GLOBAL CONNECTIONS

THE WEINSTEIN JAMS INTERNATIONAL FELLOWS NEWSLETTER | SPRING 2014

WHAT'S INSIDE

Photo: Weinstein JAMS Fellows 2012 Class: *Back row, left to right: Olurotimi Williams Daudu (Nigeria), Ivan Bimbilovski (Macedonia), Jay Welsh (JAMS Foundation), Tolegen Myrzabayev (Kazakhstan), Blazo Nedic (Serbia), Thierno Diallo (Senegal), David Brandon, Ellen Bass (JAMS Foundation), Enga Kameni (Cameroon). Front row, seated, left to right: Kathy Gonzales (Trinidad & Tobago), Lejla Mavris (Bosnia-Herzegovina), Jay Folberg (JAMS Foundation), Daniel Weinstein (JAMS), María Rosario García Alvarez (Spain), Antonio Piazza (guest, Mediated Negotiations), Livia Angela Giordano (Switzerland)*

JAMS FOUNDATION

www.jamsfoundation.org

LETTER FROM JUDGE WEINSTEIN

To our wonderful, creative, pioneering and irrepressible Weinstein JAMS Fellows, now dispersed around the world in forty-four different countries, I am thrilled to announce that I have partnered with the JAMS Foundation to provide the Weinstein JAMS International Fellowship program with funding for the next 20 years! It goes without saying that I am very proud and grateful that each of you holds a Fellowship award with my name on it. But as you know, the Fellowship experience is much more than a piece of paper.

Some of you have struggled when you returned to your home countries, others of you have flourished and accomplished amazing things. We honor all of you and recognize that introducing the magic of ADR to different cultures and legal systems is a struggle that can take decades, as we experienced in the United States. However, you should know now that in your journeys to establish ADR in private practice or in your judicial systems, you have your family of Weinstein JAMS Fellows to support you, commiserating with you during the tough times and cheering your successes.

As we welcome a new class of Fellows in 2014, know that I and the JAMS Foundation are here for you. We look forward to staying in contact with each of you and working on ways to help provide needed support for your post-Fellowship work. In the meantime, we fervently hope that the practical experience, tools and techniques that you absorbed during your Fellowship serve you well.

Cheers and good luck this year. Stay in touch with us. This last sentiment is a judicial order with worldwide jurisdiction!

—JUDGE DANIEL WEINSTEIN (Ret.), *JAMS*

WEINSTEIN JAMS FELLOWS UPDATES

MARÍA ROSARIO GARCÍA ALVAREZ
Spain, Class 2012

SINCE JUDGE MARÍA R. GARCÍA ALVAREZ'S RETURN TO MADRID IN 2012, she's continued her efforts to promote and develop the field of mediation and ADR in Spain, sharing her experience as a Weinstein JAMS International Fellow and developing court-annexed mediation programs, among other numerous activities. Immediately upon her return to Spain, she conducted a mediation training program for employment law professionals in Madrid in collaboration with the Center for Negotiation and Dispute Resolution, University of California Hastings College of Law. The mediation training program took place in December 2012.

Following the training program, in January 2013, Judge G. Alvarez was invited to speak about health care mediation at the Hospital La Paz in Madrid—along with mediators, doctors, nurses and lawyers—on the role of mediation inside hospitals and the health care industry. Subsequently, Judge G. Alvarez also lectured on court-annexed mediation programs at the Masters on Mediation program of The Bar Association of Madrid and presented at the Comillas Pontifical University ICAI-ICADE School of Law about the court-annexed mediation program that she directs at the employment court in Madrid.

In addition, Judge G. Alvarez is also director of the Employment Law working group for the Spanish General Council of the Judiciary, responsible for the elaboration and publication of a guide for judges on establishing court-annexed mediation programs. The guide will apply to all jurisdictions (civil, criminal, employment, family and administrative) and was expected to be published in fall 2013.

In May 2013, Judge G. Alvarez published an article on the role of mediators in negotiations in the journal La Ley. She continues to develop her project for the Civil Rights Foundation in researching access to justice in order to promote best practices in ADR and mediation. This Foundation project also includes the development of the design of a webpage for the Mediation Services at the Courts.

Finally, Judge G. Alvarez was invited to join the Comillas Pontifical University ICAI-ICADE School of Law as faculty to teach ADR and mediation at the master's degree level for admission to the Bar. She joined the law faculty in 2014.

SINCE IVAN BIMBILOVSKI'S RETURN TO MACEDONIA UPON COMPLETION OF HIS FELLOWSHIP PROJECT IN 2012, the Ministry of Justice commissioned Ivan to introduce a mediator licensing system in the Macedonian Law on Mediation. Based on his research at JAMS as a Weinstein JAMS Fellow, Ivan drafted

IVAN BIMBILOVSKI
Macedonia, Class 2012

and proposed several amendments to the law, which were accepted by the Ministry of Justice and proposed to Parliament, and which include requirements for becoming a certified mediator, requirements for becoming a certified trainer of mediators, the creation of a register of certified mediators and establishment of a board for assuring, monitoring and evaluating mediations, among other requirements. The vote on the amendments was scheduled to take place in late September 2013.

In addition, in March 2013, Ivan became Associate Professor at St. Paul University in Ohrid, Macedonia, and was confirmed as Pro-Rector of the University by the senate in fall 2013. Ivan also continues his affiliation with the European University in Skopje, Macedonia, as a visiting professor. Based on the research Ivan collected during his Fellowship project, he proposed a new course in undergraduate studies at St. Paul University on negotiation and dispute resolution, with emphasis on mediation, for which the Ministry of Education and Science issued accreditation, effective as of this academic year.

GALYNA YEROMENKO
Ukraine, Class 2010

GALYNA YEROMENKO IS MANAGER AND TRAINER OF THE UKRAINIAN MEDIATION CENTER of the Kyiv Mohyla Business School and founder of the coalition for the development of mediation in Ukraine. In April 2012, Galyna was appointed Chairman of the Commission for Mediation and Advisor to the President of the International Chamber of Commerce Ukraine. In 2013, Galyna's case "Collaboration Competence Development" (about the staff of an IT company) was conditionally accepted subject to being revised for presentation at the 6th Conference of the EuroMed Academy of Business, which was held in Portugal in September.

In May 2013, Galyna gave a master class at the 3rd International Forum "Mediation and Corporate Social Responsibility" conference in Temirtau, Kazakhstan, and was honored with the "Era of Mediation" award "for achievements in the theoretical and applied research technologies of alternative dispute resolution." The conference was full of interesting and thought-provoking meetings between colleagues from St. Petersburg, Moscow, Belarus and Kazakhstan.

WHEN KATHY GONZALES APPLIED FOR A WEINSTEIN JAMS FELLOWSHIP, she indicated in her application that one of her objectives was to conduct research on successful court-annexed mediation programs in the U.S. as well as on successful "multi-door courthouse" initiatives, with a view to one day designing a

KATHY GONZALES
Trinidad & Tobago, Class 2012

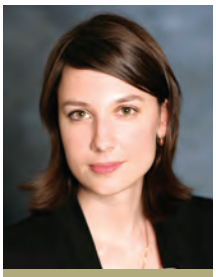
similar system for her country, Trinidad & Tobago, which would increase the use of mediation and other ADR processes in the civil litigation process. Little did she know how prescient her choice of objective would be.

In April 2013, shortly after Kathy was awarded a Weinstein JAMS Fellowship, the Judiciary of Trinidad & Tobago began a competitive bidding process to choose a consultant to lead them in the development and implementation of an ADR program offering mediation and judicial settlement conferences as alternatives to litigation. At the end of this process, Kathy was chosen as the consultant. Suddenly, her Fellowship objective was no longer simply research for a future project; it had now assumed a very real urgency. The JAMS Foundation gave Kathy invaluable support by arranging experiences that would truly prepare her to attain her objective.

Conversations with Judge Peter Lichtman of the JAMS Los Angeles Resolution Center and a presentation by Ms. Sheila Purcell, Director of the Center for Negotiation and Dispute Resolution, UC Hastings College of the Law, at JAMS San Francisco opened Kathy's mind to different possibilities for process flow. Meetings with Ms. Ana Maria Veiga, ADR Administrator, L.A. Superior Court, and Mr. Victor Quiros, Civil ADR Branch Chief, District of Columbia Superior Court, about their own programs gave Kathy ideas about case management and sensitized her to possible problems so that she could plan for them before they arose. A meeting with Ms. Donna Stienstra, Senior Researcher, Federal Judicial Center, Washington, DC, highlighted the importance of robust monitoring and evaluation of any pilot program.

For seven months, Kathy worked with the ADR Pilot Project Implementation Committee appointed by the Chief Justice of Trinidad & Tobago. Finally, on January 23, 2013, the judiciary of Trinidad & Tobago launched its ADR Pilot Project. It has now passed the one-year mark, and so far all the evaluations point to its being a successful initiative that is appreciated by attorneys and clients. Readers can view the microsite for this project at ***http://www.ttlawcourts.org/index.php/court-admin/projects/access-the-adr-pilot.***

In addition to her work as consultant to the ADR Pilot Project for the courts, Kathy is also in the process of completing her coursework for her Ph.D. in ADR at Nova Southeastern College of the Law in Fort Lauderdale, Florida. Kathy also successfully completed the international arbitration award writing examination of the Chartered Institute of Arbitrators and following a peer interview, has now been named a Fellow to CIarb.



MANUELA RENATA GROSU
Hungary, Class 2011

MANUELA RENATA GROSU RECENTLY PARTICIPATED IN AN INTERNATIONAL PROJECT, initiated by Manon Schonewille and Dr. Fred Schonewille of Utrecht University, to discuss the current legislative framework of civil and commercial mediation in Europe and other parts of the world. The goal of the project is to publish a book based on a country-by-country analysis. The book is titled *The Variegated Landscape of Mediation Regulation: A Comparative Study in Europe and the World*, and is expected to be published in 2014.

In September 2012, Manuela had the opportunity to speak about family mediation in the European Union at the Legal Research Network Conference, titled "The Impact of International Instruments on National and European Law." The conference was organzied by ELTE University in Budapest in cooperation with Ghent University, University of Bristol, University of Groningen and other universities.

In June 2013, Manuela presented at the "Mediation Overview" international conference, organized by the Judges for Mediation Association, the National Justice Office and the Hungarian Section of GEMME, (the European Association of Judges for Mediation) on the support of court mediation in the EU and worldwide, with special emphasis on China and the United States. The topics of the conference included the following subjects: the future of mediation in the fields of criminal, civil and economic law in Europe and Hungary; court mediation; best practices in mediation; the role of judges, lawyers, prosecutors and notaries in mediation; and mediation and legislation.

Also in June 2013, Manuela was invited to speak at the ADR summer school in Budapest, offered in conjunction with Central European University's legal studies department, Cardozo School of Law and Hamline School of Law, on "Mediation and Other Methods to Foster Democratic Dialogue." In particular, Manuela was invited to speak about her recent ADR activities, her 2011 experience as a Weinstein JAMS International Fellow in New York and her studies as a visiting research scholar at Cardozo School of Law.

ANDREW WEI-MIN LEE
China, Class 2011

WITH THE SUPPORT OF THE JAMS FOUNDATION, A GROUP OF 60 OF THE WORLD'S LEADING SCHOLARS AND ACADEMICS in dispute resolution pedagogy gathered in Beijing to discuss how mediation and negotiation can be more effectively taught. The conference was co-hosted by Weinstein JAMS Fellow

continued on Page 4

WEINSTEIN JAMS FELLOWS UPDATES *continued from Page 3*

Andrew Wei-Min Lee and Vivian Feng Ying Yu, Hamline University and Peking University. The resulting productivity yielded a book co-edited by Andrew Wei-Min Lee and sponsored by the JAMS Foundation, titled Educating Negotiators for a Connected World: Volume 4 in the Rethinking Negotiation Teaching Series (DRI Press 2013).

Since their return from San Francisco in 2011, Andrew and Vivian have continued to think of ways to bring together the global network of Weinstein JAMS Fellows and the expertise of JAMS personnel to China. In 2012, Andrew and Vivian hosted JAMS Mediator Bruce Edwards and Weinstein JAMS Fellows Laila Ollapally (India, 2011) and Dimitra Triantafyllou (Greece, 2011) as judges for a national Chinese intervarsity negotiation competition. In 2013, Weinstein JAMS Fellows Tsisana Shamlikashvili (Russian Federation, 2009) and Dimitra Triantafyllou visited China together with visitors from the United States on a sharing experience with scholars of Hangzhou.

Visiting experts have taught mediation in law schools, followed by lunching with professors and graduate students from Beijing and Tibet. They have toured courtrooms, then participated in a tea ceremony with Chinese judges in a Buddhist temple. With these events, Andrew and Vivian aim to create an environment for sharing, where deep personal connections can be made. There are formal trainings and "hard" seminars. And there are emotional but equally important "soft" times. Some of the most significant events have involved children from overseas learning Chinese calligraphy and creating pottery with Chinese children while their parents—JAMS mediators, Weinstein JAMS Fellows, Chinese judges and Communist Party officials—looked on proudly.

Through an atmosphere of learning and mutual respect, Andrew and Vivian position participants as international experts and pioneers in Chinese dispute resolution development. China has been mediating for thousands of years, and there is much collective wisdom in China's history and culture. Overseas institutions like JAMS have refined mediation into an expert skill with deep institutional roots. As expressed by Andrew and Vivian: "We have much to learn and share. In 2014, we will continue building more events in China. And we hope to see you here."

MUSHEGH MANUKYAN
Armenia, Class 2011

SINCE COMPLETION OF HIS WEINSTEIN JAMS FELLOWSHIP IN 2011, MUSHEGH MANUKYAN ESTABLISHED THE FIRST MEDIATION FIRM IN ARMENIA, ADR Partners (www.adr.am), which provides the only mediation, arbitration and dispute resolution services and training in Armenia. Originally a one-man company, the firm has gradually evolved to encompass three ADR specialists in mediation and arbitration and a case and office manager. Since ADR Partners' establishment, the firm has trained judges, lawyers and students in ADR, primarily negotiation, mediation and arbitration. ADR Partners has now trained more than 50 professionals in the various ADR disciplines.

In addition, ADR Partners founded two mediation clinics at the American University of Armenia (AUA) and the Russian-Armenian (Slavonic) University (RAU), where Mushegh teaches ADR and international business transactions. Currently, a new mediation module is being taught at AUA as well as a separate mediation clinical program, which is open only to AUA students and graduates. Mushegh plans to expand these mediation clinics via various funding opportunities and grants, which will provide students the tools to develop their skills in the field.

In June 2012, in cooperation with the European Union and the Council of Europe "Access to Justice" program, Mushegh participated in an ADR training program for Armenian judges, where, together with two European experts, Mushegh worked with judges on the enhancement of mediation skills (with focus on the reconciliation agreements concluded in the regular courts in Armenia). More information can be found at ***http://www.adr.am/news/show/10/0/eng.***

In December 2012, ADR Partners organized an international conference on mediation, where several international experts spoke on the development of mediation in Armenia, including Weinstein JAMS Fellows Evgeni Georgiev (Bulgaria, 2011) and Tsisana Shamlikashvili (Russian Federation, 2009). The Deputy Minister of Justice also participated and spoke regarding the need for ADR in Armenia. At the conference, the international experts presented a draft law on mediation that was widely discussed among the participants and taken as a basis for future legislative development in the field. More information can be found at ***http://www.adr.am/news/show/29/0/eng.***

In May 2013, ADR Partners and the AUA Mediation Clinic organized the first Mock Arbitration Competition among Armenian law schools, a great event for which many local and international firms provided support. More information can be found at ***http://www.adr.am/news/show/35/0/eng.***

In June 2013, Mushegh published his second book, titled International Private Law of the Republic of Armenia: Scientific and Practical Commentaries to the 12th Chapter of the Civil Code of the Republic of Armenia (International Private Law), which aims to promote international investment protection in Armenia and development of the private law discipline in the field. The book encompasses a two-year study, which Mushegh began upon his return from Moscow following completion of his Ph.D. program and which he was able to finish editing in early 2013.

Also in June 2013, Mushegh participated in UC Hastings College of the Law, Center for Negotiation and Dispute Resolution's Summer Legal Institute program on court ADR, where Mushegh met Weinstein JAMS Fellows Olurotimi Williams Daudu (Nigeria,

2012) and Judge Ahmed Abou Zeid (Egypt, 2013), who are promoting ADR in their respective countries.

Mushegh also indirectly participates in the USAID Enterprise Development and Market Competitiveness project in Armenia, a five-year project that intends to implement business-enabling reforms in Armenia and develop the country's ADR system.

SAVATH MEAS
Cambodia, Class 2011

SAVATH MEAS CURRENTLY SERVES AS PRESIDENT OF THE CAMBODIAN CENTER FOR MEDIATION (CCM) and consultant to the department of Training and Legal Education of the Ministry of Justice. Savath is also a research consultant on conflict resolution and peace-building analysis. As President of CCM, Savath has trained six professional mediators, who have since formed CCM's mediation panel to provide services to clients in Phnom Penh. Each mediator on the panel has participated in 40 hours of mediation skills and process training, which includes training in mediation principles, processes and procedures, as well as mediation models, tools and techniques. The training program includes observations and opportunities for co-mediation.

On November 30, 2012, and March 7, 2013, Savath was interviewed on the radio to discuss ADR and mediation practices at the community level. Savath also shared his ADR experience on August 16-17, 2012, with 124 officials from 31 district centers in Phnom Penh and the provinces. Most recently, Savath provided training courses on mediation process and skills to 93 officials from 31 district justice centers on July 4-5, 2013.

CCM, in cooperation with eight NGOs, the Ministry of Interior and the Ministry of Justice, organized a National Consultation Workshop on ADR practice in Cambodia, which took place on September 20-21, 2012, with 240 participants, including community leaders, civil society organizations, local and international NGOs and government officials.

CCM is also participating in a partnership with five collaborating organizations to establish a national NGO institution to improve access to justice through alternative dispute resolution (A2J-ADR). The goal of the partnership is to establish and strengthen cooperative links between the formal and the non-formal justice sectors, with the ultimate goal of improving access to justice for marginalized groups in Cambodia. Specifically, with upcoming draft legislation designed to govern ADR processes in Cambodia, CCM and its partners aim to ensure that civil society in Cambodia is given a voice in shaping ADR policy. The A2J-ADR programs are expected to be implemented around the country in early 2014 by the five participating local NGOs: Cord Cambodia, the Cambodian Centre for Mediation (CCM), the Cambodian Human Rights and Development Association (ADHOC), the Community Legal Education Center (CLEC) and the Cambodian Human Rights Action Committee (CHRAC).

PEMA NEEDUP
Bhutan, Class 2011

PEMA NEEDUP, FORMER PRESIDING JUDGE AT THE TRASHIGANG DISTRICT COURT, NOW PRESIDING JUDGE AT THE PUNAKHA DISTRICT COURT, besides the adjudication of cases as part of his judicial responsibilities, has continued working in the field of alternative dispute resolution in Bhutan. Upon completion of his Fellowship in 2011, Judge Needup was nominated by the judiciary of Bhutan as a trainer-cum-resource person for a two-week training and consultation program on ADR for 205 local leaders—bringing justice closer to the people—which was organized by the Bhutan National Legal Institute in 2012.

Judge Needup conducted an eight-day training and consultation on ADR for fifteen local leaders of the Trashigang District. Thereafter, he launched an ADR dissemination program for the people of fifteen Gewogs (counties), which was successfully completed in March 2013.

In April 2013, Judge Needup organized a two-day refresher training on ADR for thirty local leaders of the Trashigang District with support from the JAMS Foundation. Judge Needup also conducted a two-day workshop on Peer Mediation to some fifty students including principals and vice-principals from Rangjung Higher Secondary School and Trashigang Middle Secondary School as part of his planned ADR outreach to schools in 2013.

Throughout these activities, Judge Needup's objectives included the revival of the age-old tradition of amicable dispute resolution at the community level and the facilitation of the resolution of disputes in order to supplement the delivery of justice to the people inexpensively and expeditiously.

HAGIT SHAKED-GVILI
Israel, Class 2010

HAGIT SHAKED-GVILI HAS EXTENSIVE EXPERIENCE IN MULTICULTURAL MEDIATION PRACTICE AND TEACHES INTERNATIONAL COMMERCIAL MEDIATION at Bar Ilan University's Faculty of Law. A select group of students at Bar-Ilan, coached by Hagit, won a special prize for Best Mediation Plan at the 8th International Commercial Mediation Competition, held in Paris, France. The Bar-Ilan team competed alongside sixty-six other universities from thirty countries. As coach, Hagit worked with the four students over several months. Hagit's goal was to impart the skills necessary for the students to present their side clearly and articulately, and to fervently defend their clients' interests. A mediation plan is a strategy formulated by

continued on Page 6

WEINSTEIN JAMS FELLOWS UPDATES continued from Page 5

the parties involved in a dispute prior to entering into the process of negotiation. The detailed plan identifies the interests of the two parties, as well as the possible scenarios that could arise during mediation. It also defines the division of roles between the lawyer and the client, and the goals they expect to achieve. The aim of the annual competition is to train law and business students how to better meet the dispute resolution needs of today's global market and how to deal with the cultural sensitivities implied in this process. The competition allows students to test their problem-solving skills in international commercial cases in which they take the roles of client and counsel while some of the world's leading mediators participate to help the students work toward a solution.

TSISANA SHAMLIKASHVILI
Russian Federation, Class 2009

TSISANA SHAMLIKASHVILI, PRESIDENT AND FOUNDER OF THE CENTER FOR MEDIATION AND LAW AND PROFESSOR AT THE MOSCOW UNIVERSITY FOR PSYCHOLOGY AND EDUCATION, was named as one of the top-100 most influential persons in Russia and one of the top-10 lawyers for her contribution to improving Russia's legal system, according to a survey conducted by "The Russian Reporter" magazine and the Russian Public Opinion Research Center in 2012. The survey was designed to show the 100 most influential individuals divided into 10 categories: social activists, teachers, doctors, scientists, sportsmen, lawyers, cultural figures, business professionals, civil servants and military officials. More than 450 experts participated in the survey. Tsisana Shamlikashvili was nominated by the legal community for her "active integration of new technologies into legal practice." As stated by the journal's experts, "It is mostly by her efforts that the Law of Alternative Procedure of Dispute Settlement with Participation of a Mediator was adopted."

Tsisana Shamlikashvili is the President of the National Organization of Mediators, academic advisor of the Scientific and Methodological Center for Mediation and Law, Chair of the Subcommittee on ADR and Mediation of the Russian Association of Lawyers and editor-in-chief of the magazine "Mediation and Law."

The Center for Mediation and Law, founded by Tsisana Shamlikashvili in 2005, has become the main force in efforts to establish necessary conditions for the successful implementation of mediation in the Russian Federation, including:

- Drafting a law on mediation as a new dispute resolution tool, which also allows Russian judges to refer parties to mediation (the law was adopted in July 2010);
- Training programs for professional mediators all over the country;
- Massive awareness and education campaigns for citizens and various professional groups, which are gatekeepers to mediation (such as lawyers, judges, etc.);
- Teaching mediation for law school students and widely within the system of higher education; and
- Integration of mediation in the system of postgraduate and continuing education.

In April 2013, Tsisana Shamlikashvili spoke at the Program on Negotiation at Harvard Law School on the integration and future of mediation in Russia and neighboring countries. Her presentation focused on addressing the following important questions:

- Is mediation only a fashionable trend or a sign of a growing civil society?
- What are the differences between former communist countries and Western jurisdictions in terms of integrating mediation in social relations?
- Can mediation be a social tool to overcome corruption?
- What are the main obstacles for successful development of mediation in Russia?

SRDAN SIMAC
Croatia, Class 2010

THE LAST FEW YEARS HAVE BEEN VERY BUSY FOR JUDGE SRDAN SIMAC SINCE HIS RETURN FROM HIS WEINSTEIN JAMS FELLOWSHIP IN BOSTON IN 2010. Judge Simac became President of the Croatian Mediation Association (CMA), and CMA has since become the definitive leader in mediation in Croatia. Judge Simac finished his dissertation on "Mediation as a Generator of Change for the Judiciary and the Legal Profession" and successfully defended his dissertation in July 2013. Judge Simac has tirelessly promoted the idea of mediation everywhere in Croatia and abroad, with the goal to expand its reach as much as possible. He was a speaker, trainer or award winner at many recent ADR events: Durres (Albania), Oxford and London (England), Paris (France), Ljubljana (Slovenia), Moscow (Russia), Neum and Sarajevo (Bosnia and Herzegovina), Sofia (Bulgaria), Podgorica (Montenegro) and Bratislava (Slovakia), as well as an attendee in Denver and New York (U.S.).

Judge Simac has trained dozens of new mediators and has completed nearly 200 mediations and a few arbitrations. He has written many articles in different professional journals for lawyers, businesspeople, insurers, banks and physicians, and he was a guest speaker on mediation on various radio and TV programs. Judge Simac organized the Croatian Mediation Association's club to establish an ADR forum for ADR lecturers and speeches with guests (once a month) from Croatia and abroad (U.S., Great Britain, Switzerland, Germany and Slovenia).

In addition, Judge Simac has presented on ADR and mediation

continued bottom of Page 7

THE TRANSITION FROM THE TRADITIONAL TO THE MODERN: THE DEVELOPMENT OF MEDIATION IN CHINA

By Jiang Heping *(Class 2011)*

Mediation has a very long history and profound cultural tradition in China. Under the principle of harmony, both civil groups and government departments understand mediation to be an important method of resolving disputes. The mediation system is composed of civil mediation by the people's mediation committee, judicial mediation by the court, administrative mediation by the government and arbitration-mediation by arbitral administrative bodies. Although the basic principles and processes have been regulated by laws such as the People's Mediation Law and Civil Procedure Law, a perfect system and unified rules for mediation in China are lacking. Recently, mediation in China has experienced a transition from tradition to modernity against the international ADR context, advanced by the Supreme Court.

The Supreme Court has established a three-step plan in its outline of judicial reform. The first step is to issue opinions on the connection of litigation and mediation; the second step is to issue documents on the promotion of various dispute mechanisms; and the third and final step is to enact a law on modern mediation.

Currently, reform has proceeded smoothly. In 2008, the Supreme Court assigned eight courts as trial bases for reformative dispute resolution. In 2009, the Supreme Court issued "[s]everal opinions on establishing a sound conflict and dispute resolution mechanism that connects litigation and ADR," which regulated the principle of voluntariness and confidentiality, emphasizing that "the judge who has participated in the mediation shall not be the trial judge in the same case unless it is agreeable to all parties." The separation of mediation and trial is a breakthrough in the courts' mediation system.

In 2012, the Supreme Court expanded the trial courts to include 42 courts covering all the provinces and levels. The same year, the Supreme Court issued "The ADR Reform Programs," which proposed to establish innovative mechanisms such as mediator panelists lists and early neutral evaluation programs.

In 2013, the newly amended Civil Procedure Law adopted the achievements of judicial reform and regulated a special procedure for confirmation of mediation agreements. Under Articles 194 and 195, both parties can apply to the court for judicial confirmation of a mediation agreement reached with the assistance of the people's mediation committee or other mediation organizations. If the application complies with the requisite legal provisions upon judicial examination, the court shall issue a ruling to affirm the validity of the mediation agreement. This provision has greatly improved the confidence of the parties in choosing to mediate outside the courts.

Judge Jiang Heping at the 2012 National Asian Bureau Rising Leaders visit to Washington D.C.

With the efforts of the Supreme Court, more and more mediation professionals have emerged in China. Most of these are affiliated with industry associations and non-governmental organizations. Unlike previous mediators, who conducted mediations based only on experience and authority, these professionals not only have participated in mediation training, but also have the necessary subject matter expertise. These professionals closely cooperate with the courts: They conduct high-quality mediations, enabling the courts to refer cases to them and reduce the courts' caseload. They also disseminate the modern concept of mediation and promote the standardization of the mediation system throughout China.

Notwithstanding these developments, traditional mediation is deep-rooted; people commonly accept pro bono and didactic mediation services. It is accordingly much more difficult to enact a modern mediation system than to make mediation acceptable. There is a long way to go before the transition from the traditional to the modern will be accomplished, but no matter how difficult, ADR in China will continue to move forward. ■

Weinstein Fellows continued

at numerous conferences and lectures in Croatia, including before the Croatian Chamber of Commerce; the Faculties of Law in Zagreb, Split and Osijek; the Faculty of Economy in Zagreb; the Ministry of Justice; the Croatian Bar Association; the Croatian Construction Association; the Croatian Judicial Academy; the American College of Management and Technology in Dubrovnik; the Croatian Insurance Bureau; the Symposium of the Croatian Physicians' Association; three Croatian hospitals; the State School for Public Officials; the UIA World Forum of Mediation Centers; Erasmus students; the Conference of Croatian Credit Unions; Croatian insurers' days; the American Chamber of Commerce; the Forum for Free Breeding and the Rotary Club Forum of Peace.

In 2012, Judge Simac received an award for "ADR and Civil Justice Innovation" from CEDR (London) and was listed among Who's Who Legal, The International Who's Who of Business Lawyers and Commercial Mediators for 2011, 2012 and 2013. ■

THE 2013 WEINSTEIN JAMS INTERNATIONAL FELLOWS

JAMS FOUNDATION

In September 2013, the JAMS Foundation was pleased to host the fifth class of Weinstein JAMS International Fellows visit to San Francisco as part of the annual Weinstein JAMS Fellows gathering, consisting of training, workshops and cultural exchange on ADR in the U.S. and around the world.

AHMED MOSTAFA ABOU ZEID *(Egypt)* is the director of the Department of International Relations of the Court of Cassation, the highest appellate court in Egypt. While in the U.S., he plans to gain experience designing court-ADR programs and drafting ADR laws and regulations. Upon his return, he intends to encourage the judiciary to implement court-connected ADR initiatives as an efficient method for resolving disputes by working with judicial and legislative decision-makers in Egypt.

SPYROS ANTONELOS *(Greece)* is a lawyer, certified mediator and training coordinator of the Athens Bar Mediators Training Center Prometheus. As part of his Fellowship, he intends to study mediation models in the U.S. to advance the development of mediation in Greece. He also plans to increase interest and awareness of mediation among Greek legal and commercial communities by continuing to train and educate legal practitioners and entrepreneurs in Greece.

LYNNE COULSON BARR *(Australia)* is the Deputy Commissioner of the Office of Disability Services in Melbourne. Following her fellowship, she hopes to advance the resolution of disputes for marginalized groups in Australia by developing approaches that promote the accessibility and effectiveness of mediation for people with disabilities. While in the United States, she will study current ADR approaches and identify ways in which best practices in the U.S. could be adapted in Australia.

TATSIANA BIALIAYEVA *(Belarus)* served as the chief legal analyst for Urspectr LLC and a pro bono mediator for the Dispute Resolution Center in Belarus. As part of her fellowship, she will continue her comparative research on mediation as an alternative method for resolution of economic disputes in the United States and Belarus. She will also study court-connected mediation programs to further the development of similar programs in her home country.

PRIMILA EDWARD *(Malaysia)* is a senior legal consultant with the Straits Consulting Group and a mediator with the Kuala Lumpur Regional Center for Arbitration. She plans to open a mediation center to resolve business disputes in Malaysia and neighboring countries. She also intends to promote mediation as an effective means of resolving commercial conflict by engaging corporate counsel in Malaysia via training and promotion of mediation in the Asia Pacific region.

AMOS GABRIELI *(Israel)* is an advocate, arbitrator and mediator with Gabrieli, Gabel and Co. Law Office. He plans to further develop his ADR skills to increase cooperation within cities and other municipalities in Israel by introducing ADR in problematic neighborhoods, city councils, and multi-cultural districts characterized by a wide variety of daily conflict. He also will promote collaboration among top Israeli mediators and practicing mediators in the U.S.

FARSHAD GHODOOSI *(Iran)* is a doctoral candidate at Yale Law School specializing in international arbitration. He intends to augment his theoretical knowledge of ADR processes with practical experience by observing arbitrations and mediations at JAMS. He hopes to publish and teach domestic and international ADR courses to bring about effective change in ADR practices in the Middle East. He also would like to establish an ADR center in Iran and the Middle East region.

TERESA MORAIS LEITÃO *(Portugal)* is a lawyer and mediator at More than Lawyers. She hopes to advance the adoption of mandatory commercial mediation in collaboration with the Ministry of Justice and establish an ADR center to provide mediation training, education and services. Additionally, she will learn and apply U.S. best practices to promote mediation in Portugal and beyond by establishing a mediation platform for Portuguese-speaking countries.

SAYED ABDUL AHAD MANSOOR *(Afghanistan)* is a national legal advisor with the Regional Justice Sector Support Program of Afghanistan. He would like to establish an ADR Center in Kabul and advise the government in drafting laws on dispute resolution, mediation and arbitration. Additionally he plans to train and and educate legal professionals and law school faculty and students to encourage the use of ADR in Afghanistan.

FERNANDO NAVARRO SÁNCHEZ *(Mexico)* is an associate with Bufete de la Garza in San Luis Potosí. Following his fellowship, he hopes to make arbitration affordable for small to medium-sized business in regional centers in Mexico by promoting arbitration training for local lawyers, judges and law school faculty. He also envisions designing and implementing an online dispute resolution (ODR) site available for Mexican companies that do not have their own ODR services.

AŞIYAN SÜLEYMANOĞLU *(Turkey)* is the program coordinator for the Istanbul office of the ABA Rule of Law Initiative, charged with implementing legal educational programs in Turkey, Syria and Iran. She plans to promote ADR in Turkey by developing a comprehensive ADR curriculum for Turkish lawyers and law students, fostering cooperation between legal and business professionals and creating mediation training programs for legal professionals from the Middle East.

Judge Maria Rosario García Alvarez at her office at the Labor Division of the Madrid High Court of Justice

SPEAKING ABOUT MEDIATION IN SPAIN...

By María Rosario García Alvarez *(Class 2012)*

The number of litigious claims brought before the Spanish courts has steadily increased over the years. This phenomenon has been accompanied by burgeoning legislation that has become increasingly complex and technical. The combination of increased litigation and legislation has had profound consequences for the people and the State: lengthier proceedings, higher costs and a decrease in access to justice.

There are also other important factors, such as the economic crisis with subsequent budgetary shortages in the justice system and the cost and length of procedures in Spain. In 2010, figures showed that the duration and expense of an average dispute with a value of 200.000 euros would amount to a maximum of 730 days and 30.000 euros, including legal fees. By contrast, the average cost of litigation in the European Union before the national courts amounts to 10.449 euros.

These challenges proliferate when we think of the overworked courts, which must deal with increasingly complex disputes, many of them involving cross-border elements and conflicts of laws and jurisdiction. The entire scenario has put the judicial system under pressure. This goal has now been implemented by means of the new Mediation Act in civil and commercial matters, which came into force on July 27, 2012. This Act is considered a new starting point for mediation and other ADR mechanisms in Spain.

Although mediation has long been practiced in Spain (especially in areas such as family, labor and education law), only now has mediation begun to receive serious attention as a means of effective dispute resolution. Directive 2008/52/CE set forth a basic common framework for mediation within Europe, but at the same time, its necessary transposition into the Spanish legal system has served as an incentive to promote the use of mediation in domestic disputes.

According to the preamble of the Act, mediation is an essential tool to facilitate access to justice and resolve conflicts arising in a modern and complex society. Mediation is not an alternative but a complement to the public judicial system, and it offers practical, effective and affordable solutions to certain kinds of disputes. Significantly, the Directive states that mediation cannot be considered "a poorer alternative to judicial proceedings," or a sort of second-class form of justice. As a result, the Act stresses the commitment of all public administrations to foster the use of mediation.

The Act embodies a notion of mediation in line with the Directive: a device for solutions of controversies, notwithstanding its name, by which two or more parties voluntarily attempt to reach an agreement by themselves with the intervention of a mediator. The Act is applicable to mediation in civil and commercial cross-border disputes within and outside the European Union. It also applies to both court-connected mediation (when a court refers parties to mediation) and out-of-court domestic mediation (dispute not related to any existing procedure if it is chosen by the parties).

In Spain, mediation aligns with the following basic principles: voluntariness, party autonomy, impartiality, neutrality, confidentiality and availability. Although the Act understands mediation to be fully voluntary, this principle does not prevent the State from establishing compulsory systems. There are also additional guidelines related to the behavior and role of the parties, the legal position and role played by the mediator and the requirements to act as a mediator.

This scenario sets forth the first basic legal framework for mediation in Spain. The Act is expected to be of great importance for the future of mediation by improving the efficiency of the judicial system in resolving disputes and reducing the cost of litigation, especially if we consider that the average cost of mediation in the European Union is only 2.497 euros, in contrast with the average cost of litigation, which is 30.000 euros.

Until a few years ago, with some exceptions, the legal field in Spain was characterized by the utter absence of ADR; now the practice of mediation is steadily expanding. Many efforts will need to be undertaken to continue to increase its benefits among legal professionals and potential users regardless of whether an agreement is reached in a specific conflict. Mediation is a common-sense idea, based on a perspective of equality, which has enormous educational potential for each individual. As such, mediation may become a driving force for transformation of the legal system and, as a consequence, for social change and development throughout Spain.

That is why speaking about mediation is becoming more and more commonplace in Spain. ■

MASS EARLY JUDICIAL EVALUATION — AN EXPERIMENT

By Evgeni Georgiev *(Class 2011)*

EVGENI GEORGIEV
Bulgaria, Class 2011

Some courts have ADR programs with early neutral evaluation subprograms or components.[1] Other courts utilize trial judges to evaluate parties' cases pending before them as part of the regular procedure they follow.[2] Would it be advantageous for judges to evaluate large-volume cases from other judges in order to educate the parties on the probable outcome of such cases?[3]

To answer this question and determine whether there might be such a need in Sofia, Bulgaria, five judges of the Regional Court of Sofia (RCS),[4] with the support of the leadership of RCS,[5] started an experiment in March 2012, which lasted through June 11, 2012. This article is based on the results of this experiment and the participating judges' conclusions.

Sofia Municipality is the owner of "Toplofikacia Sofia" (Toplofikacia), which is the only central heating provider in Sofia. Toplofikacia has great difficulty collecting payments from its consumers, who are mainly ordinary citizens. As a result, Toplofikacia files about 5,000 cases per year with the RCS. About 60 judges of the RCS hear these cases, which constitute about 20 percent of their annual docket.

These cases usually proceed as follows: Once a case is filed, the defendant is served with the complaint. The defendant then has a month to file a reply. Most often, the defendant raises several defenses: (1) There is no valid contract between her and Toplofikacia; (2) Toplofikacia did not provide heating or provided heating with a low quality; (3) the statute of limitations has run, and all or part of the defaulted bills is not due.

Once the pleading stage is completed, on a request by the parties, the judge appoints two expert witnesses: an engineer and an accountant. Both then review the records of Toplofikacia to determine whether those records show that Toplofikacia provided the heating stated in the complaint to the consumer. The cost for expert witnesses is between 200 USD to 400 USD.[6] In almost all cases, the expert witnesses testify that the records are correct. In over 95 percent of the cases, judges find in favor of Toplofikacia regarding the defaulted bills three years since the filing of the case (the limitations period) and reject the claims for any time prior.[7]

This process takes from six months to a year. If a party appeals the judgment (which very often happens), it takes about another year, or altogether about a year and a half to two years for a final judgment.

Over time, the RCS and the higher courts have developed a consistent and predictable approach to Toplofikacia cases, making both the discovery process and the final decision routine. Nevertheless, both parties and judges still repeat the same useless discovery process and expend money and time—the parties, because they do not know the likely outcome of the case (or because they simply have unreasonable expectations), and the judges, because this is just the way they have done it for years.

Some judges of the RCS started to wonder what would happen if a trial judge were to meet with 10 or more parties of the Toplofikacia cases at the same time and inform them about the process the judges of the RCS and the Sofia City Court (SCC)[8] usually use to handle those cases. The judges decided to try this experiment.[9]

On February 22, 2012, one of the judges ordered the parties of 12 Toplofikacia cases to appear before him at the same time in the same courtroom. The parties did so. The judge explained to them how he and other judges usually decide such cases, the exceptions, the amount of money owed for the three-year period before the filing of the complaint, the costs to pursue the case as an exception and the length of time needed to reach a final judgment. Upon hearing this explanation, in 9 out of the 12 cases, the defendants (1) admitted that they used central heating but did not pay their bills and (2) asked the court for an immediate judgment applying the three-year statute of limitations. The plaintiff agreed, stating that it would not appeal.[10] Thus, 9 cases, each somewhere in between four to six months since initial filing, were decided within an hour.

continued on Page 12

1 Early neutral evaluation is an integral part of the ADR programs of many federal and state courts in the United States. For examples, see the ADR program of the Federal District Court for the Northern District of California (http://www.cand.uscourts.gov/ene) and the ADR program of the L.A. Superior Court (http://www.lasuperiorcourt.org/adr/UI/index.aspx).

2 In Germany, some trial judges do this through the mandatory settlement conference (Gütetermin) - §278 ZPO.

3 This method can be very generally described as mass early judicial evaluation.

4 The RCS is the trial court with limited jurisdiction for the City of Sofia. With 138 judges, it is the single largest trial bench in Bulgaria (http://www.srs.justice.bg).

5 These five judges are Deputy Chief Judge Valeria Bratoeva, Supervisor of the First Civil Department of the Court; Judge Albena Boteva; Judge Petya Stoyanova; Judge Boris Dinev; and Judge Evgeni Georgiev. The judges had the initial support of the former Chief Judge of the RCS, Krasimir Vlahov, presently Deputy Chief Justice of the Supreme Court of Cassation.

6 Most often this money is paid by Toplofikacia initially, but because of the cost-shifting rule, most of the costs are shifted with the judgment to the losing defendants.

7 For several years, judges were divided as to whether to apply the three- or five-year statute of limitations. Then, with an en banc decision from May 2012, mandatory for the lower courts, the Supreme Court of Cassation decided that the statute of limitations for these cases is three years (TR 3/2012, t. d. 3/2012 ОСГТК).

8 SCC is the trial court with unlimited jurisdiction for the City of Sofia and also the court of appeal for the RCS.

9 Before starting the experiment, the judges talked about their idea with the General Counsel of Toplofikacia and some of the attorneys who often represent defendants on Toplofikacia cases. All of them liked the idea.

10 One might ask why Toplofikacia simply did not sign settlement agreements with the defendants. Toplofikacia had, and still has, a very time-consuming and burdensome procedure for approving settlement agreements. It was much easier for Toplofikacia in-house counsel not to appeal a judgment close to the terms of a settlement agreement than to have the settlement agreement approved.

MASS EARLY JUDICIAL EVALUATION *continued from Page 11*

The other four judges liked the result. Their only concerns were (1) having the same judge hearing the case doing the evaluation might influence the defendants in deciding how to proceed and (2) questions about the impartiality of the judge this could raise. The judges decided, therefore, that the judge conducting the mass evaluation would not be the judge hearing the cases being evaluated.

Judge Evgeni Georgiev at his office at the Regional Court of Sophia, Bulgaria.

On March 26, May 7, and June 11, 2012, four of the judges ordered the parties in Toplofikacia cases to appear at the same time in the same courtroom. The judge in that courtroom was not the trial judge on any of the cases. Eleven cases were set on the date in March, four in May and seven in June. All parties appeared. The judge did exactly the same as on February 22. The judge then asked the parties to go before their hearing judge and inform her about how they would like to proceed with the case. There were respectively five, three and five immediate judgments—a success rate of 59 percent. The other cases continued on the traditional path.

The parties liked the procedure. When the judges asked the parties whether they felt pressured to proceed with the case one way or another, none of the parties indicated feeling any pressure. Instead, parties most often stated that they liked the procedure, because knowing the general outcome of the cases helped them to decide how to proceed with their case.

Attorneys also liked the experiment. Only in two cases where the defendant was represented by an attorney did the attorney ask the judge to proceed with discovery.

Toplofikacia liked the experiment as well: The process saved money for expert witnesses; the time for final judgment was drastically shortened; and Toplofikacia was able to avoid the burdensome procedure of approving a settlement proposal. Of course, the savings of time and money was an incentive for the defendants as well. The court also saved judicial resources by reaching final judgments very quickly.

The experiment clearly demonstrated that mass early judicial evaluation can be very efficient for both the parties and the court. Now the judges of the RCS are considering how to expand the program. The judges' main concern continues to be how to ensure that the parties, especially defendants, do not feel pressure, either from the evaluating judge or from the assigned trial judge.

None of the judges who participated in the experiment were trained in early neutral evaluation. All of them, however, previously had 32 hours of mediation training.[11] This training definitely helped the judges to be sensitive to the fact that any pressure felt by the parties, especially the defendants, would be detrimental to the experiment. The mediation training also helped both the evaluating judges and the assigned trial judges in communicating with the parties—the evaluating judges regarding the probable outcomes and the trial judges in explaining the parties' choices regarding the case. A possible approach for future expansion of the program, at least in its initial phase, might be to work only with judges who have already been trained in mediation and have good communication skills.

An Epilogue

It may interest the readers to know what has happened since this experiment was conducted in 2012. So far, the mass judicial evaluation experiment has not been expanded for two main reasons: First, the judge who triggered the experiment left the other four judges to continue by themselves too early in the process, before the group had made the early evaluation regarding Toplofikacia's cases routine. Second, in the spring of 2013, Bulgarian political life experienced significant turbulence, with thousands of people protesting in the streets against monopolists, specifically those in the energy sector, where Toplofikacia operates. Some judges feared that if they continued with the experiment, they might be accused of being pro-monopolist. The seed has been sown, however, and when the time is right and the people are ready, hopefully it will grow. ■

11 In the last three years, 49 judges of the RCS and SCC have been through mediation training—over 20 percent of the judges of these courts.

LEGISLATIVE CHANGES IN ADR IN HUNGARY: RESTRICTIONS IN RECOURSE TO ARBITRATION

By Manuela Renata Grosu *(Class 2011)*

The years 2012 and 2013 have been an intensive period for alternative dispute resolution developments in Hungary. Legislative change and the resulting legislative framework for arbitration proceedings in particular have generated heated, ongoing discussion and debate among arbitration professionals, as well as academics, ultimately resulting in an unsuccessful constitutional challenge. Arbitration in Hungary, both ad hoc and institutional, is governed by the 1994 Arbitration Act. On June 13, 2013, in light of the recent legislation, a new law on arbitration was enacted,[1] establishing two controversial requirements applicable to arbitration proceedings commenced on or after June 13, 2012.[2]

First, the Arbitration Act prohibits recourse to ad hoc arbitration when the dispute arises out of a contract in relation to rights in rem or tenancies in immovable properties located in Hungary, as well as when the registered seats of the parties are in Hungary and the contract is governed by Hungarian law. As a result, the parties are allowed to refer their dispute only to institutional arbitration, and the seat of the arbitration has to be based in Hungary. In addition, the language of the arbitration proceeding must be Hungarian.[3]

Second, the Arbitration Act expressly refers to the Act on National Property,[4] which prohibits recourse to arbitration in relation to assets located in Hungary and qualified as national property within the meaning of the Act on National Property. These disputes can be handled only by state courts and are exclusively governed by Hungarian law. Since national property is broadly defined by the Act on National Property, agreements that are to be concluded with the Hungarian state and with a Hungarian state entity or a Hungarian state-controlled company may easily fall within the scope of this provision. As a consequence, an examination of these categories and provisions is strongly advised before entering into an arbitration agreement.

Taking into consideration that most of the assets and the property owned by the state or a state entity may be treated as national property and may fall under the Act on National Property, it may be prohibitive to resolve investment disputes through arbitration.[5] Accordingly, the new legislation appears focused on the contraction of arbitration rather than its development, since it imposes a restriction on party autonomy, a fundamental value of arbitration, which may result in a negative impact on investments in Hungary. The new requirements of arbitration in Hungary may also have the practical disadvantage of making the enforcement of arbitral awards difficult against Hungary or a Hungarian party before the Hungarian courts. For those worried about the investment climate in Hungary, these changes to the law have caused controversy for fear of the legislation's effect on international business, which prefers arbitration to state court proceedings when in a dispute. The advantages of arbitration, especially important in investment disputes, such as speed, confidentiality and a final and enforceable outcome, may well now be lost in this new legal framework.

Weinstein JAMS Fellow Manuela Renata Grosu in Budapest.

From an economic and legal perspective, the restrictions imposed by the new legislation are not justified, and they send an unfortunate message that state courts are more competent to resolve disputes involving national property. Further, members of the Hungarian arbitration community are concerned that the arbitration industry subsequently will lose key business as numerous disputes currently involve national property, broadly defined. The legislation may also allow the state to become increasingly involved in private legal relationships and transactions in addition to its public law relationships. Although a constitutional challenge was raised, asserting that the new legislation violates international treaties imported into Hungarian law[6] as well as due process, this argument was ultimately unsuccessful. ■

1 Act LXXI of 1994 on Arbitration ("Arbitration Act") http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400071.TV&celpara=#xcelparam (Hungarian version, accessed 18. 06. 2013); obviously, the precondition to the application of the Arbitration Act is to have the seat of arbitration in Hungary. The Arbitration Act was modified by Act LXV of 2012 on Modification of the Arbitration Act and Act IV of 1959 on Civil Code.

2 Due to Section 4 of Act LXV of 2012.

3 Section 2 (3)-(4) of the Arbitration Act.

4 Supported by reading together and interpreting the correlation between the Arbitration Act and Section 17 (3) of the Act on National Property.

5 Section 4 of the Arbitration Act refers to Act CXCVI of 2011 on National Property, which was enacted on January 1, 2012.

6 The conventions that were imported into Hungarian law: 1958: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID/Washington Convention, 1965), and Geneva Convention. In addition, there may be bilateral investment treaties that Hungary concluded.

WHY THE NEED TO PROMOTE ADR IN CAMEROON IS IMMINENT

By Enga Kameni [1] *(Class 2012)*

ENGA KAMENI
Cameroon, Class 2012

I. Introduction and Reasons for ADR in Cameroon

Cameroon is situated in the western central part of Africa. Historically, the country became a colony of Germany beginning in 1884. Subsequently, the Germans were forced out by the British and the French, who partitioned the country into two territories: the French-speaking and English-speaking Cameroon.[2] The two territories were ruled by the French and the British until 1960, when the two territories gained independence from France and Britain. Accordingly, by the time the territories of Cameroon obtained independence, two distinct cultures and legal traditions had already developed, creating an interesting dynamic. The newly independent administration thus had to grapple with different civil and common law traditions inherited from their respective colonial masters. Establishing a common judicial system was difficult, especially during the first few years following independence. However, with growing support from international organizations,[3] legal harmonization increased.[4] One area where significant developments have occurred is in the area of business law through the OHADA initiative, specifically with respect to arbitration and mediation law.[5]

Although the hope was that with this initiative, governments and legal systems in francophone African countries would shift from the traditional use of litigation at best and mob justice at worst to embrace arbitration, mediation and conciliation as effective alternative methods of resolving disputes, unfortunately, this has not been the case. A panoply of factors, including but not limited to lack of knowledge and general dissatisfaction with the country's judiciary, has not helped matters. In addition, most lawyers often choose the long and costly path of litigation as the favored dispute resolution mechanism because of their erroneous belief in litigation as the best and only method of resolving disputes; many lawyers have never considered other methods because of their lack of knowledge and/or lack of training in arbitration and mediation.

In a country like Cameroon, where every litigant in a civil law suit must pay a deposit of 5 percent of the total amount to be claimed as damages or litigated, this could in and of itself be a factor in discouraging litigants to litigate their cases, especially given that most of the litigants tend to have incomes that fall below the poverty line. Consequently, justice may be delayed or even denied in most cases because most people would rather drop a claim than pay the 5 percent. Ultimately, peoples' rights continue to be assailed; on this perspective, possibly no other effective means of resolving disputes appears to exist other than the use of violence in settling scores. However, increased dissatisfaction with traditional legal processes provides an ideal opportunity for exploration of other means of resolving disputes, such as arbitration, mediation and conciliation, thus opening the floodgates to both the rich and the poor and providing an opportunity for access to justice for all.

II. Why Mainstream the Use of ADR in Cameroon?

1. To facilitate discussion and information exchange regarding arbitration and mediation;

2. To raise awareness about the role of arbitration and mediation in conflict prevention and Cameroon's development;

3. To develop actionable outcomes and work product to assist in the dissemination of information on arbitration and mediation;

4. To create a new cadre of lawyers and judicial officers better equipped with skills and knowledge regarding arbitration and mediation; and

5. To create and strengthen existing networks of lawyers to use arbitration and mediation to improve access to justice for their clients.

III. Some Ideas on How to Effect the Above:

1. Encourage the research and development of a manual and guide on arbitration and mediation to be used in the universities and national bar organizations in Cameroon;

2. Encourage and facilitate research and academic exchange of notes, ideas and best practices with jurisdictions that have a history and culture of using ADR. This would lead to the development and consolidation of a training manual tailored for Cameroonian lawyers and law students;

3. Frequently organize a forum bringing together lawyers, law professors, jurists and judges. The discussions would provide a practical perspective on the use of ADR, current challenges and the way forward; and

4. Closely linked to the above, frequent organization of ongoing workshops and continuous legal education sessions on arbitration and mediation at the universities in cooperation with the local bar associations, the universities, regional arbitration and mediation centers and companies is recommended. The workshops will have the intention of introducing participants to the universe of ADR in general, and to arbitration and mediation in particular, while providing background knowledge of the discipline, current trends and prospects. ■

continued top of Page 15

1 LL.M. (Corporate Law and Governance), Harvard Law School; 2012 Weinstein International Fellow and Attorney-at-Law, State Bar of New York.In the last three years, 49 judges of the RCS and SCC have been through mediation training—over 20 percent of the judges of these courts.

2 The English-speaking part of Cameroon is composed of two of the ten territories, while the remaining eight make up French-speaking Cameroon. The English-speaking region thus forms the minority.

3 Such as the Commonwealth and Francophonie, which helped in financing the new criminal code.

4 Like the Land Laws, which were harmonized in 1974 and 1976.

5 The Organization for the Harmonization of Business Law in Africa (OHADA) aims at harmonizing business laws in Africa, especially French-speaking African countries, through Uniform Acts. Cameroon is a member of the OHADA.

A GLIMPSE AT THE ALTERNATIVE DISPUTE RESOLUTION ACT OF BHUTAN 2013

By Pema Needup *(Class 2011)*

In keeping with its constitutional mandate, the Parliament of Bhutan enacted the ADR Act of Bhutan 2013 on February 25, 2013. The Act took effect on March 14, 2013.

The Act applies to national arbitration, international commercial arbitration and negotiated settlements with recognition and enforcement of arbitral awards, including foreign arbitral awards.

The Act provides for the establishment of a Bhutanese Alternative Dispute Resolution Centre, an independent body, having a distinct legal personality, to be administered by a Chief Administrator.

According to the Act, the parties to a domestic arbitration include citizens of the Kingdom of Bhutan, or a corporate entity, a company, a business entity or an association that is incorporated, or whose central management and control is exercised, in Bhutan. However, the following matters shall not be subject to domestic arbitration:

1. Disputes relating to rights and liabilities that give rise to or arise out of criminal offences;
2. Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights and child custody;
3. Guardianship;
4. Insolvency and winding up;
5. Testamentary;
6. Subject of inheritance;
7. Subject of taxation; and
8. Such other matters that are against public policy, morality or any other existing provisions of the law for the time being in force in Bhutan.

"International commercial arbitration" means arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered commercial and where at least one of the parties is:

Judge Pema Needup explains the ADR process to community leaders in the District of Trashigang

1. A citizen of a country other than Bhutan;
2. A corporate entity, a company, a business entity or an association that is incorporated in a country other than Bhutan or whose central management and control is exercised in any country other than Bhutan; or
3. The government of a foreign country.

For the purpose of international commercial arbitration, only those disputes arising from relationships of commercial nature, whether contractual or not, shall be arbitrated.The parties are free to agree on the number of arbitrators, provided that such number shall not be even. If the parties fail to agree on the number of arbitrators, the arbitral tribunal shall consist of three arbitrators. Unless otherwise agreed by the parties, no person shall be precluded by reason of his or her nationality from acting as arbitrator for international commercial arbitrations. In the case of domestic arbitration, the arbitrator shall be a citizen of Bhutan.

Arbitral proceedings shall be normally conducted by a minimum of three arbitrators. Each party shall appoint an arbitrator each, and the two arbitrators thus appointed shall appoint the third arbitrator from the list maintained by the Centre or any other person who shall act as the presiding arbitrator.

continued on Page 16

RESOLUTION ACT OF BHUTAN *continued from Page 15*

People of Upper Samkhar listen to Judge Pema Needup during an ADR dissemination and legal awareness program.

It is stipulated in the Act that the award of an arbitral tribunal shall have the nationality of the country in which the place of arbitration is situated. The national arbitral award shall have a binding force of judgment and shall be enforced by the court in accordance with the provisions of the Code of Civil and Criminal Procedure of Bhutan as if it were a decree of the Court. A foreign award shall be recognized as binding and shall be enforced in the Kingdom of Bhutan by the High Court in accordance with the Code of Civil and Criminal Procedure of Bhutan.

For the purpose of a domestic negotiated settlement, the parties may resort to negotiated settlement in accordance with the laws in force in Bhutan. For the purpose of an international negotiated settlement, only those disputes arising from relationships of a commercial nature, whether contractual or not, shall be negotiated. The settlement agreement shall be enforced by the court of competent jurisdiction in accordance with the laws in force in Bhutan. However, the Act does not cover negotiation and conciliation in detail, and it makes no mention of court-connected ADR programs. Otherwise, the Act deals with national and international arbitration and negotiated settlement in a comprehensive manner. ■

NYAYA IN THE ADMINISTRATION OF JUSTICE THROUGH MEDIATION

By Laila T. Ollapally [1] *(Class 2011)*

LAILA T. OLLAPALLY
India, Class 2011

In his seminal book *The Idea of Justice*,[2] Nobel laureate Amartya Sen explains the concepts of *Niti* and *Nyaya*. Professor Sen explains that in classical Sanskrit, the term "justice" has two aspects: *Niti*, which refers to "organisational propriety and behavioural correctness," and *Nyaya*, which stands for a "comprehensive concept of realised justice." According to Professor Sen, *Niti* focuses on the rules and precedents as well as the institutions created to deliver justice. *Nyaya*, on the other hand, gives precedence to human life and human experience. For example, the policy on food distribution is *Niti*, whereas the actual food available for consumption on the individual's plate is *Nyaya*. *Niti* and *Nyaya* complement each other, and only when both *Niti* and *Nyaya* are firmly entrenched in the legal system can the delivery of justice be complete.

In my more than twenty-five years as a lawyer, I have experienced *Niti*. However, it is only during the last six years as a mediator that I have begun experiencing *Nyaya* in a thought-provoking and fulfilling way. It is my proposition that in the context of administration of justice in India, adjudication focuses on *Niti*, whereas mediation focuses on *Nyaya*. In this article, I will try to explain how mediation can be the instrument of *Nyaya* in the administration of justice.

In mediation, primary importance is given to the experience of the parties. The legal aspects of the dispute are kept in the background, and the parties are encouraged to go beyond their pleadings and voice their innermost concerns and fears in complete confidence. They are not being judged for what is right or wrong, fair or unfair. Instead, they are comforted and encouraged that the mediator is working to understand and appreciate the value and merit in their respective perspectives. There is no third party imposing a decision on them. They are free to craft a mutually acceptable solution that is legal and best fits the needs of their unique situation. Parties slowly begin to break free of their need to be adversarial. A spirit of cooperation emerges, and very often in this environment, mutually acceptable solutions are found.

In mediation, there are obvious benefits. There is savings in time and money, a decrease in the court's caseload and the creation of tailor-made solutions. There are also certain less obvious benefits. Mediation can be a transformational experience for the parties. Parties can become more aware of their capacity for self-determination, i.e., their ability to do something themselves to address the problem that led to the dispute. In addition there is self-transcendence. The parties are often able to transcend their narrow self-interests and realize, however fleetingly, their capacity for consideration and respect for others.[3]

I can illustrate these aspects of mediation through a landlord/tenant dispute that I mediated. The landlord and tenant were previously good friends and had a healthy working relationship.

continued on Page 17

The tenant was running a restaurant out of the leased property. The understanding between the landlord and tenant was that the lease would run for a period of ten years. But five years into the lease, the landlord filed a suit for eviction of the tenant. The landlord was granted a favorable order in the trial court, obliging the tenant to vacate the property in three months' time. The tenant appealed, and the High Court referred the case for mediation. Both the parties came for mediation full of anger and resentment toward each other and adopted rigid positions. The landlord wanted the tenant to comply with the lower court's order and vacate the property in three months' time, whereas the tenant wanted to use the property for five more years and was willing to appeal the case all the way to the Supreme Court to obtain relief.

I noticed that as the mediation progressed, the parties became more and more relaxed. They started realizing that they themselves could do something to resolve their situation. A feeling of empowerment set in. Their body language changed, and they became more and more participatory. (It is worth noting that neuroscience experiments have shown that autonomy leads to feelings of well-being and motivation in people, as well as a higher order of thinking.[4])

The parties began to make some concessions in their original positions. The tenant agreed to vacate the property in two years' time; however, the landlord was adamant that he would not allow the tenant to stay in the property for even a day beyond one year. The tenant argued that he had made significant concessions to his original position by agreeing to vacate the property in two years instead of five years, whereas the landlord was being unreasonably rigid by not shifting beyond a one-year time frame. The tenant was almost ready to walk away from mediation at this perceived rigidity on the part of the landlord.

In order to gain a better understanding of the landlord's position, I asked him in a private session why it was so important for him to get the property back in a year. Having the freedom and trust to express what he truly felt, the landlord opened up to me. He explained bashfully that although his insistence on repossessing the property in a year's time may have seemed unreasonable, there was a reason behind it. His astrologer had recently informed him that he had only two more years to live. The landlord believed the astrologer's prediction and wanted to establish his son in business at the property before he passed away. He believed that his son would take at least a year to settle into the business. Therefore, it was critical for the landlord to get the property back in a year.

When I shared the landlord's real reason for wanting the property in a year, there was a complete change in the tenant's approach to the dispute. I observed that the tenant, after hearing about the landlord's situation, let go of his focus on himself and recognized the landlord's position as having legitimacy and being worthy of consideration. He experienced compassion towards the landlord and agreed to vacate the property in one year's time. The landlord agreed to place the catering order for his son's wedding with the tenant's restaurant. He also agreed to help the tenant get more catering business through a few influential friends.

Both the tenant and landlord ended the mediation on friendly terms. They appeared to be at peace with the settlement. Both were transformed by the process of mediation, which allowed for an increased focus on the "other" and a meaningful resolution through self-determination.

I have observed a similar transformation among parties in a number of mediations involving different types of disputes, including matrimonial, property, family, company and commercial, contractual and intellectual property. This has led me to believe that mediation, by giving primacy to human experience, embodies the concept of *Nyaya*.

The five dispute resolution mechanisms that are available in our administration of justice are litigation, mediation, arbitration, conciliation and *lok adalat*.[5] Mediation is the only process that requires an approach that is completely collaborative. No solution can be imposed on the parties by a mediator. However, the natural and spontaneous instinct of a human being in conflict is to be combative. It requires a change in the mind-set of the litigants to opt for the collaborative approach in mediation. Hence, the role of judges to promote mediation cannot be over-emphasized. The litigants in India have immense faith in the judiciary. Any suggestion or even a gentle persuasion by the judges to the litigants to try mediation has a tremendous impact on them. A judge once remarked, "I tell the parties, 'deal or ordeal.'" When parties are thus initiated into mediation, they come in with faith and a genuine spirit of participation. They encounter *Nyaya* and author their own unique solutions. Often there is a restoration in their relationships and a discovery of their capacities for self-determination and self-transcendence.

The important role of judges in the management of their cases and administration of justice can be illustrated through an analogy drawn from Lord Krishna driving his chariot with five horses, each powerful and majestic. The administration of justice is the chariot; the judge is the firm-footed charioteer. His reins control the five powerful dispute resolution mechanisms:

continued on Page 20

1 Laila T. Ollapally, Advocate, Coordinator and Mediator, Bangalore Mediation Centre. This article is based on a speech delivered at the Third National Conference on Mediation on July 7, 2012, organized by the Mediation and Conciliation Project Committee of the Supreme Court of India. The author acknowledges the assistance of Vrinda Sharma, Advocate.

2 Sen, Amartya, The Idea of Justice, Belknap Press, 2009, P. 496.

3 Bush, Robert A., "Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation," 3:1 Journal of Contemporary Legal Issues, 1-33 (1989).

4 Ten Neuro-principles by Jeremy Lack & Francois Bogacz.

5 Section 89 CPC.

WHY WOULD I AGREE TO MEDIATION AND NEGOTIATION WHEN I KNOW I AM ABSOLUTELY RIGHT?

By Srdan Simac *(Class 2010)*

A craftsman signs a contract that obliges him to perform an electrical installation in a building. The construction is finished, but the client does not pay the fee for the job. The parties cannot reach an agreement, so a lawsuit follows. Both clients are offered mediation as a solution. But why would either agree to a mediation when each knows he is absolutely right? This is the question most commonly asked by clients when they entertain the possibility of entering into mediation. And it is very hard to explain why mediation is the best solution.

What does it mean to be right? People believe every moment that they are right and often insist on imposing their beliefs on others, even finding themselves in escalating confrontations in order to prove that they are right. In this manner, people become prisoners of their own perceptions, which are defined by their own subjective system of values. People are extremely good at creating their own versions of reality and even more persistent in defending them. These different perceptions of reality cause conflicts.

We know that every person is a unique and exceptional human being with their own point of view and their own system of values, which are expressed every day. Conflicts occur when different beliefs, values and needs collide. If we know people are different and perceive reality in different ways, then we should be prepared to understand how a good business relationship can be ruined simply because these differences come to the surface. We should be aware that the opposing side is simply expressing an opinion, not contradicting. The problem is that the human brain sees a simple expression of opinion as a personal attack. This is why inappropriate reactions as well as conflicts often escalate to such an extent that clients are not capable of settling them on their own. As a result, they turn to the courts, the place where conflict begins; however, courts should be where conflicts end and should only be used as a last resort.

Too often people become prisoners of their subjective perceptions and their feelings that they are 100 percent right. We rarely think about how useless it is to prove to someone that we are right. Everyone spends a great part of their lives convincing others of their beliefs. By doing so, they use all kinds of creative arguments. No matter how inventive and convincing we may be, the other person will never accept our arguments if we impose them. We must know that our interlocutor will not be willing to listen and accept us until we listen and accept him. We cannot understand someone's opposing arguments if we never allow the other person to completely express and explain them. To understand somebody does not mean to agree with him; simple understanding is a big step toward moderating our opposing arguments and approaching the other side's arguments, requiring sincere communication, mutual respect and attention.

Litigation does not allow this possibility, but mediation does! The first step is to agree—agree that the two participants disagree. It is okay to disagree! The question is what to do with the differences. Someone who knows or realizes that being right is not always the best solution has a big advantage. If we exclude from these comments those clients who abuse the slow pace of the courts to postpone paying off their debts, we have to conclude that those who engage in litigation do so because they believe they are right and do not wish to back down.

continued on Page 20

Judge Srdan Simac presents at the Croatian Mediation Association (CMA) Conference in Zagreb.

Judge Simac holds a training class at the CMA Conference.

WEINSTEIN JAMS FELLOWS
FROM AROUND THE WORLD

Weinstein JAMS International Fellows 2009-2013

Ahmed Mostafa Abou Zeid, *Egypt*
María Rosario García Alvarez, *Spain*
Spyros Antonelos, *Greece*
Gabriela Asmar, *Brazil*
Lynne Coulson Barr, *Australia*
Badri Bhandari, *Nepal*
Tatsiana Bialiayeva, *Belarus*
Ivan Bimbilovski, *Macedonia*
Ximena Bustamante, *Ecuador*
Olurotimi Williams Daudu, *Nigeria*
Thierno Diallo, *Senegal*
Paola Cecchi Dimeglio, *France*
Primila Edward, *Malaysia*
Ahmed El Feqy, *Eqypt*
Amos Gabrieli, *Israel*
Aminu Gamawa, *Nigeria*
Evgeni Georgiev, *Bulgaria*
Farshad Ghodoosi, *Iran*
Livia Angela Giordano, *Switzerland*
Kathy Alicia Maria Gonzales, *Trinidad & Tobago*
Manuela Renata Grosu, *Hungary*
Chen Guang, *China*
Jiang Heping, *China*
Enga Kameni, *Cameroon*
Peter Kamminga, *Netherlands*
Andrew Wei-Min Lee, *China/Australia*
Teresa Morais Leitão, *Portugal*
Sayed Abdul Ahad Mansoor, *Afghanistan*
Mushegh Manukyan, *Armenia*
Lejla Bratovic Mavris, *Bosnia-Herzegonia*
Savath Meas, *Cambodia*
Mohan Lal Mehta, *India*
Tolegen Myrzabayev, *Kazakhstan*
Thanarak Naowarat, *Thailand*
Blažo Nedic, *Serbia*
Pema Needup, *Bhutan*
Laila T. Ollapally, *India*
Orouba Qarain, *Jordan*
Tilahun Retta, *Ethiopia*
Fraser Sampson, *United Kingdom*
Fernando Navarro Sánchez, *Mexico*
Hagit Shaked-Gvili, *Israel*
Tsisana Shamlikashvili, *Russia*
Srdan Simac, *Croatia*
Asiyan Süleymanoğlu, *Turkey*
Dimitra Triantafyllou, *Greece*
Lilian Vargas, *Argentina*
Nicola White, *Ireland*
Galyna Yeromenko, *Ukraine*
Giulio Zanolla, *Italy*
Ralph Zulman, *South Africa*

NYAYA IN THE ADMINISTRATION OF JUSTICE

continued from Page 17

litigation, mediation, arbitration, conciliation and *lok adalat*. It is in the judge's hands to choose with great application of mind the appropriate dispute resolution mechanism for each dispute and skilfully maneuver the chariot of justice. Only then will the litigant secure complete justice.

In conclusion, I submit that "whenever there exists an element of settlement"[6] in a case, by a reference to mediation, we are embracing *Nyaya* as an integral part of the administration of justice. ■

6 Section 89 CPC.

WHY WOULD I AGREE TO MEDIATION

continued from Page 18

Research shows that people are not willing to give up their beliefs, even when it becomes evident that they are wrong. Our human nature is a giant obstruction to many good solutions. The courts are the legal arenas, where everything concerns confrontation, escalation of the existing conflict, winning and defeating the opponent. The courts decide which client is right based on the law, not based on life or business rules. Real life gets lost in court behind the legal twists and turns used to defend a client's legal position, not the truth. Litigation always produces a winner and a loser, and it signifies the end of the business relationship and often ongoing hostility. Winning in litigation often means a defeat in life or business for someone else. Expressing a simple arithmetic calculation can bring the potential participants closer to accepting the reasons to agree to mediation, even if they each believe they are absolutely right.

Concerning the aforementioned example of the craftsman, we may explain why he might not be right, even if he strongly believes he is. It is entirely possible that he performed all of the construction, but maybe he did not use the agreed-upon materials or the agreed-upon color, or maybe he did not perform some part of the job properly. These are all possible reasons for not paying his fee, which is conditioned on correcting these mistakes. All of these elements that determine which client is right based on the law are very hard to establish in a litigation, so the clients use all means possible in order to win, including lies, incomplete truths, even covered-up evidence. So the court's truth is only the most probable truth because the court never really discovers all the details of the case, but it has to make a decision even if the details of the case do not always correspond to reality. Therefore, the court's decision rarely satisfies everyone.

Mediation is the most appropriate mechanism for all relationships that have lasted perfectly for some time, relationships that need to continue after litigation (business partners, neighbors, relatives, friends, etc.) and relationships where the clients care for each other. It is said that mediation is meant for reasonable people. Psychologists teach us, however, that individuals in conflict cannot control their actions and as a result cannot make rational and correct decisions. So you should choose mediation even if you are convinced that you are right. It is the best way to take control of not only the conflict, but also your life, and to begin cooperating. There is always time to go to court. ■

GLOBAL CONNECTIONS

THE WEINSTEIN JAMS INTERNATIONAL FELLOWS NEWSLETTER

QUESTIONS OR COMMENTS?

If you have any questions or comments about Global Connections, please email Ellen Bass at **ebass@jamsadr.com**