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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE

Working Group on Mediation (CEPEJ-GT-MED)

ROAD MAP OF THE CEPEJ-GT-MED

Based on the CEPEJ-GT-MED report on

“The Impact of CEPEJ Guidelines
on Civil, Family, Penal and Administrative
Mediation”

Following its reactivation in 2017, the CEPEJ working group on mediation (CEPEJ-GT-MED)¹ assessed the concrete impact within the 47 Member States of the CEPEJ Guidelines it had developed in 2007 regarding : penal mediation (CEPEJ(2007)13), family and civil mediation (CEPEJ(2007)14) and alternatives to litigation between administrative authorities and private parties (CEPEJ(2007)15). In order to achieve this goal, a questionnaire composed of 31 questions divided into four main sections corresponding to the four types of mediation (civil, family, penal and administrative) was developed by Leonardo D'Urso, CEPEJ-GT-MED scientific expert. The questionnaire was validated by the members of CEPEJ-GT-MED and sent to all 47 CEPEJ national correspondents in July 2017. All individual replies were recorded in an online platform managed by the Secretariat.

Fifty-six replies were received from the questionnaire representing 39 Member States. The participating countries were: **Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and United Kingdom.**

Andorra, Austria, Azerbaijan², Liechtenstein, Monaco, Netherlands, and San Marino did not provide data and thus have not been included in the analysis.

Even though in most cases the data gathered were based on expert estimates by the CEPEJ national correspondents and not on official statistics, the CEPEJ- GT-MED believes that the analysis of the data and above all of the comments received can contribute to have a good sense of the status of mediation in Europe. It has also helped the CEPEJ-GT-MED drawing recommendations for further actions to be developed in order to strengthen the recourse to mediation in Europe with the target to achieve by 2025 a ratio of not less than 25% between disputes settled by mediation and disputes adjudicated in judicial proceedings in all four civil, family, penal and administrative matters.

1. Findings

The main findings of the questionnaire are summarized below:

a) Impact of the CEPEJ Guidelines on mediation

Close examination of the responses to the questionnaire demonstrated that the CEPEJ Guidelines had a different impact on both the 47 Member States and the four different types of mediation (civil, family, penal and administrative). A clear disparity exists in the answers received by EU member States and non-EU Member states. The different EU Directives on Mediation requiring implementation in national laws have had a greater impact on the majority of the 28 EU Member States than the CEPEJ Guidelines.

¹ The working group is composed of: **Mr. Rimantas Simaitis** (President), Lithuania; **Ms. Anna Márová**, Czech Republic; **Ms. Maria Oliveira**, Portugal; **Ms. Nina Betetto**, Slovenia; **Mr. Jean A. Mirimanoff**, Switzerland; **Mr. Jeremy Tagg**, United Kingdom; **Mrs Violeta Belegante**, Deputy member, Romania; **Mr. Giancarlo Triscari**, deputy member, Italy; **Mr. Leonardo D'Urso**, scientific expert, Italy.

² The CEPEJ national correspondent for Azerbaijan declared that Azerbaijan is extremely interested in implementing the recommendations and the tools developed by the working group on mediation due its current absence of the effective recourse to mediation in Azerbaijan.

On the contrary, for the non-EU Member states the Recommendations and Guidelines have been instrumental for the development of national legislations.

Regarding the matter of disputes, civil and family mediations guidelines were deemed by respondents to have had a major impact in comparison to penal and administrative ones. In correlation with the above, administrative guidelines consistently received the lowest scores from respondents.

b) Number of mediation processes

The answers confirmed a general lack of available and homogenous official data on mediations. Looking at the few statistics available and at the expert estimates from the CEPEJ national correspondents of the concrete numbers of mediations in the four types of dispute matters, it is evident that the use of mediation is still in its infancy, resulting in a great variation of use of mediation across the 47 Member States. For the vast majority of Member States, the ratio between judicial proceedings in Court and mediations is 100 to 1 (for one hundred cases filed in Court only one mediation process started).

In the four dispute matters, the number of mediations reported presented quite a variation. For example, countries such as **Italy**, **Norway** or **Finland** which reported a good number of mediations in civil matters, have less developed penal mediations. Mediations on administrative matters were almost non-existent.

c) Importance of possible CEPEJ action items to increase mediations

The majority of respondents rated between 3 and 4 (out of 5) the importance of possible CEPEJ actions to increase the number of mediation processes in their state in the four types of dispute matters. On average, the majority of respondents found that setting international standards for mediator trainings, introduction of possible CEPEJ cooperation programs, proposal of a model law and new tools on mediation would be the most important actions resulting in an increase of the number of mediations. Updating the CEPEJ guidelines on mediation was ranked on average the least important action among the actions proposed.

2. Conclusions

From the analysis of the quantitative data, comments and suggestions, the main conclusions on the impact of CEPEJ Guidelines on mediation are :

1. **Need in most of Member States of new national legislations on mediation in civil, family, penal and administrative matters and monitoring of their effective application and implementation.** There is still an enormous disproportion between the number of judicial proceedings in court and the number of mediations outside court in most of the Member States. The difference in number of mediations both across the Member States and among the four types of dispute matters is due to the presence of non-effective national legislations or their total absence (especially in penal and administrative matters).
2. **Need for more effective tools on mediation**, such as international standards for mediators, model laws, cooperation programs, new tools and update the guidelines. A renewed involvement in the implementation of diverse and more effective actions is

needed in order to increase the number of civil, family, penal and administrative mediations.

3. **Need of official statistics and reference points on mediation.** Official statistics and an established network of reference points on mediation at the level of Government and Ministries of Justice (MoJ) are lacking to properly monitor the use of mediation in CoE Member States.
4. **Need of CoE/CEPEJ leadership in promoting mediation as one of the means to increase efficiency in justice.** Mediation has not been instituted as one of the main pillars to the efficiency of justice, which promotion is one of CEPEJ's main goals. CoE/CEPEJ could take a proactive and permanent role promoting effective legislative reforms and tools in the four types of mediation.

3. Recommendations

Overall, there is no doubt that the Council of Europe Recommendations on Mediation and CEPEJ Guidelines encouraged the debate on alternative dispute resolution and brought significant changes in most of the 47 Member States. However, the findings of this study showed that they have exhausted their ability to bring deep changes in the field of mediation.

The development of mediation in Member States implies a change of paradigm, because it touches the way of thinking and behaving on the conflict and means a radical changing in the judiciary practice from the part of the judges and the lawyers. In this context, the measures recommended by the CEPEJ Guidelines No 13, 14 and 15 should be considered as a whole, a set of interdependent, interconnected measures implying the interactive collaboration of the public and private sectors.

Without a compulsory mediation awareness/training of judges during their education or in the first year of their judiciary practice the number of cases referred to mediation in civil, family, penal (adults and juveniles) and administrative matters will remain unchanged at the actual insignificant number compared with the number of judicial proceedings in the same matters. Similarly, without compulsory ADR teaching and training for lawyers/ barristers in the law faculties and Barristers' schools, the ancient habit to recourse - systematically, automatically and without conflict management thinking - to the adjudication systems (State and arbitration proceedings) will remain.

In the light of the findings and conclusions of this study, the CEPEJ working group on mediation should formulate proposals for consideration by CEPEJ in view of implementing the following recommendations:

Conclusions	Recommendations for CEPEJ/CEPEJ-GT-MED
<p>1. Need for new legal framework to develop the effective recourse to mediation in civil, family, penal and administrative matters.</p>	<p>1.1 Propose to the CEPEJ to encourage the competent committees of the Council of Europe, including the CDCJ, to consider the development of a Convention on mediation in civil, family, penal and administrative matters.</p> <p>1.2 Develop Guidelines for preparation of legal framework that could be taken as a methodological and reference basis for future legislative reforms and could include recommendations to improve the effectiveness of existing national legislations on mediation.</p> <p>1.3 Promote annual or bi-annual CoE Conference on Mediation with the participation of high-level policy makers from MoJs.</p>
<p>2. Need for more effective tools and actions on mediations.</p>	<p>2.1 Develop and distribute training tools to increase compulsory training and awareness of mediation among lawyers and judges.</p> <p>2.2 Distribute to Courts in CoE member States (via MoJs) a Guide to establish and manage Court-Mediation Pilot Programs and promote success stories and best practices already achieved in some Courts.</p> <p>2.3 Continue to develop the “CEPEJ Mediation Development Toolkit” and further actions in each of the four dispute matters. In particular, promote practical implementation of the Guidelines and mediation development tools through cooperation programmes with member states.</p>

<p>3. Need of official statistics and reference points on mediation in most of the Ministers of Justice of the 47 member States.</p>	<p>3.1 Recommend the set-up of a body in each of the 47 Member State, in charge of collecting statistical data on mediation, for example a “Mediation Department” in the Minister of Justice.</p> <p>3.2 Develop a Network of persons in charge of mediation at MoJs and of correspondents of experts in civil, family, penal and administrative mediation.</p> <p>3.3 Set a standard and promote a unified methodology to collect statistics on mediation by the network of national correspondents, that will notably be used in the framework of CEPEJ evaluation cycle as from the next round 2018-2020 (in cooperation with the CEPEJ- GT- EVAL).</p>
<p>4. Need of CoE/CEPEJ leadership in promoting mediation as one of the means to increase efficiency in justice.</p>	<p>4.1 Dedicate sufficient resources to allow the CEPEJ-GT-MED to effectively support the development of mediation in Europe and act as a permanent forum to promote best practices, tools and information on mediation among Member States at MoJs.</p> <p>4.2 Promote recourse to mediation within the CoE itself by suggesting to the competent department to introduce a multi-step clause (application of mediation and then arbitration) in all CoE procurement contracts.</p> <p>4.3 Include a module on mediation and CoE/CEPEJ mediation instruments in training sessions organised on a regular basis for CEPEJ cooperation experts.</p>