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France

Rather than going to court, why not resolve your dispute through mediation? This is an alternative way of resolving disputes where a mediator helps the parties to reach an agreement. In France, the government and professionals are mindful of the advantages of mediation.

#### Who do I contact?

In France there is no central or government authority responsible for regulating the profession of mediator. There are no current plans to create one.

There are, however, non-governmental organisations working in the area of family law:

The **APMF (Association Pour la Médiation Familiale — Association for Family Mediation)** had 700 members in 2012, mostly family mediators. It provides an easily accessible directory of mediators for each region.

The **FENAMEF (Fédération Nationale des Associations de Médiation Familiales — National Federation of Family Mediation Associations)** covered more than 480 meeting places for family mediation in 2012, and provides a directory showing the location of mediation services.

You can also consult one of the following:

The **CMAP (Centre de Médiation et d'Arbitrage de Paris — Paris Mediation and Arbitration Centre)** handles disputes between (big) businesses.

In 2012 the **IEAM (l'Institut d'Expertise, d'Arbitrage et de Médiation — Institute of Expertise, Arbitration and Mediation)** grouped more than 100 court experts and specialists working in dispute resolution in the areas of economics and finance, law and taxation, medicine, building and public works, industry, raw materials and transport.

The **FMCML (Fédération des Médiateurs et Chargés de Mission libéraux — Federation of Mediators and Professional Project Coordinators)** brings together around 100 experts who can act as mediators alongside their role in giving expert opinions in a number of areas (building, property, industry, services, the distributive trades, social affairs and taxation, information technology, the environment, and medical and paramedical matters).

In 2012 the **FNCM (Fédération Nationale des Centres de Médiation — National Federation of Mediation Centres)** represented 79 bar association mediation centres, organised along regional lines. The members are mainly lawyers; the Federation has the support of the National Council of Bar Associations (*Conseil national des barreaux* — CNB), and has numerous links with the world of the courts. A directory is available on its website.

The **ANM (Association Nationale des Médiateurs — National Association of Mediators)** was set up in 1993; in 2012 it represented about 20 associations and about 300 members grouped in 11 regional delegations. It has drawn up a national code of conduct for mediators. A directory is available on its website.

#### In which areas of law are referrals to mediation possible/most common?

Under French law, parties may refer a matter to mediation in any area of law, provided the mediation does not undermine **rules of public policy governing social and economic conduct** (*ordre public de direction*). For example, it will not be possible to conclude a mediation agreement in order to circumvent mandatory rules on marriage or divorce.

Mediation is used most often in **family cases** (at the family court, through a family mediator (*médiateur familial*)) and in **small claims cases** (before the local court or the district court, through a legal conciliator (*conciliateur de justice*)).

#### What are the rules?

##### Referral to mediation

A matter can be referred to mediation only with the **prior consent of the parties**.

If court proceedings have already been brought, 'the court hearing the dispute may, with the consent of the parties, appoint a third party to ascertain the parties' positions and to compare and contrast their points of view with a view to enabling them to find a solution to the dispute' (Article 131-1 of the Code of Civil Procedure).

In the specific fields of the exercise of parental authority or interim measures in divorce case, the court may also direct the parties to attend a briefing meeting on mediation, which is free of charge, and which cannot give rise to any penalty (Articles 255 and 373-2-10 of the Civil Code).

Order (*ordonnance*) No 2011-1540 of 16 November 2011 transposed EU Directive 2008/52/EC into French law. The Directive establishes a framework intended to facilitate the amicable resolution of disputes by the parties, with the aid of a third party, the mediator. The Order broadened the scope of the provisions in the Directive to cover not just crossborder mediation but also mediation inside the country, with the exception of disputes relating to a contract of employment or involving administrative law within the sovereign power of the State (*droit administratif régalién*).

This Order of 16 November 2011 amends the Act (*loi*) of 8 February 1995 so as to establish a general framework for mediation. It defines the concept of mediation, describes the conditions that the mediator must satisfy, and confirms the principle of confidentiality, which is vital to the success of the mediation process.

The Order confirms the principle that at any stage in the proceedings a court hearing a dispute may designate a mediator, who in practice may also be a legal conciliator (*conciliateur de justice*). The court may not delegate the preliminary attempts at conciliation in divorce and separation cases to a mediator.

Where the parties have not agreed to mediation, the court may direct them to meet a mediator in order to have the purpose and operation of mediation explained to them. As the law stands, briefings of this kind can be given only by legal conciliators and family mediators.

Order (*décret*) No 2012-66 of 20 January 2012, implementing the aforementioned Order (*ordonnance*) of 16 November 2011, inserts into the Code of Civil Procedure a fifth volume (*Livre V*) concerning amicable dispute resolution, in order to clarify the rules that govern contractual mediation or conciliation and those that govern amicable settlements (*procédure participative*). This fifth volume goes together with Title VI of the Code, which deals with legal conciliation, and Title VI *bis*, which deals with court mediation. Order (*décret*) No 78381 of 20 March 1978 has been amended so that it now comprises only the rules governing the office of legal conciliator.

##### Rules governing mediation

There is no national code of conduct for mediators.

The Paris Chamber of Commerce and Industry (*Chambre de commerce et d'industrie*) has established a code of good conduct, and supervises compliance with it itself.

Family mediators are guided, whether they subscribe directly themselves or via the body that employs them, by the **ethical codes or charters** of the two federations of family mediators, the **APMF** and **FENAMEF**. These codes or charters take over the ethical rules of family mediation adopted on 22 April 2003

by France's National Advisory Council on Family Mediation (*Conseil National Consultatif de la Médiation Familiale*, CNCMF). According to the APMF website, 'The APMF lays down the code of conduct for the profession, setting out the ethical rules of professional practice and the conditions for practising family mediation in France. The code is authoritative for all practitioners.'

In March 2008 the **FNCM** approved a code of ethics based on the European Code of Conduct for Mediators.

#### **Information and training**

There is no national, official website relating to mediation.

At present French legislation does not make any provision for specific training in mediation, except in family matters, where a **family mediator's diploma** (*diplôme de médiateur familial*) was introduced by an order (*décret*) dated 2 December 2003 and a ministerial order (*arrêté*) dated 12 February 2004.

The legislation provides for training in family mediation to be given by approved centres, and a diploma to be awarded by the regional prefect after completion of training or a certification process validating the knowledge and experience acquired by the mediator. The training centres are approved by their

**Regional Health and Social Services Office** (*Direction régionale des affaires sanitaires et sociales*, DRASS). In these centres students undergo 560 hours of training spread over three years, with at least 70 hours of practice. The training ends with an examination.

#### **How much does mediation cost?**

When parties resort to mediation as an alternative method of resolving disputes, whether in court proceedings or out of court, fees have to be paid. If the parties resort to mediation in the course of court proceedings, the mediator's fee may be covered by legal aid. It will in any event be determined by the judge assessing legal costs (*magistrat taxateur*) after the mediator's role is over, on presentation of a report or a statement of expenses (Article 119 of Order (*décret*) No 91-1266 of 19 December 1991).

The judge who assesses the legal costs fixes the amount of the deposit and the remuneration (Articles 131-6 and 131-3 of the Civil Code of Procedure). The legislation does not lay down any precise scale of remuneration, and the **unit cost** for the provision of family mediation services therefore **varies**. Under a national agreement between the Ministry of Justice, the Ministry of Employment, Social Affairs, the Family and Solidarity, the National Family Allowance Fund (*Caisse nationale d'allocations familiales*, CNAF) and the Central Agricultural Mutual Benefit Fund (*Caisse centrale de mutualité sociale agricole*, CCMSA), departments receiving a family mediation service have undertaken to apply a **national scale, which varies** depending on the income of the parties. Subject to the judge's assessment, the financial share to be borne by the parties per mediation meeting ranges from €5 to €131.21.

In family matters, the National Family Allowance Fund has put in place a system of agreements enabling organisations to receive a family mediation service provided certain rules are followed.

#### **Is it possible to make the mediation agreement enforceable?**

Where court proceedings have not been brought, Article 1565 of the Code of Civil Procedure provides that an agreement reached between the parties may be submitted to the court that would have jurisdiction in the dispute, with a view to making the agreement enforceable.

Where court proceedings have indeed been brought, Article 131-12 of the Code of Civil Procedure provides that on application by the parties the court hearing the case may approve an agreement that the parties submit to it.

Article L111-3 1° of the Code of Civil Enforcement Procedure (*code des procédures civiles d'exécution*) provides that agreements arrived at by court mediation or outofcourt mediation which are made enforceable by the ordinary courts or the administrative courts are enforceable documents.

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