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Mediation in Family Disputes in the Republic of Macedonia

"To enforce mediation... one must overcome dead justice."
Guy Canivet[1]

In modern societies, the citizens face difficulties in their access to justice. These difficulties result from three main factors: 1) the number of court cases is constantly increasing in all countries and the courts are overloaded with cases; 2) the procedures are complex and they take a very long time and 3) court expenses in the proceedings are exceptionally high. On the other hand, access to justice and legal protection are considered fundamental human rights, as provided in Article 6 of the European Convention of the Protection of Human Rights. Because of this, the alternative legal resolution is an integral part of the legislative policies and reforms in all European countries and it leads to faster, cheaper and more efficient dispute resolution.[2]
Mediation is an alternative dispute resolution (out-of-court settlement of disputes) and it signifies negotiation between the opposing parties in the presence of a mediator as a third, neutral and impartial person who has no authoritative decision-making power, but helps the parties in the conflict to reach an acceptable agreement themselves. In the countries with long tradition and considerable experience, the institute of mediation, by its very nature, is a procedure governed by the principle of the autonomy of parties.[3] The mediation values mirror the values of modern societies, such as respect for dignity, fairness, justice, reciprocity, individual participation, consent and control of the parties in resolving their conflicts. The values on which mediation as a way of resolving conflicts is based are in stark contrast to the dominant value system specific for the judicial settlement of disputes. The latter is characterized by adversarial proceedings, polymorphism, lawyer's control and centralized authoritative orders. On the contrary, mediation relies on the principles of voluntarism, confidentiality, informality and equality. In addition to this, the mediator is independent, neutral and impartial. It is the interests of the parties which influence the solution. The mediator directs the process and the parties in the process. Also, he controls the outcome.[4]

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[1]Brenneur, B., Murdanaigum, M., Otis L., "Mediation, a universal language of conflict resolution", *Overview of Judicial Mediation in the World*, First International Conference on Judicial Mediation, Paris, 16-17 October 2009, p.9.
[2]*Green paper on alternative dispute resolution in civil and commercial law,* Commission of European Community, COM 2002.
[3]Manojlovic, Ognenka, Mediation Procedure, Faculty of Law, Zagreb, 2005, p. 13.
[4]Partners Serbia, What is Mediation? , http://www.partners-serbia.org/sr/oblasti/medijacija.html

The mediation can be applied in a number of areas, particularly in complex legal situations: primarily in the cases of relocation of children by their parents in the international arena where mediation is expressly provided in Regulation "Brussels II bis.", a key tool of the European Union in the sphere of family law.[5] Given the specificity of the marital and parental disputes in a number of countries in Europe, as well as worldwide, mediation is considered a more appropriate way to resolve family conflicts, unlike the standard court procedure.

The main objective of mediation in matrimonial and family disputes, especially in disputes involving minor children, is to promote the continuous involvement of both parents and to reduce the conflict between parents in the exercise of parental rights during marriage and after divorce. Mediation is an appropriate mechanism for achieving functional agreements in terms of resolving marital disputes. In this sense, the engagement of a qualified person (mediator) to resolve a dispute arising from the marital relationship facilitates the agreement and ensures the protection of rights of all parties involved in marital and family disputes, taking into consideration the best interest of marital partners, parents and children.
When it comes to mediation in family disputes, the autonomy of the parties allows the spouses and parents to find a solution which is the most suitable both for their needs and for the particular needs of their children. Resolving marital disputes via mediation is much more appropriate than resolving them in the framework of litigation.
This derives from the nature and the specific design of the court proceedings where the parties have opposing stand points. Therefore, they entrust the resolution of their conflict to the court, whereas one of the parties is always defeated and the other one is considered as a winner.

Unlike the other types of disputes, in marital disputes such a resolution is not appropriate. Namely, the spouses may divorce, but they still have a common obligation to take care about their children's upbringing, education and maintenance. The practice shows that if the court resolves family disputes, especially disputes between parents, their relationship remains permanently impaired and the conflict between them is not settled in a way which ensures that both parents are content. On the contrary, the conflict is likely to continue and to reflect negatively on the exercise of parental rights and responsibilities.
This situation affects the children extremely negatively, as they turn into "weapon in the conflict between their parents." Despite the court's involvement in the resolution of family disputes, the mediation provides a collaborative agreement between spouses and parents, as well as better application of the principle of protection of the rights

[5]Barrot, Jacques, "Mediation: A Europen Perspective", *Overview of Judicial Mediation in the World*, First International Conference on Judicial Mediation, Paris, 16-17 October 2009, p.11.

and interests of the child.[6] Apart from the questions of upbringing and raising children, the mediation provides a more flexible approach than litigation in arranging financial and property issues, especially after the divorce of marriage. In this regard, the parties can reach solutions matching their specific needs better. Thus, an agreement is enabled on the division of joint property, alimony and, in particular, on preserving the house as continuous residence of the children, instead of selling it.[7]

I. International Documents on Mediation in Family Disputes

The first significant international document containing provisions on mediation in family disputes is the European Convention for the Exercise of the Rights of the Child, 1996. This Convention urges the member states of the Council of Europe to promote mediation as a way of resolving family disputes, especially if they refer to the realization of children's rights. According to this Convention, the mediation should be a major tool for solving family disputes that will be used prior to the commencement of litigation, during the proceedings, as well as in the phase of implementation of decisions. According to this convention, the agreements reached in the process may not be contrary to the best interests of the child. Another convention of the Council of Europe providing mediation as an alternative form of resolving family disputes is the Convention on Contact Concerning Children 2003.35. This convention provides that the judicial authorities should take all measures to encourage parents to reach a mutual agreement over the issue of maintaining contact with the child, using mediation.

One of the most significant documents of the Council of Europe concerning the peaceful settlement of disputes in family disputes is Recommendation R (98) 1 on family mediation (adopted by the Committee of Ministers on January 21, 1998 at the 616th meeting of the Ministers' Deputies). Although it is a non-binding legal document, this recommendation is extremely important because it outlines the basic principles and regulates the most important features of the procedure for mediation in family disputes. The Recommendation indicates that it is necessary to promote family mediation as an appropriate model for resolving family disputes and it especially points out to the advantages of this model for the preservation of quality and continuous family relations and, above all, for the protection of the best interests of the child.

Among other things, this recommendation advises member states: 1) to introduce or promote family mediation or, when it is necessary, strengthen existing family mediation and 2) to take and strengthen all measures deemed necessary in terms of implementation, promotion and use of family mediation as an appropriate way to resolve family disputes. Family mediation can be applied to all disputes among family members, whether they are relatives by consanguinity or on the

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[6] Read more: Čulo Margaretić, A., Kajtar, E., Contemporary Legal Challenges: EU-Hungary Croatia, *Working paper SUNICOB,* 3/2012, Osijek, 2012.

[7] Steffek, Felix, *Mediation in the EuropeanUnion: An Introduction*, (Cambridge), June 2012, p.6.

basis of marriage, and among those who lived together or still are interconnected by family ties recognized by the national law.

Article 5 of the Recommendation R (98) 1 on Family Mediation governs the relationship between mediation and proceedings in front of the courts and other competent authorities. According to the Recommendation, the state should recognize the autonomy of mediation and the possibility of mediation before, during or after the procedure. In this regard, it is stated that states should provide an opportunity to terminate the litigation proceedings in order to permit the application of mediation.[8] The Regulation also provides that states in specific cases may introduce mechanisms for providing relevant information about mediation as an alternative process to resolve family disputes (such as envisaging mandatory meeting of the parties with the mediator).

The Recommendation of the Council of Europe (Recommendation 1639 (2003) 1) prescribes that mediation is a process of arranging and organizing life among family members in the presence of an independent and impartial third party, known as mediator. According to the Recommendation, mediation is applied in the context of the separation of the couple, but also address issues related to: 1) education, 2) support of the children, 3) division of property, 4) inheritance etc. The objective of mediation is finding a solution acceptable to the partners involved in the mediation process, without arguing their guilt or responsibility. The agreement reached should contribute to reconciliation and long-term improvement of relations between partners. [9]

The Article 6 of the Recommendation no.1639 (2003)1 says that when it comes to mediation it is essential to take into account the fact that the agreement is not intended to satisfy the desires of only one side, in situations when one party in all regards dominates over other party. Even more importantly, when the interests of the child have been involved in the procedure, the child should also be perceived as a party in the mediation process. The child needs to be heard in the process of mediation, as, in accordance with the law, the child is an entity that owns rights. The children should be allowed to say whether the solution really suits their best interest. Also, in the process of family mediation, it should not be allowed that certain clients are placed in a less favorable position because of their gender, or because one party has been abused, or was unable to present its position and point of view (due to drug usage or mental illness), or was emotionally or financially disadvantaged (e.g. when the party took care of the children and has not worked outside the home).[10] We should always keep in mind that mediation is a voluntary process which arises from the principle of free disposition in the sphere of legal protection. Thus, Article 7 of the Recommendation claims that mandatory referral to mediation should be prohibited.[11]

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[8] Recommendation No. R (98)1 on family mediation, Council of Europe *(Adopted by the Committee of Ministers on 21 January 1998 at the 616th meeting of the Ministers' Deputies)*, paragraph 5.

[9] Recommendation 1639 (2003)1, Article1.

[10] Ibid., Article 5.

[11] Ibid. 9, Article 7.

Within the European Union, the Directive on Mediation in Civil and Commercial Disputes was adopted in 2008. According to this Directive, the provisions apply only to mediation in cross-border disputes, but it is also noted that nothing should prevent Member States from applying these provisions in the internal processes of mediation.[12] The purpose of the Directive is to facilitate the access to alternative procedures for resolving conflicts, support friendly settlement, encourage recourse to mediation and ensure consistency between mediation and judicial proceedings.[13]

Article 5 of Directive 52/2008 provides that the court in front of which the suit was filed may invite the parties to apply mediation to resolve the dispute whenever considered appropriate, having regard to all the circumstances of the case. The court may also invite the parties to attend an information session with regard to the application of mediation, if there is a practice of holding such sessions or they are easily accessible.[14]

This Directive should be applied in cases when the court directs the parties to mediation or mediation is provided in national legislation. This Directive shall also apply in cases where the judge performs the role of mediator, in accordance with the national legislation.[15] The mediation provided in this Directive should be a voluntary process in the sense that the parties themselves can manage the process and organize it in accordance with their wishes. However, according to national law the courts should be allowed to determine time frames for the duration of the mediation process. The Directive provides that the courts should be allowed to suggest to the parties the possibility of application of mediation whenever appropriate, according to their findings.[16]

The Directive states clearly that the application of mediation should neither be conditional, nor favored by the introduction of incentives or sanctions for its application. Equally, the measures aimed at the use of mediation shall not preclude the parties from using their right of access to the court system.[17] Thus, it can be concluded that one of the essential Directive's provisions provides that national legislation should not prescribe mediation as mandatory. In order to ensure the quality of mediation, the Directive provides that appropriate training for mediators is necessary, as well as introduction of effective control mechanisms for providing quality mediation services.[18]

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[12]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, Official Journal of the European Union, 24.5.2008, paragraph 8.

[13]Magendie, Jean-Claude, Instituonalisation of Judiciary Mediation, *Overview of Judicial Mediation in the World,* First International Conference on Judicial Mediation, Paris, 16-17 October 2009, p. 47.

[14]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, Official Journal of the European Union, 24.5.2008, Article 5.

[15]Idem., paragraph 12.

[16]Directive 2008/52/EC, paragraph 13.

[17]Idem., paragraph 14.

[18]Idem., paragraph 16.

According to the Directive, mediation should not be regarded as less important or inferior alternative to court proceedings. In that sense, the agreements resulting from mediation should not depend only on the goodwill of the parties and Member States should ensure the enforceability of the agreement if the parties sign the same.[19]
In order to encourage the parties to use mediation, Member States should prescribe rules according to which while the mediation process is still taking place the obsolescence period in which parties may appeal to legal protection of their rights does not run. In this regard, the parties should not be prevented, if mediation fails, to initiate litigation or arbitration.[20]

II. Mediation in Family Disputes in Comparative Law

The experience from the implementation of mediation in European countries clearly shows that it is an effective tool which allows easier access to justice in cases where citizens resolve their family disputes. Moreover, mediation provides unburdening of the judicial system of large number of cases, as well as reduction of the costs of resolving disputes. However, despite the undeniable advantages of mediation, it still fails to take its rightful place, as reflected by the small number of cases resolved through mediation.[21]

According to the research conducted by the European Parliament in 2011, there are large differences among the European countries in terms of the duration of the court proceedings and court costs. Thus, for example, a trial in France lasts 331 day, in Germany 394 days, in Belgium 505 days, in Bulgaria 564 days, in Greece 819 days and in Italy even 1210 days. At the same time, litigation costs are extremely high. Thus, for example, those in Italy cost in average 15 370 euros and in Belgium 16 000 euros. On the other hand, the duration and costs of mediation are much lower. For example, the average length of mediation in Belgium is 45 days and in Italy 47 days, while the costs of mediation in these two countries amount to 7000 euros and 4300 euros in Italy. Comparative analysis at the European level show that the average cost of the trial is 10 449 euros and the average cost of mediation is 2497 euros. It follows that if the mediation is successful, the European citizens save 7500 euros by resolving their dispute through mediation. This means that only 24% of mediations need to be successful in order to consider mediation as financially worth, although the European experience shows that between 50 and 70% of mediations are successful and end up with an agreement.[22]

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[19]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, Official Journal of the European Union, 24.5.2008, paragraph 19.
[20]Idem., paragraph 24.
[21] It is quite a paradox that beside the fact that mediation leads to higher rate of success in dealing with cases, it is rarely used in a systematic manner by the judges, lawyers and jurists in the European countries. Read more: *Quantifying the cost of not using mediation – data analysis*, Directorate – General for internal policies, Policy Departement, Citizens rights and Constitutional Affairs, European Parliament, 2011, p. 9.
[22] *Ibid*, p.14.

In the European countries, there are several models of mediation. This is determined by the economic, political, cultural conditions and legal traditions in each country. Generally, we may distinguish six models of mediation: 1) model focused on achieving agreement; 2) cognitive-system mediation (which focuses on problem solving); 3) therapeutic model (which is focused on therapy); 4) transformative mediation (focused on the support of the parties); 5) humanistic mediation (that stresses dialogue and achieving understanding) and 6) narrative mediation (focused on the reconstruction of life stories).[23]

Basically, in all European countries the need for mediation in family disputes is gaining importance, due to the dramatic changes in marriage and family in recent decades. Across Europe, the number of marriages is decreasing, the number of divorces and separations is getting higher, the number of extramarital unions and children born outside of marriage is increasing, the number of single parent families and so-called recomposed families is more evident than ever before. In the period from 1970 to 1994, when the most significant transformations in the family occurred, the number of marriages in the EU countries decreased from 2.3 to 1.8 million annually. In all European countries the number of divorces is growing dramatically. From 1960 to 2006 the number of divorces in the EU countries increased from 1.7 million to 1.04 billion. At European level, the divorce rate is over 35 %, which means that one of every three marriages is ending in divorce. Countries with the highest divorce rate in Europe are Great Britain (53.2%), France (46%) and Germany (41%). By contrast, the Mediterranean countries have a lower divorce rate that equals to 16.5% in Spain and 11.7% in Italy. Studies show that after the divorce of marriage most of the children remain to live with the mother. For example, in 1996 in Italy the children were entrusted to mothers in 92.1% of divorce or separation cases, while the children were entrusted to fathers in only 5.5% of cases of divorce and separation. As a result of the increasing number of divorces, an increasing number of single parent families emerged, representing now 2.3% of all families in the EU. Besides the increase of the number of divorces in all European countries, the number of extramarital unions and children born out of wedlock is also growing. The percentage of children born outside of marriage in the EU increased from 5.1% in 1960 to 33.9% in 2006.[24] Exactly these changes and transformations in European families lead to increased conflict situations within the marriage and the family and consequently to increased number of lawsuits related to family relations. Due to the fact that family disputes, as opposed to other types of disputes, are highly emotional and lead to lasting

[23] Find out more about different mediation models in European countries: Brunilda Pali, Sandra Voet, *Family Mediation in International Family Conflicts - The European Context,* Institute of Criminology (LINC) Katholieke Universiteit Leuven (KU Leuven), 2007, p. 85.

[24] About the changes within the marriage and family read more: Dejan Mickovic, *Family in Europe XVI-XXI century,* Blesok, Skopje, 2008.

psychological consequences for children, the mediation is considered as the most suitable model for their resolving.[25]

There is no single model for legal regulation of mediation in Europe. In Austria there is no legal obligation to try a mandatory attempt for mediation. However, the court may stop the divorce proceedings within six months if it considers that there are prospects for reconciliation between the spouses. In order to encourage mediation in the event of divorce, the Austrian government covers the mediation costs.

In Belgium there is no mandatory mediation in family disputes. According to the Family Law from 2001, the mediation is an opportunity, not an obligation. In this regard, the spouses can initiate a mediation procedure before commencing proceedings in disputes related to marital duties or divorce. Even if the litigation procedure is already begun, the mediation could yet be accomplished. In this case, the mediator is determined by the court at the request of the parties or on its own initiative, but with prior consent of the parties.

In Croatia, the mediation process is accomplished in the frames of the divorce proceedings with the consent of the spouses who have minor children. Before starting the procedure, the court asks spouses whether they want the mediation to take place within the centers of social work, the marital counseling centers or in front of a mediator. If they can not come to an agreement in terms who shall conduct the process of mediation, the court decides. In Croatia, in 2006 there were 3349 cases of mediation. Mediation within the centers of social work is funded by the state budget.

In France, mediation can be conducted outside the court, but it could be court-annexed as well. In the first case, the parties may initiate mediation in order to prevent litigation, such as the procedure for divorce. In France there are no general rules governing this type of mediation. The Article 21 of the Law of Civil Procedure provides that it is the responsibility of judges to provide a reconciliation of the parties. Given that judicial mediation is voluntary, it depends solely on the will of the spouses. According to the Law from May 26, 2004, the court may propose mediation after obtaining consent by both spouses. The court is entitled to appoint a family mediator who will conduct the mediation. Family Court can also use the services of a family mediator in determining the exercise of parental rights and responsibilities.

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[25] The results of over 200 studies on the influence of divorce over children show that it is more probable that these children would live in poverty, have behavioural problems, get lower grades at school and leave school at early age, in comparison to the other children. Despite this, the children coming from divorced families more often face symptoms of depression, use drugs and alcohol, and they are more likely to commit crimes, compared with other children. Briefly, in all segments of their lives these children are in much more unfavourable position than other children. That is a result of the family conflicts during their parents' marriage and after divorce, financial problems after divorce, changed family structure, losing contact with one of the parents and the parents' inability to exercise parental role during marital conflict and after divorce. Read more: *The 4th European Conference on Family Law organized by the Council of Europe,* held in Palais de l'Europe in Strasbourg on 1 and 2 October 1998, on topic of family mediation in Europe, p. 24.

In Germany, the proceedings are often preceded by an attempt to resolve the dispute through mediation. In accordance with Article 279 of the Law of Civil Procedure, the court has an obligation to encourage peaceful resolution of the dispute over the entire duration of the procedure. In Germany, the dispute may be resolved by mediation only if both sides agree. The judge can not impose mediation to the parties, but he can only propose resolution of the dispute through mediation. Also, he can not specify the mediator. In family disputes, the judge may order the parties to participate in an information session on mediation.[26]

The Mediation Act[27] of Montenegro from 2005 foresees special mediation procedure concerning family disputes, including: marital disputes, disputes between parents and children and alimony disputes. The Court shall determine the date of the hearing and require the parties to select a mediator in order to achieve agreement or reconciliation. If the parties do not reach consensus regarding the selection of mediator, the court will appoint a mediator.

In accordance with the Marriage Act from 1991, Norway is one of few countries in Europe where mandatory mediation for spouses who have children under the age of 16 years is prescribed. However, in certain specific cases such as domestic violence, mediation is not mandatory. In Norway, the parties are not required to reach an agreement through mediation, but they have only an obligation to try to resolve the dispute through mediation before the beginning of the court proceedings. The objective of mediation is not to save the marriage. The Law provides that the purpose of mediation is reaching an agreement on the exercise of parental responsibility, the right to maintain personal contact with the child, determining the place of the child's permanent residence, thus always considering the best interest of the child.

III. Mediation in Family Disputes in the Republic of Macedonia de lege ferenda

The Law on Mediation was enacted in 2006 and it was amended in 2009.[28] According to Article 1, paragraph 3 of the Law, mediation is applied in family and criminal disputes, in cases when mediation is suitable for the dispute and if a special law does not exclude its application. In addition to the basic principles, such as neutrality and impartiality of the mediator (Article 4), confidentiality (Article 5), the exclusion of the public (Article 5 a), the equality of the parties (Article 6), efficiency of the procedure (Article 8) and the fairness of the proceedings (Article 9), one of the basic principles of this law is the principle of voluntarism. In this regard, in accordance with Article 3, paragraph 1 of the Act, the parties to the dispute initiate voluntarily

[26]Strecker, Christoph, Chapter II, State of Judicial Mediation and Conciliation in the Different Countries – Germany, *Overview of Judicial Mediation in the World*, First International Conference on Judicial Mediation, Paris, 16-17 October 2009, p. 165.

[27] ''Official Gazette of Monte Negro" n.30/2005 from13.05.2005.

[28]''Offical Gazette of Republic of Macedonia" n. 138 (consolidated version) from 17.11.2009.

and participate in the mediation procedure and they may renounce at any time.

Although the Law on Mediation was adopted six years ago, a general evaluation of its use shows that it is far away from fullfilment of its objective which is facilitating out-of-court settlement of disputes by resolving them in less time and thus providing no sufficient allocation of funding. According to the survey, "Perception and attitudes of the mediators about the mediation in the Republic of Macedonia", the total number of completed mediations realized among surveyed mediators was only 58 and 1/3 of the total number of mediators have not established contact with a client at all.[29] The core reasons for the weak effects of the application of the Law lie in the lack of tradition in our environment concerning mediation, lack of awareness of the professional and the general public about the benefits of mediation, the tendency of citizens "to seek justice in court," insufficient coordination of all stakeholders in the mediation process (Chamber of Mediators, Ministry of Justice, courts, mediators) e.t.c. On the other hand, mediation is an extremely convenient mean for resolving marital disputes, because it provides overcoming conflict situations, cooperation and consent of the parties and the acceptance of the achieved solutions. This is extremely important, especially in terms of protecting the rights and interests of children in the event of disputes over performance of parental rights during or after divorce. Hence, it can be concluded that the resolution of family disputes by mediation is much more appropriate and much more suitatable for all family members, especially for the children, rather than resolving disputes by judicial decision. The basic problem is how to overcome the current disadvantage in the field of mediation and encourage the resolution of family disputes through mediation.

The amendments to the Law on Non-Litigation Procedure from September 2010 anticipated the obligation to judges to inform the parties about the possibility of dispute resolving through mediation in written form, along with an invitation to attend the preparatory hearing. Although this is a step forward in the promotion of mediation, it does not seem to bring the expected results. Encouraging measures have been undertaken by the Government, as well. Thus, it has been foreseen that in case of agreement among parties to settle their dispute through mediation, the first four hours of mediation would be free of charge. Nevertheless, this is also a good initiative which is expected to yield positive results.

Despite these measures, an ongoing campaign aims to raise the public awareness about the benefits of mediation. It will contribute to the increased number of disputes resolved by mediation, better training and more effective control of the mediators. It would also motivate and encourage the judges to try to refer parties toward solving disputes through mediation. However, one needs to bear in mind that the main objective of mediation must be meeting the needs of citizens for faster, cheaper and more effective access to justice, rather than representing a tool for unburdening courts or "finding" work for

[29] Find out more: Research “The Perception and Attitudes of Mediators Concerning Mediation in the Republic of Macedonia”, conducted by the Institute 4 R, Skopje from 1.4 till 15.4.2011, p. 44.

mediators. Envisaging compulsory mediation in all cases of family disputes before going to court is contrary to all relevant international documents discussed above, as well as to the solutions provided in most European countries. In addition, mandatory mediation is contrary to its core, because it can be successful only with consent of will of both sides.

We believe that certain legislative changes, especially in family law would have positive impact toward the enhanced use of mediation in Macedonia. In this regard, if marriage is being divorced by mutual consent of the spouses and they do not have minor children (Article 39 Family Law), a mandatory attempt for mediation, pursued by qualified and educated mediator should be provided. If mediation does not lead to reconciliation of the spouses, the marriage will be divorced by signing a joint statement certified by a notary, by which partners will have an obligation to resolve all property issues, such as the division of joint property and eventual right to alimony of one of the spouses. We believe that when it comes to this type of divorce the participation of the court is not necessary, due to the fact that the court neither concluded the marriage, nor there is a dispute that the court should settle. The introduction of divorce by mutual consent of the spouses through mediation with notarized statement is consistent with the general tendency for liberalization of divorce, present in all European countries in the last few decades. This will contribute to faster and more efficient realization of the rights and interests of spouses, reduce costs and unburden courts.

In the case of mutual proposal of divorce, when minor children or children over whom the parental right have been extended are present, a solution that gives the judge discretionary right to entrust the procedure for conciliation to a mediator or to the Centre of Social Work should be envisaged. If conciliation procedure pursued by a mediator or the Centre of Social Work fails, the judge will divorce the marriage. Having in mind the prior deciding, he is obliged to request the opinion of the Centre of Social Work whether the agreement reached by spouses suits the interests of children.

If the marriage is divorced with a lawsuit filed by one of the spouses and there are no common children or children over whom the exercise of parental rights has been prolonged, the judge will, at its own finding, entrust the procedure for conciliation to a mediator or CSW. If conciliation procedure realized by the mediator or the Centre of Social Work did not terminate successfully, the court will divorce the marriage.

If a complaint for divorce is being submitted, and spouses have minor children or children over whom the exercise of parental rights has been prolonged, the judge will, at its discretion, entrust the procedure for conciliation to a mediator or CSW. If conciliation procedure fails, the court will divorce the marriage. In the frames of the judgment, the court would decide which one of the parents would be entitled for children's care and upbringing, after considering the opinion of the Centre of Social Work.

We believe that these changes are appropriate, because the mediator and not the judge is the one that would assume the obligation to achieve reconciliation of spouses. This would unburden courts, and even more importantly, it would provide an opportunity to the partners to overcome their problems and misunderstandings with the participation of an impartial third party and outside the court. The experience shows that only in rare cases the judge manages to reconcile the spouses. The reason for this is the inadequacy of the court as an institution in which disputes are taking place to occur as a conciliator of the parties. The judges are overloaded with work and that is why we strongly assume that a well-trained mediator, with proper education would more likely succeed to reconcile the spouses.

Except in cases of divorce, the role of mediation particularly needs to come to the fore in cases of conflict between the parents in relation to the exercise of parental rights, determining with which parent the child will live if they do not live together, as well as maintaining personal relationship between the child and the non-residential parent. In all of these cases, reaching an agreement between parents through mediation is by far a more convenient solution than a decision brought by an authorized state body. An agreement which is voluntarily accepted by both parents provides a constructive approach to the exercise of parental rights and responsibilities and it ensures maintaining a personal contact with the child which is, basically, in best interest of the child. Otherwise, when the decision is delivered by state authority, one parent will feel "overwhelmed" or disadvantaged which would adversely affect his relationship with the other parent and, especially, with the child. In this context, Article 76 of the Family Law has to anticipate that, in event of disagreement between the parents about the exercise of parental rights, the Centre of Social Work shall refer the parents to mediation in order to achieve an agreement in performing parental rights. If mediation fails, within 15 days, the CSW brings the decision. The Article 77 of the Family Law should envisage that the Centre for Social Work (CSW) will direct parents who live separately to mediation and, if during the process they cannot agree about maintaining personal relations and contact with the child, more precisely, if mediation fails, the CSW would make a decision within 15 days. Article 79 of Family Law prescribes that when a child does not live together with its parents, they need to make an agreement on how to maintain personal relations and contact with the child. In this article, it should be envisaged that if the parents do not reach an agreement, the CSW would refer them to mediation and if it is not successful within 15 days, the CSW will make a decision.

Mediation can be useful in cases of disputes about managing and division of joint property between spouses. In this sense, in all disputes related to management or division of joint property during marriage or after divorce, a provision that entitles the judge to stop the proceeding and refer parties to mediation should be inserted. If mediation is not successful in the legally prescribed period, the decision would be made by the court.

Taking into account the specifics of the marital and family disputes, special requirements for mediators need to be fulfilled, such as a special kind of education (psychologist, pedagogue, social worker, lawyer), as well a certain minimum education hours about the mediation in family disputes. At the same time, an adequate supervision or control over mediator's work, as well as providing family mediators with the needed technical, spatial and other conditions would create circumstances in which they can successfully perform their tasks.

Summary

In this text, the authors speak about the meaning, the positive aspects and the need for promotion of mediation in family disputes. In the first part, they give an explanation on the term mediation by emphasizing the advantages on mediation compared to litigation procedures which last much longer, cost a lot of money, and create tensed and hostile relations among parties concerned. In the article, an overview on the most important international documents on mediation in family disputes is given, such as the European Convention for the Exercise of the Rights of the Child, Convention on Contact Concerning Children 2003.35., Recommendation R (98) 1 on family mediation, Recommendation 1639 (2003) 1, and the most recent one, the Directive on Mediation in Civil and Commercial Disputes adopted in 2008.

In the second part of the text, a comparative review is presented, by giving brief preview of several European countries which have already developed good practice of mediation in family disputes. In the final part, the authors pay attention to the current situation concerning mediation in family disputes in Republic of Macedonia. Nevertheless, they give a short summary on the existing obstacles in development on mediation, the lack of awareness between people on the positive aspects on mediation, the lack of practice among the mediators. In their final conclusions, the authors suggest what measures need to be undertaken in order to make the procedures of mediation preferred manner of resolving family conflicts by the parties, and to stimulate wider use of mediation in family disputes.