

Rozdział 5b

The system of evaluation of mediators' qualifications in Lithuania: model and application experience

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I. Introduction

Some of the most important factors in successful mediation are the mediator's knowledge, skills and personal qualities, which provide the dispute parties with the support they need to communicate with each other and to reach an agreement. Naturally, the dispute parties only need the help of a mediator when their communication becomes difficult or even impossible. However, no matter how much the state supports, promotes and disseminates mediation as an effective mean of reaching a peaceful settlement, ultimately, the competence of the mediator becomes the measure of the quality and value of this service in the eyes of the dispute parties and society. Only by providing real-life assistance and helping the dispute parties to satisfy both of their interests will gain the support of the public and the mediators – the confidence, which is necessary for the development of this institute.

Although there were preconditions for the formation of the mediator's profession in Lithuania before, in reality this activity only acquired the status of a profession only on January 1st, 2019, after the new version of the Law on Mediation came into force¹. This legal act established a new model of mediation in civil disputes created on the initiative of the Ministry of Justice of the Republic of Lithuania, which is responsible for

¹ Law on Mediation (2017). TAR, 2017-12053. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/iUegWIIpmP> (28 July 2021).

implementing the justice policy in the country. This model is based on the principle of qualified practice of mediators, since for the first time specific qualification requirements for persons seeking to provide mediation services have been established at the legislation level. In Article 2 (3) of this law, it was also established that the service of a mediator, except for judicial mediation conducted by judges, is a professional service and Article 4 (1) strictly states that mediation services may only be provided by a mediator who is enrolled into the List of Mediators of the Republic of Lithuania (with the exception of temporary provision of mediation services in Lithuania by individuals who are permitted to provide mediation services in accordance with the legal acts of the European Union or the European Economic Area members states). Thus, in out-of-court mediation, Lithuania moved from a market model to a list model simultaneously shifting the responsibility of the mediators' qualifications from the mediation clients to the state.

The Lithuanian experience indicates that mediation was introduced more widely in the country after the legislator specified the legal regulation of mediation, set clear qualification requirements for mediators and established the mandatory application of mediation in family disputes. Undoubtedly, with qualification requirements for mediators set from January 1st of 2019 and compulsory mediation in family disputes applied from January 1st 2020, mediation as a practice started to attract the interest of a large circle of people who began to actively study mediation and seek the mediator status. Also, the Mediators list model has helped to strengthen public confidence in mediators, as the dispute parties can choose mediators from the list and be sure that they all meet at least the minimum qualification requirements, which raises a reasonable expectation that a good quality service will be provided.

This article presents the model of qualification evaluation of mediators chosen by Lithuania and reviews the experience of formatting the List of Mediators of the Republic of Lithuania and its structure. The main focus is on the organization and execution of the mediator qualification exam, as well as the presentation of empirical research data, such as the analysis of the results of the examinations held in the years of 2019, 2020 and the first half of 2021. The authors of the article conducted a quantitative study, during which they collected, systematized and analyzed statistical data on the individuals who took the exam and the evaluation of their achieved results. Using their expert knowledge and experience², the authors summarized the most common mistakes of those who took the exam and the shortcomings of those who did not pass the oral part. The article is intended to acquaint foreign mediation experts with Lithuania's experience in forming

² Prof. dr. Agnė Tvaronavičienė is the Chairperson of the Commission of the Mediators' Qualification Exam. Prof. dr. Rokas Uscila was a member of the Commission of the Mediators' Qualification Exam in 2019-2021.

a pool of professional mediators, to encourage them to improve the legal regulation in their own countries on the basis of practice that proved to be successful and to avoid mistakes that have been made in Lithuania.

II. Development of the mediator's profession in Lithuania

In Lithuania, the profession of a mediator began to form slowly. First of all, after getting acquainted with the advanced practice of foreign countries, Lithuanian law, psychology and communication scholars began to take an interest in this alternative to the court and to promote it in their research works³. They were followed by practitioners, who started offering this service to the public. However, such initiatives have been based only on foreign experience and the perception that peaceful dispute resolution is more sustainable. Unfortunately, the society was not ready to change its approach to dispute resolution yet – it was accustomed to resolving legal disputes in courts. Due to the advanced changes in the legal regulation of civil proceedings that were taking place⁴, it was still getting used to other innovations in court dispute resolution.

The first, real precondition for the formation of the profession of a mediator in Lithuania was initiated by the Council of Judges. In 2005 a pilot judicial mediation project⁵ was launched in one of the Lithuanian district courts. In 2014, it expanded nationwide and judicial mediation became available in all Lithuanian courts. Although in numerical terms there are relatively few judicial mediation proceedings in Lithuania from the very beginning of their application until now, the list of court mediators filled up quickly⁶.

³ For example, Ilona Michailovič (2000). Nepilnamečio kaltininko ir nukentėjusiojo mediacijos galimybės Lietuvoje. *Teisė*, 35:69-79. Accessible online: <http://etalpykla.lituanistikadb.lt/fedora/objects/LT-LDB-0001:J.04~2000~1367185453063/datastreams/DS.002.0.01.ARTIC/content> (28 July 2021); Rolandas Taraškevičius (2002). Could mediation as one of the most important ADR forms exist under today's law in Lithuania? *International Journal of Baltic Law*, 1:144-161; Daiva Petrylaitė (2003). Tarpininkavimas sprendžiant kolektyvinius darbo ginčus. *Jurisprudencija*, 40(32):33-40. Accessible online: <https://ojs.mruni.eu/ojs/jurisprudence/article/view/3440/3235> (28 July 2021); Jolanta Sondaitė (2004). Mediacijos stilių lyginamoji analizė. *Socialinis darbas*, 3(2): 114-118. Accessible online: <https://ojs.mruni.eu/ojs/social-work/article/view/2172/1973>; Natalija Kaminskienė (2005). Civilinių ir komercinių ginčų alternatyvus sprendimas. *Jurisprudencija*, 69(61):74-80. Accessible online: <https://ojs.mruni.eu/ojs/jurisprudence/article/view/3050/2851> (28 July 2021).

⁴ On the 1st of January, 2003, the new Code of Civil Procedures of the Republic of Lithuania came into force (*Valstybės žinios*, 2002-04-06, 36-1340. Pasiekiama internete: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.162435/asr>, 28 July 2021). This legal act differed from the previous one, because, for example, it enabled a more active role of judges in the process, for the first time in Lithuania it established the institute of judicial conciliation, which created preconditions for the later application of judicial mediation.

⁵ To read more about it see: Natalija Kaminskienė (2010). Teisminė mediacija Lietuvoje. Quo vadis? *Socialinis darbas*, 9(1): 54-63. Accessible online: <https://www.arbitrazoteismas.lt/wp-content/uploads/2014/08/6-Teismin-mediacija-Lietuvoje.-Quo-vadis.pdf> (28 July 2021).

⁶ At the end of 2018 (the last year before the enforcement of the new version of the Law on Mediation, which set qualification requirements and outlined the process of filling the List of Mediators of the Republic of

The opportunity to actually test oneself in judicial mediation encouraged mediation enthusiasts to look for opportunities to learn about mediation, which created a demand for mediation training. In order to become a court mediator, low qualification requirements were applied. Article 6⁷ of the Description of the Procedure for Granting and Revoking the Status of a Court Mediator approved by the Council of Judges established that a court mediator must meet the following requirements: be of impeccable reputation; have a university degree; have completed at least 32 academic hours of training in mediation and have the personal and subject qualities required of a mediator, which have been tested during a motivational interview with a special commission. Unfortunately, the expectation of becoming a court mediator to gain the opportunity to actually apply one's knowledge and skills in mediation has come true for only a small number of individuals on the list of mediators. First, there still are not that many judicial mediation proceedings to this date⁸. Second, in the vast majority of cases, mediator-judges were appointed to mediate in court disputes. For example, in 2020 only 52 of the 516 cases were mediated by mediators who were not judges. These were mainly lawyers, assistant lawyers, assistant judges, psychologists and other specialists. In the remaining cases, mediation was carried out by mediator-judges. An identical situation was observed in previous time periods.

On 15th of July, 2008, while implementing the European Union Mediation Directive⁹, the Law on Conciliatory Mediation of Civil Disputes was adopted in Lithuania¹⁰. This legislation established the legal basis for the application of out-of-court mediation in civil disputes, but did not set any qualification requirements for mediators. In regards to

Lithuania) 469 people had the mediator status (83 of them were judges): 110 men and 359 women (National Courts Administration (2019). Activity report of the Judicial Mediation Commission for 2018. Accessible online: <https://www.teismai.lt/data/public/uploads/2019/04/teismines-mediacijos-komisijos-2018-m-veiklos-ataskaita.pdf>, 28 July 2021).

⁷ The Judicial Council ruling (26 September 2014) Nr. 13P-124-(7.1.2) "In regard to granting and revoking the status of a court mediator and the approval of the description of the process". TAR, 13705. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/003704404d9c11e4b528d60fe2983631?jfwid=-vfapyls2> (28 July 2021).

⁸ In 2012, judicial mediation was applied in 17 cases, in 2013 – in 37, in 2014 – in 53 (National Courts Administration (2015). The Summary of Judicial Mediation Processes in 2014. Accessible online: <https://www.teismai.lt/data/public/uploads/2015/03/scan.pdf> (28 July 2021)), in 2015 – in 123, in 2016 – in 313, in 2017 – in 540, in 2018 – in 483 (National Courts Administration (2019). Activity report of the Judicial Mediation Commission for 2018. Accessible online: <https://www.teismai.lt/data/public/uploads/2019/04/teismines-mediacijos-komisijos-2018-m-veiklos-ataskaita.pdf> (28 July 2021)), in 2019 – in 533, in 2020 – in 516 cases (National Courts Administration (2021). Activity report of the Judicial Mediation Commission for 2020. Accessible online: https://www.teismai.lt/data/public/uploads/2021/03/tmk-ataskaita_2020.pdf (28 July 2021)). For comparison, in Lithuania, in the courts of general jurisdiction, 151,181 civil cases were heard in the first instance in 2020 (National Courts Administration (2021). Performance Results of Lithuanian Courts in 2020. Accessible online: <https://www.teismai.lt/data/public/uploads/2021/03/teismai2021-g.pdf>, 28 July 2021).

⁹ 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. OJ L 136, 24. 5. 2008.

¹⁰ Law on Conciliatory Mediation in Civil Disputes (2008). Valstybės žinios, 87-3462. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294?jfwid=-robscjuv5> (28 July 2021).

the requirements applicable to mediators, only a few provisions related to the impartiality of the mediator could be found in this law, but nothing about their qualifications. For example, Article 4 (4) of the act stated that “The mediator must act impartially in regards to the dispute parties. The mediator may accept a proposal to open mediation or to continue mediation only if they have informed the dispute parties of the circumstances known to them which may raise doubts about their impartiality and if the dispute parties have agreed for the mediation to be carried out by the specific mediator”. Article 4 (5) stated that “The mediator shall provide the dispute parties with information on their education and experience”. Accordingly, Article 4 (6) marks that “The mediator cannot be an arbitrator or a judge in the cases where they had carried out or are carrying out conciliation except when the dispute parties have agreed in writing to appoint the mediator as an arbitrator with their consent. In addition to that, the mediator can not be a lawyer or other representative of any of the dispute parties in the same dispute in which they have conducted or are conducting mediation”¹¹. Thus, the only requirement in that version was impartiality of the mediator but not their own qualifications.

It can be stated that the fact that no qualification requirements were set for mediators and that the market for the provision of mediation services was not regulated in any other way, public awareness and demand for mediation remained minimal, so the adoption of the Law on Conciliatory mediation of Civil Disputes did not promote mediation significantly. However, it cannot be denied that the initiative of mediation experts has only grown. Regular research on this topic was being conducted, national and international projects were carried out, conferences and seminars were organised.

Supported by the country's higher education institutions and non-governmental organisations, entities, formulating and implementing the public policy in the field of justice, saw the slow development of mediation and continued to look for ways to promote the use of mediation. On the 17th of September, 2015, the Minister of Justice approved the Conception for the Development of the Conciliatory mediation (Mediation) System (hereinafter – the Conception)¹², which focused on the assessment of the qualifications of mediators. Para. 56 of the Conception outlines the need to establish additional requirements for the provision of mediation services. Para. 57 proposes to consider that mediation services, which would be provided in projects organised by the state or funded by the state, could only be carried out by the individuals who are included in the list of

¹¹ Law on Conciliatory Mediation in Civil Disputes (2008). Valstybės žinios, 87-3462. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294?jfwid=-robscjvu5> (28 July 2021).

¹² The order of the Minister of Justice of the Republic of Lithuania No. 1R-268 (17 September 2015) “In regard to the Confirmation of the Concept of the Development of the Mediation System”. TAR, 13939. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1de59bf05d7211e5beff92bd32ec99a1?jfwid=-fxdp6ur6> (28 July 2021).

mediators. Para. 58 provided a proposed list of qualification requirements for mediators¹³. The proposals set out in the Conception with minimal corrections were transferred to the new version of the Law on Conciliatory Mediation of Civil Disputes, which was adopted in 2017. The new version also changed the title of the law to “Law on Mediation”¹⁴. This legal act established a new model of ensuring the qualification of mediators, which had not been applied in Lithuania until then. It will be presented in other parts of this article.

III. The Lithuanian model of mediator qualification assessment

1. Mediators’ qualification requirements in Lithuania

In 2017, following the adoption of the new version of the Law on Mediation¹⁵, its entry into force was scheduled for January 1st of 2019 (provisions on compulsory mediation – from January 1st, 2020). During the period of preparation for the entry into force of the new version, by-laws detailing the law were drafted.

Article 6 (1) of the Law on Mediation established qualification requirements for individuals seeking to be included in the List of Mediators of the Republic of Lithuania. The following requirements were set: higher university education; at least 40 academic hours of training on the topic of mediation no earlier than five years before the day of applying to be included in the List of Mediators of the Republic of Lithuania, passing the Mediators’ Qualification Exam and impeccable reputation. Part 4 of the same article provides some exceptions. First of all, special conditions are created for judges wishing to become mediators. They are not subject to any training or examination requirements. Judges with three years of experience as judges and at least 16 academic hours of introductory mediation training may be included in the List of Mediators of the Republic of Lithuania. The same benefit applies to those who have a doctorate degree in social sciences and have taught mediation for a total of at least 100 academic hours in the last three years. The requirement to pass a qualifying exam does not apply to lawyers, bailiffs and notaries who have three years of work experience as lawyers, bailiffs or notaries respectively.

In addition, Article 8 of the Law on Mediation outlined the procedure for developing the qualification of mediators. All mediators entered into the List of Mediators of the Republic of Lithuania have a duty to improve their qualifications and every five years

¹³ The order of the Minister of Justice of the Republic of Lithuania No. 1R-268 (17 September 2015) “In regard to the Confirmation of the Concept of the Development of the Mediation System”. TAR, 13939. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1de59bf05d7211e5beff92bd32ec99a1?jfwid=-fxdp6ur6> (28 July 2021).

¹⁴ Law on Mediation (2017). TAR, 2017-12053. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/iUegWIIpmP> (28 July 2021).

¹⁵ *Ibidem*.

submit documents proving professional development to the State Guaranteed Legal Aid Service, which is responsible for the administration of the List of Mediators of the Republic of Lithuania.

2. Institutions that are responsible for the assessment of the qualification of mediators and the administration of the list of mediators of the Republic of Lithuania

Effective assessment of the qualifications of mediators and the subsequent monitoring of their development requires a clear institutional model. In other words, the state must appoint authorities to assess the qualifications of mediators. In regards to Article 3 of the Law on Mediation, the most important management institutions in mediation of civil disputes are the Ministry of Justice of the Republic of Lithuania, the Council of Judges and the State Guaranteed Legal Aid Service. Regarding the assessment of the qualification of mediators, the most important of them is the State Guaranteed Legal Aid Service, as it, inter alia, compiles and manages the list of mediators of the Republic of Lithuania and organises the Mediators' Qualification Exam. It is necessary to consider the fact that the State Guaranteed Legal Aid Service does not decide on the assessment of the qualification of court mediators (which can only be judges) and their inclusion into the List of Mediators of the Republic of Lithuania. The Council of Judges holds this responsibility. Implementing the principle of judicial autonomy, the Council of Judges establishes the requirements for judges wishing to practice mediation, the procedure for granting and revoking mediator status, as well as the procedure for compiling and maintaining the list of judges who are granted the mediator status, and ensures professional development in the sphere of mediation, all on its own.

In addition to the aforementioned subjects of mediation management in civil disputes, Article 11 of the Law on Mediation provides for another important subject – the Mediators' Qualification Examination Commission¹⁶. This commission operates in accordance with regulations approved by the Minister of Justice¹⁷. It is a commission of a social partnership nature, the members of which are paid for their work in accordance with the procedure established by the Law on Remuneration of Employees of State and Municipal Institutions and Members of Commissions of the Republic of Lithuania¹⁸.

¹⁶ Law on Mediation (2017). TAR, 2017-12053. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/iUegWIIpmP> (28 July 2021).

¹⁷ The order of the Minister of Justice of the Republic of Lithuania (31 December 2018) No. 1R-289 "In regard to the implementation of the Law on Mediation of the Republic of Lithuania". TAR, 21997. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/87b2c6700d3c11e98a758703636ea610/asr> (28 July 2021).

¹⁸ Law on Remuneration of Employees of State and Municipal Institutions and Members of Commissions. TAR 2019-20628. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c6dd7dc2e23411e6be918a531b2126ab/asr> (28 July 2021).

The Mediator Qualification Examination Commission, which consists of five members, is appointed by the Minister of Justice of the Republic of Lithuania for the period of three years. One representative is appointed from the Council of Judges, one from the Ministry of Justice of the Republic of Lithuania, one from organisations uniting mediators, and two representatives are appointed from research and study institutions. The President and Vice-President of the Commission are appointed by the Minister of Justice¹⁹ from among the members of the Commission. Currently, two commissions work in parallel. In 2019, due to the large number of individuals applying to take the examination, one commission was no longer able to ensure an operative examination process. Therefore, by the order of the Minister of Justice, two commissions were formed, which continue their activities in successful cooperation.

3. The list of mediators of the Republic of Lithuania

As mentioned before, the List of Mediators of the Republic of Lithuania was started to be filled on January 1st of 2019. Until July 1st of 2021, 591 mediators were added to the list of mediators²⁰. In order to be included in this list, a person must submit documents certifying the compliance with the qualification requirements to the State Guaranteed Legal Aid Service. The list of mediators is publicised in the TEISIS information system, which is intended for the administration of state-guaranteed legal aid and mediation.

The list of Lithuanian mediators provides information about each mediator. This includes the name, specialisation, area of activity, type of mediation services provided and work languages of the mediator. Each mediator has the opportunity to provide their contact details, information on whether they have passed the qualification exam and whether they have signed a contract on the provision of mediation services with the State Guaranteed Legal Aid Service. There is also an opportunity to provide a more detailed resume.

After a systematic review of the List of Mediators of the Republic of Lithuania, it can be stated that in terms of gender, the list is dominated by women. Of 591 mediators, only 111 are men (19 percent). In terms of work languages, all listed mediators are ready

¹⁹ The order of the Minister of Justice of the Republic of Lithuania (31 December 2018) No. 1R-289 “In regard to the implementation of the Law on Mediation of the Republic of Lithuania”. TAR, 21997. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/87b2c6700d3c11e98a758703636ea610/asr> (28 July 2021).

²⁰ The List of Mediators of the Republic of Lithuania. Teisis. Accessible online: <https://teisis.lt/external/mediator/list?filter=%7B%22page%22:1,%22pageSize%22:100,%22searchSpecialisationChildren%22:true,%22orderBy%22:%22surname%22,%22sortingOrder%22:%22asc%22,%22mediatorTypeList%22:null%7D> (28 July 2021).

to provide services in Lithuanian. In addition, as many as 128 mediators can mediate in Russian, 76 in English, 8 in French, 7 in German, 4 in Polish and 1 in Italian²¹.

All mediators on the list must have a university degree (this is one of the qualification requirements). Most mediators have legal degrees. A large part of them are representatives of the traditional legal professions. These are mostly lawyers, slightly fewer judges, notaries and bailiffs. A minority of mediators have non-law degrees. These include psychotherapists, psychologists, social workers, educators, managers and other specialists. It is obvious that despite the efforts made not to restrict the possibility to provide mediation services to individuals with education in various fields (there was no requirement for legal education), in Lithuania the mediation body is clearly dominated by lawyers. This indicates that the mediator's profession is not popular among those who are not lawyers. This dominance is only reinforced by the qualification requirement exceptions that are granted to members of the classical legal professions (judges, lawyers, notaries and bailiffs). Bearing in mind that between 2019 and July 14th of 2021, only 312 mediators have passed the mediator qualification exam (197 in 2019; 94 in 2020; 21 in 2021)²², and there are 591 mediators on the list, it is clear that at least 279 people were included in the list under exceptions. That is more than 47 percent²³.

250 mediators have signed contracts with the State Guaranteed Legal Aid Service²⁴. They provide compulsory mediation in family disputes, which is administered by the State Guaranteed Legal Aid Service and funded by the state.

4. Mediation training requirements

One of the qualification requirements for mediators of the Republic of Lithuania established in Article 6 (1) Item 2 of the Law on Mediation is attending at least 40 academic hours of mediation training no earlier than five years before the day of applying to be included in the List of Mediators of the Republic of Lithuania²⁵. Without a certificate of this training, a person shall not be included in the list of Lithuanian mediators (an

²¹ The List of Mediators of the Republic of Lithuania. Teisis. Accessible online: <https://teisis.lt/external/mediator/list?filter=%7B%22page%22:1,%22pageSize%22:100,%22searchSpecialisationChildren%22:true,%22orderBy%22:%22surname%22,%22sortingOrder%22:%22asc%22,%22mediatorTypeList%22:null%7D> (28 July 2021).

²² State Guaranteed Legal Aid Service (2021). The information was received upon request via email on the 14th of July, 2021.

²³ The List of Mediators of the Republic of Lithuania. Teisis. Accessible online: <https://teisis.lt/external/mediator/list?filter=%7B%22page%22:1,%22pageSize%22:100,%22searchSpecialisationChildren%22:true,%22orderBy%22:%22surname%22,%22sortingOrder%22:%22asc%22,%22mediatorTypeList%22:null%7D> (28 July 2021).

²⁴ *Ibidem*.

²⁵ Law on Mediation (2017). TAR, 2017-12053. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/iUegWIIpmP> (28 July 2021).

exception is only applicable to judges and experienced mediation lecturers with a doctorate degree in social sciences).

In order for the training to be recognised as suitable, it is necessary that their content complies with the list of minimum topic requirements for mediation-related training, which is established by the order of the Minister of Justice of the Republic of Lithuania²⁶. According to Item 2 of the list of requirements, the training must enable individuals to prepare for the mediator qualification examination, taking into account the mediator qualification examination program approved by the Minister of Justice of the Republic of Lithuania²⁷. Not only is the training required to provide theoretical knowledge about mediation, but it is also required to develop practical skills. Para. 5 of the list of requirements states that practical mediation tasks must make up from 30 percent up to 40 percent of the training. In the list of minimal requirements for training on the topic of mediation, the minimum and maximum time that can be allocated to certain topics is also specified. For example, at least 1 and at most 3 academic hours of training must be dedicated to the topic “Concept of Conflict and Dispute and Ways of Resolving them”²⁸.

It should be noted that there are no qualification requirements for training providers. In reality, training on the subject of mediation can be organised and carried out by any person or organisation. It is important to ensure that the training program meets the minimum requirements for mediation training.

IV. The Mediators’ Qualification Exam

1. The content and form of the Mediators’ Qualification Exam

Successful passing of the Mediators’ Qualification Exam is one of the qualification requirements for mediators of the Republic of Lithuania, which is established in para 3 of Article 6 (1) of the Law on Mediation²⁹. As mentioned before, this qualification requirement does not apply to judges, lawyers, bailiffs, notaries with three years of work experience, respectively, and individuals with a doctorate degree in social sciences who have carried out mediation training in the last three years before applying to be included in the List of Mediators of the Republic of Lithuania with a total sum of at least 100

²⁶ The order of the Minister of Justice of the Republic of Lithuania (31 December 2018) No. 1R-289 “In regard to the implementation of the Law on Mediation of the Republic of Lithuania”. TAR, 21997. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/87b2c6700d3c11e98a758703636ea610/asr> (28 July 2021).

²⁷ *Ibidem*.

²⁸ *Ibidem*.

²⁹ Law on Mediation (2017). TAR, 2017-12053. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/iUegWIIpmP> (28 July 2021).

academic hours. The qualification exam for mediators is organised by the State Guaranteed Legal Aid Service. According to Article 11 (2) of the Law on Mediation, “When at least ten applications for the qualification examination for mediators have been received, the State Guaranteed Legal Aid Service shall organise the qualification examination for mediators no later than one month from the date of receiving of these applications. When less than ten applications for the mediator’s qualification examination have been received, the mediator’s qualification examination is held at least once every six months”³⁰. As mentioned before, this examination is conducted by the Mediators’ Qualification Examination Commissions, which are appointed by the Minister of Justice.

It is important to mention that when designing the structure of the exam, which was done during the preparation of the Conception³¹, it was aimed to ensure that the exam tests not only the candidates’ theoretical and legal knowledge of mediation, but also their ability to apply this knowledge in practice, their professional ethics and even personal qualities.

As the law does not pay much attention to the topic of the qualification exam, it is natural that the exam program, structure and its organisation and execution procedures were established in by-laws approved by the order of the Minister of Justice: in the program of the Mediators’ Qualification Exam, the regulations of the Mediators’ Qualification Exam Commission, the description of the procedure for organising and conducting the mediator qualification examination³².

The program of the Mediators’ Qualification Exam consists of 25 topics, which include the concept of conflict, alternative dispute resolution, basics of mediation, mediation techniques, professional activities and ethics of mediators, peculiarities of mediation in individual dispute categories, legal knowledge (such as topics related to general legal principles, transactions, mandates, settlement agreements, etc.). Para. 25 of the program also lists the skills that mediators must demonstrate during the exam, such as the ability to ensure impartiality and independence during mediation, the ability to disclose the true interests of the dispute parties, the ability to apply the mediator’s communication and negotiation skills in practice, etc. It should be noted that, regardless of the

³⁰ *Ibidem*.

³¹ The order of the Minister of Justice of the Republic of Lithuania No. 1R-268 (17 September 2015) “In regard to the Confirmation of the Concept of the Development of the Mediation System”. TAR, 13939. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1de59bf05d7211e5beff92bd32ec99a1?jfwid=-fxdp6ur6> (28 July 2021).

³² The order of the Minister of Justice of the Republic of Lithuania (31 December 2018) No. 1R-289 “In regard to the implementation of the Law on Mediation of the Republic of Lithuania”. TAR, 21997. Accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/87b2c6700d3c11e98a758703636ea610/asr> (28 July 2021).

education and experience of the candidates, they are subject to an examination with the same content.

In Lithuania, the Mediators' Qualification Exam consists of two parts. The first part is a test of 20 closed-ended questions. There are 3 answer choices to each question, one of which is correct. Individuals taking the exam are given one hour of time and are not allowed to discuss or use any aids. In regards to para. 11 of the Description of the Procedure for the Organisation and Conduct of the Mediators' Qualification Exam³³, the tasks of the written part of the exam shall be formulated by the Commission in accordance with the mediator qualification examination program approved by the Minister of Justice of the Republic of Lithuania. The written part tests the candidates' theoretical knowledge, readiness to provide mediation services and knowledge of professional ethics. Questions are usually formulated to test the knowledge of legal regulation and mediation theory. In order to pass the first part of the exam, the candidate must answer at least 14 questions correctly, i.e. score at least 7 points on a ten-point scale with 0.5 points for each correct answer. To ensure impartial evaluation, candidates' work is encrypted. Candidates who have passed the written part are invited to take the second part. Individuals who have not passed the written part can no longer continue taking the exam.

The second part of the exam is oral. It aims to assess the candidates' ability to provide mediation services in practice and to apply their theoretical knowledge. During the oral part of the examination, members of the examination commission take on the roles of the dispute parties. In groups of 6 people, candidates draw roles to simulate in the mediation process. The mediation simulation is divided into the following 6 stages: introduction of the mediator, introductory speeches of the dispute parties, identification of the issues to be resolved, two separate meetings with each of the dispute parties, general discussion. Each candidate is given 15 minutes to perform their role that they drew. Audio and video recordings are made during the exam. Once all of the candidates have played their part, members of the commission have the right to ask them additional questions. Usually, this time is used to find out how the candidates rate their own performance and what mistakes they have noticed themselves. Upon receipt of the answers, the candidates are asked to leave the room and the members of the commission evaluate their performances. In regards to Item 36 of the Description of the Procedure for Organising and Conducting the Mediator Qualification Exam, "Assessment of the oral part of the examination takes into account the consistency of the practical task, clarity and accuracy of reasoning, ability to apply theoretical knowledge in the field of mediation. In particular, it assesses how a person creates an environment appropriate for mediation, communicates with each of the dispute parties, applies the principles of mediation in

³³ *Ibidem*.

practice, manages the mediation process, encourages the parties to find a mutually acceptable dispute solution and uses methods to obtain and use relevant information. Other aspects are also assessed”³⁴. Each member of the examination commission evaluates the performance of each candidate’s practical task individually, on a 10-point scale. The average of the points given by each of the members of the commission present at the meeting is derived and rounded to two decimal places. The oral part, as well as the whole exam, is considered to be passed if the person scores at least 7 points. In regards to para. 44 of the Description of the Procedure for Organising and Conducting the Mediators’ Qualification Exam, “A person who has not passed the examination may retake the examination no earlier than half a year after the day of taking the examination. There is no limit on the number of times that the exam can be retaken”³⁵. After the exam, candidates have the right to see the minutes of the commission, test results or a video of the practical task. Those who fail the examination also have the right to appeal the decision of the examination commission to the competent authorities in accordance with the procedure established by law.

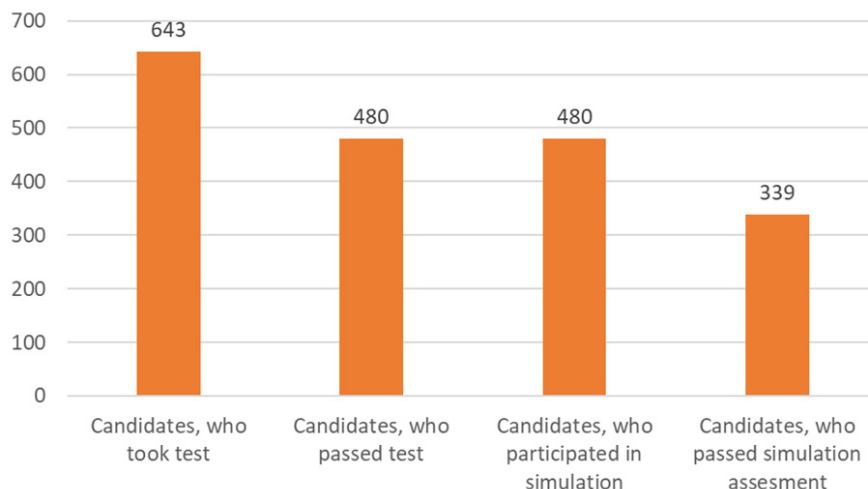
2. Study of the Mediators’ Qualification Exam results

In order to evaluate the effectiveness of the mediator qualification assessment model applied in the Republic of Lithuania, the authors collected and systematised the results of 42 exams that took place between the beginning of 2019 and June 21st of 2021. Data for this research was provided by the State Guaranteed Legal Aid Service upon the request of the authors of this article.

³⁴ *Ibidem.*

³⁵ *Ibidem.*

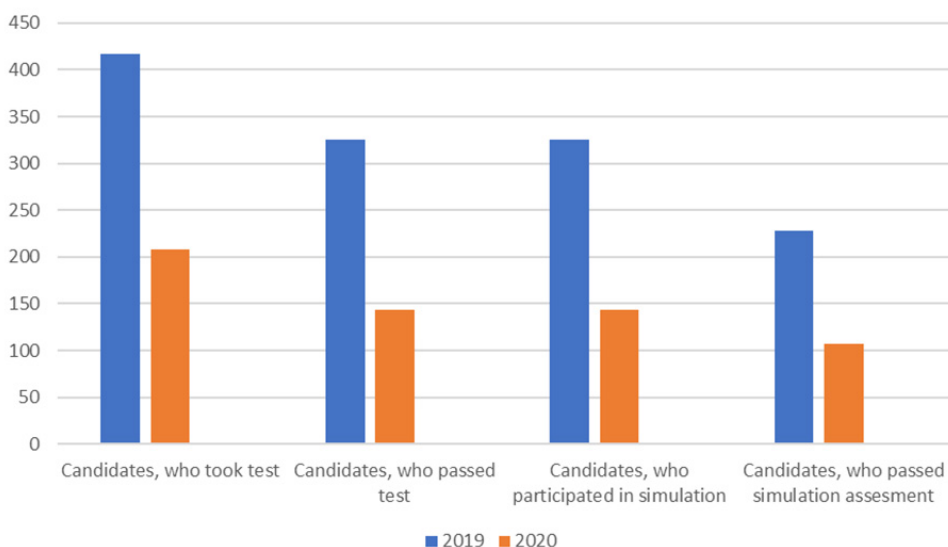
Figure 1. The number and results of people who passed the Mediators' Qualification Exam



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

Data analysis indicated that 643 individuals took the mediator qualification exam throughout the study period. 75 percent of candidates passed the written exam (480 persons). 71 percent of candidates who were allowed to continue the examination passed the oral part (339 persons) after passing the written part. Further analysis of the data showed that 53 percent of all candidates passed the qualification exam.

Figure 2. Comparison of the number and results of individuals who passed the Mediators' Qualification Exam in 2019–2020

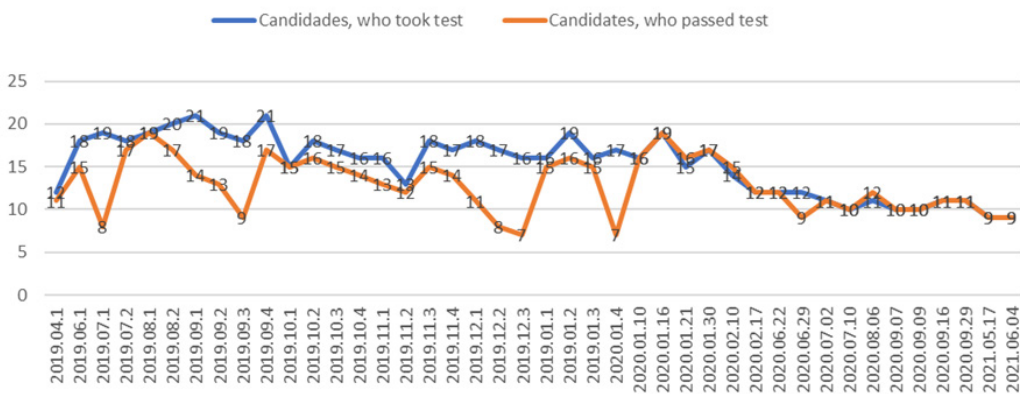


Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

In Figure 2, it is notable, that if we compare data from 2019 with data from 2020, a considerable decrease in the number of people who passed the mediator exam (two times less). There are two reasons for this difference. Firstly, in 2019, all of the Lithuanian mediators wanted to acquire the mediator status according to the new qualification requirements, therefore, a lot of applications to take the exam were submitted during that period. Secondly, the direct communication restrictions that were applied between March and May due to the pandemic caused by COVID-19 have resulted in the Mediators' Qualification Exam not being carried out for the entirety of those 3 months. Quarantine limited the ability of the candidates to pass the exam, as at that time the provisions of the mediator qualification exam were not prepared to be carried out remotely. From 2021 this option was ensured and in June and July 4 qualification exams for mediators were successfully carried out remotely. Although for the written part candidates were still required to attend the exam in the premises of the Ministry of Justice, the practical (oral) part took place on the MS Teams program at a distance.

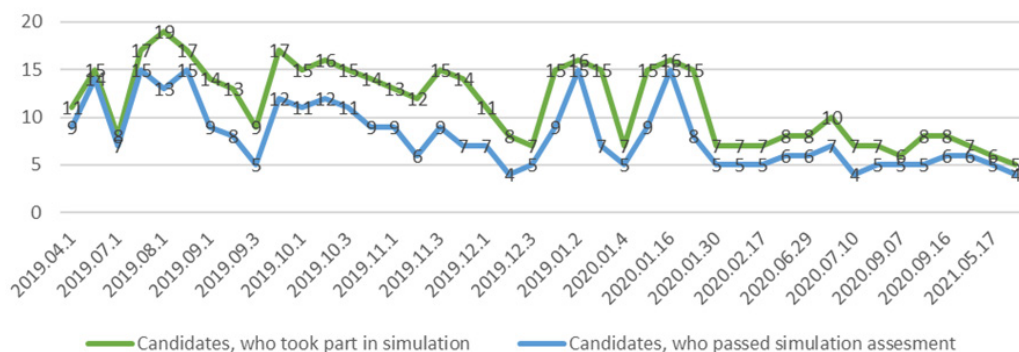
Assessing the results of the exams conducted in 2019 and 2020, we see that in 2019 78 percent and in 2020 almost 70 percent of those who took the exam passed the written part. 72 percent of them passed the oral part. There was some deterioration in the results for the written part and a slight improvement for the oral part. It can be assumed that in 2019 a lot of experienced mediators took the exam, which resulted in better results for the written part.

Figure 3. Dynamics of the results of the written part of the Mediators' Qualification Exam in 2019-2021



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

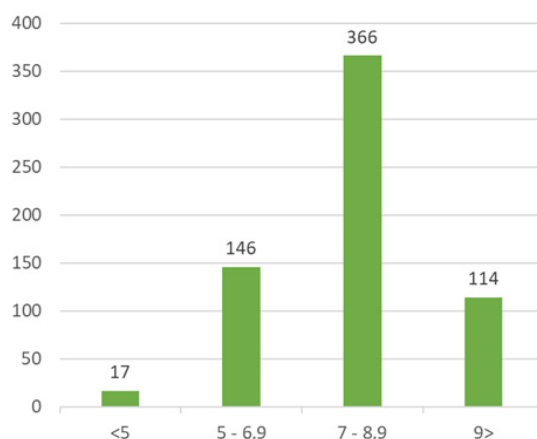
Figure 4. Dynamics of the results of the oral part of the Mediators' Qualification Exam in 2019-2021



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

The dynamic data analysis of the Mediators' Qualification Exam showed that since February 2020 there has been a decreasing trend in the number of people taking the exam. While in 2019, on average, about 18 people took the written exam and about 15 people took the oral exam, since February 2020, on average, about 11 people have taken the written exam and about 8 people have taken the oral exam. Systematically, this is a positive trend, which indicates the end of the initial stage of the examination of mediators and the stabilisation of the situation. In addition, there is a better ratio between individuals who took the exam and those who passed it.

Figure 5. Results of the written part of the Mediators' Qualification Exam in 2019–2021

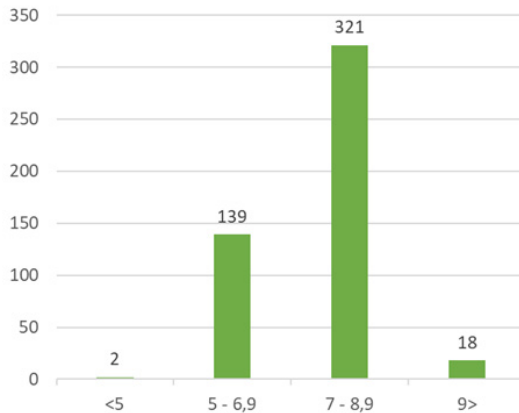


Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

As mentioned before, it is necessary to score at least 7 points in order to pass the written part of the exam. The data analysis showed that the majority of the results of the written part of the mediators' exam ranged from 7 to 8.9 points, which accounted for

57 percent of all passing grades. Unfortunately, only 18 percent of those who passed scored 9 points or more. Thus, a minority of the candidates have shown very good and excellent knowledge.

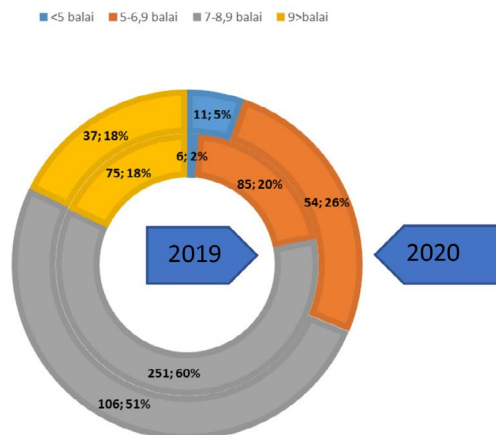
Figure 6. Results of the oral part of the Mediators' Qualification Exam in 2019-2021



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

It is clear that the general trend shows that the results of the written part of the Mediators' Qualification Exam are higher than those of the oral exam. This is confirmed by the analysis of the data collected in the study. Scores of 9 points and above accounted for only 3 percent of all passing grades. The rest of the passing grades are average or good. These results indicate that generally the candidates do not demonstrate particularly good practical mediation skills.

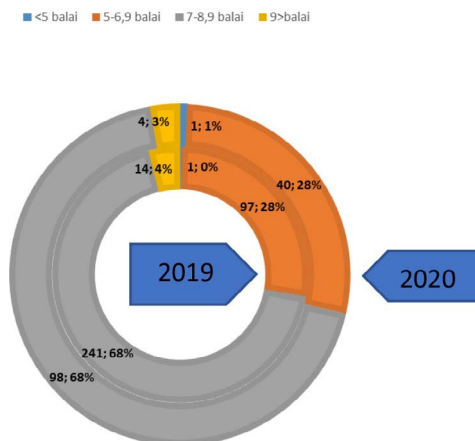
Figure 7. Comparison of the results of the written part of the Mediators' Qualification Exam in 2019-2021



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

The comparative analysis of the results of the written part of the 2019–2020 Mediators’ Qualification Exam shows that in 2020 the number of those who failed the exam increased from 22 percent (2019) to 31 percent (2020). The share of the highest ratings remained the same because in 2019 and 2020 18 percent of people scored higher than 9 points.

Figure 8. Comparison of the results of the oral part of the Mediators’ Qualification Exam in 2019-2021



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

The comparative analysis of the results of the oral part of the 2019–2020 Mediators’ Qualification Exam shows that the results of the exams did not change much. Stable tendencies are observed, where the oral part of the mediator’s qualification exam is passed by about 70 percent of candidates, yet the highest scores only make up 3–4 percent of all ratings.

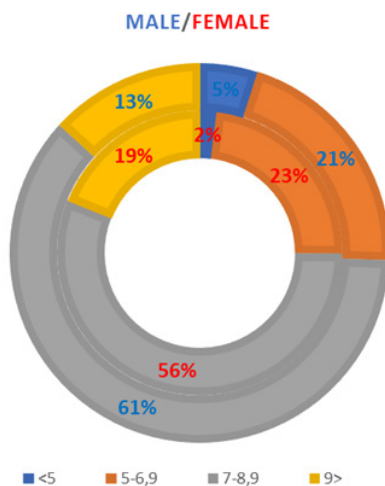
Figure 9. Analysis of candidates who passed the mediator qualification exam by gender



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

Another important finding of the study is that the gender distribution of the candidates indicates female dominance. In the doctrine of mediation, this aspect is widely analysed in different discourses when questions are raised about the implementation of co-mediation or gender balance in individual categories of family or partnership disputes. Thus, the study showed that the involvement of male candidates is not so high. Throughout the analysed period, only 90 men took the written part of the mediator qualification examination and only 56 took the oral part.

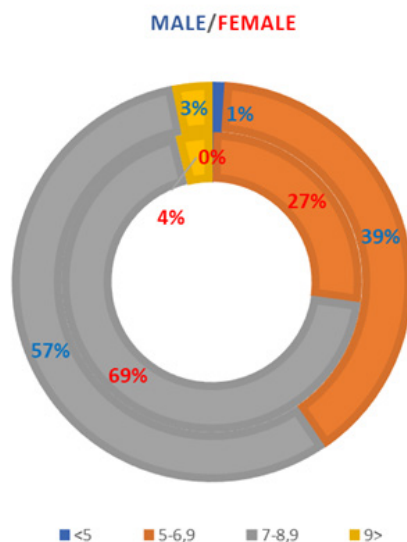
Figure 10. Comparison of the results of the written part of the Mediators' Qualification Exam in 2019-2021 by gender



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

It is appropriate to assess the distribution of exam results by gender during the study. Further data analysis showed that the grades of female candidates for mediators are higher in the written part of the exam. 19 percent of women scored 9 points or higher, while among men it was only 13 percent. Another tendency is that 5 percent of men score less than 5 points, while only 2 percent of women score less than 5 points.

Figure 11. Comparison of the results of the oral part of the Mediators' Qualification Exam in 2019-2021 by gender



Source: Outcomes of the qualitative analyses of the mediators qualification exam results, which was carried out by the authors of this article in 2021.

The data analysis of the oral examination of mediators showed that the results of candidates are higher for women than for men in both the writing part and the oral part.

In summary, the results of the empirical quantitative research indicate that the retention rate of the Mediators' Qualification Exam, which took place between April of 2019 and June of 2021, was 53 percent. Candidates usually face difficulties in the written part of the exam. Due to the restrictions on direct communication imposed as a result of the Covid-19 pandemic and the high number of people who passed the exam in previous years, significantly fewer people took the exam in 2020. Comparing the 2019 and 2020 results of those who passed the exam, a deterioration in the results of the written part and a slight increase for the oral part is seen. Analysing the candidates' scores in the written part, average and good grades are mostly prevalent and only 21 percent of the candidates received very good or excellent grades. Scores of the oral part are lower than those of the written part. There are also very few top scores. The number of those who failed the exam increased from 22 percent (2019) to 31 percent (2020). In terms of the oral part, it is a stable tendency that the oral part of the exam is passed by about 70 percent of candidates and the highest scores make up only 3–4 percent of all scores. Among the candidates, women are increasingly predominant. They also show better passing results in the Mediators' Qualification Exam.

3. External and internal (subjective) factors that influenced the conduct of the mediator exam

The quantitative analysis of mediator exam results was deepened and expanded with qualitative research data. Authors of the article were directly involved in about 50 percent of the exams that took place, therefore, using the observation method, receiving feedback from the examinees, and at the same time abstracting the collected data, they distinguish two groups of factors that significantly influenced the process of the mediators' examinations: external and subjective factors.

Among the external factors, it is necessary to mention the fact that the candidates lacked information about the exam and its procedure. This was especially relevant at the beginning of the exams. This situation, in turn, has led to the spread of misinformation regarding the mediation examination procedures and the system of checking the qualifications of mediators as a whole. The lack of information led to unnecessary tension among mediators and to many caused a fear of exams (lat. *examinophobia*). Many of the mediators stated that they felt unnatural during the exam, the tension caused their creativity or ability to convey information and reveal their abilities to get blocked. In addition to that, individuals who took the exam disseminated misinformation about its content, i.e. intimidated others, that the written part of the exam is very complex, the test is confusing and requires extensive interdisciplinary theoretical knowledge, there are many questions covering different fields, and the questions themselves are very complex and worded in a misleading way. It was also mentioned that the environment of the exam is very formalised, the unfavorable psychological climate is exacerbated by the video and audio recordings of the oral part. It is also observed that those who did not pass the exam shared their experiences having misevaluated their readiness, looking for external reasons for not passing, while avoiding critical analysis of themselves and their mistakes. Another external factor is the critical evaluation of the members of the mediation examination board, who perform the roles of the dispute parties in the mediation simulation (oral part of the exam), stating that their demands are too high, they create a number of complicated and uncomfortable situations and evaluate the candidates in accordance to very vague criteria.

It should also be mentioned that the research conducted by the authors, as well as the feedback from the individuals who took the mediator's exam, enabled the possibility to distinguish factors of a subjective nature. The authors noted that a significant portion of individuals who did not pass the practical part of the exam did not have any practical mediator skills or relevant experience at all, including the experience that they should have gained in mediation simulations during the training. For some of the examinees, the exam itself became the first practical mediation experience. Another important aspect

is that the exam took into consideration the distrust expressed by individuals in their professional knowledge as mediators. The inability of individuals to concentrate on a given personal task was also observed, which often resulted in a loss of self-control, a complete loss of process control, or even the parties' expression of dissatisfaction. On the other hand, in some cases, overconfidence in their competence as a mediator, misconception about how the mediation process should take place was observed. This was due to self-education or questionable training, the outcome of which was difficult to assess. Subjective factors that negatively affected the mediation exam also include the transfer of one's professional practice to the mediation process (consultant, pre-trial specialists, social worker; administrator, etc.).

Clearly, the reasons for not passing the exam are related to insufficient mediation knowledge and skills, the belief that the mediator's qualification exam is just a formality and over-reliance on experience gained in one's other professional roles, which are not always appropriate in mediation. The quality of mediation training remains an important aspect – not only the need to ensure the transfer of theoretical knowledge, but also the development of practical skills. Finally, self-control, ability to manage stress and empathise with the situation of the dispute parties are very important when taking the exam. The lack of these skills and personal qualities has also been an obstacle for many to pass the exam.

V. Conclusions

The research results that were presented in the article indicate that an effective qualification evaluation system for mediators has been developed in Lithuania. However, certain elements of the Lithuanian model should be improved, thus ensuring the growth of the quality of mediation services. First of all, it is necessary to look for effective solutions that would ensure the formation of practical mediator skills before the exam. It is considered that each candidate taking the examination should have participated in the role of co-mediator or trainee for a certain number of hours.

It is also necessary to raise the question of narrowing the circle of exceptions from taking the mediators' exam. Not only does the provision of quality mediation services require the possession of special practical skills, but also the acquisition of individual interdisciplinary knowledge. Thus, the question arises as to whether the possession of a general legal work experience and belonging to a certain legal profession (notary, lawyer, bailiff, etc.) is sufficient to provide quality mediation services. As there are currently a sufficient number of certified mediators in Lithuania, it would be appropriate to take the next step and create even stricter requirements for the qualification of a mediator.

Besides that, the study outlined the need to continuously monitor the assessment of the mediators' qualifications. Such monitoring must take place not only through the assessment of static factors (e.g. assessment of examination results, professional development results, etc.), but also through the analysis of dynamic factors. The latter are directly related to the provision of further mediation services, including the assessment of their quality, as well as the establishment of the role of mediator in the system of legal services. Therefore, it is appropriate to introduce a permanent monitoring element, which would ensure the collection, systematisation and analysis of data, which would again allow for targeted, science- and evidence-based decisions on the development of mediation.

Abstrakt

System oceny kwalifikacji mediatorów na Litwie: model i doświadczenia implementacyjne

Bez względu na zakres wsparcia, promocji i reklamy mediacji prowadzonych przez państwo jakość i wartość mediacji w oczach zaangażowanych stron oraz społeczeństwa ogółem zależy od kompetencji i jakości usług świadczonych przez mediatora. W opracowaniu tym opisano litewski model regulacji i zasad dopuszczenia do wykonywania zawodu mediatora, a także omówiono proces tworzenia i strukturę Listy Mediatorów Republiki Litewskiej. W szczególności wskazane zostały zasady i tryb przeprowadzania państwowego egzaminu mediatorskiego, jak również uwzględniono ocenę rezultatów jego wprowadzenia. Przeprowadzone badania wskazują na efektywność wprowadzonego systemu ewaluacji kandydatów na mediatorów i sposobu ich egzaminowania. Tym niemniej można wyróżnić kilka aspektów obecnego modelu wymagających poprawy. Jednym z nich jest potrzeba zapewnienia kandydatom na mediatorów odpowiedniego szkolenia praktycznego, w czasie którego – jeszcze przed egzaminem – zdobędą umiejętności mediacyjne konieczne w ich przyszłej praktyce. Kolejnym wyzwaniem jest propozycja redukcji do niezbędnego minimum katalogu wyjątków od konieczności przystąpienia do egzaminu mediatorskiego. Wyżej wymienione badania wskazały również na potrzebę okresowej oceny mediatorów oraz świadczonych przez nich usług.

