

FAMILY MEDIATION	EUROPEAN COMMUNITY	ITALY	SPAIN			GERMANY
			Catalonia	Valencia	Galizia	
<b>LAWS OF REFERENCE</b>	Recommendation of the Committee of Ministers to Member States regarding Family Mediation 21.10.1998	Bill: 2.10.1999	Law no. 1 15.03.2001	Valencia: Bill, 2001	Galizia: Bill, October 1999	/
<b>DEFINITION</b>	"Method according to which a third party, the mediator, impartial and neutral, putting him(her)self above the conflict, helps the parties to negotiate and to reach a common agreement"	"Way of re-organising relationships among separated or separating parents in a structured context, autonomous in regard to the legal context, with the help of a neutral mediator with specific training who, solicited by the parties and with the guarantee of professional secrecy, allows them to develop a plan for practising shared parental responsibility in a way that is satisfactory both for them and for the children"	The law does not contain any definition of mediation	"Voluntary proceeding in which a qualified professional, impartial and without power to substitute for the decisions of the parties, helps family members in situations of conflict, with the aim of facilitating dialogue and searching for a common agreement"	Intervention of a third party already freely requested and accepted by the parties. The mediator will operate by offering collaboration and help to those who have or had a family relationship, to offer a negotiated solution to a marital or couple's problem	
<b>SUBJECT</b>	Mediator: the existence of a selection procedure should be assured; training and qualification of the mediator	Mediator: consulted within or outside the Tribunal (ASL or private) in a subsidised system	<ul style="list-style-type: none"> <li>- Family Mediation Centre of Catalonia (connected to the Department of Justice)</li> <li>- Professional Rolls</li> </ul> <b>TRAINING:</b> The mediator should practice as lawyer, psychologist, social worker, social educator, or teacher, included in the professional Rolls	<ul style="list-style-type: none"> <li>- Mediation centres: non-juridical entities connected with the Management of the family and adoptions</li> <li>- Roll of lawyers of Valencia</li> <li>- Official Roll of Psychologists</li> </ul> <b>TRAINING:</b> lawyer or psychologist with professional experience and specific training by their own professional association	<ul style="list-style-type: none"> <li>- Family Mediation Service of Galizia</li> </ul>	Private professionals: lawyers, psychologists or sociologists <ul style="list-style-type: none"> <li>▪ BAFM, Federal Association for Family Mediation, "certifies" those who take a 200-hour training course</li> <li>▪ BM, Mediators born from the peace movement, organises courses open to all</li> <li>• Federal lawyers associations propose short courses (DAV, BRAK). The courses can be organised by anyone, however.</li> </ul>
<b>OBJECT (area of intervention)</b>	The Mediation can be applied to all disputes among members of the same family, related either by blood or by marriage, and those who live or have lived in family relationships, as defined	The mediator operates in cases of separation and/or divorce between couples with minor children, between couples with children or with adult children, with <i>de facto</i> families and			All questions deriving from personal relationships or parent-child relationships that are susceptible to legal discussion	Mediation is intended as a method or technique for resolving all kinds of conflict (work, family, etc.)

	by the national legislation	natural children, or in disputes in the area of inter-family relationships				
<b>OBJECTIVES</b>	<ul style="list-style-type: none"> <li>- Improve communication among family members and reduce conflict among the disputing parties</li> <li>- Create friendly agreements <ul style="list-style-type: none"> <li>- Continuity of personal contacts between parents and children</li> <li>- Reduce social and economic costs of the separation and divorce for the parties and for the States</li> </ul> </li> <li>- Reduce time needed to resolve the conflict</li> </ul>		Means of support for the family and method of conflict resolution, to avoid judicial proceedings and bring an end to those already underway	Help to families in situations of conflict, avoiding legal procedures, putting an end to those underway, in such a way that the solution reached through Mediation can obtain approval of the legal authority	Function of help or assistance to negotiations between the parties, in order to obtain an agreement or rapprochement between the parties in conflict regarding agreements about separation, divorce, annulment, or dissolution of the union, to the benefit of the members of the nuclear family	To reach the self-sufficient regulation of psychosocial or legal problems, maintaining the autonomy of the clients. To find a regulation that is binding for the parties.
<b>SERVICES ACTIVATED</b>	<ul style="list-style-type: none"> <li>- The mediation service can be organised through either the public or the private sector</li> </ul>					<ul style="list-style-type: none"> <li>▪ Private professionals (approx. 90%)</li> <li>▪ Office of Assistance for Minors</li> <li>▪ Non-profit associations</li> </ul>
<b>CHARACTERISTICS</b>	<ul style="list-style-type: none"> <li>- The mediation should not be obligatory</li> </ul>	Mediation is resorted to when requested by the judge, with the consensus of the couple	Voluntary, Impartial, Private, Free			Voluntary, private, neutral; openness and willingness of the couples to resort to them
<b>RELATIONSHIP TO THE LEGAL PROCEEDINGS</b>	<ul style="list-style-type: none"> <li>- Autonomy of the mediation, which can take place before, during or after the legal proceeding</li> <li>- Possibility of interrupting the legal proceeding in order to carry out the mediation</li> <li>- Need to facilitate approval by the legal authority of agreements reached at the</li> </ul>	Mediation is resorted to upon suggestion of the judge, during the hearing for separation/divorce. The hearing is suspended for a maximum period of 3 months. The mediation can take place even outside of the hearing				Complete autonomy, no connection with the legal proceeding. The judge can suspend the trial while waiting for results from the mediation. The agreement can be transmitted to the notary to be ratified and to acquire legal value.

	request of the parties				
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	SERVICE OF FAMILY MEDIATION	ITALY	Catalonia	SPAIN Valencia	Galizia	GERMANY
1	ENTITY THAT MANAGES THE SERVICE	Community public service (example II Melograno - Sesto Fiorentino, Town of Lucca, Town of Viareggio, Agency No. 8 and Towns of the Valdarno area, Neutral Space of the CBM, Milan - ALFID Trento*)		Entity connected to the General Management of the Family and Adoptions	Mediation Service of Galizia	Office of Assistance for Minors
	DEFINITION, OBJECTIVES, CHARACTERISTICS OF THE SERVICE	Service for the prevention of child suffering due to a bad separation. To give back to parents the responsibility of decision-making regarding their children.				Service present in all towns in Germany.
	LEGAL REFERENCES	L. 285/97 - Support to the family in terms of education, support to the parents in their parental function, beginning not so much from their difficulties and deficits, as from their resources and competencies.		Bill 2000	Preliminary bill, October 1999	SG 8 §17, 18
	SUBJECTS INVOLVED	Families				Couples with children
	WHO BEARS THE COST OF THE SERVICE	Town (sometimes with a small contribution from the family)				No cost for families
2	ENTITY THAT MANAGES THE SERVICE		Family Mediation Centre of Catalonia, together with the Department of Justice			
	DEFINITION, OBJECTIVES, CHARACTERISTICS OF THE SERVICE					
	LEGAL REFERENCES		L.1/2001			
	SUBJECTS INVOLVED					
	WHO BEARS THE COST OF THE SERVICE					
3	ENTITY THAT MANAGES THE SERVICE	Associations in the voluntary and social sector (example Coop. Emmecci Torino - Electra Arezzo, GeA Association of Milan)	(ACDMA Barcelona has interrupted the activity with volunteers because of conflicts with the public administration)			Associations in the voluntary and social sector (church social services, non-profit organisations)

	<b>DEFINITION, OBJECTIVES, CHARACTERISTICS OF THE SERVICE</b>	Way of re-organising family relationships for the future or following separation or divorce				Mediation is much insisted upon, separation is not discussed. Training of the mediator is asked for. Sometimes these persons work together with the Office for Assistance to Minors
	<b>LEGAL REFERENCES</b>					
	<b>SUBJECTS INVOLVED</b>	Couples undergoing separation, separated or divorced with children				Couples with children
	<b>WHO BEARS THE COST OF THE SERVICE</b>	Family				Normally absent or small participation in the costs for families
4	<b>ENTITY THAT MANAGES THE SERVICE</b>	Institutions and private entities	Professional Rolls (example, ACDMA Barcelona)	Official Roll of psychologists		Private studio or psycho-social consultation
	<b>DEFINITION, OBJECTIVES, CHARACTERISTICS OF THE SERVICE</b>	Therapeutic aim, in collaboration with the lawyers for both sides, to deal with all aspects connected to the couple's separation	The service intends to support an assisted negotiation. (Besides Family Mediation, the association deals with penal mediation for adults, juvenile justice, community, scholastic)			Couples with problems, married or not married. In 90% of cases, the family mediation service is offered by private professionals.
	<b>LEGAL REFERENCES</b>		L.1/2001	Bill, 2000		
	<b>SUBJECTS INVOLVED</b>	Families facing separation				Couples with or without children
	<b>WHO BEARS THE COST OF THE SERVICE</b>	The Family				Entire cost for families, very high. A partial reimbursement from the mutual service can be requested.
5	<b>ENTITY THAT MANAGES THE SERVICE</b>	Institutes and private centres (example, Facciamo pace - Rome)	Professional Rolls (example, ACDMA Barcelona)	Roll of Lawyers of Valencia		Private studio or legal consultation
	<b>DEFINITION, OBJECTIVES, CHARACTERISTICS OF THE SERVICE</b>	Consultation and support for harmonious separation				Married or unmarried couples
	<b>LEGAL REFERENCES</b>		L.1/2001	Bill, 2000		In 90% of the cases, the family mediation is offered by private professionals
	<b>SUBJECTS INVOLVED</b>	Families				Couples with or without children
	<b>WHO BEARS THE COST OF THE SERVICE</b>	Families				Entire payment according to pre-established legal fee. Very expensive. Help from the State can be requested for the costs of the trial.

## **SIMILARITIES AND DIFFERENCES**

Family mediation has been of great international interest for some years now, as demonstrated both by the practical reality in many countries and by the legislative activity that has aimed at disciplining and defining the field in terms of operations, professionalism, institutional headquarters, etc.

The European situation is rather amorphous and is definitely behind in terms of specifying legal frameworks in each State: of Italy, Germany and Spain, only the latter has adopted, in Catalonia, a legal regulation.

In the absence of a legal framework, the practices of the three States can be reduced to two fundamental models:

- A "conciliatory model," which aims at reducing the volume of disputes handled by the civil courts, when these can be the object of negotiated, extra-legal agreements;
- An "autonomous model," which centres on the need to more effectively protect minors in cases of separation or divorce, when these show a high degree of conflict that can be resolved through an intervention that is more psychological and relational in orientation, with the judge contemporaneously suspending the legal proceeding.

The first of the two models seems to have inspired Germany, where mediation is intended as a method or technique applicable in various environments – family, school, work – with the aim of favouring encounters between the parties in conflict to give them back their responsibility in the "confrontation" that opposes them, offering them an opportunity for accompanied management of their conflict. This practice of regulating conflict gives the third party, the mediator, a position of neutrality, a regulatory role, calling upon them to "provoke" an agreement between the parties. These mediation spaces are managed by private professionals, such as lawyers, psychologists, who have undergone a specific training program recognised by a Roll of Mediators.

The bills presented in Italy and Spain seem on the other hand to adhere to the second model, which brings Mediation back to its classical setting. The basic idea is that as far as possible conflicts should be taken out of the legal sphere and returned to a cultural of solidarity and co-operation rather than competition. The desire to motivate the self-determined settlement of conflicts is not viewed only as a means of reducing the civil dispute, but also and above all as an instrument for enlarging the area of help offered to the rights of citizens.

## **TREND OF DEVELOPMENT**

- To work with the families (and not on the families), recognising in the relationship with parents their central role as protagonist in their changes. The contents to be transmitted are not excluded a priori as in certain psychoanalytic models, but are proposed on the basis of the needs and objectives of individuals, from whom the project always originates, and not on whom it is proposed. Remaining aware that each parent is different and each child is different, the objectives of the intervention programme therefore should be flexible and differentiated. The ways of working with families should be varied and appropriate, the approach individualised, the objectives of interventions regarding children compatible with those of the parents, the workers showing respect towards the parents and involving them in the decision-making processes that concern them, with the aim however of favouring the interest of the minor.
- The approach should identify parents' strong points and build on these, maintaining awareness of couples' specific needs, avoiding the risk of treating them as patients.

## **OPEN ISSUES**

- What training and competencies are necessary for the workers?
- What real integration between subjects and territory?
- The position of family mediation services in terms of social services: public (as specific service or within already-existing services) or private?
- Relationship between mediation and other forms of intervention (e.g. consultation, therapy, psychosocial support, etc.)?
- Co-ordination among interventions by various professionals (lawyers, mediators, psychotherapists, judges, office consultants, etc.)?

## **SUGGESTIONS**

- To structure an informative network that guarantees the possibility of a well-informed evaluation of various possibilities for conflict resolution, both in terms of legal structures and other structures, activating ways of informing couples of the family mediation route, without violating the principle of voluntary access.
- The professionals should have qualified training: if on the one hand legal knowledge does not replace the technical quality required in the procedures of mediation, it is true that because of the need for defining the legal content of agreements that can conclude mediation proceedings, legal training is a necessary complement to knowledge of mediation techniques.

- Establishment of a roll of mediators, or of a national registry of associations or entities through which mediation procedures can be carried out.
- The impartiality and professional qualification of the mediator who manages the procedure should also be assured in the mediation proceedings.
- Establishment of an organisation to control and plan on a national level, constituting a kind of permanent observatory of a reality that is naturally in evolution and therefore subject to legislative modifications and corrections in the supportive administrative activity.
- Place attention on a true evaluation of the interventions so that the repercussions of the interventions that are carried out will not be negative. It is necessary to understand that the intervention can risk making the situation worse, instead of better (both in terms of inter-family relationships and in terms of the risk of creating dependency on the workers). What are the theoretical principles of these interventions; is it always a good idea to intervene; how can effects, whether positive or negative, be measured, etc.?