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CONFIDENTIALITY PRINCIPLE IN MEDIATION AND ITS EXCEPTIONS IN LATVIA

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Abstract. *The article analyses confidentiality principle in mediation and its exceptions in Latvia. Since 2014, when Mediation Law was adopted in Latvia, a number of mediated disputes has significantly increased. Although from the surface a principle of confidentiality seems to be with explicit content and clear borderlines, nevertheless theory and practice shows zones of still undefined concepts, which until now have not been analysed in Latvia. The object of the research is a concept of confidentiality principle. The aim of this work is to analyse scope of subjects of confidentiality principle, and elaborate on preconditions to for exceptions from mediation confidentiality. Methods of scientific and professional literature review, document and comparative analysis, as well as interview method was applied in this research. The topic of the article is discovered both from theoretical and practical aspect.*

Keywords: *mediation, confidentiality principle, exceptions from confidentiality, vertical confidentiality, horizontal confidentiality.*

JEL Classification: *J52, K40, K41*

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Introduction

The principle of confidentiality in mediation and its exceptions are provided in Latvian law, leaving open the question about a borderline, crossing which confidentiality is no more guaranteed. Privacy is one of the special advantages of mediation compared with court proceedings. Accordingly, any restriction on confidentiality reduces the benefits of mediation and the interest in using mediation. If mediation is not confidential, mediation parties have no reason to disclose information at their disposal, as this could be used against them. Only if mediation confidentiality is legally protected, the mediation process has the advantage guaranteed by confidentiality. If confidentiality in mediation is only a declarative phrase without genuine and effective legal protection, and where confidentiality can be infringed for formal reasons, there is no safe environment in mediation to reveal all facts. Therefore this article will analyse substance and expression of the principle of mediation confidentiality in Latvia.[1]

Mediation in a narrower sense is a process of voluntary cooperation in civil and commercial matters as defined in Article 1, part 1 of the Mediation Law, in which the parties seek to reach mutually acceptable agreement through a mediator who does not take a decision binding on the parties, taking into account the principles of confidentiality and neutrality and objectivity of the mediator.

Mediation is, on the other hand, a negotiation process in any area of law in the presence of a neutral and objective third party, who does not take a decision binding on the parties, taking into account the principles of confidentiality and neutrality and objectivity of the mediator. In Latvia, mediation is defined in a wider sense as a negotiation process in the presence of a third neutral party in a number of similar but not equal laws, which provides both different requirements for negotiators – mediators and different protection in terms of the principle of confidentiality vis-à-vis mediators and mediation parties.

Literature Review

Although mediation in Latvia was known in a wider sense of this term prior to the adoption of the Mediation Law in 2014 [20; 5; 13; 15], its popularity in civil matters increased rapidly from the moment when mediation was legitimised in the regulatory enactments – the Mediation Law [16] and the Civil Procedure Law [6].

Statistics on the activity of Latvian certified mediators show that starting from 2016 more than hundred civil law cases annually undergo mediation [22]. Permanently the biggest interest in mediation remains in family law disputes, representing a ratio of 72-80% from all mediation processes. Mediation in 110 family cases was launched in

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2016, 351 in 2017, 334 in 2018 and 197 in 2019. A significant increase in the number of mediation in 2017-2018 was due to the fact that the Ministry of Justice of Latvia, in cooperation with the Council of Certified Mediators, implemented the "Mediation in Family Disputes" programme, funding five free mediation sessions for families with disputes affecting children's interests. When funding was temporarily phased out in 2019, this was immediately reflected in the statistics for mediation. Meanwhile, in criminal cases where mediation is called as the settlement process, the settlement proceedings take place annually in the last six years around 1665 (2019) – 1090 (2015) per year [26].

In such circumstances, where a significant proportion of all disputes per country is addressed through mediation, a need to examine safety of the mediation service, including in terms of confidentiality, increases. So far there are no researches done on mediation confidentiality in Latvia. Separate authors have mentioned confidentiality principle in their publications and monographies in the Latvian language – J. Bolis, Z. Gereiša, etc.

Aims

The purpose of this article is to identify concept of mediation confidentiality in Latvian national law, and to disclose risks related to exceptions of this principle.

Methods

Comparative and analytic method was applied to research definitions of mediation and confidentiality principle in law. Empirical research method was used to examine practical examples of mediation activities and confidentiality principle observation in Latvia.

Results

Mediation in terms of form and content differs from other forms of dispute settlement. In fact, mediation is a negotiating process conducted by a third neutral party which, unlike the court and arbitration proceedings, does not take a decision binding on the parties.

Despite the apparent simplicity of the concept of mediation, in Latvia the concept of mediation in the Latvian language is used in three different terms in laws, although in substance it actually means the same – negotiating process in the presence of a third neutral person who does not accept a decision binding on the parties. Civil and commercial law uses the concept of mediation [mediācija] [16 and 6], criminal law and administrative proceedings use the concept of settlement [izlīguma process] [12, p. 121] [1, p. 80.1], while copyright uses the concept of process of intermediary [vidutāja process] [3, p. X.1]. Due to differences in terms of mediation and due to the content of different laws, not only the designation of the mediation process in each legal area, but also, other aspects, differ. For example, the privacy limits and protection of mediation, which will be analysed in this article below.

Mediation in a narrower sense in Latvia is the process of voluntary cooperation defined in the definition of Article 1(1) of the Mediation Law, in which the parties seek mutually acceptable agreement to resolve their disagreements through a mediator in civil or commercial matters, the scope of the areas being determined by the Mediation Directive. Mediation in Latvia is, on the other hand, a negotiating process in the presence of a neutral third party in any field of law, which does not take a decision binding on the parties.

Understanding mediation in a narrower or wider sense is essential in assessing applicable law to process of mediation, mediator, mediation parties, and their rights and obligations. For example, Article 84, Part 1, Clause 6 of the Civil Procedure Law provides a prohibition for a mediator who has participated in mediation in this or related other case to be a representative in civil proceedings. Or, for example, Article 106(5) of the Civil Procedure Law sets a prohibition to summon and question in a capacity of witnesses a person who has participated in mediation in this or other proceedings. The prohibitions imposed by the Civil Procedure Law shall apply only to mediator or mediation parties who have participated in mediation within the narrower meaning of that term, namely mediation governed by the Mediation Law. The restrictions specified in the provisions referred to in the Civil Procedure Law are not applicable to mediators and mediation parties in the wider sense of that term, namely mediators and mediation parties who have participated in the mediation process, which is governed not by the Mediation Law, but by other regulatory enactments, such as the mediation process in criminal proceedings governed by the Criminal Procedure Law, by using the term "settlement process" or through mediation in copyright proceedings governed by the Copyright Law, using the

term "process of intermediary". Therefore legally there can be a mediator as a party in civil proceedings who led the mediation process in criminal proceedings, because in criminal proceedings the term of the mediation process is a "settlement process", or a mediator who has led the mediation process in copyright dispute, since the term of the copyright mediation process is a "process of intermediary".

Multiplicity of the concept of mediation in Latvian regulatory enactments poses a risk that mediators and participants in the mediation process do not benefit from confidentiality protection, which arises from the nature of mediation, and which is weakened by terminologically unequal regulatory enactments.

Discussion

The use of a third, neutral party in the negotiations, as well as the need for open and fair talks between participants in the mediation process, outlines the importance of confidentiality in the mediation process [8, p. 139]. In any successful mediation, two preconditions must be provided: firstly, the mediator must be trusted by the mediator and, secondly, the parties to the mediation process must be convinced of the mediation confidentiality [8, p. 139]. Confidentiality contributes to openness, procedural honesty and neutrality and objectivity of the mediator [21, p. 583]. Only knowing that the mediation process is confidential have grounds for disclosing all information without fear that it will be used sooner or later against the person who disclosed the information.

Confidentiality is one of five principles of mediation alongside volunteerism, equality between the parties, cooperation between the parties, neutrality and objectivity of the mediator. Confidentiality is the advantage of which, as a result of its existence, this form of dispute settlement, like arbitration proceedings [24, p. 23.1], is more appealing than proceedings before a national court with the principle of openness inherent to it [6]. In choosing the way in which disputes are resolved, mediation may be appropriate either directly or including due to its inherent confidentiality, which guarantees that information disclosed in mediation will not be transmitted to persons who have not participated in the mediation process. The parties, while confident about the privacy guarantee of mediation, may feel safe and open to disclosure as information, it feels. Otherwise, in the absence of confidentiality in mediation, there would be no grounds for disclosing information to either the mediator or the other participants in the mediation process, as this could potentially harm the information provider itself in the future. By promoting mediation as a means of dispute settlement, confidentiality is highlighted as a special advantage which is not possible in multiple categories of proceedings.

Confidentiality is a crucial element of mediation: it encourages participants to speak openly and with candour. The greater the disclosure by the parties of their real concerns, fears, interests, needs and aspirations, the greater the prospect of the mediator being able successfully to facilitate a settlement [23, p. 80-81]. It is important to disclose all information in mediation as openly a possible, including needs, concerns, expectations and feelings. Any caution in the presentation of such information, including, for example, due to fears of privacy breach, may impair the effectiveness of mediation.

A clear and predictable legal framework for mediation confidentiality is one of the signs of a qualitative mediation process at national level. When testing the quality of mediation in a comparative perspective, mediation confidentiality may be assessed in the form of "insider/outsider" and "insider/court", in the first case assessing whether participants in the mediation process (from inside the mediation process) may disclose information to persons who did not participate in mediation (outside) and in the second case, when assessing whether the parties or the mediator (from inside of the mediation process) can disclose information to the court [2, p. 8-9], for example by being summoned and interrogated in the court hearing about information obtained during mediation.

The mediation confidentiality cannot be effectively guaranteed only by a civil agreement between the parties and the mediator. The mediation confidentiality requires legal protection so that neither the mediator nor the participants in the mediation process can be interrogated in court or otherwise forced to disclose the information obtained in mediation. Therefore, the existence of effective law provisions is a prerequisite for safeguarding the confidentiality in mediation. The protection of all types of information is important, preventing the transmission of information to any person who has not participated in the relevant mediation process, regardless of the form and content of the

information disclosed. Equally protected shall be written, verbal, and non-verbal information.

The purpose of mediation confidentiality is to create an environment of absolute certainty for the mediator and participants in mediation, so that they can disclose information during mediation without being exposed to the risk that any of this could come to the disposal of others or have negative consequences.

The mediation confidentiality communication is a prerequisite to assuring participants' overall trust in the mediation process [8, p. 138]. Participants' faith in the system will be fostered through the creation of enforceable confidentiality rights and privileges [8, p. 138]. Confidentiality has always been considered to be an essential feature of alternative dispute settlement (ADR) instruments.

The mediation confidentiality has dual character: it creates rights and obligations. The obligation arising from confidentiality requires to keep confidential and not to disclose any information obtained during mediation and, in the event of a breach of that duty, to compensate caused damages.

The right arising from confidentiality means the right to demand any person to refrain from disclosing information obtained in mediation, the right not to be interrogated about the information obtained in mediation and the right to claim damages from anyone breaching confidentiality. Any breach of confidentiality is very serious and could result in the mediator being sued [11, p. 23]. If a certified mediator has infringed the confidentiality obligation, a participant in the mediation process may submit a complaint to the Board of Certified Mediators for such action.

In Latvia until now there has been one case where a complaint regarding the conduct of a certified mediator has been examined in relation to breach of confidentiality, where the mediator disclosed to the Custody Court more information than the Mediation Law allows [17]. In the particular case the mediator had issued a statement regarding the result of mediation, exceeding content limits specified by Article 1(8) of the Mediation Law. Although in her explanations to the Mediator Certification and Certification Commission, the mediator pointed out that more information was provided with a view to ensuring the protection of the rights and interests of children, which is a permissible derogation from the principle of confidentiality and stems from Article 4, Paragraph 4(1) of the Mediation Law, the Commission found a breach and the Council imposed a sanction on the mediator – explained incorrectness of conduct.

In Latvia mediation is possible in civil, administrative and criminal cases, and it is regulated in a number of regulatory enactments in the relevant field of law – the Mediation Law [16], Copyrights Law [3], Civil Procedure Law [6], Administrative Procedure Law [1] and Criminal Procedure Law [12].

In general, the concept of confidentiality in Latvia is mentioned in 156 laws. On the other hand, the principle of confidentiality, using terms as "confidentiality" and "prohibition to disclose information", is provided for such professions and activities as psychologists [19, p. 12(3), p. 14(5)], sworn advocates, mediators [16, p. 4], arbitrations [24, p. 23(1)], intermediaries in copyright disputes [3, p. 67.9], the field of protection of children's rights [4, p. 71(1)] and official secrets [18, p. 3(1), p. 9(3)].

Mediation Law in Latvia was adopted implementing European Parliament and Council Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters [9]. Clause 16 in preamble of the Directive regarding confidentiality provides that Member States should encourage the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services to ensure the necessary mutual trust with respect to confidentiality. Clause 23 of preamble provides that „confidentiality in the mediation process is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the mediation confidentiality in any subsequent civil and commercial judicial proceedings or arbitration". Article 7, part one of the Directive provides that „mediation is intended to take place in a manner which respects confidentiality" and Member States shall ensure that „unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process".

At the same time two exceptions from me-

diation confidentiality principle are stated in Clauses a) and b), part one of Article 7 of the Directives saying that mediation confidentiality is not applicable, "where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person" and „ where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement". Part two of Article 7 permits to Member States to enact "stricter measures to protect the confidentiality of mediation", despite exceptions.

Latvia, when transposing the provisions of the Mediation Law and the Civil Procedure Law, has introduced the requirements laid down in the Directive in terms of confidentiality, close to the text of the Directive. The first, second and third paragraphs of Article 4 of the Mediation Law transpose the requirement of Article 7, Paragraph one, of the Mediation Directive that:

1) information obtained or related to mediation shall be confidential, unless otherwise agreed by the parties,

2) the mediator shall not disclose the information provided by the other party if the other party has not agreed to it, and that

3) it is prohibited to interrogate mediators and mediation parties as witnesses regarding the facts which have become known to them in mediation.

In terms of the exceptions to confidentiality provided for in the fourth paragraph of Article 4 of the Mediation Law, the Mediation Law almost literally transpose the provisions of Article 7(1)(a) and (b) of the Mediation Directive. However, there are more detailed and possibly wider restrictions on confidentiality in Latvia than the expresis verbis provided in the Mediation Directive, adding the protection of freedom and sexual inviolability as to the protection of public order, the protection of children's interests, the protection of the individual's physical or psychological integrity. The Mediation Directive does not give a Member State the right to impose more restrictions on confidentiality in its national laws. On the contrary, Article 7(2) of the Mediation Directive states that Member States may "introduce more stringent measures to protect the confidentiality of mediation".

The mediation confidentiality is also protected by civil procedural rules by prohibiting the summoning and questioning as a witness the persons who have participated in mediation in a particular or related case [6, p. 106(5)]. The Civil Procedure Law does not prohibit the expresis verbis from questioning as a witness persons who have participated in the settlement process in criminal proceedings or persons who have participated in process of intermediary in copyright dispute. Although Article 106 (1) of the Civil Procedure Law prohibits questioning in a capacity of witness "persons who do not have the right to disclose the information entrusted to them by their post or profession", only some, but not all persons may benefit from this clause, namely, mediators of settlement procedures in administrative or criminal cases, and mediators in a copyright dispute, whose job qualifies as a profession. However there is no civil procedural basis for participants in criminal proceedings to refuse to testify in civil proceedings. Such a breach of confidentiality could probably be prevented by the equalisation of mediation terminology in civil and criminal matters.

Mediation in criminal cases is possible in accordance with the Criminal Procedure Law, where the mediation process is referred to as the settlement process. Criminal proceedings is the legal pioneer in Latvia in terms of mediation, since the settlement process was legitimised in the Criminal Procedure Law from 1 October 2005, when the Criminal Procedure Law entered into force.

The mediation confidentiality in criminal cases is guaranteed only partially because only "a mediator of the State Probation Service has the right not to testify regarding settlement proceedings, as well as regarding behaviour of the parties involved and third parties during the settlement meeting" [12, p. 6]. The parties of mediation in criminal cases do not have this privilege. The criminal proceedings law does not, unlike the Civil Procedure Law, provide for an absolute prohibition to interrogate a mediator, but a right of the mediator to testify voluntarily. The protection of privacy in criminal case mediation is weaker than in civil mediation. In criminal proceedings, it shall be permitted to interrogate any person involved in mediation if it does not comply with the scope of Article 121(6) of the Criminal Procedure Law, including mediator and mediation participants from the field of civil or

administrative proceedings.

Article 381, Paragraph one of the Criminal Procedure Law stipulates that a mediator trained by the State Probation Service is not the only person who can facilitate and implement the mediation or settlement process in criminal matters. This article entitled "Actualization of the settlement" states that settlement "may" be facilitated by a mediator trained by the State Probation Service, while leaving the possibility to perform the functions of mediator to other persons.

However, in the administrative process mediation is possible under the Administrative Procedure Law, using the concept of the amicable process instead of mediation [1, p. 80.1]. The Law on Administrative Procedure does not provide for the amicable process as a mediation process with the participation of a third neutral party, but as the broadest possible settlement process, which may also take the form of negotiations directly between the parties involved. Therefore, the Administrative Procedure Law does not define either the concept of the intermediary or mediator of the settlement process, the principles of settlement, or the rights and obligations arising from confidentiality. If mediation is used in the administrative process as a method for resolving the dispute, it is possible to use the Mediation Law.

In the same way as Article 106(1) of the Civil Procedure Law, Article 163(2) of the Administrative Procedure Law prohibits questioning as a witness "a person who, after his or her position or profession, has no right to disclose the information entrusted to them". However, the protection of this rule in the field of mediation may only be exercised by a mediator in civil matters, a mediator in administrative or criminal proceedings and a mediator in a copyright dispute, where their act in their profession. Participants in mediation or settlement proceedings, however, have no administrative procedural basis to refuse to testify in the administrative proceedings. Such a breach of confidentiality could be eliminated as comparing the terminology of mediation in all areas of the law, and by supplementing Article 163 of the Administrative Procedure Law by adding persons who participated in mediation to the circle of persons released from questioning likewise in the Civil Procedure Law.

Copyright mediation is possible under the Copyright Law, where the mediation process is referred to as the process of intermediary. The Copyright law was supplemented by Chapter X.1 entitled "Intermediaries", transposing Directive 2014/26/EU of the European Parliament and of the Council [10], where Clause 49 of the preamble says that „ it is appropriate to provide, without prejudice to the right of access to a tribunal, for the possibility of easily accessible, efficient and impartial out-of-court procedures, such as mediation". The Copyright Law establishes a system of dispute settlement parallel to the Mediation Law through a neutral third party who does not take a binding decision. The requirements for the mediator and the general principles of mediation are similar but not equal to the requirements of the certified mediator and the principles of the mediation in civil cases. Likewise in mediation in civil cases, in copyright mediation there is a principle of cooperation between the parties and the principle of neutrality of the mediator, but unlike civil mediation, the mediator in copyright cases is allowed to "make his proposals for a fair settlement of the dispute" [3, p. 67.7], however, as in civil and criminal case mediation, without taking a binding decision.

The mediation process in copyright matters is confidential, by imposing an absolute prohibition on questioning a mediator and the parties in mediation [3, p. 67.9]. The prohibition of question mediators and parties under the Copyright law applies to all kinds of judicial proceedings, covering civil, criminal and administrative cases. Thus, the mediators and mediation parties are legally more protected than the mediation parties in criminal and civil matters.

The mediation confidentiality is multidimensional in time, space and in respect to the person. In the time dimension, mediation shall clearly identify its starting and ending time, which is important for establishing the confidentiality limits of mediation. The mediation confidentiality protects information obtained during mediation, but not information obtained before or after mediation. Entering into a written agreement with the mediator can determine the beginning of the mediation period. It is possible to record the end of mediation with a statement from the mediator regarding the result of mediation, but the end may also be a moment when either party refuses to continue mediation. Neither the Criminal Procedure Law nor the Copyright Law provides for a legal instrument by

which the end of mediation could be recorded.

The dimension of the mediation in space is to be determined with a view to identifying which national legal provisions are applicable to the legal framework for the mediation, which is particularly important in cross-border mediation cases.

The confidentiality subjects of mediation are mediators and parties involved in the mediation, or participants in mediation. The parties to mediation shall be parties, persons who wish to resolve their disagreements through mediation, as well as other persons present in mediation who have agreed to participate in mediation.

The special subject of the mediation confidentiality is:

1) in civil matters - a natural person designated freely by the parties who chairs the mediation process [16, p. 1(4)]. Unlike a certified mediator within the meaning of Article 1(5) of the Mediation Law, a mediator within the meaning of Article 1(4) of the Mediation Law has not specified any qualification, age, education or other requirements. Therefore, the only parameter for determining decisively whether a person is a mediator who leads the mediation process and who is subject to the principle of confidentiality, is the existence of a contract with a mediator. A written form is provided for in the contract with the mediator. Accordingly, the conduct of the mediation process without written agreement with the mediator does not provide sufficient grounds for the application of the principle of confidentiality. Whereas a mediator without a certificate, his or her certified mediator acquires rights and obligations arising from the principle of confidentiality only when a contract with the mediator has been concluded;

2) in criminal matters – an intermediary from the State Probation Service;

3) in copyright cases – a mediator – a natural person chosen freely by the parties who leads the mediation process and complies with the requirements specified in the Copyright Law and is included in the list of professional mediators [3, p. 67.3, p. 67.4].

Confidentiality as a principle has three components reflected in the relationship between the parties to mediation and the mediator, mediator and judge, and in the relationship with society or social control [25, p. 299]. The mediation confidentiality works both horizontally (in relations between equal participants in mediation) and vertically (in relations between the parties and the mediator). Confidentiality shall be equally effective in horizontal and in vertical dimension.

The object of confidentiality is information obtained during the mediation. The form of information may be written, oral, as well as that expressed by non-verbal communication, such as gestures, mimics and other body language or expressions such as blush, crying, etc.

The mediation confidentiality is not absolute. The regulatory enactments provides for a number of exceptions from the principle of confidentiality s for a number of exceptions from the principle of confidentiality the principle of confidentiality is not applied in accordance with the Mediation Law if disclosure is required in one of the seven cases:

1) for the provision of public order,

2) the protection of the rights or interests of the child,

3) in order to prevent the risk to the life of a person,

4) in order to prevent the risk to the health of a person,

5) in order to prevent the risk to the freedom of a person,

6) in order to prevent the risk of sexual inviolability as of a person,

7) in order to implement or comply with an agreement reached by mediation.

Although the exceptional cases are normative and the number is preclusive, any exception must be interpreted reasonably. None of the above exceptions has been defined by regulatory enactments with such clear boundaries that their perception would not require adequate interpretation. Exceptions to the mediation confidentiality should derogate from the principle of confidentiality in order to preserve the meaning and characteristics of mediation. Derogations from the mediation confidentiality are intended to defend specially protected values listed in regulatory enactments - public order, children's rights, the life, health, sexual inviolability, freedom and agreement entered into by mediation.

Until now, neither the doctrine nor the regulatory enactments have defined the criteria or conditions under which it would be justified to violate the limits of confidentiality by referring to

the above values. It is not specified at what level or stage the confidentiality should be infringed by reference to these values. A formal reference to the values referred to in the Mediation Law is not yet sufficient ground for infringing the confidentiality of mediation. Data from the survey of Latvian certified mediators show that several certified mediators have encountered cases where employees of Custody Courts request information on the course and content of mediation by telephone, referring to the "protection of the rights or interests of the child", formally the basis set out in the Mediation Law, in order to violate confidentiality. Only the consistent and rigorous defence of certified mediators has allowed confidentiality to be maintained by preventing disclosure.

The mediation confidentiality shall only be infringed in cases where information about infringement of an object protected by law is so substantiated and reliable that there is no doubt as to the possibility of a risk. Unjustified doubts or curiosity about the content of mediation are not yet sufficient to violate the confidentiality of mediation.

Conclusions. In Latvia, there are similar regulatory enactments, but not equally regulated mediation as a voluntary process for negotiating and cooperating with the parties through an objective and neutral third party, which helps to reach a mutually acceptable solution in conditions of confidentiality. In civil and commercial matters, mediation is regulated by the Mediation Law, criminal proceedings - Criminal Procedure Law, calling this process a settlement process, but in copyright cases the Copyright Law, calling this process an intermediary process. The confidentiality subjects of mediation are mediators and parties involved in the mediation. Mediation confidentiality works horizontally (in relations between equal participants in mediation) and vertically (in relations between the parties to mediation and the mediator). Confidentiality is equally effective in both dimensions. The regulatory framework for mediation in civil, criminal and copyright matters provides for a different protection of the confidentiality of mediation, which poses a risk to mediation confidentiality in cross-sectoral situations. The mediation confidentiality is not absolute and may be limited in the cases specified by law, in each situation assessing the necessary balance between the super purpose of the protection of confidentiality as the substance of mediation and the need to defend specially protected values. A formal reference to the values referred to in Mediation Law is not yet sufficient ground for infringing the confidentiality of mediation.

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