

The Reform of Family Mediation in Slovenia

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Abstract: Slovenian experience with ADR, including mediation, is relatively recent, with the first court-affiliated mediation program introduced in 2001 at the District Court in Ljubljana. The formal adoption of various legal instruments, most notably the Act on Mediation in Civil and Commercial Matters in 2008 and the Act on Alternative Dispute Resolution in Judicial Matters in 2010 represented a significant step forward in facilitating a wider access to mediation. However, it was only in 2019 that the new Family Code introduced further reforms of family mediation within the scope of a comprehensive reform of Slovenian family law. Among other notable developments, it newly defined family mediation, provided legal grounds for mediation conducted before and after court proceedings and responsible authorities, determined the rules on appointing mediators, as well as special rules for mediation conducted in family matters, and authorised the ministry responsible for family affairs with several supervisory and organisational tasks. The article analyses the new legal framework for family mediation, comparing it with court-affiliated procedures, and examines its success as demonstrated by the available statistical data.

Keywords: Mediation in family matters. The reform of family law. Court-affiliated mediation. Mediation at social work centres. Child's best interest in mediation procedures.

Summary: **1** Introduction – **2** Methodology – **3** Conducting family mediations – **4** Specifics of mediation in family matters concerning children – **5** Slovenian experience with family mediation – **6** Conclusions – References

1 Introduction

The Republic of Slovenia does not have a long history of alternative dispute resolution, and until relatively recently, there were no legal instruments in the

Slovenian legal system that would govern family mediation or any other method of alternative dispute resolution. However, this does not mean there were no initiatives to introduce mediation and other alternative dispute resolution processes, even without an explicit basis in legislation. Court-affiliated mediation has been conducted since 2001, when an experimental mediation project began at the District Court in Ljubljana, which later expanded to other district courts. Since 2002, the District Court in Ljubljana also conducted mediation in family matters, which was limited to cases of non-consensual divorce and related issues. The project was very successful,¹ and the parties welcomed the new manner of resolving disputes.²

It was only in 2008³ that the Act on Mediation in Civil and Commercial Matters (*Zakon o mediaciji v civilnih in gospodarskih zadevah*, ZMCGZ)⁴ was adopted, aiming to facilitate access to alternative dispute resolution and promote peaceful dispute resolution by encouraging the use of mediation and ensuring a balanced relationship between mediation and court proceedings.⁵ The ZMCGZ regulates mediation in disputes arising from civil, commercial, labour, family, and other property-related matters in connection with claims that the parties can freely dispose of and settle unless otherwise specified by a special law. The provisions of this law are also applied, as appropriate, to mediation in other disputes insofar as they align with the nature of the legal relationship from which the dispute arises and if they are not excluded by a special law. The ZMCGZ applies regardless of whether the basis for mediation is an agreement between the parties reached before or after the dispute arises, a law, a referral, or a proposal by the court, arbitration, or a competent state authority. It essentially establishes the fundamental rules for mediation procedures, leaving the rest to self-regulatory mechanisms.⁶

Court-affiliated mediation received an additional boost in 2010 when the Act on Alternative Dispute Resolution in Judicial Matters (*Zakon o alternativnem reševanju sodnih sporov*, ZARSS)⁷ came into effect. The basic premise of the

¹ The District Court in Ljubljana even received a special award within the Crystal Scales of Justice Prize competition in 2005.

² For more, see JELEN KOSI, Valerija. Osupljivo dobri rezultati. *Pravna praksa*, No. 3, pp. 19-26, 2003; and KONČINA PETERNEL, Mateja. Družinska mediacija (de lege lata in) de lege ferenda. *Podjetje in delo*, No. 6-7, pp. 1303-1312, 2007.

³ The Act on Arbitration was adopted in the same year.

⁴ Official Gazette of the Republic of Slovenia, No. 97/09 and 40/12 – ZUJF. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO5648> (accessed on 29 September 2024).

⁵ Article 1 of the ZMCGZ. The ZMCGZ was modelled after the UNCITRAL Model Law on International Commercial Conciliation of 2002. It also transposed into Slovenian law the 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.

⁶ Article 2 of the ZMCGZ.

⁷ Official Gazette of the Republic of Slovenia, No. 97/09 in 40/12 – ZUJF. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO5648> (accessed on 29 September 2024).

ZARSS follows the approach that litigation should only take place as a last resort if everything else fails. It introduced the so-called multi-door courthouse as an institutionalised approach to alternative dispute resolution, which is promoted, offered and managed by the courts. Its goal was to provide more amicable, cost-effective, and quicker solutions to the parties' problems and disputes in court proceedings, giving them more freedom and responsibility for such resolutions while also increasing the efficiency of the courts by relieving them of cases that do not necessarily require judicial interference.⁸ The ZARSS thus imposed an obligation on district, regional, labour, and higher courts, as well as the Higher Labor and Social Court, to mandatorily conduct the mediation in disputes arising from commercial, labour, family, and other civil matters in connection with claims that the parties can freely dispose of and settle.⁹ The courts had to adopt a program for implementing alternative dispute resolution, with mediation as a mandatory method, and maintain lists of mediators who conduct mediation at each court.¹⁰ Today, court-affiliated mediation is conducted in all courts, either in the form of the court's own ADR service that organizes the implementation of the program or as a collaboration with other courts. Mediation in Slovenia is also conducted by non-governmental organizations and private individuals completely independent of court proceedings (out-of-court mediation), which are cooperating and connecting through associations such as the Slovenian Association of Mediators (founded in 2006)¹¹ and the Association of Mediation Organizations of Slovenia (MEDIOS, founded in 2008).¹²

Until recently, family mediation was conducted solely within the frameworks of the above-mentioned options, in the same manner as mediation in other types of disputes. However, in 2019, Slovenian family law underwent a significant reform with the adoption of the new Family Code (*Družinski zakonik*),¹³ which redefined or updated many family-law concepts. As will be discussed further, the Family Code also laid down a new definition of family mediation, established the procedure for mediation conducted before and after court proceedings, set the conditions and method for appointing mediators, authorised the ministry responsible for family affairs to manage lists, statistics, and supervise the implementation of mediation,

⁸ ZALAR, Aleš. Zakon o alternativnem reševanju sodnih sporov (ZARSS) s komentarjem. Ljubljana: GV Založba, 2010, p. 17-22; and ZALAR, Aleš, *Revolucija v civilnem sodstvu. Pravna praksa*, No. 29-30, p. 3, 2009.

⁹ Articles 2 and 4 of the ZARSS.

¹⁰ Article 7 of the ZARSS.

¹¹ <https://www.slo-med.si/> (accessed on 29 September 2024).

¹² <https://www.medios.si/> (accessed on 29 September 2024).

¹³ Official Gazette of the Republic of Slovenia, No. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZO0MTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23 and 34/24 – odl. US. Available at: <https://pisrs.si/prehledPredpisa?id=ZAKO7556> (accessed on 29 September 2024).

and outlined certain specifics of mediation conducted in family matters. The new legal basis for family mediation only complements, rather than replaces, mediation procedures conducted during court proceedings (within court-affiliated programs), which continue to be governed by the previously existing legislation. The present article analyses the new regulation of family mediation under the Family Code, places it within the context of existing court-affiliated mediation procedures, and, based on available statistics on conducted mediations, assesses the significance of the reform for parties' opportunities to resolve family disputes outside of court.

2 Methodology

The article utilises mainly qualitative research methodology, with elements of a quantitative study, focusing primarily on the analysis of legislative developments and practical experiences with family mediation in the Republic of Slovenia. The paper comprises of two parts. Sections 3 and 4 provide a comprehensive doctrinal analysis of Slovenian legal instruments regulating family mediation, including the emphasis on new developments brought by the reform of Slovenian family law in 2019. Special attention is paid to the critical examination of newly introduced provisions governing extra possibilities of institutionalised family mediation conducted before or after court proceedings, as well as associated regulatory instruments, to analyse their intent, scope, practical implications and impact on the existing structures in this area. A detailed comparative analysis of both types of family mediation is included as well.

Section 5 incorporates an empirical component in the form of the analysis of available statistical data on family mediation. These data, which include, *inter alia*, the number of conducted mediations, consent rates and success rates of mediation, distinguishes between court-affiliated mediation conducted during court proceedings and mediation conducted before and after court proceedings and thus allows for a comparison and provides an insight into the impact of each type of mediation in the legal landscape in this area. The aim of analysing statistical and empirical data lies in deriving conclusions on the efficacy of family mediation in Slovenia in the context of family-law reform, its reception by participants and other persons involved in mediation, as well as prognosis and implications for future developments in this area.

Findings analysed in section 5 are derived from available statistical data collected by the ministry responsible for family affairs (for mediation conducted before and after court proceedings), respective courts (for mediation conducted during court proceedings), and Slovenian researchers studying empirical aspects of user satisfaction. The available statistical data is not always comparable, as it was collected and gathered based on different parameters, which is especially

evident when comparing data collected before and after the implementation of the Family Code. While the data gathered by the ministry responsible for family affairs is also published in the form of annual online reports, which feature consistent and, therefore, comparable contents,¹⁴ the data on mediation conducted during court proceedings is collected by individual courts, which follow different policies on making the statistics available to the public.¹⁵ The Supreme Court of the Republic of Slovenia keeps a record of statistical data and publishes annual reports on the effectiveness and successfulness of Slovenian courts, which include the statistics on mediation; however, these reports aggregate data for all mediations conducted in a given year, without distinguishing between family mediation and mediation in other types of disputes.¹⁶ Although all courts are responsive to individual requests for specific information and data, including statistics on family mediation, such requests can be time-consuming for both the person requesting the data and court personnel, given that 24 courts in Slovenia implement a program of court-affiliated mediation. Including this data in annual reports, categorized in sufficient detail, would greatly enhance further research and evaluation opportunities. Despite the challenges in accessing and comparing data, the available information is a useful foundation for analysing certain trends presented in the following sections.

3 Conducting family mediations

3.1 Mediation under the reformed family law

Even though mediation in family matters is not a new concept in Slovenia¹⁷ and has been in use for several years, Article 13 of the Family Code was the first to explicitly introduce the new definition of family mediation, which is defined as a process in which participants, voluntarily and with the assistance of one or more neutral third parties acting as mediators, try to reach a peaceful settlement of a dispute arising from family relations. As the Family Code does not comprehensively address mediation in Family Matters, other regulations should also be considered. It is worth emphasising that the ZMCGZ and the ZARSS continue to apply even

¹⁴ Available at: <https://www.gov.si teme/mediacija-v-druzinskih-sporih/> (accessed on 29 September 2024).

¹⁵ See, for example, statistics on mediation for District Court in Ljubljana (available at: https://www.sodisce.si/mma_bin.php?static_id=20240318095736) and for District Court in Maribor (available at: https://www.sodisce.si/mma_bin.php?static_id=20240116092002). In the cases of both courts, only data for 2023 are kept online and accessible to the public via their website. Most other courts do not publish such statistics on their websites.

¹⁶ Yearly reports are available at: https://www.sodisce.si/vsrs/osnovne_informacije_o_sodiscu/pomembni_dokumenti/ (accessed on 29 September 2024).

¹⁷ For a comparative perspective on mediation in Brazil, see FERREIRA D.B., SEVERO L. Multiparty Mediation as Solution for Urban Conflicts: A Case Analysis from Brazil. *BRICS Law Journal*. 8(3):5-29, 2021. <https://doi.org/10.21684/2412-2343-2021-8-3-5-29>

after the introduction of the Family Code, which has not repealed their provisions but rather supplemented them.¹⁸

Family mediation, which consists of assistance in resolving personal and property relationships, may be conducted before the commencement of court proceedings, during court proceedings, or after the conclusion of court proceedings.¹⁹ While the main features of mediation in all three listed situations remain very similar,²⁰ Slovenian legislation treats mediation conducted during court proceedings somewhat differently than mediation conducted before or after court proceedings, as reflected in the new provisions of the Family Code pertaining to the applicable regulation and mediators. Before discussing the differences, it is worth highlighting that there is a strong emphasis in the Family Code on the importance of mediation conducted before the start of court proceedings,²¹ with the aim of calming the conflict, finding a common interest, and forming the basis for a motion for consensual divorce or a motion for a court settlement regarding child custody, maintenance, and contact with parents or other persons, or issues pertaining to the exercise of parental responsibility that significantly affect the child's development.²²

Mediation conducted before or after court proceedings is governed by the provisions of the Family Code, the ZMCGZ, and the Rules on mediation according to the Family Code (*Pravilnik o izvajanju mediacije po Družinskem zakoniku*).²³ Mediation conducted during court proceedings is governed by the ZARSS, the Rules on mediators in the programs of the court (*Pravilnik o mediatorjih v programih sodišč*),²⁴ and the Rules on awards and reimbursement of travel expenses of mediators, acting in the programs of the courts (*Pravilnik o nagradi in povračilu*

¹⁸ NOVAK, Barbara. Družinsko pravo: Po Družinskem zakoniku in Zakonu o nepravdnem postopku. Ljubljana: Uradni list Republike Slovenije, 2022, p. 341. See also BETETTO, Nina. In: WEBER, Nana (ed.). Družinski zakonik (DZ) s komentarjem. Ljubljana: Lexpera, GV Založba, 2024, p. 67.

¹⁹ Paragraph 1 of Article 205 of the Family Code.

²⁰ Both types of mediation share the same fundamental principles, the use of mediation techniques, and being free of charge when resolving disputes related to children. JELEN KOSI, Valerija. In: WEBER, Nana (ed.). Družinski zakonik (DZ) s komentarjem. Ljubljana: Lexpera, GV Založba, 2024, p. 626.

²¹ Another important tool under the Family Code intended to assist the parties in resolving disputed issues upon the dissolution of their marriage is mandatory counselling at social work centres. See Articles 200 to 104 of the Family Code.

²² Paragraph 2 of Article 205 of the Family Code. See also JELEN KOSI, Valerija. In: WEBER, Nana (ed.). Družinski zakonik (DZ) s komentarjem. Ljubljana: Lexpera, GV Založba, 2024, pp. 621-623. Note that in Slovenia, extra-marital unions are considered equal to marriage under provisions of the Family Code. Where the article refers to divorce, the same applies mutatis mutandis to the dissolution of extra-marital union unless stated otherwise.

²³ Official Gazette of the Republic of Slovenia, No. 76/19. Available at: <https://pisrs.si/pregledPredpisa?id=PRAV13622> (accessed on 29 September 2024).

²⁴ Official Gazette of the Republic of Slovenia, No. 22/10 and 35/13. Available at: <https://pisrs.si/pregledPredpisa?id=PRAV10177> (accessed on 29 September 2024).

potnih stroškov mediatorjem, ki delujejo v programih sodišč).²⁵ Some ZMCGZ provisions apply to all types of mediation. As the Family Code provisions were heavily modelled after the existing provisions under the ZARSS, the position of the parties in mediation is comparable at all stages of the case.²⁶

In accordance with the principle of voluntary participation,²⁷ the parties are given the autonomy to start or stop mediation at any stage of court proceedings and decide for themselves how to resolve their dispute. This option does not prevent them from exercising their right to judicial protection if they would prefer to do so.²⁸ The parties are also free to decide whether they wish to resolve all their disputes and open issues through mediation or only some of them (e.g., division of joint property, maintenance, child custody). Even before starting any proceedings under the Family Code, the parties may also opt for mediation with other mediation providers operating in the market. These providers are bound by the rules of the ZMCGZ and the mediation agreement signed between the parties and the mediator conducting the mediation. However, caution is advised when verifying the competencies of commercial mediators.²⁹

3.2 Mediation conducted before or after court proceedings

Mediation before the start and after the conclusion of court proceedings is conducted by mediators from the list of mediators held by the ministry responsible for family affairs. The ministry maintains two separate lists, one for mediators at social work centres³⁰ and one for external mediation providers.³¹ Each mediator can only be listed on one of these lists. The ministry determines the number of mediators listed on each list based on actual needs, ensuring that mediation procedures are completed within three months and that each mediator conducts

²⁵ Official Gazette of the Republic of Slovenia, No. 22/10, 35/13 and 21/23. Available at: <https://pisrs.si/pregledPredpisa?id=PRAV10178> (accessed on 29 September 2024).

²⁶ BETETTO, Nina. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 68.

²⁷ Also regulated in Article 4 of the ZCMGZ and Article 15 of the ZARSS. While voluntary, mediation can be strongly recommended and promoted. NOVAK, Barbara. *Družinsko pravo: Po Družinskem zakoniku in Zakonu o nepravdnem postopku*. Ljubljana: Uradni list Republike Slovenije, 2022, p. 342. See also BETETTO, Nina. *Alternativno reševanje sporov: Pravdnemu postopku pridružena mediacija. Podjetje in delo*, No. 6-7, pp. 1264-1271, 2001; and ZALAR, Aleš. *Alternativno reševanje sporov: Temeljna načela alternativnega reševanja sodnih sporov, Podjetje in delo*, No. 6-7, pp. 1228-1240, 2001.

²⁸ KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, pp. 687-688. See also BETETTO, Nina. *Najpogostejše zmete o sodišču pridruženi mediaciji. Pravna praksa*, No. 34, pp. 6-7, 2009.

²⁹ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 622 and 265.

³⁰ Available at: https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Mediatorji/Lista-mediatorjev-na-CSD_20.9.2024_javna-objava.xlsx (accessed on 29 September 2024).

³¹ Available at: https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Mediatorji/Zunanji-izvajalci-mediacije_avg_javna-objava.xlsx (accessed on 29 September 2024).

the prescribed minimum number of mediations annually.³² Both lists held by the ministry include mediators from different backgrounds, such as law, social work, psychology, education, languages, economy, and others (although the list of mediators at social work centres contains, as should be expected, comparatively more social workers than the list of external mediation providers). Since education in a single field does not always suffice, family mediation may also be conducted as co-mediation.³³ Mediators who conduct mediation at social work centres are professional staff of the social work centre, while external mediators are invited to submit an application for inclusion on the list with a public call.³⁴

Before the official start of mediation, the mediator invites the parties to the first mediation meeting within 14 days of being assigned the case. Invitations to the first and all subsequent meetings are issued informally. A single mediation meeting usually lasts up to 120 minutes. At the beginning of the first meeting, the mediator explains the fundamental rules of mediation, their own role, the confidentiality of the process, the course of mediation, the prescribed remuneration, and the costs of mediation, including who is responsible for covering the remuneration and costs. The mediator must ensure that all parties understand the principles of mediation, the content, and the consequences of the mediation agreement and settlement. Such an introductory meeting is conducted as a mandatory part of all types of mediation, with the aim of emphasising the importance of peaceful dispute resolution and the benefits for the parties, especially their children, compared to the exhausting process of evidence gathering in court proceedings.³⁵ The mediator and the parties then sign an agreement to participate in mediation, which must include a provision regarding the location of mediation meetings and a confidentiality declaration. Mediation begins on the day the agreement is signed.³⁶

Under Article 17 of the ZMCGZ, the limitation period for the claim that is the subject of mediation does not run during the mediation. If the mediation concludes without an agreement resolving the dispute, the limitation period resumes from the moment the process ends without an agreement. The time that passed before the start of mediation is included in the limitation period prescribed by law. If a deadline is prescribed for filing a lawsuit, that deadline, in relation to the claim that

³² Article 2 of the Rules on mediation according to the Family Code.

³³ KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 693.

³⁴ Articles 3 and 11 of the Rules on mediation according to the Family Code.

³⁵ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 624.

³⁶ Articles 29 and 30 of the Rules on mediation according to the Family Code. Unless the parties have previously agreed to resolve any disputes arising from a specific legal relationship through mediation, or if mediation for resolving a certain type of dispute is prescribed by law; in such case, the mediation begins when one party receives the other party's proposal to initiate mediation (Paragraph 1 of Article 6 of the ZMCGZ).

is the subject of mediation, does not expire sooner than 15 days after the end of the mediation.³⁷

The parties may agree on the course of mediation, including by referring to some existing rules. If there is no such agreement, the mediator conducts the process as they deem appropriate. In doing so, they consider all the circumstances of the case, any wishes of the parties, and the need for a quick and lasting resolution of the dispute. The mediator must act independently and impartially and strive to treat the parties equally. They may suggest solutions to the dispute throughout the mediation, which are not binding on the parties.³⁸ The ZMCGZ does not introduce a special mechanism for declaring the enforceability of the settlement agreement but directs the parties to draft their agreement in the form of a directly enforceable notarial deed, court settlement, or arbitration award based on the settlement. The mediator may participate in drafting the settlement agreement to resolve the dispute.³⁹ If the settlement agreement is concluded in the form of a court settlement, the court is informed only when the agreement between the parties is complete and fully consensual. The judge then schedules a hearing to verify whether the agreement is in the child's best interests, and if it is, the parties, either in person or through their legal representatives, sign the court settlement. The ZMCGZ does not allow mediation on civil law matters governed by mandatory provisions.⁴⁰

The award and travel expenses of mediators that incur in disputes arising from relationships between parents and children are borne by the state budget and thus free for the parties.⁴¹ In the case of other disputes not related to children, the parties are charged the expenses incurred by the social work centre in conducting the mediation in accordance with the Rules on mediation according to the Family Code.

³⁷ See also JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 624, and KLEMENČIČ, Alenka. In: NOVAK, Barbara (ed.). *Komentar Družinskega zakonika*. Ljubljana: Uradni list Republike Slovenije, 2019, p. 689.

³⁸ Article 8 of the ZMCGZ. See also DAMJAN, Matija. *Zakon o mediaciji v civilnih in gospodarskih zadevah (ZMCGZ) s komentarjem*. Ljubljana: GV Založba, 2010, p. 129.

³⁹ Article 14 of the ZMCGZ. While it is true that agreements concluded during mediation are not enforceable, this only applies until the parties enter into a court settlement, which is generally enforceable, or sign a directly enforceable notarial deed. See also ŠETINC TEKAVC, Martina. *Mediacija: sporazumno reševanje sporov v teoriji in praksi*. Tržič: Učila International, 2002, pp. 58-70.

⁴⁰ KLEMENČIČ, Alenka. In: NOVAK, Barbara (ed.). *Komentar Družinskega zakonika*. Ljubljana: Uradni list Republike Slovenije, 2019, pp. 692-93; DAMJAN, Matija. *Zakon o mediaciji v civilnih in gospodarskih zadevah (ZMCGZ) s komentarjem*. Ljubljana: GV Založba, 2010, pp. 141-142; and KONČINA PETERNEL, Mateja. In: RISTIN, Gordana, HAJTNIK, Zoran (eds.). *Mediacija v teoriji in praksi: veliki priručnik o mediaciji*. Ljubljana: Društvo mediatorjev Slovenije, 2011, p. 239.

⁴¹ Article 211 of the Family Code. The parties still have to cover their own costs, e.g. travel costs or attorney's representation.

3.3 Mediation conducted during court proceedings

If court proceedings have already begun, mediation is conducted under the rules of the ZARSS and by mediators within the framework of programs adopted and implemented by the courts under this act. Mediation can only be conducted in accordance with the ZARSS once a lawsuit, appeal, or motion has been filed with the court, as mediation in such cases is limited to resolving judicial disputes.⁴² Regardless of other applicable provisions, the Family Code explicitly emphasises that in proceedings involving children, the court may reject the parties' proposal for mediation and refuse to stay judicial proceedings if it deems such a stay would not be in the child's best interest.⁴³

The ZARSS placed an obligation on local, district, labour, and higher courts, as well as the Higher Labour and Social Court, to adopt and implement the alternative dispute resolution program and allow the parties to use mediation within the framework of the program.⁴⁴ While the courts may also establish other forms of alternative dispute resolution, mediation is the only one listed as mandatory.⁴⁵ A court may adopt and carry out the alternative dispute resolution program as an activity organized directly at the court (a program affiliated with the court) or based on a contract with an appropriate provider of alternative dispute resolution (a program connected with the court).⁴⁶ Within the program,⁴⁷ the court mainly determines which types of procedures it shall provide and further specifies the principles, rules, and forms of these procedures.⁴⁸

Mediations during court proceedings may only be carried out by mediators included on the list of mediators under the ZARSS.⁴⁹ For the purpose of public awareness and efficient implementation of mediation procedures, the ministry responsible for justice keeps a Central register of mediators, who are included

⁴² KRALJIČ, Suzana. Družinski zakonik s komentarjem. Maribor: Poslovna založba, 2019, p. 690.

⁴³ Paragraph 3 of Article 205 and paragraph 1 of Article 206 of the Family Code. For example, the court would not stay court proceedings in cases of temporary orders, which are issued if the child is likely at risk. KRALJIČ, Suzana. Družinski zakonik s komentarjem. Maribor: Poslovna založba, 2019, p. 689.

⁴⁴ Article 4 of the ZARSS.

⁴⁵ See also ZALAR, Aleš. Zakon o alternativnem reševanju sodnih sporov (ZARSS) s komentarjem. Ljubljana: GV Založba, 2010, p. 33.

⁴⁶ Paragraph 1 of Article 5 of the ZARSS. In practice, the courts only rarely refer the parties to external providers. JELEN KOSI, Valerija. In: WEBER, Nana (ed.). Družinski zakonik (DZ) s komentarjem. Ljubljana: Lexpera, GV Založba, 2024, p. 628.

⁴⁷ See, for example, a program issued by the District Court in Maribor, available at https://www.sodisce.si/mma_bin.php?static_id=20240212114113 (accessed on 29 September 2024).

⁴⁸ Article 6 of the ZARSS.

⁴⁹ Note that cases where the court or the judge handling the dispute attempts to reach a peaceful resolution during the judicial proceedings related to the dispute are not considered mediation (Paragraph 4 of Article 2 of the ZMCGZ). Mediation can only be conducted by a judge who is not involved in any court proceedings related to the dispute under mediation.

on lists.⁵⁰ This represents a fundamental distinction from mediation conducted before or after court proceedings, which is carried out by mediators from the list kept by the ministry responsible for family affairs.⁵¹ In the case of a program affiliated with the court, the court implementing the program also maintains the list and includes mediators on the list. In the case of a program connected with the court, the list of mediators is kept by the provider of alternative dispute resolution, which is implementing the program and is authorised by the Council for Alternative Dispute Resolution⁵² to include mediators on the list. A mediator may only conduct mediation with the court or alternative dispute resolution provider that has included them on the list.⁵³ Mediators are included on the list following a public call issued by the court and published on the court's website or in a daily newspaper, inviting interested individuals to apply for inclusion on the list of mediators.⁵⁴ A vast majority of mediators listed at the courts and, therefore, in the Central Register of Mediators have obtained their formal education in law.⁵⁵

In general, the court presents the option of alternative dispute resolution to the parties in every case, except when the judge determines that this would not be appropriate in a particular case.⁵⁶ The court may invite the party in the proceedings to consent to mediation when serving the lawsuit or motion to the defendant or opposing participant, along with a summons for a response. If both parties give their consent, the case is assigned to a mediator from the list, following the order maintained by the mediation office. Mediation during court proceedings may also be conducted upon the proposal of the parties or participants, as long as it is not contrary to the best interest of the child.⁵⁷ Upon the proposal of the parties that have consented to pursue alternative dispute resolution, the court may stay the court proceeding at any time for a period of no more than three months and refer the parties to the alternative dispute resolution procedure.⁵⁸ Thus, the duration of mediation conducted during court proceedings is limited to three months.⁵⁹ After

⁵⁰ Paragraph 1 of Article 10 of the ZARSS. The central register of mediators is available at <https://www.gov.si/teme/alternativno-resevanje-sporov/centralna-evidenca-mediatorjev?start=20> (accessed on 29 September 2024).

⁵¹ KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 690.

⁵² Requirements and procedure for the authorisation of alternative resolution providers by the Council for Alternative Dispute Resolution to include mediators on the list are determined by Articles 3 to 17 of the Rules on mediators in the programs of the court.

⁵³ Paragraphs 1 to 3 of Article 7 of the ZARSS.

⁵⁴ Article 18 of the Rules on mediators in the programs of the court.

⁵⁵ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 628.

⁵⁶ Paragraph 1 of Article 15 of the ZARSS.

⁵⁷ Paragraph 3 of Article 205 of the Family Code. See also JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 627.

⁵⁸ Paragraph 2 of Article 15 of the ZARSS.

⁵⁹ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 625.

the parties are referred to mediation, the first mediation meeting must be held within 30 days of the decision to issue the referral.⁶⁰

A successful mediation conducted during court proceedings concludes with a draft agreement, typically in the form of a draft court settlement, which can be adopted and confirmed by the court. Before finalizing the court settlement, the court ensures that its content complies with applicable regulations and moral standards and is enforceable. In family disputes concerning children, the court must also ensure that the agreement is in the child's best interest.⁶¹ Otherwise, the proposed settlement must be rejected.⁶²

For mediation in disputes arising from relationships between parents and children, the court bears the costs related to the award and travel expenses of the mediator. For mediation in all other disputes, the court bears the costs related to the award of the mediator for the initial three hours of mediation, as well as any travel expenses incurred in relation to the initial three hours of mediation.⁶³ The award and travel expenses for mediators conducting mediation during court proceedings are governed by the Regulation on the Remuneration and Reimbursement of Travel Expenses for Mediators Working in Court Programs.

4 Specifics of mediation in family matters concerning children

4.1 Involvement of children

The Family Code has made an important step forward by determining that a mediator may include a child in mediation if the child is capable of understanding the meaning and consequences of mediation and if the mediator considers their involvement in their best interest. The mediator must always consider the principle of the child's best interest during mediation.⁶⁴ However, the Family Code does not grant children the right to be included in mediation, as this option remains at the mediator's discretion. Two conditions must be met cumulatively: the child's ability to understand the meaning and consequences of mediation and the fact that inclusion is in the child's best interest. Fulfilling only one of these conditions is insufficient.⁶⁵ In deciding whether to include the child, the mediator must be extremely cautious and should have specific skills and experience in communicating with children in the context of such proceedings. Slovenian legislation does not specify any formal

⁶⁰ Article 20 of the ZARSS.

⁶¹ Articles 138, 141 and 191 of the Family Code.

⁶² JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 628.

⁶³ Article 22 of the ZARSS.

⁶⁴ Paragraphs 1 and 2 of Article 210 of the Family Code.

⁶⁵ KRALJIĆ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 701.

requirement concerning the training for mediation involving children, even though such standards are not uncommon abroad.⁶⁶

Just as the mediator has the discretion to include the child in mediation, the child also has the autonomy not to participate. A child cannot be forced to express their opinion if they do not wish to do so. The realization of the right to form and express the child's opinion must be adapted to the child's psychophysical abilities and should not represent an undue intrusion on their integrity.⁶⁷ While a child can express their opinion (for example, regarding which parent they would prefer to live with), they should not feel responsible for the conflict between the parents or the decisions that adults must make.⁶⁸ Excessive efforts to obtain a child's opinion may actually conflict with their best interests, and children must be protected from the feeling that their statements directly influenced the court's decision on custody.⁶⁹

4.2 Domestic violence and child endangerment

The burden of determining whether a dispute is suitable for family mediation is generally transferred to the mediator, who must evaluate and assess the suitability in each specific case.⁷⁰ Regardless, the Family Code explicitly excludes the possibility of mediation in cases of suspected domestic violence, where mediation between the parties may not be conducted.⁷¹ Even though both parties in mediation should be on equal footing during the process, violence can disrupt this balance, as victims often fear direct contact and communication with the perpetrator.⁷² Therefore, a mediator who becomes aware of a suspicion of domestic

⁶⁶ KONČINA PETERNEL, Mateja. In: RISTIN, Gordana, HAJTNIK, Zoran (eds.). *Mediacija v teoriji in praksi: veliki priročnik o mediaciji*. Ljubljana: Društvo mediatorjev Slovenije, 2011, p. 237; and JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, str. 640.

⁶⁷ KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 702. See also KRALJIČ, Suzana. *Varstvo otrokovih koristi v postopku družinske mediacije*. Zbornik Pravne fakultete Univerze v Mariboru, Year 1, pp. 373-385, 2005.

⁶⁸ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 642.

⁶⁹ High Court in Ljubljana judgement IV Cp 3196/2014 of 17 December 2014. See also WEBER, Nana. *Otrokovo mnenje v družinski mediaciji*. *Pravna praksa*, No. 37, pp. 22-23, 2019; DRNOVŠEK, Katja, BERK, Tinka. *Children as witnesses in court proceedings*. In: MENSAH, Cocou Marius (ed.). *Protecting children's rights in civil, criminal and international law - under a touch of digitalization*. Maribor: University of Maribor, University of Maribor Press, pp. 233-253, 2024.

⁷⁰ KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 703-704. For more, see KRALJIČ, Suzana. *Preliminarna primernost sporov za družinsko mediacijo*. *Zbornik Pravne fakultete Univerze v Mariboru*, Year 5, No. 1, pp. 59-76, 2009; and KRALJIČ, Suzana, DRNOVŠEK, Katja. *The implementation of the child's right to be heard: The Slovenian view*. *Law, identity and values*, vol. 2, no. 2, pp. 101-116, 2022.

⁷¹ Paragraph 3 of Article 210 of the Family Code.

⁷² KRALJIČ, Suzana. *Družinski zakonik s komentarjem*. Maribor: Poslovna založba, 2019, p. 707.

violence, whether at court or social work centres (including external providers), must not accept the case for mediation. If the court is made aware of a suspicion of domestic violence during the court proceedings, the case must not be referred to mediation.⁷³ If mediation has already started, the mediator must end it, explaining the reasons for withdrawing consent for mediation, and return the matter to the court proceedings or social work centre.⁷⁴

Furthermore, if the mediator learns during mediation that a child is endangered, they are obligated to inform the social work centre.⁷⁵ This requirement constitutes an exception to the principle of confidentiality, and the mediator must explain in their opening remarks that confidentiality in family mediation involving minors is not as strict as in other types of mediation. However, even in other kinds of mediation, the principle of confidentiality is not without exceptions, as the mediator must report any knowledge of a crime that has occurred or is being planned to the appropriate authorities.⁷⁶

4.3 Incompatibility of functions

In line with the principle of incompatibility, the mediator may not act as a decision-maker in any dispute that has been or is the subject of mediation or in another dispute arising from the same legal relationship or related to it unless the parties agree otherwise.⁷⁷ For that reason, a social work centre worker who participated in mediation is not allowed to participate in the drafting of the opinion for the court in proceedings for the protection of the best interests of the child.⁷⁸ In their opening remarks, the mediator explains to the parties that these roles are separate and that they are bound by confidentiality even with regard to colleagues who will write the court opinion. The purpose of the principle of confidentiality and incompatibility in mediation is to ensure that the parties fully trust the mediator without fearing that their honesty could negatively affect their position in court proceedings if mediation is unsuccessful.⁷⁹

⁷³ The same applies to the organizer of mediation at social work centres.

⁷⁴ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 643.

⁷⁵ Paragraph 4 of Article 210 of the Family Code.

⁷⁶ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 643.

⁷⁷ Article 15 of the ZMCGZ.

⁷⁸ Paragraph 5 of Article 210 of the Family Code.

⁷⁹ JELEN KOSI, Valerija. In: WEBER, Nana (ed.). *Družinski zakonik (DZ) s komentarjem*. Ljubljana: Lexpera, GV Založba, 2024, p. 644.

5 Slovenian experience with family mediation

5.1 Data on mediation conducted during court proceedings

Following the initial success of the experimental project at the District Court in Ljubljana (see above), the number of mediations before Slovenian courts increased steadily until 2006 when the number of cases referred to mediation began to decline. In family mediation, the number of cases and especially the success rate have not declined as sharply as in civil litigation, which could be partially attributed to the fact that the District Court in Ljubljana offered mediation to all parties in civil and commercial proceedings without assessing their suitability, whereas in family cases, mediation was offered only when the judge deemed the case suitable for mediation.⁸⁰ As the number of cases in which mediation was offered decreased, the percentage of cases where both parties consented to mediation actually increased, indicating that the court's assessment of its suitability was accurate in many cases. The success rate of mediation also remained fairly constant, at around 70%. However, the suitability of mediation is not always easy or even possible to determine, and if mediation is not available to all parties who wish to pursue it, they are placed in an unequal position regarding access to legal protection. Furthermore, statistical data for individual courts reveals significant differences in the number of mediations offered by different courts.⁸¹

Table 1: Data on family mediation within the court-affiliated program at the District Court in Ljubljana⁸²

(continua)

	The number of cases in which mediation was offered	The number of cases in which both parties gave consent for mediation	The number of successfully completed mediations	The number of unsuccessfully completed mediations
2002	184	44 (23.90%)	14 (51.90%)	13
2003	204	72 (35.30%)	49 (70%)	21
2004	316	97 (30.70%)	62 (74.70%)	21

⁸⁰ SEKIRNIK, Tanja. Bo mediacija tudi v Sloveniji zaživela in kaj vpliva na njeno uspešnost? *Pravna praksa*, No. 16-17, pp. 6-8, 2008; and SEKIRNIK, Tanja. Kaj vpliva na uspešnost mediacije v sodnih sporih? *Podjetje in delo*, No. 2, pp. 285-297, 2008.

⁸¹ BETETTO, Nina. Mediacija v Sloveniji: kako prebuditi Trnuljčico. *Podjetje in delo*, No. 6-7, pp. 1196-1207, 2022.

⁸² KOCIPER, Maša. In: RISTIN, Gordana, HAJTNIK, Zoran (eds.). *Mediacija v teoriji in praksi: veliki priročnik o mediaciji*. Ljubljana: Društvo mediatorjev Slovenije, 2011, p. 224.

(conclusão)

	The number of cases in which mediation was offered	The number of cases in which both parties gave consent for mediation	The number of successfully completed mediations	The number of unsuccessfully completed mediations
2005	400	156 (39%)	95 (70.40%)	40
2006	765	212 (27.70%)	150 (70.70%)	62
2007	546	217 (39.70%)	155 (71.40%)	62
2008	500	224 (44.80%)	143 (66.50%)	72
2009	524	232 (44.30%)	137 (66.80%)	68
2010	490	226 (46.10%)	160 (70%)	70

During the economic recession following the crash of 2008, state budget constraints posed a real threat to court-affiliated mediation programs; if not formally, then effectively, due to the lack of funding necessary for implementing the ZARSS. A large part of the credit goes to the professional community for demanding that funding should be provided so that the mediation programs could continue.⁸³ In subsequent years, the number of mediations in family matters and the success rate remained relatively consistent. That said, especially in other fields of law, the initial expectations regarding mediation remained unfulfilled,⁸⁴ prompting experts to advocate for potential changes, such as introducing mandatory mediation or entrusting mediation to providers operating in the market. Regardless, court-affiliated mediation remains highly significant in Slovenia, as it offers certain advantages over the market-based model. The program is approved, managed, and administered by the court, as well as fully or partially funded by the court's budget. The court oversees the work and quality of the mediators, which is the best guarantee of trust from judges, lawyers, and parties. Finally,

⁸³ BETETTO, Nina. Mediacija v Sloveniji: kako prebuditi Trnuljčico. *Podjetje in delo*, No. 6-7, pp. 1196-1207, 2022. HAJTNIK, Zoran. Odvetniki podpiramo obstoj in nadaljnji razvoj sodišču pridruženih mediacij. *Pravna praksa*, No. 48, pp. 12-13, 2012.

⁸⁴ For example, in 2021, mediation was offered in 1,511 civil cases at all district courts and 2,960 at all local courts. If these figures are compared with the total number of civil cases filed that year, which amounted to 2,340 at district courts and 6,377 at local courts, the proportion of cases in which mediation was offered was 64% at district courts and a modest 46% at local courts. See BETETTO, Nina. Mediacija v Sloveniji: kako prebuditi Trnuljčico. *Podjetje in delo*, No. 6-7, pp. 1196-1207, 2022.

court-affiliated mediation offers better and faster integration of mediation with the court proceedings.⁸⁵

Table 2: Data on family mediation conducted before all Slovenian district courts⁸⁶

	The number of cases in which mediation was offered	The number of cases in which both parties gave consent for mediation	The number of successfully completed mediations (draft settlement, concluded settlement, withdrawing lawsuit)	The number of unsuccessfully completed mediations
2013	2613	1121 (42.90%)	621 (54.14%)	526
2014	2336	965 (41.31%)	564 (55.35%)	455
2015	2297	931 (40.53%)	471 (47.87%)	513
2016	2001	855 (42.73%)	428 (54.25%)	361
2017	2218	889 (40.08%)	507 (51.58%)	476

In mediation, the indirect effects are equally, if not more, important as the quantitatively measurable effects: (1) from the party's perspective, the ability to participate in resolving their own dispute; (2) from the judge's perspective, the acquisition of skills and knowledge that help them understand the core of the dispute; (3) from the societal perspective, the maturing recognition that an amicable resolution of disputes is a legal value.⁸⁷ Several qualitative studies have shown that the parties and their representatives indeed view mediation as a highly favourable method for resolving disputes. Qualitative research based on 50 anonymous questionnaires returned by the parties and their legal representatives who participated in mediation at the District Court in Ljubljana in 2010 demonstrated

⁸⁵ BETETTO, Nina. Mediacija v Sloveniji: kako prebuditi Trnuljčico. *Podjetje in delo*, No. 6-7, pp. 1196-1207, 2022.

⁸⁶ Table 2 includes combined data on mediation in non-contentious and contentious family matters for all Slovenian district courts as summarised in KLEMENČIČ, Alenka. In: NOVAK, Barbara (ed.). *Komentar Družinskega zakonika*. Ljubljana: Uradni list Republike Slovenije, 2019, pp. 708-709.

⁸⁷ BETETTO, Nina. Mediacija v Sloveniji: kako prebuditi Trnuljčico. *Podjetje in delo*, No. 6-7, pp. 1196-1207, 2022.

that 88% of the parties were very satisfied with mediation, 9% were satisfied, and only 3% were not satisfied with the procedure. Unsurprisingly, the parties were especially satisfied when the settlement was reached; however, even in cases where mediation was unsuccessful (and the case continued in litigation), 70% were very satisfied, and 30% were satisfied with the mediator. 70% of the participating parties stated that even though the mediation was unsuccessful, it helped clarify certain open issues, 80% stated that it helped them better understand the opposing party, and 10% stated that it increased the possibility of solving their case consensually. 76% of the parties stated that mediation helped them save time and money, and an incredible 98% claimed they would recommend mediation to others.⁸⁸

Similarly positive sentiment was detected in 2012 by Weber and Stritih, who based their research on data collected through three evaluation questionnaires at the Higher Court in Ljubljana (77 questionnaires were completed by parties, 53 by lawyers and 88 were completed by (co)mediators). They found that in cases where mediation concluded successfully, 80% of the parties were satisfied with the outcome, 5% were dissatisfied, and 15% were unsure how to respond. On the other hand, even in cases where the mediation process was unsuccessful, 38% of parties were satisfied with the outcome, while 43% were not. As many as 84% of parties whose mediation ended successfully would recommend mediation to others, and 81% of those whose mediation was unsuccessful would still recommend it to others. Some parties seemed to value the opportunity for dialogue and being heard more than the outcome of the mediation itself. In this regard, mediation is highly suitable, as sometimes merely having the chance to be heard allows parties to change their perspective and, in some cases, even their beliefs. It is worth mentioning that successful mediations lasted an average of 2.24 hours, while unsuccessful ones lasted an average of 1.57 hours. Therefore, the fears that mediation might prolong court proceedings seem unfounded.⁸⁹

Hajtnik's study focused on the members of the Bar Association of Slovenia (attorneys, attorney candidates, and interns), of which 625 respondents answered at least some questions in his survey. Almost 70% of respondents stated that they always or generally opt for mediation, 30% stated that they occasionally or rarely chose mediation, and only four members have never used mediation. Nearly three-quarters of respondents support maintaining mediation at its current level (45%) or even expanding it further (29%). Another 15% of respondents would still prefer to

⁸⁸ KOCIPER, Maša. In: RISTIN, Gordana, HAJTNIK, Zoran (eds.). *Mediacija v teoriji in praksi: veliki priručnik o mediaciji*. Ljubljana: Društvo mediatorjev Slovenije, 2011, p. 225-226.

⁸⁹ WEBER, Nana, JENKO, Gregor, *Zadovoljstvo tudi ob neuspešni mediaciji*. *Pravna praksa*, No. 18, pp. 14-16, 2012.

retain mediation, albeit on a smaller scale than before, and only 11% would abolish court-associated mediation.⁹⁰

5.2 Data on mediation conducted before or after court proceedings

The data on mediation conducted before or after court proceedings is more easily accessible and comparable, as the Family Code tasked the ministry responsible for family affairs with the responsibility to gather relevant data, which is published online in the form of annual reports. Considering that the Family Code only came into force on 15 April 2019, only yearly reports for 2020, 2021, 2022, and 2023 are available at the time of writing this article.⁹¹

With a strong emphasis in the Family Code on the importance of mediation conducted before the start of court proceedings, it is not surprising that most mediation indeed took place before court proceedings. The success rate of mediation conducted at social work centres remains steadily around 50%, while the success of mediation conducted by external mediation provider varies, with around 75% of successfully or partially successfully completed mediations in 2020, 56% in 2021, 62% in 2022, and 64% in 2023. Mediation at social work centres is much more popular with the parties, which could be at least partially attributed to the mandatory prior counselling, in which the parties are encouraged to take part in mediation and are thus already familiar with social work centres. While the number of initiated and completed mediations remains low compared to those conducted within court-affiliated programs, this is likely due to the relative novelty of the option. It is hoped that these numbers will increase over time, thus providing the parties with a new option for resolving disputes outside of court but with sufficient quality assurance while simultaneously helping to alleviate the burden on the courts.

⁹⁰ HAJTNIK, Zoran. Odvetniki podpiramo obstoj in nadaljnji razvoj sodišču pridruženih mediacij. *Pravna praksa*, No. 48, pp. 12-13, 2012.

⁹¹ Annual reports on family mediation are available on the website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

Statistical data on mediation for 2020: https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Zakonska-in-partnerska-zveza/Mediatorji-izobrazevanje/Statisticni-podatki-M-2020_objava.pdf.

Statistical data on mediation for 2021: <https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Mediacija/Statisticni-podatki-o-mediaciji-za-let-2021.pdf>.

Statistical data on mediation for 2022: https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Mediacija/Statisticni-podatki-o-mediaciji-2022_objava.pdf.

Statistical data on mediation for 2023: <https://www.gov.si/assets/ministrstva/MDDSZ/druzina/Mediacija/Statisticni-podatki-o-mediaciji-za-let-2023.pdf> (all accessed on 29 September 2024).

a) *Mediation conducted before court proceedings***Table 3: Mediations conducted before court proceedings at social work centres**

	2020	2021	2022	2023
The number of initiated mediations	41	190	170	151
The number of successfully completed mediations	9	48	48	41
The number of unsuccessfully completed mediations	9	53	56	55
The number of partially successful mediations	2	9	12	10
The number of procedures in which consent for mediation was withdrawn before the first meeting	7	35	41	31

Table 4: Mediations conducted before court proceedings by an external mediation provider

	2020	2021	2022	2023
The number of initiated mediations	12	27	22	35
The number of successfully completed mediations	5	12	10	15
The number of unsuccessfully completed mediations	2	9	6	9
The number of partially successful mediations	1	2	0	1
The number of procedures in which consent for mediation was withdrawn before the first meeting	0	6	4	10
The total amount paid for fees and travel expenses ⁹²	3.712,74 EUR	9.488,98 EUR	8.480,95 EUR	9.313,30 EUR

b) *Mediation conducted after court proceedings*

The number of mediations initiated and conducted after court proceedings is very low, or, in the case of external mediation providers, almost non-existent, with only one successfully completed mediation in four years. The number of cases may increase in the future, as some time would normally need to pass between the commencement of court proceedings, its conclusion, and the circumstances that would result in mediation after its completion. However, as mediation under the Family Code is primarily intended to be conducted before court proceedings, the numbers are expected to remain relatively low in comparison.

⁹² The amount paid for fees and travel expenses is listed only for external mediation providers, as mediators at social work centres are not paid for conducting the mediation, which is part of their regular work tasks.

Table 5: Mediations conducted after court proceedings at social work centres

	2020	2021	2022	2023
The number of initiated mediations	0	8	12	21
The number of successfully completed mediations	0	3	2	5
The number of unsuccessfully completed mediations	0	2	8	9
The number of partially successful mediations	0	1	2	0
The number of procedures in which consent for mediation was withdrawn before the first meeting	0	0	1	5

Table 6: Mediations conducted after court proceedings by an external mediation provider

	2020	2021	2022	2023
The number of initiated mediations	2	1	1	1
The number of successfully completed mediations	0	0	1	0
The number of unsuccessfully completed mediations	1	0	0	0
The number of partially successful mediations	0	0	0	0
The number of procedures in which consent for mediation was withdrawn before the first meeting	0	0	0	0
The total amount paid for fees and travel expenses	0,00 EUR	0,00 EUR	456,89 EUR	0,00 EUR

6 Conclusions

Mediation has become a well-established method for resolving disputes outside the court system despite its relatively short history in the Slovenian jurisdiction. Since its introduction, first as a pilot project and later as a formally regulated option, it has been strongly promoted by the courts and other legal professionals. Mediation was also openly welcomed as an alternative to traditional

litigation by the parties and their representatives, who recognised its advantages in providing quicker, cost-effective, flexible and amicable solutions to their conflicts. The introduction of the new Family Code in 2019 marked a new step in developing family mediation in Slovenia. As a part of a broader reform, the changes enacted new possibilities for family mediation in institutionalised settings, providing a clearer legal framework for resolving family disputes before and after court proceedings, thus complementing the already established court-affiliated mediation. By defining detailed requirements for the appointment of mediators and granting the ministry responsible for family affairs the authority to manage mediator lists, supervise the quality of mediation, and ensure that it is conducted in line with international standards, the Family Code allowed the parties better access to properly qualified and competent mediators, often without any additional procedural costs.

The quantitative statistical data and qualitative feedback discussed in the article reflect positive sentiment and highlight the importance of future continuous efforts in this field. While the number of cases in which mediation is offered and completed could be higher, the success rate of mediated cases is consistently positive. Even more crucial, the subjective experiences of the parties and legal professionals reveal a high rate of satisfaction, with many participants expressing a preference for the process over traditional litigation. Attorneys and mediators have also noted that mediation often results in more acceptable solutions for both parties, thus reducing the likelihood of future disputes. Even though the initial optimism that mediation would swiftly become a go-to method of resolving disputes and, therefore, reduce the strain on the judicial system has not been fully realized, it has evidently established itself as a welcomed option for dispute resolution in family matters, potentially providing significant benefits to the participants. With time, mediation has the potential to play an even more important role in resolving family disputes, but only with continued support from the courts, legal professionals and legislators.

A reforma da mediação familiar na Eslovênia

Resumo: A experiência eslovena com Métodos Alternativos de Resolução de Conflitos (ADR), incluindo a mediação, é relativamente recente, com o primeiro programa de mediação vinculado ao tribunal introduzido em 2001, no Tribunal Distrital de Liubliana. A adoção formal de diversos instrumentos legais, especialmente a Lei de Mediação em Matérias Cíveis e Comerciais em 2008 e a Lei de Resolução Alternativa de Conflitos em Matérias Judiciais em 2010, representou um avanço significativo na facilitação do acesso mais amplo à mediação. No entanto, foi apenas em 2019 que o novo Código da Família introduziu reformas adicionais na mediação familiar, no âmbito de uma ampla reforma da legislação familiar eslovena. Entre outros desenvolvimentos notáveis, o código redefiniu a mediação familiar, estabeleceu fundamentos legais para a mediação conduzida antes e após os processos judiciais e pelas autoridades competentes, determinou as regras de nomeação de mediadores, além de regras especiais para a mediação em questões familiares, e autorizou o ministério responsável

pelos assuntos familiares a desempenhar várias tarefas de supervisão e organização. O artigo analisa o novo marco legal da mediação familiar, comparando-o com os procedimentos vinculados ao tribunal, e examina seu sucesso com base nos dados estatísticos disponíveis.

Palavras-chave: Mediação em questões familiares. Reforma do direito de família. Mediação vinculada ao tribunal. Mediação em centros de assistência social. Melhor interesse do menor em procedimentos de mediação.

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