

MEDIATION

in SERBIA

*Achievements
and Challenges*



PARTNERS FOR DEMOCRATIC CHANGE SERBIA

MEDIATION IN SERBIA

Achievements and Challenges

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All terms used in the text in the male grammatical gender include the male and female individuals to which they relate.

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FOREWORD

Even though the judicial system in Serbia is still clogged by a huge case load and citizens are not satisfied with its efficiency, available alternative dispute resolution (ADR) mechanisms are not utilized enough. Among Serbian priorities on its way to EU integration is the need to "develop an alternative dispute resolution mechanism"¹, that will open a new path for citizens to constructively solve their disputes and conflicts, but also contribute to the development of a culture of dialogue and mutual appreciation in the society.

With the aim of contributing to the promotion of alternative dispute resolution (ADR) mechanisms, particularly mediation, this publication presents a comprehensive report on the implementation of mediation in Serbia, as well as recommendations for future development and implementation of mediation in Serbia. This report was prepared by organizations with extensive experience in implementation, promotion and, education in the ADR field: Partners for Democratic Change Serbia, Nansen Dialogue Center Serbia, Centre for Alternative Dispute Resolution, and Association of Mediators of Serbia. These organizations are active in the field of youth work, education, social work and family relationships, judiciary and the business sectors. The Report is based on the experiences of the aforementioned organizations and the organizations and institutions they cooperate with; therefore, although relevant, the findings and conclusions do not represent a comprehensive review of the context in a particular area.

This publication also includes examples of good practice in the use of ADR in Serbia, one in the field of anti-discrimination, within the institution of the Commissioner for Protection of Equality, and the other in the field of commercial disputes, particularly the procedure of consensual financial restructuring of companies, within the Chamber of Commerce and Industry of Serbia, as well as specialized mediation studies at the Belgrade University Faculty of Political Sciences.

The publication is part of the Initiative "*ADR Network*", aimed at establishing a network of organizations active in the field of ADR, by promoting ADR mechanisms as the primary method for resolving conflicts and disputes in Serbia. The Initiative is supported by the project

1 European Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by UN Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC

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"Technical Assistance to Civil Society Organisations" (TACSO), funded by the European Union.

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Blažo Nedić
Partners for Democratic Change Serbia

MEDIATION IN SERBIA – ACHIEVEMENTS AND CHALLENGES

*Introduction*²

Since 2000, alternative dispute resolution techniques and mediation in particular received a considerable attention in Serbia. The first mediation programs were initiated in 2000 in several concurrently developing areas: the courts (court annexed mediation), local community (community mediation), and in schools (peer mediation). The initial mediation activities were embedded in conflict resolution projects supported by international organizations that provided technical support, and provided training to mediators in different fields.

Local community mediation programmes were implemented as early as 1990s by the Nansen Dialogue Centre Serbia, with the Support of the Norwegian government. The programs were designed to incorporate peace education and inter ethnic dialogue with the aim to stimulate people living in conflict areas to contribute towards a peaceful conflict resolution. With the reform of the juvenile judiciary system and through promotion of the restorative justice concept, Serbia sought to provide conditions for active involvement of youth offenders in its restorative programs. In 2002, with the support of UNICEF and the Swedish International Development Agency (SIDA), in cooperation with relevant Ministries, the juvenile justice system saw the development of mediation services between victims and offenders. Thus, in 2005, the mediation program became part of the regular procedures in the juvenile correctional facility in Krusevac. In the same period, the non-violent approach to disputes, through a project of the German Government Agency for Technical Cooperation (GTZ CTYE), found its place in the educational system; school-mediation (or peer mediation) programs became an integral part in several dozen primary and secondary schools throughout Serbia.³

2 Parts of the text have been taken, with the author's approval, from the publication *Recommendations for Development and Implementation of Mediation in Serbia*, International Finance Corporation, Belgrade, 2011

3 See Blažo Nedić, Jelena Arsić, *Recommendations for Development and Implementation of Mediation in Serbia*, 2011, pg.7

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In 2002 mediation was recognized as a technique that can help reduce the number of cases in courts and increase efficiency. Judge Leposava Karamarkovic, the former President of the Supreme Court of Serbia, launched a "Court Settlement Week", while the Second Municipality Court in Belgrade was the first pilot court to integrate mediation services with the support of the International Finance Corporation (WB IFC). Similarly, the mediation project in the First Municipal Court in Belgrade was established, with support from the European Agency for Reconstruction (EAR), as several other courts in Serbia soon developed related programs (The Third Municipal Court in Belgrade, Fifth Municipal Court in Belgrade, Commercial Court in Belgrade, courts in Subotica, Nis, Kraljevo, Zrenjanin, Novi Sad, etc.). Special support to implementation of mediation in the judicial system was provided by the American Bar Association (ABA/CEELI) program, which, in cooperation with courts and bar associations throughout Serbia, organized a series of informative and advanced seminars for judges, attorneys and other participants in court proceedings, with the aim of creating a better understanding of mediation and their own roles in this process.

With the positive reactions from the professional and general public and the success of the pilot projects, Serbia developed a legal framework for mediation. In 2005 the Law on Mediation⁴ was passed, enabling mediation in all disputes unless the law stipulates for the exclusive authority of the court or other relevant body, where mediation may be initiated both before and after the initiation of the court proceedings, or, independently any formal proceedings, supporting mediation both in court-annexed and private settings, thereby encouraging the growth of mediation in all areas of society.

In 2006 the "Republic Mediation Centre" was established, with its seat located in Belgrade. The founders of the Centre were the Ministry of Justice of the Republic of Serbia, National Bank of Serbia, Bar Association of Belgrade and the Centre for Child's Rights. The centre has primarily been founded with the purpose of promoting mediation, providing mediation services, organizing trainings and expert gatherings, and performing publishing activities.

4 "Official Gazette of RS", No. 18/2005

Despite the existence of the legal framework for mediation in Serbia and the support of international organizations in developing mediation centers, training future mediators and bringing international experiences and best practices, the number of mediation cases, on the national level, is decreasing and court-annexed mediation programs created with the aim of providing better access to justice throughout Serbia are having difficulties in finding citizens interested in using mediation services.⁵

Initial efforts to develop and implement mediation as an integral dispute resolution method in Serbia were short lived. In many countries, mediation was successfully integrated into society as a dispute resolution technique which “makes friends from foes”, a skill that brings people together, improves relations in a society and serves both the citizens and the state⁶. A question arises how did Serbia, after initial good results, lose the opportunity to successfully implement mediation into society as an effective dispute resolution tool⁷. It is speculated that this unfortunate situation derived from shortcomings in the current Law on Mediation, that in light of numerous socio-economic changes, mediation development was not a priority for the Government, the public did not grasp the concept of mediation, and there was a lack of cooperation between different stakeholders in the field of mediation.

However, it is now apparent that, by a superficial and unprofessional approach to mediation in the last several years, primarily by those stakeholders tasked with promotion and implementation of mediation on the national level, we have brought ourselves in a situation where this efficient and above all humane way of dispute resolution was compromised in the public eye, so we should not be surprised if in a new attempt to promote mediation and other ADR methods we face even greater resilience and prejudice attempting to establish an efficient and comprehensive system of alternative dispute resolution, so badly needed in Serbia.

5 Blažo Nedić, Jelena Arsić, Recommendations for development and Implementation of Mediation in Serbia, 2011

6 Ibid.

7 Ibid.

Recognizing the above problems, in 2010, the Ministry of Justice formed a working group for changes and amendments to the Law on Mediation, with the aim of harmonizing relevant legal framework with international standards in this area, thus contributing to easier implementation of the reform process and EU accession. In December 2011, the working group submitted to the Ministry of Justice the proposal of the new Draft Law, which has been repeatedly revised. Finally, in September 2012, the new working group was formed and has prepared a new version of the Law on Mediation⁸, which is expected to enter parliamentary procedure soon.

Although adoption of the new law is an important step made by the State, it cannot be expected that only rules contained in any regulation will be a sufficient guarantee of a successful development of mediation.

For a successful implementation and development of the alternative dispute resolution system in Serbia, it is necessary to adopt a comprehensive approach, and ensure participation and cooperation of all relevant actors and stakeholders.

It is necessary to include in the mediation strategy all areas suitable for this technique (local community, education, work relations, public administration, business community, court system, civil society sector, human rights, inter-national relations, etc.), as well as all relevant participants within each of these areas (citizens, commercial subjects, educational and other institutions, state agencies and local self-governance bodies, professional associations, judges, attorneys, media), that could be either interested parties or direct or indirect participants in the alternative dispute resolution process. It is important to use the existing capacities in this process, and possibilities for a regular and continuous development of mediation services, such as: good practice of certain actors in the mediation system (for instance, the Commissioner for the Protection of Equality, Chamber of Commerce of Serbia, social work centers, etc.); availability of trained mediators; and a referral network of centers that provide mediation services and support; as well as a list of institutions and individuals/organization that show interest in participating in mediation programs. or – readiness of certain institutions to be a part of mediation case referral network, as well as interest of potential users of mediation services. Finally, the State plays a crucial role in promoting and supporting the development of the mediation and alternative dispute resolution system; it has a significant influence of the future of alternative dispute resolution processes in Serbia.

8 <http://www.mpravde.gov.rs/images/Radna%20verzija%20ZoM-10Okt2012.doc>

Research on the Implementation of Mediation in Serbia

From August to November 2012, Partners for Democratic Change Serbia, Nansen Dialogue Centre Serbia, Centre for Alternative Dispute Resolution, and Association of Mediators Serbia conducted research on the implementation of mediation and other ADR methods in Serbia. The research was part of the initiative for promotion of alternative dispute resolution (ADR) mechanisms and creation of the network of organizations active in this field.

The research methodology included an analysis of relevant regulations, interviews with key participants, creation and analysis of the questionnaire on the mediation implementation, as well as analysis of the case management and case referral systems that currently exist in different institutions.

Analysis of relevant regulations included: The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006), Law on Mediation ("Official Gazette of RS", No. 18/2005), including the working version of the new Law on Mediation, Civil Procedure Code ("Official Gazette of RS", No. 72/2011), Law on Prohibition of Discrimination ("Official Gazette of RS", No. 22/2009), Law on Prevention of Workplace Harassment ("Official Gazette of RS", No. 36/2010), Family Law ("Official Gazette of RS", Nos. 18/2005 and 72/2011), Law on Consensual Financial Restructuring of Commercial Companies ("Official Gazette of RS", No. 36/2011), Law on Insurance ("Official Gazette of RS", Nos. 55/2004, 70/2004 – cor. 61/2005, 85/2005 –, 101/2007, 63/2009 – decision of Constitutional Court of Serbia No. 107/2009 and 99/2011), Law on Bankruptcy ("Official Gazette of RS", No. 104/2009, 99/2011 and 71/2012 – decision of US), Law on Amicable Resolution of Labour Disputes ("Official Gazette of RS", Nos. 125/2004 and 104/2009), Law on Protection of Consumers ("Official Gazette of RS", No. 73/2010), Law on Juvenile Offenders and Legal Protection of Juveniles ("Official Gazette of RS", No. 85/2005), and Criminal Procedure Code ("Official Gazette of RS", Nos. 72/2011 and 101/2011).

The questionnaire was developed and adapted to each of the areas included in the research : education and youth, social work and family relations, and the judiciary and business sector. The questionnaires were completed by 36 entities, civil society organizations, state institutions, educational institutions and business companies, who were familiar with the basics of ADR, or have attended the basic or specialized training for mediators.

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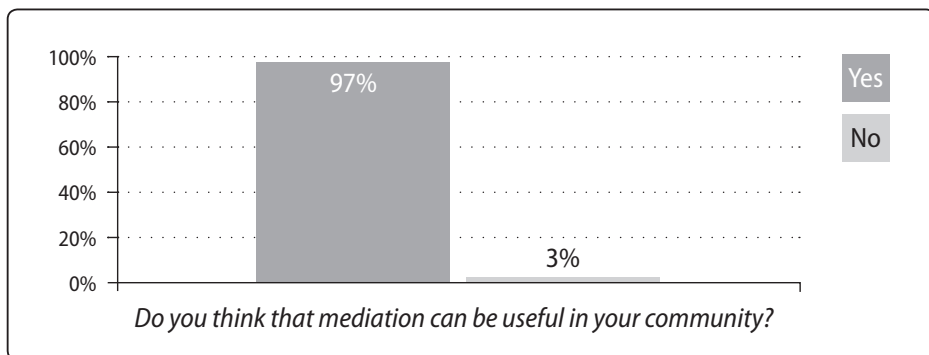
The goal of the questionnaires was to determine if a) the targeted institutions and organizations had trained mediators on staff; b) acquired mediation knowledge was implemented and to what extent (Aspect 1: The need for the training of mediators); c) potential users and local communities were interested in mediation services (Aspect 2: The need for mediation and its implementation in the local community); and d) if further promotion of ADR mechanisms were needed (Aspect 3: The need for further promotion of ADR mechanisms).

Furthermore, interviews were held with representatives of the Chamber of Commerce and Industry of Serbia, Association of Judges of Serbia, Republic Prosecutor's Office, Commissioner for Protection of Equality, Vozdovac Ombudsman, and other relevant institutions and organizations. The representatives shared their experience with ADR implementation, primarily mediation, in resolution of disputes. The views expressed in these interviews have been included in the Report, without naming the source, with the aim of summing the interviewees' experiences on mediation implementation in Serbia.

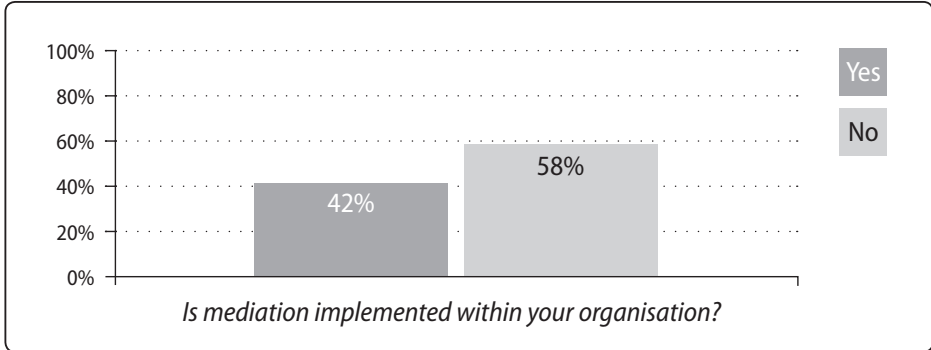
Finally, we try to find the current practical experiences in mediation implementation, the major obstacles for broader implementation, and the extent to which we can apply good practices in other areas of society by observing two well-developed systems that incorporate mediation services – the first in the anti-discrimination area, within the Office of the Commissioner for Protection of Equality, and the second, in the area of consensual financial restructuring of commercial companies, within the Chamber of Commerce and Industry of Serbia.

The quantitative analysis of the research will be discussed first, as shown below, while the qualitative analysis will be included in the texts on mediation implementation in concrete social areas, later in the report.

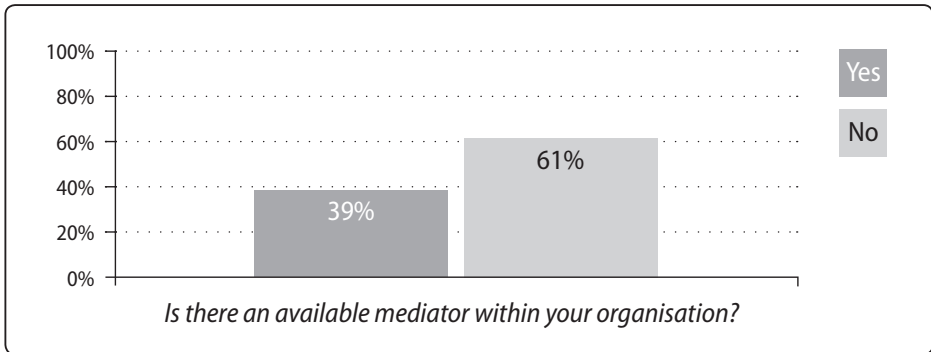
Quantitative analysis of the questionnaire



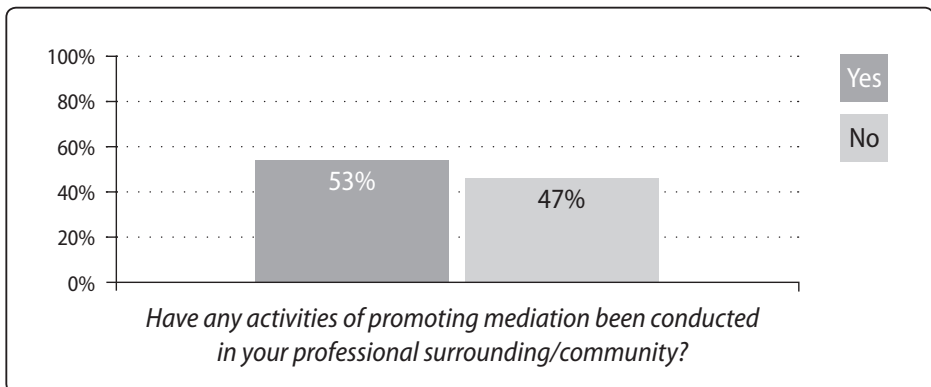
ACHIEVEMENTS AND CHALLENGES



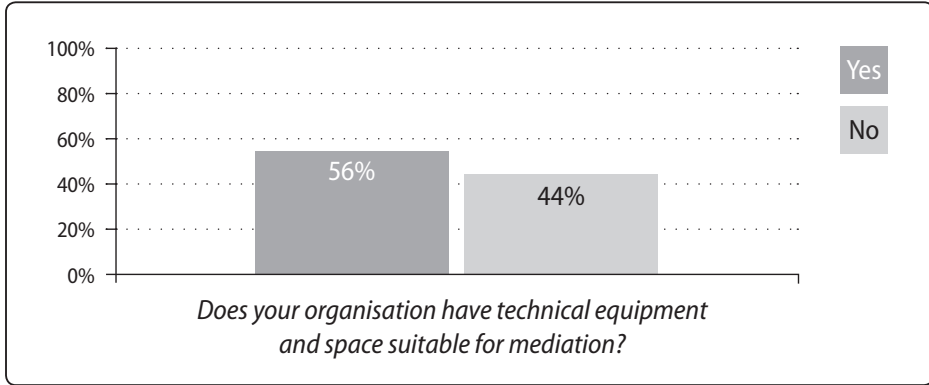
Answers stating that mediation is implemented outside of their organisation, but with its support, have been included in the percentage showing the positive response of the interviewees.



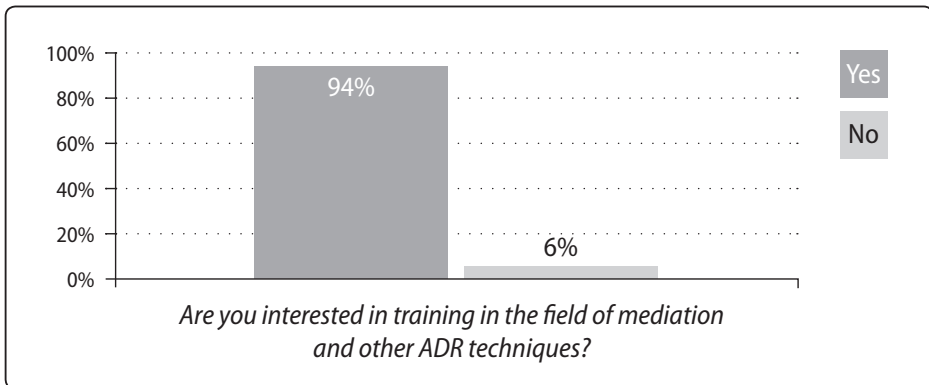
Some interviewees stated that training for mediators was held a long time ago, but those mediators no longer work within the organisation.



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One interviewee stated that the lack of suitable space is one of the major problems they face. Another interviewee stated that he had recently submitted a project proposal and if accepted, the funds would be invested to provide the necessary technical equipment for mediation.



One interviewee stated that he participated in several mediation trainings which "contributed significantly to the development and strengthening of personal competences," while another individual recommended training people within their organization in order to "contribute to creating a pleasant, positive and supportive atmosphere in the community."

Analysis of the Court Caseload in Serbia

Practice in numerous countries confirms that proper use of mediation and other alternative dispute resolution methods reduce the number of old, pending cases and new cases that enter the judicial system. However, the level of implementation of mediation and ADR methods in Serbian courts is negligible today. This is primarily associated with the fact that mediation is a new type of service that requires the establishment of a subsystem to be incorporated in regular judicial proceedings. To date, no such system has been developed in our judicial system, which negatively affects the use of mediation as a tool to increase the courts' efficiency.

According to the report from the Supreme Cassation Court of Serbia for 2011⁹, the total number of active cases before courts of all jurisdictions (except the Magistrate Courts) was **4.850.029**. The number of "old" cases, transferred from the previous years as pending, was **3.260.272**, while the number of new cases submitted during 2011, was **1.589.757**. On 31/12/2011, the number of unresolved cases was **2.876.737**.

COURT	NUMBER OF JUDGES	PENDING AT YEAR'S START	TOTAL FILED	TOTAL ACTIVE	TOTAL RESOLVED	PENDING AT YEAR'S END
Supreme Cassation (1)	20	3.452	5.652	9.104	7.164	1.940
Appeal (4)	203	26.517	70.174	96.691	72.154	24.537
High (26)	274	47.041	111.647	158.688	112.866	45.822
Basic (34)	1.044	3.063.233	1.219.959	4.283.192	1.612.719	2.670.473
Administrative (1)	30	20.296	15.787	36.083	18.372	17.711
Commercial (16)	138	91.977	150.431	242.408	134.196	108.212
Commercial Appeal (1)	24	7.756	16.107	23.863	15.821	8.042
TOTAL	1.733	3.260.272	1.589.757	4.850.029	1.973.292	2.876.737

From the aspect of the number of judges, the fact that each of 138 judges in commercial courts has an average docket of 1756 cases, is shocking, while

⁹ Available at:
http://www.vk.sud.rs/assets/files/aktuelno/statistika_o_radu_sudova_za_2011.pdf

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each of their colleagues in the basic courts has 4102 active cases on average, is quite astounding.

Looking at the average duration of the court proceedings, an important factor for implementation of the basic human right – to a fair trial and trial within a reasonable period of time – according to the same report of the Supreme Court of Cassation, there are currently more than 1.6 million old, unresolved cases in the courts of Serbia; 1.4 million of those cases are pending in the Basic courts.

COURT	TOTAL CASES	1 YR OR LESS	1-3 YRS.	3-5 YRS.	5-10 YRS.	OVER 10 YRS.	TOTAL UNSOLVED
Supreme Cassation	9.104	27	359	483	527	275	1.671
Appeal	96.691	-	5.303	5.501	3.589	1.197	15.590
High	158.688	123	10.281	7.701	4.763	1.981	158.688
Basic	4.283.192	4.558	354.378	372.572	495.063	184.112	1.410.683
Administrative	36.083	11	11	-	-	-	11
Commercial	242.408	-	3.055	1.127	549	209	4.940
Commercial Appeal	23.863	-	1.836	1.045	176	50	3.107
TOTAL	4.850.029	4.719	375.223	388.429	504.667	187.824	1.594.690

The statistics show that there are over **388,000** court cases lasting 3-5 years, more than **504,000** cases pending for 5-10 years, and about **187,000** cases that are older than 10 years. Considering that there have to be at least two parties in each case, it is easy to calculate that more than two million citizens and organizations in Serbia have to wait an average of 3 or more years for justice.

By the end of 2011, 6,752 petitions were filed against Serbia at the European Court for Human Rights¹⁰, out of which 2,768 or 41%, for the violation of Article 6 of the Convention – The Right to Fair Trial; while 636 or 23% of the petitions were filed for the violation of the right to a trial within a reasonable time period¹¹.

10 ECHR – Analysis of Statistics 2011, available at http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.pdf, pg.51

11 ECHR – Statistics on Judgments by State, available at http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf, pg.6

Dragana Ćuk Milankov
Centre for Alternative Dispute Resolution

Applying Mediation in Working with Youth

The text was written with the help of my esteemed colleagues:

Nataša Stojanovic, Pedagogue of the state secondary school "Sveti Sava" in Belgrade, Coordinator of the School Mediation Club and a member of the Association of Pedagogues of Serbia

Verica Grbić, Pedagogue of the Home for Secondary School Students "Brankovo kolo" in Novi Sad, Coordinator of the home's Mediation Club and a member of the Association of Pedagogues of Serbia

Danica Belić, Project Manager of the GIZ project "Strengthening of Structures of Empowerment and Participation of the Youth in Serbia"

Mediation work with youth started in Serbia in 2002, in the educational system. The German Organization for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit – GIZ – GmbH) began with the project "*Strengthening of Structures of Empowerment and Participation of the Youth in Serbia*", a then pilot project to include mediation in five secondary schools throughout Serbia. After testing and adjusting the program, many schools and youth clubs have implemented the mediation project, with assistance from various non-governmental organizations primarily partners of the GIZ (Association of Pedagogues of Serbia, Centre for Constructive Dispute Resolution, Centre for Alternative Dispute Resolution, Centre for Child's Rights). Today, the program for secondary school/peer mediation can be seen in over 200 institutions and clubs/youth groups in Serbia (school, youth groups, local communities, social work centres, etc.).¹² Through the GIZ program, 1200 peer mediators, nearly 400 professionals working with the youth, about 100 parents and, approximately 100 representatives of the local community have been trained.

¹² Results of a research of the GIZ project Strengthening of Structures for Empowerment and Participation of the Youth in Serbia (SoSYEP), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Belgrade, Serbia, 2012

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In the past few years, the program has developed, through cooperation of GIZ and their implementing partners, to include new areas: inclusive mediation for youth from marginalized groups, gender-sensitive school mediation, as well as peer mediation adjusted to be applied in the local community. This program also recognizes social exclusion mechanisms and trains participants how to adequately respond in such situations. Apart from programmatic improvements, the understanding of efficient mechanisms for school mediation application and its connection to the local community has progressed throughout the years.

Nansen Dialogue Centre of Serbia programs have contributed greatly towards the development of school mediation in the local community to include the youth. The center is now looking to select new school for this program, particularly schools in the South of Serbia and in Vojvodina.

UNICEF contends that mediation is a practical skill for constructive dispute resolution, and has contributed to preserving the practice of mediation in numerous schools in Serbia through the "Schools without Violence" program. This program is being implemented in 250 schools throughout Serbia; most of these schools have ongoing mediation activities.

Apart from the schools, mediation clubs function in a number of students' homes. In the Home for Secondary School Students "Brankovokolo" alone, about 150 students have been educated through the mediation club since 2006.

In 2009, programs for school mediation received institutional support, as well. The educational program, titled Peer Mediation, which is a part of the GIZ project "*Strengthening of Structures for Empowerment and Participation on the Youth in Serbia*", received an accredited status (regularly renewed since then) by the Institute for Improvement of Education and Upbringing of the Republic of Serbia in 2009. The Faculty of Philosophy and Faculty of Political Sciences of the Belgrade University have implemented trainings learned from the GIZ *Peer Education* program into the regular semester program. . In 2012, the educational program, Education for Peace, by *Dialogue towards Solution* of the Nansen Dialogue Centre of Serbia received its accreditation. The letter of support from the Ministry of Education of the Republic of Serbia, shows that institutions acknowledge the significance of the youth program. These institutions understand that the psychosocial development for youth is important and should be integrated in schools to promote an open and diverse environment. The signing of the Joint Declaration of the Ministry of Education of the Republic of Serbia and the Ministry of Education and Science of Montenegro, on mutual cooperation and cooperation with civil society organizations in education for peace was a pivotal moment for the school mediation program (as a part of the initiative of the Nansen Dialogue Centre Serbia and Nansen Dialogue Centre Montenegro in 2009).

Effects of the mediation program implementation

The research conducted by the GIZ project, "*Strengthening of Structures for Empowerment and Participation of the Youth in Serbia*", and the Institute of Psychology and the Ministry of Youth and Sport of the Republic of Serbia, illustrates the satisfaction of service beneficiaries, their opinion on program improvement, as well as improvement of its sustainability. The research was conducted on focus groups that included adults and youth who participated in the GIZ program for peer mediation during 2010 and 2011.

The general attitude of the interviewees was that the "Programme (is) particularly well accepted among beneficiaries, and its influence spread to all relevant stakeholders, whether directly or indirectly included in it".

Beneficiaries thought that one of the main problems was sustainability of mediation teams. According to the coordinators of school teams, there is room for new teams to learn the skills, however, during 2010-2011, two thirds of the teams did not receive any new members, and the trained mediators are beginning to leave the secondary schools. The mediator team meetings are usually organized according to their needs, so they do not have a regular schedule. Most of the mediation teams are supervised in order to observe the possibility for further study the help improve the skill of dialogue facilitation between parties. The number of mediations held is lower today than between 2007-2008 when the previous research was conducted. About one half of mediation team representatives said that between 2011 and 2012 their peers did not ask for help. One quarter of focus group teams did not even offer the help to students. The prevailing attitude of focus group mediators is that the students "do not accept mediation as a model for dispute resolution" (they are not interested to resolve disputes through mediation and/or do not think that a dispute can be resolved in this way). Also, team coordinators and peer mediators are of the opinion that the main problem is insufficient knowledge of students, educators and the local community on what mediation is and what are its effects. In this sense, they believe that the priority of the stakeholders should be to improve the quality of the mediation program and its sustainability.

Mediators think that this programme provides them with a personal benefit – in "improving self-confidence, tolerance, development of communication skills, improvement of peer relationships, recognition of the needs of others, as well as in understanding the position of persons from marginalized groups". Nevertheless, the youth think that the program has not improved their communication with professors, nor has it contributed towards reduction of disputes in the school as much as they expected.

The notion of school team coordinators is that mediation has, in large, been accepted in schools. Numerous schools are realizing the significance of this program; mediation activities are included in the school development plan and annual work plan. Thus, recognition of the importance of these

activities in school life was made possible: Collective sensibility of the students towards constructive dispute resolution was developed, support was given to professors (for instance, providing the possibility to include activities such as leading a mediation team in their work schedule), and longevity of the program has been provided. More and more schools are providing space for the work of mediators, as well as material resources for implementation of the program.

Teachers who have undergone the training are applying these skills in their everyday work. They believe that most of the professors support the mediators; however, they are not sure if the professors actually accept the mediation approach in dispute resolution. They are under the impression that there is good cooperation between all parties, and that they are better integrated into school life than in the previous years. Cooperation is established between mediator teams and with parties not affiliated with the schools, but, according to mediators' estimates, it is still on a very low level.

The general recommendation of interviewees is to popularize mediation on all levels so as to improve the efficacy and sustainability of mediation in schools and other organizations that attract young persons.

Colleagues who are monitoring functioning of peer teams in Vojvodina have a somewhat different perception of program sustainability. "Mediation in education-upbringing institutions is mentioned as one of possibilities, recommendation," says Verica Grbic, Mediation Team Coordinator of the Home for Secondary School Students "Brankovokolo" in Novi Sad (Home). "A level of commitment would be important in order to implement mediation, at least in the sense of learning new skills." She emphasizes the significance of recognizing the importance of the program, and providing support to professionals who implement it, by including mediation activities in relevant operational documents of the institution. "It is important that those persons who would be mediator team leaders be recognized as persons who do this and that they somehow get credit for it, and not to just leave everything down to the enthusiasm of individuals, that their work is not seen merely as a personal interest...".

The significance of a constant promotion of mediation in all environments has been recognized. Apart from educational promotion workshops where the emphasis is on the statements of GIZ research focus group mediators, informing different stakeholders (Pedagogic Council, Home Parliament, representatives of all educational groups, Board of Expert Associates of the Juznbacki Region) is seen in students' homes as a very important form of promotion, as well as creating posters on mediation with photographs from the held seminars, publishing articles in home newspapers and newspapers published in schools attended by young mediators, as well as local media appearances.

Students who reside in the Home and who are active in its mediation team believe that their peers would be interested in learning skills that inform the Peer Mediation training. Nevertheless, there is no interest in

schools for such seminars to be organized for students (among other things, due to financial limitations).

The presence of mediation in an institution, regardless of the institution's attitude towards this kind of dispute resolution, depends on the readiness of mediators, particularly the youth mediators, to implement it. Moreover, the youth on the mediation teams lack confidence in their skills, leading their peers to mistrust any advice given to them about alternative dispute resolution mechanisms. "There still isn't enough knowledge about mediation, so students are afraid that their mediation will not be accepted", says Verica Grbic. "Due to a number of responsibilities they have in school, they do not have enough time to practice, and ultimately not enough self-confidence to get involved in mediation".

Recommendations

The most common recommendation received for program improvement involving the youth is better promotion of mediation to the public. Having said this, it is important to show mediation as a resource for juggling interpersonal relations in daily work and life at school easier, not just as another responsibility. The Project Manager of the GIZ project "Strengthening of Structures for Empowerment and Participation of the Youth in Serbia", DanicaBelic, speaks of first envisioning and then creating the image of the school of mediation.

With his long-term experience implementing GIZ's peer mediation programs, DanicaBelic knows the importance of drafting action plans for new mediator teams after conducted trainings, and after incorporation into school development plans and annual school work plan.

Regular monitoring of the program effects, particularly the difficulties it faces, would be valuable for further improvement.

Within a school, program sustainability shall be improved by connecting relevant content used in other educational programs or out-of-school activities (content that is mentioned in civic education, psychology classes, etc.).

It is very important to include the adults, both in the mediation teams and in the group of "service beneficiaries" teams. If mediation is only applied to disputes of the young, the message will not be conveyed that all people should obtain these skills, so that the authoritarian status of traditional institutions towards young people will not change.

In institutions and organizations that include the young, as well as in all other social contexts where mediation is present, it is necessary to work out and establish a functioning system (there should be constant provision of information to all potential beneficiaries on what mediation is; what are the advantages for the beneficiaries; the services available in the institution; clear indication of where and services will be conducted; developed way of contacting mediators from the team; developed procedures of contacting

other parties if necessary; procedure for assessment of a case – whether it is suitable for mediation; developed system of evaluation of conducted mediations, etc.). That is the only way for mediation to come to life, be sustainable and useful to those for whom it is intended.

Keeping in mind that in Serbia, the predominant attitude of the adults still is that the young do not have social competences, the young growing up with such an attitude of adults, perceive themselves in the same way the adults perceive them – they realize they lack confidence in their skills to help in dispute resolution and fear they will not be taken seriously. That is why they need constant encouragement, as we wait for the global social changes to position the young as relevant social factors.

The last, but not least, connection between mediation teams is also a significant factor in program sustainability. It can be achieved at different levels: as creation of a network of schools where mediation functions at the city level, at the regional level, or at the level of the republic. Further, connection may refer to connecting with all institutions, international organization and civil society organizations that deal with mediation in any form. At the local community level, this connection could result in forming joint mediation teams that would be at the citizens' disposal. Apart from contributing towards sustainability of certain programs, these teams would make mediation services available to a large number of citizens. We believe that in this way, one could contribute to spreading constructive attitudes towards interpersonal relations where understanding of diversity is dominant, so that the environment in which we live could be comfortable for all of us.

Centre for Alternative Dispute Resolution is a non-governmental organization, founded with the aim of developing a non-violent approach to disputes, through mediation and other techniques of conflict transformation, in different areas. It operates at the national level of the Republic of Serbia, and it is directed towards creating a cooperation network with similarly-oriented organizations in the region and beyond. It provides services of development of programs and projects intended for prevention and intervention in situations of disputes; help and support is provided in drafting service provision strategies for members of particular marginalized/vulnerable groups; services of education for different forms of mediation and other techniques of alternative dispute resolution; services of creation of educational packages for different target groups; the Centre also provides direct services of mediation, as well as creation of programs for capacity building of different social, non-governmental, and business organizations.

School Mediation in Bujanovac

Over the years, Nansen Dialogue Centre Serbia developed an approach for long-term presence in local communities with the aim of supporting local stakeholders to work on the positive changes leading to the improved relationships and reestablishment of cooperation between ethnic groups living together. Capacity building trainings for schools and municipalities is the focus of our work. In 2006 we started with professional trainings for teachers, principals and students. Teachers realized that dialogue and constructive conflict resolution skills are very useful for their daily work, so we created programs that fit their needs and started preparing the ground for the implementation of school mediation. Inter-ethnic groups of teachers, pedagogues, principals and students from Bujanovac municipality schools were equipped with mediation skills; gradually, mediators' clubs became operational in three primary schools, and one secondary school from the town, and two village schools.

Development and implementation of the school mediation program was the joint venture of representatives of the School department of Lillehammer municipality, teachers from two primary schools from Lillehammer, teachers from Bujanovac schools, and NDC Serbia coordinators. Involvement of Norwegian colleagues was significant because of their professional expertise which they shared with us in workshops, consultancies, and visits to schools. But more importantly, Norwegian involvement was important because of their friendly approach as the third, neutral party which acted as the connecting thread between the two communities.

Activities within the School Cooperation project fostered cooperation of teachers from Serbian and Albanian schools in relation to School mediation, but also in connection to the subjects they teach. They were exchanging subject programs and were consulting with each other. Students from two different ethnic groups had the chance to spend time together on numerous occasions and realized that they shared the same interests.

The local self-government representatives were actively supporting the project by participating in events, such as sports activities, opening of mediators' clubs, and the joint performance at the Cultural House prepared by the multi-ethnic group of teachers and students. For three years financial support has been approved by the Municipal Council of Bujanovac municipality for mediators clubs in 4 schools. It is a significant recognition of the project, appreciation of the teachers' and students' work invested in

the process of mediation, as well as the acceptance of mediation as a good tool for understanding and resolving conflicts in schools.

Ministry of Education supports the project as it is in line with the new Law on the Fundamentals of Education System¹³, supporting fulfillment of one of the main goals – reduction of violence in schools. Counselors from local school departments worked with teachers on several occasions, mainly to support implementation of the new law and to ensure good functioning of the teams for prevention of violence. The emphasis was on articles 44 and 45 which forbids violence and discrimination of all forms in schools. These workshops were highly appreciated by teachers and pedagogues, as they improved their plans for prevention of violence in each school and provided the opportunity to consult with colleagues.

Teams of teacher mediators trained the groups of peer mediators in each school. School mediation has become sustainable in three primary schools as it has been fully integrated and accepted by all actors: teachers, students, management, and parents. It has been used as the regular means of resolving conflicts among students, in some cases between teachers and students, as well. Teacher mediators from Serbian and Albanian schools exchange experiences on a regular basis. It is important to stress that school management supports mediators' clubs, occasionally participating in the process of resolving conflicts. Peer mediators resolved some of the conflicts on their own; they feel in control of the process and behave responsibly. It was noticed that students' social skills were strengthened during the mediation trainings and practice.

Examples of mediation cases:

In Branko Radicevic primary school, a case that started as an every-day quarrel opened up the conflict between two classes that lasted for several years. It was successfully resolved after several mediation sessions. In Naim Frasheri primary school, the conflict over how the Graduation Day should be celebrated was successfully resolved. Teachers, students, the principal, and the school pedagogue jointly participated in the mediation process.

Support by Bujanovac municipality continued: several meetings were held with the teacher mediators and the mayor.

Teachers' statements:

Llukman Limani, Naim Frasheri school, stated during the meeting with the major, "Nansen seminars broadened our knowledge and views during the seminars, but also provided the opportunities to meet teachers from other schools and towns. School mediation develops students' self-confidence."

13 Law on the Fundamentals of Education System, Republic of Serbia, Ministry of Education and Science (Official Gazette of RS, No. 72/2009 and 52/2011).

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Brankica, a teacher from Branko Radicevic: "Joint trainings for Serbian and Albanian children are events where they get to know each other and develop relationship for the future."

Achievements:

- Serbian and Albanian schools held a joint performance on School Mediation in the Culture House in Bujanovac.
- Teacher mediators noticed that the number of conflicts had been decreased in schools.
- Ministry of Education officially supports School mediation programs in Bujanovac schools.
- Multi-ethnic group of students talked about peer mediation during several meetings.
- Teachers and students from primary school "Milija Nikčević", Niksic, Montenegro spent two days at Branko Radičević school where the process of choosing student mediators, as well as several cases of mediation, were presented to them.
- 5th-7th grade students from Levosoje, Vuk Karadžić primary school, paid a visit to the mediators' club at Naim Frasheri primary school in Bujanovac. Teacher mediators offered their support in the establishment of the mediators' club in the school in Levosoje.

The process of implementation of the new methodologies and mechanisms for violence prevention and conflict resolution, such as school mediation, takes a lot of time and patience. Persistence and dedication of teacher mediator teams, as well as project coordinators' determination, were the driving forces of the project. Support of Norwegian colleagues inspired team work among teachers, and empowered principals and pedagogues with up to dateskills inthe current educational sector. The key for the successful implementation of school mediation is good coordination for all actors involved.

Activities of the Association of Mediators of Serbia in the Function of Improvement of Mediation in Social Care

Mediation in the Social Care System in Serbia

Social care in Serbia is undergoing a reform process. Systemic changes are on the way, which have their own normative, organizational, institutional and value-related factors. All these aspects use mediation as a mechanism of alternative dispute resolution. These changes have a capacity for improvement of use of mediation in social care.

Use of mediation in the social care system has been justified in the recently passed Family Law¹⁴. According to this law, family mediation is used in marital disputes (disputes related to marriage annulment and divorce), and does not exclude the use of mediation in other family relations, although it does not specifically mention them. According to provisions of the Family Law, court shall, upon spouses' request, or with their approval, entrust the relevant custodial body, or marital or family counseling office with mediation; thus, creating an opportunity for family mediation to be implemented in centres for social work or marriage and family counseling offices; although it is most often found in social work centres.

Nevertheless, the fact that mediation is defined as a social care service in the Law on Social Care¹⁵ is a huge systemic breakthrough. It can be found in the advisory-therapeutic and social-educational services category. This law has paved the way for a more detailed regulation of mediation as a mechanism for alternative dispute resolution within the system of health care. The legal logic opens a way for standardization of all social care services, mediation included, at the bylaw level. During 2011 and 2012 the

14 "Official Gazette of RS", Nos. 18/2005 and 72/2011

15 "Official Gazette of RS", No. 24 from 4 April 2011. The law has come into force on 12 April 2011.

draft of the Book of Rules on Minimum Standards for Provision of Advisory-therapeutic and Social-educational Services was developed, and within this Book of Rules there is a group of provisions that relates to mediation in social care. Although some institutes in this draft are still subject for discussion and harmonization, it has to be stressed that provisions on mediation, formed as they are, are indisputable.

Another aspect of the regulation of mediation in this area refers to licencing of professional labour in social care. According to the draft of the Book of Rules on Licencing of Professional Labour and the Book of Rules on Professional Assignments in Social Care, mediation is ranked among specialized professional assignments in social care. That means that experts of different profiles will be licenced as mediators in social care. The following persons will be able to acquire the licence for provision of mediation in social care: those who have completed 4-year academic studies in social care, psychology, pedagogy, andragogy, defectology or special pedagogy, or any other 4-year academic studies, in accordance with the book of rules regulating advisory-therapeutic and social-educational services, or in accordance with any other book of rules; persons who have successfully completed an accredited program of specialized training with the knowledge and skills to execute specialized assignments, or provision of certain services (mediation in this case); and persons who have passed the licence exam prescribed for the area of social care.

The insitutionalized introduction aspect of mediation into the social care system also concerns the Social Care Chamber. By Law on Social Care, Social Chamber was founded in 2012 and it was passed by the Chamber's Assembly under the Chamber's Statute. According to this Statute, the Council of Experts is a separate expert body of the Chamber and organizes alternative dispute resolution by mediation between Chamber members, Chamber members and a social care service beneficiaries, Chamber members and organizations providing social care services, as well as between Chamber members and the Chamber itself; the statute also drafts the list of mediators with the aim of implementing mediation.

Activities of the Association of Mediators of Serbia

The Association of Mediators of Serbia – AMS – is an independent and voluntary association of citizens, founded to promote and provide mediation services as a way of amicable dispute resolution in public, private, and non-profit sectors.

The Association of Mediators of Serbia has the most activities in the following areas of work:

1. Promotion of mediation as a way of amicable dispute resolution, in public, private, profit and non-profit sectors
2. Improvement of professional practice of mediation in resolution of different types of conflicts

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3. Cooperation with other organizations with similar goals, at the national and international level
4. Development and application of educational programs and transfer of knowledge in the area of mediation
5. Establishment and improvement of the standard of professional conduct of mediators, mediation practice and educational programs
6. Improvement of the standards of mediation practice and educational programs in the area of mediation, in cooperation with other relevant social factors
7. Influence on strategies of development of social sub-systems, by introducing mediation and its values in dispute resolution.

The most frequent groups of activities of the Association of Mediators of Serbia, since its foundation, refers to conceptualization and implementation of different training programs for mediators.

All trainings realized by the Association of Mediators of Serbia correspond to both improvement of mediation as an alternative dispute resolution, in a wider sense, and to development of human resources and improvement of competencies for implementation of mediation in the social care system in Serbia.

The most commonly realized program is the *General Training for Mediators*, that is, education dealing with basic mediation that includes all parts of the *Book of Rules on the Training Programme for Mediators*¹⁶. This training has been conducted six times, having included more than 160 participants throughout Serbia.

The training program *Negotiating and Mediation in Social Care – Improvement of Skills of Communication and Dispute Resolution*, has been accredited in the Republic Institute for Social Care. This is an eight-day long training program that represents the basic training program for mediators. The program has been expanded, as suggested by the Book of Rules on the Training Program for Mediators, in acquiring knowledge and developing skills of communicating and the dispute resolution section. The program avails provision of the mediation service, as a new service in social care. The program lasts six days, and it has so far been realized in Vrsac, Zrenjanin, Novi Sad, and five times in Belgrade.

The specialized training program, *Mediation in Family Disputes*, is also accredited with the Republic Institute for Social Care. This six-day training program is directed towards gaining knowledge and development

16 "Official Gazette of RS", No. 44/2005

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of dispute resolution skills within family mediation. Knowledge and skills gained through this program are applicable in the work with almost all groups and individuals in interpersonal conflicts ensued from family relations. To attend this program, participants must complete the basic mediation training program first. This programme has so far been realized two times in Belgrade.

* * *

The system framework for mediation in social care has been improved in a respectable manner. But, it should be emphasized that all persons who participate in improvement of social care and mediation "have huge shoes to fill."

*Implementation of Mediation within the Judicial System in Serbia*¹⁷

Mediation in the court system (the court annexed mediation) includes the use of mediation after the court proceedings have been initiated, and mainly relates to practice of the Basic courts and certain courts of special jurisdiction. As a part of the court annexed mediation system, the courts provide mediation services in various types of disputes, i.e. property, family, commercial, employment, etc. Currently, the most common form of court mediation refers to civil disputes and mediators are mostly judges, as well as other trained professionals. In family disputes, particularly in cases involving parental rights, mediation is generally carried out in collaboration with the social work centers. In the court-annexed mediation, it is possible to facilitate an agreement between the victim and a juvenile offender (victim-offender mediation), as an alternative to criminal sanction or a separate duty under corrective penal measures. However, as already noted, the general level of the use of mediation in the court system in Serbia today, is very modest, and almost negligible.

This is primarily associated with the fact that mediation as a new, special type of service to be used in courts, requires establishment of a subsystem incorporated into the regular judicial proceedings, and as such implemented in all courts. To date, no such system has been developed in our judicial system, which certainly negatively affects the use of mediation as a tool for increasing the courts' efficiency.

In addition, proper understanding of the role of judges and court staff in the system of mediation services is vital for the use of mediation in the courts, as well as continued support for mediation by the court presidents

17 Parts and quotes from the publication *Recommendations for Development and Implementation of Mediation in Serbia* (2011, authors Blažo Nedić and Jelena Arsić) are used in this text.

and other judicial "managers". In order to use optimum benefits of mediation and achieve greater efficiency in the courts' performance, it is of particular importance to develop a case management and case referral system for mediation, provide opportunities for training of judges and court staff, and determine the reasonable fees for mediation to enable wider citizens's access to mediation services.

For the best implementation of mediation practices in the courts, it is necessary to develop clear criteria and administrative procedures related to this issue, such as the criteria for selection of cases suitable for mediation, timing of the mediation referral, the content of the case file which is referred to mediation, management of cases where an agreement is reached through mediation, as well as those where no agreement was reached, statistical monitoring and reporting, etc. The proper functioning of this system certainly presumes that all the actors in the system have basic knowledge of mediation. Although in some courts there are so-called mediation coordinators, they are often individuals who perform judicial functions, and thus, can not be expected to effectively oversee the administration and management of cases referred to mediation, in addition to their regular judicial duties. In this respect, it is useful to consider the following:

- **Appoint court mediation officers**

Mediation officers should be appointed in each court. A mediation officer is a clerk who provides the citizens and the parties with all the necessary information and helps them in scheduling mediation and selecting a mediator, the officer keeps records on the number of mediation proceedings, and coordinates other activities in the court-annexed mediation system (communication between the court and the parties in the proceedings, the parties and the mediator, and the mediator and the court). Mediation officers must receive special training to perform these functions.

- **Define procedures for management of mediation cases ("case management")**

Clear and precisely defined criteria should be established to determine which cases are suitable for mediation, timing of case referral to mediation, the content of the case file which is referred to mediation, as well as the process upon conclusion of mediation. Each court should appoint one "non-litigation" judge on duty available for "certifications" of mediation agreements, providing them with an "enforcable title", or make them "judicially enforceable". If mediation does not result in an agreement, the case returns for further proceedings in the court in which case, in line with the principle of confidentiality, the trial judge court shall only be informed that mediation was conducted, but that an agreement has not been reached (unless the parties agree otherwise).

- **Define a "reward" system for judges who refer cases to mediation**

A system should be developed whereby a judge has a (non-monetary) incentive for referring cases to mediation. For example, a case settled in mediation could be counted as resolved against a mandatory monthly norm of cases for the referring judge.

- **Training of judges and court staff**

There are a number of issues that trial judges, court staff, and the mediation officer should be familiar with to assure optimal development of mediation services. The training should be tailored-made for judges, and other court staff as well as the court mediation officer to help them understand and better serve their role in the system. This is essential, particularly because court management is an important segment of the judiciary reform, as there is potential to reduce case backlog and improve judicial efficiency. This special training program can be conducted by the Judicial Academy. In this regard, it is desirable to consider the following:

- Train trial judges on the mediation case selection, communication skills, and mediation case management
- Provide key court staff with the basic knowledge of mediation procedures and train them about mediation case management in courts
- Define mediation fees to enable more parties to use mediation services.

The research conducted in 2009¹⁸ by Partners Serbia in the District Court in Kraljevo, confirmed that a large number of potential users of mediation believe that their decision to consider mediation services would depend on financial factors. One of the court staff explained:

"If we would not charge for mediation services, potential users would believe us more when we told them that mediation was worth trying."

Some court staff members believe that the parties who have already paid the court fees, an attorney and court experts, would not agree to attempt mediation if it would represent an additional cost.

There are several ways to overcome this problem:

- Reduce fees for mediating small claims disputes. In the cases of a small or undetermined value, the corresponding court fee schedule should be applied.

18 http://www.partners-serbia.org/images/stories/pdf_ov/kraljevo_mc_assessment_report-srpski.pdf

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- Exemption from taxes for mediation for those who have already paid the court filing fees ("Mediation as a service provided to users by the court"). If parties in a pending court case agree to mediation, the mediation fee should be reduced or even waived if the court filing fee has been paid. However this should be applied on a case-by-case basis, with high-value cases not covered by the mediation fee exemption.
- Introduce a dual-system mediation tariff based on the value of the case and experience of the mediator. This model is a good combination that would serve two purposes: It would give parties an opportunity to select less experienced and therefore less expensive mediators in smaller value cases, and at the same time it would give less experienced mediators more opportunities to practice.
- Organizing promotional periods ("month of free mediation") for certain categories of users.
- Mediators who receive free training perform certain number of mediations *pro bono*.

In any case, mediation services should be available to certain categories of cases and users on a *pro bono* basis, or at a symbolic rate.

Mediation and Lawyers

In many countries, introduction and development of mediation is followed by a certain resistance of attorneys (lawyers, advocates), which could be explained by a fear that such method of dispute resolution could negatively affect attorneys' income. This article aims to initiate discussion on the role of practicing attorneys in mediation. By underlying some of the psychological aspects of the attorney-client relationship, the text aims to show that lawyers' opposition to mediation is based on prejudice and that this method of dispute resolution is beneficial to all participants in the proceedings: courts, attorneys and their clients. By supporting and properly representing their clients in mediation, lawyers can expect better satisfaction of their clients, as well as building their own reputation and respect. Lawyers, who embrace mediation, will soon realize benefits for their clients, and many advantages over the traditional court process. Finally, increased use of mediation will open new possibilities for lawyers' engagement, as they can be called upon to act as mediators, or represent their clients in mediation even before initiation of the court or any other formal proceedings.

Due to the importance of participation of lawyers in the process of mediation and for the purpose of improving the capacity of the bar associations for the use of mediation, the following should be considered:

Training of lawyers to use mediation (in accordance with the proposed 4-stage system of mediation training:

- Basic seminars to familiarize lawyers with the principles of mediation and their role in the mediation process;
- Two-day skill-seminars for effective representation of clients in mediation processes;
- Basic Training for mediators, so that each Bar association would have an optimum number of lawyers-mediators who would provide mediation services;
- Selection and training of mediation officers in bar associations and raising capacity of the bar associations to provide mediation services
- Establishment of lists of mediators in bar associations

The Bar Association represents the ideal institution for the establishment of a list of mediators and mediation services. Each bar association may, according to its needs, establish a list of mediators and mediation services

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and appoint a mediation officer. Following the consideration of the case, lawyers would (having passed the basic informative seminars and training to represent a client in mediation) evaluate the suitability of cases for mediation, and obtain clients' consent in this regard. After that, the mediation officer of the Bar Association would be approached, who would contact the other party and perform the necessary tasks to organize mediation. In this way, the lawyers would offer their clients additional service in the Bar Association prior to initiating the court proceedings.

Organization of mediation services in this manner would contribute to increased reputation of the bar associations, improvement of the lawyers' practice, additional income for lawyers, greater client satisfaction, and certainly relief for the courts, since significant number of disputes would be resolved before initiating the court proceedings. It is, therefore, surprising that bar associations have not recognized and developed this service, especially since a number of lawyers have passed the basic mediation training, and since regulations do not prevent this type of mediation services.

Activities of Partners for Democratic Change Serbia in the Area of Mediation

Since its founding in 2008, Partners for Democratic Change Serbia (Partners Serbia) have been developing programmes to promote, train, and build a system for alternative dispute resolution (ADR), mainly mediation, in different social fields. As a part of an international network of organizations in 20 countries throughout the world¹⁹, focused on conflict prevention and peaceful resolution of conflicts, Partners Serbia is trying to collect positive experiences of ADR implementation in Serbia, customizing them to the circumstances, needs, and traditions of the local community.

Although mediation is still not sufficiently used in Serbia, Partners Serbia has organized, apart from implementation of **basic and specialized trainings for mediators**, numerous **promotional presentations** on mediation, **workshops** for potential participants of mediation procedures, **specialized trainings** for legal representatives, and they have also cooperated with different institutions, state agencies and commercial subjects on the development of the system for provision of mediation services to their employees and clients.

During 2009 Partners Serbia implemented a project with the Canada – Serbia Judicial Reform Project (CS-JRP) to provide support to the **pilot-programme of mediation in the District Court in Kraljevo**. The goal was to try to find concrete and measurable results that could serve as a model for future programs of mediation in courts throughout Serbia. Within the project, a number of promotional events for the local community were organized, as well as the training for judges and attorneys; the Analysis of the Programme of Mediation in Kragujevac was also done, along with recommendations for improvement of the mediation system²⁰.

In 2011, with support from the Ministry of Foreign Affairs of Switzerland, and in cooperation with the World Bank IFC, Partners Serbia implemented the Commercial Mediation Capacity Building Project, with the aim of improving the use of mediation by commercial subjects in Serbia²¹. By promoting mediation as a quick and economic method of commercial

19 <http://www.partnersglobal.org/>

20 http://www.partners-serbia.org/images/stories/pdf_ovi/kraljevo%20final.pdf

21 <http://www.partners-serbia.org/sr/projekti/aktuelni/cmcb.html>

dispute resolution, the Project will help improve the business and investment climate, as well as improve efficacy of the judicial system in Serbia. On the basis of mediation training programs implemented by Partners Serbia, a series of promotional presentations were held, as well as seminars and trainings, to create a new network of experts who understand mediation. These activities have established a basis for forming the first "internal" systems of mediation in interested commercial subjects. One of the project results was the expressed interest of some of the leading companies and business associations in Serbia to resolve their disputes through mediation. Currently, Partners Serbia cooperates with the Chamber of Commerce and Industry of Serbia, on promotion and development of mediation implementation in the consensual financial restructuring of commercial companies, and also on implementation of mediation services in general, with the ultimate goal of improving business-operations and the investment climate in Serbia.

During its work, Partners Serbia has developed cooperation with numerous civil society organizations, such as Centre for Alternative Dispute Resolution (CARS), Committee for Human Rights Nis, and the Network of the Committees for Human Rights, etc, to promote mediation as a way for dispute resolution in human rights protection and prevention of discrimination, as well as developing a culture of mutual respect through repeated establishment of a dialogue between the conflicting parties. In this area, Partners Serbia has established cooperation with independent institutions dealing with the protection of citizens' rights, local ombudsmans and Commissioner for Protection of Equality. In 2011-2012, Partners Serbia and the CARS implemented the Partnership for Tolerance and Protection from Discrimination in Serbia Project (PTAPS), in cooperation with the Commissioner for Protection of Equality, to advance the system of protection from discrimination in Serbia and contribute towards building of social cohesion. The project, supported by the Delegation of European Union in the Republic of Serbia and Sigrid Rausing Trust, promoted implementation of mediation in cases of discrimination. One of the aspects of the PTAPS project included the building of the system for managing mediation cases within the activities of the Commissioner for Protection of Equality, and within this project the first group of mediators specialized for discrimination cases were trained.

Blažo Nedić, the Director of Partners Serbia, has been appointed as regional mediator of the World Bank for Serbia, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, Albania and Bulgaria. In September 2012, he was a fellow of the JAMS Foundation in San Francisco, where he practiced implementation of mediation in commercial and property disputes in the USA, and worked with other JAMS²² mediators, the largest private provider of ADR services in the world, with over 10,000 cases per year.

22 www.jamsadr.com

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Partners Serbia hopes to continue cooperation with the JAMS Foundation to promote ADR, develop advanced training programs for mediation service providers, and provide mediation services to interested parties.

In 2010 and 2011, Blažo Nedić and Partners Serbia provided legislative drafting assistance to the Government of Serbia by participating in the Ministry of Justice working groups drafting the new Law on Mediation and the Law on Free Legal Aid.

EXAMPLES OF GOOD PRACTICE – Mediation Training and Established ADR Systems in Serbia

Prof. dr Nevena Petrušić
Commissioner for Protection of Equality

Establishment of the System of Mediation Services within the Office of the Commissioner for the Protection of Equality

Mediation as an alternative method for peaceful resolution of discrimination situations

Mediation represents an alternative method for peaceful dispute resolution. Mediation procedure involves structured, confidential and a flexible process in which the parties to the conflict negotiate, with the assistance of a neutral third party in order to find a constructive and mutually acceptable solution. For several decades worldwide, mediation and other alternative methods of dispute resolution have significantly expanded and became a specific alternative to judicial or other formal proceedings. During the last ten years, mediation has been intensively developed in Serbia as well, gradually becoming a practice in schools, centers for social work, courts and other institutions and organizations.

Due to its advantages in regards to the formal procedures conducted in discrimination cases, mediation has been widely applied for many years in the work of independent bodies specialized in the protection of equality (*the equality bodies*). Despite a certain degree of skepticism about mediation between the party that feels discriminated against, and the one who acted in a discriminatory manner, in many countries, including Great Britain, France, Denmark, Austria, USA, Canada, Australia, mediation

models have been successfully applied by independent bodies to protect equality of the citizens.²³ These practices indicate that mediation is an effective method for resolving discrimination cases; it results in ceasure of discriminatory behavior and prevents its recurrence. Mediation enables an encounter and conversation which is beneficial to both sides. It provides the person exposed to harmful behavior an opportunity to say to the other person how he/she felt, to gain understanding, acceptance, and to strengthen confidence. Mediation provides an opportunity to hear the person's reasons for behaving in a certain way, which is crucial in most cases for the emotional recovery of the individual exposed to harmful behavior. It also provides an opportunity for the individual who caused harm to share feelings with that individual who was exposed to injury, which is important for the perpetrator in order to overcome bad feelings. By participating in the mediation process, individuals are enabled to rebuild or establish a relationship, which is particularly important for those parties who are, by nature relationships, in contact with each other on a daily basis.

Despite all these positive effects and benefits, mediation in discrimination cases has also received some criticism, primarily due to its confidentiality clause that prevents the exposure of discriminators to public condemnation, thus reducing the potential of the anti-discrimination laws and its impact on the development of social awareness of discrimination. In addition, it is supported that mediation provides victims of discrimination "second-class justice", and the process of mediation may confirm the imbalance of power between the discriminators and the discriminated, especially when a person discriminated against is a member of marginalized social groups.

Reviewing mediation models and the experience of independent bodies for the protection of equality, the Commissioner for the Protection of Equality has undertaken a series of activities in order to establish a system for providing mediation services, and has set the conditions for wider use of mediation as an alternative method for peaceful settlement of discrimination situations. The use of mediation in the Commissioner's Office is still at the initial stage; first experiences allow for the assessment and improvement of all the elements of the mediation system. The text below indicates the legal context of the work of the Commissioner for the

23 See: Salinger: Mediation as Tool for Specialized Equality Bodies, http://www.equineteurope.org/IMG/pdf/Mediation_Salinger1.pdf (access 18. 12. 2012); Raymond, T., Ball, J., *Alternative Dispute Resolution in the context of Anti-Discrimination and Human Rights Law: some comparisons and considerations*; Human Rights & Equal Opportunity Commission, Australia, 2000; Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K, Yesilkagit, K., Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Synthesis report, ec.europa.eu/social/BlobServlet?docId=6454&langId=en. (access 8. 12. 2012).

Protection of Equality and an overview of the activities this state agency has undertaken in order to establish mediation system within the Office of the Commissioner for the Protection of Equality, highlighting the initial experiences and key challenges in the use of mediation.

*Legal framework for the use of mediation
in the work of the Commissioner for the Protection of Equality*

Serbia enacted the Law on the Prohibition of Discrimination (LPD) in 2009,²⁴ which has completed a national anti-discrimination legislation and established a system for protection against discrimination. The fundamental role in the national system of legal protection against discrimination belongs to the Commissioner for the Protection of Equality,²⁵ an autonomous and independent state body, established by the LPD, with a broad range of legal powers that make it the central national institution for the suppression of all forms and types of discrimination.

In addition to the tasks aimed at promoting equality and equal opportunities, the Commissioner has a range of powers which enable him/her to enforce those powers once discrimination has occurred, in order to prevent its further manifestation and remove harmful consequences it caused. According to Article 33 LPD, the Commissioner is authorized to enforce those powers upon receipt of complaints for discrimination.²⁶ He/She gives an opinion and recommendations on how to eliminate the violation of the rights and impose measures established by the law in case the discriminator does not act upon his recommendation within 30 days.²⁷

The law does not stipulate the possibility for the Commissioner to conduct the procedure in cases of discrimination *ex officio*, but only if

24 Law on the Prohibition of Discrimination (hereinafter LPD), "Official Gazette RS", No. 22/09.

25 Hereinafter: the Commissioner.

26 Proceedings before the Commissioner are tentatively regulated in the provisions of the Articles 35-40 LPD, while detailed method of acting is provided in the Rules of Procedure ("Off. Gazette" No. 34/2011). For the course and content of the proceedings, see in detail: Petrusic, N., Becker, K., Practicum for protection from discrimination, Partners for Democratic Change, Belgrade, 2012, p. 59-75. Report of the Commissioner for the Protection of Equality in 2010, p. 8 and continues. <http://www.ravnopravnost.gov.rs/files/Redovan%20godisnji%20izvestaj%202010.pdf> (access 2. 06. 2012).

27 In line with the Article 40 LPD, if the discriminator does not comply with the recommendation, the Commissioner shall issue a warning and leave new 30 days deadline after which the public shall be informed.

the complaint is lodged by the authorized person.²⁸ The Commissioner is authorized to recommend mediation as a method of resolving the situation, to initiate the so-called strategic litigation for protection from discrimination,²⁹ and to submit misdemeanor charges for offenses established by anti-discrimination legislation.

The LPD provide only three specific rules on the use of mediation in discrimination cases. Article 33 authorizes the Commissioner to recommend mediation to the parties (Article 33 Item 3), as well as the rule that conciliation procedure may be suggested before taking other actions in the proceedings, while Article 38 states that the conciliation procedure is conducted in accordance with the law governing mediation.³⁰

Pursuant to these rules, in the procedure for complaints for discrimination, the Commissioner has the authority to assess whether the case is eligible for mediation; mediation may be proposed to the parties before they submit a complaint to the person who is claimed to have committed discrimination, but not in the later stages of the proceedings. In terms of the process of mediation in cases of discrimination, LPD does not state specific rules, but refers to the the Law on Mediation,³¹ which sets out the basic principles of mediation, the methods of initiating and

28 Complaint can be lodged by the person who considers to have suffered discrimination, and on his/her behalf and with his/hers consenta the organization engaged in human rights protection and other person (Art. 35 LPD).

29 It refers to the so-called. strategic litigation, which shall be initiated and conducted by the Commissioner in general (public) interest, in order to, as a plaintiff in the lawsuit, contribute to the consistent implementation of regulations and improvement of legal practice, to further encourage the victims of discrimination to initiate anti-discrimination litigation, support the rule of law and contribute to the improvement of access to justice, legally educate and sensitize the public on the issue of discrimination, and the like. For conducting strategic litigation cases, the Commissioner shall select frequent and widespread discrimination cases, mainly those causing particularly serious consequences for members of vulnerable, disadvantaged and marginalized groups, who are rarely given legal epilogue before the court in practice, and in respect to which there is a good likelihood of success in litigation. See: Strategic litigation of race discrimination in Europe: from principles to practice, ERRC, INTERIGHTS, London, Practice2004.pdf (accessed 1 09th 2012); Vehabović, F., Izmirlija, M., Kadribašić, A., Comments on the Law on Protection Against discrimination with explanations and review of practices in comparative law, Human Rights Centre, University of Sarajevo, Sarajevo , 2010, p. 115-119; Petrusic, N., Procedural position of the Commissioner for the Protection of Equality in anti-discrimination lawsuits, Legal life, thematic number "Law and Morality", 12/2012, Vol. III, p. 293

30 Law on Mediation , "Official Gazette RS" , 18/2005, came into force on 4th March 2005, (hereinafter: LOM).

31 Law on Mediation , "Official Gazette RS" , 18/2005, came into force on 4th March 2005, (hereinafter: LOM).

conducting mediation, parties' authorization, tasks, functions, powers and responsibilities of the mediator, as well as the conditions that must be met by the mediators in order to be able to conduct mediation.

Activities of the Commissioner in establishing the system of mediation services

The activities of the Commissioner for the Protection of Equality to establish a system of mediation services in discrimination cases have been carried out in four parallel tracks: the creation of a specific model of mediation in cases of discrimination, creation and implementation of a specialized training program for mediators, training staff at the Commissioner's Office, and promotion of mediation.

Designing specific model of mediation in cases of discrimination

For mediation to be an effective and efficient method in the Commissioner's work upon complaints about discrimination, it was necessary to create a special model of mediation. Therefore, the Commissioner for the Protection of Equality established a Working Group³² that drafted the mediation model adapted to specific features of any given situation in which the complainant claims it constitutes discrimination.

A special model of mediation utilized in the Commissioner's Office is based on standard mediation principles: the voluntariness, confidentiality, impartiality and neutrality. Although it relies on the existing legal framework of mediation in Serbia, it is still specific in relation to standard mediation, as there is a number of special rules created to adjust mediation to the specific features of the situation of discrimination. It also alleviates the negative effects that implementation of mediation could cause to the victim of discrimination and the exercise of the social mission of the Commissioner in terms of raising public awareness and suppressing discrimination.

Accordingly, special mediation model incorporates elements of mediation between the victim and the offender (*victim - offender mediation*), which is based on the concept of restorative justice.³³ Standard mediation

32 Special model of mediation was developed by the Working group consisted of Dragana Ćuk Milnkov, the president of the working group, prof. dr. Tamara Džamonja Ignjatović, Vera Despotović and Vladan Jovanović. The Commissioner for the Protection of Equality, prof. dr Nevena Petrušić, also participated in the work of the working group.

33 On philosophy and practice of restorative justice, for more detail see: Džamonja Ignjatović, T., Žegarac, N., Restorative justice between philosophy and experience, Yearbook Faculty of Political Science, 2008, p. 463-475.

does not fit all situations of discrimination to resolve a conflict, in the majority of cases of discrimination there is no conflict among parties, but there is emotional and/or other harm caused by one party to another.

The special mediation model is designed to allow resolution of the disputed event or conflict, if there is any between the parties, to ensure the emotional well-being, primarily for the person who has suffered harm, as well as to contribute to the preservation and improvement of relations between the parties and prevent further harm, that is, new conflicts and victimization.

In addition, a special model of mediation in the Commissioner's Office contains specific rules on the criteria and methods for the selection of cases suitable for mediation.

Initially, special rules have been established excluding the use of mediation in cases where the reason for lodging discrimination complaints is based on a general act of a public authority or legal entity. However, there are specific criteria for assessing the suitability of mediation regarding the parties themselves. That is, mediation can be applied only if the person against whom the complaint is lodged agrees that the event took place as stated in the complaint and recognizes that his/her conduct harmed the other party, accepting personal responsibility. Also, it is necessary that the objectives of both parties comply with the potential of mediation, and that the person who lodged the complaint is not traumatized to the extent that hinders equal participation in the process.

A special rule is introduced to estimate whether the case for which discrimination complaint has been lodged is suitable for strategic litigation during the initial case evaluation. If it is estimated that the case is suitable for strategic litigation, the possibility of referring the parties to mediation is not considered; thus, it ensures that strategically important discrimination cases receive a court epilogue, where a judicial decision is made regarding such cases –to establish case law and raise public awareness.

One of the features of mediation performed within the Commissioner's Office is reflected in the fact that it redefines the principle of neutrality of mediators. Although the professional role of the mediator implies neutrality towards individuals, the mediator can not be morally neutral towards the injury, but on the contrary, he/she must clearly demonstrate that discrimination is considered morally unacceptable. Moreover, the task of the mediator is to adequately respond to any form of social exclusion that may arise during the dialogue, so as to restore a balance of power between the parties.³⁴ The mediator has the task to take care of the establishment of

34 See more on the mechanisms of social exclusion and their deconstruction in the process of mediation: Cuk Milankov, D., Mediation and mechanisms of social exclusion, In: Džamonja T., Žegarac, N., Theoretical basis of mediation, perspectives and achievements, Center for applied psychology, Belgrade, 2009. p. 83-93.

the balance of power, when it has been disturbed for any reason, as it may happen, for example, if the party participating in the process belongs to a certain marginalized group and is less assertive in relation to the members of the majority (dominant) group.

The mediation process must comply with the rules of the Commissioner upon complaints; specific rules have been developed for employees at the Commissioner's Office, after receiving complaints for discrimination. In the first stage, it is examined whether the legal conditions for the procedure upon the specific complaint are met, in terms of timeliness and the requirements of the complaint, in that it is in line with the Article 36 LPD. The procedure upon complaint can not be performed if judicial proceedings have been conducted in that case of discrimination, if it is obvious that there is no violation of law, if the case had already been acted upon and there is no new evidence, or if the time elapsed since the violation had occurred prevents the achievement of the purpose of acting.

If the officer determines that the conditions for the proceedings upon the complaint are met, the next step is to examine whether the case described in the complaint is suitable for mediation (*the so-called mediability of the case*). This means that the case is examined in terms of its potential for conducting strategic litigation. If the case has the potential for strategic litigation, it is subsequently examined for those indications and contra-indications for mediation. If the assessment indicates that the case is suitable for mediation, the Commissioner shall contact the person against whom the complaint is lodged by telephone, and afterwards send him/her a letter, in which, inter alia, mediation is recommended. Only if that person accepts mediation, it shall be offered to the complainant, thus avoiding the possibility of secondary victimization of victims of discrimination. That is, the possibility that the complainant accepts mediation first, and then experiences rejection.

In order to create conditions for mediation to be effective and meet the needs of the parties, the Commissioner's Office provides the parties with all relevant information on the mediation process, its purpose, content and possible outcomes, as well as information about the standard procedure conducted by the Commissioner upon discrimination complaints. In this way, the parties are able to review the benefits of each procedure and select the one that can cater to their interests. This is particularly important for the party who lodged the complaint, as being well-informed is important for autonomous decision-making in terms of how to be protected from discrimination.

In the first stage, the mediation process in the Commissioner's Office is performed by the mediator appointed by the Commissioner from the official list of certified mediators. The officer shall accompany the first separate meeting of the mediator with the parties, primarily with the person against whom the complaint is lodged, and then with the person who lodged the complaint. The first meetings have imperative

information and motivational techniques that enable the parties to obtain detailed information about the process of mediation, if the mediator can assess whether the case is suitable for mediation, and, given the motivation of the parties, their relationship to the event, as well as other conditions and criteria defined in the model of mediation. If the parties agree to attempt mediation, they can mutually decide that the mediator who led the preparatory meetings continues to conduct mediation, but in the absence of an agreement, the mediator is selected by an authorized person in the service of the Commissioner and that mediator continues with the mediation proceedings. In the course of the proceedings, the mediator shall schedule separate meetings with the parties, first with the person against whom the complaint is lodged, then with the person who lodged the complaint. Then a subsequent joint meeting is scheduled, at which, inter alia, the parties sign an agreement on initiating mediation and accepting the mediator. Within one or more joint meetings, the mediation process goes through the standard stages, from the opening statements to the agreement.

*Development and implementation
of the training program for specialized mediators*

According to Article 18 Law on Mediation (LOM), judges, lawyers and other prominent experts in various fields can be mediators in Serbia, depending on the type of disputes in which they mediate, whereas each mediator must meet the requirements set forth in Article 20 LOM.³⁵ One of the conditions for conducting mediation is that the mediator has completed the training program which is prescribed by the Minister of Justice (Article 20, Para 1, Items. 3 and Para 3 LOM).³⁶ In line with the Article 19 LOM, mediators are appointed and registered in a separate list by the president of the court or head of another public body.³⁷ Given the stated rules, during the establishment of the system of mediation within

35 According to the Art. 20 LOM, the mediator must meet the following requirements: a university degree, at least five years of experience in dispute and conflict resolution and completed training program for mediators, enrolled in the List, not under investigation and has not been convicted for intentionally committed crime, is worthy for conducting mediation. Only exceptionally, the mediator may be a person who does not meet these requirements, except the condition concerning worthiness, which must be met by each mediator.

36 The Minister of Justice made the Rules on training program for the mediators, published in "Official Gazette of RS", No. 44/05.

37 On conditions for conducting mediation, see more: Petrušić, N., Alternative methods of resolving legal disputes in the law of the Republic of Serbia, Proceedings "Functioning of the legal system in RS", Center for publications Law Faculty in Nišu, Niš, 2006, p. 597.

the Office of the Commissioner for the Protection of Equality, two key questions aroused regarding who may be a mediator in cases for which discrimination complaints have been lodged.

The first question pertained to whether mediation should be carried out by persons employed in the Office of the Commissioner or it should be an independent person. The current LOM does not exclude judges, arbitrators, or other persons employed in the state administration from conducting mediation and such persons may be registered in the list of mediators. Such mediator, however, must be excluded from mediation if he/she is the judge in the present case, if the arbitrator or judge worked for the same parties in another dispute, or if it's the same person who is acting or has acted in other proceedings (Article 22 LOM). Considering the organization of work of the Commissioner's Office, and the methods of action upon receipt of complaints, as well as the need to remove any doubt about the neutrality and impartiality of the mediator to protect the integrity of mediation, the Commissioner has excluded employees of the Office of the Commissioner to serve as mediators acting upon complaints for discrimination. Therefore, in the list of authorized mediators led by the Commissioner, only persons who are not employed in the Office of the Commissioner may be registered, in accordance with the criteria and specific conditions established by the Commissioner (Article 28 of the Rules of Procedure).

Another issue that aroused during the establishment of the system of mediation within the Office of the Commissioner refers to the competence of the mediators. That is, according to current regulations, the mediator may be registered in the List of authorized mediators of the Commissioner, provided that he/she has completed training in accordance with the standard training program, which is valid for all mediators in Serbia. However, it was considered whether this training is sufficient or, given that the discrimination situation is characterized by a series of specific features, it would be useful and necessary for the mediators to gain specific knowledge regarding the phenomenon of equality and discrimination and develop specific skills that will enable them to successfully conduct a mediation process. Comparative experience indicates that there are two different standpoints in this regard in the practice of independent bodies.

The mediation and communication skills possessed by each mediator should be broad and sufficient enough to apply to any type of conflict. However, some believe that it may be an advantage if the mediator is unfamiliar with discrimination cases; this will cause the mediator inquire about discrimination, forcing both parties to actively listen to each other. This will, hopefully, increase the parties' empathy for each other and enhance the potential for each to find a mutually acceptable solution.³⁸

38 Salinger, *op. cit.*

On the other hand, there is a perception that the mediator should have expertise in the field of equality and non-discrimination, as it allows him/her to properly use mediation skills. This expertise allows the mediator to focus on relevant facts from the beginning of the process. The mediator's awareness of the issues associated with discrimination enables the mediator to help the opposing parties to express themselves honestly and empathize appropriately. The mediator is also responsible for communication between the parties and therefore must use non-discriminatory language, in order to be perceived by both parties as impartial. Moreover, it is important that the mediator maintains a balance of power between the parties, especially in situations where the mediation process involves an individual and a representative of an institution. Practice shows that the mediator who is experienced in discrimination cases tends to be more aware of obstacles and is therefore more adept to remove the imbalance of powers when compared with the mediator who has no such experience. For these reasons, it is concluded that mediators with extensive experience in anti-discrimination should receive such cases to better help the parties reach mutually acceptable and satisfactory solutions.³⁹

Arguing that for successful mediation in discrimination cases it is useful that the mediators, in addition to standard knowledge and skills, acquire specific knowledge about issues of equality and non-discrimination, as well as to learn about the context of mediation within the Office of the Commissioner for the Protection of Equality, the Commissioner for the Protection of Equality has established a Working Group⁴⁰ that has prepared a mediation training program for those who are interested in being on the List of authorized mediators of the Commissioner. Thus, the training program consists of two phases: The first phase is a five day session in which participants learn: communication skills, how to understand a conflict, the techniques of alternative conflict resolution and mediation, preparations for mediation, conducting mediation, and ethical issues.

The second phase involves specialized training on the following topics: the role and competence of the Commissioner for the Protection of Equality, prejudice and stereotypes, DIV model for the deconstruction of prejudices, restorative justice and the imbalance of power, phases and steps of the process before the Commissioner, the selection and the role of the mediator, the participants in mediation, the indications for mediation, mediation goals and benefits, preparation for mediation, preparation for the initial meeting with the person against whom the complaint is lodged, preparation for the first meeting with the complainant, and additional separate meetings. The second phase will also train individuals how to

39 Salinger, *ibid.*

40 Working group involves the individuals who designed special model of mediation. See footnote no. 10.

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conduct the first joint meeting, and the central part of the process - opening and explaining the problem from different perspectives, working out problems, negotiating and developing agreements, reaching a restorative outcome, and formulating agreements.

The first round of trainings for mediators has been successfully completed by 22 individuals,⁴¹ and specialized training is in progress. After completion, these individuals will be officially registered as mediators and placed on the List of Certified Mediators of the Commissioner. Their initial mediations will be supervised by experts and experienced mediators.

Training of the staff at the Office of the Commissioner

Although mediation of discrimination complaints to the Commissioner is not an integral part of the complaint proceedings, the Office of the Commissioner plays a significant role in the implementation of mediation. As noted above, the Commissioner's Office has been trained to perform preliminary selections of cases suitable for mediation. Employees will contact both parties to provide them with all necessary information about the mediation process, its objectives, content, possible outcomes, and motivate them to agree to engage in mediation. The Office of the Commissioner also conducts administrative tasks to ensure that the organizational and technical requirements are met, as well as monitor and evaluate the process of mediation, having the role of the administrator that provides support to the mediation process. Therefore, it was necessary to train staff at the Office of the Commissioner in order to best fulfill these duties. This training was conducted in two sessions consisting of lectures and workshops, designed and implemented by the members of the Working Group, which has created a special model of mediation. The Working Group is now in the process of creating an advanced level of training.

Promotion of mediation

For the purpose of wider application of mediation in discrimination cases, it is necessary to carry out promotional campaigns in order to present the benefits and potential of mediation to the general public. It is particularly important to use media and other appropriate methods to inform civil society organizations and the general public to encourage and motivate people to practice this type of constructive problem solving tool. We must also inform lawyers and other legal representatives about mediation, the process of mediation in the Office of the Commissioner

41 Pursuant to the terms of the public call released in late October 2012, in the selection of candidates equal regional representation was considered, with preference given to candidates from marginalized social groups.

for the Protection of Equality, the possible benefits of mediation for their clients, as well as their role and representation of clients in this process; it is important that lawyers do not resist mediation, for many fear that it would reduce their income.⁴²

So far, the key activities to promote mediation in discrimination cases have been carried out in the "Partnership for tolerance and protection from discrimination in Serbia" project⁴³, implemented by Partners for Democratic Change Serbia and the Centre for Alternative Dispute Resolution, in cooperation with the Commissioner for the Protection of Equality, and supported by the European Union Delegation to the Republic of Serbia and the Sigrid Rausing Trust. The project conducted a series of panel discussions, workshops, training sessions, conferences and other activities which have been organized in over 15 cities in Serbia. Leaflets and posters have been widely distributed, along with a promotional video and a film on mediation, in which the mediation process was outlined and demonstrated, highlighting the key benefits and positive effects of mediation.

The Office of the Commissioner for the Protection of Equality also provided information to the public through the media on the activities established by the system of mediation from the Office of the Commissioner. This information was directly distributed to civil society organizations that cooperate with the Commissioner. Since the process of operationalizing the mediation system in the Commissioner's Office is coming to an end, it is necessary to intensify promotional efforts. The initial experiences in implementing mediation at the Commissioner's Office indicate this need. Although mediation system in the Commissioner's Office has not yet been fully operationalized and functional, starting from June 2012 each case in which a complaint was lodged was examined for its mediability (suitability for mediation). Since then, over 300 complaints were received, but it was estimated that only five cases were suitable for mediation according to the rules on mediation from the Commissioner's Office. Unfortunately, mediation was not conducted in any of those five cases because the parties did not accept mediation, due to lack of experience and lack of knowledge on mediation as a method for peaceful conflict resolution.

It is evident that mediation in Serbia is still sporadically applied in all areas and has not been verified as an effective method for peaceful resolution of conflicts. This has contributed to the creation of an inadequate legal and institutional framework, and disorganized and

42 See: Nedić, B., The role of the lawyers in mediation, In: Petrušić, N., Beker, K., op. cit., p. 83-84.

43 Partnership for Tolerance and Anti-discrimination Protection in Serbia – PTAPS.

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unsynchronized actions to promote mediation.⁴⁴ In such circumstances, the use of mediation in cases of discrimination will not be possible without an intensive and ongoing promotion campaign aimed at raising awareness to the general public on the advantages of mediation and the potential that it has in suppressing discrimination, and building a culture of peace and tolerance in social relations.

44 See more: Petrušić, N., op. cit., p. 597.

Commercial Mediation

In all countries where it is recognized as a useful method of dispute resolution, mediation is most widely used in the area of commerce, because in a high percentage of cases (in most countries even over 90%) it provides satisfactory solutions, keeping and improving business cooperation, reputation, all with considerable cost-efficiency.

According to data presented by the representative of the Milan Chamber of Commerce⁴⁵, all 105 chambers of commerce in Italy provide mediation services to their members. In a single year after Italy implemented a law making mediation mandatory for certain before going to court, 91,690 disputes were resolved; in 77% of these cases, mediation was a legal obligation. Those disputes dealt with issues in real estate leases, banking, insurance, and health care, with an average settlement value of 118,299 Euro. 52% of disputes were resolved by mediation, during proceedings that lasted 56 days on average. It has been estimated that 123 million Euro was saved using mediation. It is interesting that only 35% of participants in the proceedings voluntarily accepted mediation, while it was legally binding for all other participants.

The Department for Mediation of the Milan Chamber of Commerce resolved 1651 disputes in the same period, with 79% of the cases requiring mediation. Mediation successfully resolved 42% of disputes during the legal proceedings, while only 16% of disputes were resolved prior to the beginning of formal proceedings. Proceedings lasted an average of 56 days, with an average value of 260,000 Eur.

If we take a look at the territory of the former Yugoslavia, a good example of organization of commercial mediation is, by all means, the Centre for Reconciliation in the Croatian Chamber of Commerce, which has existed since 2002 and has been successfully providing services to organize peaceful resolutions for commercial disputes.

It is safe to say the commercial mediation in Serbia is in its infancy stage, even though alternative dispute resolution has been in Serbia for ten years, and mediation has been, recognized as a technique that has great results in

45 At TAIEX seminar, subject: Mediation in Business, held on 4 Decembre 2012 in Belgrade, organized by the Chamber of Commerce and Industry of Serbia.

the commercial sector. The Chamber of Commerce might be most successful with commercial mediation as this institution tries to reconcile its members' interests and resolve any conflict of interests. However, 5-6 years ago chambers of commerce tried to implement mediation institutionally, but those attempts were without success. In Serbia, the chambers of commerce have not use the capacities for commercial mediation sufficiently. Mediation can reduce the number of cases in courts, particularly in the Supreme Court of Cassation of Serbia. In 2011, the total number of active cases in Serbia was 5,994,945; 2,226,443 cases were received, and 2,653,347 resolved, while the remaining 3,341,598 cases were unresolved. Before the reform of the judicial system, there were 138 judges in 16 commercial courts, and each judge had over 1300 cases. In this capacity, judges are not able to properly and efficiently perform their jobs because they are thinly stretched, with the commercial sector suffering the most, since disputes are expensive and protracted; after these disputes have been resolved, collection of claims is difficult, sometimes impossible. Additionally, parties may become enemies during the process, severing business cooperations.

In the interest of all its members, chambers of commerce are trying to make a serious step forward in the field of mediation. They have gained the capacity to form separate mediation departments where they train their employees to do mediation, and promote mediation as a preferred dispute resolution method. Current regulations provide a legal basis for commercial mediation development. Other state initiatives provide encouragement, such as the passing of the Law on Consensual Financial Restructuring of Commercial Companies. Proper mediation implementation in the commercial sector is imperative considering that the commercial debt has reached 1,501,412 billion dinars due to the percentage of high-risk loans approved.⁴⁶

After a recovery period (2000-2008), transition commerce of Serbia, which is based on market principles and guided by state spending, suffered another crisis (this time, international), which led to increased unemployment and a decrease of standards. The GDP crisis in Serbia is a reflection of recent external economic movements, mainly those within the European Union, the most important economic partner of Serbia. Since 2009, the commercial sector continuously reduced the number of employees. In 2011, there were 1,011,531 employees in the commercial sector, compared to 2010, that number has been reduced by 22,955. As a consequence of the global financial crisis, the demand has significantly decreased, causing an increased risk of liquidity and deteriorating debtor-creditor relations, leading to a great number of commercial companies in Serbia in debt and financial hardships. According to data from financial reports in 2011, the total loans approved to commercial companies equaled 2,661,909 billion

46 Data from the National Bank of Serbia. Of all the commercial loans that are approved, 25% of them are high-risk.

dinars⁴⁷. Late payment of loan installments in 2011, measured by the rate of problematic loans in the total of approved loans, increased compared to 2010. It was reported that one quarter of loans approved to the commercial sector were late for more than 90 days. The rate of loans given to the commercial sector that are more than 90 days late for payment equaled, by the end of the fourth quarter, 24.6% of all approved commercial loans. The consequences of prolonged deadlines for payment obligations of businesses are due to the inefficiency of the courts and its inability to solve disputes quickly leaving many accounts and settlements blocked. According to the National Bank of Serbia, on 31 December 2011, 62,340 commercial subjects were blocked with unsettled obligations totaling 172.1 billion dinars, and 92,883 employees. Out of the total number of blocked commercial subjects, 20% are small commercial companies. Regarding the blocked amounts, about 42% refer to those small commercial companies. On 31 December 2011, there were 2,763 commercial companies in Serbia in the process of filing bankruptcy or liquidation. At the same time, these same commercial companies, reduced the number of their employees, firing approximately 11.1% (5,449 employees).⁴⁸

Compared to December 2010, the number of blocked commercial subject has been reduced by 691, and unsettled obligations by 55.3 billion dinars, which was a consequence of the application of "automatic bankruptcy" or, deletion of a certain number of commercial subjects from the registry. According to the data of the Agency for Commercial Registers, since the beginning of implementation of automatic bankruptcy from March 2010 to October 2011, 14,325 commercial companies were deleted from the registry. This was the process of "cleansing" the commercial sector from fictitious companies. Apparently, some of these companies transferred the debts of their original companies to avoid tax-payment.

The Law on Consensual Financial Restructuring of Commercial Companies has attempted to solve the corporate debt problem through mediation because it is the most flexible procedure, proving to be quicker, cheaper, efficient and simpler than other available procedures (forced recovery of debt, execution, bankruptcy, reorganization plan prepared in advance). For example, bankruptcy proceedings usually lasts a long time, sometimes up to 10 years; the rate of collection is up to 30%, and the only parties that benefits from the bankruptcy are the creditors. The reorganization plan prepared in advance, on the other hand, only allows the main creditors in each class to make decisions. All creditors are equal only in the procedure of consensual financial restructuring, and only in

47 Data of the Agency for Commercial Registers, Declaration on Commercial Business Operation in the Republic of Serbia in 2011, Belgrade, June 2012

48 Data of the Agency for Commercial Registers, Declaration on Commercial Business Operation in the Republic of Serbia in 2011, Belgrade, June 2012

this procedure can they receive 100% collection of all their claims, within deadlines consensually determined by the parties in the proceedings. Due to this, the National Bank of Serbia recommended to the banks, starting June this year, to get involved in this procedure, thus stimulating out-of-court resolution of the problematic claim matters.

The legislator has prescribed by tax laws stimuli for successfully completed proceedings in consensual financial restructuring. Creditors' expenses include the value of each written off claim, and the debtor may get approval for payment of the debt in equal installments up to 60 months, with the possibility of using postponed payment for the first 12 months. Apart from this, banks were provided the possibility of classifying all restructured debts, under certain conditions, into a less risky category - if this is their first restructuring and the debtor is not late more than 30 days for at least three months, or for at least three consecutive payments.

Unfortunately, all these measures and stimuli, as well as attempts by the Chamber of Commerce and Industry of Serbia, as a legally prescribed institutional mediator, did not have the expected results. Since the end of March, when the legal framework for restructuring was defined by the bylaws, the Chamber of Commerce and Industry of Serbia has received 16 applications for mediation in the proceedings of consensual financial restructuring. All applications were filed by debtors, in serious financial difficulties.

Based on the initial experiences, we can conclude that commercial companies in Serbia do not know enough about the mediation procedure, nor on the role and competencies of the Chamber of Commerce and Industry of Serbia. On the other hand, creditors do not recognize the significance of debtor's survival, particularly the necessity of prompt reactions and decision-making. Even the representatives and lawyers of commercial companies do not have enough knowledge on this procedure, so they do not see it as a beneficial for their clients and do not recommend it.

This is why it is necessary to raise awareness and knowledge not only on consensual financial restructuring, but also on commercial mediation in general. There must be serious, continuous activity so that mediation can blossom in the commercial sector. All mediation actors should receive comprehensive training in this procedure, to establish a mutual understanding and cooperation among all participants. This instrument should be explained to potential beneficiaries so that they develop a habit to apply for mediation by themselves; mediation should also be available to all potential beneficiaries by lowering costs to and providing free-of-charge mediation in small-value disputes, or in the initial phases of mediation promotion. Publicity and promotion activities form mediation play this crucial role.

Soon, the Chamber of Commerce and Industry of Serbia will implement intensive activities providing information, education, and promotion on commercial mediation in general, with Partners for Democratic Change Serbia, with emphasis on the procedure of consensual financial restructuring, through the chamber system of Serbia.

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Education in the Field of Mediation at the Faculty of Political Sciences

In 2005, the Specialized Course of Mediation Studies began at the Faculty of Political Sciences (FPN), as the first form of academic education in this field in our country (and the first of the territories of former Yugoslavia). Academic programs in Mediation are quite rare in other European countries. Lynn Maley, a lawyer and mediator in the field of family mediation, was the educator of the first group of students. The studies lasted one school year (two semesters), and program managers at the Faculty of Political Sciences were prof. Tamara Džamonja Ignjatovic and prof. Nevenka Zegarac. The studies were held in English, and the group was comprised of 10 participants of different professions – psychologists, legal persons, social workers, defectologists, etc.

In 2006, the program of academic specialist studies in mediation was developed and managed by prof Tamara Džamonja Ignjatovic. The program included 6 modules: Conflict Theory, Introduction to Mediation, Family Mediation, Mediation between Victims and Juvenile Fellons, School Mediation, and Mediation and Cultural Differences. The lecturers were professors from the Faculty of Philosophy and FPN from Belgrade, Law School from Nis, local judicial experts, GTZ experts, and international experts, like Lesley Allport and Marien Leibman, whose participation was provided by UNICEF.

In 2007, the FNP began a project in cooperation with the City Centre for Social Work that was supported by the Fund for Social Innovations. Within this project, a 12-day mediation training program was developed. The program was accredited in the Institute for Social Care under the title of "Skills of Communication and Conflict Resolution – Negotiating and Mediation in the Area of Social Care". The program included contents that were relevant for the area of social care, such as: Family Mediation, Mediation between Victims and Juvenile Fellons, and School Mediation. The program was complemented with training provided by the Law on Mediation, and was expanded by adding contents and practical exercises to improve skills necessary for mediation practice. Also within this project, the Centre for Mediation in the Counseling Office for Marriage and Family

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GCSR was founded as a teaching basis that provided practice in family mediation that was a necessary part of the curriculum. The Centre was managed by Vera Despotovic Stanarevic. The academic specialized course of studies took place during the 2007-2008 school year consisting of 25 students from different professions, primarily from the social work centres – legal persons, social workers, psychologists, pedagogues.

This program was offered several separate trainings in GCSR in Novi Sad, Vrsac and Zrenjanin, and it included 15-20 participants from the above and regional CSR, so that in two years about 50 mediators were trained in the area of social care.

During 2008-2010, the specialized course of studies grew into a two-year program, to include the Law on High Education that students could enroll in after the completion of their masters training. Since the majority of interested participants have completed studies at the "Bologne" reform of high education, it was necessary to provide the number of credits through the specialist course of studies. This group had 12 students.

In parallel with the academic specialist course of studies, the accredited program in mediation was also modified into an 8-day session focusing only on the basics of mediation, while specialized programs in different areas of mediation implementation were separately developed, such as: Family Mediation that lasted 6 days. Several groups of students were trained, and each class had about 10 students.

From 2010 to the present, the above accredited programs continue to be taught at the FPN, as a part of the specialist program of knowledge innovation, where there was one program per semester. In 2012, the new program of specialized training was developed in Mediation in Mobbing Cases that had 7 attendees.

Currently, preparations for the Tempus project are under way; this is a Master program in Mediation that includes professors from universities from Italy, Belgium and Belgrade University, experts from Great Britain, and regional experts. There are plans to implement the program at the FPN and Faculty of Philosophy for three semesters.

RECOMMENDATIONS

State of Serbia and Its Bodies in the Peaceful Resolution of Disputes ("ADR Pledge")

The judicial system in Serbia is clogged by a huge case load while effective alternative dispute resolution mechanisms are virtually non-existent. Many of the court cases involve state bodies and agencies, since it has been a long established practice that each claim must be strenuously defended or pursued in court, regardless of the real prospects of success.

According to the information provided by the State Attorney's Office (Republičko javno pravobranilaštvo - RJP), in December 2012, the total number of civil litigation cases involving the Republic of Serbia was 56,659. In 53,182 of those cases Serbia is the defendant, while in 3,478 is the plaintiff. These numbers do not include the 52,335 cases (data as of 3 June 2010) against the Republic of Serbia litigated by the Defense Ministry Office (DMO).

In total, the RJP and DMO represent the Republic of Serbia, its bodies, agencies and other legal entities financed from the State Budget in over 108,000 court cases.

The new Civil Procedure Code⁴⁹ (ZPP) in force since February 2012 stipulates in Article 193 that prior to filing a court petition against the Republic of Serbia, a proposal for peaceful dispute resolution must be filed with the RJP office. Although this is a new legal requirement still not fully tested in practice, we can conclude that this legislation enables a significant number of cases to be settled without litigation.⁵⁰

49 Official Gazette RS no. 72/2011

50 Bulletin of the State Attorney's Office, 3/2012, page 25, Olja Jovicic, Chief State Attorney, available at www.rjp.gov.rs/download/bilten_RJP_3_2012.pdf

Since 1 February 2012, when the new ZPP entered into force, until 10 September 2012, the State Attorney's Office and the Defense Ministry Office received the total of 7,632 proposals for peaceful settlement of disputes, while formal Settlements were concluded in 1,103 cases⁵¹.

However, in January 2012, a Constitutional Petition has been filed to re-examine constitutionality of certain provisions, among others, including article 193 of the Civil Procedure Code. A group of petitioners claimed that Article 193 infringes the principle of equal access to justice and the Constitutional guarantee of equal protection of citizens before the courts, as it guarantees preferential position to the Republic of Serbia against other parties. The decision of the Constitutional Court is pending.

Although the far reaching effect of the above Constitutional initiative is debatable, the implementation of mediation, as a voluntary process requiring consent (not an obligation) of all sides in a dispute, even in this situation could contribute to prevention and reduction of court cases against the Republic of Serbia, and consequently create significant savings to the budget.

Therefore, instead of the mandatory, statutory provision, the following should be considered:

- A public pledge ("ADR Pledge") by the Government of the Republic of Serbia, whereby the Government will pledge that its departments and agencies will consider and use alternative dispute resolution in all suitable cases wherever the other side agrees to it.
- Standard Government procurement contracts will include mediation and other ADR clauses to resolve disputes instead of litigation, whenever possible.
- Government of Serbia will adopt measures to ensure monitoring of the implementation of this initiative, and periodically publish reports with statistical data.

By adopting such or similar public pledges, and by establishing the appropriate practice, the Government will show willingness to adopt and promote modern, internationally recognized methods of conflict prevention and resolution, which will be beneficial to the Government both as a promoter of accessible justice and as a potential party to disputes.

In the short term, the above practice would lead to the reduction in court cases and, consequently, increased court efficiency and overall savings to the state budget. Adoption of these methods will open the door and support

51 *Id* page 44

spreading of the "ADR culture" to many potential areas of dispute. In the long term it will improve the citizens' access to justice and contribute to further development of the legal reform in Serbia.

A possible wording of the ADR Pledge could be as follows:

Whereas

Prevention and peaceful conflict resolution include mediation, arbitration, facilitation, direct negotiation and other methods of alternative dispute resolution, and

Mediation and other ADR methods are applicable in certain types of disputes, including family, school, workplace, local community, commercial and environmental, inter-ethnic, and inter-state, as well as for resolution of court litigation, administrative and other proceedings, and

Mediation and other ADR methods enable individuals, families, communities, organizations and institutions to develop good relationships and communication, and achieve solutions that are in accordance with interests and needs of all stakeholders and interested parties, and

Methods of peaceful dispute resolution promote the atmosphere of conciliation and cooperation, instead of confrontation and litigation, while the conflicts are resolved in more humane ways, and

Mediation and other ADR methods are becoming the most dominant tool for prevention and early conflict resolution worldwide, and is in accordance with the recommendation of the Council of Europe and directives of the European Union, and

Government of the Republic of Serbia wishes to lead by example and promote development and implementation of mediation and other ADR methods, in order to improve citizens' access to justice, increase judicial efficiency, and build public confidence in the court system,

The Government of the Republic of Serbia adopts the following

ADR Pledge

The Government of the Republic of Serbia hereby pledges that, in all disputes involving its bodies, departments, or agencies, it will consider and use mediation and other methods of alternative dispute resolution prior to engaging in court or other formal proceedings, in all suitable cases, whenever the opposing side agrees to it.

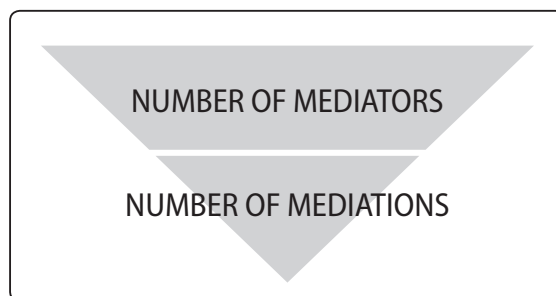
- All standard Government procurement contracts will include mediation and other ADR clauses to resolve disputes instead of litigation, whenever possible.
- Standardized training of the State Attorney's Office and all departments and agencies will be organized in order to enable them to implement mediation and other ADR methods.
- Systematic measures to ensure monitoring of the implementation of this initiative will be adopted, and periodical reports with statistical data will be published.

Training for Mediation

In the previous period of the development of mediation in Serbia, a number of judges, attorneys, social workers, psychologists and other experts have undergone mediator training programmes organized by international and local organizations active in this field. Additionally, a number of mediators attended trainings abroad organized by reputable organizations from Europe and the USA. By doing so, certain capacities have been developed for provision of mediation services, that should be recognized as an important resource.

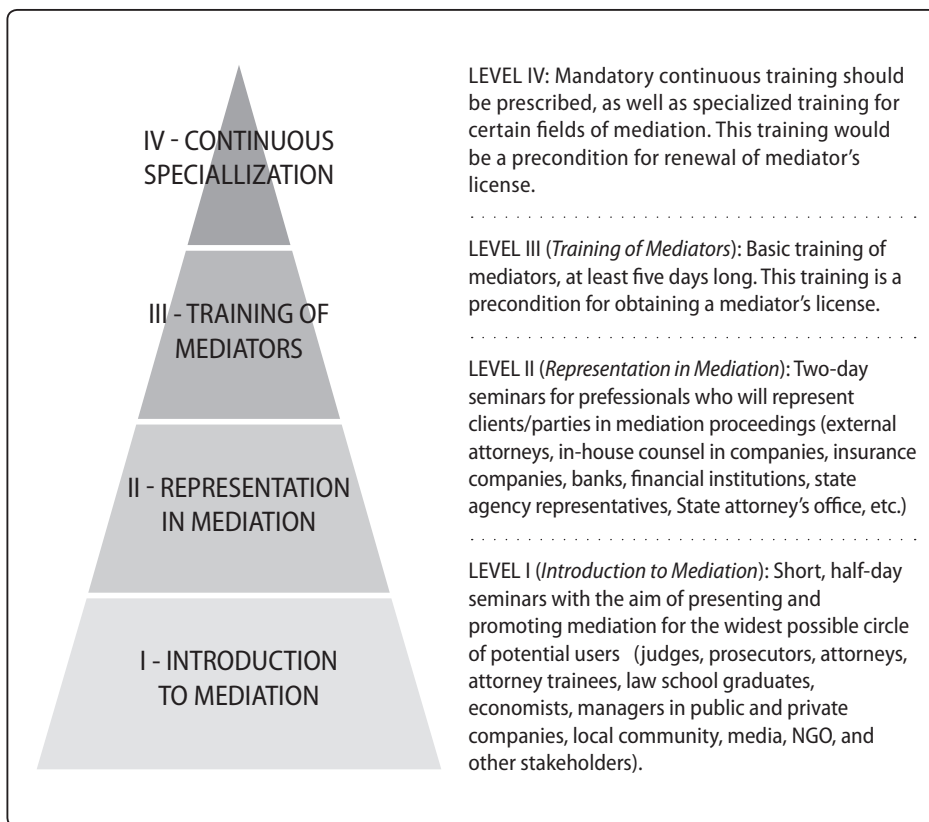
Nevertheless, it would be useful to analyse the previous "system" of training for mediators, in order to further advance the mediation system in Serbia. Previous experience has shown that if the training starts with the basic training of mediators (which, according to the current regulations, lasts 5 days), most of the participants enroll expecting that adoption of this new skill will bring them new income, and only during the training do they understand the very essence of the mediation process and the role of mediators. In the past several years, a large amount of money has been wasted on the training of individuals who will never act as mediators.

Thus, Serbia finds itself in the challenging situation of having **more mediators than mediations**, which is also characteristic for some countries in the region that have tried to introduce mediation overnight, believing that it is enough to train hundreds of mediators and open doors of "mediation centres" to promote mediation services.



Instead of this clearly unsustainable "inverted pyramid", there should instead be a comprehensive system for mediation training (not just training of mediators). This new system would occur through several phases, at three levels of training (promotional, training for representation in mediation, and training of mediators), as well as the continuous advancement or, specialization in certain areas:

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This approach shall provide that:

- As many people as possible be acquainted with the principles of mediation and primed for mediation (for example, the trial judges who should refer a case, attorneys who should inform their clients on the possibility of mediation, managers in commercial companies, etc.) - *Level I*;
- Those who recognize their own interest in mediation through Level I (attorneys, in-house counsel, law firm trainees, etc.) attend further training for efficient representation and protection of the clients' rights in mediation;
- Only those who have already passed *Level I* (and possibly *Level II*) training and who are familiar with the basic elements of mediation, and who are ready and properly motivated to work as mediators, should be trained as mediators, so that the *Level III* training includes training in specific skills, while continuous advancement and specialization of mediators, which is one of the preconditions for license renewal, is provided at Level IV.

CONCLUSION

Although the impending adoption of the new Law on Mediation is welcome, it is clear that only certain obstacles can be overcome through this legislation. Instead, key changes and improvement in this field can only be accomplished through a comprehensive approach and use of all capacities that mediation and other forms of alternative dispute resolution provide in conflict prevention and resolution. This can be achieved only through the inclusion of all relevant stakeholders, institutions, organizations, and individuals, and through cooperation based on a common desire to establish a high quality mediation system, as well as other forms of ADR.

In the mid-term period, there would be several advantages to this approach, benefitting citizens, the government, and society as a whole.

For citizens:

- Enabled access to faster and cheaper resolution of disputes than is possible in the courts – improved access to justice
- Nobody loses, "Win – Win" situation, parties find a solution that is in their best interest
- Re-established and improved relationships

For the Government:

- Reduction in budget expenditures for court judgments, expenses and fees
- Sensitive state matters could be resolved in the confidential settings of the mediation or other appropriate ADR methods
- Improved public image of the Government:
 - Government would be seen as a promoter of modern internationally accepted conflict resolution and prevention methods
 - Readiness to negotiate, collaborate and settle, rather than stubbornly resorting to confrontation and litigation;
- Reduced caseload and improved image of the judiciary:
 - Reduction in the court backlog, expedited proceedings, increased court efficiency
 - More time for judges to concentrate on complicated cases involving difficult legal matters not suitable for ADR
 - Courts promote atmosphere of negotiation, conciliation, not confrontation and litigation
 - Improved public confidence in the court systems

For the society as a whole:

- Improved social environment and increased acceptance of mechanisms for prevention and peaceful resolution of conflicts in all communities.

In this sense, the Initiative for the establishment of a coalition of ADR organizations practicing, supporting, and promoting alternative dispute resolution ("ADR Coalition"), aims to achieve improved coordination and effectiveness of their campaigns to implement and develop ADR mechanisms in all spheres of Serbian society.

Another goal of this initiative is to develop advocacy approach that promotes and implements mediation and ADR, where a coalition of civil society groups can engage decision makers in a collaborative, outcome-oriented and sustained process to advance a specific agenda for social change.

Finally, this initiative shall help improve cooperation between the Government and civil society organizations practicing ADR, which will increase their role in decision making processes and in democratic mechanisms of governance.

Following the development tendencies in other countries, Partners for Democratic Change Serbia concludes that the time will soon come when mediation will be recognized as a highly efficient and universally applicable method of dispute resolution in Serbia. Efforts by the Government in this area, adoption of a more comprehensive legal framework, and possible drafting of a national strategy for the development of mediation and other forms of alternative dispute resolution in Serbia, will serve as indications of public acceptance towards such an end. The authors of this publication remain hopeful that findings and recommendations presented in this document shall serve as a basis for the advancement of mediation as an instrument for building better and more humane society.