

Resumé

Mediation in the Context of Modern Europe

Keywords:

- mediation
- Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
- snapshot of mediation-related legislation in Europe
- mediation as an alternative dispute resolution method vs. obligatory pre-trial procedure

The purpose of this thesis is to provide an overview of initiatives undertaken over the last decades by international organisations (chapters 1.1 and 1.2) and the European Communities (chapter 1.3) in the area of alternative dispute resolution methods, with special focus on mediation, defined as a process whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator.

The thesis (mainly chapter 1.3) looks into the initiatives and processes within the EC that led to the adoption of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, considered a groundbreaking piece of legislation, destined to shape the mediation-related national legislations across the territory of the European Union and accelerate the full integration of mediation into the legal systems of individual EU Member States.

A separate section of the thesis (chapter 2) provides a snapshot of national mediation-related legislation across the territory of the European Union as of July 2009, including information on the practical use of mediation in individual Member States.

Further chapters are devoted to an analysis of the current legal status and practical use of mediation in the Czech Republic (chapter 3) and Belgium (chapter 4), with special focus on the possible impact of mediation on the quality of justice, as perceived by the parties to a dispute and the public at large. Chapter 5 reviews a range of regulatory issues related to

mediation and their coverage in Directive 2008/EC, Belgian law and current Czech legislative proposal.

A separate section (chapter 6) is devoted to exploring the current and tentative role of mediation within the legal system, with special focus on the emerging debate about the possibility (and justification) of legislating on obligatory recourse to mediation for certain categories/types of disputes.

The main conclusions of the thesis corroborate the initial assumption that while mediation represents a fast, highly efficient and amicable method of dispute resolution, it can only become a real alternative to judicial proceedings (for suitable cases), if it is firmly anchored in the legal system and if its links to preceding/simultaneous/subsequent judicial proceedings are clearly defined in relevant legislation. At the same time, mediation should remain an alternative to judicial proceedings for those who wish to use it. It should not be rendered obligatory and certainly should not be regarded as a means of bailing out the state from its obligation to provide access to justice via courts.

Based on the "explosive" legislative development in this area across Europe in 2007-2009, it can be reasonably concluded that the impact of the legislative initiative of the EC (culminating in the adoption of Directive 2008/EC) has far exceeded the scope of the Directive as such (and its legal value) and has significantly accelerated the integration of mediation into national legal systems across Europe.