

Perspectives of out-of-court settlement of family (civil) disputes in the Czech Republic

Abstract

The dissertation thesis focuses on the latest instruments of out-of-court dispute resolution in the Czech Republic. I explain the concept of ADR, which traditionally involves reconciliation, mediation, and arbitration, and I outline other possible methods emerging from innovative approaches to working with families. The dissertation thesis focuses on the right of collaboration (CL/CP method) and complementary and integrative practice in the sphere of private law. I analyze the approaches of the German “Cochem model” promoted by the Office for International Legal Protection of Children, and I present an example of good practice at the District Court in Nový Jičín. I analyze these methods of out-of-court dispute resolution from the point of view of current legislation in the Czech Republic, and I note the influence of international documents on their existence and application in practice. I consider the role of law and lawyers in solving family disputes and, above all, the importance of new legislation of private law in out-of-court dispute resolution. I address the issue of the need for public power to intervene into family life in cases of children at risk due to parental conflict as well as the role of bodies for the social and legal protection of children in representing their interests in guardianship proceedings. I emphasize the role of an educated judge as a person who can utilize all legal instruments including his/her authority to lead, in particular, the parents of minors to reconciliation and agreement. I draw attention to the conceptual disparity between the new private legislation of material law, including the modification of the special court proceedings and of existing procedural rules based in the 1960’s.

I see the perspective of the further development of out-of-court dispute resolution in a collaborative, complementary, and integrative approach, involving the mutual cooperation of all actors involved in solving family crises, i.e. parents, lawyers, mediators, social service providers, bodies for the social and legal protection of children, and the judiciary, and in the consistent application of principles resulting from international obligations, in particular the Convention on the Rights of the Child, the European Convention on the Exercise of Children’s Rights, and the European Convention on Contact concerning Children, where the child is perceived not as an object but as an entity of rights with an inalienable right to be heard in all judicial or administrative proceedings that affect him, recognizing that the extent of application of out-of-court methods of dispute settlement in practice is conditioned by the

willingness of the parties to the dispute to assume personal responsibility for resolving it and for respecting the rights of the other parties involved.

Keywords: mediation, collaborative law, complementary practice