

# STATE-GUARANTEED MEDIATION

Empirical analysis of the situation and perspectives  
in the Republic of Moldova

Chişinău, 2020

# STATE-GUARANTEED MEDIATION

Empirical analysis of the situation and perspectives  
in the Republic of Moldova



### **Researchers:**

**Felicia Chifa**, mediator, university lecturer

**Veronica Mihailov-Moraru**, lawyer, Master of Laws, trainer of trainers

The research was conducted by the Institute for Penal Reform under the Access to Justice in Moldova project financed by the Bureau of Democracy, Human Rights and Labor of the U.S. Department of State and implemented by Millennium DPI Partners, LLC. The views expressed in this research are those of the authors and do not necessarily reflect the views of Millennium DPI Partners, LLC or those of the U.S. Government.

# TABLE OF CONTENTS

<b>ACRONYMS .....</b>	<b>5</b>
<b>FOREWORD AND ACKNOWLEDGEMENTS .....</b>	<b>6</b>
<b>INTRODUCTION .....</b>	<b>7</b>
<b>I. RESEARCH METHODOLOGY.....</b>	<b>8</b>
1.1. Research assumption .....	8
1.2. Previous studies.....	8
1.3. Research components and methods .....	10
<b>II. REGULATORY FRAMEWORK AND APPLICABILITY OF MEDIATION IN MOLDOVA.....</b>	<b>12</b>
2.1. The current status of mediation in Moldova .....	12
2.2. Legislation on state-guaranteed mediation .....	19
2.3. Conclusion .....	25
<b>III. EUROPEAN MEDIATION STANDARDS AND MODELS .....</b>	<b>27</b>
3.1. International standards .....	27
3.2. European Models .....	30
3.3 Conclusion .....	40
<b>IV. THE FINDINGS OF THE EMPIRICAL RESEARCH IN STATE-GUARANTEED MEDIATION .....</b>	<b>42</b>
4.1. The findings of the mediators survey .....	42
4.2. The findings of the survey of justice professionals: prosecutors, lawyers and judges .....	47
4.3. General conclusions .....	54



<b>V. RECOMMENDATIONS FOR IMPROVING MEDIATION AND STATE-GUARANTEED MEDIATION IN MOLDOVA .....</b>	<b>56</b>
5.1. General recommendations for improving mediation in Moldova....	56
5.2. Recommended amendments to the legislation on state-guaranteed mediation.....	58
<b>Option 1:</b> To amend the relevant legislation by assigning the responsibility for state-guaranteed mediation management to the National Legal Aid Council .....	59
<b>Option 2:</b> Amend the relevant legislation by assigning the responsibility for state-guaranteed mediation management to the Mediation Council .....	66
5.3. SWOT analysis.....	71
<b>BIBLIOGRAPHY.....</b>	<b>74</b>

## ACRONYMS

ATJ	Access to Justice in Moldova Project
CC J	Criminal Code of the Republic of Moldova
CCP	Code of Civil Procedure of the Republic of Moldova
CEPEJ	European Commission for the Efficiency of Justice
COE	Council of Europe
CPC	Criminal Procedure Code of the Republic of Moldova
DRL	Bureau of Democracy, Human Rights, and Labor
EC	European Commission
EU	European Union
IRP	Institute for Penal Reform
MCJ	Mediation Council
MOJ	Ministry of Justice of the Republic Moldova
NLAC	National Legal Aid Council
SGM	State-Guaranteed Mediation
UNDP	United Nations Development Programme
USAJ	United States of America

## FOREWORD AND ACKNOWLEDGEMENTS

This research is part of justice sector reform efforts in Moldova and aims to identify solutions for a more efficient use of mediation, in general, and of the state-guaranteed mediation, in particular.

The research was conducted in March-September 2020 by the Institute for Penal Reform (IRP) under the Access to Justice in Moldova Project, implemented by Millennium DPI Partners, LLC. Access to Justice is funded by the Bureau of Democracy, Human Rights and Labor (DRL) of the U.S. Department of State.

IRP and the authors wish to express their gratitude and to acknowledge the openness of the Mediation Council, the Superior Council of Magistrates, National Legal Aid Council (NLAC), the Bar Association and the Office of the Prosecutor General in conducting the research and interviews.

Our special thanks are also extended to all the people who took part in the research, roundtables and who shared their views about various issues related to the state-guaranteed mediation.

## INTRODUCTION

Mediation can be considered to be the easiest and the most productive dispute resolution tool, because it involves a dialogue between the conflicting parties. A mediator facilitates the communication between the parties, without imposing solutions and letting them reach an agreement through negotiations. Besides contributing to a feeling of equity, mediation also helps the parties to a conflict to identify solutions more quickly and save resources.

Countries are encouraged to develop mediation arrangements covering a wider range of disputes and facilitating the participation of a wider range of people involved in disputes. For the low-income groups the mediation costs, as a rule, are covered by the state. This mechanism, which is deeply rooted in many European countries, is called state-guaranteed mediation (SGM). The experience of the European countries analyzed in this paper can provide viable models for the development of a SGM system in Moldova.

This comprehensive research provides an insight into the current status of mediation by looking into the national and international regulations, other countries' models, relevant statistical data, as well as into the perceptions and views of the key players. The paper recommends improvements to the Moldovan SGM mechanism and provides viable models to streamline the country's mediation system in general.

## I. RESEARCH METHODOLOGY

### 1.1. Research assumption

SGM is very little regulated in Moldova and the implementation mechanisms are not very functional. The Law on mediation no.137 of June 3, 2015 mentions SGM in Article 40, according to which in a mediation process one or both parties to a conflict have the right to receive the state-guaranteed services of a mediator under law<sup>1</sup>. Currently, the reimbursement of mediation costs can be claimed only in criminal matters<sup>2</sup>, while the reimbursement mechanism is outdated and inefficient. Therefore, the SGM system needs to be fully revised so as to facilitate the access of the vulnerable groups to mediation.

### 1.2. Previous studies

IRP initiated its research efforts on mediation in 2001 in partnership with the Soros Foundation Moldova.<sup>3</sup> In the years that followed the research focused on legislation, institutional reforms and legal education. These combined efforts have contributed to the creation of the mediation system in Moldova and development of justice professionals' knowledge in this area.

Among the papers that support the mediation concepts and objectives are:

- *Mediation in Criminal Matters*, Xenofon Ulianovschi, Veaceslav Marza, IRP, 2003.

<sup>1</sup> Article 40 of the Law on mediation no. 137 of June 03.06.2015 // Official Journal no. 224-233 of 21.08.2015; [https://www.legis.md/cautare/getResults?doc\\_id=110536&lang=ro](https://www.legis.md/cautare/getResults?doc_id=110536&lang=ro), (accessed on 11.06.2020)

<sup>2</sup> Government Decision on the approval of the conditions for payment of mediation services in criminal matters by the state no. 303 of 21.04.2009 // Official Journal no. 83-85 of 30.04.2009; [https://www.legis.md/cautare/getResults?doc\\_id=24633&lang=ro](https://www.legis.md/cautare/getResults?doc_id=24633&lang=ro) (accessed on 11.06.2020)

<sup>3</sup> *Alternatives to Detention in the Republic of Moldova*. Conference, October 3-4, Chisinau, 2001

- Curriculum for the Criminal Mediation Course, IRP, 2004.
- *Role and Place of Restorative Justice Programs in the Juvenile Justice System of Ukraine*, “Juvenile Justice in Eastern and South-Eastern Europe” Forum, Koval Roman, IRP, September 14-16, 2005;
- Mediation Handbook, Xenofon Ulianovschi, Marcela Dilion, Vasile Rotaru, Roman Koval, Diana Popa, IRP, 2006.
- Feasibility study on alternative resolution procedures in civil matters in the Republic of Moldova, Gheorghe Avornic, Vera Macinscaia, Ion Paduraru, Zinaida Gutu, Center for Legal Policies and Studies, 2006.
- Training resource *Criminal Mediation in the Republic of Moldova*, Cristina Beldiga, included in the “Alternatives to Detention” research paper, Igor Dolea, Victor Zaharia, Vasile Rotaru, Lilia Gribincea, Marcela Dilion, Gheorghe Gladchi, Cristina Beldiga, IRP, 2009.
- *Criminal Mediation. Training Resource*, Igor Dolea, National Institute of Justice, 2009.
- *Implementation of Mediation in Criminal Matters in the Republic of Moldova*, Cristina Beldiga. Part of the Report “Alternatives to detention”, Victor Zaharia, Vladimir Popa, Vasile Rotaru, Daniel Martin, Cristina Beldiga, IRP, 2009.
- *Criminal Mediation. Guidebook for Criminal Investigation Officers*, Igor Dolea, IRP, 2009.
- Monitoring report on the implementation of the Law on mediation of the Republic of Moldova no. 134 of 14.06.2007, Zinaida Gutu, Daniela Vidaicu, Ministry of Justice with the support of the UNDP project, “Transitional Capacity Support for the Public Administration of Moldova”, Chisinau, 2011.
- *Curriculum for the Ongoing Training of Mediators. Mediation in Criminal Matters Involving Children in Conflict with the Law*, Igor Dolea, Iana Ciobanu, Lilia Maximenco, IRP, 2016.
- Development Strategy and Action Plan for the Mediation Council for 2021-2024, Leonardo D’Urso, Constantin-Adi Gavrilă, Chifa Felicia, developed under the Commercial Mediation and Arbitration project, Phase 4, supported by USAID, EBRD and IDLO, Chisinau, 2020.

Additionally, some materials were published in specialized magazines:

- *Challenges and Perspectives for Alternatives to Detention*. Scientific Annals of the Law Faculty, Igor Dolea, 2001.
- *A New Concept in Criminal Procedure*, National Law Journal, Igor Dolea, 2003.
- *The Restorative Justice Concept in the Light of Protection of the Injured Persons' Rights* in the paper "Person's Rights in Criminal Procedure", Igor Dolea, 2009.

However, despite the wide range of issues addressed in the published materials, which can also be used as supporting materials for training in mediation, state-guaranteed mediation has received little attention.

### 1.3. Research components and methods

The research methodology was based on a mix of techniques to allow for a multi-dimensional approach. It involved specific tools of desk review and field research:

#### *a) Desk review:*

- analysis of the national legal texts (legislation, regulations on mediation and reports on mediated cases). The analysis of legislation revealed the current situation and the major challenges in the field of mediation
- analysis of the Recommendations of the Council of Europe (CoE) and European Commission for the Efficiency of Justice (CEPEJ) concerning mediation. The comparative analysis of the international and national regulations was intended to identify those provisions which are relevant for the Moldovan SGM system
- analysis of SGM models and legislation in other countries, which allowed the identification and application of the best practices taking into account the Moldovan social, legal and economic context
- review of information and data received from relevant authorities (e.g. the number of mediated cases in specific categories of matters, the number of applications for mediation in specific categories, the number of cases when the state reimbursed the mediation costs)

- development of the evaluation tools: questionnaire and interview guidelines. The two-part questionnaire provides information about the legal framework on mediation and the appropriateness of broadening the range of matters eligible for SGM. Finally, the semi-structured interview provides utmost flexibility and allows for collecting information through open communication
- compilation of the data collected using various tools and channels in order to build an overall picture of the Moldovan mediation system

The research reveals the current status of SGM in Moldova both in terms of legislation and existing practice. It addresses the quality, compatibility and applicability of the regulations; the mediation outreach mechanisms; the accessibility of the mediation system for disadvantaged groups; the payment arrangements and access to state subsidies for mediation services.

Additionally, the research provides a framework of recommendations to improve the current SGM mechanism by revising both the legislation and the regulatory framework and the scope of SGM so as to include those areas where state-guaranteed mediation has particular importance.

#### *b) Field research*

- analysis of the information collected through questionnaires. The questionnaires were disseminated with the help of the Mediation Council, the Superior Council of Magistrates, NLAC, and the Superior Council of Prosecutors and were filled out by 35 mediators, 29 lawyers, 26 prosecutors and 5 judges (see Annex 1).
- analysis of the feedback received from justice actors (lawyers, prosecutors, judges, mediators etc.) during the two panel discussions held by IRP, which allowed for detecting the system's deficiencies and formulating conclusions.

To achieve its objectives, the research combined several methods: stocktaking of legislation, comparative analysis, qualitative analysis, fundamental and applied research, synthesis and narrative research. Additionally, specific methods of data collection, processing and generalization were used. The collected data were further consolidated.



**II.**

## **REGULATORY FRAMEWORK AND APPLICABILITY OF MEDIATION IN MOLDOVA**

### **2.1. The current status of mediation in Moldova**

Mediation has become a tradition in many countries and is applied, along with traditional formal justice mechanisms, in various fields of social life. In the Moldovan legislation it was defined for the first time in the Criminal Procedure Code (CPC) passed in 2003 and was further detailed in the Law on Mediation no.134 of 14.06.2007, published in the Official Journal no.188-191, Article 730. Currently, mediation is regulated by the Law on Mediation no.137 of 03.07.2015.

#### **Benefits of mediation**

The legal framework defines mediation as an alternative method of resolving disputes amicably in a structured, flexible and confidential process with the help of one or several mediators<sup>4</sup>. The outcome of mediation is conflict resolution through an agreement reached by the parties. Mediation will be guided by a mediator, who is a neutral third party specialized in dispute resolution who leads the mediation process and facilitates the negotiations between the parties ensuring impartiality and confidentiality. The alternative resolution of disputes is also conceived as a way to facilitate the access to justice and requires that the state puts in place arrangements, including financial, to support mediation. Mediation has more benefits than other dispute resolution methods:

#### **1. For the disputing parties:**

- quick resolution of conflicts with lower costs. Sometimes one mediation session is enough to resolve a conflict;

<sup>4</sup> Law on mediation no. 137 of 03.07.2015, article 2; [https://www.legis.md/cautare/getResults?doc\\_id=12066&lang=ro](https://www.legis.md/cautare/getResults?doc_id=12066&lang=ro)

- voluntary participation in mediation and free choice in mediator selection. The parties can initiate or withdraw from mediation at any stage, without any negative consequences for them;
- flexibility of the mediation process. The parties can choose the date, time and some of the mediation rules;
- confidentiality of mediation and of the settlement agreement concluded by the parties;
- keeping the process and its outcome under control. The parties will agree on both the clauses of the settlement agreement and all the process elements (place and duration of mediation, the participants, the topics of discussion). Mediation allows for identifying a creative win-win solution for conflict resolution;
- enforceability of the agreement facilitated by a mediator. If a party fails to comply with the obligations in the settlement agreement they signed up to following a mediation process conducted out of civil proceedings, the parties can seek its enforceability by going to court under the Code of Civil Procedure (CCP) or to a notary if the settlement agreement was concluded between legal entities;
- a mediator can reduce hostility and conflict, prevent other conflicts, help preserve and strengthen relationships. Unlike mediation, a court judgment resolves a conflict, but does not end it. On the contrary, bringing the case to the court often makes further cooperation of the parties difficult or even impossible.

## 2. For the state:

- reduced costs of legal proceedings. The average cost of the legal proceedings per case is 1,585 MDL (2017 data)<sup>5</sup> and increases when state-guaranteed legal aid is involved;
- in criminal proceedings which end up with a prison sentence the state spending on detainees will also add to the costs;

<sup>5</sup> Verdes Viorica, *Study on national legislation regulating the amount and method of calculation of costs related to court proceedings and their application practices*, conducted in cooperation with the Ministry of Justice and the Court Administration Agency, Republic of Moldova, 2017; [http://www.justice.gov.md/public/files/2018/sistemul\\_judiciar\\_/23052018/studiu\\_final\\_R.pdf](http://www.justice.gov.md/public/files/2018/sistemul_judiciar_/23052018/studiu_final_R.pdf) (accessed on 11.06.2020)

- relieving the courts of lengthy lawsuits, which otherwise could have a quick resolution by reaching an agreement, which will lead to more trust in the judiciary by improving the quality of court proceedings.

### **Mediation Council**

The law no.137/2015 on mediation established the MC as a collegial body with legal personality governed by public law to implement the policies in the field of mediation. MC has nine members – five mediators selected through a competitive process by the Ministry of Justice (MOJ), one representative of the civil society, one member appointed by NLAC, one representative of lawyers appointed by the Bar Association Council and one notary delegated by the general assembly of notaries. The term of office of the Council members is four years and they cannot stay in office for more than two consecutive terms. The duties of the MC as stipulated in the Law on mediation no. 137/2015 are the following:

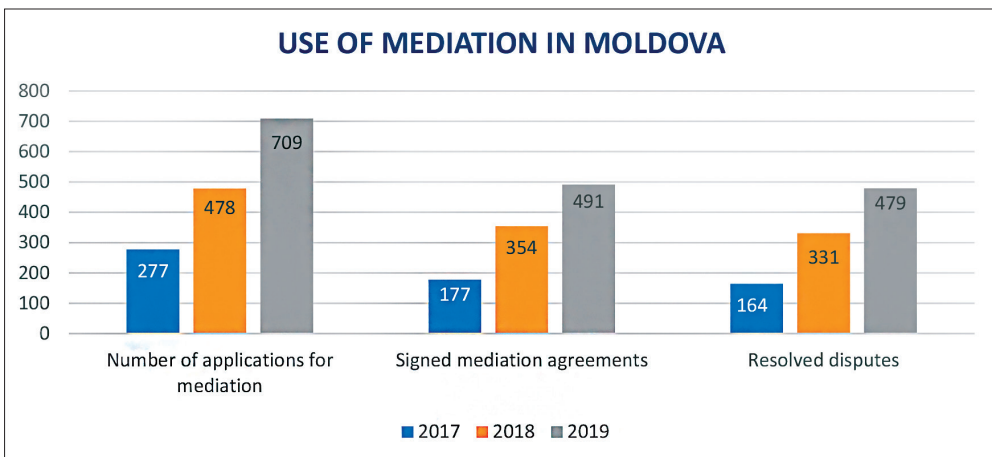
- a) promotes mediation as an alternative dispute resolution method;
- b) submits proposals and participates in policy making and improvement of the legal framework on mediation;
- c) implements policies in the field of mediation, including state-guaranteed mediation;
- d) drafts regulations to support its operation and the mediation activities and submits them to the MOJ;
- e) approves the code of ethics for mediators;
- f) sets and approves the standards for the initial and ongoing training of mediators and accredits the mediation training providers in accordance with the regulation approved by the MOJ;
- g) checks the organization and running of the mediation training and the compliance with the initial and ongoing mediation training standards;
- h) organizes the certification exam for mediators;
- i) makes decisions on the issuance of mediator certificates, suspension, termination or resumption of the mediation practice;
- j) reviews the complaints about mediators; notes the disciplinary viola-

tions and decides on the application of disciplinary sanctions for mediators;

- k) keeps the list of mediation training providers and other informative materials and makes them available to the interested persons, public authorities, courts and criminal investigation bodies;
- l) submits proposals to the Ministry of Justice concerning the mediation spending to be included in the state budget;
- m) submits half-year reports on the use of the allocations for state-guaranteed mediation to the MOJ;
- n) develops and implements pilot programs and other mediation programs;
- o) performs other duties under this law.

### Use of mediation in Moldova

The official statistical data published on MC's website<sup>6</sup> reveal an increased use of mediation over the last three years (Chart 1). The number of mediated cases, however, is still quite small compared to the European Union (EU) or the USA.



*Chart 1. Mediation statistics in Moldova in the period of 2017-2019*

<sup>6</sup> Statistics on the disputes resolved through mediation in the period of 2015-2019, MC, Chisinau; <https://mediere.gov.md/ro/documents-terms/date-statistic> (accessed on 11.06.2020)

The data collected by MC refer to out-of-court mediation only and do not cover the cases resolved by judges through mediation under the legal mediation procedure. The mediation success rates increased from 93% in 2017 to 94% in 2018 and 98% in 2019 (Chart 2).

As for the satisfaction of the beneficiaries of mediation services, qualitative statistical data at system level are missing.

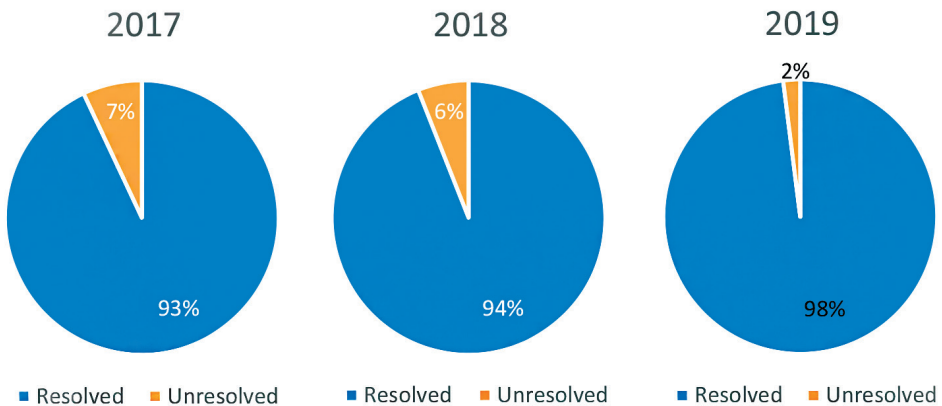


Chart 2. Mediation success rate

A criterion that describes the status of mediation in Moldova is the number of mediators and mediation providers. By June 2020, MC certified 927 mediators and by July 1, 2020, 157 of them were registered in the State Register of mediators and obtained the right to mediate. Mediators can open individual mediation offices or work as part of mediation organizations employing two or more mediators.<sup>7</sup>

### Scope of mediation

Mediation is possible in any category of matters: civil (family, labor, administrative disputes, housing etc.), misdemeanor and criminal, as well as in the civil disputes concerning rights and obligations which are or may be subject to examination in court or arbitration and which the parties can freely waive under law. Civil matters can be mediated in or out of court or arbitration process.

<sup>7</sup> 'Urso Leonardo, Gavrila Constantin-Adi, Chifa Felicia, *Development Strategy and Action Plan for the Mediation Council for y. 2021-2024*, developed under the Project supported by USAID, EBRD and IDLO, Chisinau, 2020

Mediation can be used in any criminal matter. However, exclusion of criminal liability and termination of the criminal proceedings can be achieved only in the criminal matters stipulated in art.109 of the Criminal Code (CC) of the Republic of Moldova. According to the latest amendments<sup>8</sup>, conciliation that can lead to the exclusion of criminal liability can be used in minor or less serious crimes and in serious crimes where minors are involved, including the ones regulated in chapters II-VI, art. 264 (1) of the Special Part of CC, as well as in the cases regulated by the criminal procedure. CPC<sup>9</sup> contains regulations on the use of conciliation for a large number of crimes (art. 276 (1) - (6) and, according to paragraph (7) of art. 276 of CPC, *conciliation of parties can be also achieved by applying mediation under the Law on mediation*.

The current legal framework (CC, CPC, the Law on Mediation) regulates both conciliation and mediation. While apparently both are alternative solutions in criminal matters, from the procedural point of view, only conciliation may lead to discontinuation of the criminal investigation or criminal proceedings.

According to the Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice<sup>10</sup>, mediation in criminal matters is barely used in Moldova and “despite a progressive legal framework in place, mediation is still in an embryonic stage when it comes to practice...”<sup>11</sup>

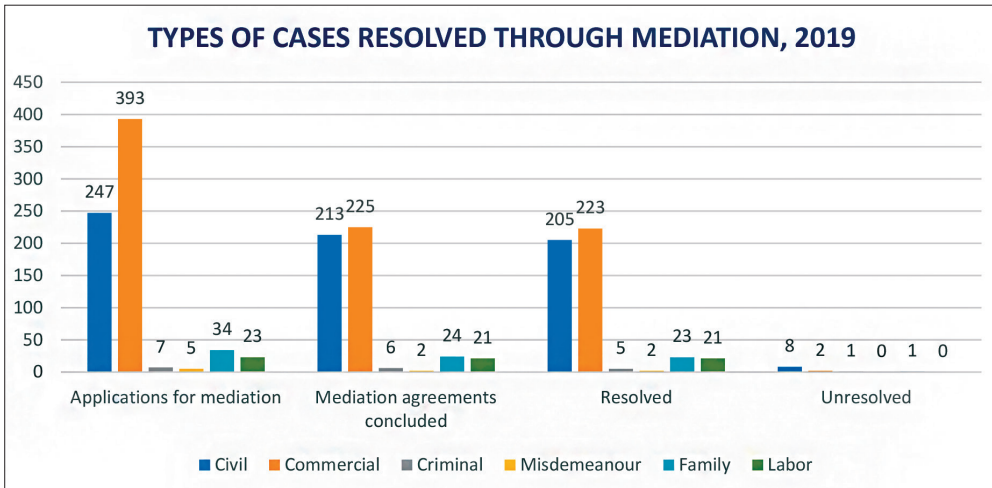
The matters covered by mediation in 2019 according to the official statistics provided by the MC are shown below (Chart 3):

<sup>8</sup> Law no. 130 of 09.06.2016 amending article 109 of the Criminal Code of the Republic of Moldova no. 985-XV of April 18, 2002 // Official Journal no. 206-214 of 15-07-2016; [https://www.legis.md/cautare/getResults?doc\\_id=93783&lang=ro](https://www.legis.md/cautare/getResults?doc_id=93783&lang=ro) (accessed on 08.06.2020)

<sup>9</sup> CPC of the Republic of Moldova available at [https://www.legis.md/cautare/getResults?doc\\_id=121208&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121208&lang=ro)

<sup>10</sup> Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, Dr. Ildir Peci, Mr Eric Svanidze, CoE, 2018; <https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00> (accessed on 07.06.2020)

<sup>11</sup> Idem



*Chart 3. Types of cases resolved through mediation*

## Mediator

Mediators are third parties, authorized under law<sup>12</sup>, who lead the mediation process towards dispute resolution. To become a mediator, one must meet all the following requirements:

- no legal protection measure in the form of guardianship has been imposed on him/her;
- a university degree;
- has not been previously convicted of serious, particularly serious, exceptionally serious crimes committed with intent;
- has no criminal record for minor and less serious crimes;
- has an impeccable reputation;
- is medically fit to practice this profession;
- graduated from the initial training in mediation;
- passed the certification exam.

The mediation training is critical for an efficient mediation process. The Moldovan MC monitors and ensures the quality of the training in mediation by developing and approving the initial and ongoing mediation

<sup>12</sup> Law on mediation no. 137 of 03.07.2015, article 2



training standards and by accrediting the mediation training providers in accordance with the regulation approved by MOJ. It also checks the organization and delivery of the mediation training, as well as the compliance with the initial and ongoing mediation training standards.

The current legislation<sup>13</sup> requires that mediators graduate the ongoing training program of at least 20 academic hours every year in the first 5 years of practice and at least 10 academic hours every following year and submit the documents proving participation in such training to MC until December 25 of each year.

As freelancers, mediators can charge a fee for mediation services and are entitled to reimbursement of the incurred mediation expenses, the amount of which is agreed with the parties. Mediators may negotiate with the party that requested their services an advance payment for the expenses related to searching and contacting the other party. In case of SGM, mediators are paid in accordance with the applicable Government Decision<sup>14</sup>. Mediators may not charge fees for the initial session where the parties are informed about mediation or given explanations or recommendations about the mediation process prior to concluding a mediation agreement.

## 2.2. Legislation on state-guaranteed mediation

SGM can be analyzed only in the general context of mediation, its peculiarities relating mainly to the financial part, rather than the essence of mediation in itself. With the old Law on Mediation<sup>15</sup> the state took on the task of ensuring access to mediation under the same conditions as the free access to justice. However, from the provisions of that Law it follows that SGM was applicable to criminal matters only<sup>16</sup>.

<sup>13</sup> Law on mediation no. 137 of 03.07.2015, article 13

<sup>14</sup> Government Decision no.303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters // Official Journal no. 83-85 of 30.04.2009; [https://www.legis.md/cautare/getResults?doc\\_id=24633&lang=ro](https://www.legis.md/cautare/getResults?doc_id=24633&lang=ro) (accessed on 11.06.2020)

<sup>15</sup> Law on mediation no.134 of 14.06.2007

<sup>16</sup> Law on mediation no.134 of 14.06.2007, article 35 "In case of mediation in criminal matters where the conciliation of parties results in elimination of criminal liability, the parties are entitled to the services of a mediator paid by the state under the conditions established by the Government"



**The Law on mediation no.137 of 03.07.2015** regulates the state support for mediation in Chapter VI. Article 39 of the Law provides for some incentives to encourage the parties to resolve disputes via mediation, such as exemption from paying the state fee, discounts for the state fee on a case by case basis, payment of the state fee by installments, urgent review of the request for confirmation of the settlement agreement.

Article 40 of the Law regulates SGM, indicating that “in mediation one or both parties are entitled to receive the state-guaranteed services of a mediator under law”. Article 18 (2) regulates the payment for mediation services, stipulating that “in state-guaranteed mediation, mediators will be paid in accordance with the applicable Government Decision”. It should be noted that there is no other mechanism besides the one regulated in the Government Decision no.303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters.

The Law also stipulates the SGM-related duties of authorities. According to Article 8 “i) the Ministry of Justice, at the proposal of the Mediation Council, prepares and submits to the Ministry of Finance the draft budget for state-guaranteed mediation”, and according to Article 10 the Mediation Council “c) implements policies in the field of mediation; l) submits mediation spending proposals to the Ministry of Justice to be included in the state budget; m) submits half-year reports on the use of the allocations for state-guaranteed mediation to the Ministry of Justice”.

The Informative Note to the draft Law no.137 explains that “one of the purposes of the state support for mediation is to foster the use of SGM. The conditions and procedure for receiving the services of a mediator paid by the state will be defined in the amendments to the Law on the state-guaranteed legal aid no.198-XVI of 26.07.2007”. Such amendments, however, have not been made yet.

### **The Government Decision no. 303 of 21.04.2009**

To implement the old law on mediation<sup>17</sup> the Government approved the Decision no. 303 on the approval of the conditions for state funding of mediation services in criminal matters<sup>18</sup>, according to which the

<sup>17</sup> Law on mediation no.134 of 14.06.2007

<sup>18</sup> Government Decision no. 303 on the approval of the conditions for state funding of mediation services in criminal matters

mediation services funded by the state are provided in those criminal cases where conciliation leads to the elimination of criminal liability under Article 109 of the CC of the Republic of Moldova and Article 276 of the CPC of the Republic of Moldova. In accordance with Article 3, the mediation services will be paid by the state provided that the following requirements are met:

- a) the offence qualifies as offence for which conciliation leads to elimination of criminal liability;
- b) it is not a recurrent offence;
- c) the perpetrator's income is lower than the income amount established for the provision of the mediation services paid by the state.

Certain categories of perpetrators, however, benefit from mediation paid by the state as an exception regardless of their income provided that they meet all the other requirements. These categories are:

- a) the mute, deaf, blind persons or persons with other speech, hearing or vision disorders or other physical or mental impairments who have communication difficulties
- b) minors<sup>19</sup>

According to Article 2 of the above-mentioned Government Decision, the state-guaranteed mediation services can be requested either by the perpetrator (suspect, the accused, defendant) or by the victim. The Government Decision describes the procedure for applying for state-funded mediation services according to which the application must be submitted personally or by the representative/lawyer to MOJ no later than 15 working days from referral to mediation. Besides the application, the application package will also contain the decision of the criminal investigation body or the court to refer the case to mediation, the income statement or the documents or copies of documents proving that the person is minor or has communication difficulties because of speech, hearing or vision disorders or other physical or mental impairments.

---

<sup>19</sup> Government Decision 303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters, article 4

The Government Decision<sup>20</sup> also regulates the procedure for paying mediators and reimbursing the expenses incurred by the person who has applied for mediation. It should be noted that the amounts are very small and can hardly compensate for the efforts required to collect the documents for the application package, thus discouraging people from using this mechanism. Moreover, according to MC, the mechanism of reimbursement of mediation expenses is cumbersome and inefficient and has never been applied. The official data provided by MC for the last three years show that only six criminal cases were resolved through mediation in Moldova, with no cases in 2017, one in 2018 and five in 2019, and none of them through SGM.<sup>21</sup>

Even though apparently the Government Decision<sup>22</sup> provides for free of charge mediation if specific requirements are met, SGM is not applicable because of the following reasons:

- a) lack of an application mechanism and deadlines for review of applications;
- b) lack of persons assigned with the duty to review the applications;
- c) lack of regulations on the estimation of and reimbursement for the expenses related to the mediation services on a case by case basis, allocation of funds etc.

Therefore, a concept with a systemic and institutional approach has to be developed and the findings about the inefficiency of the mechanism and the lack of a program to guarantee this obligation<sup>23</sup> support the need to revise the whole mechanism.

### **Mediation-related Legislation**

CCP of the Republic of Moldova no. 225 of 30.05.2003 makes no reference to SGM. However, many of its articles encourage the use of mediation

<sup>20</sup> Idem

<sup>21</sup> [https://mediere.gov.md/sites/default/files/document/attachments/raport\\_de\\_date\\_statistice\\_privind\\_litigii\\_solutionate\\_pe\\_calea\\_medierii\\_pentru\\_anul\\_2019\\_0.pdf](https://mediere.gov.md/sites/default/files/document/attachments/raport_de_date_statistice_privind_litigii_solutionate_pe_calea_medierii_pentru_anul_2019_0.pdf)

<sup>22</sup> Government Decision 303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters

<sup>23</sup> Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, Dr. Idlir Peci, Mr Eric Svanidze, CoE, 2018; <https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00> (accessed on 07.06.2020)

for dispute resolution. According to article 170 “(1) The judge returns the complaint if a) the plaintiff has not complied with the preliminary procedure for out-of-court settlement of the case, including through mediation, required by law for that matter or by the contract concluded by the parties”. Therefore, if the contract concluded by the parties provides for the use of mediation for dispute resolution the lawsuit will not be filed until the parties provide proof of participation in mediation.

If the lawsuit has been filed, in accordance with article 9 (2) of CCP “the court... shall inform the parties about the mediation option”. Regarding the preparations for court deliberations, article 183 e) states that “during the preparations for court deliberations using mediation for dispute resolution should be considered”. In accordance with article 185 (1) item d) of CCP, the judge will explain to the parties their right to initiate mediation, the essence, benefits and effects of mediation, or will advise them to take part in a session where they will receive more information about mediation as a dispute resolution method. At the same time the judge sets the timeframe for judging the case, which can be changed upon the request of both parties if they agree to initiate mediation in accordance with article 191 (1) item b) of CCP.

Mediation can be initiated at any stage of the civil proceedings and in any court. Article 212 (2) of CCP, stipulates that “the presiding judge shall take measures to encourage the parties to resolve the dispute or any contentious issue amicably. The court may give b) time, if parties request, to inquire into the essence, benefits and effects of mediation and to initiate mediation”. “At the request of the parties the court may order the suspension of the proceedings” under article 260 of CCP. If the parties agree to initiate mediation and sign a mediation agreement, the limitation period will be suspended during the mediation process until the parties present the mediation termination record to the court together with or without the settlement agreement (if the parties have not reached one).

To terminate the legal proceedings, the settlement agreement concluded through mediation must be confirmed by the court, i.e. it has to meet all the validity requirements to conclusion of legal acts stipulated in the civil legislation and must not violate the rights, freedoms and legitimate interests of the person, the interests of the society and of the state. When

the civil proceedings end based on the settlement agreement concluded through mediation, the state fee will be reimbursed to the plaintiff in accordance with article 89 (1) item i) of CCP. For the settlement agreements concluded through mediation out of court, CCP regulates the procedure for confirmation of the settlement agreement for the parties to avoid civil proceedings and issuance of a writ of forced execution in Articles 487-490.

In its Decision no.8 of 26.04.2018 on the exception of unconstitutionality of certain provisions of CCP no.225 of 30.05.2003 (judicial mediation, request no.3g/2018), the Constitutional Court recognized the constitutionality of the provisions of article 182<sup>1</sup> (1) item b), 182<sup>2</sup>, 182<sup>3</sup>, 182<sup>4</sup> and 182<sup>5</sup> of CCP and found that the judicial mediation procedure, regulated by the provisions of Chapter XIII<sup>1</sup> of CCP, does not violate the right to have the case judged in a reasonable time guaranteed by Article 20 of the Constitution of the Republic of Moldova.

CPC put in place mediation as a dispute resolution method in criminal matters leading to the termination of the proceedings. Article 276 (7) stipulates that mediation can also be used in offences for which “criminal investigation is initiated only on the basis of the victim’s prior complaint, i.e. the crimes stated in articles 152 (1), 153, 155, 157, 161, 173, 177, 179 (1) and (2), 193, 194, 197 (1), 198 (1), 200, 202, 203, 204 (1), 246<sup>1</sup>, 274 of CC, and in case of theft of owner’s property committed by a juvenile, spouse, relatives, to the detriment of the tutor, or by a person living together with or hosted by the victim.”

Another attempt to strengthen mediation was made in 2012 by adding article 344<sup>1</sup> “Case settlement through mediation or conciliation of the parties” to CPC. The reason was to provide the opportunity to initiate mediation after the case has been distributed to the judge but prior to the beginning of the legal proceedings. The parties may request this procedure for minor or less serious offences, and in case of minors – for a serious offence as defined in Chapter II-VI of the Criminal Code, as well as in the cases stipulated in article 276 (1) of CPC. The mediator’s duties in this process are also set forth in this article.

### 2.3. Conclusion

The law on Mediation no.137 of 03.07.2015 currently in force in Moldova is in line with the European mediation standards and regulates the most significant issues: the mediation principles and process, the mediator status and the authorities in charge of implementing mediation policies. There were 157 mediators practicing in individual offices or in mediation organizations in Moldova as of June 1, 2019. Despite the increasing number of disputes resolved through mediation in recent years (167 disputes in 2017, 331 in 2018, 479 in 2019), these are few compared to other countries.

The Law no. 137, Chapter VI, regulates *state support for mediation*. Article 39 provides for some incentives for the parties who initiate mediation, but those provisions are just an option for the parties and are applicable in civil matters only. Article 40, which makes an explicit reference to the *state-guaranteed mediation*, briefly stipulates that “one or both parties are entitled to receive the state-guaranteed services of a mediator under law”, but does not regulate the process. No new SGM mechanism has been put in place after these provisions became effective and currently the only mechanism for funding the mediation services is the one regulated in Government Decision no. 303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters, which stipulates that the state will pay for mediation services only in the criminal matters where settlement leads to the elimination of the criminal liability under Article 109 of CC of the Republic of Moldova and article 276 of CCP of the Republic of Moldova. Moreover, the procedure for applying for mediation services paid by the state described in Article 5 of the Government Decision no. 303 is cumbersome and lengthy and the parties might prefer conciliation or other arrangements which are quicker and involve less formality. Finally, the requirements stipulated in Articles 2-4<sup>24</sup> make it difficult to apply these provisions in practice, especially when the perpetrator, the victim or their representatives are not aware of the SGM and when it can be used. Therefore, the access of the vulnerable groups to justice and to

<sup>24</sup> Government Decision no. 303 of 21.04.2009 on the approval of the conditions for state funding of mediation services in criminal matters

the amicable settlement solutions paid by the state looks more like an illusion.

The conclusions of the above-mentioned report on the assessment of the needs of the criminal justice system<sup>25</sup> that “despite a progressive legal framework in place, mediation is still in an embryonic stage when it comes to practice” and that “the advantages of mediation need to be further explored by the Moldovan authorities and parties to criminal proceedings” (paragraph 7) are relevant in this sense. Another pertinent conclusion of the report is that “mediation is guaranteed free of charge by the State if certain conditions are fulfilled. However, neither a mechanism nor a scheme is in place to guarantee this obligation. The CM together with MOJ should be assisted to set up a proper mechanism which guarantees mediation free of charge (paragraph 92)”.

---

<sup>25</sup> Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, CoE, 2018





## EUROPEAN MEDIATION STANDARDS AND MODELS

This chapter describes some of the EU and CoE standards in mediation and restorative justice, which define the principles for mediation practice and the role of justice authorities in mediation. Additionally, it looks into the models used by European countries, with particular focus on SGM.

### 3.1. International standards

The international standards on mediation or restorative justice developed by international institutions and reviewed in this paper:

To regulate the victim-perpetrator relation out of criminal proceedings the United Nations adopted the **Basic principles on the use of restorative justice programmes in criminal matters**<sup>26</sup>. The key principles aim in particular at formulating some global standards in mediation and restorative justice. Paragraph 20 recommends to the member-states “to consider the formulation of national strategies and policies aimed at the development of restorative justice and at promotion of a culture favorable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities”, while paragraph 6 recommends that “restorative justice programmes should be generally available at all stages of the criminal justice process”.

On December 7, 2007 the CoE approved the **Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters**. CoE and the EU developed and promoted several policy documents and guidelines on mediation. The CoE recommendations address mediation as an important part of justice:

- ✓ **Recommendation R (86) 12 of the Committee of Ministers to Member States of the Council of Europe concerning measures to**

<sup>26</sup> UN Resolution 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000)



**prevent and reduce the excessive workload in the courts**, which encourages “a friendly settlement of disputes, either outside the judicial system, or before or during judicial proceedings”.

- ✓ **Recommendation R (81) 7 of the Committee of Ministers on measures facilitating access to justice** aims to encourage the use of procedures which facilitate the access to justice, such as “conciliation of the parties and the amicable settlement of disputes before any court proceedings have been instituted or in the course of proceedings”.
- ✓ **In Recommendation R (93) 1 on the effective access to the law and to justice for the very poor** the Committee of Ministers recommends to the member states to facilitate effective access to quasi-judicial methods of conflict resolution, such as mediation and conciliation, by extending legal aid or any other form of assistance to such methods of conflict resolution.
- ✓ **Recommendation R (98) 1 of the Committee of Ministers to Member States on family mediation** encourages the development of ways of resolving disputes in a consensual manner and the recognition of the necessity to reduce conflict in the interest of all the family members.
- ✓ **Recommendation R (99) 19 of the Committee of Ministers concerning mediation in penal matters** encourages mediation in penal matters and provides guidelines (in an appendix) for victim - perpetrator mediation. The guidelines set the principles of mediation, the most important one being the free consent of the parties to participate in mediation (Article 1). Other principles are confidentiality of the discussions in mediation and general autonomy of mediation services within the criminal justice system (Articles 2 and 5). Mediation in penal matters should be available at all stages of the criminal justice process (Article 4).
- ✓ **Recommendation R (2001) 9 on alternatives to litigation between administrative authorities and private parties** supports the alternative means for resolving the disputes between administrative authorities and private parties: internal reviews, conciliation, mediation, search for a negotiated settlement and arbitration.

- ✓ **Recommendation R (2002) 10 on mediation in civil matters** encourages the use of mediation in all the matters involving civil rights and obligations, including matters of a commercial, consumer and labor law nature.
- ✓ **Recommendation R (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges** sets forth that judges have the responsibility “to encourage the parties to reach a friendly settlement” (principle V-3, e).
- ✓ **Recommendation R (95) 5** concerning the improvement of the functioning of appeal systems and procedure in civil and commercial cases requires that courts should be given a more active role in “encouraging settlement” (Article 6 g).
- ✓ **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** that applies to cases where a court refers parties to mediation or in which national law prescribes mediation. According to this Directive, a judge may act as a mediator under national law provided that he/she is not responsible for any judicial proceedings relating to the matter or matters in dispute. The Directive, however, does not extend to the attempts made by the court or judge assigned to settle a dispute or to cases in which the assigned court or judge requests assistance or advice from a competent person.

CEPEJ developed and approved the **Guidelines and Specific Measures (2007)14** on December 7, 2007, with the aim to improve the effective implementation of the existing recommendations: **Recommendation Rec (98)1** on family mediation; **Recommendation Rec (2002)10** on mediation in civil matters; **Recommendation Rec (99)19** concerning mediation in penal matters; **Recommendation Rec (2001)9** on alternatives to litigation between administrative authorities and private parties etc.

Having looked into the national legal framework in light of the international standards in mediation during the fact-finding mission to Moldova, the experts of the CoE project “Promoting a Human Rights Compliant Criminal Justice System in the Republic of Moldova” found

that “the legislative framework is in conformity with CoE and international standards as set out above. All the above-mentioned standards and principles are reflected in the legal framework. Nevertheless, the fact-finding mission revealed that despite a legislative framework in place, mediation in criminal matters in Moldova is almost non-existent. The Law on Mediation is quite recent”.<sup>27</sup>

### 3.2. European Models

The contemporary Alternative Dispute Resolution movement started in the 70s in the US as a response to the excessive length and exorbitant costs of litigation proceedings. While in Western Europe mediation is institutionalized after 1990, in Eastern Europe it starts to be applied later in the early 2000s. Most of the European countries have adopted regulations on mediation only in recent years: Albania, Austria and Croatia passed a law on mediation in 2003, Bulgaria in 2004 (CCP from 2007 is aligned with the mediation law), Serbia in 2005, Macedonia and Romania in 2006, and Hungary in 2002.<sup>28</sup> In Poland mediation was put in place through the Civil Code in 2005.

Some mediation models from European countries that have been successfully using alternative dispute resolution methods follow below.

#### □ Mediation in Romania

**Legislation.** The mediator status and the mediation practice are regulated in the Law 192/2006 on mediation and organization of mediation practice.

**Competent authority.** The body that represents the mediation professionals in Romania is the Mediation Council established through law, which is responsible for the Romanian mediation system. The Mediation Council is an autonomous entity with legal personality acting in the public interest. The members of the Mediation Council are elected by mediators. The main duties of the Mediation Council are to set the

<sup>27</sup> Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, CoE, 16.08.2018, para. 88

<sup>28</sup> Sustac Zeno, Ignat Claudiu, *Alternative Dispute Resolution Methods*, Bucharest, 2020, pg. 115

training standards in mediation; to authorize the mediators and the training providers in mediation; to keep and update the Panel of Mediators; to adopt regulations on the operation of the Mediation Council and the professional ethics of authorized mediators; and to draft proposals for amending or aligning the legislation on mediation.

**Mediators.** In accordance with Article 12 of the Law 192/2006 the authorized mediators are registered in the Panel of Mediators managed by the Mediation Council and published annually in the Official Journal of Romania. The Panel of Mediators is also available on the official websites of the Mediation Council and of the Ministry of Justice. It contains information about mediators, including their contacts and education and training background, and is updated once a year and made available to the interested parties (courts, local governments and the Ministry of Justice). Besides the Romanian authorized mediators, the citizens of other EU member states, of the European Economic Community or of the Swiss Confederation who hold a qualification document in mediation obtained in one of those states may also act as mediators in Romania after they have this document recognized by the Mediation Council under Law no. 200/2004<sup>3</sup> on the recognition of diplomas and professional qualifications for the regulated professions in Romania.

**Scope of mediation.** In accordance with the legal provisions, mediation can be used in civil and criminal disputes, as well as other disputes which refer to rights which can be waived through settlement. The issues related to the personal rights and to the rights which cannot be waived are not in the scope of mediation. Participation in mediation is voluntary. The parties are not obliged to use mediation and can withdraw from mediation at any time. In other words, the parties are free to seek alternative ways to resolve conflicts/disputes at any time, either through legal proceedings, or arbitration. The interested parties can contact a mediator before going to court, as well as during the legal proceedings. The current legislation obliges judges to inform the parties about mediation and its benefits.

**Mediation costs.** The mediator's fee is stipulated in the mediation contract under Law 192/2006. The expenses are shared equally by parties, unless otherwise agreed. The state supports mediation under the

Emergency Ordinance of the Government no.51 of April 21, 2008 on the public legal aid in civil matters published in the Official Journal no.327 of April 25, 2008. According to this Ordinance, the state reimburses the amounts paid for mediation services to the persons whose average net monthly income per family member in the last two months before the application is submitted is less than 300 RON and who provide proof that mediation was used before the beginning of the legal proceedings. The persons that request mediation during the legal proceedings, but before the first hearing, are also entitled to reimbursement. If the average net monthly income per family member in the last two months before the submission of the application is less than 600 RON, the state makes an advance payment amounting to 50% of the public legal aid amount. The amount to be reimbursed to the party is determined in a court order.

### □ Mediation in Germany

**Legislation:** The piece of legislation that regulates the mediation services is the Law on Mediation (Mediationsgesetz) in effect since July 26, 2012.

**Competent authority:** There is no state body specialized in mediation policies in Germany. The Federal Ministry of Justice is empowered to make regulations introducing additional criteria for education and training in mediation. This means that the persons who graduate any training scheme that meets the requirements of such regulations can be called “authorized mediators” (*zertifizierter Mediator*). Training in mediation is currently provided by associations, organizations, universities, companies and individuals.<sup>29</sup> There are a lot of organizations that provide mediation services in Germany.

**Scope of mediation:** The most common areas for mediation in Germany are family law, inheritance law and commercial law. Mediation is initiated prior to the legal proceedings and is voluntary. The law encourages the amicable dispute resolution by putting in place various incentives in the official procedural codes (e.g. CCP, *Zivilprozessordnung*). Thus when the parties bring a civil case to court, they must say whether they have sought to resolve the dispute out-of-court, e.g. through mediation,

<sup>29</sup> Mediation in Member States – Germany [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-de-en.do?member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-de-en.do?member=1) (accessed on 07.06.2020)

or if there are any reasons for not considering such an option. The court might also advise the parties to try to resolve the dispute through mediation or other out-of-court alternatives and if the parties refuse the court may choose to suspend the proceedings.

**Mediators:** Training in mediation is provided by associations, organizations, universities, companies and individuals. German law establishes the general knowledge, competencies and procedures that should be acquired through proper preliminary training. Any person meeting these criteria may work as a mediator. There is no minimum age. Mediators must make sure they have the necessary knowledge and experience (acquired through appropriate training and ongoing training) to reliably guide parties through the mediation process.

**Mediation costs:** There is no legislation regulating the mediation fees in Germany (the hourly fees may range from EUR 80 to EUR 250). Mediation is not free of charge and payment is subject to agreement between the private mediator and the parties.

## ▣ Mediation in the Czech Republic

**Legislation:** Mediation is regulated in the Law no. 202/2012 on mediation and Law no. 257/2000 on Probation and Mediation Service.

**Competent authority:** In criminal matters the institution responsible for mediation is the Probation and Mediation Service under the Ministry of Justice, while in civil matters it is the Czech Mediators Association.

**Scope of mediation:** Mediation is possible in any legal area, unless otherwise provided for by law. Mediation is mandatory in family law, commercial law and criminal law. In accordance with CCP, the presiding judge may order the parties to proceedings to participate in an initial three-hour meeting with a mediator. In such cases, the court proceedings may be suspended for up to three months.

**Mediators:** To be authorized to provide mediation services, the person must meet the following requirements: must have graduated higher education and a relevant postgraduate Master program at a Czech university or abroad, recognized or equated, and pass the accreditation exam.



The training of mediators within the criminal justice system is ensured by the Probation and Mediation Service; training in non-criminal mediation is provided by a range of bodies and education institutions.

**Mediation costs:** Mediation provided by the Probation and Mediation Service is free of charge, or the costs are incurred by the state. If a court suspends the proceedings in a civil case and orders the parties to participate in an initial meeting with a mediator, the first three hours of the mediation session are paid at the rate laid down in the secondary legislation (CZK 400.00 per each hour that starts), and the expenses are shared equally by the parties (if the parties are exempt from paying the court fees, they are paid by the state). If mediation extends beyond three hours, the further costs will be equally shared by the parties, up to the amount agreed between the mediator and the parties to the mediation (i.e. to the proceedings).

## □ Mediation in Slovenia

**Legislation:** In Slovenia mediation is regulated by the Act on alternative dispute resolution in judicial matters (ZARSS, Official Journal of the Republic of Slovenia no. 97/09 and no. 40/12-ZUJF) of November 19, 2009.

**Competent authority:** The Ministry of Justice and Public Administration keeps a central register of the mediators engaged in court programmes for alternative dispute resolution. The Council for Alternative Dispute Resolution operates under the auspices of the Ministry of Justice and Public Administration. It was set up in March 2009 and is an independent and centralized expert body with advisory and coordination role.

**Scope of mediation:** Mediation in Slovenia may be used in civil, family, commercial, labor and other property-related matters with regard to the claims which can be settled by the parties. Mediation is also admissible in other matters, like disputes between parents and children and labor disputes resulting from the termination of an employment agreement, unless otherwise provided by law. Courts are obliged to allow the parties to use mediation in addition to other forms of alternative dispute resolution.

**Mediators:** Training for mediators is provided by a number of NGOs and by the Centre for Judicial Education of the Ministry of Justice and Public Administration.

**Mediation costs:** The court-based mediation conducted under the Act on Alternative Dispute Resolution in judicial matters is free of charge. In cases of disputes between parents and children and in labor disputes resulting from the termination of an employment agreement the parties pay only their lawyers. In all other disputes, except commercial ones, the court covers the mediator's fees for the first three hours of mediation.

### □ Mediation in Spain

**Legislation:** The Law no. 5/2012 of July 6, 2012 on mediation in civil and commercial matters transposes the Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 into Spanish law.

**Competent authority:** The competent authority at the national level is the Interconfederal Mediation and Arbitration Service (Servicio Interconfederal de Mediación y Arbitraje - SIMA).

**Scope of mediation:** Mediation is very common in labor disputes in Spain. It is sometimes compulsory before going to court. Mediation in civil and family matters is often used due to its benefits. Mediation in criminal matters is aimed, on the one hand, at reintegrating the offender in the society and, on the other hand, at compensating the victim. In the juvenile justice system (ages between 14 and 18), mediation is defined as a means of re-educating the minors. In the adult justice system, mediation is not regulated, although in practice, in some provinces, mediation is based on the criminal regulations and procedure, which allows for reducing the punishment of an offender by letting him or her repair the damage.

**Mediators:** In Spain mediators are required to have a university degree and 100-300 course hours of mainly practical training in mediation. The specific training in mediation is normally offered by universities and professional associations, such as psychologists' or lawyers' associations.

**Mediation costs:** At the national level mediation is provided free of charge by the Interconfederal Service of Mediation and Arbitration (Servicio Interconfederal de Mediación y Arbitraje - SIMA) in employment



disputes. The mediation services provided by the public institutions in criminal matters and the services provided by the bodies working with the courts on family matters are also free of charge. In Catalonia, the cost of the mediation process is regulated for those who do not receive legal aid. Besides the mediation ensured by the court, the parties are free to use a mediator and to pay the mutually agreed fees. To encourage out-of-court dispute resolution, the Law no. 10/2012 regulating certain fees in the area of justice administration and the National Institute of Toxicology and Forensic Sciences provides for a refund of the fee amount when an out-of-court settlement reduces the cost of the provided services.

### □ Mediation in Italy

**Legislation:** Mediation in Italy has legislative roots going back to the adoption of the Public Safety Act in 1931 for mediation used by the public security officers. In 2011, Italy adopted Law no.148, which in its Article 35 provides for the integration of the provisions of the Legislative Order no. 28/2010. Since then Italy has managed to harmonize its national legislation with the EC legislation aligning it to the Directive 2008/52/CE of the European Parliament and Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters published in the Official Journal of the European Union no. L136/3 of 24.05.2008.

**Competent authority:** The Federal Mediation Commission is the national mediation authority. The register of the organizations accredited to provide mediation services is kept by the Ministry of Justice and is published on its website.

**Scope of mediation:** Mediation organizations can provide assistance to achieve out-of-court settlement in any dispute that concerns rights that the parties are free to waive or transfer (*diritti disponibili*). Mediation is voluntary, though it may also be suggested by a judge or required by a contract between the parties.

**Mediators:** The Italian public and private providers of mediation services are accredited by the Ministry of Justice. The person wishing to become a mediator must hold a degree or diploma (at least equivalent to

a university degree), and must have completed at least two-year refresher courses with training providers accredited by the Ministry of Justice, and during the two-year training period they must have taken part as assistant trainees in at least 20 cases of mediation. The lawyers can become legal mediators after the completion of initial training courses and registration in the Professional Register (Albo Professionale). Registration is based on a set of professional criteria in order to maintain a minimum quality level of mediation.

**Mediation costs:** The fee for mediation mandated by law in Italy is the same for public and private providers. As for the voluntary mediation, providers can set their own fees, which require the approval of the Ministry of Justice. The parties pay equally the fees and the remuneration for mediation services, which increase in proportion to the dispute amount. Mediators are paid by the providers of mediation services and receive a certain percentage of the fee paid by the parties to the providers. The public fees for mediation range from EUR 65 to EUR 9,200. The mediation report concerning the mediation agreement amounting to less than EUR 50,000 is exempt from the registration fees. All the records and documents related to the mediation process are exempt from the stamp duty and from any other costs and fees. Legal aid is available for the poor, who can freely participate in mediation. The parties in mediation can get a bank loan of up to EUR 500.

## □ Mediation in Hungary

**Scope of mediation:** Mediation has been a method of resolving legal disputes in civil matters since 2003. Since January 1, 2007 it has been also used in criminal matters. Originally, mediation did not cover libel proceedings, administrative decisions, guardianship procedures, termination of parental rights, enforcement procedures, and procedures establishing paternity or ancestry and constitutional appeals.

**Competent authority:** The Ministry of Justice and Law Enforcement (Igazságügyi és Rendészeti Minisztérium) is in charge of the registration of mediators and legal entities employing mediators and of updating the register of mediators.

**Mediators:** In Hungary mediators are only the practitioners registered in the register of mediators kept by the Ministry of Justice. A person wishing to become a professional mediator must have a university degree and at least five years of experience in this field, a clear criminal record and register as a mediator at the Ministry of Justice. In the private sector, training is provided by private universities, chambers of commerce and Alternative Dispute Resolution centers. In the public sector, the Superior Council of Magistrates provides training in mediation for lawyers and judges (in particular in legal conciliation in civil litigations).

**Mediation costs:** Mediation is voluntary in Hungary and is paid by the parties. If the parties participate in mediation after the first hearing and the settlement agreement is confirmed by the judge, only half of the applicable fees will be paid, including the mediation fee. If the parties seek to resolve the dispute through mediation before the civil proceedings, they pay only the part of the fee that remains after deducing the mediator's fee. Mediation is compulsory in disputes concerning rights in rem, succession, lease and loan contracts, family disputes, insurance and banking contracts, medical malpractice and disputes arising from denigration of an individual.

## □ Mediation in Netherlands

**Legislation:** There is no law on mediation in the Netherlands. However there is an initiative to use mediation at court's proposal, the so-called "Mediation naast rechtspraak".<sup>30</sup>

**Competent authority:** The Netherlands Mediation Institute (NMI) is the representative body of mediators. Accredited mediators pay EUR 280 per year to NMI.

**Scope of mediation:** In the Netherlands mediation is always allowed and is used in civil and public law. Every district court and appeal court has a mediation officer who can answer questions, invite the opposing party to participate in mediation or help the parties find a mediator.

<sup>30</sup> Vasilica-Leontina Tudor, *Considerations about legal regulation of mediation in Romania, Republic of Moldova and some European countries*, in the "Legea și Viața" Journal (Law and Life), Romania, 2016, p.54-59; <http://www.legeasiviata.in.ua/archive/2016/12-1/11.pdf> (accessed on 07.06.2020)

**Mediators:** Mediators must obtain accreditation. The Federal Mediation Commission regulated the training of mediators, which is delivered by the private sector. The legal assistance services are provided by private lawyers and mediators. All the lawyers and mediators providing legal assistance services must be registered at the Legal Aid Board and meet the quality standards. The quality standards for mediators were adopted in consultation with the Netherlands Mediation Institute, Judicial Council and Legal Aid Board. There are around 500 civil servants from the tax authority, army and other areas of public administration who are registered at the Mediation Institute.

**Mediation costs:** The mediation fees are not regulated and the costs depend on the type of the case (amounting to €51 for 0-4 hours and €102 for 5 or more hours). The private lawyers and mediators who provide mediation services to people with low income are paid by the Legal Aid Board. In the Netherlands the state-guaranteed legal aid system includes both mediators and lawyers. Consequently only 10% of all the cases referred to the state-guaranteed legal aid offices go to court. Only around 600 out of the 2,500 mediators are part of the state-guaranteed legal aid system.<sup>31</sup> The mediators within the state-guaranteed legal aid system are accredited by the Dutch Mediation Institute.

## □ Mediation in Latvia

**Legislation:** Latvia has had a mediation law since June 18, 2014. The mediation model recommended by court in civil proceedings came into effect on January 1, 2015.

**Competent authority:** The Mediation Council (*Mediācijas padome*) was established on July 25, 2011 and brings together the associations registered in Latvia that are active in the field of mediation.

**Mediators:** Mediators receive relevant training provided by various associations, e.g. Mediation and Integration for Society offers a basic course in mediation intended for future mediators and a course on basic conflict resolution skills for use in professional and personal settings.

<sup>31</sup> Tatiana Ciaglic, *Mediation in the Netherlands. Good Practices*; <https://mediere.gov.md/ro/content/despre-mediare-olanda-exemple-de-bune-practici> (accessed on 07.06.2020).

**Scope of mediation:** Mediation is admissible in many areas. The area in which it is most widely used is in civil disputes arising in family law and commercial law. Judges have the obligation to advise the parties to consider using mediation for dispute resolution at various stages of the proceedings (after the lawsuit is filed, during the preparation stage, during the preliminary hearing and during the legal proceedings until the completion of the review on the merits).

**Mediation costs:** The cost of mediation depends on several factors such as the mediator's qualifications and experience, the complexity of the dispute, and the number of mediation sessions required. Mediation in civil disputes is not free of charge. In the cases concerning children's interests and rights, the Foreign and Conciliation Affairs Board of the Riga Family Court (*Rīgas Bāriņtiesas Ārlietu un samierināšanas pārvalde*) provides free of charge services to Riga residents. Disputes mostly concern maintenance, arrangements for a child's place of residence, visiting rights, custody and child-raising.

As of January 1, 2017 individuals have the opportunity to attend five free of charge sessions with a certified mediator to resolve disagreements between parents that affect children's interests and to find ways to improve the relationships between family members.<sup>32</sup> If the dispute is not resolved during five sessions, the cost of further services should be covered by the parties. To evaluate a person's eligibility a certified mediator or the Council of Certified Mediators must be consulted. Information on the program is made available to the persons concerned via courts, municipalities, social services, family courts, etc.

### 3.3 Conclusion

The analysis of the international standards and European recommendations on mediation and restorative justice has revealed that mediation is a key component of justice. In light of the commitments made at the level of international and European organizations, governments are encouraged to be more active in creating conditions and mechanisms for the application of an amicable settlement in a wider range of disputes

<sup>32</sup> Cross-Border Family Mediation – Latvia, [https://e-justice.europa.eu/content\\_crossborder\\_family\\_mediation-372-lv-en.do?member=1](https://e-justice.europa.eu/content_crossborder_family_mediation-372-lv-en.do?member=1) (accessed on 07.06.2020)

and for facilitation of the access to mediation for as many litigants as possible. An active role is also assigned to the parties in the process (judge, lawyer, prosecutor etc.), who are expected to inform the parties and apply amicable settlement of disputes at any stage of the judicial proceedings.

The analysis of mediation in various European countries has revealed that mediation is used in a wide range of disputes, civil and criminal, as well as in other disputes concerning rights which can be waived through settlement. The issues related to personal rights and the rights which cannot be waived cannot be subject to mediation. Mediators, as a rule, are the persons who completed a training program in mediation and have the authorization to practice mediation. Mediation is voluntary and the mediation fee is usually laid down in the mediation contract. In most countries the free of charge provision of mediation services is regulated. Some countries have put in place a system that is similar to the state-guaranteed legal aid system, indicating the categories of people who can receive free of charge mediation services, how they can get financial support and the types of disputes eligible for free of charge mediation.

The Moldovan legal framework is largely in line with the international standards. However, in practice mediation is barely applied, while SGM is almost missing. The experience of the European countries in mediation, in general, and SGM, in particular, could guide the efforts of the Moldovan authorities to put in place a functional mediation system. This system should include:

- a. Establishment of an authority responsible for the management of SGM
- b. Legal regulation of the types of cases where mediation is mandatory
- c. Regulation of the subjects of mediation services (primarily from vulnerable groups)
- d. Extending the scope of SGM
- e. Clear regulation of the remuneration of mediators and payment conditions for SGM

**IV.****THE FINDINGS OF THE EMPIRICAL  
RESEARCH IN STATE-GUARANTEED  
MEDIATION**

The research methodology implied collecting information from the professionals directly or indirectly involved in mediation. The research findings and recommendations are based on the inputs of 35 mediators, 26 prosecutors, 29 lawyers and 5 judges who participated in the survey.

**4.1. The findings of the mediators survey**

Mediators are the most relevant national actors involved in mediation. The questionnaire included 15 mixed, closed-ended and open-ended questions, formulated in plain language, taking into account the peculiarities of mediation. The instrument applied for mediators aimed at a) evaluating the practical application of SGM, b) evaluating mediators' perception of SGM and c) collecting recommendations on the potential lines of development for SGM. The respondents expressed their views about a) the current legislation in mediation, b) the challenges in the application of legislation and c) the major challenges and needs in the state-guaranteed mediation system. The survey questions, structured by categories, aimed to identify a) the respondents' experience in mediation, b) their experience in state-guaranteed mediation, c) their feedback on state-guaranteed mediation mechanism, and d) the potential improvements in state-guaranteed mediation mechanism from the respondents' point of view.

The survey provided input for the statistical analysis of the SGM mechanism from the mediators' point of view; the individual answers were aggregated in order to arrive at a general conclusion for each survey question. Additionally, the survey looked at the mediators' perception regarding potential ways to develop mediation. The open-ended questions allowed for collecting opinions about the regulation of the



state-guaranteed mediation system. The questions do not assess the correctness of the individual opinions.

### Analysis of the mediators survey results

According to the MC data there were 157 mediators active in Moldova as of May 27, 2020. About 22% of them (35 mediators) took part in the survey (see Chart 4). About 71% of the respondents reported less than five years of experience (see Chart 5), which means they did not practice mediation before 2015, when the new law on mediation, which has revised the duties of the state authorities related to the management of mediation and required further amendment of legislation in SGM, came into force.

None of the respondents claimed reimbursement for the mediation costs, as also evidenced by the data provided by the MC, which means that state-guaranteed mediation was not used. According to the official statistical data, only six criminal cases

were resolved through mediation in the last two years (2018-2019). Even if reimbursement of the mediation costs is possible by law in criminal cases, the mediators who provided such services did not claim reimbursement.

Moreover, the respondents had some difficulty in answering some of the questions, because they lacked experience in SGM.

Among the reasons mentioned by the respondents for not claiming a refund is lack of applications for SGM, lack of specialization in crim-

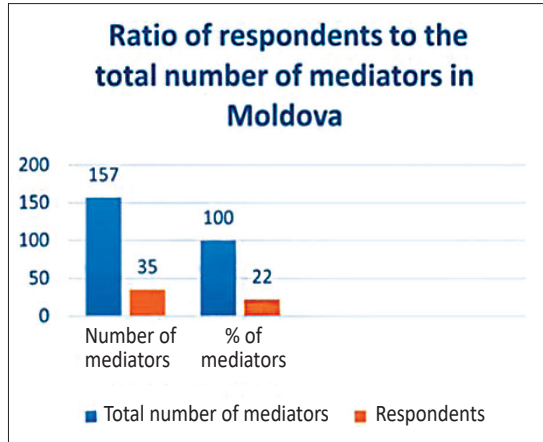


Chart 4. Mediators surveyed for the purposes of the SGM research

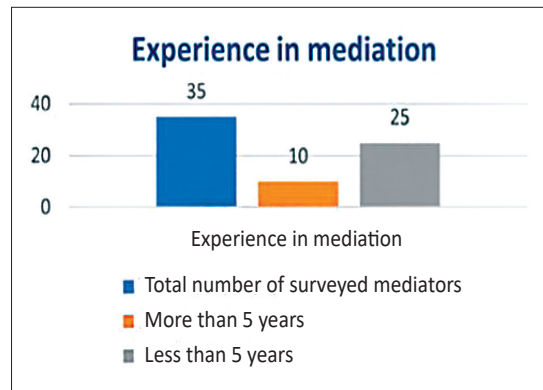
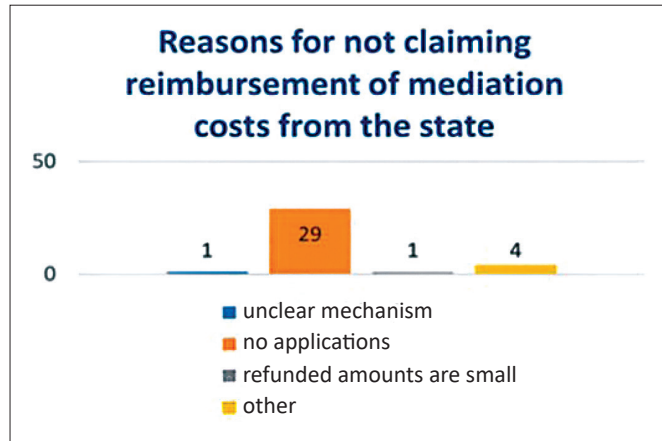


Chart 5. Experience of surveyed mediators



inal matters or ineligibility (see Chart 6). Regarding the lack of applications, one mediator noted that clients are not aware that such a mechanism exists and that the criminal investigation bodies or courts do not request or advise the use of mediation in criminal cases.

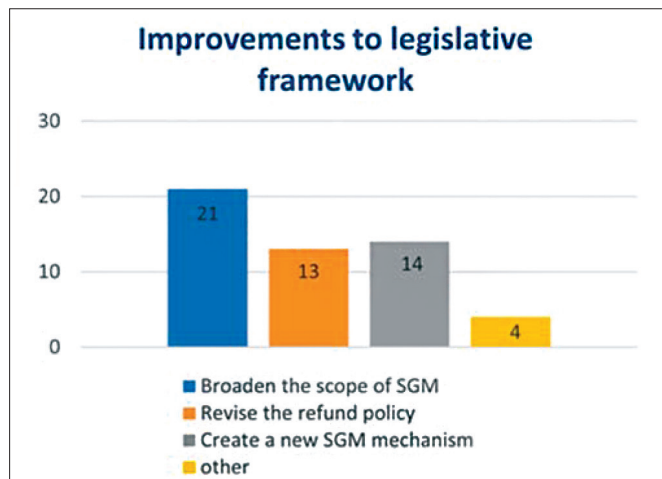


*Chart 6. Reasons for not claiming reimbursement of mediation costs from the state*

The respondents largely agreed that the scope of SGM should be broadened. Most of them (22 out of 35) believe that the SGM should cover all kinds of matters meeting the legal requirements; 11 mentioned family litigations and 9 mentioned criminal matters. It should be noted that they could choose several options.

The improvements to the legal framework suggested by the respondents are related to a) broadening the scope of SGM to cover more types of cases, b) revising the criteria related to the reimbursement of mediation costs from the state budget, and c) putting in place a new SGM mechanism (Chart 7).

The respondents also noted that to improve the SGM mechanism a new law on SGM is needed, along with amendments to CCP and CPC to bring more clarity in conciliation efforts and its effects. With regard to the mechanism on the state funding of mediation services in crim-



*Chart 7. Improvements to the legislative framework*

inal matters (Government Decision 303 of 21.04.2009) most of the respondents (11) think it is not applicable. Other six respondents find it deficient and five respondents are not aware of its existence.

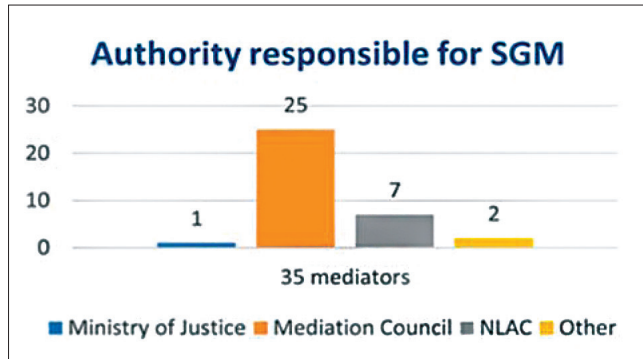


Chart 8. The authority responsible for state-guaranteed mediation

A sound mediation system requires identification of a competent authority able to manage the SGM mechanism. Most of the respondents (25) believe that the competent authority should be the MC, seven chose NLAC, one chose MOJ and two respondents consider that a new entity should be established – the National Council for State-Guaranteed Mediation.

The questionnaires included open-ended questions in order to collect the respondents' feedback on the challenges in the development of SGM and possible improvements in the current SGM system.

The challenges mentioned by the mediators may be grouped as follows:

1. Lack of an efficient mechanism and competent body responsible for SGM. The respondents noted that limiting the scope of SGM to criminal matters and the potential beneficiaries significantly reduces the access to SGM. Another issue is that Government Decision 303 is outdated. For the SGM system to work, it must provide feasible application procedures and guarantee the quality of the mediation services.
2. Lack of SGM policies and political will at the government level to develop the SGM mechanism. Currently the reimbursement of mediation costs is possible only in criminal cases. The criminal investigation body is reluctant to make referrals to mediation, because conciliation of the parties is not included in the individual performance indicators. Moreover, there are no coherent policies able to push SGM onto the list of national priorities.

3. Mediation is not commonly used as a dispute resolution method, and outreach is missing. Moldovan citizens are hardly aware of mediation as an alternative dispute resolution method and its legal effects, and even less aware of SGM. Therefore, to make mediation work it is critical to inform the population and the competent/responsible bodies.

The respondents suggested the following improvements to the SGM mechanism:

- The legal framework should be improved by broadening the scope of SGM; putting in place a new SGM mechanism; amending the CCP and the related legislation to address SGM; judicial mediation should not be applicable in civil cases; amending CPC so as to put in place a clear procedure for initiating the negotiations between the parties and terminating the criminal investigation;<sup>33</sup>
- Better management: SGM should be managed by the MC; mediation should be made mandatory during the preliminary proceedings in more civil and criminal matters; the fees for SGM services should be reasonable; the quality of services should be ensured by putting in place an easy but sound procedure of documentation and payment for SGM services;
- Professional training, including specialization, for mediators should be made available;
- A large scale outreach campaign on mediation, its effects and benefits, should be conducted.

## Conclusions

The collected inputs and the number of surveyed mediation professionals are pertinent and relevant for the purposes of the research, providing valuable information about mediation and SGM in Moldova. According to the survey results, mediators have never used the current SGM mechanism and consider it inefficient. The respondents have different views

<sup>33</sup> CCP (articles 212, 487 – 490, submission of the settlement agreement during the criminal investigation and during the criminal proceedings) can serve as an example for such amendment. The amendment should refer to courts, by clarifying the limits and competences, or should involve the revision of the Recommendation of the Criminal Panel of the Supreme Court of Justice no.56 on application of articles 109 and 276 CPC

regarding the shortcomings of SGM, most of them stressing the need to amend/improve the legal framework and to promote mediation as an alternative dispute resolution method. Therefore, the final conclusion deriving from the analysis of the mediators' survey results is that a new and functional SGM mechanism is necessary and that the legal framework has to be amended so as to allow for the efficient management of the mediation system.

#### **4.2. The findings of the survey of justice professionals: prosecutors, lawyers and judges**

Although promotion of the alternative dispute resolution methods has constantly been one of the goals of the justice sector strategies<sup>34</sup>, their use has been limited so far. The limited use of mediation is evidenced by the statistical data published in the annual reports of the Office of Prosecutor General<sup>35</sup> regarding the criminal cases resolved by reaching a settlement under Article 109 of the Criminal Code, the reports of the MC<sup>36</sup>, and supported by the Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice<sup>37</sup>.

The research methodology aimed at finding out the views of professionals – prosecutors, lawyers and judges – about a) the practical application of mediation as an alternative dispute resolution method, b) the challenges in the use of SGM and c) the possible improvements to the SGM mechanism.

<sup>34</sup> Strategy on justice sector independence and integrity for y. 2020-2023, Ministry of Justice of the Republic of Moldova, 2020; [http://www.justice.gov.md/public/files/directia\\_analiza\\_monitorizare\\_si\\_evaluate\\_a\\_politicilor/Proiect\\_Strategia\\_pentru\\_asigurarea\\_independentei\\_si\\_integritatii\\_sectorul\\_justitiei\\_2020-2023.pdf](http://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluate_a_politicilor/Proiect_Strategia_pentru_asigurarea_independentei_si_integritatii_sectorul_justitiei_2020-2023.pdf) (accessed on 07.06.2020)

<sup>35</sup> Report on the activities of the Office of Prosecutor General for 2019, Chisinau, 2020; <http://www.procuratura.md/file/Raport%20public%20Procuratura%202019%20rectificat%2004.05.2020%20.pdf> (accessed on 07.06.2020)

<sup>36</sup> Statistical report on the disputes resolved through mediation in 2019, MC, Chisinau, 2020; [https://mediere.gov.md/sites/default/files/document/attachments/raport\\_de\\_date\\_statistice\\_privind\\_litigii\\_solutionate\\_pe\\_calea\\_medierii\\_pentru\\_anul\\_2019\\_0.pdf](https://mediere.gov.md/sites/default/files/document/attachments/raport_de_date_statistice_privind_litigii_solutionate_pe_calea_medierii_pentru_anul_2019_0.pdf) (accessed on 07.06.2020)

<sup>37</sup> Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, Dr. Ildir Peci, Mr Eric Svanidze, CoE, 2018; <https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00> (accessed on 07.06.2020)

To this end, a questionnaire was distributed and filled out by 26 prosecutors, 29 lawyers and 5 judges, containing similar questions in order to obtain and compare their feedback. The 10 closed-ended and open-ended questions were formulated in different ways, allowing for additional comments, and were related to: a) the experience of dealing with cases involving SGM, b) the reasons for limited or no use of SGM, c) the professionals' views on the SGM mechanism and d) the legal and practical issues, and solutions to challenges to the increase of SGM.

### **Analysis of the justice professionals survey results**

The three groups of justice professionals were given the same set of questions and the analysis of the collected information was based on a comparative and descriptive approach.

**Prosecutors**, as the first ones who make decisions about what will happen to a case, criminal as a rule (referral to court), must inform the parties about their procedural rights under law, including the right to seek settlement where allowed by law, including about mediation and the opportunity to use the services of an authorized mediator. Section 2 of the Law on Mediation makes reference to mediation in criminal and misdemeanor cases. According to Article 37 “the criminal investigation body must inform the mediator before the beginning of the mediation process about the important elements of the case in accordance with CCP and the Contraventional Code”. In criminal cases which are still under criminal investigation, in accordance with Article 52 (1) item 24/1 of CPC, “at the mediator’s request, the prosecutor will provide the information from the criminal case that is necessary for mediation, without prejudice to criminal investigation”.

**Lawyers** provide assistance to the party in civil, criminal or misdemeanor proceedings and all the written and oral information and legal advice regarding the defense and the solutions to be applied. Knowing what lawyers think about the state-guaranteed mediation is even more important as it is closely linked with their active role and professional rights in the efforts to seek settlement between the parties to a case.

**Judges** are expected to play an active role in informing the parties about the SGM procedure, in particular in criminal matters, given that Article

344/1 of CPC requires that within one day from receiving the case they must take specific actions to involve mediators in the process.

The first question in the questionnaire *“Experience of dealing with cases eligible for mediation where mediation was used under the Government Decision no.303 of 21.04.2009 on the approval of the conditions for state funding of mediation in criminal matters”* was intended to obtain an insight into the current situation of the justice professionals and their experience of dealing with the cases involving SGM.

Only six respondents (two prosecutors, three lawyers and one judge) out of 60<sup>38</sup> said they had had such cases, the others saying they had never dealt with cases involving SGM. In the *comments* section, prosecutors explained that SGM is not used because lawyers take on the responsibility for the conciliation of the parties. Lawyers, in turn, mentioned several reasons why SGM is not used, such as reaching conciliation without involving a mediator; lack of mediators in the regions of the country; lack of a clear mechanism; lack of information – parties are not informed about SGM; the parties have more trust in courts, etc. Therefore, although there is a mediation procedure, including SGM, put in place by legislation, the answers reveal that mediation is not used by the justice professionals.

The main *reason for not using mediation services in eligible cases* mentioned by prosecutors was lack of awareness of mediation as an option and that conciliation remains the responsibility of lawyers. Lawyers also claim that they have the role of assisting the parties to reach the settlement of a dispute, because they are interested in the termination of the criminal proceedings and in having a mitigating circumstance, and that in a conflict situation, mediation would be to no avail. Judges, in turn, mentioned lack of awareness of SGM as a reason why mediation is not used.

Of all the respondents, 17 professionals (13 prosecutors and 4 lawyers) did not answer this question, 17 (6 prosecutors, 2 judges and 9 lawyers) pointed to the lack of applications for mediation from the parties, and 11 professionals (3 prosecutors and 8 lawyers) said they had achieved a settlement without the help of mediators.

<sup>38</sup> Only 5 questionnaires have been received from judges so far (July 17, 2020). According to the Decision of the Superior Council of Magistrates of 28.05.2020 the questionnaires were distributed to judges from different courts. Following the inquiries by phone to court secretariats more questionnaires are still expected to be provided.



To the question if *broadening the scope of SGM could lead to an increased use of mediation* the justice professionals were split almost equally (see Chart 9). Therefore it is not possible to draw a conclusion on whether a broader SGM scope would lead to an increased number of applications for mediation or not. To follow up with the previous question, the respondents were asked to choose the types of disputes (one or more options from the list) that are the most appropriate for SGM (*“Categories of litigations that are most appropriate in SGM”*). The professionals’ personal views about the types of matters that should be covered by mediation, including SGM, provide a wide range of answers (see Chart 10).

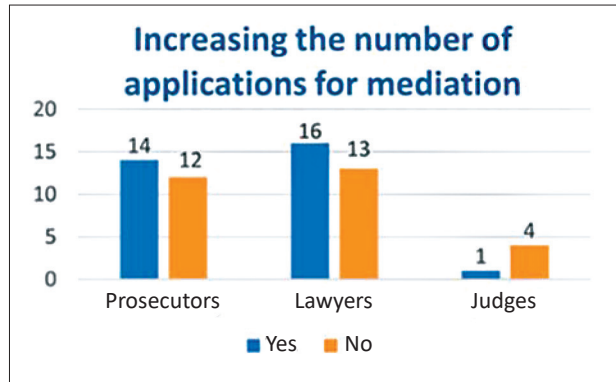


Chart 9. Increasing the number of applications for mediation

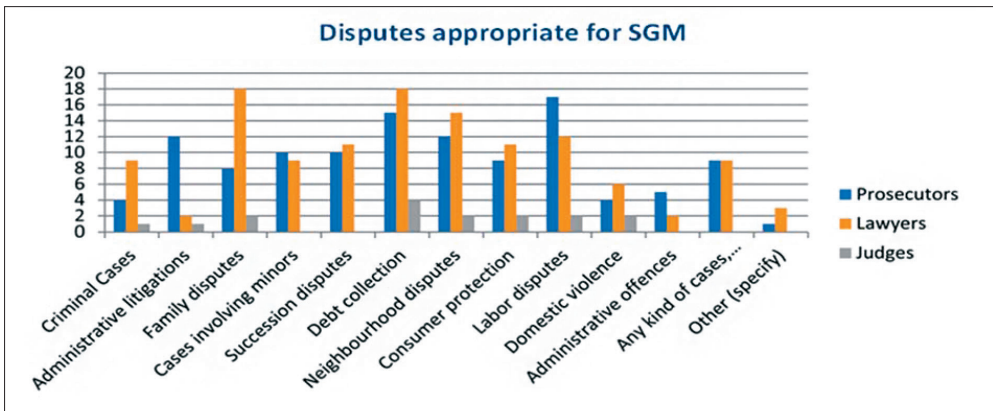


Chart 10. Disputes appropriate for SGM

Most of the prosecutors mentioned labor disputes (17 respondents) and debt collection (15 respondents) and nine prosecutors think that SGM should be applied only in civil, criminal and misdemeanor disputes and there should be a set of eligibility requirements for SGM. One prosecutor chose all the answers. The lawyers also chose several types of disputes as pertinent to mediation. Nine of them said that SGM should be used in all

the types of disputes – civil, criminal and misdemeanor – and that there should be some eligibility criteria for the beneficiaries of mediation. The lawyers mostly opted for the use of mediation in family disputes, debt collection and neighbor disputes. Two lawyers think that all the 12 areas indicated in the questionnaire would be appropriate if the mechanism was available. One of the surveyed judges did not answer the question, while the other four selected debt collection as best suited to mediation.

The research also aimed to find out what improvements are needed in the legal framework on SGM (*“Necessary improvements in the legal framework on state-guaranteed mediation”*). This was a multiple-choice question and the respondents could choose one or several options. Most of the professionals (35 respondents) consider that a new SGM mechanism should be put in place (see Chart 11). The other views are shared between extending the scope of SGM (15 respondents) and revising the criteria for reimbursement of amounts for mediation from the state budget (13 respondents) and other improvements, in particular that the legal framework should be made more friendly and applicable, mediation should become compulsory as an out-of-court procedure (including the description how to use mediation at each stage), the litigants should be informed about mediation before going to court, “a mechanism to fund the costs that are smaller than the state fee and legal aid is needed and last, but not least, the time, which is very important and priceless (5 respondents).

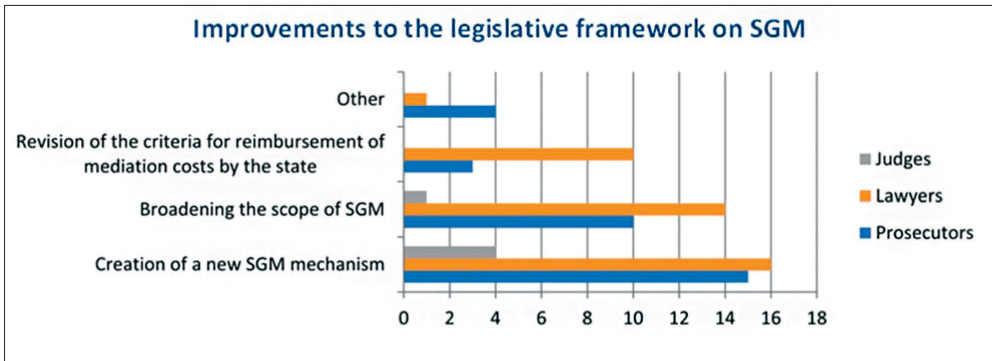
The answers to the question related to the assessment of the mechanism put in place by the Law on Mediation and the Government Decision no.303 of 21.04.2009 on the approval of conditions for state funding of mediation in criminal matters were varied, sometimes even totally different. Some of the respondents (9 prosecutors and 10 lawyers) find the legal mechanism on mediation satisfactory, others (5 prosecutors and 10 lawyers) think that it has some shortcomings and some (8 prosecutors) find it inapplicable. The surveyed judges also had different views.

Taking into account the answers to the previous questions which pointed to either a lack or an insignificant number of mediation cases, it can be reasonably assumed that professionals are not familiar with the legal mediation mechanism and that it is not applied.



One of the most important questions in the questionnaire was *what entity should be responsible for managing the state-guaranteed mediation mechanism*. The respondents could choose among the MC, NLAC, MOJ and other, based on the current activities and competences related to the legal aid system and mediation. Most of the respondents (43), including 23 lawyers, chose NLAC. Another 18 respondents chose the MC and 12 respondents chose MOJ (multiple selection). Some professionals pointed out that the two entities –MC and NLAC – should cooperate in order to improve the examination of cases by applying alternative solutions.

According to Article 344/1 of CPC, after a criminal case is registered for judicial examination, the court at the request of the parties may refer the case to mediation within three days of its distribution indicating in the judgment the actions to be taken by the parties and the mediators. According to paragraphs 1 and 3 of Article 344/1, lawyers also can take an active role to request within three days that the court initiates mediation prior to the preliminary hearing in the criminal case. The question about the *limited use of state-guaranteed mediation at the judicial stage under Article 344/1 of CPC* aims to look into the reasons for such limited use.



*Chart 11. Improvements to the legislative framework on SGM*

The prosecutors' answers support the findings discussed above regarding the lack of information on mediation. While eight prosecutors did not give any answer, others pointed to a lack in the use of this mechanism, a lack of applications from the parties, and a lack of trust in mediation, etc. The lawyers' answers were even more varied, including that: conciliation

is quicker than mediation; that there is poor outreach of mediation; lack of experience, knowledge and practice; too many bureaucratic issues; a lack of applications, etc. The judges, who are the primary actors who must apply the provisions of Article 344/1 of CPC in criminal cases, say that the state-guaranteed mediation is rarely used because there is the conciliation procedure that does not involve additional costs; because of lack of applications or poor awareness of mediation.

In conclusion, each of the three categories of respondents seems to shift the responsibility to inform the parties to others and to apply the provisions of Article 344/1 of CPC on mediation to each other. This confirms the poor awareness of the benefits of mediation (fewer cases for court review; saving resources like time and money, efforts, etc.).

The respondents' answers regarding the *hesitation to use SGM and the issues hindering the development of this alternative dispute resolution method* were multiple and different. Most of the respondents mentioned the inefficiency of the mechanism or of some of its components, poor awareness of the parties and the lack of outreach, the efficiency of conciliation. Some of the mentioned reasons proved again that the justice professionals are not aware of the benefits of mediation (*"Mediation is useless and was introduced just to obtain financing"*).

Among the *solutions to improve the state-guaranteed mediation system*, which in the view of the justice professionals would foster the use of mediation, are improvements to the legal framework to streamline the SGM mechanism; assigning a status in the proceedings to mediators; informing the parties and effective outreach; making mediation mandatory; training of professionals and ensuring the professional competence of mediators, etc. It should be noted that about 20 respondents did not answer this question.

## Conclusions

The feedback collected through questionnaires and the number of respondents is relevant for the purposes of this research, providing valuable information about mediation and SGM in the national practice. The results of the survey reveal that systemic changes are required, more specifically a) to put in place a new SGM mechanism, b) to identify the body that will be responsible for the management of the system, c) to extend the scope of mediation and d) mediation outreach.

### 4.3. General conclusions

The questionnaires filled out by mediators and other justice professionals provided a broad framework for this analysis, allowing for data triangulation and complementing desk review with relevant field data. This allowed the identifying of the reasons why mediation is not used, the most common ones being a lack of information and awareness at all levels, very limited time, and a lack of applications for mediation, even if the legal provisions of Article 344/1 of CPC provide for the opportunity to resolve disputes through mediation or conciliation.

The field research confirmed that the cooperation of parties in cases involving mediation faces major difficulties, because of the limited use of SGM and lack of coordination among legal professionals involved in a case. The limited use of SGM is caused by several objective and subjective factors:

1. Unclear legal framework and many inefficient bureaucratic formalities;
2. Poor or lack of familiarity with the SGM mechanism, lack of confidence in the efficiency of the state-guaranteed mediation mechanism and mediators;
3. The criminal investigation bodies, courts, lawyers and the parties lack initiative and do not believe in the efficiency and usefulness of mediation or mediators;
4. Lack of cooperation and coordination of actions among the justice professionals in terms of SGM;
5. Wide use of conciliation, considered to take less time;
6. SGM is not mandatory;
7. Poor legal culture in terms of resolution of criminal matters through out-of-court mediation.

Although the Moldovan legislation (Law on mediation, CPC, Contraventional Code, CCP, Government Decision no.303/2009) requires that the justice professionals inform the parties about mediation, including

SGM, in particular the vulnerable categories (Government Decision 303, Article 4), they are not very active in doing so, and, therefore, the SGM mechanism is not applied. This has a negative impact on the access to justice and to the amicable dispute resolution methods, in particular for the vulnerable categories,<sup>39</sup> such as minors, the people with communication difficulties (deaf, mute, blind) or with other significant speech, hearing, visual or other physical or mental impairments.

The survey results show once again that it is critical to promote public outreach of mediation; to extend the application of mediation in criminal matters; to ensure and facilitate the access to mediation for vulnerable people, and to organize working groups involving all the justice professionals in order to familiarize them with the SGM mechanism and make sure they coordinate their SGM-related activities.

---

<sup>39</sup> Article 4 of the Government Decision no.303/2009 on the approval of the conditions for state funding of mediation services in criminal matters

**V.****RECOMMENDATIONS FOR IMPROVING  
MEDIATION AND STATE-GUARANTEED  
MEDIATION IN MOLDOVA**

Mediation, as the primary alternative to court proceedings, can be used as a way of resolving disputes at an early stage, saving public resources, time and effort.

The analysis of the national and international legislation on mediation and of the status of mediation in Moldova, the results of the survey of mediators and justice professionals provides a framework of recommendations for the development of mediation, in general, and SGM, in particular.

**5.1. General recommendations for improving mediation  
in Moldova**

To reinforce SGM and to increase and reactivate the use of this dispute resolution alternative method in the national legal system requires first making relevant legislative and institutional changes.

In the first place, the institutions that have mediation responsibilities – MOJ, MC, Moldovan Bar Association, NLAC, prosecutors and the courts, should combine their efforts to make better use of mediation and help develop a professional group of mediators. The first dimension which could be developed is SGM, which, on one hand, would reduce the workload of courts and the legal costs and, on the other hand, would facilitate the access of the vulnerable groups to justice.

Additionally, it is necessary to create a working group with the representatives of the authorities with policy-making responsibilities in the area of mediation in order to develop a clear concept for the mediation system covering:

- the mechanism and the authority responsible for mediation management;
- the types of cases and subjects (in particular from the vulnerable groups) for which mediation is mandatory;
- the scope of SGM;
- the simplified procedure for applying for SGM services;
- a clear procedure for paying mediators, the terms and conditions of payment;
- involvement of mediators and justice professionals in the application of SGM etc.

To improve the mediation system, the MC approved its Development Strategy and Action Plan for the period 2021-2024<sup>40</sup>, which has the following objectives:

- Policy implementation in the field of mediation in Moldova;
- Improving the understanding, the use and recognition of mediation in Moldova;
- Drafting policy proposals and amendments to the legislation on mediation by introducing a compulsory information session for both parties before filing a summons and piloting them on a small number of cases and in a limited period;
- Building the operational capacities of the MC by providing it with adequate office space, human and material resources and technological capabilities;
- Identification of solutions to enhance the financial independence of the MC without changing its status of legal person of public law;
- Continuation of efforts to promote mediation, ensuring more visibility for the activities of the MC;
- Continuation of the efforts of monitoring the training activities and the quality of mediation services;

---

<sup>40</sup> D'Urso Leonardo, Gavrilă Constantin-Adi, Chifa Felicia, MC Development Strategy and Action Plan for the period 2021-2024, developed under the project supported by USAID, EBRD and IDLO, Chisinau, 2020

- More integrity and professionalism of the mediation certification exam by regulating the incompatibilities and paying the examination board members for their work;
- Development of the relationships with the pool of professional mediators and with other stakeholders;
- MC's support for the research and innovation efforts in the field of mediation. Development of the international relations and the European integration of the mediation system;
- Putting in place mediation as a means of managing the complaints received from the beneficiaries of the mediation services;
- Putting in place and management of a SGM mechanism.

Therefore, in order to develop a sound mediation system in Moldova it is critical that all the institutions with mediation responsibilities work together towards this goal. The MC's objectives laid down in the Development Strategy for 2021-2024 and detailed in the Action Plan aim at supporting the justice reform and at contributing to a more efficient justice sector.

## **5.2. Recommended amendments to the legislation on state-guaranteed mediation**

Based on the feedback received through the survey and the findings described in the previous chapters, a couple of potential interventions and improvements to SGM have been identified. It is beyond doubt that simply amending the Government Decision no.303 of 2009 is not enough. The attempts to implement the SGM mechanism through the Government Decision no. 303 have revealed several deficiencies such as:

- a. Government Decision no.303 refers only to criminal matters
- b. The amounts to be paid for SGM are too small
- c. There is no program to guarantee SGM applicability

Most of the respondents think that the current mechanism put in place by the Government Decision no.303 is inefficient and does not work and that major interventions are needed.

Therefore, before formulating some specific recommendations, the research team identified the countries with advanced expertise in the field of mediation with the most appropriate elements for Moldova, more specifically Romania and the Netherlands. In Netherlands, for instance, the lawyers and the mediators involved in SGM are part of the state-guaranteed legal aid system and cover a wider range of cases; the procedure is regulated and the expenses for the mediation services are refunded. This practice is in line with the unanimous views expressed by the Moldovan professionals that a new SGM mechanism with a broader scope should be put in place under the umbrella of an authority responsible for SGM management (NLAC, MOJ or the Mediation Council).

The analysis of the legal and institutional framework, international practices and the current national capacities allowed for identifying two potential options for putting in place a sound SGM system.

### **Option 1: To amend the relevant legislation by assigning the responsibility for state-guaranteed mediation management to the National Legal Aid Council**

Assigning the responsibility for SGM to NLAC is underpinned by the Informative Note<sup>41</sup> to the draft Law on mediation, according to which “another way the state can support mediation is by promoting state-guaranteed mediation. The conditions and the procedure for receiving the services of a mediator paid by the state will be regulated by amending the Law on state-guaranteed legal aid no. 198-XVI of 26.07.2007”.

Moreover, many respondents think that NLAC would be the most appropriate body to manage the state-guaranteed mediation system, especially because it is a legal entity under public law, which successfully manages the state-guaranteed legal aid, has administrative resources and territorial offices, which will allow for a wider territorial coverage of SGM. It should be noted again that a similar mechanism exists in the Netherlands, where mediation is part of the state-guaranteed legal aid, while in Romania the refund of the mediation fees is regulated in the Emergency Ordinance of the Government no.51 of April 21, 2008 on the public legal aid in civil matters and is the same mechanism as in legal aid.

<sup>41</sup> [http://www.justice.gov.md/public/files/transparenta\\_in\\_procesul\\_decizional/proiecte\\_pre\\_examinare/2015/4\\_Nota\\_Lege\\_mediere.pdf](http://www.justice.gov.md/public/files/transparenta_in_procesul_decizional/proiecte_pre_examinare/2015/4_Nota_Lege_mediere.pdf)



For this system to work the following interventions are required:

- To amend the Law on state-guaranteed legal aid no. 198-XVI of 26.07.2007 by including SGM;
- NLAC should approve the regulations enabling the implementation of SGM (e.g. Regulation on the payment rules and provision of state-guaranteed mediation; Regulation on the conditions of certification of mediators for SGM);
- To approve the application form templates for SGM;
- To approve the templates of reports to NLAC for the mediators providing SGM services;
- To ensure financing for SGM from the state budget;
- To include SGM in NLAC budget, including the administrative costs;
- To supplement NLAC's staff for SGM system management;
- To set the principles of cooperation with the MC.

This line of intervention where SGM is managed by NLAC has the following benefits:

### ***I. The disputes covered by SGM***

The state-guaranteed mediation will be used in the following disputes:

- Criminal cases where criminal investigation can be ceased following conciliation or withdrawal of the complaint by the victim and where criminal liability can be excluded under Article 109 of CC;
- Civil action in criminal proceedings;
- Other criminal and misdemeanor cases;
- Some of the civil matters.

### ***II. Mediators entitled to provide SGM services***

Mediators will be entitled to provide SGM services in accordance with the Regulation on the certification of mediators for state-guaranteed mediation, which will be approved by NLAC in consultation with the Mediation Council. The list of certified mediators will be prepared and updated by the Mediation Council in consultation with NLAC.

### ***III. Eligible applicants for state-guaranteed mediation***

SGM may be provided to the following categories:

- the perpetrator recognized as a suspect, accused, defendant, as well as the person recognized as a victim, who meets the eligibility criteria for SGM in criminal matters;
- the people with communication difficulties, such as those with speech, hearing, visual impairments or other speech, hearing, visual disorders and other physical or mental impairments;
- any other person meeting the criteria for SGM in civil matters, regardless of the stage when mediation is requested - during or out of civil proceedings;
- any person that has the status of offender in a misdemeanor case and meets the criteria for SGM;
- the representatives or lawyers of the above-mentioned subjects in their name and on their behalf.

### ***IV. Income of the parties***

The persons who cannot afford to pay for mediation services in criminal, misdemeanor and civil cases will have the opportunity to apply for SGM under the Law on state-guaranteed legal aid no. 198-XVI of 26.07.2007 (the income of the parties).

### ***V. Application for state-guaranteed mediation***

The SGM services will be provided on request based on the application form developed by NLAC. The refusal to provide SGM will be similar to the refusal of state-guaranteed legal aid.

### ***VI. State-guaranteed mediation stages***

*Initiation of mediation.* Mediation can be initiated by any of the parties or on the advice of the public authorities, courts or the criminal investigation body. During the court proceedings, the court will advise the parties to participate in an initial session during which they will receive information about the opportunity to resolve disputes through mediation. The parties will jointly choose a certified mediator from NLAC's list of mediators approved by the MC. Before concluding a mediation contract,

mediators must inform the parties about the mediation purpose, procedure, the rights and obligations of mediators and the parties, as well as about the consequences of mediation, the effects of the settlement agreement and the consequences of non-compliance with the provisions of the settlement agreement. The mediation contract will be in written form and will not contain clauses contrary to the law or public order and will meet the minimum requirements set by the MC.

*Mediation process.* The mediation process will be based on the cooperation of the parties and specific communication and negotiation methods and techniques used by mediators and will be governed by the Law on mediation and the Code of Ethics of mediators. The parties will be entitled to withdraw from mediation any time.

*Termination of mediation.* Mediation will terminate:

- upon the conclusion of a settlement agreement by the parties;
- when the mediator finds that the parties are unable to reach an agreement;
- upon the withdrawal of one or both parties from mediation;
- on expiry of the time limit set for the mediation process, if the parties have not requested its extension;
- upon the withdrawal of the mediator from mediation under Article 5 (1) of the Law on mediation;
- in case of the death (individuals) or liquidation (legal entities) of one of the parties.

The termination of mediation will be recorded in minutes, the template of which should be approved by the MC, signed by the mediator and provided to the parties and, if appropriate, to the court, the court of arbitration or to the criminal investigation body and NLAC.

### ***VII. Payment for mediation services***

To be paid for the mediation services mediators will submit the mediation report (according to the template approved by NLAC) and the mediation minutes to the coordinator of the territorial office. The application

form for payment can be similar to that used by lawyers for delivery of legal aid. The amounts and payment rules will be regulated in the Regulation on the payment rules and provision of SGM drafted by NLAC. To this end, the scheme put in place by Government Decision 303 can be used as reference and further developed and complemented.

### **VIII. Costs**

SGM will be financed from the state budget through NLAC's new budget line (administrative costs, mediation costs, number of additional administrative staff). For this system to become applicable, the following amendments should be made to the Law no. 198 of 26.07.2007 on the state-guaranteed legal aid:

#### **Article 2. Definitions**

To add the following definitions:

*state-guaranteed mediation* – professional mediation services provided free of charge from the funds intended for such purposes to the persons who cannot afford to pay and who meet the requirements stipulated in this law;

*mediator* – a third party acting under the Law on mediation that guides the mediation process towards the resolution of a dispute.

#### **Article 3. Types of state legal aid**

To add item c):

c) state guaranteed mediation

#### **Article 7. Forms of state legal aid**

To add item i):

i) mediation in criminal, misdemeanor and civil matters.

#### **Article 8. Bodies managing the state legal aid system**

To add item d):

d) Mediation Council

## **Chapter II. MANAGEMENT OF STATE LEGAL AID PROVISION**

To add Article 11<sup>1</sup>, stipulating the duties of the Mediation Council:

Article 11<sup>1</sup>. Mediation Council

(1) The Mediation Council in coordination with the National Legal Aid Council shall have the following responsibilities in the field of state-guaranteed mediation:

- a) to approve the criteria and the procedure for selection of the mediators wishing to provide state-guaranteed mediation services;
- b) to prepare the list of mediators authorized to provide state-guaranteed mediation;
- c) to set the quality evaluation criteria for the state-guaranteed mediation services provided by mediators;
- d) to evaluate the mediators who provide state-guaranteed mediation;
- e) to monitor the provision of state-guaranteed mediation;
- f) other responsibilities under this law and the Law on mediation.

**Article 24.** The grounds for refusal of qualified legal aid

To amend item a) as follows:

- a) the applicants for state-guaranteed mediation do not meet the requirements stipulated in Articles 36<sup>1</sup>, 36<sup>2</sup> and 36<sup>3</sup> of this law.

To add paragraph (1<sup>1</sup>):

(1<sup>1</sup>) Provision of qualified legal aid in misdemeanor, civil and administrative contentious cases shall be refused when:

- a) the application is related to the applicant's commercial activity;
- b) the amount of the action is smaller than ½ of the subsistence minimum calculated in accordance with the mechanism approved by the Government;
- c) the applicant has already received qualified legal aid in the same case;
- d) the application refers to the compensation of damage caused to honor, dignity and professional reputation;
- e) the application refers to the violation of the property right, except for the cases where it is related to removal of the danger of collapse, compliance with the rules for distance between buildings, boundary disputes.

To revise **paragraph (2)** as follows:

(2) The refusal to provide qualified legal aid, including state-guaranteed mediation, shall be grounded and can be challenged in the administrative litigation court within 15 working days from the notification of the decision.

To add **Chapter IV<sup>1</sup>. STATE-GUARANTEED MEDIATION**

**Article 36<sup>1</sup>.** State-guaranteed mediation in criminal matters

- 1) In criminal matters state-guaranteed mediation may be provided under the following conditions:

- a) The suspect, the accused, the defendant, and the person recognized as victim is a minor, regardless of his/her income;
  - b) The income of the suspect, the accused, the defendant, and the person recognized as a victim is lower than the amount stipulated in Article 21 of this law.
- 2) Other conditions for provision of state-guaranteed mediation may also be set by law.

**Article 36<sup>2</sup>.** State-guaranteed mediation in civil matters

- 1) State-guaranteed mediation may be provided under the following conditions:
- a) the income of one of the parties to the dispute is lower than the amount stipulated in Article 21 of this law;
  - b) other conditions for provision of state-guaranteed mediation can also be set by law.

**Article 36<sup>3</sup>.** State-guaranteed mediation in misdemeanor cases

- 1) State-guaranteed mediation may be provided under the following conditions:
- a) the offender's income is smaller than the amount stipulated in Article 21 of this law;
  - b) other conditions for provision of state-guaranteed mediation may also be set by law.

**Article 36<sup>4</sup>.** Provision of state-guaranteed mediation

- 1) State-guaranteed mediation shall be provided under this law following the submission of the application to the territorial office of National Legal Aid Council according to the approved template;
- 2) The manager of the National Legal Aid Council office shall check the application for compliance and issue a decision within 5 days from the submission of the application.

**Article 36<sup>5</sup>.** Mediators authorized to provide state-guaranteed mediation services

- 1) The Mediation Council shall prepare and regularly update the list of the mediators authorized to provide state-guaranteed mediation services;
- 2) The authorized mediators shall provide state-guaranteed mediation services either in individual offices or within mediation organizations under law;

- 4) The parties shall be entitled to choose a mediator from the list approved by the Mediation Council;
- 3) The National Legal Aid Council and the authorized mediator shall conclude a free of charge mediation contract in accordance with the template developed by the National Legal Aid Council;
- 4) The mediation process shall be governed by the Law on mediation and the Code of Ethics of mediators.

#### **Article 36<sup>6</sup>. Remuneration of mediators**

- 1) Mediators shall be paid for the provided state-guaranteed mediation services as follows:
  - a) a fixed fee for the services related to the initiation of mediation;
  - b) a fixed hourly fee for mediation, but not more than 6 hours;
  - c) a fixed fee for the services related to the termination of mediation.
- 2) The amounts and the payment rules for state-guaranteed mediation shall be approved by the National Legal Aid Council through a regulation.

#### **Option 2: Amend the relevant legislation by assigning the responsibility for state-guaranteed mediation management to the Mediation Council**

Assigning the responsibility for state-guaranteed mediation to the MC is underpinned by the Law on Mediation, which stipulates the duties of the MC, but does not regulate the mechanism for providing SGM. Many of the respondents think the MC is the most appropriate body to manage the SGM mechanism as it is a legal person of public law, a collegial body, established under law to implement mediation policies. The MC is a state authority with extensive powers in mediation, which fit with the SGM mechanism.

For the Mediation Council to manage the SGM the following interventions are required:

- To amend the Law on mediation;
- To adopt a Government decision on SGM;
- The MC should approve the regulations enabling the implementation of SGM (e.g. Regulation on the amount and provision of the state-guaranteed mediation; Regulation on the conditions of certification of mediators for state-guaranteed mediation);



- To approve the application form templates for SGM;
- To approve the report templates for the mediators providing SGM services;
- To adopt the Regulation on income calculation methodology for provision of SGM;
- To ensure allocations for SGM from the state budget through the MC;
- To assign the responsibility for SGM to the MC, providing for appropriate financing for additional administrative and management costs;
- To supplement the staff of the MC for SGM management;
- To develop the criteria of permanent cooperation with MOJ.

In case of choosing this line of intervention, where the responsibility for SGM is assigned to MC, the following issues should be considered:

### ***I. Disputes covered by the state-guaranteed mediation***

The state-guaranteed mediation will be used in the following disputes:

- Criminal cases where criminal investigation can be ceased through conciliation or withdrawal of complaint by the victim and the criminal liability can be excluded under Article 109 of CC;
- Civil action in criminal proceedings;
- Other criminal and misdemeanor cases;
- Civil disputes, whether pending or not.

SGM is possible in the types of cases mentioned above provided that the applicant is eligible for SGM.

### ***II. Eligible applicants for state-guaranteed mediation***

Beneficiaries of SGM can be:

- In criminal cases – state-guaranteed mediation services can be requested by the perpetrator who has the status of a suspect, accused, defendant, as well as the person recognized as a victim, who is eligible for state-guarantee mediation or his/her representatives or lawyers, who act in their name and on their behalf;
- In civil cases – any person who is eligible for state-guaranteed mediation, regardless whether it is in- or out-of-court mediation;
- In misdemeanor cases – any person that has the status of offender in misdemeanor proceedings provided that he/she meets the eligibility criteria for state-guaranteed mediation;



- The minors, regardless of their income;
- The persons with communication difficulties, because of speech, hearing, visual impairments or other essential speech, hearing, visual disorders and other physical and mental impairments.

### ***III. The income of the applicants for state-guaranteed mediation***

SGM is available only for the persons who lack sufficient financial resources to pay for such services (similarly to the state-guaranteed legal aid, where the income is calculated in accordance with the Regulation on the income calculation methodology for the provision of state-guaranteed legal aid (Government Decision 1016 of 01.09.2008).

### ***IV. Mediators authorized to provide state-guaranteed mediation***

Mediators will be authorized to provide SGM in accordance with the Regulation on the certification of mediators for state-guaranteed mediation to be approved by the MC. The list of authorized mediators will be prepared and updated by the Mediation Council.

### ***V. Application for state-guaranteed mediation***

The application for SGM will be submitted to the MC, including in electronic form. The application template will be developed by the MC. The grounds for refusal will be set forth in the Government Decision on SGM.

### ***VI. State-guaranteed mediation stages***

*Initiation of mediation.* Mediation may be initiated by any of the parties, as well as on the advice of the public authorities, courts or the criminal investigation body. During the court proceedings, the court will advise the parties to attend an initial session where they will get information about the opportunity to resolve a dispute through mediation. The parties can jointly choose a mediator authorized to provide state-guaranteed mediation from the list approved by the MC. The mediator, before signing the mediation contract, must inform the parties about the mediation purpose and procedure, the rights and obligations of the mediator and the parties, the consequences of mediation, the effects of the settlement agreement and the consequences of non-compliance with the latter. The mediation process starts on the date of signing the mediation contract, which will be in written form. The mediation contract cannot contain

clauses contrary to the law or public order and must meet the minimum requirements set forth by the MC.

*Mediation process.* The mediation process is based on the cooperation of the parties and specific communication and negotiation methods and techniques used by the mediator. The mediation process will be governed by the Law on mediation and the Code of Ethics of mediators. The parties may any time withdraw from mediation.

*Termination of mediation.* Mediation will terminate:

- upon conclusion of the settlement agreement by the parties;
- when the mediator finds that the parties are unable to reach an agreement;
- upon the withdrawal of one or both parties from mediation;
- on expiry of the time limit set for the mediation process, if the parties have not requested its extension;
- upon the withdrawal of the mediator from mediation under Article 5 (1) of the Law on mediation;
- in case of the death (for individuals) or the liquidation (for legal entities) of one of the parties.

The termination of mediation will be recorded in minutes, the template of which will be approved by the MC, signed by the mediator and provided to the parties and, if appropriate, to the court, the court of arbitration or the criminal investigation body and the MC.

### ***VII. Payment for mediation services***

To be paid for mediation services mediators will submit the mediation report, the template of which will be approved by the MC, and the mediation minutes to the MC. The application form for payment can be similar to that used by lawyers for provision of legal aid. The amounts and payment rules will be regulated in the Government Decision on SGM.

### ***VIII. Costs***

SGM will be financed from the state budget. A new budget line for SGM should be created in MC's budget. The mediators authorized to provide state-guaranteed mediation will be paid per case in conventional units equal to 50 MDL as follows:

- a) 10 conventional units for all the actions taken in relation to the initiation of mediation under Law on mediation;
- b) 5 conventional units per hour of the mediation session;
- c) 10 conventional units for all the actions taken in relation to the termination of mediation;
- d) If for mediation purposes the mediator needs to travel to another place, he/she can get a refund of the travel costs in accordance with the regulations on the secondment of employees of companies, institutions and organizations.

Assigning the responsibility for the management of the state-guaranteed mediation to the MC will involve additional administrative costs and human resources.

The implementation of the SGM mechanism managed by the MC will require amending the Law on mediation, the Government Decision on state-guaranteed mediation and approving the regulations enabling the operation of SGM by the MC (e.g. Regulation on the certification of mediators for provision of state-guaranteed mediation).

Therefore, the following amendments should be made in the **Law on mediation no.137 of 03.07.2015:**

To add the following definition in **Article 2. Definitions**

*state-guaranteed mediation* – professional mediation services provided free of charge from the funds intended for such purposes to the persons who lack sufficient funds to pay and/or who meet the requirements stipulated in this law;

**To add items e<sup>1</sup> and l<sup>1</sup> in Article 10. Duties of the MC**

e<sup>1</sup>) approves and updates the List of authorized mediators for SGM;

l<sup>1</sup>) approves the applications for state-guaranteed mediation.

To support the implementation of these provisions a **new Government Decision regulating the procedure for applying for state-guaranteed mediation** should be adopted. The decision will aim to enable the implementation of Article 10 of the Law on mediation no.137 of July 3, 2015 and will set forth the types of disputes eligible for SGM, the beneficiaries and the procedure for claiming payment for the provided mediation services from the state, more specifically:

1. SGM will be requested in written form;
2. The application will be submitted to the MC. If the case is referred to mediation, the criminal investigation body or, if appropriate, the court must inform the party about SGM;
3. The procedure for checking the eligibility of the application for SGM and making a decision on the provision of SGM, as well as for notifying the applicant about the refusal or admission of the application;
4. Income calculation procedure which will make reference to the Regulation on income calculation methodology for granting state-guaranteed legal aid approved through Government Decision no.1016 of September 1, 2008 (Official Journal of the Republic of Moldova, 2008, no. 167-168, art. 1018);
5. How SGM services will be paid. Mediators will be paid for the SGM services based on a written report they will prepare and submit to the MC, which will detail the services for which payment is claimed, the date, time and place of those services, as well as the amounts claimed for each of those services;
6. The decision on payment will be made by the MC;
7. The obligation of the mediators to keep the case file for a period of three years;
8. Other issues.

The income statement (the template will be developed by the MC) will be attached to the decision. The income statement will be supported by documents proving the person's vulnerable financial status, e.g. family membership certificate; certificate on monthly income for the last 6 months from the job; certificate from the National Social Insurance Company on the monthly social benefits, etc.

### 5.3. SWOT analysis

A SWOT analysis of the two options provided above, one for SGM management by the MC and one by NLAC, has been conducted in order to identify their strengths and weaknesses. The comparative analysis of each component is shown in the tables below:

Table 1: Strengths

Mediation Council	National Legal Aid Council
<ul style="list-style-type: none"> <li>• The Law on mediation contains provisions on state support for mediation and state-guaranteed mediation, and the MC is the authority that implements the policies in the field of mediation;</li> <li>• MC is active and ensures extensive representation of stakeholders;</li> <li>• The MC members and secretary are actively involved in the activities of MC;</li> <li>• MC is a legal person of public law, a status which allows it access to public funds;</li> <li>• There is a procedure for organizing the state exam and certification of mediators in place, which makes it easy to add an additional certification procedure for SGM.</li> </ul>	<ul style="list-style-type: none"> <li>• NLAC is a legal person of public law, a status which allows it access to public funds;</li> <li>• NLAC is operational and has experience in providing state-guaranteed legal aid;</li> <li>• Experience of a central body able to quickly respond to requests and make decisions;</li> <li>• NLAC has territorial offices across the country.</li> </ul>

Table 2: Weaknesses

Mediation Council	National Legal Aid Council
<ul style="list-style-type: none"> <li>• Limited human, financial and IT resources to manage SGM;</li> <li>• Technically undersized secretariat, which might be a challenge in ensuring efficient workflows;</li> <li>• Lack of financial resources for the professionalization of the certification exam;</li> <li>• Too much bureaucracy in accessing the funding committed in the state budget for the MC, which finally makes it impossible to implement the decisions of MC;</li> <li>• SGM will require additional administrative costs and costs for staffing the MC.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of human resources to manage SGM;</li> <li>• Overloading the NLAC's administrative team by assigning new responsibilities;</li> <li>• Professional mediators are not represented in NLAC.</li> </ul>

**Table 3: Threats**

Mediation Council	National Legal Aid Council
<ul style="list-style-type: none"> <li>• Lack of control over the terms of reference and competences of the candidates wishing to provide SGM services;</li> <li>• There will be no additional allocations from the state budget for SGM.</li> </ul>	<ul style="list-style-type: none"> <li>• Wrong perception and understanding of SGM within the state-guaranteed legal aid system;</li> <li>• There will be no additional allocations for SGM from the state budget;</li> <li>• Lack of control over the competences of the candidates wishing to provide SGM services.</li> </ul>

**Table 4: Opportunities**

Mediation Council	National Legal Aid Council
<ul style="list-style-type: none"> <li>• Increased capacity of the MC for policy implementation in the area of mediation;</li> <li>• Putting in place a new, functional SGM mechanism;</li> <li>• Amended legislation, requiring the parties to attend an initial session with a professional mediator before bringing the action to court;</li> <li>• Putting in place performance indicators for prosecutors and judges who recommend mediation and resolve disputes by achieving the conclusion of settlement agreements;</li> <li>• Increased capacity for monitoring the quality of the training services.</li> </ul>	<ul style="list-style-type: none"> <li>• Amending legislation and extending state-guaranteed legal aid framework by putting in place SGM.</li> </ul>

**Regardless of the final choice, there is no doubt that mediation and SGM has to be developed as a component of the justice system. Any intervention in this area should be in line with the purpose of the restorative justice, enable the use of mediation at any stage of the process, allow for effective access to the out-of-court methods of conflict resolution, in particular for the vulnerable groups, and implement the principles of mediation enshrined in the international standards.**

## Bibliography:

### Legislation

1. Constitution of the Republic of Moldova of 27.08.1994 // Official Journal no. 78 art. no. 140 of 29.03.2016;
2. Code of Civil Procedure of the Republic of Moldova, no. 225 of 30-05-2003 // Official Journal no. 285-294 of 03.08.2018;
3. Criminal Procedure Code of the Republic of Moldova, no. 122 of 14-03-2003 // Official Journal no. 248-251 of 05.11.2013;
4. Criminal Code of the Republic of Moldova, no. 985 of 18-04-2002 // Official Journal no. 72-74 of 14.04.2009;
5. 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, published in the Official Journal of the European Union no. L136/3 of 24.05.2008;
6. Decision of the Constitutional Court no. 8 of 26.04.2018 on the exception of unconstitutionality of certain provisions of CCP passed through the Law no. 225 of 30.05.2003 (judicial mediation, request no.3g/2018);
7. Government Decision on the approval of the conditions for state funding of mediation services in criminal matters no. 303 of 21.04.2009 // Official Journal no. 83-85 of 30.04.2009;
8. Law complementing Article 109 of the Criminal Code of the Republic of Moldova no. 985-XV of April 18, 2002, no. 130 din 09.06.2016// Official Journal no. 206-214 of 15.07.2016, [https://www.legis.md/cautare/getResults?doc\\_id=93783&lang=ro](https://www.legis.md/cautare/getResults?doc_id=93783&lang=ro) (accessed on 08.06.2020)
9. Law on the state-guaranteed legal aid no. 198- XVI of 26.07.2007 // Official Journal no. 157-160 of 05.10.2007;
10. Law on mediation no. 137 of 03.07.2015 // Official Journal no. 224-233 of 21.08.2015;
11. Law on mediation and organization of mediation practice no. 192 of May 16, 2006 // Official Journal of Romania no. 441 of May 22, 2006;
12. Law on mediation no. 202 of 2012, Czech Republic;



13. Law on probation and mediation service no. 257 of July 14, 2000, Czech Republic;
14. Law on mediation in civil and commercial matters no. 5/2012 of July 6, 2012, Spain;
15. Act on alternative dispute resolution in judicial matters, ZARSS // Official Journal of Slovenia no. 97/09 and no. 40/12 - ZUJF of November 19, 2009;
16. Recommendation R(86) 12 of the Committee of Ministers to Member States of the Council of Europe concerning measures to prevent and reduce the excessive workload, which encourages “a friendly settlement of disputes, either outside the judicial system, or before or during judicial proceedings”;
17. Recommendation no. (81) 7 of the Committee of Ministers on measures facilitating access to justice and the appendix to it, which provides for the measures needed to facilitate conciliation and mediation;
18. Recommendation R(93)1 of the Committee of Ministers on the effective access to the law and to justice for the very poor, which encourages the effective access to quasi-judicial methods of conflict resolution, such as mediation and conciliation, by extending the legal aid or any other form of assistance to such methods of conflict resolution;
19. Recommendation R(98) 1 of the Committee of Ministers to Member States on family mediation, which encourages the resolution of family disputes in a consensual manner and the recognition of the necessity to reduce conflict in the interest of all the family members; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ecb6e>, (accessed on 12.06.2020);
20. Recommendation R(99) 19 of the Committee of Ministers concerning mediation in penal matters adopted on September 15, 1999 at the 679th meeting of the Ministers’ Deputies, [http://cnm.rau.ro/Download/Mediere/Recomandarea%20no.%20R%20\(99\)%2019%20privind%20medierea%20in%20materie%20penala.pdf](http://cnm.rau.ro/Download/Mediere/Recomandarea%20no.%20R%20(99)%2019%20privind%20medierea%20in%20materie%20penala.pdf) (accessed on 08.06.2020);
21. Recommendation R (2001) 9 of 05.09.2001, which supports the alternatives for resolving disputes between administrative authorities and private parties: internal reviews, conciliation, mediation, negotiated settlement and arbitration; <https://rm.coe.int/16805e2b59>, (accessed on 10.06.2020);

22. Recommendation R(2002) 10 on mediation in civil matters, adopted by the Committee of Ministers on September 18, 2002 at the 808th meeting of the Ministers' Deputies; [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e1f76](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e1f76) (accessed on 08.06.2020).

### Specialized articles, studies

#### (additionally to the references cited in the methodology)

1. Constantin Lazari, *Mediation in the European Space*, scientific-practical journal no. 1/2013, Institute of International Relations of Moldova, Chisinau, 2013, p.90-103;
2. D'Urso Leonardo, Gavrilă Constantin-Adi, Chifa Felicia, *Development Strategy and Action Plan for the Mediation Council for y. 2021-2024*, developed under the project supported by USAID, EBRD and IDLO, Chisinau, 2020;
3. Dutu Adelina, *Aspects of Mediation Regulation in Romania and in Some Member States of the European Union*, Romanian Journal of Labor Law no.10, Bucharest, 2013;
4. Papuc Madalina-Diana, *Mediation – on the Border Line between a Nobel Goal and a Questionable Regulation*, Romanian Business Journal no. 10 of October 31, 2013;
5. Tatiana Ciaglic, *Mediation in the Netherlands. Good Practices*. <https://mediere.gov.md/ro/content/despre-mediere-olanda-exemple-de-bune-practici> (accessed on 07.06.2020);
6. Sustac Zeno, Ignat Claudiu, *Alternative Dispute Resolution Methods*, Bucharest, 2020, page 115;
7. Vasilica-Leontina Tudor, *Considerations about the legal regulation of mediation in Romania, the Republic of Moldova and some European countries*, in the journal „Legea și Viața” ( Law and Life), Romania, 2016, p. 54-59; <http://www.legeasiviata.in.ua/archive/2016/12-1/11.pdf> (accessed on 07.06.2020);
8. Verdes Viorica, *Study on national legislation regulating the amount and method of calculation of costs related to court proceedings and their application practices*, conducted in cooperation with the Ministry of Justice and the Court Administration Agency, Republic of Moldova,

2017, [http://www.justice.gov.md/public/files/2018/sistemul\\_judiciar\\_/23052018/studiu\\_final\\_R.pdf](http://www.justice.gov.md/public/files/2018/sistemul_judiciar_/23052018/studiu_final_R.pdf) (accessed on 11.06.2020)

9. Zubco Angela, *Practical aspects regarding the evolution of mediation in Moldova*, in “Perspectives and challenges of integration in the European Research and Education Area”, Vol. VI, Part 1. Cahul: USC, 2019, p. 24-29.

## Other documents

1. Statistical report on the disputes resolved through mediation in 2019, MC, Chisinau, 2020; [https://mediere.gov.md/sites/default/files/document/attachments/raport\\_de\\_date\\_statistice\\_privind\\_litigii\\_solutionate\\_pe\\_calea\\_medierii\\_pentru\\_anul\\_2019\\_0.pdf](https://mediere.gov.md/sites/default/files/document/attachments/raport_de_date_statistice_privind_litigii_solutionate_pe_calea_medierii_pentru_anul_2019_0.pdf) (accessed on 07.06.2020);
2. Report on the assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice, Dr. Idlir Peci, Mr Eric Svanidze, Council of Europe, 2018; <https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00> (accessed on 07.06.2020);
3. Report on the activities of prosecution in 2019, Chisinau, 2020; <http://www.procuratura.md/file/Raport%20public%20Procuratura%202019%20rectificat%2004.05.2020%20.pdf> (accessed on 07.06.2020);
4. Justice Sector Independence and Integrity Strategy for the period 2020-2030, Ministry of Justice of the Republic of Moldova, 2020; [http://www.justice.gov.md/public/files/directia\\_analiza\\_monitorizare\\_si\\_evaluare\\_a\\_politicilor/Proiect\\_Strategia\\_pentru\\_asigurarea\\_independentei\\_si\\_integritatii\\_sectorul\\_justitiei\\_2020-2023.pdf](http://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/Proiect_Strategia_pentru_asigurarea_independentei_si_integritatii_sectorul_justitiei_2020-2023.pdf) (accessed on 07.06.2020);
5. Informative Note to the Law on mediation, [http://www.justice.gov.md/public/files/transparenta\\_in\\_procesul\\_decizional/proiecte\\_spre\\_examinare/2015/4.\\_Nota\\_Lege\\_mediere.pdf](http://www.justice.gov.md/public/files/transparenta_in_procesul_decizional/proiecte_spre_examinare/2015/4._Nota_Lege_mediere.pdf).

## Online sources

1. Statistics on the disputes resolved through mediation between y. 2015 and y. 2019, MC, Chisinau; <https://mediere.gov.md/ro/documents-terms/date-statistice> (accessed on 11.06.2020);
2. Ilie Dorin, *Mediation compulsory again in Italy?*; <https://www.juridice.ro/267135/medierea-din-nou-obligatorie-in-italia.html> (accessed on 08.06.2020);

3. Cross-Border Family Mediation – Latvia; [https://e-justice.europa.eu/content\\_crossborder\\_family\\_mediation-372-lv-en.do?member=1](https://e-justice.europa.eu/content_crossborder_family_mediation-372-lv-en.do?member=1) (accessed on 07.06.2020);
4. Mediation in Member States – Austria; [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-at-en.do?init=true](https://e-justice.europa.eu/content_mediation_in_member_states-64-at-en.do?init=true) (accessed on 07.06.2020);
5. Mediation in Member States – Germany; [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-de-en.do?init=true&member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-de-en.do?init=true&member=1) (accessed on 07.06.2020);
6. Mediation in Member States – Hungary; [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-hu-en.do?init=true](https://e-justice.europa.eu/content_mediation_in_member_states-64-hu-en.do?init=true) (accessed on 07.06.2020).
7. Latvia Mediation becomes more popular: project “*Free Mediation in Family Disputes*” to be continued, Ministry of Justice of the Republic Latvia, 31.05.2018; <https://www.tm.gov.lv/en/news/mediation-becomes-more-popular-project-free-mediation-in-family-disputes-to-be-continued> (accessed on 07.06.2020);
8. Decreto-Legge 21 giugno 2013, n. 69 Disposizioni urgenti per il rilancio dell’economia. (13G00116) (*GU n.144 del 21-6-2013 - Suppl. Ordinario n. 50*) note: Entrata in vigore del provvedimento: 22/6/2013; <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-06-21;69> (accessed on 07.06.2020).

