

THE MINISTRY OF JUSTICE

DEVELOPMENT OF THE
ALTERNATIVE DISPUTE
RESOLUTION SYSTEM

STRATEGY OF THE MINISTRY OF JUSTICE

GENERAL SURVEY

The development of alternative dispute resolution schemes is of great importance to the Republic of Croatia, because of its influence on the national judiciary, on economic and social development and on international judicial co-operation.

In the context of this strategy we shall use the abbreviation ADR, because this is the term generally accepted in literature and international communications. ADR includes all extrajudicial dispute resolutions regardless of the specificity of their methods.

Alternative dispute resolution schemes directly contribute to the exercise of the right to a fair trial within a reasonable time, as guaranteed by Article 27 of the Constitution and Article 6 of the Convention on Human Rights and Fundamental Freedoms. Encouraging, where appropriate, settlement of disputes outside the judicial system leads to the reduction of the workload in the courts (*Recommendation of the Council of Europe concerning measures to prevent and reduce the excessive workload in the courts* R (86) 12). By facilitating and encouraging, where appropriate, mediation and other alternative methods of dispute resolution, judicial proceedings are simplified and speeded up. (*Recommendation of the Council of Europe on measures facilitating access to justice* R (81) 7)

Better access to justice is one of the key objectives of the European Union policy to establish an area of freedom, security and justice, where natural and legal persons should not be prevented in or discouraged from exercising their rights by the discrepancy or complexity of legal and administrative systems in the Member States. The concept of "access to justice" should, in this context, include promoting access to adequate dispute resolution processes for individuals and business, and not just access to the judicial system (*Proposal for a Directive of the European Union on certain aspects of mediation in civil and commercial matters* COM (2004) 718). The development of alternative dispute resolution schemes makes it possible for citizens and legal persons to choose dispute resolution proceedings other than judicial proceedings, which due to their speed, simplicity and costs may actually be more appropriate than judicial proceedings themselves.

Alternative dispute resolution schemes promote the creation of a tolerant environment, the maintenance of good relations between the parties in dispute (commercial disputes), the reduction of economic and social costs (family disputes), the resolution of interest-based disputes that could not be resolved in judicial proceedings (collective labour disputes).

Providing appropriate mechanisms for out-of-court settlement of disputes with international elements especially regarding family, commercial and consumer disputes, contributes to international cooperation in accordance with the European Union measures to establish "an area of freedom, security and justice".

Organizing, maintaining and developing means of alternative dispute resolution constitutes a right and an obligation for the competent government authorities and agencies that provide alternative dispute resolution services to citizens, legal persons and professional associations whose members may be engaged in interest and legal disputes. The state shall ensure the appropriate legal framework for undisturbed development of alternative dispute resolution and oversee the protection of citizen's rights.

ASSESSMENT OF THE CURRENT SITUATION

With the adoption of the Arbitration Act (2001) and the Mediation Act (2003), an appropriate legal framework was created and the political and legal will expressed to develop these schemes. The amendments to the Civil Procedure Act prescribe that in the case of a lawsuit against the Republic of Croatia, a motion for mediation should first be filed with the Public Prosecutor's Office of the Republic of Croatia.

Notwithstanding the established legal and institutional framework for alternative dispute resolution, which amongst other things has defined certain principles for implementing alternative dispute resolution proceedings (hereinafter: "ADR"), its development to date has not resulted in the desired number of proceedings. The courts do not avail themselves of the statutory possibilities of referring the parties to mediation proceedings. Motions for mediation in the cases in which the Republic of Croatia appears as the respondent are most often not followed by mediation proceedings, because there are no mandatory institutional arrangements for their implementation, and no funds from the state budget have been foreseen for settlements. The existing mediation organisations have not developed a network of regional offices, so the number of mediation proceedings is modest. The best results are recorded in relation to mediation in collective labour disputes carried out by the Office for Social Partnership. The only arbitration institution – the Permanent Arbitration Court of the Croatian Chamber of Commerce, has conducted a number of arbitrations, but this number still does not correspond to the real possibilities. Regarding criminal cases, mediation is only practiced in those that involve minors/young adults. Mediation in family disputes is limited to some attempts at mandatory divorce mediation, but it does not correspond to the real needs of the society and it does not produce the desired effect. Thanks to projects by international organisations, about 100 persons, some of them judges, have completed various training courses for mediators. Educational programmes have been conducted as one-time events and occasional activities. There is no unified register of mediators, nor is the quality of their work controlled. Associations of mediators do not have sufficient capacity to act as umbrella organisations of mediators. Efficient mechanisms for extrajudicial dispute resolutions in consumer cases are virtually non-existent. In some consumer dispute cases proceedings are conducted at the Courts of Honour at the Croatian Chamber of Economy and at the Croatian Chamber of Trades and Crafts.

So far, there has been no systematic Government policy on alternative dispute resolution schemes, nor have any funds been invested in the ADR system. Legislative activities have only been focused on establishing a framework for these proceedings, without any elaboration of incentives. In 2004 the Ministry of Justice defined the development of alternative dispute resolution schemes as one of the priorities of the reform of the judiciary. Good co-operation was established with mediation organisations and associations of mediators. To mark the European Day of Civil Justice 2004, an "Open Door Day" was organised at courts to inform citizens about mediation proceedings. From late 2003 to early 2004 two projects were conducted to promote mediation and out-of-court settlement – at municipal courts in Pula and Varaždin – which gave positive results. In 2005 the Ministry of Justice launched the "Strengthening Mediation as a Way of Alternative Dispute Resolution" project, and undertook activities for the preparation of the "Mediation at Courts" project.

As part of the Judicial Reform Strategy, the Ministry of Justice will elaborate the development of alternative dispute resolution schemes.

INTERNATIONAL COOPERATION IN PROMOTING ALTERNATIVE DISPUTE RESOLUTIONS

COUNCIL OF EUROPE

The Council of Europe is developing international cooperation to increase the efficiency of national judiciaries and to increase the accessibility of the judicial system, in which the alternative dispute resolution schemes hold an important place.

The recommendation of the Committee of Ministers to the member States on Family Mediation (R (98)1), recognizing the growing number of family disputes, the detrimental consequences of conflict for families and the high social and economic cost to the state, the need to ensure the protection of the best interests and welfare of the child, recommends the governments of member states to introduce or promote family mediation or strengthen already existing family mediation. The state should provide methods of selection and training for mediators, and at the same time oversee the standards acquired.

The recommendation of the Committee of Ministers to the member States on mediation in civil matters (R (2002) 10) recommends the governments of member states to facilitate mediation in civil matters whenever appropriate, and to take all measures which they consider necessary with a view to the progressive implementation of the principles of this Recommendation. The recommendation should be applied to all civil matters that include civil rights and obligations, including commercial, consumer and labour law matters. States must provide standards for the election, duties, training and qualifications of the mediators, and inform the citizens about mediation, especially about the efficiency and the cost of mediation.

The recommendation of the Committee of Ministers to the member States concerning mediation in penal matters (R (99) 19), considering the need to enhance the active personal participation of the victim and the offender in criminal proceedings, the right of the victim to obtain an apology and reparation, the importance of encouraging the offender's sense of responsibility, recommends that governments consider the principles of this recommendation when developing mediation in penal matters. Under the condition that the victim and the defendant submit themselves voluntarily to the mediation process, mediation should be allowed in every stage of criminal proceedings. The mediation process should meet certain standards and ethical rules. Selection, training and education of mediators should be carefully monitored.

The recommendation of the Committee of Ministers to the member States on alternatives to litigation between administrative authorities and private parties (R (2001) 9), recommends that the government endorse the use of alternative means for resolving administrative disputes (contracts, compensations, administrative acts). The use of alternative means could be made compulsory as a prerequisite to the commencement of legal proceedings.

EUROPEAN UNION

Promoting ADR is one of most important goals of the EU. This is confirmed by the promulgation of the **Green Paper on alternative dispute resolution in civil and commercial law** in which the importance of extrajudicial settlements for the resolution of consumer disputes and consumers' access to justice is stressed.

The Directive on cross-border credit transfers (97/5/EC) prescribes the obligation for member states to ensure the existence of adequate and efficient complaint and redress procedures in disputes between financial institutions and costumers.

The Draft Directive on certain aspects of mediation in civil and commercial matters (COM (2004)718) states the need to facilitate access to dispute resolution by promoting the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings. States should also ensure effective control mechanisms concerning the provision of mediation services, as well as training of mediators.

The Action Plan on consumer access to justice and the settlement of consumer disputes in the single market confirmed the importance of extra-judicial procedures in protection of consumer rights.

The EU Directive on injunctions for the protection of consumer interests (98/27/EC) established the obligation for states to allow independent public bodies and consumer organizations to take measures against certain business practices.

The Commission Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (98/257/EC) states the following principles: the principle of independence, the principle of effectiveness, the principle of transparency, the adversarial principle, the principle of representation and the legality principle.

The Commission Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (2001/310/EC) states following principles: impartiality, transparency, effectiveness, fairness.

UNITED NATIONS

The United Nations Commission on International Trade Law adopted two documents regarding mediation: **UNCITRAL Conciliation Rules** in 1980 and **Model Law on International Commercial Conciliation** in 2002.

CROATIAN LEGISLATIVE FRAMEWORK

The Conciliation Act

By adopting the Conciliation Act in October 2003, Croatia became one of very few countries that have legally codified conciliation procedures. The application of that Act is restricted to disputes in property law, civil, commercial and labour matters. This Act neither covers non-property disputes (family and matrimonial disputes, personal disputes), nor social or political disputes which are not subject to regular court proceedings.

The Conciliation Act contains provisions that could be regarded as universal principles for all kinds of mediation proceedings: dispositivity and party autonomy, voluntariness and consensuality,

transparency, confidentiality, the adversial principle, and encouraging mediation as an extrajudicial resolution method.

Taking into consideration the opinion of professional circles, and in order to enable the wider application of ADRs, this Act, although just recently adopted, should be amended as to differentiate it clearly from the Civil Procedure Act, which regulates judicial dispute resolution procedures based on very different principles. The new, amended Conciliation Act would be oriented towards the achievement of all the benefits of conciliation procedures.

The Labour Act

The Labour Act prescribes compulsory and mandatory conciliation in collective labour disputes. Mediation is compulsory in disputes regarding the conclusion, amendment or renewal of collective agreements or in any other dispute that could lead to a strike, any other form of industrial action or the non-payment of wages, unless the parties have agreed to another way of settling these disputes. In certain cases the Labour Act prescribes mediation proceedings even for individual labour disputes.

The Civil Obligations Act

The Civil Obligations Act provides for the possibility for contracting parties to stipulate that in the case of dissent regarding the sense and the scope of contractual clauses, a third neutral person would interpret the contract. In this case, if not otherwise prescribed by the contract, parties cannot file a civil action against each other until they obtain the interpretation of the contract (Article 321 of the Civil Obligations Act). According to Article 19 of the current Civil Obligations Act, contracting parties should try to settle all dissents or disagreements by mediation or in any other peaceful, amicable way. The new Civil Obligations Act (NN 35/2005 - Official Gazette of the Republic of Croatia) does not contain any such provision.

The Civil Procedure Act

The Civil Procedure Act envisages the possibility of reaching a court settlement through first instance proceedings. According to Article 321 of this Act a person who intends to file a suit may try to reach a settlement before a lower court of the first instance under whose jurisdiction the adversary party resides. The Article 186 of the Civil Procedure Act prescribes that a person, who intends to file a suit or a civil action against the Republic of Croatia, must first address a request for peaceful dispute resolution to the Public Prosecutor's Office.

The Family Act

The Family Act prescribes compulsory mediation in divorce cases where spouses have minor children, minor adopted children, or children of whom they are to obtain custody after they reach the age of majority. The fact that divorce proceedings are initiated by filing a complaint or by a mutually consented request does not interfere with compulsory mediation. During the first hearing the court will order the spouses to choose a mediator. The mediator should try to help the spouses to settle any marital differences and to deal with the legal consequences of the divorce. If the spouses do not reach consent regarding the mediator, the court shall appoint one. The Minister of Justice shall regulate the running of court registers and documentation needed for matrimonial and divorce proceedings. The Minister of Labour and Social Welfare will deliver a list of certificated mediators for family disputes to the Minister of Justice.

Conciliation apart from mediation proceedings is not regulated either by the Family Act or by the Conciliation Act.

The legislator did not take into consideration the legal solutions of other countries which allow conciliation in matrimonial cases where a court settlement is not possible, although the reaching of an agreement on various important questions (such as the division of matrimonial property, visitation and custody rights, parental care) would speed up and simplify divorce proceedings.

The Criminal Procedure Act

According to the principle of advisability, the Criminal Procedure Act envisages the possibility for the public prosecutor to drop all charges against a defendant for minor offences, under the condition that there is a consensus between the defendant and the plaintiff, and after the defendant fulfills one of the obligations requested by law.

The Juvenile Courts Act- in order to promote out-of-court solutions for juvenile delinquency, this Act prescribes the principle of advisability; the public prosecutor for youth can, under certain conditions prescribed by law, decide not to initiate prosecution if he considers the prosecution inadvisable, given the nature and gravity of the crime, the circumstances under which it was committed, the former life of the juvenile offender and his personal characteristics.

The Trades and Crafts Act prescribes the founding and the activities of a Court of Honour at the Croatian Chamber of Trades and Crafts. The Court of Honour adjudicates breaches of the statute of the Croatian Chamber on Trades and Crafts, violations of good trade and craft practices, and the failure of members to perform their duties. The Croatian Chamber of Trades and Crafts is financed from the member's contributions, property revenues, fees and from other resources. According to the Rules of Procedure of the Court of Honour there is no fee for any proceedings before this Court. If proceedings are initiated before the Court of Honour, and if a violation of rules is established, the Court can pronounce a variety of sanctions ranging from written admonition to removal of the trade or craft license. Before the institution of proceedings there must be an attempt to resolve the dispute peacefully by reaching a settlement between the parties.

The Act on the Croatian Chamber of Commerce prescribes that a Court of Honour shall operate at the Croatian Chamber of Commerce which would decide on violations of good business practices and trade and services turnover, on the failure of members to perform their duties and on violations of the statute.

The Court of Honour can pronounce measures against the members of the Chamber for social discipline violations.

The Arbitration Act regulates domestic arbitration issues, recognition and enforcement of arbitration decisions and judgments, court jurisdiction and procedures. Contractual parties can stipulate domestic arbitration in disputes concerning rights of which they freely dispose.

EXISTING CONCILIATION ORGANIZATIONS

The Mediation Centre of the Croatian Chamber of Commerce was established in June 2002.

Since the main objective of the Croatian Chamber of Commerce is to promote entrepreneurs' interests, the Chamber is the best institution for solving disputes between economic subjects. Over the last two years, the Centre has carried out 20 conciliation proceedings, and all of them, except one, were concluded successfully. Recently, a regional office of the Centre was established in the city of Varaždin.

The Permanent Arbitration Court at the Croatian Chamber of Commerce (CCC) is the leading arbitration agency in the Republic of Croatia. Although the law does not restrict the establishment of

other arbitration agencies, it is one of the very few arbitration organizations existing in the Croatian judiciary.

The Croatian Academic and Research Network (CARNET) operates an arbitration agency for the settlement of disputes regarding Internet domain names «hr». There are also arbitral bodies with the Croatian Olympic Committee, and the Croatian Football Federation.

Mediation Centre at the Croatian Employer's Association (CEA) was established in the year 2004. There are not been any proceedings conducted to date. . The Chamber represents entrepreneurs and employers and is based on the principle of voluntary membership.

Mediation Centre at the Croatian Chamber of Trades and Crafts (CCTC) was also established in 2004. To date, the Centre has conducted two conciliation proceedings, one with international elements. The Statute of the Mediation Centre prescribes that the Centre can only conduct conciliation proceedings if at least one of the parties is a tradesman. The Chamber represents tradesmen and membership is obligatory.

The Office for Social Partnership – the mediation process in collective labour disputes is normatively regulated within the scope of the Economic and Social Council. Organizational, logistic and personnel issues are arranged within the framework of the Office for Social Partnership of the Republic of Croatia. 29 mediators from the national mediators' list have received special training. Conciliation proceedings in collective labour disputes started in June 2003. By the end of 2004, 164 proceedings had been conducted. Pursuant to the Government Conclusions for 2004 regarding the creation of conditions for the resolution of individual labour disputes, models for the peaceful settlement of individual labour disputes are already being organized within the Office for Social Partnership. The first pilot projects are planned for 2006.

Social and welfare Centres conduct mediation proceeding in divorce cases.

Professional services for out-of-court settlement provide mediation services in cases of criminal offences committed by juvenile offenders. Since 2002, more than 92 conciliation proceedings have been conducted in Zagreb, Rijeka, Osijek and Split. About 20 mediators have received special training.

STAGES OF DEVELOPMENT

The development of the alternative dispute resolution system will include several phases, which will be followed through by the cooperation of private and public sector.

First phase: 2006-2008

Considering the insufficient practice of ADR, the first phase will be based on incentives from the public sector and support from commercial institutions for ADR. The main objectives are:

- To create a system of cooperation between ADR subjects
- To create an ADR structure
- To form a registry of mediators
- To create a system of permanent training in conciliation
- To organize systematic public information campaigns on the possibilities and advantages of ADR
- To enhance the normative framework to encourage ADR and harmonize regulations with EU law and the CE recommendations.

Second phase: 2008-2010 will include the evaluation of results from the first phase, but also strengthening and broadening of the existing structure.

Third phase: 2010-2012 will include the transition of the structure from the public to the private sector by the establishment of the National Mediation Institute. The Institute will take on all the activities of the Ministry of Justice regarding the development of ADR.

	INSTITUTIONS	CASES	STATUS UNTIL 2005.*	I PHASE 2006-2008	II PHASE 2008-2010	III PHASE 2010-2012
Number of institutions and their regional centres that conduct mediation	courts		0	9	138	138
	CEA, CTCC, CCC		3	12	30	45
	Prof. centres for out of court settlement in criminal cases		3	10	21	21
	ESC	Labour dispute	1	10	15	21
	Centres for out-of-court settlement in consumer disputes		2	10	15	21
Number of mediators	courts		10	60	100	100
	CEA, CTCC, CCC		60	80	90	100
	Prof. centres for out of court settlement in criminal cases		20	50	80	100
	ESC	Labour dispute	30	60	90	100
	Centres for out-of-court settlement in consumer disputes		0	30	50	60
Number of conciliation proceedings	courts		0	100	400	600
	CEA, CTCC, CCC		20	80	160	240
	Prof. centres for out of court settlement in criminal cases		150	250	400	500
	ESC	Collective labour disputes	170	220	300	350
		Individual labour dispute	0	100	250	350
	Centres for out-of-court settlement in consumer disputes		0	50	150	400

* The evaluation of the situation in the year 2005 is made based on available data. Since conciliation statistics have not been kept until now, the data shown in this table may differ from the real situation.

THOSE RESPONSIBLE FOR THE PROJECT

Since the development of an ADR system is a matter of public interest, the implementation of ADR is to be ensured by the Republic of Croatia.

The Ministry of Justice will establish a Committee for Alternative Dispute Resolution which will monitor the development of ADR as well as the realization of existing programs, and propose measures to promote ADR development.

The Ministry of Justice will provide administrative support to the Committee, create a Registry of mediators, organize educational programs within the Justice Academy, provide IT support for the management of mediation proceedings and the monitoring of results, organize information media campaigns in order to inform the public about mediation proceedings, and adopt a code of ethics for mediators.

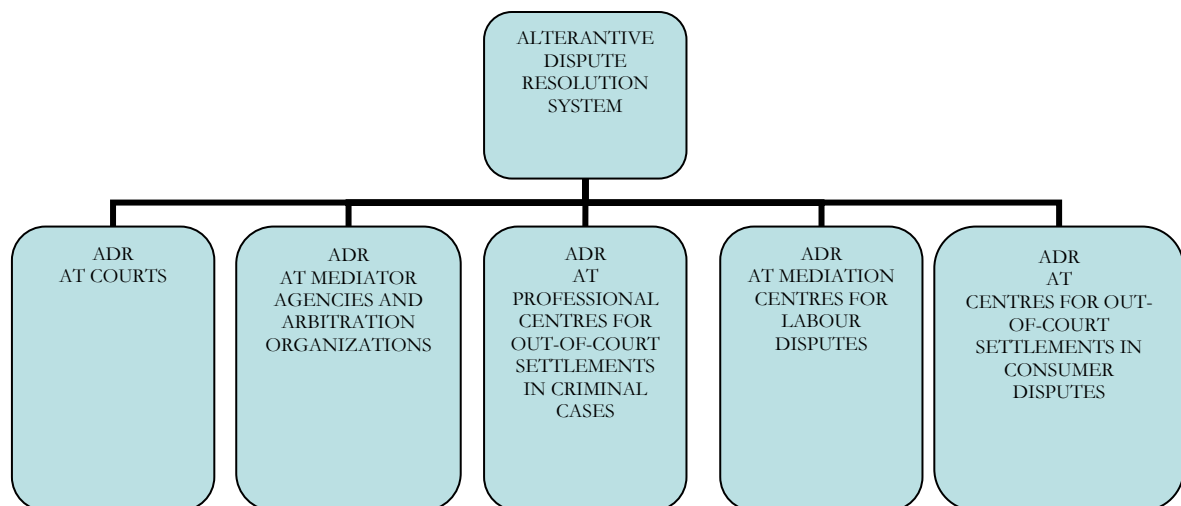
An active role in the development of ADR shall be played by the courts, the Public Prosecutor's Office, the Croatian Bar Association, mediation agencies, arbitration agencies, the Croatian Chamber of Commerce, the Croatian Employer's Association, the Croatian Chamber of Trades and Crafts, law schools, the Ministry of Economy, Labour and Entrepreneurship, and the Ministry of Health and Social Care.

An annual report on the development of ADR will be presented to the Government of the Republic of Croatia. Adequate resources for developing ADR projects will be provided by the state budget. The budget proposal for the development of ADR will be submitted to the Croatian Parliament by the Government, based on a proposal from the Ministry of Justice.

STRUCTURE

The structure of alternative dispute resolution consists of:

1. ADR at courts
2. ADR at mediator agencies and arbitration organizations
3. ADR at professional centres for out-of-court settlements in criminal cases
4. ADR at mediation centres for labour disputes
5. ADR at centres for out-of-court settlements in consumer disputes



1. ADR at Courts

In the first phase of the development of ADR within the courts, the emphasis will be on the encouragement of conciliation. Based on the mediation system elaborated, other programs for providing ADR services – especially arbitration - will be developed.

The basic characteristics of court mediation proceedings:

1. Mediation proceedings are carried out in cases where court proceedings have already started
2. Mediation proceedings are free of charge. If the parties consent, the courts can refer the parties to mediation at mediation centres operating on a commercial basis (see ADR at mediation agencies and arbitration organizations)
3. The mediation is carried out by judges with a mediator's certificate
4. Mediation proceedings take place on court premises
5. A case settled by mediation is included in the judge's work quota.
6. Courts must have a Mediation Office or Mediation Commissioner to perform administrative services, inform the public, oversee the standards and quality of mediation proceedings
7. Courts shall provide for the presence of a judge or mediator who would negotiate a court settlement even out of court working hours.

Within the 2006-2008 time frame, the Ministry of Justice will launch a pilot project *Mediation at Courts* at at least 9 courts in the Republic of Croatia. Based on the pilot courts' experience, in the second phase (2008-2010) the mediation service system shall be extended to all municipal, commercial and county courts in the Republic of Croatia.

In order to motivate parties to use mediation proceedings instead of litigation, mediation shall be completely free of charge. Parties will have only to pay representation costs and fees. It is of great importance that lawyer's, administrative, and court fees and all other costs are regulated in a way that promotes mediation proceedings.

Court mediation proceeding can be initiated only if the parties have already filed an action or a complaint. The basic intention of these projects is to launch the conciliation or mediation process while the parties are waiting for their first hearing. In this way the parties can resolve their disputes even before the first hearing, without delaying litigation and with reduced costs. If the mediation process is not concluded successfully, the parties can continue with regular litigation. Mediation can be proposed at every stage of the litigation process.

Judges do not receive extra remuneration for conducting mediation proceedings, but successfully finalized mediation are to be included in the judge's work results in the same way as litigation proceedings. The valorization of the concrete participation of judges in mediation proceedings will be determined in detail in the annual work schedule. In annual statistic reports cases resolved by mediation shall be denoted in the same way as any other resolved litigation or criminal case. In this way judges will be motivated to participate actively in mediation proceedings and to encourage the parties to use conciliation.

Conciliation at courts shall be conducted by mediators from the court's list of mediators. The majority of them are judges. When the court budget provides funding for the remuneration of mediators, or if mediation is free of charge, even lawyers or other professionals can perform duties of mediators provided that they are adequately trained and certificated. Lay persons who possess special

or expert knowledge important for the resolution of a specific case can take part in mediation proceedings as co-mediators.

Mediation and conciliation proceedings are to be conducted on court premises.

Administrative work in connection with the mediation process shall be performed by the Mediation Commissioner or Mediation Office. The commissioner's duty is to inform litigants of alternative means of dispute resolution. Each judge shall determine whether a particular case referred to him is suitable for mediation or not. After deciding that the case is appropriate for mediation, the commissioner informs the parties of the advantages of mediation in writing. If the parties give their written consent, the commissioner shall assign the case to a mediator according the mediators' schedules. Exceptionally, if the parties agree on the choice of a mediator, the conciliation shall be conducted by that mediator. The judge who proposed mediation cannot act as a mediator in the same case. If mediation is concluded successfully, the parties shall reach a court settlement. For this purpose the courts have to ensure the presence of a judge throughout the all day, even out of court working hours. The courts at which mediation proceedings are conducted must conduct an evaluation of the quality and quantity of mediation proceedings. This evaluation analyses shall be submitted to the Ministry of Justice.

Within the court-based conciliation frame, special programs for civil, family, commercial and compensation cases are to be developed.

Family Dispute Program

The new Family Act of 2003 (Official Gazette of the Republic of Croatia, no 116/03) broadened the jurisdiction of courts over family matters which were previously in the competence of administrative bodies: parental care, exercise of children's rights, custody questions, visitation, grandparent's rights of visitation, parental responsibility and care in cases where the parents are deceased, or are no longer capable of taking care of their children

Pursuant to the new Family Act, the Ministry of Justice has established a Registry of mediators for divorce cases.

Court based mediation should ease the exercise of extended competence of the judiciary over family disputes. A family dispute often inhibits the exercise of parental rights and obligations and affects children in a disturbing fashion.

Judicial practice in other countries has shown that family mediation is a more appropriate and a more suitable way to resolve family disputes than judicial proceedings. Pursuant to the EU Recommendation on Family Mediation Systems special attention should be given to the development of a mediation system at family courts, especially to problems that emerge from separation and divorce (decisions about custody; which spouse shall have the custody rights over a child, where the child shall live, rights to see the child, division of matrimonial property...)

2. ADR through mediation agencies and arbitration organizations

Within the time frame 2006-2008, the Ministry of Justice will establish permanent and systematic cooperation between the courts and mediation and arbitration agencies. Based on the mediation system elaborated, other programs for providing ADR services – especially arbitration - shall be developed.

In order to develop a network of mediation centres, the Croatian Chamber of Commerce, the Croatian Chamber of Trades and Crafts and the Croatian Employer's Association will support the creation of regional mediation centres in all economically important cities in Croatia. During this process due attention will be paid to regional representation and to the courts' readiness to establish firm connections with mediation organizations.

The basic characteristics of mediation through mediation agencies:

- A) Disputes in which court proceedings have not been initiated:

1. Mediation agencies function on a commercial basis- they decide autonomously on mediation costs and the selection of mediators.
2. Mediation agencies must meet the criteria and standards established by the Ministry of Justice regarding the selection, training and accountability of mediators.

Mediation organizations autonomously provide services on a commercial basis, and are free to decide on the mediation costs as well as on lists of mediators.

Since the State has the obligation to monitor the extent to which mediation agencies respect the established principles and standards in the mediation process, it is necessary to establish mechanisms to control the selection, training and accountability of mediators.

For the mediation agencies providing mediation services in commercial, civil, labour and family cases, the Ministry of Justice, in collaboration with the Croatian Association of Mediators, will create a registry of mediators, promote training and control the training and education of mediators, inform the public about mediation services and their costs .The Ministry of Justice will provide adequate training for mediators.

- B) Disputes in which court proceedings have been initiated
1. Courts can use the external mediation services of mediation agencies
 2. Mediation Commissioners intercede between the courts and mediation agencies.
 3. Mediation agencies determine the costs of mediation but are obliged to provide a few hours of pro bono mediation.

In cases where court proceedings have already been initiated, and with the parties' consent, the court may instruct the parties to solve the dispute at a mediation centre. Courts with jurisdiction in the territory where the mediation agency is based will appoint commissioners or mediation offices to intercede between the courts and the mediators.

Depending on the type of dispute, mediation agencies shall ensure that mediators from the list of mediators provide a few hours of pro bono services in cases in which the court has engaged them as external mediators. Each centre must organize a way of evaluating mediation proceedings and inform the Association of Mediators thereof.

3. ADR at conciliation centres for labour disputes

One of the main priorities in developing a system of alternative dispute resolution is the development of mediation and conciliation in individual labour disputes. In order to conduct mediation in individual labour disputes it is necessary to create a network of Offices for Social Partnership, which would provide mediation services. The Ministry of Justice, the Ministry of the Economy, Labour and Entrepreneurship and the Office for Social Partnership will establish the first Mediation centres in 2006. The Regulations for conciliation in individual labour disputes are to be approved by the end of 2005.

If the litigants in individual labour disputes agree, the Commissioner for mediation can instruct them to address the Office for Social Partnership Centers. The Ministry of Justice, in collaboration with Croatian Mediators Associations, will oversee the selection and training of mediators.

4. ADR at professional centres for out-of-court settlements in criminal cases

The mediation system in cases of criminal offences committed by juvenile offenders- minors or young adults, which begun to develop several years ago through pilot projects, will be fully expanded throughout the Republic of Croatia by means of a network of specialized centres for out-of-court settlements. The previous experience in mediation shall be institutionalized through the establishment of regulations pursuant to the Conciliation Act and taking into consideration all particularities. This system shall be upgraded gradually and in its final phase it should be applied to out-of-court settlements in all criminal cases. The beginning of this project is foreseen for 2006, and it shall be conducted by the Ministry of Justice and the Ministry of Economy, Labour and Entrepreneurship.

The Ministry of Justice shall establish permanent collaboration with the «Association for out-of-court settlements»- the umbrella organization for out-of-court settlements in the Republic of Croatia

5. ADR at Centres for out-of-court settlements in consumer disputes

Pursuant to the EU recommendations, the State shall provide for an adequate system for out-of-court settlement of consumer disputes. According to the National program for consumer protection, the creation of a Centre for Consumer protection is planned for 2006 in cooperation with the Ministry of Justice and the Ministry of Economy, Labour and Entrepreneurship. The Centre shall inform consumers about all kinds of out-of-court mechanisms for the resolution of consumer disputes.

The extrajudicial system of dispute resolution measures should be developed gradually by forming regional mediation agencies, and by legally binding financial institutions (especially ones that are in permanent and direct contact with consumers) to organize alternative means of dispute resolution. In order to promote extrajudicial dispute resolution, and to increase the quality of mediation, the Ministry of Justice will provide training for the personnel of mediation institutions.

EDUCATION

The Ministry of Justice shall provide for permanent education and training programs for mediators through the Judicial Academy. Education and training will be organized for judges and public prosecutors, as well as for the personnel of institutions important for the development of ADR.

Special attention shall be paid to legal solutions for the conduct of mediation proceedings. The Judicial Academy will publish special educational materials to make the successful and efficient training of mediators possible.

Mediators who undergo education and training shall receive a special certificate. The Ministry will also organize special training for tutors. Training for mediators in juvenile criminal cases is to be conducted according to a special programme.

The Ministry of Justice will establish close collaboration with the law schools (Faculties of Law) in order to introduce new ADR courses into educational curriculum.

At the Zagreb Law Faculty two optional (elective) courses on ADR already exist; these courses should soon be taught at other Croatian Law Schools.

INFORMING THE PUBLIC

In order to inform public about alternative means of dispute resolution, the Ministry of Justice will undertake a series of measures. The Ministry will:

- create a website dedicated to ADR,
- publish special publications about ADR and make them available at courts, arbitration, and conciliation organizations and institutions

- launch media campaigns, and in collaboration with conciliation associations, publish a special monthly newsletter about ADR.

INCENTIVES

In order to promote the further development of ADR, the following activities should be undertaken:

1. Lawyer's costs and fees, administrative and court fees should be arranged in a way that motivates the parties to start conciliation or mediation proceedings. When the conciliation is concluded successfully, court fees could be returned to the parties.
2. Allow the possibility of disputes successfully resolved through mediation to be included in the judges' results in the same way as litigation cases.
3. When deciding on procedural costs, judges should take into account the litigants' readiness to engage themselves in the mediation procedure.
4. Legally bind financial institutions, especially insurance agencies, to provide alternative means of dispute resolution for disputes deriving from their business activities.
5. Provide adequate resources and greater competence to the Public Prosecutor's Office in court settlements, and formulate an institutional mediation procedure
6. Organize professional discussions on the possibility of introducing settlement conferences and settlement weeks at courts

FINANCING

For the development of alternative means of dispute resolutions, as well as for other activities envisaged in the Strategy for the Reform of the Justice System in Croatia, the Ministry of Justice will provide additional funding from the state budget. The ADR Commission will, pursuant to the Strategy and the annual program approved by the Croatian Parliament, allocate resources for particular activities in relation to the development of ADR.