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## EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE

### Working Group on Mediation (CEPEJ-GT-MED)

#### THE IMPACT OF CEPEJ GUIDELINES ON CIVIL, FAMILY, PENAL AND ADMINISTRATIVE MEDIATION

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## Chapter 1. Scope of the report and data collection

### 1.1 The CEPEJ Working Group on Mediation

After an interruption, the CEPEJ working group on mediation (CEPEJ-GT-MED) resumed its activities in the beginning of 2017 for a second mandate. During its first mandate, the GT-MED had conducted an impact assessment in the Member States of the existing Recommendations of the Committee of Ministers concerning mediation, namely: Recommendation (98) 1 on family mediation, Recommendation (99) 19 concerning mediation in penal matters, Recommendation (2001) 9 on alternatives to litigation between administrative authorities and private parties, Recommendation (2002) 10 on mediation in civil matters. The original GT-MED had also developed specific Guidelines and tools to ensure effective implementation of these recommendations in the Council of Europe Member States<sup>1</sup>.

Court-related and private mediation as an alternative dispute resolution method has developed and strengthened in Europe in recent years, and with it, its modus operandi evolved. The reactivation of the GT-MED was decided at the plenary meeting of the CEPEJ in December 2016.

Under its new second mandate, the GT-MED is entrusted with facilitating the implementation of the Recommendations of the Committee of Ministers to Member States concerning mediation and, in particular to:

- a. assess the impact in the States of the existing CEPEJ Guidelines on penal mediation (CEPEJ(2007)13), on family and civil mediation (CEPEJ(2007)14), and on alternatives to litigation between administrative authorities and private parties (CEPEJ(2007)15), and update these Guidelines, where appropriate;
- b. draft, if appropriate, further tools aimed to ensure an effective implementation of existing recommendations and guidelines;
- c. contribute, where appropriate, to the implementation of the relevant co-operation programs.

Member States have been invited to propose to the CEPEJ Secretariat qualified experts to participate in this working group, who were then appointed by the CEPEJ Bureau. The working group is composed of:

**Mr. Rimantas Simaitis** (President), Lithuania  
**Ms. Anna Márová**, Czech Republic  
**Ms. Maria Oliveira**, Portugal  
**Ms. Nina Betetto**, Slovenia  
**Mr. Jean A. Mirimanoff**, Switzerland  
**Mr. Jeremy Tagg**, United Kingdom

**Mr. Giancarlo Triscari**, Italy deputy member

**Mr. Leonardo D'Urso**, Italy, has been designated scientific expert.

### 1.2 Scope of the Report

Ten years after their publication, the ultimate aim of this report is to assess the concrete impact in the 47 Member States of Council of Europe of the existing CEPEJ Guidelines on:

- penal mediation (CEPEJ(2007)13);
- family and civil mediation (CEPEJ(2007)14);

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<sup>1</sup> Above-mentioned Guidelines and Recommendations can be found following this link: <https://www.coe.int/fr/web/cepej/cepej-work/mediation>

- alternatives to litigation between administrative authorities and private parties (CEPEJ(2007)15).

The Guidelines issued recommendations concerning the availability of mediation services including specific measures that should be taken to promote and set up workable mediation schemes such as mediator qualification, codes of conduct and the roles of the various parties. The Guidelines also covered the accessibility of the different mediation schemes, their impact on limitations of terms, sanctions, and cost. In addition, recommendations for increasing awareness of mediation by the general public, judiciary, and lawyers among others is also included.

The analysis of both the quantitative data gathered on the concrete use of mediations in the 47 Member States and the comments and recommendations of the CoE experts will give valuable information to the GT-MED to evaluate how to fulfill its mandate and in particular:

- a. draft, if appropriate, further tools aimed to ensure an effective implementation of existing recommendations and guidelines (and evaluate if the existing guidelines should be updated);
- b. contribute, where appropriate, to the implementation of the relevant co-operation programs.

In addition, the findings of the Report can further contribute to the discussion at the national level for Governments and policy makers on implementing concrete measures to foster recourse to mediation in civil, family, penal and administrative matters.

### 1.3 Methodology

During the first meeting on 23-24 May 2017, the GT-MED decided to assign the scientific expert on mediation **Mr. Leonardo D'Urso** the designing of a questionnaire, the compilation of the results and the drafting of a report presenting the analyzed results.

A questionnaire was first developed by the scientific expert and validated by the members of the GT-MED. The questionnaire is composed of 31 different questions, divided into four main sections, aiming to measure the impact of existing CEPEJ Guidelines, as well as possible future CEPEJ actions, on the four different types of mediation: civil, family, penal matters, and between administrative authorities and private parties. The complete questionnaire is available in Annex 1 to this Report.

Due to the lack of official data on mediation in most Member States, the questionnaire relies on the professional expertise of the national correspondents and their opinions and estimates in assessing the impact of CEPEJ Guidelines in the past ten years. In addition to the quantity of data that was gathered, it is worth emphasis the high valuable of the comments and recommendations received in the open questions.

The main limits of this study have been:

1. the lack of verified statistics on mediations processes in most of the 47 Member States;
2. the non-uniformity of the meaning of "mediation processes" across the Member States;
3. the difficulties encountered by CEPEJ national correspondents to collect information in all four field mediations (civil, family, penal and administrative) that produced a not uniform quality of answers gathered (in some cases the correspondents gave detailed answers and comments in only one or two fields of mediation).

Despite all the limits mentioned, the CEPEJ- GT-MED believes that the analysis of the data, even though in most cases they are not based on verified statistics, and above all of the comments and recommendations can highly contribute to the accomplishment of the mandate of the working group

and at the same time be a valuable lesson to improve the methodology for a possible new questionnaire.

In July 2017, the Secretariat of the CEPEJ sent the questionnaire to all 47 national correspondents of the Council of Europe Member States. All individual replies were recorded in an online platform managed by the Secretariat. Since the questionnaire was quite innovative, extensive work has been carried out to encourage the answers from the national correspondents and sometimes verify and double check the data. In few cases when the national correspondents didn't answer, the questionnaire was sent to experts on mediation of that Member State. In other cases, more than two or three experts answered for the same Member State covering all questions or part of them. In these cases, the answers were homogeneous with no discrepancies.

The scientific expert reviewed all the answers and eliminated the incomplete ones, asked for some clarifications, analyzed the data and draft the report that was sent to all GT-MED members. During the meeting of the GT-MED on 16<sup>th</sup> and 17<sup>th</sup> November 2017, the findings of the report were discussed and revised.

### 1.4 Respondents (Q1, Q2, Q3)

Sixty-two valid replies were received to the questionnaire representing 40 different countries. The States that participated in the process were: **Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and United Kingdom.**

**Andorra, Austria, Azerbaijan<sup>2</sup>, Liechtenstein, Monaco, Netherlands and San Marino** did not provide data for this report and have thus not been included in the analysis.

The majority of respondents from the Member States were either CEPEJ national correspondents, judges, court administrators or civil servants, with a smaller number representing mediators or representatives of a mediation provider or association.



Figure 1: Answers of Question 3 of the questionnaire.

<sup>2</sup> The national correspondent declared that Azerbaijan is extremely interested in implementing the recommendations and the tools developed by the working group on mediation due its current absence of the effective recourse to mediation in Azerbaijan.

## Chapter 2. Civil Mediation

Following the required respondent contact information, the first part of the questionnaire – from question 4 to 10 - covered the impact of the CEPEJ guidelines on civil mediation in the Council of Europe Member States.

### 2.1 Impact on Civil Mediation (Q4, Q5)

In question 4, respondents were first asked to rate from “None” (equal to 1) to “Very Important” (equal to 5) the impact on their country of the Council of Europe Recommendation No. R(2002)10 (“Civil Mediation Recommendation”) of the Committee of Ministers to member states on Mediation in civil matters and of the CEPEJ 2007 guidelines for a better implementation of the existing recommendation concerning mediation in civil matters (“Civil Mediation Guidelines”).

In your opinion, in the last 10 years what was the impact in your State of the Council of Europe Recommendation No. R(2002)10 of the Committee of Ministers to member States on Mediation in civil matters, and CEPEJ 2007 Guidelines for a better implementation of the existing recommendation concerning mediation in civil matters?

Answered: 54 Skipped: 8



Figure 2: Answers of Question 4 of the questionnaire.

The weighted average of the scores granted by the respondents on the impact of Civil Mediation Guidelines/Recommendation in their State is 3.13 meaning that overall there was a “Medium Impact”.

Due to the variety of legislative frameworks and the culture on the use of mediation, it is important to analyze the answers by separating the answers into three major groups and considering the respondents’ comments.

#### **Important and Very Important Impact**

Only few States indicated that the Civil Mediation Recommendation and Guidelines had a very important impact in their states: **Armenia, Hungary, Macedonia, Montenegro, Serbia, Slovenia, and Ukraine**. All of these States indicate that this is because legislation was adopted as a result or in accordance with the Guidelines and the Recommendation. It is interesting to note that **Armenia,**

**Macedonia, Serbia and Ukraine** are not EU Member States so they would not have had to implement EU Mediation Directive 2008/52/EC or other EU regulations resulting in a likely greater impact of CEPEJ tools. Among these Member states, some of the most relevant comments from the respondents are:

**Armenia:** <<Thanks to the above-mentioned guidelines, legislative and institutional framework on mediation was established in the Republic of Armenia. Besides, awareness on mediation and its advantageous use was increased not only among professionals and users but the general public as a whole.>>

**Montenegro:** <<Laws adopted thanks to the CEPEJ guidelines.>>

**Macedonia:** <<Law on mediation 2013 fully complies Council of Europe Recommendation R(2002).>>

**Ukraine:** <<Laws adopted thanks to the CEPEJ guidelines.>>

**Serbia:** <<... the existing legal framework and its implementation falls short of the CEPEJ Guidelines, which provide that adequate training programmes for mediators should be established, including assessment of knowledge and competence of the trainee and that the training should be followed by supervision, mentoring and continuing professional development, none of which are currently neither proscribed nor practiced in Serbia. Likewise, the duration of the training programs themselves seem to fall short of European standards, although no particular duration has been recommended to date by CEPEJ..... Although a legal framework exists which takes into account the Recommendation and Guidelines, the standards set by these documents could have had a much greater impact in the implementation of the Law, and mediation is to date underutilized. Nonetheless, in the last two years, a steady increase of mediation proceedings has been noted, followed by a strong support of mediation by the Ministry of Justice and Supreme Court of Cassation. Still, coordinated, joint, continued multi-annual efforts must be made in order to establish a viable and sustainable alternative dispute resolution system.>>

**Slovenia:** <<The Guidelines were implemented into national law on mediation.>>

### **Medium Impact**

The majority of States indicating that the Civil Mediation Recommendation and Guidelines had a medium impact were mainly EU Member States (**Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Ireland, Italy, Malta, Latvia, Poland, Slovakia, Spain**) with the exception of **Albania, Bosnia and Herzegovina, Moldova, and Turkey**.

Among these Member states, some of the most relevant comments from the respondents are:

**Bosnia and Herzegovina:** <<Only limited number of mediators, professionals in the administrative bodies and judiciary are informed on the Recommendation /No. R(2002)10/ and the CEPEJ Guidelines (CEPEJ(2007)14). The Association of Mediators of Bosnia and Herzegovina referred to the Recommendation within the general advocacy and awareness raising campaigns.>>

**Latvia:** <<The recommendation was used as a basis of the legal framework of mediation.>>

**Finland:** <<The primary law governing court mediation in civil matters, the Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts of 2011, repealed the Act on Court-annexed Mediation of 2005. The Act on Court-annexed Mediation in turn was partly influenced by the Council of Europe Recommendations No. R(2002)10 and No. R(98)1. The Act of 2011 was enacted in order to implement the Directive (2008/52/EC) of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. Chapter 2 of the Act is partly directly based on the Act on Court-annexed Mediation. As such, the Recommendations have had their effect on the laws governing court mediation in civil matters, but the Recommendations haven't had that much impact on the further development of these laws.>>

**France:** <<Mediation in civil matters already exists in French law. It has been reinforced by the ordinance of 16.11.2011 that transpose the directive 2008/52/CE. The CEPEJ guidelines on mediation had a limited impact because of the existence of the UE laws.>>

**Malta:** <<Awareness in Mediation has undoubtedly grown, even though members of the Bar Association and members of the Judiciary still continue to be skeptical about Mediation. As regards measures adopted as per the CEPEJ guidelines, there is available information to the public both via the website of the Mediation Centre and also via electronic communication, whether e mails, telephone etc and if the public wishes to come to the Centre, they can also do so and receive the necessary information about Mediation during office hours. With regard to legislation, measures have been taken to implement and widen the scope of Mediation and this by way of Act VIII of 2017.>>

**Spain:** << Although a legal framework exists which takes into account the Recommendation and Guidelines, the standards set by these documents could have had a much greater impact in the implementation of the Law, and mediation is to date underutilized. Nonetheless, in the last two years, a steady increase of mediation proceedings has been noted, followed by a strong support of mediation by the Ministry of Justice and Supreme Court of Cassation. Still, coordinated, joint, continued multi-annual efforts must be made in order to establish a viable and sustainable alternative dispute resolution system.>>

**Poland:** <<Only in very first law on mediation in civil matters (amendment to Code of Civil Procedure of 2005) there was a mention of the Recommendation of CoE. Later and currently I cannot find any mentions neither on Rec. R(2002)10, nor on Guidelines.>>

### **None or Little Impact**

**Estonia, Greece, Luxembourg, Norway, Romania, Russian Federation, Sweden, and Switzerland** found that the Civil Mediation Recommendation and Guidelines had little to no impact in their states. The majority of these respondents cited a lack of awareness or interest in the Guidelines as the reason the Civil Mediation Guidelines and Recommendation had little to no impact. Except for **Norway** and **Switzerland**, of the States are EU Member States, as such EU Directives and Regulations probably had a larger impact than the CEPEJ and Council of Europe tools. **Norway**, however, indicated that this was a result of a lack of awareness on the Guidelines. Among these Member states, some of the most relevant comments from the respondents are:

**Germany:** <<Mediation is a theme of interest in Germany, but not because of the guidelines.>> and <<We estimate the direct impact of Recommendation No. R(2002)10 of the Committee of Ministers to member States on Mediation in civil matters, and CEPEJ 2007 Guidelines for a better implementation of the existing recommendation concerning mediation in civil matters (CEPEJ(2007)14) in Germany as low, because the German Mediation Act, which entered into force on 26 July 2012 and provides the legal framework for Mediation in Germany, was based on the Directive 2008/52 EC that has been implemented in the Act. The Act includes guidelines on mediation from the Directive and covers all forms of mediation in Germany, irrespective of the form of dispute or the place or residence of the parties concerned. Following the Directive 2008/52 EC there was no need to implement other Guidelines and Recommendations with similar content.>>

**Greece:** <<Little awareness of the public, little or no information on the said matter.>>

**Romania:** << Other existing legislative sources.>>

**Sweden:** << Lack of awareness /interest in the Guidelines>>

**Russian Federation:** <<Lack of awareness and interest in Guidelines.>>

**United Kingdom:** <<Much of the development of civil mediation over the last decade, in England and Wales, has followed the principles set out in the Recommendation. However, this is only because domestic factors have mirrored those considered by the Council of Europe and not because of direct application of those recommendations. Over the last decade, the Civil Mediation Council has become incorporated and now offers a status of Registered Mediator or Registered Mediation Provider. Mediators become Registered if they have passed a training course run by an approved training provider, have relevant insurance, and carry out sufficient levels of practice and CPD. CMC Registered Mediators are obliged to abide by the EU Model Code of Conduct for Mediators or, if they prefer to use a different code, they must have the prior written approval of the CMC to do so. The CMC also has a complaints procedure, which has recently been strengthened to give members of the

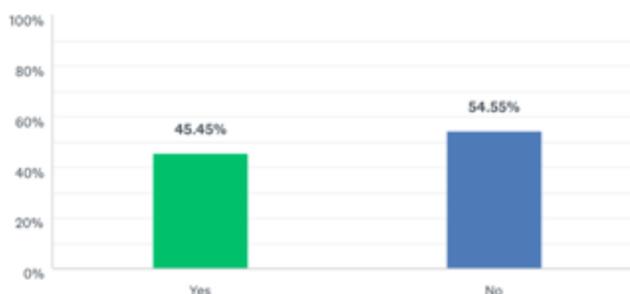
*public confidence in using CMC registered providers. CMC Registered Status is required to take part in certain government organised mediation referral schemes.>>*

## 2.2 Number of Civil Mediation Processes in 2016 (Q6, Q7, Q8)

The number of mediation processes administered in a State is the preeminent indicator of the impact of a variety of mediation tools, including the CEPEJ Civil Guidelines and Recommendation. Respondents were asked if official data was available in their state (Q6). States were almost split half and half on the availability of official data on the number of civil mediation processes administered and settled in 2016. As anticipated, there is a general lack of data on the number of mediation processes among the 47 Member States.

Are official data available on the number of civil mediation procedures administrated and settled in 2016 in your State?

Answered: 55 Skipped: 7



ANSWER CHOICES	RESPONSES	
Yes	45.45%	25
No	54.55%	30
<b>TOTAL</b>		<b>55</b>

Figure 3: Answers of Question 6 of the questionnaire.

When official data were available, we asked for the number of civil mediations administered in 2016 and the ones settled in 2016. If official data was not available, respondents were asked to provide an expert estimate.

The below table shows the numbers, the official data is in bold, while the other data are the estimates provided by the national correspondents. Whether the data came from an official source or it was estimated, the numbers were compared with the number of yearly incoming cases in First Instance Courts from CEPEJ report on the “Efficiency and quality of justice”<sup>3</sup> in order to have a rough indication of the impact of mediations in those jurisdictions.

<sup>3</sup> Question 91.2.2 1st inst courts Incoming cases\_Civil (and commercial) litigious cases (including litigious enforcement.

Country	Nr. of civil mediations	Nr. mediation settled	Success Rate	Nr. of incoming civil cases (Q 91.2.2)	Balanced Relationship Index
Albania	790			15.944	4,95%
Armenia	6	5	83,3%	NA	
Bosnia and Herzegovina	1.931	1.877	97,2%	158.046	1,22%
Croatia	531	NA	-	165.741	0,32%
Denmark	718	312	43,5%	41.717	1,72%
Finland	1.870	1.209	64,7%	10.677	17,51%
Georgia	24	11	45,8%	34.309	0,07%
Greece	150	120	80,0%	241.418	0,06%
Hungary	919	500	54,4%	180.382	0,51%
Italy	183.977	21.397	42,2% <sup>4</sup>	1.585.740	11,60%
Latvia	135	108	80,0%	45.127	0,30%
Republic of Moldova	149	93	62,4%	74.562	0,20%
Montenegro	287	NA	-	27.383	1,05%
Norway	2.037	1.301	63,9%	19.382	10,51%
Poland	6.638	437	6,6%	1.226.470	0,54%
Romania	250	180	72,0%	1.526.483	0,02%
Serbia	196	NA	-	226.039	0,09%
Slovenia	970	115	11,9%	59.996	1,62%
Spain	951	-	-	1.004.976	0,09%
Macedonia	137	26	19,0%	55.232	0,25%
Turkey	4.097	3.875	94,6%	2.075.081	0,20%
Ukraine	600	400	66,7%	714.359	0,08%

Table 1: Answers of Question 7 and 8.

By dividing the number of mediations by the number of incoming cases, we obtain the “Balanced Relationship Index” between mediations and judicial procedures. This index has been used to measure the effectiveness of the success of a mediation model in a given jurisdiction<sup>5</sup>. From the data gathered from the national correspondents, only **Italy**, **Finland** and **Norway** have an index above 10%, while for the majority (85%) of the 21 States listed the index is much below 1%.

It is worth noting that 15 States out of 21 reported less than 1.000 mediations per year, with the lowest reporting States being Armenia with 6 civil mediations administered in 2016.

<sup>4</sup> The average of 42,2% success rate is calculated over the number of mediations procedures where both parties participated to a second meeting as reported in the slide 13 of the [presentation of the statistics on 2016 mediations](#) elaborated by the Italian Minister of Justice.

<sup>5</sup> <<[Achieving a Balanced Relationship between Mediation and Judicial Proceedings](#)>> - In depth analysis on the Implementation of the Mediation Directive – European Parliament's Committee on Legal Affairs, November 2016 – by Leonardo D’Urso and Giuseppe De Palo.

Only **Poland, Turkey, Norway, Bosnia and Herzegovina, Finland** and **Italy** reported more than 1.000 mediations. **Italy** reported having 183,977 civil mediations administered in 2016. This can be explained by the fact that legislation in Italy requires a first mediation meeting with an easy opt-out for a certain category of cases, resulting in a major increase in the number of mediations.

Even considering the limitation of the statistics validity due to the general lack of official data available on civil mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to civil mediation in the vast majority of the Member States.

### 2.3 Importance of possible CEPEJ actions to increase civil mediations (Q9)

Respondents were last asked to rate the importance of possible CEPEJ actions in order to increase the number of civil mediation processes in their country. On average, the majority of respondents found that setting international standards for mediator trainings (3.94 out of 5) and the introduction of possible CEPEJ cooperation programs (3.91) would be the most important actions that would result in an increase in the number of civil mediations. Updating the CEPEJ guidelines on mediation was ranked as the least important action overall (2.85). Of those respondents that stated that other new tools on mediation would result in an increase in the number of civil mediations, the majority commented that the new tools should be either a database on good practices or other awareness raising tools.

How do you rate the importance of the following CEPEJ possible actions in order to increase the number of civil mediation procedures in your country in the coming years?

Answered: 52 Skipped: 10

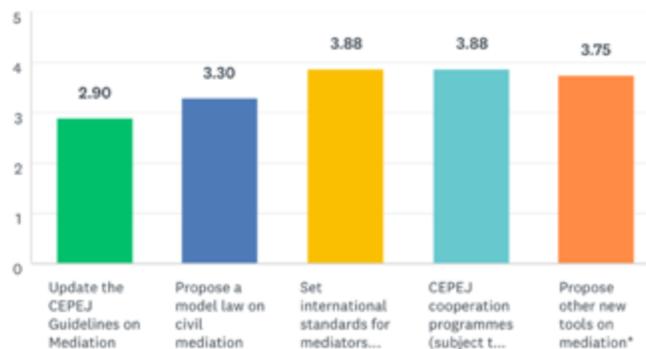


Figure 4: Answers of Question 9 of the questionnaire.

**Estonia, Germany, Luxembourg** all indicated that none of the possible CEPEJ actions would increase the number of civil mediation processes, ranking all measures a 1 or 2. These were all States that found that the Civil Mediation Recommendation and Guidelines had little to no impact in their states, indicating their tendency to believe that future CEPEJ actions would also have little or no impact. Some States such as **Germany** indicated that mediation “*is already of great interest of mediation ... no impulse is needed*”.

**Armenia, Belgium, Cyprus, Greece, Hungary, Macedonia, Moldova, Montenegro, Romania, Sweden,** and **Ukraine** all indicated that the most important CEPEJ action that would result in an increase in the number of civil mediation processes is the proposal of a model law on civil mediation.

All these States, with the exception of **Belgium** and **Cyprus**, that did not provide data, indicated that they have relatively low numbers of civil mediation. The exception to this is **Hungary**, which reported 919 civil mediations in 2016, however this number is still relatively low.

## 2.4 Comments and suggestions (Q10)

Several states suggested alternative measures to ensure the development of and to increase the incidence of civil mediation. **Armenia** indicated that incentives promoting the CEPEJ Guidelines would be welcome; **Bulgaria** suggested that compulsory mediation in certain types of civil cases is needed; and several states such as **Poland** and **Turkey** indicated that they would like to see increased CEPEJ support for mediation and mediators (both indicated that CEPEJ cooperation programs were very important).

Overall, a minority of States are not in favor of more intervention from CEPEJ mainly because in their states mediation is already working fine, such as **Germany** that commented <<As mentioned, mediation is discussed intensively in Germany. There is no impulse necessary.>>

On the contrary, the majority of representatives of Member states are asking for more support by CEPEJ.

**Bulgaria:** << It is quite reasonable of thinking of compulsory mediation on some groups of civil cases as well as increasing the qualification of the mediators.>>

**Greece:** <<Cooperation among the European States on a unified model and practice of mediation>>.

**Ireland:** <<Disseminate Council of Europe Recommendations and CEPEJ materials on mediation to professional mediation bodies, to raise consciousness within the mediation community of these instruments and documents.>>

**Malta:** <<I believe that further financing for awareness and for programmes that can be created, mediation would be successful, once carefully studied and thought out.>>

**Poland:** << Poland put a high value on promoting mediation in Poland and is concerned with all initiatives pursuing this. We acknowledge the necessity to creating a network of organizations in every State of the Council of Europe which will provide information about local systems of mediation and database of good practices. Moreover, we encourage to organize international meetings on good practices of implementing and promoting mediation in Europe. Poland is also interested in study on similarities and differences of mediation in States of the Council of Europe.... Organize how level meetings and point out to benefits and importance of developing civil mediation NOT ONLY COURT-REFERRED OR COURT-ANNEXED, but also private, contractual. >>

**Turkey:** <<It would be useful for the Turkish representatives to participate the meetings of CEPEJ-GT-MED in order to exchange the mediation experiences of Turkey. Also, it would contribute to the quality of mediation practices in Turkey, if received CEPEJ support and cooperation in terms of advanced mediation practices.>>

**Serbia:** <<Having in mind the fact that in the interim benchmarks contained in the European Union Common Position on Judiciary and Fundamental rights, adopted by the Committee of Permanent Representatives in the European Union, the EU highlights the need for further consideration and promotion of the use of various alternative dispute resolution methods, for the purpose of improvement of access to justice and decreasing the number of backlog cases, improving access to effective, efficient and high quality mediation services is one of the main strategic objectives of the Government of Serbia and the entire judicial reform agenda in the forthcoming period. Therefore, all possible support, having in mind the existing resources of the CEPEJ (from guest lectures/speakers at conferences and provided training and other targeted activities, to more substantive support through an elaborate project, such as the one provided to Turkey) is highly welcome. If no larger project is possible, having in mind the fact that legislative amendments are planned for 2018 for the Law on Mediation in Dispute Resolution, in order to, on one hand, raise standards of mediation services

*(training, qualifications, licensing of service providers/centres) and, on the other hand, to consider implementing the required initial mediation session in certain types of disputes, support in this legislative activity i.e. normative work would be highly valued. Likewise, interventions/ assistance regarding the quality of training of mediators would be valued, as well as assistance in establishing links and/or continuous training programme cooperation with European training centres, through the Council of Europe in co-operation with the European Union. Finally, assistance in establishing and monitoring of mediation schemes and on-going pilot projects, including both qualitative and quantitative evaluation aspects, would be helpful, to enable the quality of mediation schemes to be compared.>>*

**Ukraine:** *<<I think that first of all a group of specialists (foreign and national) in this area can be established for summarizing all recommendations and best world practice in order to make really effective draft law about mediation....Trainings for mediators and for teachers of mediation can be organized in order to increase the qualifications of such persons. organize practical training for judges and lawyers...To organize practical trainings for judges; to develop standards to the programs on training mediators >>*

### Chapter 3. Family Mediation

The second part of questionnaire – from question 11 to 17 - covered the impact of the CEPEJ guidelines on family mediation in the Council of Europe Member States.

#### 3.1 Impact on Family Mediation (Q11, Q12)

Respondents were asked what the impact was in their State of the Council of Europe Recommendation No. R(98)1 (“Family Mediation Recommendation”) of the Committee of Ministers to member states on Family Mediation and of the CEPEJ 2007 guidelines for a better implementation of the existing recommendation concerning family mediation (“Family Mediation Guidelines”).

In your opinion, in the last 10 years what was the impact in your State of the Council of Europe Recommendation No. R(98)1 of the Committee of Ministers to member States on Family Mediation, and CEPEJ 2007 Guidelines for a better implementation of the existing recommendation concerning family mediation?

Answered: 48 Skipped: 14

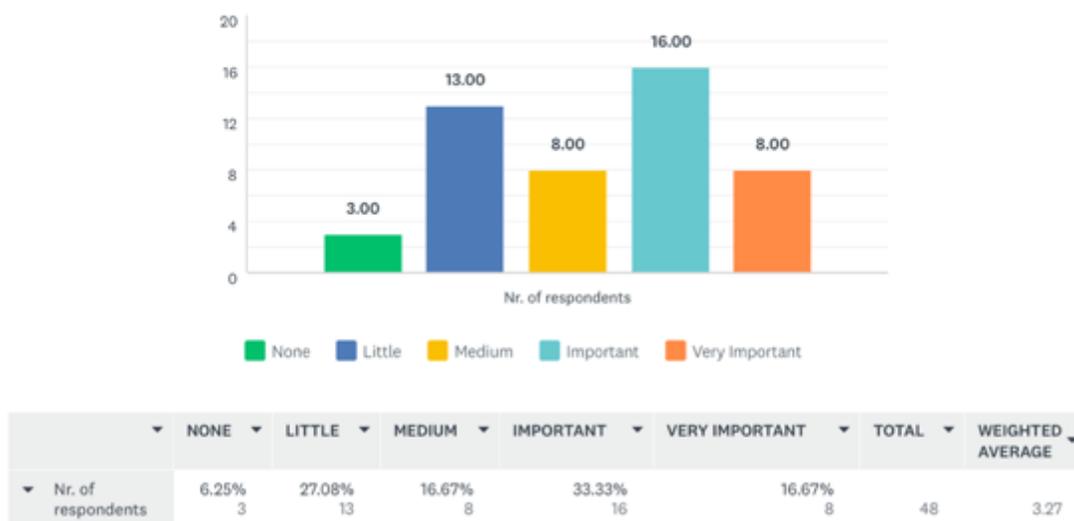


Figure 5: Answers of Question 11 of the questionnaire.

Overall, there are an equal amount of States that experienced an impact and those that did not as a result of the Recommendation/Guidelines. Over half of respondents found that the Family Mediation Recommendation and Guidelines had an important to very important impact in their state. However, over 30% of respondents stated that the Family Mediation Recommendation and Guidelines had little to no impact on their state.

Due to the variety of legislative frameworks and the culture on the use of mediation, it is important to analyze the answers by dividing them into three major groups and considering their comments.

#### **Important and Very Important Impact**

**Armenia, Georgia, Macedonia, Montenegro, Ukraine and Slovenia** indicated that the Family Mediation Guidelines and Recommendation had a very important impact in their states. These States indicated that legislation was adopted thanks to the CEPEJ Family Mediation

Guidelines/Recommendation. With the exception of **Slovenia**, these are not EU Member States so they would not have had to implement EU Mediation Directive 2008/52/EC or other EU regulations resulting in a likely greater impact of CEPEJ tools. Among these Member states, some of the most relevant comments from the respondents are:

**Georgia:** << In 2011 the amendments to the Civil Procedure Code of Georgia were adopted, introducing the court mediation procedure on family matters for the first time.>>  
**Ukraine:** <<Laws adopted thanks to the CEPEJ guidelines, interest in the guidelines.>>  
**Macedonia:** <<Laws adopted thanks to the CEPEJ guidelines.>>  
**Slovenia:** << Guidelines were implemented into national laws on mediation.>>

### **Medium Impact**

**Albania, Belgium, Bulgaria, Croatia, Czech Republic, Finland, Hungary, Italy, Latvia, Moldova, Poland, Slovakia and Turkey** indicated that the Family Mediation Recommendation and Guidelines have had a medium to important impact on their State, notably on their laws and mediation standards. Among these Member states, some of the most relevant comments from the respondents are:

**Poland:** <<Family mediation in Poland is regulated by Civil Procedure Rules. However, some number of recommendations applicable for all type of mediations (eg. standards concerning training programmes for mediators or ethics code for mediators) has been implemented by The Council for the Alternative Methods of Disputes and Conflicts Resolution, which is an advisory body of the Minister of Justice. What is more the common suggestions of Recommendation No. R(98)1 and CEPEJ 2007 Guidelines are applied by mediation centers. Based on the foregoing, it is difficult to determine the impact of Recommendation No. R(98)1 of the Committee of Ministers to member States on Family Mediation, and CEPEJ 2007 Guidelines for a better implementation of the existing recommendation concerning family mediation.>>  
**Latvia:** <<The recommendation was used as a basis of the legal framework of mediation.>>  
**Turkey:** <<It is stated in Istanbul Convention, which Turkey is a party, that the alternative resolution methods cannot be mandatorily applied in disputes that are related to domestic violence. Within the article 1 paragraph 2 of Mediation Law on Civil Disputes no. 6325, Istanbul Convention was very broadly interpreted. This situation is discussed with the NGOs, psychologists, pedagogues and academicians during the meetings held with the participation of CEPEJ experts. In other words, all the stakeholders have utilized CEPEJ tools which have been very helpful to exchange best practices.>>  
**Finland:** <<The state of mediation in family matters was previously limited to Chapter 5 of the Finnish Marriage Act (234/1929), which was amended in 1987. According to the Chapter, the “[d]isputes and legal matters arising in a family should primarily be settled in negotiations between the family members and decided by agreement”. Thus, some framework for family mediation already existed before the adoption of the Recommendation. The legal framework for family mediation in courts has been adopted in recent years. For example, the Act on Child Custody and Right of Access (361/1983) was amended in 2014 and now refers directly to the Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts of 2011. As explained in the answer to question 5, this Act is in turn partly based on the original Recommendations No. R(2002)10 and No. R(98)1.>>

### **None to Little Impact**

**Bosnia and Herzegovina, Estonia, France, Germany, Greece, Luxembourg, Norway, Romania, Sweden, Switzerland, Russian Federation and United Kingdom** indicated that the Family Mediation Guidelines and Recommendation had little impact in their States. The majority of these States reported that there was a general lack of interest in the Recommendation and Guidelines and that there were already existing legislative sources on family mediation. **Denmark** is the only state that indicated that the Family Mediation Recommendation and Guidelines had no impact at all. With the exception of **Norway** and **Switzerland** these are all EU Member States indicating that perhaps, EU Directives and regulations had a much larger impact on those States than the CEPEJ Guidelines. Among these Member states, some of the most relevant comments from the respondents are:

**Bosnia and Herzegovina:** <<Very few mediators, professionals in the ministries and other administrative bodies and judiciary are aware of the Recommendation /No. R(98)1/ and the CEPEJ Guidelines (CEPEJ(2007)14). Mediation procedures are used rarely to settle family matters. The main alternative to litigation in family matters is counseling. Namely, the family acts in Bosnia and Herzegovina mandate counseling in litigious divorce procedure. The acts prescribe that marriage counseling in the municipal social welfare centre is obligatory before a divorce procedure in court is instituted.>>

**Germany:** <<We estimate the direct impact of the Council of Europe Recommendation No. R(98)1 of the Committee of Ministers to member States on Family Mediation, and CEPEJ 2007 Guidelines for a better implementation of the existing recommendation concerning family mediation in Germany as low, because the German Mediation Act, which entered into force on 26 July 2012 and provides the legal framework for Mediation in Germany, was based on the Directive 2008/52 EC that has been implemented in the Act. The Act includes guidelines on mediation from the Directive and covers all forms of mediation in Germany, irrespective of the form of dispute or the place or residence of the parties concerned. Following the Directive 2008/52 EC there was no need to implement other Guidelines and Recommendations with similar content.>>

**Russian Federation:** <<Law on mediation was adopted but no substantial influence of CEPEJ guidelines on it can be detected.>>

**France:** <<Lack of awareness and existing internal laws.>>

**United Kingdom:** <<Much of the development of family mediation over the last decade, in England and Wales, has followed the principles set out in the Recommendation. However, this is only because domestic factors have mirrored those considered by the Council of Europe and not because of direct application of those recommendations....>>

### 3.2 Number of Family Mediation Processes in 2016 (Q13, Q14, Q15)

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Family Mediation Guidelines and Recommendation. Respondents were asked if official data was available in their state and if so, to provide the number of mediation that were administered and settled in their State in 2016. The majority of states do not have or do not make official data available on the number of family mediations. However, a number of respondents provided estimates if official data was not available.

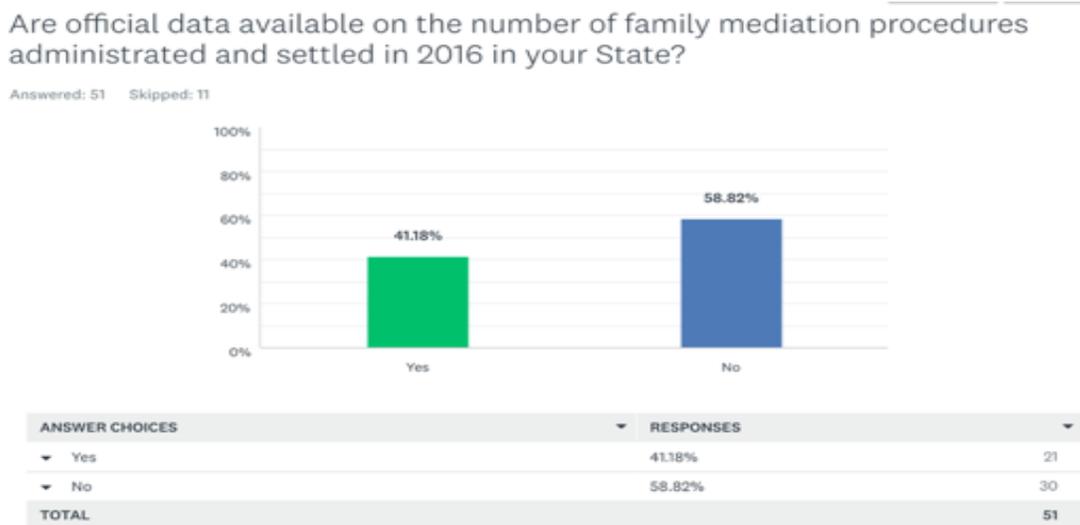


Figure 6: Answers of Question 13 of the questionnaire.

Of the States that reported the number of family mediations administered, either official or estimated, the lowest number of reported family mediations in 2016 was 33 family mediations administered in **Moldova** and 36 administered in **Turkey**. The highest incidences of mediations are from **Spain** with 7.336 and **Poland** reporting over 4,000 administered family mediations in 2016, followed by **Hungary** with 2,500 family mediations, **Ireland** with over 2,000 family mediations administered in 2016 and **Finland, Norway, and Poland** with over 1,000. **Poland** indicated that the Family Mediation Guidelines/Recommendation had an important impact on it, and that it placed a high value on promoting family mediation which can be presumed to result in the high incidence of family mediations administered.

Country	Nr. of Family Mediations	Nr. Mediation Settled
Albania	527	527
Armenia	0	0
Bosnia and Herzegovina	0	0
Croatia	108	111
Denmark	510	208
Finland	807	720
Georgia	7	4
Greece	70	40
Hungary	2.500	1.500
Ireland	2.249	1.236
Latvia	135	108
Republic of Moldova	33	11
Montenegro	231	98
Norway	2.100	1.740
Poland	4.316	1.915
Slovenia	130	15
Spain	7.336	-
Sweden	100	50
Turkey	36	36
Ukraine	2.000	1.900

*Table 2: Answers of Question 14 and 15 of the questionnaire.*

**Albania** and **Denmark** reported over 500 family mediations administered in 2016. **Croatia, Latvia, Montenegro, Romania, Slovenia,** and **Sweden** all indicated around 100 family mediations administered in 2016. **Armenia** and **Bosnia Herzegovina** expressly indicated that no family mediation processes had been initiated as of yet.

Even considering the limitation of the statistics validity due to the general lack of official data available on family mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to family mediation in the vast majority of the Member States.

### 3.3 Importance of possible CEPEJ actions to increase family mediations (Q16)

Respondents were asked to rate the importance of possible CEPEJ actions in order to increase the number of family mediation processes in their state. On average, setting international standards for mediator trainings (3.69 out of 5) and the introduction of possible CEPEJ cooperation programmes (3.68) were found to be the most important actions that would result in an increase in the number of family mediations. Updating the CEPEJ guidelines on mediation was found to be the least important action that would result in an increase in the number of family mediations. Of those respondents that stated that other new tools on mediation would result in an increase in the number of civil mediations, the majority commented that the new tools should be either a database on good practices or guidance on judicial referral to mediation.

How do you rate the importance of the following CEPEJ possible actions in order to increase the number of family mediation procedures in your country in the coming years?

Answered: 48 Skipped: 14

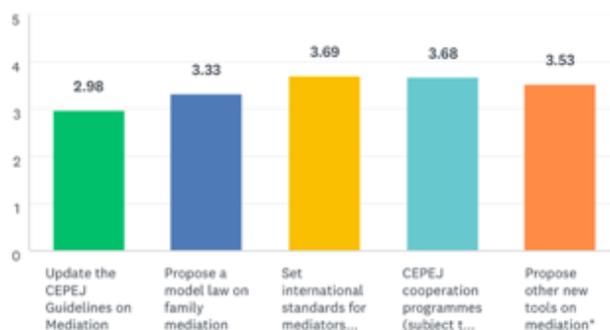


Figure 7: Answers of Question 16 of the questionnaire.

**Estonia, Germany, Luxembourg, United Kingdom** all indicated that none of the possible CEPEJ actions would increase the number of family mediation processes, ranking all measures a 1 or 2. These were all States that found that the Family Mediation Recommendation and Guidelines had little to no impact in their states, indicating their tendency to believe that future CEPEJ actions would also have little or no impact on the incidence of family mediation in their state.

**Armenia, Belgium, Greece, Macedonia, Moldova, Montenegro, Poland, Romania, Slovenia, Turkey, and Ukraine** all indicated that the most important CEPEJ action that would result in an increase in the number of family mediation processes is the proposal of a model law on family mediation.

### 3.4 Comments and suggestions (Q17)

Several states suggested alternative measures to ensure development of and increase the incidence of family mediation. In general, the respondents commented that more education and training specific to family mediation is necessary and CEPEJ should take an active role in promote mediation in family matters. Among many comments and recommendations, following are some selected ones:

**Armenia:** << CEPEJ should draft a specific action appropriate for each country separately.>>

**Lithuania:** <<Sharing experience between countries should be considered as a great possibility to the spread of the mediation among stakeholders.>>

**Romania:** <<An instrument that better targets the idea of education in the field, improving methods of promoting mediation, increasing trust in this institution, especially in situations where mediation is conceived as a free activity, or as a liberal profession, without the interference or influence of the administrative/state authority in organizing and controlling the profession.>>

**Turkey:** <<It would be very useful to receive CEPEJ support during the establishment of legal framework on family mediation and to conduct the best practices. Also, in order for the mediators, who have been recorded to the official mediator's registry kept in the Mediation Department of MoJ, to act as an expert on family mediations, CEPEJ support would be very useful to determine the training module for the experts.>>

**Serbia:** <<Much has to be done on awareness raising on the benefits of mediation in family matters, to incentivize family mediation, improve cooperation between relevant institutions and improve (harmonize) the existing legal framework. For family mediation, especially having in mind the fact that the Family Law is in the competence of the Ministry of Labour, Employment, Veteran and Social Affairs while the Law on Mediation is in the competence of the Ministry of Justice, guidance on further legislative work in order to fully reach relevant standards would be particularly useful, although a full project with beneficiaries being both ministries, social services centers and courts would render the best results.>>

**Poland:** <<Poland put a high value on promoting family mediation in Poland and is concerned with all initiatives pursuing this. We acknowledge the necessity to creating a network of organizations in every State of the Council of Europe which will provide information about local systems of mediation and database of good practices. Moreover we encourage to organize international meetings on good practices of implementing and promoting mediation in Europe. Poland is also interested in study on similarities and differences of mediation in States of the Council of Europe, in particular relating to mediation in divorce and separation cases.... We need more education for judges and court clerks plus more legal incentives for parties to mediate in case of a divorce with minors. >>

**Portugal:** <<We consider very important the establishment of an international platform of international mediation in family matters.>>

**Ukraine:** <<Making research on using mediation in family cases, distribution of information about opportunities (advantages) of family mediation... As family mediation is of great importance and can be very effective more attention should be payed to mediator trainings and popularization of family mediation. >>

## Chapter 4. Penal Mediation

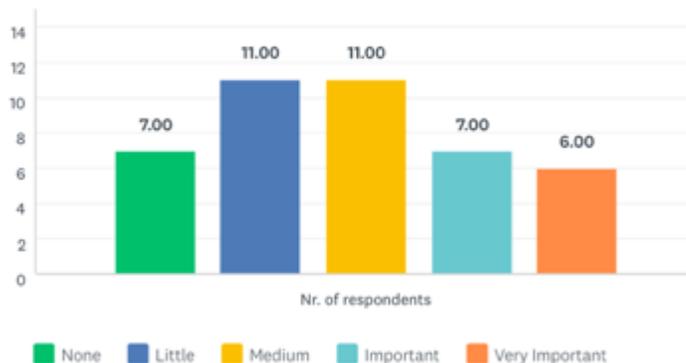
The third part of the questionnaire – from question 18 to 24 - covered the impact of the CEPEJ guidelines on penal mediation in the Council of Europe Member states.

### 4.1 Impact on Penal Mediation (Q18, Q19)

Respondents were asked what the impact was in their country of the Council of Europe Recommendation No. R(99)19 (“Penal Mediation Recommendation”) of the Committee of Ministers to member states on Family Mediation and of the CEPEJ 2007 guidelines for a better implementation of the existing recommendation concerning mediation in penal matters (“Penal Mediation Guidelines”).

In your opinion, in the last 10 years what was the impact in your State of the Council of Europe Recommendation No. R(99)19 of the Committee of Ministers to member States concerning mediation in penal matters and CEPEJ Guidelines on Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters?

Answered: 42 Skipped: 20



	NONE	LITTLE	MEDIUM	IMPORTANT	VERY IMPORTANT	TOTAL	WEIGHTED AVERAGE
Nr. of respondents	16.67% 7	26.19% 11	26.19% 11	16.67% 7	14.29% 6	42	2.86

Figure 8: Answers of Question 18 of the questionnaire.

#### Important and very important Impact

**Latvia, Macedonia, Ukraine, Georgia** and **Montenegro** indicated that the Penal Mediation Recommendation and Guidelines had a very important impact. In those States, the Penal Mediation Guidelines were used as a basis for legislation.

**Latvia:** <<The recommendation was used as a basis for the development of Regulations of the Cabinet of Ministers "Order of organization and Implementation of Mediation by the State Probation Service" (2007). At the moment, a new draft of Regulations of the Cabinet of Ministers is at the process based at the Recommendation No. R(99)19 of the Committee of Ministers.>>

**Georgia:** <<In 2015 the Code of Juvenile Justice was adopted, which contains provisions on mediation. According to the Code the mediation is possible on crimes conducted by juveniles.>>

**Montenegro:** <<Laws adopted thanks to the CEPEJ guidelines.>>

**Ukraine:** <<Laws adopted thanks to the CEPEJ guidelines; interest in the Guidelines.>>

### **Medium Impact**

**Armenia, Belgium, Bosnia and Herzegovina, Czech Republic, France, Poland, Serbia, Slovak Republic, Slovenia, and Ukraine** all indicated that the Penal Mediation Recommendation and Guidelines had a medium impact.

**Armenia:** <<Currently, the Republic of Armenia has no progress in introducing mediation in penal matters.>>

**Bosnia and Herzegovina:** << The acts on processing juveniles in penal matters were adopted and amended in Bosnia and Herzegovina in 2010, 2011 and 2014; according to these acts the municipal social welfare centres are in charge of the handling mediation processes for juvenile defendants. The Recommendation (No. R(99) 19) was taken into account while the aforementioned acts were being drafted. The Association of Mediators of Bosnia and Herzegovina made sure that the members of the working groups in charge of preparing the acts were aware of the Recommendation. Additionally, in development of training programmes related to application of the acts, the Recommendation is taken account of as a part of the international policy framework.>>

**Serbia:**<< A general lack of awareness still exists with respect to the relevance and permissibility of mediation in penal matters, although important results have been achieved to date. ... Although Serbian legislation in this area had been adjusted to relevant international standards since the Juvenile Justice Law has incorporated many advanced elements and progressive solutions which create grounds for implementation of the restorative justice principles, concerns existed over the lack of its uniform application as the innovative legal solutions have not been followed up with capacity building and financing for their implementation.>>

### **None or Little Impact**

The Penal Mediation Recommendation and Guidelines has had little to no impact on the majority of States. This is mainly due to either existing legislative sources or the fact that penal mediation does not exist in countries such as in **Croatia, and Germany. Bulgaria, Denmark, Estonia, Finland, France, Greece, Italy, Norway, Romania, Spain, Sweden, Switzerland and Russian Federation** indicated that the Penal Mediation Guidelines/Recommendation had little to no impact on their State.

**Finland:** <<Mediation in criminal cases is called Conciliation in Criminal and Civil cases, governed by the Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) which entered into force on 1 January 2006. According to the act, the general management, supervision and monitoring of conciliation services fall within the jurisdiction of the Ministry of Social Affairs and Health. Each State Provincial Office is obliged to arrange conciliation services and ensure that they are available in appropriately implemented form in all parts of the province. International co-operation has been an inspiration to this legislation adopted 2005.>>

**France:** <<Mediation in criminal matter exists for a long time, but has been recognized by the law in 1993. In spite of CEPEJ recommendations, no supplementary legal provisions have been implemented in a national law since 1999.>>

**Germany:** <<Penal matters should not be mediated.>>

**Norway:** <<We don't do mediation in Penal Matters.>>

**Russian Federation:** <<Mediation in penal matters is not provided by the law. Use of restorative justice tools is promoted by enthusiasts but is not a large-scale practice.>>

**Sweden:** <<In penal cases involving adult defendants, mediation is not used at all. In penal cases involving juvenile defendants the social authorities are obliged to investigate whether mediation is possible between the injured party and the defendant.>>

**Spain:** <<In Spain there is not a specific Law for the mediation in criminal matters.>>

## 4.2 Number of Penal Mediation Processes in 2016 (Q20, Q21, Q22)

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Penal Mediation Guidelines and Recommendation.

Respondents were asked if official data was available in their state and if so, to provide the number of mediation that were administered and settled in their State in 2016. The majority of states do not have or do not provide official data on the number of penal mediations. However, several respondents provided estimates if official data was not available.

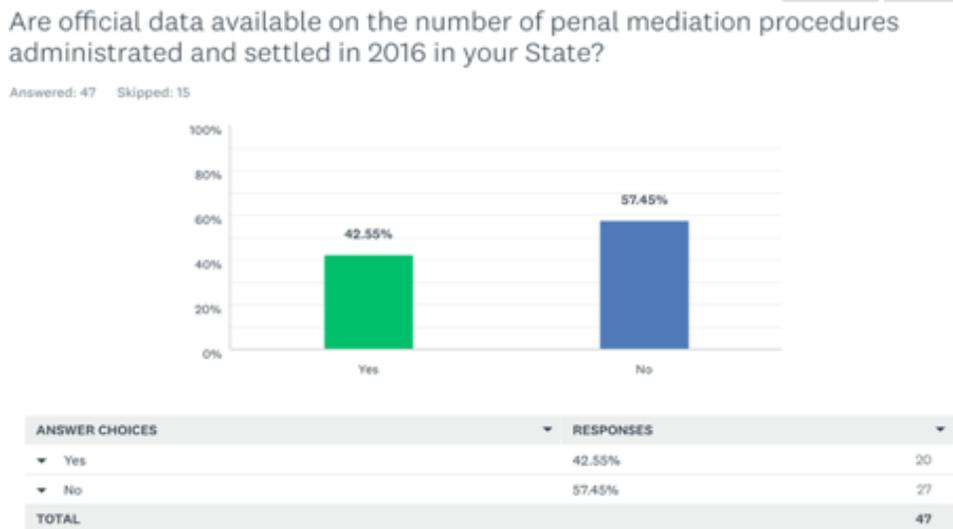


Figure 9: Answers of Question 20 of the questionnaire.

Of the States that reported the number of penal mediations administered, either official or estimated, the lowest number of reported penal mediations in 2016 is **Moldova** with 16 penal mediations administered and **Montenegro** with 41.

Country	Nr. of Penal Mediations	Nr. Mediation Settled
Albania	322	157
Armenia	0	0
Bosnia and Herzegovina	10	10
Czech Republic	982	NA
Georgia	720	287
Ireland	0	0
Latvia	1265	605
Republic of Moldova	16	11
Montenegro	41	39
Poland	4176	2338
Serbia	28	NA
Slovak Republic	1043	902

Country	Nr. of Penal Mediations	Nr. Mediation Settled
Slovenia	772	475
Sweden	500	0
Turkey	12261	7817
Ukraine	175	75

Table 3: Answers of Questions 21 and 22 of the questionnaire.

**Turkey** and **Poland** are outliers, not only do they both have mediation in penal matters, they both have large numbers of penal mediations. **Turkey** had over 12,000 penal mediations in 2016 and **Poland** had over 4,000 in 2016. **Slovakia** also indicated it had administered over 1,000 penal mediations.

Even considering the limitation of the statistics validity due to the general lack of official data available on penal mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to penal mediation in the vast majority of the Member States.

#### 4.3 Importance of possible CEPEJ actions to increase penal mediations (Q23)

Respondents were asked to rate the importance of possible CEPEJ actions in order to increase the number of penal mediation processes in their country.

On average, setting international standards for mediator trainings and the introduction of possible CEPEJ cooperation programmes were found to be the most important actions that would result in an increase in the number of family mediations. Updating the CEPEJ guidelines on mediation was found to be the least important action that would result in an increase in the number of family mediations.

How do you rate the importance of the following CEPEJ possible actions in order to increase the number of penal mediation procedures in your country in the coming years?

Answered: 42 Skipped: 20

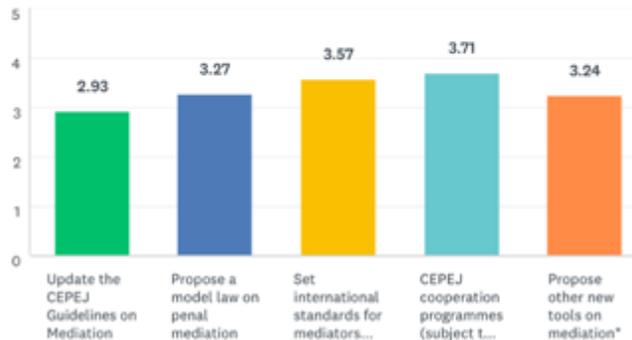


Figure 10: Answers of Question 23 of the questionnaire.

**Estonia, Germany, Luxembourg, and Norway** all indicated that none of the possible CEPEJ actions would increase the number of civil mediation processes, ranking all measures a 1 or 2. These were all States that found that the Civil Mediation Recommendation and Guidelines had little to no impact in

their states (**Norway, Denmark, and Germany** indicated that penal mediation does not exist in their State), indicating their tendency to believe that future CEPEJ actions would also have little or no impact on the incidence of penal mediation in their state.

#### **4.4 Comments and suggestions (Q24)**

Penal mediation is used only in few states. Several national correspondents suggested to share their experience and develop a legislative framework. Among many comments and recommendations, following are some selected ones:

**Latvia:** <<Working out draft of international standards for mediators training, the best practice on evaluation of mediation process and mediators skills. Workshops for mediators at European level.>>

**Lithuania:** <<Sharing knowledge on legislation experience concerning penal mediation>>.

**Ukraine:** <<Develop recommendation to use mediation in juvenile justice.>>

**Poland:** <<Poland put a high value on promoting mediation in Poland and is concerned with all initiatives pursuing this. We acknowledge the necessity to creating a network of organizations in every State of the Council of Europe which will provide information about local systems of mediation and database of good practices. Moreover we encourage to organize international meetings on good practices of implementing and promoting mediation in Europe. Poland is also interested in study on similarities and differences of mediation in States of the Council of Europe.>>

**Serbia:** <<Further research and developments in this matter in view of the imbalance of power between the victim and the offender following a crime. - Standardizing of the procedure for the preparation (psychological) of victims and offenders for mediation, in order for it to be successful. - Supporting of establishing sustainable mediation schemes: proposals for implementation of workable and sustainable mediation schemes, for not only crimes prosecuted by a private prosecutor but potential others, at different stages of the criminal justice procedure, including the execution of sanctions; Support in legal amendments and implementation of such schemes.>>

**Greece:** <<New legislation on penal mediation.>>

## Chapter 5. Administrative Mediation

The fourth part of the questionnaire covered the impact of the CEPEJ guidelines on administrative mediation in the Council of Europe Member States.

### 5.1 Impact on Administrative Mediation (Q25, Q26)

Respondents were asked what the impact was in their country of the Council of Europe Recommendation No. R(2001)9 (“Administrative Mediation Recommendation”) of the Committee of Ministers to member states on Family Mediation and of the CEPEJ 2007 guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties (“Administrative Mediation Guidelines”). The Administrative Mediation Guidelines and Recommendations had little to no impact in the majority of states.

In your opinion, in the last 10 years what was the impact in your State of the Council of Europe Recommendation No. R(2001)9 of the Committee of Ministers to member States on alternatives to litigation between administrative authorities and private parties and CEPEJ 2007 Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties?

Answered: 38 Skipped: 24



Figure 11: Answers of Question 25 of the questionnaire.

However, the Administrative Mediation Guidelines and Recommendations were very important in **Hungary, Montenegro, and Ukraine**. The States cited the importance of the Guidelines to adopting legislation in administrative mediation. **Moldova** and **Turkey** indicated that the Administrative Mediation Guidelines and Recommendations were important in their respective States due to their influence on the legislative framework.

**Armenia, Denmark, Finland, Ireland, Norway, and Slovakia** indicated that there is either no mediation process between administrative authorities and parties or that this is type of procedure is considered civil mediation.

**Belgium, Croatia, Macedonia, and Poland** indicated that the Administrative Mediation Guidelines/Recommendation had a medium impact in their State, mainly because of a lack of awareness of the Guidelines.

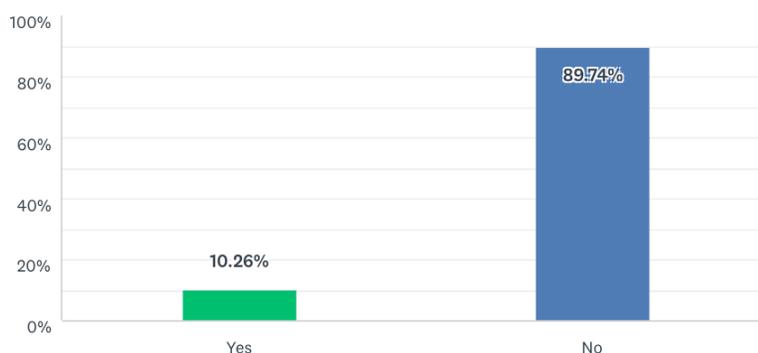
## 5.2 Number of Administrative mediation processes in 2016 (Q27, Q28, Q29)

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Administrative Guidelines and Recommendation.

Respondents were asked if official data was available in their state and if so, to provide the number of mediations that were administered and settled in their State in 2016. The majority of states do not have or do not provide official data on the number of administrative mediations. However, several respondents provided estimates if official data was not available.

Are official data available on the number of alternatives to litigation between administrative authorities and private parties procedures administered and settled in 2016 in your State?

Answered: 39 Skipped: 23



ANSWER CHOICES	RESPONSES	
Yes	10.26%	4
No	89.74%	35
<b>TOTAL</b>		<b>39</b>

Figure 12: Answers of Question 27 of the questionnaire.

f the States that reported the number of administrative mediations administered, either official or estimated, **Moldova** with 6 and **Poland** with 8 administrative mediation processes administered in 2016 reported the lowest incidence of administrative mediation.

Country	Nr. of Administrative Mediations	Nr. Mediation Settled
Albania	861	670
Armenia	0	0
Bosnia and Herzegovina	15	15
Georgia	0	0
Ireland	0	0
Republic of Moldova	6	4
Montenegro	9175	4414
Poland	54	30

Country	Nr. of Administrative Mediations	Nr. Mediation Settled
Serbia	1	NA
Sweden	0	0
Ukraine	240	200

Table 4: Answers of Questions 28 and 29 of the questionnaire.

**Montenegro** reported the highest incidence number of administrative mediations in 2016 with over 9,000 administrative mediation processes in 2016. **Albania** reported 861 administrative mediation processes in 2016 and **Ukraine** reported about 200 administrative mediation processes. The remainder of states do not have or do not provide data on the number of administrative mediations. Some States like **Denmark** noted that administrative mediations are included in the number of civil mediations and are not counted separately.

### 5.3 Importance of possible CEPEJ actions to increase administrative mediations (Q30)

Respondents were asked to rate the importance of possible CEPEJ actions in order to increase the number of administrative mediation processes in their country.

How do you rate the importance of the following CEPEJ possible actions in order to increase the number of alternatives to litigation between administrative authorities and private parties procedures in your country in the coming years?

Answered: 36 Skipped: 26

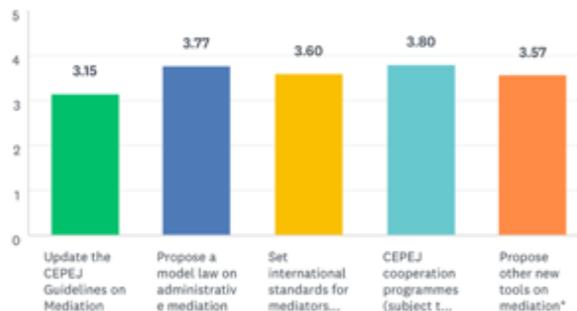


Figure 13: Answers of Question 30 of the questionnaire.

On average, most respondents found that proposing a model law on alternatives to litigation between administrative authorities and private parties and the introduction of possible CEPEJ cooperation programmes would be the most important actions that would result in an increase in the number of civil mediations. This differs from the ranking of possible CEPEJ actions in other types of mediation, signifying that perhaps more regulatory measures are needed, and would be welcome, in order to increase the numbers of administrative mediations. Updating the CEPEJ guidelines on mediation was ranked as the least important action overall.

**Luxembourg**, **Norway**, and **Sweden** all indicated that none of the possible CEPEJ actions would increase the number of administrative mediation processes, ranking all measures a 1 or 2. These were all States that found that the Family Mediation Recommendation and Guidelines had little to no impact in their states (**Norway** indicated that administrative mediation does not exist in their State),

indicating their tendency to believe that future CEPEJ actions would also have little or no impact on the incidence of administrative mediation in their state.

#### 5.4 Comments and suggestions (Q31)

Several states suggested alternative measures to ensure development of and increase the incidence of administrative mediation. **Greece** indicated that “new legislation” is necessary to increase the incidence of administrative mediation. The respondents from **Hungary, Romania, and Ukraine** suggested that administrative authorities and/or civil servants should be made aware of the benefits of mediation.

**Belgium:** <<Good practices promotion.>>

**Denmark:** <<Cases between administrative authorities and private parties belongs to mediation in civil matters.>>

**Lithuania:** <<Sharing knowledge on legislation experience on alternatives to litigation between administrative authorities and private parties.>>

**Serbia:** <<A USAID Rule of Law project is currently underway which has within its scope the reform of the State Attorney’s Office (SAO) in order to introduce greater use of alternative dispute resolution mechanisms, including creating incentives (reform of the legislation, the system of evaluation and promotion, measures for prevention of abuse/misuse, an economic analysis) for the SAO to conclude court and out of court settlements through various dispute resolution mechanisms. However, the area which remains without support/guidance are incentives (reform of the legislation, the system of evaluation and promotion, measures for prevention of abuse/misuse, an economic analysis) for the state and other represented bodies and institutions which are being sued/which might be sued, to conclude court settlements, etc. in the Administrative Dispute before the Administrative Court, as well as to use ADR as prevention mechanisms. Likewise, support in promoting of mediation/ADR in some special/specific administrative matters, where the public administration authorities and private parties can conclude mutual agreements would be highly welcome. Amendments to the Law on Administrative Procedure could be looked into, in order to support incentives for amicable arrangements of the administrative matters in the administrative procedure (sporazumno uređivanje upravne stvari u upravnom postupku). The National Judicial Reform Strategy and implementing Action Plan provide for the development of a normative framework for introduction of a two-tier administrative judiciary through the amendments to the Law on Organization of Courts as well as amendments to the Law on Administrative Disputes (establishing a first-instance administrative courts and High Administrative Court), in the following years. This is an excellent opportunity to introduce best practices for alternatives to litigation between administrative authorities and private parties, in the phase of legislative, procedural and institutional set up, i.e. in the process of creation of the new system. In view of the fact that the Republic of Serbia public administration is undergoing an extensive reform in the following period, in line with the EU accession process, with the necessity of further administrative streamlining, improving administrative procedures and services, further CEPEJ guidelines, expertise and a project specifically targeting this issue would be highly welcome. This would be welcome both from the aspect of the court, which would see a decrease of incoming cases, the administration, which would provide a better service, and the citizens/businesses, which would receive a better service.>>

**Romania:** <<Stimulate a culture where administrative authorities will be open to dialogue as an option to engage stakeholders AND to make joint decisions. Also, administrative authorities should budget for mediation services, which, at this point, I am afraid that this expense is not seen as possibility or a necessity for authorities. >>

**Hungary:** <<It would be a great help if we could find out which methods and arguments could effectively inform non-private parties and legal representatives of administrative lawsuits about the benefits of the procedure.>>

**Ukraine:** <<Need to focus on working with civil servants; to rise their awareness in opportunities of resolving disputes by mediation; assistance in implementation in legislation the right of civil servants to be party to mediation dispute resolution in minor administrative cases. >>...<<I think that first of all a group of specialists (foreign and national) in this area can be established for summarizing all recommendations and best world practice in order to make really effective draft law about mediation in Ukraine. Trainings for mediators and for teachers of mediation can be organized in order to increase the qualifications of such persons. Also work with civil servants can be done in order to form their positive attitude to mediation.>>

**Greece:** <<New legislation.>>

**Turkey:** <<In Turkey, the studies are being carried out to resolve the disputes between the administrative authorities and private parties via mediation. In this respect, support of CEPEJ experts will be very helpful in terms legal framework, awareness raising tools and good practices. Moreover, it would be very useful to receive comparative reports from Council of Europe member states, to exchange best practices and experiences on administrative mediation.>>

## Chapter 6. Findings, conclusions and recommendations

The aim of this study is to assess the concrete impact within the 47 Member States of the Council of Europe (CoE) of the existing CEPEJ Guidelines regarding: penal mediation (CEPEJ(2007)13), family and civil mediation (CEPEJ(2007)14) and alternatives to litigation between administrative authorities and private parties (CEPEJ(2007)15). In order to achieve this goal, a questionnaire composed of 31 questions divided into four main sections was developed by scientific expert Leonardo D'Urso. The questionnaire was validated by the members of GT-MED and sent to all 47 CEPEJ national correspondents in July 2017. All individual replies were recorded in an online platform managed by the Secretariat.

Fifty-six replies were received from the questionnaire representing 39 States. The participating countries were: **Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and United Kingdom.**

**Andorra, Austria, Azerbaijan, Liechtenstein, Monaco, Netherlands, San Marino, and Spain** did not provide data and thus have not been included in the analysis.

Even though in most cases the data gathered were based on expert estimates by the national correspondents and not on official statistics, the CEPEJ- GT-MED believes that the analysis of the data and above all of the comments received can contribute to have a good sense of the status of mediation in Europe. It has also helped the CEPEJ-GT-MED drawing recommendations for further actions to be developed in order to strengthen the recourse to mediation in Europe with the target to achieve by 2025 a ratio of not less than 25% between disputes settled by mediation and disputes adjudicated in judicial proceedings in all four civil, family, penal and administrative matters.

### 6.1 Findings

The main findings of the four areas of the questionnaire are summarized below:

#### ***Impact of the CEPEJ Guidelines on mediation***

Close examination of the responses to the questionnaire demonstrated that the CEPEJ Guidelines had a different impact on both the 47 Member States and the four different fields of mediation (civil, family, penal and administrative). A clear disparity exists in the answers received by EU member States and non-EU Member states. The different EU Directives on Mediation requiring implementation in national laws have had a greater impact on the majority of the 27 EU Member States than the CEPEJ Guidelines. On the contrary, for the non-EU Member states the Recommendations and Guidelines have been instrumental for the development of national legislations.

Regarding the matter of disputes, civil and family mediations guidelines were deemed by respondents to have had a major impact in comparison to penal and administrative ones. In correlation with the above, administrative guidelines consistently received the lowest scores from respondents.

#### ***Number of mediation processes***

The answers confirmed a general lack of available and homogenous official data on mediations. Looking at the few statistics available and at the expert estimates from the national correspondents of the concrete numbers of mediations in the four types of dispute matters, it is evident that the use of mediation is still in its infancy, resulting in a great variation of use of mediation across the 47 Member

States. For the vast majority of Member States, the ratio between judicial proceedings in Court and mediations is 100 to 1 (for one hundred cases filed in Court only one mediation process started).

In the four dispute matters, the number of mediations reported presented quite a variation. For example, countries such as **Italy**, **Norway** or **Finland** which reported a good number of mediations in civil matters, have less developed penal mediations. Mediations on administrative matters were almost nonexistent.

### ***Importance of possible CEPEJ action items to increase mediations***

The majority of respondents rated between 3 and 4 (out of 5) the importance of possible CEPEJ actions to increase the number of mediation processes in their state in the four dispute matters. On average, the majority of respondents found that setting international standards for mediator trainings, introduction of possible CEPEJ cooperation programs, proposal of a model law and new tools on mediation would be the most important actions resulting in an increase of the number of mediations. Updating the CEPEJ guidelines on mediation was ranked on average the least important action among the actions proposed.

### ***Overall comments and suggestions***

**All comments and suggestions have been an invaluable resource to draw the conclusions and recommended actions. Almost all respondents took time to answer most of *open questions* in all sections with comments and suggestions on various actions needed in their state for all dispute matters in order to increase the number of mediations. The vast majority of respondents believe that mediation has not been developed enough and CoE/CEPEJ is well placed to take a role of leadership within the European institutions to increase the recourse to mediation.**

## **6.2 Conclusions**

The vast majority of CoE Member States requested a renewed and permanent involvement in the implementation of diverse and more effective actions in order to increase the number of civil, family, penal and administrative mediations.

From the analysis of the quantitative data, comments and suggestions, the main conclusions on the impact of CEPEJ Guidelines on mediation can be grouped in four areas:

1. **Need in most of Member States of new national legislations on mediation in civil, family, penal and administrative matters and monitoring of their effective application and implementation.** There is still an enormous disproportion between the number of judicial proceedings in court and the number of mediations outside court in most of the Member States. The difference in number of mediations both across the Member States and among the four dispute matters is due to the presence of non-effective national legislations or their total absence (especially in penal and administrative matters). It is advisable to analyze the effect of the most recent legislation reforms on the increase of mediations in some Member States (eg. in Turkey, Italy and Greece).
2. **Lack of official statistics and reference points on mediation in most Member States.** It was very difficult to carry on this study due to the lack of official statistics and an established network of reference points on mediation at the level of Government and Ministries of Justice (MoJ). Given the undisputable contribution of mediation to the efficiency of Justice, each Minister of Justice in the 47 Member States should dedicate resources to the field of mediation.
3. **Need for more effective tools on mediation.** Almost all respondents rated very high on the proposal to develop the five tools mentioned in the questionnaire: international standards for

mediators, model laws, cooperation programs, new tools and update the guidelines. Additionally, in the comments new tools have been recommended.

4. **Need of CoE/CEPEJ leadership in promoting mediation as one of the means to increase efficiency in justice.** Mediation has not been instituted as one of the main pillars to the efficiency of justice. All respondents indicated CoE/CEPEJ should take a proactive and permanent role promoting effective legislative reforms and tools in the four fields of mediation.

### 6.3 Recommendations

Overall, there is no doubt that the Council of Europe Recommendations on Mediation and CEPEJ Guidelines encouraged the debate on alternative dispute resolution and brought significant changes in most of the 47 Member States. However, the findings of this study showed that they have exhausted their ability to bring deep changes in the field of mediation.

The development of mediation in Member States implies a change of paradigm, because it touches the way of thinking and behaving on the conflict and means a radical changing in the judiciary practice from the part of the judges and the lawyers. In this context, the measures recommended by the CEPEJ Guidelines No 13, 14 and 15 should be considered as a whole, a set of interdependent, interconnected measures implying the interactive collaboration of the public and private sectors.

Without a compulsory mediation awareness/training of judges during their education or in the first year of their judiciary practice the number of cases referred to mediation in civil, family, penal (adults and juveniles) and administrative matters will remain unchanged at the actual insignificant number compared with the number of judicial proceedings in the same matters. Similarly, without compulsory ADR teaching and training for lawyers/ barristers in the law faculties and Barristers' schools, the ancient habit to recourse - systematically, automatically and without conflict management thinking - to the adjudication systems (State and arbitration proceedings) will remain.

The effective recourse to mediation is a means to increase the efficiency of justice that is the main aim of CEPEJ. More than twenty years after the issue of the Recommendations and ten years after the Guidelines, CoE/CEPEJ should lead renewed strong legislative and informative actions in favor of the recourse to mediation in all civil, family, penal and administrative matters. In the light of the findings and conclusions of this study, the CEPEJ working group on mediation should implement the following recommendations:

Conclusions	Recommendations for CEPEJ/CoE
<p>1. Need for new legal framework that encourages the effective recourse to mediation in civil, family, penal and administrative matters.</p>	<p>1.1 Encourage the competent committee of the Council of Europe CDCJ to elaborate a “<b>Council of Europe Convention on the Recourse to Mediation in Civil, Family, Penal and Administrative Matters</b>” to be ratified by the 47 Member States and other States.</p> <p>1.2 Develop a <b>European Model Law on Mediation</b> that can be taken as a reference point for future legislative reforms and could include recommendations to improve the effectiveness of existing national legislations on mediation.</p> <p>1.3 Promote a <b>CoE Conference on Mediation</b> with the participation of high-level policy makers from MoJs.</p>
<p>2. Lack of official statistics and reference points on mediation in most of the Ministers of Justice of the 47 member States.</p>	<p>2.1 Recommend the set-up of a “<b>Mediation Department</b>” in each Minister of Justice of the 47 Member States.</p> <p>2.2 Develop a <b>Network of Mediation Departments at MoJs</b> and of correspondents of experts in civil, family, penal and administrative mediation.</p> <p>2.3 Set a standard and promote a <b>unified methodology to collect statistics</b> on mediation by the network of national correspondents, that will notably be used in the framework of CEPEJ evaluation cycle as from the next round 2018-2020 (in cooperation with the CEPEJ- GT- EVAL).</p>
<p>3. Need for more effective tools and actions on mediations.</p>	<p>3.1 Develop and distribute training tools to increase compulsory <b>training and awareness of mediation among lawyers and judges</b>.</p> <p>3.2 Distribute to European Courts (via MoJs) a <b>Guide to establish and manage Court-Mediation Pilot Programs</b> and promote success stories and best practices already achieved in some Courts.</p> <p>3.3 Continue to develop the “<b>CEPEJ Mediation Development Toolkit</b>” and further actions in each of the four dispute matters: such as international standards for mediators, model laws, cooperation programs, new tools and update the guidelines.</p>

Conclusions	Recommendations for CEPEJ/CoE
<p>4. Need of CoE/CEPEJ leadership in promoting mediation as one of the means to increase efficiency in justice.</p>	<p>4.1 Dedicate <b>sufficient resources</b> to allow the CEPEJ-GT-MED to effectively support the development of mediation in Europe and act as a permanent forum to promote best practices, tools and information on mediation among Member States at MoJs.</p> <p>4.2 Help establishing a policy within the CoE to the recourse to mediation by introducing a <b>multi-step contract clause</b> (application of mediation and then arbitration) in all contracts and promoting a referral to mediation policy for pending disputes.</p>

**Annex 1 – [Questionnaire](#)**