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TITLE

Mandatory Mediation as a Means of Family Dispute Resolution in the Republic of Armenia

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Abstract

Mediation is one of the several alternative dispute resolution methods that has been practiced in different nations throughout history. Among all the legal fields, however, family mediation that deals with the issues of divorce, child custody, and distribution of financial obligations is the area of mediation practiced most all around the world. In the Republic of Armenia application of mediation in resolving family disputes is still in its early stages. There are both legal and social barriers impeding the development of mediation in Armenia, however, lack of public awareness is the primary reason why mediation is not widely practiced in Armenia and in many developing countries. In Armenia, mediation had not been regulated as a formal method of dispute resolution until 2015. Through comparison with international practice of mandatory mediation, this paper advances to analyze the present problematic situation and make recommendations on the possible solution of the problem.

Keywords: mediation, alternative dispute resolution, mandatory mediation, family disputes, divorce, child custody, international practice, public awareness, developing countries.

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List of Abbreviations

ADR	Alternative Dispute Resolution
EU	European Union
COE	Council of Europe
EC	European Commission
NCPC	Nouveau Code de Procédure Civile
RA	Republic of Armenia
SRO	Self-Regulatory Organization
CRC	Convention on the Rights of the Child
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

"The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried."

— Sandra Day O'Connor,
Associate Justice of the Supreme Court of the United States

INTRODUCTION

Mediation is one of the several alternative dispute resolution methods that has been practiced in different nations throughout history. In the second half of the 20th century mediation gained broader practice domains to include commercial, employment, family law and other civil law matters. Among all the legal fields, however, family mediation is the area of mediation practiced most all around the world. With increasing acceptance, family mediation has broadened to include adoption, child protection, guardianship, juvenile, parent-teen, and probate matters, although divorce mediation remains the predominant practice.[1]

In the Republic of Armenia application of mediation in resolving family disputes is still in its early stages. Although mediation has been historically practiced in Armenia, it had not been regulated as a formal method of dispute resolution until 2015. In 2015 amendments have been made in the Civil Code, the Judicial Code of the RA and the Family Code of the RA by introducing new provisions on mediation. Along with these amended regulations, several projects, trainings, conferences and seminars have been organized in Armenia, however, the

[1] Joan B. Kelly, Ph.D., Pepperdine Dispute Resolution Law Journal; "Issues Facing the Family Mediation Field", Vol. I:37, 2000; Accessed at: <https://law.pepperdine.edu/dispute-resolution-law-journal/issues/volume-one/04-kelly.pdf>

outcome is not encouraging and majority of the population is still skeptical about mediation. There are number of reasons for the population's skepticism on mediation, however, lack of information and knowledge is the main reason.

To promote wider acceptance of voluntary mediation it is necessary to inform the public about mediation, to organize public discussions and to educate how the institution of mediation is implemented. In Armenia, however, where information and media outlets are relatively limited [2], significant resources and time will be required to raise public awareness, and to effectively promote voluntary mediation. Implementation of mandatory mediation can become an efficient way of addressing the issue of limited resources and to expedite the process of public awareness.

The scope of this paper is limited to studying the need of mandatory mediation, the assessment of its implementation in family disputes, and specifically the need of implementation in Armenia and its possible consequences. The paper will define family mediation and address the advantages and the disadvantages of mandatory family mediation in comparison with voluntary family mediation. Afterwards, the international practice of mandatory mediation in family dispute resolution will be studied by considering several countries both inside and outside of the EU. Finally, the paper advances to analyze the legal regulation of mediation in Armenia supported by statistical results, presents amendments in the laws and discusses the possible consequences of implementation of mandatory family mediation. The Conclusion will summarize the main findings of the research. Issues arising in different legal areas where mediation is implemented are not within the scope of this paper insofar this paper does not consider a broad thematic perspective.

This paper is based on a comprehensive study of the countries having implemented mandatory mediation of family disputes and the analysis of the Armenian laws and regulations on family mediation. References are made to number of research articles, scholarly papers, state

[2] *Note*. The government and media owners exercise significant influence on editorial content, and the overall media environment encourages self-censorship. Independent outlets are able to take advantage of the country's relatively open online space. Most of the dominant broadcast media are controlled by the government, government-friendly individuals, or other political and business elites. The print sector is small and continues to decline amid a rise in the accessibility and popularity of online sources. The internet penetration rate was 58 percent in 2015. Legal Environment: 20 (0=Best, 30=Worst), Political Environment: 23 (0=Best, 40=Worst), Economic Environment: (0=Best, 30=Worst), Press Freedom Score: 63 (0=Best, 100=Worst).
Freedom House, "Freedom of Press 2016: Armenia", © Freedom House 2017; Retrieved From : <https://freedomhouse.org/report/freedom-press/2016/armenia>

and privately held projects, and, consequently, survey results and statistics on mandatory mediation. *"Mediation: Principles and Regulation in Comparative Perspective"* is cited throughout this paper since it identifies and illustrates possible regulatory models, discusses central principles of mediation law by presenting comparative research on mediation law.[3] The book describes and analyses the law and practice of twenty two countries both inside and outside of Europe. Since the Armenian law on mediation has only recently been regulated, the practice can hardly be considered established. Consequently, the comparative analysis of mediation practiced on the international level is essential to assess the need of mandatory mediation in general as well as in Armenia.

Number of legislative decrees, legal acts and laws on mediation have been enacted in different countries. One of the most significant orders ratified by several states of the EU member states is the *European Mediation Directive 2008/52/EC* (hereinafter referred to as "Directive") enacted by the European Parliament and the Council of the European Union in 2008. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.[4] The paper will discuss and analyze articles cited from the Directive, provide statistics on the results the Directive has achieved, and draw parallels on the possible consequences of mandatory mediation in Armenia.

The journal article *"Family Mediation: Doctors Should Consider Referring Divorcing Couples to this Service"* presents insight into the psychological aspect of mediation, in particular, the psychological issues that family mediators often face when dealing with children.. Study on the model standards of practice for family mediation, challenges the parties face during litigation, as well as current developments in the field of mandatory mediation is based on the articles, reviews, surveys and reports by various widely acclaimed authors, lawyers and judges.

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[3] Mediation: Principles and Regulation in Comparative Perspective; Klaus J. Hopt and Felix Steffek; Oxford Scholarship Online: Published in January, 2013: Print Publication Date: 2012; Accessed at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199653485.001.0001/acprof-9780199653485>

[4] Official Journal of the European Union, European Mediation Directive 2008/52/EC; Accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF >

CHAPTER 1

Mandatory Mediation of Family Disputes: Advantages and Disadvantages in Comparison with Voluntary Family Mediation

Family mediation is the neutral facilitation of family dispute negotiation[5] when a third party- a professionally trained mediator- assists in settling disputes between divorcing couples, issues related to child custody, distribution of assets and other disputes. It is difficult to establish where family mediation was developed, but, historically, it has been practiced in ancient times as an informal way of dispute resolution[6], has been voluntary in many states. Today, mediation of a dispute may occur as a result of voluntary private agreement, community program, or court

[5] Ontario Association for Family Mediation, retrieved from: <https://www.oafm.on.ca/family-mediation/>

[6] Annalisa Gutierrez, The Seasons of Alternative Dispute Resolution: A Study of Mediation Tactics in the Context of Ancient Greek Mythology;
Retrieved From: <http://www.americanjournalofmediation.com/docs/ANALISA%20GUTIERREZ%20-%20The%20Seasons%20of%20ADR%20-%20A%20Study%20of%20Mediation%20Tactics%20.%20.pdf>
Note. The paper illustrates how the ancient Greeks contemplated the usefulness of family mediation through the famous myth of Persephone and Hades.

order.[7] In the last decade, however, mandatory mediation of family disputes replaced voluntary mediation in a number of countries. This change is conditioned with the fact that mediation itself, as a peaceful method of dispute resolution, has a vast array of advantages. When considering the advantages of mandatory mediation over voluntary mediation in family disputes the necessity of mandating mediation in family disputes becomes apparent

The advantages of implementation of mandatory mediation in family disputes are apparent in almost every field or aspect that a party to a mediation considers before applying for mediation. Although, critics have tried to rebut the effectiveness of mandatory mediation, empirical studies have found that between 50 percent to 90 percent of family disputes that enter mediation reach settlement.[8] This is true even where all prior attempts at settlement have failed, where the parties were pessimistic about the prospects of settlement, and where the parties have spent substantial amounts of time and money preparing for trial.[9] This chapter, further, illustrates the reasons for implementation of mandatory mediation and analyses the disadvantages the critics have highlighted in favor of voluntary mediation.

Impartiality, Confidentiality and Self-Determination

Impartiality, confidentiality and disputant self-determination are the three key components of mediation that differentiate it from other ADR methods. The first two components have not been criticized by the opponents of mandatory or court-annexed mediation, but the "self-determination" component has become the most controversial issue.

Critics from the United States argue that mediators control not the outcome of mediation, but the process of mediation. [10] Many mediators engage in coercion to keep the disputants at the

[7]Voluntary Versus Mandatory Mediation; Retrieved from: <https://mediation.uslegal.com/voluntary-versus-mandatory-mediation/ >

[8] Noel Semple, Mandatory family Mediation and the Settlement Mission: A Feminist Critique; Canadian Journal of Women and Law, Volume 24, Number 1, 2012, pages 207-239 (Article); Retrieved from <http://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1006&context=lawpub>

[9] Norman Pickell, In Family Law, How is Mediation Different From a Settlement Meeting; April 2000; Retrieved from: <http://www.mediate.com/articles/pickell.cfm>

[10] Hedeen, T. (2005). Coercion and Self-determination in Court-Connected Mediation: All Mediations Are Voluntary, But Some Are More Voluntary than Others. *The Justice System Journal, 26*(3), 273-291.; Retrieved from: <http://www.jstor.org/stable/27977255>

table and often force the disputants to sign an agreement under the pressure. On the other hand, mandatory mediation includes coercion in the sense that the state may explicitly or implicitly compel the disputants to participate in mediation. Explicit coercion infers to the persuading of the reluctant disputant to agree to mediation by implying that prosecution will be initiated. While implicit coercion can be seen when a judge agrees to dismiss a court case if successful mediation takes place, and it appears in communications from prosecutors, police officers and mediation program staff.[11] Some critics consider the closing line *"'Failure to appear may result in the filing of criminal charges based on the above complaint"* of the letter as "*very threatening".* [12]

Sometimes practice of the law may differ from what is stipulated in the law in the sense that the present human factor cannot be regulated always and in all situations. In each country that practices either voluntary or mandatory mediation, standards of conduct for mediators are regulated in order to define the mediator's jurisdiction. For example, in the US Model Standards of Conduct for Mediators, the first standard clearly states that:

Standard 1. Self-determination

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes (American Arbitration Association et al., 2004).[13]

It is explicitly stated in the standard that self-determination is the core element of mediation be it voluntary or mandatory, and the parties are free to control the process. At the same time, point 1 and 2 of the same standard read as follows:

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.

[11] *See* Footnote 10.
[12] *See* Footnote 10.
[13] Model Standards of Conduct for Mediators; American Bar Association, August 2005; Retrieved from: <http://newmexicomediation.org/wp-content/uploads/2014/02/MODELSTANDARDS.pdf>

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.[14]

The first point enables a mediator to balance the self-determination of the party in order to conduct a quality process that is part of his duty. This cannot be viewed as an infringement of the party's right of self-determination, since mediation is "a process in which *an impartial third party facilitates* communication and negotiation and *promotes voluntary decision making* by the parties to the dispute" (American Arbitration Association et al., 2004). While the second point limits the mediator's rights of interfering in the decision-making of the parties.

Secondly, the critiques according to which the requirement for participation in mediation is "very threatening" may create a misleading understanding of what mandatory mediation is. It is important to note that mandatory mediation does not infer mandatory settlement of dispute or decision-making, i.e. it means that the parties are enforced to participate in mediation session or sessions prior to litigation, while decision-making remains on voluntary basis. Hence, although participation in mediation is not voluntary, the parties are given wide discretion to decide the final outcome of mediation or even to terminate it whenever they do not find it necessary to continue.

Time- and Cost-Efficiency Guaranteed both for the Disputants and for the Court

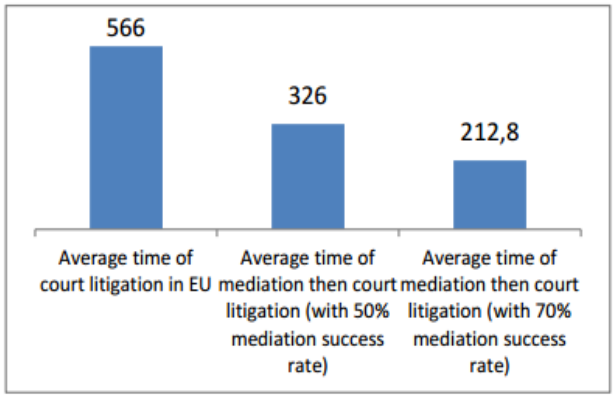
Mediation entails a number of advantages. What many people seek but are unable to reach in litigation is offered to them through mediation. These advantages are spending less time and money on disputes that do not usually require much time to be resolved, e.g. these disputes usually arise in family law, employment law and other civil disputes. In court -ordered mediation, mediation starts earlier in the litigation process and takes shorter time to reach an agreement. This results in the minimum use of court staff and time, and reduction in costs. On the other hand, even when the settlement of disputes cannot be achieved during mediation, the court proceedings followed by mediation usually take less time and money to be solved, since the parties will have already gained more information during mediation sessions.

[14] *See* Footnote 13.

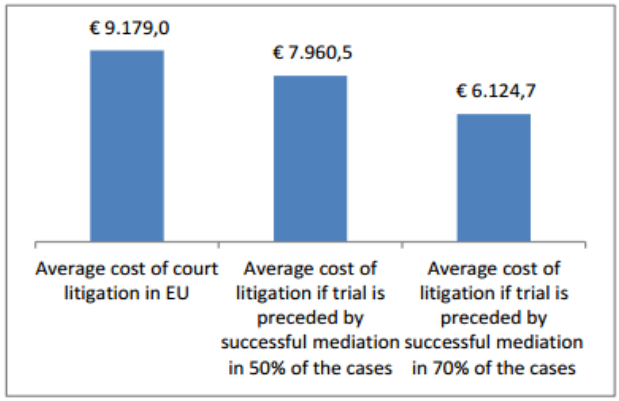
After the enactment of the EU Mediation Directive, the objective of which is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings[15] in the EU member states, the difference in time and money spent on mediation and litigation became tangible through practice. The following charters show the average time and money savings of only litigation only versus mediation followed by litigation:

Comparing the Average Time and Money Savings of Litigation Only versus Mediation then Litigation (at different mediation success rates)[16]

Time (in days)



Money (in Euro)



[15]Official Journal of the European Union, European Mediation Directive 2008/52/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF >

[16] Directorate General For Internal Policies; Policy Department C: Citizens' Rights And Constitutional Affairs; "Rebooting' The Mediation Directive: Assessing The Limited Impact Of Its Implementation And Proposing Measures To Increase The Number Of Mediations In The EU", © European Union, 2014; Retrieved from <http://www.europarl.europa.eu/studies>

The abovementioned results show that in light of the many societal benefits a greater use of mediation can bring significant and measurable time and money savings.[17]

Time- and cost-efficiency of mediation have their positive impact not only on the disputants, but also on the court. In particular, courts benefit from the implementation of mediation since a vast majority of cases, such as family or employment disputes, that prolong and aggravate the work of the courts are shifted to another body.

To put it into another perspective, mediation can reduce the cost of civil litigation in which government and/ or crown corporations are involved. Not only in the case of family disputes, but in many civil litigations, mediation avoids expending the money on legal and court fees that would otherwise be spent in the economy.[18] Furthermore, within the frames of economic efficiency mandatory family mediation is favorable to be implemented, since family mediation has better psychosocial results in comparison with litigation, and, consequently, this can decrease the number of publicly-funded social assistance programs and other social services.[19]

Voluntary mediation, in contrast, can hardly achieve the anticipated outcomes. The reasons why voluntary mediation is less favorable to be implemented in achieving the abovementioned purposes is conditioned with the same reasons as why people in many countries are still skeptical about mandatory mediation of various kinds of disputes.

Psychological Aspect of Family Mediation

It is widely acknowledged that any family-related issue that enters into the litigation process becomes a stressful experience for the participants. The discussion of this factor is two-faceted, i.e. very often whenever the issue cannot be solved separately by the parents children take participation in the mediation sessions. In particular, the mediator, with the agreement of parents, can organize separate meetings with children in order to have each party voice his/her opinion and to conduct efficient mediation sessions. The discussion of the

[17] *See* Footnote 14.
[18] Sarah Vander Veen, "A Case for Mediation: The Cost Effectiveness of Civil, Family, and Workplace Mediation"; Vander Veen Research and Evaluation, January 2014; Retrieved from <http://www.mediatebc.com/PDFs/1-52-Reports-and-Publications/The-Case-for-Mediation.aspx>
[19] *See* Footnote 16.

psychological aspect of mediation will include the analysis of both the positive and negative impacts mediation may have on the spouses and children separately.

The feminist critics argue that family mediation creates power imbalance in favor of the male party.[20] According to them, most family law disputes include parenting issues, with each party seeking more parenting time or parental decision-making authority. Women may be more likely to arrive with psychological impediments such as depression, fear of achievement, and guilt arising from the end of the relationship.[21] On the other hand, Martha Shaffer suggests that mothers may have more difficulty than fathers do in distinguishing their own interests from those of their children.[22] At the same time psychological experimental studies have shown that whenever there is a property to be shared between the parties and that issue is to be solved by negotiations, the average female subject usually claims and gains comparatively small share than the male party. This is the reason why men rather than women often choose family mediation. The feminist critics also argue that power imbalance can be created due to domestic violence. Psychologically, it will be difficult for the victim of domestic violence to determine and assert her rights and interests. This will lead to the failure to negotiate and the dominant party will win the case. Hence, according to the feminist critics, family mediation creates psychological misbalance and lets criminal violence go unpunished.[23]

It is clear that domestic violence is present in family disputes that include divorce, child custody and visitation issues.[24] Hence, mediation is prepared to deal with such issues. First of all, mediators are educated and trained in a way as to notice the presence of violence in the divorcing couple, even if they are trying to hide it. Usually, there are signs in the gestures, behavior, speech which a well-trained mediator can notice. In fact, the safety of the parties is the primary concern for the mediator during the meetings, especially in the countries where family mediation is mandatory. Secondly, preliminary screening of couples referred to family mediation, in the form of written questionnaire, a direct question from an interviewer, or any other means, usually is

[20] *See* Footnote 8.
[21] *See* Footnote 17.
[22] Shaffer, Martha, Divorce Mediation: A Feminist Perspective (1988). University of Toronto Faculty of Law Review, Vol. 46, No. 1, 1988. Available at SSRN: <https://ssrn.com/abstract=1185862>
[23] *See* Footnote 8.
[24] Anita Vestal, "Domestic Violence and Mediation: Concerns and Recommendations" , May 2007, Retrieved from <http://www.mediate.com/articles/vestala3.cfm>

conducted in order to assess the compliance of the candidates for mediation. Finally, mediator should process skills and special techniques designed to balance power and create an expectation of cooperation and should skillfully employ fairness. These techniques could include power-balancing moves, appropriate use of structured and directive questioning and private caucusing.[25]

Conversely, if the stated recommendations are not applicable in case, the case either will be exempt from mediation, or, as previously stated, the process, termination or outcome of the case will depend on the willingness of the parties, since mandatory mediation does not entail mandatory settlement of dispute. In other words, although mediation can be mandatory, it is and remains an alternative because while it works most of the time, it cannot work all of the time.[26]

Generally, mediation is less stressful than litigation and this is evident even in the cases when mediators deal with children. Family mediators are educated to have a solid understanding of the psychology of divorce and relevant child development research to be appropriately responsive to client behaviors and discussions.[27] Research has shown that clients particularly value family mediation, which has been shown to improve communication and reduce conflict and distress for adults and children.[28]

Often, parents mistakenly think that the mediator is the one who should resolve the issue and ask the mediator to involve the child in the mediation because of their inability to decide what a child wants. In such situations it is very important for a mediator to understand what child wants to voice during divorce[29] since confronting a child with mediation can psychologically put the child in a dangerous situation.[30] Two of the most frequently used phrases among children are "Don't make us feel we are being disloyal because we enjoy being with our other parent", and

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[25] *See* Footnote 20.

[26] Stephen R. Marsh, "Mediation Pitfalls and Obstacles", Copyright 2000, Accessed at: <https://adrr.com/adr1/essayc.htm>

[27] *See* Footnote 1.

[28] Fisher, T. (1995). Family Mediation: Doctors Should Consider Referring Divorcing Couples For This Service. *BMJ: British Medical Journal, 310*(6994), 1551-1551. Retrieved from: <http://www.jstor.org/stable/29727604>

[29] Shellee Moore, "10 Things Children Want to voice During Divorce"; retrieved from <http://www.divorcewizards.com/10-Things-Children-Want-During-Divorce.html>;
Shellee Moore is a Marriage and Family Therapist.

[30] Jim Melamed, "Mediating Divorce Agreement Training Manual: Parenting Issues: Children in Mediation?", Accessible at <http://www.mediate.com/divorce/pg74.cfm>

"This may not have been your choice, but remember, it is not our choice either".[31] At the same time children often are too immature to know what is in their best interests and are afraid to disappoint the parent they are greatly dependent upon. Taking into account these and other circumstances, a well-trained mediator can professionally deal with such situation. Then, why to pose the stress of litigation on children (and on the spouses) when a mediator, who can be a lawyer, a psychologist, a family therapist, help to settle the dispute?

In the face of all the benefits to be gained from mediation the most crucial issue remains why mediation is not widely practiced yet? The answer lies in the following: because the measures that have been used to promote mediation and train people in mediation are not expanding the reach and use of mediation as quickly or as extensively as hoped.[32] This means that training and promotion of mediation as a voluntary means of dispute resolution are not enough. Hence, implementing mandatory mediation in family disputes, as well as in other civil cases, will raise the level of legal awareness by "pushing" people to use mediation (*See* Appendix; Figure 1. Top-Ranked, Most Effective Legislative Measure to Increase Mediation Use (by number of preferences expressed) and Figure 2. Average Responses for the Non-Legislative Proposal with Potential for Most Impact). Strategically, mandatory mediation can be viewed as a "public interest policy", as it was in other public interest policy campaigns, e.g. making people wear seat belts. Such campaigns usually receive minimal promotion and the public awareness remains in the low level until governmental requirements mandate such measurements. Given the abovementioned benefits and facts, it is assumed that mandatory mediation can have its positive impact on raising the legal awareness of the public.

[31] *See* Footnote 6.

[32] Directorate General For Internal Policies; Policy Department C: Citizens' Rights And Constitutional Affairs, "Quantifying the Cost of Not Using Mediation- A Data Analysis", © European Union, 2014; Retrieved from <http://www.europarl.europa.eu/studies>

CHAPTER 2

International Practice of Mandatory Mediation in Family Disputes: The Practice Inside And Outside of the EU Member States

Initially, mediation was used in resolving family disputes and gradually found its application in other social relations. The countries that have pioneered in the implementation of mediation are the USA, Great Britain, and Australia. After the enactment of the EU Mediation Directive in 2008, some EU member states began intensively practicing mandatory mediation and today several civil law matters, including family and employment law disputes, are being referred to mediation by the court. Article 5 (2) of the Directive states: "This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system."[33] The EU Mediation Directive also stipulates both tax incentives and sanctions in case of voluntary mediation with the aim of motivating people to use mediation, and increase the legal awareness of the public. Article 6 encourages national courts to refer litigants to mediation, and Article 9 calls for information about mediation and mediators to be made publicly available.[34] There are four mediation models used in the EU member states: 1) Full voluntary; 2) Voluntary with incentives and/ or sanctions; 3) Required initial mediation session; 4) Full mandatory

[33]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, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0052>

[34]Bloomberg Law Reports, Steven Friel and Christian Toms, The European Mediation Directive-Legal and Political Support for Alternative Dispute Resolution in Europe, <http://www.brownrudnick.com/uploads/117/doc/Brown_Rudnick_Litigation_European_Mediation_Directive_Friel_Toms_1-20110.pdf>

mediation. Since the scope of this paper is limited to the analysis and the assessment of the need to implement mandatory mediation, this chapter will present only those countries in the EU and outside of the EU that have adopted mandatory family mediation.

After the enactment of the Directive, several EU member states, including Bulgaria, Malta, adopted mandatory mediation in family disputes. Another country in the European continent that has mandated family mediation is Norway. Other states outside of the Europe, that have made family mediation mandatory, include the USA (the states of California, Ohio, Massachusetts, Florida, etc.), Australia, and New Zealand.

Bulgaria

Bulgaria's first successful effort to regulate mediation came in December 2004 with the adoption of the Mediation Act. Later, the enactment of the 2008 Civil Procedure Code created measures for the use of mediation in pending court cases. It also established a legal relationship between mediation and civil proceedings.[35] In 2011, the National Assembly of Bulgaria implemented the EU Mediation Directive, after which several civil law matters became subject to mediation. These civil disputes include family law matters (including divorce proceedings), labor disputes, and other civil and commercial disputes. Article 11 of the Mediation Act stipulates that the court has the general authority, in its own discretion, to 'propose to parties that they use mediation for resolving their dispute. While Articles 140(3) and 374(2) of the Civil Procedure Code stipulate that in civil and commercial proceedings, the court has the general authority 'to refer the disputing parties to mediation when scheduling the first hearing of the case in public session'.

In Family mediation cases, especially in divorce proceedings, the court *must* direct the parties to mediation or another procedure for voluntary resolution of the dispute during the first meeting. If the parties agree to mediate, the case is stayed, but either party may request a resumption of the case within six months. Without a request for resumption, the case is dismissed. Articles 321(2), (3) and (4) of the Civil Procedure Code state that a divorce case is

[35] *See* Footnote 16.

dismissed by mutual party consent or when a settlement agreement is reached (depending on the content).[36]

Article 78 (9) stipulates incentives if the case is finalized by an agreement. In that case half of the deposed State fee shall be paid back to the claimant. The expenses for proceedings and for the agreement shall stay for the parties, if not otherwise agreed.[37]

The statistics indicate that there is an increase in the number of the mediated cases, and more than a third of the court-referred cases are successfully settled. [38]

Malta

Mediation Act of 2004 confers the rights and responsibilities related to mediation to a separate legal entity - Malta Mediation Center. The Board of Governors of Malta Mediation Center puts the requirements for mediation, ensures compliance with the Directive and the 2004 Mediation Act and has the authority to oversee the conduct of the mediators. Article 17 of the Mediation Act stipulates that a dispute may be referred to the Center for Mediation 1) voluntarily, that is following a decision made by the disputing parties; 2) by the Court or other adjudicatory authority or by the parties to the proceedings after litigation proceedings have already commenced; 3) by law, i.e. by any authority not being an adjudicatory authority or through the execution of a clause in a contract requiring the parties to submit to mediation any dispute arising under or out of the terms of the contract.[39] Article 18 of the Mediation Act stipulates:

(1) Parties to any proceeding may, by a joint note, request the court or other adjudicating authority to stay proceedings while the parties attempt at settling the dispute before a mediator.

(2) The adjudicatory body shall –

(a) on a request made under sub-article (1); or

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[36] Civil Procedure Code, Bulgaria, in force from 01.03.2008, Retrieved from: <http://kenarova.com/law/Code%20of%20Civil%20Procedure.pdf>

[37] *See* Footnote 31.

[38] *See* Footnote 16.

[39] Mediation Act, Malta, Chapter 474, 21 December, 2004; Retrieved from: <https://mjcl.gov.mt/en/mmc/Documents/Chapter_474t.pdf>

(b) on its own initiative, and where it considers it appropriate that the dispute may be resolved through the assistance of a mediator, direct that proceedings be stayed for the duration of the process.[40]

Article 14 of the Code of Conduct for Mediators stipulates: "The Board of Governors of the Centre shall also have the power to take such disciplinary action against any mediator whose conduct, in the opinion of the Board of Governors, does not adhere to or falls short of the conduct required by the principles in this code or in the opinion of the Board constitutes unbecoming behavior".[41]

It is important to note that mandatory mediation is required in Malta only for family law court proceedings.[42] The fee tariff is regulated by regulations 2 and 4 of Legal Notice 309 of 2008.[43] In family mediation, the parties can either freely choose a mediator (from the accredited list), and bear the cost of doing so themselves, or the Court Registrar appoints one of the mediators from a list forwarded by the Mediation Centre. In the latter case, the cost is borne by the courts.[44]

Croatia

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[40] *See* Footnote 34.

[41] Code of Conduct for Mediators, Malta, <https://mjcl.gov.mt/en/mmc/Pages/Code-of-Conduct-Mediators.aspx>

[42] *See* Footnote 16.

[43] *Note.* Regulation 2. A non-refundable fee, hereinafter referred to as "the registration fee" shall become payable to the Malta Mediation Centre, hereinafter referred to as "the Centre", for disputes referred to the Centre. The applicable registration fees shall be as follows: (a) for disputes referred to the Centre after litigious proceedings would have already commenced in a Court or other adjudicatory authority, whether such dispute is referred to the Centre by such Court or other adjudicatory authority or by the parties to the proceedings, the applicable registration fee shall be 50 euro; Cap. 492. (b) for disputes that are referred to the Centre voluntarily by the mediation parties or according to law, the applicable registration fees shall be as follows:

(a) for family mediations ..... 35 euro

Regulation 4. Mediators shall be entitled to receive such fees, established prior to the commencement of proceedings, from the parties to the mediation as may be agreed in writing between the mediator and the parties; in the absence of an agreement as aforesaid mediators shall be entitled to a fee computed on the basis of a flat rate of 50 euro per hour, excluding value added tax.

Subsidiary legislation 474.01: Mediation act (tariff of fees) Regulations, 1st December, 2008,*Legal notice 309 of 2008, Retrieved From: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11885&l=1>

[44] "Mediation in Member States: Malta", Retrieved From: <https://e-justice.europa.eu/content_mediation_in_member_states-64-mt-en.do?member=1>

Today, the Government of the Republic of Croatia, through the Ministry of Justice, provides strong support (legislative, financial, technical) to the development and promotion of mediation, and it has become one of the important parts of the Judicial Reform Strategy. Mediation in the Republic of Croatia was first regulated by the Mediation Act (NN, No 163/03, entered into force on 24 October 2003), which has integrated some of the guiding principles contained in the Council of Europe Recommendation on mediation in civil and commercial matters of the European Union. [45] Today, the Family Act of Croatia regulates the family disputes. Article 321 (1) of the Family Act stipulates mandatory counselling prior to judicial proceedings with regard to children that reads as follows:

"Mandatory counselling is a form of aid provided to family members to reach an agreement in family relationships and takes great care of protection of family relationships involving children. It is also a form of informing family members about court proceedings concerning the child's rights."[46] Mandatory counselling is conducted by an expert team appointed by a social welfare center (lawyer, social worker and psychologist) and family members should attend mandatory counselling without their attorneys and legal representatives.

The Family Act also defines family mediation by Articles 331-336, according to which family mediation is the procedure in which parties attempt to resolve a family relationship-related dispute by agreement with assistance of one or more family mediators and if an agreement is settled during the mediation session, by the approval of the court, that agreement becomes an enforcement document. [47] By way of derogation, the first meeting of family mediation prior to initiating divorce proceedings is mandatory.[48] There are certain cases when mandatory family mediation is not carried out:

1. in cases in which the expert team of a social welfare center or the family mediator assesses that the equal participation of spouses in the process of family mediation is not possible due to domestic violence,

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[45] "Mediation in Member States- Croatia" Last update: 20.07.2016; Retrieved from: < https://e-justice.europa.eu/content_mediation_in_member_states-64-hr-en.do?member=1>

[46] Family Act. National Legislation: Croatia; Retrieved from: < http://ceflonline.net/wp-content/uploads/Croatia-IR-Legislation1.pdf>

[47] *See* Footnote 31.

[48] "Cross-Border Family Mediation: Croatia"; European Judicial Network, European Justice; Retrieved From: < https://e-justice.europa.eu/content_crossborder_family_mediation-372-hr-en.do?member=1>

2. if one or both spouses are deprived of contractual capacity, and are not able to understand the meaning and legal consequences of the process even with expert assistance,

3. if the judgment of one or both spouses is impaired, and

4. if the temporary or permanent residence of a spouse is unknown.[49]

If the family mediation is carried out by the mediators appointed by the social welfare system, then mediation is free for the parties. However, if the mediator is not appointed by the social welfare system, then the parties bare the cost of their participation.[50]

Luxembourg

The first attempt to implement mediation was in 2002 which was not very successful. In 2012, through the enactment of the Law on Mediation, a detailed statutory basis for civil and commercial mediation, in addition to the already existing penal and family mediation practice, was established.[51]

In Luxembourg the New Code of Civil Procedure or the Nouveau Code de Procédure Civile (NCPC) establishes some specific rules for family mediation which, in accordance with Article 1251-1(2) NCPC may include divorce, separation, separation of couples in case of registered partnerships, as regards the liquidation of the common patrimony, marital charges, some aspects of parent-child relationships and the exercise of parental rights.[52] With regard to all the above mentioned cases, the judge is authorized to require the parties to refer their disputes to mediation. These are mandatory but free information meetings. [53]

Again, according to the NCPC Article 1251-12 a judge may, at any time during the proceeding, invite the parties to use mediation, and he/ she may do so on his or her own initiative

[49] *See* Footnote 48.
[50] *See* Footnote 48.
[51] *See* Footnote 16.
[52] Carlos ESPLUGUES – "Civil and Commercial Mediation in the E.U. after the transposition of the Directive 2008/52/EC on Mediation in Civil and Commercial Matters, in Civil and Commercial Mediation in Europe: Cross-Border Mediation", Vol II. (ESPLUGUES, C., ed.), Cambridge, intersentia, 2014, pp. 485- 771. Retrieved from: < https://www.academia.edu/21299831/MEDIATION_IN_THE_EU_AFTER_THE_TRANSPOSITION_OF_THE_DIRECTIVE_2008_52_EC_ON_MEDIATION_IN_CIVIL_AND_COMMERCIAL_MATTERS>
[53] *See* Footnote 16.

(with consent of parties) or at the request of both parties, with the time for the mediation not exceeding three months. The judge orders a free information meeting held by an approved mediator. Subsequent meetings cost € 57 (amount set by grand-ducal regulation). Individuals who have insufficient resources can obtain financial assistance for any family mediation process. [54]

Finland

The Directive was implemented in Finland in 21 May, 2011 by the Mediation Act which covers not only the cross-border disputes but also domestic disputes. The lawyers are required to consider mediation as an ADR option and to assess the possibility of the case to be resolved in that way. Finland has three different family mediation procedures: 1) out-of-court mediation, 2) court mediation as an independent procedure, and 3) mediation as part of the implementation of a decision concerning the custody of a child or rights of access.[5556]

1. *Out-of-court Mediation.* Family disputes are regulated by the Marriage Act. Chapter 5, Section 20, Cl. 1 of the Marriage Act clearly stipulates that "Disputes and legal matters arising in a family should primarily be settled in negotiations between the family members and decided by agreement."[57] If family members need outside help in settling disputes, they may seek help from family mediators made available by municipal social welfare boards.[58]

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[54] "Cross-Border Family Mediation: Luxembourg"; European Judicial Network, European Justice; Retrieved From: < https://e-justice.europa.eu/content_crossborder_family_mediation-372-lu-en.do?member=1>

[55] *Note.* This third form of mediation is available only when one of the parents has initiated an implementation process in the district court. In this case, a court decision already exists, but it has not been complied with by the other parent. Pursuant to the Act on the implementation of decisions on child custody and right of access (619/1996), the court principally determines the mediator in cases when the implementation of a decision concerning custody or right of access has been sought from the court. The mediator is usually a psychologist familiar with child psychology, a social worker familiar with child protection or a child welfare officer. The mediator arranges a meeting between the parents and talks in private with the child (or children) in order to find out their wishes and opinions, if this is possible considering the age and level of development of the child (or children).

[56] "Cross-Border Family Mediation: Finland"; European Judicial Network, European Justice; Retrieved From: < https://e-justice.europa.eu/content_crossborder_family_mediation-372-fi-en.do?member=1>

[57] Ministry of Justice, Finland, "Marriage Act (234/1929; amendments up to 1226/2001 included", Retrieved from:< http://www.finlex.fi/en/laki/kaannokset/1929/en19290234.pdf>

[58] *See* Footnote 55.

2. *Court mediation as an independent procedure.* Mediation is initiated when the parties request mediation from a court. It is also possible to refer to mediation a case from court proceedings that have already started.[59] During the preliminary hearings, judge also is obliged to assess the possibility of settling the dispute in an alternative way. The Mediation Act also establishes the possibility for court-annexed mediation, i.e. the judge himself or herself can be involved in the mediation procedures.[60] Courts can mediate in matters related to the custody, housing, rights of access and financial support relating to children (section 10 of the Act on mediation in civil matters and confirmation of settlements in general courts, 394/2011).[61]

The Finnish municipalities have the obligation to arrange services for mediation, but the use of services is strictly confidential and free of charge. Mediation can be sought for in social welfare centers, in municipal family guidance centers or in the family counselling centers by the Lutheran Church. [62]

Norway

Alternative dispute resolution mechanisms have a long tradition in Norway and mediation, as the most successful method, was highly valued not only in the new Dispute Act, but also in the process guidelines laid down in Norwegian family law.[63] Resolution of family disputes by mediation is compulsory in Norway. The law on mediation is regulated by the Marriage Act that was last amended in January 2009. Section 26 of the Marriage Act. stipulates that spouses who have children of their marriage under 16 years of age shall in separation and divorce cases attend mediation proceedings before the case is brought before the court. [64]The spouses are obliged to attend the mediation sessions unless they can bring compelling reasons

[59] *See* Footnote 55.
[60] *See* Footnote 16.
[61] *See* Footnote 55.
[62] Counsel of Europe, "Family Mediation in Europe: Proceedings", 4th European Conference on Family Law, 2000, Retrieved From: <https://books.google.am/books?id=tgoHEg49FooC&pg=PA64&lpg=PA64&dq=family+mediation+in+finland+fees&source=bl&ots=qGRO9DpK8r&sig=OD0Uu89zxukHKumLB5QQVLuWZ4Y&hl=en&sa=X&ved=0ahUKEwi8w4PCtpfTAhWCVRQKHa_XDU0Q6AEIODAG#v=onepage&q=family%20mediation%20in%20finland%20fees&f=false >
[63] *See* Footnote 2.
[64] Marriage Act, Norway; January 2009; <https://www.regjeringen.no/en/dokumenter/the-marriage-act/id448401/>

why they cannot attend. The law covers child custody cases, in particular, parental responsibility, right of access or the parent with whom the child should permanently reside. The emphasis is on the child's welfare which is further regulated by Section 26 a. *Duty to provide information to the child welfare service.*

Section 26 also defined the cases when mediation is not applicable. These are the cases when the case has already been brought to court with a claim of divorce and when the proceedings are instituted by a guardian.

Married couples and cohabitants who have children under 16 and who move apart and parents considering legal action may be allowed up to seven hours of free mediation.[65]

USA

The idea that divorcing or separating people should be required to attempt mediation before going to court was first implemented in the United States in 1980.[66] Many policy makers and practitioners became enthusiastic about family mediation in the late 1970s and early 1980s. But the fact remained that the number of mediated cases did not increase. Some jurisdictions, therefore, chose to make family mediation mandatory. Connecticut and Massachusetts did so first in 1980, and California followed in 1981. By 1989, some American jurisdictions had mandated mediation for custody and access cases.[67] According to the publication, mandatory mediation today comes in a wide variety of forms. In Newfoundland and in some American jurisdictions, mediation is mandatory when and if the judge orders the parties to participate.

In 1981, California enacted mandatory mediation legislation in child custody and visitation proceedings. The program's stated mandate was to reduce parental acrimony, encourage the paramountcy of child-focused resolutions, and promote principles of maximum parental contact.[68] Over the decades since the legislation was first introduced, amending

[65] "Mediation and Parental Cooperation: Norway", Article, Last updated:2015-01-27, Retrieved From: https://www.regjeringen.no/en/topics/families-and-children/innsiktsartikler/bosted-og-samvar/mekling-og-foreldresamarbeid/id2009754/>

[66] *See* Footnote 17

[67] *See* Footnote 49.

[68] Jennifer Whinstone, "Mandatory Mediation: A Comparative Review of How Legislatures in California and Ontario are Mandating the Peacemaking Process In Their Adversarial Systems", February 2015, Accessed at: <http://www.mediate.com/articles/WinestoneJ4.cfm >

provisions were enacted to address various criticisms about the potential harm the mandatory mediation process has on victims of domestic abuse. Notwithstanding the changes, mandatory mediation of custody and visitation cases remains the law in California.[69] The only risk that the law of California bears is the risk of domestic violence. If California reformed its program to reduce the risks to vulnerable parties, the mandatory mediation program can accomplish what it has set out to achieve.[70]

At the same time, there are certain types of exemption from court-ordered mediation. Firstly, if the cases involve domestic violence, the court grants absolute exemption. Some statutes take a protective, yet paternalistic view that no cases involving domestic violence should be mediated.[71] The second type of exemption is the conditional exemption. This category of statutes offers protection to victims of domestic violence while preserving their autonomy by offering them a choice of whether mediation would be in their best interests."[72] Several jurisdictions provide exemptions from mediation by requiring the parties to demonstrate "good cause" as to why they should not mediate. Another group leaves these exemptions to the discretion of the judge, who may order mediation or may be limited to order mediation in only "appropriate" cases.[73]

Australia

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[69] *See* Footnote 50.

[70] *See* Footnote 50.

[71] *Note.* In Florida, in circuits with a family law mediation program, the court 'shall refer to mediation' all disputed 'custody, visitation, or parental responsibility issues', except a court shall not refer any case to mediation if it finds there has been a significant history of abuse.
Joyce, H. (1997). Mediation and domestic violence: a legislative responses. Journal of the American Academy of Matrimonial Lawyers*, 14*(2), 447-467.

[72] *See* Footnote 54. *Note.* In Alaska when a party objects to mediation on grounds of domestic violence, the court 'may not order or refer the parties to mediation' unless the alleged victim agrees to participate after the court has informed the parties they have the right not to consent to participate in mediation and that this decision will 'not bias other decisions of the court.' In addition, the mediator has a duty to evaluate all court ordered and referred cases for a history of domestic violence and cannot proceed with the mediation where 'either party has committed a crime involving domestic violence' unless the victim agrees to or requests meditation, the mediator is trained in domestic violence, and a support person of the victim's choice, including an attorney, is permitted to attend the mediation if the victim so desires.

[73] *See* Footnote 54. *Note.* For example, California has established a mandatory mediation program for all contested child custody and visitation cases. However, the program provides that all domestic violence cases will be 'handled... in accordance with a special written protocol approved by the Judicial Counsel." While, Virginia – "The court is to order mediation in any 'appropriate custody or visitation case.' The court is to consider a history of domestic violence as a factor when ascertaining the appropriateness of mediation."

Australia has become a global forerunner in mediation law and practice.[74] In 2006 a well prepared and extensive family law reform has been introduced in Australia.[75] The reform included the following:

(a) introduction to a new regime and, as a result, 65 Family Relationship Centres ("FRC") have been founded to provide family dispute resolution services;

(b) mandatory mediation in connection with child related disputes;

(c) new rules regarding shared parental responsibility,

(d) protection of children from exposure to family violence and child abuse, and

(e) less adversarial court procedural rules in children's matters.

The parties are required to try to resolve the dispute by family dispute resolution before applying for a parenting order.[76] If the family dispute resolution process remains unsuccessful, the parties may apply to the court for a parenting order. At the end of the dispute resolution procedure the mediator issues a certificate. This certificate is required for the court to hear the case.[77] This requirement applies even if you have pre-existing orders in relation to the child that is the subject of the current application. At the same time, in certain circumstances the court may grant an exemption from the requirement to file a certificate.[78] Section 601 (9) provides the circumstances under which the parties are exempt from filing a certificate. Among other cases, the most important circumstances are when (1) the case should be urgently solved, (2) when the court has reasonable grounds to believe that there has been a child abuse, (3) when there is a risk of child abuse or family violence, and (4) when a party is unable to participate in a family dispute resolution effectively.

Mediation is officially seen in Australia as the preferred, economical and efficient alternative to traditional court litigation. There are a number of legislative acts for mediation,

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[74] *See* Footnote 2.

[75] Family Law Amendment (Shared Parental Responsibility) Act 2006, Act No. 46 of 2006;Accessed at : < https://www.legislation.gov.au/Details/C2006A00046>

[76] Sec. 60I (1) Family Law Act

[77] Baksa Gréta: Foreign Experience of Mandatory Mediation in Family Law Disputes, <http://epa.oszk.hu/02600/02687/00006/pdf/EPA02687_jogi_tanulmanyok_2014_510-520.pdf>

[78] Compulsory Family Dispute Resolution: Court Procedures and Requirements, Accessed at: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/getting-ready-for-court/compulsory-family-dispute-resolution-court-procedures-and-requirements>

partly enabling courts to order mediation procedures against the will of the parties, partly requiring the parties' consent.[79]

The cost of FDR depends on the provider. Private providers set their own fees. Family Relationship Centers provide one hour of FDR free.[80]

New Zealand

New Zealand is one of the countries where family mediation is widely accepted, successfully practiced, and where it has become an integral part of the judicial system. There is no general mediation statute, but mediation provisions have been incorporated into more than 60 statutes. Some statutory mediation rules contain detailed procedural framework of mediation, such as in the areas of family, employment and tenancy laws.[81] In most cases, family law cases are heard in the Family Court, which is a division of the District Court. However, before the parties will file an application in the Family Court, they are strongly encouraged to try to settle the dispute in a private mediation session. In the majority of the cases that include issues on child care, the applicants are required to introduce a certificate about the participation in Family Dispute Resolution (FDR) or to show that FDR was inconsistent in their case.[82] The family mediation sessions are held either during a judge-led conference or by private mediators who are accessible in various mediation centers or organizations. In September 2010, 172 people were

[79] *See* Footnote 2.

[80] *Note*. Centers will charge clients earning $50,000 or more gross annual income $30 per hour for the second and third hours of FDR. Those clients who earn less than $50,000 gross annual income and those who receive Commonwealth health and social security benefits will receive the second and third hours of FDR free. Centers may also charge fees in accordance with the Centre's fees policy if further joint sessions are required. Other FDR services funded by the Australian Government are required to have a fees policy that takes into account the capacity of the client to pay.
"Family Dispute Resolution", An Australian Government Initiative, Commonwealth of Australia; Retrieved From: <http://www.familyrelationships.gov.au/Services/FamilyLawServices/FDR/Pages/default.aspx#q14>

[81] Mediation: Principles and Regulation in Comparative Perspective; Klaus J. Hopt and Felix Steffek; Oxford Scholarship Online: Published in January, 2013: Print Publication Date: 2012; Retrieved from: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199653485.001.0001/acprof-9780199653485-chapter-21 >

[82] Anita Chan QC, "Family Law in New Zealand: Overview", Law stated as at: 01-May-2015; Accessible at: <http://uk.p01del.practicallaw.com/5-569-5667#a89929>

approved to undertake counsel-led mediation.[83] The statistics provided by mediators indicate that 80 percent of cases were resolved by orders being made or parties reaching informal agreement.[84]

Kazakhstan

The law on mediation in Kazakhstan was officially introduced in January, 2011. Article 1 of the Law on mediation stipulates that the Scope of mediation are the disputes arising from civil, employment, family and other legal relationship with the participation of physical and (or) legal entities.

From February 1, 2017 till July 1, 2017 Kazakhstan has started a court-annexed pilot project of mandatory pre-trial mediation in family, commercial, labor and social disputes. The project has set forward several purposes, which are the expansion of the mediation fields, minimization of the court expenses by citizens and identification of people's interest in extrajudicial settlement of disputes.[85] The outcomes of the project are still indefinite.

Today the implementation of mandatory mediation occurs in different forms. Some countries implement court-annexed family mediation programs (Finland, USA, Bulgaria, Malta), others stipulate mandatory counselling sessions about mediation (Luxembourg, Croatia) or require certificates about having attended the mediation session before applying to the parenting order (Australia, New Zealand). Each of the countries implementing mandatory family mediation has set specific financial rules for mediation, i.e. Finland offers free mediation to the disputants, in Norway disputants are allowed up to seven hours of free mediation, Australia and Luxembourg stipulate one hour of free mediation session. At the same time, some countries, including Luxembourg, USA, offer financial assistance to the disputants with insufficient resources, while

[83] *Note.* Counsel-led mediation involves each party present with their lawyers and a qualified Court appointed mediator.
Jeremy Sutton, "Mediation and Round-Table Meetings", New Zealand, 2017; Retrieved From: <https://www.jeremysutton.co.nz/2015/04/mediation-and-round-table-meetings/>

[84] Maria Kazmierow, "Mediation and the Family Court – EIP five months on"; NZ Lawyer Magazine, 1 October 2010; Accessed at: < http://www.aminz.org.nz/Story?Action=View&Story_id=1379>

[85] "Provision on the implementation of a pilot project for the implementation of Pre-trial settlement of disputes (conflicts) for certain categories of disputes by way of mediation". Republic of Kazakhstan; Accessed at: <http://www.kazmediation.kz/files/2017/01.pdf>

Bulgaria stipulates incentives in the form of paying back half of the deposed state fee if the dispute is successfully settled.

The study has revealed that several jurisdictions, particularly in the USA, Australia and Croatia, have set certain criteria which exempt people from the participation in mediation. Child abuse, domestic violence and the risk of presence of either child abuse or domestic violence are the main conditions in case of which the disputes are exempt from mediation. Other conditions include the need of urgent solution to the dispute, the inability of the spouse(s) to effectively participate in mediation due to the deprivation of contractual capacity and/or impaired judgment.

There are numerous reasons that the cases involving domestic violence should not be mediated. First, there is a concern that the grossly unequal bargaining power inherent in violent relationships renders one party unable to meaningfully participate in the process. Secondly, there is a safety concern that mediators are failing to adequately protect victims throughout the mediation process or punish the abuser. [86] Even assuming these concerns can be allayed, there is still a societal concern, that mediation is far too brief an encounter to adequately address and counteract the effects of long-term abuse and the socially sanctioned domination of men over women which results in submission, placating, obliging, and accommodating behavior on the woman's part. [87] In such circumstances mediation can be harmful, thus parties are exempt from mediation.

[86] See Grillo, infra n. 48; Kathleen O'Connell Corcoran, Practice and Policy Issues in Mediation (accessed Sept. 26,2001); Fischer, Vidmar & Ellis, supra n. 11.

[87] Alexandria Zylstra, "Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators", 2001 J. Disp. Resol. (2001) Available at: <http://scholarship.law.missouri.edu/jdr/vol2001/iss2/2>

CHAPTER 3

Implementation of Mandatory Family Mediation in the Republic of Armenia: Possible Consequences

Mediation is a relatively new institution of dispute resolution in the Republic of Armenia. Although mediation has been historically practiced in Armenia, it had not been regulated as a formal method of dispute resolution until 2015. Only two means of ADR (i.e. arbitration and financial system mediation) have previously been regulated in Armenia. Before May 2015, only few provisions could be found in the Armenian laws permitting some type of mediation between disputants. In particular, reference can be made to paragraph 1 of article 33 of the Civil Procedure Code, which provided that "disputing parties may at any stage of proceedings settle the dispute by mutual agreement." Another demonstration is paragraph 2 of article 120 of the Civil Procedure Code, which required the presiding judge to ask the parties of the possibility to peacefully settle the dispute prior proceeding to the hearing.[88]

In May 7, 2015 the President of Armenia signed the RA Law on "Amending the Civil Procedure Code of the Republic of Armenia" adopted by the National Assembly of the RA. At the same time, amendments have been made in the Civil Code, the Judicial Code of the RA and the Family Code of the RA by introducing new provisions on mediation.

According to Article 16 (2) of the amended Family Code of the RA: "The Court has the right to invite the parties divorced or in family breakdown to resolve the disputes through mediation by explaining the essence of mediation, as well as to take measures to reconcile the spouses." [89]

[88] The RA Law on Making Amendments in the RA Judicial Code, Draft, Կ-736[1]-17.03.2015-ՊԻ-010/0, Retrieved from: <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=7426&Reading=0>

[89] RA Family Code, amended in 2015, Accessed at: <http://www.arlis.am/>

Chapter 31.1 The Legal Status of Mediators is a completely new chapter that has been added to Section 7.1 of the RA Judicial Code. The new chapter defines the role of a mediator, the principles of mediation and the general rules of conduct of a mediator, mediator's rights and responsibilities, the granting certificate to an accredited mediator, as well as the deprivation from the qualification certificate of a mediator and termination of the qualification certificate. The law also stipulates the creation of a separate self-regulatory organization of mediators (SRO) which is organized by 20 licensed mediators.

According to the Article 227.2 of the RA Judicial Code, the mediation process is voluntary, based on the principles of confidentiality, equality of the parties and impartiality.[90] Parties are free to choose their mediator by mutual agreement from the list of accredited mediators. Court-referred mediation can be conducted only by accredited mediators, who are certified by the Ministry of Justice after a special training and examination.

Furthermore, amendments have been made in the RA Civil Procedure Code. Chapter 22.3 defines the process of mediation, its commencement and end dates, as well as the proceedings of the approval of extra-judicially signed settlement agreements and the mediation costs incurred on the parties. Settlement reached as a result of mediation is recorded in a settlement agreement and is reported to the court by the mediator. Upon approval by the court the settlement agreement is given the effect of a court judgment. Article 149.15 stipulates that the parties equally share the costs of mediation. However, the first four hours of court-referred mediation are free of charge, which includes case management time as well. After the first four hours, mediators are free to charge their own rates.[91] Furthermore, 50% and 40% of the state fees are returned if the dispute that was pending in the first instance court or in the appellate court, respectively, is settled via mediation.[92]

Although the aforementioned laws have been amended and added to the Armenian legislation, mediation is not a frequently practiced method of ADR in Armenia. After the enactment of the RA law, in 2015, two important projects were organized with the aim of developing mediation in Armenia. The first project, "Support to the Justice in Armenia" was a

[90] The RA Judicial Code, 2007, Accessed at: < http://www.arlis.am/>
[91] The RA Civil Procedure Code, 1999, Accessed at: <http://www.arlis.am/>
[92] Article 38.1 of the RA Law on the State Duty, Accessed at: <www.arlis.am >

training project funded by the EU and the COE to improve the mediation skills of the judges. The second project, "Developing mediation in Armenia", was organized and presented in an international conference by Dr. Mushegh Manukyan, the founder of ADR Partners[93]. However, these projects still did not trigger wide use of mediation in Armenia.

In August 2016, Dr. Mushegh Manukyan, who is also an expert to the Council of Europe, conducted a court ordered pilot project aimed to develop mediation and to demonstrate its effectiveness and advantages for all parties. As a result of the project the company had 11 cases, with seven cases reaching settlement. Out of the four remaining cases three are pending and in one case the parties decided to go to court. One of the cases that reached settlement was a commercial case that contained additional nine employment issues. Only two of the cases contained family disputes. In both of the family dispute cases the parties reached a settlement. The company conducted a survey among the participants after the project ended. The results show that all the participants of family mediation were content with the mediation process. Every participant considered mediation as a direct and unconstrained dispute resolution and stated that they were given enough time to present the case details and their requirements. Furthermore, the participants found the mediation directed by the court efficient.[94]

The limited number of mediation cases indicate that people are skeptical about mediation and the main reason is the lack of information and knowledge. To ensure the effectiveness of mediation it is necessary to inform the public about mediation, to organize public discussions and to educate how the institution of mediation is implemented. In Armenia, however, where information and media outlets are relatively limited, significant resources and time will be required to raise public awareness to effectively promote voluntary mediation. Hence, making mediation mandatory may be an efficient means in Armenia to bridge the knowledge gap and create a healthier and less stressful environment for family dispute resolution, while mitigating the burden on the courts.

Judges and mediators have different opinions on whether mandatory mediation in family disputes can be successfully implemented in Armenia. Some strongly encourage the

[93] ADR Partners LLC is the first company in Armenia providing mediation, arbitration and other services in the field of ADR.

[94] Interview with Ms. Narineh Hagobian, ADR Partners LLC, Case Manager; Interview held on 09 February 2017.

implementation of mandatory mediation in certain civil cases. Judge S. Mikaelyan considers that mediation should be mandatory in certain legal disputes, including family, labour, inheritance and other disputes, in order for it to achieve the goals it has set forward.[95] According to him, the practices of the European countries show that the countries that keep mediation on voluntary basis are the countries where the legal awareness of the public is high, (e.g. Germany, Italy) and making certain legal disputes mandatory will gradually increase legal awareness and people will slowly get used to that form of ADR.

Another judge from the Court of the First Instance, Judge N. Karapetyan, pointing out her practice, stated that not all family disputes can become subject to mandatory mediation.[96] According to her, "the possibility of using mandatory mediation is high in the disputes involving alimony, and visitation rights. However, in divorce cases trying to reconcile the parties may, probably, be a waste of time". On the other hand, "our society views the court as the last opportunity, i.e. very often we here the sentence "I have already applied to court. There is no possibility to reconcile". In such cases, taking into consideration the fact that mediation is a new institution, certain criteria should be defined and at least the claims of the parties should be precise. In other words, I think, mandatory mediation will be more efficient after a lawsuit is brought to court. If the claim is clearly stated, the possibility to use mediation will be discussed."[97]

One common thing that judges agree upon and which may hinder the implementation of full mandatory mediation in Armenia is the issue who will be paying for mediation. The law stipulates that the first four hours of court-referred mediation are free of charge, however these four hours are usually spent in case management and the actual mediation process starts after these four hours. Whenever people learn that the mediation costs can increase due to the fact that the case outcomes are indefinite, as compared to litigation where the resolution of the case is definite they refuse to take participation in mediation sessions. However, as practice shows, whenever mediation is conducted within the frameworks of court-annexed pilot projects or

[95] Interview with the Judge Stepan Mikaelyan, Judge in the Civil Court of Appeal; Interview held on 16 March 2017, 16:00.
[96] Interview with the Judge Nora Karapetyan, Judge in the Court of the First Instance; Interview held on 17 March 2017, 15:00.
[97] *See* Footnote 96.

certain programs, the parties are more willing to engage in mediation process.[98] As Judge N. Karapetyan suggested "in this situation, having a position for a mediator in the court, would be a good solution, since the mediator will look through the case details and will decide whether the case is subject to mediation in relation to time and costs."[99]

One of the first accredited mediators in Armenia, Dr. T. Simonyan, [100] finds that "mandatory mediation should not become an end in itself. We need to find a middle ground. Mediation is a good thing, while compelling people to use it may have the opposite impact. Full mandatory mediation will help to mitigate the burden on courts, but will it be useful in essence?"

Besides the factors considered above, psychological issues must also be considered specially when mediators deal with the victims of domestic violence. These victims are usually the women and the children.[101]

In 2010, the United Nations Population Fund (UNFPA) held a study that provides insight into various forms of abuse experienced by Armenian women. It conducted a survey on violence against women in Armenia, including domestic violence, for the years 2008 to 2009.[102] The study shows that domestic violence is widespread in Armenia. In particular, of the women surveyed, 9% admitted to experiencing physical violence, 25% to psychological intimidation, 61% to controlling behavior, and 3.3% sexual violence, all at the hands of their domestic partners.[103] Consequently, domestic violence is a serious concern during family mediation in Armenia, and it can hinder the application of mediation in divorce, alimony, and child custody cases. The practice shows that women having experienced domestic violence are not capable of perceiving the process of mediation and their only concern is reaching a settlement no matter what is at stake. According to a practicing mediator and one of the proponents of mediation, Mrs. A. Baghdasaryan, generally, it is possible to implement mandatory mediation. "It is relatively easy to do so in those countries where the legal awareness of the population and of other stakeholders

[98] *See* Footnote 95 and 96.
[99] Research results show that there is no such practice yet on the international level.
[100] Interview with Dr. Taron V. Simonyan, Practicing Attorney and Accredited Mediator; Interview held on 17 March 2017, 16:30
[101] "Who Are The Victims?"; Retrieved From: <http://domesticviolence.org/who-are-the-victims/>
[102] "Violence Against Women in Armenia"; Stop Violence Against Women- A Project of The Advocates of Human Rights; Last updated July 2015; Retrieved From: <http://www.stopvaw.org/armenia>
[103] "Nationwide Survey on Domestic Violence Against Women in Armenia 2008-2009" Executive Summary, United Nations Population Fund, Yerevan, 2010 <http://www.armstat.am/file/article/dv_executive_summary_engl.pdf>

is high. An example could be the practice in Finland, where mediation is mandatorily implemented also in criminal cases, i.e. these are the cases when family mediation involves elements of domestic violence. Legal awareness is not an issue in Finland, since it existed even before making mediation mandatory and mediation has been practiced there for years. While in Armenia, if we want to make mediation mandatory, we need to work on the high preparedness of the mediator. As it is extremely difficult to mediate in case of domestic violence, and we are not certainly Finland, yet, the domestic violence should be excluded from mandatory mediation. The implementation of mandatory family mediation including domestic violence can be possible only in the last stage of development which implies high preparedness of mediators, professional trainings and excellent skills to keep high ethical standards and provide high quality services when dealing with the victims of domestic violence".[104] According to Dr. M. Manukyan "mandatory mediation will do significant harm to the justice system. This is mainly due to the poor quality of the pool of mediators, inexperience of all stakeholders, and lack of understanding on the benefits. This should all be fixed in the first place."[105] He also notes that "the best system to me that is appropriate for Armenia is the Italian model - to have a mandatory session on mediation where the benefits could be explained. It is typically 30 min."[106]

The next target group of the domestic violence includes children. Children are sometimes immature to understand what they want, while one of the spouses who has a dominance in the family can threaten the child before the process of mediation has started and, consequently, this will create difficulty for the mediator to understand what is in the best interests of the child. In order to understand what is in the best interests of the child, the term "best interest" should be defined. The Convention on the Rights of the Child (CRC) which entered into force in 1993 in Armenia defines the priority of the best interests of the child and the importance of the child's freedom of expression in compliance with the child's age and maturity by the

[104] Interview with Mrs. Adelaida Baghdasaryan, Accredited Mediator; Interview held on 24.03.2017, 10:00
[105] Interview with Dr. Mushegh Manukyan, Accredited Mediator and the founder of ADR Partners LLC; Interview held on 27.03.2017, 03.46.
[106] In Italy, family mediation is not mandatory, however the lawyers have a strict duty to inform clients about the option of mediation and to try to resolve disputes by way of mediation. *See* Footnote 13.

Articles 3, 12 and 13.[107][108] Principle 2 of the 1959 Declaration of the Rights of the Child reads as follows: "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."[109] According to UNHCR Guidelines on Formal Determination of the Best Interests of the Child (2006), the interests of the child are generally best met when the child remains with his/her family. Temporary care arrangements that allow a separated child to remain

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[107] *Note. Article 3 (Best interests of the child)*: The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.
Article 12 (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making -- not give children authority over adults. Article 12 does not interfere with parents' right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers' greater weight than those of a preschooler, whether in family, legal or administrative decisions.
Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.
FACT SHEET: A summary of the rights under the Convention on the Rights of the Child; Retrieved From:
< https://www.unicef.org/crc/files/Rights_overview.pdf>
[108]*Note.* The concept of the "best interests" of children has been the subject of more academic analysis than any other concept included in the Convention on the Rights of the Child. CRC does not define the factors for determination of the best interests of the child, but stipulates that "the best interests must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).
UNICEF, "Implementation Handbook For The Convention On The Rights Of The Child", Fully Revised Third Edition, United Nations Children's Fund, 2017; Retrieved From:
<https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf>
[109] *See* Footnote 107. *Note.* The Declaration of the Rights of the Child lays down ten principles (2): 1. The right to equality, without distinction on account of race, religion or national origin. 2. The right to special protection for the child's physical, mental and social development. 3. The right to a name and a nationality. 4. The right to adequate nutrition, housing and medical services. 5. The right to special education and treatment when a child is physically or mentally handicapped. 6. The right to understanding and love by parents and society. 7. The right to recreational activities and free education. 8. The right to be among the first to receive relief in all circumstances. 9. The right to protection against all forms of neglect, cruelty and exploitation. 10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.
Declaration of the Rights of the Child, 1959; Retrieved From: <http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/>

with the extended family are generally in the best interests of the child, unless this entails a real risk of irreparable harm.[110] These guidelines determine the best interests of the child in cases of separation or divorce of the spouses, the separation of the child from his/her parents and family reunification (if feasible) and visitation rights. [111]

In May 2008, UNHCR set out guidelines on determining the best interests of the child, according to which in order to establish the best interests of the child the child welfare officer is required to follow certain steps. These are the verification of existing documents providing information on the child; interviews with the child and, if appropriate, observations; interviews with persons within the child's network including, caregivers, extended family and siblings, friends, neighbours, teachers, community leaders and workers, the guardian; background information on conditions in the geographical locations under consideration; and the views of experts, as appropriate.[112] These guidelines also stipulate the professional requirements of a child welfare officer that includes:

1. familiarity with age-specific interviewing techniques;
2. ability to assess age and maturity;
3. understanding of child rights;
4. gender-sensitivity;
5. knowledge as to how cultural, religious and socio-economic factors may influence the child's behavior and understanding;

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[110] UNICEF, "UNHCR Guidelines on the Formal Determination of the Best Interests of the Child", Provisional Release, May 2006; Retrieved From: "https://www.unicef.org/violencestudy/pdf/BID%20Guidelines%20-%20provisional%20realease%20May%2006.pdf"

[111] *See* Footnote 109. *Note.* The decisions to separate a child from his or her parents in cases of abuse or neglect shall only be taken in the case of imminent risk of serious and irreparable harm to the child. If separation is considered, the norm should not be to place the child with other family members. Placing children with other family members might seem as the best immediate solution, however it could cause additional harm to the child as it does often not ensure that the necessary restrictions in contact between parents and child are upheld.

Resettlement will generally be in the best interests of the child if it is the basis for family reunification. Family reunification, however, would not be in the best interests of the child if it entails a risk of irreparable harm, or if the child or the parents are opposed to it and especially if the reasons for such opposition are not properly addressed. In cases where family reunification is not possible, attention must be given to the need for the child to maintain contact with his or her parents and family when determining what constitutes the best interests of the child. In case of separation from parents the visitation rights of the parents need to be determined by the panel, and should be discussed with all relevant parties, including the child.

[112] The UN Refugee Agency, "UNHCR Guidelines on Determining the Best Interests of the Child", May 2008; Retrieved From: <http://www.unhcr.org/4566b16b2.pdf>

6. expertise in psychosocial counselling involving an understanding of mental and physical development of children, ability to recognize signs of distress.[113]

Consequently, in order to mandate family mediation it is necessary to overcome the difficulties created by domestic violence, and, in particular, special attention should be paid to children to effectively ensure their best interests. Along with it, the mediators should be professionally trained in order to notice the presence of domestic violence, especially in the divorce and child custody cases.

The abovementioned thoughts and opinions indicate that mandatory mediation alone may face a number of difficulties in our society, but this does not mean that it cannot be implemented in certain cases. There are certain types of measures that can be undertaken in order to ensure a successful implementation. One of the most common ways is providing financial incentives to those who voluntarily agree to mediate. This practice is widely-approved in many developing countries. Along with these incentives, mediation should be properly introduced to the society. The practice shows that even if the courts introduce the option of mediation to the disputants before the start of litigation, for example, by providing information through booklets, disputants quickly look through the booklets(if not disregard them at all) and continue to stand for litigation.[114] This is not enough to raise the legal awareness of the public. Government should organize public discussions, inform the public through media outlets, and prove its usefulness through international practice and by own example.

To sum up, mediation is an alternative and is, generally, a good alternative.[115] Although, in the Armenian reality implementing mandatory mediation bears a number of psychological, social and financial risks, recommending implementation of mandatory mediation in certain family disputes together with other comprehensive actions can result in the development of mediation in Armenia.

[113] *See* Footnote 112.
[114] *See* Footnote 95.
[115] *See* Footnote 22.

CONCLUSION

Considering the advantages and disadvantages of mediation in family disputes and the present status of mediation in Armenia, about the need for the development of mediation becomes apparent. It is hard to assess whether the current pace of development is slow or fast, but in comparison with other countries, mediation in Armenia needs promotion.

The results of the study revealed that mandatory mediation in family disputes will have number of advantages in Armenia, the most important one being the mitigation of workload burden on the courts. There is, however, a condition- not all family disputes are subject to mandatory mediation. There are other factors to be considered before making mediation mandatory. Firstly, implementing mandatory mediation should not become an end in itself. Mediation is believed to be voluntary in the sense that the parties are the ones who decide the final outcome, while mandatory mediation in this context becomes a formal thing, since the legal awareness of the society is law, and a misleading opinion may be developed about mediation if

people, as it is expected, oppose to it. Secondly, social, financial and other factors are to be considered in order to establish the possible consequences of mandatory mediation.

Mandatory mediation can solve the problem of low legal awareness, but full mandatory mediation is not enough. In order for the public to accept the change, especially if it is a good one, the relevant authorities should undertake public programs through media, organize public discussions and projects, courts should strongly encourage the implementation of mediation by organizing court-annexed pilot projects, and other means. In other words, in order to create a healthy environment for the development of mediation, it is necessary to strengthen the legal consciousness in the public.

As a concluding point, mediation is an alternative and it will remain an alternative means of dispute resolution. However, along with the day-to-day increasing globalization, new methods and means come to replace the previous ones. Today, practicing mandatory mediation together with another means, which does not hinder the self-determination of an individual and is aimed at the promotion of mediation, is not an excluded means to be implemented in the Armenian reality.

Recommendations

The following recommendations are made for the law-makers and practitioners in the field of mediation in Armenia. Based on the assessment of the need to implement mandatory mediation in Armenia, it is generally possible to implement mandatory family mediation. The recommendations are listed from the cases subject to prohibition, the least desired method of mandatory mediation, the middle ground, and the most desired method.

1. *Prohibitions*

Based on the research outcomes, the possibility to implement mandatory family mediation in Armenia is accepted by a number of practicing mediators and judges. Although, the implementation of mandatory mediation in developing countries like Armenia entails a number

of difficulties, its implementation cannot be completely prohibited. Like Kazakhstan, Armenia also, as a developing country, can mandate mediation in certain legal disputes. Further recommendations on the prohibitions can be offered taking into account the peculiarities and the necessities in each field of law, and, in particular, family law entails (domestic violence, child abuse, financial support, specific rules about guardians, etc.).

2. *The Least Desired Method of Mandatory Mediation in Family Disputes*

Taking into consideration the fact that mediation is new in Armenia, generally, it is not possible to reach the desired outcome by forcing people to use mediation. This may create opposition among people because mediation will be introduced in a misleading way, i.e. is their right to self-determination breached? Hence, only full mandatory mediation is not a desired method of dispute resolution.

3. *Middle Ground*

Due to the problem of low legal awareness, a middle ground should be established to solve the problem by making people trust the new system. For this purpose the governments should organize public discussions through mass media, provide financial incentives in the form of organizing more than four free mediation sessions as in Norway and provide financial assistance to those with insufficient resources similar to Luxembourg. This and other comprehensive actions along with mandatory mediation can solve the abovementioned problem.

4. *Most Desired Method of Mandatory Mediation in Family Disputes*

Based on the insight on various forms of domestic violence in Armenia provided by the UNFPA, and, consequently, on the possible risk of domestic violence during mediation process and on the difficulty to assess the best interests of children due to the possible lack of professional experience of the mediator, since the majority of accredited mediators are lawyers and not psychologists, mandatory mediation should not be practiced when the presence or the risk of domestic violence in the dispute is assessed. The international best practice proves a valuable contribution by exempting cases including domestic violence from mandatory mediation (Croatia, USA, and Australia). Hence, the most desired method of mandatory mediation is based on the middle ground, i.e. this entails mandatory mediation of certain family disputes (child visitation rights, alimony), along with certain steps to raise the public legal

awareness, state programs to assist the families in financial needs, and, finally, the accurate definition of the cases subject to exemption. Divorce and child custody cases that often involve domestic violence, should be exempted from mediation until the legal awareness of people is high enough and the mediators are professionally trained in order to comply with the necessary high ethical standards to deal with cases involving domestic violence.

Appendix

Figure 1: Top-Ranked, Most Effective Legislative Measure to Increase Mediation Use (by number of preferences expressed) [116]

[116] *See* Footnote 13.

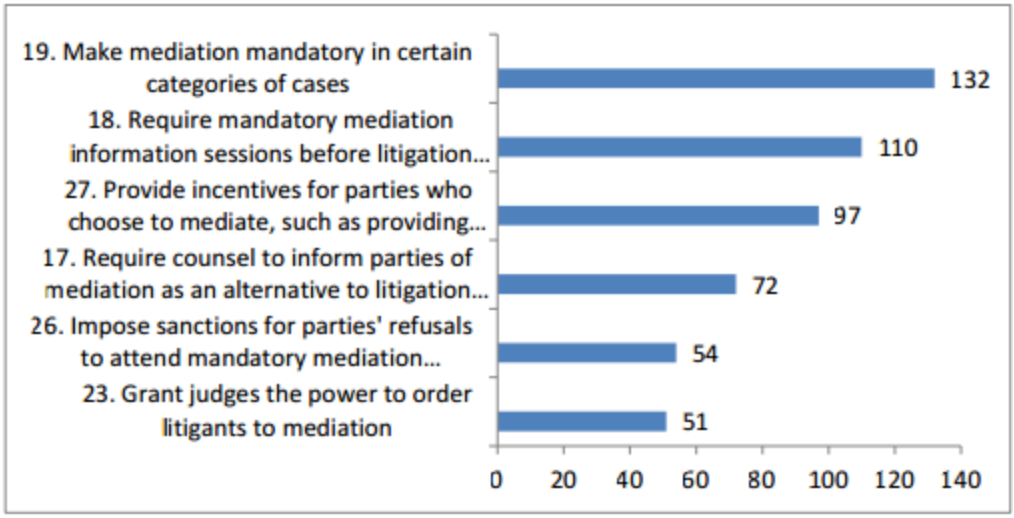
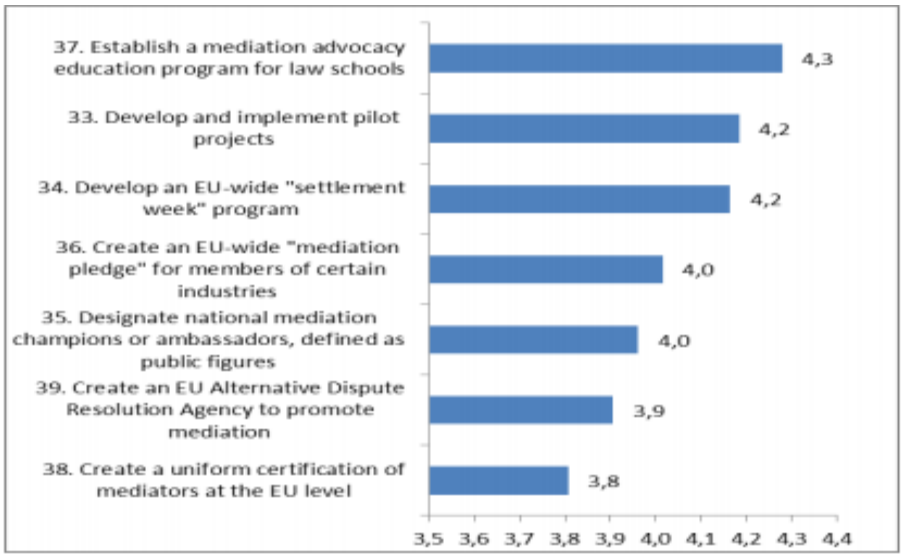


Figure 2: Average Responses for the Non-Legislative Proposal with Potential for Most Impact[117]



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INTERVIEWS

1. Interview with Ms. Narineh Hagobian, ADR Partners LLC, Case Manager; Interview held on 09 February 2017.
2. Interview with the Judge Stepan Mikaelyan, Judge in the Civil Court of Appeal; Interview held on 16 March 2017, 16:00.
3. Interview with the Judge Nora Karapetyan, Judge in the Court of the First Instance; Interview held on 17 March 2017, 15:00.
4. Interview with Dr. Taron V. Simonyan, Practicing Attorney and Accredited Mediator; Interview held on 17 March 2017, 16:30
5. Interview with Mrs. Adelaida Baghdasaryan, Practicing Mediator; Interview held on 24.03.2017, 10:00
6. Interview with Dr. Mushegh Manukyan, Accredited Mediator and the founder of ADR Partners LLC; Interview held on 27.03.2017, 03:46.