

Family Mediation in cases of Domestic Violence

University of Ottawa, 12 April 2017

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Family Mediation

- "A process of **conflict** management and disputes resolution, in which those involved in family breakdown are turning **freely**, to a **neutral** third party, the mediator, to reduce the collateral effects of a conflict." (Council of Europe, 1998).
- Family mediation applies especially to situations of separation or divorce when there are children (Casas Vila, 2017).
- Focus on the children's best interest.

Mediation and Domestic Violence: the Italian Legal Context

- Law 54/2006:
 - "Co-parenting principle"
 - "Joint custody" as principal model
 - **Mediation** as **principal instrument**

- Istanbul Convention (2014)
 - Article 31, "Custody, visitation rights and safety"
 - Article 48, "**Prohibition** of mandatory alternative dispute resolution processes or sentencing", including **mediation** and conciliation, in relation to all forms of violence.

Family Mediation in cases of Domestic Violence in Italy

- Family mediation
 - is based on the Systemic Model
 - is made, in practice, mandatory in the shared custody path
 - represents the preliminary step to be performed at the Family Counselling
 - outcomes are preparatory to the "best" legal solution in relation to the children
 - is seen as a key instrument to strengthen the principle of bi-parenthood.
- In Italy no study has investigated family mediation practices in cases involving domestic violence.

Using Family Mediation in Child Custody Cases: The Risk of Concealment of Domestic Violence

(Feresin M., Lapierre S., Romito P., in progress)

Methodology

- Objective: To explore the role of family mediation in the management of child custody in cases of domestic violence, in Italy
 - To analyze different social actors' experiences and knowledge in relation to family mediation, including lawyers, social workers and separated women with children, victims of domestic violence. Legal documents were also analyzed.
- Qualitative-exploratory methodology (Denzin and Lincoln, 2005)
- Instruments: individual semi-structured interviews (Kaufmann, 2009) and analysis of written documents
- Analysis: Content analysis on both the interview transcripts and the documents
- Sample: 5 lawyers (key informants), 15 social workers and 13 women with children and with a history of domestic violence

Results

1. Concealment of Domestic Violence
2. The (non) application of the Istanbul Convention
3. The consequences of family mediation for women and children

1. Concealment of Domestic Violence

1. Euphemizing: treating violence as conflict

“The judge prescribes to both parents to access Services (Family Counselling) for mediation due to marital conflict” (Court’s Document2)

“In a highly conflictual situation... she was heavily beaten up...” (SocialWorker15)

“During mediation he told me that I’m the most disgusting, slimy and miserable person, that he cannot face me because I’m ugly. He said that I tell lies, that I divert children and that he isn’t violent. He shouts, screams, so I’m forced to calm him down...if it depends on mediators, they have already said that we are always too conflictual” (Woman1)

1. Concealment of Domestic Violence

2. Separating: spouses versus parents

“He’s angry due to the complaints, she believes that he’s violent and there is the baby! So, in your head of professional, you must know that you need to separate the marital situation from the parenting. This’s the mediation that we had done! Because as a couple you can suck, we don’t care, these’re your affairs, but as parents you can be wonderful!”(SocialWorker8)

“It’s necessary to overlook the past, the partners’ relationship, and focus only on parenthood.”
(SocialWorker4)

1. Concealment of Domestic Violence

3. Blaming the victim and de-blaming the perpetrator

“He seems a kind man but it seems that he had alcohol abuse and that he had abused his child, a child with problems, then, you never know if these children have some basic problems or have problems because they lived in family situations like...and then she claims that he beat their child when he was drunk, when they were separated. So, the Court had permission to the father to meet his child but this child doesn't want to see him...and this child escaped, hid, because he's uncomfortable with two parents like these! Then, with these parents, I have done a mediation”(SocialWorker8)

1. Concealment of Domestic Violence

4. Unequal Mediation

“The summary of the mediators was 90% his talk, 10% mine”(Woman1)

“At the end of one mediation meeting, I went to pick up my car and he railed against me and threw objects at me! I said "I don't come here anymore." First because I have to remember all the filth that this monster made me live and then because he is dangerous, and put me back again in a dangerous situation.”(Woman3)

“Mediation has caused damages to me because this mediator is dangerous. My lawyer told me to be careful, to never speak bad of the father, not to tell anything of what I suffered, not to say anything because it's better!”(Woman11)

1. Concealment of Domestic Violence

5. Mediation at the service of the violent fathers

“The social worker told me to hide to the children what their father did, because you have to reconnect the father to the children and the children to the father, because it’s right (...)But, beyond the fact that he robbed, he also did psychological damage, because he put his hand between the legs of our daughter, it’s a serious matter! And why you want to obliged this creature to see her father? I said to the social workers "if a man did me what he did to my daughter, I wouldn’t want to see him and if he is my father, even less!" And they said "but he's still the father", "yes, he is the father but he raped his daughter!"(Woman9)

“Mediation is an excellent instrument for working on parenthood and safeguarding the father figure”(SocialWorker8)

2. The (Non)Application of the Istanbul Convention

“The Istanbul Convention is scarcely known and scarcely applied.”(Lawyer5)

“When a couple has decided to separate, we must always focus them on their parenthood and mediation where there’s a high conflict is the only way!”
(SocialWorker4)

3. The consequences of mediation for women and children

“He said "I want that the kids sleep with me", the social worker said that it was fine and then for the judge obviously it was fine, if Services said ok...And the children live badly...they don't want to go..."(Woman2)

“The social worker told me "You are suffering from PAS." I said "I'm an idiot, but you know that PAS was invented by a psychiatrist for excusing child abuse?" When I told this, she said "Be careful, that PAS exists and I certify it to you". I started crying, I was devastate...Finally she didn't write it explicitly in the final report, but she wrote that I manipulate my daughter(...)This mediator has canceled me psychologically, fortunately I have a strong character, so I reacted but if I stopped there it was really the end!"
(Woman6)

Conclusion

- Widespread application of tactics of concealment of domestic violence (Romito, 2008) during mediation.
- Legal and Social Services do not guide factors that are relevant to the best interests of the child.
- Domestic violence is neither assessed nor taken into consideration.
- Policies and procedures should reflect the complexity of domestic violence cases, hold the perpetrators responsible for the violence and support the victims.
- Naming clearly a phenomenon allows to identify the problem, to make order and to intervene in the best way.