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MEDIATION IN FAMILY CASES ACROSS THE EU AND BEYOND. IS A NEW HARMONIZED APPROACH TO EUROPE'S POLICY FOR SOLVING FAMILY CONFLICTS NEEDED?

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Article abstract

This paper seeks to address the question of the need for revising the existing EU policy in the field of family mediation. The author argues there is a necessity for a single EU methodology for managing national and cross-border family disputes through their referral to mediation, which will serve as the basis for the revision of the EU policy in the field of family mediation and will trigger a discussion for the adoption of a new Directive on the subject. This is grounded in the increase in divorce rates in the EU according to the European Parliament, the growing mobility of spouses and the spread of cross- cultural families, all of which lead to a rising number of family disputes occasionally caught between various jurisdictions and applicable laws. Possible revisions aim to set up a unified *modus operandi* through which national and transnational family disputes are managed across the EU through their referral to mediation, to propose clear guidelines for child inclusion in the mediation process following the requirements of the Convention on the Rights of the Child (1989), to establish standards for mandatory family mediation for those countries who opt-in for such a model and the professional qualifications for EU family mediators. Such an idea is ambitious in its pursuit to set unified standards on the manner through which family mediation is practiced in the EU, how children are integrated as part of the process, and what unified requirements apply to EU family mediators. The author suggests that the ultimate impact of the above would be to open the discussion for EU policymakers to consider setting up a uniform methodology for family mediation, outlining the specific processes for mandatory family mediation for Member States opting-in in a model and revising the EU mediation policy in the field of family justice.

MEDIATION IN FAMILY CASES ACROSS THE EU AND BEYOND. IS A NEW HARMONIZED APPROACH TO EUROPE'S POLICY FOR SOLVING FAMILY CONFLICTS NEEDED?[74]

Julia RADANOVA[75]

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RÉSUMÉ

Cet article cherche à répondre à la question de la nécessité de réviser la politique européenne existante dans le domaine de la médiation familiale. L'autrice soutient qu'il est nécessaire d'avoir une méthodologie européenne unique pour gérer les conflits familiaux nationaux et transfrontaliers à travers leur renvoi à la médiation, qui servira de base à la révision de la politique européenne dans le domaine de la médiation familiale et déclenchera une discussion en vue de l'adoption d'une nouvelle directive sur le sujet. Cela s'explique par l'augmentation des taux de divorce dans l'UE selon le Parlement européen, la mobilité croissante des conjoints et la propagation des familles interculturelles, qui conduisent tous à un nombre croissant de conflits familiaux parfois pris entre diverses juridictions et lois applicables. Les révisions possibles visent à établir un modus operandi unifié par lequel les conflits familiaux nationaux et transnationaux sont gérés dans toute l'UE par le biais de leur renvoi à la médiation, à proposer des lignes directrices claires pour l'inclusion des enfants dans le processus de médiation conformément aux exigences de la Convention relative aux droits de l'homme. Child (1989), visant à établir des normes pour la médiation familiale obligatoire pour les pays qui optent pour un tel modèle et les qualifications professionnelles des médiateurs familiaux de l'UE. Une telle idée est ambitieuse dans la mesure où elle vise à établir des normes unifiées sur la manière dont la médiation familiale est pratiquée dans l'UE, sur la manière dont les enfants sont intégrés dans le processus et sur les exigences unifiées qui s'appliquent aux médiateurs familiaux de l'UE. L'auteur suggère que l'impact ultime de ce qui précède serait d'ouvrir le débat pour que les décideurs politiques de l'UE envisagent de mettre en place une méthodologie uniforme pour la médiation familiale, décrivant les processus spécifiques de médiation familiale obligatoire pour les États membres qui adhèrent à un modèle et révisent le modèle. Politique de médiation de l'UE dans le domaine de la justice familiale.

MOTS-CLÉS

Conflit familial, Médiation familiale, Médiation obligatoire, Cadre juridique de l'UE sur la médiation

ABSTRACT

This paper seeks to address the question of the need for revising the existing EU policy in the field of family mediation. The author argues there is a necessity for a single EU methodology for managing national and cross-border family disputes through their referral to mediation, which will serve as the basis for the revision of the EU policy in the field of family mediation and will trigger a discussion for the adoption of a new Directive on the subject. This is grounded in the increase in divorce rates in the EU according to the European Parliament, the growing mobility of spouses and the spread of cross-cultural families, all of which lead to a rising number of family disputes occasionally caught between various jurisdictions and applicable laws. Possible revisions aim to set up a unified *modus operandi* through which national and transnational family disputes are managed across the EU through their referral to mediation, to propose clear guidelines for child inclusion in the mediation process following the requirements of the Convention on the Rights of the Child (1989), to establish standards for mandatory

family mediation for those countries who opt-in for such a model and the professional qualifications for EU family mediators. Such an idea is ambitious in its pursuit to set unified standards on the manner through which family mediation is practiced in the EU, how children are integrated as part of the process, and what unified requirements apply to EU family mediators. The author suggests that the ultimate impact of the above would be to open the discussion for EU policymakers to consider setting up a uniform methodology for family mediation, outlining the specific processes for mandatory family mediation for Member States opting-in in a model and revising the EU mediation policy in the field of family justice.

KEYWORDS

Family conflict, Family mediation, Mandatory mediation, EU legal framework on mediation

1. INTRODUCTION

[484] Mediation has been part of Europe's policy on cooperation on civil and commercial matters since the beginning of the 21st century mainly as a tool for improving the general access to justice in daily life, including in the field of family cases. Various measures have been adopted in lieu of this political will to promote new ways of quasi-judicial mechanisms for settling the conflict. One such example is Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (the "Mediation Directive") which can rightfully be considered as the pillar that has led to the spread of mediation across the Union. Since the adoption of the Mediation Directive though the EU Parliament has recognized in its resolution of 12 September 2017 that the key goals of the Mediation Directive remain far from being achieved and that on average mediation is used in less than 1% of cases reaching court, except for Italy.

[485] Based on the above findings the EU Parliament in its Briefing Note "Achieving a Balanced Relationship between Mediation and Judicial Proceedings" proposed two possible options for ameliorating the situation. One was a rewrite of art. 5.2 of the Mediation Directive that grants Member States the option to make mediation mandatory. The proposed revision would require parties to go through an initial mediation session with a mediator before a dispute could be filed with the courts in all new civil and commercial cases, including certain family and labour disputes. This "opt-out" approach was recommended because of its track record for uptake in the cases that reach mediation through it. Alternatively, the Briefing Note proposed a more precise use of Article 5.2 to achieve the Mediation Directive's balanced relationship by requiring the Member States to measure whether they are achieving a balanced relationship between court cases and mediation, and if not, to determine why not. Regardless of the specific recommendations given, it should be noticed that they fail to specifically tackle family cases and address those in ways that are specifically designed to meet the different needs encountered therein. This article shall focus on the latter with an argument that the Mediation Directive in the field of family disputes no longer (if ever) fulfills the need for solving the growing number of national and transnational disputes and a new, unified EU methodology is needed to handle such disputes.

2. FAMILY DISPUTES IN THE CONTEXT OF THE MEDIATION DIRECTIVE

[486] The Mediation Directive has been adopted as part of the EU's policy for improving access to justice, lowering court costs, and addressing the backlog of cases. Its roots are foreseen in the Tampere European Council meetings of 15 and 16 October 1999 and the conclusions reached that the EU Member States should create "alternative, extrajudicial procedures" for dispute resolution. However, at the time of its adoption, the Directive did not address specifically family conflicts as they are considered part of the civil cases. On the contrary, the only two places where family mediation is explicitly mentioned are Recital 10 and Recital 21 of the Mediation Directive which provides as follows:

> (10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an

amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.

(21) Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.

[487] As depicted above, family mediation is merely referenced in the Mediation Directive, without providing for any specific regulations in it. This is indicative of the wide discretion Member States are given in the field of such intimate relations as family ones. At the same time, the latter serves as a basis for the different models adopted across the Union ranging from full voluntary or merely voluntary mediation through categorical mandatory mediation or discretionary mandatory mediation (Helen Rhoades, 2010, p. 183-194.). Not only those models are implemented differently in the Member States, but many countries apply various system designs depending on the nature of the dispute. In light of such multiplicity and variations in the regulatory models, it may well be concluded that family mediation is not being implemented as a single process, and as such - it fails to reach its objectives in particular in the realm of family cases.

[488] Notwithstanding the above, the Mediation Directive serves as a basis for establishing the following guiding rules that bear an impact on the way family mediation should be practiced across the Union:

- Voluntary nature of the process, whereby special attention is paid to the initial consent to participate along with the need for ensuring its presence throughout the procedure until such time that the parties either reach a settlement or decide to discontinue the process. This principle is of particular importance in the field of family disputes due to the highly-emotional and personal aspects of the latter. This is further exacerbated in cases where there are grounds to believe there is a risk from domestic violence and/or a child being put at risk;

- The principle of « equidistance » is deemed of special importance in cases of family disputes, which empowers the mediator with the right to indicate incompleteness of information, serious deviations from applicable legislation, and raising concerns on the fairness of the process outcome (Carolina Riveros and Waltjen Coester, 2019, p. 1914.);

- Respect for the right of the children involved and special focus being granted to them in lieu of the potential settlement being considered between the parties;

- Imposing additional safeguards whereby the mediator requests from parties a confirmation of their informed voluntary consent to the terms of the settlement agreed;

- Limitations on the confidentiality principle regarding possible criminal proceedings that may be launched against either of the parties or endangerment of a child.

[489] The above principles are not outlined in a unified methodology or single code of conduct that all mediators should abide by. In this respect, art. 4 of the Mediation Directive should be further acknowledged which addresses the issue of quality and encourages Member States to adopt or adhere to voluntary codes of conduct applicable to mediators and organizations providing mediation services, as well as to ensure quality control over mediation training and control over the mediation conduct. However, not all countries have exercised their discretion in the adoption of such codes and currently, the regulation is patched and ranges from self-regulation to the introduction of statutory requirements towards mediators, whereby only rarely there are specific provisions applying to family mediators. All of the above leads to the creation of a kaleidoscope of different systems for family dispute mediation that function locally and hence, hinders the free practice of the mediation profession across the Union and the different perceptions of mediation in cross-border family disputes.

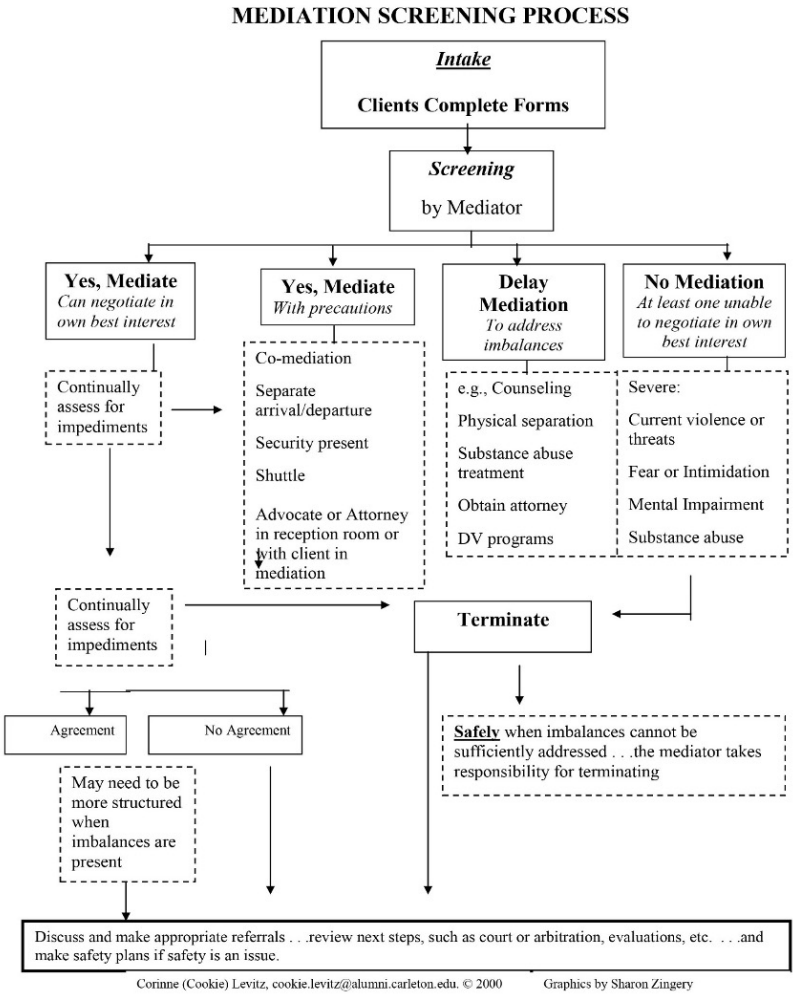
3. BEST PRACTICES FOR SOLVING FAMILY DISPUTES

[490] The above constraints on the manner through which mediation is rolled out across the EU cannot though disparage the emerging good practices for solving family disputes in the Union that often are rooted in other legal systems. As a general global development, it can be noted that family disputes are persistently being referred to mandatory mediation as a pre-condition to their oral court hearing on the merits of the dispute. This movement by far exceeds the borders of the Union and has its roots overseas starting from Australia and the US, where ADR was adjudicated as a procedural requirement in a range of legal contexts, family disputes being one of them (Tania Sourdin, 2012 ; Belinda Fehlberg, Rachael Carson and Colin Millward, 2014, p. 406-424). However, where mandatory ADR has been applied in family law, there is considerable variety between and within countries in the rationale for enacting the provisions, the processes through which parties arrive at ADR, the types of ADR available, and the impacts on families and the broader legal systems. The following few sample models of the application of mediation in family disputes have been selected due to the good results they have shown for a substantial number of years during which they have been practiced. As such, they may serve as a source of inspiration when adopting or specifying the relevant legal framework for family mediation and could also base the grounds for the adoption of a uniform methodology applicable across the EU.

3.1 US STATE-ADOPTED MODELS

[491] The same good practices that are rolled out in several states across the US include the adoption of a mediation screening process applicable to family disputes in order to establish which of them may be eligible to proceed to mediation and which should be terminated. One sample of such a screening tool is depicted in the table below[76]:

76 Author of the diagram is adjunct professor Corinne (Cookie) Levitz, Supervisor/Mediator, Family Mediation Services, Circuit Court of Cook County, Domestic Relations Division



[492] The prime goal of such screening is to establish whether there are any real or perceived risks with respect to the safety of participants that may hinder the conduct of the mediation process by compromising true voluntary participation and equality between the parties. The manner through which such screening is conducted is two-fold: 1) a confidential interview questionnaire is circulated with the participants ahead of their mediation meeting, followed up with a more detailed questionnaire aligned with the respective domestic violence protocol as means for eliciting more information on the type of violence, its gravity and duration preceding the mediation process. If the screening indicates a potential threat of domestic violence, then the mediator would, depending on the type of violence, either refer the parties to counselling, substance abuse treatment, or DV programs and delay the process until such time that the measures suggested have been adopted or terminate the procedure. Mediation shall be deemed permissible in all cases if it has been established that the parties can freely negotiate in their best interests. Notwithstanding the above, all family cases shall be subject to continuous assessment for possible impediments throughout the proceedings. That being said though, some family mediations may indicate at the outset

coercion concerns which would warrant that the mediation proceedings be organized as co-mediation with additional security measures adopted and in the presence of attorneys. All of the above may apply separately or in parallel and highly depend on the specificity of the case at hand and the severity degree of the violence.

[493] The results that have been shown through the application of this model lie in the improvement of the following court or arbitration proceedings, the making of safety plans and ultimately result in the improvement of safety.

3.2 CANADA

[494] Canada has been selected as this country has developed some good practices in the field of family mediation due to its long history in promoting ADR, including through forming conciliation courts back in 1974 (Audrey Devlin and Judith P. Ryan, 1986). Separately, family mediation has received the vast support of the state through the extensive funding it received to promote the spread of the procedure. The reason for this state support may be explained in the fact that family law matters due to relationship breakdown are the sixth most common type of "everyday legal problem" that Canadians encounter (Trevor C.W. Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup and Lisa Moore, (2016).

[495] A research report calculated the costs associated with different types of dispute resolution methods for family law matters (Joanne Paetsch, J.J., Lorne D. Bertrand and John-Paul E. Boyd, 2017) with the following findings included:

> 1) Mediation was viewed as the most useful alternative dispute process for cases of low conflict, where the disputes were focused on children and parenting, child or spousal support, and the division of property and debt;
>
> 2) Lawyers estimated that low-conflict files take an average of 4.8 months to resolve through mediation, whereas high-conflict files take an average of 13.7 months through mediation;
>
> 3) Lawyers reported high client satisfaction with the mediation process;
>
> 4) Mediation was viewed as very useful for low-conflict disputes (but less so for high-conflict disputes where litigation was more likely to be viewed as useful);
>
> 5) Mediation was viewed as generating longer-lasting resolution between the parties than litigation or arbitration;
>
> 6) Lawyer's bills for services for low-conflict cases were roughly half the cost for those resolved through arbitration or litigation.

[496] To stimulate the mediation process in the country at the same time legislative provisions allow judges to order parties into mediation intake[77] such as the below:

77 Family Law Rules. O. Reg. 439/07, s.1.

> (i) Ordering parties to mediation intake: Pursuant to the Family Law Rules a…judge hearing a family law conference may order parties to mediation intake pursuant to 17(8)(b)(iii).
>
> (8) At a case conference, settlement conference or trial management conference the judge may, if it is appropriate to do so,
>
> (b) make an order requiring one or more parties to attend,
>
> (iii) an intake meeting with a court-affiliated mediation service,

[497] Such mediation intake meetings are deemed to be a positive model for the coercing party into a discussion about the potentially beneficial aspects of mediation while at the same time retaining the party's voluntary participation. In this respect, the intake is preliminary to an actual start to mediation and generally includes a presentation to parties about the mediation process, an individualized initial screening for intimate partner violence and/or abuse, and a discussion with each party as to the issues with which they would like assistance.

[498] The above is additionally complemented by the legislative provisions allowing for judges to make an "order" for mediation under s. 3 of the Family Law Act, and to appoint a mediator under s. 31 of the Children's Law Reform Act, where children's rights are affected by the corresponding dispute. Such practices should be deemed to be positive in their obliging nature to impose on parties' participation in the actual mediation process beyond the initial intake, without, however, the need to reach a settlement agreement of any nature.

[499] Another positive practice that has been rolled out in Canada is the spread of uniform Standards for Assessing Whether Mediation May be Appropriate[78] as adopted by the Ontario Association for Family Mediation. Those standards include:

> 1) Prior to commencing mediation, all clients must be screened for any occurrences of abuse and/or power imbalance to determine which cases are inappropriate for mediation, which require additional safeguards, in addition to, or instead of mediation, and which should be referred to other resources.
>
> 2) The issue of voluntary participation is critical when it comes to creating a safe place for couples to meet and negotiate.
>
> 3) Clients should be strongly encouraged to consult with lawyers prior to mediation and certainly before an agreement is finalized.
>
> 4) Mediators must be knowledgeable about abuse. Training for mediators needs to include the following:

78 https://www.oafm.on.ca/about/standards/policy-on-intimate-partner-violence-and-power-imbalances/

5) Issues related to physical and psychological abuse and its effect on family members;

6) The impact that abuse (including witnessing abuse) has on children;

7) Effective techniques for screening, implementing safety measures, and safe termination;

8) Referral to appropriate resources, in addition to, or instead of mediation;

9) Sensitivity to cultural, racial and ethnic differences that can impact the mediation process that may be relevant to domestic violence.

10) Where a decision is made that mediation may proceed, mediators need to meet standards of safety, voluntariness, and fairness. When mediators have concerns, they should inform their clients that they are not neutral about violence or safety.

[500] The imposition of such uniform standards should be positively perceived as a good model whose adoption on the EU level may be advisable.

3.3 AUSTRALIA

[501] In Australia, mandatory ADR is prescribed in the legal provisions of the Native Title Act, 1993 (Cth), the Administrative Appeals Tribunal Act 1975 (Cth), and the Civil Procedure Act 2005 (NSW), for instance. Some state supreme courts in Australia have statutory power to refer litigants to mediation, with or without the parties' consent. Mediation and other ADR modalities have been available as alternatives to litigation in family law disputes for many years. The family dispute area constitutes by far the largest pre-litigation scheme that mandates attendance in a dispute resolution process in Australia (Tania Sourdin, 2012). This trend has evolved from the mere promotion and active encouragement of parties to participate in the family dispute process (FDR) to mandating their attendance to an FDR (Andrew Bickerdike, 2007, p. 20–25). A specific feature of this obligatory participation is the fact that parties are not required to take part *stictu sensu* in a mediation process, but rather to attend a dispute resolution process which does not necessarily mean only mediation. Such FDR services are usually administered by community-based service centres, which are state-funded and hence, free for the parties (Patrick Parkinson, 2015). Those centers issue at the end of the dispute process certificates for completion which are then distributed to the parties for their subsequent use when applying to court for a parenting court order under Section 60I (7) of the Australian Family Law Act. One positive feature of those certificates that has been praised by participants is the fact that they do not include the scope of the FDR process that has taken place or the decisions that determined its outcome. This scheme as depicted in the law can be qualified as "categorical" as it requires attaching to the court claim a certificate from a family dispute resolution practitioner attesting compliance with the procedure or an affidavit outlining the grounds on which exemption from FDR attendance is sought (Dorcas Quek, 2009, p. 479–509).

[502] Notwithstanding the above and regardless of whether a certificate of attendance is presented as evidence of an amicable attempt to settle the dispute or not, judges still retain the control to order parties into mediation in an attempt to resolve the matter out-of-court. Such discretion though has been retained for cases where it is established that the parties have failed to make a genuine effort in the ordinary meaning of the word. A survey from 2013 (Lawrie Moloney, Ruth Weston and Lixia Qu, 2013) on the manner through which family mandatory mediation is practiced in Australia established that 80 % of the users of FDR services as offered by the community centers were satisfied with the help received in reaching a parenting agreement and improving family members' capacity to manage the relationship. Specifically, the survey indicated that the biggest clients' dissatisfaction was from the use of lawyers and the court system, which served as a reconfirmation of the benefits of using FDR.

[503] However, those findings differed when it comes to cases of family violence or child abuse. A study from 2010 (Dale Bagshaw, Thea Brown, Sarah Wendt, Alan Campbell, Elspeth McInnes, Beth Tinning, Becky Batagol, Adiva Sifris, Danielle Tyson, Joanne Baker and Paula Fernandez Arias, 2010) indicated that concerns about family violence were not properly addressed during the ensuing mediation process. Importantly, concerns about power imbalances and participants' feeling of not being believed in by the mediator were reported, though the greater majority flagged satisfaction with the content of the overall process. Those concerns are tackled partially by the Family Violence Bill and the subsequently approved Coordinated Family Dispute Resolution Model (CFDR). CFDR (Rachael Field, 2016) was piloted between 2010 and 2012 and was highly evaluated by prominent researchers and users of the model. Even though the model has thus far not been rolled out through the country due to political and economic issues, a number of key takeaways are worth to be outlined and considered for future FDR process designs. One of the major positive features that proved efficient is the use of a multidisciplinary team for handling such cases. Such teams would include close collaboration between the following professionals all working on a single case: mediators, lawyers for each parent, domestic violence (DV) workers conducting the screening ahead of the FDR and providing counselling and support, gender violence analysis experts supporting perpetrators and, on an *ah hoc* basis, specialist children's practitioner or other experts specifically designed to support the needs of the family.

[504] The CFDR model includes 4 (four) phases, namely:

> Phase 1. Intake process: which depending on the specifics of the case can be conducted by the mediator or the DV worker. This phase includes an assessment of the suitability of the case for CFDR and information provision about the nature of the proceedings, the commitment level that is expected and the roles of the numerous professionals included in the process and parties' agreement thereto. Should the intake be conducted in a situation where concerns are raised about DV, the perpetrator shall be required specifically to acknowledge that a family member believes DV has impacted the family;
>
> Phase 2. Preparation for mediation: this phase includes parties' attendance to preliminary meetings including legal advice and counselling sessions and a mediation workshop. The various professionals that ultimately conduct those preparatory meetings and workshops then meet for a case management meeting where parties' readiness for participa-

tion is discussed and the case leader ultimately decides whether to proceed towards the actual process;

Phase 3. Attendance in the mediation: the model includes as a requirement that only facilitative co-mediation is conducted with a gender balance on the side of the mediators and legal representation of both parties. Additionally, non-legal advisors, such as social workers, family violence specialists, counsellors or psychologists, are also permissible to take part in the mediation process. Given that the process is being conducted within the circumstances of an ongoing DV, the meetings may be conducted virtually and more caucuses may be required.

Phase 4. Post CFDR follow-up: upon obtaining parties' consent, a formal follow-up is conducted within 1 to 3 months from the final meeting and a second one within 9 to 10 months from process completion. This phase of the procedure is conducted by the DV expert and involves an ongoing specialist risk assessment to ensure family safety and an in-depth discussion on the family's needs. Subject to it, additional considerations may be raised about whether the process needs to return to CFDR and if ongoing support and counselling may be required for any or either of the parties.

[505] Given the high number of professionals involved in the process, its intensity in terms of the resources required is high. Hence, the multiplicity of this model, as much as its positive features are beyond doubt, is questionable. However, the beneficial outcomes and high rate of settlements achieved through this procedure would serve as the basis for advocating for its potential adoption and multiplication across the EU may be advisable.

4. CHALLENGES FOR FAMILY DISPUTE RESOLUTION PROCESSES IN THE EU AND POSSIBLE SOLUTIONS

[506] Based on the above overview of the existing EU legislation on family mediation and the outlined best practices currently existing in the field, the FDR practice may be summarized as challenging due to the lack of a single policy on its unanimous multiplication. Firstly, the lack of a single definition of the process of family mediation that is being practiced in the various member states renders the numerous differences and nuances to the role of the mediator in such proceedings and forms different parties' expectations thereto. Thus, a new and unified definition may be advisable to be adopted which would standardize the process and ensure its uniform character throughout the different states. One such definition may be the following:

> Family mediation is a process in which those involved in a family breakdown, whether or not they are a couple, have married, formed a common-law partnership or other family members, appoint an impartial third person to assist them to communicate better and reach their own agreed and informed decisions concerning some, or all, of the issues relating to separation, divorce, children, finance or property by negotiation.

[507] The term family mediation, especially when included in a new EU Directive, would ensure that there is consistency in parties' expectations from the procedure and a common understanding of the role of mediators and the requirements they have to

adhere to. The adoption of such a definition alone though would not address fully the discrepancies that exist today in the manner that FDR is practised. The latter should be considered jointly with the need for the adoption of a single methodology on the manner through which mediation should be exercised in the specific field of family relations. Such methodology has been coupled with the uptake of unified standards for the practice of EU family mediation, which include the manner through which children are involved in the process and the requirements for family mediators. This would help address the existing gaps and inconsistencies in applying various mediation process models and ensure that there is a unified standard for all processes. The standard should be rooted in the unified requirements towards the training and specialization of family mediators – a field that is currently highly patched by the differing requirements that exist which also impacts the free movement of mediators within the EU. It is hereby submitted that self-regulatory codes of conduct and ethical standards for professionals are no longer sufficient in ensuring the harmonization of qualification requirements and the necessary standards for process conduct should be regulated differently in an uniform binding manner.

[508] Separate from this, a new approach should be taken concerning the role of children in the mediation process. Currently, the patched legal map of Europe allows for variations in the integration manner of children in the procedure and renders it impossible for professionals to practice mediation across Member States. Therefore, it is advisable for a uniform model to be developed that includes children as intrinsic participants in the procedure. A suggested way for this would include an informative conversation with both children and parents present where the procedures and intentions of the meetings are described. Subsequently, the conversation would proceed between parents and children for approximately 20–25 min, whose purpose is:

- helping children understand the transition through which the family is passing;
- allowing space for children's feelings and reactions, and
- enabling the participation of the child in the process as an emanation of Article 12 of the UN Child Convention.

[509] The above should not be deemed to imply the actual participation of children in the procedure or the decision-making process. On the contrary, its premise lie in including children in joint conversations between children, parents and mediators, separate child conversations with the mediator and subsequent evaluation of the potentially agreed upon co-operation agreement within 6 (six) month afterwards. Such a model has been proven to show good results (McIntosh, 2000, p. 55 – 69 ; McIntosh, Wells, Smyth & Long, 2008, p. 105 – 124 ; Mayer, 2004, p. 29 – 52) and thus, their uptake and roll-out across the EU is advisable.

CONCLUDING REMARKS

[510] Besides mediation's intrinsic benefits like the flexibility of the process and its outcomes that preserve and strengthen relationships, there is a paradox that ADR and

mediation, in particular, remain underused in the field of family law. Part of the existing challenges lies in the lack of uniform legal regulation across the various Member States and the inconsistencies in the policies adopted for this on a national basis. These tendencies in no way were addressed by the Mediation Directive, which neither tackles family mediation specifically nor offers concrete solutions in this specific field. Still, there are numerous best practices for solving family conflicts that are emerging in various jurisdictions and which should be acknowledged for the positive results that they produce. Based on this a new, uniform methodology is suggested to be adopted concerning the conduct of family mediation and the standards that have to be warrantied across the Union and ensures high quality of the services rendered. To truly achieve this goal, the author of this article calls for convening a wider pan- European discussion to consider the need for a new Mediation Directive in the field of family disputes that addresses the challenges from the growing number of national and transnational disputes and a new, unified EU methodology is needed to handle such disputes.

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