



PROJECT: *Support to the Mediation Center in Kraljevo*

ASSESSMENT OF THE MEDIATION PROGRAM IN KRALJEVO

Prepared for the Canada-Serbia Judicial
Reform Project (CS-JRP)



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EXECUTIVE SUMMARY

Partners for Democratic Change-Serbia (Partners-Serbia) is implementing a project with the Canada-Serbia Judicial Reform Project (CS-JRP) to strengthen the program's mediation sub-component in the pilot court in Kraljevo. The project is designed to build upon existing CS-JRP activities and offer additional assistance that will ensure concrete and measurable results which can serve as a model for future court-annexed mediation programs throughout Serbia.

CS-JRP's intervention in the Kraljevo Mediation Center began in 2007 and consisted of: hiring the Republic Mediation Center to train 23 judges and lawyers as mediators, renovating facilities within the court building to serve as the Mediation Center, organizing two international study trips for local stakeholders, organizing a visit to the Sarajevo mediation conference, organizing one regional seminar with Canadian experts, and conducting promotional activities. Still, in spite of this considerable effort and investment, to this date, only three mediations have taken place in the new Center, albeit all three successfully.

To determine the existing obstacles, Partners-Serbia¹ conducted a base-line assessment of the mediation program in Kraljevo. The aim of this assessment report is to inform and shape an implementation strategy to overcome those obstacles, resulting in a well-functioning, high-quality mediation program. Partners-Serbia's is now implementing a strategy that responds to the results of the assessment to improve the effectiveness of the Kraljevo Mediation Center, focusing on three main objectives:

- (1) Creating a functional system for mediation in collaboration with key stakeholders;
- (2) Providing coaching to technical staff and mediators to ensure a high-quality service to the public; and,
- (3) Designing a broad, public-outreach campaign on the benefits of mediation targeting the legal community and possible court users.

The Assessment methodology included a review of CS-JRP activities to date, analysis of the national legal framework for mediation, interviews with key stakeholders, a survey conducted by questionnaire, and a review of the mediation case-processing system as it currently exists in the court.

The assessment identified several opportunities and obstacles to the development and success of mediation in Kraljevo. Opportunities include: the availability of mediators, adequate mediation facilities, support by court management, willingness of local institutions/organizations to be a part of mediation referral network, and apparent interest of potential users for mediation services. Obstacles include: inadequacy of public promotion and outreach campaign, cost of mediation, lack of well-defined mediation case-management system, lack of understanding of trial judges, court staff and Kraljevo Mediation Center staff of their role in the system of mediation services, lack of practical experience and advanced skills of trained mediators, and lack of mediation referral network.

Based on the findings, recommendations relate to three main categories:

1. Improvement of the Mediation Center oversight and its cooperation with relevant stakeholders

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2. Improvement of the internal court procedures to better incorporate the Mediation Center services within court operations
3. Need for a broad public outreach campaign.

I. INTRODUCTION

This section presents the background, purpose and methodology of the Assessment.

1. Background

The Mediation Center in Kraljevo, which opened in August 2007, is the only institution providing mediation services in the Raska district of Serbia. The Kraljevo Center is the only place where local citizens² can acquire mediation services to solve their disputes more efficiently and at a reduced cost.

The greatest support for the development of the Mediation Center in Kraljevo was provided by the Canadian Government through the CIDA-funded Canada-Serbia Judicial Reform Project (CS-JRP), implemented by the GENIVAR Consortium. First, facilities in the District Court were renovated to serve as the Mediation Department. Afterwards 12 judges of the Kraljevo District Court, seven judges of the Kraljevo Municipal Court, and four Kraljevo lawyers passed the training offered by the Republic Mediation Center (RMC), and obtained mediator's licenses issued by the RMC.

The mediators and the Court's managerial staff were assisted by the CS-JRP and attended a series of events in which they were able to discuss mediation issues with more experienced colleagues.

In October 2007, CS-JRP organized a regional seminar where Kraljevo judges were given the opportunity to learn more about mediation from colleagues from Serbia and abroad. Mediators met a Canadian expert and practitioners from Bosnia and Herzegovina at a regional mediation conference. In February 2008, the Court Presidents and staff members visited the Second Municipal Court in Belgrade to get acquainted with how the mediation is conducted within this court that offered mediation as an integral part of the administration of justice. In order to reach the local population and better inform potential court users on the procedures and benefits of mediation, the CS-JRP team coordinated the opening ceremony of the Mediation Center of the Kraljevo District Court and Regional Conference on Mediation (both events were attended by the Canadian Ambassador to Serbia). These events were covered by local and national print and electronic media. Furthermore, in July 2008, a television show on a local Kraljevo channel featured the Kraljevo District Court President and the Director of the Republic Mediation Center in Belgrade. They explained mediation and provided an overview of its benefits in comparison to court proceedings. This was positively received by the community.

In January 2009, CS-JRP organized a two-day visit to the Republic Mediation Center and the Mediation Department of the Subotica Municipal Court for eight mediators from Kraljevo. In February 2009, the Kraljevo Court Presidents attended a judicial seminar in Sarajevo on settlement conferences and mediation. The seminar featured a lawyer and a judge who specialized in judicial settlement conference and mediation from Canada. Finally, in June 2009, CS-JRP organized another study visit to Canada for the two court presidents, several judges and representatives of the Republic Mediation Center. All of these activities were aimed to encourage the growth of mediation in the Kraljevo region and assure professionalism in providing mediation services in this part of Serbia.

² Raska District incorporates five municipalities, i.e., Kraljevo, Vrnjacka Banja, Raska, Novi Pazar and Tutin, with the city of Kraljevo as its seat. The population is approximately 300,274. |

Mediation, while one of the most used ADR processes worldwide, is relatively new to Serbia. The development of mediation began in 2002 when the Second Municipal Court in Belgrade, followed by the First Municipal Court in Belgrade, started providing court-annexed mediation services. At the time, the only legal basis for the use of mediation in courts was the provisions of the Law on Civil Procedure on court settlement. Success of these pilot, court-annexed mediation programs was soon recognized by the Serbian government and the first Law on Mediation was enacted in February 2005.

The Law on Mediation enables the use of mediation in different types of disputes, particularly in property-related legal relationships between people and legal entities, commercial, family, workplace and other civil law relations, administrative and criminal cases, in which the parties act freely, unless the law stipulates the exclusive authority of the court or other relevant authority to decide in a dispute.³ The Law supports mediation development both in court-annexed and private settings, thereby encouraging the growth of mediation in all areas of social life. During the last couple of years, many new laws have come into force that recognize the value of mediation in certain types of disputes, and support its use as an alternative to court procedures, i.e., Family Law, the Law on Peaceful Settlement of Labour Disputes, the Law on Juvenile Offenders and the Criminal Protection of Juveniles, the Criminal Code, the Insurance Law, and the recently enacted Anti-discrimination Law. Currently, the Ministry of Justice has formed a working group to draft amendments and additions to the Law on Mediation. Amendments and additions are expected particularly in relation to issues such as, requirements for becoming a mediator, licensing of mediators, mediation in cases with an international element, and mediation services in the private sector.

Together with the changes in the legislative framework, State support for mediation has been manifested by the establishment of the Republic Mediation Center in Belgrade in 2006. The Center was founded by the Ministry of Justice of Serbia (on behalf of the Republic of Serbia), the National Bank of Serbia, the Belgrade Bar Association and the Child Rights Center. Within its mandate the Center provides training for future mediators in accordance with the Regulation on Training Program for Mediators⁴, and manages its roster of mediators. Initial financial support for the Center was provided by the International Finance Corporation (IFC) and the Canadian and Netherlands governments. Based on this support, from 2006 to 2009, the Republic Center for Mediation opened branches in Belgrade at the Second Municipal Court, the Third Municipal Court and the Commercial Court, at the District Court in Nis, the Municipal Court in Subotica, and the District Court in Kraljevo.

Despite State support in providing an adequate legal framework for mediation in Serbia and the support of international organizations in developing mediation centers, training future mediators and bringing international experience, the number of mediation cases, on the national level, is decreasing and court-annexed mediation programs throughout Serbia are having difficulties to find citizens interested in using mediation services.

CS-JRP's previous efforts in the Kraljevo Mediation Center focused on hiring the Republic Mediation Center to train judges and several lawyers as mediators, renovating facilities within the court building to serve as the Mediation Center, conducting two international study trips, and providing promotional activities. Still, to this date only three mediations have taken place in the new center. During May and June 2009, Partners-Serbia conducted a

³ See, Article 1 of the Law on Mediation, Official Gazette RS, no. 18/2005.

⁴ Official Gazette RS no. 44/2005

baseline assessment of the mediation program in the Kraljevo court with the purpose of identifying the main obstacles for the development of mediation in Kraljevo, and provide recommendations for the appropriate solutions to the problem.

2. Purpose and Methodology of the Assessment

This assessment aims to identify the mediation programs' obstacles and potential opportunities as well as the progress and potential capacity of the pilot Mediation Center and recommend steps to ensure that the activities are appropriate for their achieved level of development.

The Assessment methodology included:

- A review of CS-JRP activities to date and the results achieved,
- An analysis of the national legislative framework for mediation.
- Interviews with: the Republic Mediation Center, district and municipal court judges, local court staff, lawyers, trained mediators and potential users of the court/mediation system in Kraljevo,
- A survey by questionnaire of judges, lawyers, representatives of public companies and the general public,
- A review of the mediation case-processing system as it currently exists in the court.

In addition to extensive discussions with the district and municipal court presidents, the administrative coordinator in the Kraljevo Mediation Center, and two meetings with the Director and Deputy Director of the Republic Mediation Center, a total of 20 interviews were conducted, as follows: six judges (of which five are trained mediators), four attorneys, two court staff, the city ombudsman and his deputy, four public utility company representatives, one medical center representative and a director of the local center for social work. Gender breakdown of the interviewees was 14 female and 6 male.

The survey was conducted during May and June of 2009. Two-hundred questionnaires were distributed and 79 were completed and returned as follows: 10 judges, 11 attorneys, 11 other stakeholders (from the Kraljevo Center for Social Work, local public utility companies, the regional medical center, the City Ombudsman, and a representative from the City Attorney's office), and 47 citizens. In addition, a sample post-mediation evaluation questionnaire was developed for the purposes of the survey and provided to the administrative coordinator of the Mediation Center for distribution to the 6 parties who have already attempted mediation in the Center.

The list of preliminary findings is based on the assessment that included a smaller pool of potential users of mediation services and a limited number of stakeholders. More comprehensive research might allow for a broader overview and additional recommendations for the development of mediation in the Raska District in the future.

II. RESULTS OF THE ASSESSMENT

This section identifies opportunities and obstacles to the growth of mediation in the Kraljevo jurisdiction based on the results of the assessment survey and Partners-Serbia's observations of the implementation of the CS-JSP activities.

1. Factors that provide positive incentives for further development of mediation services

- Availability of mediators

Considering that the Center is recently established, there is an appropriate number of mediators able to respond to citizens' mediation needs. There is a total of 23 trained mediators from Kraljevo of which 19 are judges, three are practicing attorneys-at-law and 1 is a lawyer. To date, only one mediator has had the opportunity to actually mediate. (The same judge was selected to mediate in all three of the Center's cases).

- Adequate mediation facilities available

Adequate mediation facilities are available within premises adjacent to the Kraljevo District Court. Premises include a waiting room, mediation room, one room serving as a breakout room, and a toilet. The Center's space was adapted to serve mediation process requirements based on the Republic Center for Mediation premises in Belgrade. All rooms in the Center are very convenient and easy to reach for clients, albeit without access or facilities for disabled users. Also, the Center has all the equipment and furniture needed for its normal functioning (computers, printers, round tables in mediation room, etc.). Clients confirmed their satisfaction with the Center's staff and its facilities in two out of the three cases mediated in the Center.

- Support of the court presidents and court administration

The Court Presidents of the Kraljevo district and municipal courts provide genuine and intensive support to the Mediation Center. Their willingness to participate in training sessions and activities related to the development of the Center must be commended. Although the Court Presidents' support staff and administration received no formal training and have only minimum guidance and instruction, as noted below, they are also making efforts to support the Mediation Center.

In each court a judge, mediation coordinator, is appointed, with a task to provide more information to interested parties and ensure coordination with the Kraljevo Mediation Center.

- Willingness of local institutions/organizations and other stakeholders to be a part of, and support the development of a mediation referral network

Interviews conducted with representatives of the Kraljevo's Ombudsman's office, the Center for Social Work, the Kraljevo Bar Association, and public utility companies showed a readiness to refer cases suitable for mediation to the Center and a willingness to be a part of a mediation referral network. This support is crucial and therefore the positive attitude of local stakeholders should be used as an opportunity for the development of a new system of services.

- Apparent interest of potential users for mediation services

Survey results confirmed significant interest in using mediation services. The overwhelming majority of participants (70 out of 79) expressed that in case of a dispute they would first try to find resolution in mediation. Twenty-nine would use mediation in any type of dispute, while 41 declared specific disputes or circumstances in which they would prefer mediation as a process to resolve their dispute, e.g. in property cases (seven), family disputes (five), workplace disputes (seven), if other party also accepts mediation (10), and if the process guarantees fairness and solutions that are mutually acceptable (four). In addition, 58 participants are of the opinion that the mediation process contributes to the more effective resolution of disputes, because it is more efficient (32), is less costly (17), restores broken relationships and improves communication between parties (five), and because of citizens' lack of confidence in the judicial system (four).

In addition, clients in two out of three mediated cases in the Center expressed their satisfaction with the mediation process, the mediator's conduct, emphasized that they would recommend mediation to other people facing disputes, and, use mediation services in the future.

2. Factors that present the most important challenges to further development of mediation services

- Inadequacy of public outreach campaign / Potential users of mediation services are not sufficiently informed about mediation and services of the Center

Twenty-seven participants in the survey (or 34%) stated they have never heard of mediation (22 citizens, three attorneys and two public utility companies), while 35 (44%) are not aware that there is a Center for Mediation in Kraljevo (30 citizens, three attorneys, and two public utility companies). Out of the 22 citizens who declared having no knowledge of mediation, nine stated that lack of knowledge is the main reason why they would never consider using mediation if in a dispute. 11 citizens explained that they assume mediation is not worth considering because they have never heard of it, but added they would think about using mediation if provided with information that such process is more efficient than court procedure, more rational, less stressful, less expensive, or that mediation would meet their interests and needs. Out of the total number of surveyed participants, 65 (82%) expressed interest in getting more information about mediation, while 32 participants were of the opinion that providing more information on mediation is a primary prerequisite for mediation to be recognized and accepted as a method of dispute resolution in the Kraljevo community. Forty participants (51%) added that they would be interested in attending educational seminars related to mediation.

Forty-five participants said that they are not familiar with any public campaigns promoting mediation, while 32 recollect some promotional activities, but consider effects of these activities as poor or non-existent. Only two participants perceived the results of the public campaigns they remembered as positive. Fifty participants also added that public outreach activities are of crucial importance to foster the growth of mediation in the Kraljevo community.

The importance of being informed about mediation is confirmed through the three cases mediated in the Center. All cases were successfully mediated before the court procedure was initiated because the parties received valuable information about the mediation process, its benefits and work of the Mediation Center before they initiated a court case. In all three cases parties heard about the possibility of mediation and sought more information in the Kraljevo Municipal Court, where a judge, serving as the mediation coordinator (in the court) provided additional information, which led to their decision to attempt mediation.

- Cost of mediation

Although the questionnaire did not include any questions directly related to the issue of the cost of mediation services, 23 participants emphasized that their decision to consider mediation would depend on financial factors. While conducting interviews Partners-Serbia was also informed by a number of judges that they have had cases suitable for mediation but that parties, after being informed about the costs, refused to try mediation. One interviewee explained: “If we would not charge for mediation services, potential users would believe us more when we tell them that mediation is worth trying.” It was also suggested by the court staff that litigants who have already paid the court filing fee, attorney’s fee and maybe an expert witness fee, would be unlikely to agree to mediation, if it would represent another expense. Finally, one public utility company (electricity) raised clear concerns that under the current Tariff, most of their claims are worth less than the minimum mediation fee. A number of survey participants and interviewees stated that they would be ready to pay for mediation services only after hearing that there is a sufficient number of cases successfully resolved in mediation and that Center’s clients were satisfied.

- Lack of a well-defined mediation case-management system in courts

All three successful cases were mediated before a petition was filled in court. In all three cases interested parties approached the mediation coordinator, and after obtaining more information decided to submit a formal request (to attempt mediation) at the Kraljevo mediation center. The request was conveyed by the Mediation Center’s administrative staff person to the other party, who accepted the request. In all three cases the parties selected the same judge, (who also serves as the mediation coordinator from the Municipal Court in Kraljevo as the mediator. In all three cases a settlement was reached by the parties, and since there were no pending court proceedings, the cases did not go back to the court for any ratification of the settlements.

Although in the above described three successful mediation cases the parties exercised their free will in the selection of a mediator, this illustrates a deficiency in the mediation case allocation system, which will be discussed in more detail in the recommendations section below.

The assessment confirmed that there is a lack of a defined, mediation case-management system in the Kraljevo courts. Neither judges nor the court staff seem certain as to the exact method of transfer of a court file to and from the Mediation Center. In addition, standardized forms used by the Mediation Center, when managing mediation cases, are not sufficient. There are no forms to record agreements to mediate, nor any evaluation forms developed to allow Center’s clients to express their views and experiences with mediation process, and thus serve the Center to self-evaluate and adapt its policies in the future.

- Lack of understanding of trial judges, court staff and Kraljevo Mediation Center staff on their role in the system of mediation services

The majority of interviewed judges and other court staff stated that they have learned about mediation from the literature, the law, and by getting information in some other way. There seems to be a lack of understanding on how the mediation referral process should function, what cases are appropriate for mediation, and a proper way of presenting mediation opportunity to the parties in the court setting. The interviews and survey show that, to this date, judges, court staff and Mediation Center staff have not been offered any training on their role in the newly developed system of mediation services. Even during the training for mediators, provided to a total of 19 judges, there was no mention of case referral or mediation case management.

Similarly, the only “training” provided to the court staff was basic instructions by two Court Presidents. The court staff were directed to either the “Mediation Coordinator” or back to the Court President for any explanation or guidance.

Finally the Kraljevo Mediation Center’s has one staff person who is working under a service contract (not a full time employment contract) with the Republic Mediation Center from 10am to 2pm daily, and at other times in case any mediations are scheduled. This staff member’s formal title is “Administrative Assistant”. This person is not a trained lawyer, nor a member of the court staff and although she received no formal mediation training or coaching of any kind but only basic instructions and reading materials from the Republic Mediation Center, it could be said that she is doing an exceptional job under the circumstances.

- Trained mediators are not sufficiently prepared to mediate cases because of lack of practical experience and advanced skills

Interviews confirmed that trained mediators lack knowledge on certain skills relevant to manage disputes in mediation. They stated that the training they received did not provide sufficient information on: certain communication skills, drafting mediation agreements, dealing with power imbalance in mediation, and potential impasses in mediation. Furthermore, most of the mediators have never had an opportunity to practice mediation and apply the knowledge they received in their training. In fact, only one mediator had some experience since this person was chosen to mediate by the parties in all three of the Center’s mediations. Having in mind that mediation is a technique that develops only through practice, and also requires various skills to be applied well, this issue should be given special attention.

Related to this, interviewed mediators also expressed their willingness and need to mediate their first cases under the supervision of a more experienced mediator. In terms of the evaluation of the mediator’s work, the lack of above-mentioned evaluation forms in the Mediation Center is also affecting the ability of practicing mediators to self-evaluate and improve their practice.

- Lack of a mediation referral network

Interviews confirmed the absence of any cooperation between the Kraljevo Mediation Center and local institutions/organizations that might be a part of network for referring cases suitable for mediation to the Center. Representatives of the City Ombudsman’s office, the City Center

for Social Work, and representatives of a number of public utility companies stated that they have no information about the Center and its services, and that no cooperation exists.

Only recently, the Court Presidents had discussions with the management of several public utility companies, looking for a method to resolve the large backlog of enforcement (of unpaid public utility bills) cases.

III. RECOMMENDATIONS AND OPTIONS IDENTIFIED

Based on the above findings, recommendations could be grouped into three main categories:

1. Improvement of the Mediation Center oversight and its cooperation with relevant stakeholders
2. Improvement of internal court procedures to better incorporate the Mediation Center services within court operations
3. Need for a broad public outreach campaign

1. IMPROVEMENT OF THE MEDIATION CENTER OVERSIGHT AND ITS COOPERATION WITH RELEVANT STAKEHOLDERS

To achieve this, the following is recommended:

➤ **Provide continuous support for the professional development of the Center's mediators**

Good mediators and successful mediations are the best promoters of mediation. Therefore, it is crucial to provide Kraljevo mediators with quality educational programs and opportunities to exchange experiences, and improve their skills and practice. It is also useful to consider the possibility of mentoring first-time mediators and maintaining an up to date roster of qualified mediators, including information on their experience and specialization.

- Organize periodic specialized seminars for mediators

As mentioned previously, mediation is a skill that mostly develops through practical experience. This is particularly important in relation to certain types of mediation cases which require special knowledge and mediator skills, such as, high-conflict family disputes, criminal cases, discrimination cases, and other cases where basic mediator training is not sufficient for a mediator to respond to the parties' needs and the particular dispute. Skills needed in these types of cases, such as skills related to dealing with power imbalance in mediation, potential impasses, involvement of other interested parties, mediation of group disputes, are usually not covered in the basic mediation training. Therefore, periodic refreshment/specialization courses for mediators are essential.

- Introduce co-mediation, mentoring and observation techniques for mediators

A co-mediation and mentoring component should be considered, especially for the mediators who have not practiced mediation for a longer period of time. A system should be established whereby more experienced mediators would co-mediate and mentor less-experience colleagues. With the consent of the parties, additional mediators could be present to observe live mediations. Following a mediation, co-mediators and observer mediators would debrief and discuss lessons learned. Debriefing and conclusions (that protect the privacy and confidentiality of the mediation parties) could be recorded and shared with other mediators.

- Develop a functional, publically available roster of mediators which includes mediation experience and other relevant information

Kraljevo Mediation Center should develop a functional, public roster of mediators, including information on their experience and background, and also a brief statistical review of previous mediations, areas of practice, in order to make the system more transparent and available to potential users.

➤ **Address the cost of mediation so that more potential users are willing to mediate**

It appears that mediation fees are seen by a number of potential users and stakeholders as an obstacle to the initial development of mediation in the Kraljevo area.

Since its establishment, Kraljevo Mediation Center strictly enforces the Republic Mediation Center's policy of mediation fees. The Tariff of Fees(<http://www.medijacija.rs/cenovnik.htm>) prescribes that a minimum fee for a case worth up to 500 EUR or with no monetary value at all, is 115 EUR. It is also stipulates that the parties must present proof that the fee has been paid, before the mediation is scheduled. There is no provision for any reduction or waiver of mediation fees in certain cases.

Although no accurate statistics are maintained, interviewed judges were of the opinion that the cost of mediation was in most cases is the key obstacle. This was also confirmed by the majority of the surveyed participants.

There are several ways to overcome this problem, some suggested by the surveyed participants:

- Organize promotional periods ("one month of free mediation") for certain categories of cases

In order to attract potential clients to mediation, it was suggested by several judges that promotional periods, like one month of free mediation, or similar marketing activities, should be organized by the Kraljevo Mediation Center. Mediation weeks including free mediation services, occasionally organized, should also be considered.

- Reduce mediation fee for small claim cases

It was suggested by a judge and a trained mediator, that for small claims or cases with no monetary value, a tariff corresponding to the court filing fee schedule should be adopted (i.e. for the court petition for a case of up to 10,000 dinars (approx. 110 EUR), the court filing fee is 1,900 dinars (20EUR), hence the mediation fee should not exceed this amount).

- Waive mediation fees for clients who have already paid the court filing fee (and make mediation another service of the court)

If parties in a pending court case agree to mediation, the fee should be reduced or even waived if the court filing fee had been paid. However this should be applied on a case-by-case basis, with high-value cases not covered by the fee exemption.

- Require that mediators who received free training perform a certain number of mediations for free

This is a common practice where candidates who receive free training, perform a certain number of free mediations in order to give back part of their time and skills to the program. With future mediator trainees it should be explained and agreed in advance. Nevertheless, it should be noted that all of the interviewed mediators expressed a willingness to perform free mediations in appropriate cases, in order to provide valuable community service and support the Mediation Center’s development and promotion.

- Introduce a dual-system mediation tariff – based on the value of the case and experience of the mediator

This model is a good combination that would serve two purposes: It would give parties an opportunity to select less experienced and therefore less expensive mediators in smaller value cases, while giving less experienced mediators more opportunities to practice. For example:

Value of the case	Experience of the mediator		
	0-10 cases	10 – 50	Highly experienced
0 – 500 EUR	* (Fee)	**	***
500 – 1000	**	***	****
etc.			

In any case, the Mediation Center should develop procedures for mediating certain categories of cases and providing services to certain categories of users on a *pro bono* basis, or at a symbolic rate. This even more if we have in mind that all costs related to the setting up of the Kraljevo Mediation Center, refurbishment of premises, equipment, training and specialization of mediators and study visits, were paid by an international donor.

➤ **Provide education opportunities for Kraljevo Mediation Center staff**

- Train Kraljevo Mediation Center staff in communication, problem solving, stress management skills and mediation procedures.

The assessment revealed that the only staff person at the Kraljevo Mediation Center performs some crucial activities within the scope of Center’s services including, persuading the other party to attempt mediation, an action considered by experienced mediators as one of most sensitive and demanding steps in pre-mediation process. In addition to overseeing the mediation process, the Mediation Center staff (one or more in the future) should also be tasked with managing the referral network and promoting mediation to potential stakeholders. Therefore, it is essential to provide the Mediation Center staff with intensive communication, problem solving, stress management and mediation case management skills.

➤ **Develop better internal management of the Mediation Center**

- Define a mediation case allocation system

There should be a clearly defined system to allocate cases for mediation, ensuring equal opportunity for all mediators on the roster. However, this question is complicated because the

parties can agree to work with any available mediator. Furthermore, if any of the above tariff-related recommendation are implemented, it would predefine the case allocation system.

- Develop a post-mediation, evaluation questionnaire and other appropriate forms and templates

The Kraljevo Mediation Center lacks several standard forms and templates, with the exception of the “request for mediation” form. In particular, a standard Agreement to Mediate and post-mediation evaluation forms need to be developed. The Agreement to Mediate is important since it establishes the parties’ understanding of the mediation process and defines the role of a mediator, basic principles of the mediation process, mediation fees, and other relevant issues before mediation is initiated. Evaluation forms serve as a basis for good client-services quality control.

Furthermore, a standard template mediation agreements (settlements) for simpler cases and peer evaluation forms between co-mediators should be considered.

- Develop a monitoring system and follow-up of the mediation settlements

The Kraljevo Mediation Center does not monitor the enforcement of mediation settlements. This capacity needs to be developed, together with statistical reporting on fully/partially implemented mediation settlements, where appropriate.

➤ **Initiate cooperation with potential referral resources in the Raska district**

- Organize informative seminars/meetings with representatives of institutions and organizations that might be a part of the referral network

The lack of a mediation referral network was recognized by a number of interviewees and survey respondents as one of the obstacles to the Center receiving more cases suitable for mediation. There is a number of local institutions/organizations that, as a part of its everyday work, come into contact with citizens that could use mediation to solve their problems. The City Ombudsman, the municipality’s free legal aid service, the bar association, the local chamber of commerce, the Center for Social Work, local NGOs, and other similar organizations should be educated on mediation. They would then be able to recognize suitable cases and provide sufficient information to citizens that could benefit from the Kraljevo Mediation Center’s services.

2. IMPROVEMENT OF INTERNAL COURT PROCEDURES TO BETTER INCORPORATE THE MEDIATION CENTER SERVICES WITHIN COURT OPERATIONS

To achieve this, the following is recommended:

➤ **Develop a well-defined mediation case-management system in courts**

Even though mediation coordinators are appointed in both courts (Municipal and District), these are judges and mediators at the same time and cannot effectively oversee the administration and case management of the Mediation Center. Although all judges were unanimous that a case should be sent to the Mediation Center, all three mediated cases were

“walk-in” clients (not cases referred by sitting judges), therefore the courts are not experienced with court-referred cases. It is necessary to develop clear protocols and procedures on the issues, such as, defining appropriate cases for mediation, timing of referrals and mediation process, the contents of a mediation file, procedures with settled and unsettled cases in mediation, maintaining statistics, etc.

To support development of a high-quality mediation case-management system, the following is recommended:

- Define procedures of how to deal with settled and unsettled mediation cases

There should be clear and precisely defined rules as to what happens with cases after the mediation process. The question of settled cases is more legal in nature, since settlement requires the completion of the pending court case. The parties may opt to certify their mediation settlement in court, or may be satisfied with an uncertified mediation (out-of-court) settlement. In any case, a court case must be concluded in accordance with the law.

Under current legislation, a mediation settlement agreement has a legal force of an “out-of-court settlement”. The President of the Kraljevo Municipal Court already indicated that should the parties so require, the court will have a duty judge available to “certify” mediation settlements, and hence provide them with a “court-settlement” force, that is, a legally enforceable document.

If a mediation does not result in a settlement, the case goes back to a trial judge, and there is an on-going debate as to what happens with the content of the minutes from the mediation. Partners-Serbia is of the opinion that only the fact that the mediation took place should be conveyed to the trial judge. This is mandated by the principle of confidentiality.

- Define a “reward” system for judges referring cases to mediation

A system should be developed whereby a judge has a (non-monetary) incentive for referring cases to mediation. For example, a case settled in mediation could be counted as resolved against a mandatory monthly norm of cases for the referring judge.

➤ **Provide education opportunities for trial judges and court staff**

There is a number of issues that trial judges, court staff and the Mediation Center staff should be familiar with to assure optimal development of mediation services. The training should be tailored-made for judges, and other court staff as well as the Center for Mediation staff to help them understand and better serve their role in the system. This is crucial especially since the Mediation Center’s services are primarily seen as a part of the court-annexed mediation program.

The following could be considered:

- Train trial judges on case selection, communication skills, and mediation case management

The role of a judge in the selection and referral of suitable cases to mediation is crucial, particularly in Serbia where citizens still primarily utilize the courts to resolve disputes. In order for a judge to be able to respond to this need, he/she has to know: how to recognize that a dispute is suitable for mediation, how to present mediation to the parties, and how to manage such a court case.

- Provide key court staff with basic knowledge of mediation procedures and train them about mediation case management in courts

For mediation to come alive and develop, it is necessary to involve everybody within the court administration system. The training for key court staff should be designed for them to “accept mediation” as an integral and complementary part of the court service, and to be able to provide sufficient information to interested citizens, rather than just as a training in mediation and mediation case management, although the latter skills would also be useful. In addition, court staff should understand how the internal referral process works within the court and what types of cases are appropriate for mediation.

3. PUBLIC OUTREACH CAMPAIGN

Public outreach activities are of core importance for the development of any institution new to society. It is expected that citizens will not readily embrace new services if they do not understand their benefits. Since mediation is still relatively new to Serbia the majority of citizens are not familiar with it and its basic principles. Therefore, public education and marketing activities to provide more information on mediation, its purpose, the Center, and its services, are needed in order to advance acceptance of mediation as an alternative method of resolving disputes in the community. This public outreach is needed as a continuous effort, and has to be addressed in the long-term. As emphasized above, referral sources should also be developed to ensure the success of new services.

Related to potential promotional activities, the following should be considered:

- Develop leaflets including contact information of the Kraljevo Mediation Center

The leaflets to inform potential clients and promote the mediation services of the Kraljevo Center that are currently available were made for the Republic Mediation Center in Belgrade and contain contact information that is not exclusively related to the Kraljevo Mediation Center. The leaflets do not contain any practical information that is useful for someone interested in learning more about the Center’s service or is considering using them. This is why it is important to produce new leaflets that provide citizens with the basic information on the Kraljevo Center. In addition, it is important that new leaflets contain both educational and promotional elements related to mediation services.

- Set-up a telephone line for citizens to get more information about the Kraljevo Center and its services

Potential mediation clients will learn about the Center and its services in a number of ways, including the media, promotional materials, and local institutions/organizations. Some citizens might need more information on the Center, have questions, comments or possibly concerns about mediation. For such cases, it would be useful to set-up a telephone line in the

Center that would be open during the week, and answered by the Mediation Center staff, to allow citizens to get more information on mediation procedure, mediators, mediation fees, benefits of using mediation, etc.

- Ensure that promotional materials are always available in courts (“information desks”) and distribute them to institutions/organizations who are part of the referral network

It is of crucial importance to produce leaflets, and other promotional materials, containing information on Kraljevo Mediation Center; and, these materials should always be available at the courts’ information desks. In addition, these materials should be distributed to all institutions/organizations that are a part of referral network and might be in contact with potential clients of the Center. This way the information on mediation and Center’s services can be spread to a great number of citizens and thereby increase possibility that they will seek mediation.

- Organize public outreach activities in local communities to inform citizens of the applicability and benefits of mediation

This could be achieved by paying visits to towns and villages nearby Kraljevo and organizing meetings to provide information about mediation to citizens in their local communities. Also hosting mediation role-plays will help citizens better understand mediation and build interest in using mediation to resolve disputes.

- Organize basic mediation outreach/training sessions on the basic principles of mediation, its applicability and value for each potential user group (attorneys, public utility companies, local government, business community, etc.)

The outreach component directed at stakeholders and potential users of mediation services was attempted by the CS-JRP project as described in the background section above, in the form of several meetings with representatives of public utility companies and the local bar association. However, a specific outreach presentation tailored to the needs of each target group should be developed and implemented in a coordinated and organized way.

- Organize advanced training of interested users on how to represent clients/organizations in mediation cases

Advanced training programs on the skills necessary for the successful participation and representation in mediation should be organized for those stakeholders who are interested in and need to participate in the mediation processes.

Although direct communication with potential referral sources is preferred, letters with both educational and promotional content could also be sent to relevant institutions/organizations with the same purpose.

- Consider providing free mediation services as a marketing tool

As previously mentioned, one of the best ways to promote mediation services is by providing it for free to interested parties for a certain period of time. Information on this might be sent beforehand to the public, local media, businesses, institutions and organization that are seen

as potential referral sources, and others who might benefit from such activity. This kind of action demonstrates commitment to the peaceful resolution of citizens' disputes and serves a marketing function. Being recognized as a provider of socially useful services is the best way to build the mediation practice. It would serve as an additional support for the recognition of mediation in Kraljevo if the Center would consider organizing, for example, mediation week (the week of free mediation services), or similar events during the year when mediation services would be available for free to all interested parties.

While promotional activities were already carried out in the past through print and electronic media, it is important to continue sharing new mediation stories in the local print and broadcast media. In the future involving citizens who, as clients of the Kraljevo Mediation Center, have had positive experiences with mediation would be a good marketing campaign. This would raise the profile of mediation with the media, policy makers and general public, as well as highlight the value of the Mediation Center's services. Having in mind that the most useful outreach is positive word of mouth, this kind of attention to a top quality mediation service will inevitably bring new clients to the Center.

IV. CONCLUSIONS

There are various activities that might be considered to support growth of mediation in Kraljevo and the Raska District. Throughout the interviews, and in the questionnaires, participants expressed their views, interests and concerns about the development of mediation services. Recommendations and options identified were mainly developed based on the interviews with local stakeholders, potential users of mediation services, and Partners for Democratic Change-Serbia expert evaluations. Recommendations proposed in this Report build on the worldwide-accepted standards and practices in providing court-annexed and private mediation services, taking also into consideration current mediation systems in Serbia, the judicial system, relevant legal framework, and other social and economic circumstances.

Since the commencement of Partners-Serbia involvement in the project, there is a number of activities that were organized to address the issues identified in this Assessment. During May and June 2009, Partners-Serbia worked closely with the core group of professionals, i.e., district and municipal court presidents, the judge coordinator, a private lawyer, the court staff, staff of the Kraljevo mediation center, as well as the leadership of the Republic Mediation Center, and staff of the CS-JRP to collaboratively determine and implement a plan for institutionalization of the mediation program in Kraljevo, and jointly coordinate certain outreach activities. In June 2009, two half-day outreach seminars were organized - one addressed to practicing attorneys, and one involving other local stakeholders (ombudsman, public utility companies, etc.). Seminars introduced participants to the idea of mediation, its basic principles, advantages of using mediation for resolving disputes, and importance of supporting its development in the society. In July 2009, one-day specialization training was held for interested Kraljevo mediators. This training aimed to serve as a refreshment exercise and provide an opportunity for mediators to discuss with their experienced colleagues from Belgrade important issues in providing good-quality mediation services.

In the following months, by the end of the project in September 2009, Partners-Serbia will finalize a Court Mediation Program Manual which will clearly lay out the policies and procedures for the mediation referral and processing system. Issues to be addressed in the Manual will include: selection criteria for cases appropriate for mediation, coordination with trial judges, mediation case management system, informing clients about mediation in court setting, and standard forms and templates (mediation agreement, confidentiality agreement, standard settlement agreement, etc.).

Partners Serbia will also develop and organize a two-day practical skills workshop for practicing attorneys on how to effectively represent clients in mediation (selection of cases, selection of mediators, confidentiality, preparing client for mediation, cooperating with mediator, negotiation, drafting of settlement, legal nature of settlement agreement, expenses and fees).

In addition, recognizing that the majority of certified mediators have not had the opportunity to practice their skills with actual cases since their initial training, Partners Serbia will ensure that the cadre of new mediators is closely mentored during their first mediations. Depending on the level of demand for mediation services, mentoring and coaching of mediators will be initiated and a system of allocation of mediation cases will be designed to ensure equal participation of mediators in the mentoring scheme. Partners-Serbia will contract a few very

experienced Serbian mediators to mediate the first court cases and provide the opportunity for the observations. First-mediators will have the opportunity to co-mediate with a seasoned mediator observing them. This mentoring component of the project is of supreme importance to guarantee an effective and useful service to the public and to begin to generate support for the mediation process amongst lawyers and their clients. The co-mediation will offer another important mentoring opportunity to give each mediator concrete feedback on improving their skills.

The Partners-Serbia team will also continue to work very closely with the Kraljevo Mediation Center staff to ensure the effective implementation of mediation program policies and procedures and to build its capacity to serve as advocates for mediation within the court's internal community as well as the public at large.

In terms of public outreach activities, Partners Serbia will develop written materials, i.e., a mediation brochure, to be distributed to citizens. It will also identify additional referral network resources of organizations that have access to citizens in conflict/dispute and conduct targeted outreach to each of those organizations (legal aid offices, local government, police, civil society organizations, etc.). All of the above activities will be coordinated with the Republic Mediation Center in Belgrade.

Partners-Serbia will provide the CS-JRP with a final project report that compares the baseline assessment data with the results achieved after five months. While this is a short time period to demonstrate impact, the baseline indicators will serve to demonstrate that the new Mediation Programs have the minimum components in place for future success.

But, above all, it is important to note here that this should be a local effort collaboratively determined with the group of stakeholders and they should set the priorities and have a clear plan for development and implementation of mediation services in the Kraljevo – Raska region, once the CS-JRP project is over. Therefore, one of the immediate Partners Serbia goals is to reconvene Kraljevo Mediation Working Group, comprised of the key stakeholders, and encourage them to agree and adopt short and long-term action plans for the future.

The time can be foreseen when mediation will become recognized and valued method for resolving disputes in Serbia. The preliminary findings and recommendations stated in this Report should serve as a basis for further planning of the development of Kraljevo Mediation Center services. The State investment expected in this area, i.e., a more comprehensive legal framework and an anticipated national strategy for mediation, could be viewed as a measure to build public acceptance of a new tool promoting peaceful relations in Serbian society. This will provide additional support for the Kraljevo Mediation Center in responding to the needs of citizens in the Raska District.

V. APPENDICES

- A. SURVEY QUESTIONNAIRE
- B. LIST OF CONTACTS