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# **Promotion and Protection of Property Rights of Internally Displaced Persons, Refugees, and Returnees upon Readmission Agreements**

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**Theme report “Mediation in Kosovo and Metohija”**

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# MEDIATION IN KOSOVO AND METOHIJA

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## I. PREVIEW

This Report is the result of the work of the legal team of the EU project "Protection and Promotion of Property Rights of Internally Displaced Persons, Refugees and Returnees upon Readmission Agreements". The Report was compiled by an expert on social issues Blažo Nedić<sup>1</sup>, a lawyer and mediator from Belgrade, supported by Milica Nedovic, graduated lawyer from Novi Sad, in the analysis of the legal framework. Objectives of the Report is to analyze the application of mediation in Kosovo and Metohija, to facilitate access to justice and protection of property and other rights of internally displaced persons from this area.

The EU project "Protection and Promotion of Property Rights of Internally Displaced Persons, Refugees and Returnees upon Readmission Agreements" represents a continuation of the work of four projects that the Office for Kosovo and Metohija, in cooperation with the EU, implements since 2008. The project beneficiaries are internally displaced persons, refugees and returnees from the EU, under the provisions of readmission agreements between the EU and Serbia. The project promotes and protects their property rights by providing information, legal advice or other expert assistance, including representation before courts. The project coordinates the work of lawyers, trainee lawyers and advisers, and all the activities are financed by the EU and the Government of the Republic of Serbia. The total value of the project, which lasts for two years, is 3,651,630 euros. The Project is implemented by a consortium led by European Consulting Group.

The right to free legal aid provided by the project can be achieved by displaced persons or persons claiming the right to property in Kosovo and Metohija, who due to the financial situation cannot afford legal representation or who due to limited access to justice cannot exercise their rights. They have at their disposal a professional team consisting of senior legal advisers, junior legal advisers and trainees. The help that the project offers consists of providing legal advice, representation of parties in the courts of the place of origin, obtaining documentation issued by the competent institutions in places of origin, as well as

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<sup>1</sup>Blažo Nedić, lawyer and mediator, Regional mediator of the World Bank and the Chairperson of the National Association of Mediators of Serbia (NUMS).





informing vulnerable and victims about their rights. In addition to working with clients, the project is working on a more permanent solution for legal support to persons to whom legal assistance is harder to get or is denied. A team of young, talented lawyers, originating from Kosovo and Metohija, from Croatia and Bosnia and Hercegovina, daily learns from top legal experts and gains unique knowledge and experience, so they could continue to work to preserve the rights of the vulnerable.

In this Report, the terms mediation and intervention, as well as all derivatives, are used as synonyms, bearing in mind that “mediation” is an international term domesticated and more corresponding to the nature of this form of non-judicial dispute resolution, and taking into account the legal term “intervention” that is present in the context of legal frame which regulates mediation in Kosovo and Metohija.

All terms used in the text in the male grammatical gender include both male and female individuals to which they relate.

## II. INTRODUCTION

Mediation in Kosovo and Metohija derives from the common law. Mistrust and often resistance to the government, has led to the fact that in Kosovo\*<sup>2</sup>, as in most parts of Montenegro and Albania, the population traditionally showed distrust to official holders of government, which includes courts. Of course, another reason for this attitude was the difficult access to the courts and the justice due to inaccessibility and distance of certain parts of the territory. Common law was created using traditional norms and rules that were applied throughout history. Mediation in this context has had a different shape compared to modern mediation and represented a mechanism for conflict resolution in the community. Mediators had more authority and were expected to “judge” in a particular case. For this reason, experienced members of the local community were elected as mediators, who enjoyed a great reputation in the society. Rural “old men” or “elders” listened to all the parties in a dispute and then made a decision, that, as a rule, was implemented without question.

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<sup>2</sup> “This name does not affect the position on status and is in line with the UNSC Resolution 1244 and the MAF Opinion on the Kosovo’s declaration of independence”.





The first law on mediation (intervention) was adopted in 2008, when the Parliament in Priština adopted the Law on Mediation no. 03/L-057 (the Law). Traditional character of the law is reflected by the preamble which states that

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*“Assembly ... for the purpose of planning, organizing, functioning and resolution of disputes in the most efficient way through mediation; respecting the traditional history of mediation in Kosovo and Metohija, as well as striving to improve the legal system in Kosovo and Metohija adopts this .... Law on Mediation”.*

Thus, the Parliament introduced this traditional instrument for conflict resolution, into the regular legal system, and defined in Art. 1.2. that

*This Law determines rules in the mediation procedures for contested relationships, in particular in property and legal relations of legal entities, and also in trade, family, labor and other civil, administration<sup>3</sup>, and criminal relations, in which the parties may not dispose of their own free will, unless the special law foresees the exclusive responsibility of a court or other competent body”.*

However, although this law clearly contributed to the development of mediation, the Provisional Institution of Government in Priština has started work on a new law in this area and by the Decision no. 04/06 of October 3, 2017 adopted the Draft of the Law on Mediation (the Draft) whose most important innovations will be presented in this Report, after reviewing the legal framework currently in force. Also, the Report will occasionally present the differences in the legal framework and concrete solutions based on the applicable regulations of the Republic of Serbia, which are in effect in the area outside of Kosovo and Metohija.

### **III. PRINCIPLES OF MEDIATION PROCEDURE PRESCRIBED BY LAW**

As in all other legal instruments that regulate mediation and the Law on Mediation of 2008, which will be analyzed in detail below, a dominant position is paid to the principles of the mediation process. The principles which are encompassed by this Law include: expression of

<sup>3</sup> Probably the intention of the translator was to talk about “administrative” relations (author’s comment)





will, the equality of the parties in a procedure, impartiality, confidentiality and credibility and urgency<sup>4</sup>.

## Expression of Will (voluntariness)

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*For starting the mediation process, there must be free will of all parties.*

Under the translated term, “Expression of Will” the Law defines the principle of voluntariness. Voluntariness is one of the fundamental principles of the mediation process, where the legislator decided to provide under these principles only “commencement of the procedure”, while the other elements of voluntariness are found in other provisions.

## Equality of the Parties in the Procedure.

*In mediation procedure, the parties are equal and have the rights and obligations under the law.*

Equality is also a fundamental principle, bearing in mind that the mediator has no formal powers to maintain “procedural discipline” and in this regard, one should take into account that the parties have equal opportunities to participate in mediation procedure, i.e. equal position must be provided for them. If this is not possible, because of the imbalance of power, or for other reasons, the mediator must assess whether the practical implementation of mediation is meaningful.

## Impartiality

*The mediator, during mediation procedure, is fully impartial and independent from any influence.*

Impartiality of a mediator is another important principle which provides that a mediator must be free from any influence.

It should be noted that the Law which is in force in the most parts of Serbia does not provide for *Impartiality* as a separate principle, but defines it through the possibility of *Exemption of a Mediator* in Article 22

<sup>4</sup> Chapter II, Law on Mediation 03/L-057



## Confidentiality and Credibility

This article defines the confidentiality of the mediation process, as well as a prohibition on the use of statements and other information contained in the mediation procedure, as evidence in any other proceedings, without the consent of the parties. The article also provides for an obligation of confidentiality for mediators, the parties, attorneys, as well as for third parties involved in the proceedings, but in relation to them, this principle is set in Article 10.8 which regulates the course of the mediation process.

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## Urgency

*The mediation procedure is urgent.*

Unlike the most parts of Serbia, where it is stipulated that the mediation process ends after the expiry of 60 days from the date of conclusion of the agreement on the mediation, unless the parties agree otherwise, Article 13 of the Law on Mediation of 2008 stipulates that the mediation process lasts up to ninety (90) days without the possibility of extending this period, even at the consent of the parties. This is confirmed in Article 14.1.d), which stipulates that the mediation process ends once the legal deadline for reaching an agreement expires.

## IV. LEGAL FRAMEWORK FOR MEDIATION IN KOSOVO AND METOHIJA

### INTERNATIONAL INSTRUMENTS THAT REGULATE MEDIATION

International legal instruments governing mediation include:

- Directive 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of May 21, 2008 on certain aspects of mediation in civil and commercial and legal things<sup>5</sup>
- Recommendation (Council of Europe) on family mediation-REC (98)<sup>6</sup>
- Recommendation on mediation in criminal matters-REC (99) 19<sup>7</sup>
- Recommendation on alternatives to disputes between administrative authorities and private persons-REC (2001) 9;<sup>8</sup>

<sup>5</sup>[http://nums.rs/wp-content/uploads/2014/12/Direktiva\\_2008-52\\_Medijacija\\_.pdf](http://nums.rs/wp-content/uploads/2014/12/Direktiva_2008-52_Medijacija_.pdf)

<sup>6</sup><http://nums.rs/wp-content/uploads/2014/12/Rec981-E.pdf>

<sup>7</sup>[http://nums.rs/wp-content/uploads/2014/12/Rec9919\\_E.pdf](http://nums.rs/wp-content/uploads/2014/12/Rec9919_E.pdf)





- Recommendation on mediation in civil matters-REC (2002) 10<sup>9</sup>,
- European Code of Conduct for Mediators<sup>10</sup>,
- Model of the Law on International Trade of the United Nations Committee on International Trade Law (UNCITRAL)<sup>11</sup>.

In the United States, although mediation was developed from the needs of practice, and without any formal laws and statutes, a series of documents provides for the use of mediation in various social areas and sets out standards for the mediation process and the work of mediators. Thus, instruments which regulate mediation in the United States include

- Ethics code for settlement negotiation<sup>12</sup>,
- ABA Model of behavioral standards of mediators<sup>13</sup>,
- Uniform model of the Law on Mediation<sup>14</sup>,
- Family mediation standards<sup>15</sup>,
- Standards for the establishment and operation of the Ombudsman's office,<sup>16</sup> and so on.

## LAW ON MEDIATION (03/L-57)

Mediation in Kosovo and Metohija is regulated by the Law on Mediation (No. 03/L-057) adopted in 2008. The law regulates the mediation process, the establishment and functioning of the Mediation Committee of the PISG in Priština, and the rights and obligations of intermediaries (mediators). Also, rules of mediation procedure in disputed

<sup>8</sup><http://nums.rs/wp-content/uploads/2014/12/recommendation-rec20019-on-alternatives-to-litigation-between-administrative-authorities-and-private-parties.pdf>

<sup>9</sup>[http://nums.rs/wpcontent/uploads/2014/12/Preporuka\\_REC\\_2002\\_10\\_o\\_medijaciji\\_u\\_gradjanskim\\_stvarima1.pdf](http://nums.rs/wpcontent/uploads/2014/12/Preporuka_REC_2002_10_o_medijaciji_u_gradjanskim_stvarima1.pdf)

<sup>10</sup> [http://ec.europa.eu/civiljustice/adr/adr\\_ec\\_code\\_conduct\\_en.pdf](http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf)

<sup>11</sup> <http://nums.rs/wp-content/uploads/2014/12/UNCITRAL-mod-law-on-int-com-concil-guide1.pdf>

<sup>12</sup> Ethics Code for Settlement Negotiation: [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/settlementnegotiations.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/settlementnegotiations.authcheckdam.pdf)

<sup>13</sup> Model standards of Conduct for Mediators: [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf)

<sup>14</sup> Uniform Mediation Act: [http://www.uniformlaws.org/shared/docs/mediation/uma\\_final\\_03.pdf](http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf)

<sup>15</sup> Family Mediation Standards: <http://apfmnet.org/docs/Standards%20of%20Practice%20Adopted%20at%202-2-14%20Board%20Meeting-Revised%202-20-14.pdf>

<sup>16</sup> Standards for the Establishment and Operation of Ombuds Offices: [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/attach.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/attach.authcheckdam.pdf)







relationships, especially in the property law, commerce, family, work and other civil relations are set, where the parties can freely use free will, if a special law does not predict the exclusive jurisdiction of the court or other authority.

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The Law defines the mediation as “extra-judiciary activity” performed by a third person (mediator). “Dispute” under the Law is any disagreement of legal entities. Although the Law does not expressly define it, the term “legal entity” obviously includes both legal and natural persons. A mediator, according to the Law, is a third neutral party, authorized to mediate between two parties aiming to resolve the dispute in accordance with the principles of the procedure.

## The Mediation Procedure and Content of the Agreement on Mediation

The Law in Chapter III speaks about the process of mediation, which expressly states that the parties must agree about the mediation and that if one of the parties suggests mediation, and the other party does not respond within 15 days of receiving the call, it shall be deemed that the request for mediation was rejected. The court may in each trial stage, until completion, direct parties to the mediation procedure.<sup>17</sup>

If the parties agree on the commencement of the mediation process, the mediator is obliged to inform them first about the principles, rules, costs and legal effects of the agreement. Mediation is implemented by one mediator, but the parties may agree to have more than one mediator (co-mediation).

The mediation procedure is formally initiated after the parties and the mediator sign the "Agreement on Commencement of Mediation"<sup>18</sup>. This Agreement, according to the Law, should include: information on the parties to the dispute, information on their legal representatives, subject of the dispute, the statement of acceptance of the mediation procedure, and provisions relating to costs and fees. If the matter is in court, and the parties mutually agree to resolve their dispute through mediation, they are obligated to inform the court. Apart from the parties, their representatives and the mediator, third parties may attend the procedure, if the parties agree on this.

<sup>17</sup> Id., Article 9.6.

<sup>18</sup> Id., Article 10.3.



Although, in principle, this article follows similar logic of comparative solutions in the region, it contains a contradiction that may be the result of non-compliance of the translation. Specifically, Article 9.1. provides that

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*The mediation procedure begins at the moment when the parties agree on it.*

while Article 10.3. says

*The mediation procedure starts after the parties sign the agreement on its commencement.*

It can be interpreted that the parties are free to agree on the commencement of mediation, which formally begins by signing an agreement on mediation (Article 10.5), although the direct interpretation of Art. 9.1. concludes that the parties are free to determine some moment for the formal commencement of the mediation process, not just the signing of the agreement on mediation.

The conclusion of the Agreement on Commencement of Mediation is a formal start of mediation in the Central Serbia (Article 18 of the Law on Mediation of RS)

The mediator may, in addition to the common, hold separate meetings with each party, if it considers that it is in the interest of the procedure, and can submit a solution to the dispute, but certainly cannot decide alone on these matters.<sup>19</sup>

This authorization of the mediator to suggest a solution to the dispute is worded differently from the solution in most parts of Serbia, which provides that *a mediator cannot impose a solution to parties, make promises and legal advice, nor guarantee a certain outcome of the mediation.*<sup>20</sup>

## Agreement Reached in Mediation

Similarly, as in most parts of Serbia, the agreement reached in the mediation procedure shall be made in writing and signed by the parties and the mediator (Article 12.3.)

However, Article 12.4. provides that the reached agreement is considered final and enforceable document. This is the difference compared with the law applicable in most parts of Serbia, which does not recognize the term “legal finality” for an agreement reached

<sup>19</sup>Id., Article 11.1.

<sup>20</sup> Law on Mediation of RS, Article 34.



in mediation, but provides that the agreement reached in the mediation process must meet certain conditions and additional certification of signatures by a notary, in order to obtain the enforcement power (Article 26 of the Law on Mediation of RS).

The applicable law in Kosovo and Metohija, contains another important difference with respect to the regulation in central Serbia, as in Article 12.5. it provides that

*If the dispute is before a court, the written agreement is submitted to the court, which after the approval becomes an executive document.*

Therefore, the provisions of 12.4 and 12.5 of the law in force in Kosovo, provide for different ways to give power of executive document to the agreement reached in the mediation procedure, depending on whether the court proceedings are in progress or not. If a judicial proceeding is ongoing, the agreement reached in mediation must be ratified by the court in order to obtain the enforcement power. If the mediation process is led pre-trial, by reading the provisions of Article 12.4, it can be concluded that the agreement reached before the mediator has the force of a final and legally binding, but not an executive document. The law does not explain how such an agreement could obtain the power of legal enforcement.

## Duration of The Procedure and Its Completion

Mediation procedure lasts up to ninety days, and as has already been said, the law does not provide for the extension of this deadline. The procedure ends when an agreement is reached, by withdrawal of one of the parties at any time during the proceeding, when the mediator confirms that he considers that continuing the mediation is not meaningful, when the deadline for implementation of mediation expires. Likewise, the mediator may terminate the procedure, if during the procedure his impartiality is called into question. The agreement reached during the proceedings is legally binding as the court agreement, if this is confirmed by the court, prosecution, or other competent authority, as previously mentioned above. Also, the same authorities can cancel the agreement if it is determined that it is not in compliance with the law, if the will of the parties is not reflected, or when their rights and interests are violated. If there is a conflict of interest, the mediator is



excluded from the procedure, unless the parties, after being informed about this, will agree that he may continue to lead the procedure.

## Costs of Mediation

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As for the costs of the proceedings, the parties shall bear them proportionately, unless otherwise agreed. The fee for the mediator is regulated by the legal act issued by the Ministry of Justice of the PISG in Priština. The main mediator's fee is 25 euros, but the parties and the mediator may agree on a higher amount.<sup>21</sup>

## MEDIATION COMMITTEE: COMPOSITION, DUTIES, RESPONSIBILITIES AND METHOD OF VOTING

By the Law on Mediation of 2008 the Mediation Committee of the PISG in Priština (the Committee) was established.

This solution is different from the law which regulates mediation in most parts of Serbia, where forming of such a body is not provided, but all the work regarding the licensing, accreditation of training, enrollment in the register and other status works is done by the Ministry of Justice of the Republic of Serbia.

The Mediation Committee of the PISG in Priština will be established by the Ministry of Justice of the PISG in Priština, and shall consist of a Chairperson and four members. Chairperson of the Committee of the PISG in Priština is a civil servant and is appointed by the Ministry of Justice of the PISG in Priština. Entities represented in the Committee are: The Ministry of Justice of the PISG in Priština, the Judicial Council of the PISG in Priština, Prosecutorial Council of the PISG in Priština, the Bar Association of the PISG in Priština, the Ministry of Labor and Social Protection of the PISG in Priština. All bodies have one representative. Chairperson of the Committee of the PISG in Priština has a term of four years, with the possibility of re-election for another term. Members of the Committee shall serve for a term of three years and may be reappointed for another term. Upon termination

<sup>21</sup> Administrative Instruction no. 05/2011 for the mediator's fee





of the term of office of each member of the Committee, the Minister of Justice of the PISG in Priština proposes the appointment of new members.

The duties and responsibilities of the Committee are: determination of the development of policies regarding the mediation system, preparation and monitoring of the Code of Professional Standards for Mediators, decisions and recommendations to regulate the field of mediation, preparing the Rules of Procedure of the Committee, maintaining a register of mediators, providing expert advice, organizing training courses for mediators and informing the public about the possibilities of mediation.

## MEDIATOR

Detailed regulation of the conditions for the mediator status, licensing, and keeping a register of mediators is provided in Chapter V of the Law.

The conditions foreseen for the acquisition of the mediator status are: that he possesses a university degree and has passed the training course for mediation, that he mediated under supervision of a mediator in at least 6 sessions (it is unclear whether it is about 6 sessions, or 6 mediations), that he has not been convicted of a criminal offense punishable by imprisonment for more than 6 months, that he has high moral qualities and is registered in the register of mediators.

Training for mediators is conducted by the Mediation Committee of the PISG in Priština in cooperation with the Ministry of Justice of the PISG in Priština.

This solution is different from the law in most parts of Serbia, where accreditation to conduct training is issued by the Ministry of Justice, and all accredited legal entities may conduct the training.

A person who successfully completes the training will receive a diploma, and certification of mediators is performed by the Mediation Committee of the PISG in Priština. The Ministry of Justice of the PISG in Priština licenses the mediators who meet all the necessary requirements and at the proposal of the Committee, it suspends or revokes the license to the mediator.



## PUBLIC REGISTRAR

As mentioned, the Committee shall maintain a public Register of Certified Mediators. Copies of the Register shall be submitted to all courts, prosecution offices and other competent authorities. The reasons for which a mediator can be deleted from the Register are: personal request, death, revocation of the license, if inability to work occurred, the implementation of some other duty or a function that is not in accordance with the mediation and law.

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Unlike Register in central Serbia, the Register in Kosovo and Metohija at the moment is not publicly available, nor is the special web page of the Mediation Committee of the PISG in Priština available, which certainly reduces transparency, and hinders access to mediation services.

## RIGHTS AND OBLIGATIONS OF MEDIATORS AND PARTIES IN THE MEDIATION PROCESS

Chapter VI of the Law of 2008 defines the rights and obligations of the mediator and the parties. All rights and obligations are agreed before the start of the mediation, and must be respected until the end of the proceedings. The Law states that a foreign citizen can be a mediator in Kosovo and Metohija in specific cases and in accordance with the terms of reciprocity, with the prior approval of the Ministry of Justice of the PISG in Priština.

The Law contains a penal provision<sup>22</sup> relating to the situation when the mediator during the performance of his duties, illegally revealed any official information or otherwise abused his official duty. In these situations, he will answer in accordance with the Criminal Code in force in Kosovo and Metohija. It is unclear exactly what is meant by the term “official duties”, although this term may be due to the imperfections of the translated text.

<sup>22</sup> Id., Article 27





## BY-LAWS

### CODE OF CONDUCT FOR MEDIATORS (NO. 01-927)

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By-laws whose contents are elaborated hereinafter follow regulatory and legal logic of the Law on Mediation of 2008. Shortly after the law came into effect, the Code of Conduct for mediators was adopted.<sup>23</sup> As the purpose for the adoption of this Code, the Mediation Committee of the PISG in Priština states that it provides general principles of behavior of mediators, and protects the interests and informs clients on the responsibilities of mediators, as well as promotes public confidence in mediation as an alternative process for resolving disputes.

The Code defines the following terms: mediation, mediator, impartial, conflict of interest, as well as the principle of self-determination. The Code talks about the appropriate expertise stating that the mediator may not intervene in areas for which he is not trained and in which the good results of the dispute cannot be expected. Confidential character of the mediation, process quality, advertising and promotion of mediation, mediation agreement, the basis for the conclusion and form of the mediation are also governed by it. It also discusses the suspension or termination of the mediation and the conditions under which it can be implemented. The Code promotes the profession of mediators, require confidentiality and respect for privacy in the proceedings, prohibits unfair, false and misleading work during the mediation process. The Code presents basic information on tariffs, and points out that, if a mediator withdraws from the mediation process, he becomes obligated to pay back for all the work that he did not perform.

If a person who has legal or other license does not perform mediation in accordance with the Code, the Committee for Mediation of the PISG in Priština will initiate proceedings against him. The Code defines the concept of impartiality as a duty of a mediator to avoid acts that create an image of partiality towards the one of the parties, and is obliged to provide equal assistance to all parties. He is also obligated to reject managing the process if he cannot behave in accordance with the above stated. The mediator is obliged to respect

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<sup>23</sup><https://md.rks-gov.net/desk/inc/media/13DA44DB-CA16-4974-B955-D7079688F530.pdf>





the impartiality and may not show prejudice on the basis of personal characteristics of a party, regarding its origin, gender, nationality, language, religion, values and beliefs, or personal appearance during the mediation, nor for any other discriminatory reason. The mediator does not give or receive gifts, nor does give or receive services, loans, or other valuables that may pose a problem in terms of actual or apprehended impartiality of the mediator. It is forbidden for third parties to make pressure or impact, which compromises the independence or impartiality of the mediator.

## **DECISION ON ANNOUNCING THE PUBLIC COMPETITION FOR SELECTION OF CANDIDATES FOR TRAINING FOR MEDIATION (02-1195)**

This decision<sup>24</sup> was made to speed up the process of establishing mediation as an alternative means of dispute settlement. Mediation Committee of the PISG in Priština publishes a notice of training for mediation at least 30 days before the scheduled training. The manner and the deadline, as well as the media in which the notice expires in Albanian and Serbian language is also determined. In addition to the description of the contents of the notice, two centers for the training are mentioned (Uroševac and Djakovica) and the number of candidates selected for the training in mediation. The Decision states where the applications can be taken and all additions to the application an interested party is obliged to deliver. The application can be downloaded from the website of the Ministry of Justice of the PISG in Priština, can be taken in the premises of the Secretariat of the Mediation Committee of the PISG in Priština and in the district courts in Uroševac and Djakovica, and is to be supplemented by a certified copy of university diploma, certificate of citizenship, a certificate that the candidate has not been convicted for a criminal offense punishable by imprisonment for more than 6 months, and a short statement about the interests of the candidate, and a short biography - CV.

## **REGULATION ON SELECTION OF PARTICIPANTS FOR TRAINING IN MEDIATION (1-68)**

<sup>24</sup> <https://md.rks-gov.net/desk/inc/media/5BF63632-FA33-4E9A-9DA4-313051C8CB1B.pdf>



This Regulation<sup>25</sup> was adopted in order to establish fair and transparent procedures, in accordance with the previously announced competition for mediation. In the context of this Regulation, the following is addressed: initial interviews with candidates, the Board to consider the election of candidates, factors or criteria to be taken into account for the selection of candidates who will attend training for mediators, selection and interview with candidates for mediators and notice of election of candidates for training for mediators.

Mediation Committee of the PISG in Priština nominates a person who is obliged to hold an initial interview with each candidate within 5 days of receipt of the application. This Regulation establishes when the application will be considered incomplete, and the obligation of the Mediation Committee of the PISG in Priština to inform the candidates about how to complete it, for which the candidate has a deadline of 5 days from the date of notification.

The Mediation Committee of the PISG in Priština establishes a Review Board of the PISG in Priština, before starting the process of selection of candidates for training. It is composed of 2 members of the Mediation Committee and a member of the organization that organizes training. This by-law also talks about conflict of interest in connection with the application, and in which cases the Mediation Committee of the PISG in Priština nominates a replacement, another member, or excludes the member from participating in the consideration of candidates.

The Review Board of the PISG in Priština elects the candidates who were shortlisted and organizes interviews with the candidates. An unsatisfied candidate has the right to appeal, which he submits to the Mediation Committee of the PISG in Priština within 5 days after the decisions was made. The Board determines the final selection and prepares the list of accepted applications within 30 days after the deadline for the application and immediately notifies the applicants of the decision in writing.

## REGULATION ON TRAINING AND LICENSING OF MEDIATORS (01-609)

<sup>25</sup> <https://md.rks-gov.net/desk/inc/media/38B7988C-7DBB-4FA6-AE1A-C47274E67348.pdf>



Regulation on the training and licensing of mediators<sup>26</sup> was made in order to establish a program of education and learning through training for the person who signs up as a mediator and to establish procedures for the licensing of mediators.

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This Regulation shall govern general conditions of acquiring the mediator status (every person who holds a university degree in an accredited and licensed university in Kosovo and Metohija or in another country), the necessary qualifications (attend 40 hours of basic and 36 hours of specialized training, offered by the teacher or organization with a license of the Mediation Committee of the PISG in Priština), listed content of the training program, demonstration during training (it is mandatory and is conducted at least twice), establishes the obligation to issue a certificate of completion of training by the Mediation Committee of the PISG in Priština, defines types of training (advanced training and continuous training), closely specifies the services of training, mediation under the supervision of a mediator for at least seven debates, as well as the necessary prerequisites that a candidate for a mediator must meet (not being sentenced for a criminal offense punishable by imprisonment for more than 6 months; possession of high moral values), and precisely states the licensing process for the mediator.

Unlike the training in most parts of Serbia, which is prescribed for a period of 25 hours of the basic training, with a mandatory specialized training of at least 10 hours per year, during the validity of the Mediator License, training program for mediators according to the regulations in Kosovo and Metohija consists of 40 hours of basic and 36 hours of specialized training.

## ADMINISTRATIVE INSTRUCTION NO. 05/2011 FOR THE MEDIATOR'S FEE

This Administrative Instruction<sup>27</sup> determines the manner of payment of fees for mediation and administrative costs of mediation centers. The parties-participants in the procedure have to pay a fee for mediation and other costs which include: administrative fee for accepting the case for mediation (when the case is managed from a single center that

<sup>26</sup> <https://md.rks-gov.net/desk/inc/media/C80BF9AE-9ECB-44A0-8FD7-6EAFB4A70A4B.pdf>

<sup>27</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8032>



provides this service); the costs of experts, interpreters and other costs that are related to the provision of the necessary evidence (if they exist and are required); fees for the engaged mediator or more of them.

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The base price for a single case of mediation is 25 Euros. The mediator and the parties can agree for a higher amount of compensation. Mediators are encouraged to provide free services in situations where the parties are unable to materially settle the costs. In addition, the mediator will offer one free session for the purpose of consultation and informing the parties in relation to the principles, nature, rights and responsibilities in the process of mediation. If, after this session, parties decide to continue the mediation procedure, they need to pay the mediation fee in accordance with the agreement.

An interesting solution is the possibility that the compensation fees for mediation can be executed by the Judicial Council of the PISG in Priština, the Ministry of Justice of the PISG in Priština, or any other institution or organization, in which case the parties use mediation for free or as shall be determined by an agreement between the donors and temporary institutions in Priština.

## REGULATION ON REGISTRATION OF MEDIATORS (01-610)

This Regulation<sup>28</sup> was adopted in order to establish a single register of mediators, to determine the conditions of registration and method of management and removal from the register of mediators, and to regulate other things after the registration of the mediators.

It closer arranges the manner and the responsible body for keeping records, which is the Mediation Committee of the PISG in Priština or responsible body which it authorizes. It states in details the content of data in the Register of Mediators in Kosovo and Metohija (serial number of the registration, first and last name of the mediator, name of one parent, place of residence and telephone number, occupation, name of employer if he is employed, the number and date of the decision on registration, number, date and a possible reason for the deletion from the Register, date and place of taking the solemn oath, and other data, if

<sup>28</sup><https://md.rks-gov.net/desk/inc/media/14BE05C2-0B92-47C7-882A-031814E31600.pdf>



necessary), and specifies the obligations of mediators to immediately inform of changes of data.

The mediator gains the right to act on the date of entry in the Register. The conditions to be enlisted in the Register are stated, and all the obligations that the candidate should previously fulfill (that he has completed training in accordance with the training program for candidates for mediators, that he has received a certificate upon successful completion of training for a mediator, that he has received a license from the Ministry of Justice of the PISG in Priština for a mediator). Documentation required for registration of mediators includes two photos, address and telephone number, proof of completion of training for mediation, evidence of the license issued by the Ministry of Justice of the PISG in Priština, and proof of payment of fees for registration.

This Regulation defines the decision on entry into Register, and states the text of the solemn oath to be made after the decision on registration becomes final, and specifies the layout and content of identification card of the mediator.

The decision on removal from the Register is an administrative act that may not be appealed, but an administrative proceedings can be initiated, and as a reason for deleting are stated, in addition to meeting the requirements of the Law (at a personal request, in case of death, revocation of license, inability to work and implementation of some other duty or function that is not in accordance with the mediation or the law in force) two things: that the mediator is convicted of a deliberately committed criminal offense punishable by imprisonment for more than 6 months; rough violation of the Code of Ethics (the repetition of at least 3 duty violations is considered a violation of ethics, according to the Regulation on the Responsibilities and Disciplinary Procedure for Mediators in Kosovo and Metohija).

## REGULATION NO. 07/2011 ON LICENSING OF THE MEDIATORS



Regulation No. 07/2011 on licensing of the mediators<sup>29</sup> determines the procedure for the licensing of persons applying for a mediator, referring to the fulfillment of the conditions stipulated by the Law on Mediation.

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The Ministry of Justice makes a decision on licensing within 14 days from the date of filing the application. If the application is incomplete, the applicant has 11 days to complete it. The Ministry of Justice is obliged to give a written explanation in case of refusing the request. The decision on licensing, signed by the Minister of Justice, should contain the grounds on which it is made. The Minister's decision is final, and since it is not appealable, it may be subject to administrative proceedings if a person is not satisfied. The decision on licensing becomes final on the day of granting the request and issuing a decision on granting the license from the Ministry of Justice of the PISG in Priština. An officer authorized by the Ministry of Justice of the PISG in Priština is obliged to notify the Mediation Committee of the PISG in Priština and the applicant of the decision on licensing no later than 5 days from the validity of the decision (Licensing Register is kept by an officer appointed by the Ministry of Justice of the PISG in Priština). The applicant whose application for a license has not been granted has the right to submit, within 30 days, a claim to open administrative proceedings before the competent court.

## **REGULATION ON RESPONSIBILITIES AND DISCIPLINARY PROCEEDINGS FOR MEDIATORS (01-849)**

This Regulation<sup>30</sup> prescribes in detail the disciplinary bodies, procedure, disciplinary violations, as well as measures that may be imposed to the mediator. The Regulation in the General Provisions talks about the principles and responsibilities of the different bodies and organs conducting the disciplinary proceedings, in Special Provisions talks about disciplinary violations and measures as well as about the very Disciplinary Proceedings and conducting the administrative proceedings.

<sup>29</sup> <https://md.rks-gov.net/desk/inc/media/96D12312-6AD9-47FC-BEBF-C269D8F60634.pdf>

<sup>30</sup> <https://md.rks-gov.net/desk/inc/media/22430F64-CD54-4ADA-88C5-C05DFA893970.pdf>



The legal framework in most parts of Serbia does not contain a by-law that regulates disciplinary liability, nor otherwise stipulates in detail the disciplinary proceedings, violations and measures that may be imposed on a mediator.

### **General Provisions**

The purpose of the Regulation is to establish procedures for reviewing complaints submitted against the mediators, which are related to the performance of the duties of mediators; to facilitate the appropriate and fair proceedings, and to determine whether the mediator violated the Code of Conduct for mediators; to establish fair and disciplinary measures in connection with violations of the Code of Conduct for mediators. This Regulation regulates the procedures for disciplinary liability of mediators in Kosovo, who broke the Law on Mediation, the Code of Conduct for mediators on Kosovo and Metohija, and other legal acts issued by the Ministry of Justice of the PISG in Priština and the Mediation Committee of the PISG in Priština while performing their duties or in connection with them.

The first instance disciplinary proceedings take place before the Disciplinary Committee whose composition is determined by the Chairperson of the Mediation Committee of the PISG in Priština, and is made of one member of that Committee, and the two mediators from the Register of Mediators licensed by the Minister of Justice of the PISG in Priština. The Minister of Justice of the PISG in Priština has the right to annul decisions brought in the first instance. The process is conducted in accordance with the presumption of innocence. Disciplinary measures imposed against the mediator should be appropriate and proportionate to the offence. The deadline for the initiation of disciplinary proceedings in connection with an offense expires after six months, while for the criminal act it expires after one year from the date of offence or notices of violation. Enforcement of the final decision regarding the disciplinary measure imposed in case of violation is not allowed after six months, while the execution for a criminal offense is allowed after the decision was handed to the offender.

The Disciplinary Committee is independent and impartial in their work, and makes decisions





by majority vote. The public was excluded at all stages of the disciplinary proceedings.

### ***Special Provisions***

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In the Regulation, there are specific provisions pertaining to disciplinary responsibility of the mediators. Disciplinary violation is clearly designated and defined, taking account of performed criminal acts, the violation, unlawful or irresponsible performance of official duties, the determination of fees which are contrary to the tariffs or the written agreement concluded between the mediator and the parties.

The following are envisaged as disciplinary measures: a written warning; proposal for suspension of the license by the Ministry of Justice of the PISG in Priština; a proposal for the revocation of the license by the Ministry of Justice of the PISG in Priština. It is also possible to impose several disciplinary measures at once. Criminal proceedings and disciplinary proceedings can be run simultaneously and.

The mediator against whom a criminal procedure is initiated, or against whom an indictment was issued in connection with carrying out his duties as a mediator, or in connection with any criminal offense, shall immediately inform the Mediation Committee of the PISG in Priština. If something is not done Ministry of Justice of the PISG in Priština shall submit a proposal for the revocation of the license.

The disciplinary complaint shall be submitted in writing and shall contain: name and surname of the mediator, the city in which he performs his duties and description of disciplinary violations. Persons who may file a disciplinary complaint are as follows: each party in the mediation process; any other mediator, mediation services, the Association of Mediators of Kosovo\* of the PISG in Priština; court, public prosecutor's office, police or any other authority before which the proceedings were conducted, regarding the matter between the parties in the mediation, the Mediation Committee of the PISG in Priština, each of its members, as well as any other body, function or professional body connected to mediation; each donor or other non-governmental organization that assists in the mediation process or with which the Committee is working on that process. The complaint is submitted to the Mediation Committee of the PISG in Priština, which is obliged to submit,



within 15 days from the date of filing, a copy to the mediator. If the mediator does not respond, it shall be deemed that he has accepted the complaint filed against him, and that the main hearing will not be held and evidence shall not be considered, and the Disciplinary Committee of the PISG in Priština can make a decision on disciplinary action. If the mediator does not agree with the content of the complaint, the hearing before the Disciplinary Committee of the PISG in Priština will be held within 15 days of receipt of the reply to the complaint.

### ***Disciplinary Proceedings***

The third part of this Regulation applies to disciplinary proceedings, their course and content.

In the call to the hearing by the Chairman of the Disciplinary Committee of the PISG in Priština, the Mediator is informed that if he does not show or if he cannot justify his absence, the proceedings will be held without him. If the mediator represents himself, the Chairman shall inform him of his legal rights, that he is not obliged to incriminate himself, that he has the right not to give a statement regarding the charges and the right to make a statement regarding the charges.

During the proceedings of the main hearing, minutes shall be kept, where the members of the Disciplinary Committee of the PISG in Priština will put their signatures, as well as the accused mediator with his personal data, the subject under consideration, the place of proceedings and all acts adopted in the process. At the end of the procedure, the minutes will be signed by the mediator, Chairperson of the Disciplinary Committee of the PISG in Priština and the officer. After the closing arguments, the Committee Chairman declares completion of consideration of the case and draws away for a decision. A written copy of the decision shall be delivered to the reported mediator, the party who filed the complaint, and a copy is kept in the records of disciplinary cases.

As for the appeal to the Minister of Justice of the PISG in Priština, the party which is not satisfied with the decision of the Disciplinary Committee of the PISG in Priština has the right to a written appeal within 15 days, by submitting it to the Minister of Justice of the PISG in



Priština. There are also reasons for rejecting the appeal on the basis of inadmissibility or overdue.

### ***Administrative Proceedings***

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A dissatisfied party may initiate administrative proceedings before the Supreme Court of the PISG in Priština against the decision given by the Minister of Justice of the PISG in Priština on license revocation.

## **DRAFT OF THE NEW LAW ON MEDIATION**

As noted above, decision no. 04/06 of October 3, 2017, the Provisional Institution of Government in Priština has adopted the Draft of the Law on Mediation<sup>31</sup>. This Draft, which has not yet entered the procedure of the Assembly in Priština, contains several important changes to the current legislation, the most important is certainly the introduction of mandatory mediation for some types of disputes, exclusion of the possibility of mediation in cases of domestic violence, the introduction of the person responsible for mediation in the courts and prosecutors' offices, as well as deletion of the Mediation Committee of the PISG in Priština from the text of the Draft.

In Article 3.1.1.2. the Draft introduces the concept of “**Mandatory mediation**” and predicts that in certain situations, the judges will have the authority to force the parties to attempt mediation. Mandatory mediation is provided by Article 9 of the Draft in disputes about family relationships, in connection with alimony, custody, contacts with the child, division of joint marital property, where the judge at the preliminary hearing, after considering the official claim, is obliged to refer the parties to the mediation procedure. Paragraph 2 of this Article provides that mandatory referral to mediation will be also in property cases relating to easements, as well as compensation for expropriated property. The main reason for the determination of disputes in the field of expropriation for “mandatory mediation”, according to the lawyers involved in this Project, is more than 70,000 court cases in this area. The deadline for implementation of mediation in these cases is 30 days. If the

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<sup>31</sup>[http://www.kryeministri-ks.net/repository/docs/PROJEKTLIGJI\\_P%C3%8BR\\_ND%C3%8BRMJET%C3%8BSIM.pdf](http://www.kryeministri-ks.net/repository/docs/PROJEKTLIGJI_P%C3%8BR_ND%C3%8BRMJET%C3%8BSIM.pdf)



intervention or mediation attempted in these cases is not successful, the parties can return to the court proceedings only after delivery of written evidence, signed by the mediator and the parties, that they have tried to resolve the dispute through mediation.

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**“Person responsible for mediation”** will be appointed in the courts, prosecutors’ offices and administrative authorities, and shall be responsible to assist the parties with the cases referred to mediation, as well as in the selection of mediators.

**The legal effects of the agreement** reached in mediation are governed by Article 15 of the Draft and the principle of “two tracks” was retained there. Namely, if the matter was referred to mediation by the court, prosecution or administrative body, the agreement reached is submitted to the court, and after approval, it has the enforcement power in accordance with the law regulating enforcement proceedings. However, Article 14.4. of Draft provides that

*“If the mediation starts at the self-initiative of the parties, obtained written agreement signed by the parties and the mediator, has the power of an executive document in accordance with the relevant law on enforcement procedure.”*

Although the probable intention behind this provision is to encourage the so-called “private mediation”, or mediation before initiating court proceedings, given that mediators can be persons of all professions and trades, the question is what will be the legal effects of the application of this provision in practice. Potentially, such a provision could open a door to abuses, for the simple reason that such an agreement was devoid of any review by a court or other competent body.

**The duration of the mediation procedure** is determined by Article 16 of the Draft to 90 days, and the court in cases of mandatory mediation may grant an additional period of 60 days for an agreement to be reached. In cases where the parties to the dispute with self-initiation failed to resolve the dispute within 90 days, they, along with the mediator, can sign an agreement for an additional period of 30 days, provided that the mediator, in that case pays attention that by such extension of the deadline he does not cause legal consequences of the loss or acquisition of rights to one party at the end of period.

In the Draft of the new Law, maintaining the Registry of Mediators of the PISG in Priština, as well as all the services of licensing mediators and accreditation of training, have been



transferred to the Ministry of Justice of the PISG in Priština. The Draft also stipulates that all by-laws will be adopted six months after the entry into force of the new law, until when the existing regulations shall apply.

## ***V. ACTIVITIES OF INTERNATIONAL, REGIONAL AND LOCAL ORGANIZATIONS AND INSTITUTIONS IN THE AREA OF MEDIATION IN KOSOVO AND METOHIJA***

### **UNDP**

During 2013-14, within the Rule of Law Program (UNDP Rule of Law Program), UNDP, with the support from the Government of the Kingdom of the Netherlands, supported the work of the Mediation Committee of the PISG in Priština, as well as the establishment and functioning of the Mediation Centers in Uroševac, Đakovica, and the establishment of the center in Priština. In 2013, 263 cases were referred to mediation centers, and a total of 595 clients were referred to mediation, of which 22% were women. The agreement was reached in 49% of cases, and the database to track cases for mediation services was developed.<sup>32</sup>

During 2016, UNDP program has started a promotional campaign on mediation, as part of the UNDP Rule of Law Program. The campaign's target group was students of the Law Faculty of the University of Priština. By focusing on students, future lawyers, prosecutors, judges or mediators, UNDP sought to raise their awareness of the specific issues with whom they will meet in their professional work.<sup>33</sup> The campaign started with a panel discussion organized at the Faculty of Law, which aimed to encourage reflection on the importance of mediation. Students were addressed during the panel by the senior prosecutor from the State Prosecution of the PISG in Priština, who spoke about the benefits of mediation in resolving the backlog cases before the courts, as well as easier access to justice for the public. The administrator of the Mediation Center in Djakovica also spoke about the functioning of the Center and integration with the courts and prosecutors' offices. The support that UNDP provides to the Mediation Center in Djakovica was crucial to their operation. At the end of the panel, a licensed mediator shared experiences with students

<sup>32</sup>[http://www.ks.undp.org/content/dam/kosovo/docs/Infographics%20Serbian/RULE\\_OF\\_LAW\\_B\\_SRBSKI.pdf](http://www.ks.undp.org/content/dam/kosovo/docs/Infographics%20Serbian/RULE_OF_LAW_B_SRBSKI.pdf)

<sup>33</sup><http://www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2016/05/04/mediation-reaching-the-youth-of-the-public-university-of-prishtina-has-an-prishtina.html>



European Consulting Group





from specific disputes that were resolved through mediation. At the end of the panel, a contest of students was announced, where they tested their skills in mediation, and within which the three best essays on mediation were chosen, with appropriate rewards.

## USAID

The Program for execution and economic legislation (CLE)<sup>34</sup> is a three-year USAID program launched in May 2013. The program for execution and economic legislation (CLE) has continued to build on the progress made by the programs for the implementation of the agreements and decisions (SEAD).

The mission of the Program for execution and economic legislation (CLE) is to improve and strengthen the rule of law in Kosovo and Metohija, in order to create a better environment for economic development and increase of investments. The CLE program is focused on two strategic objectives. First, it will help the provisional institutions to improve the enforcement of civil verdicts, while it will in dramatic measure reduce the amount of backlog of unsolved cases in the judicial system in Kosovo. Second, this will help Kosovo and Metohija to develop and strengthen the legal framework and systems relating to the contract and commercial law, including mediation and alternative dispute resolution mechanisms (ADR).

The Program promotes gender equality in all its activities. All relevant training related to the new system of enforcement, new legislation relating to contract law, arbitration and mediation, will ensure the full involvement of female judges and other female professionals.

The Program for execution and economic legislation (CLE) helps and manages centers for mediation<sup>35</sup>. The Program also assists the provisional institutions, such as the Ministry of Justice of the PISG in Priština, in drafting the necessary legislation and building essential infrastructure to strengthen the mediation and guarantee its stability. Mediation is one of the possibilities for alternative dispute resolution (the other option is arbitration). Mediation is largely supported by government institutions and courts: Mediation Center in

<sup>34</sup>[http://www.kontrata.net/repository/docs/CLE\\_Program\\_Program\\_Fact\\_Sheet\\_\\_2013-11-06-srb\\_357454.pdf](http://www.kontrata.net/repository/docs/CLE_Program_Program_Fact_Sheet__2013-11-06-srb_357454.pdf)

<sup>35</sup>[http://www.kontrata.net/repository/docs/CLE\\_Program\\_Fact\\_Sheet\\_Mediation\\_2014-04-04\\_srb\\_me\\_logo\\_46276.pdf](http://www.kontrata.net/repository/docs/CLE_Program_Fact_Sheet_Mediation_2014-04-04_srb_me_logo_46276.pdf)



Gnjilane is now located in the premises of the Municipal Court in Gnjilane. For now, the Program for execution and economic legislation (CLE) manages centers for mediation in Gnjilane, in Peć and Prizren, and supports other mediation activities. The Program for execution and economic legislation (CLE) supports the Judicial Council of the PISG in Priština and the Mediation Committee of the PISG in Priština at the Ministry of Justice of the PISG in Priština in developing and implementing regulations. The Program for execution and economic legislation (CLE) continues to support the further steady development and expansion of the mediation services throughout the territory, while supporting the creation and strengthening of the Association of Mediators, non-governmental organization that will represent mediators and mediation institutions before public authorities.

### **CSSP (Berlin Center for Integrative Mediation)**

CSSP is an organization based in Berlin, which is for more than a decade present in the Western Balkans. Mission of CSSP is to support the leaders of local communities in post-conflict areas in order to resolve inter-ethnic conflicts through dialogue, to increase trust, and negotiation, using principles and tools of integrative mediation. CSSP advocates peaceful conflict resolution and raising capacity based on a systemic problem solution, non-discrimination and participatory processes.<sup>36</sup>

By supporting local leaders in solving local conflicts, CSSP contributes to the overall process of building peace in Kosovo and Metohija. In order to establish the more efficient system of conflict resolution, CSSP promotes the development of mediation as a separate profession. CSSP cooperates with political institutions at central and local levels, as well as with civil society organizations, to spread the profession of mediators in post-conflict environments. By creating local expertise for mediation, particularly in inter-ethnic mediation, local solutions can be found for local problems.

When necessary, CSSP serves as a mediator, usually at the local level. When the conflict involves other levels of government, CSSP applies multiple access and includes

<sup>36</sup><https://www.cssp-mediation.org/cssp/our-missions-and-principles/>





representatives of the central government and international organizations in the process of mediation.

In Mitrovica, CSSP cooperates with civil society organizations and individuals from North and South Mitrovica to enhance capacity in the use of mediation in the local community. CSSP recently opened mediation center with offices north and south of the Ibar river where mediators, trained by CSSP, help the parties resolve disputes referred by the court, or independently of the court proceedings.<sup>37</sup>

In the implementation of projects in Kosovo and Metohija, CSSP has the support of the German Foreign Office, the Norwegian Ministry of Foreign Affairs and Federal Department of Foreign Affairs of Switzerland.<sup>38</sup>

## KOSOVO PROPERTY AGENCY OF THE PISG IN PRIŠTINA (KAI)

Three new categories in legal professions were introduced in Kosovo and Metohija in 2008 and 2012, notaries, mediators and civilian enforcement officers. Their introduction has had an impact on the exercise of property rights. In 2008, with the Law no. 03/L-05 on mediation, a method of alternative dispute resolution has been introduced in Kosovo and Metohija. Mediation has received a large amount of attention, because it was seen as a modern and convenient means of relieving the courts and reducing the number of backlog cases, in order to promote friendly and quick way of resolving disputes, including disputes relating to property. The first two pilot mediation centers were established in June 2011 in the municipalities of Peć and Gnjilane, and in October 2011 the first court case has been referred to mediation. Currently, there are 7 centers for mediation, with around 170 certified mediators.

KAI of the PISG in Priština has identified several cases where mediation was a convenient way of resolving the dispute, and although KAI of the PISG in Priština continued mediation between the parties in order to find a conciliatory solution, none of the cases have been resolved amicably.

<sup>37</sup><https://www.cssp-mediation.org/kosovo/>

<sup>38</sup><https://www.cssp-mediation.org/thank-you/donors/>



For example, disputes over the valuation of the property is often stalled due to lack of accurate and reliable data on the market. Market value, however, is the price that was agreed between the parties and that actually will be paid for the property. Instead of relying on the expert testimony on valuation to determine the market value, mediation can help parties to reach themselves an agreement on the value. Helping the parties to negotiate an agreement, promotes above all efficiency and better sustainable result because it was reached by consensus.<sup>39</sup>

### **“PARTNERS OF KOSOVO \* - Center for Conflict Management”**

Established in 2001, a non-profit organization “Partners of Kosovo\* - Center for Conflict Management”<sup>40</sup> (Partners) belongs to the international network of organizations Partners Global<sup>41</sup>, and works with civil organizations, local governments and communities, as well as with international donors in Kosovo and Metohija. The organization implements a number of projects in the field of mediation, transitional justice, leadership among women and youth, sustainable integration programs with local governments. The organization has provided training services for mediation and arbitration in disputes in over 400 cases, with the participation of over 12,000 people, and they also participated in the writing of the first Law on Mediation, which was adopted by Parliament in September 2008.

The partners have also opened two centers for mediation in 2011-2012 in Uroševac and Djakovica, in cooperation with the UNDP program. The project is aimed at building capacity to improve access to justice, through the development and strengthening of alternative dispute resolution methods aimed at reducing the backlog of cases in courts. Gender-balanced approach aimed at ensuring equal access to justice and mediation services for men and for women.

The Partners have provided support to the Mediation Committee of the Ministry of Justice of the PISG in Priština on the institutionalization of mediation. In 2012 within USAID/SEAD program, the Partners have trained 30 mediators for the two centers for mediation in Uroševac and Djakovica, and 15 mediators for the new center in Gnjilane.

<sup>39</sup>Taken from the document "National strategy of Kosovo on property rights", December 2016, USAID and the Government

<sup>40</sup>Taken from the document "Partners Kosova - Center for Conflict Management", Center Overview.

<sup>41</sup><http://www.partnersglobal.org/>



## CENTER FOR ALTERNATIVE DISPUTE RESOLUTION - MITROVICA

The Mediation Center was established in 2013 by CSSP - Berlin Center for Integrative Mediation with the support of the Embassy of the Kingdom of Norway in Priština, the Swiss Embassy in Priština and the German Ministry of Foreign Affairs. In 2016 the Mediation Center of the PISG in Priština was registered as a local organization called the Center for Alternative Dispute Resolution - Alternative Dispute Resolution Center (ADRC).<sup>42</sup>

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ADRC has as its vision establishment of a more efficient justice system, and mutual respect and understanding of differences between communities, and their mission is to facilitate access to justice through mediation, primarily but not exclusively in the Mitrovica region, and to encourage communication and mutual understanding between communities.

The main objective of the organization is to provide mediation services to the citizens of Mitrovica as well as the promotion of mediation as a mechanism for alternative dispute resolution. ADRC intermediates in mediation in judicial and non-judicial procedures, as well as in procedures with prosecutors, acting in the material and time-efficient manner, acting in the framework of the relevant legal provisions (the Law on Mediation (no. 03/L-057) was adopted in 2008) and, and in accordance with official agreements with the Judicial Council of the PISG in Priština and Prosecutorial Council of the PISG in Priština in order to resolve legal disputes between the parties. As provided by law, each agreement reached in the mediation process, which has been approved by the court/prosecution has the power of an enforcement document.

In addition to mediation in disputes, ADRC aims to encourage interethnic communication and the development of human capacity for dialogue and negotiation, contributing to the expansion of the initiative for reconciliation in the territory of Mitrovica.

There are 49 mediators that contribute to the work of the Center, who come from different ethnic groups and professional environments, who are trained by CSSP and ADRC in cooperation with the Mediation Committee of the PISG in Priština and are licensed by the Ministry of Justice of the PISG in Priština. Over the past five years ADRC has mediated in

<sup>42</sup><http://www.mediation-mitrovica.org/srb>



hundreds of legal cases in the Mitrovica region, specifically 701 cases, with success in 88% of cases, which allowed easier access to justice for the more than 1,500 clients.

ADRC - Mediation Center Mitrovica is composed of a multi-ethnic staff and operates in a multi-ethnic area of Mitrovica.

The work of the Center is carried out in cooperation with the Municipal Court in Mitrovica (and its branches in Leposavić, Vučitrn, Srbica i Zubin Potok) and the Municipal Prosecutor's Office, where cases suitable for mediation are taken, in accordance with the Law on Mediation.



## VI. STATISTICS OF CASES SOLEVED THROUGH MEDIATION 2012-2015

Total number of all cases 2012-2015	Priština	Uroševac	Đakovica	Peć	Gnjilane	Mitrovica	Prizren	Total
Cases referred by the court	610	191	151	305	476	114	118	1965
Cases referred by the prosecutor	430	181	202	56	16	129	122	1136
Cases at the initiative of the parties	31	21	21	4	18	99	3	197
<b>Total referred to mediation</b>	<b>1071</b>	<b>393</b>	<b>374</b>	<b>365</b>	<b>511</b>	<b>338</b>	<b>243</b>	<b>3295</b>
Total solved by mediation	1009	232	280	224	408	285	24	2462
Total unsolved cases	28	51	79	127	62	56	18	421
Cases whose resolution is pending <sup>43</sup>	-	-	-	-	-	-	-	-

Source: Rustem Qehaja and Valbon Mulaj, "Mediation as an Alternative Manner of Dispute Resolution in KiM," *Acta Universitatis Danubius. Juridica*, Vol. 12, No 3 (2016).<sup>44</sup>

<sup>43</sup> The table lacks updated information regarding the cases whose resolution is pending. Bearing in mind that the table presents the three years old data, this section of the table was left empty.

<sup>44</sup> <http://journals.univ-danubius.ro/index.php/juridica/article/view/3658/3713>



## VII. CONCLUSION

In principle, it can be concluded that in Kosovo and Metohija there is a regulatory framework that enables the implementation of mediation in resolving various disputes. Moreover, regulations, involving detailed and elaborated disciplinary measures, constitute a solid starting point for the development and use of mediation in the contested relations.

The body responsible for the development and use of mediation has so far been the Mediation Committee of the PISG in Priština, which has five members, which was established by the Law on Mediation in 2008. The composition and responsibilities of this committee are regulated in detail, and it has representatives from the Ministry of Justice of the PISG in Priština, the Kosovo Judicial Council of the PISG in Priština, the Prosecutors Council of the PISG in Priština, Bar Association of Kosovo of the PISG, and the Ministry of Labor and Social Protection of the PISG in Priština. However, what draws attention is that in the Law there is no requirement that at least one member of the Committee should be a mediator, or to possess experience in the field of mediation and alternative dispute resolution. Also, there is currently no website nor any other publicly available information on the work of the Committee, nor the Register of Mediators. One reason for this may be that the Draft of the new Law did not specify the establishment of the Committee, but all its responsibilities are transferred to the Ministry of Justice of the PISG in Priština, but bearing in mind that the new Draft has not entered the parliamentary procedure, lack of access to the Register of Mediators, and lack of transparency in the work of the Mediation Committee of the PISG in Priština at this time greatly complicate the use of mediation in resolving disputes.

Territorial accessibility of mediation is limited, because currently only seven (7) Centers for Mediation in the courts, in Priština, Uroševac, Prizren, Peć, Djakovica, Gnjilane and Mitrovica are working. According to the research conducted in this report, there are only two civil organizations that provide mediation services, the Center for Conflict Management in Priština and the Center for Alternative Dispute Resolution in Mitrovica.

On the territory of Kosovo and Metohija there are about 170 licensed mediators, but no



data is available on their territorial distribution, qualifications, nor their ethnicity, or specialty, due to the mentioned lack of access to the Register of Mediators.

The Draft of the new Law on Mediation, as specified in Chapter IV was adopted by the Provisional Institutions of Government in Priština, and contains solutions that should improve the legal framework and should introduce new incentives for mediation in Kosovo and Metohija, but also the potentially problematic provision of Article 14.4 of the Draft, which stipulates that the agreement reached in the procedure of private mediation is automatically given the power of an executive document, if signed by the mediator, without any review by a court or other competent authority. The most significant changes to the Draft of the new Law are related primarily to the introduction of mandatory mediation for some types of disputes, exclusion of the possibility of mediation in cases of domestic violence, the introduction of the person responsible for mediation in courts and prosecutors' offices, as well as deletion of the Mediation Committee of the PISG in Priština from the text of the Draft.