

Mediation in Family Disputes

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Mediation as a Path to Justice

- Access to justice and legal protection is a basic human right (Article 6, European Convention on Human Rights). Alternative dispute resolution is an integral part of legislative policy across Europe — leading to faster, cheaper and more efficient outcomes.
- Mediation is out-of-court dispute resolution: negotiation between the parties in the presence of a mediator — a neutral, impartial third person with no power to decide, who helps the parties reach their own acceptable settlement.
- Internationally, mediation is expressly provided for in the “Brussels II bis” Regulation — a key EU instrument in family law. Given the specific nature of marital and parental disputes, many countries consider mediation more appropriate than standard court proceedings.

Why Mediation Suits Family Disputes

Children first

Promotes continuous involvement of both parents in the care of the child and reduces parental conflict — during marriage and after divorce.

Party autonomy

Spouses and parents shape a solution that best fits their needs — and especially the needs of their children — with a professional mediator protecting the rights of all involved.

No winners, no losers

In court, one side is always defeated. Practice shows court-resolved family disputes permanently damage relationships; conflict continues over parental rights.

Flexible on property

More flexible than court on financial issues after divorce: division of joint property, maintenance, and preserving the home as the children's continuous residence.

Comparative Law — No Single European Model

Austria — No mandatory mediation, but the court may pause divorce proceedings for six months if reconciliation seems possible. The government covers mediation costs to encourage its use.

Belgium — Family mediation is an option, not an obligation (2001 law). Spouses may start mediation before court proceedings in disputes over marital obligations or divorce.

Croatia — Mediation runs during the divorce procedure, with the consent of spouses with minor children — at the Center for Social Work, a marriage counseling center, or with a mediator; if they cannot agree, the court decides.

France — Mediation may be out-of-court or court-connected. Judges are responsible for ensuring reconciliation (Art. 21, Law on Civil Procedure); under the 2004 law the court may propose mediation and appoint the mediator, including for parental responsibility.

Comparative Law — Germany, Montenegro, Norway

Germany

Court proceedings are often preceded by attempted mediation. Under Art. 279 of the Law on Civil Procedure, the court must encourage a peaceful settlement throughout the procedure; mediation requires the agreement of both parties.

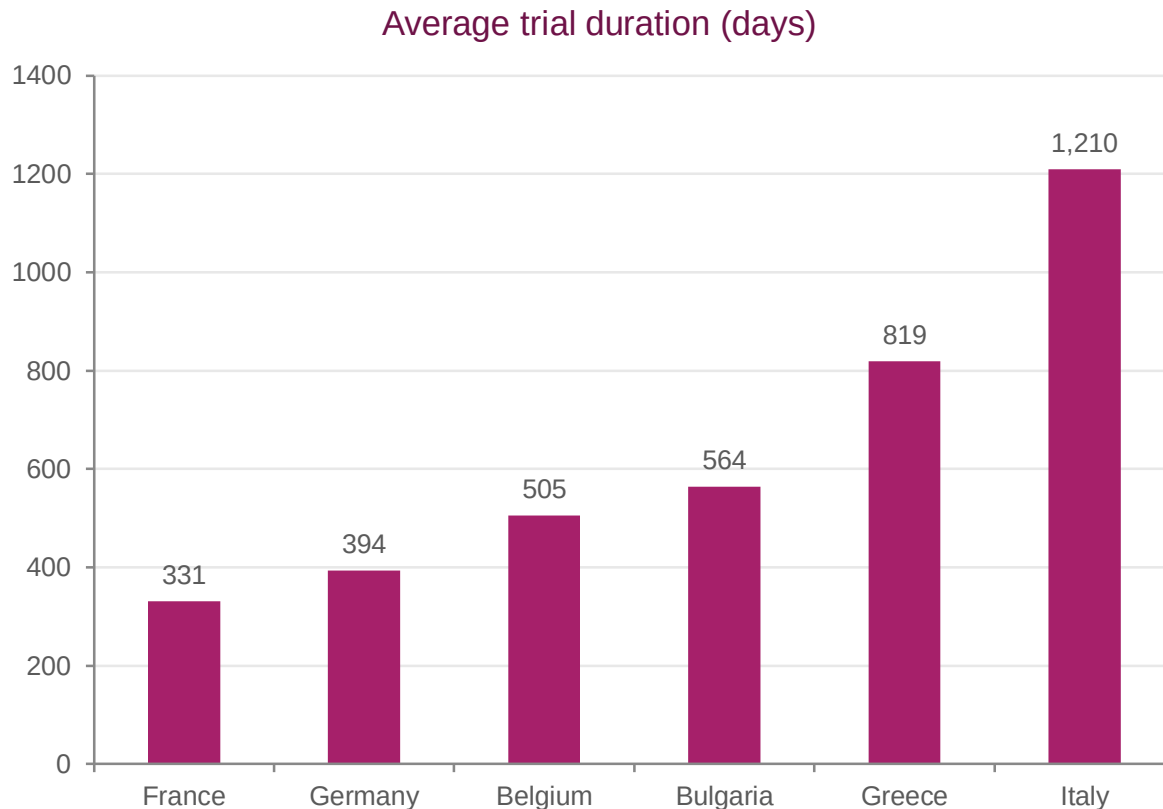
Montenegro

The 2005 Mediation Law provides a special procedure for family cases — marital disputes, disputes between parents and children, and maintenance. The court sets a hearing and asks the parties to select a mediator; failing agreement, the court appoints one.

Norway

Under the Marriage Act of 1991, mediation is mandatory for married partners with children under 16 — one of the few such countries in Europe. Parties need not reach an agreement, only attempt mediation before court, on parental responsibility, contact with the child, and the child's permanent residence — guided by the best interest of the child.

Court vs. Mediation — Duration and Cost (2020 survey)



Mediation: 45 days in Belgium, 47 in Italy

Court costs reach €15,370 (Italy) and €16,000 (Belgium); mediation costs €7,000 and €4,300 respectively.

European average: €10,449 per court process vs. €2,497 per mediation — a successful mediation saves ~ €7,500 per dispute.

Only 24% of mediations need to succeed to break even — yet 50–70% end with an agreement.

Mediation eases access to justice, relieves overloaded courts, and cuts the cost of resolving disputes.

Mediation in Macedonia — Unfulfilled Potential

58

total mediations conducted by
surveyed mediators

1/3

of mediators never established contact
with a single party

- The Law on Mediation has not even remotely fulfilled its main goal — faster, cheaper out-of-court settlement of disputes.

Why so weak?

- No tradition of mediation in our social environment
- Low awareness among experts and the general public of its advantages
- Citizens' tendency to “seek justice in court”
- Insufficient coordination among all actors — Chamber of Mediators, Ministry of Justice, courts, mediators
- Yet mediation remains ideally suited to marital and family disputes: it overcomes conflict, builds cooperation and consent, and produces solutions the parties accept — crucial for protecting children's rights in disputes over parental rights.

Source: “The perception and attitudes of mediators about mediation in the Republic of Macedonia”

Proposal — Mediation Built into the Divorce Procedure

Consensual divorce, no minor children

Mandatory attempt at mediation by a specially qualified mediator. If reconciliation fails, the marriage is dissolved and the partners must settle all property issues — division of joint property and any right to alimony.

Consensual divorce, with minor children

The judge entrusts reconciliation to a mediator or the Center for Social Work. If it fails, the judge dissolves the marriage — after asking the Center whether the parenting plan reached by the partners serves the children's interests.

Divorce by lawsuit, no common children

The judge, at his discretion, entrusts reconciliation to a mediator; if it fails, the court dissolves the marriage.

Divorce by lawsuit, with minor children

Reconciliation goes to a mediator or the Center for Social Work. If it fails, the court dissolves the marriage and accepts the parenting plan prepared with the Center's support; absent agreement, the court adopts the plan based on the Center's prior opinion.

The mediator — not the judge — takes on reconciliation. Courts are relieved, and partners work through their problems with an impartial third party outside the courtroom. Overloaded judges rarely reconcile spouses; a well-trained mediator has a far better chance.

Recommendation — Amend the Family Law (Arts. 76, 77, 79)

Beyond divorce, mediation matters most in conflicts over the exercise of parental rights: which parent the child lives with, and personal contact with the other parent. A voluntary agreement secures both parents' constructive, long-term engagement — the state's decision leaves one parent feeling “defeated”, poisoning relations with the other parent and the child.

Marriage mediation and stronger counseling centers should build parents' awareness that their conflict deeply harms their children — and that responsible parents put the child in the foreground.

Art. 76

Disagreement between parents in exercising parental rights → the Center for Social Work refers the parents to mediation.

Art. 77

Parents living separately who cannot agree with whom the child will live → the Center refers them to mediation.

Art. 79

No agreement on maintaining personal relations and direct contact with the child → the Center refers the parents to mediation.

In each case: if mediation fails within 15 days, the decision is made by the Center for Social Work.

The ultimate goal of psychological or legal intervention in family mediation is to redefine family relationships in a way that protects the best interests of the child.

Thank you for your attention!