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Osvrt na panel CARS-a „Značaj i prednosti rješavanja porodičnih sporova putem medijacije“

Family Mediation from a Lawyer's Perspective

Reflections on the CARS panel “The Importance and Advantages of Resolving Family Disputes through Mediation”

Marija Živković · Partner, JPM & Partners Podgorica



CRNOGORSKI

Medijacija u porodičnim sporovima iz ugla advokata

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Centar za alternativno rješavanje sporova (CARS) organizovao je u petak, 30. oktobra 2026. godine, u hotelu Hilton u Podgorici panel na temu „Značaj i prednosti rješavanja porodičnih sporova putem medijacije“. Moderatorka panela bila je direktorica Centra Maja Golović Vojinović, a učesnice Tamara Brnović, sutkinja Višeg suda u Podgorici; Snežana Mijušković, zamjenica Zaštitnika ljudskih prava i sloboda Crne Gore; Dijana Popović Gavranović, načelnica Stručne službe u Vrhovnom državnom tužilaštvu, socijalna radnica i porodična terapeutkinja; prof. dr Biljana Đuričin, profesorka Pravnog fakulteta Univerziteta Crne Gore; i ja, u svojstvu advokatice. Iako je svaka od nas i medijatorka, govorile smo prvenstveno sa stanovišta svojih primarnih profesija, što je doprinijelo kvalitetnoj razmjeni teorijskih stavova i praktičnih iskustava.

U brakorazvodnim postupcima upućivanje na medijaciju je u Crnoj Gori obavezno, dok u ostalim porodičnim sporovima sud stranke može uputiti medijatoru kada ocijeni da je to u najboljem interesu djeteta. U brakorazvodnim parnicama sud stranke upućuje na prvi sastanak s medijatorom radi pokušaja mirenja, a ako mirenje ne uspije, radi postizanja poravnanja o vršenju roditeljskog prava i podjeli zajedničke imovine. Izuzetak su slučajevi u kojima zbog sumnje na nasilje u porodici medijacija ne bi bila svrsishodna. Iako je upućivanje obavezno, sama medijacija ostaje dobrovoljan i povjerljiv postupak, u kojem se sa strankama postupa ravnopravno i pravično, uz poštovanje ostalih osnovnih načela medijacije – savjesnosti i poštenja, neutralnosti i nepristrasnosti.

ENGLISH

Family Mediation from a Lawyer's Perspective

Reflections on the CARS panel “The Importance and Advantages of Resolving Family Disputes through Mediation”

On Friday, 30 October 2026, the Centre for Alternative Dispute Resolution (CARS) held a panel at the Hilton hotel in Podgorica on “The Importance and Advantages of Resolving Family Disputes through Mediation”. The panel was moderated by the Centre's Director, Maja Golović Vojinović, and the panellists were Tamara Brnović, Judge of the High Court in Podgorica; Snežana Mijušković, Deputy Protector of Human Rights and Freedoms of Montenegro; Dijana Popović Gavranović, Head of the Expert Service at the Supreme State Prosecutor's Office, social worker and family therapist; Prof. Dr Biljana Đuričin, Professor at the Faculty of Law of the University of Montenegro; and myself, as a practising lawyer. Although each of us is also a mediator, we spoke mainly from the standpoint of our primary professions, which made for a valuable exchange of theoretical views and practical experience.

In Montenegro, referral to mediation is mandatory in divorce proceedings, while in other family disputes the court may refer the parties to a mediator when it considers this to be in the best interests of the child. In divorce cases, the court refers the parties to a first meeting with a mediator to attempt reconciliation and, if reconciliation fails, to reach a settlement on the exercise of parental responsibility and the division of joint property. The exception is cases in which, because of suspected domestic violence, mediation would not be appropriate. Although referral is mandatory, mediation itself remains a voluntary and confidential process in which the parties are treated equally and fairly, in line with the other core principles of mediation – good faith and honesty, neutrality and impartiality.

CRNOGORSKI

Prema podacima Uprave za statistiku, u Crnoj Gori je 2025. godine pravosnažno razveden 851 brak, naspram 584 u 2014. godini, a u više od polovine tih brakova bilo je djece. Centar za alternativno rješavanje sporova primio je u 2025. godini 262 predmeta porodične medijacije, a do septembra 2026. još 168. Iako ove brojke nisu direktno uporedive, porast broja razvoda jasno ukazuje na potrebu za efikasnijim načinima rješavanja porodičnih sporova.

Na tom okviru gradile smo razgovor, svaka iz svoje perspektive – suda, zaštite ljudskih prava, socijalnog rada i porodične terapije, akademske zajednice i advokature. O prednostima medijacije nije bilo dileme: brži i jeftiniji postupak, manji emotivni teret, očuvan odnos roditelja i mogućnost da stranke same urede svoje odnose.

Najbolji interes djeteta osnovna je premisa od koje svaka od nas uvijek polazi u svom radu, u kojoj god ulozi da se nalazi. To je i zakonska obaveza svih učesnika u postupku, kako pred sudom, tako i u medijaciji. Prema djetetu se mora postupati s posebnom pažnjom, uz puno uvažavanje njegovih potreba i dobrobiti. Zato sud dogovor roditelja o vršenju roditeljskog prava prihvata samo ako je u najboljem interesu djeteta. Ista obaveza važi i za medijatora. On mora posebno voditi računa o djetetu, s njim može razgovarati kada je to primjereno njegovom uzrastu, a povjerljivost postupka prestaje tamo gdje počinje zaštita djeteta. Iako zakon takav razgovor dozvoljava, u našoj praksi medijatori do sada nisu razgovarali s djetetom. Na panelu je bilo riječi o tome kako bi se ovaj segment, po uzoru na uporedna iskustva, mogao unaprijediti. Za to je, međutim, potrebno jasno utvrditi uslove i način na koji bi se dijete uključilo u postupak. Presudna je i stručnost medijatora, jer razgovor s djetetom u porodičnom sukobu zahtijeva posebna znanja i veliki senzibilitet.

ENGLISH

According to the Statistical Office of Montenegro, 851 marriages were finally dissolved in Montenegro in 2025, compared with 584 in 2014, and more than half of those marriages involved children. The Centre for Alternative Dispute Resolution received 262 family mediation cases in 2025, and a further 168 by September 2026. Although these figures are not directly comparable, the rise in the number of divorces clearly points to the need for more effective ways of resolving family disputes.

This was the framework for our discussion, each of us speaking from her own perspective – the judiciary, human rights protection, social work and family therapy, academia and the legal profession. There was no disagreement about the advantages of mediation: a faster and cheaper process, a lighter emotional burden, a preserved relationship between the parents, and the opportunity for the parties to settle their own affairs.

The best interests of the child are the fundamental premise from which each of us always starts in our work, whatever role we are in. They are also a legal obligation for everyone involved in the proceedings, both in court and in mediation. A child must be treated with special care and with full regard for his or her needs and well-being. This is why a court will accept the parents' agreement on parental responsibility only if it is in the best interests of the child. The same duty applies to the mediator, who must pay particular attention to the child and may speak with the child where this is appropriate to the child's age; confidentiality ends where child protection begins. Although the law permits such a conversation, mediators in our practice have not yet spoken with children. The panel discussed how this aspect could be improved, drawing on comparative experience. This, however, requires clearly defining the conditions and the manner in which a child would be included in the process. The mediator's expertise is also decisive, because talking to a child caught in a family conflict requires specialist knowledge and great sensitivity.

CRNOGORSKI

Postupci razvoda braka, odlučivanja o vršenju roditeljskog prava, diobe zajedničke imovine i slični porodični sporovi među onima su kojima se advokati najčešće bave. Specifični su zbog okolnosti u kojima nastaju. U njima nije presudno pravničko znanje, već sposobnost da se razumije čovjek koji sjedi preko puta. Ljudi su u tim trenucima ranjivi – povrijeđeni, ljuti, uplašeni i iscrpljeni. Pored toga, često imaju nerealna očekivanja: da će sud „kazniti“ drugu stranu, da će dijete pripasti samo njima, da će zadržati svu imovinu. Podložni su i uticajima sa strane – porodice, prijatelja, novih partnera, tuđih iskustava i društvenih mreža – koji su najčešće dobronamjerni, ali rijetko objektivni.

Advokat je prva osoba kojoj se stranka obraća, zbog čega je ključno uspostaviti odnos povjerenja kroz slušanje, empatiju i podršku, ali bez bezuslovnog povlađivanja. U tom odnosu advokat ima tri jasne obaveze: da sasluša i razumije šta stranka traži i šta joj je zaista potrebno; da bude objektivan i otvoreno kaže koje su mogućnosti i realni ishodi postupka, čak i kada to nije ono što stranka želi da čuje; i da zastupa interes stranke, ali uvijek uz interes djeteta, koji ima prednost. Tu se javlja i najveći izazov. Roditelji često nisu svjesni šta je najbolji interes njihovog djeteta. Razlog nije nedostatak ljubavi, već sukob, zbog kojeg sopstvene želje lako poistovjete s potrebama djeteta. Zato je zadatak advokata, medijatora, organa starateljstva i suda da roditeljima pomognu da u odlukama polaze od stvarnih potreba djeteta, a ne od sopstvenog sukoba.

ENGLISH

Divorce, decisions on parental responsibility, the division of joint property and similar family matters are among the cases lawyers deal with most often. They are specific because of the circumstances in which they arise. What matters most is not legal knowledge but the ability to understand the person sitting across from you. At such moments people are vulnerable – hurt, angry, frightened and exhausted. They also often have unrealistic expectations: that the court will “punish” the other side, that the child will be awarded to them alone, that they will keep all the property. They are also susceptible to outside influences – family, friends, new partners, other people's experiences and social media – which are usually well-meant but rarely objective.

The lawyer is the first person the client turns to, which is why it is essential to build a relationship of trust through listening, empathy and support, but without unconditionally indulging the client. In that relationship the lawyer has three clear duties: to listen to and understand what the client is asking for and what they really need; to be objective and say openly what the options and realistic outcomes of the proceedings are, even when that is not what the client wants to hear; and to represent the client's interests, but always together with the interests of the child, which take precedence. This is also where the greatest challenge lies. Parents are often unaware of what their child's best interests are. The reason is not a lack of love but the conflict, which leads them to mistake their own wishes for the child's needs. It is therefore the task of the lawyer, the mediator, the guardianship authority and the court to help parents base their decisions on the child's real needs rather than on their own conflict.

CRNOGORSKI

Dio posla advokata je i da stranci objasni sva tri puta koja su pred njom – sporazum, medijaciju i sud – i šta svaki od njih znači. Smatram da je dogovor uvijek bolji od nametnutog rješenja. Zato strankama, kad god za to postoji prostor, prvo predlažem da same, sporazumno urede odnose. Posebno se trudim da izbjegnem situacije u kojima o načinu održavanja ličnih odnosa s djetetom i vršenju roditeljskog prava presudno odlučuju modeli koje predlaže centar za socijalni rad. Ti modeli su, po mom iskustvu, često uniformni i neprilagođeni savremenim porodicama, pa ne uvažavaju specifičnosti konkretne situacije. Roditelji koji poznaju svoje dijete, svoj ritam i svoje mogućnosti mogu, uz pravu podršku, postići rješenje koje je mnogo bliže stvarnim potrebama djeteta.

Kada je stranka upućena na medijaciju, uloga advokata se mijenja. Mirenje se vodi bez punomoćnika, pa stranku treba pripremiti prije prvog sastanka s medijatorom: da zna šta je čeka, šta može da očekuje i da odluka ostaje u njenim rukama. U fazi poravnanja zadatak advokata je da dogovor bude zakonit, izvršiv i održiv.

Ulogu advokata, ipak, ne treba precjenjivati. Nemaju sve stranke punomoćnika, a ni svi punomoćnici nemaju iskustvo i senzibilitet za porodične sporove. Zato je važna i aktivna uloga suda. Sud bi već na pripremnom ročištu, prije upućivanja na medijaciju, trebalo da strankama pojasni kako postupak izgleda, šta mogu da očekuju i koje su njegove prednosti. Stranka koja razumije zašto je upućena medijatoru dolazi s manje otpora i više spremnosti na razgovor.

ENGLISH

Part of a lawyer's job is also to explain to the client all three paths open to them – agreement, mediation and court – and what each of them involves. I believe that an agreement is always better than an imposed solution. That is why, whenever there is room for it, I first suggest to clients that they settle matters themselves, by agreement. I make a particular effort to avoid situations in which contact arrangements and the exercise of parental responsibility are decided mainly by the models proposed by the social welfare centre. In my experience, these models are often uniform and ill-suited to modern families, and they fail to take account of the specific circumstances of a given case. Parents who know their child, their own routines and their own capacities can, with the right support, reach a solution that is much closer to the child's real needs.

Once the client has been referred to mediation, the lawyer's role changes. Reconciliation takes place without legal representatives, so the client should be prepared before the first meeting with the mediator: they should know what lies ahead, what they can expect, and that the decision remains in their hands. At the settlement stage, the lawyer's task is to make sure the agreement is lawful, enforceable and sustainable.

The lawyer's role should not, however, be overstated. Not every party has a legal representative, and not every representative has the experience and sensitivity that family disputes require. That is why an active role for the court also matters. Already at the preliminary hearing, before referring the parties to mediation, the court should explain to them what the process looks like, what they can expect and what its advantages are. A party who understands why they have been referred to a mediator arrives with less resistance and greater willingness to talk.

CRNOGORSKI

Ni dobra priprema, međutim, ne garantuje rezultat. Medijacija koja se sprovodi formalno, kao korak koji treba „odraditi“ prije nastavka parnice, samo produžava postupak i stranke vraća u sudnicu još udaljenije. Advokat i sud mogu stranku dovesti do vrata, ali razgovor vodi medijator. Ključ uspjeha je zato u ličnosti medijatora – u njegovom znanju i umijeću, i u sposobnosti da prepozna i ono što se ne izgovori: strah, pritisak i nasilje u bilo kom obliku.

Iza mene je prilično bogato advokatsko iskustvo u ovoj oblasti i mogu reći da su porodični sporovi izuzetno zahtjevni, ne toliko pravnički koliko emotivno, i to za sve nas koji u njima učestvujemo kao profesionalci. Ipak, donose i satisfakciju koju je teško opisati, naročito kada nakon mnogo godina sretnem nekoga s kim sam prošla taj put. Takvi trenuci podsjećaju zašto je u ovim postupcima važno ono što ne piše u spisima – da iza svakog predmeta stoje ljudi i djeca čije živote možemo, makar malo, učiniti boljim.

Uspjeh porodične medijacije zavisi od svih koji u njoj učestvuju, ali najviše od medijatora. I od njega se u ovim sporovima, više od pravničkog znanja, traže komunikacija, strpljenje, pristup ljudima u krizi i sposobnost da prepozna ono što se ne izgovara. Smatram da u većini drugih sporova medijatori treba da budu pravnici, jer je predmet spora pravno pitanje. Porodični spor je drugačiji. Moj je stav da ga treba da vode medijatori iz pomagačkih profesija – socijalni radnici, psiholozi, pedagozi i drugi stručnjaci koji se bave porodicom i djecom. Praksa je to više puta potvrdila: upravo oni u porodičnim sporovima postižu najbolje rezultate. Ovaj stav iznijela sam i na panelu, a moje sagovornice su se s njim, uz manje razlike u pristupu, uglavnom složile.

ENGLISH

Even good preparation, however, does not guarantee a result. Mediation carried out as a formality, as a step to be “ticked off” before the litigation continues, only prolongs the proceedings and sends the parties back to the courtroom even further apart. The lawyer and the court can bring the party to the door, but it is the mediator who leads the conversation. The key to success therefore lies in the person of the mediator – in their knowledge and skill, and in their ability to recognise what goes unsaid: fear, pressure and violence in any form.

I have considerable experience as a lawyer in this field, and I can say that family disputes are extremely demanding – not so much legally as emotionally – for all of us who take part in them as professionals. Yet they also bring a satisfaction that is hard to describe, especially when, many years later, I meet someone with whom I shared that journey. Such moments are a reminder of what matters in these proceedings although it is not written in the case file – that behind every case there are people and children whose lives we can make at least a little better.

The success of family mediation depends on everyone involved, but above all on the mediator. In these disputes, more than legal knowledge, the mediator needs communication skills, patience, the ability to work with people in crisis, and the ability to recognise what is left unspoken. I believe that in most other disputes mediators should be lawyers, because the subject of the dispute is a legal question. A family dispute is different. In my view, it should be handled by mediators from the helping professions – social workers, psychologists, educators and other specialists who work with families and children. Practice has confirmed this many times: it is precisely they who achieve the best results in family disputes. I put this view forward at the panel as well, and my fellow panellists largely agreed with it, with minor differences in approach.

CRNOGORSKI

Ni to, međutim, ne smije biti jedini uslov. Danas ista licenca važi za spor oko duga i za spor oko djeteta, iako zakon od sudije u porodičnim stvarima izričito traži posebna znanja iz prava djeteta. Od medijatora ne treba tražiti manje. Potrebne su posebne i kontinuirane obuke, usklađene sa savremenim trendovima i potrebama prakse, kao i posebna lista medijatora za porodične sporove.

ENGLISH

That, however, must not be the only requirement. Today the same licence applies to a dispute over a debt and to a dispute over a child, even though the law expressly requires judges in family matters to have specialist knowledge of children's rights. We should not ask less of mediators. What is needed is dedicated and continuous training, aligned with current developments and the needs of practice, as well as a separate roster of mediators for family disputes.



Porodica koja se razilazi zaslužuje da je do dogovora vodi neko ko razumije i ljude i pravila. Tek tada medijacija prestaje da bude formalni korak i postaje prilika da roditelji i nakon razvoda ostanu roditelji.

A family that is breaking apart deserves to be guided to an agreement by someone who understands both people and the rules. Only then does mediation stop being a formal step and become an opportunity for parents to remain parents after the divorce.

AUTORKA · AUTHOR



Marija Živković

Partner, JPM & Partners Podgorica

marija.zivkovic@jpm.law

Partner, JPM & Partners Podgorica

ADRESA

Ulica Šeika Zaida 2
Podgorica, Crna Gora

JPM & Partners · Lex Mundi · www.jpm.law

ADDRESS

2 Šeika Zaida Street
Podgorica, Montenegro

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