

Mediation as a Way of Alternative Resolution of Disputes in Kosovo

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Abstract

This work tackles mediation in Kosovo grounded on the special Law for Mediation, which entered into force in 2008. The paper is going to discuss other provisions in other legal codes and provisions which foresee mediation as a mechanism for resolution of conflicts and disagreements in extrajudicial form in the civil and criminal field etc. As for the level in which implementation of mediation has arrived in Kosovo, will be a subject of review. Therefore, firstly it discusses the notion of mediation, followed by definition, history, legal regulatory, types, statistics of application, advantages, weaknesses, difficulties, subjective impressions of responsible people of this extrajudicial instrument as well as of mediators' practical experience, their recommendations for changes followed by its place and importance in the future.

Keywords: Mediation, Conflicts, Kosovo, ARD, Law

1. Introduction

Experience has shown that conflicts, respectively disagreements are natural and unavoidable in social life. Disagreements appear every day between various parties. When such disagreements appear, the state must interfere to resolve disagreements. About how the state is going to solve, there are various methods, therefore, consequently the purpose of this text

is to explain mediation in Kosovo and how it is structured, as one of mechanisms of the so called Alternative of Dispute Resolution (ADR).¹

In history of Albanians, for centuries the mechanisms of conflict and dispute resolution existed through mediation based on the so called "Canon". These mediations were based on the norms of customary law and they functioned as parallel mechanisms towards state institutions installed by occupying systems in Albanian territories. Therefore the key importance of this work is to argument the fact that giving opportunity to parties to resolve disputes through mediation based on their will is a new useful alternative, which is not grounded in Canon, but it is based on the Law on Mediation. This new institute is different from canon mediation especially from the point of view of decision making exclusiveness by the parties, as based on the Canon; this right was an exclusive competence of the so called "council of the elders".

Thus, mediation is an ideology, "Alternative Dispute Resolution" – abbreviated to ADR), advocating a new form of jurisprudence which means an alternative way of conflict resolution. We say that mediation happens when dispute or disagreement exists², which according to LoM; Article 2 Line 2 means "*Any dispute between entities to the right.*" In the text below mediation refers to confrontation of two or more parties, therefore they wish to resolve the conflict through this way through a neutral and credible party, negotiating the joint acceptable solution by all parties³.

1.1. Hypotheses

Considering the argument discussed above, the main research questions raised here are as follows:

- a) Has mediation been foreseen in each field of law?
- b) Is mediation of the current system of legal infrastructure implementable in practice, and what advantages does it bring to justice system in Kosovo?

¹ ADR comprises of Mediation which is regulated through Law no. 03/I-057 on Mediation (hereinafter LoM), announced by decree No. DL- 048 - 2008, dated 03.10.2008 and Arbitrage, Law No. 02/I-75) ("Law on Arbitrage") adopted on 26 January 2007.

² By "Disagreement" according to LoM Article 2 line 2 means "*Any dispute between entities to the right.*"

³ Compare: *Oboth, Monika / Seils, Gabrielle: Mediation in Gruppen und Teams. Praxis und Methodenhandbuch, Paderborn 2011, pg.19.*

- c) Where does the level of its application stand, (with tendency for stagnation or increase?)
- d) Is mediation a perfect instrument for resolution of conflicts or does it need to further be supplemented?

1.2. Methodology of work

In order to come to scientific results, several scientific methods have been applied such as those of interviewing mediation experts, statistical data analysis of Ministry of Justice in regard to frequency of application of mediation. As regards to the content of literature, a range of texts have been selected on mediation from the most known mediators. The basis of this scientific work is interpretation of Law on Mediation and other laws and regulations which have foreseen mediation as an instrument for extrajudicial conflict resolution.

2. Notion

There are various data available as to the notion of mediation since antiquity (China, Japan, Greece, Rome etc.). Its notion is considered to have derived from Greek language, e.g. terms: "*mesitis*", which refers to female mediator, and "*mesitaes*" which refers to male mediator⁴. In Latin language also there is a range of terms related to mediation, such as: "*mediare*", "*medius*", meaning of which is „standing in between“⁵. It is important to stress that the term of mediation, in Albanian language has the synonym of the „middle“, which referred to people entering in between a conflict for separation of parties from direct fight, be it the armed conflict, and also the person who carried out mediation of woman and man for entering into marriage relationship "*msiti*"⁶.

⁴ Compare: *Duss-von Werdt*, Joseph: Einführung in die Mediation, Heidelberg 2008, S. 12.

⁵ Compare: *Gielkens*, Leo: Mehr als Sieg und Niederlage, Mediation als Erziehung zum Gewaltverzicht in der Jugendpastoral, Berlin, 2007, S. 157; *Pfeifer*, Wolfgang (1999): Art. „Konflikt“, In: Etymologisches Wörterbuch des Deutschen, S.704; (*Pfeifer* 1999: Art. „Medium“, S. 854).

⁶ Compare: *Qerimi*, Islam: Mediation in Österreich, siehe auf der Homepage: http://www.polizei-newsletter.de/documents/2013_Qerimi_Mediation_in_Osterreich.pdf [07.02.2014].

3. Definition

Mediation according to Albanian language vocabulary is defined as: *“process in which a person takes initiative with intention of reconciliation of parties or to resolve disputed matters.”*⁷

Law on Mediation in Kosovo (hereinafter LoM) has defined mediation in Article 22. According to this definition *“Mediation is an extrajudicial activity conducted by a third person (mediator), for resolution of disputes between the parties to the right in accordance with the requirements provided for by the present law”*. Therefore we say that in general sense notwithstanding the specific legal regulations of various states foreseeing this institute for dispute and conflict resolution provided for by Article 9 (9. 1) and (9. 6) of LoM mediation includes conflict resolution, which usually is precedent to judicial process, which is intended to have an agreement reached between the parties found in conflict. But it must be emphasised that mediation as a process can also be conducted while a judicial process is ongoing until before the judicial process has been completed. Besides this, in conformity with Article 1 and 2 of LoM, mediation may be carried out even without addressing the court at all for deciding on a disputed matter, if law does not foresee the exclusive competences of the court or of any other competent state body.

Mediation is a very broad concept, and parties are given a lot of flexibility⁸. There are also people who think that issue of mediation should not be regulated by law at all. They say that a full liberty must be left to the parties in dispute to regulate and resolve their disputed matters in the best possible way as they may think of it⁹. However, this opinion was upheld by trade law, considering that such legislative rules would limit and impede the process of conciliation unnecessarily¹⁰.

⁷ *Modern Albanian Dictionary*, Academy of Sciences of Albania, Institute of Linguistics and Literature, Tirana, 2002, pg. 834.

⁸ “Flexible” in mediation procedure means: Existence of alternative options in many aspects, of the form and time of realisation, contribution of the parties, other supporters and mediators, for more details see: *Commentary of the Law “On Mediation for Dispute Resolution”* No.10835, Date 24.02.2011 Tirana, 2012 pg. 31.

⁹ Compare: *Holland*, Matthias Sören: *Mediation in Planungsverfahren auf kommunaler Ebene unter besonderer Berücksichtigung der Bauleitplanung*, Potsdam 2012, pg. 51.

¹⁰ *Mediation in: Program of System of conclusion of agreements and decisions in Kosovo (SEAD)*. Report and recommendation for development and successful and effective

4. Background

Mediation is not an unknown phenomenon for Albanians, too. Moreover, historically Albanians are known as people which has continuously worked for resolution of disagreements through mediation, through the so called "Canons" which were based on the customary law¹¹. This feature has found its grounding also in the Preamble of Kosovo Law on Mediation¹², which cites: "*Respecting the traditional history in Kosovo, and the aim for advancement of the legal system in Kosovo...*", hence it corroborates the finding that mediation has been extensively applied in Kosovo as well. But traditional mediation distinguishes significantly from the institutional mediation provided for by law.

In the Canon of Lekë Dukagjini¹³ amongst others, the traditional institute of mediation is recognised. In this function, it is foreseen that: "*Mediator is called he who interferes for bringing to an end the quarrelling, to avoid the situation out of which murder or any other destruction may result.*¹⁴ *A man or a woman may be a mediator, boy or girl, or the priest.*¹⁵ *Mediator can be called for a house, village to village, for flag to flag.*¹⁶ *If 100 people are killed on one side, and no killed person on the other side, once someone comes to mediate, the firearm ceases, fire shall cease.*"¹⁷.

From the abovementioned provisions of Canon of Lekë Dukagjini, the importance is clearly seen that Albanians paid to the institute of mediation.

After 1999, in a professional manner the NGO "Partners Kosova" dealt with the process of mediation in Kosovo¹⁸, which trained more than 350 attendants and has supported on resolution of over 200 cases, and a

implementation of the system for alternative resolution of disputes, 30 April 2010 USAID, page 23.

¹¹ May be it has been as a result of occupation for a long time, where through traditional mediation resistance was made to violent interim bodies and intending to resolve their disputed matters. Formoredetailsread: *Qerimi, Islam: Rolle und Herkunft des Kanun bei den Albanern*, 1. Aufl., Norderstedt 2010, S. 5 - 13.

¹² Law No. 03/L-057 on mediation.

¹³ *Father Gjeçovi, Shtjefën: Kanun of Lekë Dukagjini*, Prishtina, 2001, pg. 68-69.

¹⁴ *Gjeçovi, Sh.: Ibid*, § 667

¹⁵ *Ibid*, § 668

¹⁶ *Ibid*, § 669

¹⁷ *Ibid*, § 677

¹⁸ Partners Kosovais a Non-Governmental Organisation similar and related to International Partners for Democratic Changes which has extensive experience in mediation.

particular attention has been paid to training judges in the procedure of mediation¹⁹.

With the support of United States Agency for International Development and United Nations Development Program, opening of several mediation centres was enabled.²⁰ Important is the fact that Economic Chamber of Kosovo (ECK)²¹ and American Economic Chamber in Kosovo (AmCham)²², both have been centres for Alternative Disputes Resolution (Centre – ADR) for mediation and arbitration financed by USAID which are developed from 2011.

Therefore we may say that in Kosovo, taking into consideration that nowadays the world is experiencing hasty technical and technological development and market economy development, creation of efficient mechanisms is necessary, through which development of a fair mediation process would be developed.

5. Types of mediation

Types of mediation are as follow:

1. Mediation authorised by Court, in criminal and civil field;
2. Prosecution authorised mediation;
3. Private mediation, where parties do not submit the case to court or in Prosecution (self-referring);
4. Traditional mediation, where matters are resolved by unlicensed mediators based on customs, traditions and manners.

Amongst the main fields where mediation is applied are the following: Field of civil law (dealing with property and ownership conflicts, with those related to causing damage); Field of criminal law (accused – victim); Field of contentious law; Field of family law (split up, divorce); Field of heritage law; Mediation in schools (management of conflicts between pupils, and management of conflicts between pupils and educators);

¹⁹ "Partners Kosova"- Center for Conflict Management: "Partners-Kosova", see at: http://www.partnerskosova.org/index.php?option=com_content&view=article&id=68&Itemid=121&lang=sq [14.02.2014].

²⁰ Guidelines for transactions of international trade in Kosovo, USAID, November 2012, page 267.

²¹ For more details see at: <http://www.rks-gov.net> [22.02.2014].

²² For more details see at: <http://www.amchamkvs.org> [22.02.2014].

Conflicts of generations, between brother and sister, parent - child etc.; Mediation at work and economy (Conflicts inside a company; Conflicts between companies); Mediation on the public law; Between neighbours; Constructions, environment protection, planning and Conflicts between communities and inter-cultural conflicts, e.g. where culture is the cause of the conflict.

6. Legal grounds

Mediation institution in Kosovo is based and functions from below listed acts:

1. Law on Mediation -LoM;
2. Criminal Procedure Code-CPC (Article 232);
3. Code of Juvenile Justice - CJJ and (articles 14 and 15);
4. Some regulations and administrative instructions issued by Mediation Commission which operates within the Ministry of Justice.

Also laws referring mediation as a method for dispute resolution in contentious relations are as follows:

- Law on Obligatory Relations (LOR - Article 10);
- Law on Contentious Procedure (LCP - Articles 411 and 412);
- Law on Copyright and Related Rights (LCRR- Article 182);
- Law on Customer Protection (LCP - Article 34.5)and
- Law on Agricultural Land (LAL- Article 37).

The notion of mediation in sense of brokering, facilitation and service as mediators is also referred in other laws²³.

²³ Law on family (Article 160); Law on Privatisation Agency of Kosovo (Article 6, paragraph 1, point g); Law on weapons (Article 1, paragraph 46); Law on hotelier and touristic activity (Articles 7, 10, 39, 46); Law on internal trade (no. 2004/18); Law on wastes (4); Law on services of information society (Article 2); Law on trade of fuels and their products (Article 2); Law on Central Bank of the Republic of Kosovo (Article 2); Regulation no. 2004/2 for prevention of money laundering and related criminal offences (Article 6) and the Regulation no. 2006/47 on Authority of Central Bank of Kosovo (as amended by Regulation no. 2007/8).

6.1. Law on Mediation (LoM) and some regulations issued by Mediation Commission

Prior to approval of LoM, the mediation procedure was regulated by the Yugoslavian law of that time on the Contentious Procedure. In function of completing the legal infrastructure in the field of Alternative Dispute Resolution, the Republic of Kosovo through alternative ways in concordance with EU legislation²⁴ drafted and enforced in 2008 the Law on Mediation No. 03/L-05 which for its model took the Austrian Law on Mediation in civil - legal matters²⁵.

This law regulates the mediation procedure and foresees establishment of efficient mechanisms to make this system functional, by determining also the rights and obligations of the mediators. This law also expressly defines fields in which the mediation process can be undertaken in contentious, legal and ownership relations of the entities to the right, trade relations, family relations, job relations, other civil, administrative and criminal relations in which the parties may have their free will, in case a specific law does not foresee the exclusive responsibility of court or any other competent body.

6.1.1. Structure of mediation

LoM in articles 17 and 18 foresees appointment of a mediation commission which will consist of the following: One representative of the Ministry of Justice, one representative from Judicial Council, one representative from Prosecutorial Council, one representative from Chamber of Advocates and one representative from Ministry of Labour and Social Welfare.

As it may be seen, this commission consists of key stakeholders of social life, with exception of a representative of civil society who would need to be part of this commission. This commission has competences and responsibilities to issue certain acts with the purpose of making mediation system functional in Kosovo, including the Code of Professional Ethics²⁶,

²⁴ EU Directive 2008/52/EC.

²⁵ Law on Mediation of Civil - Legal Matters - Austria (BGBl. 2003, issued on 6. June 2003. (Bundesgesetz: Zivilrechts-Mediations-Gesetz - ZivMediatG).

²⁶ Code of Conduct of Mediators in the Republic of Kosovo, Nr. 01.927, 17.09.2010.

enlisting and removing the mediators from the list, and this registry will be forwarded to all bodies²⁷.

This commission has been established and functions within the Ministry of Justice, and it is currently working on completing the legal infrastructure as regards to secondary legislation. Further it functions for implementation of the law on mediation, Ministry of Justice has issued the Administrative Instruction for definition of mediator fee tariffs²⁸. In the course of mediation procedure development, there are expenses incurred in accordance with the Article 16 of LoM must be paid by litigating parties proportionately, unless parties agree differently.

This law does not regulate juvenile mediation matters and arbitrage considering that these two procedures are regulated by special laws, Code of Juvenile Justice²⁹ and respectively the Law on Arbitrage.³⁰

According to the applicable law, parties in a mediation procedure may be only natural and legal persons, but this legal provision excludes other parties which do not have the status of natural or legal person. Such parties are foreseen by Law on Business Organisations of Kosovo., such as Unlimited Liability Company is not a Legal Person³¹.

Law in question also foresees the mediation procedure, which can be conducted before or after initiation of judicial or administrative proceeding. According to this legal provision, for all disputes for which court exclusive jurisdiction is not foreseen or of any other competent body, the parties may institute the mediation procedure at any stage of procedure development before any of the bodies, seeking temporary suspension of the procedure, until the mediation procedure has been completed³². But in Kosovo practice on mediation, it is not yet sufficiently clear for the judges and prosecutors as to what cases are exactly suitable for mediation procedure and which are

²⁷ "Regulation on Registration of Mediators", Mediation Commission of the Ministry of Justice, 23.05.2011.

²⁸ Administrative Instruction issued by Ministry of Justice of Kosovo, No.05/2011 on the honorary of mediators applicable as of 29.07.2011.

²⁹ Code of Juvenile Justice of Kosovo -Code No. 03/ L-193, 8 July 2010.

³⁰ Law on Arbitration of Kosovo, No 02/L-75, OG 2008/37 v 10. 9. 2008.

³¹ For more details see: Law on Business Organisations, Article 48, No. 02/L-123, 17.05.2008, hereinafter Article 2.1 paragraph 14 defines "*Legal Person*" is a general expression which refers to a company, including trade organisation which has a special legal identity and separate from that of members or its shareholders.

³² Ibid in articles 9 and 10.

not considered as such, therefore a more detailed approach is required when amending and supplementing the law.³³

6.1.2. Initiative for instituting the mediation procedure and the act of agreement reached according to LoM

One of the parties of the conflict has the right to request from the other party to institute the mediation procedure, which may be considered as an offer, which if not resulting positively within the time limit of 15 days, it is considered that the party has not agreed to initiate the mediation procedure (Article 9.3.) And in case the parties agree for initiation of mediation procedure, thus agreeing also for mediator, the mediation procedure is instituted and to its maximum it may last for 90 days (Article 13). But there is a level of confusion in LoM as regards to initiation of mediation procedure, considering that the current applicable law provides for two options: the time when parties have signed the agreement to go through mediation for resolution of dispute. Considering that this formulation is not unique, non-exact definition of the time of beginning of the duration for dispute mediation, it may have direct impact in legal security of the parties and in the course of time limits in the procedure, therefore, not always in practice such a thing is exactly and accurately applied, especially by the staff working in centres, in this case by the administrators³⁴.

In all cases when mediation procedure has been commenced at a court or a competent body, if the body before which the procedure is taking place assesses as potential, settlement of the dispute in mediation proceeding may advise parties to seek the settlement through mediation (Article 9.5). This in no way implies that parties are obliged to agree with such a proposal (Article 10.1). Such a proposal may be submitted by court or the body where the mediation proceeding is taking place until the end of the procedure at that particular body (Article 9.6).

Before commencement of the mediation procedure, parties must sign a statement by which parties express their agreement for initiation of mediation procedure (Article 10.3). Agreement for initiation of the mediation procedure contains data for the litigating parties, their representatives, subject to disagreement, statement for acceptance of

³³ Interview with Lindita Ademi -Head of Mediation Commission, conducted by the authors of this work on 18 February 2014.

³⁴ Interview with Lindita Ademi -Head of Mediation Commission, conducted by the authors of this work on 18 February 2014.

mediation principles, and the provisions on procedure expenses, including the fee of mediator (Article 10.4). Thus, in harmony with Article 16 (2) of LoM on procedure expenses and the fees for mediators, the administrative instruction was issued³⁵. Article 2 point 2 of this sublegal act provides for the compensation fee for mediators, for the parties to decide on their agreement with the mediator. The basic level of compensation for one mediation case is the amount of 25€. Mediator and parties are free to agree for a higher amount of compensation should the parties agree. Whereas Article 3 point 3 of this administrative instruction foresees *“a meeting session with purpose of consultation and information to be held free of charge, nature and rights and responsibilities in mediation procedure”*. Until entering into force of this administrative instruction mentioned above, the Ministry of Justice had signed another administrative instruction dated 24 August 2008 which determined the fee of 150€ a day and 75€ for half a day, but as this instruction was not announced in the official gazette, it was not binding.

At the moment of initiation of mediation procedure, the mediator is obliged to deliver to court or the competent body one copy of agreement for mediation procedure, if the case has been in procedure before these bodies (Article 10.6).

Article 14 of LoM defines that mediation procedure is terminated or interrupted when parties have reached an agreement; when parties withdraw; when mediator in consultation with parties determines that it is unreasonable to continue; the mediator may terminate the mediation procedure if during the procedure the neutrality of mediator is in question or it appears; or when agreement that has been reached is not grounded on LoM.

Should the parties reach an agreement in mediation procedure, such an agreement has the value of an executive document and is subject to execution procedure in accordance with the Law on Executive Procedure,³⁶ whereas in cases when the matter is in judicial procedure, the agreement gains the power of executive title following its approval by the court or another competent body which has suspended the procedure with the purpose of opening the way to mediation procedure (Article 14.4).

³⁵ Administrative Instruction issued by Ministry of Justice of Kosovo, No.05/2011 on the honorary of mediators applicable as of 29.07.2011/29.07.2011.

³⁶ Law on Executive Procedure of Kosovo, No. 03/L-008, Article 6.1. This article determines: *“Means of execution are executive actions or the system of such actions, by which according to the law realise a credit coercively”*.

The Act of Agreement from mediation must be drafted in written in order to avoid any kind of misuse or misinterpreting thereof. Therefore Article 12.3 of LoM foresees that following the parties having achieved an agreement in mediation procedure, the mediator compiles a written agreement, which shall be signed by the parties and the mediator. Article 14 of LoM also foresees the legal effects produced by the mediation agreement. According to this Article, the agreement reached by mediation procedure has the power of a judicial agreement, if approved by court, prosecution or if that is certified by another competent body. According to this legal provision, another competent body implies notary,³⁷ who shall certify all reached agreements between the parties, in all cases in which a judicial procedure has not been initiated or any other procedure before any other competent body. It is of value to mention the fact that some courts till now have refused to approve agreements of the parties deriving from mediation procedure, and which are in contravention to Article 12.5 LoM and thus they have difficulty in their executive procedure.³⁸

6.1.3. Principles of mediation procedure

Mediation is led by several principles. One of fundamental principles for instituting a mediation procedure is *existence of will of the parties* (Article 9.1). This means that nobody can force the disagreeing parties to initiate a mediation procedure, or if such a procedure should such a procedure commence, the parties are free at any stage of procedure to withdraw. Having in consideration the fact that in a mediation procedure, the autonomy of parties' will exists (Article 3), the parties themselves should agree for the mediator who shall carry out mediation in their matter. Parties may agree to engage more than one mediator (Article 10.2). Also an important fact is that the beginning and same the end of mediation procedure depends exclusively on the will of contracting parties (Articles 3 and 10.1). In self-reference cases, although till now is considered that a small such number has appeared, difficulties have been faced as LoM refers only cases referred by the court, prosecution or other institutions, but it does not

³⁷ For more details see: Law no. 03/L-010 on Notary, announced by decree No. DL- 053-2008, date 06.11.2008.

³⁸ Interview with Lindita Ademi on 18 February 2014 by the authors of this work.

regulate referring of cases that are self-addressed by the parties for mediation.³⁹

Another principle of mediation procedure is the one which is related to *equality of parties* (Article 4). This means that none of the contracting parties is considered as privileged, or better to say it may not be treated as such. This due to the fact that in a mediation procedure we do not have a winner or a loser, thus both parties must come out as winners and be equally treated (win-win).

Another important principle of mediation is the *principle of neutrality of mediator* (Article 5). This means that the mediator as a third party, neutral and authorised mediates between the two parties intending to resolve disagreements, is obliged to be independent and unbiased from any kind of influence. Neutrality implies the fact that the mediator in mediation procedure dares not in any way to be biased, respectively to give privileges to one of the parties in conflict. Therefore, it is fairly said in literature that only what is reached by the will of the parties, should the mediator base the formulation of Agreement, considering that only their will based on this principle produces legal effects.⁴⁰

Another principle is also *principle of confidentiality and reliability* (Article 6), according to which mediator is obliged to keep confidentiality of all what he/she learns in the course of carrying out the mediation procedure. In contrary, should the mediator disclose confidential information of mediation procedure illegally, thus he/she would misuse his official duty; the mediator shall be convicted for criminal offence in accordance with the Criminal Code of Republic of Kosovo⁴¹. Mediator must also be reliable for the parties in conflict and must create the spirit of trust and understanding in relation to the parties. According to the law, no statement or similar information related to mediation procedure shall be used as evidence in any other procedure without prior consent from the parties (Article 6.1. LoM). According to this principle, mediator, parties and their representatives are obliged to keep secrecy of mediation procedure, unless parties agree differently.

Amongst other principles of mediation is also *principle of urgency* (Article 7), according to which the mediation procedure needs to be carried out in

³⁹ Interview with Lindita Ademi - Head of Mediation Commission, conducted by the authors of this work on 18 February 2014.

⁴⁰ Zartmann, Sylvie: Mediation im Arbeitsrecht, Dissertation. Köln 2003, S. 20.

⁴¹ Criminal Code of Republic of Kosovo -CCK, No. 04/L-082, Article 400 paragraph 1 - 4.

the shortest term possible, but in no way to last longer than 90 days (Article 13). Hence, it is obvious that LoM does not include the provision from UNCITRAL Model for mediation law from Article 6 which allows mediator to determine continuation of the procedure should the parties fail to agree. Therefore, Article 10.3 of LoM is understood as clarification of Article 9.1 of importance of the date of commencement of mediation because of time limitations, in duration of 90 days for mediation procedure.

6.1.4. Requirements to be a mediator

Various laws of different states foresee specific conditions to become a mediator. Some do not foresee specific conditions; some foresee that mediator must have higher education such as case of Kosovo is⁴² even despite the fact that at the beginning there were dilemmas because this criterion would exclude many persons that at that time served as mediators⁴³. But other criteria also exist which for exercising this duty do not decisively prejudice the university education of a mediator, but it is required specialisation for knowledge of basic legal and psycho-social principles in diverse fields of mediation⁴⁴.

Article 22 of LoM defines mediator as *“third party, neutral and authorised to mediate between two parties with the purpose of settlement of disagreements, in accordance with mediation principles”*. Article 22 of LoM has foreseen a range of criteria which need to be met by a candidate wishing to exercise the work of a mediator. Amongst others, mediator except general conditions for employment must meet the following conditions:

- a) To have university diploma;
- b) To have successfully passed the training course for mediation;
- c) To have mediated under supervision of a mediator in at least six sessions;
- d) To not have been convicted for criminal offence for which punishment over six months has been foreseen;

⁴² Ibid, Article 22 paragraph 2 (a).

⁴³ See: Program of System for Execution of Agreements and Decisions in Kosovo (SEAD). Report and recommendations for development and successful and effective implementation of the system for Alternative Dispute Resolution, 30 April 2010 USAID, page 32.

⁴⁴ See: BGBl. 2003, issued on 6. June 2003. Law on Mediation in Civil - Legal Matters (Bundesgesetz: Zivilrechts-Mediations-Gesetz - ZivMediatG).

- e) To have high moral qualities⁴⁵;
- f) To be registered in the list of mediators.

Definition of general conditions which are required to be met by a mediator has been done in order to have a selection of professionals of various fields, who have certain knowledge and skills for exercising the duty of mediator.

Ministry of Justice carries out licensing of mediators who fulfil conditions foreseen by this law.

A mediator can also be a foreign citizen in Kosovo in individual cases and according to the principle of reciprocity, following reception of prior consent from the Ministry of Justice (Article 26). This is also foreseen by majority of states and their laws on mediation.

One of important issues is that of trainings for mediators organised by Mediation Commission in cooperation with the Ministry of Justice⁴⁶. It is necessary when the list of mediators and mediator training participants is created⁴⁷ to make a categorisation of mediators based on what they mediate for, e.g. criminal, civil, administrative, family, economy, etc.

6.1.5. Role and duties of mediator

Role and main duties of a mediator is that he/she should be cautious at the beginning and to see whether a raised issue before him is under his scope of competence (Article 1 and 2), and he must also be careful whether the issue can be judged, respectively must have in consideration always the principle "ne bis in idem" meaning "not two times for one case". Before initiating the procedure, the mediator is obliged to notify the parties on the principles, rules, expenses of the procedure and legal effects of reached agreement in mediation procedure (Article 9.4.). In addition, mediator is obliged that at the moment he understands that there is a conflict of interests or in any circumstance his neutrality is in question, he is obliged to inform the parties and withdraw from the matter unless parties agree for the mediator to continue the procedure (Article 15). This means that even

⁴⁵ As for requirements a mediator must meet "high moral qualities" according to LoM it is not defined, and is considered to be quite subjective.

⁴⁶ Regulation for training and certification of mediators, No. 01.609, 23.05.2011.

⁴⁷ 100 day Report of the Ministry of Justice. In the first training for mediators there were selected candidates from majority of regions of Kosovo, whereas trainers were experts from Austria. See: <http://www.md-ks.org/?Page=1,179> [14.02.2014].

despite existence of such circumstances which put in question his impartiality, this does not mean that mediator should withdraw from the procedure if parties even after learning such circumstances agree to continue the procedure before the same mediator.

Considering that in Kosovo LoM is grounded also in the traditional right of resolving disputes, mediator must have a lot of knowledge besides knowing well the applicable legislation, must also know the tradition and customs of the respective country and the region. We say this because weak preparation of contacts by the mediator or more mediators (the so-called Co-Mediators) would influence negatively and deteriorate the relation between parties in conflict, as it is found in the literature that parties are able to quickly notify these flaws.⁴⁸ Therefore mediator must cultivate the feeling of friendship and trust between parties in conflict with purpose of successful conclusion of disagreements. Such a feeling we believe has been created in that way if a mediator⁴⁹:

- a) applies an objective and non-judgmental attitude;
- b) expressing calmness and control – based on the principle that the other person is more concerned and more sensitive than the mediator;
- c) expressing warmth and sympathy, but not to make promises which he cannot keep;
- d) building trust with the individual;
- e) seeking cooperation.

Differently from the judicial procedure, the result of this process stands wholly in hands of participating parties. Therefore we say that here is not the role of mediator to decide, but the parties themselves decide. As a summary of what was mentioned above, that the mediator should aim at finding the solution which is the most favourable for the parties. This means that the mediator does not have the right to accept agreement which would be harmful for the other party in conflict (Articles 21.1 and 12.2.).

⁴⁸ Compare: *Elsen, Tanja / Kitzing, Martina / Prof. Dr. Andreas Böttge: Begleitforschung zum Modellprojekt (durchgeführt im Auftrag des Bundesministeriums der Justiz) Professionelle binationale Co-Mediation in familienrechtlichen Streitigkeiten (insbesondere Umgang) Endbericht, Hannover, Dezember 2005, pg. 48 – 51.*

⁴⁹ *Restoring Justice and Mediation in Criminal Conflict Resolution, Manual for Judges and Prosecutors, Tirana 2007, pg. 46.*

Therefore, for a mediation procedure to be successful, mediator is obliged to find a neutral place where discussions would be carried out in order not to have any of the parties feel privileged, respectively discriminated. As for the role and duties of the mediator, that is clearly expressed in Article 11.2 of LoM, that in no circumstances he has the right to take the position of any of the parties but always must take care of rights and interests of both parties.

6.2. Mediation in criminal field

A specific field regulated by Law on Mediation is the one related to mediation in criminal field, which is related to mediation between the victim and suspected perpetrator of the criminal offence. According to Kosovo legal provisions in the criminal field, the institute of mediation is a process led by a neutral person who is capable of helping parties to reach an agreement and a resolution based on Article 232 of CPC⁵⁰, and Article 15 CJJ⁵¹. As mentioned earlier, based on LoM in the criminal-legal aspect it refers to extrajudicial activity which is realised by a third person (mediator) for dispute resolution between litigating parties in accordance with terms provided for by LoM.⁵² Mediation is recognised also in the criminal field.

6.2.1. Criminal Procedure Code (CPC)

CPC foresees the possibility of dispute resolution through mediation. Article 232rd paragraph (1) foresees that Prosecutor can submit the criminal report for a criminal offence which is convicted by fine or imprisonment up to three years to mediation. Before doing so, the prosecutor takes into consideration the type and nature of offence, circumstances in which the offence was committed, personality of the perpetrator and previous convictions of perpetrator for the same criminal offence or for different criminal offences and also the level of his criminal liability.

Precondition for initiation of a mediation procedure is existence of parties' consent. If the other party, in this case the damaged, within 15 days from receiving it does not respond to invitation, it is considered a rejection, respectively withdrawal from mediation procedure⁵³. When parties fail to

⁵⁰ Criminal Procedure Code (CPC).

⁵¹ Code of Juvenile Justice (CJJ).

⁵² LoM, Article 2.

⁵³ LoM of Kosovo, Article 9.3.

reach an agreement, Public Prosecutor may file a summary indictment, whereas in case an agreement has been reached, he rejects the criminal report and the injured loses the right to appear as a claimant pursuant to Article 62 of this Code⁵⁴. Therefore, mediator must notify the injured for losing this right before reaching an agreement pursuant to LoM.

6.2.2. Code of Juvenile Justice (CJJ)

CJJ contains a specific chapter which regulates the mediation procedure for juveniles⁵⁵. Thus, Article 14 paragraph 2 defines that prosecutor, judge for juveniles or the panel for juveniles may propose mediation if it is estimated that it will be suitable having in consideration the nature of the criminal offence, circumstances in which the criminal offence was committed, history of the juvenile, possibility of returning into normal relationships between the juvenile and the injured party, possibility of reducing damage of the injured party, the possibility of rehabilitating the juvenile and his/her re-integration in society. Therefore based on Article 14 paragraph 3 this procedure too has been foreseen to be conducted if parties express the consent for mediation.

6.2.3. Characteristics of mediation in criminal field

Application of mediation in criminal field also has some specific characteristics. Thus mediator must be very careful and as deemed necessary to have individual meetings with the perpetrator of the criminal offence and its victim, listening carefully the story of each party, encouraging the parties in conflict to find a fair solution for both parties. Through such individual meetings, mediators aim at collection of information about the manner and circumstances of perpetration of the criminal offence. Mediator should encourage parties to leave aside the bitter past for both parties and to see towards the future and the perspective ahead.

Upon reaching an agreement through mediation, parties agree not to initiate a criminal procedure, asking for apology by the perpetrator to the victim, compensation of damage in cases of damaging health, property etc. Court or prosecution can consider invalid the agreement reached through mediation, when coming to conclusion that agreement does not reflect the

⁵⁴ CPC, *ibid*, Article 233 paragraph 4

⁵⁵ For more details see: Code of Juvenile Justice, Chapter III.

will of parties in conflict, when their rights and interests are damaged, or when indemnification is obviously in disproportion to the damage caused⁵⁶.

6.3. Mediation in civil field

6.3.1. Law on Obligatory Relations (LOR)

Mediation as an institute of conflict resolution in civil field is envisaged by Article 10 of *Law on obligatory relations*, which foresees that conflict resolution is conducted through peaceful manner⁵⁷. Based on this Article “participants in an obligatory relation shall try to resolve disputes through negotiation, mediation or in any other manner based on participants’ agreement”.

6.3.2. Law on Contentious Procedure (LCP)

Law on Contentious Procedure foresees a special form of mediation, which is called Judicial Settlement,⁵⁸ where parties are given the opportunity to agree with each other and thus the court renders a decision based on agreement by the parties for dispute resolution. This law foresees mediation regulated by a special law, while court sessions continue to be regulated by the Law on Contentious Procedure. Law on contentious procedure in force has more specifically foreseen that⁵⁹: “Should the court find necessary such a thing, then, latest in the preparatory session, taking into consideration the nature of the dispute and other circumstances, proposes to litigating parties to resolve their dispute through mediation procedure, regulated by a special law. Resolution of dispute through mediation may be proposed also by the parties themselves upon their agreement for this. Such proposal may be made by the parties until conclusion of the main trial session for the matter”.

6.3.3 Law on Copyright and Related Rights (LCRRR)

Also the *Law on copyright and related rights* issued through UNMIK Regulation no.2003/L-26 contains mediation provisions. Thus, Article 182 foresees collective associations and representatives of users may apply

⁵⁶ LoM, Article 14.5.

⁵⁷ Law on Obligatory Relations of Kosovo, Law No. 04/L-077v, OG / No.16/19.06.2012, Pristina.

⁵⁸ See Article 3.2 Law on Contentious Procedure, Law No. 03/L-006, GZ 2008/38v20.9.2008, Pristina.

⁵⁹ Ibid, Articles 411 and 412.

mediation for settlement of certain disagreements. Further on, in Article 169 this law has determined similar principles for mediation as regards to independence, neutrality of mediation, confidentiality and limited time frame in the same way for this procedure.

6.3.4 Law on Agricultural Lands (LAL)

Also the *Law on agricultural lands* which was issued through UNMIK Regulation no.2006/37 in Article 37 has enabled mediation for dispute resolution between the parties for leaving agricultural land if parties agree for mediation. Almost all principles valid at LoM apply also in this law with exception that here it must have valid authoritative qualities and to have knowledge in the field of agriculture.

6.3.5. Law on Customer Right (LCR)

Provision on mediation also mentions *Law on customer right*. This law initially was issued through UNMIK Regulation no. 2004/42, in Article 34.5 it authorises the Association for Customer Protection to undertake certain activities with the purpose of protection of customer interests, including here mediation between central bodies and customer and between seller and customers. This provision is also foreseen by Article 72 of applicable law on CR from 2012⁶⁰.

As a summary for the field of civil mediation, we may say that in one disagreement of civil-legal nature an original solution may be achieved, which is not regulated expressively by law, because these laws foresee free exercising of profession of trade and taking into consideration the supply-demand ratio in the market and the risks of honest competition, or taking into consideration rights and obligations of owners, neighbours and other persons.⁶¹Based on the statistics of mediation from Albanian state saying "*for offences of low importance and low social risk 68 percent of criminal conflicts are caused by a situation of civil - property, contractor conflict, causing damage etc.*"⁶², then this leads to a big lesson, where for prevention of a criminal conflict, early work is needed until they are of civil nature.

⁶⁰ Law no. 04/1-121 on Customer Protection, GZ/no. 32 20, 11.2012, Pristina.

⁶¹ Article 2 paragraph 2 of the Law on Obligatory Relations of Kosovo, Law No. 04/L-077v10.05.2012; Commentary of the Law "On Mediation, Dispute Resolution", no. 10835, Dt. 24.02.2011 Tirana, 2012, pg. 11.

⁶² Restoring justice and mediation in criminal conflict resolution, Manual for Judges and Prosecutors, Tirana 2007, pg. 61.

6.4. Other laws with provisions on mediation

The most important provisions are related to mediation are foreseen also by the following laws:

- i. *Law against discrimination* which was issued through UNMIK Regulation no.2004/32 has foreseen the possibility of mediation in Article 7.4, which determines that “any kind of mediation or reconciliation procedure can be used as available by applicable law based on choice by complainant or complainants, to treat violations of this law.”
- ii. *Law on Ombudsperson in Kosovo* issued through UNMIK Regulation no. 2000/38, as amended through UNMIK Regulation no. 2006/06 has authorised the ombudsperson based on Article 4.2 to use the right for mediation, reconciliation and settlement which needs to be in concordance with LoM.
- iii. Provisions of mediation have also been foreseen by Article 9.1 (i) of *Regulation on Commission for Legal Aid* which was issued through UNMIK Regulation no. 2006/36 which is dedicated to persons who are qualified or take the social assistance or those in similar financial state.

7. Statistics of mediation (2012 - 2013)

Cases presented below refer to programs of mediation by judges, prosecutors, probation service clerks, lawyers of victims, defence counsels of minor offenders, victim-minor offender by interested parties themselves to resolve extrajudicial matters (self-referring) etc. Based on these statistics⁶³ of Ministry of Justice in relation to frequency of application of mediation in Kosovo for years 2012 - 2013 the fact is verified that this institute has started to be applied also by Kosovo justice institutions.

⁶³ Statistics of Ministry of Justice of Kosovo related to mediation for years 2012 and 2013, see: http://www.md-ks.org/repository/docs/06_12_2013-Web_faqe_2012--Janar-Nentor_2013.pdf [10.02.2014].

Table No. 1 List of cases referred to mediation in Kosovo for 2012

2012	Prishtina	Ferizaj	Gjakova	Peja	Gjilan	Total
Cases referred by court	-	14	14	57	77	155
Cases referred by prosecution	1	-		-	-	1
Cases with reference	6	6	10	-	-	22
Total referred for mediation	7	20	24	57	70	178
Resolved in total	3	5	10	22	36	76
Not resolved	4	9	8	20	22	63
In process (the figure of total varies)	-	6	6	15	12	39

Above data testify that in 2012 no case has been referred for mediation from the level of Court of Prishtina, whereas they have mainly been referred by Gjilan Court - 77. Whereas as regards to success for resolution, the fact is verified that the highest number has been resolved in Peja, considering that from 57 cases referred from Court for mediation, all have been resolved.

Table No.2⁶⁴ List of cases referred for mediation in Kosovo for 2013

2013	Prishtina	Ferizaj	Gjakova	Peja	Gjilan	Mitrovica	Total
Cases referred by court	86	139	57	75	70	4	431
Cases referred by prosecution	74	-	6	-	-	-	80
Self-referred cases	2	7	3	-	-	7	19
Referred in total for reference	162	146	66	75	70	11	530
Total resolved	145	40	34	28	45	11	303
Total not-resolved	3	21	24	19	17	-	84
In process (total figures)	-	2	4	86	9	-	63

⁶⁴ http://www.md-ks.org/repository/docs/Evidenca_2013,_publikimi_per_web_faqe.pdf [22.02.2014].

In this table, it is obvious that the highest number of cases referred from court was from the court of Ferizaj, whereas as another characteristic is also the fact that the court of Mitrovica has referred the first cases for mediation. As for references from prosecution, the highest number was from Prishtina 74. Based on self-reference in whole Kosovo, there were 19 cases.

Hence, if data is compared from both tables presented above, it is noticed that in the last year there were less cases of self-reference compared to one year before. Furthermore it is noted that the highest number of mediations have been resolved by the court in Prishtina, in total 145. As regards to the grand total of referred cases from the court of Kosovo, it is noted that in the first year they referred 155 cases whereas in the last year they referred 431. As regards to reference in prosecutorial level, a big difference is noticed. Thus, while in the first year there was only one such case, in the last year there were 80 such cases. Whereas as rounding of these details it is evidenced the fact that while in 2012 in total there were 176 cases referred for mediation, and there were resolved 78, in 2013 530 cases were submitted out of which 303 were resolved. As regards to the prosecutorial level, a fact is seen that the highest number in the last year came from Prishtina 74.

Therefore, from abovementioned data, we come to conclusion that disputes and disagreements between the parties in the last year began to be treated through mediation procedure, and the number of applications has started to increase in all levels of justice institutions of justice for the municipalities of Kosovo. But it is noticed that the number of cases with self-reference is still low.

8. Advantages and disadvantages of mediation

8.1. Advantages

Majority of those dealing with mediation represent opinion, that reasons of application of mediation are of various types, but the most important ones are time, financial aspect, emotional and informality. Further on, practice has shown that agreement reached through mediation is more sustainable than agreements reached through judicial procedure. This is because in judicial processes always one party is a loser, whereas in mediation procedure both parties come out as winners. Therefore, it is correctly considered that mediation is the most efficient manner for dispute resolution, as it is the only legal institute where both parties are winners

despite all other procedures, where always one of the parties is a loser and unsatisfied⁶⁵.

Mediation in Kosovo also can achieve to facilitate the job of courts from cases which are not very important which very quickly and in a right manner could be resolved in extrajudicial manner, as in the end of 2013 it is considered that there were over 220.000 unresolved cases in courts of Kosovo with a tendency of increasing⁶⁶.

Mediation has many advantages compared to judicial procedure. These advantages in literature can be summarised as follows⁶⁷:

- Flexibility of mediation procedure is considered as an essential advantage of conflict resolution in relation to judicial procedure;
- The cost of procedural expenses is significantly lower than judicial settlement, for the parties and for the public too.
- The matter is kept under control. When parties are in a mediation procedure, they have the result under their full control. Therefore, we say that both parties come out as winners from mediation as to difference from judicial procedure;
- There is no specific place where mediation is to be carried out, or there is no strict procedure, as this matter is decided by the mediator and the parties;
- In general there is an opinion that resolution of problem through mediation is much better, do that in future good relations are built

⁶⁵ For more detail see: "Elezi, Ismet: "Knowledge on the Pan-Albanian Law", Prishtina, 2003.

⁶⁶ Interview given for Free Europe by Fejzullah Hasani, President of Supreme Court of Kosovo, on 19.11.2013. See at: <http://www.evropaelire.org/content/article/25173095.html> [12.02.2014].

⁶⁷ *Spindler*, Gerald: *Gerichtsnaher Mediation in Niedersachsen: eine juristisch-rechtsökonomische Analyse, Abschlussbericht im Auftrag des Niedersächsischen Ministeriums für Justiz und des Niedersächsischen Ministeriums für Wissenschaft und Kultur*, Göttingen 2006, pg. 129 - 130. *Krahaso: Möhn*, Heinz: *Geschichte und Denkmodelle der Mediation*, Berlin 2012 pg. 51- 52; *Fritsch*, Martin: *Mediation im familiengerichtlichen Verfahren*, Hamburg 2010, pg. 28; *Weitz*, Tobias Timo: *Gerichtsnaher Mediation in der Verwaltungs-, Sozial- und Finanzgerichtsbarkeit*, in: *Schriften zum deutschen und europäischen öffentlichen Recht*, herausgegeben von Steffen Detterbeck, Frankfurt am Main 2008, 76 ff; *Restor ing justice and mediation in resolution of criminal conflicts*, Manual for judges and prosecutors, Tirana 2007, pg. 71; Compare: *Wenzel*, Claus: *Konfliktbearbeitung durch Mediation aus berufspädagogischer Sicht. Theoretische Grundlagen, Qualifizierungsansätze und Umsetzungsempfehlungen für mediatives Arbeiten in der Schule*, Kassel, (Univ., Diss. 2008), pg.112, see in online version: <http://www.uni-kassel.de/upress/online/frei/978-3-89958-437-0.volltext.frei.pdf> [13.02.2014].

between the victim and the perpetrator of the criminal offence, than taking it to court for decision, where the perpetrator is found guilty. By such a resolution of disputes, especially in the field of criminal law, it comes to conclusion and we may also say to curing of consequences which have been caused as a result of the criminal offence

- Execution of mediation agreement is done much better than through court decisions, as both parties have agreed to such a solution without imposing to any of the parties, different from judicial decision by which in principle not only one party is satisfied, but there are many cases where both parties are unsatisfied, etc.
- Compensation and other liabilities, it is likely that they are more completed by following a mediation process, than as response to an order issued by court.
- Matter remains confidential.

8.2. Disadvantages

As regards to weaknesses of this institute, the following opinions exist in literature:

1. In case of not having success, the parties shall turn to judicial process, thus the time invested in this period shall not be considered as saved time, but as a lost time⁶⁸.
2. Research has shown that pressure over parties for mediation against their will is not effective and it can artificially increase the severity and prolongation of conflict⁶⁹.
3. In case of unsuccessful conclusion, (at non-fulfilment of damage compensation obligation) or interruption of mediation in the criminal field, for the perpetrator of criminal offence may have negative effects when measuring pronouncement of judicial decision by the judge although it is not clearly seen in it⁷⁰.

⁶⁸ Compare: *Weitz*, Tobias Timo: *Gerichtsnaher Mediation in der Verwaltungs-, Sozial- und Finanzgerichtsbarkeit*, in: *Schriften zum deutschen und europäischen öffentlichen Recht*, herausgegeben von Steffen Detterbeck, Frankfurt am Main 2008, pg. 78.

⁶⁹ Compare: *Restoring justice and mediation in resolution of criminal conflicts*, Manual for judges and prosecutors, Tirana 2007, pg.36.

⁷⁰ Compare: *Kaspar*, Johannes: *Wiedergutmachung und Mediation im Strafrecht*. *Rechtliche Grundlagen und Ergebnisse eines Modellprojekts zur anwaltlichen Schlichtung*, Bd.1,2004, pg. 267.

9. Mediation in practice

Kosovo mediators with their statements taken from their interviews explain about development, functioning, difficulties and concerns which have followed mediation during these years in Kosovo practice⁷¹. They expressed that there is **progress** in: institutionalisation of this process and raise of awareness of citizens to understand mediation as an efficient and quick process. Whereas **difficulties are**: cooperation not in required level of courts, prosecutions and other institutions for referring cases to mediation; the role of lawyer in mediation process. Although lawyer knows law on mediation, he/she does not apply it in process, behaves as if he were in a court session, does not bring the party, and that causes obstacles for reaching the agreement. Of course the material condition is in question; insurance companies are not conscious, do not come to certain sessions and they are rigid in case resolution; referring cases from court (judges) is not in adequate level, the number of mediators is high but they do not have cases, whereas judges shelves have lots of pending cases; non-compliance of law by institutions referring cases to mediation, especially Article 1 point 1.1, and 1.2 where it says that law determines rules of mediation procedure in legal - property, trade, family, work, dispute relations of the parties and other civil relations, administrative and criminal; this article of the law is not being implemented in the same way by the mediation centres, e.g.: Mediation centre in Prishtina has only criminal cases, the centres in Peja and Gjilan have only civil cases.

Kosovo mediators recommend that these actions of mediation in future bring successful results:

- Before amendment of the law, first it must be implemented and afterwards we see where the deficiencies are;
- A higher care of Ministry of Justice;
- A higher efficiency of Commission of mediation based on obligations deriving from the law;
- Visits of the commission in mediation centres must be more frequent, where the commission shall be notified about the successes of mediators or for difficulties during their work;

⁷¹ Interview conducted by authors if this work on 13 February 2014 in Peja with Mr.Sc. Avdyl Hoxha, mediator and Haxhi Iberdemaj, mediator.

- Regulation on fees must be amended, as the amount of 25€ for one case, maybe 5-10 sessions are needed, and the amount is low.

10. Recommendations and conclusion

Based on the current social, political and economic circumstances existing in the new state of Kosovo, there are many ownership, family, criminal, property, economic conflicts, we say that the judicial solution, considered as the only potential form of dispute resolution, must also leave ay for new rules, which also are legal and cover a limited number of criminal matters. This needs to be promoted because:

- the new state of Kosovo has weaknesses in law enforcement, there is corruption in justice bodies and a large number of citizens have lost their trust, and there is tendency of self-judgement reappearance.

Institutionalisation of mediation as an extrajudicial manner for conflict resolution in various fields would impact on fast, efficient solution with low expenses of conflicts appearing everyday as a result of dynamics of social life.

This would impact also on increasing efficiency of work of judiciary in general, as many judicial cases would be resolved through mediation procedure still without going to prosecution, court or other competent bodies varying from the nature of the case.

Mediation Commission must be more effective, engaging in intensive manner in making functional this alternative mechanism of conflict resolution.

Legal infrastructure must be completed, by issuing all necessary sublegal acts which derive from the law on mediation.

Public opinion must be sensitised in the Republic of Kosovo regarding the opportunities that mediation and mediation procedure offer, through different debates with the public, leaflets, television spots etc. Thus trust of citizens would be created in the mediation system, and thus avoiding the traditional mediation and self-judgment.

Courts, prosecutions and other competent bodies must be encouraged to advise parties as much as possible for their disputes to be resolved through mediation, in concordance with applicable legal provisions.

Rules for mediators must be respected in strict manner, noncompliance of which would need to be punished by lifting their licence, but conditions would need to be specified in advance.

Ministry of Justice must create special mechanisms for supervision and control of work and activity of mediators and other free professions.

Sufficient cadre needs to be trained and promoted by all ethnic groups, and also distribution of mediators must be proportionate to the number of inhabitants e.g. in every 20000 inhabitants one mediator, but they are not limited to work only in a certain place, they are free to mediate in the whole territory of the Republic of Kosovo, depending on the requests from interested parties.

In the issue of mediation, we represent the opinion, which must not have many written rules and conditions, as mediation is an extrajudicial procedure which is conducted based on the will of the parties. In addition, setting very specific conditions may limit persons who have tendency to become mediator, and have reputation in society, but they may not be able to meet the conditions provided for by law. This does not mean that everybody can become a mediator, but conditions and procedure of mediation must be very flexible.

Specialised trainings need to be held for all fields in which mediation is conducted and why not profiling of mediators. In conclusion of this work, we consider that mediation services in Kosovo must have the sufficient autonomy to carry out their duties.

We say that hypothesis related to the matter whether there is increase of mediation in Kosovo, it is verified that it has.

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Interviews

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