



ASSOCIATION OF MEDIATORS  
OF THE REPUBLIC OF MACEDONIA

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Macedonian Young Lawyers Association

# REPORT

## SOUTH EAST EUROPEAN MEDIATION FORUM REGIONAL CONFERENCE

Skopje, October 2006

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## I. INTRODUCTION

The First Regional Conference for Mediation in South East Europe was held in Skopje, Republic of Macedonia during 12 – 15 of October, 2006. The conference was organized and hosted by the Association of Mediators of the Republic of Macedonia and the Macedonian Young Lawyer Association. The conference was also, supported by the CSS Project for Integrative Mediation (CSSP) from Germany and the ADR Group from the United Kingdom.

On the conference took participation professionals involved in mediation process from the countries of the Western Balkans including Slovenia. The organization of the conference is continuation of the initiative of the mediators which participated on the regional networking workshop organised by CSSP in Sarajevo in November 2005.

Taking into consideration the Agenda of the First Regional Conference for Mediation in South East Europe, the Conference was organised in two parts. Thus, the first part of the conference was designed in an interactive manner with power point presentations and discussions covering the topics related to the implementation and the development of the mediation process in the region and sharing experience in promoting mediation. While, the second part of the conference was mainly focused on a training and capacity building sessions emphasizing on the various types of mediation and techniques for negotiations, such as family mediation, community mediation, school mediation, court mediation.

The last day of the conference was discussed about future of the SEEMF, where was reviewed the structure, membership, sustainability and other issues which are important for further development of the SEEMF initiative. It was further agreed that in order to expand the mediation process in the South Eastern European Region there is a need for strengthening the cooperation, the exchange of information and experience between established organizations and associations of mediators. Also, the participants agreed that it is necessary to make efforts for promotion of the mediation as a form of dispute resolution mechanism and to push forward with the activities of education, informing the community about possibilities for off-court solution of problems. This would have an aim to change general behaviour of the people when they will face with various problems i.e. that the court resolution of disputes is not only and last resort.

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The conference was welcomed by the distinguished speakers including Sasho Vasilevski, Deputy Minister of Justice of the Republic of Macedonia, Elisabeth Müller, German Deputy Ambassador, Bernd Burwitz, CSS Project, Germany Michael Lind, Managing Director of ADR Group and Milco Kupev, President of the Macedonian Mediators Association, which highly appreciated and supported the conference.

## II. WORKSHOPS AND PANEL DISCUSSIONS

The first part of the Conference was implemented through workshops which included lecturers with power point presentations. After each presentation was stimulated discussion on the matters related to the mediation topics. Thus, the presentations covered the following topics:

- Will court related mediation survive?
- Introduction and promotion of mediation in the legal system and establishing and building self-sustainable mediation
- Attorneys vs. Mediation
- How to communicate Restorative Justice and Victim/Offender mediation with the general public?
- Application of Restorative Justice and Victim/Offender Mediation in Juveniles, a one year project, results, dilemmas, and challenge
- Peer Mediation
- Lecture about Hatred
- Community mediation with special focus on interethnic dialog
- Parallel development of a private or Independent Capability for Mediators
- South Eastern Mediation Networking Session
- SEEMF future (legal frame, membership, structure, leadership, next regional conference, etc)

### ***II.1 Will court related mediation survive?***

The future of the court related mediation was elaborated by the Judge Ales Zalar from Slovenia. He pointed out the essence of mediation process stressing on the:

- Mediation and the Government,
- Mediation and the Court,
- Mediation and Attorneys, and
- mediation and parties in the dispute.

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On the workshop were given examples from other countries and their systems where mediation is regulated. In some countries Governments are interested to regulate mediation processes, while some countries regulate mediation with the law. Other countries stimulate mediation between parties in the dispute by bringing them to mutual consent. Also, was mentioned that United Kingdom has a system where mediation is always applied before court resolution of disputes in cases where the State is party in the dispute Furthermore, it was stressed that it would be good for the mediation itself if the costs are covered by the State, and otherwise it would be hard for implementation.

The presentation also, focused on the Justice Model of mediation where courts make selection of the cases where mediation can be applied. The hardships of this model are increased costs for mediation and the selection of judges who will mediate between certain parties. The fear is that some judges might have their own interests in the case.

According to the opinion of the participants, parties in the dispute should elect judges who will be mediators in the case. However, the boundary between handing down of a judgment and reaching mutual solution is often very thin, it is questionable whether judges may be successful in implementation of the mediation. The view of the participants is that mediation should also include people from different backgrounds for instance: economists, engineers, psychologists etc.

As regards to the mediation cases, there is no specific model and criteria how certain case will be treated. The most important issues for the party to decide whether it will opt for mediation or other forms of dispute resolution are: Confidentiality, Costs, Expertise and Court enthusiasm.

In addition to the Court mediation was discussed the relation between attorneys and mediation. The view of the participants was that the attorneys would not be suitable for mediation because of their financial interests to litigate and the fear that they will lose earnings if they mediate. However, there are countries which made certain reforms in this respect by giving addition incentives to the attorneys to practice mediation. For instance Italy prescribed lower annual taxes for attorneys which participate in mediation, while France encouraged mediation clauses in the contracts which provide mediation as a main tool for dispute resolution. Only if unsuccessful, the court can decide upon lawsuit. The court has right to reject lawsuits as premature if no mediation is provided.

The conclusions of this workshop were that the Governments should encourage mediation, general public should be more acquainted with the possibilities for mediation, to influence on the general behavior of the people, mediation should

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attract distinguished professionals with different academic and professional background, etc.

## ***II.2 Introduction and promotion of mediation in the legal system and establishing and building self-sustainable mediation***

On this workshop the participants discussed the incorporation of mediation in their national legal systems, and some of these systems were presented as successful cases such as Kosovo, Bosnia and Herzegovina and Serbia. One of the main discussions was finding mechanisms for establishing of self-sustainable mediation. Participants expressed their opinion that in the most of countries from the South Eastern Europe the mediation is regulated with the law. The mediation covers various areas of disputes like: family disputes, corporate disputes, property disputes, labour and employment disputes, misdemeanor and offences, etc.

Also, there it was emphasized that in the South Eastern European countries are established associations of mediators as a professional bodies of mediators. The associations also, established cooperation with the governmental bodies, association of judges and attorneys, business community and economic chambers, etc. The aim of the associations is to promote the mediation in society as an efficient tool for peaceful resolution of disputes.

Also, the participants agreed they should increase their regional cooperation with an aim to share practical experience between mediators and mediators associations and organisations in the South Eastern Europe in respect to the implementation of mediation within their legal systems.

## ***II.3 Attorneys vs. Mediation***

This workshop was leaded by Judge Srdjan Simac form Croatia and Mr .Blazo Nedic from Serbia. During this workshop was pointed out that mediation is a form of alternative dispute resolution mechanism. The Court resolution of disputes can be less efficient because of huge amount of lawsuits, long litigation, time consuming procedure, high legal taxes, etc.

The mediation is helpful for the attorneys as well as for the parties. Mediation is good for attorneys because is less stressful, there no prompt filings, there is no waste of time in the courts, attorneys can participate in mediation when they have free time, etc. Moreover, mediation when is successful brings satisfaction for the client who

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may recommend the attorney to his friends and business partners. Theoretically happy clients pay their bills and also bring other clients.

On the other hand, mediation is good for the parties because they save time and money, clients can express their opinions, there is less stress and physical burden for clients during mediation and if mediation fails to resolve the dispute parties still may opt for court litigation. Also, mediation reconciles parties which are in conflict and may foster further cooperation between them. Unfortunately, this is not a case with court litigation where parties remain on their position without chance for peaceful solution of problems.

Having in mind the aforementioned, the mediation is also good for the courts because there are fewer files and they can focus on more complicated issues. The mediation also strengthens the confidence in the courts and accelerates the dispute resolution procedure.

As a conclusion, in mediation all parties can be winners, while in litigation there are always winners and losers.

#### ***II.4 How to communicate Restorative Justice and Victim/Offender mediation with the general public?***

This workshop was cancelled because the Lecturer Mr. Gerd Deladre from Germany cancelled his participation one day before the Conference.

#### ***II.5 Application of Restorative Justice and Victim/Offender Mediation in Juveniles, a one year project, results, dilemmas, and challenge***

Mr. Rasim Gjoka from the Foundation for dispute resolution and reconciliation form Albania explained the aims and achievements of the project Application of Restorative Justice and Victim/Offender Mediation in Juveniles Mediation in juveniles. He explained that mediation in Albania is applied by the judges, attorneys and state prosecutors. There are many cases where mediation can be implemented. Thus, mediation is often used to resolve family disputes, neighbor disputes, school disputes, business disputes as well as offences and misdemeanors.

The Foundation also, participates in resolution of school disputes where they have established very good cooperation. The Foundation offers to the problematic

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students to participate in mediation in order to resolve the dispute. For this, students must agree on the mediation and after that it must be approved by their parents.

During this workshop Ms. Karen Kristin Paus from Norway gave short presentation regarding mediation in Norway. After this, the meeting was concluded.

## **II.6 Peer Mediation**

The lecture on peer mediation was performed by Ms. Duska Pribicevic Gelb from the Centre for culture of peace and non-violence from Croatia. The lecture was started with definition on mediation. After that it was stressed that school mediation was initiated in Croatia in the beginning of 1993. The main reason for introduction of the mediation in schools was the fact that the relations between pupils had worsen. On the other hand, the professors could not manage with the problems of the pupils.

In this course was pointed out by Ms. Gelb that a special manual was adopted in order to educate pupils, parents, professors, social workers how to encourage dialog between pupils. The manual contains 33 educational workshops for children in primary school. The manual also defines the methods of organization of group activities by the professors in the schools.

During presentation of school mediation a special accent was put on the pupil mediator. This means that the pupils are used as mediators in their own environment. However, for this to be achieved it is necessary to provide professors and pupils with certain training and after that to organize exercises.

In this context was also mentioned that older professors are abstaining from this type of work with pupils. However, younger professors welcomed this method for fostering discussion among pupils.

At the end of the workshop was presented a short documentary film where it was showed how professors work with pupils and their effort to find leader in the group who will be recruited as a mediator. For example, when two pupils argue between themselves a pupil mediator undertakes the responsibility to resolve the conflict. So the role of the professor is substituted by the pupil – mediator.

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## ***II.7 Lecture about Hatred***

The lecture about hatred was presented by Professor Zoran Milivojevic from Serbia. On this workshop he gave some details about conflict and how it can be defined. Furthermore, it was explained the interpersonal relations between those who are in conflict and those who are not in conflict. The friendly relations often generate sympathies and closeness, while non-friendly relations generate greed, hate, and revenge.

In addition to this was also mentioned that hate generate other hate and thus comes to revenge which is form of primitive justice. Also, hate is connected to devastation (emotive, psychical, social, etc). Sometimes hate may be a reason for murder. Almost all murders are based upon hate, except manslaughter.

By the end of the presentation was mentioned that it is difficult to determine whether exist justifiable murders (example. Murder in self defence, Euthanasia, Murder in war, etc). As a final remark of the presentation was concluded that murder is perception of evil.

## ***II.8 Community mediation with special focus on interethnic dialog***

The session on Community mediation with special focus on interethnic dialog was conducted by Ms. Jelena Lengold from Nansen Dialogue Center from Serbia. In this respect, Ms. Lengold explained the history of Nansen associations. At the moment they implement several projects in the region focusing on dialog through virtual schools of electronic studies. Nansen center has an aim to encourage dialog between people. Their target group are local politicians who are trained to listen other people. The main aim of the dialog is to find solution about problems and to listen what other party has to say in this respect. This is not a case during debate, because opposite parties only push forward their views and positions.

According to the presentation, there are several types of people's behavior in the conflict i.e. there are people who avoid conflict, people who step back during conflict, people who do not step back during conflict, people who try to find compromise and win-win situation.

## ***II.9 Parallel development of a private or Independent Capability for Mediators***

Workshop that was mainly focused on the development of capability for mediators was held by Michael Lind from ADR Group from UK. Mr. Lind talked about the UK

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experience in mediation development giving special attention of the development of the private sector. Mr. Lind stressed that there were many obstacles that UK mediation as well, but they still succeeded and today have more support from relevant subjects. The issue of court-annexed mediation was touched and it was concluded at this moment court-annexed mediation should be supported in the region. Mr. Lind reminded everyone that judges and courts have cases, courts also have premises and government is supporting them. He also emphasized the importance of engaging with all key stake-holders, i.e., law firms, professional bodies, academic institutions, chambers of commerce, etc. These institutions should be informed on mediation and given an explanation why mediation is good for them and why they should support it. In the end, Mr. Lind addressed some of the future challenges for SEEMF but concluded that everyone should have positive spirit and that the Forum has the future if everyone is willing to take some risks.

## ***II.10 South Eastern Mediation Networking Session***

This session was lead by Ms. Smiljka Gavric, the national coordinator for Bosnia and Herzegovina and the SEEMF Networking coordinator. Ms. Gavric gave a brief presentation on the ideas for future structure of the Forum. She talked about the informal structure and the one that would include registration of the Forum as a regional entity. Ms. Gavric then talked about the Forum bodies, i.e., the board, chairman, network coordinator, etc. The presentation of Ms. Gavric had the purpose of inviting all conference participants to discuss future of the SEEMF and give their ideas on the last day of conference when the proposal of the SEEMF Steering Board (consisted of national coordinators) will be presented.

## **III. TRAINING SESSIONS**

### ***III.1 Negotiation***

The training session on negotiation was performed by Ms. Sonja Rauschuz from Austria. She gave short description about work of the Vienna partners. In this respect they provide advices, training and consulting service to clients. During training session was also briefly presented the BATNA model of negotiating.

In this course was presented the project Seven elements and thus the participants were separated into groups in order to try the seven elements model. Their task was to prepare several alternatives of the problem and to find the best alternative for resolution. After that each alternative was assessed by the participants.

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Furthermore, during the training was also presented a case where students obstructed the classes with their behavior. After that, was made concretization and structuring of the problem. Thus, were identified parties and their interest in the case. The interest of the professor was to keep his job, to improve the teaching, to improve cooperation with pupils, to keep the discipline in the class, to implement the educational program etc. The interests of the parents were to restore discipline in the class, to get quality education for their children, to realize the educational program, etc.

For resolution of this case were proposed two alternatives:

- Common meeting with professor and parents,
- Common traveling with professor and pupils.

### **III.2 School/Peer Mediation**

The training session on school mediation included practical exercises in order to determine the types of behavior between people. The exercises were implemented by Ms. Amelija Krstanovic from Croatia.

The exercises were focused on determination of attention of people. The participants in the group were asked to make circle and to pass the ball to each other. The essence of the exercise was to keep the balls from falling down on the pavement. Later the lecturer increased the number of balls in order to get more attention from the participants.

Other exercises had an aim to define the behavior of the people. Thus, the participants were asked to write their names with their right and left hand. After that they were asked how they felt when they write with the opposite hand. Their answers were: helpless, challenging, curious, confusing, etc. Hence the behavior of the people can be determined as. active, reflexive, theoretical, practicing.

### **Victim/Offender Mediation**

This training was cancelled because there was no interest among participants for this type of training.

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## ***Community Mediation***

The training session on community mediation was executed by Mr. Albert Hani from Center for conflict management from Macedonia. He explained how disputes can be resolved. In this relation was pointed out that disputes can be solved through mutual understanding, discussion about problem, negotiation, expertise, arbitration, court, murder or ignoring the problem.

Thus, mediation was defined as a process of resolution of disputes in which one person is helping to conflicted parties to reach agreement. Mediation is successful when there is good will for both sides to overcome the problems.

The mediation as a process is composed of following:

- Preparation,
- Opening of the statements,
- Preparation of work plan,
- Exchange of views and positions,
- Building of agreement,
- Signing of agreement,
- Closing of the statement.

## ***Dialog***

Mr. Steiner Bryn from Nansen Dialogue Centre from Norway had delivered a lecture on the training session for dialogue. He expressed his views, opinions and cases from everyday life. When he speaks about dialogue he means on a deep conversation which lasts at least 3 days. According to Mr. Bryn many people understand dialogue wrongly because the intention of the dialogue is to understand other party. This is opposite form negotiations when you try to persuade.

Also, there is a difference between dialogue and debate. In dialogue people listen other people, while in debate people behave as hunters of weak arguments in order to use them against opposite party.

The dialogue must express full tolerance although it is difficult to tolerate issues which are subject to dialog. In the dialogue parties listen stories in which they do not believe and they consider those stories as lies. The moment when you started not to trust, you started the debate.

Those who want to practice dialogue must practice self-discipline.

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## ***Court mediation***

The training on court mediation was performed by Judge Gordana Ristin from Slovenia. At the beginning of the training session were raised several issues about mediation. Thus, was discussed whether mediation can resolve problems, who can be mediator, what is the interest of parties for mediation, how court mediation is functioning in the court, etc.

According to Judge Ristin, the aim of the mediator is to help for resolution of dispute. The role of mediator is not to interfere between parties. Sometimes mediators can fall into dead end situation without knowing what to do and how to proceed. In such case mediators should have supervisors (usually psychologists) who will help them to overcome the situation. Also, it is helpful if mediators talk with other colleagues and exchange information.

Furthermore, it was emphasized that mediators should be paid for their work in order to be motivated. As far as mediation cost concerned it would be good if they are covered by the state. It is considered that, if parties pay for mediation, there will be less resolution dispute.

Mediation starts when a party approaches to the mediator with a request for mediation and not with formal signing of the contract. Mediators can be people with different academic and professional background. Judges and attorneys are not suitable for mediators because of their professional work and possibility for their latter involvement in the case. Mediators and Judges should not discuss between themselves about final outcome of certain case. It is not ethical to prejudice about case.

At the end of the training session Judge Ristin pointed out that mediation should not become business. In order to de-stimulate attorneys to litigate it was proposed that they should receive double honoraria for their work, otherwise they will advise clients to litigate. It was also suggested that mediation should be always applied as a mechanism for dispute resolution before filing lawsuits before competent courts.

The training session was concluded by Ms. Karen Kristin Paus, who explained the court mediation in Norway. In Norway court mediation is independent institution which is financed by the state. Also judges – mediators, in court mediation are paid per hour by the state. Parties are not allowed to have attorney during mediation, because it is considered that they do not have confidence in the system

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## Family mediation

Ms. Ilaria De Vanna from Italy had delivered training for family mediation. Ms. De Vanna gave a short presentation of the model that is used in the South Italy, promoted in the mediation centre in Bari.

### ***Plenary Session: SEEMF Future (legal frame, membership, structure, next regional conference, etc.)***

The Conference was resumed with the Plenary Session which had an aim to tackle the future activities of the SEEMF. Mrs. Smiljka Gavric presented the proposal for the future structure of SEEMF made by the SEEMF Steering Board. In addition, participants were informed on the objectives, goals and plans of the SEEMF in 2007.

The following were the main information given to all participants by Mrs. Gavric

#### Steering Board Members

Albania - Oltion Kadaifciu  
Bosnia and Herzegovina – Smiljka Gavrić  
Croatia – Srđan Šimac  
Kosovo – Florent Hajrizi  
Macedonia – Žarko Hadži-Zafirov and Dragan Dameski  
Montenegro – Ivana Gajović  
Serbia – Jelena Arsić  
Slovenia – Gordana Ristin

#### SEEMF Objectives

The South Eastern Mediation Forum is a regional network that supports mediation development in the different regions in South Eastern Europe, thereby improving good practice, cooperation, exchange of experiences and human relationships. The South Eastern Mediation Forum promotes and performs mediation through direct activities and networking with local and external networks and organizations, and seeks to include all forms of mediation and mediators.

#### SEEMF Organizational Structure Proposal

- BOARD – consisted of national coordinators

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- CHAIRMAN – elected between national coordinators each year (rotating position)
- NETWORK COORDINATOR
- TREASURER
- WORKING GROUPS – groups of experts for certain projects within the Forum

### SEEMF Goals

- Raising public awareness of SEEMF as well as mediation in general
- Supporting and promoting mediation programs, trainings and education
- Performing activities in order to insure sustainability of SEEMF
- Drafting and adopting Standards of Practice and Code of Ethics
- Establishing good communication with all relevant and interested parties
- Assisting with the exchange of knowledge and experiences among mediation professionals
- Permanent maintaining and improving of SEEMF website
- Creation of data-base (list of mediation organizations and mediators in the region)

### SEEMF Plans in 2007

- Quarterly updating of the SEEMF website (**country coordinators**)
- Suggestions for new SEEMF logo design (**Florent Hajrizi**)
- Manual for basic mediation training (**Gordana Ristin, Jelena Arsic, Aleksandar Zivanovic, Davor Babic, Nina Betetto, NDC, Partners Kosova, AFCR**)
- Round table about inter-ethnic mediation (**Ivana Gajovic and Florent Hajrizi**) September / October 2007
- Annual Steering Board Meeting (by the end 2007)
- Preparation of the second SEEMF regional conference in 2008
- Victim-offender Mediation / Restorative Justice Conference – May 2007, Albania (round-table discussion included)

Upon ending of the presentation of Ms. Gavric, national coordinators invited all individuals and organisations to contact them in their countries and to join forces and work together and support this regional initiative.

During her presentation and with regard to the SEEMF structure Ms. Gavric stressed that SEEMF will have a Board which will be composed from national coordinators. The representatives shall be elected on roster basis with a mandate of one year. The

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Board shall be governed by the president who is a member of the Board at the same time. There will be Network Coordinator, Treasury Officer and Working Groups.

The main tasks and goals of the SEEMF are:

- to improve the general consciousness of the people about mediation,
- to promote mediation as a tool for dispute resolution,
- to organize trainings, education and capacity building campaigns,
- standardization of good practices on mediation,
- to draft an Ethical Code for mediators,
- to establish good communication with the target groups and other interested parties,
- to enhance regional cooperation and exchange of information and experience between members,
- to create comprehensive web site as a main source of information for mediation,
- to create and to up-date list with mediation organization and mediators from the region.

The next steps of SEEMF shall be preparation of:

- draft Guidelines on the basic mediation training
- prepare materials for the SEEMF website
- improve networking and communication between coordinators
- new logo of the SEEMF for which Mr. Florent Hajrizi is entrusted,

Also, during plenary session, a special accent was put on the inter-ethnic mediation. Thus, Mr Florent Hajrizi and Ms. Ivana Gajovic were entrusted a task to prepare some information for the next meeting.

The next meeting for the SEEMF Steering Board is in fall 2007 in Montenegro, at which time there is also a shall a working group meeting focused on inter-ethnic mediation. The place for the next SEEMF Conference, planned in 2008 will be decided in 2007. Currently there are two proposals for host nations; Croatia and Albania. It was welcomed that Albania offered representatives from each member country of SEEMF the opportunity to attend the Victim-offender Mediation / Restorative Justice Conference which will be held in May 2007 in Albania.

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