

Diminishing Voices of Children in Mandatory Mediation Schemes

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Abstract : With the growing trend for mandating parties of family conflicts to out-of-court processes, the adopted statutory regulations often remain silent on the way the voice of the child is integrated into the procedure. Convention on the Rights of the Child (Art. 12) clearly states the obligation to assure to the child who can form his or her own views the right to express those views freely in all matters affecting him. This article seeks to explore the way children participate in the mandatory mediation schemes applicable to family disputes in the European Union. A review of scientific literature and empirical data has been conducted on those EU Member States that coerce parties to family mediation to establish that different models of practice are deployed, and there is a lack of synchronicity on how children's role in mediation is viewed. Child-inclusive mediation processes are deemed to produce sustainable results over time but necessitate professional qualifications and skills for the purpose of mediators to accommodate that such discussions are aligned with the best interest of the child. However, there is no unanimous guidance, standards or protocols on the peculiar characteristics and manner through which children are involved in mediation. Herewith, it is suggested that the lack of such rigorous approaches and coherence in an ever-changing mediation setting transitioning towards mandatory mediation models jeopardizes the importance of children's voices in the process. Thus, it is suggested that there is a need to consider the adoption of uniform guidelines on the specific role children have in mediation, particularly in its mandatory models.

Keywords : family mediation, child involvement, mandatory mediation, child-inclusive, child-focused

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