



## ACCESS TO PROFESSION OF MEDIATOR IN GEORGIA: GENDER, EDUCATION, AND OTHER DIMENSIONS

*Devadze Ketevan<sup>1</sup>*

<sup>1</sup>*Batumi Shota Rustaveli State University, Batumi, Georgia, Keti.devadze@bsu.edu.ge,  
ORCID: 0000-0001-5967-0816*

**Abstract.** *In this article, we discuss the profession of the mediator; what kind of requirements or restrictions are prescribed for professional mediators in different countries, how different characteristics of a mediator can affect the mediation process or the outcome of the mediation. The article provides review and the comparative analysis of eligibility criteria for access to the profession of mediator set by the law in Georgia and other countries with further survey of Georgian mediators' gender and education based on the official data of Unified Register of Mediators in Georgia. The analysis of the data that includes 54 mediators shows that 57,4% of mediators are female and that most mediators have a degree in law (88.8%). Other fields of education are Psychology (7,4%), Economics(1.8%), and Public relations (1.8%).*

**Keywords:** *Mediation Law, Sociology of Mediation, Personality of Mediator, Qualification Requirements for Mediators, Georgian Association of Mediators.*

**JEL Classification:** *J52; L84*

*Formulas: 0; fig.: 0; tabl.: 0; bibl.: 14.*

### Introduction

The Hague Conference on Private International Law defines mediation “as a voluntary, structured process whereby a ‘mediator’ facilitates communication between the parties to a conflict, enabling them to take responsibility for finding a solution to their conflict” [4]. Mediation is becoming a more and more popular method for resolving conflicts in a variety of contexts and the profession of mediator is developing and defining its meaning.

The mediator is a third party in a mediation – an impartial independent person who guides the parties through the mediation without any decision-making power [3, p. 1577]. In a new law of Georgia on Mediation (2019) the mediator is defined as “a natural person registered with the Unified Register of Mediators in Georgia who meets the requirements of this Law and agrees to conduct mediation, regardless of his/her status and selection/appointment procedure” [1]. The new law has led the country to set criteria for the accreditation of mediators and to establish the Unified Register of Mediators.

European Commission for the Efficiency of Justice published the handbook for mediation lawmaking in June 2019 and underlines the importance of the existence of Unified register lists of Mediators and foreseeing it in the national law that for practicing mediation should be necessary that a person is on the unified list. It will maintain adequate safeguards capable of unqualified people from conducting mediation. The reputation of the

profession of mediator and mediation itself can be damaged by the incompetent mediators in the eyes of society. It may also lead to the reduction of the rates of recourse to mediation.

There are many issues within mediation that warrant attention as the literature in this sphere has grown significantly in the last decades.

After the process of transforming the mediator into a separate profession began, the discussion had arisen of how to regulate the activity of mediators and whether it should be regulated in any way.

The mediation process is influenced by many factors and one of them is the role of the mediator. Mediator’s behavior itself is influenced by many factors, including the age, gender, personality, professional skills, experience, educational background, education in the field of mediation, their beliefs, etc. [10]

### Literature Review

Some of the significant works in this area are monographs by V. Fisher [6], L. Marlow [11], where the advantages of a lawyer and a psychologist are studied on the example of foreign mediation: a role of a mediator, as well as a set of competencies that a professional mediator must possess.

Although the mediator does not make decisions for the parties and he/she only helps the parties to reach an agreement, the mediator can indirectly "influence" the content of the final decision of the parties involved.

Stuhlmacher and Morrissett studied the link



of the gender of the mediator to the perception of mediation and stated some interesting differences in behaviors or communication styles of men or women that may have an influence on the mediation process. But in the summary of the analysis authors underline the importance of power differences between two genders that becomes more salient than gender itself. Power issues are particularly important in disputing peers, such as husband and wife, employee-supervisor and etc. have often had unequal levels of power [13].

The issue of registration and certification of mediators arose. As well as the different standards to which this profession should be formulated.

### **Aims**

The article is aimed to compare eligibility criteria for access to profession of mediator set by the law in Georgia and other countries., discussing relation between a personality of mediator and his or her ability to organize proper and successful mediation process.

The purpose of the study is to analyze two indicators: gender and educational background of the mediators registered in the Unified Register list of Mediators in Georgia and to find out how different characteristics of a mediator can affect the mediation process or the outcome of the mediation.

### **Methods**

To study the main indicators, we used data from the Georgian Association of Mediators, using doctrinal method analyzing eligibility criteria for access to the profession. We used the quantitative analysis method to determine the gender balance in the list and the diversity of university educational background of the registered mediators.

Eligibility criteria for access to the profession of mediator in Georgia and other countries are studied on the base of doctrinal and comparative legal methodology.

Statistical analysis of gender and field of university education indicators in the Unified Register of Mediators records is conducted to clarify relation between personal background of Georgian mediators, eligibility criteria envisaged by the law, and professional skills necessary to maintain the mediation process.

### **Results and Discussion**

In 2019, a law on mediation was enacted in Georgia, based on which a Unified Register list of Mediators in Georgia [2] was created and a me-

diator certification program was approved. Until now, there were many ways in Georgia to adjust the mediator profession and conduct the mediation process.

The Law of Georgia on Mediation [1] defines the term "mediator", in particular, a mediator is only a person who is registered in the Unified Register of Mediators of the Georgian Association of Mediators and therefore meets the requirements of the law.

In 2019 Georgia signed the Singapore Convention on Mediation, which is the United Nations Convention recognizing the mediated settlements.

The law distinguishes between two types of mediation:

“Judicial mediation – the mediation that is initiated after a claim has been filed with the court, in accordance with the procedure established by the Civil Procedure Code of Georgia, if the court refers the case to a mediator;

Private mediation – the mediation that is initiated by the parties on the basis of a mediation agreement, without referring the case to a mediator by the court.”

In both cases, the mediation must be conducted by a mediator registered in the Unified Register of Mediators, which confirms the high standard set by the state for the professional competence of the mediator. Which is realized in the form of a unified register of mediators.

“A legally competent natural person with no criminal record, who has completed a mediation training/training for mediators in accordance with a certification programme for mediators and who holds a certificate issued by the Mediators Association of Georgia may be registered with the Unified Register of Mediators in Georgia”[1].

Different countries have different requirements for people who wants to enter the profession of a mediator.

As mediator has to deal with very sensitive cases, moral standards of impartiality and neutrality are very high. That’s why next to the list of different requirements for mediation we see some standards for the mediator’s reputation as well.

There are many countries, where only a person with no criminal record may become a mediator. For instance, in Lithuania a person with a history of crime related to corruption cannot practice mediation. In Slovenia practicing mediation is



forbidden for people who have convicted for intentional crime or offense. A person whose sentence raises ‘doubts as to the reliability of practice of mediator’ is not allowed to be a mediator in Austria. Belgium requires a record clear from disciplinary and administrative sanctions together with criminal records for potential mediators.

Mediation is a complex field. The stereotypical view that only a lawyer can be a mediator cannot be considered as a truth. In 2002 Jacqueline M. Nolan-Haley in his work stated that lawyers had a monopoly in mediation: “Mediation is a big business today that is practiced by lawyers and non-lawyers and is closely related to the business of law. Lawyers have a long-standing monopoly on the law business and do not look favorably on sharing their power with nonlawyers.” In his article Nolan-Haley has argued that for bringing us closer to the needs and interests of the parties involved in the mediation process, the systemic change is necessary, including collaboration and power-sharing among professionals in multiple disciplines to reform the legal practice from a problem-solving perspective instead of upholding professional monopoly of lawyers [12].

Process of mediation was developed and became usual in legal practice. This is the reason why the people interested in the profession of mediator are mainly lawyers - they were trained and practiced the mediation. Accordingly, the stereotype that mediation is part of the legal profession exists in Georgia till now.

Personal qualities and skills needed to perform the function of a mediator may be found in a representative of any profession. Every adult of legal age can become a mediator. However, in the example of many countries, we see that they settle some age qualifications for their citizens. For example, in Austria only a person not younger than 28 can become a mediator, in Poland a person must

be at least 26 to enter the list of qualified mediators (European Handbook for Mediation Lawmaking, 2019). In Florida, the required age is 21 and a person should be of good moral character.

We see the requirements of university degrees for starting the career as a mediator in some countries as well. For example, Azerbaijan, Cyprus, Lithuania, Serbia, Slovenia and Spain require a University degree for potential mediators. In the Czech Republic, a Master’s degree is required. Turkey’s requirements are more concrete and only a person with law degree can become a mediator.

Among the practicing mediators of the practitioner we most often meet the representatives of the following two professions, professionals in the fields of Jurisprudence and Psychology. Other fields of university education in social sciences are also represented.

U.S. domestic law defines different requirements for potential Mediators: Few states require a bachelor’s degree in a specific field for family court mediators. There is required a law degree for court-approved mediators in some states as well [5].

In Delaware Requirements of mediators’ qualifications vary by court. In the Court of Common Pleas, the requirement is a bachelor’s degree in social services or a related field is required together with a 28-hour mediation training.

For civil court cases in Michigan mediator must have a Juris Doctor degree or a bachelor’s degree in conflict resolution, for domestic relations cases, a mediator is required five years’ experience in family counseling or university degrees from one of the following fields: law, social work, psychology, counseling, marriage and family therapy, or behavioral sciences.

For custody mediators the Pennsylvania Supreme Court requires University degree and practical experience in law, psychology, family therapy,

**Table 1**

**Gender and higher education fields of Georgian mediators according to the Unified Register of Mediators in 2021**

Number of registered mediators	Gender			
	54	Female: 31		Male: 23
Field of university education				
Law: 48		Psychology: 4	Economics: 1	Public Relations: 1



counseling, psychiatry, or other fields of behavioral or social science [5].

Based on the Law on Mediation, the Mediators Association of Georgia was established, which is a membership-based legal entity under public law established by the Law of Georgia on Mediation and is the only association that self-regulates mediators. to ensure professional self-regulation of mediators.

The Law of Georgia on Mediation defines the term “mediator”, in particular, a mediator is a person who is registered in the Unified Register of Mediators of the Mediators Association of Georgia and therefore meets the requirements of the law.

At the moment, Georgian Association of Mediators unites 54 active mediators in the Unify register. There are no university background or age requirements for potential mediators in Georgia, any legally competent natural person can become a mediator, who has no criminal records and has completed an accredited training course in mediation.

The analysis of mediator registration list data includes the study of data based on two characteristics, namely gender distribution and the field of mediator university education.

Gender balance is maintained between mediators, with 31 of the 54 members being female and 23 male.

All members of the professional association listed in the public register have a higher university education, Bachelor’s, Master’s or Ph.D. degrees, and the distribution of the field of education is as follows: 88.8% of members of the professional association listed in the public register mediators have a law degree. Other fields of education obtained by the mediators are Psychology (7.4%), Economics (1.8%) and Public relations (1.8%).

The presence of lawyers as the majority in

the mediators’ list may strengthen the stereotypical view in our society that only a lawyer can be a mediator.

### Conclusions

In 2019, a law on mediation was enacted in Georgia, based on which a Unified Register of Mediators in Georgia was created and a mediator certification program was approved. Until now, there were many ways in Georgia to adjust the mediator profession and conduct the mediation process. During this period, mediation at all stages was mainly developed within the judiciary.

Because of that, lawyers today are dominant in the field of professional mediation.

The article reviews the steps taken by the mediator profession before creating a unified register. There is a comparative analysis provided of eligibility criteria for access to profession of mediator set by the law in Georgia and other countries.

Our research is based on a survey of mediators currently registered in Georgia, who they are, what education they received, and what activities they did before starting a mediator career. Our study has shown that vast majority of registered mediators have a law degree Some of registered mediators have a degree in Psychology, Economics, and Public Relations. It should be noted that gender distribution among Georgian mediators is balanced.

To deal with the overcrowding of the mediation profession in Georgia by lawyers, we suggest Georgian Association of Mediators to promote the profession of mediator among students and alumni with the different educational backgrounds.

### Acknowledgements

This publication is prepared as part of the implementation of Grant Project «Mediation: Training and Society Transformation» of the EU Program ERASMUS + KA2: CBHE.

### References:

1. *Law of Georgia on Mediation, N4954- Is, (2019).*
2. *Unified Register of Mediators’ URL: <https://mediators.ge/en/mediators/all/worldwide/all/all/0/1/>*
3. *The Federal Republic of Germany, Mediation Act. Bundesgesetzblatt I, p. 1577, Sec. 1 (2). 2012.*
4. *The Hague Conference on Private International Law, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (2012)*
5. *Court-Certified Mediator Qualification Requirements in the USA, URL: <https://legalstudiesms.com/learning/court-certified-mediator-qualification-requirements/>*
6. *Fisher, R. J., & Keashly, L. (1991). The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Intervention. Journal of Peace Research, 28(1), 29–42.*
7. *Stuhlmacher. A., Morrissett. M. (2008). Men and women as mediators: Disputant perceptions. International Journal of Conflict Management. 19. 249-261.10.1108/10444060810875804.*



8. Tokarz, K., (2020). *Pioneering Women Lawyers Who Changed the Legal Profession and Influenced the Practice of Law, Including Mediation Practice: From Barkeloo and Couzins to the Present*, *Washington University Journal of Law & Policy*, 62, 15-23.
9. Marlow, L., Saube, S.R., (2013). *The Handbook of Divorce Mediation*
10. Nolan-Haley, J. (2002). *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective*. *Harvard Negotiation Law Review*, 235(7), 235-99.
11. Jones, G., Pexton P., (2015). *ADR and Trusts: An International Guide to Arbitration and Mediation of Trust Disputes*, *Spiramus Press Ltd Kandashvili, I., (2018). Mediation and Online Dispute Resolution (ODR)*
12. *Mediation as an Innovative Form of Dispute Resolution*. *TSU Journal of Law*.
13. Korybski, A., (2018). *Legal Status of Mediator in Mediation Proceedings in Civil Cases*. *Studia Iuridica Lublinensia*, 143-162
14. Leonard L. Riskin, Richard C. Reuben, Jennifer K. Robbennolt, Nancy A. Wels, Art Hinshaw & Alyson Carrell (2019). *Dispute Resolution and Lawyers*, P. 361