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TOWARDS THE FORTHCOMING AMENDMENT OF THE PEACEFUL DISPUTE RESOLUTION ACT: IS THERE A NEED TO PROFESSIONALISE THE MEDIATION SERVICE?*****

Professions play a pivotal role in shaping public policy and delivering public services to citizens, grounded in specialised theoretical knowledge and lex specialis norms. In legal scholarship, professionalisation is understood as a process through which an occupation ceases to be performed by individuals without formal training and becomes characterised by more than just technical expertise. Currently, there are almost 200 regulated professions in Croatia. However, the profession of mediator is not included in that list. Since the regulation of professions primarily arises from their

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importance in safeguarding public needs and the common interest, this paper aims to examine whether the time has come to professionalise the role of mediators in Croatian legal framework. This is done, firstly, by analysing the evolution of the legal status of mediators in Croatia and the new Peaceful Resolution of Disputes Act, and, secondly, by examining the necessary requirements for professionalisation of the mediation service.

Key words: *Mediation. – Peaceful Dispute Resolution Act. – Professionalisation of Legal Services. – Regulatory Framework for Mediators. – Croatian Legal Framework.*

1. CONCEPTUAL FRAMEWORK – THE NOTION OF PROFESSION

In legal doctrine, membership in a given profession is institutionalised through professional associations that impose restrictions on entry and practice. Admission to such an association requires the attainment of relevant educational qualifications and the successful completion of professional examinations, and membership in the association constitutes a prerequisite for the lawful exercise of the profession. These mechanisms engender a specific professional culture – shared values and ethical standards – which distinguish members of the profession from other members of society.[1]

Theoretical analyses classify professions into three categories. The first group comprises traditional or classical professions (such as lawyers and physicians), which are the oldest and are characterised by a high degree of authority and decision-making autonomy. The second group includes the engineering professions (e.g., architects, engineers),

1 Jasenka Džinić, Alen Musa, *Europska regulacija profesija i komore u Hrvatskoj: razvoj upravne profesije i drugih profesija u javnoj upravi (priručnik)*, Institute for Public Administration, Zagreb 2012; Ivan Koprić, "*Suvremeno obrazovanje za javnu upravu*", *Annals of the Croatian Political Science Association: Journal of Political Science* 1/2007, 375–395; Ivan Koprić, Gordana Lalić Novak, Goran Marčetić, *Komparativna javna uprava*, Zagreb 2015, 1–190; Ivan Koprić, Goran Marčetić, "*Obrazovanje upravnog osoblja: iskustva i izazovi*", *Croatian and Comparative Public Administration: Journal for Theory and Practice of Public Administration* 3–4/2002, 515–566; Ivan Koprić, *Prilagodbe hrvatske javne uprave europskim standardima*, *Yearbook of the Academy of Legal Sciences of Croatia* 1/2014, 8–39.

in which professional autonomy is comparatively more limited due to the prominent role of managerial oversight in the decision-making process. The third group consists of occupations that have only subsequently attained the status of a profession (such as social workers and nurses).[2]

At the practical level, it is important to emphasise that, as of 1 July 2013 – the date of Croatia's accession to the European Union – the provisions of the Regulated Professions and Recognition of Foreign Professional Qualifications Act[3] began to apply. The purpose of this Act is to implement Directive 2005/36/EC on the recognition of professional qualifications[4] and to define what constitutes a regulated profession, which means that the conditions for practising such a profession are prescribed by a specific law, and that the performance of a regulated profession requires the acquisition of professional qualifications following formal education (including, for instance, work experience, a licence, and other relevant credentials).[5]

Currently, there are slightly fewer than 200 regulated professions in Croatia, as recorded by the Agency for Science and Higher Education.[6] However, the profession of conciliator/mediator is not

2 Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor,* University of Chicago Press, Chicago 1988, 86–91.

3 Regulated Professions and Recognition of Foreign Professional Qualifications Act, *Official Gazette of the Republic of Croatia,* No. 82/15, 70/19.

4 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance), *Official Journal of the European Union*, 30 September 2005, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC and Regulation Official Journal of the European Union No 1024/2012 on administrative cooperation through the Internal Market Information System, *OJ* L 354, 28 December 2013.

5 Robert Bush, Alan Baruch, Joseph Patrick Folger, The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition, Jossey-Bass, San Francisco 1994, Nils Christie, "Conflict as Property", *British Journal of Criminology* 13/ 1977, Vesna Dasović Marković *et al., Medijacija – Priručnik za obuku medijatora*, Udruženje medijatora u Bosni i Hercegovini, Banja Luka 2004, Tanja Džamonja Ignjatović, Nevenka Žegarac, *Medijacija – koncepti i konteksti*, Centar za primenjenu psihologiju, Beograd 2006.

6 Agency for Science and Higher Education is a specialised institution responsible for quality assurance in science and higher education. It was established by a government regulation adopted by the Government of the Republic of

listed among those professions in the official records maintained by the Agency.[7]

2. THE EVOLUTION OF THE LEGAL STATUS OF MEDIATORS IN CROATIAN LAW

Alternative dispute resolution encompasses a range of procedures conducted outside of the judicial system, offering alternatives to formal court proceedings, which remain the most common method of resolving contentious legal relationships in Croatia. These procedures usually involve a neutral third party whose role and degree of influence may vary depending on the type of procedure involved. In the Croatian legal framework, particularly in the field of civil law, alternative dispute resolution mechanisms primarily include mediation,[8] arbitration,[9] court settlement,[10] and conciliation in employment,[11] family,[12] and consumer disputes.[13]

Croatia for the purpose of carrying out expert tasks related to the evaluation of scientific activities and higher education, as well as matters related to the recognition of diplomas and qualifications. See: *https://www.azvo.hr/*, 12 June 2025.

7 See on the official website: *http://reguliraneprofesije.azvo.hr/hr/profesije/?search=miritelj*, 12. 6. 2025.

8 Mediation Act, *Official Gazette of the Republic of Croatia, No.* 18/11 repealed by the enactment of the Peaceful Resolution of Disputes Act (Art 32).

9 Arbitration Act, *Official Gazette of the Republic of Croatia*, No. 88/01.

10 Labour Act, *Official Gazette of the Republic of Croatia*, Nos. 93/14, 127/17, 98/19, 151/22, 46/23 and 64/23 (Art. 206); Civil Procedure Act, *Official Gazette of the Republic of Croatia*, Nos. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22 and 155/23 Arts. 433–437.

11 In judicial practice (Decision of the Supreme Court of the Republic of Croatia, No. Rev-331/93 of 14 April 1993, *Selected Decisions of the Supreme Court of the Republic of Croatia* 1994, No. 1, p. 295), a court settlement is considered a hybrid agreement of both procedural and substantive civil law character. Therefore, its validity is assessed in accordance with the rules of both civil procedural law and substantive civil law. See Civil Procedure Act, *Official Gazette of the Republic of Croatia*, Art. 95; Obligations Act, *Official Gazette of the Republic of Croatia*, Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23, Arts. 150–159.

12 Family Act, *Official Gazette of the Republic of Croatia*, Nos. 103/15, 98/19, 47/20, 49/23 and 156/23, Part Seven.

Although certain forms of conciliation existed under the previous system, the modern model of mediation was introduced in Croatia in the late 1990s by both domestic and international non-governmental organisations in the aftermath of the armed conflict in the former Yugoslavia. These initiatives, rooted in community-based reconciliation and conflict resolution, were largely altruistic in nature.[14]

From a normative perspective, the Civil Procedure Act[15] provided for the possibility that the court may propose mediation to the parties, as well as for the parties to jointly request that their dispute be resolved through mediation. This provision marked the first formal step towards the creation of a legal framework for mediation in Croatia. Nonetheless, parties often lack adequate knowledge of the mediation procedure. At the preparatory hearing, the judge is obliged to inform the parties of the option to engage in mediation. If the judge determines that the dispute is suitable for such a method, they are encouraged to explain the benefits of mediation and to engage the parties in a dialogue concerning the advantages and disadvantages of this form of dispute resolution. This stage also provides the court with an opportunity to assess the relationship between the parties, their willingness to pursue an amicable resolution, and their reasons for or against initiating mediation. However, the experience of judges and court staff involved in informing and referring parties to mediation suggests that the parties' trust in and perception of the mediation process is crucial to its success and further development, which, yet, has not yielded the anticipated results in civil litigation.

Mediation was initially regulated by the Mediation Act adopted in 2003, which defined the mediation procedure, its underlying principles, the role of the mediator in the process, as well as relevant procedural deadlines. This legislative act formally introduced voluntary

13 Consumer Protection Act, *Official Gazette of the Republic of Croatia*, Nos. 19/22 and 59/23, Art. 117.

14 Ljiljana Milutinović, *Mediability of Disputes – A Practical Guide for Judges*, International Finance Corporation, Ministry of Justice of the Republic of Serbia, Belgrade 2007, Vesna Mišić *et al*., *Sporazum o nagodbi u postupku medijacije kao izvršna isprava*, Association of Mediators in Bosnia and Herzegovina, Justice Reform Project Canada – Bosnia and Herzegovina, Banja Luka 2009.

15 Through its articles 35, 36, 37, and 38, the 2019 Amendment to the Civil Procedure Act continues to develop the institution of mediation as one of the alternative dispute resolution mechanisms.

out-of-court mediation into the Croatian legal system. Following the enactment of this primary legal framework, a series of implementing by-laws were adopted to address specific issues, including the referral of parties to mediation, the establishment and maintenance of the Register and List of Mediators, the adoption of a Code of Ethics for Mediators, as well as provisions governing liability and disciplinary responsibility, remuneration and compensation of mediators, and mediator training.

Despite these legislative developments, the field of mediation in Croatia continues to face a number of persistent challenges. These include limited demand for mediation, a regulatory framework that lacks sufficient incentives and effective sanctions for failing to consider mediation, inadequate institutional capacities of mediation service providers, and, equally important, insufficient infrastructure for the sustainable training of mediators, judges, and legal professionals. Given that the normative framework does not provide any form of sanction for the failure to consider mediation, nor does it offer meaningful incentives to encourage parties to engage in mediation, it is not surprising that mediation as a peaceful method of dispute resolution has not been embraced to a satisfactory degree within the Croatian legal order. This is particularly so considering that mediation remains a relatively novel concept in the domestic legal culture. The general impression is that the full potential of alternative dispute resolution has yet to be realised, both in terms of enhancing access to justice for citizens, and in terms of alleviating the excessive burden on the judiciary by diverting cases that could be effectively resolved through mediation.[16]

16 For more on the background and legislative history of the Mediation Act (Official Gazette, No. 163/2003), the relevant international sources and recommendations, as well as a comparison with the UNCITRAL Model Law, see: Alan Uzelac, "*Zakon o mirenju – komentarske bilješke*", in: A. Uzelac; V. Gotovac; B. Blažević, *et al.*, *Mirenje u građanskim, trgovačkim i radnim sporovima,* Zagreb 2004, 33–44.

3. THE NEW PEACEFUL RESOLUTION OF DISPUTES ACT – A STEP TOWARD THE PROFESSIONALISATION OF THE MEDIATION SERVICE

On 7 June 2023, Croatian Parliament adopted the Peaceful Resolution of Disputes Act. The Act was published in the Official Gazette, No. 67/2023, and entered into force on the eighth day following its publication, with the exception of the provisions of Articles 7 and 8, Article 9(3) and (4), Article 10(3), and Article 19(2), which will enter into force upon the commencement of the operation of the Centre for the Peaceful Resolution of Disputes (hereinafter: the Centre). Through the adoption of the Peaceful Resolution of Disputes Act, several key instruments of European Union law are transposed into the Croatian legal order, including 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 (*OJ* L 136/3), Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (*OJ* L 128/8), and Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (*OJ* L 305/17). The purpose of the Act is to create the necessary legal and institutional conditions for the amicable settlement of disputes, to prevent the unnecessary initiation of judicial proceedings, and to ensure a balanced relationship between the process of peaceful dispute resolution and judicial proceedings.

The Act introduces organisational and procedural provisions that establish a general framework for the peaceful resolution of disputes in Croatia, with the system being supported by the Centre. The Act replaces the previous Mediation Act and, in addition to regulating mediation, also governs structured negotiations, thereby providing the basis for a comprehensive legal framework encompassing all forms of alternative dispute resolution, with the exception of arbitration. The majority of the provisions of the Act have already entered into force and regulate, in a revised manner, the conduct of certain categories of disputes. The purpose of the Act is to create conditions conducive to the amicable settlement of disputes, to avoid the unnecessary

initiation of legal proceedings, and to ensure a structured relationship between the peaceful resolution procedure and judicial proceedings. Peaceful dispute resolution may be conducted either prior to or during the course of litigation, and in certain matters, parties are obliged to attempt an amicable settlement before initiating civil proceedings. Where, in the course of litigation, the court determines that the parties have not attempted to resolve the dispute referred to in Article 9 (1) of the Act through peaceful means prior to the initiation of proceedings, and that no justified reason exists under Article 9 (5) or (6) of the Act, the court shall, upon receipt of the statement of defence, instruct the parties to attend an informational session on mediation within 15 days. The purpose of this session is to encourage the parties to consider resolving the dispute through mediation.

The Centre for the Peaceful Resolution of Disputes is a public institution established for the purpose of achieving the objectives set out in the aforementioned Act. Its responsibilities include promoting the development of a culture of peaceful dispute resolution and the use of procedures regulated by the Act; granting and revoking authorisation to mediation institutions; approving training programmes for specific types of peaceful dispute resolution; conducting, either independently or in cooperation with mediation institutions, professional training and continuing education for mediators; deciding on the registration and deregistration of mediators in the Register of Mediators; maintaining the Register of Mediators and the Register of Mediation Institutions, and issuing certificates from those registers; ensuring effective cooperation with the judiciary and mediation institutions; facilitating the assignment of cases to mediation institutions; appointing, at the request of the parties, persons to conduct the informational session on mediation and the mediation itself; conducting the informational session and mediation, in cases where no other institution can provide the service within a reasonable time frame and at lower cost; issuing certificates confirming that mediation was attempted; systematically collecting data on peaceful dispute resolution procedures; publishing information on dispute resolution methods, mediators, and mediation institutions; and assisting parties in choosing an appropriate dispute resolution method.

Mediation institutions are entities that are either expressly authorised by the Act or have obtained approval from the Centre to:

(i) conduct training for mediators; (ii) conduct training for trainers; and/or (iii) carry out mediation procedures. The Centre shall grant approval for mediator training or trainer training to an institution that meets the following minimum requirements: at least three qualified individuals authorised to conduct training, adequate premises for training delivery, and adopted training programmes. Approval to carry out mediation shall be granted to an institution that has at least three registered mediators and appropriate facilities for conducting mediation. If the Centre subsequently determines that a mediation institution no longer fulfils the statutory requirements prescribed by the Act, it shall revoke the previously granted approval. The decision to grant or revoke such approval shall be made by a formal administrative decision of the Centre, against which an appeal may be lodged with the Ministry of Justice. The status of mediator is acquired through registration in the Register of Mediators, which is maintained by the Centre, and is lost upon deregistration from the Register. The Register is public and maintained in electronic form. The Centre issues certificates from the Register, which have the status of official public documents. A person may be entered into the Register of Mediators if they have obtained a certificate of completed mediator training issued by an authorised mediation institution. A registered mediator shall be removed from the Register at their own request or ex officio if it is determined that the conditions for their registration were not met or in the event of death. The Centre shall decide on registration and deregistration by issuing an administrative decision, which may be appealed to the Ministry of Justice. A mediator is under a continuous obligation of professional development. The rules governing registration and deregistration, the maintenance of the Register, and the requirement of continuing professional education shall be prescribed by an ordinance issued by the Minister of Justice. A mediation procedure initiated following a proposal for mediation shall be deemed concluded if a statutory deadline for the filing of a lawsuit applies under a special regulation. The mediator shall notify the Centre when a mediation procedure has commenced. The appointment of a mediator shall be made in accordance with the rules agreed upon by the parties. The parties may jointly determine whether the mediation will be conducted by one or more mediators, and who shall be appointed as mediator. If the parties fail to reach agreement on the number or identity of the mediator(s), they may request that the mediator be appointed by the Centre, a mediation

institution, or another third party. During the mediation process, the mediator is obliged to act with professionalism and impartiality. Any person offered the appointment as mediator must disclose all circumstances that may raise doubts as to their impartiality. After appointment, the mediator is required to inform the parties of such circumstances as soon as they become aware of them, if this was not done earlier. The mediation shall be conducted in the manner agreed upon by the parties. In conducting the proceedings, the mediator shall maintain a fair and equal approach to all parties. The mediator may meet separately with each party. Unless otherwise agreed by the parties, the mediator may disclose information received from one party to the other party only with that party's consent. The mediator may also assist in drafting the settlement agreement and may propose its content.

4. WHAT IS NEEDED FOR THE PROFESSIONALISATION OF THE MEDIATION SERVICE?

As previously noted, doctrinal discussions identify several general characteristics of professions, which include: the permanence of occupation, specialised theoretical knowledge and continuous professional development, organisation into professional associations at the national level, regulation by legal norms, adherence to professional ethics and oversight, and the emergence of a distinct professional culture.[17]

4.1. Why Consider Establishing a Chamber of Mediators?

Civil society, in its broadest sense, also encompasses organisations such as professional chambers. These chambers must function as independent, professional associations operating within a particular field, while simultaneously maintaining developed professional

17 See: Roger Fisher, William Ury, *Getting to Yes – Negotiating Agreement Without Giving In*, Penguin Books, New York 1991, Christopher W. Moore, *The Mediation Process – Practical Strategies for Resolving Conflict*, revised 3rd ed., Jossey-Bass, San Francisco 2003, Lea Rozdeiczer; Alejandro Alvarez de la Campa, *Alternative Dispute Resolution Manual: Implementing Commercial Mediation*, Small and Medium Enterprise Department, The World Bank Group, Washington D.C. 2006, Mira Rozenberg, *Jezik saosećanja*, Zavod za udžbenike i nastavna sredstva, Beograd 2002.

relations with other similar associations and being interconnected with them. Such interrelations enable coordinated action, when necessary, to achieve shared objectives. Believing that the establishment of a Chamber of Mediators would contribute to the development of a culture of peaceful dispute resolution, this section explores the following questions: What is the role of professional associations, and what are the specific features of professional organisations within Croatia's justice system, including their typology? What would be the goals and programmatic principles of a professional association of mediators? And how might such a chamber contribute to the professionalisation of mediation services and to the more effective implementation of a culture of peaceful dispute resolution?

Professional or expert chambers constitute a part of civil society, understood in its broader sense.[18] This distinction is essential to

18 The European Court of Human Rights, in interpreting Article 11 of the European Convention on Human Rights (freedom of association), relies on several key principles: Both formal and informal associations are protected: An association must possess an institutional character – continuity and structure – but it does not necessarily have to possess legal personality. Members of such associations may include both natural and legal persons. Associations are distinct from public-law entities: Professional associations are not state organs, even in cases where membership is mandated by law (e.g., bar associations). Legally constituted trade unions and chambers serve to protect their members within the professional sphere. The activities of the association must be professional in nature: These include defending the rights of members, influencing professional standards, and providing representation before courts or administrative bodies. Commercial activity does not fall within this scope. A professional association is thus a body with an institutional structure – whether formal or informal – primarily dedicated to defending the interests of its members and regulating professional standards. This applies irrespective of whether the association possesses legal personality or whether membership is legally required. Professional associations include trade unions, chambers, and professional organisations that act protectively for their members and establish professional norms. The jurisprudence of the ECtHR provides a clear outcome: the freedom of association guarantees the right of such bodies to internal autonomy (e.g., control over membership), to undertake collective activities (e.g., strikes, negotiations), and to represent members before state authorities. Where the state imposes restrictions – such as prohibiting membership, expulsion, or banning trade union activities – the ECtHR considers such measures within the ambit of Article 11 and evaluates whether the restriction is "prescribed by law" and "necessary in a democratic society." See, Igor Milinković, "Freedom of Association of Judges in Bosnia and Herzegovina", *Zbornik radova Pravnog fakulteta u Nišu* 96/2022, 123–143; David Harris, Michael O'Boyle, Edward

grasp, as the role of such associations in achieving the objectives of civil society, particularly in the domain of public advocacy, can be irreplaceable. This holds true regardless of whether these organisations are established pursuant to a legal obligation (e.g., bar associations or notaries' chambers) or are founded voluntarily, by the will of their members (e.g., judges' associations and similar entities). A common characteristic among these associations is that they are, above all, social rather than political organisations, operating free from ideological or dogmatic influence, and guided by the principles and standards of the profession they represent. This implies that professional associations must adhere to the principles of democracy, the rule of law, constitutionality, and legality – values which both the associations and their members are obliged to promote, independently and through their respective chamber.

4.1.1. Comparative Overview

For the purposes of this paper, we shall provide a concise comparative overview, as such an approach offers a useful foundation for analysing the legal systems of neighbouring countries.

In the legal system of Bosnia and Herzegovina, mediation is regulated by law. The Parliamentary Assembly of Bosnia and Herzegovina has enacted two key legislative instruments applicable throughout the territory of Bosnia and Herzegovina. These instruments serve both an organisational function and regulate substantive and procedural aspects of mediation. They are the Mediation Procedure Act,[19] and the Transfer of Mediation Tasks to the Association of Mediators Act.[20] The latter governs the procedure for transferring mediation-related tasks and designating civil society associations that are authorised to carry out mediation functions in Bosnia and Herzegovina, in accordance with the provisions of the Mediation Procedure Act, and the process of delegating mediation responsibilities to a recognised Association of Mediators.

Bates, Carla Buckley, *Law of the European Convention on Human Rights*, Oxford University Press, Oxford 2023, 713–724.

19 Mediation Procedure Act, *Official Gazette of Bosnia and Herzegovina*, No. 37/04.

20 Transfer of Mediation Tasks to the Association of Mediators Act, *Official Gazette of Bosnia and Herzegovina*, No. 52/05.

In the Republic of Serbia, the legal framework governing the application of mediation is the Mediation in Dispute Resolution Act.[21] It is important to emphasise that the first Mediation in Dispute Resolution Act was adopted as early as 2005. The most significant innovations introduced by the Act included a system of licensing mediators by the Ministry of Justice; the establishment of a Register of Mediators; the creation of a decentralised training system for mediators, through training organisations accredited by the Ministry of Justice; the enforceability of settlement agreements reached through mediation; and a recommended fee schedule for mediators' services, determined by the Ministry of Justice. The Act also prescribes the obligatory training of mediators, with the training programme adopted by the Minister of Justice. With regard to the chamber of mediators, the Act does not provide for its establishment. However, if such a body exists, membership is not mandatory, nor is participation in its activities obligatory.

In the Republic of Slovenia, the Alternative Dispute Resolution in Judicial Matters Act (*Zakon o alternativnem reševanju sodnih sporov*)[22] and the Mediation in Civil and Commercial Matters Act (*Zakon o mediaciji v civilnih in gospodarskih zadevah*)[23] do not prescribe the establishment of a chamber of mediators. Nevertheless, a form of chamber exists, namely the Mediators' Association of Slovenia (*Društvo medijatorjev Slovenije*), although it is not regulated by a specific law, nor is membership compulsory.

4.1.2. Professionalisation and Typologies of Other Chambers

In the continued analysis, the following question necessarily arises: how are the professions of attorneys and notaries, arguably the most comparable to the mediation profession, regulated under Croatian law? Each is governed by a dedicated piece of legislation that regulates, among other things, the conditions for practising the profession, the maintenance of professional registers, disciplinary responsibility, and

21 Mediation in Dispute Resolution Act, *Official Gazette of the Republic of Serbia*, No. 55/14.

22 Alternative Dispute Resolution in Judicial Matters Act, *Official Gazette of the Republic of Slovenia*, No. 97/09 and 40/12

23 Mediation in Civil and Commercial Matters Act, *Official Gazette of the Republic of Slovenia*, No. 56/08.

related matters. What these professions have in common is the existence of a professional chamber, to which the legislator has delegated certain public-law powers. A chamber is an interest-based, independent, and professionally governed organisation comprising members united by a shared professional interest.

Thus, pursuant to the Legal Profession Act[24] (Art. 2) and its accompanying regulations,[25] the Croatian Bar Association is established as an autonomous and independent professional organisation, founded in accordance with the law. The Bar Association decides on applications for entry into the professional register, maintains a unified register, initiates and conducts disciplinary proceedings, and performs other tasks prescribed by law. Membership in the Bar Association is mandatory.

Notaries public*, de lege lata,* could already act, within certain limits, as mediators *sui generis*. In other words, they would have the right to perform such activities only within the scope of their existing legal authorisations, as defined by statutory and subordinate legislation.[26] The Notaries Public Act[27] (Article 9), along with accompanying regulations,[28] stipulates that the Chamber of Notaries is a professional association comprising notaries entered in its official register. It is a non-profit organisation that holds legal personality and exercises powers as defined by law and its statute. Within its scope of competence, the Chamber safeguards the honour, reputation, integrity, and rights of notaries public. It exercises oversight over their work, represents them before state bodies, adopts decisions that are binding for notarial practice, initiates and conducts disciplinary proceedings, maintains the Directory of Notaries, and performs other duties established by law. Membership in the Chamber is compulsory.

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24 Legal Profession Act, *Official Gazette*, No. 9/94–126/21.

25 Statute and Code of the Croatian Bar Association, available at: Code of Attorney Ethics – Croatian Bar Association, *https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Croatia_The_Attorneys_Code_of_Ethics.pdf,* 14 July 2025.

26 Dejan Bodul, Jakob Nakić, "Je li mirenje trebalo staviti u nadležnost javnih bilježnika?" *Novi informator* 6799/2023, 1–3.

27 Notaries Public Act, *Official Gazette, No.* 78/93–57/22.

28 Statute and Code of the Croatian Notaries Chamber, *http://www.hjk.hr/*, 14 July 2025.

Although it has since been repealed, the Enforcement Officers Act[29] also envisaged the establishment of a Chamber of Enforcement Officers, which was to regulate all aspects of the profession, including the terms of appointment, the maintenance of an official register, oversight of professional conduct, and disciplinary responsibility. Membership was mandatory under that law as well.

4.2. HOW TO ENSURE THE SUSTAINABILITY OF THE MEDIATION PROFESSION

The sustainability of employment in the mediation profession depends largely on the provision of adequate compensation, *i.e.*, a proper salary for mediators.[30] It is essential to ensure the financial independence of mediators. Currently, remuneration is governed by subordinate legislation adopted either by mediation centres or institutions, under the assumption that there is sufficient engagement in mediable cases. These subordinate acts are most commonly rules on fees and reimbursement of mediation costs, which stipulate that mediation expenses include the fee for the request for mediation, administrative costs for conducting the procedure, as well as the mediator's fee and expenses. In most cases, the mediator's fee and reimbursement of expenses, as determined by the relevant act of the mediation centre or institution, along with other necessary mediation-related costs, are borne equally by the parties, unless otherwise agreed in the mediation agreement. This, however, brings us to a fundamental issue. It is generally recommended that mediation costs remain significantly lower than those of other forms of dispute resolution.[31] Yet, this objective is increasingly difficult to achieve in light of the rising compensation thresholds in other professions. For instance, on 25 November 2023, a new Attorney Fee Tariff entered into force. Compared to the previous

29 Enforcement Officers Act, *Official Gazette,* No. 139/10, 150/11 and 70/12, Repealed by the Act on Termination of the Enforcement Officers Act, *Official Gazette*, No. 112/12.

30 This differs from the concept of the permanence of judicial office, which implies that a judge cannot be removed from office arbitrarily, but only on grounds established by law or through voluntary resignation.

31 E.g., European Commission for the Efficiency of Justice, "Guidelines for a Better Implementation of the Existing Recommendations", *http://www.coe.int/t/dghl/cooperation/cepej/WCD/Guidelines_fr.asp#*, 19 June 2025).

tariff, the new Tariff/23 introduces numerous and relatively extensive amendments: the number of legal actions qualifying for compensation has been expanded, and the fees for certain actions have increased significantly. In addition, amendments were adopted to the Regulation on the Temporary Notarial Fee Tariff,[32] increasing notarial service fees by an average of 25%. Furthermore, we should recall the relatively recent "white strike" of judges, which raised the question of whether the state had fulfilled its obligation to balance the general/public interest of citizens in an efficient judiciary and the realisation of the rule of law, with the financial integrity of judicial officeholders. Indeed, the exceptionally complex concept of judicial independence necessarily encompasses financial independence. This means that judicial independence must be ensured through adequate financing of the judiciary[33] reflected, among other things, in judges' salaries that correspond to the dignity of judicial office and the burden of responsibility. This form of material security constitutes an important formal guarantee of individual independence of judicial officeholders. Accordingly, if mediators are to perform their duties efficiently and with integrity, adequate financial support is essential which raises the key policy question: Should the state be responsible for financing mediators?

32 Regulation on the Temporary Notarial Fee Tariff, *Official Gazette, No.* 38/94, 82/94, 52/95, 115/12, 120/15, 64/19, 17/23, 139/24

33 See Syracuse Principles on the Independence of the Judiciary, Art. 2: "In order to guarantee its independence, the judiciary shall be provided with the means and resources necessary for the proper performance of its functions."; Consultative Council of European Judges (CCJE), Opinion No. 2(2001), §2: "The CCJE affirms that court funding is closely linked to the issue of judicial independence [...]."; Venice Commission, Opinion No. CDL-AD(2012)014, §95: "[...] Financial independence [...] is one of the key components of both institutional and individual independence of the judiciary. [...]"; OSCE/ODIHR and the Venice Commission, Joint Opinion No. CDL-AD(2011)012, §24; Also see: International Association of Judicial Independence and World Peace (JIWP), Universal (Montreal) Declaration on the Independence of Justice (1983), point 2.41: "A matter of the highest priority for the State shall be to provide adequate resources to enable the judiciary to properly perform its functions, including physical facilities appropriate for preserving judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets."; See also Council of Europe, Committee of Ministers (CoM), Recommendation Rec (2010) 12, Chapter V; and United Nations (1989), Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, Procedure No. 5.

5. INSTEAD OF A CONCLUSION

Through the Peaceful Resolution of Disputes Act the legislator has formally established the conditions for performing the duties of a mediator. Nevertheless, the legal framework still abounds in inconsistencies and vague legal norms, which adversely affect the overall efforts to professionalise the mediation service. Under the current regulations, mediators are not required to be experts in the subject matter of the disputes they mediate. They are not required to hold a university degree or possess a specific number of years of relevant work experience. The adoption of a dedicated competency framework, effectively a catalogue of essential skills that mediators must possess, would provide a sound basis for the professionalisation of the mediation service. Our aim is to advocate for the harmonisation of legislative solutions and to point out to the competent authorities that mediators, in the spirit of our legal system, should be organised into a professional Chamber of Mediators, vested with certain public-law powers, and tasked with promoting a culture of mediation. As demonstrated throughout this paper, all legal professions in Croatia are organised through a chamber-based model. The legal and notarial professions are well-established and professionally organised, and their experience should be used as a reference point. Moreover, such a chamber would also have the authority to evaluate the (un)suitability of an individual to serve as a mediator. In assessing person's suitability, it is necessary to consider their performance of work-related duties throughout their professional life, as well as their overall past conduct and activities. As this is a legally indeterminate concept, any legal provision referring to "unworthiness" would require interpretation, and the legal practitioner applying it would be bound by legal standards established through such interpretation. It would therefore be incorrect to interpret the concept of "unworthiness" on a personal level or to limit it to the meaning it may carry in everyday language. Rather, it refers to a potential legal formulation which, despite any possible negative connotation, does not entail the substantive meaning implied by Article 35 of the Constitution.[34] The assessment of "unworthiness" is not intended to defame, insult,

34 Article 35 of the Constitution of Republic of Croatia, *Official Gazette*, No. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14: "Everyone shall be guaranteed respect for and legal protection of their personal and family life, dignity, reputation, and honour."

humiliate, or diminish the dignity, reputation, or honour of an individual, but merely to indicate that, at the time of deciding on that person's rights or obligations regarding membership in the Chamber, the individual does not, objectively or fully, meet one or more of the established criteria. (Moreover, the effects of such an assessment are not permanent nor irreversible.)[35] This raises a further question: Can judges be members of the Chamber, if membership is mandatory? Does a judge's membership in an association, especially one marked by strong hierarchical and reciprocal ties, create delicate issues in relation to constitutional values? In fact, states may, under certain conditions, restrict judges' freedom of association, for the sake of protecting judicial independence and impartiality. *E.g.*, a judge's general obligation to maintain restraint in their private life may include restrictions on membership in certain groups or associations. However, such limitations must be prescribed by law and be sufficiently clear so that a judge may foresee that their membership in a particular group may lead to disciplinary proceedings.[36] Therefore, a reasonable balance must be achieved between the right of judges to freedom of association and the requirement to preserve judicial independence and impartiality in the exercise of their duties.[37] In achieving that balance, it must be remembered that the judicial system can only function properly if judges are not isolated from the society in which they live. Through active participation in public life, judges gain first-hand insights into issues relevant to the cases they decide. Still, a balance must be struck between the public benefit of such engagement and the need to preserve public confidence in the judiciary, the right to a fair trial, and the integrity, impartiality, and independence of the judicial system as a whole. We therefore hold that the independence and impartiality of professional judges, acting as mediators and potential members of a Chamber of Mediators, is not inherently compromised by such membership.

Furthermore, the current method of regulating mediators' compensation continues to constitute a barrier to professional engagement in mediation. This seriously calls into question the existence of genuine

35 Decision of the Constitutional Court of the Republic of Croatia, No. U-III-3054/2009 of 6 March 2013, *Official Gazette of the Republic of Croatia*, No. 34/2013.

36 *Maestri v Italy*, judgment, 17 February 2004, No. 39748/98.

37 Consultative Council of European Judges (CCJE), Opinion No. 3 (2002) on the Ethics and Responsibility of Judges.

political commitment to the effective functioning and strengthening of a culture of mediation. In fact, a dysfunctional system of remuneration will ultimately fail to attract or retain qualified and talented mediators. This leads to the question of whether the solution lies in the state assuming responsibility for covering the costs of mediation, especially in view of the growing trend towards mandatory mediation – that is, the idea of mediation becoming a procedural prerequisite for initiating court proceedings. In that context, one may also ask whether it would be appropriate to consider granting centres for peaceful dispute resolution and other mediation institutes the status of courts.[38]

All of these remain open questions, accompanied by numerous arguments *pro et contra*, which will continue to be debated, as the process of shaping an effective model and culture of peaceful dispute resolution remains deeply marked by legal dilemmas.

38 Indeed, the concept of a court or tribunal is a Union law concept and is not dependent on the legal status of the body under national legislation. In most EU Member States, requests for legal protection are not decided by courts *stricto sensu*, but by specialised bodies which, prima facie, are non-judicial in nature. In Council of Europe and European Union law, the English term "tribunal" is used instead of "court", although both are translated into Croatian as "sud". The term "court" is ascribed an autonomous meaning, and both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have applied consistent principles to determine whether a particular body may be considered a court. In the case of ECtHR, *Julius Kloiber Schlachthof GmbH and Others v. Austria* (No. 21565/07, 21572/07, 21575/07, and 21580/07, judgment of 4 April 2013), the applicants complained that their case had not been decided by a court. The ECtHR reiterated that the defining feature of a court is its judicial function, meaning that it adjudicates legal matters within its jurisdiction by applying legal rules through a procedure conducted in accordance with law. Additional requirements include independence, impartiality, the tenure of its members, and the availability of procedural safeguards – some of which are expressly listed in Article 6 of the European Convention on Human Rights. The ECtHR found that neither the AMA nor the Minister possessed the necessary attributes of a court, and thus held that there had been a violation of Article 6 §1. Criteria for determining whether a body has the status of a court were also laid down in CJEU case law, particularly in *Dorsch Consult* (Case C-54/96, *Dorsch Consult Ingenieurgesellschaft mbH v. Bundesbaugesellschaft Berlin mbH*, ECR 1997 I-4961, judgment of 17 September 1997, para. 23), and *Josef Kollensperger* (Case C-103/97, *Josef Kollensperger GmbH & Co. KG, Atzwanger AG v. Gemeindeverband Bezirkskrankenhaus Schwaz*, ECR 1999 I-00551, judgment of 4 February 1999, para. 29). According to these rulings, the relevant body must be: Established by law, of a permanent nature, having binding jurisdiction, conducting proceedings *inter partes*, issuing decisions based on rules of law, and functioning independently.

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UZ NADOLAZEĆU NOVELU ZAKONA O MIRNOM RJEŠAVANJU SPOROVA – TREBA LI PROFESIONALIZIRATI SLUŽBU MIRITELJA?

Rezime

Profesije imaju važnu ulogu u oblikovanju javnih politika i pružanju javnih usluga građanima, a temelje se na specijaliziranom teorijskom znanju te *lex specialis* normama. U pravnoj znanosti, profesionalizacija podrazumijeva proces kroz koji zanimanje prestaje obavljati pojedinac bez formalne izobrazbe i postaje karakterizirano nečim više od same tehničke stručnosti. Trenutno u Hrvatskoj postoji gotovo 200 reguliranih zanimanja. Međutim, zanimanje medijatora nije uključeno na taj popis. Budući da regulacija profesija prvenstveno proizlazi iz njihove važnosti u zaštiti javnih potreba i zajedničkog interesa, cilj ovog rada je istražiti je li došlo vrijeme za profesionalizaciju uloge medijatora u hrvatskom pravnom okviru. To se čini, prvo, analizom evolucije pravnog statusa medijatora u Hrvatskoj te novog Zakona o mirnom rješavanju sporova, a drugo, ispitivanjem potrebnih uvjeta za profesionalizaciju usluge medijacije.

Ključne riječi: *Medijacija. – Zakon o mirnom rješavanju sporova. – Profesionalizacija pravnih usluga. – Regulatorni okvir za medijatore. – Hrvatski pravni okvir.*

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