ANALYSIS OF THE MEDIATION SYSTEM OF THE REPUBLIC OF CROATIA IN COMPARISON TO THE MEDIATION SYSTEMS OF CERTAIN JURISDICTIONS

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Unaprjeđenje sustava sudskog mirenja u Republici Hrvatskoj/Reinforcing the system of court-annexed mediation

Contents

PREFACE

About the project

The Republic of Croatia is implementing the Justice and Home Affairs program as part of the Norwegian Financial Mechanism 2014-2021. The program is run by the Ministry of Justice and Public Administration, with assistance provided by the Norwegian Courts Administration in the role of donor program partner, and the Council of Europe as an international partner organization. The value of the program amounts to 15 million euro, as a result of the grant provided by the Kingdom of Norway, with the Republic of Croatia donating 2.64 million euro. The goal of the program is to strengthen the rule of law, and the program encompasses four projects implemented by the Ministry of Justice and Public Administration in cooperation with Croatian and Norwegian partners and the Council of Europe.

The project "Reinforcing the system of court-annexed mediation", which was initiated in 2020 and completed in 2024, was implemented by the Directorate for Civil, Commercial and Administrative Law of the Ministry of Justice and Public Administration in cooperation with project partners - the Norwegian Courts Administration and the Judicial Academy.

The total value of the project is 1.5 million euro, of which 85% is financed from the grant provided by Norway, while 15% is financed from the State Budget of the Republic of Croatia.

Project implementation includes the following activities:

- conducting analysis of the existing mediation system of the Republic of Croatia in comparison with the mediation systems of other European countries in order to consider the possibilities for improving the Croatian mediation system
- preparation of a sociological and legal analysis of the reasons for the lack of utilization of mediation in the Republic of Croatia
- creation of a handbook on court mediation
- conducting training for mediators, namely for 500 persons directly involved in the work of the judiciary or persons who are otherwise relevant for the development and acceptance of mediation in the Republic of Croatia (judges, court advisors, lawyers, state attorneys, civil servants, representatives of the academic community and the educational system)
- conducting an awareness-raising campaign.

The purpose and goal of the project

The need for the implementation of the project arose from the fact that citizens and business entities use courts exclusively to resolve disputes, which results in a large number of court cases, overburdening the judicial system and making its functioning difficult.

Underdeveloped and insufficiently used system of mediation at the courts was, inter alia, identified as one of the main challenges to achieving the goal of strengthening the rule of law. The utilization of the mediation system at courts in the Republic of Croatia is extremely low compared to the total number of cases at municipal and commercial courts. Therefore, the implementation of the project is aimed at strengthening the efficiency of the judiciary by enhancing the utilization of the mediation system at the courts.

Within the framework of project activities, a comprehensive approach ensures that mediation in the Republic of Croatia becomes sustainable in the long term and that a positive perception is created regarding the amicable resolution of all disputes in which mediation is possible. The effect of such a comprehensive approach to mediation should have as a result a greater number of concluded settlements, relieving the workload burden of the judiciary, as well as greater trust of citizens in the judiciary due to greater satisfaction of the parties.

The aim of the analysis of the existing mediation system of the Republic of Croatia in comparison with the mediation systems of other European countries is to investigate the application of mediation within the legal system of the Republic of Croatia, as well as to investigate comparative mediation systems and create a document that will indicate the possibilities of improving the Croatian mediation system in general, with special emphasis on court mediation.

Expected results of the analysis

There are several reasons why different dispute resolution options are being introduced in the judicial system ("multidoor access to justice"). Namely, there are six reasons that can be cited as six goals of mediation:

1. **improving the efficiency of the judiciary** - reducing the number of pending cases, taking over part of courts' workload
2. **ensuring access to justice** - enabling parties to overcome economic, organizational and procedural obstacles on the path to dispute resolution
3. **self-determination of the parties** - providing the parties with the opportunity to play a more important role in the management of their dispute in such a way that they actively influence the dispute resolution process, recognize their needs and interests, and find and create dispute resolution options that would satisfy both their needs and the needs of the opposing party to the dispute
4. **transformation** - enabling the parties to overcome their own interest to a certain extent and accept the common interest that connects them, all with due regard to the fact that in mediation the parties have the possibility to change or transform their mutual relationship
5. **social transformation** – achieving the long-term goal of transforming the culture of litigation
6. **social control** - enabling the resolution of disputes outside the public domain so that the parties use mediation to achieve their own interests in their own measure, without external

influences, but certainly not in a way that is contrary to mandatory rules of law, morality and the rights of third parties.

By conducting a comparative analysis and providing recommendations of a consultative nature derived therefrom, an effort is made to propose a way to improve the system of court-annexed mediation and achieve more efficient justice, taking into account the aforementioned six goals of mediation.

METHODOLOGICAL APPROACH

Conducting the analysis of the mediation system of the Republic of Croatia in comparison with the mediation systems of certain European countries is planned in such a way that a team of legal experts drafts and creates a comparative analysis document. The foregoing precedes the process of making recommendations regarding the possibilities of improving the Croatian court mediation system.

The team of legal experts participating in the work on the analysis has theoretical and practical knowledge related to mediation.

Legal experts from the field of mediation of the project partner of the Norwegian Courts Administration also participate in the work on the comparative analysis.

The empirical research method was used to for the purpose of comparative analysis.

The work on the comparative analysis was preceded by conducting a sociological and legal analysis of the reasons for insufficient use of mediation in the Republic of Croatia. Sociological and legal analysis was used during the preparation for other analyses in which the mediation system in the Republic of Croatia was investigated by judiciary branches (civil law, enforcement law, inheritance law, bankruptcy law, administrative law, consumer disputes, financial sector disputes, disputes in family law, criminal law).

In addition to the sociological and legal analysis of the reasons for the insufficient use of mediation in the Republic of Croatia and the analysis of the mediation system of the Republic of Croatia by judiciary branch, and as part of research and work on the comparative analysis, study visits were made to Portugal, Norway, the Netherlands and Ireland in order to gain insight into the functioning of various alternative dispute resolution systems.

The guiding idea when selecting European countries whose systems are the subject of a comparative analysis was to choose countries with different systems and solutions, all in order to offer the widest possible range of experiences and knowledge.

Portugal is considered an interesting system considering that it has special tribunals for amicable dispute resolution, where a large part of the court workload related to small claims is resolved. In addition, according to certain characteristics (for example, the size of the country, the workload of the courts), Portugal is similar to Croatia.

The Netherlands has developed mediation both in the form of court mediation and extra-judicial mediation, and there is mandatory training of judges in amicable dispute resolution, although there is no law on mediation in the Netherlands.

Norway is an obvious choice given the partnership role of the Norwegian Courts Administration in the implementation of the project, and the fact that court mediation is an important and successful part of the Norwegian justice system.

Of all the countries visited, Ireland is the closest to the common law tradition. Given the fact that the application of mediation is significantly greater in countries with a common law tradition compared to countries with a continental legal tradition, it was expedient to investigate how mediation is integrated into that judicial system.

As part of the study visits, a number of institutions were visited (courts and other judicial authorities, chambers, institutions for mediation), and their employees presented mediation. Materials were collected, mostly in the form of presentations and articles, brochures and statistical data. Practical workshops and discussions were held for the purpose of gathering information and exchanging experiences.

Therefore, the comparative analysis follows the previously conducted analyses and is based on the knowledge and experience gained in other countries, for the purpose of considering the possibility of their application for the purpose of improving the Croatian court mediation system.

OVERVIEW OF INDIVIDUAL MEDIATION SYSTEMS

1. CROATIA

1.1 The justice system

An efficient and independent justice system is necessary for the development of society as a whole, including both individuals and economic entities, which is achieved, inter alia, by the activities of its institutions, which in the Republic of Croatia are primarily the Supreme Court of the Republic of Croatia, the courts and other institutions of the justice system – the State Attorney's Office of the Republic of Croatia, the State Judicial Council, the State Attorney's Council, the Judicial Academy, the Croatian Bar Association and the Croatian Notaries Chamber.

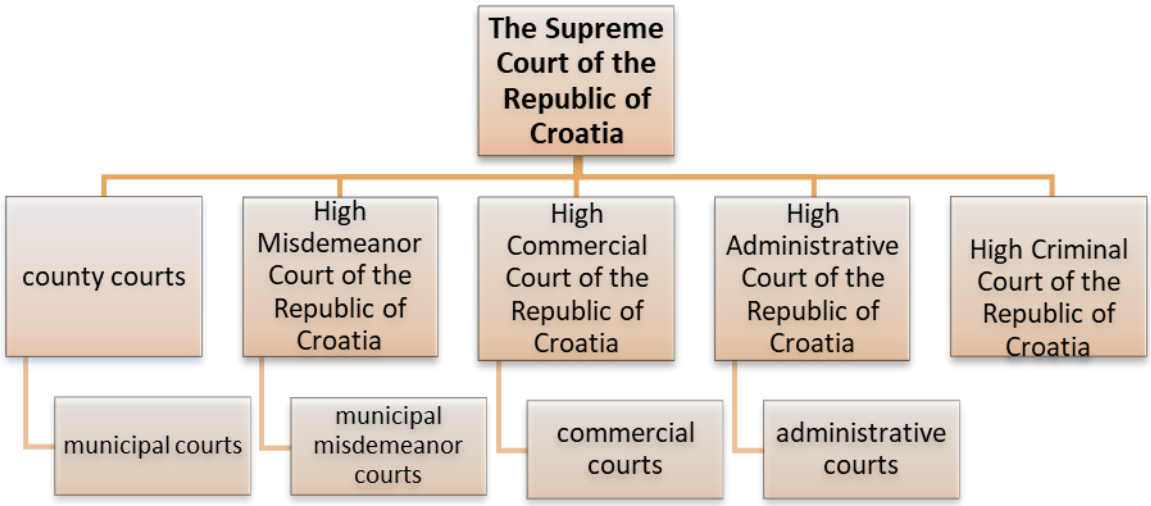
The independence of the judiciary is guaranteed by the Constitution of the Republic of Croatia.

The Courts Act stipulates that courts protect the legal order of the Republic of Croatia established by the Constitution, the acquis of the European Union, international treaties and laws, and ensure the uniform application of rights, and equality of all before the law.

Courts adopt decisions in disputes about fundamental human rights and obligations, about the rights and obligations of the Republic of Croatia and units of local and regional self-government, and about the rights and obligations of other legal entities, impose penalties and other measures on perpetrators of criminal acts and misdemeanors established by law and other regulations, decisions on the legality of general and individual acts of public authorities, they resolve disputes about personal relationships of citizens, as well as labor, commercial, property-related and other civil law disputes, and decide on other legal matters when stipulated by law.

The judiciary in the Republic of Croatia comprises regular and specialized courts and the Supreme Court of the Republic of Croatia, which is also the highest court in the Republic of Croatia.

Figure 1. Organization of Croatian courts



Ordinary courts are municipal and county courts.

The specialized courts are commercial courts, administrative courts, the High Commercial Court of the Republic of Croatia, the High Administrative Court of the Republic of Croatia, the High Misdemeanor Court of the Republic of Croatia and the High Criminal Court of the Republic of Croatia.

Judicial duties are entrusted personally to judges appointed by the State Judicial Council as an independent authority that ensures the autonomy and independence of the judiciary in the Republic of Croatia. In exercising their judicial duties, judges are independent and have immunity in accordance with the law. Judicial duties are permanent, and a judge cannot perform a service or work that is determined by law to be incompatible with judicial duties.

The duties of judges in certain types of cases are determined by the annual work schedule determined by the president of the court, no later than on 1 December of the current year for the following year. Judges in the Republic of Croatia may adjudicate in all types of cases within the jurisdiction of the court where they exercise their judicial duties.

1.2. Mediation

1.2.1. Legislative framework

Mediation as a way of resolving disputes was regulated for the first time in Croatian legislation by a special regulation, the Mediation Act of 2003, which was amended in 2009.

In early 2011, a new Mediation Act was adopted, which fully entered into force on the day of the accession of the Republic of Croatia to the European Union.

The Mediation Act of 2011 regulated mediation in civil, commercial, labor and other disputes, in relation to the rights that the parties are free to exercise, with the possibility of application to other disputes, if this corresponds to the nature of the legal relationship from which the dispute arises and if a special act does not prescribe different rules for these disputes.

The Mediation Act of 2011 prescribed court mediation and extra-judicial mediation.

However, after several years of applying mediation in practice, the results proved to be insufficient and did not meet the anticipated expectations. A number of shortcomings of mediation were observed in practice, both in the field of court mediation and extra-judicial mediation.

The common shortcomings of court mediation and extra-judicial mediation are, for example, the lack of confidence of citizens in the possibility of resolving disputes through mediation, as well as the fact that citizens still place more faith in the court's decision, and that there is almost no promotion of mediation in the media, which is why citizens do not have sufficient available information. Also, mediation is insufficiently covered within professional events and is not sufficiently presented to the professional public.

In addition to the above, in relation to court mediation, shortcomings have also been identified in that the utilization of the mediation system at courts is extremely low compared to the total number of cases at municipal and commercial courts. The number of judges and lawyers who are actively involved in resolving disputes through mediation is insignificant, while the shortcomings in relation to extra-judicial mediation is related to the fact that the existing mediation institutions are not

interconnected in any way, they do not engage in professional mediation, considering that the activity of mediators is not regulated, and information about mediation activities undertaken by mediation institutions and individual mediators is not available to the public.

With regard to the recognized and accepted importance of the mediation in the judicial system of the Republic of Croatia, with the aim of eliminating identified deficiencies and improving the mediation system in general, the activities that have recently been carried out in connection with mediation within the overall judicial system indicate that efforts are being made to achieve a wider and more efficient application of mediation in practice, and to make mediation a recognizable and accepted alternative dispute resolution method.

A significant activity in this regard is the implementation of the project "Reinforcing the system of court-annexed mediation", the goal of which is to strengthen the rule of law by improving the system of court mediation.

In addition to the aforementioned project, the improvement of the mediation system is also covered by the reform of mediation, which was carried out through amendments to the regulations, and which was foreseen as part of the reform of the court procedure in the National Recovery and Resilience Plan. The result of the reform of the mediation is the adoption of the Act of peaceful resolution of disputes in 2023, exactly twenty years after the establishment of the legislative framework for mediation in the Republic of Croatia.

The Act of peaceful resolution of disputes broadly defines the area of amicable dispute resolution, which now, in addition to mediation, also includes legally regulated negotiations and other alternative dispute resolution methods, while the area of application of the Act refers to the amicable resolution of disputes in civil, commercial, labor, family and administrative disputes, as well as dispute involving other matters concerning the rights that the parties can freely exercise.

1.2.2. Development of court mediation

The beginnings of the development of court mediation in the Republic of Croatia in the legislative sense in relation to civil and commercial disputes are primarily within the framework of the regulation of civil procedure and the provisions of the Civil Procedure Act.

Legislative interventions introducing court mediation into the provisions of the general procedural law governing civil proceedings came only after court mediation had previously been the subject of several pilot projects in individual courts.

The idea of preparing pilot projects in individual courts was the topic of workshops on the introduction of mediation at Croatian courts, organized in 2004 by the Croatian Legal Center (HPC) and the British Association for Central and Eastern Europe (BACEE). The lecturers at the workshop were, inter alia, experts from the British Center for Effective Dispute Resolution (CEDR).

In 2006, the implementation of the court-affiliated mediation project began through pilot programs at the Commercial Court in Zagreb, the Municipal Court in Bjelovar, the Municipal Court in Osijek, the Municipal Court in Rijeka, the Municipal Court in Slavonski Brod, the Municipal Court in Varaždin, the Municipal Court in Vukovar , the Municipal Court in Zadar and today's Municipal Civil Court in Zagreb,

which was the Municipal Court in Zagreb until 1 October 2007. In 2008, the pilot program was implemented at the Municipal Court in Karlovac, as well as at the commercial courts in Varaždin, Rijeka, Pazin, Bjelovar and Osijek.

In 2007, the High Commercial Court of the Republic of Croatia began to implement mediation as the first court of second instance.

After the implementation of the court-annexed mediation project through pilot programs in certain courts, the Act on Amendments to the Civil Procedure Act was passed in 2008. After that, further legislative interventions were made, which shaped and developed the legislative framework of court mediation until today, that is, until the adoption of the Act on Amendments to the Civil Procedure Act in 2023.

It is important to note that the Act of peaceful resolution of disputes includes provisions governing the relationship between amicable dispute resolution and trial before a court, namely the provision regulating the duty to attempt to resolve the dispute amicably before initiating court proceedings and the provision on referral to an amicable dispute resolution procedure.

In relation to the regulation of amicable dispute resolution and trial before a court, the novelty prescribed by the Act of peaceful resolution of disputes is the introduction of a duty to attempt to resolve the dispute amicably prior to court proceedings, considering the fact that before the initiation of civil proceedings for damages, apart from the proceedings for damages arising from employment relationship, the parties obliged to attempt to resolve the dispute amicably. At the same time, unless otherwise determined by a special regulation, the duty to attempt to resolve the dispute amicably shall be fulfilled by the party:

- if the procedure for amicable resolution of the dispute between that party and the opposing party has ended unsuccessfully, or
- if that party notified the other party of their requests and objections, the facts on which they are based, and invited the opposite party to fulfill the request or to participate in the amicable resolution of the dispute by registered mail with return receipt, or in another way confirming the receipt of that notification, and if the opposite party refused such a proposal or did not react within 15 days from the day of receipt of the proposal.

Furthermore, if one party, prior to the initiation of civil proceedings, proposes to resolve the dispute amicably, such a proposal can be rejected by the other party only if there is a justified reason therefor, such as previous violence between the parties. The duty to attempt to resolve the dispute amicably does not apply in cases where, due to violence, it is not reasonable to expect the parties to achieve an amicable resolution of the dispute by fulfilling this duty, or when the party initiating the procedure has not discovered the place of permanent or temporary residence, even though they have contacted the Centre for peaceful resolution of disputes in order to obtain the address of the opposing party for the purpose of delivering notices and proposals.

Furthermore, if a court determines in civil proceedings that the parties did not attempt to resolve the dispute for compensation for damage, except for the dispute for compensation for damage arising

from the employment relationship, by amicable means before initiating those proceedings, and that there is no justified reason therefore, as determined by law, upon receipt of the response to the lawsuit the court shall instruct the parties to participate in an informational meeting on mediation within 15 days. If the parties are referred to an informational meeting on mediation, they must attend the informational meeting on mediation and, in the presence of the mediator, inform the opposing party of their requests and objections and the facts on which they are based, and the mediator will explain to the parties the advantages of resolving the dispute through mediation and will help the parties to determine the matters in dispute and those that are not in dispute. The mediator will inform the Centre and the court about whether the parties attended the informational meeting on mediation and whether they accepted the resolution of the dispute through mediation. The mediation must be completed within 60 days from the day the mediation began, and in any case, it must not affect the holding of the scheduled hearings. The mediator will inform the Centre and the court about the manner in which mediation is to be completed.

Furthermore, regardless of the aforementioned authority of the court by which, in a case prescribed by law and under the prescribed conditions, it directs the parties to participate in an informational meeting on mediation, the court before which civil or other proceedings are in progress may, at the hearing or outside the hearing during the entire proceedings, direct the parties by adopting the decision thereon to participate in an informational meeting on mediation within a certain period, to initiate mediation or undertake some other action for the amicable resolution of the dispute.

The Act of peaceful resolution of disputes also regulates the method of bearing costs, i.e. it prescribes that if the parties have not agreed otherwise, each party shall bear their own costs, and the costs of the mediation procedure and the informational meeting on mediation shall be borne by the parties in equal measure, or in accordance with a special act or rules of an institution for mediation. It is also prescribed that the costs of an informational meeting on mediation and mediation that is not completed by concluding a settlement agreement are included in litigation costs, which means that the costs of an unsuccessful mediation are transferred to the costs of court proceedings in order to encourage the parties to settle disputes amicably without conducting court proceedings.

1.2.3. Institutional framework

The Act of peaceful resolution of disputes defines amicable dispute resolution as any out-of-court or judicial procedure by which the parties seek to resolve a dispute amicably, including mediation and structured negotiations, and defines mediation as any procedure, regardless of whether it is conducted at a court, a mediation institution or outside them, as part of which the parties endeavor to resolve the dispute amicably with the help of one or more mediators who provide aid to the parties in reaching a resolution, without the authority to impose a binding solution on them.

It is precisely in the definition of mediation that its institutional framework can be recognized, which includes court mediation and extra-judicial mediation. Court mediation is regulated and organized by the state within the framework of the judicial system, while extra-judicial mediation is also organized in the private sphere, at mediation institutions and by conducting mediation independently of mediation institutions, when mediation is conducted independently by an individual mediator.

What is new in relation to the institutional framework of mediation in the Republic of Croatia is that the Act of peaceful resolution of disputes established a legal framework for the establishment of the Centre for peaceful resolution of disputes as a public institution to achieve the purpose of the Act:

- it encourages the development of a culture of amicable resolution of disputes and the use of procedures regulated by this Act
- it gives and revokes consent to institutions for mediation
- it approves education programs for certain types of amicable dispute resolution
- it conducts, independently or in cooperation with mediation institutions, professional training of mediators
- it adopts decisions on the entry and deletion of mediators from the Register of Mediators
- it keeps the Register of Mediators and the Register of Mediation Institutions, and issues certificates from the aforementioned registers
- it ensures effective cooperation with judicial authorities and mediation institutions,
- it intermediates in the referral of cases to mediation institutions
- it appoints, at the request of the parties, the persons who conduct the informational meeting on mediation and the mediation itself when the informational meeting on mediation and mediation itself cannot be conducted by another mediation institution within a reasonable time and at lower costs
- it issues a certificate of attempted mediation
- it systematically collects data on amicable dispute resolution procedures
- it publishes information about amicable resolution of disputes, mediators and mediation institutions, and provides assistance to parties in choosing an appropriate method of dispute resolution.

The founder of the Centre for peaceful resolution of disputes is the Republic of Croatia, and on behalf of the founder, the Ministry responsible for justice exercises the founding rights. The Center operates in accordance with the principles of cooperation, subsidiarity, transparency, impartiality and effectiveness.

1.2.4. Mediators

The novelty prescribed in the Act of peaceful resolution of disputes also applies to the regulation of the status of mediators.

The Act stipulates that a mediator is a person registered in the Register of Mediators who, based on the agreement of the parties, conducts mediation, making registration in the Register of Mediators mandatory in order for a person to acquire the status of a mediator.

Therefore, the status of a mediator is now acquired by registration in the Register of Mediators kept by the Centre for peaceful resolution of disputes, while that status ceases to be valid by deletion from the Register, in contrast to the previous stipulation that a mediator was a person who, based on the agreement of the parties, conducts the mediation procedure, while registration in the Register of Conciliators was voluntary.

From the above, as well as from other provisions of the Act of peaceful resolution of disputes, which regulate issues related to mediation institutions, mediators and the Centre for peaceful resolution of disputes, as well as from the by-laws that were adopted on the basis of the aforementioned regulation, it can be concluded that the status of mediators was regulated in a more formal fashion, and the Centre was assigned a regulatory, coordinating and advisory role.

A mediator in court mediation, in accordance with the provisions of the Civil Procedure Act, is a mediator appointed from the list of mediators determined by the president of the court.

The mediator cannot participate in the procedure of amicable resolution of the dispute in the civil case assigned to them.

If the procedure for amicable resolution of the dispute before a court is completed without reaching a settlement, the mediator may not participate in the dispute in any capacity.

After bringing a regular legal remedy, the parties can unanimously submit a proposal to participate in amicable resolution of the dispute before a judge mediator of the court having jurisdiction to adopt the decision on the legal remedy.

The difference in relation to court mediation at a first-instance court and at higher court in the stage of the proceedings after a regular legal remedy is brought concerns the person of the mediator, given that court mediation during the first-instance civil proceedings is carried out by a mediator appointed from the list of mediators established by the president of the court, while court mediation before higher courts in proceedings related to legal remedies is conducted exclusively by a judge mediator.

Judges in the Republic of Croatia are not obliged to attend training for mediators.

1.2.5. Mediator and trainer training

Training for mediators is now a precondition for acquiring the status of a mediator, considering that without attending the training it is not possible to register in the Register of Mediators, which is mandatory in order for a person to be a mediator.

Mediator training and trainer training are conducted by mediation institutions that are authorized by law or that have received approval to conduct training from the Centre for peaceful resolution of disputes.

The Centre will issue approval for conducting training for mediators and for conducting training for trainers to an institution that has at least three qualified persons for conducting training, suitable premises for conducting the training and which adopted training programs.

Therefore, the Centre, inter alia, gives and revokes consent to institutions for mediation; approves education programs for certain types of amicable dispute resolution; conducts, independently or in cooperation with mediation institutions, professional training of mediators.

The by-law that regulates the training of mediators in more detail is the Ordinance on Mediation Institutions.

The Ordinance on Mediation Institutions prescribes, inter alia, the method of conducting basic and additional training for mediators and training for trainers.

The Ordinance distinguishes basic and additional training and prescribes that basic training is conducted for a group of no more than 24 participants and lasts at least 40 hours, and is conducted according to a program that includes theoretical and practical classes and an exam for a mediator.

Additional training is conducted for a group of a maximum of 24 participants who are registered in the Register of Mediators. Additional training lasts at least 20 hours, and is conducted according to a program that includes theoretical and practical classes.

Trainer training can be accessed by persons who are registered in the Register of Mediators and have participated in at least ten mediation procedures as a mediator, for which confirmation will be requested from the mediator.

Training for trainers is conducted for a group of a maximum of 12 participants and lasts at least 40 hours, and is conducted according to a program that includes training design and presentation skills; methods of teaching adults; facilitation skills, preparation of training programs, evaluation and trainer exam.

Persons who have obtained a trainer's certificate can independently conduct training after passing the exam within the mediation institution registered in the Register of Mediation Institutions.

1.2.6. Legal aid, fees, financing

Legal aid in the Republic of Croatia is provided by lawyers who are authorized to provide all forms of legal aid, and in particular to provide legal advice, draw up documents (contracts, wills, declarations, etc.), draw up lawsuits, appeals, proposals, requests, petitions, extraordinary legal remedies and other submissions, and represent the parties.

Lawyers are entitled to remuneration for their work and reimbursement of expenses related to the work performed in accordance with the Lawyer’s Tariff, including for representation before mediation.

In addition to the legal aid provided by lawyers in the Republic of Croatia, there is also a system of free legal aid, governed by the Act on Free Legal Aid, which regulates primary legal aid and secondary legal aid as a type of free legal aid.

Primary legal aid includes providing general legal information, legal advice, drafting submissions and representation before public judicial bodies, and legal aid in out-of-court amicable resolution

of disputes. Primary legal aid is provided by administrative authorities of counties and the City of Zagreb, authorized associations and legal clinics. Regarding legal aid in out-of-court amicable resolution of disputes, authorized associations are perhaps the most suitable providers of primary legal aid.

Secondary legal aid includes legal aid from lawyers related to court proceedings, and one of the forms in which it can be provided is legal aid in the amicable resolution of disputes.

However, the data show that free legal aid is rarely used for amicable dispute resolution (in 2022, legal aid for amicable extra-judicial dispute resolution was provided in 1.26% of the total number of instances involving primary legal aid, while legal aid for court mediation procedures was approved in 0.12% of the total number of secondary legal aid cases). At the same time, it was observed that in some cases, after the approval of secondary legal aid, the litigants reached a settlement and resolved their dispute (for example, in the settlement of estates in case divorce, child support, etc.).

In relation to the cost of mediation in the Republic of Croatia, court mediation, unlike extra-judicial mediation, is free.

2. PORTUGAL

2.1. The justice system

The organization of Portuguese courts is determined by the Constitution of the Republic of Portugal. The specificity of the Portuguese justice system is manifested in the fact that there are two separate judiciary branches - civil and administrative judiciary.

The Constitution divides courts into: courts of general competence (courts of jurisdiction), and administrative and tax (fiscal) courts. In addition to the Constitutional Court (*Tribunal Constitucional*), whose exclusive jurisdiction is to decide on constitutional issues, there are the following categories of courts:

- Supreme Court (*Supremo Tribunal de Justica*) and general courts of first instance and second instance
- Supreme Administrative Court (*Supremo Tribunal Administrativo*), and administrative and tax courts
- Court of Auditors (*Tribunal de Contas*).

Regular courts with civil and criminal jurisdiction are organized in three levels.

In order of hierarchical rank and territorial scope, they are as follows:

- The Supreme Court (*Supremo Tribunal de Justiça*) has jurisdiction over the entire country
- courts of appeal (*tribunais da relação*)
- first-instance district courts (*tribunais de comarca*).

The Supreme Court, based in Lisbon, includes the civil, criminal and social divisions, and is responsible for the entire national territory of Portugal. With the exceptions established by law, the fundamental

purpose of the Supreme Court is to standardize judicial practice and decide on issues related to the application and interpretation of the law.

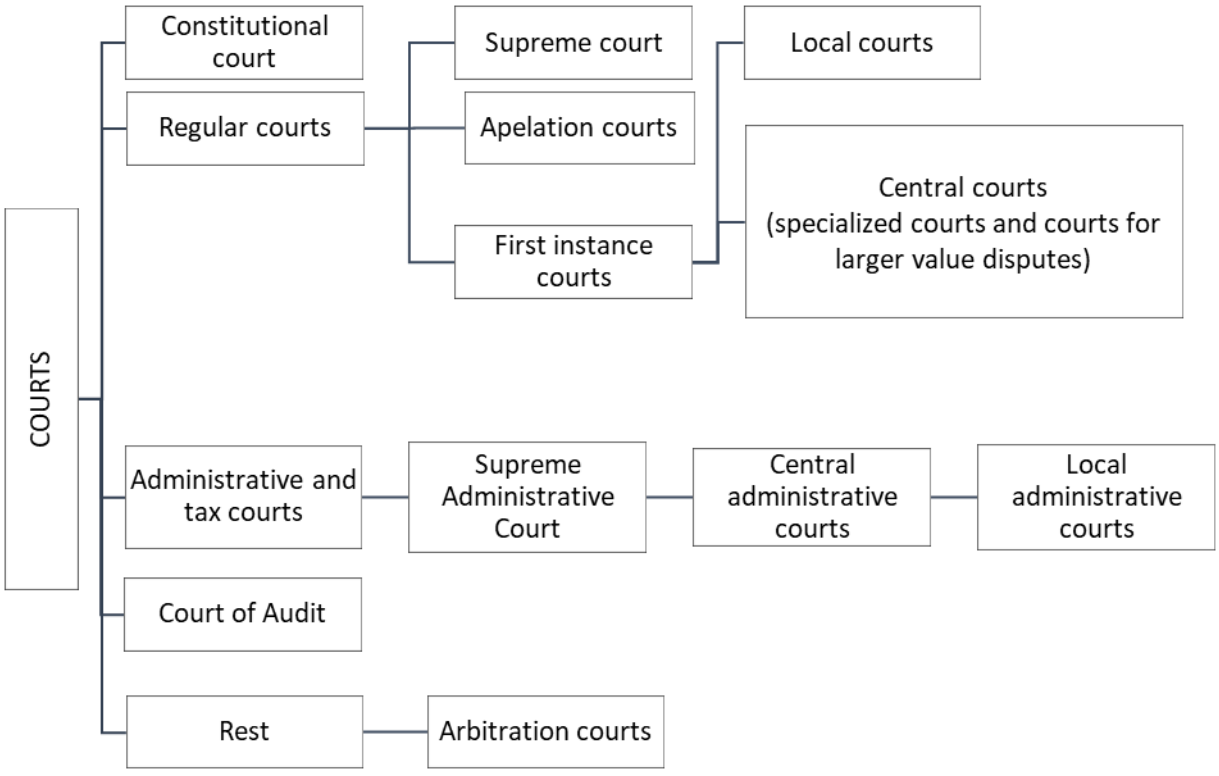
Courts of appeal have civil, criminal and social divisions, family law and juvenile divisions, commercial divisions, intellectual property divisions and market competition divisions.

Courts of first instance are generally district courts (*tribunais de comarca*) of general and specialized jurisdiction, which is reflected in the formation of specialized councils, i.e. councils of general jurisdiction with the possibility of forming local (*satellite*) councils.

Administrative and tax courts are responsible for adopting decisions pertaining to disputes arising from legal relations related to administrative and tax matters. Administrative courts include first-instance administrative and tax courts, central administrative courts (with a territorial division into north and south) and the Supreme Administrative Court (*Supremo Tribunal Administrativo),* which has jurisdiction over the entire country. The national territory is divided into 23 judicial districts (*comarcas*), which correspond to administrative districts (counties), which include several municipalities. The central units of the courts are competent for the entire area of the county or for a larger set of municipalities. Conflicts of jurisdiction between courts are resolved by the Tribunal de Conflitos.

In addition to the above, there are arbitration courts (*Tribunaisarbitrais*) and courts of peace (*Julgados de Paz*).

Figure 2. Organization of Portuguese courts



2.2 Regular proceedings and alternative dispute resolution methods

2.2.1. Regular proceedings

Citizens resolve the largest number of disputes before national courts, but since a major drawback of the Portuguese legal system is precisely the length of court proceedings, the importance of a different way of resolving disputes is increasingly emphasized. According to data from the Portuguese National Institute of Statistics, the average duration of court proceedings is 11 months, while appeal proceedings last four to six months.

After the problem of the length of court proceedings was identified, the state made great efforts to implement procedural rules that will simplify the proceedings and invested significant funds in the infrastructure and modernization of the courts (especially digitalization). Despite great progress in the form of making the proceedings more economical, the costs are still quite high due to the fact that in civil proceedings the parties are exclusively represented by lawyers when the value of the dispute exceeds EUR 5,000.00, or when the proceedings are conducted before a court of appeal. In criminal cases, mandatory representation by lawyers is present in almost all cases.

For this reason, the state has been actively promoting alternative dispute resolution methods - such as arbitration, mediation and conciliation - for the past twenty years. An alternative to the regular trial is the proceedings before the courts of peace, which at the same time represent a kind of pre-trial which prevents the flow of minor cases to the courts. In this way, judges can devote themselves to more socially significant and complex cases.

It is important to point out that, according to the basic procedural law, at every stage of the procedure, the judge can refer the case to mediation, unless one of the parties opposes it. If the judge refers the parties to mediation, they will stop the proceedings until the final outcome of the mediation. It seems that the aforementioned amendment to the fundamental procedural law popularized mediation, but judging by the available data, mediation did not achieve the results that Portugal is striving for, and in the future, it would be necessary to work on raising citizens' awareness of the advantages of this procedure.

2.2.2. Arbitration

The Republic of Portugal is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (ICSID Convention). In recent years, arbitration has experienced a great growth in Portugal, primarily because parties have begun to include arbitration clauses in their contracts.

The most important arbitration center in Portugal is the Arbitration Center of the Portuguese Chamber of Commerce (The Arbitration Center of the Portuguese Commercial Association).

There are also specialized arbitration institutions such as:

- *The Sports Arbitration Court*
- *Mediation and Insurance Arbitration Center*

- *Center for Property and Real Estate Arbitration.*

Consumers have at their disposal ten arbitration Centers for consumer disputes. The novelty is the establishment of several arbitration Centers for administrative and tax arbitration, which have strong state support and very strict procedural rules, and arbitrators who conduct arbitration procedures can be appointed exclusively from the list of these Centers.

The parties, arbitrators and arbitration institutions are obliged to maintain the confidentiality of all information and documents presented in the arbitration proceedings. The arbitrator cannot be a legal entity. If one party does not appoint an arbitrator or the parties cannot agree on the person of the arbitrator, the appointment is made by a national court.

2.2.3. Mediation

Mediation is allowed in various areas of law, and the use of mediation in family, employment, criminal, civil and commercial disputes is particularly promoted. In addition to court mediation in Portugal, there is also extra-judicial mediation, in which the procedure is not strictly formal and structured as is the case in the procedure before the courts of peace, and is carried out exclusively with the consent of both parties.

A somewhat more conservative approach to mediation with regard to European trends is manifested in the fact that mediation is always voluntary, although it may be suggested by a judge. If the parties have included a mediation clause in the contract, this circumstance does not imply an obligation to conduct the mediation procedure, but in this case the parties are obliged to attend a mediation meeting before filing a lawsuit in the competent court.

Each area of mediation (family, labor, criminal, civil and commercial) has specific guidelines for conducting the mediation process. Mediation in civil and commercial cases is carried out before the courts of peace (*Julgados de Paz*) as part of the small claims procedure.

The settlement reached in the mediation process is enforceable without confirmation or court approval under the following conditions:

- that the parties have legal capacity and that it is a dispute that can be subject to mediation according to the law
- that the mediation procedure was conducted in accordance with the law
- that the settlement agreement does not contravene morality and the legal order
- that the settlement agreement was concluded before a certified mediator listed by the Ministry of Justice.

Lawyers have an obligation, in accordance with the code of ethics of lawyers, to encourage their clients to try to resolve the dispute through negotiations before filing a lawsuit.

The role of the lawyer in the mediation process is very important. Although the parties are free to participate in the mediation process without a lawyer, lawyers have an important role in preparing

their clients for the mediation process and in drafting the settlement agreement. However, judging by the available information, many lawyers still consider mediation a threat to their service, which does not contribute to raising awareness of the benefits that mediation brings to citizens and the negotiation climate in society.

2.2.4. Development of mediation

In Portugal, the role of the mediator is regulated by the Mediation Act, according to which the role of the mediator is limited to conflict resolution. The mediator is considered an impartial and independent third party, deprived of the power to impose decisions on the parties in the mediation, who assists the parties in trying to reach a final settlement of the matter in dispute.

In addition to the Mediation Act, there are regulations that recognize and regulate the professional practice of mediators in the role of mediators in various professional areas. According to the year of adoption of the regulations that regulated the position of those mediators, it is possible to follow how the development of mediation in Portugal proceeded. Thus, regulations were passed regulating the position of cultural mediators for education (1998), socio-cultural mediators (2001), family mediators (2007), criminal mediators (2007), mediators in public mediation (2010) and mediators for the resolution of business or a company (2018).

The position of a socio-cultural mediator is interesting, whose role is to cooperate in the integration of immigrants and ethnic minorities with the aim of strengthening intercultural dialogue and social cohesion. Socio-cultural mediators perform their functions in schools, social security institutions, health institutions, with local authorities, public services and any other entity that may require their services.

The status of a mediator in a dispute in Portugal is regulated by the Mediation Act from 2013, which only applies to cases of dispute resolution.

2.2.5. Structural problems

Mediators in Portugal primarily operate in areas that are not within the jurisdiction of the courts of peace - in family, labor and criminal matters, with the largest part falling precisely on the former, i.e. family matters.

The lack of a professional association that would include or at least register all mediators in Portugal makes it impossible to provide precise statistical data on mediators. It follows from the conducted studies that the majority worked in a public institution, and a smaller part in private institutions. However, although they operate in different types of organizations within different employment relationships, the vast majority stated that they work as freelancers (77.5%), that is, they did not have any contractual relationship with the institutions where they worked. In addition to the above, only a small percentage (14.18%) of respondents were employed as mediators, while the majority were employed in other positions (85.82%).

Due to the absence of a competent authority for monitoring and supervising mediation, various organizations have developed codes of conduct, the main objectives of which are to guide mediators so that they can meet the highest standards of quality. However, codes by themselves do not succeed in consolidating and regulating the practice of mediation, rather training in mediation is essential for stabilizing and consolidating mediation. However, the training for mediators is not uniform, which is why it cannot achieve one of the basic goals, namely the improvement of practice and its stability.

2.2.6. Mediator training

Portugal does not have a central state body for the training of mediators, so the training is carried out by non-state bodies that are authorized for training by the Ministry of Justice. There is no national code of mediators. Mediators conduct their actions according to the European Code of Conduct for Mediation Providers.

2.3 Courts of peace (*Julgados de Paz*)

2.3.1. Jurisdiction and fundamental principles

Apart from arbitration and mediation, the most popular alternative way of resolving disputes is the procedure before the courts of peace. Courts of peace are outside the jurisdiction of state courts and are active as small claims courts. The jurisdiction of courts of peace is prescribed by law.

Judges at courts of peace do not have to meet all the requirements for appointment as state court judges. The only requirement is that they have completed university law studies, which opened up numerous questions related to the legality of their decisions, as well as the constitutionality of the court of peace itself. The Portuguese Supreme Court resolved the aforementioned doubts in such a way that it adopted a legal understanding in which it fully assigned the status of court to courts of peace.

Portugal opted for more lenient conditions for the selection of judges at courts of peace, because the courts of peace are competent to handle civil disputes in which the value of the subject of the dispute does not exceed EUR 15,000.00 (with the exception of family, inheritance and labor disputes). Proceedings in small claims disputes in most EU member states are simplified because they are disputes of minor social importance, which should not overburden state courts.

Thus, the basic principles of the procedure before courts of peace are informality and cost-effectiveness. The dispute before a court of peace can be resolved through mediation, conciliation or in the context of an oral hearing. Each court of peace has a mediation service, which is in charge of implementing the mediation process and is also available to citizens who intend to resolve their dispute - which is not within the jurisdiction of the court of peace - through the mediation process.

2.3.2. Proceedings before courts of peace

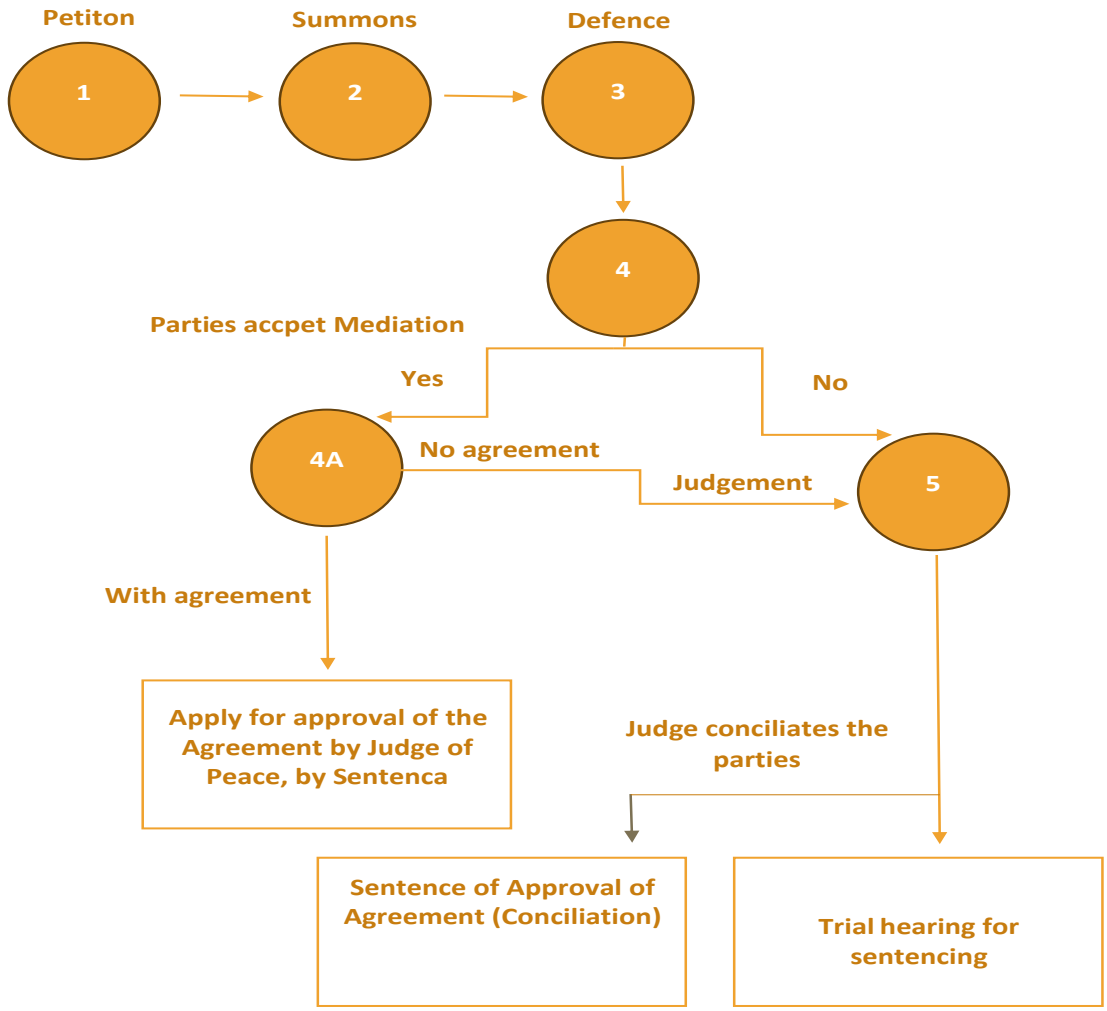
The procedural rules have been simplified in such a way that the parties can present their dispute verbally, if that suits them better. The procedure lasts an average of 3 months.

After receiving the request and initiating the proceedings before a court of peace, mediation is carried out, provided that one or both parties have not previously ruled out this possibility. The parties can choose a mediator from the list by agreement, and in the absence of an agreement, the court secretariat is responsible for the appointment.

Before the mediation procedure, an informational meeting is scheduled, where the parties are introduced to the mediation procedure and the possibilities of an agreement are considered, which will be further elaborated in the mediation procedure. When the parties agree that they are willing to resolve the dispute in mediation, the first mediation meeting is scheduled. A successful mediation ends with an agreement between the parties. The agreement must be made in writing and signed by the parties and the mediator. That agreement is submitted to a justice of the peace for confirmation. A confirmed agreement has the same effects as a judgment.

If the parties do not express their consent for conducting mediation or do not reach an agreement in the mediation or mediation procedure, the justice of the peace is informed, who schedules a hearing. The discussion begins with an attempt to reconcile the parties by a justice of the peace, and mediation is carried out. If the parties do not reach an agreement during the hearing, the justice of the peace takes the evidence by hearing the parties, and other proposed evidence is presented that the court considers expedient, after which the justice of the peace renders a judgement. The proceedings before a court of peace are not subject to strict procedural rules, as is the case before regular courts, and the judge can, if the parties agree, adopt the decision on the basis of equity.

Figure 3. Presentation of the procedure before the courts of peace - diagram of the procedure



In the Courts of Peace, the procedural process has its own simplified form, and the parties can even present the procedural documents orally.

Disputes filed in these Courts can be resolved through mediation, conciliation, settlement or through trial and subsequent sentence.

2.3.3. The advantages of resolving disputes before courts of peace

The fees paid before the courts of peace are several times lower than at regular courts. Additionally, even such fees are reduced if the parties reach an agreement in mediation such that each party is required to pay half the fee. Each party can resolve the dispute in the way that suits them best at a cost of only 25 euro.

Furthermore, before a regular court, representation by a lawyer is mandatory, while before the courts of peace, the party must appear in person, but can represent themselves, which greatly reduces the costs of the proceedings. Exceptionally, before the courts of peace, the party must hire a lawyer if it is expressly prescribed by law (for example, due to lack of knowledge of the language).

Since the procedure is informal and flexible, the parties not only resolve the dispute, but also the original conflict that led to the dispute (not only the claim is discussed). The parties define the scope and content of the agreement by which they resolve their dispute and thus take responsibility for the solution of their problem.

2.3.4. Relationship to regular courts

In conclusion, it should be pointed out that in Portugal, a party who intends to initiate a dispute that can be conducted both before a regular court and a court of peace has a choice: either they will bring the action before a regular court, before which they will have to be represented by a lawyer and will be obliged to pay high fees and be involved in lengthy proceedings with an uncertain conclusion, or they will turn to a court of peace, where they do not have to use the services of a lawyer (but can, if they want to), they will pay lower fees, and the dispute will be resolved quickly and in a way that the party can influence.

If the dispute is not resolved amicably, the court of peace will issue a decision that becomes final if the parties do not file an appeal, which is the case in more than 95% of cases.

If the party files an appeal against the decision of a court of peace, the ordinary court decides on the appeal. One of the reasons why parties rarely file an appeal against judgments rendered in the proceedings before the courts of peace is that the appeal can only be filed through a lawyer and with the payment of fees, which are significantly higher than the fees for accessing the court of peace.

In the above-mentioned way, the system has ensured that minor cases are resolved outside regular courts. The advantages are reflected in the fact that, on the one hand, the parties have a quick and efficient procedure and low costs, and on the other hand, the regular courts are relieved, which can then devote themselves to solving cases in disputes of greater value, that is, of greater importance for individuals and society as a whole. It follows from all of the above that the courts of peace are an example of good practice that is applicable in a large number of EU member states.

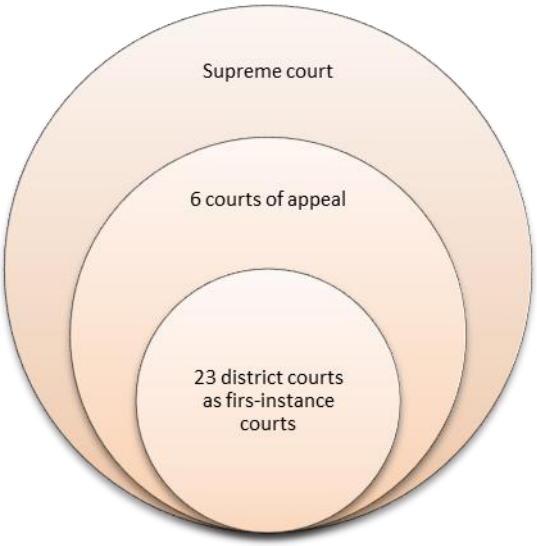
3. NORWAY

3.1 The justice system

3.1.1. Courts

The Norwegian court system serves a population of 5.5 million inhabitants and is very simple – it consists of district courts as first-instance courts, courts of appeal as second-instance courts and the Supreme Court.

Figure 4. Organization of Norwegian courts



With very few exceptions, all judges adjudicate in all types of cases, both civil and criminal.

Civil disputes are, for example, disputes over real estate, compensation for damage, insurance, inheritance, labor disputes, disputes between business partners, between neighbors, disputes within the family, disputes between the tax administration and the taxpayer, disputes between social welfare authorities and parents.

Although the general rule is that all judges adjudicate in all types of cases, in civil cases judges are assisted by Conciliation Boards and Complaint Boards.

3.1.2. The Conciliation Boards

All disputes involving a monetary claim of up to NOK 200,000 (approximately EUR 20,000) must be brought before the Settlement Committee, with the exception of labor disputes, family disputes and disputes against public authorities. There is another exception for cases where a lawyer represents both parties and for some other cases, which are too complex and therefore need to be filed in the district court. Each municipality has established the Conciliation Board. The members of the Conciliation Board are not lawyers, but lay people appointed by the state. In addition to conducting mediation, the Conciliation Board can also make judgments in simple cases. The decision is binding on the parties unless they file a Lawsuit in the district court within one month. Most of the cases considered before the Conciliation Board relate to debt disputes in various contexts, especially in connection with the purchase of goods and services. The Conciliation Boards process between 80,000 and 100,000 cases a year and reach decisions in 60 to 70% of those cases.

3.1.3. The Complaint Boards

In addition to the Conciliation Boards, there are specialized Complaint Boards and tribunals, over 50 state Complaint Boards, such as the Financial Complaint Board (*finansklagenemnda*), the Rent Disputes Commission (*husleietvisutvalget*), the National Office for Health Service Appeals (*pasientskadenemnda*), the Immigration Appeals Board (*utlendingsnemnda*), Consumer Disputes Commision (*forbrukerklagetutvalge*), as well as the Complaint Boards established within the industrial sector and the craft sector. The ten largest boards handle more than 30,000 cases a year. Most of these boards can decide the outcome of the case. The decision is binding on the parties unless they file a lawsuit with a district court within one month.

3.1.4. The "gatekeeper" effect on the courts

As a result of the work of the Conciliation Boards and the Complaint Boards, the courts mostly deal with complex civil cases that require legal clarification. In regular civil proceedings, two or three days are needed for the main hearing and two days for writing the verdict. Judges of the first instance use equal time annually to adopt decisions in civil and criminal cases.

3.2. Court mediation in Norway

3.2.1. Mediation pilot project

In the mid-nineties of the last century, a small group of judges, lawyers and professors, inspired by the idea of a multidoor courthouse, which came from the United States of America, recommended to the Norwegian authorities the introduction of court mediation. The idea was met with the enthusiasm of the authorities, and on 1 January 1997, a mediation pilot project was launched at six courts. In 2001, a large-scale study was conducted on the course of mediation, during which a psychologist compiled a report called “Faster, cheaper and friendlier”. The results of the pilot project were positive, given that parties, lawyers and judge mediators accepted mediation as an effective way of resolving disputes. In the time that followed, new courts were included in the pilot project almost every year, and until the entry into force of the new Disputes Act in 2008, all first and second instance courts in Norway were included in the pilot project. In this way, courts and parties hardly felt the transition from the pilot project stage to the stage that followed with the entry into force of the new Act - which made mediation a formal part of the Norwegian legal system.

3.2.2. The Act relating to Mediation and Procedure in Civil Disputes - Disputes Act (Lovdata)

The positive outcome of the pilot project was the main reason for establishing mediation as a formal part of the Norwegian legal system. In the preparations for drafting the Disputes Act, it was particularly emphasized that the first goal is to create a system where people can resolve their disputes without bringing them to court. However, if a dispute is brought to court, the goal should be to resolve all disputes that are suitable for amicable resolution in that way.

The ministry responsible for drafting the Act considered it of great importance that the courts can offer a healthy and well-organized mediation system in the early stages of the procedure, after the dispute has entered the court system. The Ministry also pointed out that it is not certain whether and

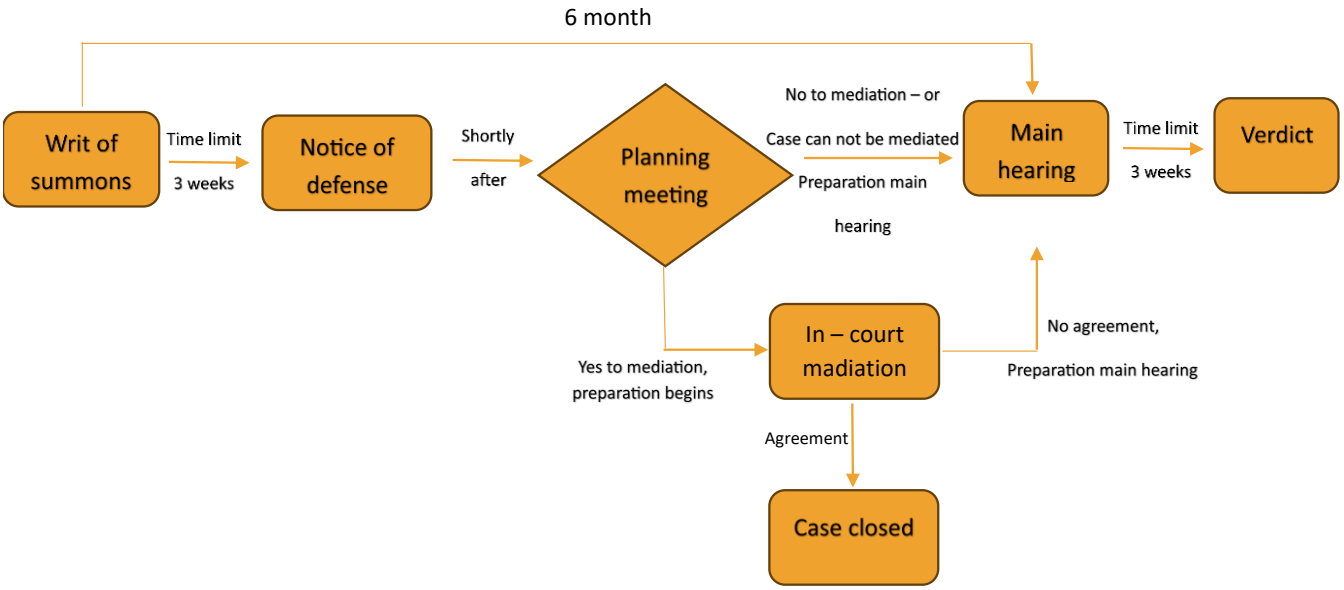
to what extent mediation will lead to financial savings, but noting that this is not decisive for deciding whether there should be a more permanent mediation system. The main incentive to create a permanent mediation system is that successful mediation will result in significant savings for the parties, avoiding the need for a main hearing and drafting of the judgment.

3.2.3. Cases referred for mediation

Court mediation is conducted in all types of civil cases in which the parties can reach an agreement, while a special form of mediation is provided for custody disputes.

3.2.4. The course of action and the role of the judge in mediation

Figure 5. The flowchart



After filing a lawsuit in civil proceedings, the defendant has a three-week deadline to file a response to the lawsuit. According to the Disputes Act, after having received the lawsuit and the response to the lawsuit and consulting with the parties, the judge is obliged to make a plan of action in the case. In order to make a plan of action, the judge schedules a meeting, usually as a telephone conference with the lawyers or with the parties themselves if they are not represented by lawyers. The first topic to be discussed at the meeting is whether mediation should be conducted. If it is a dispute suitable for reaching an agreement, the judge will generally adopt a positive attitude towards conducting mediation.

However, sometimes both parties or one party do not want to participate in mediation.

In that case, the judge will ask for an explanation and will explain the advantages of mediation to the parties and their lawyers. Usually, the parties and their lawyers consider mediation before the meeting scheduled by the judge for the purpose of developing a plan of action.

The lawyer or judge should first explain the mediation procedure to the parties, and then discuss the possible advantages and disadvantages of mediation. The advantages of mediation that need to be mentioned to the parties are that mediation is voluntary and protects interpersonal relationships, that in mediation the parties control the outcome of the case, that mediation is cheaper, that it clarifies issues in the dispute, that mediation enables a resolution of the dispute that both parties can be satisfied with, as well as that the witnesses are protected from stress, that mediation, which is confidential, avoids the publicity of the proceedings, that separate meetings can be held in the mediation, and that the court settlement that is reached is enforceable.

There are only a few disadvantages of mediation, and these are, for example, the lack of legal clarification of the dispute, as well as incurring additional costs by a party in case the mediation fails.

If the parties agree to conduct mediation at the meeting, the date for holding the mediation meeting is usually set within a few weeks. Regardless of whether mediation has been agreed upon or not, the main hearing in the civil proceedings will be scheduled within six months from the date of filing the lawsuit. If the parties do not want to try to resolve the dispute through mediation, the judge will remind them that, if they change their mind, they can turn to the court for mediation at any stage of the proceedings.

If mediation is conducted and the parties reach a settlement, the main hearing will be terminated.

In most instances of mediation, the parties manage to reach a settlement. However, since the main rule is that the case must be concluded within six months of the filing of the claim, a main hearing must be scheduled in case the parties still fail to reach a settlement.

Figure 5. The course of action in court mediation

The mediator will often be the judge to whom the case has been assigned. If special knowledge is required in relation to the subject of the dispute, the judge or the parties may suggest that a co-mediator participate in the mediation. For example, if it is a dispute related to property/real estate defects, the co-mediator may be a civil engineer.

According to the Disputes Act, the mediator can be a person outside the court, but this rarely happens.

If the parties do not reach an agreement in mediation, the case will be assigned to another judge and he will conduct the main hearing. The mediator has an obligation to keep information confidential and may not discuss the case with the judge who will take over the case's resolution.

3.2.5. Preparation for mediation

3.2.5.1. Preparation of the mediator

Successful mediation is based on quality preparation for mediation. In order to prepare for the mediation, the judge calls the lawyers or the parties in order to, among other things, agree on:

- who will be present at the mediation meeting

- which topic will be covered in the mediation (interests of the party)

- how the mediation will be structured, and

- how the mediation participants will communicate with each other.

In addition to calls to lawyers or parties, which the mediator makes via phone call, for the purpose of preparation, the mediator also analyses the documentation received in the case.

However, the most important preparations for mediation are made by the parties, often with the help of lawyers.

3.2.5.2. Preparation of the parties

Before obtaining a license to practice as a lawyer, lawyers are required to attend a course that includes mediation. The course focuses, among other things, on the so-called Harvard negotiation method - which is used for the purpose of preparing the parties for effective negotiation and consists of seven elements:

- relationship (what it is like now and how I want it to be)
- communication (how to communicate effectively, including active listening and talking about oneself, not about the other party)
- interests (what are our and their interests - what we really want)
- options (creating options that satisfy the interests of both parties - maximizing joint gains)
- alternatives (what will happen if we do not reach an agreement)
- legitimacy (what criteria can we use to ensure that our resolution offer is fair)
- obligations (what obligations should I request or assume).

3.2.6. Mediation results

If the parties reach an agreement, it is usually concluded as a court settlement. The settlement will be recorded in the minutes of the mediation meeting. A court settlement has the same validity as a final and enforceable judgement. Parties often decide on a court settlement due to enforceability. However, the mediation process is confidential, while the court settlement is public. If it is important to the parties that the settlement also remains confidential, they have the option to enter into a private settlement, that is, to agree that the settlement will be confidential.

In mediation, the parties participate very actively up to the conclusion of the agreement, often with the predominant engagement of lawyers. At the same time, it is very important that the parties fully understand the settlement they will enter into, which is why they should also participate in drafting the settlement agreement. If the parties do not reach an agreement, the case is referred to the main hearing, but it is not uncommon for the parties to settle after mediation, but before the main hearing.

3.2.7. Legal aid, fees, financing

In certain cases, parties are entitled to free legal aid, depending on their income. However, not everyone with poor financial status is entitled to free legal aid. The possibility of obtaining free legal aid applies only to certain cases, which are considered particularly important for the well-being of people. The conditions for approval of applications for free legal aid are strict, including conditions relating to income and wealth limits. In addition, parties have the right to free legal aid in certain types of cases regardless of income (for example, in cases of compensation for damages filed by victims of violence against the perpetrator or in cases of child welfare).

The system of free legal aid is organized as a service established by public authorities in order to provide people in poor financial situations with the legal aid they need. The purpose is to prevent the loss of the right to trial due to poor financial status.

The costs of filing a lawsuit in court are quite low. In Norway, the court fee is calculated on the basis of an annual fixed amount, which was NOK 1,243 (approx. EUR 124) for the year 2023. For a dispute with a one-day main hearing, five times the defined amount must be paid, for a two-day main hearing eight times and for a three-day main hearing eleven times the defined amount. If the case is settled within four weeks before the main hearing, one only needs to pay twice the defined amount, which is NOK 2,446 (about EUR 245). Mediation is often scheduled within four weeks before the main hearing, so the cost of mediation is very low.

The main part of the costs of a court case are lawyers’ fees. Lawyers' fees have risen sharply in the last ten years, which is why there is great concern that people may not be able to recover the costs of lawyers in court proceedings. In addition, the lawyer's fees for the main hearing are significantly higher than if a party participates and resolves the dispute in mediation. However, lawyers’ fees can sometimes be a problem in mediation as well.

3.2.8. Statistical data

Court mediation is accepted to a great extent in Norway. Most judges are mediators. However, if a judge does not want to be a mediator, they are not obliged to engage in mediation.

At some courts, mediation groups are established and only members of the group are allowed to conduct mediation.

According to statistical data for district courts, the percentage of mediation was:

2018: 22%, 2019: 24%, 2020: 27%, 2021: 27%, 2022: 27%, 2023: likely 28%. So now they are heading towards 30%. The percentage of concluded settlements for district courts in the period 2020 – 2023

was between 70 and 80%. The percentage of mediation at the Court of Appeal in the period 2020 – 2023 was 12%, and the percentage of settlements reached around 70%.

One of the reasons for the success of court mediation in Norway is trust. According to the World Values Survey (WVS) for 2022, 74% of people in Norway trust other Norwegians compared to 10-30% worldwide. There is also great trust between citizens and authorities. In recent years, around 80-90% of people have very high or fairly high trust in the courts, parliament, government and the police.

3.3. National Mediation Service (*Konfliktrådene*)

In addition to the courts in Norway, the National Mediation Service (*Konfliktrådene*) has been established as a public service within the Crime Suppression Department of the Ministry of Justice and Public Security.

The National Mediation Service conducts restorative proceedings in criminal and civil cases and is available to all citizens of Norway, and the services it provides are free of charge. The National Mediation Service, in addition to mediation in criminal law, resolves civil disputes initiated by parties or state authorities, provided that the case is deemed suitable for restorative proceedings, which is decided by the National Mediation Service in civil disputes. Eligible cases are, for example, a misdemeanor that was not reported to the police, a case in which the prosecutor's office rejected the report, neighborhood disputes, family conflicts, and others. The National Mediation Service can carry out a restorative procedure in civil cases and when such a procedure is initiated by the victim or the offender, after or during the serving of the sentence (Article 2 of the Act on the Execution of the Sentence stipulates that there must be an offer to undergo a restorative procedure during the serving of the sentence). Therefore, the range of cases in which the National Mediation Service ensures the implementation of the restorative procedure is very wide. The largest number of criminal cases referred to the National Mediation Service for the purpose of implementing restorative procedures is related to violent criminal acts, while the largest number of civil cases are related to family, neighborhood and property disputes.

The NMS has two administrative levels - the Central Administration (*Sekretariatet for konfliktraadene*) and 12 regional offices (in 22 locations). NMS has a total of 140 employees and around 450 local volunteer mediators appointed for four years.

3.4. Mediator training

3.4.1. Training of judges and lawyers as mediators

All novice judges in Norway, as part of the mandatory training consisting of five modules, are educated about mediation in general and mediation in custody cases. Mediation training generally lasts a day and a half, as does custody mediation training, which also lasts a day and a half. The method used in the training consists of lectures and role playing. However, regardless of the conclusion that mandatory training organized in this way is not enough to educate high-quality mediators, it turned out that the organization and advanced training for all judges would be too expensive.

A few years ago, advanced mediation courses were held for judges, which were very well received. Sometimes mediation is the topic of an annual two-day seminar organized for all judges. Starting in

the fall of 2022, a three-year project is underway in which approximately 30 judges are trained annually as part of a nine-day training course.

In addition to judges, it is also important to train lawyers, who play an important role as advisers to the parties in mediation. Before obtaining a license, lawyers attend a six-day course, one and a half days of which is a course on mediation and negotiation. The training method is a mixture of lectures and role playing. There are always two trainers, one mediator and one lawyer, who illustrate to the participants the two professional roles in mediation.

3.4.2. Training for mediators of the National Mediation Service

People who want to become volunteer mediators of the National Mediation Service can apply for public tenders. After an interview and basic training that lasts four days and an additional three days, they will be assessed as to whether they are suitable people for the job of volunteer mediator. The main criterion is to assess whether they are personally suitable for the task of facilitating dialogue. Also, it is a condition that volunteer mediators are at least 18 years old, that they are Norwegian or citizens of another Nordic country, or that they have been registered in the national register as residents of Norway for the last three years prior to employment or appointment, that they live in the municipality where they apply to be a volunteer mediator, as and that they meet additional requirements, for example to submit a certificate of having no prior conviction. Volunteer mediators are appointed for a period of four years with the possibility of re-appointment and receive a modest fee per hour spent on each case and reimbursement of expenses such as transportation costs. The work of volunteer mediators is supervised by employees of the regional office of the National Mediation Service, with continuous training and guidance through local meetings of mediators and attending seminars.

3.5. Mediation in special cases

3.5.1. Mediation in family cases before a court

The judge presiding over the custody case, in which parental care, visitation rights and/or parental responsibility are decided, schedules a preliminary hearing whereby they ensure the presence of a psychologist. After the judge familiarizes the parties with the advantages of the amicable resolution of the dispute, the possibility of reaching an agreement in order to achieve the best interests of the child, and after the parties agree to try to resolve the procedure in mediation, the specific problem that exists between the parties is first determined. After that, the lawyers briefly present their view of the dispute. The psychologist informs the parties about the conversation with the child, and the parties express their views. Then the judge and the psychologist talk with the parties to help them find a solution.

As a rule, parties have the opportunity to participate in a maximum of three hearings. They could reach a final agreement already at the first meeting. Otherwise, the judge and the psychologist can help them reach a temporary solution before the court, on the basis of which the disputed issues (e.g. housing, visitation rights, but also everyday life problems) will be regulated until the next mediation hearing. If the parties do not reach a final agreement in the second hearing, the same issues are temporarily arranged in a different way, so in practice it is checked which solution is in the best

interest of the minor child of the parties. At the third mediation hearing, the parties try to reach a final settlement, and if no settlement is reached, the same judge schedules the main hearing where they adopt the decision on the subject of the dispute.

Between 2019 and 2021, about 60% of custody cases under the Children's Act dealt with by the courts were resolved at or after mediation hearings and about 40% were resolved through a main hearing and adjudication.

3.5.2. Dialogue process in child protection cases

In addition to the aforementioned mediation procedure, which is carried out in court in family cases, in cases related to the protection of children, parents have the option of concluding an agreement out of court before an administrative body, similar to the Croatian Institute for Social Work (former Center for Social Welfare), in a process called the dialogue process. The dialogue process is a voluntary procedure. For its implementation, the consent of the parties is required. The parties must be represented by lawyers. In addition to the mediator, who is an employee of that body, a psychologist also participates in the procedure.

The purpose of the procedure is to improve communication between the parties and reach an amicable solution in the best interest of the child. In the dialogue process, the parties have the possibility to conclude a temporary agreement for a certain period of time. If no final agreement is reached, they are referred to the regular procedure. In this way, parents are given the opportunity to actively participate in making a decision that is in the best interest of their children, which gives them the power to decide, but at the same time imposes responsibility for that decision.

3.5.3. Mediation in misdemeanor proceedings and criminal proceedings for minor crimes

Mediation in misdemeanor proceedings was introduced as early as 1981 through a pilot project for perpetrators of offenses under the age stipulated by the criminal code. Since 1991, the National Mediation Service has been regulated by law, and since then the restorative procedure implemented by the National Mediation Service can be used both in criminal cases decided by the state attorney's office or the court, and in corresponding civil cases. The restorative procedure provided by the National Mediation Service is a generally available service open to the public.

The police and the state attorney's office refer 2/3 of cases (criminal and civil) to the National Mediation Service. In the case of criminal cases, these are cases where the charges have been dismissed for various reasons, but it is believed that there is still a need for dialogue between the parties.

The cumulative criteria that must be met in order for the state attorney's office to forward a criminal case to the National Mediation Service are that the perpetrator's guilt has been proven, that the perpetrator acknowledges the facts of the case and that the case has been assessed as suitable for mediation, and that there is agreement from both parties to forward the case to the National Mediation Service mediation. The general rules for conducting mediation in criminal proceedings, i.e. for conducting restorative proceedings, are that the parties must consent to the procedure of their own free will and that they can withdraw their consent at any time, that conversations during

mediation are strictly confidential and that what is discussed Discusses mediation cannot be used as evidence. Council of Europe Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters establishes as a general principle that mediation in criminal proceedings must be available to everyone and at every stage of the proceedings, as well as that mediation must be ensured complete independence within criminal proceedings.

The mediation process is carried out by one or two volunteer mediators appointed by the National Mediation Service, a settlement agreement signed by both parties and the volunteer mediator is concluded, and the state attorney's office and the police are informed about the behavior of the parties and the concluded settlement.

If the case is not resolved by reaching a settlement, it is returned to the competent state attorney's office, which adopts the appropriate decision.

The National Mediation Service is currently committed to achieving the goal of providing victims with greater access to restorative procedures. Namely, the need to inform society in general about the possibilities of the restorative procedure, and especially to inform the victims of crimes, was determined. Through the improvement of methods and procedures, by providing special information to victims and by developing a professional network, the National Mediation Service has developed and improved methods, approaches and guidelines in relation to assessing whether cases are suitable for the restorative procedure, and in order to better meet the needs of victims and protect them from possible re-victimization. It is considered particularly important to work on the development of the initial phase of familiarization with the procedure and the preparation of the procedure itself, then to increase the number of criminal procedures that are referred to mediation and by strengthening and improving the cooperation of judicial bodies, as well as to develop restorative procedures for criminal offenses by minors and for potential civil cases that arise as a consequence of the commission of a criminal offense.

3.6. Further development of mediation in Norway

Compared to some European countries, Norwegian society is more harmonious and trusts the government.

Mediation before the courts in Norway did not reduce trust in the courts. On the contrary, mediation is still very popular, and both lawyers and the parties are satisfied with participation in mediation.

The goal is to further strengthen and encourage the use of mediation, and this goal can be achieved through greater education of judges and lawyers, informing all parties and minor changes to the normative framework. It is precisely on the basis of the amendment to the Disputes Act that, starting in the summer of 2023, a judge is obliged to schedule mediation in a civil case if they consider the case suitable for mediation, while before those changes, in cases in which he considered the case suitable for mediation, the judge could - therefore was not obliged - to schedule mediation.

3.7. Lessons learned

It is obvious that mediation in Norway is much more developed and popular than mediation in Croatia. Therefore, in order to develop judicial mediation in Croatia, the application of the best practices learned in Norway should be considered.

3.7.1. Measures to increase the number of mediation procedures in Croatia

3.7.1.1. Organize another type of solution for resolving small claims disputes

Both Norway and Portugal have established a system for settling small claims disputes outside the regular courts. Norway achieved the above by establishing and operating settlement committees and Portugal by establishing courts of peace. Croatia should also consider developing a similar system. However, persons in systems organized in this way should have legal knowledge and knowledge of mediation. The benefit that such an established system would bring to the parties is to provide the parties with an efficient dispute resolution procedure at lower costs, while at the same time benefiting the courts by allowing them more time to resolve disputes both in mediation and in regular proceedings, by conducting the main hearing and rendering a judgement. The above is also useful for society as a whole.

3.7.1.2. Mediation information that the judge should provide to the parties

Considering the fact that the parties in Croatia are not sufficiently familiar with mediation and its advantages, it would certainly be desirable for the judge to provide the parties with information on what mediation is and what its advantages are at an early stage of the proceedings. The judge's authority to ask the parties to explain why they do not agree to try to resolve the dispute through mediation would certainly be useful to the judges in their efforts to encourage the parties to mediate. If, even after receiving the information, the parties do not agree to try to resolve the dispute in mediation, the judge should still try to promote the benefits of mediation to both the parties and their lawyers.

This approach as taken by the judges would certainly increase the number of mediation procedures conducted, unlike the current practice. In civil cases in Croatia, judges should inform the parties about mediation at the preliminary hearing, but unfortunately, most judges only briefly mention the possibility of mediation without any explanation of what mediation is and the advantages of resolving disputes through mediation. The normative framework governing civil proceedings allows Croatian judges to refer parties to mediation during the entire procedure. However, the parties rarely use this option. The reason for the above is certainly that the judges themselves are not sufficiently familiar with mediation.

3.7.1.3. Mandatory mediator training for all judges

In order for the parties to be informed about mediation, it is necessary that judges and lawyers in Croatia are obliged to attend mediator training. It is extremely important that such training includes a practical part and that judges and lawyers are trained using the method of simulated mediation cases. In Croatia, mediation is only mentioned in passing within the academic program at law schools, but only at the theoretical level of knowledge acquisition.

In the framework of the project “Improvement of the Court Conciliation System”, more than 300 (future) judges and lawyers underwent basic training for mediators, while about 50 of them underwent additional training for mediators. During the training, judges and court advisors learned what mediation is, whether it is easier to bring mediation closer to the parties at a preliminary hearing

or at a later stage of the trial, how to recognize in which cases they can instruct/suggest mediation to the parties. But most judges are still not educated about mediation. Therefore, it would be necessary for every judge to undergo at least basic training as a mediator.

3.7.2. Measures to increase the success of mediation

3.7.2.1. Professional mediator training for judges

In Norway, the importance of education and training has been repeatedly pointed out, so it is suggested that judge mediators have an obligation to improve their mediation skills through additional training, mediation and supervision. Professional training would help judges to make mediations more successful.

3.7.2.2. Preparation for mediation

Preparation for mediation as undertaken by the parties and lawyers, including the mediators, is crucial for the success of the mediation. In Norway, before the mediation the judge agrees the details and structure of the mediation with the lawyers via a telephone call, while the lawyers prepare the parties for mediation based on the method for effective negotiation (the so-called Harvard negotiation method). However, in Croatia, the preparation of the parties depends on the lawyer and their knowledge and experience in mediation, while in court the parties and their lawyers are invited to the first mediation meeting without prior preparation. Therefore, given that preparations for mediation are crucial for mediation to be effective, it is necessary to consider introducing the practice of holding lectures and workshops on the importance of preparing lawyers and judges for mediation.

3.7.3. Promotion of mediation

In Norway, people are mostly familiar with mediation, and if they are not, they have trust in the justice system and judges. So, when a judge offers the parties mediation as a way to resolve the dispute, they are more likely to accept it than in Croatia, given the lack of trust of citizens in Croatia in judges and the parties' ignorance of other ways of resolving disputes, such as mediation.

Therefore, in order to promote mediation in Croatia, campaigns should be continuously organized to raise awareness about the benefits of mediation, round tables, publish articles on mediation, and encourage media interest in the subject of mediation. Also, the distribution of leaflets and posters promoting mediation should be organized in all courts that conduct mediation.

4. THE NETHERLANDS

4.1. The justice system

Courts of first instance in the Netherlands are district courts (*rechtbanken*), of which there are eleven in total, one district court for each district. Each district court consists of several divisions, namely the sub-district division, the criminal division, the civil division, the administrative division and, in a certain number of district courts, the division for family and juvenile cases (in the case of a larger number of that type of case).

The sub-district division deals with cases in the field of both civil and criminal law. Thus, in the field of civil law, the sub district division resolves disputes related to rent, purchase with instalment payments

and employment, and all disputes with a value of up to 25,000.00 euro. In such procedures, the party can represent itself, that is, it is not necessary to be represented by a lawyer in court. In the field of criminal law, the sub-district division only deals with cases related to minor crimes, and these are often cases in which the police and the public prosecutor have proposed a settlement. In that case, the case will be assigned to the sub district judge only if the defendant does not accept the settlement proposal, and then the judge will issue an oral verdict immediately after the hearing.

The criminal division handles criminal cases that are not handled by sub-district judges. Cases are handled either by individual judges or judicial panels, which handle more complex cases and all cases in which a prison sentence of more than one year is proposed.

The civil division also resolves cases that are not specifically assigned to a sub district judge, and are resolved either by a single judge or by a judicial panel, which resolves more complex cases.

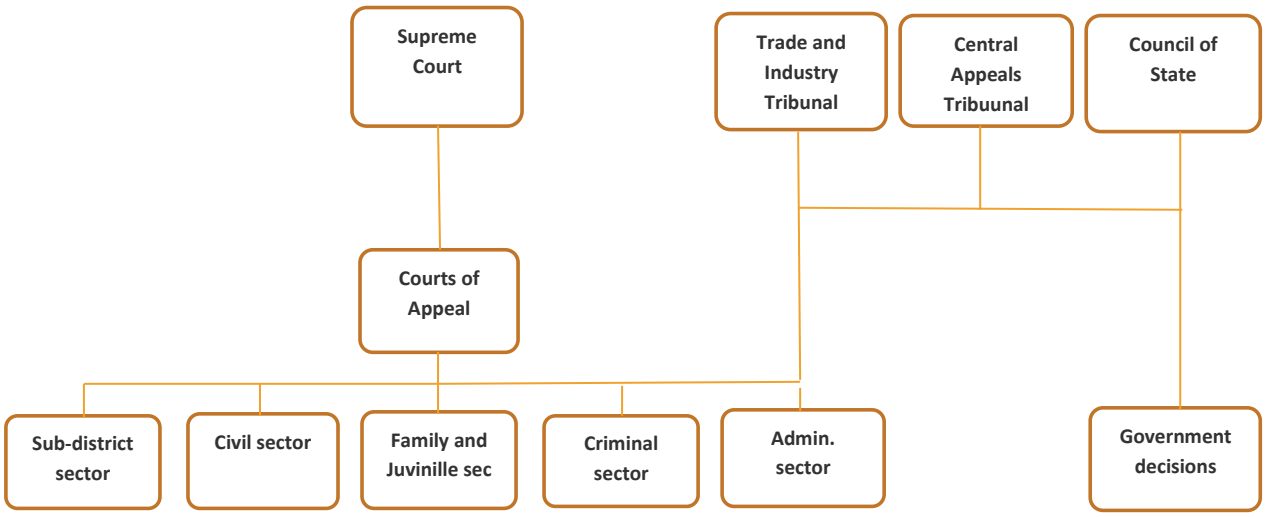
The administrative division resolves administrative disputes. In a large number of cases, such a procedure is preceded by a complaints procedure conducted before administrative bodies. Cases are presided over by a single judge, and it is possible for them to be presided over by a judicial council if they are dealing with complex cases or cases involving fundamental issues.

Appeals against judgments rendered by the district court in civil and criminal cases can be submitted to the competent court of appeal (*gerechtshoven*), of which there are four in total. The court of appeal also resolves all appeals against tax rulings.

In administrative disputes, depending on the type of case, an appeal can be filed, on which the decision will be adopted by the courts of appeal (*gerechtshoven*), the Central Court of Appeal (*Centrale Raad van Beroep*), the Administrative Court of Appeal for Trade and Industry (*College van BeroepvoorhetBedrijfsleven*) and the Council of State (*Raad van State*), Department for Administrative Disputes (*Afdelingbestuursrechtspraak*).

Before the Supreme Court (*HogeRaad*), the highest court of the Netherlands based in The Hague, the decisions of lower courts in civil, criminal and tax cases can be challenged by submitting a cassation appeal. The Supreme Court examines whether the lower court correctly applied the law, but does not discuss the factual situation in the case established by the lower court. Therefore, judgments can be contested on the basis of legal issues, and the Supreme Court conducts a cassation procedure in which it can annul the judgment. Therefore, the Supreme Court has an important role for the development of Dutch law and is responsible for ensuring the uniform application thereof.

Figure 6. Organization of courts in the Netherlands



4.2. Regular proceedings and alternative dispute resolution methods

4.2.1. Regular proceedings

The largest number of disputes in the Netherlands are resolved before regular courts in regular court proceedings. At the same time, considering that the Dutch courts regularly and successfully resolve the influx of cases, it is concluded that in the Netherlands the issue of the efficiency of access to justice is not a problem that should be particularly highlighted.

4.2.2. Mediation

Alternative dispute resolution and mediation as one of the alternative dispute resolution methods has a long tradition in the Netherlands. The Dutch government has been actively promoting mediation since the late 1990s, when two pilot programs were initiated to integrate (judicial) mediation into the dispute resolution system. In addition to court proceedings in civil and administrative disputes, mediation can be used as an additional, alternative way of resolving disputes, even when court proceedings are already underway.

At the suggestion of a judge or at the request of the parties themselves, the parties, with the help of an expert and independent mediator, can jointly try to reach a solution to the dispute.

In the Netherlands, in cases where they consider it appropriate, the courts instruct the parties to resolve the dispute in mediation. Therefore, every court has a mediation office. The court mediation office provides parties with information about mediation, works with the parties to determine whether mediation is a good fit for them, provides support to the parties in deciding whether to engage a mediator, and arranges the initial mediation meeting. Mediation offices at courts are staffed by certified mediators, but not judges of those courts.

As already stated, the Netherlands has no particular problems with the efficiency of the courts or the duration of court proceedings, and as a reason for using mediation to resolve disputes, only 1% of respondents cite the duration of the procedure, while as many as 43% of respondents cite the fact that in regular court proceedings, due to the established rules of procedure, it is not possible to achieve a result that would be satisfactory for any of the parties in the dispute.

In addition to court mediation, mediation in the Netherlands is mostly carried out in informal mediation procedures, as well as within a well-organized system of private mediation.

4.2.3. An attempt to establish a legislative framework for mediation in the Netherlands

In relation to the issue of the legal regulation of mediation in the Netherlands, it is important to note that the Netherlands has so far refrained from standardizing mediation, while at the same time mediation is recognized and often used in practice as a tool for the amicable resolution of disputes.

So far, several bills were prepared that would standardize mediation, however, an act was not passed. The reasons why the adoption of a general legislative framework for mediation was not supported were, for example, that it was shown that it is difficult to determine whether standardization will actually achieve more frequent use of mediation, that is, that there are no indicators that the already existing quality of mediators in the Netherlands is insufficient.

Among the last attempts to pass an act took place in 2020, when the result was that there was no support from several private mediation associations for the passage of the act.

Despite the above, as well as despite the absence of an act on mediation, the state participates in the promotion of mediation by adopting and implementing various incentive measures, such as, for example, measures to promote the use of mediation by providing information to the parties through appropriate websites (https://www.juridischloket.nl), measures to ensure financial support for people with low income through the provision of legal aid in the form of mediation, and measures to encourage the use of mediation in such a way that the courts, in cases where mediation has been assessed as an appropriate method of dispute resolution, instruct the parties to resolve the dispute through mediation.

4.2.4. Institutional framework

Mediation in the Netherlands is an established part of the dispute resolution system with 800 professional mediators involved.

Given that mediation in the Netherlands is not standardized and there is no general legislative framework that regulates mediation, the regulation of mediation is in the hands of private institutions as a kind of partners of the state in that area.

In terms of institutions, in the field of mediation, it is worth highlighting the work of the Committee for Legal Aid (*RaadvoorRechtsfijstand*) and, in the field of private mediation, the work of the Dutch Federation of Mediators (*MediatorsfederatieNederland - MfN*).

Given that the Dutch Ministry of Justice is responsible for the provision of free legal aid and its supervision, it has established an independent administrative body for this purpose - the Legal Aid

Committee (*Raad voor Rechtsfijstand*). Within the scope of the Legal Aid Committee is the provision of secondary legal aid, which, in addition to the legal aid of lawyers, also includes the provision of mediator services in order to try to reach an amicable resolution of the dispute.

The Dutch Federation of Mediators (*MediatorsfederatieNederland - MfN*) is an umbrella organization, representing the largest associations of mediators in the Netherlands and covering most of the professional field, whereby, inter alia, it provides information about mediation to the general public and conducts research on mediation, monitors and maintains contact with mediators who conduct mediation and establishes standards regarding mediation training. The federation also promotes the professionalization of the mediation profession by ensuring and improving quality.

In the Netherlands, there are various registers of mediators, including, among others, the Register of MfN Mediators. In this sense, MfN registered mediators work in accordance with the mediation regulations and the code of conduct established by the MfN. Also, if a party is dissatisfied with the work of the MfN registered mediator, they have the option of initiating an appeal procedure. Such quality control of registered MfN mediators contributes to trust and professionalization of their work, as well as trust in mediation in general.

It is precisely for these reasons that the Legal Aid Committee (*Raadvoor Rechtsbijstand*), which is subject to the the authority of the Dutch government, applies the MfN standards as the basis for its register of mediators.

4.2.5. Mediator training

In order to be registered in the Register of Mediators of the MfN, mediators are required to take and complete certified basic training in mediation, pass a theoretical exam, pass an assessment and submit a certificate of conduct (*Verklaring Omtrenthet Gedrag - VOG*). Furthermore, mediators are obliged to continuously update their knowledge of mediation in order to meet certain quality requirements by conducting at least nine mediation procedures every three years, with a total of at least 36 hours of contact. Of the mentioned nine mediations, they must complete at least two each year, with a total of at least eight hours of contact. Of the nine mediation procedures that must be conducted in a period of three years, at least three mediation procedures must end with a written agreement, and a maximum of three mediation procedures can be conducted together with another mediator (co-mediation). In addition to the above, in a period of three years, mediators are obliged to collect 48 PE points (professional training). Some of these points must be collected by participating in peer discussions. Also, every three years, mediators must participate in peer evaluation. Peer evaluation is a quality assurance measure and includes a procedure in which an independent and impartial mediator assesses whether the services of another mediator are at the level of the average standard that can be expected from an expert. It clearly follows from the above that registered MfN mediators are subject to strict quality requirements.

Mediation in the Netherlands is completely voluntary and there is no statutory obligation for the parties participating in the mediation to sign a mediation agreement containing provisions on matters such as confidentiality or representation of the parties. However, the MfN Mediation Regulations 2017

(*Mediationregulation 2017*) govern the obligation of parties using the services of MfN registered mediators to sign a mediation agreement.

4.2.6. Legal aid, fees, financing

The costs of mediation in the Netherlands are not uniform and depend on the mediator who charges them, and the amount of costs is influenced by various factors, for example, the experience, professional education and area of specialization of the individual mediator. The cost of mediation also depends on the duration of the mediation and the number of meetings with the mediator. Therefore, before the mediation, it is necessary to ask the mediator for information about the price of providing the mediation service, which the mediator charges per hour of work, as well as information about additional costs that could arise in connection with the mediation. Mediators are obliged to provide information about mediation costs. The average price of mediation is 150 euro per hour (not including value added tax).

The legal aid system of the Legal Aid Committee (*Raad voor Rechtsbijstand*) is available to anyone who is unable (in full) to meet the costs of providing legal aid on their own, which includes the costs of mediation. Therefore, the costs of legal aid provided to persons with limited financial resources are covered by the state from the Legal Aid Fund, while a minority of the costs, taking into account the criterion of the income tax, is borne by the beneficiary himself.

Mediators within the legal aid system provide legal aid in more complex cases by providing secondary legal aid in the form of a certificate. Namely, the mediator submits the request for providing legal aid on behalf of the beneficiary to the Legal Aid Committee. If the request is approved, the Committee for Legal Aid issues the mediator an authorization to provide legal aid in the form of a certificate. As a rule, mediators are paid a fixed fee, with certain exceptions for more complex cases that require more time to resolve. Given the way the legal aid system is structured, mediation costs are not borne exclusively by the Legal Aid Committee, but to a lesser extent by the beneficiary. In this way, the system is protected from the possible introduction of frivolous or insignificant cases into the legal system, and rational and socially responsible spending of state funds is achieved. Precisely for the purpose of encouraging the use of mediation, the beneficiary's financial contribution for mediation is set lower than, for example, the contribution for legal aid provided by lawyers.

Mediation can also be carried out in criminal proceedings and is free of charge for the parties.

4.2.7. Statistical data

In the Netherlands, as a rule, all disputes are considered suitable for an attempt at mediation. Thus, approximately one million cases are resolved annually in informal mediation, approximately 200 to 300 thousand cases in private mediation, and 3 to 4 thousand cases in court mediation.

4.3. Restorative justice

Mediation is always allowed and available in the Netherlands, and is most often used in civil law cases. However, for a number of years, mediation has also been possible in criminal cases.

Mediation in the branch of the criminal judiciary is related to the system of restorative justice.

In the Netherlands, there is no legislative framework for the application of mediation even in the branch of the criminal judiciary justice, however, mediation is used very often in criminal proceedings or criminal prosecutions, precisely within the framework of the restorative justice system.

The system is organized in such a way that, at the national level, administrative tasks are performed by a special department organized within the scope of the Ministry of Justice and Security, while mediation in courts is handled by the already mentioned mediation offices.

Regarding limitations in the application of mediation in criminal proceedings, it is important to point out that there are no restrictions that would exclude the possibility of applying mediation in criminal proceedings - neither from the aspect of the type of criminal offense nor from the aspect of the prescribed punishment for the criminal offence that is the subject of the proceedings. However, in practice, mediation is most often used in cases of criminal prosecution for the commission of criminal offenses of threat, theft, fraud, causing a traffic accident, and criminal acts with elements of violence.

If the criminal case is suitable for mediation, the state attorney or judge has the option to offer mediation. At the same time, mediation in no case replaces criminal proceedings, but it is often related to issues of compensation for damage (violation of personality rights and/or material damage), which arose as a result of the commission of a criminal act. The court will indicate the possibility of conducting mediation most often at the preliminary hearing, but - although rarely - also later.

The actions of the Mediation Office can also be indirectly proposed by lawyers - the defendant's defense attorney or the victim's attorney, as well as by the Probation Office. They turn to the court or the state attorney with a proposal to conduct mediation, who may decide to refer the case to the Mediation Office.

In addition, if it considers that it would be expedient to carry out mediation, the Center for Social Welfare can also contact the Mediation Office directly if it is a case in which a child is involved - either as a perpetrator or as a victim of a criminal act.

The mediation office at the court will contact the offender and the victim and investigate the possibility of initiating mediation. If it determines that mediation is possible in a specific case, two mediators specialized in matters of a criminal nature will be appointed and individual introductory meetings will be scheduled. The meetings are held in a specially designated room in the court building, they are gradually confidential, and the procedure itself is free of charge for the parties. The mediation office first addresses the offender. If in the conversation it is determined that the offender accepts their responsibility for the committed crime and that they want to repair the damage caused, the Mediation Office then addresses the victim to determine whether the victim wants to have a conversation about it with the offender. Mediation will only be conducted if both parties voluntarily wish to participate in mediation. When, after the individual introductory meetings, the essential components of the agreement are determined, a joint meeting is held in which the victim, the offender and both mediators participate. The content of the written agreement that they may conclude and with which the mediation ends is decided by the victim and the offender. The agreement is included in the criminal file of the court and the court and the state attorney take it into account when making a decision within their jurisdiction. It is important to emphasize that, although the

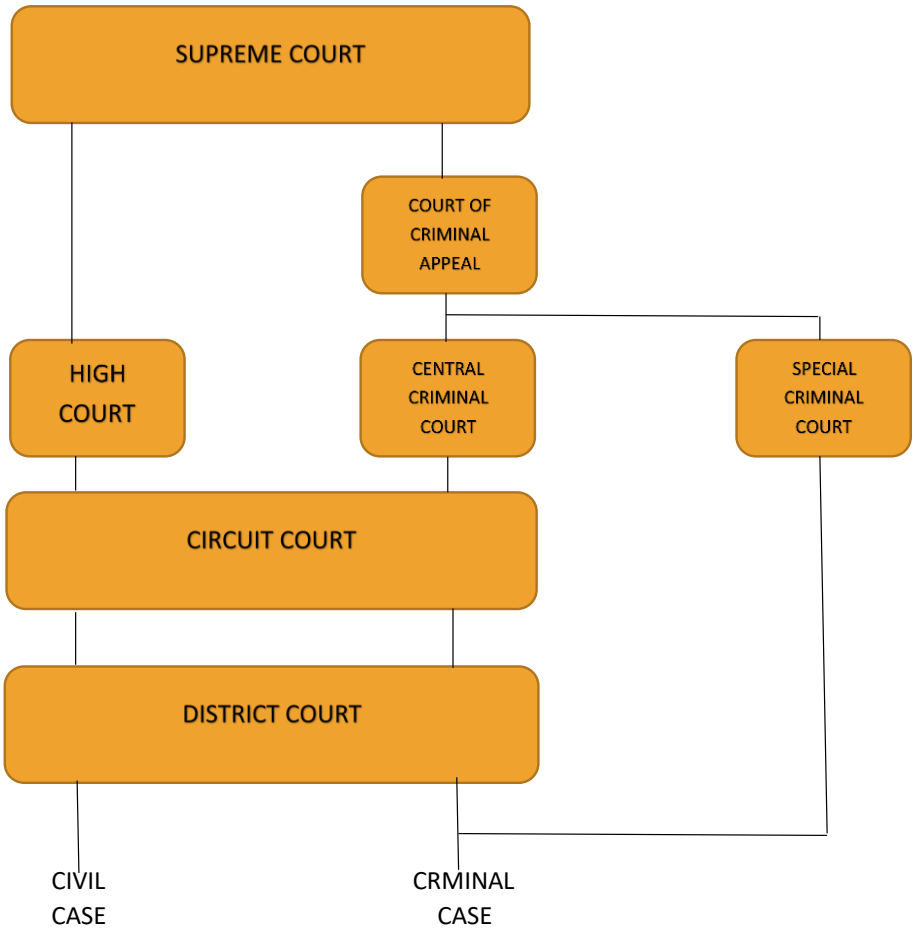
mediation is conducted at the Mediation Office of the court, the judges of that court cannot be mediators.

5. IRELAND

5.1. The justice system

The judiciary in Ireland is established in degrees and consists of the Supreme Court as the highest court, the Court of Appeal with jurisdiction over criminal and civil matters and the courts of first instance, which include the High Court (with unlimited jurisdiction in all criminal and civil matters) and courts of limited jurisdiction, that is, the Circuit Court and the District Court.

Figure 7. Organization of courts in Ireland



The Supreme Court decides on appeals against the decisions of the Court of Appeal, if the decision refers to an issue of general public interest or in the interest of justice it is necessary to refer the appeal to the Supreme Court, as well as on appeals against the decisions of the High Court, if the

Supreme Court has determined that there are exceptional circumstances justifying a direct appeal to the Supreme Court, i.e. if it is a question of general public interest and/or the interest of justice.

In addition, the Supreme Court, at the request of the President of the Republic, has the authority to adopt decisions on the constitutionality of certain provisions of a bill (or the entire bill) approved by the parliament. The Supreme Court also decides on the issue of the president's permanent incapacity to perform their duties.

The Court of Appeal is competent to adopt decisions on appeals in civil proceedings conducted before the High Court, and consists of a president and nine ordinary judges.

The High Court decides on civil and criminal matters, and has exclusive jurisdiction in matters related to the adoption of children, requests for extradition, as well as in regard to the validity of any act with regard to the provisions of the Constitution (except for acts that have already been previously referred to the Supreme Court for constitutional review).

The High Court also plays the role of appellate court for civil cases of the regional court, and has the authority to review the decisions of all lower courts by issuing prerogative orders (for the enforcement of the law, for the cessation of illegal activities or for the delivery of files). These orders do not refer to the merits of the decisions of the lower courts, but rather to the question of potential excess of jurisdiction.

The circuit court's jurisdiction in civil cases is limited to proceedings where the value of the claim does not exceed EUR 75,000 (EUR 60,000 in personal injury claims). The parties can agree to the jurisdiction of the circuit court, in which case the jurisdiction becomes unlimited.

The circuit court decides on probate issues and issues related to the ownership of real estate or the rental of real estate in which the estimated rental value does not exceed EUR 253.95. The circuit court is also competent for family law proceedings.

The district court decides in civil cases and criminal liability in which the value of the claim does not exceed EUR 15,000. The district court is also competent in relation to the general enforcement of judgments of any court in respect of debt, in relation to a large number of provisions on the issuance of permits and in relation to claims related to intentionally caused damage (with a limit of EUR 15,000).

The Supreme Court, the Court of Appeal, the special criminal court, the central criminal court, the circuit criminal court and the district court are responsible for decisions in criminal cases.

The role of the courts in Ireland is particularly relevant because Irish law is, inter alia, based on common law, which means that judicial practice is an important source of law. According to the doctrine of precedent, Irish courts are obliged to follow the decisions of courts in previous cases of similar factual and legal basis, especially if they are decisions of higher courts. However, the doctrine of precedent represents a principle, not a binding immutable rule. In addition, within the doctrine of precedent, a distinction is made between the binding part of the decision, which must be respected, and the part of the decision that refers to the judge's observations on issues that arose in the case, but

were not significant or did not require a decision. This part is not binding in future cases, but it may influence the decision.

Regardless of this, the decisions of the courts are primarily based on adopted acts, whereby the Mediation Act particularly stands out in terms of alternative dispute resolution.

5.2. Mediation

Compared to other countries of the European Union, the systematic regulation and recognition of mediation as an effective method of alternative dispute resolution in Ireland appeared relatively late - with the adoption of the Mediation Act, which formally entered into force on 1 January 2018.

The main impetus for the adoption of the Mediation Act is found in European regulations. Namely, in 2008, after a detailed review of alternative out-of-court dispute resolution methods, with the aim of harmonizing the non-adversarial dispute resolution procedures at the level of the European Union, the EU adopted the so-called mediation directive (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters; EU Mediation Directive 2008/52/EC).

With the directive, the EU member states undertook to establish in their national legislation a series of procedural principles related to alternative methods of resolving civil and commercial law disputes, primarily in cross-border disputes.

The objective of the directive is aimed at facilitating access to alternative dispute resolution and promoting the amicable resolution of disputes, encouraging the use of mediation and ensuring a balanced relationship between mediation and court proceedings.

Based on the fundamental principles stated in the directive, the Irish Parliament passed the Mediation Act in 2017, which entered into force on 1 January 2018. The basic principles stated in the directive, such as voluntary participation, enforceability of the agreement reached between the parties and generally facilitated access to alternative dispute resolution methods, are also reflected in the Mediation Act. Moreover, the Mediation Act establishes a legal framework to promote the resolution of disputes through mediation, presenting it as a viable, effective and cost-effective alternative to court proceedings.

The Mediation Act itself represents a significant milestone for the Irish civil justice system and is very significant for alternative dispute resolution. This legislative framework applies to almost all forms of civil disputes (with certain exceptions that will be discussed below), providing support for the development of a robust mediation system and at the same time laying a solid foundation for the development of mediators as a special profession.

The Mediation Act offers users - the parties - choice and autonomy in decision-making, by enabling the parties to independently and freely decide between two systems: litigation and mediation. The parties are at all times, even at a late stage of the litigation, given a clear incentive to leave the courtroom and find a creative solution to their dispute themselves, in ways that reflect the ideas of the EU Mediation Directive.

Despite the relatively short history of the development of the mediation system in Ireland, the beginning of which is marked by the adoption of the Mediation Act, it can be safely said that mediation in Ireland is wholeheartedly accepted, both by the parties and by all other stakeholders in the process, by competent authorities, through lawyers, auxiliary bodies and institutions, all the way to administrative staff and non-profit organizations. Various published statistics show that the mediation process in Ireland has a success rate of 65% to 80%. For example, in a report prepared by the Irish Commercial Mediation Association (ICMA) in 2019, statistical data from the Irish Commercial Court are cited, which indicate that almost 65% of cases referred to mediation on an annual basis end in a successful agreement. As those statistics obviously do not include mediations that took place in cases outside the Commercial Court, it is likely that the overall success rate of mediation in Ireland could be somewhat higher.

5.2.1. Mediation Act

As previously stated, the Irish Mediation Act draws heavily on the EU Mediation Directive. Passed by the Irish Parliament (Oireachtas) on 2 October 2017, the Act establishes a legislative framework whose Centre is facilitating the resolution of disputes through mediation, presenting mediation as an adequate alternative to initiating civil proceedings.

Hailed by Irish legal scholars as a long-awaited and commendable solution that will no doubt shape the future of the mediation process in Ireland, the Mediation Act *"finally recognizes mediation as an effective and successful approach to dispute resolution in a wide variety of contexts"*, with the potential to overcome the challenges of cost and the length of time faced by civil proceedings, significantly "*more quickly, creatively and at much less financial and other cost compared to litigation or adversarial dispute resolution processes*".

Following the definition from the EU directive, mediation is described in the Mediation Act as a confidential, facilitative and voluntary process in which the parties to the dispute, with the help of a mediator, try to reach a mutually acceptable agreement that resolves the dispute. In the context of the Mediation Act, a mediator means a person appointed under a mediation agreement with the aim of assisting the parties to the agreement to reach a mutually acceptable agreement on the resolution of the dispute that is the subject of the agreement.

In its twenty-six articles, divided into six shorter parts, the Mediation Act further:

- provides codes of practice and conduct for mediators
- establishes a separate authority known as the Mediation Council of Ireland to ensure that the Act is applied and to submit regular reports to the Minister for Justice and Equality in relation to the mediation process
- gives the parties in family or inheritance law proceedings the opportunity to attend informational mediation meetings
- amends a number of other Irish family acts, such as the Guardianship of Infants Act 1964, the Judicial Separation and Family Law Reform Act 1989 and the Family Act (Divorce) Act 1996.

- regulates other related issues.

The main features of the mediation system in Ireland are covered in Article 6 of the Mediation Act and are reflected in the following basic principles:

- the possibility for the parties to the dispute to engage in mediation at any time as an alternative way of resolving the dispute
- constant and exclusive voluntariness regarding the parties' participation in the mediation process
- freedom of the party to withdraw from the mediation process at any time
- the possibility of the party being assisted in the process by a person (including a legal advisor) who is not a party to the dispute
- the right to independent legal advice at any time during the mediation process
- the intentions of the parties and the mediator to make all reasonable efforts to complete the mediation process in an expeditious manner, in order to reduce costs
- the right of the mediator to withdraw from the mediation at any time by sending a written notice to the parties stating the mediator's general reasons for withdrawal
- the freedom of the parties to independently and arbitrarily determine the outcome of the mediation.

In addition to the above-mentioned, Article 10 of the Mediation Act specifically states that all communication (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any court proceedings or otherwise.

All communication, records or notes, the disclosure of which would:

- whether necessary for the implementation or execution of the parties' agreement reached in the mediation process
- whether necessary to prevent physical or psychological injury to the party
- required by the applicable provisions of the law
- was necessary in the interest of preventing or detecting a committed criminal offence (including an attempt to commit a criminal offence), concealing a criminal offence or preventing or detecting a threat to a party or
- whether necessary for the purpose of proving or refuting the allegations raised in the civil lawsuit regarding the negligence or inappropriate behavior of the mediator that occurred during the mediation.

Ultimately, Article 11 of the Mediation Act regulates the enforceability of the agreement reached between the parties in the mediation process. According to the provisions of Article 11 of the Mediation Act, the parties have the right to determine:

- whether and when an agreement was reached between them in mediation and
- whether the agreement will be enforceable.

A mediation agreement between the parties in any case has the effect of a contract between the parties participating in the mediation, unless it is expressly stated that the agreement has no legal force until it is incorporated into a formal legal transaction or contract signed by both parties.

In addition, the Mediation Act specifically regulates the implementation and enforceability of agreements reached in individual family disputes or in disputes related to the status and protection of children. Thus, in special family disputes, the court can determine that the terms reached in the agreement of the parties are enforceable, unless the court is convinced that:

- the agreement does not adequately protect the rights and privileges of the parties and their dependents (if any)
- the agreement is not based on full and mutual disclosure of the assets that the respective party has, or
- the agreement is contrary to public policy
- the party to the agreement was under undue or excessive influence from any other party to reach the agreement.

The course and manner in which mediation is conducted are regulated in detail in the following points.

5.2.2. Cases subject to mediation

In contrast to the exhaustive listing of cases that can be submitted to mediation, the Mediation Act in its Article 3 starts from the opposite assumption, prescribing cases to which the Mediation Act (and therefore mediation itself) does not apply.

According to that list, the Mediation Act does not apply to:

- arbitration proceedings within the meaning of the Arbitration Act of 2010.
- disputes within the jurisdiction of the Workplace Relations Commission or investigated by the Commission, including disputes resolved under the Workplace Relations Act 2015, whether through a mediation officer appointed under the provisions of that Actor otherwise
- cases that are under the jurisdiction: (i) an appeals commissioner appointed under the Finance (Tax Appeals) Act 2015; (ii) of the High Court under the Tax Consolidation Act 1997, or (iii) a property arbitrator appointed under the Property Values (Arbitrations and Appeal) Act 1960 in relation to a decision of the Inland Revenue Commission as to the market value of any immovable property

- certain requests filed under the Tax Consolidation Act of 1997.
- procedures according to: (i) certain sections of the Tax Consolidation Act; (ii) certain parts of the Customs Code; (iii) certain parts of the Finance Act of 2001.
- proceedings before the High Court regarding judicial review or proposals for submitting a request for judicial review
- proceedings against the state in connection with alleged violations of a person's fundamental rights and freedoms
- proceedings under the Domestic Violence Acts from 1996 to 2011.
- procedures under the Child Care Acts from 1991 to 2015.
- any other dispute or procedure that may be subsequently prescribed for the purposes of Article 3 of the Mediation Act.

It follows from the above that the Irish legislator decided to exclude mediation primarily in special procedures related to tax or financial issues, in which a public law body often acts as the other party, as well as in certain procedures in which mediation, for the purpose of protecting victims of domestic violence or in related to the violation of the party's fundamental rights, it is simply not appropriate.

In other cases (individual labor law disputes), the Mediation Act is not applied because there is already a parallel system that allows certain discretion to the parties in terms of access and alternative resolution of disputes.

Therefore, it can be said that in Ireland the possibility of resolving disputes through mediation is very widely and variegated.

5.2.3. Role of judges in mediation

According to Article 16 of the Mediation Act, as the fundamental act governing the issue of mediation in Ireland, the presiding judge has the power to, at the request of a party or ex officio, if they considers it appropriate having regard to all the circumstances of the case:

- invite the parties to the proceedings to consider mediation as an alternative way of resolving the dispute that is the subject of the proceedings
- provide parties in the proceedings with information about the benefits of mediation.

If the parties decide to start the mediation procedure after being called by the court, the court can:

- make a decision on postponement or termination of the procedure
- issue an order extending the time required to fulfil certain procedural prerequisites or any order of the court in the proceeding or
- issue any other order or give instructions that would be considered necessary for the facilitation and effective use of mediation.

Therefore, a judge in Ireland has full discretion to take a proactive approach and refer parties to mediation at any stage of the proceedings. In any case, the court cannot force the parties to enter into mediation, because such an approach would be against the basic principle of voluntary participation of the parties in the mediation process.

However, in accordance with Article 21 of the Mediation Act, the court may, after sending a summons to the parties in accordance with the above provision of the Mediation Act and if it considers it fair, during the final determination and allocation of costs to the parties take into account:

- any unreasonable refusal or failure of a party to consider using mediation and
- any unreasonable refusal or failure of a party to the proceedings to attend the mediation.

The consequence of the potential loss of the right to the costs of the procedure can certainly in some cases be an additional motive for accepting the court proposal and starting the mediation procedure, especially if the judge does not hesitate to act in accordance with the provisions of Article 21. of the Mediation Act and distribute the costs of the dispute in accordance with the will of the parties to try to resolve the dispute through mediation.

Finally, the Mediation Act does not prescribe obstacles for judges to attend one of the programs accredited by competent and professional bodies and thus become mediators themselves. Additional information about the advantages, method and course of mediation can certainly influence the tendency of the judge to propose mediation to the parties in his own proceedings as an alternative way of resolving the dispute and to refer the parties to another mediator who can help them reach an agreement.

5.2.4. The role of lawyers in mediation

Unlike the other systems of the analyzed countries, the Irish mediation system is particularly distinguished by the specific role of lawyers in mediation.

Namely, in accordance with Article 14 of the Mediation Act, the lawyer shall, before starting the procedure on behalf of the client:

- advise the client to consider mediation as a means of attempting to resolve the dispute
- provide the client with information in respect of mediation services, including the names and addresses of persons providing such services
- provide the client with information about
    - the advantages of resolving the dispute in otherwise than by way of court proceedings, and
    - the benefits of mediation
- inform the client that participation in mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of the client and/or their children is at risk, and

- inform the client of:
    - their obligation to inform the party about mediation and the consequences they may face if this obligation is not fulfilled
    - the provisions of the Mediation Act that refer to the confidentiality of documentation and statements made in the mediation procedure
    - the possibility of the parties' agreement reached in mediation being enforceable.

In addition to the invitation and the exact specification of the content of the notification that the lawyer must send to their clients, the Mediation Act goes one step further, prescribing the consequences for not informing the client about the possibility of an alternative resolution of his dispute through mediation.

Namely, according to Article 14 paragraph 2 of the Mediation Act, a lawyer who represents a party who intends to initiate civil proceedings before the court is obliged to submit, together with the document initiating the proceedings, a legal statement from the lawyer proving that they have fulfilled their obligations regarding the notification of the suspension of mediation. The lawyer is released from the fulfilment of this obligation only in certain, exhaustively specified types of family disputes.

Therefore, if the party, after the lawyer introduced them to mediation, decides that he does not want to participate in such a procedure, the lawyer must provide a legal statement proving that they have fulfilled the obligations they are subject to, i.e. that they properly advised the client to consider mediation.

The lawyer's failure to attach the appropriate statement results in the adjournment of the proceedings by the court for a period it deems reasonable under the circumstances, in order for the lawyer to fulfil their obligation to submit such a statement to the court or, if the lawyer has already done so, to give them time to submit such statement to the court. Bearing in mind the statute of limitations for certain claims or requests, it is clear that this is a very serious sanction.

Following the above, with the adoption of the Mediation Act, the lawyer's duty to propose and introduce the client to mediation was transformed into a legal obligation, in contrast to the previously applicable mere ethical obligation that would derive from the code of professional conduct of lawyers.

This kind of obligation for a lawyer is foreseen only in rare countries at the EU level. For example, similar (but certainly not identical) regulations are known, among other things, in German and Polish law, in which it is stipulated that the judge must be informed in the lawsuit about the efforts of the parties to resolve the dispute amicably before filing the lawsuit, as well as about the existence of reasons that exclude mediation. Furthermore, in Italy, the Decree no. 28/2010 introduced a similar obligation, strengthened by the possibility of the party to cancel the contract on the provision of services between the party and the lawyer in case of non-compliance with the obligation to inform about a potential settlement of the dispute through mediation.

Since the lawyer is often the first point of contact for the party before starting a legal dispute, it is clear that this obligation on the part of the lawyer can prove to be very useful, especially if one takes

into account the trust that the parties often place in their lawyers, as well as their reliance on expert and professional advice of a lawyer.

The active participation of lawyers as one of the crucial stakeholders in disputes, through the obligation prescribed by Article 14 of the Mediation Act, additionally contributes to the recognition and strengthening of the Irish mediation system as a whole.

5.2.5. Mediation process

The Irish mediation system can be divided into ten stages in terms of duration and course:

1. pre-mediation phase
2. selection of mediators
3. preparation for mediation
4. mediation agreement
5. mediation
6. gathering information from parties
7. examination and research of possible solutions
8. negotiations on the content of the agreement
9. making an agreement
10. final stage.

Below is a brief overview of the key stages in the mediation process.

5.2.6. Preparation for mediation

In the preparatory stages, the focus is especially on choosing a mediator and concluding a mediation agreement. The parties are free to choose their own mediator directly from a specific institution or to choose a mediator upon recommendation. The Bar of Ireland, as well as the Law Society of Ireland have online search engines that allow you to search for certified mediators by name, surname, district in which they operate, areas of expertise and special skills. Parties can also turn to the Legal Aid Board, which provides free mediation services in family disputes.

The selection of a mediator is crucial to the mediation process. The mediator must be competent, independent, expeditious and capable of building a relationship with the parties, as well as gaining their trust, all so that the mediation process can be successfully completed.

According to Article 7 of the Mediation Act, the parties and the proposed mediator are obliged to draw up and sign a document (agreement on mediation) appointing the mediator and containing the following information before the start of the mediation:

- the manner in which the mediation will be conducted
- the manner in which mediation fees and costs will be paid

- the place and time in which the mediation is to be conducted
- the fact that mediation should be conducted in a confidential manner
- the right of each party to seek legal advice
- the manner in which the mediation may be terminated
- other conditions (if any).

5.2.7. Mediation - before and after

The mediation process aims at an amicable settlement of the dispute, depending on the will and agreement of the participating parties, so that a safe end to the dispute by concluding an agreement in the mediation process is not guaranteed. Accordingly, the mediation agreement that the parties enter into before the commencement of mediation usually contains a deadline by which an agreement should be reached.

After the meeting with the mediator and the negotiations, the parties can draw up a draft of the proposed agreement, which contains the terms of the agreement reached by the parties to resolve the dispute. As previously mentioned, it is up to the parties to decide whether the said agreement will be a binding and enforceable act. The parties may also consider whether they wish to use mediation again in the event that future complaints arise in relation to the dispute.

An agreement reached in mediation is the same as any other settlement agreement and is not subject to review by a court (except in specific cases, which are listed above).

If mediation does not result in a resolution of the dispute between the parties, the parties may initiate (or continue) court proceedings to resolve the dispute. Although mediation will usually take place within a day, if the mediator feels that progress has been made, negotiations can continue after that, so mediation often lays the groundwork for a resolution to be reached later, usually within a few weeks.

5.2.8. Legal aid, fees, financing

The Mediation Act contains only shorter instructions on bearing the costs of mediation - according to Article 20 of the Mediation Act, the parties shall, unless ordered by the court or otherwise agreed between the parties:

- pay the mediator the fees and expenses agreed upon in the mediation agreement, or
- divide the fees and costs of the mediation equally.

Furthermore, according to Article 20 of the Mediation Act, fees and costs must be reasonable and proportionate to the importance and complexity of the issues at hand and the amount of work that the mediator performs.

The amount of compensation for mediators is determined by the chosen mediator - some mediators charge by the hour, and some calculate a fixed fee. However, each mediator is obliged to provide information about his costs in advance, and this when signing the mediation agreement. In family

disputes, free legal aid is organized and provided by the Legal Aid Board, which in turn is financed by the state. Some other state agencies, such as health services and the Workplace Relations Commission, also offer free mediation services, the former for staff and the latter for the general public.

Therefore, fee-based mediation in Ireland can be classified into two main categories – privately paid mediation and free mediation funded by the state or private individuals.

The parties generally pay their own attorney's fees for the attorney's participation in the mediation.

5.2.9. Statistical data

Although the figures and success rate of mediation in Ireland vary from source to source, the general view is that between 65% and 80% of disputes that enter the mediation process are successfully resolved through mediation.

Thus, according to the experiences of former Court of Appeal judge Justice Peart, who now works as a certified mediator in Ireland, more than three-quarters (75%) of legal disputes that enter mediation are eventually resolved successfully.

5.3 Courts Service

The Judicial Service is an independent body established in November 1999 by the government, with the following statutory powers:

- for managing the courts
- for providing support services to judges
- to provide information about the court system to the public
- for securing, managing and maintaining court buildings, and
- to provide content for users.

As the first point of access for parties in court, the Courts Service adopted and implemented numerous programs aimed at bringing mediation closer to the parties, adopting an approach that is primarily focused on the end user - the party.

By adopting this approach, the Courts Service contributes in numerous direct and indirect ways to the development and spread of mediation among the Irish population:

- The Courts Service provides free space to the Legal Aid Board at the courts
- after research and receiving feedback from parties, non-profit organizations and mediators, the Courts Service installed visible signs in the courts (such as supporting banners and road signs) that allow pauses to familiarize themselves with mediation
- The Courts Service also distributes leaflets designed by the staff, which are written in the language of parents and parties in mediation, and whose text has been confirmed by mediators and non-governmental organizations.

All of the above measures taken by the auxiliary administrative body such as the Courts Service have had a significant impact on strengthening the mediation system in Ireland.

5.4. Mediator training

The education of mediators is carried out by accredited bodies, whose programs can be additionally confirmed by the Mediators' Institute of Ireland and/or the International Mediation Institute.

Depending on the body, the training lasts about sixty hours, and generally consists of a theoretical and practical part. An example of an accredited body with the authority to organize and conduct mediator training is the Mediation Foundation of Ireland, established with the aim of providing excellence in mediation services – from dispute resolution to excellence in mediator training.

5.5. Mediation in separate proceedings

5.5.1. Mediation in family disputes in court

The main body dealing with mediation in family disputes is the Legal Aid Board, an independent statutory body responsible for providing legal aid in civil proceedings, counselling, family mediation and legal aid programs.

The Legal Aid Board operates in twenty family mediation centers and provides free services exclusively through employed mediators.

Court family mediation begins with the first party's arrival at the court and their participation in the first informational meeting. The Legal Aid Board officer will then invite the other party to attend the same type of information meeting. At these meetings, information is provided, the possible existence of domestic violence is checked, and an initial assessment of the suitability of the dispute for mediation is made. After that, a joint meeting is organized, which formally begins the mediation process.

Information and family mediation services are currently available in six district courts across the country.

5.5.2. Mediation in family disputes outside the court

Instead of going to court, the party and the other parent were allowed to attend an informational meeting about mediation in one of the district court offices and to continue the mediation process at the out-of-court first joint meeting.

5.5.3. Mediation in misdemeanor disputes and proceedings for minor criminal offences

Although the Mediation Act does not contain explicit provisions on the prohibition of mediation in misdemeanor and criminal proceedings, mediation in Ireland is not developed in this field.

5.5.4. Mediation in labor disputes

In terms of mediating employment disputes brought by Irish workers, the role of the Workplace Relations Commission (WRC) as an independent, statutory body established on 1 October 2015 under the Workplace Relations Act 2015 is proving to be crucial. The commission deals with the resolution of complaints submitted by workers.

In certain cases, a complaint or dispute can be sent to the Mediation Service, which serves as an alternative to a formal hearing. This ensures compliance of the Workplace Relations Commission with the basic principles of the Mediation Act.

The system recognizes external and internal mediation – external mediation is carried out through the Commission based on a complaint sent by an employee and in which a legally qualified authorized mediator is used or through mediation initiated by the employer through a senior advisor or through an authorized trade union mediator.

Internal mediation is carried out in procedures in which an employee submits a complaint to protect dignity at work or in an appeals procedure, as well as in early intervention systems in order to proactively avoid a minor problem in the employment relationship growing into a significant problem.

External mediation of a worker's grievance usually results in an unsuccessful outcome because the parties' positions are entrenched and there is nothing to lose by adjudication. Given that mediation initiated by the employer through a senior advisor or union-authorized mediator is usually initiated to avoid expensive litigation, this type of mediation generally ends in an agreement. Mediation initiated to protect dignity at work usually has mixed success, while mediation for early intervention is generally successful because it is unlikely that both parties will be entrenched in their positions and it is more likely that both parties will be focused on finding an adequate solution.

5.6 Further development of mediation in Ireland

Mediation in Ireland is generally showing a positive upward trend. In a country with the lowest number of judges per hundred thousand inhabitants (3.27 compared to Croatia's 40.7) out of 47 countries examined by the European Commission in 2020, mediation in relation to the court proves to be a completely adequate, efficient and cheap alternative way of resolving disputes, which is increasingly recognized by parties.

Moreover, the emergence of the COVID-19 pandemic accelerated the gap between mediation and litigation. While courts have struggled to adapt to this reality, which has been transferred to the Internet and online platforms, many mediators have shown agility and the ability to quickly adapt, adopting online platforms for document exchange and joint editing and virtual meetings as part of mediation. Leveraging technology to protect clients and provide quick access to a problem-solving forum with experienced professionals was quickly embraced by parties, realizing that legal certainty could be achieved through legally binding agreements reached as part of mediation – in a timely and cost-effective manner.

In the words of the president of the Mediator's Institute of Ireland: "*The development of Mediation has been a dynamic breakthrough in how we resolve our differences. The practice of mediation will come to dominate the landscape of dispute resolution. This will happen simply because Mediation is an effective way of resolving disputes. Like everyone here at the MII I passionately believe in Mediation's potential to resolve even the most complex, intractable disputes. But it goes much further - in fostering resolution through negotiation rather than confrontation Mediation creates resolutions which last and promote well-being and happiness*."

5.7. Lessons learned

The greatest peculiarity (and let's say an advantage) of the mediation system in Ireland is reflected in the legally rooted cooperation between lawyers and mediators, in which their roles complement each other for the benefit of the users - the parties. The harmonious and complementary interaction of professionals with contrasting skills gives much more than can be achieved separately. In such a system, mediators take on more of the emotional burden of the parties in dispute, and lawyers provide legal advice regarding their clients' rights, which is particularly important when clients want to have a legally binding outcome, regardless of the subject of the dispute.

By raising the duty of lawyers to inform and acquaint their clients with all their rights and possibilities, including the possibility of an amicable resolution of disputes through mediation, from a mere ethical obligation to a legal obligation, and by tying this obligation to clear sanctions for possible violations, lawyers have become advocates and active collaborators in to the mediation process, which contributes to the spread of mediation as a whole.

But not only lawyers and mediators are active collaborators in the improvement and advancement of the mediation system. Services that provide free family mediation services, such as the Legal Aid Board, as well as administrative staff in the Courts Service, contribute significantly to the further development of mediation in Ireland.

The adoption of a practical system that is primarily focused on the user - the party - and supported by materials (brochures, banners, signs) compiled by the users - the parties themselves - for other users - the parties - in a very simple, concise and clear language has proven to be a very effective way of reaching wider audience, and thus the expansion of the mediation system in Ireland.

6. LESSONS LEARNED

During the preparation of the analysis, the opportunity was used to visit countries of different jurisdictions and to gain knowledge and experience regarding the arrangement and application of mediation. The common conclusion in relation to all the countries visited is that they use mediation to a greater extent than in Croatia. Therefore, mediation in Croatia is a potential that needs to be used.

6.1. The possibility of different dispute resolution methods

When trying to redefine the dispute resolution system in order to improve it, two possibilities are often discussed. The first possibility looks at the achievement of improving the efficiency and quality of trials within the work of state courts as they are, while the second possibility looks at the need to use other, alternative ways of resolving disputes.

The first possibility starts from the fact that in order for society to function properly, the existence of state courts is necessary. The above confirms that the right of access to court is considered one of the basic human rights. Courts are needed for the purpose of resolving disputes, just as it is necessary to make them better, that is, more efficient.

The second possibility takes into account certain (in)ability of state courts in performing their functions and for certain disputes and in certain circumstances proposes additional possibilities for resolution outside the courts.

Therefore, in numerous judicial systems, solutions for improving the efficiency and quality of the dispute resolution system are found precisely in the application of alternative methods of dispute resolution.

6.2. Terms

Mediation is very often used and understood as a collective term for alternative dispute resolution.

In Norway, the term mediation (*mekling*) or court mediation (*rettsmekling*) is most often used.

In Portugal, the term mediation (*mediação*) is used mainly when talking about out-of-court mediation, while the practice of the courts of peace (*julgados de paz*) can, from a theoretical standpoint, be defined as mediation.

In the Netherlands, we mainly talk about mediation (*bemiddeling*).

In Ireland, we mainly talk about mediation.

In the latest normative framework for mediation, Croatia decided to define the area of amicable dispute resolution more broadly, in the sense that it also includes mediation, structured negotiations and other alternative ways of resolving disputes. Until then, the term "mediation" used was replaced by the term "mediation", noting that there is no difference in meaning.

6.3. Legal framework

Each of the countries whose systems are the subject of comparative analysis has a different approach to the question of whether mediation, as a more informal procedure compared to court proceedings, should be regulated by law, or whether mediation is a series of practical measures that do not need to be regulated by law.

Thus, for example, in Norway in 2005, the Disputes Act (*Lovdata*) was passed, which made mediation a formal part of the Norwegian legal system, and that part of the legal system that regulates the procedural legal framework for resolving civil disputes. Such positioning of mediation sent a clear message about the role and importance of mediation as a way of resolving civil disputes, as well as about the role of judges in conducting mediation.

In relation to the question of whether mediation should be regulated by law, the Netherlands took a different approach. Namely, even after several attempts to pass an act regulating mediation, the act was not passed.

In Portugal, the implementation of mediation is strengthened through the work and activity of courts of peace, however, mediation is not regulated by law.

Ireland resolved the issue of legal regulation of mediation not so long ago, in 2017, by passing the Mediation Act.

Croatia has a longer tradition of legal regulation of mediation. The year 2023 marked the 20th anniversary of the establishment of the legislative framework for mediation in Croatia.

6.4. Possibilities of mediation

As an expected result of the analysis, it is assumed, among other things, an attempt to answer the question of what are the possibilities of mediation in achieving the improvement of the judicial system by introducing different ways of resolving disputes (enabling a "multidoor access to justice").

Therefore, the six previously presented reasons for the introduction of different dispute resolution methods into the judicial system are discussed below.

6.4.1. Improving the efficiency of the judiciary

By analyzing different legal systems and the application of mediation in those systems, and in connection with the issue of improving the efficiency of the judiciary by introducing mediation as a possible way of resolving disputes, it was determined that there is a justified expectation that positive results and success will be achieved.

Namely, it is considered that in Norway, Portugal and the Netherlands the potential of mediation has been recognized to a significant extent and that the acceptance of mediation has helped the justice systems of those countries improve their efficiency. In this sense, Ireland is not lagging behind, and it can be expected that the path of encouraging the use of mediation that they have chosen will yield he expected results in the future.

The above certainly does not exclude or reduce the importance of courts and their primary and leading role in resolving disputes. On the contrary, it can be expected that the development of modern, democratic, permissive and pluralistic societies will naturally result in an increase in the number of disputes, which justifies the need to offer other solutions in addition to the courts. Ultimately, the courts themselves will benefit precisely through increased work efficiency.

6.4.2. Ensuring access to justice

Mediation enables the parties to overcome economic, organizational and procedural obstacles on the way to dispute resolution. For example, in Portugal, disputes up to EUR 15,000 in value (with the exception of labor and family disputes) can be resolved at courts of peace with significantly lower costs and without the involvement of a lawyer.

At the same time, lower costs for customers do not mean lower quality. It is simply a different way of reaching a solution than the way offered by the court in a regular, more formal procedure. Namely, mediation takes into account certain circumstances that do not come to the fore in the proceedings before the court.

6.4.3. Self-determination of the parties

Mediation enables the parties to manage their own dispute with an active approach and create a solution acceptable to them.

Of course, the parties are limited by the fact that the possible resolution of the dispute must not be contrary to mandatory regulations, the morals of society and the rights of third parties.

The aforementioned ensures that the outcome of the mediation has social recognition and eventual enforceability, i.e. the possibility that the resolution of the dispute by reaching a settlement will have the same value as a court decision in court proceedings.

6.4.4. Transformation

In mediation, the parties have the possibility to change (transform) their mutual relationship, and this possibility is much more difficult to achieve in the framework of court proceedings. The aforementioned was also confirmed through the testimonies of mediators in the visited countries, who presented their practical experiences. Despite the diversity of the systems in these countries, the mediators recognized the benefits of mediation in the same way.

6.4.5. Social transformation

A series of personal transformations is reflected on a wider circle of people in a society, as a result of which a social transformation is realized. The long-term goal that should be pursued is the goal of transforming the culture of conflict resolution - it is desirable to transform a litigious society into a society of amicable dispute resolution.

6.4.6. Social control

Traditionally, the social function of establishing justice has been entrusted to the courts.

Nevertheless, the parties can work on their problems and make an effort to resolve their disputes even without the prevailing influence of the court within the framework of conducting formal court procedures, which ultimately affects society's better perception of the courts in general.

7. RECOMMENDATIONS

In order to improve the system of judicial mediation in order to improve the entire judicial system and to achieve the goal of strengthening the rule of law, among other things, by implementing the project "Improvement of the Court Conciliation System", recommendations for improving the system were drawn up.

When preparing the recommendations, the intention was not to propose the direct application of acquired knowledge and experience, but to consider their application in a manner adapted to the conditions and possibilities of the domestic legal system.

Therefore, it was necessary to first determine what the state of court mediation is in the domestic legal system and what are the problems that need to be solved, that is, what are the needs that need to be met in order to improve the system and to encourage the application of mediation.

The sociological and legal analysis of the reasons for the non-use of mediation in the Republic of Croatia included an analysis of the opinions of judges, lawyers and the parties themselves on mediation as a way of resolving disputes. The results of the analysis showed that mediation is still an unknown way of resolving disputes in the judicial system of the Republic of Croatia, also due to insufficient openness of the judicial system towards mediation.

Already during the implementation of the project, positive developments were made in the direction of affirming the mediation system, both court mediation and extra-judicial mediation.

Therefore, these recommendations aim to contribute to the process of improving the mediation system, with special emphasis on the contribution to the improvement of the court mediation system.

Based on the established needs of judges, lawyers and the parties, the recommendations were drawn up precisely in relation to the aforementioned groups of addressees. Nine recommendations were made, three recommendations each in relation to judges and lawyers, and two recommendations in relation to the parties, with one recommendation presented separately.

Judges:

1. **A more stimulating scoring of judges' work in connection with mediation in the Framework Criteria for the Performance of Judges.**

The performance of judges is determined based on the number of cases that each judge has resolved in a one-year period based on the Framework Criteria for the Performance of Judges (Framework Criteria). Failure to comply with the Framework Criteria exposes the judge to the possibility of initiating disciplinary proceedings, while failure to comply with them also violates the Code of Judicial Ethics.

Therefore, it is recommended to establish the Framework Criteria for the Performance of Judges so that for the conducted mediation in which a settlement agreement was concluded points are awarded both to the judge who referred the case to mediation and to the judge who conducted the mediation. In addition to the above, points should be awarded to the judge and mediator for conducting mediation that is not completed by concluding a settlement agreement.

Given the importance of the Framework Criteria for determining the efficiency of the work of judges, the proposed scoring of the performance of judges would motivate judges to refer parties to mediation more often and to conduct mediation in court.

2. **Strengthen the importance and visibility of mediation through organization of the internal structure of the courts.**

Establishing organizational units for mediation at the courts would enable continuous and systematic monitoring of court activities related to mediation, as well as familiarization of courts with the needs of the parties, which would enable changes to strengthen the system and application of court mediation.

3. **As part of the regular professional development of judges, ensure that judges acquire theoretical and practical knowledge and skills related to mediation.**

In order to motivate and encourage judges to conduct mediation, it is necessary to enable them to acquire the necessary knowledge and skills about mediation. As part of the implementation of the project “Improvement of the Court Conciliation System”, about 190 judges and about 70 court

counsellors completed the basic training for mediators - out of the planned 500 persons directly involved in the work of the judiciary. Such a number of interested judges and court advisors confirmed not only the need, but also the interest, in mediation training among judges in general. However, for longer-term success, training on mediation should be available to judges as part of the regularly planned professional development of judicial officials.

Lawyers:

1. **Determine a more stimulating amount of remuneration for lawyers for representation in mediation.**

Lawyers provide all forms of legal aid within the framework of the powers prescribed by law, among other things, they also provide legal advice and represent parties. The nature of the legal service is such that it is the lawyers who have the closest professional relationship with the parties and to the greatest extent influence the party's perception of the dispute.

The principles and rules of conduct that lawyers must always adhere to in the performance of their duties, in order to preserve the dignity and reputation of the legal profession, are regulated by the Code of Ethics of Lawyers, which also regulates the relationship towards the parties. Thus, if it is in the interest of the party, the lawyer will try to reach an agreement between the parties in the dispute without initiating court or other proceedings. The lawyer will try to resolve the dispute through a settlement during court or other proceedings, if this is in the interest of his client.

The tariff on awards and reimbursement of expenses for the work of a lawyer provides for the payment of remuneration to a lawyer for providing the service of representing a party in mediation, however, in order to further encourage lawyers to consider mediation more often as a possible way of resolving their clients' disputes, it is useful to consider increasing the amount of such remuneration.

2. **Provide training for lawyers related to mediation.**

Lawyers should be familiar with mediation and be able to advise the party on what mediation is, how it is carried out and what are the features of dispute resolution through mediation. In this sense, just as it is necessary to educate and train judges about mediation, the same is necessary in relation to lawyers.

3. **Prescribe the obligation of lawyers to propose and introduce the party to mediation.**

Prescribing the obligation of lawyers to propose and introduce the party to mediation would certainly send a strong and serious message about the importance of mediation. In doing so, the right of the party to access the court, as well as the voluntariness of mediation, must not be called into question under any circumstances.

Customers:

1. **By conducting continuous promotional campaigns, raise citizens' awareness of mediation, and at the courts make it possible for parties to receive general information about mediation in the simplest and most direct way possible.**

Carrying out promotional campaigns is one of the most effective ways to make information available to the general public. Quality messages that will show that the justice system itself has accepted mediation and its possibilities will surely take a step forward towards the acceptance of mediation by the citizens themselves.

2. Allow the parties who settled the dispute through mediation to recover the court fee paid in court proceedings.

Encouraging the parties to reach an amicable resolution of the dispute by returning the amount paid for court fees in the case of settlement of the dispute through mediation is certainly a justified proposal, given that the dispute was resolved by the efforts of the parties themselves.

Small claims:

Consider mediation as the primary means of resolving small claims.

Mediation is a type of dispute resolution that is, among other things, informal in the sense of the absence of procedural legal rules.

In small claims disputes, that is, in simplified court proceedings, it is justified to consider what sufficient amount of form (in correlation with adequate legal protection) is needed to resolve such disputes.

Given that mediation offers the possibility of a faster and cheaper, yet appropriate solution to a dispute, the possibility of using mediation in resolving small value disputes should be considered to a greater extent than before. There are a number of such solutions in comparative jurisdictions.

Moreover, it is reasonable to suggest that amicable dispute resolution should be the primary means by which all small claims will be attempted to be resolved.

The idea is that all small value disputes that come to court go through the opt out system of amicable dispute resolution; those that are not resolved in this way enter further proceedings, with the primary use of the free assessment of evidence from Article 464a of the Civil Procedure Act, i.e. with the simplified form of procedure provided for disputes of this type.

8. CONCLUSION

Mediation in Croatia is not sufficiently utilized as a way to resolve disputes and achieve a more efficient judicial system. Visits to other jurisdictions and acquired knowledge and experience justified the opinion that there is room for improvement, as well as that there are solutions that are worth investigating and applying.

Namely, mediation, in addition to improving the efficiency of the trial and making justice more accessible, can also enable the parties to actively participate in the resolution of their own disputes and their self-determination, transform the relationship of the parties in the dispute and strengthen the social function of the establishment of justice and support the dignity of the courts' persuasiveness.

In this way, results are achieved in achieving the always important goal, which is strengthening the rule of law and greater trust of citizens in the work of the courts and the entire judicial system.

The possibilities of the court therefore do not have to be limited to one (formal) procedure, but it is possible to open several doors to justice for the benefit of the parties and the court.