

**ALTERNATIVE  
DISPUTE  
RESOLUTION  
IN FIVE  
EUROPEAN  
COUNTRIES**

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# Czech Republic

## **Definition of ADR in the Legal System**

There is no definition of ADR in the Czech Republic. ADR in the meaning of ALTERNATIVE DISPUTE RESOLUTION comprises special methods and processes of settling disputes by means other than litigation. Arbitration, Mediation and Conciliation are defined and set out by the relevant legal acts. Czech legislation defines mediation in terms of penal, commercial, family and civil matters. In the Probation and Mediation Service Law which rules the penal mediation, the definition of the mediation in the criminal offender-victim cases can be found. The new Mediation Act which entered into force on 1st September 2012 defines the „mediation“ and „family mediation“ as follows : Mediation is a procedure for resolving conflict with one or more mediators who promote communication among persons involved in the conflict in a way to help them to reach an amicable settlement of their conflict stipulating the mediation settlement. Family mediation is a mediation focused on resolving conflicts resulting from the family relationships.

## **Legal Framework – responsibility, competency and impacts of single agreements**

Conciliation and conciliation process generally has no special legal requirements. Civil Procedural Code (Act No. 99/1963 Coll., as amended) regulates the right to demand the conciliation process in the court in Article 67. The Approval of the Conciliation Agreement according to the article 99 of the civil procedural code is also allowed in the open litigation process. Judicial Approval of the Conciliation agreement has the same legal impacts as the judicial sentence including the direct enforceability. Special reduced fee is ordered for judicial conciliation procedure as well as for the judicial approval of the conciliation agreement resulting from the mediation. Written form and legal requirements for conciliation agreements are needed only in judicial conciliation process.

Arbitration in the Czech Republic is governed by the Act No. 216/1994 Coll., on Arbitration Proceedings and Enforcement of the Arbitral Awards, as amended, that came into force on 1 January 1995. The Act provides definitions and rules regarding arbitration proceedings, arbitration agreement and the enforceability of the arbitral awards. Any property disputes could be subject to arbitration, except for the disputes relating to enforcement of decisions and some disputes arising from

bankruptcy procedure, provided that both parties agree thereupon. Special competency rules have been valid for arbitrators in consumer's disputes since the last amendment of the Arbitration Law in 2012. Only arbitrators registered in the Consumer Arbitrators Register kept by the Ministry of Justice are allowed to arbitrate the consumer's arbitration disputes.

Mediation in penal cases is governed by the Act No. 257/2000 Coll., on Probation and Mediation Service, as amended, entered into force in the 1st January 2001. The aim of the penal mediation is the integration of the offenders, participation of the victims and the protection of the society. Probation and Mediation Service (PMS) is a state agency directed by the Ministry of Justice. Its employees – officers of the PMS actively promote the development of the restorative justice. Penal mediation is linked with the penal procedure and its results are regarded in the penal judgements and decisions.

Mediation in other than penal cases is regulated by the newly adopted Mediation Act, Act No. 202/2012 Coll. of Laws, valid since 1st September 2012. The Act provides legal impact of the open mediation process and the terms for registration of so called registered mediators. The Register of Mediators is kept by the Ministry of Justice. Mediation procedure is initiated with the conclusion of the Contract on Performance of Mediation. A mediator shall perform mediation procedure personally, independently, impartially and with due diligence. Contract on Performance of Mediation may not be confidential, unless the parties agree so. Parties themselves are responsible for the contents of the final Mediation Agreement. Mediator is obliged to keep the strict confidentiality about the mediation procedure and about all documentation. He or she is prohibited to testify as a witness in possible judicial procedure, nor provide any documents connected with the past mediation. Successful mediation ends by concluding of a Mediation Agreement. The Mediation Agreement is not an enforceable title. It is like any other common agreement. If the parties to it need an exequatur they should apply to the court or ask notary or an executor. If a mediation procedure begins under the valid Contract on Performance of Mediation, the term of prescription of individual rights shall cease.

#### **ADR services – Conditions for the ADR services performance**

There is no compulsory mediation in the Czech law, neither for penal nor civil cases. The only exception the law provides for is the possibility to order the parties to take the first appointment (for maximum three hours) with a registered mediator. Judge shall decide that remuneration of a registered mediator for people in social need would be paid by the state.

The mediator's fee in the ordered appointment is limited to the amount of 400 Czech Crowns for one hour ( approximately 15 EUR/1 hour).

Mediation services are performed also in a traditional way as so called Collaborative Approach, Facilitation, Conflict Management, Integrative Resolving Dispute and others. Different approaches and styles of mediation are offered to the public and state authorities. Association of Mediators of the Czech Republic (Asociace mediátorů ČR ), [www.amcr.cz](http://www.amcr.cz) and European Institute for Reconciliation, Mediation and Arbitration (ESI, o.p.s.), [www.esi-cz.eu](http://www.esi-cz.eu) are the best known private providers of ADR services, including mediation and professional education and trainings. Conferences, workshops and seminars for communication and mediation techniques and skills are organized and offered by variety of private and university subjects.

Collaborative Law and Collaborative Practice are known by limited number of advocates and professionals.

### **Qualification, training and registration**

No special qualification or training is requested for negotiation, conciliation or even arbitration. Complex and qualified education in different branches (law, psychology, sociology, theory of conflict, communication, mediation) is prescribed by the law for registered mediators. Exams for mediators are governed by the Decree no. 277/2012 Coll., on exams and fee of mediators. Exams for advocates registered in the Czech Bar are provided by the Bar exclusively, which also have the disciplinary control over the registered mediators – advocates. Registered mediators – advocates are not allowed to provide legal services in conflict, in which he/ she governs mediation or was involved in the preparation of the mediation.

### **Perspectives and vision in the future**

Systematic state and local government support for expanding Mediation and ADR in different types of conflict starts to develop in the Czech Republic. The new civil legislature in 2014 and the increasing number of civil and administrative cases, also seriousness of conflicts in society, give further motivation factors for wider application and usage of Mediation and ADR methods in practice. There is a sufficient number of specialists ready to support this process and participate in it actively. However organized, nationwide and systematic public promotion of ADR methods will be much desirable.

# Slovakia

## **The definition of ADR within the legal framework of Slovak jurisdiction**

There is no one definitive definition of ADR in the Slovak Republic's legal code. There are various laws, however, which cover out-of-court resolution of disputes either through mediation or arbitration.

As far as the institution of mediation is concerned, we can currently find in the Slovak legal environment various definitions of the term, the existence of which reflect on the far-reaching uses of the institution. The differences in these legal definitions show the need for them to be fully and properly understood and distinguished within their various legislative contexts, with especial reference to basic differences in the organization and effects of mediation as well as the status of those people practising it.

According to the purposes of Act no. 420/2004 Coll., mediation is understood as an out-of-court activity in which parties involved in a dispute arising from a contractual or other legal relationship use the help of a mediator in solving their dispute.

Act no. 550/2003 Coll. about Probation and Mediation Officers gives a legal definition of mediation for matters dealt with during criminal proceedings. In this case mediation is defined as an out-of-court process of dispute resolution between an injured party and an accused party.

In response to the sharp increase in the divorce rate and worsening of familial relations during recent years, another form of mediation has also been legally codified as an expert means of solving family conflicts.

With effect from 1.1.2012, Act no. 327/2005 Coll. on Provision of Legal Aid to People in Material Need has been updated to cover matters relating to mediation. This law covers another dimension, specifically mediation provided by the state to people in material need.

Arbitration proceedings in the Slovak Republic are covered by Act no. 244/2002 Coll. on Arbitration. This law states that either one arbitrator or several may decide an issue if both sides in the dispute have reached agreement through a so-called arbitration agreement.

## **The legal framework (responsibility and competences of ADR provider, agreement and its effects)**

Act no. 420/2004 Coll. on Mediation covers disputes arising from civic and legal relations, family relationships, business and working relations, as well as crossborder disputes arising from similar legal relations, but does not cover disputes arising from rights and obligations

which the parties cannot tackle and which are dealt with in other specific legislation. Mediation begins with an official agreement on using mediation which is signed by the mediator together with the parties involved. The law states that this agreement must be registered in the Notaries' Central Registry. The agreement which is then made as a result of mediation has a written form and is binding for all parties. An authorized person may submit an application for a court ruling or application for distraint on the basis of this agreement if it complies with conditions laid out in the relevant regulations and is written in the form of a notarial record or approved as an accord before the court or other organ of arbitration. Mediators are obliged to display a high level of expertise and professionalism in their work and are liable for any damage incurred by the participants of the mediation caused by their activity.

Mediation in criminal matters, carried out in accordance with Act no. 550/2003 Coll. about Probation and Mediation Officers is a legally permitted form of dealing with crimes which aims to settle or at least temper a dispute caused by a criminal offence being committed and then remove or mitigate its unwanted effects. Mediation is not used to determine the guilt or innocence of the accused party, however. Mediation in criminal proceedings is mainly used when criminal charges have been conditionally dropped and/or parties have reached an accord.

Mediation as a special method aimed at mitigating conflictual situations in families, is according to Act no. 305/2005 Coll. on Social and Legal Protection or Social Curatorship focussed on settling conflicts within families. The course and result of this kind of mediation are not regulated by Act no. 420/2004 Coll. about Mediation.

On the basis of Act no. 327/2005 Coll. on Provision of Legal Aid to People in Material Need, mediation which is provided to such people is covered by Act. no 420/2004 Coll. on Mediation so long as the mediator leading mediation is in the register of mediators kept by the Slovak Ministry of Justice.

According to the law, arbitral proceedings are permitted in cases dealing with property disputes arising both in Slovak and international business and civil relations if the place of arbitration is in the Slovak Republic. Only disputes which participants can end with a consent decree before going to court may be decided within arbitration proceedings. The delivered arbitration verdict may not be revised and is as binding on the participants of the arbitration proceedings as a valid court order.

Modes and providers of ADR (requirements and conditions for carrying out ADR in relation to the provider and recipient of the service)

Act no. 420/2004 Coll. on Mediation states that mediation may only be carried out by natural persons – mediators – recorded in the register of mediators kept by the Slovak Ministry of Justice, who carry out this work as an occupation which is defined by special regulations, in their own name and at their own risk for the purpose of making a profit. Act no. 420/2004 Coll. on Mediation permits mediators to carry out their professional activities within a mediation centre established in accordance with the same act. At present there are approximately 740 mediators and 25 mediation centres registered with the Slovak Ministry of Justice. The Ministry enters into the register of mediators those persons who are fully eligible to conduct legal affairs, have obtained a university degree of the second level in the Slovak Republic, or have a notarized document confirming completed university education abroad, are without a criminal record and have a certificate proving they have received specialist training for mediators.

In accordance with Act no. 550/2003 Coll. about Probation and Mediation Officers, mediation in criminal matters may only be carried out by a probation and mediation officer who has the status of a court official and carries out their activities as a state employee. This act does not use the term ‘mediator‘.

In accordance with Act no. 305/2005 Coll. on Social and Legal Protection or Social Curatorship, mediation as a special means of mitigating family conflicts may only be carried out by employees of the Office of Labour, Social Affairs and Family who have completed an accredited training course for mediators.

In accordance with Act no. 327/2005 Coll. on Provision of Legal Aid to Persons in Material Need, mediation to such people is provided by a mediator designated by the Legal Aid Centre. This person must be either an employee of the centre with the qualifications required by Act no. 420/2004 Coll. on Mediation or entered in the register of mediators kept by the Slovak Ministry of Justice.

As far as arbitration proceedings are concerned, the law states that any natural person who the contractual sides agree upon may be the arbitrator. If a specific statute or the law on arbitration do not state otherwise, s/he must be adult, fully eligible to conduct legal affairs, should have experience of such work and should not have a criminal record.

**Regulation of ADR providers (content and level of training, further education, registration)**



Act no. 420/2004 Coll. on Mediation states that to be qualified to carry out mediation and to be eligible for entry to the register of mediators, a person is legally obliged not only to have a second level university degree but also to have completed an accredited training course and passed a specialist exam in mediation at an educational institution which is authorized to offer such an accredited educational programme. The powers of the Ministry of Justice in relation to mediators are concentrated in the area of registration and records of mediators, mediation centres and mediation educational institutions, also in the area of further education of mediators and their testing, if necessary.

A probation and mediation officer must fulfil the same requirements made of a public official, education in the field of probation and mediation being provided by the Judicial Academy.

An employee of the Office of Labour, Social Affairs and Family carrying out mediation as a specialized practice in accordance with Act no. 305/2005 Coll. on Social and Legal Protection and Social Curatorship has first to undergo special training in mediation. Employees of a Legal Aid Centre who offer mediation services must also have a certificate proving they have been specially trained for such work in accordance with Act no. 327/2005 Coll about Provision of Legal Aid to Persons in Material Need.

### **The current state of ADR in terms of use (statistics, propagation, media, forms of support, multidisciplinary cooperation, current trends)**

In recent years there has been more and more discussion in Slovakia about mediation, probation and ADR. Students of the helping professions have, as part of their final dissertations, submitted various research projects that reveal increasing public awareness of ADR. Informational programmes have been shown on television: in 2010, a programme about mediation called *...a just! (dohoda možná) (...now more than ever (agreement possible))* was shown, for example. A number of DVDs propagating mediation have been made in Slovakia, professional and academic conferences held, conference notes and instructions published and flyers for the general public distributed.

The extent to which mediation is used in Slovakia is hardly satisfactory, however. It seems that Slovaks usually prefer solving legal disputes in court rather than outside of it. In part this is a result of the fact that many judges and lawyers perceive mediators as competition, or as people not really qualified to settle such disputes. Also the principle of fulfilling obligations on a voluntary basis is still not natural to our culture

and has not yet really taken root in our young democracy. A mediation agreement is thus often seen as being less reliable than a court decision the violation of which will lead to sanctions.

### **A vision of the future?**

If ADR is to be more widely used in the future, the values it represents first need to become more established in society through a programme of public and specialist education. The theory and methodology of ADR should thus be included in the undergraduate and postgraduate education for all the helping professions as well as in the formal and informal education of citizens in general (for instance as part of pastoral teaching to believers during different periods in their life).

# Hungary

## **Definitions for ADR in the legal framework of Hungarian jurisdiction**

The Act 2002/LV. on Mediation<sup>1</sup> defines mediation to be a special non-litigious procedure conducted in accordance with the Act (see below the responsibilities) to provide an alternative to court proceedings in order to resolve conflicts and disputes where the parties involved voluntarily submit the case to a neutral third party (the mediator) in order to reach a settlement in the process and lay the ensuing agreement down in writing.

Act CXXXIII of 2006 on Mediation in Criminal Cases<sup>2</sup> provides a definition and the purpose according to the different context: „(1) Mediation proceedings means an *attempt to resolve conflicts resulting from a crime*, in an attempt to find a negotiated solution – fixed in writing – between the victim and the author of the offense, mediated by a *competent third person* (mediator) independent of the court hearing the criminal case, and of the public prosecutor, which might *mitigate the effects of the crime* and might *steer the defendant to abide by the law in the future*.(2) All mediation proceedings shall be aimed to reach an agreement between the victim and the respondent, *facilitating the contrition of the respondent*.”

## **Legal Framework (responsibilities and competencies of ADR provider, mediation contract and its effects).**

The Act on Mediation defines the responsibilities of the Mediator as „mediating negotiations between the parties *to the best of their abilities, in an unbiased and conscientious manner in order to reach an agreement in conclusion of the process*.” The Act also includes the *obligation of ensuring equal treatment* for all parties.

In addition to the above, the Act on Mediation in Criminal Cases continues: „the mediator shall proceed with *due respect for the dignity of the parties* during proceedings and shall ensure that the parties *treat each other with respect* as well”, it also emphasises *independency of the court hearing* of the criminal case and *strict confidentiality*.

The most important competencies for a mediator are named in the training specifications listed in the Decree on Professional Training and Post Certification Degree of Mediators as discussed later under Accreditation.

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<sup>1</sup> <http://www.mediationeurope.net/eng/documents/lawinhungary.pdf>

<sup>2</sup> <http://www.euforumrj.org/readingroom/Countries/Hungary/Hungarian%20Mediation%20Act.pdf>

In Hungary it is possible for parties to make the content of their agreement resulting from mediation enforceable. They can request the court or a public notary to incorporate the agreement into a judgment or an authentic instrument, which can be enforced afterwards.

### **ADR schemes and providers (preconditions and conditions for performing ADR in relation to providers and recipients, payments)**

Mediation is *voluntary*, only applicable if both parties agreed so. However, to apply mediation as an alternative to court decision is only possible when the *parties are not bound by statutory provision*.

As for the providers, natural persons and the employees of legal persons become *entitled to engage in professional mediation* as of the date on which they are officially admitted in the register.

Once all preconditions mentioned above are fulfilled, the last one is to *avoid conflict of interest*, as it is specified in the Act on Mediation.

The conditions of providing mediation to recipients are specified in the Act on Mediation, beginning with the *obligation of confidentiality* (regarding any and all data and information obtained in a mediation process even after the termination of the professional mediation activities), continuing with the commencement of the session with the mediator *informing the parties* as specified in the Act and in some extent including the above mentioned *responsibilities* of the mediator.

The rules governing the different types of proceedings set out clearly the system of payment of the costs to be borne by the parties. In certain cases the parties are free to agree on the fees and costs incurred in the proceedings, while in other cases the amounts are specified in legal regulations.<sup>3</sup>

### **Regulation of ADR providers (content and extent of trainings, continual education, registration)**

According to the Act on Mediation *Ministry of Public Administration and Justice* is responsible for the registration of mediators.<sup>4</sup> To be able to register as a mediator, the Act on Mediation specifies that the applicant<sup>5</sup> needs to) have a degree in higher education and at least five years' experience in the respective field from the time of obtaining the said degree; b) provide proof of having completed the professional training course decreed by the minister for mediators; c) have no prior criminal

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<sup>3</sup> [http://ec.europa.eu/civiljustice/adr/adr\\_hun\\_en.htm](http://ec.europa.eu/civiljustice/adr/adr_hun_en.htm)

<sup>4</sup> direct url: <http://kozvetitok.irm.gov.hu/>, central link: <http://igazsagugyiinformaciok.kormany.hu/kozvetitok>

<sup>5</sup> in case of a natural person (for legal persons the criteria are different, see the Act on Mediation)

record and not be restrained by court order from practicing the activities of mediators.

According to the Decree 63/2009. (XII. 17.) on *Professional training and post certification degree of mediators* in order to register as a mediator, the applicant must have completed *a*) a 60 hour theoretical unit with specified content (understanding and skills of: conflict theory basics, basic negotiation practices, mediation techniques and methodology, process engineering and dynamics, inquiring techniques, mediation techniques adequate for different levels of conflicts, handling of problematic actors, [basic] psychology, and the legislative background for mediation) and *b*) a practical unit consisting of a fully completed, mediated case and its feedback from the trainer - either in the form of 1) simulation, or 2) real mediation with a mentor, or 3) involvement in a case study group, or 4) writing a case study based on a real and own-mediated case, or 5) participating in a method-oriented supervision of a case mediated before.

The decree also specifies the professional standards of the training provider regarding required professional experience, the maximum number of students in one group etc..

According to the Act on Mediation, natural persons are required to participate in continuing professional training programs. The continuing professional training program is comprised of consecutive education cycles arranged in a sequence *over a period of five years*. The person required to participate in continuing professional training shall attend either of the training courses specified in the decree of the minister as to comprise a part of the continuing professional training program, and shall provide proof of having completed the said training course to the minister.

### **Current status of ADR in terms of its use**

The different forms of ADR are applied in several fields in Hungary, such as in community issues, child protection and family matters, in conflicts in the education system, in labour and commercial debates and in criminal matters - for details please see the country report.

### **Vision regarding the future of ADR**

Parallel to the bottom-up activities, high level initiatives are necessary to promote the culture and principles of ADR in the society so that people know about it and feel trust towards requesting this service. Further attempts are needed to harmonize the different ADR regulations and services and facilitate the cooperation amongst them.

Experiments, pilots, innovations can be well done in different projects by small NGOs (from bottom up) and these experiences can largely contribute to create adequate legal, methodological and institutional framework for ADR. However, to bring it to the systemic level and make it mainstream, top-down support and will are inevitable. Otherwise, these practices remain marginal, ad hoc, temporarily sustained and inaccessible for every citizen.

Therefore, Foresee's aim is to spread ADR in every possible way in order to give the chance to as many citizens as possible to resolve their conflicts with a „win-win” approach.

# Lithuania

In Lithuania ADR is taking the first steps and practicing ADR methods becomes increasingly popular. Our country is gradually abandoned the view that court is the only institution capable of settling any disputes between the parties.

Recently, the first legal acts have been adopted that approve the possibility of using ADR in Lithuania:

## **Mediation**

In Lithuania it is possible to use judicial and extrajudicial mediation.

Since 2005 Lithuania has implemented a judicial mediation, which has been designed to help resolving a civil dispute peacefully. This procedure is carried out by specially trained judges, their assistants or other appropriately qualified persons. Judicial mediation - a free service, it is organized and carried out in the courts. This is not a mandatory procedure and is only offered as an option to the opposing parties by the judge.

On the 31<sup>st</sup> of July, 2008 The Mediation in Civil Disputes Act came into effect, which for the first time in Lithuania made the appropriate assumptions for the use of one of the ADR methods - mediation. Mediation is defined as a civil dispute resolution procedure in which one or more mediators assist the parties to peacefully settle the dispute. Mediation can be used for both national and international judicial and extrajudicial disputes. Mediation services can provide the public and the private entity that recommends and appoints mediators, offer or establish such rules of procedure, administered by the costs and provide premises, in which this procedure is performing. In the parties dispute may participate only a third impartial person. He needs to satisfy the set of mediation experience requirements, confidentiality, professional standards, and the obligation to comply with the European Code of Conduct for Mediators. Such a peace agreement may also be filed with the court for approval, after which it becomes a court decision and can be implementing enforced.

On the 15<sup>th</sup> of April, 2008 State-Guaranteed Legal Aid Act was amended and supplemented. It provides an opportunity to provide initial legal advice on the extrajudicial settlement procedures. However, evaluate the statistical data of the original provision of legal aid, more and more people seek to protect their violated rights, not by the exercise of ADR mechanisms, but in the court.

A number of legislative proposals at this time already registered. From 01 October 2011 come in to force the amendments of Civil Procedure Code, which established the confidentiality of data security, which were obtained on Mediation in the process. Such data cannot be considered as evidence in court proceedings. In addition, the mediators cannot be questioned as witnesses in court.

Arbitration. These institutions solve both national and international commercial disputes in a confidential way. Mediation can be provided by Arbitration Courts but if the parties expressly authorized to do it.

Negotiations in Lithuania, mainly used for disputes related to contract law. However, this ADR procedure is not regulated by law. Parties, generally, by them self include the clause in their contract to negotiate, in the event of a dispute.

2013 was changed the Labour Code which establish the new extrajudicial procedures. Mandatory workplace disputes resolution by Labour Disputes Commission. The employee and the employer may apply to the following commissions, whose services are free of charge.

ADR procedures in Lithuania are widely applicable to a dispute of consumer rights protection. State Consumer Rights Protection Authority resolving disputes between individuals and vendors or service providers of alternative extrajudicial methods. Contention Commission at the Ministry of Social Security and Labour deals with disputes between individuals, pension or benefit paying institutions and the Disability and Working Capacity Assesment Office at the Ministry of Social Security and Labour of the Republic of Lithuania.

Currently, it is impossible to determine the numbers of disputes are dealt with ADR. Use of ADR procedures are exclusively funded by contributions from the parties. In Lithuania ADR has not been firmly established. For further ADR development is important the information dissemination, with ADR-related material distribution and promotion to the public.



## Italy

### THE MOST RECENT AND THE CURRENT SITUATION OF ADR in EUROPE AND ITALY WITH PARTICULAR REGARD TO FAMILY MEDIATION AND COLLABORATIVE LAW

The demand for justice has increased dramatically with the increasing literacy of the population and the advance of the Consumers' protection: since the year 1990 in fact - and especially during the decade which has just ended (see e.g. Decree No. 205/2003 whereby corporate-law introduced several alternatives, designed to stop the increase of litigation that promised to collapse the system).

As many will recall, the U.S. Federal Government (Civil Justice Reform Act-1990) represents the real birth certificate of the ADR movement in the world: it did list alternative methods recommending these to the governments of the individual American States. Among all those methods (that nowadays have all been incorporated by Italian Law and are: conciliation, arbitration, early neutral evaluation see Art. 696 bis c.p.c., summary jury trial see in the same groove Art. 702 bis c.p.c. mediation see Art. 155 Civil Code) – there it stood out for its originality the Family Mediation.

Mediation is commonly understood as the "bypass" to litigation, the judge strongly urges (but does not require) referral to a neutral third party independent from the judiciary that decides, not imposing solutions but assisting the parties themselves to settle.

Therefore, while in Europe family mediation as a means of alternative family dispute resolution to the process of divorce (to limit the analysis to the field that concerns us here) landed with the Family Law Act 1996 of the British Government, Family Mediation in Italy in the same period had been strangely intercepted not by the legal community or by Scholars of Civil Procedure, but by groups of psychologists, in particular by schools of psychotherapy. That is - by professionals whose training could be very distant from the world of the Law.

As a result, in our Country, the concept of Family Mediation has been delivered by social services or, in some cases, even by a consultant appointed by the Court to evaluate the custody of the children, usually.

Simultaneously, the world of psychology advocated -beyond this model of intervention- another one that may be called a completely voluntary action : a request of assistance which issimilar to counseling.

A model of Court-annexed mediation has never been particularly strong in Italy, as intended to simplify the divorce by agreements expendable in Court with the great statistical numbers that are needed by the civil process.

Embedding family mediation too much into the world of Psychology and Social Psychology, however, presented several disadvantages.

A concept of Family Mediation limited to "Social Services" or "Technical Advice" undermines a fundamental principle of Mediation - or rather its "fundamental principle" - : the neutral third party to whom it is entrusted by definition can not be vested with that of the delivering advice to the Judge.

The second model that has been spread throughout Italy, completely detached from a judicial environment (broadly attributable to the area of counseling or short impact psychotherapy ) is rather useless for the civil lawsuit as devoid of its revolutionary force: i.e. the return of the decision making to the parties (s.c. empowerment) who are already enmeshed in a dispute.

Broadly speaking Lawyers & Judges are the guardians of law, i.e. the guardians of the world as-it-is and not as-it-should-be. Particularly in Italy, these categories have revealed their absolute disregard for the great innovation of family mediation, with a few honorable exceptions. Keeping Family Mediation in a psychosocial role completely detached and rather alien to the civil trial (and thus relegating the same to the area of psychotherapy and counseling) was for these professionals absolutely the right project at keeping the status quo unaltered.

Moreover: the conservative attitude is a sport where the Italians are the undisputed masters.

The Law 154/2001, in fact which set up the Mediation Centers for violence in the family, has been interpreted as a referral of severe cases to social services.

The Law 54/2006 2006 which gives the President of the Family Court the power to send spouses into family mediation before the adoption of measures on children (basically the standard is the provision of reproductive UK Family Law Act) has remained almost entirely inapplicable. Only a few dozen cases a year are sent to mediation by the court.

Collaborative law is the real innovation in the field of ADR and our hope for the next years.

This is based on one basic rule: the parties' lawyers are bound by contract with the parties themselves to renounce the mandate in case of a

negotiation's break up: also, the negotiations take place openly between the parties with their lawyers present. As a corollary, the collaborative lawyers will work jointly only with other collaborative lawyers as part of a list that is made public locally and internationally (this exclusivity applies only when they're practicing collaborative law, of course).

This rule (called the Withdrawal Rule) is simple and brilliant at the same time and could only be born into the culture of English-speaking Countries: that is where the Roman Law distinction between lawyers / barristers and lawyers / solicitors (consultants) has remained unchanged until a few years ago.

The idea of a lawyer who renounces going to court for purposes of protecting his/her Client -a renunciation that in Italy might as well be perceived as senseless- in English speaking areas has been a commonplace for centuries: an event planned and sanctioned by law.

If this waiver is contracted *ex ante*, as it happens in CP, here it is that the limit on the defensive functions reveals the extraordinary strength of this method of conciliation: all participants have an interest in containing aggression and conciliate the dispute before it results in Court's intervention.

The parties do not have to start all over again (doubling time and legal costs) for an outcome that can not be too different from that already identified having not one but two legal advisers.

The lawyers will not even be interested in the failure of negotiations, lest prematurely losing their Client .

Eventually it is worth mentioning how the collaborative process can involve, and does normally involve, non-aligned consultants, s.a. mediators and/or, financial experts, not differently than the judicial process itself and these figures are indeed strategic resources -neutral third parties – to the negotiation process.



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