in the field of child participation in mediation, domestic violence cases and mandatory mediation. 20% of respondents indicated their interest in the issue of agreement recognition in cross border cases. Respondents who indicated the need of improving practical skills and techniques noted that it is important for them to improve their practical knowledge how to help the parties to get out of their positions and understand their interests, to manage sharp negotiations. Other useful training topics can be: online mediation, intercultural communication (10 %).

To sum up, mediators expressed their needs, which are mostly connected with developing their skills in family mediation. This result may be fated by the fact that currently in Lithuania family mediation is mandatory in most disputes.

2. To the question No. 2 "Have you ever mediated a dispute with participation of lawyers?" we received the following numbers:

Yes 11

No 7

Bigger part of the mediators already have experience in mediating with lawyers.

3. To the question No. 3 “If Yes, what were the main benefits and challenges of such interaction?” we received the following answers:

As the main benefits of mediation with participation of the lawyers were listed:

- Parties can get legal advice from the lawyers.
- Parties feel safer and more comfortable during mediation.
- The lawyers prepare parties for the first mediation session. At the first meeting most of parties know about mediation, understand the main principals and role of mediator.
- The lawyers are encouraging negotiations, searching for possible solution, especially in child dispute cases.
- The mediator cannot advise for the parties on what is more useful for them or terms of agreement and etc. The presence of the lawyers helps parties to understand the legality of their claims too.
- The lawyers can take active participation in preparation of the agreement, also prepare the draft of agreement.

As the main challenges of such interaction were listed:

- The mediation process becomes more formal, more similar to negotiation.
- The lawyers are reluctant to hand over the decision-making power to the party, encourage them to fight for their rights, not to make concessions, especially if they are convinced of a more favourable decision in court.
- Some of the lawyers still have not understand the meaning of mediation process (mediation process is understood as a court hearing, evidence to be examined, etc.).
- Lawyers do not pay attention to the real needs of their clients, but are guided only by their own opinion.
- The Lawyers take active role during the mediation process, trying to show their importance for the client.
- The lawyers control parties and usually during mediation parties express not their own desire or opinion but what their lawyers tells them to say.

Most respondents (90 %) indicated the benefit of the lawyers participation during mediation process when the legal issues arise, active participation in preparation of the agreement. Also mediators mentioned that when the lawyer knows about mediation or even are well trained they prepare parties for mediation process, advise for them. It saves time especially in the mandatory mediation. But at the same time, on the other hand, the mediation process with the participation of the lawyers becomes more formal, less sincere and open, which is especially important in family disputes.

4. To the question No. 4 “What are the main differences of the role of the lawyer in mediation to compare with litigation?” we received the following answers:

Most respondents mentioned that during the court proceeding, the lawyers take active role in:

- representing and defending their client's rights and legal interest (100% of respondents).
- leading the case.
- acting in the name and interests of their clients.
- seeking to win case.
- convincing the judge.

During mediation process the lawyer's role is more passive. They act as:

- counsellors, advisors for their clients.
- Defend their client's interest but not only in legal way, more in advising about the benefits and possible solutions.
- Encourage compromise search.

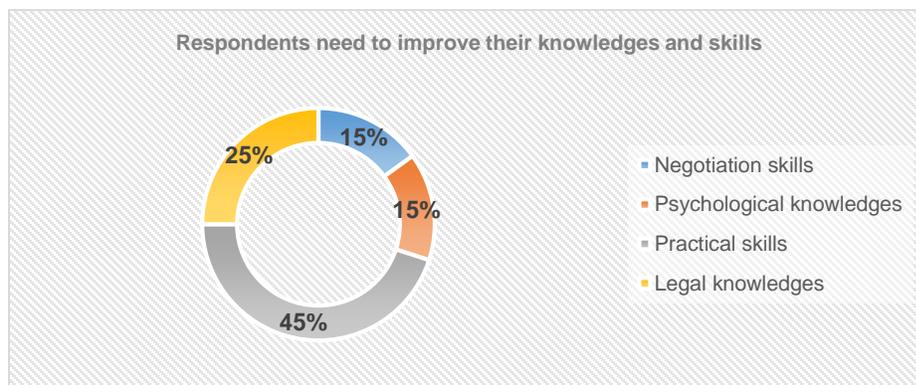
Most respondents mentioned that during mediation well trained lawyers help for parties in searching and seeking solutions. As still some of mediators have lack of legal knowledge's, the lawyers help to prepare mutually accepted agreements. But when the lawyers do not see the advantages of mediation, they can destroy the mediation process or even escalate the conflict between parties. Some of the respondents mentioned that they had met difficulties in organizing the mediation when both parties have lawyer, but only one parties lawyer wish to participate during mediation sessions.

5. To the question No. 5 "What knowledge and skills in your opinion lack mediators while they are coordinating mediation, which involves lawyers?" we received the following answers:

Most of respondents indicated that they need to improve their:

- psychological knowledge (to understand better parties, their behavior during mediation, to find out their interest and values).
- 45% of respondents mentioned that they need more mediation practical skills as they meet difficulties in maintaining neutrality, balance of power during the mediation which involves lawyers. Some of lawyers acts the same as in court proceedings. In such cases for mediators can be difficult to remain neutral, impartial, but at the same time not lose its role when active lawyers are involved in the process.

25% of mediators mentioned that their need is to improve their legal knowledges as they sometimes feel unsafe and uncomfortable to discuss legal issues which are not well known by them. It gives the reason for the lawyers become more active and start making proposals, negotiate.



6 To the question No. 6 "What knowledge and skills in your opinion lawyers lack while they are participating in mediation?" we received the following answers:

Common themes suggested were:

- active listening skills.
- effective communication.
- understanding that mediation is about cooperation and win-win situation and not win-lose.
- understanding their role during mediation.

Respondents mentioned that during mediation sessions sometimes they also must explain about different styles of mediation and why it is important to understand not only positions but also values and interest of the parties. Usually the lawyers want speed process and fast solution which is in the best interest of their client but not both parties.

7 To the question No. 7 “Do you agree with a statement, that mediation should involve only parties to a dispute and participation of lawyers often makes mediation process more complicated?” we received the following numbers:

- Yes 12
- No 8

Respondents who answered positively mentioned that:

- Mediators need to put more energy to organize and manage mediation process because lawyers do not understand their role during mediation.
- Most of respondents think that lawyers can participate at the first meeting and during the preparation of agreement session.
- Family disputes are very personal and various so parties should take part without lawyers as sometimes it is uncomfortable talk about very sensitive issues in the present of the lawyers.
- The participation of the lawyers during mediation is completely unnecessary, as it can only lead to confusion between the parties, escalation of the conflict.
- The involvement of the lawyers prevents the parties from looking at the dispute from a different angle, understanding position of the other party, often reducing the party's flexibility in finding agreements.
- It depends on the lawyers understanding the mediation meaning and purpose.

Respondents who thinks that lawyer helps during the mediation noted that:

- lawyers usually help to reach more effective agreement.
- The participation of lawyers would not complicate mediation when the mediator is the lawyer and has experience. It helps to keep balance of the power and leading role of mediator.
- If lawyers believe in the benefit of mediation they can encourage and support parties.

In summary, it can be stated that the role of the lawyers in the mediation process depends on their knowledges about mediation, approach to its benefits. Respondents noted that lawyers' negative attitudes towards mediation are also influenced by the fact that they consider mediators to be their competitors. However, in this process, lawyers can also maintain their important role in assisting, advising their clients, and preparing agreements.

8. To the question No. 8 “What are the most difficult challenges in cross-border family mediations?” we received the following answers:

Respondents highlighted the most difficult challenges in cross – border family mediation:

- Geographical distance.
- Time zone difference.
- Cultural differences.
- Different language.
- Highly escalated conflicts (especially in child abduction cases).
- Difficulties in organizing face to face mediation.
- Online mediation.
- Different legal regulation.
- Different jurisdiction.
- Lack of knowledges of international legal regulation.

- Enforceability of agreements.
- 60% of respondents mentioned that they do not have practice in cross-border family mediation. Consequently, not surprisingly 80 % of respondents said that this leads to a lack of knowledge and practical skills in how the mediation process should be organized.

### Questions for lawyers

9. To the question No. 9 “What are your needs in further mediation / negotiation trainings? Please write 3 topics, in which you want to develop your further expertise in the field of mediation / negotiation” we received the following answers:

Respondents reported that they want to develop further expertise in the field of:

- Family mediation (52%).
- Practical aspects of mediation (body language, effective communication, effective negotiation and tactics of negotiation, psychological aspects, role of lawyer and mediator during the mediation) (37%).
- Commercial mediation (22%).
- Cross border family cases (mediation, jurisdiction, legal regulation) (22%).
- Mediation in labour disputes.
- Mediation in criminal justice.

Respondents who indicated that they would like to improve their skills in the field of family mediation, underlined the need of knowledge in the field of child participation in mediation, domestic violence cases and mandatory mediation.

To sum up, lawyers expressed their needs, which are mostly connected with developing their knowledge and skills in family mediation. Especially practical aspects of the process.

10 To the question No. 10 “How can you describe a role of the lawyer in the mediation process?” we received the following answers:

Respondents see lawyers in mediation process:

- As consultants and advisors (explains for clients the consequences of possible decisions, the legal norms applicable to the nature of the dispute).
- As persons who prepare the parties for the first mediation meeting, helps them to feel safer.
- Representatives of clients and their interests without taking over the mediation process, thus helping the mediator to do his or her job.
- An observer that activates when clients need.
- As person who helps a party (their client) to feel stronger and safer in the mediation process.

Respondents noted that the success of mediation partly depends on the opinion and the role of the lawyers: how they prepare clients, explain them the risks that may be caused by the other party's offer, help to choose between several proposed dispute resolution options and ect. Some of the lawyers mentioned that the lawyer's role is very important as they can help mediator during the process especially on legal issues.

One of the respondents mentioned that the mediator alone decides about the possibility for the party's lawyers to take part in mediation. The lawyer can be not allowed to attend mediation for the sole reason that the other party does not have a lawyer.

One of the respondents noted that: “participating in mediation as a lawyer is worst thing in the world, as client who signs the agreement can blame the lawyer for misrepresentation”.

One of the lawyers mentioned that he never takes part in mediation because of confidentiality principal. If no agreement can be reached during mediation, it becomes difficult to present evidences and important information, which was discussed during mediation to the court.

11 To the question No. 11 “What knowledge and skills in your opinion lack mediators while they are coordinating mediation, which involves lawyers?” we received the following answers:

Respondents highlighted that in most cases mediators lack of:

- Legal knowledge.
- Psychological knowledge.
- Understanding the role of lawyer (negative attitude towards a party's lawyer, how to involve lawyers, to make them “useful”, finding common ground).
- Practical skills in organising and managing the mediation process, finding the balance between parties.

Some of respondents mentioned that lack of mediator’s legal knowledge’s can lead to distrust of mediator or even fail the mediation process. But on the other hand other respondents mentioned, if the lawyers take part in mediation, mediator does not need legal knowledge. When mediator understands the issues of the relationship between the lawyer and the client, he can turn to the lawyer for assistance.

12 To the question No. 12 “What knowledge and skills in your opinion lack lawyers while they are participating in mediation?” we received the following answers:

Respondents think that lawyers participating in mediation need to improve:

- negotiation skills (knowing better the difference between mediation and negotiation);
- psychological knowledge;
- effective communication skills;
- in cross border cases - international legal regulation;
- understanding of mediation process.

Most of the respondents mentioned that they are still confused about their role during mediation. They still need better understanding of their roles and difference during mediation and litigation.

13 To the question No. 13 “Do you agree with a statement, that mediation should involve only parties to a dispute and participation of the lawyers often makes mediation process more complicated?” we received the following numbers:

Yes 14

No 13

The reasons why the lawyers should participate in mediation are:

- The represented party listens and hears lawyer’s arguments as a reliable.
- The lawyers advise clients about possible consequences of the proposed solution.
- The lawyers encourage clients to cooperate with the other party, help to negotiate terms of the agreement, at the same time protect clients rights and interest.
- Because parties and often mediators lack legal knowledge, it can lead to unfair, uncompleted or even sometimes unlawful agreements, material losses.
- Parties refuse to engage in mediation without the lawyer because they feel insecure.
- The lawyers inform the parties before the mediation about the legal issues of the dispute and the consequences of making one or another decision, explain what the parties can and cannot do. It helps to make mediation process faster.
- The lawyers are often not only the legal advisers, but also emotional supporters of the client.
- Without direct participation in mediation for lawyers can be difficult to advise for client on possible proposals, solutions or even agreement terms as they did not hear the reasons why it was chosen.

Some respondents think that the lawyers must be involved at least in the part of the mediation, but the mediator must communicate with the parties at least once without any lawyers. The goals of the mediator and the lawyers are different. Lawyers represent their clients on the basis of evidence from the past and the mediator has the task of restoring peace between the parties during the sessions, as they are encouraged to agree on the future if they forget the past. Some of the respondents agrees that the main role in mediation belongs to the mediator, who is able or unable to control the process.

14 To the question No. 14 “What are the most difficult legal challenges in cross-border family mediations?” we received the following answers:

61,5% of respondents identified that they already have experience in cross border cases.

They highlighted the most difficult legal challenges in cross border family mediation:

- Lack of legal knowledge's: different national legal regulation, international legal acts.
- Lack of understanding terminology.
- Understanding of cultural, religious differences.
- Different language – preparation agreement into two languages.
- Different style of mediation, different legal regulation of mediation in different countries, fees for service.
- Difficult to organize face to face mediation.
- Recognition and enforceability of mediation agreement
- Child participation.

One of respondents mentioned that mandatory mediation in family disputes puts parties in unequal positions: resident of Lithuania should at first apply for mediation and according the Brussels II bis Regulation a case may be brought before the courts of several EU Member States under the Lis pendens rule (Article 19), the case is heard in the court of the State where it is first brought. The initiation of mediation proceedings is not equivalent to the initiation of proceedings under Article 16 of the Regulation. Therefore, Lithuanian residents and / or citizens and Lithuanian courts loses jurisdiction a citizen of another country applies directly to court.

### Questions for all professions

15 To the question No. 15 “What are your needs in trainings about cross-border family cases?” we received the following answers:

Most of respondents expressed the interest in trainings about cross border family cases on:

- "Comparative" of legal regulations and practice of different countries: between EU member states, UK, USA, Islamic law states.
- Understanding cultural differences.
- Application of regulations relating to parental responsibility, division of property.
- Cross – border mediation.
- Legal English.
- Case law.
- Private international law, determination of jurisdiction.
- Recognition and enforceability of agreement.

Respondents highlighted the need of more practical trainings, applying the theory to the already examined cases.

16 To the question No. 16 “Please write what legal problematics have you encountered in cross-border family cases (from your experience or theoretical knowledge)” we received the following answers:

Respondents indicated that they have encountered legal problems:

- Different court practice.
- Jurisdiction.
- Recognition and enforcement of agreement.
- Lack of knowledge about the legal system of another state in family matters.
- Knowledge of international law, different legal regulations, different understandings, different cultural stereotypes, different religions.
- Property located abroad division.
- Different legal regulation of mediation procedures ( in Lithuania mandatory mediation in family disputes), fees of mediation and etc.

17 To the question No. 17 “Please write what mediation problematics have you encountered in cross-border family cases (from your experience or theoretical knowledge)” we received the following answers:

Most responded have no practice of mediation in cross- border family cases but they noted:

- Recognition and enforcement of agreement
- Organization of face to face mediation.
- Time limits (child abduction).
- Child participation.
- Different language.
- Mediators network.

18 To the question No. 18 “Please write examples of good practice from your experience in cross-border family cases (for instance, good cooperation between lawyer and mediator, clarification of opinion of the child, fast court procedure, good translation of documents, support from the Ministry of Justice, etc.)” we received the following answers:

Some respondents emphasized the role and assistance of judges in the mediation, necessity of cooperation between central authorities.

#### Conclusions about this survey and the main outcomes.

1. The survey showed that both mediators and lawyers are facing the instant need for developing their knowledge and skills in family mediations. The practical aspects of the process were emphasized by both groups of the respondents. This result may be fated by the fact that currently in Lithuania family mediation is mandatory in most disputes.

It is suggested to add family mediation, with lawyer’s participation, simulations in the seminar plan.

1. The variety of the answers on the benefits and challenges of mediator / lawyer interaction reveals, that this issue is crucially important and skills of cooperation between these two groups is necessary. Mediators know and appreciate the added value of lawyer’s participation in mediation, still they are not always able to cope with dominating different style of negotiations, which is often brought to the mediation table. From the other side, big part of lawyers understands well their role in the mediation. Thus, part of them still are searching for it. As well, it should be emphasized that

mediators often are more stressed during the processes, where lawyers are involved. It is necessary to develop mediator – lawyer communication skills to let them feel more comfortable.

It is suggested to add mediation advocacy topic in seminar plan, letting participants of the trainings to find out the role of lawyers in mediation and suggest for lawyers' and mediators' possible fields and methods of better collaboration.

2. The survey showed that according to the respondents lawyers in mediation lack soft skills, while mediators – legal knowledge. It shows a need to find a balance between it and suggest the both group interests oriented training, which would aim to help mediators to get more legal knowledge and on the other hand would help lawyers to get more soft skills.

It is suggested in seminars use group work method for the fulfilling task, which need soft skills and legal knowledge and allow lawyers and mediators to learn from each other and to better evaluate each other's strengths, which should be used for the sake of dispute parties best interests.

3. It is worth to mention the fact, that bigger part of mediators and lawyers agree with a statement, that mediation should involve only parties to a dispute and participation of lawyers often makes mediation process more complicated. This result of the survey may show the constant resistance between the lawyers and the mediators.

It is highly recommended to invite for the seminar the equal number of the lawyers and the mediators and to encourage them working together in pairs or small teams.

4. Having in mind that CODEMAL project is oriented towards fostering mediation in cross-border family disputes, it is crucial to evaluate the answers of both groups of professionals in regard of challenges in such kind of processes. It is worth to mention that only small part of the mediators was already involved in such procedures. This shows the need of mediation to be promoted more in this area. Thus, lawyers are more experienced in cross-border disputes. From the answers of mediators and lawyers, we can see that mostly both groups need knowledge on specifics of distance (online) mediation, the role of cultural and religious differences in mediation, different language issue, different national legal regulations, issues of recognition and enforceability of mediation agreement. This shows the instant need to focus on these issues during the trainings.

It is highly recommended to add pre-training “must read” materials list for the participants of the trainings. It is impossible to present all required information during several days trainings. Participants should study some topics independently and during the seminars share their gained knowledge by fulfilling some group tasks.

5. The last question was not answered by the bigger part of the respondents. It shows that probably they do well any good practice in cross-border family cases. The explicit

presentations of the scheme how mediation can be included in the cross-border family cases should be presented and explained.

We suggest providing information about the best practices of cross-border family disputes mediation. This could serve well for fostering the usage of this process in Lithuania.