

**PRINCIPLES, MODELS, TECHNIQUES, AND WORKING
METHODS OF MEDIATION: AN ALBANIAN FAMILY
MEDIATION STUDY**

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AUTHOR STATEMENT

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ABSTRACT

Family mediation is proposed as an alternative approach to conflict resolution, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. The study consists of conflict theories, conflict resolution theories, negotiation theories, family mediation models/approaches, family systems theories, and theories of divorce, in the attempt to explain the notion of mediation. The purpose of this study is to develop data on the experience of mediators in order to explore the working methods of family mediators from mediators' own point of view. The objective of this qualitative study is to focus on the importance of family mediation principles, models of practice, mediators' roles, styles, and techniques, salient issues regarding the practice of family mediation. Consistent with a qualitative approach, semi-structured interviews were chosen to access the actual experience of mediators. The sampling frame was purposive in the study. Furthermore, the sample consisted of interviews with twenty mediators drawn from the Albanian National Chamber of Mediators. The interview questions focused on obtaining data, including information on family mediation practice issues, and working methods in the field. With regard to basic principles, models of practice, roles, styles, techniques, and salient issues in the field, the findings of the qualitative research reveal that the effectiveness of mediation does not only depend on mediator's competence of working methods, but it also depends on nature of conflict, social-cultural context, and disputants' individual characteristics by confirming the main hypothesis of the study. However, lack of clarified practice models, and new strategies may decrease the efficiency of mediation. Also, the findings reveal that the recent development in the mediation field, has affected the quality or the effectiveness of mediation service in terms of models of mediation, practice issues, and strategies in the field. Although, family mediation field has made a positive progress in Albania with regard to establish itself as an alternative method of dispute resolution, and therefore to resolve family disputes, it still needs further improvements in identifying practices that have in common the potential for being successful, by developing, implementing clarified practice models, and new strategies which may enhance the efficiency of mediation, despite the nature of conflict, individuals' characteristics, and problems in general. With regard to practice models, however, it is hoped that recent legislative and other changes will strengthen the field and create accessible options for couples to resolve their disputes.

Key words: family mediation, legal, principles, models of practice, roles, styles, salient issues

Dedicated to my husband OLSI...

To my lovely daughter VIVIAN...

To my lovely parents, and my sister ANA...

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CHAPTER I: INTRODUCTION

1.1. Introduction

Family mediation is proposed as an alternative approach to conflict management in couples seeking the divorce, where a third, impartial person, named mediator operates to facilitate the dispute resolution processes.

Family mediation is born in the United States in the late 60s and from there it is spread to Europe, with the increase of separations and divorces constantly growing, at least in Western countries. However, family mediation takes care of the families in the process of separation, especially when in such contexts are children.

According to Buzzi and Haynes (1996), family mediation is proposed as an alternative approach to the management of marital conflict in view of a separation or a divorce in which an impartial third person, called a mediator, acts to facilitate the resolution of the dispute between the parties. According to Lisa Parkinson (1997), family mediation is a process that allows the parties to handle their own problems, unlike the approach offered by the procedural system. In other words, family mediation is an alternative system created to regulate interpersonal disputes.

The purpose of the mediation process is to assist the parties in reducing the destructive aspects of the conflict, and reinforce good communication skills between couples in order to reach an agreement. Moreover, its goals seek to help parents cooperate, communicate and help them to maintain boundaries that protect their children from ongoing conflict.

The origins of family mediation show that this tool is a form of dispute resolution, based on the direct comparison between the litigants, called to solve their own problems in a healthy and peaceful way, with the help of a neutral third party that favors a positive communication between the parties.

This great development of family mediation, in the United States and Europe has come thanks to excessive increase of civil cases in front of the courts. For this reason, was raised up the necessary to identify alternatives to the process, in order to have a more effective service to individuals in resolving disputes. Then, the mediation has thus become a method adaptable with regard to the family crisis, which still represents a time of suffering for the pair, and especially for children. For example, a mediator helps the couple to recognize their common interests and to reach decisions that include these interests. Although the marital relationship may end, being good parents never stop.

The various principles of family mediation are very important since they establish its distinct identity and safeguard those who use them. These principles are used by all mediators, regardless of the type of mediation.

Furthermore, many mediators work in the context of a specific model of mediation. Others select techniques from different models and integrate them into their model. Although they are different, the goal of any model is always to help the couple in crisis in resolving conflicts. These conflicts can be resolved by using a global model, in its relational and economic aspects, or a partial model, thus giving a greater importance to property issues, rather than relational, or vice versa.

Moreover, this study of family mediation consists of many important theories, paradigms, and models that could best explain important concepts, such as conflict, divorce,

family disputes, and also the mediation as a process. Moreover, conflict theories, conflict resolution theories, negotiation theories, models/approaches of family mediation, family systems theories, and theories of divorce, have a great contribution in this research, in the attempt to explain the notion of family mediation in general. Furthermore, the social – conflict paradigm assumes that society itself is an arena of inequality that produces both conflict and change, and that many sociologists are interested in understanding more in depth the concept of conflict, and the investigation of how factors, such as age, gender, ethnicity, and social class may be all related to inequality (Macionis, 2001, p. 34). In addition, conflict resolution theories and concepts resemble the Galtung’s model of conflict, which proposed an influential model of conflict that encompasses both symmetric and asymmetric conflicts. He suggested that conflict could be viewed as a triangle, with contradiction (C), attitude (A) and behavior (B) at its vertices.

Furthermore, negotiation theories resemble the Ury & Fisher’s paradigm based on negotiations, and the specific aim to achieve a balance of power in the pair with the subsequent aim of reducing the suffering of the party. Also, the research includes the family systems theory based on Bowen’s family systems theory which is an ecological model that seeks to understand humans as part of a natural, emotional ecosystem. In addition, the study consists of Bohannan’s six stages of divorce, and Kaslow’ stages of divorce. Finally, the study introduces family mediation models/approaches of practice to conflict resolution disputes.

1.2. Objectives of the study

Moreover, the purpose of this study is to explore the working methods in the field from mediators' own point of view. The objectives of this qualitative study are:

- To focus on mediators' perceptions on how they understand the ethical principles of mediation: confidentiality, neutrality, impartiality, power and control in process and outcome of family mediation;
- To explore the effectiveness of family mediation models of practice in the family mediation field they find most effective in their work linked to high conflict disputes and, sensitive issues treated in the field;
- To focus on the importance on where mediators place themselves in relation to the roles, styles, and their respective techniques of practice in the attempt to increase the effectiveness of family mediation disputes;
- To focus on the way mediators address salient issues in mediation, and how it may have an impact on resolving family disputes;
- To focus on mediators' working methods in the field, nature of conflict and disputants' individual characteristics;

1.3. Research questions of the study

Main research question: Does the *effectiveness of mediation* depend on the *mediator's competence* of working methods, or on the *nature of conflict, social-cultural context*, and *disputants' individual characteristics*?

1. How do mediators understand the *basic principles of mediation* to both process and outcome of mediation?

Associated question : What kind of connotations do mediators relate with the ethical principles of mediation?

2. Which are the most effective *family mediation approaches* that mediators use in practice and in what way do they play a part in mediation process with regard to dispute resolution?

3. How the *mediators' roles, styles, and techniques* are displayed in behavior, and practice in relation to both process and outcome?

Associated question: With regard to successful mediation, how mediators achieve, and make use of rapport with the disputing parties?

4. Which are the *mediators' perceptions* with respect to a range of *sensitive issues* in relation to the effectiveness of resolving family disputes in mediation process?

Associated question 1: With regard to sensitive controversy, how do mediators identify the needs of mandatory mediation?

Associated question 2: With regard to salient issues, how mediators consider the inclusion of children in family mediation process?

Associated question 3: With regard to sensitive matters, how mediators position themselves in issues such as child and spousal abuse situations in relation to mandatory mediation?

Associated question 4: What are the mediators' perception with regard to issues linked to pathological behavior from the part of the disputants in relation to mandatory mediation?

1.4. Hypothesis of the study

Main hypothesis: The *effectiveness of mediation* does not only depend on *mediator's competence* of working methods, but it also depends on *nature of conflict, social-cultural context*, and *disputants' individual characteristics*.

Hypothesis 1: The way mediators understand and make use of the *basic principles in practice*, affects both the process and the outcome of mediation.

Hypothesis 2: The way mediators adopt the *practice models of mediation*, affects both the process and the outcome of mediation.

Hypothesis 3: The way mediators display their *roles, styles, and techniques* in behavior and practice, affects both the process and the outcome of mediation.

Hypothesis 4: The way mediators address *salient issues* in mediation (identification of the needs of mandatory mediation, the inclusion of children in mediation, child and spousal abuse situations, manifested pathological behavior from the part of the disputants), determines the effectiveness of resolving family disputes.

1.5. Significance of the study

With regard to process and practice of family mediation, this study has a great contribution in the family mediation field since it has received very little attention in general, and also in the Albanian context. It should actually be the focus of research in the future to

promote the field of family mediation to a more effective level of practice. Since there is lack of research regarding the working methods, including mediators' perceptions, beliefs, behaviors with regard to principles, models of practice, styles, and roles in Albania, it is very important to generate specific data regarding mediation practice. This study may also contribute for further research within the field of family mediation.

Furthermore, the study on family mediation may serve as a reference point for similar or further research in the field of mediation. In addition, this study may contribute as to provide additional materials for studying purposes at University level at Law and Psychology department.

1.6. Structure of the study

Chapter one presents an introduction of family mediation, the objectives of the study, the research questions, the hypothesis, and the significance of the study.

Chapter two presents the theoretical framework, and it consists of many important theories, paradigms, and models that could best explain important concepts, such as conflict, divorce, family disputes, and also the mediation as a process. Moreover, conflict theories, conflict resolution theories, negotiation theories, family mediation models/approaches, family systems theories, and theories of divorce, have a great contribution in this research in the attempt to explain the notion of mediation in general. In addition, chapter two presents a summary of the literature review, addressing the research areas critical to this study, with regard to the origin, development of mediation, ethical principles of mediation, as well as previous research with regard to family mediation. Finally, chapter two presents a different perspective on how family mediation is regulated by the EU, and how it has been

implemented in Italy which as a member country must at least try to follow guidelines provided by the EU. This chapter will also look at how family mediation has been introduced in Albania, by considering the country's obligation to adapt its internal laws to those of the EU.

Chapter three presents the methodology section, and it introduces the purpose, the objectives as well as the main research questions of the study. In addition, this chapter presents the instruments used in the study in order to ensure its validity and reliability of the method, the sample selection, the collection and the analysis of data, as well as ethical issues with regard to the subjects' participation in the study. Finally, it discusses the limitations of the study.

Chapter four presents analysis of the data, using a qualitative method, in which interviews and transcripts of twenty mediators drawn from the National Chamber of Mediation is analyzed. Specifically, this chapter attempts to explore the working methods of family mediation from mediators' own point of view. It attempts to identify and explore where family mediators position themselves in relation to principles, models of practice, roles, styles, techniques of practice, and sensitive issues of family mediation that they find most effective in their work. Chapter five discusses the findings of the study consistent with other research on family mediation field.

Finally, chapter six presents a summary of the findings. Also, it offers guidelines and recommendations for further research in the field, and it suggests new ideas in the attempt to create, and develop a culture and practice of family mediation in Albania.

CHAPTER II: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

Part. I: Theoretical framework

2.1. Theories explaining mediation

2.2. Conflict theories and conflict resolution approaches

According to Parkinson (2011), conflict is usually associated with aggression and is often accompanied by forms of violence that can destroy individuals, societies, and environments. There are instinctive and biological reactions to conflict and aggression that are common to all animals, including humans. Lorenz (1963) and others have studied how aggression works in animals, and how the different vertebrate species have developed a certain behavior to deal with aggression. Many animals instinctively avoid direct conflict, submitting to the individual or group they perceive as stronger.

Human societies have developed other ways of managing the conflict, including negotiation and arbitration. Reactions to conflict, however, even in highly developed societies, are often primitive and have fatal consequences for the individuals (Parkinson, 2011, p. 25).

Yet, the conflict itself is neither positive nor negative. It is a natural force, necessary for growth and change; life without any conflict would be static, and what counts is how the conflict is handled. If the conflict is handled carefully, it is not necessarily destructive, and does not inevitably involve the destruction of individuals and communities and internal reactions (Parkinson, 2011, p. 26). The energy generated in the conflict can be used

constructively rather than destructively, and when conflicts are resolved in a cooperative way rather than through controversy, relationships in individuals can be improved and strengthened. According to Crum (1987), if there is good will on the part of the disputants, mutual perceptions and attitudes may change, and then positive communication, listening, and cooperation can be enlightened by them to other members of their family or community. "*Resolving a conflict rarely has to do with who is right. It depends on recognizing and appreciating the differences*" (Crum, 1987, p. 26).

According to social–conflict paradigm, society itself is an arena of inequality that produces both conflict and change (Macionis, 2001, p. 34). Moreover, many sociologists are interested in understanding more in depth the concept of conflict, and they attempt to investigate how factors, such as age, gender, ethnicity, and social class may be linked to the concept of inequality. According to Macionis (2001), sociologists who embrace the social-conflict paradigm suggest that there is a relationship between the above factors, and the unequal distribution of social prestige, power/control, economic prestige, and education.

Therefore, social-conflict paradigm suggests that equal opportunity does not reflect the society as a whole, but rather, it gives the idea that society benefits dominant categories of people, while depriving the weakest categories of people. Furthermore, social-conflict paradigm imply that differences in social class, economic status, gender, and education, highlight the negative effects that society produces on poor people, men, and uneducated strata of individuals. Moreover, as Marx suggested: "*The philosophers have only interpreted the world, in various ways; the point, however, is to change it*" (Macionis, 2001, p, 34).

Again, as reflected in the academic literature, conflict is defined as an intrinsic aspect of social change. According to Galtung's model of conflict (1969; 1996), conflict may arise as a result of social change rather than as a result of inherited factors. Over the years, Galtung has developed influential theories on different areas such as the distinction between positive and negative peace, the concept of structural and cultural violence, and theories of resolution and conflict transformation.

Furthermore, Galtung (1969) developed a theory of conflict, and suggested that conflict could be perceived as a triangle, with contradiction (C), attitude (A), and behavior (B) at its vertices. More specifically, Galtung (1969) argues that in the "Triangle of Conflict", the factors that determine the permanence of the actors in the conflict are a) external behavior or incorrect attitudes (that favor the use of direct forms of violence), b) incorrect interior attitudes (leading to negative feelings), c) unwillingness or inability to address and resolve the contradictions (dominance of the perception that the positions are irreconcilable). Each of the three factors negatively influence the other: the idea that the positions are irreconcilable induces to assume internal and external wrong attitudes. The triangle of the conflict influences and is influenced both by the triangle of the violence from the triangle of wrong perspectives (Belli, 2005).

Galtung suggests that in a symmetric conflict, the contradiction is defined by the disputants themselves, their wishes and interests, and the clash of interests between them. On the other hand, Galtung (1996) implies that in an asymmetric conflict, the contradiction is defined by disputants' relationship and the conflict of interests, which have inherited factors in the relationship. In addition, attitudes include parties' beliefs, feelings, and

perceptions of each other and of themselves. For example, in high conflict situations, parties may develop negative stereotypes of each other, which in turn, may produce negative feelings of anger, fear, grief etc. Following the same debate, the behavior represents the third component of the triangle of conflict on Galtung's theory. Moreover, behavior may include either positive patterns of behavior, such as cooperation, and reconciliation, or negative patterns of behavior, such as aggressiveness, and hostility.

According to Galtung (1996), first, conflict is a dynamic process, in which all three components of conflict, therefore, contradiction, attitude, and behavior emerge simultaneously in a situation with high conflict, and second, they constantly change, and influence each other. As the dynamic progresses, parties manifest aggressive and conflictual behaviors toward each other, and this may result on an intensification of the conflict. As the levels of conflict immensely arise, it may develop other types of conflicts within the family system, and this may negatively contribute to the identification of the original conflict. In order for the conflict to be resolved, other dynamic changes that involve a change in attitudes, and behaviors, must be taken in to account.

According to Fisher & Keashly (1991), the process of conflict escalation is very difficult, since new unexpected and complex situations may emerge.

According to Gandhi, conflict can be viewed more as an opportunity than as a problem. However, problems may be its manifestations when the actors of the conflict, not aware of such attitudes, they get involved in negative behaviors, marked by hatred and violence.

2.3. Bowen Family Systems Theory

Systems theory has been conceptualized as an overall theory based on the interaction between individuals, rather than on the individuals themselves. According to Goldenberg (2012), systems theory expanded in order to emphasize family functioning, and to explain family dysfunctional patterns within the family system. Also, it attempts to explain the interaction between family members by taking in to account familiar and social-cultural context (Goldenberg, 2012, p. 79).

Although systems theory has been conceptualized as an overall concept, which includes both systems family components, and cybernetics principles, it has been criticized by the postmodernists or those who follow a social constructionist orientation (Goldenberg, 2012, p.80). Furthermore, postmodernists argue that individuals have subjective perceptions of the reality, and they construct their own meanings, views, and interpretations in a subjective form (Becvar, 2003, p. 175). Accordingly, postmodernists point out that family systems see problems as derived from dysfunctional family patterns within the family system, and that they lack to take in to account gender related issues, social, and cultural factors. Although the postmodernists views with regard to systems theory have of a considerable value, systems theory continues to remain a fundamental theory, since it attempts to better explain the relationship between psychological disorders and dysfunctional family patterns.

One of the most fundamental theories in explaining family functioning, is the family systems theory originated from Murray Bowen. As Goldenberg points out (2012), Bowen developed the family systems theory in order to understand the nature of family functioning, family interrectional patterns, and to focus on practical issues of family therapy, such as working with families in clinical settings. According to Goldenberg (2012), Bowen

conceptualized the family as “an emotional unit, a network of interlocking relationships, best understood when analyzed within a multigenerational or historical framework”.

Although Bowen’s orientation was based on psychoanalysis or psychodynamic approaches, his theory on family systems differed from that of Freud’s psychoanalytic theory, in which, the latter one, attempts to view the individual’s behavior as an interaction of opposing biological drives within an individual (Goldenberg, 2012, p. 153). Instead, Bowen’s theory highlights natural processes, and human emotional functioning as part of a natural system.

In order to have a broader overview of the dysfunctional family patterns, Bowen developed eight interlocking theoretical concepts. Interesting is the fact that all eight concepts are highly interrelated, in the sense that none is fully understandable without some comprehension of the others (Goldenberg, 2012, p. 179). As Friedman (1991) suggests, all these eight interlocking concepts encompassing family emotional functioning, better explain the presence of the chronic anxiety in individuals passed through one generation to another by taking in to account specific family contexts, nature of conflict, and culture. Papero (1990) defines anxiety as “arousal in an organism when perceiving a real or imagined threat, stimulates the anxious-prone person’s emotional system, overriding the cognitive system and leading to behavior that is automatic or uncontrolled (Papero, 1990, p. 180). Whereas in family terms, levels of anxiety emerge as individuals attempt to balance the psychological pressures created as a result of interactions between the members of the family.

2.3.1. Bowen theory concepts relevant to mediation

Differentiation of self: The first interlocking concept of Bowen’s theory is the differentiation of self. According to Goldenberg (2012), Bowen’s concept of differentiation

refers to the process than to the achievement of goals. Bowen suggests that in order to achieve the differentiation of self, individuals must be able to position themselves in an intense emotional system, by saying "I" while others claim "us". The concept of differentiation of self, also means assuming the highest responsibility for one's own being and emotional system, instead of attributing responsibility to others or to context.

However, differentiation must not be equated with identification, autonomy, or independence, since it has little to do with the individual's behavior, but rather, it has to do with his/her emotional being. Moreover, the concept of differentiation of self relates to the concept of bonding and attachment.

Emotional system: The second interlocking concept of Bowen's theory is the emotional system. According to Goldenberg (2012), the emotional system is connected to the concept of differentiation of self, and multigenerational transmission. Therefore, a family emotional system includes the thoughts, feelings, emotions, fantasies, associations with its members, individual and collective relationships. Therefore, it includes all the information of a family that can be embedded in a family genogram, such as the emotional history of the system itself, the effects that most important emotional and physical forces exert upon it, as the system has dealt with transitions, and the quality of differentiation in the system (present and past). Therefore, Bowen has used the term "family" as the synonym of "emotional system".

Furthermore, the emotional system focuses on what needs to be noted in an individual, such as differentiation levels, interconnected triangles, and chronic anxiety. So, one can argue that the concept of emotional system suggests that if you knew all the cultural and environmental factors of a family's background, but you did not know anything

about the emotional processes of family members, then you would not be able to make accurate predictions about their future behaviors (Goldenberg, 2012, p. 80).

The multi-generation transmission: The third interlocking concept of Bowen's theory, the multi-generational transmission implies that emotional reactions are transmitted "from generation to generation". The Bowenian concept of multigenerational transmission is rooted in the notion that all generations belong to a continuous natural process in which each generation is present behind the next, so that the present and the past becomes almost a false dichotomy. The significance of the concept of multigenerational transmission in Bowenian theory lies in the fact that it locates the whole theory within the framework of natural systems (Goldenberg, 2012, p. 81).

The emotional triangle: In the fourth interlocking concept of Bowen's theory, the Bowenian triangle concept is much more complex than the triad, in which emotional triangles have specific rules that govern their emotional processes (Goldenberg, 2012, p. 82). The more you try to change the relationship between two entities, the more likely you are to strengthen the aspects of the relationship that you want to change. Kerr (1981) argued that triangles are natural and universal phenomena. Bowen asserted that triangles formed from the systemic anxiety of two people. Since it is impossible for individuals to maintain the level of differentiation necessary to maintain a stable relationship, and therefore a way to stabilize a relationship is in bringing them a third person.

According to Goldenberg (2012), at a therapeutic level, this concept motivates the therapist to allow a couple to create a triangle with him, but he is careful not to get involved in the emotional process of that triangle, either with excessive activity or with emotional reactivity. So, the therapist, trying to remain anxious in the triangle can cause a change in

the relationship between the other two (a change that would not be manifested if the two individuals said the same thing in the absence of the therapist).

2.4. Bohannan's Theory of Divorce

One of the most influential theories of divorce is referred as Bohannan's six station model of divorce. Bohannan (1970) suggests that people who are close to divorce must go through certain stages necessary for the preparation of the marital dissolution, and that the way individuals cope with divorce is to attempt to neglect it. As Bohannan (1970) states, "If the trauma does not either disappear or abate, however, the person afflicted must allow it into his or her consciousness slowly so that it is not totally debilitating". Accordingly, Bohannan proposes six stages of divorce in which, the order these stages may occur is of secondary importance when related to the resolution of the trauma. Instead, the resolution of this trauma occurs as individuals go through all of these stages. Therefore, failure to pass a stage, may produce psychological problems of various types.

2.4.1. Bohannan's six stages model of divorce

Emotional Divorce: Bohannan's first stage of divorce is the emotional divorce. According to Kaslow (1980), it begins when the couple becomes conscious of its feelings of dissatisfaction, and when the couple feel the dissolution of their marriage. Furthermore, the emotional stage emphasizes an increase in levels of conflict, a decrease of mutual trust, and an increase in levels of criticism between the couple. As Bohannan (1970) states, "The emotional divorce occurs when the spouses withhold emotion from their relationship because they dislike the intensity or ambivalence of their feelings. They may continue to work together as a social team, but their attraction and trust for one another have

disappeared”. The Bohannan’s idea linked to the feelings of grief experienced during the emotional divorce, reflect the same amount of grief felt upon the death of a spouse. Accordingly, similarities are found if one contrasts the Bohannan’s first station model of divorce to the Stage of Grief Model, based on the work done by Elisabeth Kubler-Ross. Furthermore, the Kubler-Ross model (1969), commonly known as the five stages of grief, applied these stages to people suffering from terminal illness. Later, the principles of Kubler-Ross model were also applied to significant life events, such as divorce, death of a loved one, the onset of a disease ect,.

Legal Divorce: Bohannan’s second stage of divorce is the legal divorce. It is the formalization of the decision to separate, and it coincides with the first contact on the part of one or both spouses with a lawyer. In this stage, the legal system determines whether to include financial issues as well as custody issues. In this process, each spouse is represented by a lawyer whose role is to protect the clients’ interests. According to Kaslow (1980), at this stage, feelings of anger, and grief emerge as lawyers attempt to negatively emphasize their clients’ financial interests. For example, a lawyer may recommend to one of the disputants to use different tactics in order to protect his or her own economic interests by ignoring his or her client’s emotional requirements (Kaslow, 1980, p.5).

Economic Divorce: Bohannan’s third stage of divorce is the economic divorce, where issues related to property settlement, and the spousal and child maintenance is discussed. Usually, the lawyers negotiate the details of the financial support and custody issues with their clients prior to the judicial proceedings (Kaslow, 1980, p. 11). However, each party’s willingness to accept a fair distribution of property is partially taken in to

consideration, since the way lawyers operate in negotiating financial and property issues does not often reflect parties' emotional requirements.

Co-parental divorce: Bohannan's fourth stage of divorce involves a redefinition of parental patterns of behavior, such as parental responsibility, so as to continue to fulfill the children's educational requirements. Furthermore, the co-parental divorce is closely related to the economic divorce, and at this stage, problems emerge in regard to custody determination.

Bohannan (1973) characterizes the term "co-parental" in order to explain that even divorce terminates the legal bonds of a marriage, it does not terminate the parent-child relationship (Kaslow, 1980, p. 13).

Community divorce: Bohannan's fifth stage of divorce is concerned with the change in the divorced person's social community. Moreover, the community divorce involves changing social relations with the family of origin of ex-spouse, and with friends in common. As a result of these losses, the divorced couple may experience strong feelings of loneliness.

According to Kaslow (1980), this stage highlights the emergence of feelings of discomfort that divorcees often experience when invited to common social circles attended only by married couples. However, the individual's feeling of loneliness tends to gradually minimize as the individual starts to construct different social circles (Kaslow, 1980, p. 23).

Psychic divorce: In the Bohannan's final stage of divorce, the individuals attempt to achieve personal autonomy, and regain self-confidence. As Bohannan (1973) states, "This is the most difficult station of divorce to experience since it involves both the separation of

the self from the ex-spouse's personality and influence, as well as the acceptance of full responsibility for one's own thoughts and actions”.

According to Kaslow (1980), the intra-psychoic problems resolve, when the individual has a fully understanding of the factors which contributed to the dissolution of his or her marriage.

2.5. Kaslow's Theory of Divorce

Kaslow's theory of divorce relates to the partners' emotions and behaviors manifested in different stages of separation, and involves three steps in overcoming the marital separation process (Kaslow, 1997, p. 17).

The first Kaslow's stage of divorce, the alienation phase, coincides with the decision of spouses to separate. According to Kaslow (1997), the alienation phase is very difficult for both partners to face with. Therefore, partners experience a sense of strangeness, and distance between each other. However, in principle, in the greatest number of cases, moving away from each other does not affect the emotional or social dimension. Instead, they may be sexually detached from each other. For this reason, the decision to separate often, involves a very long time.

For children's sake mainly, many spouses choose to undergo an unsatisfactory couple relationship, expecting for their children to become autonomous, and be able to leave home.

At this stage of the separation process, the emergence of levels of conflict between the spouses is related to the displacement of feelings of blame on one another, and therefore, resulting on the failure to their marital relationship. Also, in this stage, spouses

tend to consult with friends and family about what they should do. Unfortunately, children may be involved in coalitions for or against one of the parents.

Furthermore, the Kaslow's legal phase relates to the emergence of the need to reorganize their own lives, and also the need to solve sensitive issues concerning economic, financial, or custody issues: with whom are children going to live with, the attendance of children, child support and possibly former spouse. At this stage, extreme behavioral attitudes are evident, such as feelings of denial with regard to separation (Kaslow, 1997, p. 18).

On the emotional level, this phase prevails the sense of loss after the separation. Moreover, feelings of depression can follow aggression, and feelings of despair can produce anger, and confusion.

Furthermore, the rebalancing phase is achieved through reorganizing both individual and family relationships. The more positively you have broken all the preceding stages, the more partners will have new opportunities. The rebalancing phase is directed towards the future about what can be achieved rather than what has been left in the past. After a particularly difficult time, the couple may find a certain serenity that benefits their children. The best outcome of this phase corresponds to the ability of each spouse to regain their own capabilities, and look to the future through suitable affective and relational choices (Kaslow, 1997, p. 18. This is the time in which partners are open to new social relations and friendship, identify new interests, and achieve greater professional success.

2.6. Family mediation approaches

With regard to family dispute matters, mediators need a theory to provide an explanation consistent with their professional activity. The theory contains central values of mediation. The practice of mediation is based on beliefs and fundamental values about people and conflict.

In 1973, a social psychologist, Morton Deutch, first introduced his theory of the nature of human conflict, and the constructive use of a third party in conflict resolution. Based on Deutch's theoretical approach, Brown described mediation as "looking at alternative solutions, increasing constructive communication, reminding parties of the cost of the conflict, and the consequences of the unresolved dispute, and promoting a mediator as a model of competence, integrity and impartiality "(Brown, 1982, p. 14).

In addition, the Fisher and Ury (1983) model of negotiation based on the principles of interest is seen by many as the theoretical basis of mediation. The interest-based negotiation uses a problem solving approach that seeks common interests and tasks to help disputes achieve acceptable results for both.

2.6.1. Facilitative mediation

The facilitative mediation relates to the field of family mediation and divorce. Early authors, and professional mediators described mediation of what today is called facilitative model of mediation and divorce as a process which includes many stages. This model is primarily a process of importance to decision-making of the parties involved, and gives the parties a position of power. Moreover, the facilitative model of mediation focuses on identifying parties best interests, developing all the possible solutions, and evaluating the agreements with the support of a neutral third person, the mediator, who plays a facilitating

role, driving them towards a clear definition of the problems, and guiding the parties toward the stage of negotiation (Folberg, 1983; Milne, 1982).

Furthermore, Moore (1996) states that mediation is “the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute”.

On the one hand, Kolb (1983), suggests that facilitative mediation can operate as an orchestration, in which the parties’ thoughts, and feelings are taken in to consideration from the part of mediators as central to mediation. In this context, mediators who rely on the facilitative model of mediation, do not attempt to convince parties to reach an agreement without taking in to account parties’ willingness to do so.

On the other hand, Riskin (1994), suggests that “the facilitative mediator assumes that his principal mission is to enhance and clarify communications between the parties in order to help them decide what to do”. Accordingly, Riskin suggests that there are differences in defining whether a mediator takes a facilitative or evaluative role in solving disputes. So, the researcher developed a grid in order to define whether a mediator takes a narrow or a broad classification of the conflict to be resolved (Riskin, 1994, p.31). Accordingly, Riskin implies that those mediators who rely on a narrow-based facilitative mediation, attempt to help parties generate new ideas, and help them accomplish their own assessment with regard to family related problems. On the other hand, those mediators who rely on a broad-based facilitative mediation, highlight the importance on understanding the interests of the disputants, and help them take in to account how to find the best solution for

everybody, especially when children are the main concern for the disputing parties (Riskin, 1994, p.32).

However, research shows that many of the mediators who rely on the facilitative model of mediation describe this model as an interest-based approach or as principled-negotiation focus based on the work of Fisher and Ury (1981).

Moreover, Mayer (2000) identifies four key features of facilitative mediation. First, facilitative mediation is a process-oriented but not focused on the outcome. The mediators manage the mediation process and assist the disputing parties in their discussions.

Second, facilitative mediation is client-centered. The mediator has the task of facilitating the communication between parties and help them to seek the best solutions for their problems.

Third, facilitative mediation focuses on communication. Mediation either facilitates or limits in some cases the communication between the parties.

Fourth, facilitative mediation is based on the parties mutual interest. The mediator helps the disputants identify the main interests and concerns, and inviting them to contribute to the resolution of their problems.

2.6.2. Evaluative mediation

Evaluative mediation is defined as controversial when used to family dispute matters. Instead, it is commonly used when applied to commercial disputes (Folberg, 2004, p. 72).

This mediation model is characterized by a greater involvement of the mediator, who, through the use of techniques related to the management of conflict, directs the parties toward an agreement. Those who support evaluative mediation, believe that the

combination of mediation with the evaluation, is not only possible, but it is also useful. According to Bush & Folger (1994), evaluative mediation is an effective approach in the attempt to resolve family disputes, since it aims to “transform” the disputants as the conflict is resolved.

On the other hand, some argue that the use of the evaluation model may compromise the objectivity and neutrality of the mediator, at the expense of parties’ self-determination in making choices. Those in favor of facilitative mediation suggest that the role of the mediator is to facilitate the process of mediation through dialogue and communication (Love, 1997). Opponents of evaluative mediation tend to criticize this combination of different functions, suggesting that every form of assessment by the mediators, is totally contrary to the principles of traditional mediation "pure", defined as facilitation of negotiations between the parties, through the help of a third party, impartial and neutral with respect to the possible outcomes (Love, 1997).

In this sense, it can be helpful to consider more closely the meaning of the concept of "evaluation", in order to understand how mediators evaluate the readiness and willingness of the parties to engage in mediation, the nature of the conflict, and their communication abilities. As Lowry (2004) implies, the evaluative mediation is crucial to the process of mediation, since it focuses the mediator’s attention on the nature of the conflict by making assessments about the conflict, and attempting to resolve that conflict in order to reach an agreement.

In the attempt to have a clear idea of what evaluative mediation is, Riskin (1996) emphasizes three main activities being involved in the evaluation process. The first phase of evaluation process involves the assessment of the parties’ strengths and weaknesses.

Moreover, the second phase involves the generation of multiple alternatives in order to resolve the problem. Finally, the third phase involves the prediction of the outcome at trial if a dispute, not reaching an agreement in mediation, were to be fully litigated. Furthermore, the evaluative approach assumes that the role of the mediator is very active, and decisive with regard to process of mediation.

However, the mediator's power with regard to process is of primary importance: if parties know from the beginning that the mediator has power to express opinions, or to write a report that could lead the court's decision, this form of mediation should be differentiated from the facilitative mediation where the parties are free to reach an agreement or not, without the mediator's power to influence a judicial process (Parkinson, 2003, p.73).

Again, facilitative mediators may be reluctant to acknowledge that, inevitably, there are some elements of judgment in the way they work and the techniques they choose. Every mediator, whether he/she is aware or not, evaluates the readiness and willingness of the parties to engage in mediation, the nature of the conflict, and their level of communication. Also facilitative mediators structure the process in order to put the parties in a position to explain their needs, to explore the possible options and evaluate them. In addition, the mediator performs internal assessments in order to manage and structure the process of mediation.

Greatbatch and Dingwall (1989) defined the term "selective facilitation" in order to describe the mediators' interventions, who only seemed to favor an option or solution, and ignoring others. Also, the use of questions, and the use of tone from the part of the mediator, may communicate his/her views in a subjective way.

2.6.3. Narrative model of mediation

Narrative mediation is based on the idea that mediators and disputants exert a reciprocal and continuing influence, through their dialogue and communication. Theorists who embrace this approach to mediation explain the narrative model as a process in which disputants are invited to tell their story with the purpose of equally involving them in mediation, and helping them resolve conflict through a shared understanding (Burrell, Donohue, Alen, 1990; Cobb & Rifkin, 1991; Soares, 1996).

According to Cobb (1994) and others, recognizing the continuing mutual influence that mediators and disputants exert on each other, this is a challenge to the direct model of mediation, in which the disputants are guided by the mediator as in a series of steps. Furthermore, structured models provide a useful structure for the mediation process, but do not explain the dynamics and do not use a wide range of communication strategies.

A central concept of narrative mediation model is the idea of *framing* elaborated by Bateson (1995). Bateson defined the term "frame" as a psychological means to delineate messages. The concept of *frame* operates including certain messages and excluding others, just like a picture frame containing the image to be viewed and excludes external parts. For example, you can be attributed to a negative message a positive form. The notion of frame or form, however, is static, although mediation has embraced the term reframing, as more suitable to the idea of the process, by representing an interactive message exchange.

Furthermore, the *reframing* is considered by many as one of the main techniques used by mediators to help the disputants to progress towards an agreement. Research on mediation show that the *reframing* is seen as a unilateral function conducted by the mediator, and therefore, in therapeutic and transformative models of mediation, the mediator uses

techniques like this to get a calculated effect on the disputing parties. Instead, communication models emphasize the co-construction of frames and shapes (Botker & Jameson, 1997), in which, disputants and mediators, constantly formulate and reformulate one against the other.

Rifkin and Cobb (1991), on a narrative analysis of mediation sessions report that the disputant that tells his story first is on advantage, because the story of the second disputant is then seen as a reaction or a challenge to the other person, rather than as a story in its own. It raises new questions about the possibility that the mediator invites the parties to decide who will speak first, as in the model of Coogler, having already developed a hypothesis on their relationships of power.

According to Cobb (1994), the nature of every conflict tends to be notoriously rigid, repeated incessantly and reluctant to change. The roles of the characters in the story of each disputant, are challenged and reformulated in the opposed version. Haynes & Haynes (1989) describe mediation as a process that allows the stories of couples to come up to new interpretations.

2.6.4. Family-centered mediation

The family-centered mediation takes into account the needs of the family as a whole, including parents, children and other members. The children are involved indirectly and sometimes directly in mediation. In this model, family mediators focus on the needs and the related problems of various family members, and help them to develop solutions to the problems. This family mediation model derives from systems theory, attachment theory, conflict theory, and negotiation theory. The family-centered mediation tries to help parents and other members of the family system to develop parenting programs, and settle

agreements. The goal of this approach is to help families manage change. The family members are helped to communicate with one another, and to reach decisions during a critical period of transition and readjustment (Parkinson, 2003, p.66). The changes that must be faced in the transition of a critical period, involve multiple psychological adaptations for both adults and children.

The main theoretical framework for family-centered mediation is systems theory. Furthermore, systems theory provides the tools to conceptualize and understand the individual experience and life events, in the social and family context (Parkinson, 2012, p. 65). Therefore, systems theory aims to further explain the family structure, relationships and patterns of behavior. The systems theory perspective helps the mediator to take in to consideration of social and legal factors that may be relevant in a particular situation. As Roberts suggests (1997), "understanding the impact of the legal environment, economic, political, social, sexual, cultural, ethnic, family and psychological of any dispute, especially when children are involved, it is crucial to include these issues as part of the mediation process ". If mediation is facing negotiations without reference to external influences, power imbalances issues may be identified in mediation.

2.6.5. Structured model/Settlement-directed mediation (Coogler, Kaslow, Roberts, Fisher and Ury)

This model was designed by Coogler¹ about the mid '70s with the specific aim to achieve a balance of power in the disputants with the subsequent aim of reducing the

¹O. J. Coogler, psychologist and lawyer, a pioneer of family mediation in the United States; Coogler founded the *Family Mediation Center* at Atlanta, and subsequently he created the *Family Mediation Association*.

suffering of the parties². The space reserved to the feelings related to the content of the dispute, however, is very much reduced compared to that devoted to the economic stability of the couple. In this sense, the structured mediation avoids dealing with the feelings focusing on the cooperative attitudes of partners.

Structured mediation means a particular procedure of family mediation, in which "there is a logical and historical order, both in terms of issues to deal with, such as the education of children, the division of family assets, child support, maintenance of the spouse, and in terms of the completion of the procedures".³

Coogler started from this basic criterion to build this model, because in this way the disputants would have had from the beginning the assurance that all relevant issues would be addressed during mediation. These matters should be clarified, in order to reach an agreement acceptable for both parties.

In this way, disputants are advised to be guided with confidence by the mediator, who through the fixed order of discussion of problems, will address all the issues, and facilitate a productive discussion. In addition, as mentioned earlier, the rules proposed by this model tend to limit the competitive strategies in the couple, and foster cooperative attitudes of the spouses. For each issue, there are many steps to be followed, and in this regard, what distinguishes this type of mediation from other models of practice, is a tool outlined by Coogler, the so-called "*scheme to solve the problem*." This is a detailed lineup

² M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 50.

³ M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 51, cit.

that the mediator must respect during the meetings.⁴ Basically, this is divided in four phases.

In the first phase, the two parties, with the help of the mediator must clearly define their difficulties to the problem, which will then be analyzed one by one without being confused with each other.

In the second phase, once addressed the issue by both parties, the mediator plays a more active role, which is searching for information related to the issues raised by each party. At this stage, the mediator seeks, therefore, to create a relationship of trust with them.

In the third phase, once past the initial difficulties, the parties evaluate the options, guided by the mediator, seeking a shared agreement, evaluating the pros and cons of each alternative.

In the fourth and final phase, the parties choose the best alternative in relation to the issue discussed. It is important to underline that, it's not all so simple, because there may be always difficulties, which can rise to new aspects of the problem that need to return to the previous steps. In other words, in case that an agreement is not reached, the mediator asks the parties to go back to earlier stages, or the mediator decides to terminate the mediation process.

In structural mediation, the number of meetings needed to solve the whole situation is not specified. However, since the mediation is to take place within a limited time, the maximum number of sessions may not exceed 8-10. Once negotiations are

⁴R. ARDONE, S. MAZZONI, *La mediazione familiare*, Giuffrè, Milano, 1994, p. 178.

reached, they are drawn by the mediator in the memorandum of agreement. This is a detailed list of all the decisions taken by the parties with the relative reasons.

2.6.6. Alternative Dispute Resolution

A possible alternative with regard to dispute resolution is found in the methods developed by Harvard Negotiation Project, a unit of the Harvard Law School, founded in 1979 in emphasizing both the theoretical teaching linked to practice of negotiation and conflict resolution, based on the study of cases of negotiating success (Parkinson, 2011, p. 31). The scope is absolutely general, ranging from interpersonal conflicts to international ones.

In this research, both Roger Fisher, the director of the unit and international law expert, and William Ury, the anthropologist professor, published in 1991 the book *Getting to Yes*, which is an innovative approach of constructive conflict management (Parkinson, 2012, p. 32). Furthermore, the Alternative Dispute Resolution, is rapidly developed as a field of study in itself. The ADR approach proposed by Fisher and Ury (1991) is based on four fundamental principles and are discussed as the followings:

Separate people from the problem: In the attempt to reach an negotiation, the disputing parties have to deal with their own emotions, and also face with the emotions of others. According to Parkinson (2011), we must take into account that when people feel threatened, there is an increase of the level of conflict accompanied with feelings of misunderstanding (Parkinson, 2011, p. 58).

Focus on interests not positions: According to Marzotto and Telleschi (1999), each part expresses a position that is the most appropriate to meet with their own interests. Instead of discussing their own positions, parties must explore and focus on their interests. Furthermore, the appropriate questions that identify common interests are: what are their mutual needs, hopes, fears, and desires; how they are involved in the negotiation of the basic interests, such as, security, economic well-being, sense of belongingness, social recognition, control over their lives, and so on.

Moreover, it is important to highlight that the goal of mediators in the attempt to solve family conflicts is to reconcile parties' interests, rather than parties' positions (Marzotto & Telleschi, 1999, p. 57).

Invent effective solutions for both parties: Often, at the beginning of negotiations, the mediators start from disputants' positions, by trying to reduce the distance between them. However, in a complex situation, it is first necessary to increase the number of options and alternatives.

Also, Fisher and Ury (1991) recommend the use of the brainstorming technique, which refers to the discussion of emerging options, and allow the generation of new ideas that help parties to negotiate, and therefore reach an agreement.

Insist on objective criteria: The negotiation must take place on a voluntary basis, and the outcome of negotiations must be based on some objective standards.

2.6.7. Global Model (Haynes)

Global model of mediation was developed by the psychologist John M. Haynes,⁵ in 1978, which created this type of family mediation in the United States, later in Canada, and in Europe. The global model pursues the aims of a family mediation of global type, because its structure is organized in such a way to deal with any problems arising from a separation or a divorce, taking into account both relational and patrimonial aspects.⁶ According to Haynes, interpersonal disputes, those relating to the position of children are inseparable from the economic aspects, and therefore separate the two issues would lead to the failure of mediation.

The resolution process begins when the couple admits the existence of an irreconcilable problem regarding cohabitation. In the first contact, the mediator sets out the main aspects of the method. The mediator informs the spouses as well as explaining how to conduct the meetings. If both spouses agree to the terms, an initial interview is arranged, in which critical issues are already clarified by telephone.

The first meetings are important both for the spouses, as they may determine whether or not there is interest in participating in these meetings. The techniques used by Haynes, are the *brainstorming* technique and the *problem solving* technique. *Problem solving* is a technique that permits the precise definition of the problem, focusing on common interests, rather than on individual positions. The mediator may suggest the use of

⁵J. M. Haynes, psychologist, is the president of *Haynes Mediation Associates*, and also the president of *Mediation Training Institute*. Haynes is the founder of *Academy of Family Mediators*.

⁶ M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 53.

brainstorming, in order to see how many ideas the participants, including the mediator, are able to offer, even as they may seem bizarre.

As mentioned before, the mediator must, however, overcome the initial barriers between them, through *problem solving*, before leading participants in the *brainstorming*. The mediator collects the information with regard to parties' own perspectives, and once this stage is over, the mediator makes an evaluation of all the options/alternatives.

The next step consists of negotiations between parties, in the attempt to seek for the final agreement. Obviously, this last phase is achievable only if disputants have successfully passed through all the previously stages.⁷

Finally, when the parties reach an oral agreement, the mediator formalizes it through a report in which there are all the information with regard to parties' objectives of the agreement. This document includes the financial aspects, and the personal relationships between partners and their children.

2.6.8. The Mediation-Shuttle (caucusing)

Mediation-shuttle (caucusing) consists of individual mediation meetings, held with each party separately. This model is largely used in commercial mediation. With regard to the use of this model in family mediation, this paradigm is not used much, since it raises some problems. If the mediator continues to work with them individually, this does not help them to develop an ability to communicate directly with each other. In other words,

⁷E. GIANNELLA, M. PALUMBO, G. VIGLIAR, *Mediazione familiare e affido condiviso*, Sovera, Roma, 2007, p. 107.

this model does not promote communication between the parties. It is important to remember that communication between the parties, improves the answer you get from the other party, by sharing with this partner a new and more adequate representation of reality with respect to the objectives that both people pursue.⁸

In addition, the caucusing has other disadvantages, in which separate meetings with the parties require more time than joint meetings with both parties. Another problem that arises during the mediation-shuttle is the principle of confidentiality. For example, in commercial mediation, for the mediator it is a common practice to disclose details about what each party says, revealing to the other party only what is authorized to be disclosed. The mediator therefore might know, in confidence, the terms in which each party would agree, and therefore, the mediator uses this confidential information to negotiate agreements that the parties will have to take, without revealing the position of any of them.⁹

In family mediation, to promise confidentiality to each of the parties individually, could cause more problems than it solves. A family mediator cannot get and keep secrets, but may instead, offer to meet individually with each disputant, assuming that none of the information provided by each of the parties can be kept secret from the other. Thus, both parties are required therefore, to accept the possibility that the mediator agrees with the content of the discussions with the other party.

⁸D. DI LAURO, *La comunicazione strategica: il modello sistemico relazionale*, Xenia Edizioni, Milano, 2010, p. 24.

⁹L. PARKINSON, *La mediazione familiare: i modelli e strategie operative*, Erikson, Londra, 1997, p. 63.

Another disadvantage to be taken into consideration is that this model can affect the perception of the neutrality of the mediator in one or both of the parties.

The caucuses can be used in family mediation as a strategy of crisis, when one of the disputants is unable to speak in the presence of the other. This model is used, even in the case where the levels of conflicts are so high that one of the two is on the point of leaving the room. Offering a brief moment of meeting with each participant separately, can help the couple to have a moment of emotional recovery.

However, it is easier to implement this process in the co-mediation, because a mediator can spend some time with one party while the co-mediator talks with the other party.

2.6.9. Integrate or Partial Model (Emery, Marlow, Sauber and Bernardini)

The partial model of mediation was developed by Lenard Marlow and Richard Sauber. Furthermore, the integrated or partial model is distinguished from other models primarily, because the intervention at the site of mediation is carried out by two different professionals, between the mediator and the lawyer, conducted in separate locations but in an integrated way. The term "integrated" refers to the relationship between the mediator and legal counselor who collaborate in the management of the conflict. Therefore, the mediator has the task of helping the disputing party to overcome the conflict by stimulating the communication between them. The professional mediator has the ability to assist the parties in negotiating with regard to parental responsibilities, such as the primary residence

of the children and the ways in which parents make decisions in regard to the latter. On the other hand, the counselor takes care of the negotiations relating to the economic aspects.¹⁰

With regard to partial model, the mediator addresses the critical issues of the dispute in terms of a non directive style. This model takes into account the expression of emotions, focuses on common interests, and the redefinition of the relationship between the parties.

2.6.10. Therapeutic Mediation (Irving and Benjamin)

The Irving¹¹ and Benjamin¹² therapeutic model of mediation has been designed to accept and manage the full range of interactional relationships present in couples. According to Irving and Benjamin, before implementing a negotiation, it is necessary to stabilize the relations between the parties. Moreover, starting from the experiences of Irving and Benjamin, the relational processes refer to a critical point where disputants were blocked during mediation process. As a result, many of these couples could benefit from a preliminary intervention which attempts to change dysfunctional behaviors, and block the

¹⁰E. GIANNELLA, M. PALUMBO, G. VIGLIAR, *Mediazione familiare e affido condiviso*, Sovera, Roma, 2007.

¹¹H. Irving è docente nella Facoltà di Scienze Sociali e di Giurisprudenza dell'Università di Toronto. Irving è stato il Presidente della *Family Mediation Canada* ed ha fatto parte del consiglio dell'*American Association of Family and Conciliation Courts*. Attualmente Irving pratica la mediazione familiare a Toronto.

¹²M. Benjamin è sociologo della famiglia e dell'educazione. Oltre ad occuparsi di mediazione familiare, egli si interessa anche di istruzione universitaria, terapia familiare e violenze domestiche.

involvement or influence of others, increasing thus their willingness to participate in a meaningful way in negotiations.¹³

So, this approach has been defined as the model of therapeutic family mediation, since it puts the emphasis on understanding parties' social context. Furthermore, this model seeks to determine the optimal meeting point between the needs of the couple, and mediation techniques in order to help them to reach an amicable and a more durable agreement.

In this sense, the therapeutic model refers to the techniques of systemic-relational therapy, and models of communication. Irving and Benjamin state that interactional processes between the family members have their own structure, which limits and create the interaction at a behavioral level of communication and affection.

It is important to underline that after the separation of the spouses, the familiar system suffers profound structural changes, both with regard to the relationships themselves between the spouses, and to other relations such as family, friends and lawyers.

Consequently, the inclusion of other people within the systemic model of the couple, already unstable by itself, may cause or a stabilization of interactional processes, or the emergence of dysfunctional patterns, which usually result in permanent conflict situations over time. Through this model, the conflicting parties not only receive assistance to reach agreement, but they are also stimulated by the mediator himself, to change their patterns of behavior, and patterns of thought.

¹³M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano.

Moreover, the process of therapeutic intervention is divided into 4 phases, particularly recognized for its three crucial aspects that distinguish it from other models; a greater emphasis is placed on assessment techniques, selective application of pre-mediation, and the recursive relationship between the phases.

The first phase includes evaluation process, which allows assessing the availability of the couple to enter into mediation. Moreover, the evaluation process consists in collecting data, including the psychological status of the spouses, their communication skills, education of children, and their financial resources. From this information you can note three types of disputants; the unsuitable ones, those ready to enter immediately in mediation and those that probably will be able to negotiate, after passing through the phase of pre-mediation. The duration of the evaluation is carried out in three sessions, one of which individually with each spouse and the other one together. The choice of individual sessions is designed to establish trust and encourage honesty. After the evaluation, if necessary, the disputing party may pass to the phase of pre-mediation, or directly in negotiations.¹⁴

The pre-mediation phase means the intervention to which are subjected the couples, which are considered suitable for mediating, but both, for their relational dysfunction fail to enter into advantageous negotiations. It aims above all to re-establish a healthy communication between them and to determine accurately the systemic processes that may prevent the conflicted couple whether to proceed in mediation. Additionally, this phase may be required during the phase of the negotiation, in the case when the mediator considers the

¹⁴M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999.

interactional block of the couple. At this point may insert the phase of the negotiations, in which we try to reach an agreement on various points of the dispute. The issues to be discussed regarding parental and economic aspects are well defined together with the mediator. The problem definition is done through the technique of problem-solving, also used by other models of mediation. Next, the mediator establishes the chronological order of discussion of issues, from the most simple to solve, to the most difficult, in order to prepare the couple for a more conciliatory attitude. If in the course of the negotiations are created particularly difficult moments between the spouses, the mediator can provide them with emotional support, or may decide to temporarily suspend the session, in order to give an opportunity to the couple to regain control over their feelings. After completed the process of negotiation, the mediator helps the couple to establish the terms and conditions of an informal agreement.

The last step is the process of follow-up that aims to control, six weeks after the end of the mediation the progress of the disputing party and also, to assess whether their agreement should be changed or not. If necessary, the disputing party may return to the pre-mediation phase or negotiation.¹⁵

2.6.11. Transformative Mediation (Bush and Folger)

Bush and Folger transformative model defines the mediation as "*a process in which a third party helps the parties to redefine the quality of their dynamic relationship*

¹⁵M. CORSI, C. SIRIGNANO, La mediazione familiare. Problemi, prospettive, esperienze, Vita e Pensiero Editore, Milano, 1999.

transforming the conflict from negative and destructive to a positive and constructive one through the observation and discussion of issues and possible solutions "(Bush, 1994).

This approach allows participants to lead, while the mediator follows: all his attention goes to encourage positive communication between the parties, and listening to each other. When it is create a greater understanding between the couple, looking at the problem with a different point of view, the whole picture can be transformed.¹⁶ However, the mediator brings intervention methods that contribute to the achievement of two key objectives: empowerment and recognition. Empowerment encourages self-determination and autonomy, strengthening the capacity of people to clearly see their situation. In addition, recognition involves the parties in the ability to recognize one's feelings and points of view.

According to Curie (2001), transformative mediation aims to encourage a peaceful reorganization of the relationship between the parties and focuses on the interaction and communication between the parties that can lead to a moral growth. The reconciliation of conflicts is a pleasing result, but of secondary importance. The focus on the relationship implies that the mediator meets the parties in joint sessions.

The conflict can generate feelings of vulnerability and self-centeredness. In the sense that, since such a state of weakness of a part tends to reinforce the other, the conflict may inevitably grow more. In order to avoid this, the mediator's task is to turn weaknesses into strengths and self-centeredness in identification performance. Unlike other types of intervention, the transformative mediator does not manage the process, but accompanies and

¹⁶L. PARKINSON, *La mediazione familiare: modelli e strategie operative*, Erikson, Londra, 1997, p. 59.

supports the parties making use of the ability of reflection, synthesis and verification. That is, how to establish a program management operations, normalize, to point out the common reasons and look for the origin of the questions are to be avoided.

Those in favor of transformative mediation believe that this approach offers the parties the opportunity to transform the conflict from negative to positive, and to move towards constructive and relational dynamics.¹⁷

2.6.12. Transitional Symbolic Model (Cigoli and Marzotto)

According Scabini (1995) and Cigoli (1998), the transitional symbolic model is a theoretical and methodological organic paradigm of knowledge and intervention on the family, founded on epistemological assumptions. It has an organic theory of family functioning;¹⁸

- applied to each phase of the family life cycle
- explaining healthy and pathological functioning of the family.

It has a consistent methodological guidance for research and clinical social intervention with families. It has also a specific conceptualization of particular concepts useful for decoding;

- the process of separation and divorce

¹⁷L. PARKINSON, *La mediazione familiare: modelli e strategie operative*, Erikson, Londra, 1997, p. 60.

¹⁸E. SCABINI, *Psicologia sociale della famiglia*, Bollati e Boringhieri, Torino, 1985.

- the theory and technique of the intervention of family mediation (Cigoli, 1998; Marzotto and Telleschi, 1999; Cigoli and Marzotto, 1999).¹⁹

Mediation is represented here as an experience of ritualized passage of the marriage crisis, or how the transition from a compact familiar organization to a different bipolar organization, where the family lives under two roofs.

According to Cigoli (1998), separation/divorce is a relational transition (transformation - passage), a reconfiguration or reorganization of family ties, and thus also intergenerational. That is, it is a process whose meaning and nature transcends individuals. Furthermore, it is a process that affects the whole family organization and symbolic exchange between the generations.²⁰

In the process of separation / divorce is impossible to discriminate between the marriage bond and the parental bond.

The crucial element of this critical event is the end of the marriage covenant. The developmental task related to it is, consequently, the development of the end of the marriage covenant and the revival of parental agreement. In fact, this is a task that can be tackled with different outcomes, and exposed to specific risks. In other words, the "remaining always parent is not an easy task to tackle on their own without the help and support of the social body and the tools available from it" (Cigoli and Marzotto, 1999).

¹⁹C. MARZOTTO, R. TELLESCHI, *Comporre il conflitto genitoriale. La mediazione: metodo e tecniche*, UNICOPOLI, Milano, 1999.

²⁰V. CIGOLI, *Psicologia della separazione e del divorzio*, il Mulino, Bologna, 1998.

Family mediation within this paradigm, it is a process accompanying the real and symbolic transition of the family through the process of renegotiation of family relationships. In addition, the transitional symbolic model allows a ritualization of marital conflict, its recognition and its overcoming. The mediator is the guarantor of the creation of this space as a space of mutual respects that have to be necessarily protected.

The mediator works with the couple in an absolutely independent way, different from the other services, lawyers and judges. For this reason, it is important to confirm that the mediator does not make reports or assessments of any kind intended for third parties, but he moves only in the relationship of trust established with parents.

Another important function that carries out family mediation in this perspective is to ritualize a moment that allows to recognize and exploit the public dimension of social importance of marriage and cohabitation, and that the absence of a strong moment of transition, in the moment of divorce is a tests. In fact, the risk is to weaken confidence in the bond, in family and social ties in particular.

However, family mediation works in the conflict as an element of transformation and possibility. The conflict is shown here as a way of dealing with differences. It is those differences that should not be impossibilities to meet, especially where children are involved.²¹ At the time of divorce, the risk to children is to give up hope in the bonds and build ever more fragile bonds because of the fear of suffering too much when they break. For this reason, the attention of the mediator is focused on the children, on their experience and

²¹C. MARZOTTO, R. TELLESCHI, *Comporre il conflitto genitoriale. La mediazione: metodo e tecniche*, UNICOPOLI, Milano, 1999.

special position between the parents. The work being done is to exploit the ties that sometimes before the separation are fragile and weak, and to strengthen the role and identity of each parent.

Notwithstanding the rules shared custody is in fact extremely easy any very relevant harm in the relationship with their children up to the syndrome of "Parental Alienation". It is a severe form of alienation or removal from a parent that can occur in cases of serious conflict between them.

According Cigoli (1998), there was, however, very clearly the need for parents to have or continue to hold, even during the separation, a mental space for the children.²²

The transitional symbolic model leaves room to take care of all aspects of the link, which is sometimes also pass economic issues. This model expects to face in mediation all aspects of the relationship and all the issues that parents want to arrange a deal.

Furthermore, there is a global opening up to all objects of conflict and negotiation, both the children with material goods. In order to maintaining a control of the process, there is a flexibility in the settings and tools where there is the possibility to recur individual meetings, with children, or to prescribe the active duties of facilitation of communication and emotional insight.

2.6.13. Eco-Systemic Canadian Model (Linda Bérubé – Annie Babù)

²²V. CIGOLI, *Psicologia della separazione e del divorzio*, il Mulino, Bologna, 1998.

This model was originally developed by the Canadian mediator Linda Bèrubè, in 1992, and then later developed in France by Annie Babù, in 1997. According to Bèrubè and Babù, mediation is seen as a form of ritual that aims to change the nature of the family unit.

As the conflict is considered an element that is part of the change, the role of the mediator is to help the parties recognize: thus laying out the opportunities that may arise from the situation, with an eye to the future.²³

What is really important in mediation, they are common interests. For this reason, personal issues and the subject of disagreement are treated differently and separately. Moreover, it should focus on the actual needs and not on positions. For this reason it is important to start by the joint defining of the problem, and then imagine solutions that produce mutual benefit.

During the procedure, are treated both aspects of parenting, and financial ones as they are interdependent.²⁴ According to Bèrubè (1992) and Babù (1997), this model includes 3 phases in the mediation process, specifying:

1. the development of the preliminary context
2. the negotiation of the reason for the dispute
3. The meeting of the mediation with the law.

²³E. GIANNELLA, M. PALUMBO, G. VIGLIAR, *Mediazione familiare e affido condiviso*, Sovera, Roma, 2007, p.109.

²⁴ E. GIANNELLA, M. PALUMBO, G. VIGLIAR, *Mediazione familiare e affido condiviso*, Sovera, Roma, 2007, p. 110.

It is important to note that the change is possible to the extent that people are able to attribute meaning to the events that are happening them. In the Canadian ecosystem model, mediation intervenes at a symbolic level, that is, providing new connections between pieces of their history and what is happening in the separation.

In this context, separation and divorce constitute a "familiar transition" that allows the parties to be reorganized in order to enable them to fulfill their parental role and, at the same time, improve relations with the other spouse in a different context.

Part. II. Literature review

2.7. History and origins of mediation

Family mediation is proposed as an alternative approach to conflict management in couples seeking the divorce, where a third, impartial person, named mediator operates to facilitate the dispute resolution processes. According to Lisa Parkinson (1997), family mediation is a process that allows the parties to handle their own problems, unlike the approach offered by the procedural system. In other words, family mediation is an alternative system created to regulate interpersonal disputes.

The purpose of the mediation process is to assist the parties in reducing the destructive aspects of the conflict, and reinforce good communication skills between couples in order to reach an agreement. Moreover, its purported goals seek to help parents cooperate, communicate and help them to maintain boundaries that protect their children from ongoing conflict.

This chapter explores the origins, and history of family mediation, and also it examines the importance of the development of family mediation process in relation to individual and couple dynamics of conflict divorce. Origins of mediation and development of family mediation in many countries of the world show that this approach is an effective form of dispute resolution for the couples, based on the creation of an agreement that works for their future.

In ancient times, the history of mediation was the history of diplomacy. Confucians have a long history of respecting the natural harmony of life. Several other ancient cultures had similar traditions. In many African countries, villages had at least one council who was skilled at helping people solve problems. Another evidence of mediation is due to the culture of ancient Rome, in which the representatives of the *plebe* established a group of high skilled people at helping others solve problems, and settle rules with the specific purpose of regulating the most crucial aspects of social life.

While mediation has been in existence for thousands of years, family mediation began to take shape in the United States in the late 60s and then in Europe with the increase of separations and divorces constantly growing by emphasizing the importance of the families in the process of separation, especially when child custody issues were in dispute.

This great development of family mediation in the United States and Europe has come due to excessive increase of civil cases in the courts. For this reason, it was necessary to identify alternatives to the process in order to have a more effective service to individuals in resolving disputes.

Furthermore, many organizations and family mediation centers were formed in the U.S, Canada, and Europe by developing several models of family mediation, such as therapeutic model, structural model, global model, transformative model of family mediation. Therefore, family mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve thanks to the emergence of more and new schools of thought.

Although mediation is often seen as a recent phenomenon, data show that it has quite a long history in different civilizations and cultures. Moreover, in ancient times, the history of mediation was the history of diplomacy.

The first traces of conciliations between parties in dispute dates back to ancient China in the fifth century BC, where the Eastern Civilizations were known for peaceful persuasion rather than coercive conflict. Confucians have a long history of respecting the natural harmony of life. What Confucius advised the parties in the dispute was to meet with a neutral peacemaker who would have assisted them in reaching an agreement, rather than go to a court. According to Confucius, the outcomes of the process were likely to leave the parties unable to cooperate to resolve such conflict and controversy.²⁵

Accordingly, the conciliation solutions of disputes were considered more effective than formal solutions reached in court.

²⁵L. PARKINSON, *La mediazione familiare: modelli e strategie operative*, Erikson, Londra, 1997, p. 27.

Many anthropologists state that in many African countries, the purpose of continuing tradition was to bring together a council which asked elders and wise men of the tribe to help resolve disputes between individuals, families and villages.

Another evidence of mediation is due to the culture of ancient Rome. Around 451 BC, the representatives of the *plebe* established a group of high skilled people at helping others solve problems. Thus, the representatives entrusted and asked them to settle rules with the specific purpose of regulating the most crucial aspects of social life, which, according to the representatives, the last one was corrupted because of inequality. Moreover, there are many examples of mediation used by traditional communities in Europe or North America.

In England, in the sixties of the nineteenth century were established early conciliation committees (Boards of conciliation) to help resolve disputes in some industries. Furthermore, in all areas, mediation has been used in several ways to facilitate communication and help the disputants in reaching consensus decisions. The mediation became more formalized in many fields of application, in the sphere of industry commerce, and health. The use of mediation became more formalized even in the criminal justice system. Interestingly, the mediators may be involved to help resolving disputes between different countries and communities. For example, Nelson Mandela, the former president of South Africa is probably recognized as the most authoritative international mediator

regarding the sensitive issue of AIDS, in 2000, by using his mediation ability to encouraging scientists and politicians to work together to fight a disease that is ravaging Africa.²⁶

In some countries such as China and Japan, mediators are recognized of considerable authority. For example, the Chinese and Japanese mediators maintain moral values: that is, criticizing the attitude of a right hand, and encourage each other to have acted properly. As this paternalistic approach states, the parties do it to resolve their disputes in a peaceful and responsible way for the good of the society and especially for the good of the family.

Instead, in many other countries, mediation is seen as a way to make the parties able to develop their own decisions and agreements. However, these countries have applied legislation and procedures to enable courts to address the causes to the mediation. For example, Australia has been one of the first states to extend a legislation that would promote the use of mediation in family disputes (Family Law Act of Australia, 1975).

In England and Wales too, the Family Law Act of 1996 scheduled two decades of efforts to provide family mediation for couples helping them to resolve conflicts regarding their children, finances and other problems in the most delicate phase of their lives, that is, that of separation and divorce.

2.7.1. Birth and development of family mediation

²⁶L. PARKINSON, *La mediazione familiare: i modelli strategie operative*, Erikson, Londra, 1997, p. 28.

While on one hand, several authors argue that family mediation was born in the United States in the late 70s, and then spread into Europe, on the other hand, Lisa Parkinson states that "the first mediation projects in England have developed independently by American prototypes".²⁷ According to the author, by the end of the nineteenth century English judges in the courts applied a procedure known as "reconciliation." This procedure was used to resolve marital conflicts and disputes. Therefore, to the couple was offered a service of couple therapy or individual therapy in order to achieve reconciliation, and one of the couples, especially the wife, was urged to accept reconciliation.

However, the first family mediation service in the UK was established in 1978 in Bristol. Couples with children could ask this service with their spontaneous will, before starting to the proceedings of the court, in order to reach an agreement concerning the custody of the children. As a result, independent services for family mediation were spread in England since 1979, and after, in the eighties, there was a big increase of family mediation centers in Europe and other countries. However, an interdisciplinary approach was encouraged from the beginning and most of the centers had the support of local lawyers. For example, the first country to train lawyers of family law as mediators was Scotland, with the support and help of the Law Society of Scotland.

However, the United States played a crucial role in the development of family mediation. California instituted the conciliation service connected to the court in 1939

²⁷L. PARKINSON, *L'esperienza inglese dei servizi di Mediazione Familiare*, in E. SCABINI, G. ROSSI (a cura di), *Rigenerare i legami: la mediazione nelle relazioni familiari e comunitarie*, Vita e Pensiero Editore, Milano, 2003, p. 261. cit.

(Family Conciliation Court). The functions of this Court included important issues regarding the separation and custody of children. The Court was also responsible to "*provide amicable agreements to family dispute*".²⁸

Because there was an increase in divorces in a global context, the focus of reconciliation in court in England and the United States moved from consulting for reconciliation to the mediation for divorce. Afterwards, it was the creation of the Finer report (survey requested by the British government), in 1974, one-single-parent families (Finer Committee, 1974). The Finer report recommended that the reconciliation should be considered as a priority in order to help couples to reach an agreement without going to trial. The Finer committee (1974) defined the conciliation as "*the process which consists in generating common sense, reasonableness and agreement in dealing with the consequences of alienation*". In addition, in cases of matrimonial failure and divorce, another definition of conciliation suggested "*helping the parties to reach reflected decisions of all kinds, including decisions on reconciliation, in an atmosphere of calm consideration rather than tension and hostility*".²⁹

At the same time the Finer report was published in England, James Coogler, a lawyer, established the center of family mediation (Family Mediation Center) of Atlanta in Georgia. Starting from his own personal experience of a painful marital separation, Coogler

²⁸ A. MOTRONI, *Consultori familiari e mediazione*, in G. COSI, M. A. FODDAI (a cura di), *Lo spazio della mediazione*, Giuffrè, Milano, 2003, p. 231.

²⁹L. PARKINSON, *La mediazione familiare: modelli e strategie operative*, Erikson, Londra, 1997, p. 36.

developed a process called *structured mediation in divorce* (Coogler, 1978). The mediator would assist couples in helping them reach an agreement related to every aspect involved in the dissolution of a family nucleus, like that of custody of the children, separation of their assets, and any child support. Subsequently, Coogler established the Family Mediation Association, one of the first organizations of separated parents, in which they had the opportunity to share their own family experiences.

Hundreds of similar organizations were formed in ten years by developing several models of family mediation, such as therapeutic model, structural model, global model, transformative model of family mediation. Among the most important models of family mediation were those of Howard Irving and John Haynes.³⁰

Furthermore, Irving, in collaboration with Benjamin, established in 1978, the Toronto Conciliation Project, which was the first family mediation service in Canada. Moreover, this project provided support to families in order to foster communication and define marital disputes. This type of model used by Irving was called the Therapeutic Family Mediation, based on the resolution of the emotional and relational aspects of the couple.³¹

A few years later, John Haynes, mediator and social worker, founded the Academy of Family Mediators. Furthermore, this mediation center included social workers, matrimonial

³⁰M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 29.

³¹M. CORSI, C. SIRIGNANO, p. 30: “Nel 1978 Howard Irving attivo il *Toronto Conciliation Project*, per introdurre la mediazione di divorzio allo scopo di ridurre il conflitto, facilitare la comunicazione, definire i problemi, suggerire soluzioni ed arrivare ad un accordo scritto tra le parti contraenti”.

and family counselors. Many family mediation volunteers went to the US to get their training from institutions such as the Academy of Family Mediators. Therefore, the Academy provided training supervised by a group of experts, such as lawyers and psychologists. In addition, the academy recognized the need for mediators to have a good mix of capacities and backgrounds including an understanding of law, family dynamics, emotional state, and the psychological effect of divorce on children and parents. Moreover, fifty services were established in the United States.

In the eighties, family mediation began to spread in France, which currently has more than eighty specialized public centers.

In 1988, it was formed in Paris, the first association, the Association pour la Promotion de la Médiation Familiale (APMF). This association included experts from a wide variety of backgrounds such as lawyers, judges, psychologists, social workers, and parents' associations, in order to undertake various activities of mediation.

In 1990, the APMF adopted the code of ethics: This code disciplines the French mediation, and it is recognized even today for its completeness and avant-garde³².

In 1991, the Commission on Education of the Family Mediator created la *Charte Européenne de la formation des médiateurs familiaux et dans les situations de divorce et séparation*. The European Charter, where adhere many countries such as Germany, Belgium,

³²M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 32.

France, Great Britain, Italy, Switzerland, aims to ensure order, coherence, consistency and professionalism.

In addition, in Italy, in 1987 it was formed the l'Associazione Genitori Ancora (GeA). The promoters, F. Scapparo and I. Bernardini, both psychologists, realized that the new culture regarding separation, promoted by the family mediation, could be a win to win (winning solution) for all those parents who could not make "healthy" arrangements at the time of legalizing their separation.

Furthermore, in 1989, the first center of family mediation in Italy; il Centro Genitori Ancora (GeA). Another important event was the foundation of the Italian Society of Family Mediation (SIME.F.) on 25 May 1995 with the aim of promoting the professional activity of the family mediator in Italy, in compliance with the ethic profiles that are part of the European standards³³.

In conclusion, family mediation is proposed as an alternative approach to the management of marital conflict in view of a separation or a divorce in which an impartial third person, called a mediator, acts to facilitate the resolution dispute processes (Buzzi & Haynes, 1996).

Although mediation is often seen as a recent phenomenon it has quite a long history in different civilizations and cultures. Moreover, in ancient times, the history of mediation was the history of diplomacy. Evidence based on the history and development of mediation

³³M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze*, Vita e Pensiero Editore, Milano, 1999, p. 34.

show that this approach is an effective form of dispute resolution for the couples and other forms of disputes based on the creation of an agreement that works for their future.

Dissatisfaction with the legal system's ability to deal effectively with interpersonal as well as social conflict led to a search for alternatives. Therefore, family mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve due to the formation of more and new schools of thought. Furthermore, the creation of several study groups on family mediation has brought its contribution of ideas and experience. In addition, experts from a wide variety of backgrounds such as lawyers, judges, psychologists, and social workers have contributed to increase efficiency in the mediation centers. These factors have influenced the creation and development of some major models of family mediation. Then, the mediation has thus become a method adaptable with regard to the family crisis, which still represents families with high-conflict parents.

With regard to cultural differences, it is hoped that recent legislative and other changes will strengthen the field and create accessible options for couples to resolve their disputes. Despite these differences, many of which still exist, the development of mediation continued and expanded in many countries of the world.

2.7.2. The European Code of Conduct for Mediators

Mediation is a process in which a neutral mediator helps parties in dispute to try to work out their own principles for the resolution of the issues between them. It is an informal process whose objective is helping the disputing parties reach a mutually acceptable agreement. Dissatisfaction with the legal system's ability to deal effectively with all kinds of

conflict led to a search for alternatives. Therefore, mediation began to be recognized as a unique area of practice that required specialized education and training. Considering the fact that mediation represents a generally superior form of dispute resolution, and is governed by rules of procedures and conduct, it is necessary to provide a framework of the European Code of Conduct for Mediators in relation to ethical practice of mediation. Therefore, the purpose of this article is to inform the reader about the importance of the European Code of Conduct for mediators in relation to dispute resolution, and mainly to provide a framework of the principles of mediation, which ensures quality in treatment of members of the profession and those the profession of mediation serves.

The importance of European Code of Conduct for Mediators

As European Code of Conduct for mediators states, “it sets out a series of principles to which mediators can voluntarily operate spontaneously under their own responsibility. This code can be applied to all kinds of mediation regarding civil, family and commercial matters. Also, organizations providing mediation services can make such a commitment by asking mediators acting under the auspices of their organization to respect the code of conduct or to act in accordance with this code. Adherence to the code of conduct is without prejudice to national legislation or rules regulating individual professions. Organizations providing mediation services may develop more specific codes, adapted to their specific context or the types of mediation services they offer, as well as to specific areas, such as family mediation or customer mediation”.

Competence, appointment, and promotion of the mediator’s services

Since the mediators' competence is crucial during the course of mediation, mediators must have the appropriate knowledge in the process of mediation. Therefore, a mediator should maintain professional competence in mediation skills by regularly engaging in educational activities and practice in mediation skills.

Furthermore, mediators should decide with the disputants regarding suitable dates on which the mediation may take place. Also mediators should verify that they have the appropriate competence of the specific case before accepting the appointment.

In relation to fee issues, mediators must always provide the parties with complete information as to the mode of remuneration which they intend to apply. In addition, mediators may promote their service of mediation in a professional way by respecting the principles of the Ethical Code of Conduct for Mediators.

Integrity, impartiality, confidentiality and professional competence

With regard to the European Code of Conduct for Mediators, the principles of mediation are used to establish its identity, and above all to protect those who ask it. Accordingly, these principles define the "structure" of family mediation and it is very important that a mediator respects these principles.

Integrity, impartiality, confidentiality, and professional competence are the essential qualifications of any mediator which the European Code of Conduct for mediators has paid special attention.

Furthermore, a mediator should not accept any involvement or undertake any act that would compromise the mediator's integrity. In addition, a mediator should maintain professional competence in mediation skills by regularly engaging in educational activities

and practice in mediation skills. In addition, if the mediator decides that a case is beyond the mediator's competence should withdraw and address the specific case to another expert of mediation.

Moreover, a mediator shall be impartial and advice all parties of any kind of situation that may result in possible prejudice or impartiality on the part of the mediator. Therefore, the principle of impartiality is established to help all parties as opposed to one or more specific parties in moving toward an agreement. The mediator should withdraw from mediation in case the mediator believes that can no longer remain neutral.

With regard to the principle of confidentiality, the mediator shall maintain the confidentiality of all the mediation process and will not voluntarily disclose information obtained through the mediation process except where required by law, and to the extent those matters are with the consent of the parties. Therefore, an exception is made only in cases where the life or safety of any person is or may be at serious risk.

Principles of family mediation: Neutrality and impartiality of the mediator

The various principles of family mediation are very important since they establish its distinct identity and safeguard for the professionals practicing mediation. Accordingly, these principles define the "structure" of family mediation and it is very important that a mediator respects these principles.

Regarding family mediation, even if in Norway the mediation is mandatory for all parents who separate and divorce, the recommendation of the Council of Europe number (98) 1 states that mediation should be a voluntary process. For example, during the first meetings of the mediation process, the mediator explains to the disputants that family

mediation is a voluntary process. Therefore, participants may withdraw at any stage of the mediation.

The neutrality and impartiality of mediators is very important during the mediation process. According to Lisa Parkinson (1997), with "impartiality we understand the concept of "equidistance", which means that the mediator, equally, pays attention to all the parties and manages the process in a balanced and impartial way. By this we mean that the mediator must conduct the process of mediation without favoring one side or the other.

Declaration of any conflict of interest on the part of the mediator

In case that a mediator has current or past of any kind of consulting relationship with any party, the mediator should address them to another expert in mediation in order to avoid conflicts of interest. However, it is expected, that mediators terminate the mediation when they become aware of a conflict of interest during the course of the mediation.

Empowerment of the parties to reach agreement

Empowerment is one of the most important principles of mediation, and has a number of different meanings. This term refers to the sharing of knowledge between the mediator and the parties. However, individual mediators assist litigants in reaching their own decisions. For instance, mediators encourage the parties to give a full explanation in relation to economic issues through the mediation process, and encourage disputes to provide the necessary information, so that their decisions are based on the fact that both parties have evaluated all the important information. Another significant aspect of empowerment is the avoidance from exerting pressure on each other.

Respect for the individual and cultural diversity

In addition, the mediator must ensure to the disputants equal opportunities to be part of the mediation process regardless of their cultural background. From this point of view, the mediation should be available to all couples, married or not and at all stages of separation or divorce.

Personal safety and protection from risks

Disputants must be protected from any concerns, insults or threatens of violence. So, the mediators must ensure that each dispute takes part in mediation on a voluntary basis. Therefore, the mediation process should take place in an appropriate and comfortable environment. Also, there should be available separate waiting rooms and, where appropriate, additional separate meetings with each of the parties. Mediators should also have the ability to recognize situations that involve imbalances of power of one of the disputants which may affect the mediation process, and to set the basic rules for dealing with these matters. If in case there is evidence of inappropriate behavior due to high conflict situations, the mediator should explain to the parties that mediation should be terminated.

Confidentiality

With regard to the principle of confidentiality, the mediator must conduct the mediation on a confidential basis, and will not voluntarily disclose information obtained through the mediation process except to the extent that these matters are with the consent of the parties. Therefore, an exception is made only in cases where life or safety of any person is or may be at serious risk.

Emphasis on common interests rather than on individual rights

Because mediation is based on communication and cooperation between the parties, they are helped by the mediator to focus on common interests rather than on individual ones. That is, the mediator helps them to make decisions that include common interests. In the mediation process, the parties are helped to achieve a result of *win-to-win* rather than *win-to-loose*.

Consideration of the needs of all parties, including children

Family Law Act (1996) states that all mediators should help parents to consider "the welfare, wishes and feelings of each child; and whether and to what extent should be given the opportunity to each child to express his or her wishes and feelings in mediation". From this point of view, the mediator cannot decide or advice parents on what could be the best in the interests of the children, but the mediator may help them to take into account the needs, wishes and feelings of their children.

Agreement, process and settlement

Since the whole course of the process of mediation is very important for the mediator as well as all parties to reach an agreement, the mediator must ensure that prior to conductance of the mediation the disputants have understood and also agreed the terms and conditions of the mediation process in relation to obligations of confidentiality on the mediator and on the parties. Moreover, the mediator must take into consideration the specificity of each case including possible imbalances of power and any wishes the disputants may have, by reaching an agreement with the mediator on the way in which the mediation is to be performed. In addition, the mediator may hear the disputants separately in case of high conflict.

Moreover, the mediator must inform the parties and therefore may terminate the mediation if the mediator considers that continuing is unlikely to result in a settlement. In the end of the process, the mediator, under his own responsibility must ensure that any agreement is reached by all parties. On the other hand, the disputants may terminate the mediation at any time if they do not see as appropriate to reach an agreement. In case that they reach an agreement, the mediator must inform the parties as to how they may formalize the agreement.

In conclusion, mediation is a process in which a neutral mediator helps parties in dispute to try to work out their own principles for the resolution of the conflicts between them. Furthermore, mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve due to the formation of more and new schools of thought. The Ethical Code for Mediation is very important because it serves as a guideline for professionalism and quality of service. With regard to the European Code of Conduct for Mediators, the principles of mediation are used to establish its identity, and above all to protect those who ask it. Accordingly, these principles define the "structure" of family mediation and it is very important that a mediator respects these principles. More importantly, experts such as lawyers, judges, psychologists, and social workers who practice mediation should maintain professional competence in mediation skills by regularly engaging in educational activities and practice in mediation skills. Considering the fact that mediation represents a generally superior form of dispute resolution, we should take into account the importance of the Ethical Code of Conduct for Mediators and the main

principles of mediation which contribute in regulating the profession of mediation, with the objective of helping the disputing parties reach a mutually acceptable agreement.

2.8. Research on family mediation

2.8.1. What is a successful mediation?

Still in the early eighties, an innovative research revealed the results of the first experimental Bristol service to support a reform of the divorce law, that would encourage the use of mediation in place of the process. Furthermore, the researchers claimed that "before granting legal aid, it would be good to thoroughly evaluate the possibility of reaching an agreement through conciliation (mediation)" (Davis and Lees, 1981, p.164). The researchers proposed to finance and experience a number of pilot projects, before starting a major reform of the law.

A few years later, the National Family Conciliation Council (now National Family Mediation) gave way to five pilot projects with regard to global mediation services, instead of mediation concerned only on issues regarding children. For many years, the researchers were interested to find out of the effectiveness of mediation experienced by the disputants in these pilot projects, through analysis conducted by researchers at the University of Newcastle (Walker, McCarthy and Timms, 1994; McCarthy and Walker, 1996) . The mediation services concerned were mainly registered as charitable institutions, and directed by local management committees, which included members of the judiciary, local lawyers and social services managers. The service was private, reserved and generally free.

The results of the Newcastle University research conducted by the global mediation can be summarized as follows:

- Couples chose the mediation mainly because they were looking for a friendly and cooperative way to solve conflicts;
- 80% of couples reached an agreement, with the help of their lawyers (39% of all issues, and 41% on some). Most of them were satisfied of the agreement;
- There were other positive outcomes when levels of conflict, feelings of anger, and feelings of resentment had decreased;
- Couples felt that the mediation had been effective in terms of costs, compared to the legal system;
- Lawyers had a major influence on mediation clients as references, and as legal advisors as well as holding in some cases the role of lawyers-mediators (Walker, Mc Carthy and Timms, 1994; McCarthy and Walker, 1996) .

The sample size of the study included 510 participants. With the exception of three couples, all those who took part in the mediation were owners of their property, and they had the assets to be divided. Many couples were living together but were planning to separate or divorce, and saw mediation as a constructive way to develop common decisions. The researchers pointed out that their sample of mediation "seemed to belong predominantly to the economically and socially high class" (Walker, McCarthy and Timms, 1994, p.44). Some professions were over-represented, which indicated a greater awareness and acceptance of mediation in these professions. One in ten women was employed as a teacher and, again, one in ten women was employed as a nurse. One out of eight men was employed as a teacher.

"Is it more likely that mediation is taken into account by people employed in certain professions, or reference services believe that mediation is more appropriate for distinguished guests, members of the middle class" (Walker, McCarthy and Timms, 1994, p.44).

Furthermore, an attorney mediator referred to the "preference for distinct and educated couples, since the complexity of the budget modules requires a certain degree of schooling, and the negotiation process requires that customers know express clearly" (ibid., P. 122).

Moreover, Kelly (1989) pointed out, likewise, that the respondents in his study of global mediation were "a group of volunteers, self-selected, predominantly white, middle-class, well-educated or medium-high class" (Kelly, 1989, p. 86).

2.8.2. Couples who drop out without completing the mediation

Researchers at Newcastle, in their study discovered that most of the couples withdrew from mediation.

According to Walker, McCarthy and Timms (1994), little more than half of those who began the mediation completed the process.

However, it is important to understand why a significant part of the participants were unable to complete the process. The initial level of conflict and anger do not seem to be relevant factors. Kelly, Gigy and Hausman (1988), in an empirical study in California found that the reasons for the disputants to withdraw from mediation included: Costs, the most common reason for withdrawal (39% of cases); the feeling of being overwhelmed, helpless or unprotected; the lack of financial knowledges; the refusal of the other party to

produce a full equipped financial documentation; and the feeling that the issues mediated in the field were too complex for mediation.

However, the decision to withdraw from mediation did not necessarily mean that the latter had failed or that disputants were dissatisfied with the process. Moreover, the authors revealed that half the people who had withdrawn from mediation, were neutral or satisfied with the mediation process. Therefore, many had made some progress and had reached the basis for an agreement. Still others were withdrawn for reasons that had little or nothing to do with the mediation.

2.8.3. Levels of satisfaction among the disputants

Furthermore, the study revealed that most of the disputants interviewed by the researchers, in which 63% of them reported that they were happy to have participated. However, 25% would rather not have done it, while others did not display particularly strong feelings in any way (McCarthy and Walker, 1996). Moreover, 82% of those who had taken advantage of the global mediation, were satisfied, while for those who had participated in the partial mediation (focused only on children), only 54% were satisfied. The results of the study showed that global mediation seemed to have worked better than partial mediation in terms of increased communication between the couple, reduction in levels of tension, and feelings of anger, and increased ability of negotiating (Walker; McCarthy; Timms, 1994, p. 80).

In general, American and Australian research with regard to the experience on mediation, revealed satisfactory results, in which, the participants reported levels of satisfaction with regard to conflict resolution between 60% and 85% (Kelly 1989; Pearson and Thoennes, 1989; Irving and Benjamin, 1992; Gibson and Bordow , 1994).

2.8.4. Does mediation facilitate the post-divorce relationships?

Some studies claim that family mediation facilitates the relationships between parents, while others claim that mediation does not. For example, Irving and Benjamin (1992), found that 60-70% of the respondents reported an improvement in co-parenting relations, including a reduction of the conflict, better communication and fewer serious problems.

Another study conducted in the US, revealed that mediation partially improves the cooperation between parents regarding custody issues (Pearson and Thoennes, 1988).

One of the difficulties in measuring the impact of mediation on post-divorce relationships is the relationship between the outcomes of mediation with the levels of previous cooperation to the mediation itself. Therefore, if global mediation achieves good results, is it possible that couples who are motivated to reach an agreement would still be relatively cooperative?

In another American study with large sample, Pearson and Thoennes (1988) found the most elevated levels of cooperation between the parents who took part in mediation regarding issues relating to children, rather than among those who had taken part in legal proceedings. The researchers took into account a number of assumptions or hypothesis, including the one that the comparison between the cases "mediated" and "unmediated" was invalid, because the couples who reach an agreement in mediation are inherently more cooperative. The couples were studied in three different categories: those who had taken part in mediation, those who had served the process without being given an opportunity to choose mediation, and those that were addressed to the court, refusing the service of mediation. Moreover, a conflict scale was used in the study. " Even in this

extreme of the scale of conflict, those who took part in the mediation proved to be more cooperative, compared to those who had not availed themselves of mediation.

Furthermore, the American study revealed that 30% of parents who reached a mediation agreement had the impression that mediation itself had improved their relationship. At the time of the third interview follow-up, more than 60% of those who had reached an agreement, reported that some cooperation with ex partners was possible, than those who had not tried mediation, and six times more than those who had turned to mediation, but were not able to solve any problem (Pearson and Thoennes, 1988).

2.8.5. Costs of mediation and costs of process

One of the major advantages claimed by the mediation is to reduce legal costs, as well as time. In a study conducted in Bristol, researchers evaluated the impact of family centered mediation, focusing on the children in comparison with the costs of legal advice, and revealed that in cases where mediation had led to an agreement, there had been a considerable reduction of legal rates. According to lawyers, mediation had reduced legal costs in 54% of cases (Davis and Lees, 1981).

Moreover, Kelly (1991), conducted a study in which the researcher compared the costs of mediated divorce cases with those conducted by lawyers, and noted that global mediation was considerably less expensive than the presence of two attorneys in the attempt to negotiate, and reach a final agreement in court. The two groups of mediated and unmediated cases were comparable in terms of the complexity of the issues, levels of income, degree of conflict, the initial level of hostility or cooperation, and expected degree of difficulty in reaching an agreement. Kelly (1991) implied that the research results were

evaluated with caution, since the respondents were self-selected, and therefore, they were not representative of the divorced population as a whole.

In another American study, Pearson (1991) compared the mediated and non-mediated cases. Legal costs revealed a higher percentage of 30-40% for those who solved the process of divorce through lawyers, compared to those who chose mediation.

2.8.6. How important is the mediator's gender?

What role plays the gender of the mediator in the "mediation triangle" formed by the two parties and the mediator himself? Researchers from Newcastle, revealed that the mediators of the National Family Mediation services were mostly women (Walker, McCarthy and Timms, 1994). Husbands who responded to questions about the gender of the mediator, did not matter in most cases, while women tended to be more troubled by a mismatch between gender, and feared that a single mediator, male or female, could not be able to manage the process properly.

2.8.7. The co-mediation

Generally, the co-mediation, is appreciated by the disputing parties. However, the gender of the co-mediators seems to play a greater importance than the single mediator. The majority of family mediators with a therapeutic orientation are women, as well as many lawyers in family law who choose to exercise as mediators.

Various studies have revealed that a husband who is faced with his wife and two female mediators, tend to feel excluded. Instead, the use of two males mediators is likely to reinforce the existing power imbalances. On the other hand, women tend to feel overwhelmed in front of their husbands and two males mediators (Walker, McCarthy and Timms, 1994, p. 129).

Generally, the use of a mixed mediation team is preferable, as it provides better balance between gender, as well as greater variety of viewpoints. However, one can not imply that this is the best model to work with, or that mediators of the same gender can not work together effectively. However, the personality of the mediator, his skills and experience are as important as gender. If it is necessary to propose to disputants two mediators of the same kind, this aspect should be discussed with both in the phase of admission. If the parties accept mediation on this basis, the co-mediators should periodically check that both parties feel at ease, despite the imbalance between gender, just as it should make a single mediator.

2.8.8. Is mediation beneficial for children?

Various studies show that mediation also ensures positive results for children. Furthermore, research conducted on parents who had experienced mediation showed that 58% of them believed that the mediation had helped them to protect the interests of children, while 37% thought that mediation had contributed to reaching agreements with regard to custody issues. The studies revealed that the global mediation had been a tremendous help in addressing the problem of children, whereas family centered mediation focused on children, gave parents the chance to have contact with the younger son (McCarthy and Walker, 1996).

Moreover, Pearson and Thoennes (1988), in their extensive research in the US, found that mediation on issues relating to children represented an improvement over the judicial system, but could not solve all the problems during and after divorce .

The researchers revealed a number of reasons to explain the fact that studies on mediation does not show significant and measurable benefits for the children. These

included problems in establishing sufficiently sensitive issues, the period of time considered, and a number of other variables. Although mediation helped parents to reach decisions concerning children, and helped non-resident parents to maintain contact with them, however, the mediated agreements between the parents did not necessarily facilitated the psychological adjustment in children.

The researchers concluded that the adaptation of children after a divorce depends on the interaction of many variables, including the quality of parenting, relationships between parents, family dynamics, and the environment surrounding the child, rather than the choice of parents to take part in mediation.

Consistent with the academic literature, research shows, however, that the involvement of children in mediation may produce positive effects in resolving family conflicts. Both in Britain and in other countries, it is shown that, even when the mediators support a policy that favors the direct involvement of children in mediation, only a small percentage of cases are actually involved. A Scottish study conducted by Garwood (1989) brought to light that although mediation services of Edinburgh would support a policy aimed at enhancing the participation of children, only 20% of cases were actually involved in mediation.

From the mediators' point of view, the main reason for not engaging children in mediation sessions was their young age (average three and a half years). However, for parents, the most frequent reason was that they considered as unnecessary that children meet the mediator, because they felt able to talk to their children at home by themselves. Also, the study included controlled interviews with the children who had met with the mediator. Furthermore, the main modalities to involve children in mediation sessions consisted in

meeting them separately without the parents. The sessions, mainly consisted of a discussion with the children, especially with the youngest ones. There was used different materials such as books, drawings, paintings, posters, diagrams and toys. The children loved this wide range of materials, and drawing or playing with the toys put them at ease. Sometimes, after the meeting with the children, it was organized a family meeting with parents and children together, and also, there was held a family meeting rather than meeting children by themselves.

Most of the children reported that the goal for their involvement in mediation was not clear, and that for this reason they felt nervous and insecure. This seems to be the result of a lack of adequate information and explanations from the part of the mediators. Some of the children reported that they would prefer receiving a letter from the mediator. Several of them thought that the mediator should make decisions for them and for their family: two boys, aged nine and eleven years, thought that "the mediator would decide with whom they had to go to live with" (Garwood, 1989, p. 31).

Despite the uncertainty regarding their participation, almost all children considered very positive their own experience with the mediator. Saponseck (1991) commented on the lack of research conducted in the United States, and Britain about the involvement of children in mediation, and stressed out that it is important to conduct other large-scale studies, otherwise, it would be unwise to draw any conclusions with regard to the benefits of the involvement of children in mediation.

2.8.9. The mediator's neutrality

One of the major objectives of the mediation is to make the disputants able to reach their own decisions. The results of numerous studies show, however, that it is naive to believe that the mediator "controls the process but not the outcome" . As Abel (1982) states, the "moral ambiguity" in an informal context, typically, that of mediation, means that it may oppress rather than deliberate the process. Mediators can not be neutral.

As Guliver (1979) implies, the mediators who work in any field of the dispute are intended to have their own point of view, values and interests. The preparation and supervision of mediators should be designed to make them aware of their personal reactions and how to address them. On the basis of analysis of a series of mediation sessions, Dingwall (1988) notes that " It is clear that the mediator has his or her own point of view about what would be an acceptable outcome for both the parties, and that the mediator may be able to make use of his or her self-control in order to exert pressure in the process of mediation" (Dingwall, 1988, p. 165).

Other examples of those mediators who apply their own values are mentioned by Davis and Roberts (1988), which took over in a London suburb service with respect to the fact that there must be a contact between the child and the non-residential parent; therefore, a position supported by a range of knowledge about the needs of children, but certainly not consistent with the notion of impartiality of the mediator. Mediators who assume to know which is the better solution for the parties, may easily create feelings of anger and disaffection in a parent. A father who had custody of the children said:

They seemed too authoritarian about everything (...) We have the book here and you'll do as the book instructs you to do (...). They probably had a ready-made theory even

before we entered into that office. In other words, they were not prepared to start treating the issues of the dispute (cit. In Davis and Roberts, 1988, p. 79).

2.8.10. The importance of clear information on the length of sessions

The disputants need information and explanations about the process in which they are going through, so that their expectations may coincide, as far as possible with those of the mediator. Wrong expectations can turn into frustration or disappointment, and they should be thoroughly informed in order to understand the nature of mediation, and also define their expectations (Parkinson, 2011, p. 286).

The feedback provided by clients to researchers at the University of Newcastle, for example, showed that the three-hour sessions used in some services were far too long. Long sessions, at the end of the working day, contributed to feelings of exhaustion in to participants. In addition, participants were not aware of the limits of time (Parkinson, 2011, p. 287).

CHAPTER. III: HISTORICAL CONTEXT AND LEGAL FRAMEWORK OF FAMILY MEDIATION IN THE EUROPEAN UNION AND BEYOND THE CASES OF ITALY AND ALBANIA

3.1. Background

When it comes to the importance of mediation as a whole, it is essential to think of the reality of the countries within the European Union (EU) as that in some kind of ‘solar system’ where ‘planets’ (member countries) have their own trajectory but are, nevertheless, attracted to and in continuous and regular motion around the ‘sun’ (the EU legislative and policy-making institutions). This is what happens with EU laws: their main purpose is to regulate the activity of the member states, by either imposing rules – on a broad or specific basis – or by providing recommendations as to how this can be achieved.

In addition, there are the other ‘solar bodies’ that want to be upgraded to the rank of planets. These are countries that are not yet part of the EU but that have initiated a process of integration, with all the obligations for legal compliance and fulfillment of several requirements that this process encompasses.

The purpose of this study is to provide a different perspective on how family mediation is regulated by the EU, and how it has been implemented in Italy which as a member country must at least try to follow guidelines provided by the EU. The study will also look at how family mediation has been introduced in Albania, by considering the country’s obligation to adapt its internal laws to those of the EU, although not being a member state yet.

3.2. The European Union Family Mediation Legal Framework

The principle of access to justice is one of the most fundamental principles in the EU, underlining its overall legislation in different areas.³⁴ In the Tampere meeting of 1999, the European Council (Council) called for “alternative, extra-judicial procedures to be created by the Member States”³⁵ of the EU, in order to facilitate better access to justice.

The year before, in 1998, the Council had adopted a recommendation on family mediation by means of which the member states were recommended to introduce or promote family mediation (*Recommendation*)³⁶. The Council had recognized the growing number of family disputes and had expressed the need to protect the best interests of the child, especially in relation to custody and access. The *Recommendation* set out a series of principles of family mediation with the purpose of inspiring the member states to adopt any or all of such principles. However, the *Recommendation per se* did not impose any obligation on the member states to actually commit to the implementation or observance of such principles.

In 2002, the Commission initiated widespread consultations with the Member States on possible measures “to promote the use of mediation.”³⁷ The Council had already adopted several conclusions with regard to a broader use of alternative dispute resolution methods in the area of civil law and commercial law. The aim was to determine basic principles that would enable the creation and function of extrajudicial procedures of settlement.

³⁴ *Charter Of Fundamental Rights Of The European Union*, 7 December 2000, 2000/C 364/01, at 47

³⁵ See the European Council Presidency Conclusions, online: European Parliament <http://www.europarl.europa.eu/summits/tam_en.htm>.

³⁶ See Council of Europe, Committee of Ministers, Recommendation R (98)1 (1998), online: Council of Europe <<https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%2898%291&Language=lanEnglish&Ver=original&Site=CM&BackColorIntranet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>>.

³⁷ EC, Commission Directive 2008/52/EC of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters [2008] OJ L 136, at para (3) of Preamble [*Mediation Directive*].

Finally in 2008, nearly one decade later from the Tampere meeting, the European Parliament and Council adopted the so called *Mediation Directive*.³⁸ The benefits that mediation provides to the parties are clearly stated in the Preamble of the *Mediation Directive*:

Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

3.2.1. Content of the *Mediation Directive*

The extent and content of the *Mediation Directive* reflect the fact that mediation is still in the process of development and promotion in the EU and Member States have different regulatory approaches to it. Therefore, some articles of the *Mediation Directive* impose specific rules that Member States must reflect in their national legislation, while other articles are more vague and flexible and provide general rules by leaving it to the Member States the extent of the implementation of such rules.³⁹

3.2.2. Scope and Application

What was already mentioned in the Preamble is specifically stated in article 1 of the *Mediation Directive* pursuant to which “the objective of [the] Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by

³⁸ See *Mediation Directive*, *ibid.*

³⁹ Dr Felix Steffek, “Mediation in the European Union: An Introduction”, (June 2012), online: European Justice <<https://e-justice.europa.eu/resultManagement.do?stext=steffek&itext=steffek&sco=any&slang=any&spage=25&slmo=anytime&soption=c,n,a,&showPage=1&hval=b2b8e4f1a927f8e13ce4cbd5201dc758>> at 8

encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.”

The application of the *Mediation Directive* is also limited, by article 2, to cross-border disputes and to civil and commercial matters with the exception of rights and obligations which are not at the parties’ disposal under the relevant national legislation. This means that if the law of a Member State requires a court decision to get a divorce but allows the parties to privately regulate other areas of family law, only the latter area will be covered by the *Mediation Directive*.⁴⁰ However, the Member States are free to extend or limit the application of the *Mediation Directive* specific areas of civil and commercial law, including family law.

Application of the *Mediation Directive* is also limited to the type of mediation as defined under article 3(a):

‘Mediation’ means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

Mediator is also defined in article 3 as being:

...any third person who is asked to conduct mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

⁴⁰ *Ibid* at 9.

3.2.3. Quality of Mediation – Codes of Conduct and Training

Article 4, more than imposing rules to ensure the quality of mediation, reflects the aspiration that the EU has in having a harmonized practice of mediation between the Member States. For such purpose, the *Mediation Directive* asks the Member States to “encourage ... the development of, and adherence to, voluntary codes of conduct by mediators and organisations providing mediation services” and the Member States have the discretion to use any means they consider appropriate to achieve such purpose. Article 4 also asks the Member States to encourage training of mediators as one of the ways of having an effective, impartial and competent mediation.

In its efforts to encourage adoption of and adherence to codes of conduct by mediators, in 2004 the EU adopted a European Code of Conduct for Mediators⁴¹ (*Code of Conduct*). The *Code of Conduct* sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. Although the *Code of Conduct* is directed to mediators involved in all kinds of civil and commercial mediation, it is left to the wish and discretion of the organizations providing mediation services to develop specific codes which are more apt to the types of mediation services they offer, as well as to specific areas of law, such as family law.

3.2.4. Recourse to Mediation

Article 5 tries to reconcile the delicate relationship between judicial proceedings and mediation. It is left to the discretion of the court before which a proceeding is commenced, to invite the parties to use mediation as a means of settling their dispute. It is

⁴¹ See European Code of Conduct for Mediators, 2 July 2004, online: European Judicial Network <http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf>.

also left to the discretion of the Member State to make mediation a compulsory step towards resolution of the dispute between the parties, or provide incentives, or impose sanctions, provided that this will not negatively affect the right of the parties to access the judiciary.

The content of this article, and the way it tried to deal – or not deal at all – with mandatory mediation, has been subject to discussion following the implementation of the *Mediation Directive*, as it will be seen here below.

Enforceability of Mediation Agreements

Article 6 is one of those articles by way of which the *Mediation Directive* is intended to set hard rules for the Member States to fulfill. Member States have the obligation to make sure that, upon consent of the parties (or one of the parties) the agreement resulting from the mediation process will be enforceable.

Paragraph 21 of the Preamble further specifies that:

In order to be enforceable in another Member State, agreements between the parties have to be enforceable in the Member State in which they were concluded. Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.

Confidentiality

In article 7 it is recognized the importance that confidentiality has in a mediation process, and obliges the Member States to ensure that no evidence will be given – by neither

the mediators nor the persons involved in the administration of the process – in judicial proceedings or arbitration with regard to any information arising from a mediation process.

Exception is made in two cases: (1) for reasons of public policy, in particular where protecting the best interest of a child or preventing harm to a person overrides the confidentiality requirement, or (2) where disclosure of the mediation agreement is necessary in order to enforce that agreement.

Notwithstanding article 7, the Member States are free to adopt stricter rules – but not gentler – for protecting confidentiality of the mediation process.

Information

The main reason why the EU decided to adopt the *Mediation Directive* was to urge the Member States to take the necessary steps to increase use of mediation within the alternative dispute resolutions framework. It goes without saying that use of mediation within the EU up to that moment had been relatively low compared to the judicial dispute resolution system. This has been because the parties themselves – including judging and lawyers – had often taken their decisions “under a *lack of information* about its characteristics, potential, requirements and practical implementation”⁴².

In order to increase information, article 9 asks Member States to provide the public with contact information for mediators and mediation organizations. In addition to that, Member States are also asked to inform the public on courts that make cross-border mediation agreements enforceable.

3.2.5. Transposition and Review

⁴² Steffek, *supra* note 6 at 12.

At the end of the day, the most important part of a directive in general, is the obligation it poses on the member states to implement it within their national legislations, by making it binding upon them. Article 11 requires the Member States to bring into force the laws, regulations and administrative provisions that are necessary to comply with the provisions of the *Mediation Directive* before 21 May 2011.

As a follow up measure, article 10 sets a May 2016 deadline for the European Commission to prepare and submit a report on the current status of the application of the *Mediation Directive* in the Member States. If necessary, the report shall also propose amendments to the *Mediation Directive*.

3.2.6. Aftermath of the Mediation Directive: The EU Mediation Paradox

Regardless of the clear benefits of mediation, the implementation of the *Mediation Directive* has not been successful. The disconnection between the benefits and the very limited use of mediation in the Member States has been named the “EU Mediation Paradox”⁴³.

The first red flag with regard to the modest results that the *Mediation Directive* appeared to have produced was raised by the European Parliament in 2011. The resolution adopted in that occasion called for further action on increasing awareness of mediation and further encouraged the Member States to develop programs promoting the main advantages of mediation: cost, success rate and time efficiency.⁴⁴

⁴³ EC, European Parliament Study of 15 January 2014 on Rebooting’ the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU, online: European Parliament <<http://www.europarl.europa.eu/committees/en/juri/supporting-analyses.html?action=3>> at footnote 4.

⁴⁴See EC, European Parliament Resolution of 13 September 2011 on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts, [2011/2026(INI)].

One year later, in 2012, the concerns about the actual implementation of the *Mediation Directive* were raised and discussed in a Parliamentary debate initiated by the Committee of Legal Affairs near the European Parliament. One of the questions asked was: “How does the [European] Commission intend to address the problem that the Directive’s objectives have *clearly not been met?*”⁴⁵ [emphasis added]

The answer to that and other questions raised in the debate was that the European Union and the Member States must persevere in making mediation known to the public. More specifically the Vice-President of the Commission at the time said:⁴⁶

‘[J]ustice delayed is justice denied’, and we have a very big backlog in many of our Member States. Mediation is one possible means of getting rid of the backlog, especially in smaller cases where you do not necessarily go through a lengthy court procedure but, of course, access to justice is a fundamental right.

I do not believe that mediation can simply replace a court procedure; it is an alternative, but in order to become a real alternative it has to be known and ... it has to become a cultural choice. For this we need time.

The Member States and the Commission need to work hand in hand to make sure more information about mediation is available. ... [I]n order to be successful this approach will involve training for mediators and also for lawyers, to ensure that they do not necessarily see mediation as opposed to their professional interests.

⁴⁵ EC, Sitting of Tuesday, 11 December 2012, online: European Parliament

<<http://www.europarl.europa.eu/sides/getDoc.do?type=OO&reference=O-2012-000169&language=EN>>.

⁴⁶ See Viviane Reding discussion, *ibid*.

In order to accelerate the process, and in line with the follow-up provision under article 11 of the *Mediation Directive*, the Vice-President of the Commission informed the parliamentarians present in the debate that a study was going to be conducted that would focus on the promotion of mediation, “because it is very clear that if we have an interesting law, but nobody knows that it exists and lawyers and the judiciary are not utilising it, then it does not serve the use we want it for.”

Therefore, following the debate and the previous discussions within the EU, the study was conducted and published in 2014⁴⁷. The official purpose was to “obtain national-level feedback regarding the experience gained from transposing the [*Mediation*] *Directive* into national legal orders, and to identify reasons why mediation is not used more frequently for both internal and cross-border disputes.”⁴⁸

Furthermore, 816 experts from all over the EU contributed to the preparation of the Study, by answering to a series of questionnaires in relation the Member Country they belonged to. The Study showed that although the implementation of the *Mediation Directive* by the Member States has increased the use of mediation in general, it has still failed to achieve its objective as stated in article 1, that is “to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.”⁴⁹

According to the Study, 13 countries – composing 46% of the Member States – have reported less than 500 mediations per year, while only 4 countries (14% of the Member

⁴⁷ *Supra* note 10.

⁴⁸ Study, *ibid* at 11.

⁴⁹ *Mediation Directive*, *supra* note 4 at 4.

States) have reported more than 10,000 mediations per year. The remaining 11 countries (39% of the EU countries) reported between 500 and 10,000 mediations per year.⁵⁰

Of all the Member States, only Italy has reported more than 200,000 per year, which is considered as the only case where the *Mediation Directive* has had a very positive impact and resulted successful.

The Study has proved what has been continuously stated in terms of the many societal benefits that mediation has. In terms of time, the average duration of court litigation in the EU countries is 566 days, while the average duration of court litigation when it is preceded by mediation (at 70% success rate) is nearly 213 days. In terms of money, the average cost of court litigation in the EU countries is \$13,000 while the average cost of court litigation when it is preceded by mediation (at 70% success rate) is \$8,600.⁵¹

It must be borne in mind that the above results might be higher or lower in the specific Member State, depending on the population, internal legislation, economical development and culture of litigation.

3.2.7. Proposed solutions: Mitigated Mandatory Mediation and the ‘Balanced Relationship Target Number Theory’

The respondents to the Study proposed a number of legislative and non-legislative measures that would be effective in increasing the use of mediation in the appurtenant Member States.

In terms of legislative measures, the most preferred ones are:⁵²

- Make mediation mandatory in certain cases

⁵⁰ Study, *supra* note 10 at 6.

⁵¹ *Ibid* at 7.

⁵² *Ibid* at 8.

- Require mandatory mediation information sessions before litigation
- Impose sanctions for parties' refusals to attend mandatory mediation

As it can be seen, the key word is *mandatory* and, indeed, the Study seems to support the adoption of a stronger model of mandatory mediation that would require the parties to mediate before they can approach the litigation process. The strongest preference would be that for an “opt-out” model – as in the case of Italy – instead of an “opt-in” one⁵³.

In terms of non-legislative measures, the most preferred ones are:⁵⁴

- Establish a mediation advocacy education program for law schools
- Develop and implement pilot projects
- Create a uniform certification of mediators at the EU level

These measures show once again that in order for mediation to increase, a better regulation is needed. Although the above non-legislative initiatives are not compulsory *per se*, they, at the very least, involve a more serious engagement of the disputing parties with the mediation process.

In light of the above, the one solution coming out from the Study is the “regulatory intervention introducing, not simply allowing, a mitigated model of mandatory mediation, at least in certain categories of cases.”⁵⁵ This would require the necessary amendment of the *Mediation Directive* and specifically of already discussed article 5 which, as it is, leaves it to the discretion of the Member States whether to introduce any form of mandatory mediation in their national practice and legislation.

⁵³ *Ibid* at 9.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*.

The other solution coming out from the Study – which does not prejudice the previous one – is the so called ‘Balanced Relationship Target Number Theory’.⁵⁶ This theory is based in article 1 of the *Mediation Directive* and suggests that Member States are required to ensure a *balanced relationship between mediation and judicial proceedings*. In order to achieve this balanced relationship, Member States must determine a clear target number which is the minimum percentage of mediated cases towards litigated cases. Failure to determine and achieve the ‘balanced relationship target number’ would amount to a *de facto* lack of compliance with the *Mediation Directive*.⁵⁷

When asked whether a ‘balanced relationship between mediation and judicial proceedings’ existed in the respective Member States, all the respondents to the Study answered “no”, including Italy.⁵⁸

3.3. Family Mediation Legal Framework in Italy

3.3.1. A successful case of Mandatory Mediation?

In 2014, in Italy, the average duration of litigation at trial in Italy was 3.5 years – which could easily increase to 9 years if the case was appealed – while the average duration of mediation was 66 days.⁵⁹ The average cost of litigation was \$22,400 while the average cost of mediation was \$4,300.⁶⁰

⁵⁶ *Ibid* at 10.

⁵⁷ See Giuseppe de Palo, “The EU Civil and Commercial Mediation Paradox and a Possible Solution” (December 2012), online: European Union Agency for Fundamental Rights <fra.europa.eu/sites/default/files/wgv_de_palo.pdf>.

⁵⁸ Study, *supra* note 10 at 127-128.

⁵⁹ *Ibid* at 124.

⁶⁰ *Ibid* at 126.

The figures speak for themselves. The judicial system was overloaded with a backlog of 5.4 million cases⁶¹ and Italy was eager to adopt the *Mediation Directive* and make mediation finally known and available to the public.

The *Mediation Directive* was adopted in 2010 through the legislative decree 28/2010 (*Decree*)⁶². The *Decree* covers both cross-border and domestic disputes and recognizes the general availability of voluntary mediation for civil and commercial claims. In addition to that, and most importantly, the Decree introduces the mandatory mediation for certain categories of “civil or commercial claims and rights that are *freely disposable* by the parties.”⁶³ We need go no further to understand that the Italian legislator decided to use its discretion – as allowed by the *Mediation Directive* – and leave family law mediation out of the scope of application of the *Decree*.

The consequence is that family mediation is less than regulated in Italy. However, in order to continue with this analysis, a general review of some of the most important provisions of the so-called ‘mitigated mandatory mediation’ needs to be undertaken.

3.3.2. The Mitigated Mandatory Mediation

The mandatory mediation provisions entered into force in 2011, but were subject to harsh polemics among lawyers and other professionals. The mandatory provisions were constitutionally challenged by several associations of lawyers and in 2012 the Italian Constitutional Court declared the mandatory provisions unconstitutional.⁶⁴ The reason for

⁶¹ Giuseppe De Palo & Lauren R Keller, “The Italian Mediation Explosion: Lessons in Realpolitik” (April 2012), online: Wiley Online Library <<http://onlinelibrary.wiley.com/doi/10.1111/j.1571-9979.2012.00334.x/abstract>> at 181.

⁶² *Decreto Legislativo in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali*, 28/2010, GU 53/2010.

⁶³ *Ibid* at 2 [translated by author].

⁶⁴ *Sentenza Corte Costituzionale* 24 ottobre - 6 dicembre 2012, n 272.

unconstitutionality, however, was not the breach of the constitutional “right to defence” – an equivalent of the Canadian “access to justice” – but the overdelegation of legislative power by the Italian government which had not been expressly delegated by the Italian parliament to adopt the mandatory provisions by a legislative decree. The Constitutional Court did not find the provisions to be in breach of the Italian constitution or of the *Mediation Directive*.

As a result of the declared unconstitutionality of the *Decree*, mediations stopped and backlogged cases continued to increase. To fix the problem, the Italian government amended the *Decree* – this time in compliance with the delegation of powers – and the mandatory provisions were reintroduced in article 5, with some modifications. The new mandatory provisions came into force in 2013 and will be in effect for a trial period of four years at the end of which the result of their implementation will be reviewed and analysed.

Here are some of the most important features of the *Decree*:

- *Applicable categories*: By law, mediation is voluntary for all civil and commercial claims and rights that are freely disposable by the parties. However, mediation will be mandatory for: condominium disputes, property rights, division of goods, trusts and estates, family-owned businesses, landlord/tenant disputes, loans, leasing of companies, medical malpractice, libel and slander, insurance, banking and finance contracts (art. 5).
- *Condition Precedent*: mediation is a condition precedent for the initiation or continuation of the judicial proceeding in the mandatory categories (art. 5).
- *Mandatory Mediation Request*: Parties must submit a request for mediation near one of the mediation organisms in the same jurisdiction of the court that is competent for the dispute

(art. 4). Following the request for mediation, the mediation organism assigns a mediator and determines the date for the first mandatory meeting (art. 8).

- *Mediation Organisms*: Mediation organisms are instituted by private or public entities and are registered in an apposite registry with the Minister of Justice. They are entitled to manage the mediation process, upon fulfillment of efficiency, reliability and professional requirements (art. 16).
- *Opt-out model*: The first mandatory meeting will be for informational purposes only, at the end of which the parties and their lawyers will be invited to decide whether to continue with the mediation or not (art. 8).
- *Legal counsel presence obligatory*: Parties' lawyers must be present during all meetings of the mandatory mediation (art. 5).
- *Duration*: Mediation cannot last for more than three months (art. 6).
- *Enforceability*: The settlement agreement is automatically enforceable if executed also by the parties' lawyers, otherwise the court approval is needed (art. 12.1).
- *Mediator's Proposal*: Where parties cannot reach an agreement, the mediator can draft a proposal and submit it to the parties for review (article 11). Acceptance of the proposal by both parties settles the dispute and brings mediation to an end. Rejection, however, may cause a fee-shifting penalty at trial in case the mediator's proposal is equivalent to the subsequent judicial decision (art. 13).
- *Certification & Training*: Mediators are certified by mediation organizations that are registered with the Ministry of Justice. A mediator is required to have a three-year university degree or be enrolled in a professional society. They are required to have 50 hours of training and 18 hours of courses every two years. New mediators must work with experienced

mediators for at least 20 mediations during the first two years following their certification.

Lawyers are mediators by right but still need to attend training courses (art. 16).

- *Duty to Inform*: Lawyers have the duty to inform their clients, in writing, about the option of mediation. A client can void the attorney-client agreement if the lawyer fails to perform such duty (art. 4).
- *Confidentiality*: Each individual involved in the process of mediation has an obligation of confidentiality (art. 9).
- *Incentives*: There are several incentives provided, from exemption from stamp duties, expenses, taxes and charges for all mediation acts and documents, to an exemption from the registration tax of the settlement agreement. A tax credit is also granted towards the mediation fee (art. 20).
- *Sanctions*: The judge may make presumptions of evidence in a subsequent trial. In addition, the judge can condemn a party that unjustifiably declines the mediation by paying double the amount of the court proceeding administration fee (art. 8).

The increase in the use of mediation following entry into force of the Decree was called the “Italian Mediation Explosion”⁶⁵ and is considered as the only successful case of the implementation of the *Mediation Directive*.

Many of the provisions constitute indeed a success, like the specific recognition of the mediation and the mediator, the enforceability of settlement agreements, the duty of confidentiality, the training requirements for mediators, the incentives provided to parties choosing mediation over litigation, and most importantly, the introduction of mandatory mediation. Although the latter was subject to objections and challenges, the positive effects

⁶⁵ See *supra* note 28.

of an opt-out system – which gives the parties the possibility to get to know mediation and make an informed decision before rejecting it – are proved to be real.

On the other hand, provisions like the ones imposing the mandatory presence of lawyers, or entitling the mediation organisms to assign mediators, or allowing the mediator to propose solutions to settle the dispute also in lack of consent of the parties, or imposing sanctions if such solution is not accepted, may result problematic. Such provisions, besides positive effects that are supposed to bring, affect the right of self-representation, the freedom of contract between mediator and parties, the duty of impartiality and neutrality of the mediator and also the voluntariness of the entire process.

3.3.3. The Current Status of Family Mediation in Italy

It was after the adoption in Paris of “*The European Charter for Training in Family Mediation for Separation and Divorce*” that in Italy began to appear the first associations of family mediators.⁶⁶

The first European recognition came in 1996 with the ratification of the European “*Convention on the Exercise of Children's Rights*” (*Convention*) which requests the signatory parties to encourage “the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases.”⁶⁷ Although the *Convention* did not enter into force until 2003, it served as incentive in adopting law 285/1997⁶⁸ which introduced in the Italian *Civil Code* the first explicit legal reference to

⁶⁶ See Gianpaolo Impagnatiello “La mediazione familiare tra Corte Costituzionale e legislatore delegate”, (2009) *Mediares* 163.

⁶⁷ CE, *Convention on the Exercise of Children's Rights*, ETS No. 160: 1996/2000, at 13.

⁶⁸ Legge 28/1997 “*Disposizioni per la promozione di diritti e di opportunità per l'infanzia e l'adolescenza*”, GU 207/1997.

family mediation for families and minors, as one of the means of implementing the law⁶⁹. Despite the generality and somewhat vagueness of the provision, it served its purpose of introducing family mediation in the Italian legal framework.⁷⁰

The next legal reference to family mediation came four years later with law 154/2001 which introduced amendments to the Italian *Civil Code* in the area of high-conflict family relations.⁷¹ The new article 342-ter of the *Civil Code* provides for the judge, in issuing protecting orders, the power to order the intervention of social services or a family mediation centre. This is a discretionary power that the judge can use without consent of the parties. This has been subject to some criticism based on the fact that imposing mediation would make it contradictory to the concept itself which assumes that family mediation makes sense only if the parties participate in it with absolute freedom and without coercion whatsoever.⁷²

Another thing to be noticed is also the fact that family mediation was even considered for high-conflict cases in which, as a matter of principle and practice in common law countries, mediation is generally not advised.

The largest reform of Italian family law happened in 2006 with law 54/2006 which among introducing for the first time joint-custody in the *Civil Code*, it also provided for family mediation in the context of joint-custody.⁷³

The new provision allows the judge to send the parties to mediation, with their prior consent and with particular consideration of the protection of moral and material interests of the children.⁷⁴

⁶⁹ *Ibid* at 13.

⁷⁰ *Supra* note 33 at 9.

⁷¹ *Ibid*.

⁷² Impagnatello, *supra* note 33 at 10.

⁷³ L Guaglione, "Affidamento condiviso tra mediazione familiare e poteri del giudice, in Corti pugliesi" (2007), Edizioni Scientifiche Italiane 28.

The provision has also been subject to criticism for several reasons:⁷⁵

- It only refers to mediation pending a separation order of the judge, and does not consider the so-called preventive mediation that parties can undertake before initiating a court proceeding. This remains a grey area in the law.
- It creates confusion between family mediation and reconciliation. Reconciliation is well-known in employment and labour issues but is not used in family law issues. In the reconciliation process the third party is superior to the other parties and can propose solutions that parties can either adopt or reject.
- Legislator has in fact reduced family mediation to a form of ‘*qualified reconciliation*’
- Legislator’s purpose was to increase the judge’s powers more than promoting family mediation as a new and evolved form of alternative dispute resolution.
- The Italian Constitutional Court has interpreted article 155-*sexies* as simply “*referring to, and not creating, the institution of family mediator, which is in fact not defined or regulated in any internal law.*”⁷⁶ [emphasis added]
- The law is silent with regard to any confidentiality requirement, representing a very big obstacle to the use of family mediation.
- Mediation agreement is not automatically enforceable but subject to verification from the judge with regard to the child’s best interest in custody and support cases.

3.3.4. Proposed solutions: Ad-hoc Regulatory Framework or Extended Application of the Mitigated Mandatory Mediation

⁷⁴ Italian *Civil Code* at 155-*sexies* [translated by author].

⁷⁵ Impagnatello, *supra* note 33 at 11

⁷⁶ Sentenza Corte Costituzionale 131/2010, GU 16//2010 [translated by author]

The current legal framework for family mediation has been criticized and calls for the necessity of changes to the legislation have been consistently made. The proposed solutions vary from the creation of a separate legal framework for family mediation, to the specific inclusion of family law disputes within the mandatory mediation framework of the *Decree*.

Even those who criticize the *Decree* as being inapplicable to family law disputes because irreconcilable with the peculiarities of family law mediation, still think that the road undertaken by the legislator through the *Decree* is without discussion worthy of being explored. For that purpose, a series of measures are provided, the most important being the regulation of the family mediator institution and determination of a confidentiality requirement⁷⁷

Others explicitly express objection and concern for the exclusion of family mediation from the application of the *Decree*. Consider the following passage from an article written by Melina Scalise, journalist and civil mediator:⁷⁸

If the purpose of mandatory civil mediation was to reduce the court proceedings times and the respective social tensions by directing people to a model of extra-judicial resolution of disputes, why it is that family has been kept out from such intervention? Are maybe consumer protection or condominium conflicts resolutions more important compared

⁷⁷ Impagnatello, *supra* note 33 at 21.

⁷⁸ Melina Scalise, "Mediazione familiare e mediazione civile perchè la prima è facoltativa e la seconda obbligatoria" (2012), online: Giustizia e Mediazione Civile <<https://giustiziamediazionecivile.wordpress.com/2012/09/27/mediazione-familiare-e-mediazione-civile-perche-la-prima-e-facoltativa-e-la-seconda-obbligatoria/>> [translated by author]

to family conflicts? Isn't family the place where the citizen is formed and comprehends the sociality? **Family mediation cannot be abandoned to ignorance.** [emphasis in original]

From the previous considerations of the current Italian legal framework for family mediation, it seems clear that family mediation, as it is, cannot be seen by the public as an effective tool of alternative dispute resolution. The lack of regulatory laws for family mediation – in a civil law jurisdiction where laws are necessary to create, legitimate, and develop legal institutions – negatively affect access to justice for people that cannot afford initiating or continuing a judicial process for years and are either left to the vagueness of the law, or to the common sense of the judge in assessing the need for a mediation.

3.4. Family Mediation Legal Framework in Albania

During the many centuries of existence of the Albanian state, some form of mediation has always been practiced. Notions of mediation can be found in the *Kanuni i Leke Dukagjinit* – a code of customary rules dating back to the middle age. The code was an attempt made by Leke Dukagjini, an Albanian prince, to somehow control and discourage blood feud which has been the main form of restorative justice for centuries until 1944 with the advent of communism.⁷⁹ Under the code, mediation was provided by a person with great virtues who was highly respected by the families involved in the blood feud.

During communism, a 'social court' provided a species of extra-judiciary conflict resolution and the mediator was a person of trust of the political party.⁸⁰

Although sometimes in post-communist countries difficulties may arise in explaining to judges or legislators new terms or legal institutions, the reaction in Albania was

⁷⁹ Ayse Betul Celik & Alma Shkreli, "An Analysis of Reconciliatory Mediation in Northern Albania: The Role of Customary Mediators" (August 2010) 62 *Europe-Asia Studies* 6, 885.

⁸⁰ CE, Proceedings of the 4th Conference on Family mediation in Europe, 1998(2000) Council of Europe Publishing 109.

positive because of a somewhat overlapping of already known notions. With the dismissal of communism in 1990 – during which obtaining or even asking for a divorce was very rare – the number of divorces increased significantly by overburdening the Albanian courts with family claims (in addition to the claims in other areas of the law).

To overcome administrative deficiencies of the Albanian courts, and to alleviate social tension with regard to the newly found divorce, a first law on mediation was adopted in 1998.⁸¹ The law introduced the concept of mediation as an alternative dispute resolution method. It was mainly to be used for civil claims including those in family disputes, but its impact was very limited.

The next attempt to regulate and promote mediation was made in 2003 with a new law on mediation.⁸² Despite the obvious improvements, such as the introduction of the mediator as a private profession, the law was not in line with the *acquis communautaire* and thus failed to meet all the EU requirements.⁸³

As a final attempt, the Albanian legislator adopted the current *Mediation Law*, in force since 2011.⁸⁴ The law was drafted based on the *Mediation Directive*. Although Albania is not a member of the EU yet, since 2006 it has an obligation to approximate its internal legislation to that of the EU.⁸⁵

The Albanian legislator specifically chose to include family mediations within the application of the *Mediation Law*. Some of its most important provisions are:

⁸¹ Ligj nr. 8465, date 11.3.1999 "Për ndermjetesimin per zgjidhjen me pajtim te mosmarreshjeve".

⁸² Ligj nr. 9090, date 26.6.2003 "Per ndermjetesimin ne zgjidhjen e mosmarreshjeve".

⁸³ Endira Bushati & Dr Edi Spaho, "Mediation: A concept that has to do not just with the justice system" (2011), online: Academicus International Scientific Journal <<http://www.academicus.edu.al/index.php?subpage=search&search=1&autori=bushati&titulli=Title...&x=6&y=0>>.

⁸⁴ Ligj nr.10385, date 24.2.2011, "Per ndermjetesimin ne zgjidhjen e mosmarreshjeve".

⁸⁵ Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Albania, online: Delegation of the European Union to Albania <http://eeas.europa.eu/delegations/albania/eu_albania/political_relations/index_en.htm> at 70.

- *Mediation definition:* Mediation is the extra-judicial process through which parties attempt the dispute resolution by means of a third impartial party (art. 1.1). Mediation is also distinguished from reconciliation which is a different activity, independent from and sometimes concurrent with mediation (art. 1.2).
- *Voluntary & Mandatory:* The law provides for both types of mediation, voluntary and mandatory. Voluntary mediation can be undertaken by the disputing parties at any time and/or stage, regardless of whether a court proceeding has already started (art. 2.1). However, once a court proceeding is initiated, the judge must orient the parties towards mediation, especially for family law disputes and those where interests of children are at stake. The judge must refer to mediation also those cases where a mandatory reconciliation meeting is provided for under the Albanian *Family Code* (art. 4). This serves to confirm that reconciliation and mediation are two activities separate and independent from each other.
- *Monolithic system:* *Mediation Law* applies to both domestic and cross-border disputes (art. 2.8).
- *Mediator definition:* The mediator is a third neutral party that ensures resolution of the dispute is carried out with efficacy, fairness and impartiality, in a professional way and without prejudice to the parties or the dispute (art. 3.2). However, the mediator bears no responsibility if no settlement agreement is reached at the end of the mediation or if an already reached agreement is not complied with by the parties (art. 3.4). In addition, mediators do not have the right to order or oblige the parties to accept the resolution of the dispute (art. 1.3).
- *No legal advice:* it is specifically provided that the mediator can provide no legal advice to the parties (art. 10.2).

- *Licensing and Registration:* Mediators must be licensed and registered with the Mediators Registry near the Ministry of Justice (art. 4). Among the licensing requirements it is the completion of a university degree and completion of the formation and training program for mediators (as approved by the National Chambers of Mediators). Further training is also required each year for at least 20 hours (art. 9).
- *Procedure:* Parties are free to determine the terms, procedure and time limits for the mediation procedure (to the extent it is allowable by the law). They can freely choose one or more mediators from the Mediators Registry. They are also free to withdraw from the mediation process at any time (art. 3 and 15), and/or ask the court to resume the court proceeding in the case of mandatory mediation (art. 13).
- *Preliminary Meeting:* The mediator must inform the parties on the purpose and general principles of the mediation, his role as a mediator and the role of the same parties in the process, the costs and expenses related to the process, as well as the effects of the settlement agreement (art. 17.1). Unless otherwise agreed by the parties, the mediator has the right to propose an acceptable resolution of the dispute at any stage of the mediation (art. 17.5).
- *Confidentiality and Mediation Privilege:* All parties to the mediation procedure have an obligation of confidentiality, unless the parties have agreed otherwise. Exception is made when breaching the duty of confidentiality is necessary to safeguard the interest of the state, or of the public, or to prevent or stop physical or psychological violence, especially towards children or persons with disabilities (art. 19). Mediator is also bound by the mediation privilege, unless he/she is required by law to testify in a court proceeding.
- *Enforceability:* The settlement agreement is binding and enforceable between the parties at the same level as an arbitration award (art. 22).

The Mediation Law is generally in line with all compulsory provisions of the *Mediation Directive* regarding confidentiality and enforceability of settlement agreements. As regards the discretionary provisions, the Albanian legislator, differently from the Italian legislator, has chosen to include family law within the realm of application of the *Mediation Law* by extinguishing any visible uncertainties as to whether and how parties can resolve their family issues by mediation.

The Albanian legislator has taken a more parties-are-free-to-mediate approach than that of the Italian legislator. Though at first it might seem like *Mediation Law* has introduced elements of mandatory mediation, in reality, the judge's referral to mediation seems more like a proposal to try mediation than an explicit order to comply with. Nonetheless, this referral or proposal presents the parties with a new opportunity of which they might not be aware.

CHAPTER IV: METHODOLOGY

4.1. Introduction

This chapter introduces the purpose, the objectives as well as the main research questions of the study. In addition, this chapter introduces the instruments used in the study in order to ensure its validity and reliability of the method of the sample selection, the collection and the analysis of data, as well as ethical issues with regard to the subjects' participation in the study, and it finally discusses the limitations of the study.

4.2. The purpose of the study

The purpose of this study is to develop data on the experience of mediators in order to explore the working methods of family mediators from mediators' own point of view. The objective of this qualitative study is:

- To focus on mediators' perceptions on how they understand the ethical principles of mediation: confidentiality, neutrality, impartiality, power and control in process and outcome of family mediation;
- To explore the effectiveness of family mediation models of practice in the family mediation field they find most effective in their work linked to high conflict disputes and, sensitive issues treated in the field;
- To focus on the importance on where mediators place themselves in relation to the roles, styles, and their respective techniques of practice in the attempt to increase the effectiveness of family mediation disputes;

- To focus on the way mediators address salient issues in mediation, and how it may have an impact on resolving family disputes;
- To focus on mediators' working methods in the field, nature of conflict and disputants' individual characteristics;

4.3. Research questions of the study

Main research question: Does the *effectiveness of mediation* depend on the *mediator's competence* of working methods, or on the *nature of conflict, social-cultural context, and disputants' individual characteristics*?

1. How do mediators understand the *basic principles of mediation* to both process and outcome of mediation?

Associated question : What kind of connotations do mediators relate with the ethical principles of mediation?

2. Which are the most effective *family mediation approaches* that mediators use in practice and in what way do they play a part in mediation process with regard to dispute resolution?

3. How the *mediators' roles, styles, and techniques* are displayed in behavior, and practice in relation to both process and outcome?

Associated question: With regard to successful mediation, how mediators achieve, and make use of rapport with the disputing parties?

4. Which are the *mediators' perceptions* with respect to a range of *sensitive issues* in relation to the effectiveness of resolving family disputes in mediation process?

Associated question 1: With regard to sensitive controversy, how do mediators identify the needs of mandatory mediation?

Associated question 2: With regard to salient issues, how mediators consider the inclusion of children in family mediation process?

Associated question 3: With regard to sensitive matters, how mediators position themselves in issues such as child and spousal abuse situations in relation to mandatory mediation?

Associated question 4: What are the mediators' perception with regard to issues linked to pathological behavior from the part of the disputants in relation to mandatory mediation?

4.4. Hypothesis of the study

Main hypothesis: The *effectiveness of mediation* does not only depend on *mediator's competence* of working methods, but it also depends on *nature of conflict, social-cultural context, and disputants' individual characteristics*.

Hypothesis 1: The way mediators understand and make use of the *basic principles in practice*, affects both the process and outcome of mediation.

Hypothesis 2: The way mediators adopt the *practice models of mediation*, affects both the process and the outcome of mediation.

Hypothesis 3: The way mediators display their *roles, styles, and techniques* in behavior and practice, affects both the process and the outcome of mediation.

Hypothesis 4: The way mediators address *salient issues* in mediation (identification of the needs of mandatory mediation, the inclusion of children in mediation, child and spousal abuse situations, manifested pathological behavior from the part of the disputants), determines the effectiveness of resolving family disputes.

4.5. Research design

4.5.1. Methods

A qualitative research design was chosen in order to answer the research questions as well as the associated research questions of the study. Furthermore, studies on qualitative research show that recently, researchers focus their attention on qualitative methods in addition to applying quantitative research methods (Denzin & Lincoln, 2000). Usually, researchers use a mixed method approach supposing that the data obtained from only one method in the studies, will be insufficient to fully present the entire picture of the problem as may be posed. According to Gay, Mills & Airasioan (2009), the purpose of mixed methods is to create a synergy and power that exists between the methods of qualitative and quantitative research. On the one hand, many studies show that the results obtained from the qualitative data and quantitative data, can be contradictory if used as a mixed model approach. On the other hand, there are circumstances in which the use of only one approach in the attempt to address a specific problem, could be ineffective. However, in the attempt to understand the underlining reasons of why several studies, particularly,

focus their attention on applying qualitative methods research in specific contexts, it is important to make a further distinction between qualitative and quantitative methods.

Silverstein & Auerbach (2005), made a distinction between what is called, hypothesis-generating, which is qualitative in nature, and hypothesis-testing, which is quantitative in nature. According to Gilgun (2005), qualitative methods are applicable for theory-generation, description of peoples' experiences, and the meaning they attribute to specific contexts or situations, therefore, this suggests that qualitative methods research is useful to generate theories in the future.

As Sprenkle (1994) states, "Qualitative research methodologies are especially well suited for describing complex phenomena, defining new constructs, discovering new relationships among variables and trying to answer "why" questions" (Goldenberg, 2012, p. 404). In opposite to quantitative methods which are useful to generate data on a large scale, qualitative methods are useful to develop data on specific issues or contexts by examining a small number of cases (Moon, Dillon, & Sprenkle, 1990). Furthermore, the qualitative methods include case studies, interviews, observational methods, content analysis methods, focus groups ect., and these instruments serve to examine specific situations in depth (Sprenkle, 1994).

Even in this study of family mediation as an alternative solution for resolving conflict disputes, taking in to account a complex and a sensitive issue, such as the issue of divorce, this study aims to provide a detailed picture on the actual experience of mediators in order to explore the working methods of family mediators from mediators' own point of view by using a qualitative method design.

Again, in the attempt of carrying out the objectives as mentioned before, the type of the study is a qualitative one, which attempts to explore specific themes, and behavioral patterns in a particular situation, and understanding more in depth a particular phenomena, such as understanding of what mediation is. Also, it attempts to examine mediators' working methods, such as basic principles in use, models of practice, roles, styles, techniques, and salient issues within the complexity of the field.

4.5.2. Research methods for obtaining qualitative data

The qualitative data served us for two purposes: (1) To explore the attitudes and perceptions of mediators of the principles, models, styles/techniques, and sensitive issues of family mediation, and (2) to explore their responses on the effectiveness of family mediation by taking in to account the working methods in the field of mediation.

The research method that consists of qualitative data is exploratory in nature. Due to the exploratory nature of the study, a qualitative method is chosen as the most appropriate method in the attempt to analyze the perceptions, attitudes, and responses with regard to the working methods in the field of family mediation. The qualitative method of the study served for two purposes: First, to ensure that the main key points of the study are covered and, second, because the nature of the interviews was unofficial/without formalities, it would be helpful to achieve more profound data.

Interpretive approaches mainly rely on the naturalistic methods, such as interviews and observations. This method provides a dialogue between the researcher and those with whom the researcher interacts, in the attempt to jointly build a meaningful reality (Henning, 2004).

Consistent with this perspective, the validity and the reliability of the study may not be based on an objective reality. This explanation fits very well with this part of the family mediation study, because it focuses on the mediators' perceptions and attitudes with regard to where do they position themselves in relation to principles, roles, styles, and models of practice in the family mediation field they find most effective in their work.

Furthermore, the interviews are the most common used technique to obtain data in qualitative research, and they allow the researches to explore and collect in-depth information. Also, the researcher may ask additional questions to the participants in the attempt to draw more useful information. Moreover, the researcher may ask the respondents to explain or expand more of an answer, that it may reach a better understanding about the information received during the interview.

The reason of why the sampling of the study consists of mediators drawn from the National Chamber of Mediation, underlines the importance of the family mediation field, in which the mediators face with divorce cases at their work settings on daily bases. So, mediators represent of a valuable resource in this research, in the attempt to fulfill the main objectives of the study. With regard to the gender of mediators, the study consists of eight (8) female mediators and twelve (12) male mediators. Interestingly, the study shows that gender does not have an impact on the effectiveness of mediation with regard to principles, models of practice, roles, styles, and sensitive issues, as it will be analysed in the results section.

4.5.3. Instrumentation and data analysis

Consistent with a qualitative approach, semi-structured interviews were chosen to access the actual experience of mediators. Furthermore, the sample consisted of semi-

structured interviews with twenty mediators drawn from the Albanian National Chamber of Mediators. Moreover, semi-structured interview is a technique of research used in qualitative research, which aims to explore a framework of topics of a particular context/situation, without limiting the interviewers to specific type of questions, and they are often preceded by informal interviewing (Bernard, 1988).

Considering the exploratory nature of the study, the goal of the semi-structured interviews was to allow the participants the freedom to express their views with regard to specific issues in the field, and to allow them express themselves through open dialogue resulting in a narrative form of communication. Also, this type of interview takes the form of self-report measures, which exposes each participant's held viewpoints by eliciting mediators' self-perceptions, roles, behaviors, and values about family mediation.

Likewise, the purpose of these interviews was to discuss the mediators' perceptions on the effectiveness of family mediation with regard to working methods in the field, and permitted discussion about the effectiveness of mediation in resolving with conflict family issues dealing with divorce.

The interview questions focused on mediators' perceptions on how they understand the ethical principles of mediation in the process of family mediation. In addition, the interview questions focused on gathering information on where family mediators position themselves in relation to mediators role/style, models of practice, and techniques they find most effective in their work. Also, the interview questions attempted to elicit mediators' viewpoints in relation to sensitive matters, such as the issue of mandatory versus voluntary mediation, the inclusion of children in mediation, and spousal/child abuse.

Specifically, this study provides the following interview questions in order to address the above issues of the study. In the attempt to address critical issues in a research, the interview questions may take the form of different types of questions with different goals. As in the present study, descriptive questions were used, in which the participants were asked to describe things, for example, in a narrative. First, descriptive questions may take the form of grand tour questions (which is often used near the beginning of the interview to encourage the participant to speak). For instance, “I am interested in how you decided to become a mediator? What were your incentives? How long have you been practiced mediation?”

Second, descriptive questions may take the form of mini tour questions (which is often used after grand tour questions). An example might be, “You have told me a lot about family mediation in general, your motifs/incentives, and how you decided to become a mediator. Please tell me more about your role as a mediator in trying to help parties solve conflicts”. Third, descriptive questions may take the form of experience questions. For instance, if the participant were to define his/her mediator’s role as active or interventionist in nature, the following question might be posed, “Can you give me an example of family mediation dispute, when you were interventionist with regard to a specific situation?”

Moreover, descriptive questions is used to answer the “how” questions, and may result in a narrative, as illustrated as the following, “Specifically, how do you understand the principle of impartiality/neutrality? How these ethical principles interlock with each other as well as with other aspects of practice? How the principle of party control and mediator authority can occur in practice? In what way, your role as a mediator, practice

styles and techniques are expressed in practice? How do you identify the needs of mandatory mediation? If you are in favor of voluntary mediation, then, how important is voluntariness of participation in mediation? Could neutrality be dangerous if asserted in situations of manifest inequality? Do you agree that children should participate in mediation? If you agree, what are the benefits for including children in mediation, and how important is the inclusion of children in the mediation process? In case you disagree, what are the disadvantages for including children in mediation? Is impartiality essential to the achievement of trust, duty, skill or others? Is impartiality related to gender/social-cultural dimensions? Is impartiality related to models of practice? Is neutrality related to parties' individual characteristics? Specifically, is neutrality associated to parties' self-determination? Is mandatory mediation recommended in spousal/child situations/manifested pathological behavior?"

On the other hand, structural questions usually take the form of list questions. An example might be, "What ethical principles of practice are you using in mediation? Which models of practice are you using in your work? Does the use of those models depend on context or disputants characteristics?" For instance, the study provides of a list in which practice models are listed, and the participants are asked to identify one or more models in their work, such as facilitative mediation; evaluative mediation; structured negotiation model; structured approach; shuttle/caucus mediation; transformative mediation; therapeutic model of mediation; transitional-symbolic model; feminist-informed approach; systemic approach; and narrative mediation.

In addition, rating questions (type of contrast questions) were used, in which the participants were asked to place a value or establish an order of a particular theme. For instance, an example of rating questions might be, “Which has been most often the purpose of the role as a mediator with conflicting parties?” Another example of rating questions might be, “Which has been the strategy that you use most often with conflicting parties?”

Contrast questions may also involve type of questions as the following example, “How do you make a difference with regard to neutrality and impartiality in practice? Are you in favor of mandatory or voluntary mediation?”

Furthermore, the questions in the interview guide comprise of the core questions related to the research questions of the study based on mediators’ perceptions to mediation practice. For instance, the following interview questions such as “*what ethical principles of practice are you using in mediation?*”, “*how these ethical principles interlock with each other as well as with other aspects of practice?*”, “*specifically, how do you understand the principle of impartiality?*”, “*is impartiality related to models of practice?*”, “*how do you understand the principle of neutrality?*”, “*how do you make a difference with regard to neutrality and impartiality in practice?*”, are all related to the first research question of the study.

On the other hand, the interview questions, “*is neutrality related to parties’ individual characteristics?*”, “*is impartiality essential to the achievement of trust, duty, skill or others?*”, “*is impartiality related to gender/social-cultural dimensions?*”, “*is neutrality associated to parties’ self-determination?*”, “*how the principle of party control and mediator authority can occur in practice?*”, “*could neutrality be dangerous if asserted in*

situations of manifest inequality?” correspond to *both* the first, and fifth research questions of the study.

Furthermore, the respective interview question, *“which models of practice are you using in your work?”*, corresponds to the second research question of the study. On the other hand, the following question, *“does the use of those models depend on context or disputants characteristics?”*, is *both* related to the second and to the main research question of the study.

Moreover, the following interview questions such as *“which has been most often the purpose of the role as a mediator with conflicting parties”*, *“which has been the strategy that you use most often with conflicting parties”*, *“in what way, your role as a mediator, practice styles and techniques are expressed in practice”*, are all related to the third research question of the study.

Finally, the respective interview questions such as *“are you in favor of mandatory or voluntary mediation?”*, *“if you are in favor of voluntary mediation, then, how important is voluntariness of participation in mediation?”*, *“how do you identify the needs of mandatory mediation?”*, *“is mandatory mediation recommended in spousal/child situations?”*, *“what about of manifest pathological behavior?”*, *“do you agree that children should participate in mediation?”*, *“if you agree, what are the benefits for including children in mediation, and how important is the inclusion of children in the mediation process?”*, *“in case you disagree, what are the disadvantages for including children in mediation?”*, are all associated to the fourth research question of the study.

4.5.4. Sample/Participants

For the purpose of this study, qualitative interviews were chosen in order to answer the research questions as well as the associated research questions of the study. A qualitative approach was chosen, since the present study is exploratory in nature, and semi-structured interviews were chosen to access the actual experience of mediators in the attempt to generate more in depth answers from mediators who have a professional experience in family resolution conflicts.

Furthermore, a crucial part of the present study is determining the sampling. It is important to highlight that before deciding what types of participants to include in a study, and what kind of information a researcher wants to collect, the main research questions of the study need to be identified and specified. Therefore, the main goal of the researcher should be clear from the start, by taking into account both the audience, and types of questions the researcher is going to include in the interviews. Furthermore, the sampling frame in the present study was purposive/judgment sampling. The intended emphasis of this part of the study is to explain why sampling is purposive in this research. So, the study included mediators who have a professional experience as conflict resolution mediators. Therefore, the sampling is purposive, because it is selected based on the opinion of an expert. Likewise, in the judgment sampling, in the research, there is a selection of units to be sampled based on mediators' knowledge and professional judgement about family mediation, and working methods in the field.

Moreover, the sample consisted of interviews with twenty mediators drawn from the National Chamber of Mediators, that have been previously identified as working with conflict families and having an experience with family disputes matters.

In the study, (8) of them were male mediators and (12) of them were female mediators. The sample included only mediation professionals, in which most of them hold a Law University degree, mainly with backgrounds in family law, and very few of them included professionals with backgrounds in mental health etc., with years of practice ranging from one to seven years. Although, the study is primarily focused on conflict family disputes, mediators who participated in present study are also identified as having experiences on civil, commercial, and penal disputes.

The sample consisted of interviews with twenty mediators drawn from the National Chamber of Mediators, in which (8) of them were male mediators and (12) of them were female mediators. Moreover, the sample included mediation professionals, in which most of them hold a Law University degree, mainly with backgrounds in family law, and very few of them included professionals with backgrounds in mental health etc., with years of practice ranging from one to eight years (table. 1).

Table. 1 Data sample

Interview	Age of the respondents	Work experience in the mediation field (in years)	Academic background (Colleges, Universities, qualifications)	Job position (except of being a mediator/member of the Albanian National Chamber of Mediation)
Number 1	40	2 years	Law School	Lawyer, Lecturer
Number 2	43	6 years	Law School	Lawyer, Lecturer
Number 3	30	3 years	Law School	Lawyer, Lecturer

Number 4	36	4 years	Psychology	Psychologist
Number 5	37	2 years	Law School	Lawyer
Number 6	45	3 years	Languages and Literature	Lecturer
Number 7	48	8 years	Psychology	Psychologist, Mediation trainer
Number 8	49	8 years	Law School	Lawyer, Lecturer, Chairwoman of the National Chamber of Mediation
Number 9	46	7 years	Law School	Lawyer
Number 10	37	3 years	Law School	Lawyer
Number 11	34	5 years	Law School	Lawyer
Number 12	37	4 years	Law School	Lawyer
Number 13	38	5 years	Law School	Lawyer, Lecturer
Number 14	44	6 years	Law School	Lawyer
Number 15	50	5 years	Law School	Lecturer
Number 16	49	2 years	Law School	Lawyer
Number 17	36	4 years	Law School	Lawyer
Number 18	36	2 years	Law School	Lawyer
Number 19	40	3 years	Law School	Lawyer
Number 20	41	4 years	Law School	Lawyer

4.5.5. Procedure and Data Analysis

Furthermore, twenty interviews were conducted in the study, and their duration was for a period of six weeks (from May to July 2016). All participants in the interviews were informed about the procedures as well as the objectives of the study. They were explained their rights and, after being assured the ethical principles of confidentiality and secrecy, it was explained to them that they have the right to see the notes taken by the researcher, after the completion of the interviews. The duration of each interview lasted 35 to 40 minutes, and most of the interviews took place in the mediators' offices. Moreover, a note-taker was provided during the interviews, in order to gather information with regard to the most critical questions of the study.

It is important to emphasize that the interviews with mediators, and the guide interview questions were conducted in the Albanian language during the study. Since the data collection is an essential component by itself to conducting a study, the researcher attempted to both demonstrate carefulness regarding the translating criteria, and professional competence in qualitative research. Furthermore, the researcher showed carefulness to transfer meanings of data collection from Albanian language to English language without changing the content by following both the English language guidelines for translation, and mainly taking into account linguistic differences, and social-cultural determinants. As this family mediation study shows, translating mediators' narratives into English, one must borne in mind that the researcher/translator role is of an important value in qualitative research, since a researcher/translator's role is not only linked to the evaluation of cultural differences in research, but it is also associated to the interpretation of data in a critical way.

Furthermore, the method of analysis used in this study is the management of data "manually" without using computer programs. Initially, the data collected were transcribed, and recorded manually through the interviews. Further, the researcher attempted to familiarize with all the data collected by reading and re-reading the transcripts, which served to get to know better the data and written comments prior to the left of the text. However, the transcription of interviews, keeping records and monitoring may provide a description for the study report, but does not offer us further explanations. It is the competency of the researcher himself that gives meaning to data gathered by exploring and interpreting them.

Therefore, the second phase consists of the identification of the themes and categories that emerged from the data. This process involves identifying themes through transcripts of interviews and attempt to verify, confirm, classify data, and repeating this process until the researcher is able to identify all themes and categories. In order to fully complete the process of the identification of the main themes, the researcher held notes while reading through a key word or phrase, in order to summarize what was written in the text. This is known as the open coding process. The aim is to provide a list of words for each element that is discussed in the transcript.

In the third phase, the researchers brought together all the phrases from all the interviews on a clean page. During this process, all duplicates were deleted, bringing the reduction of categories. After the initial reduction of the categories, the researcher went further in the attempt to identify if the categories were similar or overlapping. After the researcher was being informed by the analytical and theoretical main points of the study,

then, these categories were carefully selected by grouping them. This reduced list of category formed the final list that was used to share all the interviews.

The fourth phase was painting each category with a color, and every given transcript was painted the color of the category. In the fifth stage, all data sections down each category (marked with corresponding colors) was "cut off" and "up" (paste) in a A4 page. To these pages a label was set by category, and data entered in a file where the researcher has the only access. The last phase consists of the interpretation of the findings. Researcher developed a list of key findings that emerged as a result of the categorization and classification process, and was followed later with descriptive quotations or examples to give meaning to the data.

4.6. Ethical issues

Prior to conducting the interviews with the participants, the study was explained in details including the nature of the study, the purpose, and the objectives of the study. Furthermore, all the respondents were given an informed consent to sign in before the conductance of the interview. In addition, information was given to the participants that describes in details the research procedures.

Also, all participants were informed about the right to withdraw from the study at any time, or to decline to participate in the study. Moreover, all the participants were explained about any unpleasant effects during the conductance of the interview. In order to ensure confidentiality and participants' protection of personal identification, a description to the ethical principle of confidentiality was given to the participants in order to ensure protection from revealing the results of the study with regard to particular participants.

Since very few of the interviews were audio recorded in the study, and then transcribed by the researcher, it is important to highlight that in each study or experiment, recording voices requires informed consent that would not result in personal identification. So, all participants were asked if they all agree with the procedures of the study, and they also were ensured confidentiality with regard to the protection of personal identification.

Other sensitive ethical issues that were carefully addressed in this study is the offering inducements for research participation, and the deception in research. Furthermore, any researcher must strongly avoid excessive offers for research participation that could be perceived as coercion. Also, if harm is an alternative, researchers do not use deception on participants, and the researcher has an obligation to minimize or eliminate harm as soon as possible, where tendency of the use of deception in research is evident from the part of the researcher.

4.7. Limitations of the study

Like any scientific study, this study presents limitations. The main factors that limit this study are as the following:

First, there is lack of previous studies in Albania on the phenomenon of divorce linked to family mediation practice as well as the role of family mediators in the attempt to solve conflict resolution disputes. The lack of previous studies of family mediation, restricts the literature review, and the discussion chapter of the study. Therefore, it limits the possibility of comparing other findings in contexts similar to that of Albania.

Second, qualitative data analysis is not subjected to the process of verification by a third party or by the participants in the study (mediators) so as to ask them to evaluate the

analysis of the study. So, the way the study is conducted, may lead to subjectivity and bias from the part of the researcher who may have influenced the way the data are analyzed in this section.

Although self report data may be the easiest and fastest way to collect information, and it can be used either from quantitative or qualitative methods, it poses few problems, in the sense that it may lead to what is called social desirability bias. Therefore, the participants have the tendency to seem good during the interview process. In case that a researcher does not use a variety of question types while interviewing participants, then this may lead to social desirability bias, where the respondents are inclined to even lead questions in interview. As a result, this may influence data gathered, and it may lower the validity of the study. Previous research suggests that fixed choice questions may force the respondents to answer the questions. In addition, questions may be misunderstood from the part of the respondents, and as a result, this lowers the reliability of the study.

CHAPTER V: RESULTS

5.1. Results of qualitative data

The purpose of this study is to develop data on the experience of mediators drawn from the Albanian National Chamber of Mediation in order to explore the working methods of family mediators from mediators' own point of view.

The perceptions of the respondents on the question of how do mediators understand the *basic principles of mediation* to both process and outcome of mediation is analyzed as the following. In addition, one associated questions is emerged during the study in which mediators were asked on what kind of connotations do they relate with the ethical principles of mediation, and it generates significant data on the importance and the effectiveness of these ethical principles in the mediation field in Albania. In terms of ethical principles, various themes emerged in this study, and they were analyzed in details. Therefore, the study reveals the most crucial principles of mediation as reported by mediators, such as the principle of respect, voluntariness of participation, impartiality, neutrality, party control/power, and mediator authority.

This study shows the importance of the principle of respect in the responsibility of the mediator to treat each disputant with respect in the attempt to help the party alternatives and the best solution for everybody. Furthermore, many themes emerged explaining the principle of respect in terms of impartiality, and the autonomy of the parties as well as the autonomy of the mediator. A mediator explains the principle of respect in terms of a value:

I think respect is a value and it is very important not only in the social context of each of us, but also it plays a part in the professional context. I think of respect as caring about people. In

practice, respect is also a value in which may lead the disputing party toward the resolution of conflict.

From another mediator's point of view, respect is seen as patience as illustrated in this case:

I think that the principle of respect is linked to patience. From a social constructionist perspective, I agree that people tell their stories and their narratives from their own point of view, and therefore, construct their meanings of the reality. And I respect them as individuals. But there are situations in which I do not actually agree when one of the disputant is expressing an idea. I try to respect them everytime they are expressing an idea and try to be patient with them.

Another mediator describes the principle of respect as linked to trustworthiness as illustrated in this case:

I believe that respect serves as creating rapport with the parties and also building a mutual trust, which I guess is fundamental to the process and the outcome of mediation. If you don't respect the parties as individuals, and you don't respect their views, and issues, then this will not help on building trust with the parties.

Nevertheless, for most of the mediators, the effectiveness of the process of mediation and its outcome depends on bringing together several principles of mediation, such as the principles of impartiality, neutrality, respect, and that of the voluntarism as presented as the followings:

I think that in order for the mediation be an effective tool for solving family disputes and conflicts, all the basic principles of mediation should be in perfect harmony with each other.

Otherwise, I am afraid that reaching an agreement at the end of the process will fail due to the absence of these principles in practice.

I strongly believe that the principle of respect, first of all, should take place in the mediation process. Then the parties should participate in mediation sessions on a voluntary basis, and this is followed by applying the principles of neutrality and impartiality from the part of the mediator. We, as mediators, should combine all these principles together in order to enhance the effectiveness of mediation. Of course, this is not easy to achieve.

Furthermore, the majority of mediators take into consideration the role of the mediator as being impartial and neutral as central in regard to the process. On the other hand, the respondents also agree that achieving both of them is quite difficult. First, impartiality is distinguished from neutrality with regard to the process and the outcome of mediation. The study shows the mediators' perceptions with regard to the principle of neutrality and how do they make use of it in practice. The majority of them assume that the principle of neutrality is difficult to achieve, since it may interfere with many salient issues such as that of party power imbalance where the mediator should take an interventionist role in order to manage the process of mediation.

Although, the principle of neutrality positively may contribute to negotiation of agreement, and therefore, to settlement of agreement, studies show that neutrality is not fully accomplished in the attempt to resolve conflicts, especially when important factors such as prejudices from the part of the mediator may be present within a specific context. Furthermore, the principle of neutrality is seen as biased in the following example:

I really do believe that neutrality is fundamental in practice, in the sense that it plays a crucial part in the effectiveness of the process and its outcome. On the one hand, we, as mediators,

should be unbiased and avoiding taking sides. On the other hand, we do make judgments and none of us can be non-judgmental deep down. In any case, we, as mediators, are not there to judge and tell them what to do. However, we should bear in mind that they have their own point of view on how they have actually perceived their own problems. Moreover, they bring their own experience there and they construct their own meanings to a specific reality. In any case, we don't have to agree with them.

Here the contrasts between impartiality and neutrality are examined in connection to the outcome of the process of mediation. Consider the following example:

I don't think impartiality resembles neutrality. They are not the same thing. For example, if one of the disputants reveals to me that (she) has been abused and this kind of abuse is still going on, in that sense, I am not neutral. In this case, I would stop the process of mediation.

Interestingly, in the attempt to distinguish between the principle of neutrality and impartiality, another mediator examined the concept of neutrality as linked to models of practice. On the other hand, the concept of impartiality is not related to models of practice:

Impartiality is not connected with the mediation models, but can be conditioned by objective or subjective elements. On the other hand, neutrality is linked to the mediation models, in the sense that considering social cultural level, mediation is more inclined to use different techniques and models. Also, the principle of neutrality is connected with party's self-determination. Neutrality is also linked with manifested inequality.

Similarly, consider another example where the contrasts between impartiality and neutrality are examined in connection to the outcome of the process of mediation. Also, the principle of neutrality and impartiality is linked to the building of trust between the mediator and the disputants:

I think that the principle of neutrality is linked to the position of mediators with the results and not the individual itself. Neutrality is different from impartiality. Furthermore, neutrality is related to the results or the outcome of the process, although it can be difficult to be accomplished during the mediation process. For example, in a divorce case, where children live in separate houses. In this case, the principle of neutrality is threatened. On the other hand, the principle of impartiality is related to the process, and not the outcome. I think that there is no absolute impartiality. Therefore, the principle of impartiality is a function of the process. In addition, impartiality is connected to the building of trust between the parties and mediators, which may lead to positive effects in achieving a satisfactory outcome.

On the one hand, the principle of impartiality, requires not only the right skills, abilities, and experience from the part of the mediator, but it is also linked to the gender, and cultural context as illustrated as the following:

I am very sensitive to gender and cultural issues when it comes to resolving disputes. So I'm very open to people not feeling comfortable with me. Once, there was a situation with a divorcing couple, where one of the disputing party, the husband, expressed a weird behavior towards me. It was an awful situation. The husband did not trust the process of mediation because of my gender, that of being a male mediator. I guess, if they are not comfortable, then that's fine, and they can find somebody else. And when it comes to culture, in another case, there was a couple from North of Albania where since the first session of mediation, they were particularly concerned with the fact of where did I come from. They expressed themselves as not feeling comfortable with me, since I do not come from their place of origin and I would not be able to understand their culture, therefore, I would not be able to understand the nature of their conflict. If they decide to leave, I understand them and I respect their choice.

Another important theme that emerged during the study is that the notion of impartiality is linked to the models in-use from the part of the mediators. Consider the example of shuttle mediation, especially applied when high levels of conflict are present.

Following the same debate, the principle of impartiality is not protected and it may enhance the risks of the mediator being perceived as biased. Consider the following example:

I agree that family mediation differs from other fields of mediation with regard to the practice, styles, strategies, models in-use, and process itself. I think, since family matters are difficult to deal with, and therefore, they are difficult to be resolved, it is necessary from the part of the mediator to demonstrate the appropriate skills, experience, and also care and attention. If, for example, a mediator sees the disputants each separately, then, there is the risk of being partial.

Another central theme that emerged during the study with regard to the principle of neutrality is the distinction between the process and the outcome of mediation. Furthermore, the findings show that the majority of mediators agree with the statement that the mediator is in control of the process, and neutral to the outcome of mediation. On the other hand, few of them agree that the mediator should be interventionist with regard to process depending on the context, and dispute dynamics. In addition, mediators should take into account the nature of conflict, as well as social-cultural dimensions on the behalf of the disputants. As mediators indicate in this study, intervening in conflict situations of power imbalance, and managing the process of mediation, does interfere with the principle of neutrality as regard to the outcome of mediation. Again, the findings show that most of the mediators agree that the mediator should be neutral with regard to outcome, and few of them agree with the

interventionist position, especially when situations of power imbalances take place in mediation.

Also, the findings of the study demonstrate that the principle of impartiality has a major impact on the effectiveness of conflict resolution matters, since it serves the parties equally, and it also influences the process of the parties' dispute.

Following the same debate, most of the respondents were conscious of the differences that exist between neutrality and impartiality. Although, few of them expressed feelings of insecurity in regard to the application of these principles into practice. Moreover, the mediators found it as most crucial the use of impartiality (serve both the parties equally) during the process of mediation, and that the lack of impartiality would enhance the risks of not achieving neutrality with regard to the outcome.

In order to make a further distinction between impartiality and neutrality, the findings show that most of the mediators attributed the idea of impartiality to mediators' abilities, skills, and competence. On the other hand, the respondents attributed the concept of neutrality to disputants' voluntariness, willingness, and parties' freedom to make their own choices.

In addition, the respondents suggested that the effectiveness of the outcome depends on mediators' personal or financial relationship with one of the parties. Also, any other direct or indirect interest related to the outcome of the mediation may possibly create bias in terms of mediators' interests and preferences towards the one of the parties, and damage neutrality.

Therefore, most of the respondents referred as being impartial during the mediation sessions and neutral to the outcome. However, the notion of impartiality is not seen as

distinct from this of neutrality with regard to mediators' perception of these principles in use. (the one may influence the other). Consider the following example:

I really try hard to be impartial during the sessions of mediation. In family disputes, I try to pay both of the disputants the same attention, and give them the same time to express themselves equally. Also, I think it is essential to let them free find their own solutions since their problems belong to them, and with this I mean neutrality.

The concept of neutrality is further illustrated in the following example:

I think that the notion of neutrality is strongly linked to parties' willingness to change things and resolve conflicts. It is for their own good to find the way to communicate with each other and get focused into the future. I may be impartial all the time and treat each of them equally, but in order to achieve a successful agreement, this depends on party's willingness to see things from a different perspective. And this is what I call, being neutral to the outcome.

In addition, another important theme in mediators' perceptions of the notion of neutrality emerged during the study due to possible preferences with regard to possibly expected outcome from the part of the mediator. Furthermore, studies on family mediation show that mediators' expectations in relation to the outcome of mediation has been identified as inevitable in practice. Following the same debate, studies in the field of family mediation demonstrate that these expectations concerning the outcome from the part of mediator have been created due to mediators's willingness to help the parties focus on what is their own best interest, which in most of the cases, their best interest is focusing on their children. On the other hand, these expectations regarding the outcome of mediation, may lead to a lack of neutrality from the part of the mediator, and therefore, may produce biased outcomes. Consider the following mediator's comments:

When it comes to family disputes, the most fundamental thing is to help the disputing party feel aware of the nature of their conflict, and then help them focus on what is their own best interest. Many of them express an urge for an immediate resolution of the conflict when it comes to their children. In this sense, I first take into account parties needs. I do not think that any mediator can be 100% neutral.

Another important theme that emerged during the study is the relationship between the notion of neutrality and the idea of power imbalances.

In addition, the study shows that the power imbalance notion is closely linked to gender, social status, educational, as well as cultural differences. Consider the following example of how power imbalances are identified during the mediation sessions:

Considering my own experience as a mediator, there are cases where one of the disputant show better communicative skills than the other, and therefore, he or she may dominate not only the other party, but also, there is the risk he or she dominates the process of mediation. I think, this may result due to his or her education, social status, and culture. So, it is pretty difficult to deals with this kind of situation.

Another mediator is very sensitive and concerned when it comes to power imbalances issues in relation to educational and cultural differences. Consider the following comments:

I think any mediator should demonstrate not only competence, communicative skills, and other mediation techniques when faced with power imbalances problems, but also the mediator should be very sensitive, especially when it comes to huge discrepancies on each party's level of education. One may articulate better than other, perhaps due to his or her level of education. On the one hand, I have the duty to help more the weaker party in order to bring some balance between the two of them. On the other hand, this may not protect neutrality in terms of the outcome of mediation.

In addition, respondents expressed feelings of tension and feelings of dissatisfaction in situations where one of the disputant was trying to achieve an agreement in favor to his/her own interest. Furthermore, respondents displayed a need to not taking sides in situations where one party exerts power and dominance over the other party. This example refers to a financial dispute where one disputant, the wife, did not have the necessary information with regard to legal proceedings and therefore, did not have any contact with a legal counselor:

There are divorce cases in which one of the parties does not contact a legal counselor when it comes to either parental or financial disputes. In the attempt to resolve a financial dispute in a case of divorce, I noticed that one of the disputant, the wife had never contacted a legal counselor for legal advice. I think, the reason behind this, was that she was feeling so emotionally exhausted concerning her divorce situation, so that, she preferred to immediately settle an agreement without asking for advice. On the one hand, I cannot be neutral, since she shows the willingness acting that way. On the other hand, I should be very careful on trying to bring the necessary balance in the process, and finalize a positive outcome.

Similarly, another mediator expressed feelings of dissatisfaction in situations where one of the disputant was trying to exert dominance in the attempt to achieve an agreement in favor to his/her own interest:

Usually, in such situations where power imbalance issues are present, I prefer not to take sides. I am referring to a divorce case where one of the disputants, the wife exerted power and dominance on her husband, by not allowing him to see their children. In this case, it's too difficult to

be impartial with the disputants. In my opinion, power imbalances issues are the most difficult ones to mediate.

Furthermore, another central theme emerged during the study in consideration to neutrality linked to party self-determination and willingness toward a positive outcome. Studies on family mediation demonstrate that the effectiveness of the mediation process does not only depend on mediator's competence, models, styles, and ethical principles in-use in order to reach an agreement, but it also depends on parties self-determination and willingness to chose mediation as an alternative for their dispute resolution. Consider the following example:

I think it is really essential to let the disputing party decide to find an alternative for their resolution of the problem. All I can do is to generate their communication, and help them find ways to focus on their children, eventhough they are still convinced to separate from each other. But this depends on their ability and willingness to make things work, and therefore, to define their own problems.

Another mediator stated the importance of party self-determination as central to the effectiveness of the process, positive negotiations between the parties, and the achievement of an agreement. In this context, the principle of neutrality is of secondary importance.

I would say that it is really important that disputants make their own decisions to resolve their conflict. I don't think I am in a position to directly influence their decisions, since they know better than me what is the best solution for them. If their self-determination is clearly evident during the process, then the idea of neutrality is of secondary importance. In this sense, party's willingness to find a solution on their own, facilitates the process and the outcome itself.

Furthermore, another mediator defines as central the disputants' needs as most crucial to the process and outcome.

I think everyone should be treated equally in an empathetic way. I am not there to impose their choices and fully direct the process. They need to know that they central to the process and to the outcome of mediation, and dealing with their problem the way they want to.

In addition to the previously themes mentioned before, the idea of curiosity linked to the notion of neutrality emerged during the study. As Prevatt (1999) states, it is essential to take into account the disputants' own perspectives equally and empathetically, because it helps them define the problem and generate possible solutions. Furthermore, listening carefully without prejudice to each of the disputants and adopting several techniques, such as circular questions, may stimulate curiosity not only from the part of the mediator, but it may also encourage the parties feel comfortable and free of the process, understand the nature of their conflict, and generate alternative solutions by showing curiosity. Consider the following example:

I think that a good mediator should help the parties not only understand the nature of their conflict, but also help them through curiosity make their own solutions.

Moreover, another mediator understands the concept of curiosity as the creation of several alternatives, and this may increase the number of options for the solutions the disputants find most effective. Furthermore, the achievement of curiosity may also be reached in combination with several useful techniques, such as the brainstorming technique, which can lead to the generation of many ideas. Consider the following comments:

My role is to help parties increase their curiosity through the generation of hypothesis for possible solutions, and I usually adapt several techniques that increase the possibility to find solutions, such as the brainstorming technique, and the problem-solving technique, especially when dealt with parental and financial issues.

Moreover, another theme emerged in the study where mediator's authority is linked to mediator's active role:

Unlike the court that only takes into account what parties want to, in mediation, the mediator can be brought on parties having a more active role, and this is related to the authority of the mediator.

In addition to the ethical principles of mediation as mentioned before, the principle of voluntariness plays a crucial part in the effectiveness with regard to the process of mediation. For instance, during the first meetings of the mediation process, the mediator explains to the disputants that family mediation is a voluntary process. In this context, the disputants may withdraw at any stage of the mediation.

Furthermore, most of the mediators in this study agree that the participation on a voluntary basis is one of the most crucial principles of mediation. On the other hand, one of the mediators agrees that mandatory mediation should be applied in every mediation dispute regardless the nature of conflict and disputants personality traits. In addition, many interesting themes emerged during the study with regard to mediators' perceptions linked to the voluntariness of participation. First, the respondents suggest that voluntary mediation is connected to the notion of fairness and the effectiveness of the process and the outcome itself. Second, for mediation to be effective, both parties should be reasonable people who

are motivated to negotiate a final agreement. On the other hand, with mandatory mediation, which is quite the opposite of voluntary mediation, there is the risk of the emergence of problematic issues during the initial sessions of mediation, such as that of child and spousal abuse situations, or whether the identification of pathological behavior from the part of the disputants. Of course, this does not mean that these sensitive issues (abuse and pathological behavior) do not exist in case that the disputants wish to enter mediation on a voluntary basis.

Following the same debate, however, if the mediation process is conducted on a voluntary basis, then it may minimize the risks of encountering such a problems. Consider the following mediator's comments with regard to the importance of the voluntary participation:

I strongly believe that participation on a voluntary basis from the part of the disputing party is really essential. The parties should first be informed that mediation is a voluntary process, and they have the right to withdraw at any stage of the process.

Moreover, another mediator highlights the importance of the voluntary mediation in the sense that it may minimize the risks of encountering problems that have a pathological nature, and also when these problems originate from abuse episodes from the part of one of the disputant. Furthermore, the mediator emphasizes the notion of the voluntariness of participation as opposed to mandatory mediation. Consider the following comments:

I think that the divorcing couple should enter mediation on a voluntary basis. I believe that these individuals are reasonable people since they have already decided to take into account the responsibility to make their own decisions, to negotiate for a positive outcome, and to finalise upon

signing an agreement. I totally disagree with the mandatory mediation because it may involve cases where possible abuse situations are manifested, and also pathological behavior may be identified during the initial stages of mediation.

Following the same debate on the benefits the voluntary mediation as opposed to mandatory mediation can bring about, another mediator expresses his view on the challenges the mediation as a regulatory profession is being faced with. Consider the following mediator's point of view with regard to voluntary mediation:

I think all the ethical principles of mediation are important to the process and the outcome of mediation. To me, the principle of voluntariness plays the greatest part of all the others, since it contributes to the effectiveness of the dispute resolution. I know that in some countries, there is the mandatory mediation, and I think, if applied in Albania, this will threaten the field of mediation in our country.

Furthermore, the views of the respondents on the question of which are the most effective *family mediation approaches* that mediators use in practice and in what way do they play a part in the mediation process with regard to dispute resolution is analyzed as the following.

Moreover, in the attempt to explore the current mediation models of practice, the respondents were asked to specify which of the models of practice they are currently using, and also they were asked about the effectiveness of each model in-use.

In other words, mediators were asked to identify which are the models of practice with regard to family disputes that they use in their work. Therefore, the present study shows the participants' responses by specifying their model of practice as choosing between the

followings: facilitative mediation, evaluative mediation, structured negotiation model, structured approach, shuttle/caucus mediation, narrative mediation, transformative mediation, therapeutic model of mediation, transitional-symbolic model, feminist-informed approach, systemic approach. Moreover, mediators were also asked if they use more than one model of practice in their work.

The study shows that most of the mediators make use of the structured negotiation approach, others report of using the facilitative mediation in their work, and many of them rely on two or more models of practice by adopting the eclectic approach in mediation.

Moreover, the study demonstrates that the models/approaches in use from the part of the mediators highlight those models as reflected in the academic literature, such as the directed negotiation model, the transformative model, the caucus approach/shuttle mediation, narrative mediation, and the facilitative mediation.

On the other hand, the therapeutic model, the transitional-symbolic model, evaluative model of mediation, and other approaches were not mentioned in the study from the part of the mediators. Furthermore, important themes emerged during the study where the models in-use is related to mediator's professional expertise, the gender of the mediator, the party's typology in terms of personality traits, the nature of conflict, and mainly the issues involved in the mediation process.

Moreover, a lawyer mediator expressed his direct view regarding the model he is using in relationship to his professional background. Consider the following comments:

I always use the structured negotiation model in the mediation sessions. I think it is the best model in use, because it helps the disputing party achieve a balance of power, and it also helps them

focus on collaborative attitudes. Probably, I think of my preference of this model is due to my experience as a lawyer.

Furthermore, a lawyer mediator expressed his direct view regarding the model of practice not specifically related to his professional background. Instead, the mediator proposed the facilitative approach of mediation as mainly linked to the role and style of the mediator, and it is also positively linked to the principles of impartiality and neutrality. Consider the mediator's views in relation to the models of practice:

I always try to play a facilitative role, identify parties' needs and best interests, develop possible solutions, and guide them toward reaching a negotiation. It doesn't matter in what model of practice you rely. What matters is the importance of role of the mediator, therefore, that of being a facilitator. So, parties should understand that you are impartial, neutral, and that your purpose of your actions is to facilitate the process.

Similarly, another mediator reported of being in favor of facilitative model of mediation as related to both mediator's personality traits, and mediator's professional expertise. Consider the following mediator's views:

Well..I think that facilitative model of mediation stands above all the other models, because it is client-centered, and it is also based on parties mutual interest. My role as a mediator is to facilitate the communication between the parties. Yes, I agree that I attribute this to my professional expertise, but again, it's not quite simple. Indeed, it is more complicated to explain. Trying to help parties to better communicate with each other, and therefore facilitate their flow of communication, it comes from inward.

Eventhough most of the mediators rely mainly on the structured negotiation approach as the basis of family mediation, however, some of them combine the principled negotiation model with other models of practice.

Another lawyer mediator has expressed a more indirect view with regard to models in use. The following mediator attributed the models in practice to specific situations or contexts of mediation as well as the issues treated in the mediation process. Thus, the respondent emphasized the eclectic method in use, where he adapted two or more mediation models depending on the context and issues involved in the process. However, the structured negotiation approach forms the basis for conflict resolution for this mediator. Consider the following comments:

Most of the times I use the principled negotiation approach when it comes to dispute resolution in general. But again, this depends on the case I am treating. If the main couple's concern is the parental custody, I try to adapt a less structured model, such as the transformative approach. But of course, one mediator should be really trained in adapting other models.

Again, many of the mediators rely mainly on the structured negotiation approach, however, some of them combine the principled negotiation model with other models of practice as linked to context, nature of conflict, and parties' individual characteristics. In addition, this mediator reported that there is a relationship between the models of practice and the principle of neutrality, and that the models of practice is linked to culture/social dimensions. Consider the following comments:

I personally attribute my success as a mediator to the structured negotiation model. I think that principled negotiation approach is the foundation of all the other models. However, considering other factors such as the complexity of the issues treated in the field, nature of conflict, disputants' typology, and culture/social dimensions, I usually rely on facilitative model, and shuttle model of mediation. However, I think that every mediator should be careful in using the models, since not

every model is suitable to any type of conflict (I highlight here the culture/social context). As a result, this may put the principle of neutrality at risk.

Similarly, another lawyer mediator attributed the models in practice to specific situations or contexts of mediation as well as the issues treated in the mediation process by proposing an eclectic model of practice, but still, the principled negotiation model is the basis of mediation. He strongly expresses his direct view on the exclusion of narrative model in mediation as linked to the creation of power imbalances during the process. Consider the following comments:

I think that the combination of some mediation models may lead to the effectiveness of dispute settlement. Most of the times I use the structured negotiation model depending on the situation and the nature of the conflict. However, I believe that the transformative model of mediation is a challenge when it comes to dispute settlement, in the sense that it requires not only an understanding from the part of the disputants themselves when used, but also the proper education and training on the part of mediators in order to succeed. On the other hand, I think that the narrative model is not the appropriate model, because if applied, could lead to the creation of the power imbalance between the parties.

Interestingly, as opposed to the above mediator's comments with regard to the narrative model of practice, the following mediator expressed her views on identifying the narrative model, and the transformative model of mediation as central to her success in the attempt to resolve family disputes. Consider the following comments:

The way I operate in my work as a mediator is trying to help parties tell their story in an equal way, and help them solve their conflict through dialogue and communication. Therefore, I try to encourage positive communication, and help them looking at the problem with a different

perspective. Instead of trying to push the parties toward reaching a negotiation, I first help them solve the conflict through a shared understanding. I think that narrative and transformative models of mediation have positively contributed to my success as a mediator.

Furthermore, the transformative model is identified in the study with a primary focus on looking at the problem with a different point of view, and the whole picture can be transformed.

However, two (3) out of twenty (20) of the mediators, reported to rely on the transformative model of mediation by attributing it to their academic background as well as to their professional expertise. However, it is important to highlight that this does not mean that lawyer mediators do not make use of the transformative model in their work. Following the same debate, other important themes emerged during the study, and they highlight the difference between lawyer mediators and other profesional mediators linked to the model of practice. Consider the following mediator's comments with regard to the transformative model of practice as linked to her professional background as a psychologist:

Well, I am a psychologist. I realize that negotiations are difficult to achieve, and I try to encourage constructive communication between the disputants by helping them reorganize their relationship. I try to focus more on the interaction and communication between the parties that can lead to a moral growth. When the disputing parties enter the mediation process, I try to make a fully understanding of the significance of the whole process, otherwise negotiations could not be achieved, and the mediation process may totally fail. So, in order to avoid this, I get strongly focused on empowering party's self-determination and autonomy by strengthening the capacity of the disputants in order for them to clearly see their situation. I can't actually follow a structured mediation without

not directing the flow of communication between the parties. I strongly agree that a lawyer could apply better the structured negotiation model to family disputes.

Consider another mediator's comments with regard to the transformative model of practice as linked to his academic and professional background in studying Law School in Canada:

I started the Law School from the University of Toronto years ago, and I was enrolled only two academic years in that University. However, having taken courses of mediation in general, and training sessions on the transformative mediation, in particular, I then decided to follow a transformative approach in my work. However, this does not mean that I strictly follow that approach.

Furthermore, another theme emerged during the study where the models of practice is linked to the issues mediated, particularly in cases when high conflict situations are confronted in mediation. Furthermore, consider the following example where shuttle mediation (caucusing) is considered effective with regard to high conflict disputes, and it can best work as a strategy of crisis:

I usually follow this model in my work, especially in commercial mediation. I have also used the caucus in family matters to, especially when faced with parental custody, and when children are the party's main concern. I think, this is the best method since it can help the disputants minimize levels of conflict.

Moreover, consider another mediator's views with regard to the preference of the shuttle mediation in use, and also linked to the context or situation, as well as problems or issues presented in the process of mediation:

First, I think that caucusing is a good method in resolving conflicts. If I work with high conflict parents in separate rooms, it is easier for me to help them individually in the attempt to

minimize their conflict. There are cases that they do not want to see each other. Joint sessions would be time consuming and would not resolve any problem. Plus, seeing them separately would help me identify for possible spousal and child abuse situations. Of course, I do not make use of this model everytime. It depends of the case and the issues treated in the mediation process.

Consider another mediator's idea of being in favor of shuttle mediation:

I think that caucusing is a very effective model in solving high conflict issues, particularly in situations where feelings of anger, and grief are directly manifested since at the beginning of mediation sessions from the part of the disputants. Joint sessions would not produce positive effects on couples at first glance. Of course, I may use another kind of mediation model in joint sessions, when I see that levels of conflict get minimized at a certain point.

Furthermore, Gulliver (1977; 1979) points out the importance of understanding mediation as a negotiation process, and the importance of the role of the mediator in facilitating communication between the disputants, and manage the transitions through the developmental stages of mediation.

The views of the participants on the question of how the *mediators' roles, styles, and techniques* are displayed in behavior, and practice in relation to both process and outcome is analyzed as the following at the result section. In addition, the respondents were asked how do they achieve and make use of the rapport with the disputing parties in the process of family mediation.

When styles of practice is linked to models of practice

With regard to styles of practice linked to models of mediation, the study shows that most of the mediators, however, did not give an explanation of their model of practice in terms of any specific style. On the other hand, few of them expressed opposed views in

relation to styles and models of practice as linked to other key elements such as, gender, and social/cultural factors. However, they found the question of their style difficult to define. Instead, most of the mediators preferred to provide a description of their style in a simplistic manner. This mediator is describing his style in a simple form:

I don't really know how to answer the question about individual style. I don't have any specific style. What I am attempting to do is to work with each party and become part of each dispute's group. No successful mediator is truly neutral or impartial, or whether to fully assume the role of a facilitator, and this I guess is related to the individual style of each mediator.

Another mediator strongly argues that mediator's individual style is not related to any particular approach/model of practice in mediation. If this is the case, then the individual style could not be seen as a limitation, but on the contrary, this could be seen as an effective way to treat each case differently depending on the context as well as on the party's characteristics or styles:

What I'm actually trying to do is identifying the party's needs and concerns, and trying to be empathetic and good listener. Therefore I think perhaps I have a natural ability to understand others' needs and concerns, and this has nothing to do with the approach or the model in-use. I adapt myself to what I see to be necessary in an eclectic way.

When styles of practice is related to party's gender and social/cultural characteristics

With regard to styles of practice related to party's gender and social/cultural characteristics, studies on the field of family mediation show that focusing on a specific model of practice does not always determine the effectiveness of both the process and the outcome of family mediation, since mediators should consider other important factors, such as gender, and social/cultural aspects that might guarantee a successful outcome for

resolving disputes. Moreover, few of the mediators, similarly related their stylistic models of practice directly to the particular characteristics of the parties to the process.

Therefore, consider the example of this mediator who is particularly sensitive to the dangers of gender and social/cultural bias in styles of practice:

Although my orientation of practice is structured toward negotiation accompanied with a directive style, I would already describe my style as non-directive, calm, and at the same time as authoritative. Actually, I am a very sensitive person when related to gender and cultural issues in the mediation field. I think, what matters is showing respect to the disputants and therefore knowing that they already experience it. I can change my style and be facilitative mediator, and non-directive, especially when it comes to culture and social context.

Consider the following example in which the mediator's description of his style is demonstrated in a more directive and authoritative way towards the parties:

I can describe my style as directive. On the contrary, having a non-directive style may not produce positive outcomes in mediation. For example, what I mean is that the use of humour, for example, may be misinterpreted from the part of the disputants, so you have to be very careful about using it. Therefore, I chose to conduct a process in a more directive way.

When styles of practice and negotiations are linked to party's self-determinism and willingness for change

With regard to styles of practice and negotiations linked to party's self-determination and willingness to change, studies on the mediation field show that the mediators' style and role is also linked to a mutual trust between mediators and disputants. Therefore, this depends on the parties' own positive capacities for change and party's self-

determinism. As a result, this can facilitate the mediation process itself in working on negotiations, reaching agreements, and resulting in successful outcomes. Consider the following example:

Eventhough, divorce is a difficult process to deal with, I actually believe that people have the willingness to change if they want to. I think, as a mediator, I can give people the idea that they still have something good in them, and there is still hope, and that they can move forward focusing on the future. Usually I can show them, with my own techniques, that there are other ways they could cope with it.

According to Silbey and Merry (1986), the role of the mediator plays a crucial part within the process of mediation because it may either positively or negatively influence the process and its outcome. Following the debate, the authors suggest that several mediators face with what has been called “the mediator’s dilemma”, therefore, the experience of mediator’s need to settle a dispute on the one hand, and on the other hand, the lack of power they experience to do so. In this context, this negative situation may produce tension and other relevant negative feelings in their attempt to resolve this situation. Consider the following example:

I think that the mediation process is complicated itself, in the sense that you can deal with people who are really stuck and have a lot of trouble in dealing with conflict, and you actually have the feeling that you do not have the power to help them. In these situations, the best thing, I guess, is to take a directive as well as a non-directive role as a mediator in order to move through a satisfactory manner, somehow.

Styles and mediator personality and preferences

The personality of the individual mediator plays a crucial part in the mediation process, and in understanding his/her style of practice. With regard to styles and mediator personality and preferences, consider the following example in which a mediator describes his style in terms of personality characteristics:

I can actually describe myself as a tough and a very direct person. Eventhough there are mediation cases where I should behave in a more non-directive manner, I can't get away from who I am. Therefore, my personality traits do not guarantee the positive outcome of the mediation.

Some mediators' preferences on the way they work is linked to clarity and structure when it comes to family disputes.

According to my opinion, the style of the mediator is linked to clarity and structure. A good mediator makes the meaning of words clear and structures things. By the same token, I could use an analogy, in assuming that a good teacher or a good University Professor uses and explains concepts with clarity in an analytcal way, and also defines the objectives of the course in a structured manner.

However, a different style may be more appropriate depending on the context, professional background, or culture. In the case of the following family mediator, her personal style may reflect both the context of family and inter-personal relationships and her professional background as a psychologist:

I can describe my style as a quiet and a warm person. During my mediation sessions, I try to be a good listener, communicative, empathetic to the disputants. I use my humor during the sessions of mediation in order to create a more relaxed atmosphere in there. But at the same time, I try to be directive towards them.

Additionally, in regard to mediators', and disputes' characteristics associated with successful outcomes, the study shows that most of mediators regarded achieving rapport with

the parties as most central of their success in bringing about settlements. Consider the following example of a mediator:

In order to establish with the disputing party a mutual trust, I just want to make sure that they already know I really care about them. This will contribute to a successful outcome.

Consider the example of another mediator:

I think it is really important to treat each disputant equally and fairly. What contributes to the achievement of a successful outcome, I think is the ability to make any individual feel respectful regardless culture, and social status.

Another mediator expresses her view regarding coming up to successful solutions in this way:

I think empathy stands on the top of all the above qualities a good mediator should have. Being empathetic and understanding party's needs and desires, feel their pain will result in a positive and a successful outcome

Furthermore, other important themes emerged during the study emphasizing mediators' personality traits, and tactics they employ in practice, and how they contribute to the achievement of successful mediation. Therefore, active listening, use of humor, inherent factors, honesty, trustworthiness, ethics etc., are considered central to the effectiveness of mediation, since they all may encourage the disputants to fully communicate with the mediator in order to negotiate with the attempt to reach an agreement. Consider the following examples:

First of all, I think, building trust with the parties, not only helps them communicate in a positive manner with the mediator, but also it encourages them establish their interest, objectives, strengths and weaknesses. As a result, this may help them on reaching an agreement in the future. In

addition, the building of trust with the mediator may also help to primarily focus on their children and find the best solution for them.

Consistent with the study, Ross & Wieland (1996) suggest that the term trust helps not only the mediator to solve the conflict, but it also may help the parties to enhance communication, and create rapport with the mediator. On the other hand, few of the mediators believe that the building of trust may interfere with the mediator's principle of neutrality and, therefore, this may negatively influence the process of mediation and its outcome. A mediator explains how in certain situations the idea of "trust" is not positively conceptualized by the other disputant:

I always try to create a climate where the parties trust the mediator in order to achieve their goal, that of finding the best solution for everybody. At least I really try. But there cases where one of the disputant finds himself sceptical regarding a successful outcome. He or she may not fully trust the mediator. On the other hand, the other disputant feels comfortable with me and the mediation process too. Sometimes, it is really hard on how to get balance and help them feel good. I don't know what to say. And I ask myself, maybe I was not neutral enough to both of them...

Another theme emerged where mediators were asked that what can a mediator do in order to bring about such a relationship. The majority of the mediators considered as crucial and attributed the empathetic listening to their success.

I really care about them. I try to listen them carefully, and try to acknowledge each disputant's feelings of fear, anxiety, grief, etc., as well as their concerns. I don't rush myself to convince parties to settle an agreement, but rather I prefer take the time to carefully listen to them before the negotiation phase of the mediation has begun.

Also, the study demonstrates that creativity plays an essential part in the achievement of the mediators' success, since it may generate creative solutions to the

dispute, and therefore, this may help on reaching an agreement. Following the debate, nearly half of the mediators, referred to this as one of their most important technique of practice. Interesting is the fact that some mediators attributed this ability to their personality traits or characteristics.

In addition, other techniques in-use, which require an expertise working on a specific model, and contribute to the generation of creative solutions were mentioned by the mediators. Furthermore, those mediators who adopted a negotiated model of mediation, emphasized the brainstorming technique, the problem solving technique, and the reframing technique in comparison to other techniques in-use. Accordingly, the use of these techniques help the disputants generate new ideas, and come up to creative solutions.

It is essential to be able to find a way to understand the origin and the nature of the conflict which might have been emerged during a specific context. I try to work hard to find creative solutions for the parties in order to help them understand not only the nature of the conflict, but also help them find new ways to resolve the conflict through various techniques, such as the brainstorming technique, problem solving technique, as well as the reframing technique.

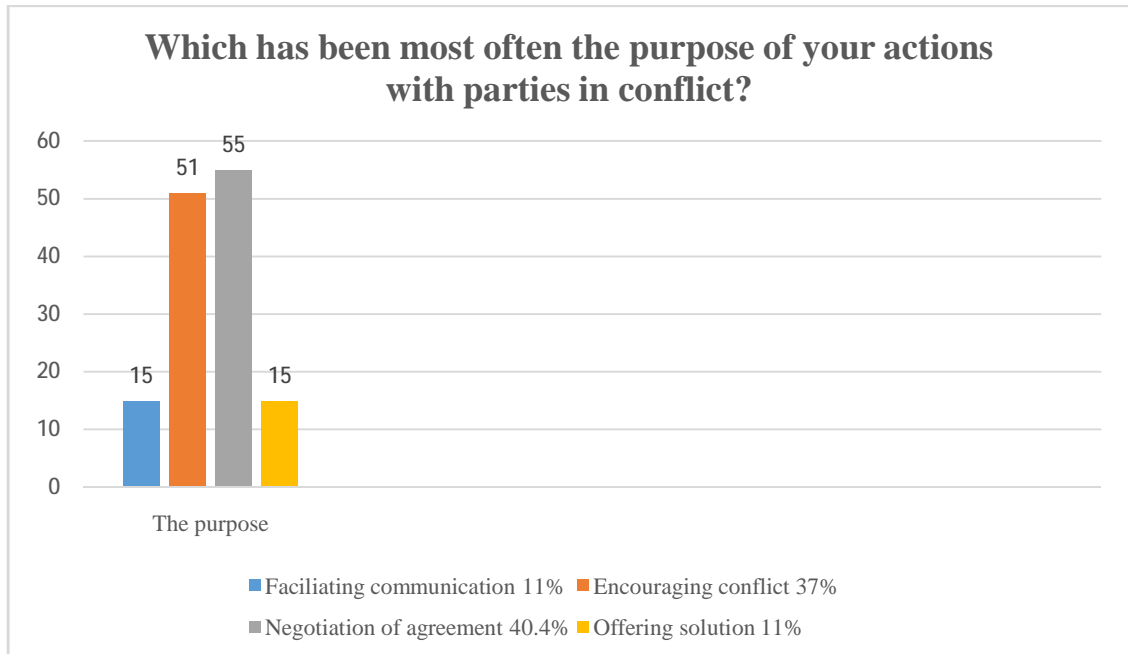
Another mediator attributed the use of humor to his success in the attempt to unblock conflict resolution and to settle an agreement with the disputing parties. Accordingly, the mediator states that the use of humor not only is an effective technique itself, which may lead to the generation of new ideas, but it is also related to inward factors of mediators:

I really try to make use of the humor with the disputing parties in order to facilitate not only the process of mediation itself, but mainly to ease their pain, and therefore, their emotional status. I think that the use of humor is a very effective technique, especially when applied in

situations where levels of conflict are enormously high. What I really think is that “humor” is a personality trait, and I actually call it, a personality value. Therefore, it comes in a spontaneous manner.

In addition, the mediators were asked to identify which has been most often the purpose of their actions with parties in conflict by listing from the most important statement to the less important one. Therefore, (Table. 2) shows the participants’ responses by specifying their role as choosing between the following statements: facilitating communication between parties in conflict by enabling them improve their communication skills, encouraging parties to find a solution themselves, negotiation of agreement, offering solution to the conflicting parties, or all of the above has been the purpose of mediators’ actions.

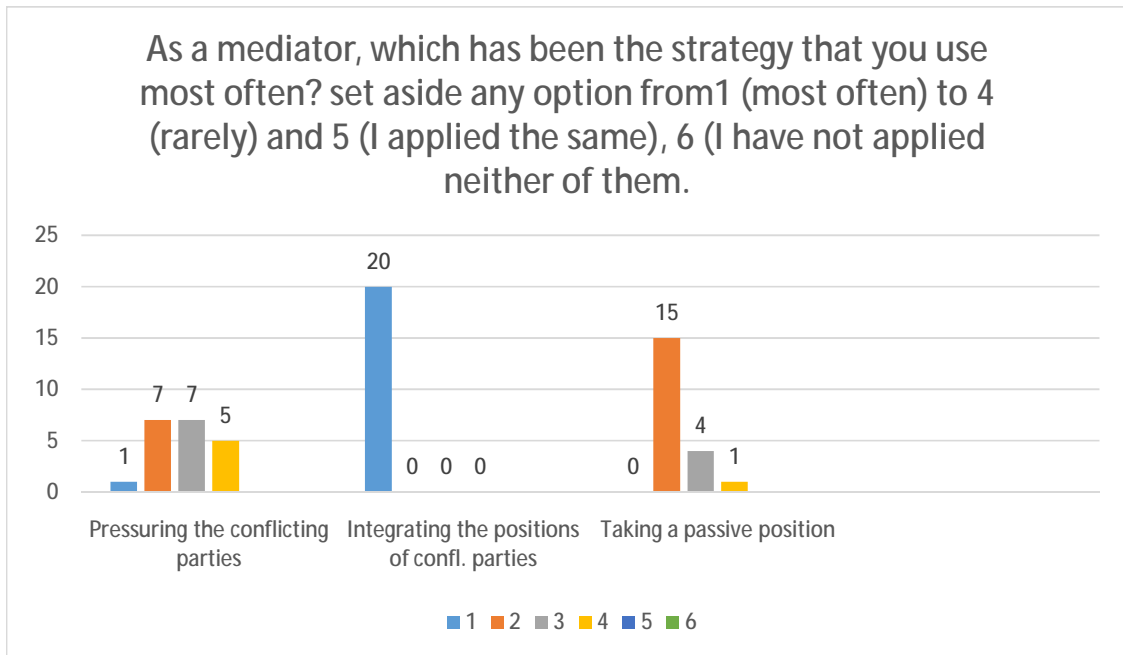
Table. 2



Source: the Author

Moreover, mediators were also asked to identify which has been the strategy that they use most often in the attempt to solve conflicts with the parties by listing from the most important statement to the less important one. Therefore, (Table. 3) shows the participants' responses by specifying their strategy as choosing between the following statements: pressuring the conflicting parties, integrating positions of the conflicting parties, taking a passive position, applying equally to all of them, and not implementing any of them.

Table. 3



Source: the Author

Furthermore, the views of the participants on the question of which are the *mediators' perceptions* with respect to a range of *sensitive issues* in relation to the effectiveness of resolving family disputes in mediation process is analyzed as the following.

Also, four associated questions emerged during the study in which mediators were asked how do they identify the needs of mandatory mediation.

Moreover, the mediators were also asked how they consider the inclusion of children in family mediation process, and what they thought were the most crucial factors related with the children's divorce adaptation. Last but not least, to the respondents was posed the question of how they position themselves in issues such as child and spousal abuse situations with regard to mandatory mediation. Finally, the mediators were also asked what

are their perception with regard to issues linked to pathological behavior from the part of the disputants in case of mandatory mediation.

Consider the following mediators' dilemma on whether mediation should be voluntary or mandatory in practice:

I believe that mediation should be on a voluntary basis only. Mediation is an alternative itself, but in order to become an alternative it has to be known, and it has to become a cultural choice, and for this we need time. So, at some point, I agree that mandatory mediation should be applied in specific cases of divorce.

Another important theme emerged during the study in which mandatory mediation may produce negative effects on the mediation process where manifested physical and psychological abuse is present during the process. Consider another lawyer mediator's comments in favor of voluntary mediation as opposed to mandatory mediation:

First, I do not think that mandatory mediation should be regulated by law in Albania, since not all the divorce cases are suitable to mediation. For example, the mandatory mediation is not a successful practice in cases where manifested physical or psychological violence, especially towards children or persons with disabilities is evident during the mediation process. Second, I think that all the disputing parties are free to enter the mediation, and they are also free to withdraw from the mediation process at any time they want to.

Consider another lawyer mediator's comments in favor of voluntary mediation as opposed to mandatory mediation where manifested physical or psychological violence is screened:

Since mediation is an alternative itself, and as such, it should be on a voluntary basis only. My professional experience as a mediator demonstrates that mandatory mediation is not the right

alternative to resolve disputes when faced with spousal/child abuse situations. There are specific divorce cases which cannot be mediated. In this context, mandatory mediation is not the right solution. I strongly believe in the free will.

In addition, applying the mandatory mediation in practice, could possibly damage or fail the mediation process itself, if divorce cases linked to pathological behavior from the part of one of the disputants is identified during the process. In this case, mandatory mediation would not result efficient in terms of achieving an agreement where one of the disputants may be previously diagnosed with a personality disorder or/and other pathological disorders as well. Consider the following mental health mediator's comments regarding the risks of the mandatory mediation in practice:

I think mandatory mediation may fail the process of mediation itself where pathological behavior is manifested during the mediation sessions. In such cases, I would stop the procedure, and suggest to the individual who displays symptoms of pathological behavior to meet a mental health expert. You can't pretend for the parties to assign an agreement, if one of them is previously diagnosed with narcissistic personality disorder, for example. That won't be reliable.

Similarly, consider another mediator's comments as the followings:

I believe that mandatory mediation could produce negative effects only, especially where cases of manifested pathological behavior is present. I am not a mental health expert myself, but eventhough disputant's pathological behavior is not present at first, again, manifested power imbalances issues emerge in mediation, where one of the disputants attempts to dominate the other. Instead, I am in favor of voluntary mediation.

With regard to mediation as voluntary or mandatory, consider the mediator's perceptions on viewing the mediation itself as staying in the middle of two:

I think that mediation should be on a voluntary basis only. Nevertheless, I think that some sort of mandated elements, depending on the context and the cases mediated, should be taken in consideration. I recommend a mandatory first session of mediation, because this may help the disputing party to get information about the mediation as a process. Then the process should be voluntary. In such conditions, the disputing parties are free to chose whether to enter the mediation or not.

Similarly, another mediator expresses his views regarding voluntary versus mandatory mediation as staying in the middle of two:

Well, I am in favor of voluntary mediation, but it depends on the willingness of the mediators to inform their clientele about the nature, and the process of mediation as an alternative for family disputes. However, I suppose that some mandatory elements should be taken into account, and implemented as well, specifically in the first sessions of mediation.

Interestingly, one of the mediators expresses his direct views as being in favor of mandatory mediation as opposed to voluntary mediation, mainly linked to custody issues:

I am actually aware of the fact that mediation itself needs time to become a culture in our country, but I still believe that if mandatory mediation takes place, then it could positively contribute to the effectiveness of family dispute resolution in general, it mainly helps the parents solve custody issues, especially where their mutual interest are their children, and it contributes to the increase on the number of mediated cases. Not every judge reffers the cases of divorce to mediation, although the law provides for both types of mediation, voluntary and mandatory.

In addition, the mediators were also asked how they consider the inclusion of children in family mediation process, and what they thought were the most crucial factors related with the children's divorce adaptation.

Furthermore, important themes emerged during the study highlighting the relationship between mediators' professional background, styles, models of practice and the decision of the child inclusion in the mediation process. Consistent with the academic literature, the study shows that the mediators' perceptions on the controversy in favor or opposed to including children in mediation explain why some mediators who adopt the facilitative mediation disagree with the child inclusion in mediation. On the other hand, those mediators who adopt another kind of model (transformative) and who are particularly sensitive on child issues, are in favor of including children in mediation. The study shows that few of the mediators agree that the participation of the child in the mediation process could emotionally benefit the child and have a positive impact on the outcome. Consider the following comments of a mediator who is in favor of child inclusion in mediation:

I think that children have to be aware of what is actually happening. They need to be informed of their parents' dispute and the divorce situation. I am quite sure that children experience feelings of confusion during the stages of divorce, and they should be helped by getting the right information with regard to their parents' agreement.

Consider another example where the mediator's views on the child inclusion in mediation coincides with her professional background as a psychologist:

Since the phenomenon of divorce produces in children more the experience of feelings than the thoughts, I think that children's feelings and needs should be listened and they should have a voice in the process. By participating in the process, children can be helped adjust emotionally, and have an awareness of how to cope with conflict.

As opposed to including children in mediation, most of the mediators in the study agree that children should not be included in the mediation process for the following reasons

listed below. Furthermore, major themes emerged during the study, such as the unwillingness of parents to include children in mediation, the age of the child, the psychological/emotional state of children, the appearance of symptoms of stress to the child created as possible manipulation from the part of the parents. Taking into account mediators' perceptions on not including children in mediation, most of them agree that these salient factors, may cause the failure of the mediation process itself. Consider the following mediators' comments:

I think there are specific circumstances in which children should not participate in the mediation process. If parents do not wish to bring their children in mediation, and they certainly want to resolve their problems by their own without involving them, then there is nothing to do. If children are involved in the process against their parents will, then this wouldn't work. Instead, they may feel not free to talk about.

Furthermore, consider another mediator's perceptions who does not support the idea of including children in mediation as linked to the inappropriate age of the child to deal with legal issues:

I do not think that children should be included in mediation, since a child is not prepared to understand the dynamics of law, and talk about legal issues. Instead, a child needs more of psychological support in order to face with the consequences of divorce.

Similarly, another mediator does not support the idea of including children in mediation because of their age:

I do not think that children should participate in mediation sessions. They are not psychologically matured enough, and also they are not emotionally prepared to face with custody related issues. Besides, mediators should be trained enough to include children in mediation.

Furthermore, family and social factors may contribute to the non inclusion of children in mediation as one of the mediators explains as the followings:

I think that including children in mediation could not work, since children might be manipulated or influenced by their parents, or by one of their parent's family of origin to such an extent that it could not lead to the effectiveness of resolving family conflicts.

Interestingly, another mediator expresses his ideas with regard to the inclusion of children in mediation as staying in the middle of two: his willingness to include children in mediation, and his sceptical views on the benefits that mediation could produce for children.

From the one hand, I think that children could benefit from mediation, since they face with social as well as psychological post divorce consequences, and this could help them a lot. On the other hand, I doubt that mediators practice it, since we haven't yet developed a culture and practice of family mediation in Albania.

Similarly, another mediator expresses his views with regard to the inclusion of children in mediation as staying in the middle of two:

I think that children should participate in mediation up to ten years of age in joint sessions with their parents. In these cases, I suggest that a follow up after mediation should be done, even if the case has not settled. However, I barely believe that the participation of children in mediation could produce any effects in the attempt to negotiate.

In addition, another mediator suggests that the inappropriate age of the child does not guarantee reliability in terms of parental custody due to child immaturity. Consider the following example:

I think that the age of the child is a crucial factor, which in my views it strongly determines the effectiveness of mediation. Even if the child is more than ten years old, he or she is unable to

discuss custody issues, and this may negatively contribute to the creation of confusion in parents by not reaching an agreement at the end of the process.

Moreover, the emotional/psychological state of the child due to parental disputes linked to the divorce, is another crucial factor which does not support the idea of including children in mediation. Consider the following comments:

I believe that a child who is feeling anxious and stressed due to factors related to divorce, and he is feeling anxious about talking to a mediator, is not able to get focused on custody related issues.

Furthermore, consider another mediator's perceptions in relation to cases when children might be manipulated by their parents to such an extent as to cause significant stress and anxiety to their children:

From my own experience as a mediator, there are parents in which behave in a very egocentric way by focusing themselves in their positions rather than focusing on the best interest of the child. They are not able to differentiate their own needs from their children's needs and wishes. I do not think that in such cases, children may be included in the mediation process.

CHAPTER VI: DISCUSSION

The purpose of this study is to develop data on the experience of mediation experts drawn from the National Chambers of Mediation in order to explore the effectiveness of working methods of practice from mediators' own point of view. The present study suggests that the effectiveness of mediation process depends on the emphasis placed by mediators on the family mediation practice, including an understanding of principles, roles/styles, models of practice, and salient mediation debates, from the perspective of mediators themselves in the mediation field.

Specifically, one of the most crucial part of this study is linked to the first research question of the study with the attempt to analyze the effects of the guiding ethical principles of mediation in resolving family disputes. Furthermore, McCrory (1981) implies that these principles play one of the most crucial part in mediation since these principles not only define the effectiveness of the mediation process, but also they may successfully guarantee a positive outcome to the disputing parties. McCrory (1981) describes these ethical principles as the four 'fundamental and universal characteristics' of mediation. Moreover, McCrory (1981) argues that if one of these universal principles of mediation is absent, then the process of mediation may fail and therefore, the process cannot be characterised as mediation (McCrory, 1981, p.56). These core principles include the voluntariness of the process, the impartiality of the mediator, the confidentiality of the mediator, and the procedural flexibility available to the mediator. In addition, the principles of neutrality and impartiality are one of the most essential ethical principles of mediation since they are used to establish its identity, and above all to protect those who ask it. On the one hand, Lisa Parkinson (1997) suggests

that " with impartiality we understand the concept of "equidistance", which means that the mediator, equally, pays attention to all the parties and manages the process in a balanced and impartial way. By this we mean that the mediator must conduct the process of mediation without favoring one side or the other. On the other hand, the concept of impartiality should not be confused with the concept of neutrality. Eventhough the difference between the guiding principles of impartiality and neutrality is reflected in the European Code of Ethics, yet, neutrality, as reflected in literature, does not have a clear meaning. With regard to neutrality, the European Code of Conduct states that in specific circumstances which include any personal connection with one of the parties, any financial or other interest related to the outcome of mediation, the mediator may continue the mediation in strict neutrality in order to guarantee full impartiality. On the other hand, impartiality means that the mediator must act and demonstrate openly that he/she is acting with impartiality towards the disputants, and should be committed to serve all parties equally in terms of the mediation process.

The perceptions of the respondents on the question of how do mediators understand the basic principles of mediation in the process of family mediation is discussed as the following. In addition, one associated question emerged during the study in which mediators were asked on what kind of connotations do they relate with the ethical principles of mediation, and it explores the importance and the effectiveness of these ethical principles in the mediation field in Albania. Therefore, the study reveals the most crucial principles of mediation as reported by mediators, such as the principle of respect, voluntariness of participation, impartiality, neutrality, party control/power, and mediator authority. It is important to emphasize the role and the effectiveness of these principles since they safeguard

the process of mediation and they also contribute to the fairness of the process and the outcome of mediation by protecting the disputing party. Other research show that in order for an effective mediation to take place, the principles of impartiality, neutrality, respect, voluntariness, should be in harmony with each other (Roberts, 2007, p. 108). However, this is difficult to achieve, because in some mediation cases, the nature of conflict (especially if we refer to situations with high-conflict parents), the party's vulnerability, plus the complexity of disputes, may negatively contribute to the failure of using these fundamental principles in practice.

First, the study shows the importance of the principle of respect in the responsibility of the mediator to treat each disputant with respect in the attempt to help the party find alternatives and the best solutions for everybody. Furthermore, many themes emerged explaining the principle of respect in terms of impartiality, and the autonomy of the parties as well as the autonomy of the mediator. The study shows that the principle of respect is seen by the mediators as an important value linked to both social and professional context as well.

It is interesting to know that from a social constructionist perspective, where individuals tell their stories, and construct their meaning of reality, the principle of respect is seen by the mediators as "patience". As Goldenberg (2012) points out, the postmodern perspective argues that what individuals call "reality" is socially and culturally determined from their experiences. Therefore, individuals construct their realities as they live them, and the effort to deal with the construction of the meanings of reality requires the principle of respect, which resembles the meaning of patience from the part of mediators.

Also, the study reveals that the principle of respect is related to trustworthiness in which the creation of the rapport, and also the building of mutual trust between the mediator and the disputing party, may contribute to the effectiveness of the mediation.

However, most of the mediators agree that the effectiveness of mediation and its outcome depends on bringing together several principles of mediation, such as the principle of respect, voluntariness of participation, impartiality, neutrality, party control/power, and mediator authority.

In addition, the principle of impartiality is established to help all parties as opposed to one or more specific parties in moving toward an agreement. Moreover, a mediator should be impartial and advise all parties of any kind of situation that may result in possible prejudice or impartiality on the part of the mediator. As pointed out before, with "impartiality we understand the concept of "equidistance", which means that the mediator, equally, pays attention to all the parties and manages the process in a balanced and impartial way (Parkinson, 1997, p.40). Moreover, the study reveals that the majority of mediators take into consideration the role of the mediator as being impartial to the disputing party, and neutral as central with regard to the process. Therefore, most of the mediators were able to distinguish between the principles of impartiality and neutrality as reflected in their practice. Also, the respondents agree that achieving both of them is quite difficult.

In terms of the mediators' perceptions with regard to the principle of neutrality and how do they make use of it in practice, the majority of them agree that neutrality is difficult to achieve, since it may interfere with many sensitive issues such as that of party power imbalance, where the mediator should take an interventionist role in order to manage the process of mediation. Despite the fact that neutrality, in theory, might positively affect the

process of mediation and its outcome, studies in the field of mediation show that in practice, some of the mediators are not neutral to the process, since they bring with them their own prejudices and feelings with regard to a specific context or situation. Previous research, and also the study demonstrate that the principle of neutrality is seen as biased from most of mediators. According to Prevatt (1999), the principle of neutrality should not be confused with noninvolvement. Thus, there is the risk that each of the disputing party may have the perception that the mediator may create an alliance with the other party.

Also, the study reveals that screening for spousal and child abuse, may stop the mediation, and therefore, the neutrality is not achieved in such cases.

Interesting is the fact that the notion of impartiality is linked to the models in-use from the part of the mediators. It is far more difficult for impartiality to be seen to operate where, for example, the model of shuttle mediation is used in practice. Furthermore, shuttle mediation (caucusing) consists of individual mediation meetings, held with each party separately. This model is largely used in commercial mediation. With regard to the use of this model in family mediation, this paradigm is not used much, since it raises some problems. That is, if the mediator continues to work with them individually, this does not help them to develop an ability to communicate directly with each other. It is important to remember that communication between the parties, improves the answer you get from the other party, by sharing with this partner a new and more adequate representation of reality with respect to the objectives that both people pursue (Di Lauro, 2010, p.24). However, shuttle mediation can be used in high conflict situations, and may be used as a strategy of crisis when one of the disputant is unable to speak in the presence of the other. Therefore, this model is used even in the case where levels of conflict are so high that one of the two is

on the point of leaving the room. Offering a brief moment of meeting with each disputant separately can help them to have a moment of emotional recovery. Following the same debate, the principle of impartiality is not protected and it may enhance the risks of the mediator being perceived as biased.

Another central theme that emerged during the study with regard to the principle of neutrality is the distinction between the process and outcome of mediation. Furthermore, the findings show that the majority of mediators agree with the statement that the mediator is in control of the process, and neutral to the outcome of mediation. On the other hand, few of them agree that the mediator should be interventionist with regard to process depending on the context, and dispute dynamics. In addition, mediators should take into account the nature of conflict, as well as social-cultural dimensions on the behalf of the disputants. As mediators indicate in this study, intervening in conflict situations of power imbalance, and managing the process of mediation, does interfere with the principle of neutrality as regard to the outcome of mediation. Again, the findings show that most of mediators agree that the mediator should be neutral with regard to outcome, and few of them agree with the interventionist position, especially when situations of power imbalances take place in mediation.

Also, the findings of the study demonstrate that the principle of impartiality has a major impact on the effectiveness of conflict resolution matters, since it serves the parties equally, and it also influences the process of the parties' dispute.

Following the same debate, most of the respondents were conscious of the differences that exist between neutrality and impartiality. Although, few of them expressed feelings of insecurity in regard to the application of these principles into practice. Moreover,

the mediators found it as most crucial the use of impartiality (serve both the parties equally) during the process of mediation, and that the lack of impartiality would enhance the risks of not achieving neutrality with regard to the outcome.

In order to make a further distinction between impartiality and neutrality, the findings show that most of mediators attributed the idea of impartiality to mediators' abilities, skills, and competence. On the other hand, the respondents attributed the concept of neutrality to disputants' voluntariness, willingness, and parties' freedom to make their own choices.

In addition, the respondents suggested that the effectiveness of the outcome depends on mediators' personal or financial relationship with one of the parties. Also, any other direct or indirect interest related to the outcome of the mediation may possibly create bias in terms of mediators' interests and preferences towards the one of the parties, and therefore, it may enhance the risks for not achieving neutrality. Therefore, most of the respondents referred as being impartial during the mediation sessions and neutral to the outcome. However, the notion of impartiality is not seen as distinct from this of neutrality with regard to mediators' perception of these principles in use. (the one may influence the other).

In another study of neutrality in mediation, similar results in the attempt to make a distinction between the process and the outcome of mediation in terms of neutrality, suggests that the respondents (mediators) referred to the principle of neutrality as being linked to the outcome rather than the process of mediation. Similarly, when it comes to power imbalances issues, intervention from the part of the mediator may have an impact on substantive outcome (Douglas, 2008).

Also the findings show that there is a relationship between the notion of neutrality and the idea of power imbalances. In the attempt to understand family systems in relation to the notion of power imbalances, Goldenberg (2012) explains how power imbalances may have an impact on family structure through Haley's and Madanes' strategic approach. According to Haley, most family members face with issues of power and control, and experience feelings of anxiety, depression, phobias all the time. Moreover, Haley suggests that these symptoms exist since they are a form of manifestation of family members' needs for power, and they operate as tactics used by one member to face with issues of power with another. Similarly, as in the context of family mediation, many mediators are faced with the power imbalances issues in which one of the disputants dominates the other, and they (disputants) may even try to maneuver the whole process. According to Goldenberg (2012), they do so, because they feel fearful of changing their behavior, and actually, they are not making great efforts to find another solution to their conflict. In family mediation matters, mediators should take into account power imbalances between the disputants when they enter mediation, in the attempt to create homeostasis by applying effective techniques in cases where inequality is identified since at the beginning of the process. As a result, addressing power imbalances appropriately from the part of the mediator, may lead to a neutral and a fair outcome in which does not favor one disputant in terms of outcome. In addition, the study shows that the power imbalance notion is closely linked to gender, social status, educational, as well as cultural differences.

Furthermore, the study also demonstrates that mediators are very sensitive when it comes to power imbalances linked to educational and cultural differences, in situations

where one of the disputants does not have the necessary information with regard to legal issues.

The findings also show that the effectiveness of mediation is not only linked to mediators' competence, styles and, models of practice, but it is also linked to parties' self-determination, the disputants' needs, and curiosity to chose mediation as an alternative for resolving their conflicts. Many of them consider these principles as central to the effectiveness of mediation, and few of them consider the concept of neutrality of a secondary importance. Other similar findings on neutrality in mediation show that neutrality is central to mediation, and it is closely associated to parties' self-determination and willingness (Douglas, 2008).

Following the same debate, the idea of curiosity linked to the notion of neutrality emerged during the study. As Prevatt (1999) states, it is essential to take into account the disputants' own perspectives equally and empathetically, because it helps them define the problem and generate possible solutions. Furthermore, listening carefully without prejudice to each of the disputants and adopting several techniques, such as the brainstorming technique, and circular questions, which may stimulate curiosity not only from the part of the mediator, but it may also encourage the parties feel comfortable and free of the process, understand the nature of their conflict, and generate alternative solutions by showing curiosity.

As Cecchin (1987) points out, the concept of neutrality resembles the concept of curiosity, in the sense that curiosity from the part of the mediator may offer possible alternatives, and may generate hypothesis in the attempt to change disputants' negative

patterns of thought, and turn them in to positive by helping them focus on the future rather than the past (Cecchin, Lane, & Ray, 1992).

One of the most important finding of this study is the emphasis placed by respondents on the principle of voluntariness in their attempts to deal with the dilemmas of mandatory mediation.

Consistent with previous research, the principle of voluntariness plays a crucial part in the effectiveness with regard to mediation. It is important to acknowledge that even in other countries where the mediation is mandatory in relation to divorce cases, however, the recommendation of the Council of Europe number (98) 1 states that mediation should be a voluntary process. For instance, during the first meetings of the mediation process, the mediator explains to the disputants that family mediation is a voluntary process. In this context, the disputants may withdraw at any stage of mediation.

Furthermore, most of mediators in this study agree that the participation on a voluntary basis is one of the most crucial principles of mediation. On the other hand, very few of them agree that mandatory mediation should be applied in every mediation dispute regardless the nature of conflict and disputants personality traits. In addition, many interesting themes emerged during the study with regard to mediators' perceptions linked to the voluntariness of participation. First, the respondents suggest that voluntary mediation is connected to the notion of fairness and the effectiveness of the process and the outcome itself.

Second, in order for mediation to be effective, both parties should be reasonable people who are motivated to negotiate a final agreement. On the other hand, with mandatory mediation, which is quite the opposite of voluntary mediation, there is the risk of the

emergence of problematic issues during the initial sessions of mediation, such as that of child and spousal abuse situations, or the identification of pathological behavior from the part of the disputants. Of course, this does not mean that these sensitive issues (abuse and pathological behavior) are not evident in cases where disputants wish to enter mediation on a voluntary basis. Following the same debate, however, the study shows that, if the mediation process is conducted on a voluntary basis, then it may minimize the risks of encountering such problems.

Another important issue in the study is the notion of party self-determination in the attempt to resolve family conflicts. Furthermore, the study reveals that the effectiveness of mediation in the attempt to settle an agreement, does not only depend on the skills and the competence of the mediator, but it also takes into account party's willingness and self-determination in reaching an agreement.

In addition, the study shows that mediators' perceptions with regard to the notion of self-determination is linked to their perceptions with the principle of neutrality. The more self-determinant the parties are, the higher the possibility to reach a neutral and positive outcome. However, most of mediators revealed an awareness of the impossibility of the achievement of neutrality in a complete form, since mediators have their own values, prejudices, and preferences in regard. Rather than attributing their success to the value of neutrality as universally valid, mediators attributed their success to mediation to both their role/tactics, and the party's self-determination.

Also, the concept of self-determination is linked to the way mediators make use of the models of practice in their work. The findings suggest that self-determination is

considered as a factual support for the mediators to use a variety of models of practice in their work, ranging from structured to therapeutic models of mediation.

Another important point of the study is the mediators' determination on giving emphasis to the role of the neutral or impartial mediator as facilitative rather than to the role of the mediator as having power and control of the process.

In contradiction to the results, the findings however, suggest that many of the mediators report that one's should have an interventionist role in the attempt to negotiate a dispute, especially when confronted with issues of power imbalances. If this is the case, then, the principle of impartiality is threatened, and the controlling of the process of mediation takes place. However, this depends on the mediator's competence, skills, and abilities with regard to neutrality, when faced with manifested power imbalances issues.

Similarly, when it comes to power imbalances issues or manifested inequality, many of the researchers were concerned to determine whether the mediation will provide fair and equitable outcomes for both men and women (Emery and Wyr, 1987). Moreover, some feminists believe that women are inevitably disadvantaged in the arrangements ordered by the court, due to the "patriarchal tendency" underlying all judiciary. Mediation should bring some benefits to women, giving them in a fair voice, sharing financial information, and giving attention to their needs and concerns.

However, the opinion of feminists (Bottomley, 1985; Hart, 1990; Grillo, 1991) with regard to the benefits of mediation, raise objections against the mediation for the following reasons: it is not able to remedy the fundamentally weak position of women in a society dominated by men, where they have a lower status and less power in regard; mediation takes place behind closed doors, and it is a process which has very little control; it tends to

overlook the inequalities of power during the mediation, because a mediator acting impartially, cannot sufficiently protect a vulnerable wife by a husband stronger, more experienced and powerful even from a financial point of view;

However, this statement suggest that addressing power imbalances issues in mediation, one must bear in mind that social-cultural dimensions may be significant factors to negatively contribute towards the settlement of the dispute.

In relation to models of practice, the creation of several study groups on family mediation has brought its contribution of ideas and experience into practice. In addition, several professionals, including lawyers, judges, psychologists, social workers, with their different backgrounds have contributed to increase efficiency in the mediation centers. These factors have influenced the creation and development of some major models of family mediation as reflected in the previous literature. Although these models/approaches reveal elements in common, it is necessary, however, to note some differences, in order to get a better idea on the specific representation of each approach.

Moreover, many questions emerge regarding the differences between these models and their use in family mediation. On the one hand, a question emerges in relation to the equal applicability to all couples who decide to enter the family mediation. On the other hand, another question arises if these models are better suited to a particular type of couple. With regard to the effectiveness of family mediation approaches in-use, research shows that most of mediators do not display any particular preference for a model with respect to another. However, a sizeable number of mediators show a particular interest and preference with regard to a specific model of practice linked to their expertise on mediation, such as the

principled negotiation model. On the other hand, other studies demonstrate that there are significant differences on the particular preference or application of a model in relation to mediator's professional background. For instance, as reflected in the literature, the therapeutic model of Irving consists of a run-up phase to the mediation process focusing most on the disputants' emotional aspects, and restructuring the family system. As opposed to the therapeutic model, the structured approach, proposed by Coogler, Fisher and Ury, consists of a particular procedure of family mediation, in which there is a logical and historical order, both in terms of issues to deal with, such as the education of children, the division of family assets, child support, maintenance of the spouse, and also in terms of the procedures to be completed. In this context, when the couple decides to mediate, the mediator who follows a structured negotiation approach, aims to help the disputing party to invest more on negotiation techniques. It is interesting to know that since the direct mediation to an agreement is based on the technique of rational negotiation, the focus of this model arises in obtaining concrete results and solutions in practice. On the other hand, there is the risk that the mediators who apply the structured negotiation model may end up to quick conclusions, by not taking enough into account the emotional aspects from the part of the disputants. On the other hand, the therapeutic model recognizes that there are couples not ready yet to work together in mediation. These couples may be able to use mediation, if is offered a help to them in advance in separate meetings. However, it is important to highlight that all other models pay attention to the relational processes of the couple, but they just do it in a minor way.

One other difference can be noted with regard to the presence or not of the children to the mediation meetings. In the structured model, parents are encouraged to bring their

children in mediation, whereas in the therapeutic model, the children do not participate in the mediation sessions.

However, there are differences between the therapeutic model and the transformative model as well. The first one puts its emphasis mainly on the evaluation process prior to the mediation therapy. Whereas the mediator who uses a transformative model, does not manage the process, but accompanies and supports the disputing party to think of alternatives and solutions.

In contrast to processes that deal with a single theme, such as children or finances, the global mediation proposed by Haynes deals with all the issues involved in separation or divorce, child custody, spousal/children maintenance, and property issues. On the other hand, integrated or partial mediation takes into account only some aspects in the process of separation/divorce. That is, only the issues related to child custody are addressed to a non-directive style from the part of the mediator.

Furthermore, the views of the respondents on the question of which are the most effective family mediation approaches that mediators use in practice and in what way do they play a part in the mediation process with regard to dispute resolution, is discussed as the following.

Moreover, the study provides significant data with regard to mediation models/approaches in practice, in which six family mediation models were identified as the following: structured negotiation model, transformative model, narrative approach, structured approach, facilitative mediation, shuttle/caucus mediation, and the eclectic model of mediation (a mixed approach focused on the selection of other techniques and models of mediation).

Respondents were asked in what way do these models of practice play a part in mediation with regard to dispute resolution. The findings suggest that although there are differences with regard to a particular model of practice, most of the mediators rely on two or more approaches in their work depending on the context and disputes' characteristics.

Specifically, the study shows that a sizeable number of mediators make use of the structured negotiation approach, while others report using the facilitative mediation in their work, and most of them rely on two or more approaches by adopting the eclectic method in mediation.

Moreover, the study demonstrates that the models/approaches in use from the part of the mediators, partially highlight those models reflected in the academic literature, such as structured-negotiation model, transformative model, caucus approach/shuttle mediation, narrative mediation, facilitative mediation, and structural model of mediation. The study also reveals that some of the models of practice as reflected in the academic literature, were not mentioned in mediators' interview responses. Therefore, the therapeutic model, the transitional-symbolic model, the evaluative model of mediation, the global approach, and the feminist-informed approach etc., were not mentioned in the study. Among these, there were several models of practice widely used in a previous study of family mediation (Kruk, 1998). In this study, emphasis is placed on the relationship between models of practice with diverse client and dispute characteristics. In contrast to our study, these findings report that five mediation models were identified, such as principled negotiation model, therapeutic-family systems, feminist-informed approach, culturally specific, and multigenerational approach (Kruk, 1998, p.208). As these results suggest, a sizable number of mediators use the principled negotiation model as they consider this approach to be the foundation of their

practice. However, most of them rely on two or more approaches in their practice (Kruk, 1998, p.207). Similarly, our findings suggest that the majority of mediators consider the eclectic approach as the most appropriate to solve family disputes as linked to nature of conflict, and diverse dispute characteristics. Again, a sizable number of the mediators consider the structured-negotiation approach as central to their practice. Rather than excluding diverse sensitive issues from mediation, other similar practice models, such as therapeutic model (suitable for those disputants who are unable to negotiate as a result of unresolved emotional conflicts) should be taken in to consideration, as it may enhance the effectiveness of mediation. Again, a feminist-informed approach may result effective when possible screening of spousal abuse and power imbalance are manifested in mediation (Kruk, 1998, p. 208).

Furthermore, the findings suggest that although a sizable number of mediators mainly rely on the structured negotiation approach, however, most of them combine the principled negotiation model with other models of practice within the limitation of their models of practice.

Interestingly, the transformative model is identified in the study as linked to mediator's expertise of this model, with a primary focus on the achievement of two key objectives, the empowerment and recognition. According to Parkinson (1997), empowerment encourages self-determination and autonomy by strengthening the capacity of disputants to clearly see their situation. In addition, recognition involves the parties in the ability to recognize one's feelings and points of view. As Folger and Bush (2001) state: "Transformative Framework assumes the entire mantle of mediation, not only appropriating traditionally acknowledged hallmarks of good mediation practice as its own, but also

premising their exclusive realisation on a transformative ‘mindset’ (Folger & Bush 2001, p.23).

The findings show that two (2) out of twenty (20) of mediators reported to mainly rely on the transformative model of mediation by attributing it to both their academic background, and their professional expertise.

The findings also demonstrate that there are other models of practice which are linked to the issues mediated, particularly in cases when high conflict situations are confronted in mediation. Consistent with previous academic literature, shuttle mediation (caucusing) is considered effective with regard to high conflict disputes, and it can best work as a strategy of crisis. The caucus consists of individual mediation meetings, held with each party separately. With regard to the use of this model in family mediation, this paradigm is not used much, since it raises some problems. That is, if the mediator continues to work with them individually, this does not help them to develop an ability to communicate directly with each other. It is important to remember that communication between the parties, improves the answer you get from the other party, by sharing with this partner a new and more adequate representation of reality with respect to the objectives that both people pursue (Di Lauro, 2010, p.24). However, the shuttle mediation can be used in high conflict situations, and may be used as a strategy of crisis when one of the disputant is unable to speak in the presence of the other. Therefore, this model is used even in the case where the levels of conflict are so high that one of the two is on the point of leaving the room. Offering a brief moment of meeting with each disputant separately can help them ease their tension (Coogler, 1978; Haynes, 1981; Folberg & Taylor, 1984). A similar study of mediation and models of practice suggests that shuttle mediation is particularly used in commercial mediation, and it

is very rarely used in family mediation disputes (Roberts, 2007, p.143). In contrast to this study, the findings suggest that some of the mediators rely on this model as a second alternative, when confronted with high conflict family disputes.

Although there are no significant differences in terms of models of practice related to the gender of the mediator, and mediator's work experience, however, there are differences in terms of models in-use linked to mediator's professional background, disputants' characteristics, the nature of conflict, and mainly the issues involved in mediation. Therefore, the study identifies the above reasons as central to mediators' choice of relying on the eclectic model as an effective tool for resolving family dispute matters.

However, the findings suggest that mediators should take in to account key factors such as gender issues, social/cultural aspects, and mediators' experience.

Despite the attempt of practicing a diversity of mediation models from the part of the mediators, this study demonstrates that the use of models in practice is restricted in mediation field with regard to family disputes.

In addition, the views of the participants on the question of how mediators' roles, styles, and techniques, are displayed or expressed in behavior and practice, is discussed as the followings. In addition, the respondents were asked how do they achieve and make use of the rapport with the disputing parties in the process of family mediation.

Consistent with academic literature, studies on mediation in general have been conducted in order to explore the effectiveness of mediation in resolving family disputes.

Pearson and Thoennes (1988) noted significant improvements among lawyer mediators, social workers, and family counselors who had at least six experiences of intervention behind. Those who had averaged over more than six cases had helped the couple

to reach an agreement in 64% of cases, against 30% of the cases treated by less experienced mediators.

Furthermore, an effective mediator provides relevant knowledge when it is needed, and helps disputants formulate options that derive from the experience of the mediator, without taking for granted that what has worked in such a situation must necessarily also work in another.

Also Pearson (1982) and Pearson and Thoennes (1988), according to the research made through the analysis of mediation sessions recorded, reported that effective mediators intervened actively, structured the process well, and devoted time to evaluate the different possible solutions. In cases where advances were scarce, the mediators focused more attention on the collection of facts, making little progress, especially when the disputants communicated insufficiently. The mediation sessions recorded, transcribed, and analyzed by Donahue, Allen and Burrell (1988) revealed that mediators who intervened actively during the mediation sessions, obtained more easily good results, compared to those who simply facilitated the exchange between the parties.

Furthermore, the study shows that positive results were associated with three specific interventions by the mediators: establish and impose procedural rules; structure the process in order to obtain relevant information; operate the reformulation of the statements of the parties in order to identify important issues.

The study shows that in those cases where mediation sessions were interrupted, there was a tendency, among the most passive mediators, to "let go of the couple for a while, to see how they interact." The researchers found that a non-intervening approach by

mediators could create a sort of asyndetic thinking leading to the loss of the goal (Parkinson, 2011, p. 287).

In addition, appropriate techniques for mediation may prove inadequate in determining the structure, the focus and the control necessary in mediation to help couples to move from confrontation to problem solving.

Kressel and colleagues (1989) found that the techniques used by mediators with regard to the collection of information, constituted an important component of efficiency. The way the questions were posed to the disputants in mediation sessions, and the collection of information in a systematic way was considered some of the most important elements of efficiency. Kressel (1994), in a study of video and audio recordings of mediation sessions, noted that mediators passed from the categories of orientation to that of problem solving. Moreover, the problem solving approach proved to be more efficient and more flexible to the extent that it helped the disputing parties to balance the power, encouraged productive communication skills, and discouraged the destructive conflict. As a result, the problem solving approach was associated with the achievement of lasting agreements.

Accordingly, this study on family mediation is important because it gives emphasis on how mediators' roles, styles, and techniques are manifested in practice, and how they contribute to the effectiveness of mediation in the attempt to settle family disputes. As Rousseau (1998) points out, the key factor which leads to the effectiveness of mediation in resolving conflicts is the development of rapport between the mediator and the disputing party, and that achieving rapport is related to other key factors, such as building trust, and being empathic with disputants. With regard to styles of practice in relation to models of practice, the findings show that most of the mediators did not give an explanation of their

model of practice in terms of any specific style, and they found the question of their style difficult to define. Instead, mediators preferred to provide a description of their style in a simplistic manner, and they argued that their individual style could not be seen as linked to a specific model of practice, but rather as an effective way to treat each case differently depending on the nature of conflict.

Furthermore, some of the mediators, similarly related their stylistic models of practice directly to party's gender and social/cultural characteristics, and also, some of them described their style of practice in a more directive and authoritative way towards the parties.

The findings show that styles of practice and negotiations are also linked to party's self-determination and willingness to change. Furthermore, achieving rapport, and building trust with the disputants is related not only with mediators' roles and styles of practice, but it is also related to parties positive willingness, and parties' self-determination to change things.

In addition, the mediators' personality traits and preferences play a crucial part in revealing their styles of practice, and therefore, it may contribute to the effectiveness of a positive outcome in reaching a successful agreement. Also, some of the mediators expressed their ideas of the preferences on the way they work as linked to clarity and structure when it comes to resolving conflicts, and reaching negotiations.

Additionally, with regard to mediators' and disputes' characteristics associated with successful outcomes, the study shows that most of mediators regarded achieving rapport with the parties as the most central of their success in bringing about settlements.

Moreover, the findings demonstrate that other central factors such as mediators' personality traits, and tactics they employ in practice, may contribute toward negotiations,

and the achievement of agreements. Apart from the main central factors associated to a successful mediation, the findings also suggest that other factors are considered important from the part of the mediators as crucial to their success as mediators. Therefore, active listening, use of humor, inherent factors, honesty, trustworthiness, ethics, etc., are considered central to the effectiveness of mediation, since they all may contribute to successful mediation.

Similarly, many studies have shown that high levels of anger and marital conflict, do not necessarily constitute barriers for the couples in the attempt to achieve agreements in mediation (Depner et al., 1994; Irving & Benjamin, 1989; Kelly & Duryee, 1992). Other researchers (Emery and Wyler, 1987) have focused their attention exclusively on the characteristics of the disputants, in order to determine who has more chances of being helped in mediation. Finally, Waldron and colleagues (1984) concluded that there are two main factors that determine whether the disputants can benefit from mediation.

“The first element gives emphasis to the development of the personality, which allows the person to see the world not as black and white but as a range of gray ... The capacity for empathy, the ability to see the two sides of the coin, are essential” (Waldron et al., 1984, p. 18).

The second factor is that both couples have the capacity to look ahead, and have the willingness to solve their problems. More complex studies have shown that positive results can be announced with greater reliability, and compatibility related the interaction between the characteristics and dynamics of the couple, and the attributes and skills of the mediator.

Consistent with our study on family mediation, Pearson and Thoennes (1985), similarly defined as relevant factors, interconnected with each other, the characteristics of

the disputant, the nature of the couple's dispute and the mediator attributes. Donahue and colleagues (1988) revealed that the agreements reached in mediation were related to interaction between the parties' attributes and skills of the mediator.

In addition, Ross & Wieland (1996) suggest that the term trust helps not only the mediator to solve the conflict, but it also may help the parties to enhance communication, and create rapport with the mediator. On the other hand, the findings show that few of the mediators believe that the building of trust may interfere with the mediator's principle of neutrality and, therefore, this may negatively influence the process of mediation and its outcome. The study shows that the idea of "trust" is not positively conceptualized by some of the disputants.

Also, the study demonstrates that creativity plays an essential part in the achievement of the mediators' success since it may generate creative solutions to the dispute, and therefore, this may help on reaching an agreement. Following the debate, half of the mediators, referred to this as one of their most important technique of practice. Interesting is the fact that some mediators attributed this ability to their personality traits or characteristics. In addition, other techniques of practice, which require an expertise working on a specific model, and contribute to the generation of creative solutions were mentioned by the mediators.

Moreover, the findings suggest that the importance of building rapport with the parties is not only associated with mediators' inherent characteristics, but it is also linked to the techniques/tactics of practice from the part of mediators. The study shows that half of the mediators reported that one of the main factors contributing to their attempt to reach an agreement with the disputing parties, is their capacity to generate innovative ideas as a result

of their professional experience in mediation. However, mediators did not give minor emphasis to the mediators' inherent traits, because all these factors positively contribute to a successful mediation.

Furthermore, these mediators who adopted a negotiated model of mediation, emphasized the brainstorming technique, the problem solving technique, and the reframing technique in comparison to other techniques in-use. Accordingly, the use of these techniques helps the disputants generate new ideas and come up to creative solutions.

Other mediators attributed the use of humor to their success in the attempt to unblock conflict situations, and to settle an agreement with the disputing parties. Accordingly, the mediator states that the use of humor not only is an effective technique itself, which may lead to the generation of new ideas, but it is also related to inward factors of mediators. However, the issue of the use of humor in mediation sessions is questionable, especially when it comes to high conflict situations, and when inappropriately used in tense circumstances (Moore, 1996).

In summary, among most important mediator characteristics related to mediator's roles, style, and techniques of practice are respect, building rapport, empathy, patience, curiosity, and communication skills. With regard to techniques of practice, the findings report as the most frequently cited the brainstorming technique, problem solving technique, reframing technique, and circular questions. Also, the study shows that not all the techniques of practice in the attempt to solve disputes were mentioned by the mediators, but rather, mediators were asked to identify the most crucial ones as central in their work. However, this should not be confused with the fact that there are not other techniques in-use, which may significantly contribute to the effectiveness on resolving conflicts. Rather, the last ones may

be considered as inappropriate from the part of the mediators if linked to nature of conflict, parties' individual characteristics, and other related factors.

Furthermore, the views of the participants on the question of which are the mediators' perceptions with respect to a range of sensitive issues in mediation process is discussed as the following. Also, four associated questions are emerged during the study in which mediators were asked how do they identify the needs of mandatory mediation.

Moreover, the mediators were also asked how they consider the inclusion of children in family mediation process, and what they thought were the most crucial factors related with the children's divorce adaptation. Last but not least, to the respondents was posed the question of how they position themselves in issues such as child and spousal abuse situations with regard to mandatory mediation. Finally, the mediators were also asked what are their perception with regard to issues linked to pathological behavior from the part of the disputants in case of mandatory mediation.

It is interesting to consider the experience of mandatory mediation in countries like New Zealand, and the US, in order to see to what extent it confirms the theory, widely accepted, that the mandatory mediation would be ineffective, or would result in an unacceptable pressure on disputants. Mandatory mediation in the United States is mostly concerned with children-related issues. The court-ordered mediation to Los Angeles Conciliation Court is been considered as satisfactory and efficient, (from an economic standpoint) in defining child custody and visitation disputes. So, in 1981, the California puts a law in which, it requires to the divorcing parents to enter the mediation sessions before going to the court. Furthermore, the mandatory mediation was perceived as a justified attempt to resolve the conflicts on children. Its application in California, created lots of

controversy (Grillo, 1991; Rosenberg, 1992). The researchers sought to determine how parents were experiencing the process, and if they felt satisfied with the outcome of mediation.

In 1992, in an important study on mediation, there was obtained information from a sample of participants equal to 83% of all mediation sessions (1.700) conducted in a two-week period. The cases addressed in mediation included high rates of violence domestic, child abuse and substance abuse. The mediators reported that 79% of the sessions dealt with difficult issues, and 71% dealt with high levels of emotional distress. Despite these problems, more than 80% of parents perceived the mediation sessions as positive. Moreover, the participants reported of not being pressed by the mediator, whereas the mediators determined as productive as 76% of the mediation sessions.

American researchers revealed strong public support for the mandatory mediation with regard to those who had participated in the study. At least 85% of those who had reached the agreements were in favor of mandatory mediation, and still 62% of those who had not reached agreements reported that mandatory mediation is probably necessary to resolve family disputes.

Coming to the actual study on family mediation, as regards whether mandatory family mediation, in its mitigated form or not, is one of these successful practices in Albania, the law provides for both types of mediation, voluntary and mandatory. Voluntary mediation can be undertaken by the disputing parties at any time and/or stage, regardless of whether a court proceeding has already started (art. 2.1). However, once a court proceeding is initiated, the judge must orient the parties towards mediation, especially for family law disputes and

those where interests of children are at stake. The judge must refer to mediation also those cases where a mandatory reconciliation meeting is provided for under the Albanian *Family Code* (art. 4). This serves to confirm that reconciliation and mediation are two activities separate and independent from each other.

Moreover, the Mediation Law is generally in line with all compulsory provisions of the *Mediation Directive* regarding confidentiality and enforceability of settlement agreements. As regards the discretionary provisions, the Albanian legislator, has chosen to include family law within the realm of application of the *Mediation Law* by extinguishing any visible uncertainties as to whether and how parties can resolve their family issues by mediation. Therefore, the Albanian legislator has taken a more parties-are-free-to-mediate approach. Though at first it might seem like *Mediation Law* has introduced elements of mandatory mediation, in reality, the judge's referral to the mediation seems more like a proposal to try mediation than an explicit order to comply with. Nonetheless, this referral or proposal presents the parties with a new opportunity of which they might not be aware.

However, there are still no statistics as to the impact that *Mediation Law* has had over resolution of family disputes in Albania, but the premises for a serious growth in family mediation have been set.

Again, regarding the debate whether mandatory mediation is one of these successful practices for solving family disputes in contrast to voluntary mediation, the findings suggest that most of the mediators agree that mediation should only be on a voluntary basis. Most of them disagree with mandatory mediation, since it may have a negative impact on mediation,

where possible manifested physical or psychological abuse is screened during the mediation sessions.

Also, the study shows that most of mediators are not in favor of mandatory mediation, since it may contribute to the failure of mediation, especially where dispute cases related to pathological behavior (for ex., personality disorders) from the part of one of the disputants is identified during mediation.

Few of the mediators view mediation as staying in the middle of two, and agree that although mediation is an alternative itself, mandatory mediation should be applied in specific cases of divorce, since mediation has not become a cultural choice yet from the parts of the disputants.

Consistent with the academic literature, research shows that the involvement of children in mediation may produce positive effects in resolving family conflicts. Both in Britain and in other countries, it is shown that, even when the mediators support a policy that favors the direct involvement of children in mediation, only a small percentage of cases are actually involved. A Scottish study conducted by Garwood (1989) brought to light that although the mediation services of Edinburgh would support a policy aimed at enhancing the participation of children, only 20% of cases were actually involved in mediation.

Despite the uncertainty regarding their participation, almost all children considered very positive their own experience with the mediator.

Coming to our study, the decision on whether to include children or not in mediation process is linked to context, expertise, and professional experience from the part of the mediator. In addition, taking into account of what is “the best interest of the child” also is

linked to the style and the model of practice from the part of the mediator. As Wallerstein & Kelly (1980) suggest, mediation is a process in which the disputing parties are invited to negotiate and therefore settle an agreement for their best interest without involving children in their disputes. Similarly, the findings show that mediators who adopt the facilitative approach, are less likely to include children in the mediation, suggesting that the disputing parties are invited to settle an agreement for their best interest without the involvement of children. On the other hand, Lansky (1996) points out that mediators from a mental health background are more likely than lawyer mediators to include children in mediation. Finally, the decision on whether to include children or not in the mediation is culturally determined. According to Saposneck (1991), not all the cultures support children's rights to enter a mediation session, since in some countries the children's needs and wishes are satisfied by their own parents, whereas other cultures support the autonomy of the child to decide by his/her own.

Furthermore, the study also highlights the importance of the relationship between mediators' professional background, styles, models of practice and the decision of the child inclusion in the mediation process. Consistent with the academic literature, the study shows that the mediators' perceptions on the controversy in favor or opposed to including children in mediation, explains why some mediators who adopt the facilitative mediation disagree with the child inclusion in mediation. On the other hand, those mediators who adopt another kind of model, and who are particularly sensitive on child issues, are in favor of including children in mediation. The study shows that only two (2) out of twenty (20) of the mediators agree that the participation of the child in the mediation process could emotionally benefit the child and have a positive impact on the outcome.

As opposed to including children in mediation, most of the mediators in the study listed that children should not be included in the mediation process for the following reasons such as, the unwillingness of parents to include children in mediation, the age of the child, the psychological/emotional state of children, the appearance of symptoms of stress to the child created as possible manipulation from the part of the parents. Taking into account mediators' perceptions on not including children in mediation, most of them agree that these salient factors, may cause the failure of the mediation process itself. Specifically, most of the mediators emphasized that the inappropriate age of the child does not guarantee the effectiveness of mediation in terms of parental custody.

Finally, when it comes to salient issues in mediation, the findings suggest that with regard to disputes' characteristics in the attempt to solve salient matters, most of the participants identified as crucial in their work the children focused issues, power imbalances issues, conflict escalation of the disputes, and parties' cooperation in reaching an agreement.

CHAPTER VII: CONCLUSIONS, RECOMMENDATIONS

7.1. Conclusions

The findings of the study provide an empirical evidence of family mediation practice in Albania analysing the factors and features affecting mediation, including a variability in family mediation working methods in terms of principles in-use, mediator's role/styles, models of practice, and problematic issues. The study demonstrates that mediation as a first alternative resolution between the parties, results partially effective in terms of both process and outcome, since it poses difficulties encountered in trying to assess the outcomes of mediation.

First, with regard to the ethical principles of mediation, the findings reveal that most of mediators agree that the effectiveness of mediation and its outcome depend on bringing together several principles of mediation, such as the principle of respect, voluntariness of participation, impartiality, neutrality, party control/power, and mediator authority. Also, the findings suggest that the way mediators understand and make use of the *basic principles in practice*, affects both the process and outcome of mediation, confirming the first hypothesis of the study.

Following the same debate, most of mediators were conscious of the differences that exist between neutrality and impartiality. Again, the results of this study show that mediators demonstrated the ability to understand the concept of neutrality as connected with other ethical principles of mediation, such as the principle of impartiality, and party's self-determination. Also, mediators demonstrated the ability to understand the core principles of mediation as associated to the models of practice in the field. However, this is difficult to

achieve, because in some mediation cases, the nature of conflict, party's vulnerability, social-cultural determinants, and complexity of disputes, may hinder the implementation of these principles in practice, and therefore, hinder negotiations. As a result, the above statement confirms the main hypothesis of the study, where the *effectiveness of mediation* does not only depend on *mediator's competence* of working methods, but it also depends on *nature of conflict, social-cultural context, and disputants' individual characteristics*.

Second, the study demonstrates that models/approaches in use partially highlight those models reflected in the academic literature. The findings show that mediators make only use of structured-negotiation model, transformative model, caucus approach/shuttle mediation, narrative mediation, facilitative mediation, and structural model of mediation in practice.

However, our findings suggest that the majority of mediators consider the eclectic approach as the most appropriate to solve family disputes as linked to nature of conflict, social-cultural context, and diverse dispute characteristics, confirming the main hypothesis of the study.

Despite the attempt of practicing a diversity of mediation models in practice, this study demonstrates that first, the use of models of practice is restricted in mediation field with regard to family disputes, and second, the way mediators adopt these *practice models of mediation*, affects both the process and the outcome of mediation in the attempt to resolve family disputes, and therefore, reaching negotiations.

Third, with regard to roles, styles, and techniques of practice in relation to models of practice, the findings show that most of the mediators did not give an explanation of their

model of practice in terms of any specific style, or a specific role, and they found the question of their style difficult to define. Instead, mediators preferred to provide a description of their style in a simplistic manner, and they argued that their individual style could not be seen as linked to a specific model of practice, but rather as an effective way to treat each case differently in the attempt to solve conflicts, and reach an agreement in terms of both process and outcome. The statement above confirms the third hypothesis of the study, in which the way mediators display their *roles, styles, and techniques* in behavior and practice, affects both the process and the outcome of mediation. In addition, the findings reveal that the effectiveness of mediation is also related to both *mediator's competence* of working methods, and *nature of conflict*, social-cultural related issues, parties' individual characteristics, gender, and other related factors.

Also, mediators demonstrated carefulness when it comes to the utility of the techniques of practice, since not all of them are appropriate if linked to nature of conflict, parties' individual characteristics, and other related factors.

Fourth, as regards to sensitive issues, most of mediators disagree with mandatory mediation, since it may have a negative impact on mediation, where possible manifested physical/psychological abuse is screened, and possible manifested pathological behavior is present. Only few of them view mediation as staying in the middle of two, and agree that although mediation is an alternative itself, mandatory mediation should be applied in specific cases of divorce, since mediation has not become a cultural choice yet from the parts of the disputants.

Furthermore, the findings show that the decision on whether to include children or not in mediation process is linked to nature of conflict, context, mediator's expertise, and professional experience. In addition, taking into account of what is "the best interest of the child" is also linked to the style and the model of practice from the part of the mediator. The study shows that only few of the mediators agree that the participation of the child in the mediation process could emotionally benefit the child and have a positive impact on the outcome. As a result, this brings about the necessity for the mediators support additional training before they involve children in mediation. It is important to highlight that the way mediators address *salient issues* in mediation, such as the identification of the needs of mandatory mediation, inclusion of children in mediation, child and spousal abuse situations, manifested pathological behavior from the part of one of the disputants, determines the effectiveness of resolving family disputes, confirming the fourth hypothesis of the study.

However, one must borne in mind that it is impossible to conceive a search that can measure the intrinsic value of the mediation process, because it is too complex and includes too many factors.

Interestingly, during the eighties, the researchers evaluated the mediation especially in terms of percentages in the reached agreements, and the disputants levels of satisfaction. Nowadays, there is more attention to the outcomes in the long term, to different aspects of the role of the mediator, and to models of practice currently in-use. Moreover, some researchers argue that mediation should consider long-term sessions for disputants, rather than focusing on the resolution of the dispute in the short term (Walker and Hornick, 1996). Is it reasonable, however, to expect the mediators resolve the conflicts that accompany the

double failure, address the needs of children, attempting to resolve the financial and property disputes, and also individually assist disputants in their long-term psychological recovery? If one agrees to all of these objectives, then, this produces important implications for the preparation of the mediators, and the level of funding needed. From the other hand, may the mediation outcomes justify the continued commitment to its further development?

Finally, the findings of the research reveal that the *effectiveness of mediation* does not only depend on *mediator's competence* of working methods, but it also depends on *nature of conflict, social-cultural context, and disputants' individual characteristics*, by confirming the main hypothesis of the study. In addition, the findings reveal that the recent development in the mediation field, has affected the quality or the effectiveness of mediation service in terms of models of mediation, practice issues, and strategies in the field. In that event, a more elegant and cultivated systematic interpretation of family mediation working methods is needed, in order to enhance the effectiveness of family mediation. Also, a more clarified classification of the models/eclectic approaches to practice is needed, when taking into account nature of conflict, social-cultural aspects, parties' individual traits, power imbalances issues, parties' communication/negotiation skill level, etc. Consequently, having a more sophisticated strategy for resolving family disputes, this could enhance the efficiency of positive outcomes in mediation.

As a conclusion, in terms of mediation in general, and family mediation in particular, what works for one country may not work for another. Trying to provide unifying principles for a multitude of countries is, at the very least, challenging. Having different perspectives from different realities may help in identifying practices that have in common

the potential for being successful, by developing clarified practice models, and new strategies which may enhance the efficiency of mediation, despite the nature of conflict, individuals' characteristics, and problems in general. Whether family mediation in its mitigated form or not is one of these successful practices, will depend on a series of factors, such as legal and historical background, legislative will and openness to change. However, having a good and clear regulatory framework is the first step to creating and developing a culture and practice of family mediation. Finally, having a clear idea in creating new strategies of practice, and training qualifications, requires not only the legislative willingness to change, but also the implementation of these mediation standards of practice in the field.

7.2. RECOMMENDATIONS

- A definition of mediation as an alternative solution to the Civil Code and the Code of Civil Procedure would be necessary to give proper seriousness of alternative conflict resolution through mediation.
- The terms of limitation should be suspended while cases of divorce issues are being handled by the mediators.
- Taking as an example the Italian practice of implementing elements of mandatory mediation as an alternative conflict resolution through mediation, before conflict dealt with by the court, it will help to increase the issues to be resolved through mediation.
- Making reference to the Italian practice with regard to the new article 342-ter of the *Civil Code*, which provides for the judge, in issuing protecting orders, the power to

order the intervention of social services or a family mediation centre, there should be a discretionary power that the Albanian judge can use without consent of the parties.

- National Chamber of Mediation should provide additional training sessions for judges to provide guidelines about cases which are suitable or non-suitable for mediation, and also to provide the latest information with regard to sensitive issues, such as screening for child/spousal abuse cases. Increasing the number of training sessions of judges in the field of mediation, will increase the number of issues referred in mediation.
- Albanian National Chamber of Mediation should promote mediation through advertising, and through other means, to encourage all those individuals who wish to solve conflict disputes through mediation before going through court procedures.
- The Albanian National Chamber of Mediation should set out clear goals and objectives for mediation services.
- Further research on family mediation to measure the effectiveness of the service should be conducted.
- The National Chamber of Mediation should ensure ongoing training sessions for their mediators to provide with the latest information on delicate issues such as screening for pathological behavior cases. This training should include not only mental health practitioners, but also social assistants, and lawyers to increase further knowledge on the mediated and non-mediated cases.

- The National Chamber of Mediation should promote ongoing training opportunities for future mediators. Trainings sessions should encourage not only judges, lawyers, but also mental health practitioners. Special attention is given to future mediators who hold a Master Degree in Counseling, and who wish to work with high conflict parents with regard to custody issues. Those practices should include partnerships with accredited educational organizations.
- Training sessions should include specific programs with regard to models of practice in the field of mediation. Novice mediators should be encouraged to gain knowledge about the most recognized mediation approaches, such as structural model, transformative model, therapeutic model, narrative model etc. Eclectic approach of mediation is encouraged to be used in mediation, since it best suits each individual or family in terms of nature of conflict, and disputants' characteristics.
- The National Chamber of Mediation, should provide strict criteria of qualifications necessary for an individual to mediate family conflict disputes. These criteria of qualification should include both academic qualifications, and professional experience to mediate family dispute matters. In addition, National Chamber of Mediation should also set requirements for mediators to acquire general knowledge of family law.
- Both academic and family law professionals should contribute to further research on family mediation, and provide with new academic programs in the field at University level, including Law and Psychology department.

- National Chamber of Mediation should support additional training for senior mediators in mediating financial and property issues.
- Mediators should consult with mental health practitioners or social services on spousal/children abuse before treating domestic abuse cases in mediation.
- The principle of confidentiality should be clear: there should be a code of practice with regard to the involvement of children in mediation.
- The National Chamber of Mediation should ensure ongoing training sessions for their mediators to keep them up to date on emerging issues such the inclusion of children in mediation. Mental health practitioners should support additional training before they involve children in mediation.
- Mediators' experiences and skills regarding the work with children should be more shared.

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Interview questions

Appendix A

1. How long have you been practicing mediation?

2. Which has been most often the purpose of the role as a mediator with conflicting parties?

Set aside any option from 1 (more) to 4 (less):

Facilitating communication between parties in conflict, enabling the parties improve their communication skills

Encouraging the conflicting parties to find a solution themselves

Negotiation of an agreement between the parties in conflict

Preparing and offering a solution to the conflicting parties

All the above have been the purpose of my actions

None of the above has never been the purpose of my actions

3. Which has been the strategy that you use most often with conflicting parties? Set aside any option from 1 (most often) to 4 (rarely) and 5 (I applied the same), 6 (I have not applied neither of them).

Pressuring the parties to the conflict

Integrating positions of the conflicting parties

Taking a passive position

I applied equally to all of them

I have not implemented any of them

I cannot say

4. What ethical principles of practice are you using in mediation?

5. How these ethical principles interlock with each other as well as with other aspects of practice?
6. Specifically, how do you understand the principle of impartiality?
7. Is impartiality essential to the achievement of trust, duty, skill or others?
8. Is impartiality related to gender/social-cultural dimensions?
9. Is impartiality related to models of practice?
10. How the principle of party control and mediator authority can occur in practice?
11. How do you understand the principle of neutrality?
12. How do you make a difference with regard to neutrality and impartiality in practice?
13. Is neutrality related to parties' individual characteristics?
14. Specifically, is neutrality associated to parties' self-determination?
15. Could neutrality be dangerous if asserted in situations of manifest inequality?
16. Which models of practice are you using in your work?
 - Facilitative mediation
 - Evaluative mediation
 - Structured negotiation model
 - Structured approach
 - Shuttle/caucus mediation
 - Transformative mediation
 - Therapeutic model of mediation
 - Transitional-symbolic model
 - Feminist-informed approach
 - Systemic approach

Narrative mediation

17. Which models of practice are you using in your work? Does the use of those models depend on context, nature of conflict or disputants individual characteristics?

18. In what way, your role as a mediator, practice styles and techniques are expressed in practice?

19. Are you in favor of mandatory or voluntary mediation?

20. If you are in favor of voluntary mediation, then, how important is voluntariness of participation in mediation?

21. How do you identify the needs of mandatory mediation?

22. Is mandatory mediation recommended in spousal/child abuse situations?

23. What about of manifest pathological behavior?

24. Do you agree that children should participate in mediation?

25. If you agree, what are the benefits for including children in mediation, and how important is the inclusion of children in the mediation process?

26. In case you disagree, what are the disadvantages for including children in mediation?

Pyetjet e intervistës

Shtojca A

1. Sa kohë keni që praktikoni ndërmjetësimin?

2. Cili ka qenë më shumë qëllimi i rolit të ndërmjetësit të palëve në konflikt? Vendosni mënjane çdo opion nga 1 (më shumë) në 4 (më pak):

Lehtësimi i komunikimit midis palëve në konflikt, duke u mundësuar palëve të përmirësojnë aftësitë e tyre të komunikimit

Nxitja e palëve në konflikt që të gjejnë vetë një zgjidhje

Negocimi i një marrëveshjeje midis palëve në konflikt

Përgatitja dhe ofrimi i një zgjidhje për palët në konflikt

Të gjitha këto kanë qenë qëllimi i veprimeve të mia

Asnjë nga këto nuk ka qenë kurrë qëllimi i veprimeve të mia

3. Cila ka qenë strategjia që përdorni më shpesh me palët në konflikt? Vendosni mënjane çdo opion nga 1 (më shpesh) në 4 (rrallë) dhe 5 (kam aplikuar njësoj), 6 (unë nuk kam aplikuar asnjë prej tyre).

Ushtrimi i trysnise mbi palët në konflikt

Integrimi i pozitive të palëve në konflikt

Duke marrë një pozicion pasiv

I aplikuar në mënyrë të barabartë për të gjithë ata

Nuk kam zbatuar asnjë prej tyre

Nuk mund të them

4. Cilat parime etike të praktikës zbatoni në ndërmjetësim?

5. Si lidhen këto parime etike me njëri-tjetrin, si edhe me aspekte të tjera të praktikës?

6. Në mënyrë specifike, si e kuptoni parimin e paanshmërisë?
7. A është paanshmëria e domosdoshme në krijimin e besimit, detyrës, apo aftësive tuaja?
8. A është e lidhur paanshmëria me dimensionet gjinore/sociale-kulturore?
9. A është e lidhur paanshmëria me modelet e praktikës të ndërmjetësimit ?
10. Si manifestohen në praktikë parimi i kontrollit të palëve dhe autoriteti i ndërmjetësit?
11. Si e kuptoni parimin e neutralitetit?
12. Si e bëni dallimin midis parimit të neutralitetit dhe paanshmërisë në praktikë?
13. A është neutraliteti i lidhur me karakteristikat individuale të palëve?
14. Specifikisht, është neutraliteti i lidhur me vetëvendosjen e palëve në ndërmjetësim?
15. A mundet që neutraliteti të ketë risk nëse vërtetohet në situata të pabarazisë së manifestuar?
16. Cilat modele praktike përdorni në punën tuaj?
 - Ndërmjetësim lehtësues
 - Ndërmjetësim vlerësues
 - Modeli struktural-negociues
 - Modeli struktural
 - Ndërmjetësimi caucus
 - Ndërmjetësim transformues
 - Modeli terapeutik i ndërmjetësimit
 - Modeli simbolik tranzicional i ndërmjetësimit
 - Modeli feminist-informues i ndërmjetësimit
 - Modeli sistemik i ndërmjetësimit
 - Ndërmjetësim narrativ

17. A lidhet përdorimi i modeleve të ndërmjetësimit me kontekstin, natyrën e konfliktit apo karakteristikat individuale të palëve në konflikt?
18. Në ç'mënyrë, roli juaj si ndërmjetës, stilet dhe teknikat e ndërmjetësimit manifestohen në praktikë?
19. A jeni në favor të ndërmjetësimit të detyrueshëm apo vullnetar?
20. Nëse jeni në favor të ndërmjetësimit vullnetar, atëherë, sa i rëndësishëm është vullneti i pjesëmarrjes së palëve në ndërmjetësim?
21. Si identifikoni nevojat për një ndërmjetësim të detyrueshëm?
22. A rekomandohet ndërmjetësimi i detyrueshëm në situata kur ndodh abuzim ndaj bashkëshorteve/fëmijëve në familje?
23. Cili është perceptimi juaj lidhur me sjelljen e manifestuar patologjike të njërës prej palëve në konflikt?
24. A mendoni se pjesëmarrja e fëmijëve sjell avantazh tek ata në ndërmjetësim?
25. Nëse pajtoheni me këtë ide, cilat janë avantazhet për përfshirjen e fëmijëve në ndërmjetësim dhe sa e rëndësishme është përfshirja e fëmijëve gjatë procesit të ndërmjetësimit?
26. Në rast se nuk bini dakord, cilat janë disavantazhet për përfshirjen e fëmijëve në ndërmjetësim?

Consent form

Appendix B

Please read this form, and feel free to ask any questions before agreeing to participate in this study.

I hereby, Klodiana Rafti, invite you to become part of a research study. This study will explore family mediation, the working methods of family mediators, and the actual process of mediation from mediators' own point of view. You will be interviewed specifically about the working methods in the field, and how this may influence the mediation process in the attempt to solve family disputes. The inclusion in this study is voluntary, so you can choose to participate or not. I'll explain to you what this study is about, and please feel free to ask any questions before agreeing to participate in this research.

I am interested in learning more about the working methods in family mediation field, and its effects on conflict resolution. The whole procedure will take some of your time. All information will remain confidential. The benefits of this research is related to my contribution to research in the field of mediation.

If you consent to take part in this study, you have the right to withdraw at any time you want. If you approve the participation in this study, please answer the following questions;

Age: _____

Gender: _____

Years of experience in mediation _____

Academic background: _____

Professional background other than being a mediator: _____

Statement of consent:

"I have read the above information. I have clarified all my questions and concerns about this study, and I am over 18 years old. I give my full consent to participate in the study".

Signature of participant

Date

Name of researcher

Signature of researcher

Date

List of graphics

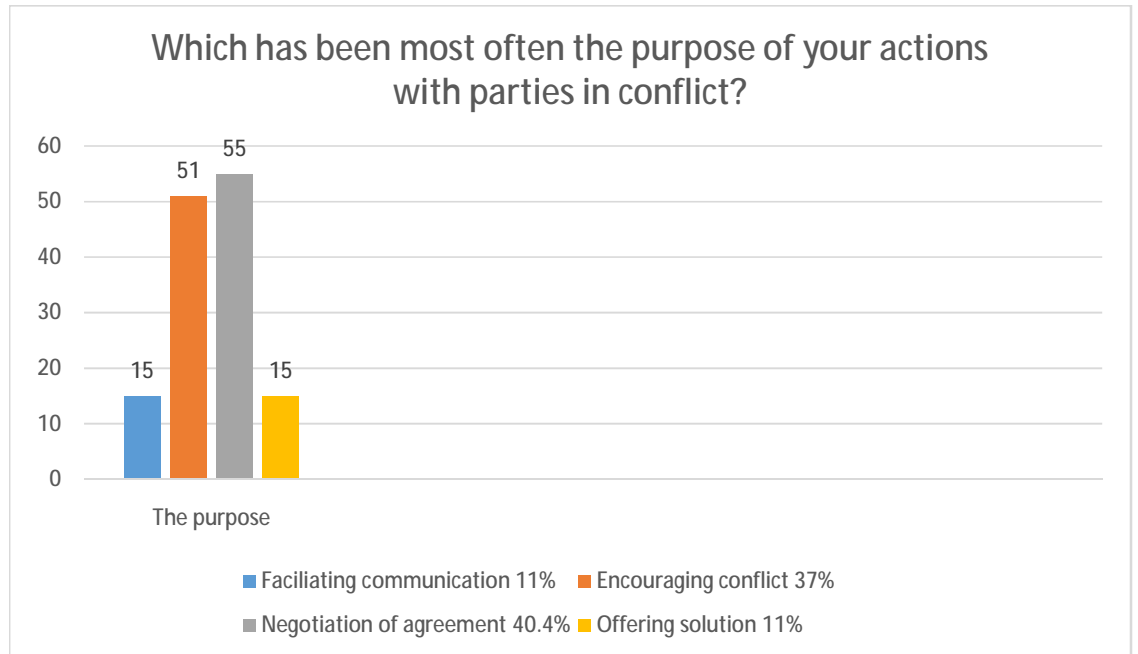
Appendix C

Table. 1

Interview	Age of the respondents	Work experience in the mediation field (in years)	Academic background (Colleges, Universities, qualifications)	Job position (except of being a mediator/member of the Albanian National Chamber of Mediation)
Number 1	40	2 years	Law School	Lawyer, Lecturer
Number 2	43	6 years	Law School	Lawyer, Lecturer
Number 3	30	3 years	Law School	Lawyer, Lecturer
Number 4	36	4 years	Psychology	Psychologist
Number 5	37	2 years	Law School	Lawyer
Number 6	45	3 years	Languages and Literature	Lecturer
Number 7	48	8 years	Psychology	Psychologist, Mediation trainer
Number 8	49	8 years	Law School	Lawyer, Lecturer, Chairwoman of the National Chamber of Mediation
Number 9	46	7 years	Law School	Lawyer
Number 10	37	3 years	Law School	Lawyer
Number 11	34	5 years	Law School	Lawyer

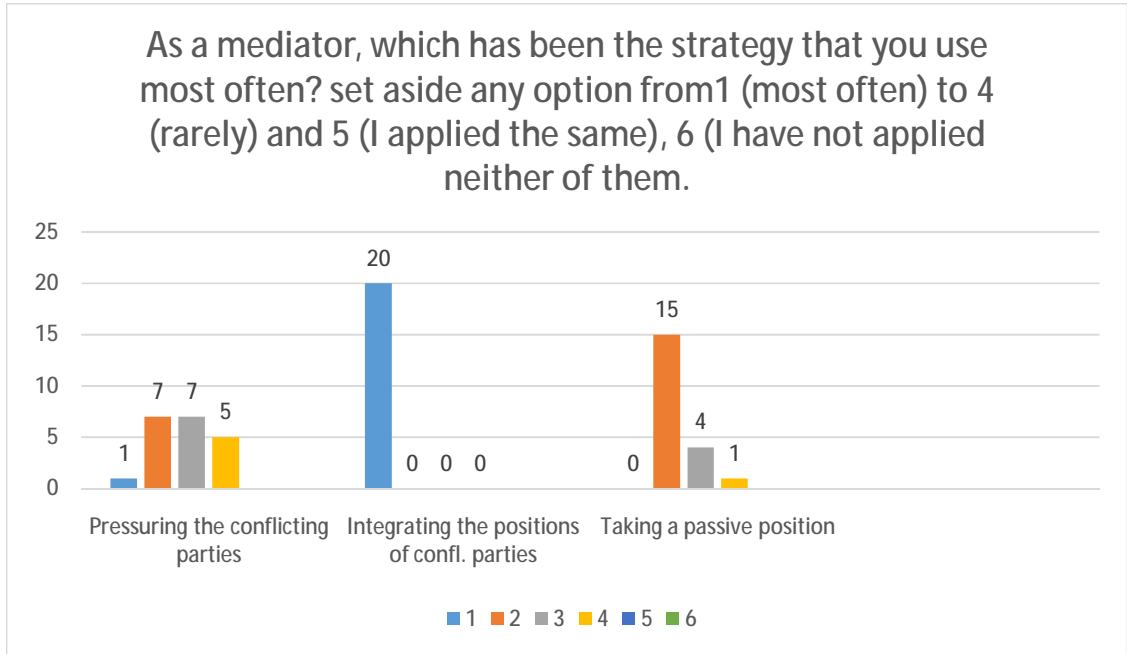
Number 12	37	4 years	Law School	Lawyer
Number 13	38	5 years	Law School	Lawyer, Lecturer
Number 14	44	6 years	Law School	Lawyer
Number 15	50	5 years	Law School	Lecturer
Number 16	49	2 years	Law School	Lawyer
Number 17	36	4 years	Law School	Lawyer
Number 18	36	2 years	Law School	Lawyer
Number 19	40	3 years	Law School	Lawyer
Number 20	41	4 years	Law School	Lawyer

Table. 2



Source: the Author

Table. 3



Source: the Author