

Research Article

MEDIATION IN THE BALTIC STATES: DEVELOPMENTS AND CHALLENGES OF IMPLEMENTATION

Agnė Tvaronavičienė, Natalija Kaminskienė, Dana Rone and Rea Uudeküll

Submitted on 6 August 2022 / Revised 26 Aug 2022 / Approved 3 Sep 2022 /
First Published Online: **1 Oct 2022** / Published **15 Nov 2022**

Summary: Summary: 1. Introduction. – 2. European Mediation Policy and Its Implementation in the Baltic States. – 3. Mediation Models in the Baltic States. – 3.1. Mediation in Lithuania. – 3.1.1. Mediation in Civil Justice. – 3.1.2. Mediation in Administrative Justice. – 3.1.3. Mediation in Criminal Justice. – 3.2. Mediation in Latvia. – 3.2.1. Mediation in Civil Justice. – 3.2.2. Mediation in Administrative Justice. – 3.2.3. Mediation in Criminal

Agnė Tvaronavičienė – Professor of the Law School and Head of Mediation and Sustainable Dispute Resolution Laboratory at Mykolas Romeris University, Lithuania a.tvaronavičienė@mruni.eu <https://orcid.org/0000-0002-5489-5570>. **Corresponding author**, responsible for investigation and formal analysis.

The corresponding author is responsible for ensuring that the descriptions and manuscript are accurate and agreed upon by all authors. **Competing interests:** The author declares there is no conflict of interest. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

Natalija Kaminskienė – Professor of the Law School at Mykolas Romeris University, Lithuania natalijak@mruni.eu <https://orcid.org/0000-0002-0198-8271>. **Co-author**, responsible for investigation and formal analysis. **Competing interests:** The author declares there is no conflict of interest. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

Dana Rone – Associate Professor of the Faculty of Law at Turība University, Latvia dana.rone@latnet.lv. **Co-author**, responsible for investigation and formal analysis of Latvian legislation and practice. **Competing interests:** The author declares there is no conflict of interest. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

Rea Uudeküll – Coordinator at Ministry of Social Affairs, Estonia rea.uudekull@sotsiaalkindlustusamet.ee. **Co-author**, responsible for investigation and formal analysis of Estonian legislation and practice. **Competing interests:** The author declares there is no conflict of interest. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

Translation: The content of this article was translated by the co-authors.

Funding: The co-authors received no financial support for the research, authorship, and/or publication of this article. The Journal provides funding for this article publication.

Managing editor – Dr. Tetiana Tsvina. **English Editor** – Dr. Sarah White.

Copyright: © 2022 A Tvaronavičienė, N Kaminskienė, D Rone, R Uudeküll. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

How to cite: A Tvaronavičienė, N Kaminskienė, D Rone, R Uudeküll 'Mediation in the Baltic States: developments and challenges of implementation' 2022 4 (16) Access to Justice in Eastern Europe 68-86. <https://doi.org/10.33327/AJEE-18-5.4-a000427>

Justice. – 3.3. Mediation in Estonia. – 3.2.1. Mediation in Civil Justice. – 3.2.2. Mediation in Administrative Justice. – 3.2.3. Mediation in Criminal Justice. – 4. Comparison of the Developed Mediation Models in Lithuania, Latvia, and Estonia and Recommendations for the Future. – 5. Conclusions

Keywords: Keywords: mediation, out-of-court mediation, court-connected mediation, dispute resolution, settlement, Baltic States

ABSTRACT

Background: *This article explores the response of Lithuania, Latvia, and Estonia to major European initiatives in the field of mediation. Accordingly, the paper examines EU attempts to foster mediation and introduces the process and the outcome of the implementation of the Mediation Directive (as the main legal instrument of setting the unified standards for mediation in the EU) in the aforementioned Baltic States.*

Methods: *Research commenced with a review of the existing literature, followed by an analysis of mediation models currently being implemented in the three Baltic States. A comparative analysis of the models presented by the authors and a discussion of common issues and challenges enabled us to draw certain conclusions.*

Results and Conclusions: *Throughout, the paper considers key developments in the implementation of mediation and presents an analysis of what are considered to be the main challenges that need to be addressed. This research assists dispute resolution practitioners and researchers who are interested in better understanding how different countries are implementing mediation practices and processes.*

1 INTRODUCTION

Lithuania and Latvia in 2020 and Estonia in 2021 celebrated their 30th anniversary since regaining independence. In building a modern state and democratic legal system, developing an effective, citizens' needs-based dispute resolution system is vitally important. Whilst all three states have developed and maintained a well-organised modern judiciary, they have taken the equally important step of fostering sustainable¹ alternatives to the traditional court-based dispute resolution system.

It is important to capture and share with those outside the Baltic region the experience and constant effort to accommodate mediation, as it is relevant to other countries that have recently embarked on the process. The Baltic experience may also encourage those who may be disappointed in the slow progress being made in their own countries, conscious of the enormous effort needed to transform outmoded dispute resolution culture processes. The article aims to provide an analysis of the key developments of mediation in the three countries and identify the main challenges yet to be addressed. In fact, the experience of Lithuania, Latvia, and Estonia and stories of their success and setbacks may help other countries that are currently integrating mediation into their legal systems to identify the most effective means to foster mediation.

This study is both original and novel, and as a pioneer study, it brings together for the first time a landscape of mediation in three Baltic states from the perspective of civil, administrative,

1 The notion of sustainable dispute resolution and its main characteristics were first presented by N Kaminskienė, A Tvaronavičienė, I Žalėnienė, 'Bringing sustainability into dispute resolution processes' (2014) 4(1) *Journal of Security and Sustainability Issues* 69-77.

and criminal justices. There have been previous attempts to provide an overview of the development of mediation in the Baltic states. For example, Lithuanian, Latvian, and Estonian mediation models were briefly presented in the article ‘Baltic Countries’.² Detailed information about the development of mediation in all EU member states, including Baltic states, can be found in the book *Variiegated Landscape of Mediation*,³ which inspired other scholars to research and fill the gap in data in the legal regulation of mediation across the EU. Another piece of comparative research on mediation laws in the Baltic states was conducted by Pihlak, Rone, and Valančius.⁴ Another comparative example of the situation in the Baltic region can be found in *Mediation to Foster European Wide Settlement of Disputes*.⁵ In fairness, mediation regulation is in a constant state of flux, and empirical data requires regular reviews. Scholars in Lithuania, Latvia, and Estonia explore mediation mostly at the national level. The majority of this body of work is published in the respective national languages, which makes it difficult to disseminate on a wider international stage. We assert that this article provides a structured and all-encompassing comparative analysis of the contemporary mediation systems in the Baltic states.

2 EUROPEAN MEDIATION POLICY AND ITS IMPLEMENTATION IN THE BALTIC STATES

Around the world, different cultural traditions and jurisdictions increasingly turn towards mediation as a desirable form of dispute resolution.⁶ Sustainable, flexible, quick, and relatively inexpensive, mediation is an attractive alternative to litigation and is not only oriented toward dispute resolution but seeks to restore relationships. However, for reasons of their own, not every country has embraced mediation. This may be due to the considerable efforts needed to promote the practice and also because national legal systems are not homogeneous; besides, there is no ‘one size fits all’ solution.⁷ These differences in traditions, cultures, and history of the judiciary and out-of-court dispute resolution suggest the need for us to carefully (if, when, and to what extent it is appropriate) introduce proven practices of other countries into another state’s national system.

A decade ago, mediation experts ‘concluded that the institutionalization of mediation in every country proceeds in two phases: an initial phase involving national mediation organizations (starting in 1980); and a second phase represented by international collaborative initiatives.’⁸ This pattern was absent in the Baltic states that only regained their independence circa 1990 and 1991. It is only now that Lithuania, Latvia, and Estonia are implementing the first phase of institutionalisation of mediation – national institutionalisation.

2 V Nekrosius, V Vebraitė, ‘Baltic Countries’ in Cs Esplugues, JL Iglesias, G Palao (eds), *Civil and Commercial Mediation in Europe* (Intersentia 2012); V Nekrosius, V Vebraitė, ‘Baltic Countries’ in Cs Esplugues (ed), *Civil and Commercial Mediation in Europe Vol II* (Intersentia 2014).

3 M Schonewille, F Schonewille (eds), *Variiegated Landscape of Mediation* (Eleven International Publishing 2014).

4 M Pihlak, ‘Chapter 10. Estonia’, D Rone, ‘Chapter 18. Latvia’, V Valančius, ‘Chapter 19. Lithuania’ in N Alexander, S Walsh, M Svatos (eds), *EU Mediation Law Handbook. Regulatory Robustness Ratings for Mediation Regimes* (Wolters Kluwer 2017).

5 F Pesce, D Rone (eds), *Mediation to Foster European Wide Settlement of Disputes* (Aracne 2016).

6 NM Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer law International 2009), 1.

7 ‘European Handbook for Mediation Lawmaking’ (European Commission for the Efficiency of Justice, 2019) <<https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>> accessed 6 August 2022.

8 Alexander (n 14) 55.

Nonetheless, the initiative to foster mediation in Europe launched by the Council of Europe⁹ served as an accelerator for national legislation in this field. Unsurprisingly, these initiatives were mirrored in EU legislation. The adoption of the Mediation Directive¹⁰ in 2008 was a strong stimulus for all EU member states to introduce, or essentially review, national legal regulations on mediation. It was also meant to accommodate all EU states by means of 'soft regulation' rather than to impose an across-the-board approach, which might not be appropriate in certain legal systems. On the one hand, such a liberal approach sat well with those countries that quickly grasped the idea of mediation and accepted it easily. As the Directive required member states to ensure a minimum level of harmonisation, they were expected to apply the measures to resolve cross-border disputes. At the same time, such regulation did not prevent each country from enacting laws allowing the application of mediation in purely national disputes.¹¹ On the other hand, one result of 'soft regulation' was that some countries, including Lithuania and Estonia, failed to make any significant progress in the acceptance of mediation, preferring instead to allow mediation to develop, rather like a neglected plant.

The issue of the proper implementation of the Mediation Directive remains relevant, as this is still the only legal tool for harmonising mediation standards within the EU. In addition, in 2017, the European Parliament¹² stated that the goals of the Mediation Directive have still not been reached in many member states, which reduces the accessibility of mediation within the EU and inhibits the saving of a significant part of public finances assigned for the maintenance of the judicial system.¹³ Lithuania commenced implementation of the EU Mediation Directive when it adopted the Law on Conciliatory Mediation in Civil Disputes¹⁴ in 2008, choosing to apply the same regulations both for international and national mediation processes. For the most part, implementation was transitional and hesitant, and no significant additional measures accelerating the mediation development were introduced. For almost a decade, mediation in Lithuania was slow to develop, restrained by the court-connected mediation scheme that applied to civil cases. Inconsistent qualification requirements for mediators (except court mediators), insufficient funding, scarce promotional measures, and low dissemination of mediation in society forced the state to consider active promotional measures to foster mediation. Hence, the reforms that started in 2017 are still ongoing.

- 9 Council of Europe Committee of Ministers, Recommendation (98) 1 on family mediation <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ecb6e>> accessed 6 August 2022; Council of Europe Committee of Ministers, Recommendation (2001) 9 on alternatives to litigation between administrative authorities and private parties <<https://rm.coe.int/16805e2b59>> accessed 6 August 2022; Council of Europe Committee of Ministers, Recommendation (2002) 10 on mediation in civil matters <<https://rm.coe.int/16805e1f76>> accessed 6 August 2022; Council of Europe Committee of Ministers, Recommendation CM/Rec(2018) 8 concerning restorative justice in criminal matters <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3> accessed 6 August 2022, etc.
- 10 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (24 May 2008) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0052>> accessed 6 August 2022.
- 11 A Pera, 'The European Union policies on access to justice and ADRs' in A Miranda (ed), *Mediation in Europe* (Araçne 2014) 97-124, at 109.
- 12 European Parliament resolution of 12 September 2017 on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the 'Mediation Directive') (2016/2066(INI)) <https://www.europarl.europa.eu/doceo/document/TA-8-2017-0321_EN.pdf> accessed 25 August 2022.
- 13 G De Palo, 'A Ten-Year-Long "EU Mediation Paradox" When an EU Directive Needs To Be More ... Directive' <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI\(2018\)608847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf)> accessed 25 August 2022.
- 14 Law on Conciliatory Mediation in Civil Disputes <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.330591>> accessed 6 August 2022.

Latvia adopted the Mediation Law in 2014,¹⁵ formulating equal rules for any type of mediation, and, at the same time, amended the Civil Procedure Law.¹⁶ Although the Mediation Law was adopted slightly later, as it was ordered by the Mediation Directive, the law has turned out to be a well-balanced and stable instrument operating without significant amendments. It provides for basic principles of mediation, a mediation process, rules on court-annexed mediation, the status of certified mediators, and a review of the complaints procedure that applies to certified mediators. Three months after the adoption of the Mediation Law, the Cabinet of Ministers Regulation No. 433 was adopted 'On Certification and Attestation of Mediators' (hereinafter – Regulation No. 433),¹⁷ which described in detail the process of certification and later attestation of mediators.

Estonia also implemented the Mediation Directive, adopting the Conciliation Act in early 2010.¹⁸ Unfortunately, the new legislation failed to stimulate changes to mediation processes and practices in the country. Why was this the case? Firstly, the new bill merely regulated mediation proceedings in civil matters, leaving administrative and criminal justice matters out of the legislative framework. Secondly, the penetration and regulation of mediation were also hindered by the fact that the legislation left unregulated the supervisory tasks of mediation, the professional certification of a mediator, as well as the profession of a mediator. However, the act describes the process of mediation. Despite the obligation of a country to encourage the practice of mediation, in the case of Estonia, new amendments and efforts to meet EU standards have failed.

In conclusion, the implementation of the EU mediation policy in all three countries has had different outcomes. In Lithuania, the initial impact was that it failed to promote the broad expansion of mediation in society, although it later encouraged further processes of mediation reforms and warranted the quality of mediation services. Latvia took a different route by implementing the Mediation Directive to the extent that it has encouraged the adoption of necessary national rules for mediation to start developing. Indeed, it has helped greatly in constructing a well-balanced model of mediation. In the case of Estonia, national mediation regulation adopted for the purpose of implementing the Directive has failed to encourage the practice of mediation, with a preference for self-regulation.

3 MEDIATION MODELS IN THE BALTIC STATES

3.1 MEDIATION IN LITHUANIA

In Lithuania, mediation reforms were introduced in 2017, so the country now enjoys court-connected mediation in civil and administrative procedures, a well-framed out-of-court mediation system in civil disputes, out-of-court mediation in administrative disputes, and mandatory pre-trial mediation in most family disputes. There is also a time-checked mediation institute in probation service activities.

15 Mediation Law (2014) <<https://likumi.lv/ta/en/en/id/266615-mediation-law>> accessed 6 August 2022.

16 Amendments of Civil Procedure Law (22 May 2014) <<https://likumi.lv/ta/id/266611-grozijumi-civilprocesa-likuma>> accessed 6 August 2022.

17 Cabinet of Ministers Regulation No. 433 On Certification and Attestation of Mediators (5 August 2014) <<https://likumi.lv/ta/id/268136-mediatoru-sertifikacijas-un-atestacijas-kartiba>> accessed 6 August 2022.

18 Conciliation Act <<https://www.riigiteataja.ee/en/eli/530102013028/consolide>> accessed 6 August 2022.

3.1.1 Mediation in Civil Justice

The qualification requirements for mediators have been some of the most important elements of the recent reforms in Lithuania. A national list of mediators was established in early 2019. The Law on Mediation¹⁹ provides a rule that only mediators who are listed may provide mediation services in Lithuania (Art. 4, part 1). To be listed as a mediator, one must have: successfully completed a university education; participated in 40 hours of mediation training; passed the mediators' qualification exam; and have an unblemished reputation. At the end of 2021, there were more than 600 mediators included in the national list of mediators,²⁰ 117 of which are judge-mediators.²¹ However, there are exceptions to these qualification requirements, and these include those employed as university lecturers, judges, attorneys, notaries, and bailiffs.

The first attempts to apply mediation in the Lithuanian legal system were related to the launch of the pilot court-connected mediation project in 2005. 'The pilot project was conducted by several judges and academicians familiar with the notion of mediation, and who strongly supported the model adopted by the province of Quebec in Canada and its introduction in the Lithuanian courts.'²² In 2014, the model presented by the pilot project was admitted as the Lithuanian court-connected mediation model and began to apply in all courts dealing with civil cases.²³

The latest statistics show that court-connected mediation still is not popular enough in Lithuanian courts. According to the data from 2021, 144,919 civil cases were started in Lithuanian courts in 2021.²⁴ During the same year, only 574 court-connected mediations were initiated.²⁵ In 47 per cent of mediated cases, a settlement was reached. Scholars have stated that 'during the last four years, the number of the court-connected mediation cases has shown no significant change.'²⁶

The development of out-of-court mediation in Lithuania has been rather slow, which can partly be explained by the country's historical tradition of relying on the courts to resolve disputes. The reform of mediation was initiated by both the Ministry of Justice and social partners involved in the preparation of the Concept on Mediation Development in Lithuania.²⁷ This important document provided a roadmap for further steps in the development of mediation in all three justices: civil, administrative, and criminal. The legal regulation of mediation introduced in 2008 established a liberal framework for the mediation process, but this has not witnessed growth in mediation. Aware of the inertia created by such legal regulation

19 Law on Mediation <available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/asr>> accessed 6 August 2022.

20 'National List of Mediators' (Teisis 2021) <<https://teis.lt/external/mediator/list?filter=%7B%22page%22:1,%22pageSize%22:100,%22searchSpecialisationChildren%22:true,%22orderBy%22:%22name%22,%22sortingOrder%22:%22asc%22%7D>> accessed 6 August 2022.

21 'Annual Report of Court Mediation Commission' (Court Mediation Commission, 2021) <<https://www.teismai.lt/data/public/uploads/2022/03/tmk-ataskaita-2021.pdf>> accessed 6 August 2022.

22 N Kaminskienė, 'Teisminė mediacija Lietuvoje. Quo vadis?' (2010) 9(1) *Socialinis darbas* 54-63, at 57.

23 For more information on the Lithuanian court-connected model and its specifics, please see Agnė Tvaronavičienė et al, 'Towards more sustainable dispute resolution in courts: empirical study on challenges of the court-connected mediation in Lithuania' (2021) 8(3) *Entrepreneurship and Sustainability Issues* 633-653.

24 'Annual Report of Lithuanian Courts' (National Courts administration, 2021) <<https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/statistika/106>> accessed 6 August 2022.

25 'Annual Report of Court Mediation Commission' (Court Mediation Commission, 2021) <<https://www.teismai.lt/data/public/uploads/2022/03/tmk-ataskaita-2021.pdf>> accessed 6 August 2022.

26 A Tvaronavičienė et al (n 27) 637.

27 The Concept of Development of the Mediation in Lithuania (Minister of Justice, 2015) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1de59bf05d7211e5beff92bd32ec99a1?jfwid=pd6eq2kwp>> accessed 6 August 2022.

and observing the ongoing processes of introducing mandatory mediation schemes in other European countries, Lithuania's law-making bodies decided not only to offer precise regulation over the professional activities of the mediators to encourage a higher quality of mediation services and bring more trust in mediators but also to introduce mandatory mediation in family disputes. These changes influenced Lithuanian mediation legislation away from taking a purely formal regulatory framework approach toward responsible and explicit regulation.

The outcome is that today out-of-court mediation in civil matters is currently supported by the Lithuanian state. In general, it works on a contractual basis. Parties to a dispute may hire a professional mediator and agree with him or her on payment and other important rules of their collaboration. In addition, state-funded mediation services are provided for those citizens who cannot afford to hire a private mediator.²⁸ All mediators who are willing to provide mediation services must be enrolled in the Lithuanian List of Mediators, which is administered by the State Legal Aid Service. Failure to enrol means that they are not allowed to issue documents confirming that mediation has taken place and therefore cannot legally practice as mediators. Mediators are obliged to present documents confirming their qualification development every five years and comply with the rules and principles provided in the Law on Mediation.

Mandatory mediation in family disputes was introduced into the Lithuanian legal system in January 2020 through the Laws on Mediation and on State Guaranteed Legal Aid.²⁹ Free access to mandatory mediation for all citizens and permanent residents of Lithuania in family disputes is provided. Such processes are administered by the State Guaranteed Legal Aid Service. In case disputing parties are willing to choose the mediator themselves, they are allowed to do so, but the services of the mediator selected by the parties are not funded by the state. In comparison with mandatory mediation models in other countries, the Lithuanian model seems to be quite liberal, as it imposes an obligation to initiate mandatory mediation on the future claimant but does not oblige participation in mandatory mediation by the prospective respondent.

According to statistics from 2021,³⁰ there were 6,369 requests for mandatory mediation received. In 2,838 cases, mediators were appointed. Unfortunately, in other cases (more than 50 per cent), the second party to a dispute (the respondent) did not agree to participate in mandatory mediation. A total of 2,900 mediations were completed, and in slightly more than 50 per cent of them, settlements were reached. These numbers demonstrate that far too many cases never reach mediators and follow the formal procedure of a request and rejection of mediation. This raises the question: without direct contact with a professional mediator, how is it possible to explain to the parties the pros and cons of mediation and peaceful dispute resolution? In this instance, we can hardly expect them to be highly motivated to participate in such a process.

In line with the mandatory mediation of family disputes, several other state support incentives for the promotion of mediation are applied. Firstly, parties can save 25 per cent off stamp duty if they have tried mediation before filing the claim to the court.³¹ Secondly,

28 Law on State Guaranteed Legal Aid Service <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.98693/asr>> accessed 6 August 2022.

29 Law on Mediation <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/asr>> accessed 6 August 2022; Law on State Guaranteed Legal Aid Service <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.98693/asr>> accessed 6 August 2022.

30 'Annual report of State Guaranteed Legal Aid Service' (State Guaranteed Legal Aid Service, 2021) <<https://vgtppt.lrv.lt/uploads/vgtppt/documents/files/VEIKLOS%20ATASKAITA%202021.pdf>> accessed 6 August 2022.

31 Code of Civil Procedure Art. 80, part 8 <<https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/asr>> accessed 6 August 2022.

limitation periods are suspended if parties are involved in the mediation process (for the period of conducting mediation).³² Thirdly, as of 2019, courts have the right to depart from the general rules of distributing litigation costs in case of dishonest behaviour of the party during the mediation process.³³

In conclusion, mediation in civil justice in Lithuania is well-structured and explicitly regulated, which is a strong basis for the further development of respected professional mediators. It also sets a clear vision of mediation development both at judicial and non-judicial levels. If the so-called 'liberal model' of mandatory mediation has already shown good results both in numbers and in awareness of mediation in society, there exists a need for further procedural measures to create a more user-friendly and fast-track system and make it easier to access civil mediation procedures. Finally, the issue of adequate public funding for mandatory mediation, particularly mediators' remuneration, remains problematic.

3.1.2 Mediation in Administrative Justice

In administrative disputes, one party always is the state or a municipal body, either of which acts within the limits of its functions and authority. This may leave little or no room for negotiation. Regardless, the practice of administrative courts in Lithuania shows that settlement in certain administrative disputes is possible. In 2013, the Law on Administrative Procedure³⁴ was amended by the rule allowing the parties to an administrative dispute to settle, with some exceptions. Following that course, in 2019, court-connected mediation was introduced in Lithuanian administrative justice under the initiative of the administrative courts. The model of court-connected mediation in administrative disputes is similar to the one used in civil justice. In 2021, only seven mediations took place in the administrative courts.³⁵ Very few disputes were referred to court-connected mediation since the start of this initiative, proving that the path of development of this initiative is slow.

The new version of the Law on Mediation came into force on 1 January 2021.³⁶ It broadened the scope of the law and included mediation in not only civil but also administrative disputes. What is novel about this legislation is out-of-court mediation in administrative disputes. Purely voluntary mediation became an option for a disputant who started a pre-litigation dispute resolution process in the Commission of Administrative Disputes of Lithuania. Members of this Commission can serve as mediators, and mandatory enrolment in the Lithuanian List of Mediators is required. Besides that, other mediators from the list have the possibility of being appointed, granting them per-hour payment from the state budget. Out-of-court mediation in administrative disputes is free of charge for the disputants. In 2021, 11 out-of-court mediation processes took place in the Commission of Administrative Disputes of Lithuania.³⁷

To summarise, in Lithuania, the implementation of mediation in administrative justice is

32 Law on Mediation Art. 18. <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/asr>> accessed 6 August 2022.

33 Code of Civil Procedure Art. 93, part 4 <<https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/asr>> accessed 6 August 2022.

34 Law on Administrative Procedure <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.72290/asr>> accessed 6 August 2022.

35 'Annual Report of Court Mediation Commission' (Court Mediation Commission, 2021) <<https://www.teismai.lt/data/public/uploads/2022/03/tmk-ataskaita-2021.pdf>> accessed 6 August 2022.

36 Law on Mediation <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/asr>> accessed 6 August 2022.

37 'Annual report of the Commission of Administrative Disputes of Lithuania' (The Commission of Administrative Disputes of Lithuania, 2021) <<https://lagk.lrv.lt/veikla/veiklos-ataskaitos/>> accessed 6 August 2022.

in its infancy and is rarely used. There is a clear need to adopt additional support measures, firstly by consistently informing the parties about mediation opportunity, and secondly by encouraging the administrative authorities to legally seek a settlement without fear of being blamed for having secretly colluded with the 'offender', and thirdly by clearly balancing the right to settle with the principle of imperative regulation prevailing in public law.

3.1.3 Mediation in Criminal Justice

Mediation in criminal justice is the least developed branch of mediation in Lithuania. Currently, mediation is applied only in the probation system, which ignores huge opportunities for reconciliation and resocialisation in all stages of the criminal procedure through victim and offender mediation. The possibility of mediation in probation became a reality in 2014 following support from the Norwegian government.³⁸ A well-structured and effective system of services was created with mediators on probation placed in five major cities of Lithuania and employed on the basis of a labour contract.

The number of mediations in probation is inspiring when compared with mediation statistics in other areas of law. In 2021, mediation was conducted in 605 cases (721 cases in 2020; 894 cases in 2019). As a result, in 2021, mediators prepared 413 settlements (391 settlements in 2020; 440 settlements in 2019).³⁹ Unfortunately, the number of mediated cases in the probation system is dropping, as fewer mediators are employed, and the lack of attention towards the development of amicable dispute resolution in this area is obvious. Most issues referred to mediation in probation were connected with compensation of damages and family violence.

The main obstacle to the future of mediation in Lithuania's criminal justice is a lack of clear legal regulation. Thus, the potential of mediation in criminal justice cannot be exploited without essential amendments to the Code of Criminal Procedure legalising the option of mediation in all stages of criminal prosecution procedure, including in pre-trial investigation.

3.2 MEDIATION IN LATVIA

Mediation was popular in Latvia even before the country adopted the Mediation Law in 2014. Enthusiasts organised mediation seminars and invited foreign specialists and mediation activists from national NGOs, among others. Translations of mediation books by foreign authors were issued, as well as the first books authored by Latvian nationals. Governmental and municipal authorities offered free mediation services to certain groups, mostly in family law cases. Mediation in criminal disputes has deeper legal roots in Latvia than mediation in civil and commercial cases, taking into consideration the inclusion of restorative justice ideas in the Latvian Criminal Procedure Code two decades before the Mediation Law was adopted. In line with notions of the restorative justice concept, the settlement process, also called mediation, in criminal cases in Latvia has been available since 2004, when the State Probation Service Law came into effect. For these reasons, the first mediators in Latvia were trained and started their practice in criminal cases, later amplifying their professional skills in sectors of civil and commercial law. State-paid mediation in criminal cases has been available

38 'Implementation of mediation in probation offices (MIPT)' (EEA grants, 2014) <<https://eeagrants.org/archive/2009-2014/projects/LT14-0006>> accessed 6 August 2022.

39 R Petkevičiūtē, 'The Experience of the Application of Mediation in Probation Service and the need of Interinstitutional Cooperation' (4 February 2022) <<https://www.youtube.com/watch?v=TijuEizXvXA&t=12857s>> accessed 6 August 2022.

since 2005 and is organised by the State Probation Service officers and volunteer mediators.⁴⁰ Mediation in administrative cases is the newest of all mediation types, and its development commenced after the possibility of settlement was introduced in administrative procedures.

3.2.1 Mediation in Civil Justice

The Mediation Law regulates mediation in general, as well as the profession and the legal liability of certified mediators. To become a certified mediator, a person must meet certain standards provided in Regulation No. 433. Namely, a person shall be at least 25 years old, with a good reputation and no criminal record, possess a higher education qualification in any field, be fluent in the Latvian language, and have completed at least 100 hours of studies in mediation. Such a person may apply to sit for the examination of certified mediators, which is organised once a year. If the candidate is successful and accepted as a mediator, they receive a certificate valid for five years (Art. 60). Currently, in 2022, there are 50 certified registered mediators in Latvia, although an unknown number of people practice without a certificate. Only certified mediators are supervised by the Council of Certified Mediators and must undergo continuous education and meet all practice requirements.

Mediation in civil disputes in Latvia is informed by several procedural measures. First, the court encourages the litigant in a matter of civil procedure to consider mediation as an option to settle their dispute. It is mandatory for the court to ask the question: 'Has mediation been tried before submission of the claim to the court?'⁴¹ With that, the legislator has left mediation optional but invites the claimant to at least think about mediation as a possible tool to settle the dispute. Another mandatory requisite has been added whereby the respondent must tell the court if they agree to try mediation.⁴² Secondly, there is a possibility for reimbursement of 50% of the state fee for litigation under current budget provisions. This serves as a strong motivator for both parties to mediate. Thus, if the parties conclude an amicable agreement, or if the claim is revoked because a settlement was reached in the mediation process, 50% of the state fee can be recovered, provided the claim is lodged within three years after payment of the fee and in the same court instance.⁴³

The court can suspend litigation proceedings for up to six months if the parties agree to mediation. Confidentiality in civil cases where mediation is agreed upon is protected by the civil procedural rule that no person may be questioned in the capacity of a witness who has participated in mediation in a particular or related case.⁴⁴

In 2016, the Ministry of Justice made financial provisions to promote mediation, fully covering five free mediation sessions for persons in family law disputes where minors are involved and seven free mediation sessions for low-income persons with children. More than half of all certified mediators in Latvia (currently 33) are involved in this state-financed mediation project.⁴⁵ According to the statistics, mediation in family law disputes is the most popular type of mediation in Latvia, mostly thanks to the financial support provided by

40 State Probation Service Law <<https://likumi.lv/ta/en/en/id/82551-state-probation-service-law>> accessed 6 August 2022.

41 Civil Procedure Law Art. 128, part 2, Clause 5-1; Art. 148, part 2, clause 6 <<https://likumi.lv/ta/id/50500-civilprocesa-likums>> accessed 6 August 2022.

42 Ibid Art. 148, part 2, clause 6

43 Ibid Art. 37, part 1, clause 7 and part 2.

44 Ibid Art. 106, clause 5.

45 Certified mediators <<http://sertificetmediatori.lv/mediacijas-pakalpojumi-gimenes-stridurisinasa/>> accessed 6 August 2022.

the Ministry of Justice projects.⁴⁶ In 2021, 346 out of 389 mediated cases were family law cases. Simultaneously with the Ministry of Justice's financial support, in 2020, the CEPEJ was also financing mediation across the entire spectrum of disputes.⁴⁷ Unfortunately, the latest statistics are not available yet.

In summary, both court-connected and out-of-court mediation enjoys strong legal regulation and is widely used in practice in Latvia. Mediation is purely voluntary, although it is encouraged using certain procedural stimulation measures. State financing for mediation services in family disputes is provided only on a project basis so that there is a need for organisations to search for regular funds to maintain access to mediation.

3.2.2 Mediation in Administrative Justice

According to Gatis Litvins, 'Latvia's Mediation Law is an umbrella law for all legal sectors, although as yet this setting has not been fully implemented. This law provides for a general framework for mediation, which also applies to disputes, not only in civil law but also in other areas of law'.⁴⁸ At the same time, neither the Mediation Law nor any other legislation explicitly requires or allows the use of mediation in the administrative process. 'Such an additional legal framework is necessary because private law is based on the principle of the private autonomy of individuals'.⁴⁹ However, in public law, the legislator has wider discretion to lay down rules for mediation, and these must be laid down in regulatory enactments.

In 2012, the Administrative Procedure Law⁵⁰ in Latvia was significantly amended, introducing a new tool in administrative cases – a settlement, which, *inter alia*, can be reached by means of mediation. This was an entirely new concept for settlement in administrative processes. When examining an application about a dispute involving an administrative act, the institution must consider the possibility of entering into a settlement before any decision is taken. If the institution agrees that a settlement is possible, then it must inform the individual of the settlement process and agree on an amicable arrangement so that the person may express their opinion on the possibility of concluding the settlement.⁵¹ Furthermore, in the administrative procedure, if a dispute is reviewed by the court and the presiding judge considers that a settlement may be possible, the court may explain to participants in the proceedings the possibility of entering into a settlement (administrative contract), as well as suggest possible terms of any settlement. A court may offer explanations of the possibility of entering into a settlement in writing and in a court session and may convene a hearing only for the discussion of this matter.⁵² Although the term mediation or cross-references to the Mediation Law is not *expressis verbis* mentioned in the Latvian Administrative Procedure Law, the settlement can be organised and facilitated by mediators.

46 'Statistics on mediation' (Mediaicija LV, 2020) <<http://www.mediaicija.lv/?Resursi:Statistika>> accessed 6 August 2022.

47 'Pieejams sertificēta mediatora-konsultanta atbalsts mediācijai civillietās' (Sertificēti mediatori, 2021) <<http://sertificetimediatori.lv/projekts-mediacija-civillietas/>> accessed 6 August 2022.

48 G Litvins 'Directions and Perspectives of Mediation Development' (2019) <https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/LUJFZK-7-2019/isclul-7_2019_Ties-zin-uzd-noz-nak_23.pdf> accessed 6 August 2022.

49 Ibid.

50 Administrative Procedure Law <<https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law>> accessed 6 August 2022.

51 Administrative Procedure Law Art. 80, part 1 <<https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law>> accessed 6 August 2022.

52 Ibid Art. 107, part 1.

3.2.3 Mediation in Criminal Justice

Historically, the settlement procedure in criminal cases developed in parallel to mediation in civil law cases. As a result of intergovernmental cooperation between Latvia and Norway and training seminars for public servants from the Latvian State Probation Service, the mediation of criminal cases received legal sanction and regulation (and mediators were trained) even before the adoption of the Mediation Law. Although the term 'mediation' is not used in the Criminal Procedure Law,⁵³ the settlement is a process organised by mediation methods and by trained mediators who are mostly public servants employed by the State Probation Service, as well as specially trained settlement volunteer team members approved by the latter.

A mediator acting on behalf of the State Probation Service cannot be questioned about the settlement process, save for the cases when new instances of criminal conduct are discovered. This guarantee of confidentiality is positive in terms of the settlement process in mediation, helping to ensure a safe information environment for the parties in the settlement.

According to the Criminal Procedure Law, criminal proceedings shall be terminated where 'a settlement between a victim and a suspect or accused person has been concluded in criminal proceedings that may be initiated only on the basis of an application of a victim, and the harm inflicted by the criminal offence has been completely eliminated or reimbursed'.⁵⁴ An investigator acting with the consent of a supervising prosecutor, prosecutor, or a court may terminate criminal proceedings, *inter alia*, 'if the person who has committed a criminal violation or a less serious crime has made a settlement with the victim or their representative in cases determined in the Criminal Procedure Law'.⁵⁵ 'The termination of criminal proceedings on the basis of a settlement shall not be permitted if information has been acquired that the settlement was achieved as a result of threats or violence, or by the use of other illegal means'.⁵⁶

Criminal Procedure Law states that 'in the case of a settlement, an intermediary trained by the State Probation Service may facilitate the conciliation of a victim and the person who has a right to a defence'.⁵⁷ Further, it is declared that where settlement is possible and the involvement of an impartial third party seems to be beneficial, 'the person directing the proceedings may inform the State Probation Service of such possibility or usefulness, but if the criminal offence was committed by a minor, then the State Probation Service shall be informed in any case, except when the settlement has already been entered into'.⁵⁸

Parties to a dispute should enter into settlement voluntarily and know the likely consequences. The law requires settlement to be attached to a criminal case. An oral announcement expressed in a court hearing can be made to include the settlement in the minutes. 'A settlement shall be signed by both parties – the victim and the person who has the right to defence – in the presence of the person directing the proceedings or an intermediary trained by the State Probation Service, who shall certify the signatures of the parties. The parties may also submit a notarially certified settlement to the person directing the proceedings'.⁵⁹

53 Criminal Procedure Law <<https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>> accessed 6 August 2022.

54 Ibid Art. 377, clause 9.

55 Ibid 379, Part 1, clause 2.74.

56 Criminal Procedure Law Art. 379, Part 4 <<https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>> accessed 6 August 2022.
Ibid Art. 377, clause 9.

57 Ibid Art. 381, Part 1.

58 Ibid Art. 381, Part 2.

59 Ibid Art. 381, Part 4.

In 2020, most requests to organise mediation were received from the perpetrator (43%) and from the police (44%).⁶⁰ One-fourth of all perpetrators requesting mediation in criminal cases were minors. Unfortunately, the latest data and numbers for mediation processes are not available.

In conclusion, Latvia has developed a functioning mediation model in criminal justice based on the active role of the probation institution. Appropriate legal regulation and a well-structured scheme of mediation service may serve as a good example for the implementation of criminal justice mediation in other countries.

3.3 MEDIATION IN ESTONIA

The development of mediation in Estonia as a field of scholarly research, as well as in practical terms, has been gradual. Despite the wider community's lack of general knowledge of mediation, the endorsement of mediation has largely been left to professionals active in the field. For instance, since 1997, divorcing or separating parents have been able to use voluntary family mediation services. Whether or not it remains a voluntary process is up for debate, as the Estonian Code of Civil Procedure requires the court to take all measures possible to settle the case or a part of a case through compromise or with the help of a mediator.⁶¹

However, due to the lack of sustained government support, mediation has not reached all those in need. The three largest universities in the country – Tallinn University, Tallinn University of Technology, and the University of Tartu – have organised courses, lectures, and seminars in an attempt to increase public awareness and understanding. Despite efforts made by the universities to increase public awareness, opportunities to practice as a professional mediator remain scarce.

3.3.1 Mediation in Civil Justice

Mediation in civil justice in Estonia is regulated under the Conciliation Act. However, the legislation does not establish a legal framework for court-connected mediation, leaving the out-of-court mediation model somewhat general in nature. With regard to the profession and qualification of a mediator, the law recognises the mediator as 'a natural person to whom the parties have entrusted the task',⁶² as well as the sworn advocates and notaries, together with 'a conciliation body of the government or a local authority'.⁶³ No official accreditation procedures are in place, and neither is an all-inclusive list of mediators active in the country, although the Estonian Bar Association holds a special list of attorneys-at-law who provide mediation services.⁶⁴ The legislation leaves open the requirements for mediation training, as well as the coordination of mediation by the government. With this in mind, it is unsurprising that the development of mediation is held back, and this has done nothing to strengthen the state's efforts to engage in the process.

The aforementioned law provided a general framework for the provision of mediation services, which, up until that point, had not existed. However, the various types of

60 'Statistics on mediation' (State Probation Service, 2019) <<https://www.vpd.gov.lv/lv/2019gada-statistikas-raditaji>> accessed 5 August 2022.

61 Code of Civil Procedure (as amended of 1 July 2022) para. 4 (4) <<https://www.riigiteataja.ee/en/eli/513122013001/consolide>> accessed 5 August 2022.

62 Ibid para. 2 (1).

63 Conciliation Act (as amended of 10 January 2010) para. 2 (2-4) <<https://www.riigiteataja.ee/en/eli/ee/530102013028/consolide/current>> accessed 5 August 2022.

64 'Lepitumenetus ja vandeadvokaatidest lepitajad' (Eesti Advokatuur, nd) <<https://advokatuur.ee/est/advokaadid/vandeadvokaatidest-lepitajad>> accessed 5 August 2022.

mediation are not regulated under current legislation. The most common areas of mediation cases in Estonia comprise: family and inheritance, employment and contract law, and commercial law and real estate disputes. Unfortunately, no statistics for the services provided are available. Perhaps the most widespread type of mediation over the years is family mediation, which has been provided by private practitioners since 1997. The leading and, for years, a sole organisation providing family mediation services is the Estonian Association of Mediators (in Estonian: *Eesti Lepitajate Ühing*).⁶⁵ The organisation was established to enhance family mediation services in the country and has received partial support from the government over the years. In addition, supportive cooperation has been in place with local government as well as the courts. In 2018, another family mediation association, the Mediation Institute (in Estonian: *Lepituse Instituut*), emerged on the market.⁶⁶

Besides the private market, Tallinn, Tartu, and other local government units have provided family mediation free of charge for its citizens throughout the years. However, recent studies by the government have shown that service accessibility is greatly fragmented across the country.⁶⁷ The state of fragmentation is illustrated by the reality that not every local government provides, refers, or pays for family mediation services for its citizens, which many find the process prohibitively expensive. In the absence of a coordinating governmental unit for mediation, the overview of the quality and statistics of the service is simply not possible; some service providers, such as the Tallinn Family Centre, assisted less than 100 families in 2019.⁶⁸ Unfortunately, the latest data is unavailable.

Considering all the efforts made by dedicated specialists over the year, it is no surprise that the biggest shifts regarding the development of mediation in the country are taking place in family mediation. It is envisaged that the coordinating governmental organisation for family mediation will be the Estonian Social Insurance Board, where families in need will have the chance to receive free service. The state-funded service is being developed, keeping in mind the congestion of courts regarding child custody disputes. The Parliament of Estonia passed the National Family Mediation Service Act in late 2021, which created the foundation for the service, which is now available nationwide and free for all separated parents. Most importantly, the new regulation guarantees state funding for the service from September 2022.⁶⁹

This overview of civil mediation in Estonia shows that while mediation in civil disputes is present, self-regulation and the private market prevail. Unfortunately, mediation is not perceived as an equal alternative to court procedure and exists only due to the efforts of dedicated enthusiasts. Far more support from the state is expected for civil mediation if alternative dispute resolution becomes a natural part of the legal landscape in Estonia.

65 Estonian Association of Mediators (nd) <<http://lepitus.ee/uhingu-info/>> accessed 5 August 2022.

66 Lepituse Instituut (nd) <<https://lepituseinstituut.ee>> accessed 5 August 2022.

67 E Soodla, LL Raag, *Analüüs ja ettepanekud perelepituse riikliku süsteemi loomiseks* (Ministry of Social Affairs and Ministry of the Interior, 2019); R Uudeküll, *Ekspertanalüüs perelepitusteenusest kuue Euroopa riigi võrdlusel* (Estonian Social Insurance Board, 2020).

68 Ibid 9.

69 'The Riigikogu passed the National Family Mediation Service Act' (Parliament of Estonia, 2022) <<https://www.riigikogu.ee/en/sitting-reviews/the-riigikogu-passed-the-national-family-mediation-service-act/>> accessed 5 August 2022.

3.3.2 Mediation in Administrative Justice

The process of conciliation in administrative justice is established under the Code of Administrative Court Procedure.⁷⁰ However, the regulation only sets forth the model of court-connected conciliation in administrative cases. Here, mediation is presented as one of the forms of conciliation. Introduced in early 2012, the mediation chapter in the act was intended to reduce the burden on administrative courts, yet the legislation reveals few details of the procedure. For instance, conciliation cannot be conducted in court by the judge hearing the case but by an impartial judge who acts as a conciliation judge and conducts the mediation proceedings (para. 137). It is the court's responsibility to explain the exact procedural rules and aims of conciliation as well as the rights of conciliation participants.

The law prohibits written and other types of recordings of the mediation procedure (para. 138 (6)). The fee for mediation is borne by the parties of the dispute (para. 141). Compared to civil conciliation cases, the information on statistics and the practice of administrative conciliation (including mediation) remains unavailable and has not entered the public debate, despite the regulation being in place.

The obstacle to the future of out-of-court mediation in administrative justice in Estonia is the Conciliation Act, which has the sole power to regulate the possibility of mediation in civil proceedings and should therefore be expanded to include administrative justice. Furthermore, more precise rules on court-connected mediation would help judges and the parties to understand conciliation (including mediation as one possible form of it) and choose it more often. Thus far, the new law amendments have not been under public discussion.

3.3.3 Mediation in Criminal Justice

Mediation in criminal justice in Estonia is not regulated by the Conciliation Act but falls under the regulation of the Code of Criminal Procedure⁷¹ as well as the Victim Support Act,⁷² under which the established regulation of procedure on conciliation has been enforced by the Government of the Republic of Estonia.⁷³ According to the legislation, the coordinating organisation of mediation in criminal justice cases, more specifically in second-degree criminal offences, is the Estonian Social Insurance Board. The out-of-court model for mediation in criminal justice has been in place under the governmental organisation since 2007, which now sits under the victim support service. Here, the mediator is chosen from one of the four regional victim support offices⁷⁴ around the country and receives special training organised by the Social Insurance Board.⁷⁵ The mediation process is free and must be completed within two months, resulting in a written agreement delivered to the prosecutor's office along with a descriptive report.⁷⁶ The out-of-court model of mediation in criminal

70 Code of Administrative Court Procedure (as amended of 1 June 2022) <<https://www.riigiteataja.ee/en/eli/ee/527012014001/consolide/current>> accessed 5 August 2022.

71 Code of Criminal Procedure (as amended of 1 January 2022) <<https://www.riigiteataja.ee/en/eli/ee/531052016002/consolide/current>> accessed 5 August 2022.

72 Victim Support Act (as amended of 7 May 2020) <<https://www.riigiteataja.ee/en/eli/ee/513062016001/consolide/current>> accessed 5 August 2022.

73 Lepitustmenetluse läbiviimise kord (as amended of 31 December 2016) para. 4-5 <<https://www.riigiteataja.ee/akt/12854160>> accessed 5 August 2022.

74 'Ohvriabi- ja ennetusteenuste töötajate kontaktandmed' (Estonian Social Insurance Board, nd) <<https://www.sotsiaalkindlustusamet.ee/et/ohvriabi/ohvriabi-ja-ennetusteenuste-tootajate-kontaktandmed>> accessed 5 August 2022.

75 'Ohvriabi- ja lepitusteenus' (Estonian Social Insurance Board, nd) <<https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/ohvriabi-ja-lepitusteenus>> accessed 5 August 2022.

76 Lepitustmenetluse läbiviimise kord (as amended of 31 December 2016) para. 4-5 <<https://www.riigiteataja.ee/akt/12854160>> accessed 5 August 2022.

justice provided by the Social Insurance Board was enforced to enhance the involvement of the victim in the decision-making process and decrease the unease, anger, and other negative feelings resulting from the crime. What makes the victim support mediation different from the other types of mediation is the practice that the best interest of the victim is taken into consideration.⁷⁷ In addition, the Code of Criminal Procedure imposes clear restrictions that the victim and accused must have given consent to mediation. Fortunately, the close cooperation between the police, the prosecutor's office, and the Social Insurance Board has seen an increase in the number of mediation cases in recent years.

In view of this, it is reasonable to assert that mediation in criminal justice in Estonia has found its rightful place and is supported by different stakeholders in the criminal justice system. Hence, the out-of-court model for mediation in criminal justice has grown from a small initiative implemented by the governmental organisation and since become an important player in the mechanism of restorative justice.

4 COMPARISON OF THE DEVELOPED MEDIATION MODELS IN LITHUANIA, LATVIA, AND ESTONIA AND RECOMMENDATIONS FOR THE FUTURE

Despite the territorial proximity of the Baltic States, the presented mediation models reveal a surprising diversity.

The three cases in this research demonstrate that it is possible to establish an institution of mediation either by one 'umbrella' law on mediation (Latvia and Lithuania) or by introducing special legal acts regulating the peculiarities of mediation in a particular type of justice (Estonia). Lithuania has the most scrupulous mediation regulation, whereas Latvia and Estonia enjoy more general, summarised mediation regulations. The switch to a more defined regulation in Lithuania in 2017 had a significant increase in the number of mediated cases. This may suggest the need to introduce more detailed regulation, especially measures ensuring the quality of mediation services.

The experience of the Baltic states shows that without explicit qualification requirements for the mediators, we cannot expect a high level of professionalism. Even so, in the case of Estonia, where the issue of mediators' qualification has until now remained subject to market forces, there is evidence this does not have any positive impact on the development of mediation. Conversely, the experience of Lithuania and Latvia proves that setting up qualification requirements for mediators ensures a pool of highly skilled professionals who are ready to mediate. As long as this question is regulated differently (Latvia – 100 hours, Lithuania – 40 hours with exceptions for the judges), it is evident that further discussion is needed on the amount of mediation training hours required.

Mediation in the Baltic states is being developed, albeit unevenly, in all three directions: civil, administrative, and criminal. The strongest mediation development was noticed for Lithuania in civil mediation, for Latvia in civil and criminal justice, and for Estonia in criminal justice. The weakest mediation development was detected for Lithuania in mediation in criminal justice and for Latvia and Estonia in administrative justice.

All three countries combine the use of out-of-court and court-connected mediation schemes in civil justice. Both Latvian and Lithuanian legal regulation of civil procedure envisages

77 'Ohvriabi- ja lepitusteenus' (Estonian Social Insurance Board, nd) <<https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/ohvriabi-ja-lepitusteenus>. accessed 5 August 2022.

procedural incentives for the disputants who have tried mediation before litigation. Even though such incentives have not yet significantly increased the mediation numbers, they should be recognised as effective and worth applying as a tool to promote mediation.

The findings of this comparative analysis suggest that the Baltic states should vest responsibility for mediation administration and supervision either in state institutions (Lithuania) or in a combination of state institutions and non-governmental organisations (Latvia). In none of the countries was the institution of mediation left completely unregulated or unattended. We hold that it is encouraging when the state is open to sharing its responsibilities of mediation, administration, and supervision with the private sector. Following an example of self-regulation of independent professions (e.g., advocates), the future of mediation administration could be developed in the same direction, i.e., entrusted to mediators with external supervision from the state, but only when absolutely necessary. It is important to stress that removing the 'hand of the state' is possible only when the community of local mediators has matured sufficiently so as to be able to regulate itself.

In terms of mediation in civil disputes, it is apparent that Lithuania enjoys the highest level of state support, whereas, in Estonia, the development of mediation has been left in the hands of private mediators and NGOs. The liberal Lithuanian model of mandatory family mediation (where services are free for all citizens) results in better outcomes – more settlements – in comparison with other countries, where mediation is purely voluntary. The Latvian practice where family mediation services are paid from the temporary project offers accessibility to mediation yet does not guarantee continuity due to inadequate financial support.

Despite the high divergence of administrative disputes, all three Baltic states demonstrate a strong resolve to use mediation, allowing the parties to settle within the administrative procedure. Court-connected mediation is institutionalised only in Lithuania and Estonia. In Latvia, the possibility to mediate in the administrative procedure is based not on precise legal regulation but more on the interpretation of the legal norms allowing settlement. This might create obstacles to the development of out-of-court mediation in administrative justice.

Mediation in criminal justice is well developed in Latvia. Historically, the model of mediation in criminal justice was built even earlier than in civil justice. The necessary legal regulation and active state intervention through the Latvian State Probation Service have led to the creation of a straightforward and transparent mediation system that is easy to use. In fact, Estonia is a positive example of mediation in criminal justice, where out-of-court mediation is based on easily accessible services provided by trained mediators. In our opinion, the most important factor for the development of mediation in criminal justice is proper legal regulation and the clear stipulation of the possibility of mediation in criminal procedure. In both Latvia and Estonia, provisions are embodied in the legal regulation, thereby creating the necessary conditions for the use of mediation and validation of mediated agreements. In Lithuania, mediation services in criminal justice are provided only after a judgement is made and as part of probation services. Even though in Lithuania and Latvia, the same state institution (state probation service) takes care of the mediation application, the Latvian scheme is more effective since the Latvian State Probation Service administers mediation in all phases of criminal procedure. Lithuania would benefit from the same scheme.

With their common historical and cultural background, and relatively short ADR history, the comparison of these countries revealed two common problems – lack of mediation awareness and a paucity of statistics. To overcome the first obstacle, additional state support measures in implementing mediation are strongly recommended. It is also evident that mediation as a private and confidential process is difficult to research. For example, in Estonia, there are no available data on the numbers and outcomes of mediations that have been organised. In Lithuania, data are available only about court-connected mediation processes, mandatory mediation, and mediation in probation – the quantity of private out-of-court mediations is

still unknown. In Latvia, data are available on mediations led by certified mediators, mostly in civil law cases, as well as specialised statistics about mediations in criminal law cases organised by the State Probation Service and its volunteer mediators. Mediation statistics and mediation success rates serve firstly as a basis for further developments and secondly to encourage parties to disputes to choose mediation and have confidence in its success. Thus, it is necessary to gather and analyse the results of the application of mediation in practice.

It is important to state that the comparative analysis of three different mediation stories demonstrates that all three neighbouring countries have some distance to go in finding the best solutions to overcome shortcomings in traditional litigation and encourage a respectable and diplomatic approach to resolving disputes of any kind, especially in cases where there is a high degree of emotion and long-established relationships.⁷⁸

5 CONCLUSIONS

1. The research showed that the implementation of the EU Mediation Directive in three Baltic states has had different outcomes. Initially, in the case of Lithuania, it did not facilitate the broad expansion of mediation; in Latvia, it was sufficient to encourage the adoption of national rules which stimulated the development of mediation; in the case of Estonia, the EU Directive did not encourage the practice of mediation, leaving many important aspects of mediation practice for self-regulation.
2. The research also showed that mediation might be set up either by one 'framework' law on mediation (Latvia and Lithuania) or by introducing special legal acts for each type of justice (Estonia). Lithuania has the most scrupulous mediation regulation, whereas Latvia and Estonia enjoy more general mediation regulation.
3. The Baltic States vest the responsibility of mediation administration and supervision in either state institutions (Lithuania) or the dual system of state institutions and non-governmental organisations (Latvia).
4. Without explicit qualification requirements for the mediators, a high level of professionalism cannot be expected. Even so, in the case of Estonia, where the issue of mediators' qualification has until now remained subject to market forces, there is evidence that this does not have any positive impact on the development of mediation. Conversely, the experience of Lithuania and Latvia proves that setting up such requirements ensures a pool of highly skilled professionals who are ready to mediate and improves the quality of mediation services.
5. Mediation in the Baltic states is being developed, albeit unevenly, in civil, administrative, and criminal justice. The strongest mediation development was noticed for Lithuania in civil and administrative mediation, for Latvia in civil and criminal justice, and for Estonia in criminal justice. The weakest mediation development was detected for Lithuania in mediation in criminal justice and for Latvia and Estonia in administrative justice.
6. All three countries combine the use of out-of-court and court-connected mediation schemes in civil justice, whereas Lithuania and Latvia additionally use procedural mediation incentives for the disputants who have tried mediation before litigation or settled during the court proceedings, which should be recognised as effective and worth applying as a tool to promote mediation.

78 N Kaminskiėnė, A Tvaronavičienė, R Sirgedienė, 'Collaborative law as a tool for more sustainable dispute resolution' (2015) 4(4) *Journal of Security and Sustainability Issues* 633-642, at 641.

7. The comparison revealed two common problems – lack of mediation awareness and a paucity of statistics. To overcome the first obstacle, additional state support measures (legislative, procedural, financial, publicity, etc.) are strongly recommended. To solve the second problem, it is important to ensure systematic and continuous gathering and periodical analysis of data on mediation and its results.

REFERENCES

1. 'Annual Report of Court Mediation Commission' (Court Mediation Commission, 2021) <<https://www.teismai.lt/data/public/uploads/2022/03/tmk-ataskaita-2021.pdf>> accessed 5 August 2022.
2. 'Annual Report of Lithuanian Courts' (National Court Administration, 2021) <<https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/statistika/106>> accessed 5 August 2022.
3. 'Annual report of State Guaranteed Legal Aid Service' (State Guaranteed Legal Aid Service, 2021) <<https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/VEIKLOS%20ATASKAITA%202021.pdf>> accessed 5 August 2022.
4. 'Annual report of the Commission of Administrative Disputes of Lithuania' (Commission of Administrative Disputes of Lithuania, 2021) <<https://lagk.lrv.lt/veikla/veiklos-ataskaitos/>> accessed 5 August 2022.
5. 'European Handbook for Mediation Lawmaking' (European Commission for the Efficiency of Justice, 2019) <<https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>> accessed 5 August 2022.
6. Alexander NM, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009).
7. Alexander NM, Walsh S, Svatos M (eds), *EU Mediation Law Handbook. Regulatory Robustness Ratings for Mediation Regimes* (Wolters Kluwer 2017).
8. Esplugues C, Iglesias JL, Palao G (eds), *Civil and Commercial Mediation in Europe* (Intersentia 2012).
9. Esplugues C (ed), *Civil and Commercial Mediation in Europe*, Vol II (Intersentia 2014).
10. Kaminskienė N, 'Teisminė mediacija Lietuvoje. Quo vadis?' (2010) 9(1) *Socialinis darbas* 54-63.
11. Kaminskienė N, Tvaronavičienė A, Sirgedienė R, 'Collaborative law as a tool for more sustainable dispute resolution' (2015) 4(4) *Journal of Security and Sustainability Issues* 633-642.
12. Kaminskienė N, Tvaronavičienė A, Žalėnienė I, 'Bringing sustainability into dispute resolution processes' (2014) 4(1) *Journal of Security and Sustainability Issues*, 69-77.
13. Miranda A (ed), *Mediation in Europe* (Aracne 2014).
14. De Palo G, 'A Ten-Year-Long "EU Mediation Paradox" When an EU Directive Needs to be More ...Directive' (European Parliament, 2018) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI\(2018\)608847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf)> accessed 25 August 2022.
15. Pesce F, Rone D (eds), *Mediation to Foster European Wide Settlement of Disputes* (Aracne 2016).
16. Schonewille M, Schonewille F (eds), *Variiegated Landscape of Mediation* (Eleven International Publishing 2014).
17. Tvaronavičienė A et al, 'Towards more sustainable dispute resolution in courts: empirical study on challenges of the court-connected mediation in Lithuania' (2021) 8(3) *Entrepreneurship and Sustainability Issues* 633-653.