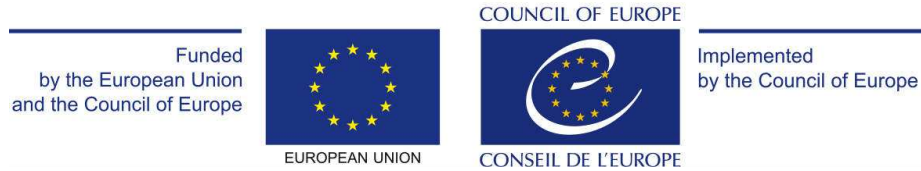


**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Theme II “Ensuring Justice” – Action 5: Regional dimension for 6 EaP  
Project for Regional Dialogue on Judicial Reform in the EaP Countries**

Working Group on Regional Dialogue on Judicial Reforms  
in the Eastern Partnership Countries

**Expert Report on the outcomes of the Working Group’s meeting on:**

**ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS**

with focus on: Criminal Restorative Justice and Mediation in Civil Cases

Strasbourg, 26 September 2016

**Report written by the experts:** Maria Oliveira, Aarne Kinnunen, Katian Caria



The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.



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## BACKGROUND

The meeting of the Working Group (WG), on which this report is based, has been organized in implementation of the project for regional dialogue on judicial reforms, within the framework of the joint Council of Europe and European Union Eastern Partnership (EaP) Programmatic Co-operation Framework (PCF). The project aims at fostering dialogue, professional networking and exchanges of experiences among legal professionals in view of addressing outstanding common challenges and consolidating national processes of judicial reform. In this framework, representatives from judiciaries, ministries of justice and bar associations of the EaP countries selected a number of areas of shared interest perceived as most challenging for the respective national reform processes and established three Working Groups that were tasked to examine, with the support of international experts, one of the selected issues in a dedicated meeting.

Topics selected by participants for further analysis included: judicial ethics and disciplinary liability of judges, with a focus on their distinctions and interrelations; e-justice, in particular aspects of electronic case management; legal aid schemes, with special attention to ways to ensure independence of legal aid financed lawyers; independence of judges; selection, evaluation and promotion of judges; the role of Courts of Cassation/Supreme Courts; ways to ensure inclusive and transparent judicial reforms; alternative dispute resolution mechanisms, with a focus on criminal restorative justice and mediation in civil cases; equality of arms between lawyers and prosecutors.

The third round of meetings of the three WGs was hosted in Strasbourg, France, in September 2016 and focused on the following topics: judges' independence (WG A), transparent and inclusive reform processes (WG B) alternative dispute resolution mechanisms (WG C). Discussions were facilitated by international experts, also tasked to produce a report on the outcomes of each meeting.

This paper provides an overview of the discussions held during the meeting of the WG C, focusing on alternative dispute resolution mechanisms issues. It is based exclusively on the information provided by the participants by filling in a questionnaire prepared by the experts and the discussions held during the meeting, supplemented with the comments and inputs by the independent expert. It does not in any way aim at providing an exhaustive presentation or a thorough assessment of the situation in the countries considered, but rather at reporting about the issues presented and discussed by the participants with the purpose of exchanging experiences and possibly identifying areas of common interest for further examination or co-operation.





## 1. Introduction

The independent, efficient and transparent functioning of the judiciary is a cornerstone of the rule of law principle and an essential element of the guarantee and the safeguard of individual freedoms and fundamental rights.

When addressing the issue of the Council of Europe and European Union standards in the field of the independence and efficiency of the judiciary, the first text that immediately springs to mind is the European Convention of Human Rights and, particularly, its article 6 which protects the right to a fair trial.

To support and harmonise the task of member States in this respect and to complement the said Convention, the Committee of Ministers of the Council of Europe has adopted since the 70's several recommendations defining general principles for the functioning of justice and inviting governments to adopt legislation and taking other measures aiming at supporting, developing and strengthening these principles. **(Annex 1)**

The implementation of "alternative ways to settle disputes" has been one of the objects of the following recommendations:

- The Recommendation No R (98) 1 of the Committee of Ministers to Member States on Family Mediation (adopted by the Committee of Ministers on 21 January 1998)
- The Recommendation No R (99) 19 of the Committee of Ministers concerning mediation in penal matters (adopted by the Committee of Ministers on 15 September 1999)
- The Recommendation Rec (2002) 10 of the Committee of Ministers to member States on mediation in civil matters (adopted by the Committee of Ministers on 18 September 2002)

These Recommendations were the first of this kind and acknowledged the importance of mediation for European communities in the changing social context. Besides, they are also relevant because they encourage member States to introduce, promote and strengthen mediation in three fields – family, penal and civil matters.

The European Commission for the Efficiency of Justice (CEPEJ) worked to enable a better implementation of the Recommendations of the Committee of Ministers concerning mediation.

On this basis, the CEPEJ elaborated guidelines and specific measures aimed to ensure an effective implementation of those Recommendations. Therefore, on the 7<sup>th</sup> of December 2007 the "Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters CEPEJ(2007)13" and the "Guidelines for a better implementation of the existing recommendations concerning family mediation and mediation in civil matters CEPEJ(2007) 14" were adopted.

These Guidelines serve as a practical tool for member States – national legislators, policy makers, the judiciary and, in sum, all stakeholders involved - assisting them in adapting the Recommendations and finding their basis in existing international and regional instruments and indicating how these provisions can be best implemented to develop new standards in areas where there are legal gaps.

These Guidelines are rooted in three subjects: **Availability**, **Accessibility** and **Awareness**, recognized as the “triple A mnemonic”. In fact, these are the three pillars where mediation development schemes would be based.

So, to expand equal **availability** of mediation services, measures should be taken to promote and set up workable schemes across as a wide geographical area as possible.

To expand **accessibility**, mediation should be advantageous to court users in what concerns costs, time, location, information and easy access to a mediator.

Finally, even if mediation is available and accessible to all, not everyone is aware of it or of its features and advantages. The raise of **awareness** of all stakeholders involved is also an important requisite in what concerns the development of mediation.

## 2. Questionnaire applied in preparation of the meeting

### 2.1. Questionnaire design

The questionnaire sent to the participant countries of the workshop was designed considering the mentioned Guidelines. It is divided into three parts to cover the distinct fields in analysis: **mediation in civil matters**, **family mediation** and **restorative justice**. (Annex 2)

Though the Recommendation No R (99) 19 only mentions “mediation in penal matters”, in fact, mediation is just one of the means used in Restorative Justice which is a broader concept. Therefore, the option was not to restrict the scope of the third part of the questionnaire to mediation in penal matters.

The questions cover all the main issues addressed by the above mentioned Guidelines.

The respondents were asked to offer any comment regarding each question, allowing them to offer a wide view on the topic related to it.

The intention of the questionnaire was to gather and provide information concerning the development of mediation in each country and, at the same time, divulge the mentioned Recommendations and Guidelines to all participants.

## **2.2. Profile of the respondents**

The respondents were from different origins, namely, Ministries of Justice or related official bodies, Bar Associations, Chamber of Commerce and Industry or NGOs. **(Annex 2)**

Therefore, the results of the questionnaires do not provide an official perspective of each country. However, they proved to be very useful as the information obtained which was beforehand shared with the participants, was very helpful giving them the possibility to compare the current situation in each country and encouraged the sharing of information during the meeting.

## **2.3. Questionnaire analysis**

The results of the questionnaire reveal that there are considerable differences between the respondents concerning their respective level of development in mediation.

Besides, though most countries were familiar with mediation in civil matters, they do not consider family mediation as a specific field. Trained or accredited mediators in civil mediation also intervene as family mediators, though they did not receive specialized training in this area.

Most of the respondents were not familiar with Restorative Justice or even with mediation in penal matters in general.

## **3. Meeting report**

The way the meeting unfolded allowed us to draw several conclusions which can be relevant to the future of the project.

The meeting was conducted in an easy way to encourage participants to present their points of view and address questions both to each other, as well as to the experts. The questionnaire and the answers received were useful as they were used as a guide to identify both the main aspects related to mediation in the different fields at stake and to focus the discussion on the most relevant subjects which are at the core of the above-mentioned Guidelines.

This report is divided into three distinct parts.

The first one concerns Mediation in Civil Matters and Family Mediation and the second one is dedicated to Restorative Justice.

Finally, the third part collects the final comments offered by the participants regarding the future of mediation in their respective countries.

### 3.1. Mediation in civil matters and family mediation

When the discussion was opened, the participants were invited to share their views and expectations regarding the outcome of the meeting. The desire to share experiences amongst themselves and to learn from the experts' know-how was identified as the expected result.

#### a. Legal framework

The first subject addressed was about the need for a legal framework on mediation. Are legal provisions on mediation necessary or, conversely, can they constitute an obstacle to its development and implementation?

Concerning this subject there are differences between the participant countries.

Some have a law on mediation (**Republic of Moldova and Belarus**), others have specific provisions on mediation in the general law (**Armenia**), but half of the participant countries showed a complete absence of legal provisions on mediation (**Azerbaijan, Georgia and Ukraine**).

The **Republic of Moldova** had a specific law on mediation initially adopted in 2007 which was amended in 2014. The law in force proved to be more appropriate as there are more cases settled through mediation than before. The model adopted out-of-court mediation, showed to be more effective and deserved the lawyers' support. Parties can notarise the mediation agreement for enforcement purposes if they wish. They have a new law, enforced in 2015, which stipulates that there is a compensation for litigation costs when the parties reach an agreement by means of mediation. Lawyers encourage the use of mediation and their clients at the end of process get some money back, in other words, they save on court costs.

In **Belarus** a law on mediation was adopted in 2013. Previously there was a settlement/mediation Institute and many disputes were settled outside.

It was questioned if a "mediation model" could be identified (**Georgia**) and some hesitations were expressed in what concerns excessive regulation and fear that it could harm mediation, instead of developing it (**Ukraine**).

Participants agreed that there should be a legislation framework that would allow "the freedom for organic growth". The lack or inexistence of key legal provisions on mediation might jeopardize legal certainty and, thus, the use of mediation could be discouraged. This is the case of the suspension of limitation terms and enforcement of the settlement agreements which are only reliable and have a binding effect when under a legal statute. Similarly, the principle of confidentiality, for instance, should be regulated by law in order to benefit from State protection.

## **b. Mediators' background**

One of the topics discussed was the compatibility of the mediator's activity with legal professions, namely, judges and lawyers, given that, in most countries there are no restrictions. In general, anyone can be a mediator, as long as they have a university degree, minimum age and proper social behaviour. In Europe it is common to find that mediators are lawyers as well. However, when duly trained, these professionals do not mix the two roles. In practice, when a lawyer is acting as a mediator he/she should not mention this to the participants in the mediation. If the parties need legal or other kind of advice, the mediator must refer them to a lawyer or a specialised consultant. His/her role is exclusively to assist the parties to reach a mutual satisfactory agreement.

The risk of being a lawyer and a mediator was referred to as being difficult to put a "Chinese wall" between being an advocate and a mediator. While acting as a mediator, the lawyer cannot provide legal advice to the parties. The mediator must serve both parties and cannot mix different roles. **(Armenia)**

Likewise, the compatibility of being a judge and a mediator was also questioned. **(Ukraine)**

With regards to **the Republic of Moldova**, it was noted that their ten years of experience indicated positive and negative results. An effort has been made to gain the judges' support but it was recognized that there is still a lot of hard work to do. The Cassation Court wants the judges to become mediators which did not deserve a general approval since it is hard for them to be neutral.

Representatives from **Belarus** mentioned that per their experience, it is not a problem to change the mentality of the judges to become interested in mediation. The courts have a list of mediators which parties are offered to use.

## **c. Mediators training and accreditation**

The participants addressed the topic of mediation training and mediators' training and accreditation. The experience in Europe shows that these issues are addressed in different ways. For instance, while in France the family mediator's training takes about twenty months to obtain the "Diplôme d'État de Médiateur Familiale", other countries are not so strict. It is acknowledged that practice, namely, role plays or supervision, is much more important than theoretic training to the education of a mediator.

Participants showed interest in knowing how mediators should be trained and what could be the best possible scenario for that purpose. The importance of mediator's training and its relevance for the quality of mediation services was emphasised. **(Armenia)**

Concerning training content, including role plays, both during the training as well as in the final assessment, was acknowledged as essential **(Armenia and Ukraine)**.

The participants also raised the issue of mediator's certification and accreditation. Who issues licences to mediators and who is authorised to give courses to mediators: State bodies, NGO's, specialized bar associations?

Similarly, there are considerable differences among the European countries. In some cases, the Ministry of Justice or public entities are competent to certify mediators and publish official lists of mediators. However, this is not the rule yet.

For instance, in the **Republic of Moldova and in Belarus** the Ministry of Justice is responsible for the quality of the mediators.

#### **d. Competent authorities to rule mediation**

Participants questioned about the rule of mediation. Should "the ownership of mediation" be shared in a cooperative way between the stakeholders involved – High Council of Justice, the courts, the bar (**Georgia**) or otherwise should mediation be rule by a public body?

Should it be dependent on the Ministry of Justice or be an autonomous body? In this case, what should be the competencies of a "Council of Mediation" or equivalent body? (**Republic of Moldova**)

It was acknowledged that the existence of a public body is acceptable if the independence and impartiality of the mediators and the principle of confidentiality are duly assured. Mediation is based on trust. If the parties do not trust the system or feel that the key principles of mediation are not being preserved, there will not be any future for mediation.

#### **e. Raise of awareness**

Raising awareness of the stakeholders involved – judges, lawyers, parties and the public in general – has been a recurring theme. Ideas about "how to popularise or raise awareness of mediation" were shared by all the countries. This topic is, in fact, one of the most common concerns, acknowledged in the above-mentioned Guidelines as a pillar for the development of mediation. There is not a sole prescription to overcome this difficulty. Different actions can be taken having in mind the cultural characteristics of each country or region but it takes time to achieve meaningful results. Pilot court-annexed schemes have proved to be very effective in some countries. On one hand, because it involves all stakeholders – judges, lawyers, mediators, court clerks, parties and public in general - and, as a consequence, determines a general raise of awareness of mediation. On the other, if the model is successful and presents good results it can be replicated to other courts.

With regards to **Belarus**, a major challenge was identified in the mentality of the parties concerning the use of mediation, though it was recognized that changes in this regard could be a matter of time.

In **Georgia**, they are working with lawyers to provide mediation courses in order to change the current mind-set, in other words, to educate lawyers to view mediators “as friends and not as competitors”.

It was suggested that when the parties file a claim, the back of the document could recommend mediation (**Republic of Moldova**) and concern was expressed about the resistance of the legal community to collaborate with mediators recognising that the improvement of the mediation culture as a challenge (**Ukraine**).

#### **f. Raising awareness of judges**

One of the main challenges identified by the participants was “how to convince judges to refer cases to mediation?” This is, in fact, a very sensitive issue which has been addressed in different ways by countries aiming to introduce mediation into their legal systems.

In **Belarus** the “Institute for Retraining and Qualification, Upgrading of Judges, Prosecutors and Legal professionals at the Belarusian State University” provide training for judges but they cannot be mediators. They learn how to support mediation. As the Law on Mediation covers all general courts, the training is provided to all judges in their continuous education. They learn, for example, techniques to refer cases to mediation. In sum, judges must do whatever they can in order to resolve the case peacefully. As mediation is not mandatory, it is always on the parties own initiative to mediate or not.

In the case of **Azerbaijan**, within the civil proceedings, the judge shall invite the parties to solve the case amicably by way of concluding settlement agreement (reconciliation). However, judges are not acting in a capacity of mediators.

Participants from **Armenia** described their difficulties concerning the lack of commitment of the judges, though some of them have already received training on mediation. The guarantee of people’s rights, which they are supposed to assure and the likelihood of non-binding agreements have been two of the main reasons expressed by the judges as to why they are still reluctant to cope with mediation.

In fact, the mentioned obstacles are common and in Europe there is a public debate around them. There are judges who are against mediation, those who are in favour, those who would like to be mediators and those who know how to refer a case to mediation and have include referral into their daily practice. Judges are the basis of the judicial system. Very often judges are the fuel of mediation. Normally people trust judges and therefore, when they refer them to mediation, they accept. Judicial referral can be very effective in certain circumstances. However judges need to have at least basic knowledge about mediation and master “referral techniques”. In addition, judges need to trust mediators, be sure that they are duly trained and have the necessary skills. This is one of the reasons why the Code of Conduct for Mediators is so important. The participants in mediation should be aware that the mediator has to comply with this Code.

It was said that judges need encouragement to support mediation, though many judges are already recommending mediation. The likelihood of reduction of their work load is not a sufficient incentive.

Proposed possible approach could be that when assessed, judges could get extra points if they recommend mediation or that one criterion to promote judges could be to evaluate how they are pushing and stimulating mediation. It was indicated that this matter should be regulated by law. **(Georgia and Republic of Moldova)**

In contrast, it was said that given that mediation is a voluntary process, judges should not be “punished” if they don’t recommend it. In other words, they shouldn’t be adversely affected for not recommending mediation. **(Ukraine)**

### 3.2. Restorative Justice (RJ)

**Aarne Kinnunen** gave presentations on the European and international standards on Restorative Justice as well as on best practises and lessons learned in this field. The issue of juveniles’ position in the criminal justice system was examined first.

Interest was expressed in the role of restorative justice and mediation in rehabilitation of juvenile offenders. The discussion broadened into the rehabilitative measures of juveniles in general. **Aarne Kinnunen** illustrated the system of rehabilitation and the role of the victim-offender mediation (VOM) in Finland. One side of it is the measures taken by Criminal Sanctions Agency during prison sentence or probation. By offering a chance to take part in substance abuse rehabilitation programmes and other rehabilitating activities, such as cognitive skills programmes, prisoners are supported to lead a life without intoxicating substances and crimes. Prisoners are guided to activities through the assessment centre, where they are assessed and the plan for their sentence term is made. After that, municipalities are responsible for continuing the rehabilitative measures started during the sentences period. Furthermore, the municipalities are responsible for maintaining the wellbeing of citizens in general. The role of the VOM becomes evident especially in the beginning of the criminal justice proceedings. For example, in Finland VOM services provide an entry point into the social and healthcare services provided by the municipalities or NGOs.

The question was raised weather it is possible to give a task of organizing RJ services to the probation services. In this respect, the importance of probation in providing restorative justices services was stressed. Austria, Czech Republic and several other countries have chosen this approach. **Armenia** has already prepared a similar legislation. The way of organizing RJ services varies a lot between countries in Europe and there is no one ideal model. In Finland, the service providers can be municipalities or NGOs and the best provider are chosen by means of tenders. The neutrality of the mediators has been seen as a core value in Finland.

The question of the profile of the mediators within the RJ system was raised. Can mediators work pro bono (on a volunteer basis) or are they professionals? In Finland the mediators are volunteers who are trained to give RJ services and they only get their expenses (phone calls, transportation) covered.



A question on the preventive impact of RJ was also raised. Have studies been conducted to find out to what extent RJ can decrease criminality? With regard to the effectiveness of RJ as a preventive mechanism, **Aarne Kinnunen** noted that because of the fairly marginal use of RJ services, it is difficult to show a drop in crime rates at national level. However, there are several studies that show substantially reduced offending for some offenders, but not all.

The question was raised regarding how detailed legislation should be to provide RJ services. Different countries in Europe have chosen different paths. In Finland, the Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) provides a fairly loose structure. It provides a structure for organizing mediation services but does not determine, for example, what types of crimes can be mediated. However, crimes containing a clear power imbalance can't be mediated.

Interest was expressed whether it is possible to provide RJ service after a person is convicted. **Aarne Kinnunen** said that in several countries (e.g. Belgium, United Kingdom) it is possible to mediate in prisons, but this does not influence criminal justice proceedings. This model is gaining popularity across the continent.

The question was raised regarding mediation in cases of domestic violence. **Aarne Kinnunen** said that this is a controversial and highly debated issue throughout Europe. In some countries mediation in domestic violence is explicitly forbidden. In Finland mediation in domestic violence is possible, but it is restricted to lenient cases and to first-time offenders. Only police or prosecutor can refer a case of domestic violence to mediation. However, the cases of domestic violence constitute over 10 % of the caseload referred to mediation yearly. Participating in mediation doesn't guarantee that the case will be dismissed from court, as it is the courtesy of the public prosecutor to decide. The service provider can refuse to take the case to mediation if there are signs of pressure. The VOM is an additional part to the service provided to couples suffering from domestic violence. According to studies, general satisfaction is good.

The discussions lead into the field of how to raise awareness in mediation in respective countries. **Aarne Kinnunen** commented that raising awareness and changing the attitudes in the field of criminal justice and population in general is a long process. Local and national media must get involved. It is important to engage key stakeholders and people within the criminal justice who have favourable attitudes towards it. Co-operation with police and prosecutors must be constant so that the topic stays on the agenda.

### 3.3. What future?

The participants were invited to express their views regarding the future of mediation in their countries. The following aspects were highlighted:

- The importance of the establishment of a self-governing body of mediators that is self-sustainable, with a Code of Conduct and a body to enforce the Code of Conduct. (**Armenia**)

- The need for mechanisms of enforcement of the settlement agreement, allowing the parties to go directly to the “implementation bureau” for a quicker response. **(Georgia)**
- The importance of promoting mediation using free social broadcasting at peak hour about mediation hoping that in the future a common ground could be found and “wallets would be less important than people”. **(Republic of Moldova)**
- Mediation should become something normal, usual, integrated in all spheres of society and everyone – lawyers, judges, and public in general - should know that mediation exists. **(Ukraine)**
- Mediation should be promoted, showing its benefits, such as saving of time and money, though having in mind that people cannot be forced to mediate. **(Ukraine, Azerbaijan)**
- The adoption of legislation on mediation is a necessary instrument to achieve good results and move forward and ensure enforcement of mediation agreements as the State must guarantee this possibility but not impose anything since only this attitude is consistent with the voluntary spirit of the mediation process. **(Ukraine)**

## 4. Conclusions

The following conclusions have been organised into two main blocks, one regarding Civil and Family Mediation and the other regarding Restorative Justice, where Aarne Kinnunen was acted as the expert invited from Finland.

### 4.1. Civil and family mediation

The participants shared a genuine interest in launching mediation in their countries as it is already in Azerbaijan, Georgia and Ukraine as well as in developing and strengthening its practice as affirmed by Armenia, Belarus and the Republic of Moldova.

They acknowledged the multiple advantages of mediation over judicial proceedings in terms of efficiency, costs reduction, parties’ satisfaction and social pacification.

However, both the replies to the questionnaires and the outcome of the workshop revealed the existence of a variegated landscape in what concerns the use of mediation.

Raising awareness of all the stakeholders involved – judges, lawyers, parties and public in general - was identified as the main challenge as it has constituted an obstacle to the development of mediation.

Particularly, in the case of judges, the participants acknowledged that special measures had to be adopted to persuade judges that, on the one hand, mediation could be a useful mechanism which serves justice and promotes efficiency of legal proceedings and, on the other, that it could help the parties in a conflict to solve it in an amicable and positive manner.

Traditionally, judges have played the role of conciliators, attempting, before the court hearings, to hearten the parties and their lawyers to reach a negotiated agreement. These judges/conciliators are not always fully aware of the distinction between this intervention and mediation. As a consequence, they are not open to adopt a different approach which consists in referring the parties to a mediator.

To invert this trend, alternative dispute resolution methods in general, and in particular mediation, and the use of referral techniques should be included in judges' initial and refreshing training. These measures have proved to be very effective. Judges play a key role in changing parties' understanding of justice as a one-way path. Alternative methods of dispute resolution such as mediation when suggested by the judge given his/her prestige and trustworthiness are better accepted.

The suggestion for rewarding, in different ways, the judges who are willing to promote mediation needs further consideration since it might have a negative impact in the judiciary, namely if it is pictured as a threat to their independence or as an unconstitutional measure.

Mutatis mutandis some of these reflections apply to lawyers. It would be of paramount importance that mediation and other alternative mechanisms of dispute resolution were integrated in Law Schools' curricula. Lawyer's lack of knowledge of these subjects has been indicated as one of the major difficulties to the development of mediation.

Bar Associations' initiatives have produced meaningful results in this regard. Initiatives, such as workshops dedicated to mediation open to their members and the promotion of an open discussion on the matter have given good results.

Instead of a menace to lawyers' activity and correlated income, mediation advocacy may be seen as a distinctive skill by clients and judges.

Finally, raising awareness of the public in general deserves a careful approach. Though the claim, frequently repeated, that mediation is embedded in "national culture", the truth is that it results of an underlying misunderstanding of the worldwide acknowledged meaning of mediation. Its definition and features can be found in the "International standards documents" (Annex 1).

However, it seems unquestionable that conflict resolution in each society has its own traditional features. It would be unrealistic to believe that a widespread resort to mediation in alternative to courts could be possible within a very short period of time. An overview of the existing situation in European countries demonstrates that this change of behaviour implies a cultural adaptation which is slow and unpredictable.

To overcome this fact some countries, Italy is a recent example, have introduced "opt-out mediation" schemes which can be regulated in different manners. One of them is when mediation is a condition for the admissibility of the action. In other words, the judicial action, which is proposed by a party without attempting to resolve a dispute using the mediation process, shall be declared inadmissible by the judge. Given the voluntariness of mediation, the parties only have to attend an informal mediation information session or a first session of mediation. In any case they are not obliged to reach an agreement and the

confidentiality has to be kept by the mediator, the parties and the lawyers if they were present. If the parties do not reach an agreement there should not be any negative consequences in the court decision.

Though “opt-out mediation” may have some advantages, in fact it has been a very contentious issue. Furthermore it demands adequate and a wide availability of mediation providers duly trained and accredited.

This leads directly to another important topic, which is the need for a legal framework on mediation.

The participating countries which have adopted a law or specific provisions on mediation showed more relevant results concerning its development.

Originally, in the United States and in some European countries, namely the United Kingdom, mediation practices started as private initiatives, namely from mediators’ associations, particularly in the family mediation field without any legal framework to rule its practice. This bottom-up initial approach progressively gave way to the intervention of public authorities and consequently to the adoption of legal provisions aiming to rule, at least, the most relevant aspects of mediation which are described in detail in the European Directive on Mediation (see Annex 1).

From then on, mediation has been of paramount importance in the implementation of the public policies for justice.

It has been generally acknowledged that a legal framework facilitates and encourages the use of mediation once it guarantees the legality of the proceedings.

Furthermore, two crucial aspects, the effects of mediation on limitation and prescription periods and the enforceability of agreements resulting from mediation need legal basis, in compliance with the principle of legal certainty

Other aspects, such as the guarantee of the principle of confidentiality, the mediator’s accreditation and the quality of mediation, have been regulated sometimes in detail in some countries.

When the States encourage, by different means, the use of mediation, either independently or as a court-annex scheme, they become co-responsible for the associated infrastructure and the reliability of the process. And this is definitely a strong argument in favour of the need for a legal framework in mediation.

However, though the above mentioned principles need to be assured, there is not a single model. The legislation should be adjusted to the cultural identity of each society.

The mediator is an emerging professional in many countries all over the world though some of them have a parallel professional activity.

In Europe, it is consensual that anyone can be a mediator regardless of his/her background. This said, it is clear that being a mediator is not restricted only to professionals who have a background in the legal field. However, a considerable percentage of legal professionals, namely lawyers, also work as

mediators. Therefore, the main condition to become a mediator is to achieve requisites of attendance and assessment required by the training.

It is acknowledged that mediation training is essentially based in practice through “mock mediation” or “role plays” to enable the trainee to develop his/her skills. In some cases, initial training is followed by a supervised practice conducted by an experienced mediator.

Special attention should be paid to mediation training as the quality of the mediation service providers is essential to improve trust and recognition of the potential of this means of dispute resolution.

The mediator’s accreditation rules differ considerably from country to country. Recent legislation on this subject shows that there is a trend to implement stricter accreditation rules as a means to reinforce and assure the quality of mediators by means of public recognition.

The participating countries, in general, are aware of mediation in civil matters. Conversely, family mediation has not followed the same trend.

Family mediation has been considered as an important means to help families in conflict to overcome their differences in a positive way and to protect children from a traumatic parent’s divorce or separation. Given the particularities of these conflicts it has been acknowledged that mediators need to be specialised in this field. Family judges and lawyers should also be involved as mutual collaboration is essential to achieve meaningful results.

As seen, the implementation of mediation is a demanding and challenging task which requires the active participation not only of the public authorities – Ministries of Justice or public bodies – but also of all stakeholders involved – judges, lawyers, mediators, court clerks, police, social workers and the public in general.

Innovative and adjustable policies are highly recommended. The establishment of pilot courthouses offering mediation services has been seen as a successful experience in different countries as it allows designing a “model courthouse”, involving human and material resources. Availability, accessibility and awareness of mediation can be tested at a small scale and relevant information can be obtained in order to evaluate the “models” quality and feasibility, as well as the likelihood of it being replicated.

#### **4.2. Restorative Justice (RJ)**

The role of the restorative justice and victim-offender mediation (VOM) becomes evident especially in the beginning of the criminal justice proceedings. RJ and VOM give a platform for parties to discuss the crime and wrongdoing and parties themselves decide about the agreement and possible compensation that should take place. Furthermore, VOM services can provide an entry point into the social and healthcare services provided by the municipalities or NGOs.

The way of organizing RJ services varies a lot between countries in Europe and there is no one ideal model. In several countries it is possible to mediate in prisons, but this doesn't have an effect on criminal justice proceedings. This model is gaining popularity across the continent.

Different countries in Europe have gone different paths in choosing the form of legislation. This depends on their respective legal and cultural background. Most countries have chosen to build a loose legal structure, which allows different kind of crimes to be mediated. Mediating in cases of domestic violence is a controversial and highly debated issue throughout Europe. In some countries mediation in domestic violence is explicitly forbidden. In some countries mediation in domestic violence is possible, but it is restricted to lenient cases and to first-time offenders. In these countries the VOM is seen as an additional part to the service provided to the couples suffering from domestic violence. According to studies, general satisfaction of the both parties is good.

Regarding the profile of the mediators within the RJ system, in Finland they can be working pro bono (on a volunteer basis) or as professionals. Both models are in use in Europe. The neutrality of the mediators has been considered a core value.

The preventive impact of RJ is another important aspect but it is difficult to show a fall in crime rates at national level. However, there are several studies that show substantially reduced offending for some offenders.

Raising awareness and changing the attitudes in the field of criminal justice and population in general is a long process. Local and national media must get involved. It is important to engage key stakeholders and people within the criminal justice who have favourable attitudes towards it. Co-operation with the police and prosecutors must be a constant so that the topic stays on the agenda.

## ANNEXES





## **1) International standards**

### **Documents**

#### **1. International Standards on Mediation in Civil and Commercial Matters**

##### **1.1. United Nations**

1. UNCITRAL Model Law on International Commercial Conciliation (2002)
2. UN ECOSOC 2002: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

##### **1.2. Council of Europe**

3. Recommendation Rec (2002) 10 of the Committee of Ministers to member States on mediation in civil matters
4. Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters

##### **1.3. European Union**

5. European Code of Conduct for Mediators
6. Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

#### **2. International Standards on Family Mediation**

##### **2.1. Council of Europe**

7. Recommendation No R (98) 1 of the Committee of Ministers to Member States on Family Mediation
8. Guidelines for a better implementation of the existing recommendation concerning mediation and mediation in civil matters

##### **2.2. Hague Conference on Private International Law**

9. Convention on the Civil Aspects of International child abduction (Concluded 25 October 1980)
10. Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

#### **3. International Standards on Restorative Justice**

##### **3.1. United Nations**

11. Handbook on Restorative Justice programmes

##### **3.2. Council of Europe**

**12.** Recommendation No R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters

**13.** Guidelines for a better implementation concerning mediation in penal matters

**3.3. European Union**

**14.** Council Framework Decision of 15 May 2001 on the standing of victims in criminal proceedings (2001/220/HA)

## 2) Replies to the questionnaire (short version)

### LIST OF RESPONDENTS

Participants who replied to the questionnaires represented the following institutions/entities

<b>Armenia</b>	(a) Ministry of Justice of the Republic of Armenia  (b) The Chamber of Advocates of the Republic of Armenia
<b>Azerbaijan</b>	Bar Association of the Republic of Azerbaijan
<b>Georgia</b>	High Council of Justice of Georgia
<b>Republic of Moldova</b>	Chamber of Commerce and Industry from Moldova
<b>Ukraine</b>	(c) Ukraine National Bar Association  (d) NGO “Association of Advocates of Ukraine”
<b>Belarus</b>	Institute for Retraining and Qualification Upgrading of Judges, Prosecutors and Legal Professionals at the Belarus State University

CIVIL MATTERS Legal Framework	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
1. Specific Laws/Standards	Yes (a) (b)	No	Yes	No (c) (d)	Yes	No
2. Reform underway	No (a) (b)	No	Yes	Yes (c) ; No (d)	Yes	Yes
3. Kinds of disputes	All in the list (a) (b)	There are no specific legal requirements.	Any	All in the list (c) Other+Family and Financial (d)	All mentioned and Family	All
4. Disputes that cannot be mediated	Yes (a); No (b)	No	Yes.	Yes (c); No (d)	Yes	No
5. Challenges	Absence/insufficient legal framework; Judges do not promote mediation (a) General lack of awareness among parties and public (a) (b)	N/A	Lack of awareness among judges + lawyers + the parties and public in general	Reform not launched yet (c) Absence/insufficient legal framework Judges + Lawyers do not promote mediation General lack of awareness among the parties and public in general (d)	General lack of awareness among the parties and public in general Non-tolerant mentality of the parties which does not support for peaceful dispute resolution	Judges + Lawyers do not promote mediation Lack of awareness among judges + lawyers + among the parties + public in general
6. Public debate	No (a) ----- (b)	Yes	No	Yes (c) (d)	-----	No
CIVIL MATTERS Availability	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
7. Mediation schemes	Yes (a) ----- (b)	No	No	No (c) (d)	Yes	No
8. Judicial system promotion	Yes (a); (b)	No	Yes	No (c); (d)	Yes	No
9. Court-annexed mediation schemes or lists of mediators	Yes (a); (b)	No	Yes	No (c); (d)	Yes	No
10. Bar Associations support	Yes (a) No (b)	N/A	Yes.	Yes (c) A little bit (d)	Yes	No
11. Lawyers advice	Yes (a) No (b)	Yes	Yes	Some but not many (c) Yes, a very small % of lawyers (d)	Yes, Not always	No
12. Opt-out mediation	No(a) Yes (b)	No	Yes	No (c) (d)	No	No

CIVIL MATTERS Mediator's qualifications	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
<b>13. Specific Training</b>	Yes (a); (b)	No	No	Yes (c); (d)	Yes	Yes
<b>14. Providers</b>	- Public mediation providers; Mediator's private associations (a) - The Ministry of Justice by itself or by involving specialized Mediators training organization (b)	NGOs	Public Universities	- Public mediation providers (c) * Mediators' private associations/providers (d)	Institutions of continuous education for adults and other organizations.	Public Universities Private Universities Mediators' private associations/providers
<b>15. Length of mediation training</b>	- The law does not specify (a) - Between 40 and 80 h (b)	N/A	Up to 40 h	- Between 40 and 80 h (c) - Up to 40 h; Between 40 and 80 h; Between 80 and 120 h; Over 120 h (d)	Over 120 h 140 h – for persons who have a university degree in the jurisprudence 170 h – for persons who have other higher education	Over 120 h
<b>16. Items covered by the training</b>	- All in the list, except "adequate amount of role plays and other practical exercises" (a) - All in the list (b)	Almost all are covered	Attitude and ethics of the mediator Phases of the mediation process Traditional settlement of a dispute and mediation Skills and techniques of communication and negotiation Skills and techniques of mediation	- All in the list (c) - All except Traditional settlement of a dispute and mediation; Indication, structure and course of mediation; Mediators need more role plays and practical exercises (d)	All	All in the list
<b>17. 5 priority topics</b>	1 <sup>st</sup> Mediation skills to avoid deadlocks 2 <sup>nd</sup> Skills to conclude mediation 3 <sup>rd</sup> The principle of confidentiality 4 <sup>th</sup> Skills in working with advocates	1 <sup>st</sup> Traditional settlement of a dispute and mediation 2 <sup>nd</sup> Legal framework of mediation 3 <sup>rd</sup> Principles and aims of mediation 4 <sup>th</sup> Phases of the	1 <sup>st</sup> Phases of the mediation process 2 <sup>nd</sup> Traditional settlement of a dispute and mediation 3 <sup>rd</sup> Attitude and ethics of the mediator 4 <sup>th</sup> Skills and	1 <sup>st</sup> Introduction to mediation 2 <sup>nd</sup> Definition of the major topics by mediator, evaluation of ideas and convergence of mediation interests 3 <sup>rd</sup> Emotional	1 <sup>st</sup> Principles and aims of mediation 2 <sup>nd</sup> Attitude and ethics of the mediator 3 <sup>rd</sup> Legal framework of mediation 4 <sup>th</sup> Skills and techniques of	-----

	<p>5<sup>th</sup> Special skills for mediators (a) *</p> <p>1<sup>st</sup> The organization of mediation process 2<sup>nd</sup> Conflict management 3<sup>rd</sup> Management skills with unequal parties 4<sup>th</sup> The features of mediation in family disputes 5<sup>th</sup> The principle of confidentiality (b)</p>	<p>mediation process 5<sup>th</sup> Skills and techniques of mediation</p>	<p>techniques of communication and negotiation 5<sup>th</sup> Skills and techniques of mediation</p>	<p>competence of the mediator 4<sup>th</sup> Development and practice of the communication skills of mediator 5<sup>th</sup> Methods of moderation and visualization (c) *</p> <p>1<sup>st</sup> Principles in mediation and methods of compliance 2<sup>nd</sup> Stages of mediation 3<sup>rd</sup> Emotional intelligence in mediation 4<sup>th</sup> Mental features in interethnic mediation 5<sup>th</sup> Mediator's warranty (d)</p>	<p>communication and negotiation 5<sup>th</sup> Skills and techniques of mediation</p>	
<b>18. Specific requisites</b>	<p>- To have any degree; To be 21 years old or over; To be an accredited mediator (a) - To have any degree Training in mediation; To be an accredited mediator; registered in the registry of mediators (b)</p>	None	Any age	<p>No (c) *</p> <p>Any age, But the special Law will change it (d)</p>	<p>To have any degree Training in mediation; To be an accredited mediator. Per the Law on Mediation the mediator may be a person who: 1) has a university degree in the jurisprudence or other higher education, 2) trained in the field of mediation or experience to provide a conciliation in accordance with the procedural law, 3) granted the certificate of mediator from the Ministry of</p>	<p>Training in mediation; To be an accredited mediator. Necessary to hold a Bachelor degree.</p>

					Justice.	
<b>19. Accreditation process</b>	Yes, Conducted by Ministry of Justice (a); (b)	No	No	No (c);(d)	Yes, Per the Law on Mediation the certificate of mediator granted by the decision of the Accrediting Commission on mediation matters (Board of Experts) at the Ministry of Justice	Yes, there is a certification exam consisting from 2 parts. Written and verbal test.
<b>20. Criteria for accreditation</b>	- 2 stages of accreditation: 1. Test with a passable threshold of 90%, 2. Interview (a) - Pass the specific training, when to pass the writing and oral examinations (b)	N/A	N/A	No law yet (c) * ----- (d)	The criteria for accreditation per the Art. 4 of the Law on Mediation: 1) university degree in the jurisprudence or other higher education; 2) training in the field of mediation or the experience to provide a conciliation in accordance with the procedural law.	A person can become a mediator if he/she meets a set of cumulative conditions.
<b>21. Accreditation bodies</b>	Ministry of Justice (a); (b)	N/A	N/A	No law yet (c) * ----- (d)	Ministry of Justice The Accrediting Commission on mediation matters (Board of Experts) at the Ministry of Justice	The Mediation Council issues a Decision regarding the approval of the certification exam. Further, the Ministry of Justice issues the certificate confirming the title of mediator.
<b>22. Entity ruling mediation</b>	Yes, Self-governing organization of mediators (a) (b)	No	No	No (c) (d)	Yes, the Accrediting Commission on mediation matters (Board of Experts) at the MoJ	The Mediation Council
<b>23. Competent authority</b>	Yes Self-governing organization of mediators (a) (b)	N/A	N/A	N/A (c) * ----- (d)	The Accrediting Commission on mediation matters (Board of Experts) is established at the MoJ	The Mediation Council

<b>24. Number of accredited mediators</b>	- Accredited mediators – 56 (a) - Accredited mediators – 54 (b)	N/A	Trained mediators - over 100	- No information on trained mediators (c) - Trained mediators – maybe 300; Accredited – about 100 (d)	285 accredited mediators on 09.09.2016	Trained mediators_800; Accredited mediators_700
<b>CIVIL MATTERS Codes of Conduct</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>25. Approved Code of Conduct</b>	- Yes (a) - Judicial Code The Mediator shall be guided by general rules of conduct (b)	No	No	- No (c) - Yes, Only European Code of Conduct for Mediators (d)	Yes	Yes (26.02.2016)
<b>26. Sanctions for breaching Code of Conduct</b>	- No (a) - Yes (b)	No	No	No (c) (d)	Yes	Yes
<b>27. Principle of confidentiality</b>	Legislation (a) (b)	No specific rules	Legislation	Agreement (c) (d)	Legislation	Legislation

<b>CIVIL MATTERS Procedure &amp; Contents</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>28. Provisions for suspension of limitation terms</b>	----- (a) (b)	No	No	No (c) (d)	Yes	Yes
<b>29. Mechanisms of enforcement</b>	Yes (a); (b)	No	No	- No (c) - Yes (d)	Yes	Yes
<b>30. Data information</b>	- No (a) - ----- (b)	N/A	Until 30/06/2016 40 cases referred to mediation. 17 cases settlement reached	- N/A (c) - ----- (d)	No official data	-----
<b>CIVIL MATTERS Costs of mediation</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>31. Costs in € for users</b>	- Variable amount, € 10/1st hour; € 20/2nd hour (a) - ----- (b)	N/A	Free of costs	- Variable (each mediator sets own price) (c) - Free of costs (for promotion); Fixed amount – € 300-2000; Variable amount - € 30 per hour (d)	Variable amount (determined by the parties)	-----
<b>32. Legal aid</b>	No (a) (b)	No-	No	No (c) (d)	No	Yes



CIVIL MATTERS Awareness	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
<b>33. Measures to raise awareness</b>	- Dissemination of information via leaflets/booklets, internet, posters Seminars and conferences (a) - Articles/information in the media (b)	-----	Articles/information in the media Seminars and conferences Open days on mediation at courts and institutions which provide mediation services	- Articles/information in the media (c) - Articles/information in the media Seminars and conferences; Private initiative of mediators (TV appearances, presentations etc.) (d)	Articles/information in the media Dissemination of information via leaflets/booklets, internet, posters Mediation telephone helpline; Information and advice centers; Focused awareness programs such as "mediation weeks"; Seminars and conferences	Articles/information in the media Dissemination of information via leaflets/booklets, internet, poster Information and advice centers Seminars and conferences Open days on mediation at courts and institutions which provide mediation services
<b>34. Training for judges</b>	Yes (a) (b)	No	Yes	- No (c) - Yes (d)	Yes	Yes
<b>35. Training for lawyers</b>	- Yes (a) (b)	No	Yes	No (c) (d)	Yes	No
<b>36. Other comment</b>	----- -	Interrelation between mediation organizations, as well as free legal aid	-----	Ukraine need help in popularization mediation among the broad (d)	-----	----- -

FAMILY MEDIATION Legal Framework	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
<b>37. Specific Laws/ Standards</b>	- Yes (a) - No (b)	No	No	No (c) (d)	Yes (mediation in civil matters).	-----
<b>38. Reform underway</b>	- Unknown (a)* - No (b)	No	-----	No (c) (d)	Yes	-----
<b>39. Kinds of disputes</b>	- Separation; Divorce; Child Custody; Child support; Guardianship; Adoption (a) - Separation Divorce (b)	Such cases like maintenance (alimony), parenting time (visitation) can be amicably settled between the parties before court.	-----	- Divorce; Child custody (c) - Divorce; Child custody Child support; Parenting time (visitation) (d)	Divorce; Maintenance; Child custody; Child support; Parenting time (visitation); Parentage /Paternity; Guardianship; Adoption	-----
<b>40. Disputes that cannot</b>	No (a) (b)	Yes	-----	No (c) (d)	No	-----

<b>be mediated</b>						
<b>41. Challenges</b>	- Absence or Insufficiency of legal framework; Judges do not promote mediation; General lack of awareness among the parties and public in general (a) -General lack of awareness among the parties and public in general (b)	N/A	-----	----- (c) - Judges do not promote mediation Lawyers do not promote mediation; General lack of awareness among the parties and public in general (d)	Same in civil mediation	-----
<b>42. Public debate</b>	- <b>No</b> , reform already accomplished (c)	<b>No</b> (focused on commercial disputes).	-----	- <b>Yes</b> (c) (d)	-----	-----
<b>43. National or international NGOs involved in supporting/improving family mediation</b>	<b>Yes</b> (c) ----- (d)	<b>No</b>	-----	- <b>No</b> (c) - <b>Yes</b> , NGO's NAMU, Private initiatives (d)	<b>Yes</b> NGO "Belarusian Republic union of Lawyers"	-----
<b>FAMILY MEDIATION Availability</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>44. Mediation schemes</b>	- <b>No</b> (a) - <b>Yes</b> (as in civil cases) (b)	<b>No</b>	-----	<b>No</b> (c) (d)	<b>Yes</b>	-----
<b>45. Judicial system promotion</b>	<b>Yes</b> (a) (b)	<b>No</b>	-----	<b>No</b> (c) ----- (d)	<b>Yes</b>	-----
<b>46. Court-annexed mediation schemes or lists of mediators</b>	- <b>Yes</b> (a) - <b>No</b> (b)	<b>No</b>	-----	<b>No</b> (c) (d)	<b>Yes</b>	-----
<b>47. Bar Associations promotion</b>	- <b>Yes</b> (a) - <b>No</b> (b)	N/A	-----	<b>Yes</b> (c) (d)	<b>Yes</b>	-----
<b>48. Lawyers advice</b>	- <b>Yes</b> (a) - <b>No</b> (b)	<b>Yes</b>	-----	- Not all (some) (c) - <b>Yes</b> (about 10%) (d)	<b>Yes</b>	-----
<b>49.. Opt-out mediation</b>	<b>No</b> (a) (b)	<b>No</b>	-----	- <b>No</b> (c) - <b>Yes</b> , Separation (d)	<b>No</b>	-----
<b>FAMILY MEDIATION Mediator's qualifications</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>50. Specific Training</b>	- <b>No</b> (a) (b)	<b>No</b>	-----	- <b>Yes</b> (c) (d)	<b>Yes</b>	-----
<b>51. Providers</b>	- Mediator's private	N/A	-----	- Private Universities (c)	Other	-----

	associations (a) - See the point 14 (b)			- Mediators' private associations (d)	See point14	
<b>52. Length of mediation training</b>	- The law does not specify (a) - Between 40 and 80 hours See the point 15. (b)	N/A	-----	- Up to 40 hours (c) - Up to 40 h, Between 40 and 80 h; Over 120 h (d)	See p.15. (...in the context of general mediation training 10 hours for family mediation).	-----
<b>53. Items covered by the training</b>	- Not known (a) . See point 16 (b)	N/A	-----	- No information (c) - Principles and aims of mediation; Attitude and ethics of the mediator Phases of the process; Legal framework; Skills and techniques of communication and negotiation; + of mediation; role plays and other practical exercises (d)	All	-----
<b>54. Priority topics</b>	- Not known (a) - See the point 17 (b)	N/A	-----	----- (c) - 1 <sup>st</sup> Principles in mediation and methods of compliance; 2 <sup>nd</sup> Stages of mediation; 3 <sup>rd</sup> Emotional intelligence in mediation; 4 <sup>th</sup> Mental features in interethnic mediation; 5 <sup>th</sup> Mediator's warranty (d)	See p.17	-----
<b>55. Specific requisites</b>	- To have any degree; To be 21 years old or over; To be an accredited mediator (a) - See point 17	N/A	-----	- It is not regulated by law yet (c) - None (d)	To have any degree; Training in mediation; To be an accredited mediator; See p.18	-----
<b>56. Accreditation process</b>	- Yes Conducted by the Ministry of	N/A	-----	No (c) (d)	Yes, See p.19	-----

	Justice (a) - See the point 19 (b)					
<b>57. Criteria for accreditation</b>	- 2 stages of accreditation: 1. Test with a passable threshold of 90%; 2. Interview (a) - See the point 20 (b)	N/A	-----	No law yet (c) (d)	See p.20	-----
<b>58. Accreditation bodies</b>	- Ministry of Justice (a) - See point 21(b)	N/A	-----	Association of Mediators (c) ----- (d)	Ministry of Justice See p.21	-----
<b>59. Entity ruling family mediation</b>	- Yes, Self-governing organization of mediators (a) - See point 22. (b)	No	-----	No (c) (d)	Yes See p.22	-----
<b>60. Competent authority</b>	Yes, Self-governing organization of mediators (a) - See the p.23 (b)	N/A	-----	Not available (c) ----- (d)	See p.23	-----
<b>61. Number of accredited mediators</b>	- Only general mediators 56 (a) - There is no specific registry for family mediators. (b)	N/A	-----	- N/A (c) - Trained mediators 50 Accredited mediators 10 (d)	Accredited mediators 285 See p.24	-----
<b>FAMILY MEDIATION Codes of Conduct</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>62. Approved Code of Conduct</b>	- No general guidelines, but each private sector organizations may have its own (a) - See point 25 (b)	N/A	-----	- No (c) - Yes, Only European Code of Conduct of Mediators (d)	Yes See p.25	-----
<b>63. Sanctions for breaching Code of Conduct</b>	- No (a) - See point 26 (b)	N/A	-----	No (c) (d)	Yes See p.26	-----
<b>64. Principle of confidentiality</b>	- Legislation(a) - See the point 27 (b)	N/A	-----	Agreement (c) (d)	Legislation	-----

<b>FAMILY MEDIATION Procedure &amp; Contents</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>65. Provisions for suspension of limitation terms</b>	-----	No	-----	No (c) (d)	Yes See p.28	-----
<b>66. Mechanisms of enforcement</b>	----- (a) See point 29 (b)	No	-----	- No (c) - General civil law (d)	Yes See p.29	-----
<b>67. Any legal criteria for recognition the child's best interest?</b>	----- (a) - Article 1 of the Family Code (b)	Both Family Code and Law on Child Rights of the Republic of Azerbaijan + Convention on the Rights of the Child.	-----	No (c) (d)	Yes ("Law on Mediation"; "Marriage and Family Code")	-----
<b>68. Data information</b>	-----	N/A	-----	-----	No official data	-----
<b>FAMILY MEDIATION Costs of mediation</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>69. Costs in € for users</b>	Variable amount € 10/1 <sup>st</sup> h € 20/2 <sup>nd</sup> h (a) ----- (b)	N/A	-----	- Individually Professionalism of mediator and n. of hrs. spend (c) - Free of costs – (to promote mediation); Fixed amount – 50 – 300; Variable amount 40€ per h (d)	Variable amount See p.31	-----
<b>70. Legal aid</b>	No (a) (b)	No	-----	No (c) (d)	No	-----
<b>FAMILY MEDIATION Awareness</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
<b>71. Measures to raise awareness</b>	- Dissemination of information via leaflets/booklets, internet, posters Seminars and conferences (a) - Articles/information in the media (b)	-----	-----	- Articles/information in the media Dissemination of information via leaflets/booklets, internet, posters Seminars and conferences (c) - Seminars and conferences (d)	Articles/information in the media Dissemination of information via leaflets/booklets, internet, posters Mediation telephone helpline; Information and advice centers Focused awareness programs such as "mediation weeks" Seminars and conferences	-----

72. Training for judges	- Yes (a) - See point 34 (b)	No	-----	No (c) (d)	Yes	-----
73. Training for lawyers	- Yes (a) - See point 35 (b)	No	-----	No (c) (d)	Yes See p.35	-----
<b>FAMILY MEDIATION International/Regional Conventions</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
74. Signed Conventions	No (a) ----- (b)	Yes	-----	No (c) (d)	Yes 1. Convention of 20 Nov 1989 on the Rights of the Child; 2. Convention of 25 October on the Civil Aspects of International Child Abduction 3. Convention of 29 May on Protection of Children and Co- operation in Respect of Intercountry Adoption	-----
<b>FAMILY MEDIATION</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
75. Other comments	-----	-----	-----	- Creation of canter of the family mediation	-----	-----

<b>RESTORATIVE JUSTICE Legal Framework</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARUS</b>	<b>REP. of MOLDOVA</b>
76. Specific Laws/ Standards	- No (a) - No, but the Criminal Procedure Code. Reconciliation is allowed until the court's retreat to the conference room to adopt a verdict. (b)	No. However, under Criminal Procedure Code reconciliation between the victim and the accused is possible.	-----	- No (c) - Yes (It is not a mediation, but there are Criminal proceedings based on agreement. (d)	No	-----
77. Reform underway	- No (a) - Ongoing 3rd stage of Judicial Reforms. (State Probation	No	-----	- No (c) - Yes (These rules of law were included to the new Criminal	No	-----

	Service was established and its Law was adopted in, 2016). (b)			Procedure Code in 2012) (d)		
<b>78. Offences excluded</b>	- There are <b>No</b> provisions for mediation in the fields of criminal law (a) - <b>No</b> (b)	Under Criminal Procedure Code reconciliation between the victim and the accused is possible in a private and semi-public criminal prosecution (please also see comment above).	-----	----- (c) - Other exclusions: Agreement on reconciliation between the victim and the suspect or the accused may be concluded in the proceedings regarding criminal offenses (d)	-----	-----
<b>79. Challenges</b>	- None (a) - All listed •Lack of the specialists who could train further mediators •Lack of/insufficiency of the political will to change the Criminal Justice vector from Punitive to Restorative approach (b)	N/A	-----	----- (c) - General lack of awareness among the parties and public in general (d)	-----	-----
<b>80. Public debate</b>	- <b>No</b> (a) (b)	<b>No</b>	-----	<b>Yes</b> (c) ----- (d)	<b>Yes</b>	-----
<b>81. National or international NGO's involved in Restorative Justice</b>	- <b>No</b> (a) - Not exactly for restorative justice, but for Probation Service Establishment (b)	<b>No</b>	-----	<b>No</b> (c) <b>No</b> information (d)	<b>No</b>	-----
<b>RESTORATIVE JUSTICE Availability</b>	<b>ARMENIA</b>	<b>AZERBAIJAN</b>	<b>GEORGIA</b>	<b>UKRAINE</b>	<b>BELARAUS</b>	<b>REP. of MOLDOVA</b>
<b>82. Mediation schemes</b>	<b>No</b> (a) (b)	<b>No</b>	-----	- <b>No</b> (c)	<b>No</b>	-----

				- Yes (d)		
<b>83. Judicial system promotion</b>	No (a) (b)	No	-----	- No (c) - Yes (d)	No	-----
<b>84. Facilitators/mediators in the field of restorative justice</b>	No (a) (b)	No	-----	No (c) (d)	No	-----
<b>85. Bar Associations promotion</b>	No (a) (b)	N/A	-----	Yes (not many) (c) (d)	No	-----
<b>86. Lawyers advice</b>	No (a) (b)	Lawyers inform the parties on possibility of reconciliation	-----	- Yes, Some of them but not many (c) - Yes (d)	No	-----
<b>87. Stage</b>	- None (a) - Diversion from criminal justice system) i.e. restorative justice carried out as part of an informal sanction, such as community resolution) Pre-sentence) i.e. restorative justice carried out after an offender has pleaded guilty but prior to sentencing (b)	(i) private criminal prosecution may not start or shall be terminated in case of conciliation between a victim and an accused before court deliberates; (ii) a semi-public criminal prosecution (as well as the criminal case) - may not be terminated because of reconciliation of the victim with the accused exceptions are the cases provided by Article 73 of the Criminal Code (when the person has committed a crime for the first time, not representing big public danger).	-----	----- (c) - Pre-sentence (i.e. restorative justice carried out after an offender has pleaded guilty but prior to sentencing (d)	-----	-----
<b>88. Types of activities</b>	- None (a) - See question 82 (b)	N/A	-----	----- (c) - Face-to-face victim/offender meetings or conferences (d)	-----	-----



RESTORATIVE JUSTICE Mediator's qualifications	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
89. Specific Training	No (a) (b)	N/A	-----	----- (c) - No (d)	No	-----
90. Providers	- None (a) - No (but it the Justice Academy of Armenia) (b)	N/A	-----	----- (c) - USAID (d)	-----	-----
91. Length of mediation training	None (a) N/A (b)	N/A	-----	-----	-----	-----
92. Items covered by the training	None (a) N/A (b)	N/A	-----	-----	-----	-----
93. 5 priority topics	None (a) - 1 <sup>st</sup> CoE and other international recommendations and requirements in the field; 2 <sup>nd</sup> Psychology of the offender (crime, criminal behavior) and the victim; 3 <sup>rd</sup> Psychology of communication and negotiation skills; 4 <sup>th</sup> Case management and case work approach; 5 <sup>th</sup> Code of conduct, ethics and the Law (b)	N/A	-----	----- (c) - Vira Zemlyanska has written the Handbook «Restorative justice in criminal proceedings in Ukraine» (d)	-----	-----
94. Specific requisites	None (a) No (b)	N/A	-----	----- (c) None (d)	-----	-----
95. Accreditation process	No (a) (b)	N/A	-----	No (c); No Info (d)	-----	-----
96. Criteria for accreditation	None (a) N/A (b)	N/A	-----	N/A (c) No Info (d)	-----	-----
97. Accreditation bodies	None (a) N/A (b)	N/A	-----	MoJ or Public Body (c) ----- (d)	-----	-----
98. Entity ruling mediation	No (a) No (MoJ) (b)	No	-----	No (c) ----- (d)	No	-----
99. Competent authority	None (a) See question 98 (b)	N/A	-----	No (c) ----- (d)	-----	-----

100. Number of accredited mediators	None (a) (b)	N/A	-----	N/A (c) No Info (d)	-----	-----
RESTORATIVE JUSTICE Codes of Conduct	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
101. Approved Code of Conduct	No (a) (b)	N/A	-----	- No (c) - Yes Only European Code of Conduct for Mediators (d)	No	-----
102. Sanctions for breaching code of Conduct	No (a) N/A (b)	N/A	-----	No (a) (b)	-----	-----
103. Principle of confidentiality	None (a) N/A (Usually assured by the Laws) (b)	N/A	-----	Agreement (c) (d)	Legislation	-----
RESTORATIVE JUSTICE Procedure & Contents	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
104. Provisions for suspension of limitation terms	No (a) N/A (b)	N/A	-----	No (c) (d)	-----	-----
105. Mechanisms of enforcement	- No (a) - Yes At least, ensuring the enforcement of the Art. 183 of the Criminal Procedure Code by the stakeholders of the Criminal Justice System, including restorative justice programs in duties of all Municipal Management Administrations of Armenia (or delegating these activities to national, community based NGOs or other organizations) (b)	N/A	-----	----- (c) - Yes, In case of default of the settlement the victim may apply to the court which approved the agreement, with a request to cancel the sentence. The result is a nullity appointment proceeding in a general manner or sending materials to complete the procedure of pre-trial investigation in a general way, if the agreement was initiated under pretrial investigation. (d)	-----	-----

106. Data information	None (a) No (b)	N/A	-----	----- (c) No information (d)	-----	-----
RESTORATIVE JUSTICE Costs of mediation	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
107. Costs in € for users	----- (a) N/A (b)	N/A	-----	----- (c) Free of costs (d)	-----	-----
108. Legal aid	No (a) (b)	No	-----	No (c) (d)	-----	-----
RESTORATIVE JUSTICE Awareness	ARMENIA	AZERBAIJAN	GEORGIA	UKRAINE	BELARUS	REP. of MOLDOVA
109. Measures to raise awareness	None (a) N/A (b)	N/A	-----	----- (c) - Articles/information in the media Seminars and conferences (d)	-----	-----
110. Training for judges	No (a) No, Just as a little part of Probation activities (b)	Yes, Several sessions have been conducted ("Article 6 of the European Convention of Human Rights").	-----	----- (c) No information (d)	No	-----
111. Training for lawyers	No (a) No, just as a little part of Probation activities (b)	Yes The identical sessions have been conducted for lawyers on restorative justice in frame of trainings named as "Article 6 of the European Convention of Human Rights"	-----	----- (c) No information (d)	No	-----
112. Other comment	-----	-----	-----	-----	-----	-----

### 3) Agenda

#### **Working Group C** **Alternative Dispute Resolution Mechanisms**

with focus on: Criminal restorative justice; Mediation in civil cases

**Strasbourg, 26 September 2016**  
**Council of Europe, Agora Building**  
**Room G06**

09.30 – 10.00	<u>Opening and Introduction</u> Mr Simon Tonelli, Head of Division for Legal Co-operation, Council of Europe
10.00 – 10.40	<u>Presentation of relevant European and other international standards</u> <ul style="list-style-type: none"><li>- <u>Restorative Justice</u> - Mr. Aarne Kinnunen, Deputy Head of Department, Ministry of Justice, Department of Criminal Policy, Finland</li><li>- <u>Mediation in Civil and Family matters</u> - Ms. Maria Oliveira, CEPEJ Expert, Portugal</li></ul>
10.40 – 11.00	
	<u>Questions and answers</u>
11.00 – 11.15	Coffee Break
11.15 – 12.15	<u>Overview and analysis of the most challenging issues faced by participating countries</u> <ul style="list-style-type: none"><li>- <u>Restorative Justice</u> - Mr. Aarne Kinnunen</li><li>- <u>Mediation in Civil and Family matters</u> - Ms. Maria Oliveira</li></ul>
12.15 – 12.45	
	Comments and inputs by participants
12.45 – 14.15	Lunch Break
14.15 – 15.00	<u>Presentation of case-studies, best practices or lessons learned in relation to the identified challenges from experiences of countries both within the region and in other Council of Europe member states</u> <ul style="list-style-type: none"><li>- <u>Restorative Justice</u> - Mr. Aarne Kinnunen</li><li>- <u>Mediation in Civil and Family matters</u> - Ms. Maria Oliveira</li></ul>
15.00 – 15.30	
	Comments and inputs by participants
15.30 – 15.45	Coffee Break
15.45 – 17.30	<u>Proposals and discussions of possible regional approaches or cooperation initiatives that could be undertaken in response to the identified challenges</u> Mr. Aarne Kinnunen Ms. Maria Oliveira  <u>Inputs from participants</u>

#### 4) List of participants

### **Working Group C** **Alternative Dispute Resolution Mechanisms**

with focus on: Criminal restorative justice; Mediation in civil cases

**Strasbourg, 26 September 2016**  
**Council of Europe, Agora Building**  
**Room G06**

#### **International Experts**

- |    |                                |  |
|----|--------------------------------|--|
| 1. | Ms Maria da Conceição Oliveira | Attorney at Law and Mediator   |
| 2. | Ms Katian Caria                | Trainer, Mediator and Life Coach   |
| 3. | Mr Aarne Kinnunen              | Deputy Head of Department of Criminal Policy at Ministry of Justice of Finland |

#### **RSG Members**

- |     |                        |   |
|-----|------------------------|---|
| 4.  | Mr Artur Hovhannisyan  | First Deputy Chairman of the Chamber of Advocates of Armenia  |
| 5.  | Ms Gulnar Gurbanova    | Member of the Board of the Azerbaijan Bar Association   |
| 6.  | Mr Anar Baghirov       | Member of the Board of the Azerbaijan Bar Association   |
| 7.  | Mr Vladimir Maroz      | Deputy Director of the Institute for Retraining and Qualification Upgrading of Judges, Prosecutors and Legal Professionals at the Belarusian State University |
| 8.  | Mr Zaza Khatiashvili   | Chairman of Georgian Bar Association  |
| 9.  | Mr Irakli Kandashvili  | Executive Board Member of the Georgian Bar Association  |
| 10. | Mr Alexandre Tsuladze  | Head of the Department of International Co-operation and Quality Management of the High Council of Justice of Georgia   |
| 11. | Mr Viacheslav Panasyuk | Deputy Director, Directorate for Justice and Security of the Ministry of Justice of Ukraine   |
| 12. | Ms Oksana Kadenko      | Member of the Bar Council of Ukraine  |

#### **Institutional experts**

- |     |                      |  |
|-----|----------------------|--|
| 13. | Ms Vazgush Kostanyan | Leading Specialist of the Unit of Constitutional Legislation at the Ministry of Justice of Armenia |
| 14. | Mr Elchin Nasibov    | Head of Division of the General Department of Legislation of the Ministry of Justice of Azerbaijan |

- |                              |   |
|------------------------------|---|
| 15. Mr Vafaddin Ibayev       | Judge at the Supreme Court of Azerbaijan                    |
| 16. Ms Volha Savich          | Member of the Bar Association of Minsk, Belarus             |
| 17. Ms Svetlana Gorea        | Head of the Council of Mediation, Republic of Moldova       |
| 18. Ms Oksana Myroshnychenko | Judge of Golosiyevskiy District court of Kiev City, Ukraine |

#### **Civil Society Representatives**

- |                              |   |
|------------------------------|---|
| 19. Ms Adelaida Baghdasaryan | Assistant Professor at American University of Armenia                   |
| 20. Mr Arshak Gasparyan      | President of the Social Justice NGO, Armenia                            |
| 21. Mr Rustam Zulfugarov     | Advocate and Chairman of the Legal Researchers Center, Azerbaijan       |
| 22. Mr Mehman Sultanov       | Co-founder of Azerbaijan Law Reform Centre                              |
| 23. Mr Andrei Balan          | CEO of the Mediation Center of the Republic of Moldova                  |
| 24. Ms Maryna Saienko        | Executive Board Member of the NGO "Association of Advocates of Ukraine" |
| 25. Mr Vladislav Sytyuk      | Member of Advocates' Association of Ukraine                             |

#### **CoE Secretariat**

- |                          |  |
|--------------------------|--|
| 26. Mr Simon Tonelli     | Head of Division for Legal Cooperation |
| 27. Ms Sophio Gelashvili | Head of Unit                           |
| 28. Ms Rita Marascalchi  | Project Manager                        |
| 29. Ms Zaruhi Gasparyan  | Project Assistant                      |