

# FBE MEDIATION COMMISSION

## Report on Mediation in Europe



In 2018, from the Mediation Commission, we carried out a report that consisted of a comparison of different laws and mediation regulations that exist within the different Members of the FBE.

In 2020, the ultimate objectives were to produce a comprehensive report that provided a holistic view of the mediation in Europe.

With these aims in mind, we prepared a questionnaire, structured in three sections, with the intention of collecting concrete information in order to achieve a comprehensive report that provides a general view of mediation in Europe, the main challenges that arise around it, and possible actions of improvement.

The **first section** dealt with the status of the issue and for that reason we asked about the legislation on mediation in every country, the principals issues that guide mediation for the correct exercise of it such as confidentiality, voluntary, empowerment of the parties, the basic formation of the mediator including the degree of training and specialization, technical preparation and need to carry out continuous training and, finally, the importance of the Bar Associations around the figure of mediation.

In the **second section**, we sought to address the implementation degree of mediation, asking for the advantages of mediation as a dispute resolution mechanism that provides practical and cost-effective solutions to certain parties' conflicts, for example major speed and empowerment of the parties and less temporary and emotional cost, among others. Furthermore, we would like to study the prevalence of the solutions obtained from the agreement of the parties and the effective implementation of the system examining the areas

where mediation has the most implementation and if there are any areas of law that is particularly excluded from the exercise of mediation.

In the **third and final section**, we wanted to gather the main application problems and improvement proposals analyzing the culture of mediation in each country and studying measures that could effectively foster confidence, such as awareness campaigns, information to public authorities, budget endowments and other actions that could intensify the use of mediation quantitatively and qualitatively in order to create a true system of out-of-court resolution of conflicts.

We have analyzed all the contributions received from the following countries: Austria, Belgium, Check Republic, France, Germany, Italy, Netherlands, Poland, Portugal, Spain, Serbia and Switzerland.

It is noteworthy that most States have reasonably legislation on mediation, in some cases with recent updates and reforms. Most of them have rules on mediation in civil procedural codes and some have specific laws of a more sectoral nature. In some States, mediation is also present in specific regulations on criminal, labour and contentious-administrative proceedings.

There is unanimity on the principles applicable to mediation: voluntariness, confidentiality, neutrality and impartiality of the mediator and equality of the parties.

The training of mediators is an area in which there are some differences. In some States, this matter is handled by private institutions that offer mediation services, while in other States, binding regulations of a transversal nature have been approved on the training requirements to be able to act as mediator. In some States there are lists of accredited or registered mediators which are provided by mediation institutions, Courts or even by the Ministry of Justice.

The presence of Mediation Centres (ADRs) in Bar Associations differs among States. Some Bar Associations have public and private mediation centres, training centres for future mediation practitioners or ADR sections for its members, while others do not have any specific section nor ADR centres for mediation.

There is unanimous agreement that mediation offers clear advantages over court litigation: greater confidentiality, shorter duration, lower costs, empowerment of the parties, adaptability to the specific case and flexibility. In addition,

mediation is regarded as an ADR method which contributes to relieving the courts of a large number of cases, resulting in an efficient solution for the parties and the court system.

Beyond family law, mediation is generally present in civil proceedings in almost all States and also in specific areas of the legal system, although the scope is not uniform (in some States it extends to labour law and even criminal law, while in others it seems to be essentially reserved for private law). Some States provide specific mediation procedures for criminal matters and preserve certain disputes to Court's jurisdiction.

All analysed legal systems provide for the possibility of homologating the mediation agreement before the courts or by means of its execution in a public document before a public notary. The result is that it becomes an enforceable title, with an enforceability equivalent to a court settlement. This feature strengthens mediation as an alternative dispute resolution system.

The scope of free or no-cost mediation services is uneven and diverse across de jurisdiction of the analysed member States. Only some of them provide access to mediation for litigants without recourses in specific matters like family law or child protection.

In order to achieve greater success and more frequent use of this institution, it is necessary to deepen the process of dissemination among the various justice professionals (magistrates and lawyers, in particular) and to increase university training and post-graduate programmes. Some States include this dissemination process among the priorities on the agenda of their Ministries of Justice.

We would like to thank the Bars who sent us the legislation on mediation for their collaboration in this issue. With all the information that was compiled, analyzed and summarized, we have proceeded with this rewarding research on the status of mediation in Europe.

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