



ALTERNATIVE DISPUTE RESOLUTION / MEDIATION IN SOUTH EASTERN EUROPE

CONFERENCE OF
THE SOUTH EASTERN EUROPEAN MEDIATION FORUM
14-15 OCTOBER 2010

Belvedere Hotel, Shkëmbi i Kavajës
DURRËS, ALBANIA

ALTERNATIVE DISPUTE RESOLUTION / MEDIATION IN SOUTH EASTERN EUROPE

Organized jointly by

The Albanian Ministry of Justice
International Finance Corporation (IFC)
UNICEF-Albania
The Albanian School of Magistrates
CSS Project for Integrative Mediation, Germany
SEEMF partners

Implemented by

The Albanian Foundation for Conflict Resolution
& Reconciliation of Disputes (AFCR)

**This Publication is a working report on the Conference on
Alternative Dispute Resolution/Mediation in South Eastern Europe,
held in Durrës, Albania, from 14-15 October 2010**

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Mrs. Brikena Kasmi
Albanian Deputy Minister of Justice

Honorable Ladies and Gentlemen,

It is my pleasure to congratulate you on behalf of the Albanian Ministry of Justice for the Regional Conference of the South Eastern Europe on Mediation.

The institute of mediation constitutes one of the most important institutes as far as increasing the citizens' access to the justice system is concerned. This institute, as an approach to conflict resolution, is increasingly being worldwide accepted.

History has pointed out that the need for conflict resolution has urged humanity to use procedures of alternative dispute resolution; procedures which, while gaining experience, have been improved and continue to be improved.

Various societies tend to differently approach to conflict resolution: some prefer the informal ones, whereas other societies prefer to use more formal ways to dispute resolution. We should, however, say that despite this 'difference', the latest trends of modern societies tend to widen the range of alternatives of conflict resolution, in complicated cases also, in order to avoid the judicial approach, taking into consideration the economic and time costs that the latter generates.

The demand in increase for the application of mediation in dispute resolution is a research process, at least in its beginnings, searching better ways to settle conflicts, either in family cases, in juridical-civil relations between parties or even in international disputes.

I have often heard the expression that 'mediation yields wisdom'. This expression is impressive to me for the 'weight' it bears relating it both to the characteristics of mediation and the ones of mediation practitioners.

The process of mediation evolution is a non-exhausting possibility of the ways which could make the parties sit together and discuss on their disputes. What mediation should bring about is the resolution of the dispute considering the value of settling the conflict and not whether this conflict is existent.

This important role of mediation demands our maximal commitment to its development.

In this framework, the Ministry of Justice has taken measures for the development of mediation such as drafting a new law on mediation in dispute resolution. The need to develop a draft law reviewing the entire whole existing legal framework (the law no.9090/2003) derives from the problems faced in practice by the courts or subjects in charge with the law implementation, during the reconciliation procedures as well as in addressing the need to have a greater number of cases settled through extrajudicial approaches.

The development of the draft law serves also the improvement of the Albanian legislation on mediation, taking into consideration the European acts in the relevant area.

For this reason, and also to be in line with the recent developments of the international prospect on the activity of mediators, it is considered as necessary to mainly regulate some juridical aspects related to the mediator's profession. New provisions about the mediator's role are inserted aiming at offering an effective and qualitative service, respecting the principle of confidentiality and protection of parties' interests.

Moreover, this draft law addresses the need for improvement of the legal framework regarding the preliminary procedure (referral procedure) as well as the mediation procedure, and the organization of the mediation service.

Considering what I mentioned above, such regional conferences help to improve and further develop the mediation institute. Their help does not consist only in assisting the relevant agencies in developing and approving the legal framework, but also in improving the standards of its implementation.

Therefore, I wish you success with this regional Conference.

***Wendy Jo Werner,
Investment Climate Program Manager, IFC***

Deputy Minister Kasmi,
Members of the Press, Ladies and Gentlemen,

It's a great pleasure for me to be here today to welcome you to the Conference of the South East Europe Mediation Forum. This is definitively very much a joint effort between IFC, UNICEF, Ministry of Justice and all of you as the mediation community.

IFC has come to this group and this work through our interest in resolving commercial disputes and how to increase access to justice particularly to enable a better business environment and more investment. But you can see here today and you will hear here today that mediation goes far beyond just commercial disputes. It is a great pleasure for us to be a part of the overall community that looks at how to resolve disputes through mediation. Disputes, as Mrs. Kasmi mentioned are really inevitable and in modern times, especially during the financial crises I think this even came to for even more. But the mediation work that has been going on over the last many years throughout the region has shown that it is able to rise to the challenge, of commercial and economical disputes even in the case of crises.

And in order to do that we have developed a court-centered, court-connected mediation models which have been very successful. Throughout the region we have different types of arrangements with associations, with the public sector, with private sector business associations, so over the next two days you will be able to hear about the various ways that you have all solved your problems and the challenges that have come up for you.

But overall we can see that for a sustainable mediation model one of the key factors is this healthy discussion across the region, and between different countries and the partnerships that rise out of that discussion.

As I mentioned, mediation term might have been very successful in the region. Under the work IFC has done in the South East Europe on alternative dispute resolution, we have found that approximately 75 per cent of the cases referred to mediation have been resolved, a very good percentage.

One of the ways we measure how well the process works is how much funds have been released from mediation. So in the resolved cases of mediation we have seen funds released back into the economy more than a hundred million dollars. And we can see this can happen quite quickly. Even here in Durres it has been relatively a recent and new initiative, here just in Durres, but there is already more than six million US\$ in released funds from mediation cases that are resolved.

Furthermore, I just want to mention and acknowledge and thank all of you who are important parts of this community of mediators and in partnership.

IFC has worked closely with ministries of justice, here in Albania but across the region, Councils of Justice, members of Parliament to establish a better legal framework. But our work

goes much beyond establishing legal framework, and it moves to all those who are implementers, all of you. So it's important to highlight the work of judges and lawyers who may be many years back were perhaps skeptical of the idea of mediation, but we can now see that judges and lawyers can be some of our best advocates, and that mediation can be a good enabler for the justice system.

In addition, I want to highlight the role of business associations and business organizations. I think that we have looked to them to give us an indicator of where we need to do more and in some places in the region we have done more work on sectorial mediation with more specific skills of mediators, particularly in constructions.

Finally, or may be not finally, we would also like to highlight the work of educational system in developing new judges and new lawyers who understand the role of mediation in the justice system.

And most importantly all of you who are serving as mediators, your role as a balanced voice, as the one who can come to bring the parties to the table, and hopefully bring resolution to disputes is the most important role here, and that is the foundation for the success of this sort of initiatives in the region.

So, I would like to acknowledge all of your hard work and congratulate you on being here and wish you a very successful and useful few days of discussion.

Thank you very much.

Robert Carr
Deputy-Representative, UNICEF-Albania

Deputy Minister of Justice,
Dear participants,

I am pleased to address the beginning of this regional conference on developing alternatives dispute resolutions/mediation in South Eastern Europe. Let me first congratulate the co-organizers of this event, in particular the Ministry of Justice for supporting a dialogue on experience sharing of development of diversion models in the region.

The topic under discussion is particularly relevant and key to the development of a juvenile justice system that respects the best interest of the child principle and uses detention as a measure of last resort. In absence of institutional responses, UNICEF has since 2006 supported the diversion solutions for children in conflict with the law in selected areas in partnership with MoJ and Albanian Foundation for Conflict Resolution. Since then Albania has greatly progressed. The new law on probation has foreseen also the establishment of the institute for mediation. As a form of diversion, mediation and community services orders continue to be implemented since 2007. In 2009, around 42 per cent of juveniles in selected districts are referred to alternatives to detention, compared to almost none before 2007.

Still, as we are gathered today, roughly 70 per cent of juveniles spent their sentence while in pre-trial detention. This situation needs to be changed. The use of other forms for security measures, including more diversion, the further expanding alternative measure is the way to go ahead. Diversion is particularly efficient for juveniles also as a preventive measure for dealing with juveniles' becoming recidivists. It is very important that more elements of restorative justice are present in the Albanian juvenile justice system, bringing it fully in line with the international standards and guidelines for the administration of juvenile justice system.

I wish this sharing of experience with serve to countries in this region to bring existing best practices and experiences become a resource and inspiration. Dialogue at every level is necessary and important to create a mass of countries that have the potential to support major developments and through restorative justice, bring more attention to juvenile victims and communities. This is certainly helping the JJ system to become more sensitive and address the issue of justice for children rather than of juveniles in conflict with the law only.

I wish you all fruitful discussions. UNICEF is looking forward to the recommendations and conclusions of this Conference.

Christoph Lüttmann
Mediation Project Manager/Coordinator for SEEMF
CSS Project for Integrative Mediation, Germany

Dear Deputy Minister,
Dear SEEMF Coordinators,
Dear friends and supporters of SEEMF,

Today is not only the start of the conference of the South Eastern European Mediation Forum, but today we also celebrate the fifth anniversary of SEEMF. Five years ago a group of mediation experts from the region met together with CSSP in Sarajevo to found a regional network of expertise on mediation. When we look into the room we can see how far the initiative and the network have come: the network is growing and professionalizing each year. I think that it is a great success for SEEMF and shows the potential that lies within the network.

Whenever my colleagues and me are informing third persons about the South Eastern European Mediation Forum - if it is in meeting with Embassies, with international organizations, during meetings in Brussels or with other mediation experts - we always see that this network sparks a high interest. And we often hear questions like: "What are their regional projects? Where is their office? How can somebody become a member? How is SEEMF financed and do they have enough funds?"

These questions show that potential donors, state and non-state actors are very interested in SEEMF as a cross-border actor and would like to learn more about the organization. Last year the SEEMF coordinators discussed and decided that the network, which is an informal one until now, would like to register as an organization, build internal structures to soon be able to integrate new members and have an outreach through mediation projects in the region. I highly support these ideas and CSSP is ready to further support SEEMF in this process. I am curious to see where the South Eastern European Mediation Forum will be in the next five years.

There is a second pleasant development we can observe in this room. In the past mediation has in most of the countries in the region been an informal and rather civil society initiated approach, but with a long tradition, too. Nowadays more and more states of the region include mediation into their official justice and conflict resolution systems. Many of you expert mediators are included in that process of institutionalization into official structures and recognition of mediation as a distinguished profession. CSSP, together with Partners Kosovo and other actors in Kosova, is supporting that process. So today the members of the Mediation Commission of the Ministry of Justice in Kosovo, which is in charge of building up a legal framework and official structures for mediation, are attending the SEEMF conference. Please join me in welcoming Fatime Ismajli, the Chair of the Mediation Commission.

The Mediation Commission is the first actor to attend a SEEMF conference before building up official structures. They want to exchange their ideas with mediation experts from the region and hear the lessons learned from the countries and institutions you are representing. Tomorrow there will be a workshop dedicated to the development of mediation in Kosovo. The attendance of the Mediation Commission at this conference symbolizes to me first of all the growing recognition of mediation and its potential to resolve conflicts. And second it

Conference of the South Eastern Europe Mediation Forum

symbolizes the growing recognition of SEEMF as a network which unites professional mediators from the region. So coming back to the next five years, I am very confident SEEMF will find its way in uniting and professionalizing regional approaches on mediation.

Thank you Rasim and AFCR for realizing this conference and thank to all contributing donors who made this possible. Now I'm looking forward to our discussion and exchanges in the next two days.

Rasim Gjoka,
AFCR Executive Director

Honorable participants,
Ladies and gentlemen,

First, I would like to thank you all for your participation in the Conference on Alternative Dispute Resolution and Mediation in South Eastern Europe.

Without the will demonstrated by all partners of SEEMF, respectively colleagues from Slovenia, Croatia, Serbia, Macedonia, Kosovo, Montenegro, Bosnia and Herzegovina and Albania in overcoming the challenges, the organization of this event would not have been possible.

I believe and expect that the Conference will be a next important step in exchanging the best experiences in the South Eastern Europe in the area of mediation in conflict and dispute resolution in a wider specter of application, like in commercial disputes, penal, family, community, school ones, etc.

Mediation which shall be the most used word in these two days of the conference has now increasingly become a known, preferred, and interacting concept and practice among the business environment, judicial system, prosecution, wider community, family and school community.

Mediation is also a practical concept which in its content and magic in all the different languages of the world has in its essence the communication between people, the feeling of peace, understanding, consensus and compromise in dealing with and settling problems and disputes which individuals, parties, and social groups face every day.

I would like to highlight the support provided by the Albanian Ministry of Justice and Albanian School of Magistrates in successfully organizing this event.

Special thanks go to the supporters and co-organizers of the Conference, respectively IFC, UNICEF and the Delegation of the European Commission in Tirana, as without their financial support the Conference could have not been organized.

Moreover, I would like to thank the CSS Project for Integrative Mediation with its headquarters in Berlin, who have continued their support to the initiative undertaken five years ago in Sarajevo to establish and consolidate the SEE network in the mediation area, which is demonstrated in their cooperation in the organization of this Conference.

Lastly, I wish and hope that the Conference will not simply be a regular activity of SEEMF, but really contribute to getting to know and exchanging experiences and the best examples in the region in the area of mediation; it will provide with possibilities and spaces for experts and mediators from the region countries to directly communicate and cooperate for joint actions and projects, and it will be a step forward to the development and consolidation of SEEMF.

CONFERENCE IN REVIEW

The two-day regional Conference of the South Eastern European Mediation Forum on *Alternative Dispute Resolution / Mediation in South Eastern Europe* was held on 14-15 October, at Belvedere Hotel, Shkëmbi i Kavajës, Durrës, Albania.

The Conference was a joint undertaking of the Albanian Ministry of Justice, International Finance Corporation, UNICEF-Albania, Albanian School of Magistrates, The Project for Integrative Mediation (CSSP- Germany) and the SEEMF partners, implemented by the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR). The activity was financially supported by IFC, UNICEF-Albania and EC Delegation in Tirana.

The event was attended by SEEMF organization member representatives from the SEEMF country members, respectively from Bosnia& Herzegovina, Croatia, Kosovo, FYRO-Macedonia, Montenegro, Serbia, Slovenia and Albania. The team of invitees from the region countries included mediation associations' representatives, mediators, justice sector representatives, NGO representatives and experts of the field. Moreover, as Albania was the host of the Conference, representatives from Albanian justice institutions, international agencies operating in Albania, civil society agencies, respectively from the Albanian Ministry of Justice, School of Magistrates, District Court of Durres, General Directorate of State Police, General Directorate of Probation Service, UNICEF, IFC, EU Delegation in Tirana, OSCE, USAID, UNDP, UNICEF, Durresi Chamber of Commerce, and also mediation experts and practitioners attended the Conference. Around 93 participants attended the event.

During the two days, the participants from the SEEMF member organizations introduced and shared their experiences and practices on different aspects of alternative dispute resolution/mediation in commercial, civil, family, school, and penal area. Apart from the SEEMF partners, guest speakers from National Norwegian Mediation Service, and the International Dispute Resolution Center, London and CSSP, gave their contribution to this Conference, as well.

Welcome and opening speeches were delivered by Mrs. Brikena Kasmi, Albanian Deputy-Minister of Justice, Mrs. Wendy Jo Werner, IFC Investment Climate Program Manager, Mr. Robert Carr, Deputy-Representative of UNICEF-Albania, Mr. Christoph Lüttmann, Mediation Project Manager and Coordinator for SEEMF at CSS Project for Integrative Mediation, Germany and Mr. Rasim Gjoka, Executive Director of AFRCR. A short introductory was made by the representative of Kosova Mediation Commission, Mrs. Fatime Ismajli, as they were joining SEEMF activities for the first time.

The Conference program was a combination of plenary sessions and workshops.

In the first and second plenary session presentations were delivered by international, regional and local experts on different aspects of mediation in commercial area, civil and penal area, and latest developments of ADR/Mediation in each of the SEEMF country members.

The first set of workshops was focused on experience exchange of the participating countries in the area of alternative dispute resolution/mediation in commercial cases and on restorative

justice for juvenile victims and offenders, and beyond. The workshops on ADR/mediation in commercial cases and Restorative Justice were followed up the second day as well.

Mediation in other areas such as family, community cases and particularly peer mediation in schools were dealt with in the second set of workshops, the second day.

Best experiences of the SEEMF member countries in the areas above-mentioned were introduced and shared, thus making the conference a step to further strengthening the mediation network in the South Eastern Europe and further developing the alternative dispute resolution, particularly mediation, in all the region's countries, thus become part of the European trend of ADR development.

All the speakers highlighted the importance of further development of the mediation approach in conflict resolution, as an alternative of many benefits to the parties, community, justice sectors, and society at large. Challenges faced by each country in their efforts to institutionalize and make the mediation applicable in commercial, civil, penal, family and school cases in the respective countries were also discussed in the workshops.

The last plenary sessions included reporting from each of the workshops on the main issues discussed, challenges, recommendations and also discussion by the participants.

Moreover, Mr. Christoph Lüttmann introduced the participants to the main issues discussed in the meeting of SEEMF coordinators and deputy-coordinators held after the sessions of Conference first day. He mentioned the decision regarding the SEEMF registration in Montenegro as an important step to the consolidation of SEEMF, in order that SEEMF partners do not only gather in events like this, but also undertake joint projects.

Other news was the organization of the next SEEMF conference in Slovenia and that SEEMF chairing will shift to Mrs. Gordana Ristin, Head of ADR Division, Ljubljana-Slovenia.

Mr. Andy Grossmann Grossman, Center for Effective Dispute Resolution, International Dispute Resolution Center in London, expressed his impressions about the conference, valuing the diversity of practice from the region countries.

Conclusions were drawn at the end of the Conference on the possibilities and perspectives of further development of ADR/Mediation in the SEEMF countries and strengthening of SEEMF itself.

This working report contains the presentations delivered in the Conference as well as the main outcomes from the Conference workshop.

**NEW LEGISLATION ON ALTERNATIVE DISPUTE RESOLUTION
IN THE REPUBLIC OF SLOVENIA**

*Gordana Ristin
Senior Appeal Court Judge,
Head of ADR Division, Ljubljana-Slovenia*

1. Introduction
2. Mediation in Civil and Commercial Matters Act (ZMCGZ)
3. Alternative Litigation Settlement Act (ZARSS)
4. Conclusion

1. Introduction

Over the last ten years, there has been a tremendous rise of alternative dispute resolution (ADR) in the Republic of Slovenia, especially of mediation. Until now, the normative framework in this field was rather vague, but with the adoption of the Directive 2008/52/EC of the European Parliament and of the Council on 21 May 2008 on certain aspects of mediation in civil and commercial matters, the directive needed to be harmonised with the national legislation in the issues regarding cross-border disputes. The obligation to harmonise the directive was a good incentive for the legislative body to also revise mediation between domestic entities. Mediation in the Republic of Slovenia was primarily established as court-annexed mediation, which is why the Alternative Litigation Settlement Act (ZARSS) was adopted on 30 November 2009 and came into force on 15 June 2010. Since mediation has been known in Slovenia for ten years already, private mediation started evolving, too. In this paper, I will present the development of court-annexed mediation in Slovenia and show statistical results of these proceedings in court. Since September 2009, the Appeal Court of Ljubljana offers mediation at appellate level as well. The programme celebrated its first anniversary in September 2010 and has already shown some interesting results. At appellate level, there are no court backlogs; all appeals in all divisions are solved within the six-month reasonable time-limit. Nevertheless, alternative dispute resolution is progressing and thereby showing a culturological change in our country. At the same time, this is a reaction to the economic crisis, since some people only with difficulties pay the lawyer and dispute expenditures. Rules of procedure are getting stricter, so lawyers cannot guarantee success to their clients.

2. Mediation in Civil and Commercial Matters Act (ZMCGZ)

2.1. Reasons for the legal regulation of mediations.

As stated in the introduction, the cause for the adoption of ZMCGZ was the Directive 2008/52/EC of the European Parliament and of the Council. But with the development and the expansion of mediation, the standardization of basic principles of this otherwise informal way of dispute resolution proceeding had to be ensured. Each party needs to be enabled the same informal way of dispute resolution in order to avoid mistakes or even compensation claims.

The legislator wanted to keep the flexibility of the mediation proceeding and the possibility to adapt it to change in accordance with each case and with the party's wishes.

2.2. UNCITRAL Model Law on International Commercial Conciliation

A model for forming the contents of ZMCGZ was found in the Model Law on International Commercial Conciliation, prepared by the United Nations Commission for international Commercial Law (Uncitral) in 2002, and for which UNO recommended to the countries to study the options of enacting its rules.

2.3. Act Overview

The Act's aim is to ease access to alternative dispute resolution and promote peaceful dispute resolution by encouraging the use of mediation and ensuring a balanced relationship between mediation and court proceedings. The Act applies to mediation in civil, commercial, labour, family and other property relationships with regard to claims that may be freely disposed of and settled by the parties, unless otherwise stipulated for individual disputes by a special law. The Act applies to private mediations or to directions to mediation by a court. The Act defines mediation as a proceeding by which the parties voluntarily attempt to reach through a neutral third person (mediator) an amicable resolution of a dispute arising out of or relating to a contractual or other legal relationship, irrespective of whether for this proceeding the term mediation, conciliation, reconciliation, mediation of disputes or other similar term is used (Article 3). Mediator is a neutral third person who conducts mediation between the parties of the dispute. They can also be a judge, who will of course never take decisions in the matter in question and has to protect the proceeding's confidentiality against the court. This Act does not stipulate any necessary mediator qualifications. In ten years of mediation in Slovenia, we have designed a training programme for mediators, which has a minimum of 40 hours and contents which are in line with the Recommendations of the Council of Europe on Mediator Training.

The Act includes some mandatory provisions. In the interpretation of the Act, the rules of the UNCITRAL Model Law on International Commercial Conciliation and the principles of fairness and good faith are to be regarded. The provisions on the impartiality of the mediator and on ceasing the limitations and preclusive time limits are mandatory; otherwise, the fundamental rule of party autonomy is applied. The Act has provisions on mediator appointment, the conduct of mediation, etc. It also specifies that the mediator may communicate with parties together or with each party separately, and that they may disclose the substance of the information to any other party to mediation if this benefits the mediation proceeding, unless a party has disclosed the information to the mediator subject to a specific condition that it be kept confidential (Article 10). The Act ensures confidentiality of information and admissibility of evidence in the same way as the UNCITRAL Model Law. In this respect, the Act is stricter than Article 7 of Directive 2008/52/EC. The Act defines the termination of mediation and dispute settlement agreement as well. The mediator cannot act as an arbitrator in a dispute, unless otherwise agreed by the parties. The mediator is entitled to an award and to a reimbursement of reasonable costs, unless otherwise agreed upon with the parties or otherwise stipulated by the rules of the institution where mediation is conducted. In case of no agreement, each party bears its own costs, whereas the overall costs of mediation are borne equally by all parties. In the Republic of Slovenia, the Slovenian Association of Mediators has adopted a binding mediation tariff for its members.

3. Alternative Litigation Settlement Act (ZARSS)

3.1. Litigation settlement as an assumption for the application of ZARSS

This Act regulates litigation settlements in the framework of alternative dispute resolution proceedings provided to the parties by the courts on the basis of this Act. This means that it is not possible to apply ZARSS when a lawsuit, an appeal or a proposal is not filed in court. The Act was adopted in order to speed dispute resolution and thereby lighten the court's burden. In this respect, we can speak of time savings. At the same time, the Act was adopted with the intention to meet parties' demands in the proceeding. It improved parties' access to legal protection. In addition, parties can try to solve disputes in a fair way, applying subjective justice, since all parties must agree on the contents of the achieved consensual dispute resolution.

3.2. Scope of the Act

The Act is applied in disputes arising from commercial, labour, family and other civil relationships with regard to claims which may be freely disposed of and settled by the parties, unless otherwise stipulated for individual disputes by a special law. This act does not apply to social disputes. Until a new legal code on family law is adopted in Slovenia, this Act also applies to family disputes. Taking this approach, Slovenia wishes to implement the Recommendation of the Council of Europe regarding mediation in family matters. On the other hand, this Act does not apply to mediation in administrative matters. In Slovenia, mediation in administrative disputes has not yet been standardised.

3.3. Court obligations and entitlements

County, district, regional, labour and high courts, as well as the high labour and social affairs court, enable ADR by accepting and implementing the alternative dispute resolution programme. In addition to mediation, courts can also introduce other forms of ADR. Courts may adopt and implement ADR programme as an activity organised directly in court (court-annexed program) or on the basis of a contract with a suitable provider of ADR (court-connected program). Courts can also co-operate with each other. The District Court of Ljubljana, for example, runs an ADR programme for four other district courts.

3.4. Mediators in mediation programmes

In court-annexed programmes, it is the court that manages the register of mediators. In court-connected programmes, the list of mediators is drawn and compiled by the programme provider. It needs to be said at this point that none of the courts in Slovenia has entered into a contract with an external provider; all have decided for court-annexed programmes. A mediator has to have at least higher education and has to complete mediation training according to the programme determined by the Minister of Justice. The majority of mediators are jurists (judges, lawyers, notaries and jurists in the economy); some are psychologists, sociologists and social workers.

3.5. Programme funding

Funds for programmes are provided within the courts' budgets. Mediations are free of charge in family matters. In civil matters, mediation is free for the first three hours, whereas in commercial matters, parties have to pay for mediation without delay.

3.6. Mediation referral

The courts refer the parties to mediation in each case, unless the judge deems this inappropriate for a particular case. At first degree, with parties' agreement, the court proceeding is suspended for three months, during which time the parties have the possibility to solve their dispute. This period may be extended with parties' consent, but only exceptionally. Natural persons as parties are obliged to participate in meetings and hearings within the framework of ADR proceedings in person. Legal persons as parties have to ensure the presence of a person with the power to reach a court or out-of-court settlement. Unfortunately, the Act adopted a resolution that notifications for mediation meetings be served in accordance with the Civil Procedures Act. I consider this provision too strict. However, the legislator stipulated this for the following reason: if a party fails to participate in the informative hearing, the judge may impose the absent party the reimbursement of the other party's expenses that arose from attending this hearing. This does not mean, of course, that the mediator has to notify parties this way. At the Appeal Court of Ljubljana, the mediator arranges a meeting with the parties by phone, and only afterwards notifies them in writing.

Article 19 regulates mandatory referral to mediation. The court may refer the parties to an amicable dispute resolution by an explained decision. If the party submits an objection to this decision, the judge repeals their decision and the mediation proceeding does not take place. However, regardless of the result of the proceeding, the court may, upon request by the other party, order the party that has submitted a clearly unreasonable objection to the mediation referral to reimburse the other party for the expenses that were required for the proceeding and that arose from the clearly unreasonable objection onwards. I consider this article extremely difficult to realise in real life and hope that judges will not make use of it too often. After all, it is an exception to the rule.

3.7. Disputes with the state

In all court disputes where this Act (ZARSS) is applied and where the state is a party, the State Attorney's Office must give consent for mediation when this is appropriate, given the circumstances of the case. If the State Attorney's Office deems that unsuitable, it must submit a reasoned proposal to the Government of the Republic of Slovenia to make a decision.

In this respect, we have very bad experiences; since this Act entered into force on 15 June 2010 to date there have been six cases filed at the Appeal Court of Ljubljana where the state was a party and none of the mediations was successful.

3.8. Mediations at the Appeal Court of Ljubljana

In preliminary provisions, the Act stipulates that mediations at appellate level begin within two years after the enactment. But since the Appeal Court of Ljubljana offers the ADR programme since September 2009, we have continued with practice in accordance with the new act. The statistics are very interesting. Since January 2010, the court has offered mediation in 1227 cases.

In 126 cases, the parties accepted mediation; of these cases, 65 are still open. All together, 43 cases were resolved successfully, 17 of these were open at other courts. In 34 cases, the resolution failed. If only successfully resolved cases without associated cases are taken into consideration, the success rate is 42.6%. If we add the associated cases, the success rate is 70.49%, which is outstanding and above all expectations. Again, let me stress that there are no backlogs at our court.

There is statistical data of the District Court of Ljubljana for 2009 attached to this paper. This court carries out mediation programme since 2001 and has the best results.

4. Conclusion

I have been dealing with mediation for ten years. Let me conclude with some thoughts on how I see the future of a jurist's profession, including that of a judge.

Although there are no backlogs at the Appeal Court of Ljubljana, the people's content with the work of judges, lawyers, state attorneys, notaries and other legal professions is not improving. In surveys, public opinion shows that the people's level of trust in courts is very low. We, jurists, too, are dissatisfied with our position and feel that people's expectations are too high. Yet, the civilisation's best invention of dispute resolution has turned out to be courts. If peaceful dispute resolution does not bring success, a case ends in court. But this needs to be put into perspective, into our time, which is described as the "postmodern era" by the philosophers. It is a period of partial changes in the value system. Due to a large number of disputes, limitations of access to court have taken place with the help of preclusions and costs. The form is becoming the essence, procedural law the centre of action, whereas the contents of the dispute (legal, let alone psychological) are no longer important. In the end of the proceeding, a party with the better procedural lawyer might win over the party who is right (cf. Ristin G. "Judges mediators show the way how to change the performance of the legal profession." ABA Conference. San Francisco, April 2010).

The post-modern era is characterised by people's right to doubt and test the authorities, and demand answers to all questions, since the right to choose is a characteristic of democracy. This is easy when it concerns an individual. But it proves difficult when it involves people in conflict, especially a number of persons. Younger people have been raised in abundance, in a time of financial prosperity, not having known an economic crisis. Now, they must accept living in less comfort and convenience, working more for less money. Nevertheless, this is not about the crisis of universal and permanent values: peace, family, acceptance, love, honesty, equality, etc. These have persevered and all of us want to keep them. This is why the future of the legal profession is to explain to the parties that dispute resolution in court means solving legal questions and that jurists do not search for solutions to life's problems. A civilisation misunderstanding has arisen between parties and jurists, and it needs to be overcome by explaining to the people what a law can and cannot achieve.

Accordingly, I regard ADR as one of the approaches to dispute resolution in the future. It will be a part of the judiciary, even though case files will be given away to contractual providers, for example. And it is not about the privatisation of judiciary, but about accepting the fact the life changes, and with it, so should we, jurists.

ADR / MEDIATION IN CROATIA

*Srđan Šimac, Judge of the
High Commercial Court of the Republic of Croatia
and President of the Croatian Mediation Association*

The time passed and many things happened till today and all of our countries made a great progress in mediation development. I know that even today most of us may feel like Don Quixote, fighting against the wind wheels. But, because we believe in the mediation, we are persistent and patient. And frankly, it is not too hard to fight for an idea you believe so much. I think especially for Croatia, the time in front of us is crucial for expanding mediation idea. You know, old ideas and old habits die hard. In human nature and in all societies there is a kind of great resistance to any kind of change no matter how positive it is. Many people see mediation as an undesirable change, but only till the moment when they allow themselves to realize what mediation really is. So, we still have a lot of battles in front of us, but all of us can agree that it is not too hard to fight for such a good cause.

I would like to share with you an anecdote told in a conference like this one. My good friend, a lawyer, took the floor and said something like this: "Look at to Srđan. For many people he was literally the man from Mars, he was the man from the space and nobody did understand him what he was talking about. But look at him and look at all of us today. He has a huge spaceship now with a lot of crew, actually with a lot of mediators." So, all of us can say today our mediation crew is bigger and bigger every day.

When we are talking about Croatia, I can say we had a great start. We have a law on mediation from 2003. We founded Croatian Mediation Association at the same year. We introduced very successful Court-annexed mediation projects, then mediation centers outside of courts, than peer mediation programs, restorative justice program, workplace mediation, etc. But I can say that probably from the last year or little bit earlier, there is a kind of pause in mediation development. Many countries have faced with the same experience in the mediation development, something like going many steps up and then few steps back. But I am sure that it is only temporary weakness and that there is a great mediation future not only in Croatia but in in front of all of us.

So far, we have probably one thousand trained mediators and among them are probably 200 judges. We finished recently a very unique project funded by the European Union. It lasted last two years. It was a project of developing mediation inside and outside the courts and now we have a register of mediation, we have standards for mediators, code of ethics, educational standards, accreditation, certification and various things. It's a great frame for the future and I am so proud about the Project, but unfortunately it is not well recognized so far. So we need to fight for mediation much, much more. For example, all of us need a lot of efforts in advertising of mediation and this project had a nice part about advertising mediation but it was not ended or not started because the whole Project ended.

Anyway, I can say there are good signs for the future all around. For example, we trained new 100 judges. Then, there is a kind of historical moment for mediation development in Croatia,

namely, 230 lawyers applied for the mediation training and the first experience in training them is amazing. Lawyers are really gatekeepers or gate openers of mediation world. Do not underestimate lawyers, because there is a habit for the disputants to address to the lawyers whenever they have a dispute and disputants believe in their lawyers and they will listen if they suggest them to use mediation. So if we will have very soon almost 200 or more lawyer mediators, I think it will be a great help for our cause.

Another great thing is initiative of Croatian Banks Association. Next Wednesday we are going to have a first one day introduction on mediation for probably 60 bank employees and we are in the process of train them and organizing a mediation centre for banking disputes. This is a very good sign. They have a lot of cases and great influence in society. Another good example is the city of Zagreb, our capital. Zagreb has around one million population and their representatives want to create their own mediation centre. They have a huge number of disputes and definitely it will be another great kind of contribution to mediation in Croatia.

So I wish to all of you to continue to be brave, to be persistent, and to not stop to believe in mediation. Mediation is definitely something what worth to fight. I strongly believe that mediation development in all of our societies is something what is unstoppable. And it is only a matter of the time when it will be widely accepted. Our common efforts to that direction are the best way we can contribute to ourselves and to our societies. This conference is very good example how we can contribute together to the common goal.

**COMMERCIAL DISPUTES AND MEDIATION – COURT CONNECTED
MEDIATION IN DURRES**

*Ervin Metalla, Head of Durresi
District Court, Albania*

A well-known author says that people argue on words, without coming to an understanding on their meaning. Natural it is that civil disputes frequently arise because of non-existing reasons, which dictated the need for mediation for their successful solution, with no need to restoring to judicial proceedings. The historical, economic and social context in our country has not enabled the sound development of this alternative of dispute resolution in the pre-trial phase.

This is the reason why the IFC supported the project on ADR/Mediation, implemented by AFCR in the District Court of Durres, studied and used the most adequate moment in the court proceedings where to use the alternative dispute resolution in civil and commercial disputes, exactly at the stage when the case is filed at the court, but before the trial. The respective judge for the case refers it to the mediation, before initiating the trial. The model of establishing an alternative dispute resolution/ mediation office within the court premises was followed, as an annex to the court activity, or as called differently “Court connected mediation”.

Experience showed that this was the best way to overcome the difficulties faced. Difficulties were faced in some directions: Firstly, the existing legal framework, which although foresees the possibility for settlement of the dispute through reconciliation, yet it does not provide sufficient procedures for mediation, i.e. for the referral of the cases to mediation by the court. Secondly, the mentality and views of the parties and their legal representatives regarding mediation in the dispute settlement was not favorable at the beginning. Thirdly, the procedural restriction which the judges face in referring the case to the mediation office, and also their lack of willingness to do such a thing, was another obstacle.

Starting by the latter, we may say that this challenge was overcome due to the preparatory promotion carried out by the project stakeholders. They developed an operational model in consistency with the possibilities provided and the relevant legislation. It is worth mentioning the support provided by the Ministry of Justice (MoJ) and the High Council of Justice (HCJ), parties in the MoU between MoJ, HCJ, IFC and AFCF. Being this the starting supporting point in the work of Durresi District Court, had its impact in making the judges and the parties aware of the benefits of ADR/mediation. This is evidenced by the increasing number of cases referred by the judges to mediation.

Thus, the challenge of having cases referred by the court was faced through overcoming barriers such as the opinion that the existing legal framework is insufficient or whether these settlements would not be sustainable. However, we need say that the courts’ judges had to ‘convince’ the parties on the advantages of mediation in dispute resolution. In order to guarantee the expectations, the model chosen in Durres was a model according to which upon achieving the mediation agreement, the latter was submitted to the respective judge who issued a court decision, thus making the agreement an executive title. The process saved time and money, and also the bureaucracy fabricated by the formal court trial. This also increased the parties’ confidence that in case the mediation was not successful, they could re-start the court proceedings.

The experience in Durresi Court has conveyed two important messages: firstly, the alternative dispute resolution through mediation is a challenge which should be continued to be faced, as the up-to-date outcomes are promising, and secondly, the relevant legal framework should be enriched, even through expanding the range of cases that can be settled through mediation. The legal improvements are already in place. The Albanian Parliament is expected to approve amendments to the mediation law, therefore enabling for increase in the number of cases referred to mediation. Moreover, the interest in better administration of justice demands mediation.

It is worth mentioning that the judges of Durresi Court, apart from applying the mediation law, which is expected to be improved with the expected amendments, are also based on some important provisions in the Code of Civil Procedure. Thus, in the first part of the Albanian Code of Civil Procedure (CCP), which is the general part, too, under Chapter I titled "*General Principles of the Legal Process*", Article 25 on "*Reconciliation of parties*" it is provided that "*it is a task of the court to make efforts to reconcile the parties in a dispute*". The Procedure Civil Law which regulates the daily activity of the court and which is part of the public law, states that *the court's mission to reach parties' reconciliation* is one of the core principles of the civil litigation. This principle, in essence, expresses the public interest that this alternative resolution carries on.

Thus, the principle of dispute resolution through reconciliation, above-cited, is further elaborated in the provisions of the Special Part of the Civil Procedural Code. Thus, Article 158/a of the Code, provides that, in any case of disputes between two parties, the court is obliged to schedule a preparatory session. Regarding how the court arranges this session, inter alia, article 158/b titled: "*Reconciliation actions*" provides that:

"The judge, during the preparatory actions makes all efforts to settle the dispute through reconciliation, when the nature of the case allows for it. For this purpose, when it is the case, he also orders the appearance of the parties themselves.

The efforts for reconciliation may be repeated at any stage of the court investigation.

When the reconciliation is reached before the start of the court session, minutes are held and signed by the parties. The judge approves the reconciliation by decision.

When the reconciliation is reached in the court session, the conditions of the agreement are reflected in the court minutes. The court issues decision on its approval, but in any case it must not be in conflict with the law.

A separate appeal may be made against the decision on the solution of the dispute by reconciliation or on the non-acceptance of reconciliation.

Moreover, the provisions in the CCP need to be considered closely related to Law No.9090, dated 26/06/2003 "*On Mediation in Dispute Resolution*". Article 2/2 of this law provides that "*Mediation, under this law, is applied in the cases where asked for and admitted by the parties, before or after the rise of the dispute, where obligatory under the law, and where asked by or evaluated by the judiciary, arbitration or the relevant state body based on the law*". Thus, considering these legal provisions in close relation with each-other, the judge has broadly interpreted that mediation in dispute resolution, apart from being sought by the parties, can also be considered as appropriate by the court and refer the case to mediation. Applying the above-mentioned legal framework, and encouraged by the Ministry of Justice and the High Council of Justice, the judges of Durresi Court referred cases to mediation, bringing into life this alternative.

MEDIATION IN BOSNIA AND HERZEGOVINA

*Smiljka Gavrić, Mediator
Association of Mediators in BiH, Board Member
of European Mediation Network Initiative -EMNI*

1. Main principles of mediation in Bosnia and Herzegovina

- Out of court mediation
- Voluntary mediation in all BiH, mandatory court mediation was implemented only in Brcko District BiH in the period 2002 - 2009
- Confidentiality
- Equality of parties
- Impartiality and neutrality of a mediator

2. Legal framework

- Laws on civil procedure in FBiH, RS (since 2003), Brcko District BiH (since 2009)
- Laws on criminal procedure (damage claims only) in FBiH, RS (since 2003) and Brcko District BiH - opened possibility for case referral to mediation
- Law on Mediation Procedure of BiH (2004) - regulate the mediation procedure
- Law on Transfer of Mediation Services of BiH (2005) - authorizes The Association of Mediators in BiH for provision of mediation service
- Mediation Rules and Code of Ethics (2006) - regulate mediation procedure, costs, ethics, procedure in cases of violation of rules, training
- Law on Prohibition of Discrimination in BiH (2009)
- Law on Protection and Processing of Children and Juveniles in Criminal Procedure of Republic of Srpska (2010)
- Law on Prohibition of Discrimination in BiH (2009) - opens possibility for Ombudsmen of BiH to refer a case to mediation
- Law on Protection and Processing of Children and Juveniles in Criminal Procedure of Republic of Srpska (2010) - opens possibility for a judge or a prosecutor to refer a case to mediation
- Laws on Court Taxes (2008-2010) - provide possibility for parties who settle in mediation to refund from 50-100% court tax.
- Family Law of FBiH (2005) - establishes family mediation implemented by family mediators appointed by the Ministry of social welfare of FBiH
- Law on Amicable Resolution of Labour Disputes (2009) - regulates conciliation in labour disputes in RS and establishes the Agency for Amicable Resolution of Labour Disputes

3. Strategic documents

- Justice Sector Reform Strategy of BiH 2008-2012

4. Activities of The Association of Mediators in BiH

- Providing mediation services
- Certification of mediators
- Providing mediation training for mediators, judges, lawyers and general public in BiH and Western Balkans Region

- Public promotion of mediation
- Following trends in mediation and networking with organisations in other countries

5. Application of Mediation by The Association of Mediators in BiH

- Pilot projects – June 2004 – May 2007
- Regular Application according to the Laws – since June 2007

6. Differences between pilot projects and regular application of mediation in BiH

<i>Pilot projects</i>	<i>Regular application</i>
Mediation implemented according to the rules and procedures of the pilot projects	Mediation implemented in accordance to the Law on Mediation Procedure, Law on Transfer of Mediation Services to The Association of Mediators and mediation rules of The Association of Mediators in BiH
Mediation possible in cases referred by Basic Court Banja Luka and Municipal Court Sarajevo only.	Both pretrial and court referred mediation possible
Judges in courts have quotas of cases in which they need to propose mediation.	Judges estimate mediability of cases and refer a case according to their opinion and will.
Mediators appointed by the pilot project management.	Mediator selected by the parties.
Mediation free of charge for the parties. Mediation funded by donor support.	Parties bear the costs of mediation themselves.
The court has to verify the settlement in a form of court settlement.	The settlement document signed in mediation has a power of enforcement document.

Mediation statistics

	2004-2007 (pilot projects)	2007 (upon pilot projects)	2008	2009	2010 (until Sep 30th)	Total
Cases received*	622	27	82	40	34	805
Sarajevo	96	16	34	21	9	176
Banja Luka	526	11	48	19	25	629
Court referred	622	14	65	17	15	733
Pretrial	0	13	17	23	19	72
Commercial	n/a	15	55	34	25	
Other	n/a	12	27	6	9	
Mediated	622	12	44	25	20	723
Settlements	343	10	29	17	19	418
No settlement	279	2	15	8	1	305
Value (EUR)	approx. 9430000	335084.5	9716609.6	667354.3	1634326.4	approx. 21783374
Still in procedure					13	13

* Cases received: There is a difference between cases received and cases mediated, since the association sometimes receives a case from the court where the parties expressed consent for mediation to a judge, however they never appear to mediation centre.						

7. Main conclusions of evaluation of application of mediation in BiH

- Close to 60% mediations in pilot projects and 75% upon pilot projects end with settlement.
- Close to 90% of settlement obligations are voluntarily implemented by the parties.
- There are no requests for court enforcements based on mediation agreements Number of cases of pretrial mediation is in increase.
- 95% of parties are satisfied with mediation service and mediators' performance.
- 70% of parties claim they improved relationship with other party during mediation.
- 40% of parties continued cooperation after the mediation.

8. Major activities in development of mediation in BiH by Association of Mediators in BiH

- Advocacy for change of procedural Laws and adoption of The Law on Mediation Procedure
- Participation in amending the Law on Court Taxes.
- Participation in development, implementation and monitoring of implementation of Justice Reform Strategy BiH.
- Advocacy for introduction of mediation in juvenile justice system in RS and FBiH
- Advocacy for introduction of family mediation in RS.
- Development and implementation of training programmes and related manuals for mediators, judges, end users of mediation, mediation trainers and specific training programmes on negotiation, family mediation and victim offender mediation.
- Research and evaluation.
- Development of initiatives for introducing of alternative dispute resolution in the field of communal utility services.

MEDIATION IN COMMERCIAL DISPUTES IN MONTENEGRO

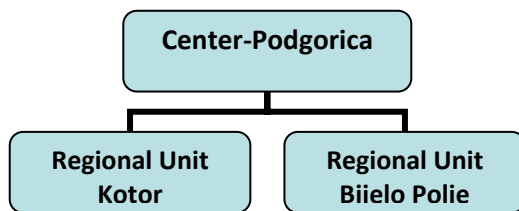
Miroslav Knežević
Director, Mediation Centre of Montenegro

Introduction:

- The Center was founded on 30 May 2008
- Founders: Government of Montenegro, Central Bank of Montenegro and Montenegrin Association of Mediators.

The Center's work is supported by:

- International Finance Corporation - IFC
- OSCE Mission to Montenegro
- UNICEF Office in Podgorica
- UNDP Office in Podgorica



The Center organizes:

- Training seminars for judges and public prosecutors on referring cases to mediation, on the role of lawyers in mediation proceedings.
- Basic trainings and advanced seminars for mediators.

Publications:

- Manual for mediation, intended for citizens
- Manual for recognition of cases intended for judges
- Mediators Training Manual
- Newsletter

Commercial mediation

- Training of judges of the Commercial Court
- Introducing economic entities to benefits of mediation
- The project of referring economic cases to mediation

Assets released during the second half of 2008 and 2009 - 15 million EUR in about 46 disputes; in the first 4 months of 2010 - 7 million EUR.

In cooperation with the Commercial Court, and with the support from the UNDP, undertaken project "Mediation Weeks"

Expected outcomes:

- Reduced backlog
- Increased courts' efficiency
- Benefits for commercial entities
- Commercial benefit for the whole community

RESTORATIVE JUSTICE - AN ALTERNATIVE IN PENAL CASES, RECENT DEVELOPMENTS IN NORWAY

*Karen Kristin Paus, Senior Advisor,
National Norwegian Mediation Service,
Central Administration*

Dear all,

Thank you for the invitation to be part of this SEEMF conference. It is more than a year since I last was here - and it is good to be back in Albania - and meet colleagues and friends from the region again!

Working within the field of mediation and restorative justice still means pioneering work in most countries - and so meeting colleagues and sharing experiences and giving each other inspiration is of great value. Therefore this conference is so valuable - to you in the region but also beyond - it is like circles in water - spreading and reaching new shores over time.

Some of us had the privilege in 2007 to meet the brothers from Yukon, Canada, Phillip and Harold Gatensby, sharing with us their ancient traditions for "Peacemaking Circles". Their approach in settling disputes in their local communities was a holistic one, a basic part of their view on life: starting with themselves, their local community, the nation, and the world - as circle's in water. They did talk a lot about circles as a basic form in life and also as a model for good communication in the Peacemaking Circles. I will also talk about circles when it comes to recent developments in our work in Norway.

The National Mediation Services of Norway that I represent is a public institution, placed under the Ministry of Justice, Civil Department for executing our law on mediation from 1991 covering mediation in both penal and civil cases. I will first present shortly some of our results and activities in 2009.

Locations of NMS 22 Offices



The above graphic shows the location of the 22 Mediation Service - reflecting Norway's demography - where people live.

The central government is responsible for - and covers all expenses of the Mediation Service offices, that are now fully governmental/state bodies. The Mediation Service is organized into three administrative levels:

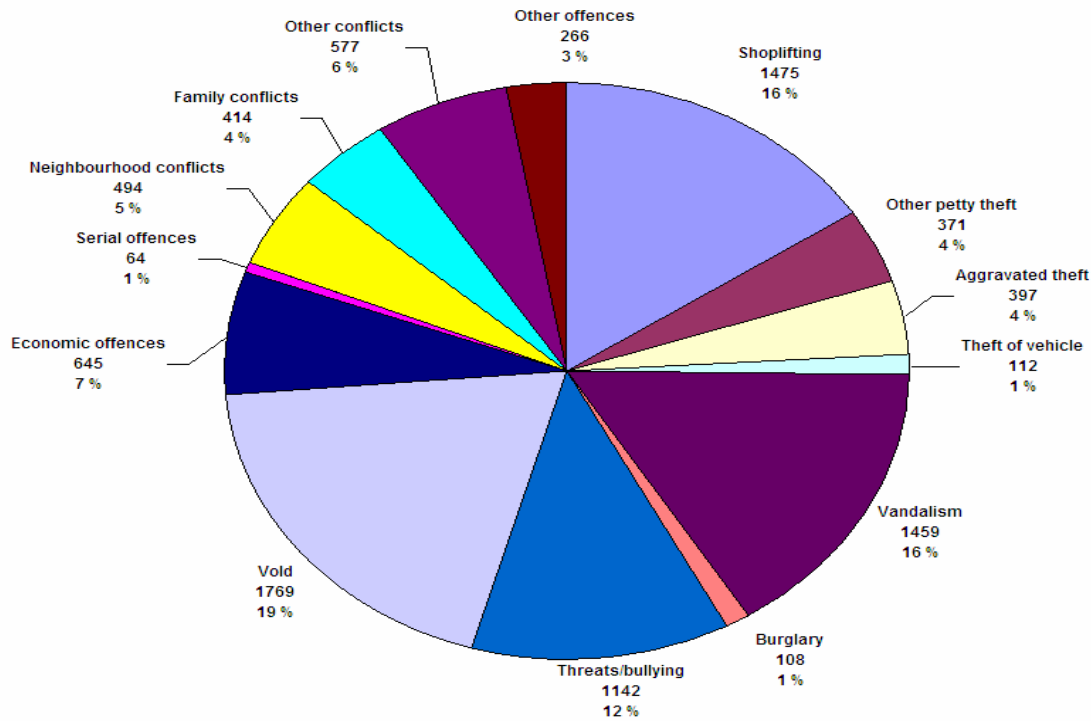
- the Mediation Service offices at the local level, 22 in total nationwide.
- the National Mediation Service' Central Administration (led by me).
- Ministry of Justice' Civil department is the superior responsible body.

People working in the mediation services are state employees, in total about 80 persons. Most of the mediation services are quite small units - many with 2 employees. The largest office covering the capital Oslo and the areas around- has 10 employees. The 22 local offices are responsible for the local volunteer mediators the handling of cases and cooperation with local partners such as police, prosecutors, municipal institutions like schools and local communities. In the Central unit we are 11 persons are responsible for the 22 offices conducting their practise according to law and regulations'. Our work covers pure administrative tasks, systems of securing quality and developments of the mediation services, systems of recruitment, training, and feed back from parties, and being the focal point for communication between the 22 local offices and The Ministry of Justice.

We have 435 Municipalities - so each of NMS 22 offices covers several municipalities & counties. Our mediators are appointed locally - and we seek to have available mediators in all the 435 municipalities.

Some characteristics of our mediators from our last overview of all NMS mediators is from 2007 - in total there was 648 mediators (in 2009 it is 697). A majority of 410 are appointed after NMS became fully state organized in 2004, with new basic training program for new mediators throughout the whole country.

- **Age:** The largest age group is between 50-60 (140), second is between 40-50 (119) and third is between 30- 40 (108). Only 46 is below the age of 30, and 19 above the age of 70.
- **Gender:** 351 women and 297 men. Before the age of 50 - the mediator groups are dominated by women, and after 50 it is a slight dominance of men.
- **Ethnicity:** 5,6 % (34) have a background from other countries. In the population in total immigrants or children of immigrants represents 10,6 % of the population (508 000 persons of a population of 4, 8 millions).
- **Education:** Most of our mediators have higher education, of the 648 mediators in 2007 - 478 had degrees at University level. 133 had 12 years school, and only 11 had primary school only. It seems that even though educational level in Norway is high, the mediators group seems to be above average educational level.

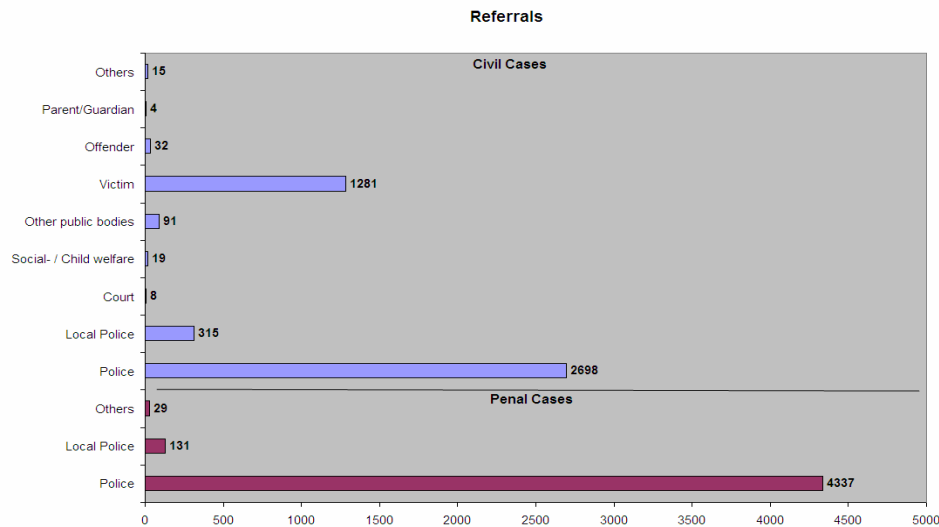


This overview shows all cases received at NMS in 2009 – 9293 cases in total, and reflects mainly what cases the Police - & Prosecuting Authority - as the main source of referrals (referring more than 80 % of all cases), considers suitable for mediation.

9293 cases were referred to NMS, and mediation or conferences took place in 6580 cases.

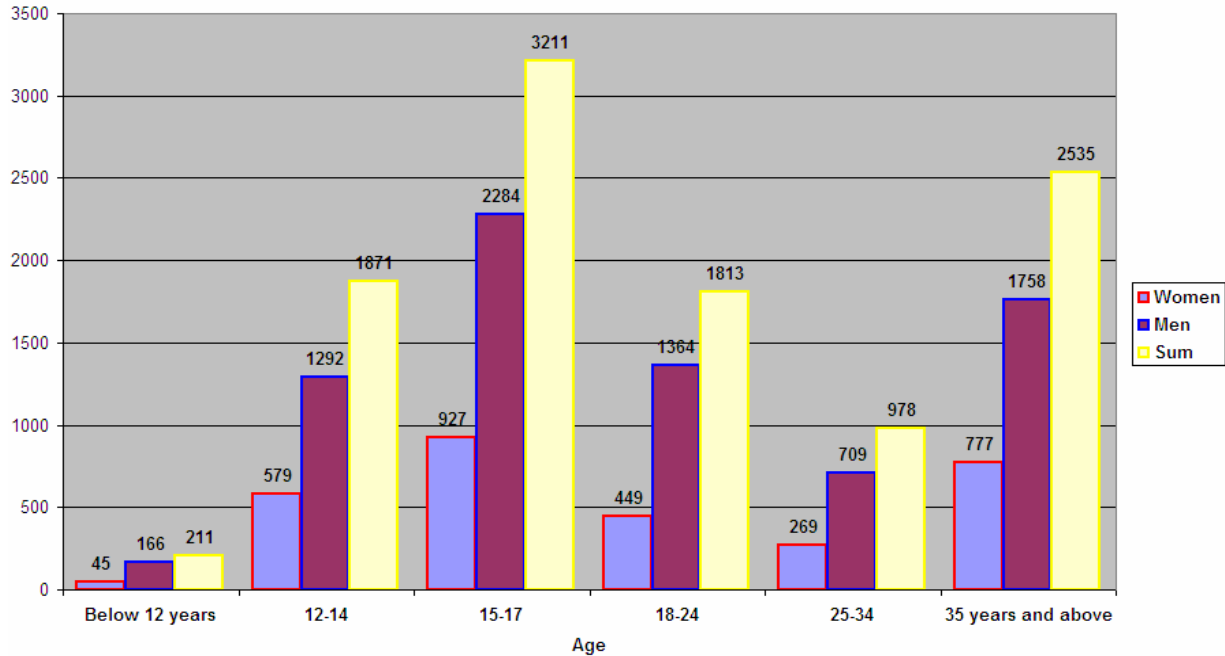
Mediation is voluntary, and some says no to mediation and some cases are closed without mediation for other reasons; parties are not found – or the case is solved in other ways – by advice etc. , or the case is not found suitable for mediation.

Referral of cases



There has been a slight increase in direct referrals from the parties – victims especially. But as you can see most cases – both penal and civil are referred to NMS from the Police and Prosecuting Authority.

Age groups of offenders 2009 (NMS statistics)



Experience and research show that cases of violence/violent conflicts are the cases most suited for mediation and other restorative processes.

In minor cases with young people researchers have found less effect of RJ. It is however crucial that other alternatives are used to keep juveniles away from crime – but also away from the stigma of the penal justice system!

A long-term objective, is to apply VOM or RJ in more cases of violence – as the parties involved have much to gain from RJ processes. Still, to some degree, this is being contested by other parts of the Penal Justice system, by legal professionals and also by psychologists – who have concerns especially regarding mediation in cases of violence in close relationships. We share this concern – but also see that depending on how a process is facilitated and how the preparation work is conducted – there is no exact limit to kinds of cases suitable – it is much more a question of timing and whether the persons are suitable – and have a good will.

Legal consequences of mediation

1. Case closed – no further legal proceedings

If a criminal case has been successfully mediated with an agreement, the prosecuting authority may only reinstitute criminal justice proceedings if the person charged commits a *significant breach* of the agreement.

2. No criminal record

A successfully mediated criminal case shall not be noted on the criminal record.

As in all crime statistics – there are **more men** than women. The offenders in NMS caseload are mostly young boys/men – reflecting that our co-operating partners sees mediation especially suitable for young offenders.

An interesting tendency however the last years is an increase in the age group above 35 – many of these are involved in civil cases - as family disputes, threats towards partners – x-partners in a “break-up” phase, neighbourhood disputes, economic fraud etc.

The **victims** /offended party (not shown in this slide) are slightly older and holds a few more women than the group of offenders in NMS cases.

It is an the increase in number of private persons amongst the victims – meaning not only professionals – like shopkeepers etc.”. This is probably a good development – meaning that victims that feel affected by the crime are offered processes of mediation and restorative justice.

RJ – definitions – core values

Restorative justice seeks to balance concerns of the victim and community with the need to re-integrate the offender into society. RJ seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it. (Definition proposed by the Restorative Justice Consortium in the United Kingdom in 1998.)

“Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.” (Howard Zehr 2002)

Restorative justice understands crime first of all as harm done to people and communities.

Three pillars of RJ

HARMS & NEEDS – OBLIGATIONS – ENGAGEMENT

(from HOWARD ZEHR’S “The Little Book of Restorative Justice”)

Regarding the well known negative effects of imprisonment - we also know that having a criminal record in itself is stigmatizing and even inflicts a negative self perception especially for young people. I believe we all would feel that getting a criminal record was quite dramatic and would limit some possibilities for us in the future.

Therefore - an important part of a successful mediation used as an alternative measure in penal cases - is as long as you have fulfilled the agreement and taken responsibility for your actions you should be allowed to leave the case behind you for good. This increases the chances of the offenders ability to be reintegrated in society – as accepted and included.

Developments in methods and implementation

From victim-offender *mediation* to *conferencing*

1. NMS implemented conferencing as a method in 2009 -
 - mediators and staff were trained
 - 250 conferences were held throughout the country.
2. Positive experiences!
3. A full-scale implementation of conferencing face some challenges in regard to resources (budgetary shortcoming) and partly facilitators/mediators capacity.

The parties are the main actors in restorative justice, the parties put words to how they experienced what happened how it affected them, what they feel, what their needs are and what they see as a relevant solution to put things right.

The fact that *the process is voluntary* implies that the parties already meet each other with good will – they have made a choice to try to do something about the situation – to enter a dialogue. As mediators we recognize this and give credit to both parties for the effort they now are willing to make.

We base our work on a “no-blame approach” – meaning that *we include rather than exclude persons* – it is the act that they did that is not accepted – not the persons.

H. Zehr: Restorative justice understands crime first of all as harm done to people and communities. Our legal system, with its focus on rules and laws, and with its view that the state is the victim, often loses sight of this reality. (H.Z.)

- Harms & needs: RJ begins with concern for the victims and their needs. RJ seeks to repair the harm as much as possible, both concretely and symbolically.
- RJ emphasizes the offenders accountability and responsibility, as they are encouraged to understand consequences of their deeds.
- RJ promotes engagement or participation: this principle suggests that the primary parties affected by crime – victims, offenders, members of community – are given significant roles in the justice process.

These are quotes from Howard Zehr, who is considered one of the “fathers” of restorative justice in USA. Zehr focuses on “putting right” - respecting all parties in the process.

I recommend his book – for practitioners, policymakers and anyone interested in this topic, in a few pages this book gives insight in the dynamics and philosophy of RJ.

Last developments for RJ in Norway

1. Conferencing applied systematically for juveniles that have committed severe crimes, includes follow-up contract (as alternative to imprisonment – decided in Court)

2. Bringing restorative justice and mediation into the probation work and into the prisons – as a supplement.
3. Follow up of the Governments plan to reduce domestic violence:
 - 3.1. Victim-offender mediation as a supplement to court proceedings
 - 3.2. Mediation in cases where the police/ court gives the offender restrictions on taking contact with the victim

Conferencing is now one of our two models for facilitating meetings between parties in conflict. In conferences more persons take part in the process– not only the primary parties but also their network of family, friends, neighbours, schoolmates, teachers etc. and others affected by the offence.

The meeting is facilitated in a slightly different way – practically we are *sitting in a circle* - and we follow a specific *manuscript* of questions and order of whom gets to talk when.

We see that solutions reached in conferences to a larger degree addresses all sides of the affects of the offence – and what's need to be addressed for the future. Our impressions so far is that more people in the circle and using the script seems to ensure even better than traditional mediation that all involved gets to say what is important for them – to relevant parties, and that the outcomes seems to be sustainable.

Special training for facilitation of conferences is provided to our staff and to selected mediators. We aim in the future to incorporate both mediation and conferencing in joint training modules so that all mediators are comfortable with both facilitating mediations and conferences.

I believe conferencing brings us closer to the original ideas for restorative justice and of Nils Christie's philosophy of bringing the conflicts back to the local communities and its rightful owners - the parties.

Scientific findings on RJ, Norway -09

The parties interviewed experienced mediation to -

- contribute in their process of "healing" after the incident/crime
- allow them to speak their mind
- increase their understanding of the other party
- improve the relation between parties

The parties interviewed would recommend mediation to others!

"Restorative justice practice performed by NMS do to a large degree fulfill the objectives and ideals of RJ".

(NF-rapport nr.14/2009)

Conferencing/follow up team – as a new alternative measure decided by court; NMS has a coordinating role for bringing in representatives from central institutions like police, child care service, school, youth field-workers –and family/private network – other relevant persons.

Gain; All experts are meeting at the same time with the young one. Creates a comprehensive plan; clear agreements on job-sharing between the professionals towards the juvenile, and the juvenile has a say in the planning, and must actively take responsibility. The project has made the police realise that paying attention to the victim is also a positive asset in the rehabilitation work with the offender.

Some risks connected to this new measure: NMS becomes more involved in the execution of penal measures, victims risks being a tool to “educate” the juvenile offender, not become an alternative to prison – but rather an extended use of punishment. A central debate for all alternative measures – is if they truly become alternatives or if they represent a so-called “net-widening” catching smaller fish into the penal justice sector. (Stanley Cohen introduces this term in his book “Visions of Social Control”).

RJ in prison/probation service - The mediation service bringing restorative justice and mediation into the probation work and into the prison; Via courses in conflict management for the offenders serving a community sentence. “Talking groups” with the prison inmates - initiated by the mediation service - a joint project with the prison. The topic is conflict handling, via “life in general”. Leads to mediation in defined conflicts that can have a relevance to the crime they are serving for, or with a family-member, a friend. Here we have a big task ahead – there are so many unsolved conflicts – and human needs for our services both from inmates – and from the victims outside – who perhaps dread the day the offender is released and they meet him unrepeated in their local community again. This is another reason why victim organisations are engaging in victim-offender mediation – to handle the conflict and regain a sense of security and control of their lives and be ensured by the offender that they have nothing to fear.

RJ – part of process for reduced domestic violence; this is much debated – especially the women organisation and crisis shelters have been sceptical if this would put the women and children at higher risk of violence from the offender. Results from NMS pilot project shows the opposite: some victims says that for the first time someone had time to hear their story out, and a few women says that contact with NMS finally gave them courage to break free from a destructive relationship.

The reality is also that the alternative to a potential facilitated meeting by NMS is nothing – many of these women struggle alone in their situation without any help from the public institutions. Only in cases where the evidence is strong can a case be brought successfully to court – but even then with a verdict – the situation is still dangerous for the victim.

We understand those who are sceptic as they are pointing at potential real risks. I therefore stress that it is of tremendous importance how we go about such cases - with care and awareness of the real danger for the victim. That we cooperate across the sectors – justice – health – mediation. And sometimes we must conclude that a meeting between the parties is not to be advised.

Other researchers findings (-09)

1. Challenges identified: victims roles, agreements, potential clash of systems.
2. Strengths – potential: An arena that can manage complexity
3. Quotes from parties:

“I hope more parties can settle their case in this way, much better than going to court.” (victim)

"That you can sit down and talk together, discover that the other party is not this bad person that you thought. If you go to court aggression between the parties will easily increase. At the mediation service you can resolve issues of aggression. I felt much more at ease after the meeting." (offender)

These findings were published in a report 17th of December 2009.

A research focusing on cases of violence and other severe cases (threats)

The researchers conducted interviews with parties, observations of mediation and conferencing and questionnaires to even more parties.

The findings were overall positive – the majority of informants would recommend this process to others in similar situations.

The researchers concluded that NMS provides a mediation service that are close to our ideals – and worth while developing further.

Improvements – ensure information and consent

Some challenges that were identified was the potential conflict between meeting the needs of bureaucracy and maintaining the core values of restorative justice characterized with being able to room complexity.

NMS has always had this challenge – on one side we have an important role to play regarding diverting penal cases from further proceedings – on the other hand it is a challenge to build up and maintain our principles of mediation and restorative justice in close co-operation with the traditional penal justice system. It is not impossible – but a challenge that we need to recognize!

In recent years we have experienced an increase in understanding and acceptance of our work within the justice sector – from political level to practitioners in the field. At the same time as our services are getting more popular – it is also a risk of being co-opted and being incorporated in the other institutions. Keeping this in mind, developing our own identity, respecting the core values of mediation as stated by Council of Europe – and the principle of the mediation providers' autonomy from the justice sector - is crucial to how the service can develop further – and to the standing of mediation amongst people.

CONCLUSIONS

1. Restorative justice works!
 - 1.1. It is cost-effective money-wise and human suffering wise; for victims – offenders, their family and friends – local community - and society at large.
2. Skepticism is to be expected from our cooperating partners within the justice sector- but this skepticism will decrease as good results are documented and repeated. It takes time and effort – but you will succeed!

Victim-offender mediation is part of an international development towards a more humane, cost effective penal justice system to the benefit of the parties involved, their network of family and friends and for the society at large.

In a broad perspective restorative justice contributes in building & keeping peaceful communities with trust in the authorities ability to handle conflicts.

And finally RJ is a contribution to a democratic society – characterized by active including safe local communities with a suitable amount of crime© handled in a positive including manner.

International exchange of experiences was and still is essential as inspiration for our own developments of the service. Still there is no such thing as “*a best or ideal model*” of implementing mediation. Each country must take their situation into consideration - what fits in our society - at this stage, local culture, traditions and more, even practical and pragmatic considerations as geography / demography and how to get started - where do we have best access to introduce victim-offender mediation? Where can we best succeed to build up a practise that will inspire further developments. Mediation services can be organized practically in many ways - provided the core values of mediation as stated by Council of Europe and UN are respected.

A few books of Christie, relevant to our topic, that I would recommend:

- Christie, Nils, “Conflict as Property”, *British Journal of Criminology*, Vol.17, No.1, 1977
- Zehr, Howard, *The Little Book of Restorative Justice*. Good Books, 2002.
(www.GoodBooks.com)
- Council of Europe - Recommendation No. R 99(19) of the Committee of Ministers of the Council of Europe to Member States concerning Mediation in Penal Matters, 15 November 1999.
- EU’s Council Framework decision of 15th March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)
- UN (2002/12) Basic principles on the use of restorative justice programs in criminal matters.
- UN’s Handbook on Restorative Justice.

Hereby recommend literature – written in a very easy readable engaging way!! Nils Christie is indeed a great writer!

You can also find a long interview with him on related issues at YouTube.

DEVELOPMENT OF RESTORATIVE JUSTICE FOR JUVENILES IN ALBANIA. PERSPECTIVES AND CHALLENGES

*Prof.Dr. Arta Mandro-Balili
Prof.Dr. Mariana Semini-Tutulani*

Facts

- Albania is making efforts to build an adequate Juvenile Justice System, taking into consideration the best interest of the child. Although such efforts have been continuous, there is still need for further commitment and there are still some challenges to be faced.
- Children make more 40 per cent of the Albanian society, and addressing their issues is more than an issue of tomorrow. They are also issue of the today!
- We are still a country facing several economic and social problems, where children do not have a life of standards they deserve, but on the contrary...
- Children and criminality are a phenomenon which in stead of being distant, they are uncommonly creating a symbiosis. There are deficiencies in the role of family, society and state.

The youth today and society today, tomorrow ...

- The development and civilization of society depends on the level of education of its young generations.
- If we see the youth of today, we will understand the society of tomorrow.
- If the youth is well-educated, responsible, and respects the law and peaceful co-living, the society will be more civilized. Otherwise...

In all life aspects, including also the juridical ones and justice – the child (youth) is different, a being in development.

- When an adult gets ill and sees the doctor, his diagnosis, dosage of treatment, treatment duration, etc, are completely different from the ones proscribed to a child.
- The message is that being different, exactly for the reason that he/she is a human in development, there is still time and possibility that the child be rehabilitated; he/she has different needs compared to adults, and the therapies that the system will use for their 'recovery' are completely different and particular compared to adults' ones. In this case, the ambulatory treatment is a priority and not the institutional ones.
- Treatment of each child should be individualized.
- There is a strong public interest in special protection of minors, and prior interest in them and their welfare are substantial. This becomes important considering that the standard of the society largely depends on the awareness about the 'good' and the 'devil', education, reintegration, protection, education, treatment of juveniles and minors today.
- Therefore, the sentences or measures should be of pedagogical orientation.
- In juvenile justice the reparative character is rather diminished, and the rehabilitation approach prevailing.

Micro and macro social environment

- Family conditions where the individual is grown up.
- School and society;

- Media and information;
- Social, regional, mentality, etc;
- Respect to rule of law;

are determinant to understand how the individual manages the negative feelings: hate, anger, jealousy, greed, etc and the way how he/she manages the conflict, avoiding or becoming part of it.

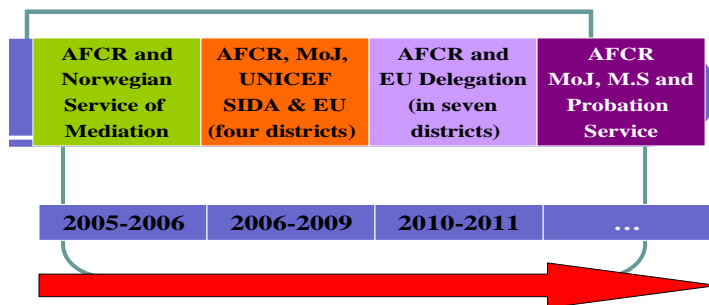
Which are the victims of a criminal offence?

- *The consequences of a criminal offence affect two victims:*
 1. *The person who is offended is the direct and main victim and,*
 2. *State is the second victim.*

Challenges of RJ

- Conciliation of the victims' needs, offenders' and community needs is the main aim of restorative justice. In contrast with retributive justice, which mainly deals with crime punishment, restorative justice is focused on restoration of damage caused by the criminal offence.
- As means of achieving this goal, restorative justice gets together the victims, offenders and community members, making the offenders not only responsible for the non-legal acts (criminal ones), but also repairing the harm caused to the victims.

Phases of implementation of the RJ project for juveniles. Institutional cooperation and partners



Which are the objectives of mediation in criminal cases?

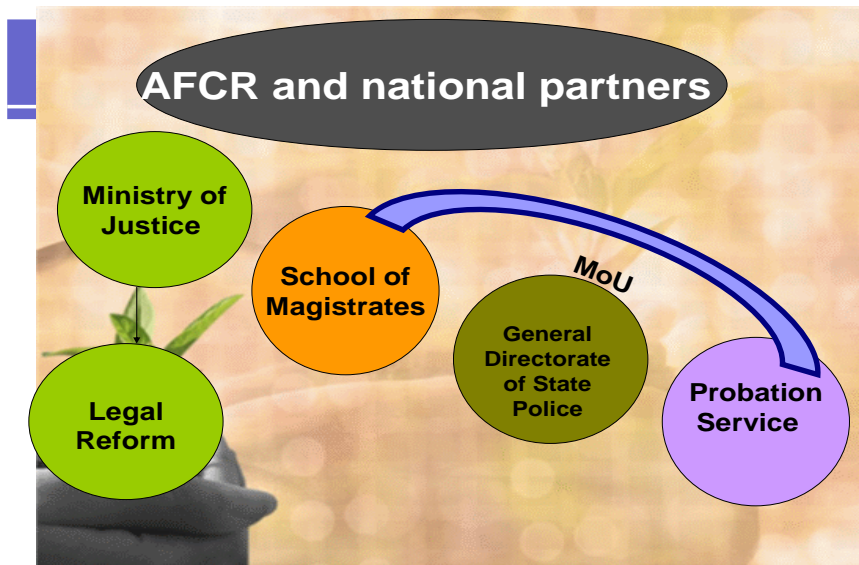
<ul style="list-style-type: none"> - "Legitimate interest of the victim": compensation and apology; - Reintegration and rehabilitation of the victim; - Minimization of consequences of victimization; 	<ul style="list-style-type: none"> - Communication with the offender; - Prevention of criminality; - Effectiveness and quick response by justice.
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AFCR goals' in implementing the project:

- Promotion and consolidation of restorative justice, particularly of victim-offender mediation for juveniles;
- Enhancement of institutional cooperation;
- Awareness and capacity building for judicial police officers, jurists, lawyers, mediators (through activities conducted by local and international experts) in the districts targeted by the project;
- Mediation service provision in criminal offences involving juveniles between 14-21 years old.
- Monitoring / evaluation of the process and preparation of a package of amendments to improve the mediation legal framework in Albania.

Capacity building in the area of restorative justice and victim-offender mediation through organization of:

- Basic training for judges, prosecutors, police officers;
- Basic and advanced training for mediators;
- Advanced training for probation service staff;
- Cycle of lectures for School of Magistrates students;
- Preparation of training modules;
- Preparation of brochure of case-studies handled through victim-offender mediation.



Statistics of juveniles sentenced for criminal offences

Year	Total	Females	Children
2002	4370	269	274
2003	6130	283	308

2004	6379	362	320
2005	4733	494	289
2006	6613	533	268
2007	5678	455	211 (198k+13kv)
2008	7602	557	407 (356k+51kv)

The impact of mediation in criminal cases

Settlement of criminal cases through mediation results in:

- a) Withdrawal of the victim from request at prosecution to initiate criminal proceedings against the offender;
- b) apology by the offender. Traditional ceremonies, like having a coffee/drink together, promise, oath, etc.
- c) undertaking actions which might include public apology on the media, or in the community where the victims lives or works;
- d) compensation for the damage caused, in cases when health, or property or else might have been hurt, thus covering medical expenses or those foreseen by the Civil Code.

THE APPROACH TO THE CURRENT DEVELOPMENT OF MEDIATION IN KOSOVO THE MEDIATION SERVICE IN PARTNERS-KOSOVA (P-K)

*Shukrije Gashi, Director
Partners-Kosova, Center for Conflict Management*

Partners-Kosova in order to give an overview of the current development of mediation in Kosovo has prepared a summary presentation, to provide the Conference participants with some information on the main activities that are undertaken in Kosovo during this year, at central level, i.e. Ministry of Justice, respectively the Mediation Commission, as well as other activities in this area conducted by main actors of mediation in Kosovo such as: Partners-Kosova, CSSP, CECCHI, Swiss Twinning Project, UNDP, etj.

The role and contribution of Partners-Kosovo in the mediation area, as founder of this institute in Kosovo, is multifold, including also its role as Advisory Body to the Mediation Commission at the Ministry of Justice of Kosovo. The cooperation of PK with the above-mentioned actors in the area of developing the sustainable and functional legal and juridical framework for the Mediation Commission is of special importance. PK has provided assistance in developing the respective Regulations for the implementation of the mediation law and making this Committee and the modern mediation in Kosovo functional. Fostering the process of modern mediation development as efficient approaches to dispute resolution, has been a long-term objective of the Partners-Kosova, dating back in 2001, time when this NGO was established.

In order to demonstrate how Partners-Kosova, as leading professional NGO in the area of mediation, committed to foster the initiatives of every partner with the main goal of further development of mediation in Kosovo, providing them with knowledge and professional practical expertise, we need mention the International Conference on Mediation in Kosovo “Maximizing potentials” (1-2 December 2009), organized by Partners-Kosova and CSSP under the patronage of the Kosovo Ministry of Justice, financed by: German Government, USAID, Swiss Embassy in Pristine and UNDP-Kosovo, as well as with the assistance of a Chinese Company for creation of an temporary conference website.

Additional data on the activity of P-K in the area of mediation

- According to the Mediation Service of P-K, there are more than 500 cases registered for mediation, out of which 300 are successfully settled, others are in being processed through mediation.
 - The mediation of property claims, a pilot project of PK, a pilot project undertaken in cooperation with local NGOs, Partners-Serbia, Center in Belgrade, financed by the generosity of the British Embassy in Kosovo, assisting the needs of the Kosova Property Agency (KPA).
 - Training on mediation basic and advanced skills for the KPA staff, training scheduled within the second half of November, 2010. Training attendees are from all Kosovo regions, including KPA Offices in Serbia and Montenegro.
 - Since the post-war in Kosovo, Kosovo Property Agency has received more than 40 thousands claims for private property, (occupied residential), out of which, 19 thousands are settled.
- The above-data are from the KPA website.*

The importance of that Conference relies on its content and quality of recommendations drawn from the working groups on maximizing the mediation potentials in Kosovo and expanding the application of this alternative dispute approach to dispute resolution within the judicial system in Kosovo. One of the main successful events, a consequence of the Conference, was the establishments of the Mediation Commission in 2010, as structure of the Ministry of Justice, and

P-K provided an extraordinary contribution, together with CSSP and other above-mentioned actors, as well as other local and international experts who demonstrated their commitment to the further development of mediation. A factor contributing to such practices of cooperation and co-action was also the already approved law on mediation, which was first introduced in Kosovo by Partners-Kosova in 2002. The same law, on the initiative of P-K, was redrafted in 2005-2007 by working group composed of Partners-Kosova, NCSC, USAID, OSCE and UNMIK, and Legal Office. After drafting the new law, the draft was discussed by a wider working group of experts, where apart from the above-mentioned organizations, an active role was played by the legal representative of the Prime Minister' Office, Legal Office at the Department of Justice of Kosovo, representatives of courts and prosecution offices of all levels, professors of the Faculty of Justice from Kosovo University, etc. The Kosovo law on mediation was approved by the Kosovo Parliament in April 2008, with some changes made without prior consultation with Partners-Kosova which to our opinion do not make mediation overall inclusive and functional. However, P-K and the members of the Advisory Body of the Mediation Commission are of the opinion that although the law has some insufficiencies, it should be applied until there is a possibility for changes and improvement, as it is an existing base to give way to functioning of structured mediation, particularly court mediation.

Challenges, potentials and the effectiveness of the complementary cooperation

- Challenges, opportunities and benefits from complementary cooperation, developed based on the principles of fair competitions and (Fair play principle), professionalism, avoiding any other inappropriate approach that could cause any damage to the mediation local, long existing capacities in Kosovo; instead strengthening and enlarging the existing capacities and using of it as an additional tool, in and outside of courts;
- P-K continuing further cooperation with (KMJ) regarding improving and strengthening of the current professional capacities of MC of this Ministry, as well as, work regarding changes, supplements and adoptions with existing Kosovo Mediation Law for the benefit of mediation cooperation in near future with interested stakeholders.

Partners-Kosova, considers this conference that is being held in Albania (Durrës) as very important to the development of mediation, as a direct and practical contribution to all the participants exchanging experiences in fostering the further development of mediation, as a very effective approach to all the citizens of the Western Balkans to a better access to justice.

MACEDONIAN EXPERIENCE IN DEVELOPMENT OF ADR/MEDIATION IN CONFLICT RESOLUTION

*PhD Ljupco Sotiroski, Mediator
Management Board Member
Chamber of Mediators in Macedonia*

Overview

- I. The Law on Litigation
- II. The Law on Criminal Procedure

I. Law on Litigation

- Mediation is defined as extra-judiciary procedure and is conducted on a reference by the court.
- Article 200, Paragraph 1, Item 6 provides termination of litigation when two parties decide on that for resolving the dispute with mediation or otherwise.
- Article 203, paragraph 2 envisages the continuation of proceedings suspended at the request of one of the parties.
- If no such request, the procedure will continue after the expiry of 45 days from the date of termination.

Outlook

These articles are precondition for using mediation as an alternative way to resolve disputes.

Advantages

- to avoid large litigation expenses,
- a friendly resolution of the dispute
- significantly reduce costs,

Amendments

The provision of Article 11 of the Law Amending the Law on Mediation defines that the beginning of proceedings for mediation, does not interrupt on limitation periods and that initiated proceedings for mediation does not affect to the preclusive deadlines for bringing procedure determined by other law.

- In the current judicial practice in the Republic of Macedonia there are rare cases of application of this legal provision and general use of mediation as an alternative way of resolving disputes.

Current situation

1. Deficiencies

- There is a lack of active role from the judges in encouraging the parties, to solve their dispute or situation under the provisions of mediation,
- Insufficient institutional support especially by the Ministry of Justice,
- lack of awareness of the advantages of the mediation,

- Insufficient media coverage,
- Lack of motivation / lack of awareness of the mediators,
- Limited / lack financial resources for proper function.

2. Procedure in progress

- proposed new provisions for the possibility of referral to mediation before, and during the litigation,
- amendments for active role and binding role of the judge in stimulate and referral of clients for mediation.

3. The legal basis for Mediation: The Laws and Recommendations

- The Law of Mediation, Official Gazette of Republic of Macedonia, No. 60/2006,
- The Law for the amendment of law for Mediation, Official Gazette, No. 22/March 2007.

Amendments

- the mediators are organized in the Chamber for mediators in the Republic of Macedonia (Art. 28)
- the Chamber for mediators in the Republic of Macedonia is legal entity responsible for Mediation,
- The Law for the amendment of law for Mediation, Official Gazette, No. 114/September 2009,

Amendments:

- establishing the principals of mediation, mediation procedure and organization of mediators,
- the provisions of the amendments are related to the civil, trade, labor, costumer as well as other contentious relationships,
- the provisions are governing the criminal and family cases if mediation matches on the nature of contentious relationships and if the application on mediation is not excluded with the special law,
- the mediation procedure is resulted by the Agreement achieved by the parties, before or upon of beginning the litigation, with or without Court referral, unless the law is not foreseen the exclusive jurisdiction of the court or other authority

- The recommendations of the Comity of Ministers of the Council of Europe:

- Recommendation P (2002) 10 for mediation in the civil cases,
- Recommendation P (98) 1 for family mediation,
- Recommendation P (99) 19 for mediation in the criminal cases.

- *The amendments to the Law (2009) is regulated:*

- The duration of the mediation procedure (reduced from 60 to 45 days)
- The Ministry of Justice has jurisdiction for implementing training for mediators and issuing certificates for completed training for mediators;
- Supervising the implementation of the law.

The role of the Ministry of justice- achieved results in relation to:

- Nomo technical improving the text of the law,
- Amendments to the Law on Mediation aim to increase compliance of the mediation procedure with the Law on Civil Procedure, regarding the referral of the parties by the court during the primary procedure, to resolve the dispute through mediation.

Other laws that contain provisions on mediation

- The Law on Civil Procedure ("Official Gazette" No. 79/05, 110/08, 83/09),
- The Juvenile Justice Act ("Official Gazette" br.87/07, 103/08, 161/08),
- The Family Law (Official Gazette No. 80 / 9, 9 / 96, 38/04 and Consolidation of 22/12/2008),

The Company Law (Official Gazette No. 28/04, 84/05, 85/05/25/07, 87/08,

- The Law on Peaceful Resolution of Labor Disputes (Official Gazette No. 87/07),
- The Law on Consumer Protection (Official Gazette No. 38/04, 77/06, 77/07),
- The Law on Obligations (required) Relations (Official Gazette No. 18/01, 84/02, 84/08)

The Law on Criminal Procedure

- In the draft Code on Criminal Procedure, mediation procedure is newly proposed and is envisaged only for acts prosecuted upon private charges. (Articles 497 – 503),
- The draft envisages that mediation in penal matters would only take place if the parties are freely consent,
- The parties would be able to withdraw the consent at any time during the mediation.

Basic principles of mediation procedure

- Voluntary participation,
 - Equal participation,
 - Equality of access,
 - Confidentiality,
 - Efficiency and effectiveness,
 - Transparency only for the involved parties,
 - Fair procedure.
-
- The basic procedural rights, safeguards are preserved during the whole procedure .
 - If the parties are willing to solve their dispute with mediation they have to give their consent in a period of 3 days from the official proposal from the judge
 - The whole procedure must finish in a total period of 45 days (counting from the given consent) and if not than the criminal trial will continue
-
- **The possible way of ending the procedure are:**
 - Resolving the dispute,
 - Ending the procedure with the knowledge that there is no possible solution that satisfies both of the parties,
 - Ending the procedure because the period of 45 days has expired without a appropriate solution,
 - Ending because the parties have withdraw the freely given consent ,
 - Ending because the solution is unlawful, unsuitable or not appropriate.

Advantages

- Flexibility for both parties,
- Solution that fits both parties,
- Short period for solving the problem – 45 days,
- Low cost,
- Privacy,
- Releases the court from petty crime.

**COURT-BASED MEDIATION WORKING ALONGSIDE THE PRIVATE SECTOR
AS A KEY COMPONENT IN THE DEVELOPMENT OF COMMERCIAL MEDIATION
IN THE SEE REGION**

*Andy Grossman
Center for Effective Dispute Resolution
International DRC, London*

All of the SEE region countries are economies in transition and have been moving over the last decade from controlled economies to free-market ones. With this has come an anticipation of an increase in disputes arising between private and/or commercial parties. At the same time, SEE region countries also see Alternative Dispute Resolution (“ADR”) as part of their strategy for accession to the European Union.

What is clear is that all successful mediation projects have had considerable connection to the courts. There are many examples. In Slovenia the mediation programme was run with the Municipal court in Ljubljana. In Serbia there is a court-annexed programme as part of the Belgrade second Municipal Court. In Croatia, the first mediation programme was offered via the Commercial court of Zagreb. More recently in Albania, a pilot mediation scheme was run at the District Court of Durres. And there are others.

In many of the SEE countries the next development in mediation practice has been to extend the offering of mediation beyond the courts and promote it through more diverse ways.

One of the most powerful incentives for parties to mediate is to avoid court decisions and the uncertainty which they inherently entail. If there is no prospect of getting a decision, defendants are not likely not engage in any form of dispute resolution. Therefore, for parties to consider mediation it must work in the shadow of the law.

All mediation processes rely on a legal framework to support them. At a minimum, laws need to allow for the enforcement of mediation settlements. Other areas for legislation include confidentiality, inadmissibility of evidence and without prejudice. However, legislation can go further and provide mechanisms to encourage the use of mediation. These could include, powers by the courts to:

- Order a stop to proceedings for parties to consider ADR
- Order parties to engage in ADR or an ADR information session
- Penalize parties for unreasonable refusal to engage in settlement and ADR
- Provide reasons to the court why mediation is not appropriate in their case
- Reduce court fees for parties mediating
- Amend the disposal targets for judges to give them credit for referring cases which are settled by mediation.

In civil law jurisdictions before mediation is seriously considered, it is necessary to pass a law setting out the principles under which mediation can operate. In Croatia, for example, despite considerable training of mediators through a USAID project starting in the late 1990’s, no

substantial movement on the introduction of mediation took place until the passing of the Mediation Act by the Croatian Parliament in 2003.

Having passed a mediation law and any other associated legislation, the mediation delivery model then needs to be considered.

Broadly ADR models can be classified as either public or private models although dispute resolution has both a private and public function.

If the intention behind introducing commercial mediation is to provide inward investment, cross border dispute resolution and harmonization of dispute resolution within civil justice systems within a trading bloc, then public models are likely to be more appropriate. This is because, for agreements to be enforceable in other jurisdictions, then they are likely to need the force of law behind them, such as the status of a court order. This is more likely to be achieved if the mediation service is court-based where any mediation agreement is enforceable by way of an order of the court and where there is buy-in from the judiciary.

The court- based model has two types: court-annexed and court-connected.

In essence in a court-annexed model the court takes ownership of all aspects of the mediation process.

For example, the Zagreb Commercial Court mediation programme was located completely within the court and run by court staff. In Albania the court-annexed pilot scheme in the District Court of Durres aimed to establish a model which could be replicated and expanded in the court system as a whole. Among other activities, the pilot involved the establishment of a Mediation Centre within the Court having its own administrative facilities, the selection and training of a small group of mediators and seminars for judges and lawyers on case referral.

A court – connected model still involves the court but the degree of control of operation by the court is less. In Bosnia and Herzegovina, for example, two separate mediation centres were established in Banja Luka and in Sarajevo. They were independent but they had a close connection to the municipal courts in those cities and the courts referred cases to the centres under a sophisticated referral system.

Although the degree of connection with the courts is a significant factor in the development of mediation, delivery models can also be (and should be) adopted outside the court system by the private sector. This could be by way of connection to a business sector, chamber of commerce or a trade body. One example of an industry specific trade body is the Croatian Chamber of Trades and Crafts which enables artisans and craftsman to access a mediation service provided by their chamber.

Allowing private sector and public sector delivery models working alongside each other is key to the next stage of mediation development in the region. This will involve developing sector initiatives to attract demand for mediation services – moving from what has been described as the “charismatic”, pre-institutional stage of ADR development. It will also involve Governments allocating funds and resources to develop further court schemes (or make permanent existing ones) to send out the strongest possible signal to individual disputants,

local businesses and potential investors. Most importantly, Governments will need to be mindful of not exerting such stringent control of mediation services that it strangles any initiatives from the private sector. In other words, mediation develops as a state controlled function which has both public and private sector delivery models.

**COMMERCIAL MEDIATION AS DEVELOPMENT MEANS
IN REGIONAL BUSINESSES MEDIATION IN BOSNIA AND HERZEGOVINA**

*Smiljka Gavrić, Mediator
Association of Mediators in BiH, Board Member
of European Mediation Network Initiative -EMNI*

Introducing of mediation institute to the business society

- Round tables
- Chambers of Commerce
- Seminars

When companies decide for mediation and why

- Court refer
- Settlement within court procedure
- Parties initiative

Types of disputes related to mediation advantages

- Business entities dealing
- Banks, Insurance, Leasing
- Compensation for damage
- Rental agreement
- Sales contract

Sectoral representation

- Private companies
- Banks
- Insurance companies
- Construction companies
- Tourism

National level

- Domestic Companies
- Companies with foreign capital

Regional level

- Business Relationship / Cooperation
- Investment

Mediation develops regional business

Practical steps

- Clause on Use of Mediation in Contracts
- Chambers of Commerce Recommendations
- Leading Companies

Negotiation and its outcome as a key part of business enhancing

- Parties involvement
- Parties expectation
- Parties awareness

SEEMF contribution to regional businesses accelerating

- Launching of Pilot Project including all SEEMF Countries
- Linking the Chambers of Commerce within the Region in order to Support Mediation

**ADR IN COMMERCIAL DISPUTES IN ALBANIA –
FROM THE PERSPECTIVE OF MEDIATORS**

*Artion Beqiraj,
Jurist, Mediator,
Durrresi Court-Connected Mediation Center*

The Durrresi Mediation Center for Commercial Disputes is established in the beginning of the year 2009 in the premises of Durrresi District Court.

The establishment of the Center was made possible due to a project supported by IFC and implemented by the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes.

Eight certified mediators are engaged in the Mediation Center of Durrres. They completed a training program developed by AFCR and conducted by national and international experts. The mediators are jurists qualified in various aspects of the civil, commercial, family and penal law. The administrative aspect of the Center is carried out by the Center Coordinator.

The Mediation Center is mentioned as pilot project, considering the model used particularly as far as referral of cases is concerned and the functioning of the Center based on this model.

The model was designed that cases, disputes could be referred to the Mediation Center, either from the court or out of court, such as from attorney's offices, or the parties themselves, notary offices, etc.

Supported by the District Court of Durrres, the case referral from the court to the mediation Center is done through applying the "Court connected mediation" model.

The court cases can be referred to the mediation Center and a procedural mechanism allowing for that is established under the project.

The judge examines the case, takes decision on the referral of the case to mediation, when the parties request this and in case he/she is convinced that the case can be settled through mediation.

The case is referred by the judge to the mediation Center through the judicial secretary, according to 'a sample' Decision that is designed by the court for this reason.

If mediation is successful and the parties reach a settlement agreement, then according to the "Court connected mediation" the mediator submits a copy of the agreement to the judge.

In a court session, the judge approves the agreement, making it part of the content of the court decision on the case.

In case the dispute is not settled through mediation, within the legal deadlines, the mediator notifies the judge and the parties restart the court proceedings for their case.

It needs to be emphasized that despite the location of the Mediation Office within the Court's premises, it functions independently from the Court.

The process coordination in the mediation center:

Upon the case referral to the Center, the Center coordinator files the case and contacts the parties. He/she informs the parties on their right to choose a mediator from the list of mediators which is available in the Center.

Following he/she gets into contact with the mediator chosen by the parties for the respective case. Every preliminary information that the coordinator receives from the parties is included in the individual file of the mediator, preserving the privacy of the case.

Then it is the mediator who takes care of the following procedures: communicates with the parties and schedules the mediation sessions.

The legal procedure applied by the mediators in their activity are provided in law no 9090, dated 26.06.2003 "On mediation in dispute resolution", and also by other provisions set out by the laws in force, depending on the type of the dispute.

The Center has now gained a consolidated experience in mediation of commercial cases. The conflicts treated by the Center's mediators were of different types:

- Commercial conflicts:

- conflicts over business ownership;
- conflicts over entrepreneurship contracts, transport, violation of contract obligations,
- conflicts over decision-making and functioning of commercial company, liquidation, administration actions, transferal of shares, etc.

- Conflicts of civil conflicts:

- property compensation, sale contract, rent contracts, property division, recognizing ownership, etc.

The mediators have also assisted in family cases that affect business, such as division of matrimonial property after divorce etc.

There have also been referred some criminal cases like insult, battery and theft.

Center's statistics on the cases mediated within February 2009 - September 2010:

Number of cases referred	Cases settled	Cases unsettled
90	59	31
Percentage	65%	34%

The cases have been referred by the following:

- 68 cases or 75% of cases have been referred by the Court and one case from the Probation Service (penal case).
- 22 cases or 25% of cases have been referred by attorney's offices.

Part of the positive outcome of the mediation activity in Durres is not only the large number of cases successfully settled through mediation, but also the monetary values released, i.e. Euro 4'090'378 (the estimation includes monetary obligations of the parties, and also estimation of the assets subject to mediation).

According to the Law “On Mediation in Dispute Resolution” (dated 26.06.2003) mediation is an extra-judicial activity, in which parties seek the mediation of a third party to achieve an acceptable solution for their dispute, a solution which does not contradict the law.

The mediators apply the same legal procedures, but the difference lies in the type of dispute. ADR in commercial disputes has its specifics in this aspect.

To settle a conflict you should mediate parties’ positions, prejudice, emotions, and one main particularity of commercial disputes is the *commercial interests* that such cases involve.

The *interest* factor is important, particularly for the business, are they are both of economical and non-economical type (image, reputation, etc.). *Interest* is the dominating factor in a business dispute which determines whether the businessman will follow the judicial procedure or the mediation one in conflict resolution; whether he will reach a reconciliation agreement with the other party, the conditions of the dispute.

Now we all are aware that mediation has some advantages in relation to judicial procedures in conflict resolution.

These advantages of mediation provide facilities for the *business interests*, guaranteeing at the same time the *judicial security* of a legal process.

The success of mediation is related with two factors:

Firstly, it is related with parties’ trust in following the mediation procedure as a legal alternative to dispute resolution.

Secondly, legal solution through mediation is in consistency with the parties’ interests and the law.

There are still some challenges which should be overcome:

- Important is the mentality of the parties and the challenge to change it. Moreover, the mentality of the experts like lawyers, economists, notaries, some of whom have supported us, but it has not always been sufficient, needs to be changed as well.
- Awareness increasing of public opinion to accept that mediation is a legal alternative serving the parties’ interests.
- Increased cooperation with the business community through informing them on the mediation advantages.
- Continuous cooperation with the business consultants like lawyers, economists, notaries, etc.
- More intensive and permanent cooperation with the Court.
- Institutional cooperation with the state bodies, particularly with the Ministry of Justice.
- Approval of changes in the current legal framework.

Moreover, I would suggest as following:

- Organization of frequent meetings with businessmen, lawyers, economy consultants, notaries, etc.
- Round tables with judges and prosecutors.
- Permanent training for mediators.
- Specific training for mediators in certain areas, i.e. mediation in civil, commercial, family, penal, labor disputes, etc.

**VICTIM-OFFENDER MEDIATION IN SERBIA
THROUGH UNICEF PROJECT 2002 – 2007**

*Jasna Hrcic, PhD, Assistant Professor,
Faculty of Political Sciences,
University of Belgrade*

Parallel efforts:

- *Advocacy* (awareness raising , mobilizing professionals and public)
- *Policy development* and related legislative and admin reforms
 - Legal provisions for VOM for juvenile offenders
 - Mainstreaming training programmes: MoSLA, RMC. FPN
- *Capacity building*
 - VOM training - 200 persons, ToT - 50 persons
- *Development of three VOM programmes*
 - In local community: Diversion Scheme Project in Nis
 - In institution: Mediation Programme at the Juvenile Correctional Institution in Krusevac
 - Networking: Mediation Network of Teams for Child Protection in (14 municipalities)

Serbian laws and restorative justice

Legal ground for mediation

- February 2005 - Law on Mediation
- July 2005 - Family Law

Legal basis for implementation of VOM in criminal matters:

- 2006 - Juvenile Justice Code
 - Diversion order “settlement with the injured party” for juvenile offender
- 2008 - Code on Criminal Proceedings
 - Mediation and settlement for adult offenders

2010 – Improving and polishing laws

- Draft New Law on Mediation
- Draft Law on Social Protection
- Draft amendments on JJ Law

Mainstreaming VOM training & mediators

2005 - Faculty of Political Sciences in Belgrade-VOM training

Republican Centre of Mediation:

- 2007 – VOM training program and manual developed in UNICEF projects - official VOM training program of RCM
- 2008 - UNICEF initiated licensing VOM mediators by RCM - hasn't been completed yet
- 2008 – Ministry of Labour and Social Policy (MoLSP).
- Accredited VOM training program , licensed VOM trainers.
- VOM - service provided by centres for social work.

2006 - Prepared seven sub-laws of the JJ Law, only sub-law on diversion orders wasn't adopted

2008 - Regular data-gathering of Republican office for statistics for diversion as a whole, but not segmented by the type of diversion.

2008 - Mediation and VOM included as a service in the Rule Book of Centers for Social Work (MoLSP).

2009 - Juvenile Justice Council (UNICEF advocacy).

2010 - Draft Law on Social Protection –quality control, procedures and standards of practice, including services MoLSP currently perform for the Ministry of Law (MoJ).

Current VOM practice

Professionals trained in VOM implementing their knowledge and skills:

- As a part of governmental initiatives in Serbia (e.g. programmes in day care centres).
- Everyday practice in centres for social work and JCIK.
- Scattered cooperation with juvenile courts in the country – referrals for diversion orders
- VOM projects donated by other agencies.

Challenges

- In a country struggling with overall *judicial reform* including adoption numerous laws, separating judiciary from the executive, fighting corruption in the judiciary etc. it is very difficult to impose Juvenile Justice as a priority.
- Frequent *changes of government* further protract Juvenile Justice reform.
- Juvenile Justice is completely *cross-sectoral* - unclear lines of responsibility, especially between Ministry of Social Affairs and Ministry of Law.
- Defining and adopting *budget* for full operationalization of JJ law, involvement of Ministry of Labour and Social Policy, Ministry of Law and local government .
- Improvement of data *collation system* on diversion measures.
- Adopting of *sub-law on diversion measures* and defining its administrative procedures by state prosecutor .

Lessons learnt

Crucial:

- *Simultaneously* work on reform of legislation and piloting:
 - Legislative reform - pre-condition for sustainability.
 - Piloting gives more credibility for the legislative reforms
- Define *lines of responsibility*, especially between MoLSP and MoJ
- Create a *critical mass* of support among *civil society*
- Engage *academia* and mainstreaming in academic curricula

Conclusion

Providing governmental support that would lead to applying VOM as diversionary measure on regular basis demand *continuous effort* in ever changing political scene of Serbia.

Although significant steps were made in that direction, as long as *government* doesn't provide *procedural and logistic basis* for everyday practice, it is not mainstreamed in the country

**TIRANA MEDIATION CENTER MODEL OF IMPLEMENTING
RESTORATIVE JUSTICE FOR JUVENILES**

*Alma Tafani, Jurist
Coordinator of the Tirana Mediation Center*

The “Victim-Offender Mediation for Juveniles (14-21 years old)” project was started in Tirana in 2005 on the initiative of AFCR and the colleagues of the National Norwegian Mediation Service, supported by Norwegian Ministry of Foreign Affairs. In the framework of this project within a one-year period 155 penal conflicts between juveniles were settled through the mediation and reconciliation.

Considering the outcomes of the pilot phase this program was followed under the JJ Reform (2006-2009) in Albania. The reform was led by UNICEF in MoJ, EC Delegation and SIDA. Currently the program is still running under a two-year project on Promoting and Consolidating Restorative Justice and Victim-Offender Mediation for Juveniles in Albania, implemented by AFCR with the support of EC Delegation in Tirana and UNICEF.

Objectives

- Resolution of penal cases between juveniles through mediation in accordance with article 2 of the law no.9090, dated 26.3.2003 “On Mediation in Dispute Resolution”;
- Increase the settled number of penal cases with juveniles involved through mediation and reconciliation, therefore preventing criminality among juveniles.
- Increase the public and state institutions on resolution of penal conflicts through mediation and providing juveniles with access to the mediation service, by aiming at recuperation of the victim and rehabilitation of the offender, as well as maintaining good relations between them after the mediation process.

Goals of the victim-offender mediation process:

- Reconciliation of the victim (injured party) and offender;
- Rehabilitation of the offender;
- Finding an acceptable resolution by the both parties in conflict;
- Prevention of judicial resolutions of conflicts and smoothing the social consequences, and especially prevention of escalation of penal offences with juveniles between 14-21 years of age into more serious crimes.

Legal Base

- Law no.9090 dated 26.06.2003 “On Mediation in Dispute Resolution”
- Article 59, Code of Penal Procedure of the Republic of Albania (RA): “The party injured by the penal offences provided for in articles 90, 91, 92, 112/1, 119, 120, 121, 122, 125, 127, 148, 149, and 254 of the Penal Code has the right to submit a complaint at the court and claim the damage compensation.
- Article 284, Code of Penal Procedure of RA: “Penal offences provided for in articles 89, 102/1,105,106, 130, 239, 240, 241, 243, 264, 275 and 318 of the Penal Code. Penal proceedings may not start unless a complaint is submitted by the injured party, and this complaint may be withdrawn at any phase of penal proceedings. The complaint is filed at the prosecution office or judicial police.

The methodology applied in the course of the project implementation:

- Training of judicial police officers and criminal police officers in the area of restorative justice and mediation in juvenile cases.
- Identification of the suitable cases for mediation at the police commissariats. Having the parties' consent on the resolution of the conflict through mediation. The mediation process according to the standards.
- Finalizing the mediation process on the resolution of the penal conflict between the parties by signing the settlement agreement, containing also the main outcome of the process.

Case mediation by Tirana Center

Cases	Beating N. 90, Penal Code	Non-serious N.89. Penal Code	Insult N.119, Penal Code	Total
January 2005 - Mars 2006	89	49	17	155
November 2006 - October 2007	88	3	19	110
November 2007 - October 2008	97	12	12	121
January - December 2009	47	7	6	60
January - October 2010	30	14	4	48
Total	351	85	58	494

Challenges:

The implementation of the pilot project in close institutional cooperation between AFCR and Police Directorate, pointed out to some obstacles with regard to referral procedure of penal cases from institutions to mediation. The Albanian legislation for mediation in criminal cases: Article 2 of Law no. 9090 "On Mediation in Dispute Resolution" provides for use of mediation in certain penal cases, respectively the cases foreseen by articles 59 and 284 of the Code of Penal Procedure. However, the Code of Penal Procedure does not specify the conditions for referral of such penal cases to restorative practices. It leaves no discretion to the prosecutors, judges, or police to refer cases to mediation. Moreover, it does not contain any special provision for the diversion scheme for juvenile offenders to restorative justice programs.

The legal improvements, providing for diversion, should be first in agenda, for one more reason: the establishment of the Probation Service, and approval by MoJ of the Regulation of

Cooperation between the Probation Service and the Mediation Service (pursuant to the Law on Probation Service) demands amendments to regulate the referral procedure from the Probation Service to the Mediation one.

In the new draft law on mediation provisions are inserted, making mediation obligatory as a procedure, certainly if accepted by the parties, if parties or one party is a minor.

**BOSNIA & HERZEGOVINA: UPDATE ON JUVENILE JUSTICE SYSTEM
IN BOSNIA AND HERZEGOVINA**

*Ahmed Pjano
Program Manager/Advisor,
Child Rights Governance, Save the Children*

Legal frame

- The National Strategy against Juvenile Delinquency in Bosnia and Herzegovina 2006-2010.
- The National Strategy and the Plan for the implementation of National Strategy Combating Violence against Children 2007-2010.
- The Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings (stopped).
- The Penal Code.
- The Criminal Procedure Code.

Alternative measures

- Personal apology to the injured party.
- Compensation of damage to the injured party.
- Regular school attendance.
- Working for a humanitarian organisation or local community.
- Accepting a job suitable for the juvenile's skill and qualifications;
- Placement in another family, home or institution.
- Treatment in an appropriate health institution.
- Attending specific form of counselling.

Practice

- Increase of juvenile delinquency in BiH?
- In the period from January to December 2008, 2,373 juveniles (781 in Republika Srpska and 1,592 in the Federation BiH) were reported for committing crimes.
- The clients of the Institute for Child and Juvenile Male Education "Hum" in Sarajevo have committed 77 crimes during a period of only four months (May-August 2009).
- The number of cases in which offenders are children aged 8 to 10 (cases were reported involving offenders who were aged only 6) is on the rise.

Influence for changes

- UN Convention on the Rights of the Child.
- UN Standard Minimum Rules for Administration of Juvenile Justice.
- UN Standard Minimum Rules for Non-custodial Treatment.
- Administration of Juvenile Justice, Resolution of UN Economic and Social Council no. 1997/30.
- CoE Recommendation R (87)29 to Member States on Social Reactions to Juvenile Delinquency.
- CoE Recommendation rec (2003)20 to Member States Concerning New Ways of Dealing with Juvenile Delinquency and the role of Juvenile Justice.
- CoE Recommendation No. R (99)19 to member States Concerning Mediation in Penal Matters.

- The Committee on the Rights of the Child Recommendations to Bosnia and Herzegovina.

Save the Children Norway role in reform of Juvenile Justice System in Bosnia and Herzegovina

- Focus on Restorative Juvenile Justice.
- Cooperation with the association of Mediators in BiH.
- Realized study tour to Norway on restorative justice and mediation in disputes that involve children.
- Completed analyses of legal framework with recommendations for introducing mediation in disputes that involve children in family and penal matters in BiH.
- Organized two discussion meetings with professionals in family and penal matters on analysis findings and recommendations.
- Organized two training session and 13 presentations of concept of mediation in family and penal matters.
- 443 professionals educated on implementation of alternatives measures in penal disputes and mediation in family and penal disputes.
- Developed Standards and requirements for performing the role of mediator in disputes involving children.
- Developed Training curricula for mediators in disputes involving children. developed – 2 training curricula (1 on family mediation and 1 on victim offender mediation).
- Developed action plan in family or penal cases involving children and accepted by relevant institutions.
- Mediation Clases at the Faculty of Law in Tuzla.

Practice change

- First case transfered to mediation....

**HOLISTIC APPROACH TO YOUTH –
CHALLENGES IN IMPLEMENTATION OF PEER/SCHOOL MEDIATION**

*Danica Belic
Program Coordinator
GTZ, Belgrade*

Whole approach to youth

▪ **The main idea**

Aristotle's definition - The whole is more than sum of its parts” the best explains the main idea of Holistic approach.

▪ **Definition**

Doctrine that emphasizes the priority of a whole over its parts is holism.

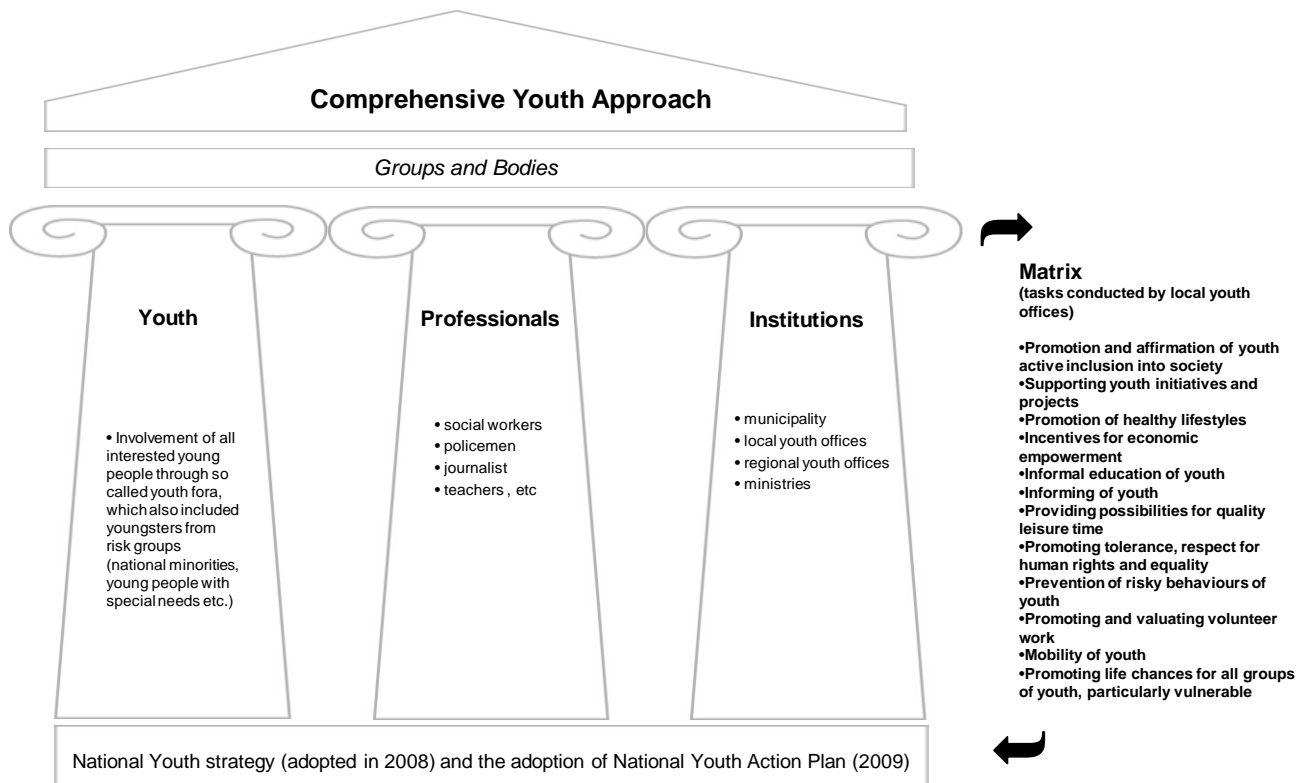
The whole depends on its parts and in a way how its parts being changed they create new relations, processes, subsystems. Each part is very important and any particular interaction within the whole.

▪ **Key points**

- Quality - if we define some change as the aim of the system all of its parts will be in the function to accomplish that aim. In this way we may also define quality of each part and possibilities of created subsystems.
- Interventions into the system - system is dynamic and living and depends on interaction of its parts. We may change the parts and elements strengthening of two key points - knowledge and relations.
- Elements of the system have different roles: Structures (organizations, institutions, financial...), Processes (strategies, functions, competences..) and actors (humans, individuals, groups, movements..)

The Three pillars of holistic approach to youth

A systemic approach to youth empowerment - a case study from Serbia



Overview of applied Holistic approach to youth in implementation of Peer/ school mediation program in Serbia

- Program data and recourses:
- ❑ Program is implemented:
 - From 2002 till now
 - In approximately 100 institutions and organizations – elementary and secondary schools, students’ dorms, youth groups/clubs...
- ❑ Realized trainings for Youth (1200 mediators), Professionals (400), Parents (100), Local community representatives (100);
- ❑ 30 towns in Serbia (towns, cities, villages...);
- ❑ Applied vertical model of implementation of The program
- ❑ educational packages are developed: for students in elementary school, for students in secondary school, for adults, Inclusive peer mediation.
- ❑ Three levels of training are developed: basic, advanced and supervision

The first pillar – Youth Challenges and Recommendations

Challenges	Recommendations
The number of active mediators in school is smaller every academic year	Training for students should be organized every second year
Mediators found the trainings interesting, useful, applicable in school but they are not highly motivated	Action plan as one of the product from the training should be supported and start with realization of mediators' activities as soon as the training had finished
Mediators are not recognized by peers	The selection criteria should be defined in writing and transparent. Children who are "negative leaders" and children with behavioral problems should not be trained as mediators, for them the whole training package should be prepared.

Challenges	Recommendations
Keeping the mediators motivated and active	Team of peer mediators should have regular meetings in the time line adapted with their responsibilities. Action plan should be participatory planned.
Empowering the mediators	

The second pillar

Professionals and Adults (Teachers, Pedagogues, Psychologists, Principles in School, Parents, Local community representatives...)

Challenges	Recommendations
A small number or only one of trained professionals in school	Mediators' team of professionals should consist of at least 5 motivated members If the coordinator in school is trainer for PM it is easier to implement
Coordinators are overloaded with the growing demands of the Ministry of Education	Trainings for students should be organized by the end of the March at the latest
Capacity building	Different trainings should be provided.

The third pillar - Institutions

Challenges	Recommendations
Support to implementation of program in school	The school headmaster should know the benefits of the project: relevant, brief, efficient and interesting training as possible also participant on PM training
Limited resources of schools for the program implementation	
Sustainability of program implementation in schools	Program should be included in schools' documents - The School Development Plan and The Annual Program of School work Set the minimum of requirements and standards for procedures and forms of inclusion in school document as well as for keeping the documentation on the implementation

In general

Challenges	Recommendations
Insufficiently developed monitoring and supervision system which would support the program implementation	Define methods, procedures and instruments of monitoring on program activities during the implementation
Systematic support to the implementation	Accreditation of program according to standards prescribed by Ministry of Education
Funds	Cooperation with Local government should be defined and supported by Ministries.
Networking	The good practice models should be regularly exchanged

PEER MEDIATION PROGRAM IN ALBANIA: ACHIEVEMENTS AND CHALLENGES

*Merita Bala
Program Coordinator, AFCR*

Peer mediation programs offer schools an alternative to traditional disciplinary practices and help schools become safer places. The goal of peer mediation is to reduce conflict and provide children with problem-solving skills. Trained peer mediators create a safe atmosphere, allowing disputing students to tell their stories and assisting them in working out a mutually acceptable agreement. Since a solution is not forced on the students, the disputants feel empowered to take responsibility for their actions and to deal constructively with their immediate and future disagreements.

Conflict Resolution and peer mediation programs in schools have proved to be very effective as far as violence prevention is concerned. Children tend to either withdraw or force a solution to a conflict and in the latter case violence happens. Whether peer mediation programs teach students that there are also win-win approaches to conflict resolution.

Mediation *should be introduced since younger ages*, primary schools, in order to educate them how to settle their own conflicts since the initial phases through peaceful means: facilitation, negotiation, mediation, and not always rely on teachers. Consequently, the children built their own system of settling conflicts, being educated with a culture of peace, dialogue and understanding.

Considering the above-mentioned, and also the numerous advantages of peer mediation programs, a pilot project on peer mediation was implemented by AFCR in 2006-2009 supported by UNICEF (in partnership with EC and SIDA), in the framework of the Juvenile Justice Reform in Albania.

Why was this project undertaken:

Violence and violent behavior is a frequent phenomenon in our schools. According to a research Report on Violence against Children in Albania¹, conducted in 2006, 48 per cent of students interviewed reported to have experienced violence by other students. This high figure demonstrates the violent reactions of students in conflicting situations and the need to prevent such violent reactions. Peer mediation programs are one of means of preventing such violence.

Moreover, in a baseline survey conducted by AFCR in five elementary schools targeted by the project, the most frequent types of conflicts in school were student-student cases. So teaching students the skills and knowledge how to peacefully and constructively settle a conflict, becomes of first hand important if the goal is to reduce the conflicting situation at school.

Project target area: The project targeted seven schools, 5 primary schools and 2 high ones in three main cities, Tirana, Durrësi and Lezha.

¹ Research report supported by UNICEF, Violence against children in Albania, Tirana 2006.

The main project's goal was developing a model of peer mediation programs in schools, and then promote this established model throughout the education system in Albania, aiming at making it part of the school curricula.

Main objectives:

- Capacity building for teachers and students in the area of mediation, conflict resolution skills, mediation, facilitation, etc.
- Organization of creational and fun activities to engage students in mediation promotion as a very effective way of conflict resolution in school environment.
- Setting up peer mediators' groups and their acting as mediators in concrete cases.

Project components

- Institutional cooperation
- Awareness raising activities on peer mediation
- Capacity building
- Setting up mediators' groups
- Intensive programs in schools on peaceful conflict resolution
- Publications – programs on TV
- Case mediation by the student mediators, coordinated by a teacher.
- Exhibitions, competitions at school and inter-school level.

The main outcome of the project was a *consolidated peer mediation program in seven schools (Tirana, Durresi and Lezha) through:*

- Training of 37 teachers, 10 Education Directory specialists, 100 school principals (the latter only a basic training of two days), 175 students in peaceful conflict resolution and peer mediation.
- Promotional activities with students in each of the schools and inter-school ones as well
- Organizations of classes focused on conflict management, communication, mediation, etc in the elementary schools targeted by the project.
- Preparation of informative materials (Manual on Mediation in Conflict Resolution in School Environment", Tirana 2006; modules on conflict management.

Drawings made by the children (interschool competition: Peace, tolerance, conflict resolution)



- **Case mediation:** in total there were 250 cases in the 7 schools settled through the peer mediators. Around 40 students and 18 teachers were involved in the process. Students were capacitated to solve themselves their own conflicts without escalation. Peer mediators' groups were set up in each of the schools, having the mandate to identify cases and act as facilitators/mediators. The activities organized with children served to educate them with the culture of peace, tolerance, dialogue, effective communication, and therefore create a more peaceful situation in their schools. The most frequent types of conflicts settled were conflicts and disputes rising as result of misunderstanding, miscommunication, deviant behaviors, etc. Cultural differences are also causes of conflicts between children.

Publications

- Training manual on Mediation in School Conflicts, designed for Dispute Resolution (2006)
- A set of training modules is prepared in cooperation with the Institute of Curricula. The modules contain practical activities to be used by teachers in working with the students.
- A booklet for student mediators is prepared.

Lessons learned:

- A very positive perception of the actors involved in the pilot phase of the project.
- Positive effects on school-children parties in conflicts.
- Positive changes in the school climate with regard to approaches to conflict resolution.
- Peer mediation programs are an important asset for reducing violence in schools.
- It is necessary that the teachers community is aware and committed in the implementation of the program. The program was more successful were teachers were more eager to coordinate the student mediator groups.
- Moreover, it is also the school principals who should be supportive to such programs, in order for the program to be successful.
- Interactive workshops/competitions are an attractive way of getting children involved in peer mediation programs.

Challenges

- Expansion of the program at wider scale, i.e development of a strategy of involving conflict resolution/mediation in the school curricula or extra-curricula program.
- Better coordination with the education authorities in combining this initiative with others, such as the initiative for violence prevention in school as they are closely related?
- Overload of teachers' workload and consequently they are not motivated to deal with additional activities.

SUMMARY ON WORKSHOP ON ADR/MEDIATION IN COMMERCIAL DISPUTES

The workshop on ADR/Mediation focused on commercial disputes, moderated by Mrs. Gordana Ristin and Mr. Srđan Šimac, was an interaction with questions and answers and discussion taking into consideration the flexibility and overall involvement of the participants in the debate.

Discussion was focused on topics like how do parties behave in commercial conflicts; which are some of the particularities of jurists when they are in the role of the mediator; which are some of the particularities and orientation of the parties in a dispute to address to jurists to settle the legal problem they have without focusing on vital aspects of the dispute; how to use tradition in resolution of conflicts of commercial type, etc.

More detailed presentations were delivered by the participants in the workshops, introducing various experiences in the area of mediation in commercial cases.

- In Ljubljana Court, Slovenia, in the years 1991-1998 there were 600 cases referred to mediation and out of them only 5% were settled through mediation. In the Appeal Court of Ljubljana there is a separate department of ADR, hiring 25 mediators, out of whom 9 are judges, and others are psychologists, jurists, etc. The Association of Mediators in Slovenia offers a training program for interested institutions for the tariff of 3,000 Euro. This association has developed a "White Book", containing advice on mediation. In the various meetings the association invites time after time personalities from different areas, who get the attention of the media, and this is a good method to inform people about the mediation process. In Slovenia there is also legislation on the insurance companies and protection of consumers, laws which should be known and used when handling commercial disputes through mediation alternative. In her discourse Mrs. Ristin also said that in her experience as mediator around 150 cases were referred to her, and out of them 70% were successfully settled, and 60% of the latter were commercial disputes.

In a mediation process it is very important to have the parties' trust in mediation. Mr. Borislav Blažević, President of Croatia Mediation Association Croatia, said that the mediator is a musician who sees the world from a wide viewpoint. Mr. Borislav introduced his experience as mediator in Croatia.

Mr. Srđan Šimac shared two suggestions with the participants. Firstly, - he said, - the business people are important for the changes in society. They do not have time to manage conflicts and need to be focused on their main concerns, so it is the mediator who should approach to them. Secondly, the training in mediation is important to learn how to negotiate and to serve the parties. We can negotiate with the parties and we do have the necessary skills to do it. We can negotiate with the parties, but should have the necessary skills for that. When we see that the judicial processes are not the right ones, we should offer our service. The circumstances around us change, so a mediation which is not successful today may be successful tomorrow, so it is important that we keep in touch with the parties and mediate their case tomorrow. A real case from Croatia was shared with the participants, showing how a dispute was settled only in three sessions and far costless.

When we think about commercial disputes we think of companies, but we forget that they are represented by people. Human/personal elements are very important in commercial dispute resolution.

Two cases were introduced from commercial area in Croatia. In the first case, the parties had been waiting for four years to have a solution by the court and in the second case for eight years. In the second case, the parties, after having accepted mediation were able to sign an agreement within 4.5 hours. Thus, often the judicial system is not very appropriate to conflict resolution.

- The experience of the Albanian Foundation for "Conflict Resolution and Reconciliation of Disputes" in establishing a Mediation Center in the District Court of Durres with the support of the latter was introduced in the workshop. The representative of this office, Mr. Artion Beqiraj introduced the administrative procedure of case referral to mediation, resolution through mediation and the cases when the agreement becomes an executive title. In the 15 months of the project implementation 90 cases were referred to mediation out of which 75% were referred by the court and the 25% from the attorney's offices. Representatives from Durrsi Commercial Chamber, from the mediation centers of Tirana, Korca and Gjirokastra shared their experience in commercial mediation.

- Mrs. Smiljka Gavric, mediator from Bosnia and Herzegovina, introduced the experience of the Mediation Center in BanjaLuka. She reported that in the last five years they have had a close cooperation with the municipality, and she also explained the way they operate there, the administrative costs setting a payment of 50 Euro/hour for the mediation service. Through these tariffs they make it attractive for people who need to settle their conflicts without going to the court.

Smiljka states that the type of mediation (either traditional or modern) should be suitable to the conflict type, adding that the modern mediator is better for commercial mediation, and he should be someone who is professionally skilled and qualified.

- The experience of the mediators in Kosovo was introduced through the presentation made by Mrs. Shukrije Gashi from Partners-Kosova. Highlighting the cooperation with the Chamber of Commerce in Pristina, she pointed out that in Kosovo, the majority of the commercial disputes are referred by car-insurance companies. She provided an example when the company did not want to pay for the damage caused to another person, and the case was settled through mediation, repairing for the damage done because of the accident and also for the moral harm. Representatives from USAID in Pristina, who participated in the workshop, said that business people sometimes do not use contract. This raises a problem, as not having a contract they cannot even address the case to the court. Whereas in mediation, it is easier to settle the disputes although the parties did not have any contract with each-other.

Regarding the traditional mediation it was expressed that in a traditional mediation people who assist as mediators enjoy public respect and they are people well-known by their community, whereas in modern mediation every thing depends on the professional skills and capabilities of the mediator. In Kosovo a combination of these two types of mediation is made.

- Mr. Ljupco Sotiroski, representative of the Chamber of Mediation in Macedonia, stated that in their center there have been a few cases settled through mediation and this field is a new one in Macedonia. However, legal provisions have been developed and amendments are made, so

now mediation can be performed as profession. He said that currently there are 121 mediators in Macedonia, and 68 of them are trained ones. Mr. Sotiroski provided an example pointing out the skillfulness of the mediator and how the mediator had encouraged the parties to reach an agreement, encouraging them through asking questions.

According to him it is very important to know the methods and techniques as well as the professional aspects of the issue, as the cases referred to mediation might be of specific types. Hence, in some cases it is better to have co-mediator who has knowledge in the dispute area, for example when the conflict is a construction one, the co-mediator could be an engineer.

A lot of discussion was held about the many aspects of the mediation process in commercial cases. Therefore, it was discussed about the importance of getting to know the parties' perceptions, their emotional feelings, control of such feelings, respect of confidentiality in mediation, having the parties trust that mediation, a fair and transparent process, initiating communication in a mediation process, taking into consideration the common interests, focusing on the issue, not on the persons involved, the importance of knowing the socio-economic cases that are referred to be settled through mediation, the necessity and importance and communication with the Chambers of Commerce regarding the resolution of commercial cases through mediation, creating and establishing balances between the parties in a mediation process, etc.

Challenging concerns for the future enlivened discussion, like:

- how can businessmen be encouraged to mediation?
- Are people ready to pay for the mediation service?
- Should commercial disputes between cross border business/companies be subject to mediation?
- Which are advantages and disadvantages of mediation in commercial dispute resolution?

**SUMMARY ON THE WORKSHOPS ON MEDIATION IN FAMILY, COMMUNITY,
LABOR, CONSUMER CASES**

The workshop was moderated by Mr. Christoph Luttmann, CSSP. In this workshop the participants were introduced with the presentation of Mrs. Maja Zegarac, SEEMF Coordinator for Serbia and Head of the Steering Board Association of Mediators of Serbia. She focused on some experiences and challenges of mediation in Serbia. She said that in Serbia family mediation is regulated through the Family Code, providing for the protection of the children interests in cases of divorced couples. She explained that a specialized group training others, is already established and they conduct certified training programs in the family mediation area.

The greatest number of family cases is divorce ones and the attention is focused on the social protection. In cases of divorcing couples who have children, the judge is obliged to offer them a reconciliation session. However, a relatively low number of cases are referred to mediators. It is the clients who chose whether to mediate or not. This is applied also for couples who are not married but co-habit. In Serbia, although there is much need for the mediation service, the number of cases referred to mediation is low and the cooperation between the judicial system and system of social protection is in very low levels. Setting out professional standards is also related to the training of mediators in this area in order to make them skillful. The new law on mediation which is being drafted will be a great support.

Bosnia and Herzegovina participants reported that in their country there are strict rules on family mediation. However there is kind of confusion in the terminology used. There are people who deal with mediation, but in fact what they do, is not a mediation process. In Bosnia the training process and specialization for mediation in family disputes was initiated by the end of 2009.

In the discussions and comments by the participants from Serbia, Bosnia and Herzegovina, Albania, Kosovo and Norway, it was emphasized that in family mediation there should be caution about the danger of non-adequate mediation and the possibility of hiding domestic violence. The parties in family disputes should voluntarily participate in a mediation process and in order for the mediation process to be successful, there should be a close cooperation between the prosecution office, court, police and social service centers.

The mediators in family cases need to be specialized in this area to understand the risk. They need additional training, apart from basic training in mediation.

The role of the court is important and the judges should also be trained in this area. There should not only be a reconciliation session, but also another session where the judge makes the parties acquainted with the mediation process.

In this workshop, the progress and institutionalization of mediation in Kosova was also introduced, and Shukrije Gashi presented the work conducted to draft the legislation and setting up the mediation commission. Additionally, Mrs. Fatime Ismajli, Head of the Kosovo Mediation Commission introduced the activity of this Commission, focused on training of mediators, regulation of the mediation procedures, etc.

Other participants also discussed about the institutionalization of mediation and legal regulations, about the importance of mediators' training, such as representatives from B&H,

Croatia, and Slovenia. The Slovenia experience was introduced as an example, where every member of the Mediators' Chamber who wants to be a mediator should undergo a training program of 63 hours and then take an examination. If he fails to pass the examination, he cannot be a mediator. In Croatia in 2003 the first 100 mediators were trained, who established the Reconciliation Association in Croatia. Firstly it was initiated with the training of judges and now they are continuing with the training of professions other than the court.

Kosova representatives expressed the idea that apart from the legal aspect, practice should be taken into consideration. Some ideas were that films, articles, brochures, news, etc about the mediation process should be prepared, and broadcast or published, so that information about mediation reaches people. Representatives of USAID in Kosovo said that in Kosovo there is common approach to mediation, i.e, although different institutions, they have common objectives.

Focusing on the necessity of increase of professionalism in mediation, the Albania experience was mentioned, particularly the court-mediation one, highlighting the importance of the cooperation between the judge and the mediator, both in the communication process and case referral to mediation. The experience of Britain was also introduced, pointing out the necessity of developing a strategy on mediation, involving all the stakeholders. The experience of B&H, having a four-year action plan was offered as an example to others.

SUMMARY ON WORKSHOPS ON RESTORATIVE JUSTICE AND VICTIM-OFFENDER MEDIATION FOR JUVENILES/COMMUNITY/PROBATION SERVICES

Following the conference program two workshop sessions were focused on restorative justice and victim-offender for juveniles/community and probation services.

The first set of workshops on this topic was facilitated by Mrs. Karen Kristin Paus, and the second by Mrs. Jasna Hrcic. In the RJ workshops the participants were introduced with the experience, current situation, lessons learned, challenges faced in the region countries in introducing, developing and institutionalizing restorative justice, particularly victim-offender mediation, juvenile justice, etc such as in Serbia, Macedonia, Kosovo, Bosnia and Herzegovina and Albania.

Mrs. Jasna Hrcic, PhD, Assistant Professor, Faculty of Political Sciences, University of Belgrade, introduced the participants with an overview on restorative justice and juvenile offences in Serbia. She mentioned that it was started as an initiative of UNICEF, and the main areas where efforts were focused compromised advocacy (awareness raising and mobilizing professional and public on the benefits of restorative justice); policy development and relevant legislative and administrative reforms; capacity building and lastly the development of three VOM programs. The first program was a Diversion Scheme Project implemented in Nish, the second biggest city in Serbia. Around 200 participants were trained through this program and 20 of them attended also training for trainers. The second program was a Mediation Program implemented at the Juvenile Correctional Institution in Krusevac and the third a Mediation Network of teams for child protection implemented in 14 municipalities.

Then Mrs. Hrcic made a summary on the legal ground for mediation in Serbia, mentioning the law on Mediation, approved in 2005, the family law in 2005, the JJ law in 2006 and also the legal instruments providing for application of victim-offender mediation. She also mentioned the initiative for legal improvements in the mediation law, social protection law and amendments to the JJ law. Although there is a law for juveniles in Serbia, yet a concern mentioned by Mrs. Hrcic is that the juvenile issues, and the one of restorative justice, are not prioritized by the government, and there is kind of ambiguity of responsibilities among the ministries in charge. There might be cases which take too long to be addressed just because the ministries do not take over the responsibility, and the main reason is that this implies their budget as well. Another concern in Serbia was the frequent *changes of government* which in turn further protract Juvenile Justice Reform.

The current situation in Macedonia with regard to VOM in Juvenile Justice System, Challenges and Dilemmas was introduced by Mrs. Stojanka Mirceva, MA, Fellow, Faculty of Security – Skopje, University St. Kliment ohridski – Bitola. In her introduction she emphasized that they have as she called it a ‘revolutionary law’ for juveniles, because it is protects the interests of minors in all cases. Prevention has been paid importance in Macedonian legislation for juveniles.

In order to have a better implementation of juvenile justice in Macedonia, they have carried out a promotion campaign on children rights and juvenile justice. This promotion campaign targeted justice professionals, judges, prosecutors, social workers, police officers and also

mediators. Mrs. Mirceva mentioned that apart from children over 14, which is the age of criminal responsibility, attention is paid to tackle the issue of the offences committed by those under 14 .

Regarding VOM, she said that under the current procedural legislation, amended in 2006, there is a provision on referral of cases to mediation. There is a legal obligation that commission of mediation and reconciliation are set up to deal with juvenile offences. One of the members of such commission should be from the Center for Social Care for Juveniles, and these commissions are local ones, i.e. set up for specific cases. The judge may not proceed with the case unless it has not passed through all the defined procedure. The prosecutor and police officer have also the discretion to divert the cases to mediation.

However, despite such provision Mrs. Mirceva highlighted that up-to-date there is not any case referred to mediation. Among the reasons influencing this situation she mentioned lack of willingness by the justice professionals, judges and prosecutors, and also trust in mediators. Another reason is that in all cases the state offers services to juveniles free of charge, whereas in the mediation case, juveniles have to pay for the mediation service, if the case is diverted. That might be a reason why juvenile parties are not willing to have their case settled through mediation.

A short briefing on the current situation of VOM for juveniles in Kosovo was made by Mr. Florent Hajrizi, stating that Kosova, being a new state suffers probably difficulties which other states have already overcome. In Kosovo the legislation is very good, to the European standards, but its implementation is not at the right level. In Kosova the mediation service in penal cases is regulated under the law on probation service, as one of the alternative measures. However, a by-law should be adopted to better regulate it.

A concerning issue, according to him, is the issue of sheltering children who have suffered from violence.

In the second set of the workshops on RJ/VOM the participants were introduced to the experience of Albania and BiH. Mrs. Alma Tafani, Jurist and Coordinator of Tirana Mediation Center, introduced the experience of Tirana Center in implementing the program of RJ and VOM for juveniles aged 14-21. She stated that it was initiated as a pilot project on the initiative of colleagues from the Norwegian Mediation Services. She mentioned that although the mediation framework is regulated by the law "On Mediation in Dispute Resolution", still there are inconsistencies between this law, which provides for the use of mediation in penal offences on one hand, and the Code of Procedural Law on the other hand. In implementing the project this 'handicap' was overcome through signing a Cooperation Agreement between the AFCR and the General Directorate of State Police. The goal of the Agreement was the collaboration between the two parties with regard to organization of joint activities (awareness round tables and training) and more important with regard to referral of cases by the police officers to mediation. The positive outcome of the piloting (a monitoring and evaluation phase was conducted) called for continuation of this project. The project was followed under the Juvenile Justice System, a joint undertaking of UNICEF and Albanian Ministry of Justice, SIDA and EC Delegation in Tirana. The Cooperation Agreement with the Police was renewed and cooperation continued. The project targeted age-groups between 14-21. The most frequent cases referred to mediation were the ones of battery, non-serious injury and insult. Mrs. Tafani made a briefing how the juvenile offenders and victims benefited from the mediation process.

However, she mentioned also the challenge of having the same experience with the judges and prosecutors. The latter complain that the Procedural Code, does not allow them to refer cases to mediation.

Afterwards it was followed with an Update on Juvenile Justice System in B-H, by Ahmed Pjano, Program Manager/Advisor, CRG (Child Rights Governance) Save the Children, and Bosnia and Herzegovina. In his presentation he focused on the actions undertaken in B&H with regard to dealing with juvenile delinquency, violence against children, juvenile justice system and the legal framework providing for children protection and treatment in criminal proceedings. As far as restorative approaches to juvenile delinquency Mr.Pjano introduced the means provided by the law and also used in such cases. One concern that he shared with the participants was the increase in the number of child offenders from the age of 8. He highlighted the importance of the international instruments and organisms in supporting the reform of the Juvenile Justice System in B&H. With regard to promotion of mediation in juvenile cases he mentioned the role of Save the Children Norway.

In conclusion, we need say that in all the countries efforts have been made to progress the Juvenile Justice, to have a justice system for them that protects best their interests.

Civil society, supported by international organisms like UNICEF, Save the Children, have provided an important assistance to advancing the juvenile justice reforms and make JJ in the respective countries compatible to the international instruments related to children and juveniles.

However, although in the majority of the countries the legislation provides for victim-offender mediation, yet its implementation is not at the right level. Challenges are faced in work-coordination between relevant agencies.

Therefore it is recommended that civil society organizations, who have been part of legislative improvements in the area of mediation, who have promoted and been an valuable asses in capacity building in this area for a wide range of stakeholders, should continue their efforts to cooperation with the relevant state agencies for the implementation of the diversion programs for juveniles.

SUMMARY ON THE WORKSHOP ON PEER/SCHOOL MEDIATION

The workshop on peer/school mediation was moderated by Mrs. Merita Bala, Project Coordinator at AFCR. In the workshop the participants were introduced with the experiences of Serbia, Croatia and Albania in implementing programs of mediation and conflict resolution in schools, and also the lessons learned and challenges to widen the use of such programs in schools.

Mrs. Danica Belic, Program Coordinator in GTZ-Begrade shared with the participants the approach to youth used in Serbia and the challenges faced in implementing peer/school mediation. The holistic approach used in Serbia was focused on three main pillars: working with the youth, professionals and institutions, considering the important role of each of the three components in implementing successful peer mediation programs. The program was initiated in 2002 and is still running. Ms. Belic presented information with regard to project beneficiaries, target area, and then went into details describing the three pillars above-mentioned, the advantages and also the challenges faced and also recommendations to overcome the challenges. The overall inclusiveness of actors in the programs was appreciated by the participants, arguing that this holistic approach is important in having positive outcomes.

The Croatian experience in implementing school mediation programs was introduced by Mrs. Sonja Kersten, Program Manager, Centre for Peace, Nonviolence and Human Rights Osijek. Mrs. Kersten tried to make a comparison between the model applied in Serbia and the approach they have used in Croatia for the implementation of peer mediation programs. In Croatia the program is supported by the Ministry of Education. There is also a licensed agency which deals with the development and implementation of peer mediation programs in schools, including training as well. The Ministry of Education provides a timeframe of six days to the agency to implement a promotion and training program within the school. She introduced a program initiated in 2006, and which is being implemented in 10 schools. The approach used is first training the teachers and then the children. The program was first initiated with children of 4th and 5th grade, providing them first with skills in communication, problem solving and then by the end of the first cycle they are provided with some basic knowledge on mediation. Then in the second stage, the ones who show an interest in becoming peer mediators attend the training on mediation and thereafter the mediators' clubs are set up in schools. She mentioned also the problems faced in implementing the programs, such as the level of commitment of teachers and parents. Although teachers accept the idea, there are cases when they are not supportive to such programs, i.e. when there is a real case of a conflict they do not refer it to the peer mediators' club.

The workshop was followed by an introduction on peer mediation program implemented in Albania in 2006-2009, supported by UNICEF Albania under the Juvenile Justice Reform. Mrs. Merita Bala focused on the reasons why these programs are effective to creating a peaceful school environment and presented some of the main outcomes of the project, lessons learned and challenges of introducing such programs at a wider scale not only in a limited number of schools.

Apart from experience sharing, the discussion on the peer mediation topic was also focused on the supportive and non-supportive factors for implementing successful programs in schools. A

question which rose discussion was about the role of teachers, their level of interest, knowledge or trust in peer mediation. Sonja mentioned some reasons why the teachers sometimes are non-supportive to peer mediation, such as their professional ego, the overload of school curricula or other programs being implemented in schools, and the low number of teachers trained in a school in peer mediation, etc. Similar problems were faced also in the programs in Serbia and Albania.

One main conclusion drawn from this workshop was that in order for these programs to be successful and sustainable, the role and commitment of education authorities, school authorities and teachers community is important. Such programs should not be limited in the framework of single projects, but instead they should be part of the school curricula or extra-school curricula. Such programs ensure a larger involvement of children in school life and a safer school environment.

RECOMMENDATIONS

- More information on mediation should be introduced on electronic and written media.
- The contribution of all the institutional and civil society actors is important in developing an overall strategy on mediation.
- The involvement of all the institutional actors, civil society, groups of interests in developing strategies on mediation at national level.
- Apart from the establishment of legal infrastructure for the mediation as alternative dispute resolution, this alternative should be more developed in the Balkan countries as an important asset for the legal improvements.
- The necessity of training programs of basic and advanced level – a necessity to the progress of the mediation process.
- There should be a strategy and cooperation of all actors for the media support to the mediation process.
- For the application of mediation in the family area it was recommended that apart from the cooperation with the social centers at local level, the mediators who deal with family issues should undergo a specialized training.
- Regarding mediation in business area it was recommended that more efforts should be made to increase the awareness of the business actors on the positive values of the mediation approach. The mediators should be in continuous and direct contact with the business companies.
- The necessity of promoting ADR/mediation to individuals, parties, social groups and community, and particularly on the potentials of dispute resolution through mediation.
- During the workshop sessions the participants unanimously emphasized the necessity of standard training programs to provide the mediators with the necessary skills, with the mediation techniques, basic principles of mediation, as well as providing them with specific communication skills.

- Efforts in introducing peer mediation should be made at an early stage, because involving children in developing society culture and accepting culture of mediation, which in turn will be part of the every day of the citizens, is an investment that we make for the society of tomorrow.
- Teachers, being the main actors influencing the successful implementation of peer mediation programs, should have intensive knowledge in the area. Therefore knowledge on conflict resolution skills, mediation, etc., should be included in the university curricula for teachers.
- In-service training for teachers in the relevant area should also be continuous.
- Networking is important in experience exchanging, therefore, teachers and peer mediators should be encouraged to network with other schools.
- As there might be many programs implemented in schools, such as on human rights, environment issues, peace, etc., there should be a better combination of these programs.
- Implementation of joint cross-border projects in this area would also be beneficial as far as experience exchange is concerned and also lesson learning from others.

Annex 1:

THE PROGRAM

FIRST DAY, 14 OCTOBER 2010

08.30-09.30 Registration of participants

09.30-10.00 Conference Opening

Moderator: Rasim Gjoka

Welcome speeches by representatives of:

Albanian Ministry of Justice – Mrs. Brikena Kasmi, Deputy Minister

IFC – Mrs. Wendy Jo Werner, Investment Climate Program Manager

UNICEF-Albania – Mr. Detlef Palm, Country Representative

CSS Project for Integrative Mediation, Germany – Mr. Christoph Lüttmann, Mediation Project Manager and Coordinator for SEEMF.

FIRST PLENARY SESSION

Moderator: Prof.Dr. Mariana Semini

10.00-10.15 ADR/Mediation development in Slovenia.

Gordana Ristin, Appeal Court of Ljubljana

President of the Slovenian Mediators Association

10.15-10.30 ADR/Mediation in Croatia.

Srđan Šimac, President,

High Commercial Court of the Republic of Croatia

10.30-10.45 Commercial disputes and mediation – Court connected mediation in Durres, Albania.

Ervin Metalla, Head of Durresi District Court

10.45-11.00 Development of Mediation in Serbia.

Maja Zegarac, SEEMF Coordinator for Serbia; Head of the Steering Board Association of Mediators of Serbia

11.00-11.15 Bosnia and Herzegovina experience in development of ADR/Mediation.

Smiljka Gavrić, Economist/Mediator, Bosnia-Herzegovina

Board Member of European Mediation Network Initiative -EMNI

11.15-11.30 ADR in commercial disputes in Montenegro.

Miroslav Knezevic, Director, Center for Mediation, Montenegro

11.30-12.00 Coffee break

SECOND PLENARY SESSION

Moderator: Prof.Dr. Arta Mandro

- 12.00-12.20 Restorative Justice - an alternative in penal cases, recent developments in Norway.
Karen Kristin Paus, Senior Advisor, National Norwegian Mediation Service, Central Administration
- 12.20-12.35 Development of Restorative Justice for Juveniles in Albania. Perspectives and challenges.
Prof.Dr. Mariana Semini & Prof.Dr. Arta Mandro
- 12.35-12.50 The approach to the current development of mediation in Kosovo.
Shukrije Gashi, Director, Partners-Kosova, Center for Conflict Management
- 12.50-13.05 Macedonian experience in development of ADR/Mediation in conflict resolution.
PhD Ljupco Sotiroski, Mediator, Management Board Member Chamber of Mediators in Macedonia
- 13.05-13.30 Factors influencing ADR Strategy.
Andy Grossman, Center for Effective Dispute Resolution International Dispute Resolution Center, London
- 13.30-14.30 Lunch
- 14.30-16.30 WORKSHOPS (coffee break of 15' included)

Moderation: Gordana Ristin

Workshop 1: ADR/Mediation in Commercial Disputes. Experiences from:

Croatia experience - Borislav Blažević, President of Croatia Mediation Association
ADR in commercial disputes in Albania - from the perspective of mediators, Artion Beqiraj, Jurist, Mediator, Durresi District Court
Montenegro model of applying in ADR in resolution of commercial disputes, Miroslav Knezevic, Director, Center for Mediation, Montenegro

Discussion, experience exchange from participants.

Workshop 2: Restorative Justice and Victim-Offender Mediation for Juveniles/
community/probation services.

Moderator: Karen Kristin Paus

Speakers from:

- Serbia: Restorative justice and juvenile offences in Serbia, Jasna Hrcic, PhD, Assistant Professor, Faculty of Political Sciences, University of Belgrade
- Macedonia: VOM in Juvenile Justice System - Challenges and Dilemmas: Situation in Macedonia, Stojanka Mirceva, MA, Fellow, Faculty of Security – Skopje, University St. Kliment ohridski – Bitola
- Kosovo: Briefing on the situation of RJ for juveniles in Kosovo, Florent Hajrizi, Program Manager, Kosovo-Partners

Discussion, experience exchange from participants.

SECOND DAY, 15 OCTOBER 2010

09-00-11.00 Follow-up of the workshops from the first day

Workshop 1: ADR/Mediation in Commercial Disputes

Moderators: Smiljka Gavrić and Ljupčo Sotiroski

Speakers from:

- Slovenia: Achievements in ADR/Mediation in commercial disputes in Slovenia, Gordana Ristin, Senior Court of Appeal Judge, Ljubljana, President of the Slovenian Mediators Association Senior Court of Appeal Judge, Ljubljana
- Bosnia & Herzegovina: Commercial Mediation as Development Means in Regional Businesses, by Smiljka Gavrić, Economist/Mediator, Board Member of European Mediation Network Initiative-EMNI
- Macedonia: Current situation and challenges in the Commercial Mediation, *PhD Ljupčo Sotiroski*, Mediator, Management Board Member, Chamber of Mediators in Macedonia

Workshop 2: Restorative Justice and Victim-Offender Mediation for Juveniles/ community/
probation services

Moderator: Jasna Hrcic, PhD, Assistant Professor, Faculty of Political Sciences, University of Belgrade

Speakers from:

- Albania: Tirana Mediation Center model of implementing Restorative Justice for Juveniles. Alma Tafani, Tirana Mediation Center Coordinator, AFCR
 - Bosnia & Herzegovina: Update on Juvenile Justice System in B-H , Ahmed Pjano, Program Manager / Advisor, CRG (Child Rights Governance) Save the Children
- Discussion, experience exchange from participants.

11.00-11.15 Coffee-break

11.15-13.00 WORKSHOPS:

Workshop 1. Peer mediation in schools. Share experiences. Lesson learning from different countries in the SEE region.

Moderator: Merita Bala

- School Mediation Program in Serbia, Danica Belic, Program Coordinator, GTZ, Belgrade
- Peer Mediation Program in Albania: achievements and future challenges, Merita Bala, Program Coordinator, AFRCR
- Peer mediation in Croatia and the cooperation between Croatia and Slovenia in this field, Sonja Kersten, Program Manager, Centre for Peace, Nonviolence and Human Rights Osijek, Croatia

Workshop 2. Mediation in family, community, labor, consumer cases, etc. Share experiences. Lesson learning from different countries in the SEE region.

Moderator: Christoph Luttmann

- Serbia: Experiences and challenges of family mediation in Serbia, by Maja Zegarac, SEEMF Coordinator for Serbia; Head of the Steering Board Association of Mediators of Serbia.
- Interventions by representatives from other SEEMF member organizations.

13.00-14.30 PLENARY SESSION

Moderator: Christoph Lüttmann

Reporting from the workshops.

Main findings and conclusions introduced in the plenary session. Discussion. Conference closure.

14.30 Lunch