

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

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
at the 616th meeting of the Ministers' Deputies)*

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Recognising the growing number of family disputes, particularly those resulting from separation or divorce, and noting the detrimental consequences of conflict for families and the high social and economic cost to states;
3. Considering the need to ensure the protection of the best interests and welfare of the child as enshrined in international instruments, especially taking into account problems concerning custody and access arising as a result of a separation or divorce;
4. Having regard to the development of ways of resolving disputes in a consensual manner and the recognition of the necessity to reduce conflict in the interest of all the members of the family;
5. Acknowledging the special characteristics of family disputes, namely:
 - the fact that family disputes involve persons who, by definition, will have interdependent and continued relationships;
 - the fact that family disputes arise in a context of distressing emotions and increase them;
 - the fact that separation and divorce impact on all the members of the family, especially children;
6. Referring to the European Convention on the Exercise of Children's Rights, and in particular to Article 13 of this convention, which deals with the provision of mediation or other processes to resolve disputes affecting children;
7. Taking into account the results of research into the use of mediation and experiences in this area in several countries, which show that the use of family mediation has the potential to:
 - improve communication between members of the family;
 - reduce conflict between parties in dispute;
 - produce amicable settlements;
 - provide continuity of personal contacts between parents and children;
 - lower the social and economic costs of separation and divorce for the parties themselves and states;
 - reduce the length of time otherwise required to settle conflict;
8. Emphasising the increasing internationalisation of family relationships and the very particular problems associated with this phenomenon;
9. Realising that a number of states are considering the introduction of family mediation;

10. Convinced of the need to make greater use of family mediation, a process in which a third party, the mediator, impartial and neutral, assists the parties themselves to negotiate over the issues in dispute and reach their own joint agreements,
11. Recommends the governments of member states :
 - i. to introduce or promote family mediation or, where necessary, strengthen existing family mediation;
 - ii. to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes.

Principles of family mediation

I. *Scope of mediation*

- a. Family mediation may be applied to all disputes between members of the same family, whether related by blood or marriage, and to those who are living or have lived in family relationships as defined by national law.
- b. However, states are free to determine the specific issues or cases covered by family mediation.

II. *Organisation of mediation*

- a. Mediation should not, in principle, be compulsory.
- b. States are free to organise and deliver mediation as they see fit, whether through the public or private sector.
- c. Irrespective of how mediation is organised and delivered, states should see to it that there are appropriate mechanisms to ensure the existence of:
 - procedures for the selection, training and qualification of mediators;
 - standards to be achieved and maintained by mediators.

III. *Process of mediation*

States should ensure that there are appropriate mechanisms to enable the process of mediation to be conducted according to the following principles :

- i. the mediator is impartial between the parties ;
- ii. the mediator is neutral as to the outcome of the mediation process ;
- iii. the mediator respects the point of view of the parties and preserves the equality of their bargaining positions ;
- iv. the mediator has no power to impose a solution on the parties ;
- v. the conditions in which family mediation takes place should guarantee privacy ;
- vi. discussions in mediation are confidential and may not be used subsequently, except with the agreement of the parties or in those cases allowed by national law ;
- vii. the mediator should, in appropriate cases, inform the parties of the possibility for them to use marriage counselling or other forms of counselling as a means of resolving their marital or family problems ;
- viii. the mediator should have a special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children ;
- ix. the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties' bargaining positions, and should consider whether in these circumstances the mediation process is appropriate ;
- x. the mediator may give legal information but should not give legal advice. He or she should, in appropriate cases, inform the parties of the possibility for them to consult a lawyer or any other relevant professional person.

IV. *The status of mediated agreements*

States should facilitate the approval of mediated agreements by a judicial authority or other competent authority where parties request it, and provide mechanisms for enforcement of such approved agreements, according to national law.

V. *Relationship between mediation and proceedings before the judicial or other competent authority*

- a. States should recognise the autonomy of mediation and the possibility that mediation may take place before, during or after legal proceedings.
- b. States should set up mechanisms which would:
 - i. enable legal proceedings to be interrupted for mediation to take place;
 - ii. ensure that in such a case the judicial or other competent authority retains the power to make urgent decisions in order to protect the parties or their children, or their property;
 - iii. inform the judicial or other competent authority whether or not the parties are continuing with mediation and whether the parties have reached an agreement.

VI. *Promotion of and access to mediation*

- a. States should promote the development of family mediation, in particular through information programmes given to the public to enable better understanding about this way of resolving disputes in a consensual manner.
- b. States are free to establish methods in individual cases to provide relevant information on mediation as an alternative process to resolve family disputes (for example, by making it compulsory for parties to meet with a mediator), and by this enable the parties to consider whether it is possible and appropriate to mediate the matters in dispute.
- c. States should also endeavour to take the necessary measures to allow access to family mediation, including international mediation, in order to contribute to the development of this way of resolving family disputes in a consensual manner.

VII. *Other means of resolving disputes*

States may examine the desirability of applying, in an appropriate manner, the principles for mediation contained in this recommendation, to other means of resolving disputes.

VIII. *International matters*

- a. States should consider setting up mechanisms for the use of mediation in cases with an international element when appropriate, especially in all matters relating to children, and particularly those concerning custody and access when the parents are living or expect to live in different states.
- b. International mediation should be considered as an appropriate process in order to enable parents to organise or reorganise custody and access, or to resolve disputes arising following decisions having been made in relation to those matters. However, in the event of an improper removal or retention of the child, international mediation should not be used if it would delay the prompt return of the child.
- c. All the principles outlined above are applicable to international mediation.
- d. States should, as far as possible, promote co-operation between existing services dealing with family mediation with a view to facilitating the use of international mediation.
- e. Taking into account the particular nature of international mediation, international mediators should be required to undergo specific training.