

Article

Mediation in Criminal Matters: A Perspective from Kosovo

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Abstract: As a new alternative, mediation is integrated in the legislation of both developed and developing countries in Europe. Various researchers in member states of the Council of Europe revealed obstacles, particularly related to the implementation of mediation in criminal matters. They are addressed through several recommendations and non-binding guidelines. However, there is limited empirical research on how mediation in criminal matters is being implemented in the contexts of developing countries in south-eastern Europe. Hence, the purpose of this qualitative study is to assess mediation in criminal matters in Kosovo by exploring how the main stakeholders describe the legal basis and implementation process and what it indicates for future practices. The data were gathered through 11 semi-structured interviews with judges, prosecutors, mediation clerks, and mediators. Results show that laws and other guidelines that have been introduced since 2008 constitute a solid legal ground that facilitates mediation in criminal matters. The stakeholders are well aware of the benefits mediation brings and express their willingness to advance its application to criminal matters. Results also indicate uncertainty among judges and prosecutors regarding the assessment and referral of certain criminal offences to mediation. To address it, specialized trainings, exchange programs, and continuous monitoring and evaluation of the process could be supportive.

Keywords: mediation in criminal matters; legislation; implementation of mediation



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1. Introduction

Mediation is an alternative procedure that offers the possibility to the offender and the victim to resolve their cases based on their own informed choices, without having a judge decide for them. It is grounded in the belief that conflict may offer both to offender and the victim an opportunity to be built as stronger individuals, develop more satisfying relationship, and overall create better communities (Van Ness and Strong 2014; McCorkle and Reese 2019). Zwier and Guernsey (2016) consider that there are many theories in which strategies in the negotiations can be build, such as economic theory, gender differences, international politics, social psychology, or problem solving theory. The latter, according to them, includes outcomes of international conflict resolutions and other conflict resolution issues and “views negotiation as a problem-solving or interest based “win-win” process” (Zwier and Guernsey 2016).

Accordingly, mediation is defined as a third party process conducted by a person, who acts neutral and impartial, enabling the offender and the victim to have an interest-based communicative process through which they will agree on a satisfactory and beneficial outcome (Zelizer and Chiochetti 2017; McCorkle and Reese 2019; Brookes and McDonough 2006). Mediation is applied to both civil and criminal matters. Numerous studies highlight that mediation programs result in repairing the damage caused by a crime, reducing the fear of victimization and post-traumatic stress among victims, making the victims feel fulfilled and credible, holding the perpetrators accountable, reducing the number of filings, trials, and convictions in court, and preventing similar damage occurring in the future (Charkoudian et al. 2021; Gerkin et al. 2017; Johnstone 2012; Moran 2017; Poulson 2007; Van Ness and Strong 2014; Suzuki and Yuan 2021). Further, a study conducted to understand whether recidivism in mediated cases differs from cases prosecuted as usual in

the subsequent year found that mediated cases were almost five times less likely to return to criminal court compared to those that were not mediated (Charkoudian et al. 2021).

Due to cultural or legal reasons, mediation as an alternative procedure initially emerged and then developed fast during the 20th century in the United States of America, England, Japan, Australia, China, and New Zealand (Hopt and Steffek 2013; Ozbek 2011). Given the advantages of mediation, the European Union (2008) countries also integrated mediation into their legislation. According to Hopt and Steffek (2013), there are two models of regulating mediation on a macro level in the European Union (EU) countries: extensive regulation, which aims at almost comprehensive regulation of mediation and associated professional law, and restrained regulation, which aims for the systematic and thorough regulation of the substantive issues of mediation and its participants. In order to promote and support further the member states of Council of Europe to apply mediation in both civil and criminal matters, several recommendations and non-binding guidelines were issued to promote and support these countries to apply mediation, such as Council of Europe Committee of Ministers (1999)¹⁹; United Nation (2000) Economic and Social Council (ECOSOC) Res. 2000/14; Council of Europe Committee of Ministers Recommendation (2002)¹⁰; European Commission for the Efficiency of Justice (CEPEJ) [2007]¹³; CEPEJ (2007)¹⁴; and European Parliament and Council Mediation Directive 2008/52/EC¹. The latter, particularly, is considered to have "...given new momentum to mediation in Europe by establishing a common framework for cross-border mediation" (Hopt and Steffek 2013, p. v).

Despite these developments, mediation continued to slowly emerge as an alternative toward the more popular forms of punitive justice (Gerkin et al. 2017; De Pao 2018). It was particularly difficult in advancing mediation in criminal matters. Based on the data collected in the members states of the Council of Europe, the obstacles in mediation of criminal matters include "lack of awareness of restorative justice and mediation, lack of availability of victim-offender mediation before and after conviction, power to refer parties to mediation limited only to a single criminal justice institution, relatively high cost of mediation, and lack of specialized training and disparities in qualifications of mediators". (CEPEJ 2007)². In order to address these concerns, further recommendations, practical tools, and handbooks for mediation law-making to implement and develop the use of mediation were developed to support both the countries and practitioners such as Council of Europe Committee of Ministers (2018); CEPEJ (2018); CEPEJ (2019)³. Specifically, the aim is to promote "standards for the use of restorative justice in the context of criminal procedure. ... safeguard participants' rights and maximize the effectiveness of the process in meeting participants needs" (Council of Europe Committee of Ministers 2018)⁴. Detailed instructions are also provided for court mediation in order to ensure implementation of the CEPEJ Guidelines on mediation. It includes instructions for mediation main indicators:

¹ Recommendation (99)19, CONSEIL DE L'EUROPE (<https://rm.coe.int/0900001680910dbb>, accessed on 4 June 2024); ECOSOC Res. 2000/14; Microsoft Word—Document1 (<https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>, accessed on 4 June 2024); Recommendation (2002)10, Result details (https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e1f76, accessed on 4 June 2024); CEPEJ [2007]13 Guidelines for a better implementation of the existing Recommendations concerning mediation (<https://rm.coe.int/1680747759>, accessed on 4 June 2024), CEPEJ (2007)14, Guidelines for a better implementation of the existing Recommendations concerning mediation (<https://rm.coe.int/16807475b6>, accessed on 4 June 2024); Mediation Directive 2008/52/EC, Directive—2008/52—EN—EUR-Lex (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0052>, accessed on 4 June 2024).

² CEPEJ [2007]13 Guidelines for a better implementation of the existing Recommendations concerning mediation (<https://rm.coe.int/1680747759>, accessed on 4 June 2024).

³ CM/Rec (2018)8 concerning restorative justice in criminal matters DisplayDCTMContent (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e35f3>, accessed on 4 June 2024); CEPEJ (2018)7 REV, <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, accessed on 4 June 2024; CEPEJ (2019)9, 1680951928 (<https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>, accessed on 4 June 2024).

⁴ CM/Rec (2018)8 concerning restorative justice in criminal matters DisplayDCTMContent (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e35f3>, accessed on 4 June 2024).

availability, accessibility, and awareness, mediation management, and monitoring checklist, guide to judicial referral to mediation, basic mediator training curriculum, European Code of Conduct for mediation providers, standard mediation forms, and baseline grid for mediation key performance indicators (CEPEJ (2018)7 REV).⁵ Good practices on how to draft a law on mediation are provided based on a research on 18 member states of the Council of Europe as well as a comparative analysis of their national legislation on mediation (CEPEJ (2019)9).⁶ It also suggests that further research on this field and increased monitoring and evaluation of the implementation of mediation might contribute to developing it further as an alternative tool in justice.

It shall be noted that most of the research on mediation is conducted in developed countries in the world, and, as such, they reflect the contexts of countries that have consolidated judicial systems. The research and monitoring of mediation in criminal matters in developing countries, particularly in the Balkan countries, is limited. The existing research or reports mainly focus on the analysis of mediation laws, comparison of the laws, analysis of the cases resolved through mediation, mediation in juvenile criminal offences, implementation of mediation, and awareness of mediation (International Finance Corporation 2009; Bode 2021; Albanian Legal and Territorial Research Institute 2020; Jovanovska and Tuntevski 2018; Stoilkovska et al. 2015). Their findings indicate several issues that are related to both the content of the law and the role of criminal justice authorities in the development of mediation.

In Kosovo, mediation is addressed through reports and qualitative research conducted by the local non-governmental organizations, supported by international organizations (Hajra 2023); studies on the characteristics of mediation in criminal matters were based on statistical data and the review of 300 cases solved through mediation (Krasniqi 2019) and analysis of changes incorporated in the Mediation Law in 2018 (Dermaku 2019). However, there are limited studies that address the issues on implementation of mediation in criminal matters through the perspective of judges, prosecutors, and mediators themselves, particularly after 2018 when the Law on Mediation was amended. Therefore, this article intends to contribute further in this regard through an empirical study by exploring how mediation in criminal matters is applied in the context of Kosovo and to what extent the law amendment has impacted its implementation. In order to achieve this objective, the study was focused on studying the viewpoints of main stakeholders on mediation, taking into consideration specifics of the country context: Kosovo is at an early stage in developing a well-functioning system, it has a large number of unsolved cases, it integrated mediation in its legislation for the first time in 2008, amended it in 2018, and tends to have adopted a model of an extensive regulation of mediation and other associated laws. Kosovo's attempts to advance mediation have also been noted in the European Commission (2023); nevertheless, the number of cases referred to mediation remains limited and "there is a need for a monitoring and evaluating system to assess the overall impact of mediation services. . ." (European Commission 2023, p. 21)⁷.

1.1. Mediation in the Legislation of Kosovo

The Law on Mediation in Kosovo was enacted for the first time in 2008⁸, laying the foundations for the institutionalization of mediation as a legal alternative procedure. Mediation in criminal matters is also regulated through the provisions of the Criminal Procedure Code. To further facilitate the application of mediation, the relevant institutions have issued administrative instruction that specify cases that can be referred to the mediation

⁵ CEPEJ (2018)7 REV, <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, accessed on 4 June 2024.

⁶ CEPEJ (2019)9,1680951928 (<https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>, accessed on 4 June 2024).

⁷ European Commission Kosovo Report 2023, Kosovo Report 2023—European Commission (https://neighbourhood-enlargement.ec.europa.eu/kosovo-report-2023_en, accessed on 4 June 2024).

⁸ Law on Mediation (2008), Prishtina, Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2592>, accessed on 4 June 2024.

procedure. Then, in 2018, the Law on Mediation was revised and adopted⁹. Below is an analysis and comparison of these legislative documents.

1.1.1. The Law on Mediation 2008

The Law on Mediation, Nr. 03/L-057 (2008)¹⁰ was adopted for the first time in Kosovo in 2008. It regulated the procedure of mediation in general, including the establishment, organization, and functioning of the Mediation Council, as well as the rights, duties, and qualifications of mediators. According to this law, the mediation was defined as “an extra-judicial activity carried out by a third person (mediator), for the purpose of resolving by conciliations the disagreements between parties subject to law in accordance with the provisions of this law” (Article 2). This law also defined the areas in which mediation was to be applied, such as contested relationships, in legal asset matters, of natural and legal persons, commercial, family, labor, and other civil, administrative, and criminal relationships (Article 1). Further, it specified that the entire procedure of mediation relies on the basic principles, such as free will, equality of parties in procedure, impartiality, confidentiality, and credibility as well as urgency (Articles 1–7).

The initiation of the mediation procedure related to the court is regulated in Articles 9 and 10 while in 2012, the Kosovo Judicial Council approved a protocol that regulated this form of mediation and referral of court cases to the mediation procedure (Articles 9–10). Judges had rights to refer cases to mediation before a final decision was taken about these cases. In addition to the courts, the [Law on Mediation \(2008\)](#) defined how the mediation shall be initiated by the prosecutors (Articles 9, 14). In order to make the initiation of the procedure more applicable, [The Kosovo Prosecutorial Council \(2013\)](#)¹¹ issued a protocol through which it defined the referral of prosecutorial cases to mediation (Decision/Protocol No. 80/2013 on referring the cases by the Public Prosecution to Mediation Centres¹²). The mediation procedure initiated by the prosecutors and judges was the same and the reached mediation agreement is considered as valid as soon as the prosecution/court approve it.

Under Article 9, it is specified that the mediation procedure can begin only when the parties agree to begin with. Parties are obliged to respond to the request of mediation within 15 days, otherwise, it will be considered that the party did not accept to be part of this procedure (Article 9). It is also stipulated that when the matter is with the court or the prosecution and they consider that it can be resolved with mediation, they can suggest the mediation procedure to the parties. Further, Article 10 defines that the mediation procedure shall be conducted by only one mediator except in the cases when parties agree to have more mediators. The mediation can start only when the parties sign the agreement on commencing the procedure of mediation, which contains data on the parties in procedure, subject of the dispute, the statement of acceptance of the mediation principles, as well as the provisions on the costs of the procedure, including the mediator’s fee (Article 10).

The [Law on Mediation \(2008\)](#) also regulates the duration of the mediation procedure, which cannot last more than ninety (90) days (Article 13). According to the [Law on Mediation \(2008\)](#), after the mediation procedure is completed, the mediator is obliged to inform the court or another competent body in writing. The agreement attained in the mediation procedure has power of the court agreement, if it is approved by the court, prosecution, or any other competent body (Article 14, Section 14.4). These decision-making bodies have the right to annul the agreement attained through mediation, when it concludes

⁹ [Law on Mediation \(2018\)](#), Prishtina, Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17769>, accessed on 4 June 2024.

¹⁰ See footnote 8.

¹¹ The Kosovo Prosecutorial Council. 2013. Decision/Protocol No. 80/2013 on Referring the Cases by the Public Prosecution to Mediation Centers.

¹² The Mediation Centres (which organised and administered mediation cases referred by the courts or prosecution) were opened for the first time during the period from 2011 until 2014 in seven main regions of Kosovo: Ferizaj, Gjakova, Peja, Gjilan, Prishtina, Mitrovica, and Prizren. They were operating outside of the court and prosecution institutions. Historiku—Oda e Ndërmjetësuesve të Kosovës (<https://ndermjetesimi.com/en/historiku/>, accessed on 4 June 2024).

that it has been reached against the law in force, when it does not reflect the will of the parties, when the rights and interests of the parties are impinged, or when the compensation is clearly disproportionate to the caused damage (Article 14, Section 14.5).

The conditions that shall be fulfilled to take over the role of a mediator are defined. In addition to the general conditions for employment, the mediator shall also meet the following conditions: have a university degree; successfully pass the training course for mediation; to have mediated at least six sessions under the supervision of a mediator; not to have been convicted for a knowingly criminal act which is punishable with over six months imprisonment; possess high moral qualities; and be registered in the mediator's registry (Article 22). In addition to meeting the previous conditions, the mediators shall also be licensed by the Mediation Committee, which was created by the Ministry of Justice (Article 23). The law provides that this committee can propose to the Ministry of Justice to suspend or revoke the license of the mediator.

1.1.2. The Law on Mediation 2018

Although the approval of the [Law on Mediation \(2008\)](#) was an important step in advancing the judicial system in Kosovo, during its implementation, there were several obstacles that needed to be addressed through the necessary changes. It should be mentioned that no official model of evaluation of how mediation functioned was applied. Rather, the initiative to make changes was mainly part of country's attempts to meet the requirements of the annual European Commission Reports on Kosovo and other international assessments, which constantly highlighted the need for the country to improve the efficiency of the judiciary, reduce the backlog of cases, and advance innovative practices such as mediation. The changes incorporated in the upcoming Law on Mediation, 06/L-009 approved on 2018¹³ intended to address some of the reported issues in the practice by the main stakeholders and to reflect the European Commission guidelines and directives on mediation¹⁴. Certainly, the [Law on Mediation \(2018\)](#) retained a great number of the issues regulated in the previous law, while the part below will present only the new articles incorporated in this law.

One of the most important revisions is related to the application of mediation in criminal matters. While in the previous law the mediation could be applied only in cases when the alternative punishment was either a fine or imprisonment up to 3 years, according to the [Law on Mediation \(2018\)](#), it can be applied for the cases when the punishment is cumulative, with fines and imprisonment up to three (3) years (Article 2). It shall also be noted that the law specifies that the mediation procedure shall not be applied in cases of domestic violence. However, the law still provides a broad definition of areas where mediation could be applied and it caused confusion in practice, requiring further specifications. Thus, the Kosovo Judicial Council issued an administrative instruction that defines the criminal offences suitable to be referred to mediation procedure ([Administrative Instruction Nr. 66/2000 2020](#))¹⁵.

According to this administrative instruction, the criminal offences as defined in the [Criminal Code of the Republic of Kosovo \(2019\)](#) which can be considered as appropriate to be referred to the mediation procedure are as follows: threats, harassment, assault, light bodily injury, participation in a brawl, coercion, violation of the right to strike, misuse of the right to strike, theft of services, misappropriation of another's property, taking possession

¹³ See Footnote 9.

¹⁴ CEPEJ [2007]13 Guidelines for a better implementation of the existing Recommendations concerning mediation (<https://rm.coe.int/1680747759>, accessed on 4 June 2024); CM/Rec (2018)8 concerning restorative justice in criminal matters DisplayDCTMContent (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e35f3>, accessed on 4 June 2024); CEPEJ (2018)7 REV, <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, accessed on 4 June 2024.

¹⁵ Kosovo Judicial Council, Administrative instruction on cases that are appropriate to be referred to mediation, Prishtina, 2020, p. 8. Udhëzimet Administrative—Këshilli Gjyqësor i Kosovës (<https://www.gjyqesori-rks.org/udhezimet-administrative/?r=M&legId=226>, accessed on 4 June 2024).

of movable property, forest theft, destroying, damaging, or removing public installations, failure to avoid danger, endangering public traffic, failure to participate in averting a public danger, removing or damaging official stamps or marks, taking or destroying official stamps or official documents, and self-justice ([Administrative Instruction Nr. 66/2000 2020](#); [Criminal Code of the Republic of Kosovo 2019](#))¹⁶. This administrative instruction also specifies the necessary documents that the criminal case referred to the mediation procedure shall contain, which include, but not limited to, the decision of the judge to refer the case to the mediation procedure, criminal report (copy), and minutes of the meeting of the session in which the parties agreed to solve their case through mediation, as well as other documents relevant to the case.

The other change in the [Law on Mediation \(2018\)](#) is related to the introduction of the mediation clerks. The mediation clerk is an “official of the court who administers cases referred to mediation by the court and administrative bodies as well as the official of prosecution office who administers the cases referred by the prosecution office” (Article 3, Section 1.3). The mediation clerks were given the role of the mediation offices, which had operated outside of the courts or prosecutions premises before the [Law on Mediation \(2018\)](#) was adopted. According to this law, the mediation sessions shall be organized within the premises of court and prosecution. This new solution is thought to support and, thus, increase the coordination between the main actors, which is expected to result in faster and more efficient solutions of the cases involved in the mediation procedure.

Further, a significant revision was made, giving the legal effect to the mediation agreement under Article 18 in the Law on Mediation 2018. This article determines that the agreement reached with meditation has the power of an enforcement document:

“If the mediation commences with self-initiation by the parties, the agreement reached in writing signed by the parties and the mediator, which contains the clause (certificate) on the validity and enforceability of the agreement, shall have the power of enforcement document in accordance with the relevant Law on enforcement procedure”.¹⁷ (Article 15, Section 4)

The [Law on Mediation \(2018\)](#) retained the same duration of 90 days for the mediation procedure. However, a new approach in this regard is the possibility that the parties, in cooperation with the mediator, can ask from the authority that approved the reference of the case to mediation to prolong the period for an additional period of thirty (30) days, under the condition that the prolongation will not cause legal consequences in loss of right or acquisition of right to one party over time (Article 16, Section 3). In addition to the prolongation of the duration of mediation procedure, another difference is that this law foresees the establishment of the Chamber of Mediators, which, according to this law, is defined as: “an independent non-profit legal person acting in compliance with this Law and its statute adopted by the General Assembly of the Chamber of Mediators and approved by the Ministry of Justice” (Article 21). The organization and functioning of the Chamber of Mediators is regulated with internal act of the chamber.

1.1.3. Mediation in Criminal Matters according to the Criminal Procedure Code

[Criminal No. 04/L-123 Procedure Code \(2012\)](#)¹⁸ addressed mediation under the alternative procedures in Article 232¹⁹. Through five paragraphs, it determined the procedure that enabled the solution of criminal offences through mediation. In the first paragraph, it provided the possibility for the state prosecutor to refer a criminal offence punishable

¹⁶ [Criminal Code of the Republic of Kosovo \(2019\)](#), Prishtina, Kosovo, see Articles 181, 182, 184, 185, 187, 192, 221, 222, 314, 318, 319, 349, 357, 362, 370, 405, 406, 407, 410, <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>, accessed on 4 June 2024.

¹⁷ Article 15, Section 4, [Law on Mediation \(2008\)](#), Prishtina, Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2592>, accessed on 4 June 2024.

¹⁸ [Criminal No. 04/L-123 Procedure Code \(2012\)](#), ActDetail.aspx (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>), accessed on 4 June 2024).

¹⁹ *Ibid.* Article 232, “Mediation proceeding”.

by a fine or by imprisonment up to three years for mediation. It also specified that before referring a criminal offence to mediation, the state prosecutor “shall take account of the type and nature of the act, the circumstances in which it was committed, the personality of the perpetrator and his or her prior convictions for the same criminal offence or for other criminal offences as well as his or her degree of criminal liability” (Article 232, Section 1).

According to the [Criminal No. 04/L-123 Procedure Code \(2012\)](#), the mediation shall be performed by an independent mediator who is obliged to accept a case referred by the state prosecutor (Article 232, Section 2). In addition, the mediator is obliged to ensure that the content of the agreement is proportionate to the seriousness and consequences of the criminal offence. According to [Sahiti et al. \(2014\)](#), this is because during the mediation procedure, the mediator can receive unrealistic requests from the parties, but this should not impact the content of the agreement. The agreement can be reached only with consent of the defendant and injured party, while upon receiving the notification that the agreement has been reached, the state prosecutor shall dismiss the criminal report (Paragraph 3 and 4). In case an agreement could not be reached, the mediator shall inform the prosecutor about the failure of the agreement, as well as the reasons of such failure.

The intention of Kosovan institutions to improve further the mediation process is also highlighted in the revised [Code No. 08/L-032 Criminal Procedure Code \(2022\)](#)²⁰. It defines mediation proceedings under Article 229, and among others, provides the possibility for the state prosecutor to refer to mediation a criminal offence punishable by a fine or/and by imprisonment up to three years.²¹

2. Method

The study adopted a qualitative approach and used a case study design with the aim of exploring the implementation process of mediation in criminal matter through “the viewpoints of all key stakeholders” ([Billups 2021](#), p. 6). The research questions that guided the study were (1) how the main stakeholders describe the legal basis and process of implementing mediation in criminal matters, (2) to what extent did the revision in the [Law on Mediation \(2018\)](#) affect the practice, and (3) what it indicates for future practices. These research questions intended to explore how clear and efficient the legislation on mediation in Kosovo is, understand the impact of the revised [Law on Mediation \(2018\)](#), and find out the main challenges that stakeholders face while implementing mediation as an alternative procedure. The participants in this study were judges, prosecutors, mediation clerks, and mediators. Purposive sampling was used to select participants (four judges²², four prosecutors²³, two mediation clerks²⁴, and four mediators²⁵). They were chosen for their role and ability to provide information based on their experiences and perspectives with the intention to cover different point of views on mediation. The Basic Court in

²⁰ [Code No. 08/L-032 Criminal Procedure Code \(2022\)](#), ActDetail.aspx (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759>, accessed on 4 June 2024).

²¹ *Ibid.* Article 229.

²² In 2022, 18 judges were working in the Criminal Division in the Basic Court of Prishtina, 12 of whom were covering Prishtina, the capital of Kosovo. The sample was selected out of 12 judges, and the selection criteria were related to years of experience (more than five years of experience) and gender (two male and two female judges).

²³ In 2022, 29 prosecutors were working in the General Department of the Basic Prosecution in Prishtina. The sample was selected out of 29 prosecutors and the selection criteria was related to years of experience (more than five years of experience) and gender (two male and two female judges).

²⁴ In 2022, there were only two Mediation Clerks, one of them working on Basic Court of Prishtina and the other one in Basic Prosecution of Prishtina. Both of them were selected as a sample.

²⁵ The sample of mediators was selected from the list of 25 mediators of Chamber of Mediators in Region of Prishtina, who cover mediations in civil and criminal matters. The criteria of selection covered only mediators that deal with mediation of criminal matters.

Prishtina²⁶, Basic Prosecution in Prishtina²⁷, and Chamber of Mediators²⁸ in Prishtina were selected as sites of research, since they represent the biggest region in Kosovo and have the largest number of cases. Semi-structured interviews and document analyses were used as instruments to gather the data. The semi-structured interview questions were referring to the assessment of overall legal basis for mediation in Kosovo, the definition of the roles of the criminal justice authorities, process of referring criminal cases to mediation, and the awareness on mediation.

The researchers approached the research site by contacting the representatives of institutions. Following the initial verbal briefing, the written requests for interviews explaining the aim of the study as well as providing the questions for the semi-structured interviews were submitted to the Basic Court in Prishtina and Basic Prosecution in Prishtina. The same procedure was followed with the Chamber of Mediators. Through this process, the researchers obtained the informed consent from the research participants, ensuring that they understand the nature of the study, that the data that will be collected will be strictly confidential, and that their identities will not be exposed.²⁹ In addition, it was also highlighted that they can enter this research only out of their free will. There were 11 participants that agreed to participate in the research: two (2) judges, four (4) prosecutors, three (3) mediators, and two (2) mediation clerks. Thus, the total number of interviews in this research was $n = 11$. The interviews took place in the offices of participants and were conducted in 2022. The interviews were not recorded but the researcher took notes, which were transcribed immediately after the interviews.

It should be noted that this research has a few limitations that have to be taken into account when interpreting the results. The research took place at three institutions, the Basic Court of Prishtina, the Basic Prosecution of Prishtina and Chamber of Mediators in Prishtina, which are operating in a unique environment within a developing country context. The number of respondents (11) and their functions (judge, prosecutors, mediation clerks, and mediators) may represent valid and reliable findings on mediation relevant for the institutions that were the subject of this research. These findings may also be relevant and be considered by other Basic Courts and Basic Prosecutions that function in Kosovo within same legislation and in a similar cultural context. However, the findings cannot be generalized for any other settings other than those from which they were obtained. The description of the context provided in this article, though, enables, as Gay et al. (2006) suggest, “some applicability and transferability of the findings from one qualitative study to a similar setting” (p. 407). Therefore, the findings may be also relevant for the contexts of other developing countries, if there are similarities with the described context in Kosovo.

3. Results and Discussion

The results presented below are structured based on the main issues that the participants highlighted as relevant to the implementation of mediation in criminal matters in Kosovo: legal basis to facilitate mediation, the role of criminal justice authorities in mediation, criminal matters that are eligible to be referred to mediation, the process of referring criminal matters to mediation, and professional training and awareness on mediation.

²⁶ Basic Court of Prishtina is a first instance court located in the capital of Kosovo. It consists of four branches and it is one of seven first instance courts in Kosovo. Welcome to Prishtina Basic Court! – Gjykata Themelore Prishtinë (<https://prishtine.gjyqesori-rks.org/mire-se-vini-ne-gjykatën-themelore-ne-prishtinë/?lang=en>, accessed on 4 June 2024).

²⁷ The Basic Prosecution in Prishtina has jurisdiction over all first instance cases, unless otherwise provided by law, and it covers the territory of Prishtina, Podujeva, Drenas, Lipjan, Fushe Kosova, Obiliq and Gracanica.

²⁸ Licensed mediators, who are registered in the Registry of Mediators are organised into the Chamber of Commerce. Chamber of Mediators was established in 2019 and it has a president and seven board representatives for each region: Prishtina, Gjilan, Ferizaj, Gjakova, Peja, Prizren and Mitrovica.

²⁹ The University of Prishtina does not require the approval of Ethical Committee for the types of research that involve legal institutions and the legal professional staff.

3.1. A Solid Legal Basis to Facilitate Mediation

The interviewed respondents argue that the regulation of mediation through the laws and other guidelines in Kosovo sets a solid legal ground to facilitate mediation in criminal matters. They highlighted that the updated Law on Mediation approved in 2018 as well as the administrative instructions issued have further enriched the legal basis and contributed even more in further advancing the implementation of the mediation procedure in practice. Personal interview (I), in person meeting, interviewed in June, 2022. (a judge) explained this by saying: *“I believe that the legislation on mediation is well grounded and it offers us sufficient legal basis to refer cases to mediation procedure. The revisions in Law on Mediation (2018) have enabled us to increase the number of cases that we refer to mediation”*.

All respondents welcome and consider mediation as useful for both parties and legal institutions. According to them, this legislative framework enables the victim and the offender, if they agree, to participate actively in the resolution of criminal matters through the help of an impartial party (mediator). Personal interview (V), in person meeting, interviewed in June, 2022. (a prosecutor) describes the benefits of the mediation procedure as follows:

“The victim and offender appreciate the mediation procedure because it makes both feel good. The offenders are happy because it will not be recorded anywhere that they had a criminal history, while the victims feel empowered and important as it is their willingness and forgiveness to the offender which enables the agreement to be reached. Following the agreement, they do not look each other with hatred as they do when the mediation procedure begins”.

Given the big number of unsolved cases and overload of judges and prosecutors, most of the respondents claim that integration of mediation in criminal matters in the Kosovan legislative framework is of a particular importance for the legal system overall. According to the respondents, if the parties express their will to resolve the cases through mediation, it enables the legal system to enact a much more efficient procedure than the traditional one. Further, they claim that it involves lower costs, provides a faster way of solving cases, takes place out of the court, and the parties have no right to appeal. Describing the benefit that they have as representatives of legal institution, Personal interview (IV), in person meeting, interviewed in June, 2022. (a prosecutor) commented: *“It is very helpful for us as well, because if parties agree to solve their case through mediation, we do not have to file an indictment, we are not obliged to follow the mediation procedure and have time to address other cases”*.

One of the advantages of the Law on Mediation (2018) that the respondents considered the most relevant is that the agreement reached through mediation procedure has the power of an enforcement document. Particularly, Personal interview (IX), in person meeting, interviewed in June, 2022. (a mediator) highlighted that *“it has a significant positive impact on the parties when they understand that if they reach an agreement through mediation, it will have the power of enforcement document”*.

3.2. The Role of Criminal Justice Authorities Is Relatively Well Defined

The respondents consider that their roles have been defined relatively well in the legislation. They recognize that the Law on Mediation is clear when it gives the right to the judges to refer cases to mediation before a final decision is taken about these cases.

Further, according to the respondents, the Law on Mediation also defines how the mediation shall be initiated by the prosecution, i.e., by the prosecutors. The respondents admitted that the protocol issued by the Kosovo Prosecutorial Council, which defined the referral of prosecutorial cases to mediation, was very useful to them to make the initiation of the procedure more applicable. The mediation procedure initiated by the prosecutors is the same as the one initiated by the court, since the agreement reached is considered as valid as soon as the prosecution approves it.

All respondents claimed that they are fully aware and respect that mediation in criminal matters shall be applied only if the parties freely consent. Personal interview (II),

in person meeting, interviewed in June, 2022. (a judge) described it as follows: *“when I identify a case which could be referred to mediation, I initially explain to the parties what mediation procedure is, and then it is up to their free will if they want to decide to use mediation as an alternative procedure to solve their case”*. The same has been argued by the prosecutors, mediators, and mediation clerks. In this regard, a mediation clerk in the prosecution illustrated how persistent they are in making sure that the parties understand all specifics of mediation: *“In about 85% of cases, parties have no information at all about mediation procedure. However, we explain it to them in details, until we are ensured they understood all its specifics”*. Further, the respondents confirmed that the mediation starts only when the parties sign the agreement on commencing the procedure of mediation, which contains data on the parties in the procedure, subject of the dispute, and the statement of acceptance of the mediation principles, as well as the provisions on the costs of the procedure, including the mediator’s fee ([Law on Mediation 2018](#), Article 10). The law specifies that the timeframe within which the parties shall respond to the mediation is 15 days, otherwise it will be considered that the parties did not accept to be part of this procedure. However, regarding the timeframe during which the mediation procedure shall be finalized, some of the respondents claimed that sometimes there is a need for more time than the duration of ninety days (90) that is defined in the law.

Further, the establishment of the Chamber of Mediators and the involvement of the mediation clerks in the court and prosecution was also considered by respondents to have contributed to improving the implementation of mediation. The respondents agree that this new solution is supporting and increasing the coordination between the main actors and it results in faster and more efficient solutions of the cases involved in the mediation procedure. Personal interview (I), in person meeting, interviewed in June, 2022. (a judge) considered that mediators are demonstrating good work as *“in the last two years, there was a significant improvement in mediation of cases, because most of them are being successfully resolved”*. The same has been claimed by Personal interview (IV), in person meeting, interviewed in June, 2022. (a prosecutor), who said: *“out of all cases that we referred to Mediation Office, 85% of them were successfully resolved”*. While, in general, they consider that they have good cooperation with judges and prosecutors, a need for better coordination and more support from the Ministry of Justice was pointed out by Personal interview (X), in person meeting, interviewed in June, 2022. (a mediator).

3.3. The Process of Referring Cases to Mediation to Be Clarified Further

The respondents reported few difficulties while assessing and deciding which criminal offences shall be referred to mediation procedure. They consider the changes incorporated in the [Law on Mediation \(2018\)](#) as very important, which clarifies that mediation can be applied for cases when the punishment is cumulative, with fines and imprisonment up to three (3) years. Until then, the law defined that mediation could be applied only for cases when the alternative punishment was either a fine or imprisonment up to 3 years. However, Personal interview (III), in person meeting, interviewed in June, 2022. (a prosecutor) said that for him *“it is still unclear what to do with criminal offenses that are punishable with imprisonment only. As a result I have never referred criminal offences that are punishable only with prison up to three (3) years to mediation procedure.”*

They also mention the significance of the [Criminal No. 04/L-123 Procedure Code \(2012\)](#) that addressed mediation under alternative procedures and determines that the state prosecutor can refer the criminal reported for a criminal offence punishable by a fine or by imprisonment up to three years for mediation (Article 232, Section 1). However, according to the respondents, the Kosovo Judicial Council’s administrative instruction, which defines the criminal offences suitable to be referred to mediation, had a great impact on their work. It shall be noted though, that when respondents (judges and prosecutors) were asked to list the cases that they refer to mediation, it included only theft of services, threat, assault, light bodily injury, harassment, and misappropriation of another’s property. The respondents admitted they send to mediation only a few criminal offences that they believe

will be successfully resolved through mediation. The fact that not all criminal offences are accepted by the parties to be solved through mediation is described by Personal interview (VII), in person meeting, interviewed in June, 2022. (mediation clerk), who said that when prosecutors refer to mediation the criminal offence 'participation in brawl', *"in most of the cases, the parties categorically refuse the mediation procedure. This might be related to the overall culture that one shall not forgive the offender"*. A similar point of view was conveyed by Personal interview (I), in person meeting, interviewed in June, 2022. (a judge): *"Now, I have just had a case of 'harassment' which I recommended to be solved through mediation, but the parties did not accept it"*. Subsequently, the respondents agree that the number of cases referred to mediation is limited, while Personal interview (II), in person meeting, interviewed in June, 2022. (a judge) describes this issue as follows: *"we have more than 60% of all cases punishable up to three (3) years, and therefore we shall increase our commitment in implementing more frequently the mediation procedure"*.

The respondents were asked how they decide about the cases they refer to mediation. They claimed that initially they assess the nature of the criminal offence and the legal basis as it is defined according to the law. *"To assess if a criminal offence is to be referred to mediation, I am based on legal requirements but also on my own experience which cases are more appropriate for mediation"*, explained Personal interview (VI), in person meeting, interviewed in June, 2022. (a prosecutor). On the other side, Personal interview (V), in person meeting, interviewed in June, 2022. (a prosecutor) highlighted the importance of the statements that the parties give in the police report: *"I also consider the documents of the case that I receive from the police. If I see in the police report that the offender apologized and was sorry for his act, then I refer that case to mediation. While, if I see that the offender did not regret for his act, but blames the victim, I do not refer the case to mediation"*.

From six interviewed judges and prosecutors, only Personal interview (I), in person meeting, interviewed in June, 2022. (a judge) claimed he informs all parties involved in criminal offences such as threat, light bodily injury, and theft that there is a possibility that their case can be resolved through mediation, as an alternative procedure. Other respondents stated that they do not refer the cases to mediation if the offenders are recidivists or have a criminal record. Personal interview (IV), in person meeting, interviewed in June, 2022. (a prosecutor) was firm in this regard: *"I do not refer to mediation procedure recidivists that have criminal record, even if they express willingness"*. These different views on the assessment of criminal offences may indicate a need to clarify further the process of assessing a criminal offence and the rights that the parties have in order to be given the opportunity to resolve their case through mediation.

Talking about the necessary documents that a criminal case referred to the mediation procedure shall contain, the respondents claim that they have no obstacles. They consider that they are able to complete the files providing all the necessary information that is needed to initiate the mediation procedure with the parties. They say that more than 90% of the cases that are referred to mediation result in a mutual agreement. A respondent attributes this outcome to the advantages that the mediation procedure has for all stakeholders: *"this large number of reached agreements for the cases referred to mediation is strongly connected with the benefits of the mediation: the victim is compensated, the offender is not going to have a criminal history, the reports between the parties are significantly relaxed, and it makes all of us realise that the aim of the punishment is achieved"*. According to them, these good statistics of the mediation procedure represent a positive indicator that shall motivate the prosecutors and judges to increase their effort and commitment in referring more criminal cases to mediation.

3.4. Several Challenges Faced in Attempt to Increase the Number of Referred Cases to Mediation

All the respondents agreed that the number of criminal matters referred to mediation remained limited even after the [Law on Mediation \(2018\)](#) was adopted. Being asked if prosecutors and judges have a possibility to refer a larger number of criminal cases to mediation, they agreed that more can be achieved in this regard. However, according to the

respondents, there are several challenges that criminal justice authorities have in referring criminal cases to mediation.

One of these challenges is the limited knowledge that parties have regarding mediation. Being asked about how much knowledge the parties involved had when judges or prosecutors proposed for them to resolve their cases through the mediation procedure, the respondents agree that most of the parties have no prior information about mediation. *“I can say that more than 80% of parties involved in these cases hear about mediation for the first time when we propose it to them. If they would have prior information, it would be much easier for us”* explained Personal interview (I), in person meeting, interviewed in June, 2022. (a judge). On the other side, Personal interview (XI), in person meeting, interviewed in June, 2022. (a mediator) believes that both judges and prosecutors can achieve more in this regard. This respondent argues that mediation is not sufficiently explained to the parties and *“a bigger commitment of the judges and prosecutors is needed in order to provide the parties with correct information on mediation benefits, which would result in the increase in number of cases referred to mediation”*. According to this respondent, sometimes an impression is created that judges and prosecutors still hesitate to seriously consider and apply mediation as an alternative dispute resolution tool.

The fact that they find it challenging to inform more parties about the benefits of mediation is also admitted by the judges and prosecutors who participated in this study. Personal interview (II), in person meeting, interviewed in June, 2022. (a judge) justified this saying that *“there is a very large number of unsolved cases and a very limited number of judges. It means that a judge is overloaded with many cases and has no sufficient time to assess if each case is relevant to be referred to mediation”*. Personal interview (III), in person meeting, interviewed in June, 2022. (a prosecutor) considered that police could also help them in this regard by including in the police reports if the parties would prefer to solve their case through mediation. This is how this possibility is described: *“when the police take the first statements from the offender and the victim, they can inform the parties about the possibility of mediation, and if the parties are willing to consider mediation as alternative procedure to solve their case, note that in the police report”*.

Personal interview (II), in person meeting, interviewed in June, 2022. (a judge) highlighted another challenge related to the delay of organizing the first session of mediation, suggesting that there is a need for mediators to be more efficient in organizing mediation sessions. The respondent justified this as follows:

“there were cases when I informed the parties about the possibility of solving their case through mediation, they agreed to accept the mediation procedure, but since they were not contacted within a short period of time, they decided to withdraw. It might be that they were influenced by their family members and friends. The delay on initiating the mediation procedure may have a negative impact”.

The delays in taking over the mediation cases from the mediators has been noted also by another participant, Personal interview (VII), in person meeting, interviewed in June, 2022. (a mediation clerk), who said that cooperation with mediators is good in general, *“but there are delays in taking over the referred cases by the mediators, since they wait until more cases are referred to meditation, so they can accept and pick up all of them when they come”*. It should be noted that the [Law on Mediation \(2018\)](#) defines that after the mediation clerk contacts the mediator *“the mediator will have to confirm his availability and accept the case within three (3) days”*.³⁰

Another issue brought in by Personal interview (V), in person meeting, interviewed in June, 2022. (a prosecutor) only was the mediation fee of EUR 40, which, according to him, is high and should be reconsidered. He explained that *“according to the statistics, most of the offenders have low socioeconomic status, poor or being part of social welfare schemes. I had a case*

³⁰ Article 10, Point 2, [Law on Mediation \(2018\)](#), Prishtina, Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17769>, accessed on 4 June 2024.

when the offender was willing to accept the mediation procedure, but he withdrew because he could not afford paying the mediation fee”.

3.5. Professional Trainings and Awareness on Mediation Required

Regarding the qualification of the mediators, the respondents agreed that the law sufficiently specifies the recruitment process and competencies that the mediators shall have and reported no major issues. However, given the specifics of the mediation, all respondents agreed that there is a need for further professional development of the mediators. *“We attended only some trainings which were organised by international organisations, such as USAID or UNDP. They were mainly focused on the development of mediation skills rather than focusing on judicial-legal aspect of mediation”*, said Personal interview (X), in person meeting, interviewed in June, 2022. (a mediator). The mediators expect the Ministry of Justice to offer them more training, as is also defined in the [Law on Mediation \(2018\)](#) and [Administrative Instruction MD-Nr \(2019\)](#)³¹. However, they highlight that these trainings shall be advanced trainings offered by competent professionals on mediation. This would, according to them, develop further the knowledge not only of mediators but of all main stakeholders on how to implement mediation more effectively. In addition, they believe that there should be a continuous monitoring of the mediation procedure, including the sessions. Personal interview (IX), in person meeting, interviewed in June, 2022. (a mediator) explained this as follows:

“the process of mediation shall be monitored by relevant institutions and professionals to identify any possible issues in the process that might be evident during the session. This would increase the responsibility of the mediators and would also support them to improve further. It is also very important to observe if the mediators are respecting the code of ethics and if they are respecting the procedure accordingly”.

Given that mediation is a new approach, people do not have sufficient information about it. This lack of information represents a difficulty for legal authorities to convince the parties to agree to resolve their cases with mediation. The respondents explained that usually the parties involved express their will to resolve the cases with mediation only for theft of services. For other cases, the parties are aggravated and hesitate to resolve the case through mediation. According to respondents, the overall culture in Kosovo might also influence their decision to avoid their cases being solved through mediation. Therefore, they consider that it is a responsibility of Kosovan institutions to use various alternatives that would increase the awareness on mediation as an alternative procedure and the benefits it offers for all the parties. The promotion of mediation, *“... would not only contribute to raise the awareness on mediation among the public, but also among the judges and prosecutors themselves”*, said Personal interview (XI), in person meeting, interviewed in June, 2022. (a mediator).

Being asked how they see the mediation procedure in the future, respondents agree that it will be a key alternative procedure that shall be used to resolve criminal matters punishable up to three years of imprisonment. However, most of them insist that the success depends on how much they will succeed in increasing the parties' awareness on the advantages of the mediation.

3.6. Other Issues

An issue addressed by almost all respondents is the possibility of using mediation for domestic violence offences. Domestic violence criminal offences have been excluded because a victim and an offender of the same family are not in an equal position, as the mediation principle of equality provides ([Krasniqi 2019](#)). However, the participants recommend amending the Law on Domestic Violence to allow the usage of mediation

³¹ Administrative Instruction MD-Nr. 06/2019 On Training And Certification Of Mediators. Republika e Kosovës (<https://md.rks-gov.net/desk/inc/media/468FD6E8-D2D3-4CCB-A95E-2A031E12CEE6.pdf>, accessed on 4 June 2024).

procedure for cases in which family members are involved. This recommendation was given by all respondents, while the statement of Personal interview (I), in person meeting, interviewed in June. 2022. (a judge) is used below to illustrate how they justify it:

“In addition to the relation between partners, the domestic law considers as a family relation also the relations between siblings, parent and child and relations between cousins. If there would be a possibility to use mediation procedure to resolve their cases, it would be efficient. It could contribute to relax the relation between them by ending their conflict rather than have them go through a regular court procedure and aggravate further their relations”.

4. Conclusions

Although mediation is relatively new to the Kosovan judicial system, the findings show that some of the identified challenges are similar to the challenges found in other research in developed countries, and are mainly related to a lack of awareness of mediation, difficulties to develop mediation as an alternative to the more popular forms of punitive justice, a lack of specialized training, and disparities in the qualifications of mediators (Gerkin et al. 2017; De Pao 2018; CEPEJ 2007)³². It is important to note that the stakeholders were able to distinguish and highlight clearly the benefits that both the victim and the offender obtain from the process. All stakeholders seem to embrace it and are motivated to use it in criminal matters. They recognize the advantages of the mediation and are well aware of the positive impact it can have in increasing their own work efficacy and that of the judicial institutions. It may indicate that, overall, they have a positive consideration of mediation, which is promising for the further advancing of the process.

Regarding the legal basis of mediation in Kosovo, this study discloses that stakeholders agree that Kosovo has managed to develop a solid legal basis of mediation. It basically tends to be more toward an extensive regulation of mediation, having a Law on Mediation and other supplemented means of regulation such as regulations or directives, in order to “address the procedures providing for the referral of cases for restorative justice and the handling of cases following restorative justice” (Council of Europe Committee of Ministers 2018, p. 4)³³. Some of the main revisions made in the Law on Mediation (2018) include the application of mediation in criminal matters for criminal offences punishable with a fine and imprisonment up to three (3) years, in addition to those punishable with a fine or imprisonment up to three (3) years, giving a legal effect to the mediation agreement (having a power of enforcement document), introduction of mediator clerks, who administer cases offered to mediation, and the establishment of the Chamber of Mediators. Each of these revisions was considered by the participants to have enriched the legal basis facilitating the implementation of mediation in criminal matters in several aspects. In this sense, the research confirms the positive effects of the continuous changes that Kosovo has adapted in its legislation and, at the same time, it encourages regular evaluation and monitoring of mediation in criminal matters to identify other possible shortcomings that could be addressed. The Mediation Development Toolkit³⁴ set of tools developed by CEPEJ-GT-MED members can be adapted in Kosovo as well and used as framework by all mediation stakeholders.

Despite these positive insights, the results show there is still some uncertainty among both judges and prosecutors regarding the assessment and referral of a criminal case to mediation. Similar uncertainty has also been reported in research conducted in other contexts and it is something that impacts negatively the development of mediation as an alternative to the traditional forms of punitive justice (Gerkin et al. 2017; Hopt and Steffek 2013). This is also interpreted as a lack of relevant education and awareness of the main stakeholders regarding mediation (Ozbek 2011). Comparably, the findings of this study in Kosovo reveal that there are only a few criminal offences that are referred to mediation,

³² See Footnote 2.

³³ See Footnote 4.

³⁴ See Footnote 5.

although the law foresees various criminal offences that can be solved through mediation. Both judges and prosecutors justify this, saying that they decide to refer to mediation only the cases that they believe will be solved successfully. Since the law defines that the referral of cases to mediation is an option, this hesitation to refer other criminal offences to mediation may continue in the future, if the judges and prosecutors have no relevant experience and are not certain if they may be suitable to be solved through mediation. Further, the low number of cases referred to mediation can be an additional indicator that both judges and prosecutors might need more insights for all criminal offenses that are suitable to be referred to mediation. Therefore, other alternatives that would enable their further professional development as judges and prosecutors in the field of mediation shall be considered. This could be achieved through mentoring programs provided to them by experienced professionals, or trainings or program exchanges that would enable the judges and prosecutors to see and learn how criminal offences are assessed and referred to mediation in other countries.

The limited knowledge of the parties on mediation might also negatively impact the availability of mediation in the future. Tränkle (2007) claims that in several research papers conducted in different countries, it is reported that difficulties arise because the parties do not understand the process and the aim of mediation. The participants in this research claimed that most of the parties to whom they propose to solve their issues through mediation have never heard of this option. They are convinced that the number of criminal cases that can be referred to mediation can be increased if the parties would be aware and knowledgeable about the specifics of mediation. The justice institutions, and other parties involved, might consider developing certain content and communication channels through which parties could have easy access to all the information they might need regarding mediation. In the Netherlands, for example, the courts provide a self-administered test to the parties, making it possible for them to themselves assess whether the dispute that they have is suitable for the mediation process (Hopt and Steffek 2013).

The consideration of giving the prior possibility to the parties to assess by themselves if their criminal offence is suitable for mediation process could also contribute to addressing one of the unique challenges reported in this study: the limited number of judges and the large number of unsolved cases in Kosovan courts (Newspaper Metro 2022). Although mediation is viewed as an alternative possibility that would enable judges to reduce this large number of unsolved cases, this study shows that judges are overloaded and they have insufficient time to ensure the availability of mediation in all the cases where applicable. It indicates that more needs to be achieved to enable the criminal justice authorities to “give more information, arrange information sessions on mediation and, where applicable invite victims and/or offenders to use mediation and/or refer the case to mediation” (CEPEJ 2007)³⁵. Another option proposed by the stakeholders in this research is that of having police inform the parties about the mediation option when they give their first statements. The possibilities of developing a self-administered test for parties that could be used by the police as well might be considered.

Although it was mentioned by only one respondent in this research, a mediation fee might be an obstacle for the parties to accept the mediation procedure. Further research in this regard is recommended to find out more about a relationship between a mediation fee and the acceptance of the mediation procedure by the parties. It should be noted that the issue of a relatively high cost of mediation has been identified in other countries as well (CEPEJ 2007; Hopt and Steffek 2013). The findings of this study also point out the need for greater efficiency from the mediators when it comes to initiating a mediation procedure for the cases that judges and prosecutors refer to mediation. In this regard, the stakeholders consider that the institutions, particularly the Ministry of Justice, can provide more support to the Chamber of Mediators, in order for them to be better organized.

³⁵ See Footnote 2.

Finally, the need for professional training for mediators was highlighted in this study. The mediators seem to be very enthusiastic about their work but are disappointed how their work is not monitored by any institution or a researcher. The feedback they would obtain from this process would not only ensure the mediation procedure is being implemented accordingly, but it would also help the mediators understand if they are performing well or if they need to change anything in their practice. Lack of specialized training for mediators has also been identified as an obstacle in other research³⁶ and it should be considered in the Kosovan context as well.

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References

- Administrative Instruction MD-Nr. 2019. 06/2019 On Training and Certification of Mediators. Ministry of Justice. Available online: <https://md.rks-gov.net/desk/inc/media/712E3D07-0E4F-45F9-B035-23CC4B9459F9.pdf> (accessed on 4 June 2024).
- Administrative Instruction Nr. 66/2000. 2020. Kosovo Judicial Council, Administrative instruction on cases that are appropriate to be referred to mediation, Prishtina. Available online: <https://www.gjyqesori-rks.org/udhezimet-administrative/?r=M&legId=226> (accessed on 4 June 2024).
- Albanian Legal and Territorial Research Institute. 2020. *Report on the Results of Monitoring the Implementation of the Legislation on Mediation*. Tirana: Albanian Legal and Territorial Research Institute.
- Billups, Felice D. 2021. *Qualitative Data Collection Tools: Design, Development and Applications (Qualitative Research Methods)*. Newcastle upon Tyne: Sage Publications, Inc.
- Bode, Jola. 2021. Mediation in Juvenile Criminal Offenses—Albanian Case. *European Journal of Interdisciplinary Studies* 7: 77–89. [CrossRef]
- Brookes, Derek, and Ian McDonough. 2006. *The Differences between Mediation and Restorative Justice Practice*. Available online: https://www.researchgate.net/publication/335704100_The_Differences_between_Mediation_and_Restorative_JusticePractice#fullTextFileContent (accessed on 4 June 2024).
- CEPEJ. 2007. *Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters CEPEJ (2007)13*. Strasbourg: CEPEJ.
- CEPEJ. 2018. *Mediation Pilot Monitoring Checklist. From Mediation Development Toolkit Ensuring Implementation of the CEPEJ Guidelines on Mediation, CEPEJ (2018)7 REV*. Strasbourg: CEPEJ.
- CEPEJ. 2019. *European Handbook for Mediation Lawmaking, CEPEJ (2019)9*. Strasbourg: CEPEJ.
- Charkoudian, Lorig, Jamie Walter, Caroline Hamon-Darrow, and Justin Bernsteind. 2021. Mediation in Criminal Misdemeanor Cases. *Criminology, Criminal Justice, Law & Society* 22: 14–29.
- Code No. 08/L-032 Criminal Procedure Code. 2022. Prishtina. Available online: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759> (accessed on 4 June 2024).
- Council of Europe Committee of Ministers. 1999. *Recommendation No. R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters*. Strasbourg: Council of Europe Committee of Ministers.
- Council of Europe Committee of Ministers. 2018. *Recommendation CM/Rec (2018)8 Concerning Restorative Justice in Criminal Matters*. Strasbourg: Council of Europe Committee of Ministers.
- Criminal Code of the Republic of Kosovo. 2019. Prishtina. Available online: <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf> (accessed on 4 June 2024).
- Criminal No. 04/L-123 Procedure Code. 2012. Prishtina. Available online: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861> (accessed on 4 June 2024).

³⁶ See Footnote 2.

- De Pao, Giuseppe. 2018. Ten-Year-Long “EU Mediation Paradox” When an EU Directive Needs to Be More . . . Directive: Briefing Requested by the JURI Committee, European Parliament [Interactive]. Available online: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI\(2018\)608847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf) (accessed on 4 June 2024).
- Dermaku, Fatime. 2019. Recent Additions to Kosovo’s Law of Mediation. *Acta Universitatis Danubius* 15: 136–43.
- European Commission. 2023. *Kosovo Report 2023*. Luxembourg: European Commission.
- European Union. 2008. *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*. Maastricht: European Union.
- Gay, Lorraine R., Geoffrey E. Mills, and Peter W. Airasian. 2006. *Airasian. Educational Research: Competencies for Analysis and Applications*. Upper Saddle River: Pearson Merrill Prentice Hall.
- Gerkin, Patrick, John Walsh, Joseph Kuilema, and Ian Borton. 2017. *Implementing Restorative Justice under the Retributive Paradigm: A Pilot Program Case Study*. Washington, DC: SAGE Open.
- Hajra, Florentina Hajdari. 2023. *The Reform of the Legal Framework, Practice and Challenges of Mediation in Kosovo*. Prishtina: Alternative Dispute Resolution Center (ADRC).
- Hopt, Klaus J., and Felix Steffek. 2013. *Mediation Principles and Regulation in Comparative Perspective*. Oxford: Oxford University Press.
- International Finance Corporation. 2009. *Paths of Mediation in Bosnia and Herzegovina: Collection of Papers*. Washington, DC: IFC, International Finance Corporation.
- Johnstone, Gerry. 2012. *A Restorative Justice Reader*, 2nd ed. London: Routledge.
- Jovanovska, Antigona, and Nikola Tuntevski. 2018. Appliance of Mediation in Criminal Matters on the Area of the Court of Appeal—Bitola, Macedonia. *Balkan and Near Eastern Journal of Social Sciences* 4: 40–47. Available online: https://ibaness.org/bnejss/2018_04_04/05_Antigona_and_Nikola.pdf (accessed on 4 June 2024).
- Krasniqi, Milot. 2019. Several Characteristics of Mediation in Criminal Field in the Republic of Kosovo. *International Comparative Jurisprudence* 5: 190–205.
- Law on Mediation. 2008. Prishtina. Available online: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2592> (accessed on 4 June 2024).
- Law on Mediation. 2018. Prishtina. Available online: <https://www.gjyqesori-rks.org/mediation/?lang=en> (accessed on 4 June 2024).
- McCorkle, Suzane, and Melanie J. Reese. 2019. *Mediation Theory and Practice*, 3rd ed. Washington, DC: SAGE Publications.
- Metro, Gazeta. 2022. Over 30,000 Court Cases Unsolved, Citizens Wait for Their Case to Be Solved in Court for Many Years. *Newspaper Metro*, June 4.
- Moran, Kattie L. 2017. Restorative Justice: A Look at Victim Offender Mediation Programs. *21st Century Social Justice* 4: 2.
- Ozbek, Mustafa Serdar. 2011. The principles and procedure of penal mediation in Turkish Criminal Procedure Law. *Ankara Law Review* 8: 153–220.
- Poulson, Barton. 2007. Recreating relationships: The interpersonal implications of restorative justice for juvenile offenders and their victims. *Journal of Law & Family* 10: 161–72.
- Sahiti, Ejup, Rexhep Murati, and Xhevdet Elshani. 2014. Commentary Criminal Procedure Code of the Republic of Kosovo. Prishtina. Available online: <http://jus.igjk.rks-gov.net/486/> (accessed on 4 June 2024).
- Stoilkovska, Alexandra, Valentina Mucunski Palevski, and Jana Ilieva. 2015. Awareness about mediation as an alternative form of dispute resolution: Practices in the Republic of Macedonia. *International Journal of Cognitive Research in Science, Engineering and Education* 3: 21–27. [CrossRef]
- Suzuki, Masahiro, and Xiaoyu Yuan. 2021. How Does Restorative Justice Work. *Criminal Justice and Behaviour* 48: 1347–65. [CrossRef]
- The Kosovo Prosecutorial Council. 2013. *Decision/Protocol No. 80/2013 on Referring the Cases by the Public Prosecution to Mediation Centers*. Prishtina: The Kosovo Prosecutorial Council.
- Tränkle, Stefanie. 2007. In the shadow of penal law: Victim-offender mediation in Germany and France. *Punishment & Society* 9: 395–415.
- United Nation. 2000. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000). San Francisco: United Nations and the Rule of Law.
- Van Ness, Daniel W., and Karen Heetderks Strong. 2014. *Restoring Justice, An Introduction to Restorative Justice*, 5th ed. London: Routledge, pp. 82–95.
- Zelizer, Craif, and Colleen Chiochetti. 2017. *The Mediation Handbook: Research, Theory and Practice*. Edited by Alexia Georgakopoulos. London: Routledge.
- Zwier, Paul J., and Thomas F. Guernsey. 2016. *Advanced Negotiation and Mediation Theory and Practice: A Realistic Integrated Approach*, 2nd ed. Boston: National Institute for Trial Advocacy. ASPEN Publishing.

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