

## WELLCHI NETWORK

<http://www.ciimu.org/wellchi>

Sixth Framework Programme



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### EASTERN EUROPEAN SOCIETIES

#### ESTONIA

##### **On parental Leave Allowance in Estonia** Dagmar Kutsar

According to its standard rules, the European Union foresees both maternal and parental leave as guaranteeing equal parenting opportunities as well as being in the best interests of the child. The debate concerning a maternal/parental "wage" in Estonia began in the late 1980s and emerged again in 2002 as a potential pronatalist measure to encourage couples to have more children. Several dilemmas have become issues of public debate. Should the sum be a flat rate and universal? As all children are equally wanted in this society, can they carry an equal value that is separate from the parental status or career? Should it be a maternal, paternal or parental allowance? Two important issues underlying the debate relate to equal opportunities in the labour market and fathers' involvement in childcare. Should the parental allowance be seen as a compensation for loss of income? If this is the case, then it should be related to the parent's former salary, contradicting the universalist idea of all children being of equal value, but perhaps encouraging high-income women to have more babies.

The Parental Leave Allowance was introduced in Estonia on 1 January 2004. The Act is related to the former wage of the parent, with upper and lower fixed limits, and is paid after maternity leave ends until the first birthday of the child. If the mother did not work, the minimum level of parental leave allowance is paid from the day the baby is born for a total of eleven months.

The regulation inspired high hopes of a rapid increase in the number of births for women with high incomes, and produced optimistic media interventions – putting the child's needs aside. The media coverage shows a slight increase in the number of births, but babies are born more often to households with low or no income. The statistics also show that about one third of the mothers did not have a work contract prior to the birth, and one quarter received an income close to the minimum wage. The debate over what will happen to these families and children after the parental allowance ends is gathering speed – but now as a child poverty issue.

[Link to the Act: https://www.riigiteataja.ee/ert/act.jsp?id=688483](https://www.riigiteataja.ee/ert/act.jsp?id=688483) (in Estonian; English version not available).

#### BULGARIA

##### **Two New Laws in Bulgaria: Mediation and Domestic Violence** Velina Todorova

#### Mediation

On 2 December 2004, the Bulgarian Parliament passed the first Act on Mediation, which entered into force on 22 December 2004. Mediation is not only a newly legalised practice but also a new concept for Bulgarian professionals and society. In June 2005 the Minister of Justice adopted the supplementary regulations of the Act: a/ Training standards for mediators, b/ Procedural and Ethical Rules of Mediator's Conduct, and c/ Uniform Register of Mediators. The Act deals with: 1/defining and organising the mediation service; 2/ principles of mediation; 3/ legal status of mediators; 4/ mediation procedure; 5/ form, content and legal effects of the agreement.

The Mediation Act defines mediation as "a voluntary and confidential procedure for out-of-court dispute resolution whereby a third party mediator assists the disputants in reaching an agreement" (Article 2). The law envisions a wide scope for mediation not only in legal but also in non-legal disputes. The legal disputes range from civil, commercial, labour, family and administrative disputes related to consumer rights, and other disputes between natural and/or legal persons. Mediation shall also be conducted in the cases detailed in the Criminal Procedure Code (Article 3).

The Act provides two options for referral to mediation: First, as the private initiative of the disputing parties; they can either propose resolving the dispute through mediation or agree to use it in a possible future dispute as a clause of a contract (Article 11/1, 3). The parties have equal opportunities to participate in a mediation procedure. They should participate in the procedure of their own free will and may withdraw at any time. Second, the court judging a case may propose mediation for dispute resolution (Article 11/2). Apart from these general statements, the law does not explicitly establish interaction between mediation and traditional civil proceedings. This matter has probably been deliberately left for regulation by the new future Civil Procedure Code which is currently being drafted. For the time being, the law suggests that if mediation commences in the context of judicial proceedings, the parties should inform the competent authority to suspend it (Article 14/2). In the case when mediation is terminated, the civil procedures are resumed according procedural law (Article 15/3).

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As defined by law, the mediator shall be a natural person, legally capable who has not been convicted of criminal offences by public law and who is entered in the Uniform Register of Mediators with the Minister of Justice. Mediators may work together in order to implement the activity (Articles 4 and 8). According to the Act: "persons performing functions of administration of justice in the judiciary system are excluded from mediation activities" (Article 4). The Act does not allow the mediator to give legal advice to the disputing parties (Article 10/1). Lawyers as well as other specialists, however, can take part in the mediation procedure (Article 12/3).

The Act outlines the following mediation principles: neutrality, impartiality and confidentiality. In conformity with these principles the Act obliges the mediator to conduct the procedure solely if able to guarantee his or her own independence, impartiality and neutrality. During the procedure, the mediator is obligated to comply with the opinion of each of the disputants. The mediator should withdraw from the procedure if there are any circumstances that would cast doubt on their independence, impartiality and neutrality (Article 10).

**Domestic Violence**

The Protection against Domestic Violence Act was passed by the Bulgarian Parliament on 16 March 2005. The Act came into force on 1 April 2005. A definition of domestic violence is given in Art. 2: any act of physical, psychological or sexual violence, and the attempts at such violence, as well as the forcible restriction of individual freedom and privacy, committed against individuals who are or have been in family relations or are related, who live in factual cohabitation or live in the same dwelling. This definition encompasses violence committed by/Art. 3: spouse or a former spouse, a person who is or has been in factual cohabitation with the victim, a person who has a common child with the victim, by ascendants or descendants, siblings, a person who is connected by marriage with the victim up to the second level, a guardian, a tutor or a foster parent.

The Law provides a special emergency civil procedure of court administration in cases of domestic violence. The regional court issues special orders for protection of victims of violence, which contains restraining measures against the violent person. The protection orders are vested in the form of a court decision and can contain one or more of the following measures: constraining the aggressor so they do not to commit further acts of domestic violence, separating the aggressor from the victim and from the common dwelling, restraining the rights of the aggressor to approach the dwelling, the workplace and the places of social contacts of the victim, ordering interim measures for contact with the child when they are in the best interest of the child. Further measures contained in the protection order may be: directing the victims towards programmes for rehabilitation and obliging the aggressor to attend special treatment programmes. The protection order is valid up to one year. In all cases of violence the court imposes a fine on the attacker - from 200 to 1000 leva (100 to 500 EURO). It could be recommended that other measures that are not explicitly mentioned in the law and must be specified by the court should be provided so the court can be more flexible in each individual case.

The procedure for protection against domestic violence may be initiated by the application of the victim, or upon request of the executive director of the Agency for Social Assistance. There is another possibility in case urgent protection is needed - by an application from close relatives of the victim.

A positive moment in the new law is the possibility to issue the order in some cases based only on the declaration of the victim in the absence of other evidence. For the sake of the speed of the procedure, the applications and requests will be registered immediately and legal guarantees exist that the decision will be issued within one/one and a half months. In cases of serious threats for the health and life of the victim, an emergency procedure is applied where the order for protection is issued in 24 hours in an *ex parte* procedure, which then develops in the normal procedure for issuing protection orders. The documents issued by the NGOs working in the field of victim support are recognised in the procedure

The police play an important role in the emergency protection of victims of domestic violence. They are obliged to act in the procedure for notifying the aggressor about the court procedure and court order and especially in the implementation of the restraining orders, which is part of the court decision; limiting the possibility of the aggressor committing further violence, taking him/her away from the common dwelling and the places of social contacts of the victim. These measures are implemented with the participation of the police. Furthermore, in case when the aggressor does not comply with the court decision, the police can arrest him/her and notify the prosecutor.

A special role is attributed to NGOs working in the field of domestic violence. Those registered according to the Law of Social Assistance can issue documents which are presented in court; their representatives can participate as witnesses of the effect of violence on the victim; and they are included in the network of social programmes for rehabilitation of the victims. In addition, cooperation between NGOs and State institutions is envisioned. This cooperation will be in the areas of preventing domestic violence, victim support, and selection and education of people who will implement the law.

[Link to the Laws in the Attachment: English Version \(informal translation\) \(PDF\)](#)

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## RUSSIA

### 10TH ANNIVERSARY OF THE NEW RUSSIAN FAMILY CODE Masha Antokolskaia\*

On 5-6 December 2005 Russia celebrated the 10<sup>th</sup> anniversary of the 1995 Russian Family Code. The celebrations were in the form of a conference held in the Russian Parliament and in the Russian Law Academy. The conference brought together the former drafters, the politicians, the academics, the judiciary and the practitioners, from Moscow and from other regions of the country, as well as a number of foreign guests.

The drafting of the new Code was carried out by a team of seven scholars, appointed by the *State Duma*.<sup>\*</sup> Since the radical reforms of the 1920s Russian family law has been among the most modern in Europe. Therefore, the drafters could build largely on the existing tradition. As a result they were able to produce an innovative piece of legislation containing many inventive solutions to modern family law problems. Thus, Russia is one of the few countries providing substantive regulation of surrogate motherhood. Divorce on demand is *de facto* introduced into Russian law. A special Chapter on children's rights goes far beyond the minimum standard provided by the UN Convention.

The participants of the conference were very positive about the first 10 years of the application of the new Code. However, many pressing problems were identified as well. There were lots of suggestions for further improvements and many calls for a move forward. There was a lot of discussion on the pending need for regulation of extramarital cohabitation. Ratification of the Hague Convention on Intercountry Adoption appeared to cause heated debate which was not always unbiased. Some influential politicians expressed fairly shocking ideas with regard to this Convention.

In general, the celebrations were typified by a rather optimistic feeling that, in spite of huge economic and social problems, the legal community is doing a pretty good job in the field of family law.

\*The Lowest Chamber of the Russian Parliament.

- Professor of Private law of the *Vrije Universiteit Amsterdam*, The Netherlands. From 1993-1995 member of the drafting team responsible for drafting the 1995 Russian Family Code.

## POLAND

### GOVERNMENT PLANS INCLUDE "PATERNITY" LEAVE

The Polish government is ready to consider introducing paternity leaves. After yesterday's announcement concerning increasing the length of maternity leaves by two weeks this year and two more next year, Prime Minister Marcinkiewicz added today that the leaves may also be optionally available to fathers. The prime minister also promised that the government would propose legal measures to protect mothers who want to return to work after leaves. Further changes, however, will be possible only in the 2007 budget. The task of simplifying tax law and preparing the new budget has been entrusted to the new vice-prime minister and finance minister Zyta Gilowska, an ex-member of the Civic Platform. At the moment Mr Marcinkiewicz and Ms Gilowska face the difficult task of convincing the Parliament that their budget proposal should be accepted. The vote is planned for Saturday. If they fail the new elections may be held as early as April.

**Source:** *Polskie radio*, 10.01.2006, [www.radio.com.pl/polonija/article.asp?Id=31620&j=2](http://www.radio.com.pl/polonija/article.asp?Id=31620&j=2)

## BULGARIA

### THE CHILD PROTECTION ACT BECOMES ALIGNED WITH EU LAW

The Council of Ministers endorsed a bill on the amendment of the Child Protection Act. The underlying amendments are related to Bulgaria's forthcoming accession to the EU and the ensuing commitments.

The amendments will create the regulatory framework of the National Information System whose maintaining is the sole responsibility of the president of the State Agency for Child Protection. The law is also harmonized with the latest changes in the Family Code relating to adoption procedures.

**A NEW FAMILY CODE IS** in the legislative programme of the Government to be submitted for first reading in the Parliament in May 2006

For more information see: [www.government.bg](http://www.government.bg).

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### **The Future of Childhood: Towards the Multidisciplinary Study of Children**

Alan Prout  
London and New York: Routledge Falmer, 2005.

Alan Prout is Professor of Sociology at the University of Stirling and one of his main research interests is creating and elaborating a sociology of childhood. The work discusses the place of children and childhood in contemporary society, the shifting boundaries between adulthood and childhood and the changing character of childhood in a globalising world. Similarly, the role of material artefacts and technologies in the construction of childhood in the contemporary world is critically examined. It is argued that childhood is a heterogeneous, complex, emergent phenomenon and this means that it is made up of a wide variety of material, discursive, cultural, natural, technological, human and non-human resources.

The book grew out of the author's involvement with what has come to be known as the 'new studies of childhood'. For him the study of childhood requires a broad set of intellectual resources and an interdisciplinary approach. It is now possible to see the emergence of a more coherent field of enquiry so that childhood studies may finally be able to find a fresh conceptual apparatus.

One of the tenets of the 'new studies of childhood' is that it is not to be merely treated as a universal, biologically given phenomenon but that it must be placed in its social and cultural context. Childhood should be examined as a social construction and children studied not as passive objects of socialisation but as social actors in their own right. At the core of this argument lies the conviction that it is best not to study childhood within a framework built from implicitly assuming a set of oppositional dichotomies. Indeed the last part of the 20<sup>th</sup> century saw an erosion of the boundaries between many categories that in modernist thought were seen as mutually exclusive. For Alan Prout the effort to create this new field of childhood studies will be more effective if it is part of a wider endeavour to move beyond dualistic thinking in general.

Finally, in the last chapter on the future of childhood he provides some examples of different assemblages of heterogeneous materials from society and nature in the fields of information and communication technologies (ICT), psychopharmaceutical and reproductive technologies. He claims that the new technologies of ICT destabilise not only the boundary between the public and the private spheres but also between adulthood and childhood, helping to create conditions in which the dependency of children becomes problematic and in which the voices of minorities, including children, might be constructed and amplified.

### **Childhood in Europe. Approaches – Trends – Findings**

du Bois-Reymond, Manuela; Suenker, Heinz; Krueger, Heinz-Hermann (eds.)  
New York: Peter Lang 2001.

This volume contributes to the further development of analyses of childhood at both theoretical and empirical levels. Unlike studies which that focus more on a psychological perspective, the authors introduce a broader social scientific approach. Children are not so much analysed in a developmental perspective, but rather the contributions focus mainly on the child as a cultural and social actor and on childhood as a social category in its own right.

The contributions discuss the change in children's daily lives within their families, at school, and in the context of media use and leisure activities in different countries. It is argued that the parent-child relationship has changed fundamentally, for it is now much more governed by the principle of negotiation and open communication than in former times (p. 3), and children have gained influence within the family, even if there are in part considerable differences between different social groups. In his contribution, Hengst shows how parents in different European societies structure the childhood of their children between autonomy and supervision in rather different ways. Buechner and Fuhs argue that the ways in which the relationship between school and leisure is structured play an important role in the quality of childhood. Modern children learn not only in school but increasingly in their leisure time as well. This points to opportunities as well as risks in the lives both of children and of their parents who either know or ignore the cognitive and social potentials of leisure activities. Poland is a good example in this context, where according to the chapter by Smolinska - Theiss there is a gulf between education and the leisure-consciousness of parents in the new middle classes, on the one hand, and in poor families on the other. The book also deals with methodological strategies for "making children count", and includes new debates on children's rights to participate in social life, as in the contribution by Qvortrup, who discusses participation as a central measure that reconciles the new autonomy and social status of children with the need to integrate them into society.

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## WELLCHI NETWORK

## FORTHCOMING EVENTS

2<sup>nd</sup> Conference:

**'WELL-BEING OF CHILDREN AND LABOUR MARKETS IN EUROPE. DIFFERENT KINDS OF RISKS RESULTING FROM VARIOUS STRUCTURES AND CHANGES IN THE LABOUR MARKETS'**

March 31- April 1, 2006  
Organised by: University of Hamburg, Germany.  
See: <http://www.ciimu.org/wellchi/agenda/indexagenda.htm>

5<sup>th</sup> Workshop:

**'TRANSMISSION OF INEQUALITIES FROM GENERATION TO GENERATION AND THEIR IMPACT ON SOCIAL COHESION'**

Göteborg (Sweden), September 13-14, 2006.  
Organized by: Dept. of Sociology. University of Göteborg.  
See: <http://www.ciimu.org/wellchi/agenda/indexagenda.htm>

## PAST EVENTS

3<sup>rd</sup> Workshop:

**'WORKING FLEXIBILITY AND CARING ARRANGEMENTS'**

1-3 September 2005, Rennes (France)  
Organized by: École Nationale de la Santé Publique  
See: <http://www.ciimu.org/wellchi/reports/indexreports.htm>

4<sup>th</sup> Workshop:

**'CHILDREN IN MULTICULTURAL SOCIETIES'**

2-3 December 2005, Athens. Greece.  
Organised by: EKKE, National Centre for Social Research.  
See: <http://www.ciimu.org/wellchi/reports/indexreports.htm>

## OTHER FORTHCOMING EVENTS

**Third International Conference on the Impact of Global Issues on Women and Children**

February 12-16 2006, McMaster University, Bangladesh  
Contact: [ic2006@mcmaster.ca](mailto:ic2006@mcmaster.ca)

**Child Inclusion as a Challenge to the Mediterranean Partnership of the EU**

February 16-17 2006, European Foundation for Street Children Worldwide, Brussels, Belgium  
Contact: [elisabetta.fonck@enscw.org](mailto:elisabetta.fonck@enscw.org)

**Work Life Balance Conference 2006.**

February 22-23 2006, Hyatt Regency Perth. Western Australia.  
[http://www.docep.wa.gov.au/lr/WorkLife/Work%20and%20Family/Conference%202006/Work\\_Life\\_Balance\\_Co.html](http://www.docep.wa.gov.au/lr/WorkLife/Work%20and%20Family/Conference%202006/Work_Life_Balance_Co.html)

**International Interdisciplinary Conference on Children's Rights - An Appraisal of the Children's Rights Convention: Theory meets practice.**

May 18-19 2006, Ghent. Belgium.  
[http://www.law.ugent.be/pub/iuap/c\\_welcome.html](http://www.law.ugent.be/pub/iuap/c_welcome.html)

**International Interdisciplinary Conference on Children's Rights - An Appraisal of the CRC - Theory Meets Practice**

May 18-19 2006, Interuniversity Attraction Poles- Research Network on Human Rights of Children, Human Rights Centre, Ghent University, Belgium.  
Contact: [Marie.Delplace@UGent.be](mailto:Marie.Delplace@UGent.be)

**The Century of the Child. Children's Rights and the Nation-State in the US, France and Sweden, 1990-2000**

May 24 - 26 2006, Columbia University. USA.  
Contact: [ltierste@barnard.edu](mailto:ltierste@barnard.edu)

**Developing Foster Care in CEE / CIS / Baltics - Learning Together**

June 4-7, International Foster Care Organisation, Slovakia  
Contact: [east-east@ifco.info](mailto:east-east@ifco.info)

**Childhood and Youth: Choice and participation.**

July 4-6 2006, Sheffield University. UK.  
<http://www.shef.ac.uk/cscy/conference2006/conf-details/conference-details.htm>

**XVI ISA World Congress of Sociology**

The quality of social existence in a globalising world  
July 23 - 29 2006, Durban. South Africa  
<http://www.ucm.es/info/isa/congress2006/index.htm>

**International Conference on Children and Divorce.**

July 24-27 2006, University of East Anglia. Norwich, UK  
<http://www.iccd2006.com/>

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**1. Národní institut dětí a mládeže (NIDM)** (National Children and Youth Institute) - **Czech**  
[http://www.idm-msmt.cz/a\\_index.php](http://www.idm-msmt.cz/a_index.php)

**2. TÁRKI** (Social Research Centre) - **Hungary**  
<http://www.tarki.hu>

**3. Instytut Pracy i Spraw Socjalnych** (Institute of Labour and Social Affairs) – **Warszawa (predominantly in Polish)**  
<http://www.ipiss.com.pl/>

**4. Institutul de Cercetare a Calității Vieții** (Research Institute for Quality of Life) - **Romania**  
<http://www.iccv.ro/english/newsite/index.htm>

**5. Centre for Independent Social Research (CISR)** - **Russia**  
<http://www.cisr.ru>

**6. Network for European Social Policy Analysis (Espanet)**  
<http://www.espanet.org/>

**7. COST Action 19 – Children’s Welfare** (*text written by Thomas Olk, participant in the COST Action 19*)  
The new precariousness of the welfare state, and the growing influence of the market are challenging children’s worlds and their everyday lives (e.g. in families, schools, kindergartens and leisure). Demographic changes are leaving children vulnerable to the competition for public resources, access to space, and the use of time. As actors within the political and economic arena children are marginalised; they do not have strong interest groups to defend their rights to resources. However, societies cannot do without children’s contributions to society. Broad social changes call for deeper analyses into the cultural blindness to children’s input to the societal fabric and its consequences for children. COST A19 was established in June 2001 and will run until June 2006 (contact persons: An-Magritt Jensen (chair) and Thomas Olk (vice-chair)). The action seeks to understand children’s welfare within aging societies. Three areas of welfare are highlighted: material welfare, access to space and the use of time, and children’s rights and discourses. The scientific perspective of the network is described and available in a Memorandum of Understanding. The first step involved publishing studies from 13 countries in two volumes. In 2006, the second step will be taken, which includes publishing two additional volumes entitled “Children’s Economic and Social Welfare” and “Access to Space and Use of Time” (working titles). The final conference will take place at Roskilde University Centre, Denmark, on the 16-17 June 2006. For more information on COST and the call for papers, please visit the COST website.

For further information about COST A19:  
<http://www.svt.ntnu.no/noseb/costa19/>

Jensen, An-Magritt/Ben-Arieh, Asher/Conti, Cinzia/Kutsar, Dagmar/Phádraig, Marie Nic Ghiolla/Nielsen, Hanne Warming (eds.): Children’s Welfare in Ageing Europe. Volume I + II, Trondheim 2004.

**8. End Child Poverty Campaign**  
<http://www.ecpc.org.uk/>

End Child Poverty once and for all

A host of leading charities working with children and families joined forces to set up End Child Poverty in April 2001. Since then our membership has expanded to include a broad range of organisations from the public, private and voluntary sectors as well as trades unions and faith groups. Our goal is simple - to eradicate child poverty - and our aims are clear:

- \* Inform the public about the causes and effects of child poverty;
- \* Forge a commitment between and across the public, private and voluntary sectors to end child poverty by 2020;
- \* Promote the case for ending child poverty by 2020 with this and every future Government.

The End Child Poverty campaign has over 75 member organisations representing many thousands of supporters across a wide range of sectors. The contents of this website represents the views of End Child Poverty and does not necessarily reflect the views of member organisations.

# **BULGARIA**

## **Mediation Act**

*Promulgated, State Gazette No. 110/17.12.2004*

### Chapter One GENERAL DISPOSITIONS

#### Scope of Application

Article 1. This Act regulates the relationships associated with mediation as an alternative method of resolution of legal and non-legal disputes.

#### Notion of Mediation

Article 2. Mediation is a voluntary and confidential procedure for out-of-court resolution of disputes, whereby a third party mediator assists the disputants in reaching a settlement.

#### Subject of Mediation

Article 3. (1) The subject of mediation may be civil, commercial, labour, family and administrative disputes related to consumer rights, and other disputes between natural and/or legal persons.

(2) Mediation shall be conducted in the cases provided in the Criminal Procedure Code.

(3) Mediation shall not be conducted if a law or another statutory instrument provides another procedure for arriving at an agreement.

#### Organisation of Mediation

Article 4. Mediation shall be implemented by natural persons. Such persons may work together for the purpose of implementing the activity. No persons performing functions of administration of justice in the judiciary system may carry out mediation activities.

### Chapter Two PRINCIPLES OF MEDIATION

#### Voluntary Recourse and Equal Treatment

Article 5. The parties shall have equal opportunities to participate in a mediation procedure. They shall participate in the procedure of their own free will and may withdraw at any time.

#### Neutrality and Impartiality

Article 6. (1) A mediator must not display partiality and must not impose a resolution of the dispute.

(2) Within a mediation procedure, all questions shall be resolved by mutual agreement between the parties.

#### Confidentiality

Article 7. Discussions in connection with the dispute are confidential. The participants in a mediation procedure are bound by the obligation to respect the confidentiality of all circumstances, facts and documents that have come to their knowledge in the course of the procedure.

### Chapter Three LEGAL STATUS OF MEDIATOR

#### General Eligibility Requirements

Article 8. Eligibility for mediator service is limited to legally capable persons who have not been convicted of criminal offences by public law and who are entered in the Uniform Register of Mediators with the Minister of Justice.

## Rules of Mediator Conduct

### Article 9.

(1) A mediator shall act in good faith in compliance with the law, good morals, and the procedural and ethical rules of mediator conduct.

(2) A mediator shall accept to conduct the procedure only if able to guarantee his or her own independence, impartiality and neutrality.

## Mediator's Obligations and Liability

### Article 10.

(1) A mediator may not give legal advice.

(2) During the procedure, a mediator is obligated to comply with the opinion of each of the disputants.

(3) A mediator shall withdraw from the procedure upon occurrence of any circumstances that would cast doubt on their independence, impartiality and neutrality.

(4) A mediator may not communicate to the other participants in the procedure any circumstances concerning only one of the disputants without the consent of the said disputant.

(5) A mediator is not liable if the parties fail to reach a settlement.

(6) A mediator is not liable for non-performance of the agreement.

## Chapter Four MEDIATION PROCEDURE

### Initiation of Procedure

#### Article 11.

(1) A mediation procedure shall commence on the initiative of the disputants, with each of the said disputants having the right to propose a resolution of the dispute through mediation.

(2) A proposal for resolution of the dispute through mediation may also be made by the court or another competent authority to which the dispute has been referred for settlement.

(3) The parties' consent to resolve a possible future dispute through mediation may also be stipulated as a clause of a contract.

### Participants

Article 12. (1) A mediation procedure is implemented by one or more mediators selected by the parties.

(2) The disputants participate in the procedure personally or through a representative.

(3) Lawyers, as well as other specialists, may likewise participate in a mediation procedure.

### Mediator's Steps

Article 13. (1) Prior to conducting the procedure, the mediator informs the parties of the essence of mediation and of the consequences of it and requires the written or oral consent of the said participating parties.

(2) The mediator is obligated to indicate all circumstances that may give rise to reasonable doubt in the parties as to the impartiality and neutrality of the mediator.

(3) In the course of the procedure, the essence of the dispute is clarified, the mutually acceptable solution options are specified, and the possible framework of an agreement is outlined.

(4) Upon performing the above steps, the mediator may schedule separate meetings with each of the parties, with due respect for the equal rights of the participants in the procedure.

### Grounds for Suspending the Procedure

#### Article 14.

(1) Mediation is suspended:

1. by common agreement between the parties, or at the request of one of the parties;

2. upon the death of the mediator; 3. in the cases detailed in Article 10 (3) herein.

(2) If mediation is conducted while a proceeding is pending, the parties should inform the competent authority of the suspension of the procedure.

## Grounds for Terminating the Procedure

Article 15.

(1) A mediation procedure is terminated:

1. upon reaching a settlement;
2. by mutual agreement between the parties;
3. upon withdrawal of one of the parties;
4. upon the death of a disputant;
5. upon dissolution of a disputant if a legal person.

(2) The agreement of the parties to terminate the dispute must be expressed clearly and unequivocally.

(3) Upon termination of a mediation procedure, a pending proceeding that has been suspended shall be resumed in accordance with the provisions of the law.

## Chapter Five AGREEMENT

### Form and Content

Article 16. The form and content of the agreement shall be determined by the parties. The form may be oral, written or written with notarisation. A written agreement states the place and date where the said agreement was reached, the names of the parties and the addresses of these, the points of agreement, and the name of the mediator. It must be signed by the parties.

### Effect of Agreement

Article 17.

(1) The agreement is binding only for the disputants and may not be held against any persons who did not participate in the procedure.

(2) The agreement is binding for the parties only with respect to the points of agreement and may not be in conflict with the law and morals.

## TRANSITIONAL AND FINAL PROVISIONS

§ 1. Within six months after this Act enters into force, the Minister of Justice will adopt mediator training standards, Procedural and Ethical Rules of Mediator Conduct, and will establish and maintain a Uniform Register of Mediators.

§ 2. The implementation of this Act is entrusted to the Minister of Justice.

This Act was passed by the 39th National Assembly on the 2 December 2004, and the Official Seal of the National Assembly has been affixed to it.

# Protection against Domestic Violence Act

*Promulgated, State Gazette, issue 27 of 29 March 2005*

## Chapter One GENERAL PROVISIONS

### Article. 1.

- (1) This law governs the rights of individuals who have suffered from domestic violence, the protection measures, and the procedure applied for imposing these measures.
- (2) Liability under this Act does not preclude the civil and criminal liability of the respondent.

Article. 2. Domestic violence is any act of physical, mental or sexual violence, and any attempt at such violence, as well as the forcible restriction of individual freedom and privacy, committed against individuals who have or have had family or kinship ties or live or have lived in the same home.

Article. 3. Protection under this Act may be sought by any individual who has suffered from domestic violence committed by:

1. a spouse or former spouse;
2. a person with whom the individual lives or has lived;
3. a person with whom the individual has a child;
4. an ascendant;
5. a descendant;
6. a sibling;
7. a relative by affinity up to the second degree;
8. a guardian or foster parent.

### Article. 4.

(1) In the event of domestic violence the victim has the right to seek protection from the court.

(2) In cases where evidence exists that there is a direct and imminent threat to the life or health of the victim, the victim may file an application with the police authorities in order to impose emergency measures pursuant to Section 76 of the Ministry of Interior Act. The bodies of the Ministry of Interior shall forward the application to the court together with the explanations of the respondent, if such explanations have been provided, and the record of any measures imposed, describing the circumstances that call for emergency court protection.

(3) At the request of the victim, a medical doctor must issue a document to establish in writing any injuries or traces of violence found on the victim by the doctor.

### Article. 5.

(1) Protection against domestic violence is implemented through any of the following:

1. placing the respondent under an obligation to refrain from committing domestic violence;
2. removing the respondent from the common dwelling for a period specified by the court;
3. prohibiting the respondent from being in the vicinity of the home, place of work, and the places where the victim has his or her social contacts or recreation, on such terms and conditions and for such a period as specified by the court;
4. temporarily relocating the residence of the child with the parent who is the victim or with the parent who is the victim or with the parent who has not carried out the violent act in question on such terms and conditions and for such a period as specified by the court, provided that this is not inconsistent with the best interests of the child;
5. placing the respondent under an obligation to attend specialised programmes;
6. advising the victims to attend recovery programmes.

(2) The measures under subsection 1, points 2, 3, and 4 are imposed for a period from one month to one year.

(3) In all cases, with the order under Section 15(1) the court will also impose a fine of 200 to 1000 Levs.

Article. 6.

(1) The State shall ensure the implementation of programmes aimed at preventing and protecting against domestic violence, as well as programmes providing assistance to the victims.

(2) The bodies of the Executive branch shall select and train the persons in charge of protection by virtue of this Act.

(3) The bodies of the Executive branch and the natural and legal persons registered by virtue of Article 18(Z) and (3) of the Social Assistance Act shall work together to provide protection for the victims of domestic violence.

(4) The persons referred to in subsection 3 shall develop, organise the implementation of, and implement the programmes under Section 5(1), points 5 and 6.

## Chapter Two

### PROCEEDINGS FOR IMPOSING PROTECTION MEASURES AGAINST DOMESTIC VIOLENCE

#### Division 1

#### *General Provisions*

Article. 7.

(1) The court competent for imposing a measure is the regional court in the area where the current address of the victim is found or, in the cases referred to in Article 4(2), the regional court in the area of the local police department where protection was sought.

(2) The court before which there is pending litigation between the victim and the respondent or litigation involving any of the parties based on a provision of the Family Code or of the Child Protection Act is competent for imposing a protection measure at any stage of the proceeding.

Article. 8. The proceeding for issuing an order may be instituted:

1. on application by the victim;
2. at the request of the Director of the Social Assistance Directorate;
3. whenever emergency court protection is sought, on an application by a sibling or by a person who is a relative to the victim in the direct line irrespective of the degree of kinship.

Article. 9.

(1) The application or request is in writing and must contain:

1. the names, the address, and the personal ID number of the applicant or the individual that has filed the request; if a victim cannot or is unwilling to disclose his or her address, he or she may identify an address for litigation purposes;
2. the names and the current address of the respondent or any other address where the latter may be summoned, including a telephone and fax number;
3. information concerning the family, kinship or factual ties between the victim and the respondent;
4. a description of the facts and circumstances under which domestic violence occurred;
5. a signature.

(2) In the cases referred to in Section 8, points 2 and 3 the court shall, ex officio, involve the victim as a party.

(3) A statement by the applicant concerning the violence in question shall also be enclosed in the application under Section 8, point 1.

(4) At the request of the applicant the court shall seek ex officio with respect to the respondent a criminal record certificate, information concerning any measures imposed under this Act, and a certificate showing whether or not the respondent is registered at any psychiatric establishment.

Article. 10.

(1) The application or request is filed within one month from the date on which the act of domestic violence occurred.

(2) The application or request is entered in a special register and assigned on the date of filing.

(3) In the cases referred to in Section 4(2) the application is filed via the nearest local police department.

Article. 11.

(1) No costs are charged upon filing an application under Article 8, points 1 and 3.

(2) Upon issuing the order, the court shall direct the respondent to pay costs and expenses.

(3) In the event of refusal to issue an order or if the order is revoked, the costs and expenses are charged to the applicant, while in the cases referred to in Article 8, point 2 the expenses are incurred by the Social Assistance Agency

*Division II*  
Hearing of Case

Article. 12.

(1) On the day on which the application or request is filed the court shall schedule an open hearing to take place no later than 30 days after and shall serve the writ of summons and a copy of the application or request with their enclosures on the defendant, while notifying the latter of his or her obligation to produce evidence.

(2) In the cases under Article 8, points 2 and 3 the victim is summoned as well.

(3) When necessary, the writ of summons is served with the assistance of the police authorities or the mayor.

Article. 13.

(1) Evidence deemed admissible under the Code of Civil Procedure shall also be admissible in proceedings involving protection orders.

(2) The following may also serve as evidence in a proceeding under subarticle 1:

1. records, reports, and any other acts issued by the Social Assistance Directorates, by medical doctors, as well as by psychologists who provided counselling to the victim;

2. documents issued by legal persons providing welfare services and entered in a register at the Social Assistance Agency;

3. the statement made pursuant to Article 9(3).

(3) When no other evidence exists, the court issues a protection order solely based on the statement made pursuant to Article 9(3).

Article. 14.

(1) Where it appears in the information in the application or request that the Ministry of Interior and other state government agencies possess documentary evidence of acts of domestic violence, the relevant body or agency shall forthwith issue authenticated copies of such documents at the request of the victim or his or her representative or attorney, or at the request of the court.

(2) Anyone required to issue a document or copy pursuant to subarticle 1 but who fails to do so is liable for a fine of 100 Levs imposed by the court in accordance with the Code of Civil Procedure.

Article. 15.

(1) The court rules on the application by delivering a judgment in an open hearing.

(2) When the application or request is granted the court issues a protection order.

Article. 16.

(1) With the protection order, the court shall impose one or more protective measures.

(2) The order must include notification of the effects of any failure to comply with the decision, as set out in Section 21(2).

(3) The judgment and the order are served on the parties, and when a measure under Section 5 (1), points 1, 2 and 3 is imposed they are also served on the local police department in the area where the current address of the respondent and the address of the victim are located.

#### Article. 17.

(1) The court's decision may be appealed against in the district court within seven days from it being served. The appeal is lodged via the court that delivered the judgment, and a copy for the other party is attached. New evidence may be enclosed in the appeal as well.

(2) The appeal does not stop the judgment being carried out.

(3) The regional court forwards a copy of the appeal and of the enclosures to the other party who may, within three days of receiving it, file objections and offer new evidence. After the expiration of that time limit, the appeal together with the enclosures and objections are forwarded to the district court.

(4) The district court handles the appeal within 14 days, in open court, the parties are summoned in accordance with Article 12, and the court rules on the appeal by delivering a judgment on the merits that uphold or reverse or vary the judgment appealed against. When it decides to change the order, the court issues a new order.

(5) The judgment of the district court is final.

#### Article 18.

(1) When the application or request contains information concerning a direct and impending threat to the life or health of the victim, the regional court, sitting ex parte and in camera, issues an emergency protection order within 24 hours of receiving the application or request.

(2) The order under subsection 1 is served on the parties and forwarded ex officio to the local police department.

(3) When it appears from the information in the file that measures should be undertaken under the Child Protection Act, the court notifies the Director of the Social Assistance Directorate.

(4) The court schedules an open hearing to take place no later than 30 days after and shall serve the writ of summons and a copy of the application or request with their enclosures on the defendant, while notifying the latter of his or her obligation to produce evidence.

(5) In the cases under Article 8, points 2 and 3 the victim is summoned as well.

(6) Where necessary, the writ of summons is served with the assistance of the police authorities or the mayor.

Article. 19. An emergency protection order has effect up until a protection order is issued or until the court refuses the application or request.

### Execution of Protection Order

Article. 20. A protection order is subject to immediate execution.

#### Article. 21.

(1) The police authorities shall ensure that the order is executed when a measure under Article 5 (1), points 1, 2 and 3 has been imposed pursuant to such order.

(2) In the event of the failure to comply with the court order, the police authorities having found such a failure shall arrest the offender and notify the prosecutorial authorities.

Article. 22. The court shall issue ex officio a writ of execution with respect to any fines imposed and the stamp duties and costs applied.

### Final Provisions

§ 1. The provisions of the Code of Civil Procedure shall apply mutatis mutandis to any matters not explicitly covered by this Act.

§ 2. The Minister of Interior, the Minister of Justice, the Minister of Labour and Social Policy, the Minister of Health, the Minister of Education and Science, and the Minister of Finance shall develop, within 6 months from this Act entering into force, a Domestic Violence Prevention and Protection Programme.

§ 3. The State shall assist the municipalities and the non-profit legal entities with establishing and supporting services and centres designed to implement the measures under Article 5(1), points 5 and

6.

§ 4. The persons registered by virtue of Article 18(2) and (3) of the Social Assistance Act who provide welfare services and recovery programmes to victims of domestic violence or specialised programmes to perpetrators of such violence must provide the court with a list of available services and programmes.

§ 5. In Section 63(3) of the Ministry of Interior Act (promulgated, State Gazette, issue 122 of 1997, issue 29 of 1998 Judgment No. 3 of the Constitutional Court of 1998; amended, issues 70, 73, and 153 of 1998, issues 30 and 110 of 1999, issues 1 and 29 of 2000, issue 28 of 2001, issues 45 and 119 of 2002, issues 17, 26, 95, 103, 112 and 114 of 2003, issues 15, 70 and 89 of 2004, issues 11 and 19 of 2005), a new third sentence is inserted: "In the event of domestic violence a copy of the notification record shall be provided to the victim upon request."

*This Act was passed by the XXXIXth National assembly and the official seal of the National assembly is affixed to it.*