



ASSOCIATION EUROPÉENNE DES AVOCATS  
EUROPEAN ASSOCIATION OF LAWYERS

# **Mediation**

**an effective tool  
for commercial and family disputes  
Singapore Convention**

**January 28, 2021  
webinar on Zoom**



**MEDIATORS  
ASSOCIATION  
OF GEORGIA**



**GEORGIAN  
BAR  
ASSOCIATION**

# Introduction



**Maria Ślęzak**

President  
European Association  
of Lawyers (AEA-EAL)

Dear Colleagues and Friends,

I have a pleasure to present you this information on our webinar "Mediation: an effective tool for commercial and family disputes. Singapore Convention" that took place on January 28, 2021. With speakers and participants from more than 15 countries, we had a chance to make an overview on mediation as cheaper and faster method of dispute resolution. Speakers from such various jurisdictions as Argentina, Belgium, Georgia, Hong Kong (China), Kazakhstan, Spain and Uzbekistan gave us a wide perspective on how mediation is used in their countries, what are advantages with this tool and how international regulations such as Singapore Convention may be used to facilitate cross-border mediation.



**David Asatiani**

President  
Georgian Bar  
Association (GBA)

On behalf of the Georgian Bar Association (GBA) I am delight with the common initiative of our organizations to give lawyers opportunity to meet experts – legal practitioners and certified mediators and to benefit with their knowledge and experience. Lots of questions raised during the event, very positive feedback sent after the webinar showed us how much such events are needed in time of limited access to justice. Also, international organizations such as Council of Europe and European Union as well as countries themselves promotes mediation. International tools such as Singapore Convention, which Georgia became a recent party, facilitate use of mediation in cross border cases. I support for the mediation as an effective mechanism to increase the quality and access to justice.



**Irakli Kandashvili**

Member of the GBA Board,  
Chairman Mediators Association  
of Georgia (MAG)  
**Moderator of the Conference**

On behalf of the Mediators Association of Georgia (MAG) I am delighted to be part of this very interesting international webinar, where the representatives of countries from 3 different continents participate and the best lawyers and mediators of their jurisdiction exchange the experience and discuss the needs of further development of mediation in our homelands. Singapore Convention on Mediation is very important for global universe of trade and commercial relations, it allows the parties to easily enforce the terms of the settlement agreements reached as a result of mediation in different jurisdictions, it promotes international trade and business relations and encourages the use of mediation in dispute resolution. I am fully convinced for the need of similar events on the topic in future.

# Our Speakers



**Carmen Pérez Andújar, Spain**

ITER Law & Partners (Madrid - Sevilla); Partner responsible for the Department of Litigation and Arbitration. Lawyer and mediator with 25 years of experience in litigation, mediation and arbitration.



**Marcelo Castrogiovanni, Argentina**

Lawyer, member of the AEA-EAL, Professor at the Faculty of Law, University of Buenos Aires, Director of the Electronic Magazine of Commercial Law, Founding member of the Foundation for Advanced Studies in Legal Sciences



**Sevara Maripova, Uzbekistan**

Lawyer and mediator, Associated Professor at the University in Tashkent, Head of the Department of Private Law of the Center for Continuing Legal Education, expert in training of mediators, author of training courses and materials



**Melissa Pang, Hong Kong China**

Lawyer and mediator, Pang & Associates Law Firm, Hong Kong, specialist in commercial law, property law as well as civil litigation and mediation, notary public, solicitor in South Wales, Australia. President of the Law Society of Hong Kong



**Sabine Perquy-Forke Belgium**

responsible for German desk in Van Landuyt & Partners, lawyer in Brussels, member of the AEA-EAL Board of Directors, member of German, Belgium and French Bars, specialised in civil and commercial cases, certified mediator.



**Sergei Vataev, Kazakhstan**

Lawyer and mediator, independent contractor for Dechert. He focuses on litigation, mediation and arbitration, corporate law, and project finance. Chairman of the International Arbitration Court of the Republic of Kazakhstan

# Mediation: an effective tool for commercial and family disputes. Singapore Convention

Our webinar was an excellent opportunity to meet both practicing lawyers and experienced mediators, to learn from each other about this relatively new tool for legal professionals. There was a huge interest of participants reflected not only in high number of attendees but also in number of questions, examples of which are displayed in boxes. All statistics show that lawyers, parties and even judiciary are rather reserved for mediation despite its undeniable advantages: low cost, short and simple proceedings, win-win effect and easy enforcement. Mediation builds culture of compromise within the justice system and brings social peace among the society. Therefore, it is promoted by the European Union and its Member States and is moved from ALTERNATIVE method of dispute resolutions into GENERAL mean of solving conflicts. So why lawyers and their clients do not use mediation more often? The main answer regarding lawyers is connected with training. Future lawyers are trained to be litigators, to win the cases, to fight in the court. More cases you win - the better lawyer you are. Mediation has different philosophy: more settlements have been reached - the better mediator you are. This approach should be introduced into the initial and continuing training of lawyers together with such skills like negotiations, listening to both parties, excellent communication techniques, objectivity towards the case, ability to guide the mediation process, etc. Then and only then our profession can play a central role in mediation, which will raise significantly in the future. And why clients are not use mediation willingly enough? It depends on culture and education. Where society's attitude is more into co-operation,

**Why mediation is not so popular among lawyers?**

**Should mediators be chosen freely by parties or rather appointed by a judge?**

The screenshot displays a Zoom webinar interface. The main window shows a grid of participants, including Irakli Kandashvili, AEA-EAL Office, Sergei Vataev, Carmen Perez Andujar, David Asatiani, Sabine Perquy-Förke, Maria Slazak, Sevara Maripova, Melissa Pang, Marcelo Castrogiovanni, and Aleksandra Siewicka-Marszałek. The sidebar on the right shows a Q&A section with questions from anonymous attendees and Michael de B. The bottom of the screen features a toolbar with various controls like Unmute, Start Video, Participants, Chat, Share Screen, Polling, Pause/Stop Recording, Raise Hand, Q&A, and End.



# Mediation: an effective tool for commercial and family disputes. Singapore Convention

compromise and avoidance of conflict, mediation is used more frequently. Contrary, where a fight and striving to victory is seen to be more appropriate, mediation is less popular. Therefore, it is important to introduce co-operation, amicable settlements and compromise-based resolutions at the earliest possible stage of education process; even in primary schools and continuing it on next levels of education. This will result with proper culture and approach towards win-

**Is mediation  
a "competitor" towards  
arbitration and will replace it  
in future?**

win solutions.

Mediation is divided usually into two types: court-annexed mediation, where it is an official procedure (or its part) proposed by a judge. Second type is private mediation, where disputing parties decide to use mediation to solve a conflict between them. In different countries, there is a various proportion between private and court-annexed mediation. For example, in Hong Kong most mediations are private initiatives of parties, while in Belgium it is proposed by the court mostly.

Status of mediators also vary. In some states it is a non-regulated profession, where everyone can become a mediator and manage a process, while in other ones a mediator needs to be registered when fulfils required criteria. Certification is connected rather with a court

**Should mediators be a re-  
gulated profession similarly  
to lawyers?**

annexed mediation, where a judge may propose or appoint a mediator from the official list. In some jurisdictions a certified mediator is required to complete a mandatory training (Belgium, Uzbekistan). In Hong Kong there are number of private institutions certifying mediators and setting up their

**Can mediation be used in  
criminal cases?**

own requirements, while in some European countries there are state institutions or courts responsible for registration process . Criteria regarding training and other areas are set by the law. Mediation can be used

in civil, family, labour and commercial cases. In Spain, specific growing area of mediation are medical cases of dispute between patients and medic professionals. Court annexed mediation is generally voluntary in most countries and requires agreement of both parties to start it. However, there are few exceptions from this general rule: for example, in Belgium the judge may order mediation on the request of one part only. In Kazakhstan, in civil and commercial cases the judge may be a mediator himself/ herself. In Argentina there is a rule that mediation is mandatory, however with several exceptions (for example criminal cases).

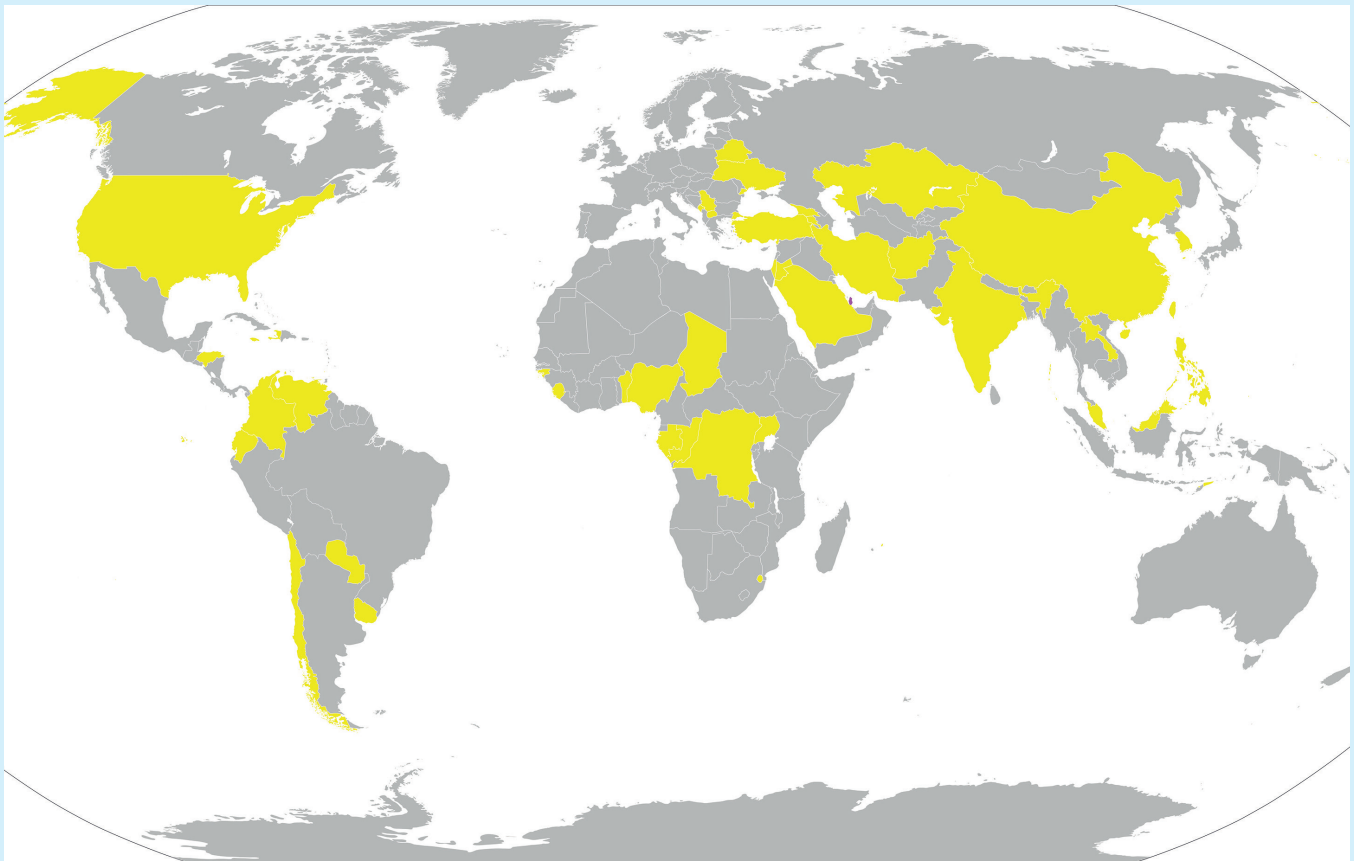
Execution of reached settlements also depends on type of mediation. If it is a court-annexed mediation, the settlement is confirmed by a judge by declaring its enforceability. In private mediation it may be enforced by the court or by the notary public on common request of parties. An interesting issue arose whether mediation could replace arbitration in future.

**What to do if I am not glad  
with the chosen/ appointed  
mediator?**

Our speakers expressed the opinion, that nowadays we can observe some elements of mediation gradually seep into arbitration, however both institutions have their own strong and weak points and will co-exist in the future.

# Mediation: an effective tool for commercial and family disputes. Singapore Convention

And how mediation can be used in cross-border cases? This issue is regulated on international level. In Europe it is 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. Outside Europe there are number of legal instruments, of which the most recent is United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention on Mediation)" adopted by the General Assembly of the United Nations on December 20, 2018 and entered into force on September 12, 2020. At the moment 53 states are signatories of the Convention, including two world's largest economies - the United States and China. The Convention applies to cross-border results in commercial disputes. It provides efficient, cost effective and harmonized framework of the enforcement of international settlements and creates a good alternative for international arbitration and litigation proceedings. Main goals of the Convention are to facilitate international trade and to promote the use of mediation for the resolution of cross-border commercial disputes. With the Convention in force, business seeking enforcement of a mediated settlement agreement across borders can do so by applying directly to the courts of countries that have signed and ratified the treaty, instead of having to enforce the settlement agreement as a contract in accordance with each country's domestic process. They can also rely on mediation as a dispute resolution option for their cross-border transactions with greater certainty and assurance that their mediated outcomes are enforceable. The conciliatory nature of mediation also helps to preserve commercial relationships despite the disputes. Taking into account that parties of the Convention are countries of more than half of global trade, the Convention will play a significant role in international system of dispute resolution.



**Signatories of the Singapore Convention on Mediation (December 2020)**

# Organizers



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