AN ANALYSIS OF RECONCILIATORY MEDIATION IN NORTHERN ALBANIA: THE ROLE OF CUSTOMARY MEDIATORS

by

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ABSTRACT

AN ANALYSIS OF RECONCILIATORY MEDIATION IN
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M.A. in Conflict Analysis and Resolution

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This research investigated the old practice of customary mediation in the Northern Albanian society. The data used in this research was mainly generated through interviews with community mediators. The strategies and techniques used by the mediators in twenty-seven cases of killings (due to blood feud, momentary and previous fight or accidents) were analyzed. The strategies were analyzed on the basis of Bercovitch and Huston classification: communication-facilitation, rocedural-formulation and directive-manipulation strategies. The techniques were analyzed based on Callister and Wall's table of mediator's techniques in community mediation. Further more the reconciliatory process was also analyzed through Lederach's framework of the elements of reconciliation: truth, mercy, justice and peace.

Examining the twenty-seven cases of mediation in the Albanian context we can conclude that most of the killings happened due to momentary fights and mostly they were people who had relations with each other.

In analyzing the strategies of the mediators it is searched whether they use more communication-facilitation, procedural-formulation or manipulation. The findings showed that in most case the mediators used either

communication-facilitation or directive-manipulation. The techniques used in these cases reflect the features of Albanian mediation but they also give us insight on other techniques the mediators use in community mediation in penal case. These techniques are bounded by the cultural background and the rules of the Customary Law.

Albanian traditional mediation bares the characteristics of VOM and the traditional mediators abide by the Restorative Justice principles. Albanian mediation shows to bare the characteristics of the cultural context in which it takes place. The values found in the Albanian customary law, Kanun, in a way guide the mediation process as well. The findings also suggested that some of the elements of reconciliation are understood differently in the Albanian culture.

ÖZET

KUZEY ARNAVUTLUK'TA UZLAŞTIRICI ARABULUCUK İNCELEMESİ: GELENEKSEL ARABULUCULARIN ROLÜ

Alma Shkreli

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Anahtar Kelimeler: Arnavutluk, Geleneklsel Kanun, arabulucuların stratejileri, uzlaştırma

Bu araştırma Kuzey Arnavutluk'ta eski bir uygulama olan geleneksel uzlaştırmayı incelemiştir. Bu araştırmanın datası çoğunlukla halk arabulucularıyla yapılan görüşmelerden sağlanmıştır. Arabulucular tarafından kullanılan strateji ve taktikler yirmi yedi davada (kan davası, anlık veya geçmişi olan kavgalar veya kazalar sebebiyle) analiz edilmiştir. Stratejiler Bercovitch ve Huston sınıflandırmasına gore analiz edilmiştir. Bu sınıflandırma, iletişim-kolaylaştırma, usule ait-kolaylaştırma, usule ait-formulasyon, direktif-manipulasyondan oluşmaktadır. Teknikler, Callister ve Wall'un toplum arabuluculuğunda arabulucuların taktikleri tablosuna göre analiz edilmiştir. Bunun ötesinde, uzlaştırıcı süreç de Lederach'ın uzlaştırmanın elementleri taslağına göre incelenmiştir. Bunlar doğruluk, merhamet, adalet ve barıştır.

Arnavutluk'ta yirmi yedi arabuluculuk davasının incelenmesiyle, çoğu öldürülmenin anlık kavgalarla ve çoğunlukla birbiriyle ilişkili insanlar arasında olduğu görülebilir.

Arabulucuların stratejisi incelenirken, ağırlıklı olarak iletişim-kolaylaştırma, usule ait-formulasyon veya manipülasyon mu kullandıklarına bakılmıştır. Bulgular göstermiştir ki, çoğu davada arabulucular iletişim-kolaylaştırma veya yönlendirici-manipülasyon kullanmışlardır. Bu davalarda kullanılan teknikler Arnavutluk arabuluculuğunun özelliklerini yansıtır ama aynı zamanda cezai davalarda arabulucuların kullandığı tekniklerle ilgili de

bize fikir verir. Bu teknikler kültürel altyapıyla ve Geleneksel Hukuk'la sınırlandırılmıştırç

Arnavutluk geleneksel arabuluculuğu VOM özellikleri taşır ve geleneksel arabulucular Yenileyici Adalet prensiplerine uyarlar. Arnavutluk geleneksel hukuku Kanun'da bulunan özellikler de arabuluculuk sürecini yönlendirirler. Bulgular aynı zamanda Arnavutluk kültüründe uzlaşmanın bazı elementlerinin farklı anlaşıldığını da göstermiştir.

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.

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LIST OF ABBREVIATIONS

ADR   Alternative Dispute Resolution

VOM   Victim Offender Mediation

AS   Accidental Shooting

H   Honor Killing

MF   Momentarily Fight Killing

PF   Previous Fight Killing

CA   Car Accident

B   Killing Due To Business Disputes

C-F   Communication-Facilitation Strategy

D-M   Directive-Manipulation Strategy

Fa   Family Requested the Intervention

M   Mediators Themselves Intervened

OM   Other Mediators Requested the Intervention

EoV   The Elders Of The Village Requested the
Intervention

RB   Reconciliation Through Beja

OS   One-Side Killing

TS   Two-Side Killing

OK+S   One Killing and Suicide of the Killer

NR   No Relations

FA   Family Ties

FR   Friends

CV   Co-Villagers

N	Neighbors
Nv	Neighboring Villages
FR	Forgiveness and Reconciliation
FK	Forgiveness for the Kin
F	Just Forgiveness
No FR	No Forgiveness and Reconciliation
R	Reconciliation
No R	No Reconciliation

Chapter 1

Introduction

Conflict, phenomenon as old as the humanity itself, is always present in all communities, societies and cultures together with mechanism that contribute to its resolution. When it is not possible to find a peaceful solution, which contents both parties, a third party (an individual or a group) may intervene to help through pushing for an agreement and establishing channels of communication. In many cultures the third party role is part of the cultural norms, traditions and values; particularly traditional societies, argues Zartman (2000:1) have a reputation of holding secrets of peacemaking shaped by their traditional norms and laws. Mediation as one of the conflict resolution mechanisms, very often is based on these customary/traditional laws, and has played an important role in peaceful resolution of conflicts and disputes, prevention of self justice, revenge, and stopping the ongoing feuds as well as reconciliation of parties.

Mediation in conflicts and disputes is an old practice enrooted in the Albanian society, as it is prescribed in the customary laws or *Kanuns[1] (Kanuni i Lek Dukagjinit, Kanuni i Skenderbeut, Kanuni i Laberise, etc)* (Elezi, 2006: 137). The regime change in the post-Communist period followed a phase of social and political disorder where the state lost control in many parts of the country (Voell, 2003:1). Due to political unrest, economic collapse, mass emigration and migration, strikes and most importantly as a result of state structures' inability to exercise their power, the Customary Law was revived in Albania. This was the case especially in rural mountainous areas of the

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[1] The Kanuns in a broader sense can be defined as a set of norms and rules of social activities, based on specific moral concepts such as honor, loyalty, trust, belief, assurance for safety and truce, encompassed in the Albanian society (Mile, 2007).

country, where the power of the traditional norms had always been powerful (Voell, 2004). The Kanun had been essential in the life of the Northern Albania society, except for the years between 1945 and 1992: when the country was under a harsh communist regime which banned the customary practices. For sixteen years now, until the present days the customary law - the Kanuns - and constitutional law have been coexisting. Many scholars admit that "Albania represents a very unique case for the study of self-governing practices, which exist parallel to the state authority." (Mile, 2007)

My aim is to explore a little examined area that of the approaches and strategies of the mediators in a society which responds to certain extent to the traditional/customary laws. This study will describe systematically the process and the mechanisms utilized by the traditional mediators. Empirical data are collected from field interviews with mediators in Northern Albania. I conducted interviews with eleven mediators from a wide geographical area in northern Albania, in the rural areas of: Shkoder, Vau Dejes, Lezhe, Mirdite, Lac-Kurbini and Malesia e Madhe in September – October 2007: where I collected from the informants twenty-seven cases.

As a form of 'self-justice', vengeance and blood feud has been an important part of the customary laws. Since 1992: conflicts over issues such as land property, personal offences, and honor crimes can degenerate and have degenerated into blood feud among the families of the victims and the perpetrators. In the Kanuns there are specific articles/rules against whom, when and how to seek vengeance for a wrongdoing in the community or outside. The anthropologist Antonia Young states that: "blood-feuds and their resolution have long existed, particularly in stateless societies, where tribal concepts of political organization persist, for the defense of family, clan or tribe, both as group and as individual feuds. In most such societies, alongside the practice of blood-feuds, there are mechanisms for reconciliation by various ritual means of the exchange of assets, such as valuables, food, tools, cloth, money or women in marriage. In the usual rural context, there are many

mediation options in the traditional culture including family mediation, clan resolution processes and mediations by religious leaders or other third parties." (2006: 3)

Even though since 1999: there is the Mediation Law now in Albania, mediators have been gaining entry in conflicts between families mostly based on the customary law. The approach they apply has all the characteristics of mediation as defined by the literature and their main aim or expected outcome is reconciliation between the families, full or partial. The roles that the traditional mediators have played in the mediation process and the reconciliatory outcome are immense, because they have been intervening between families or tribes who were in feuds, or were about to be in one, in this transitory phase of the Albanian society after the end of Communist Regime in Albania, in 1992 till nowadays, serving as face-savers, channels of communication, advisors or instigators for solution, etc. Although in the Kanuns it is specified that the mediator 'may be a man or a woman, a boy or a girl, or even a priest'[2] (Fox, 1989: 138), the role of the mediator has been usually taken on by the respected (male) elders of the tribes and villages (Young 2006). The mediators are respected figures and appreciated for their influence in their communities.

The aim of this study is, thus to explore third party roles of informal, customary mediators, who are actively involved in resolution of conflicts and specifically cases of killings (caused by feuds, accidents and momentarily or previous fights) between families/tribes in the contemporary Albanian context. This research has two main objectives. The first one is to examine systematically the roles of the customary mediators, by looking at the strategies and techniques they use during the mediation process. The second objective is to look at the outcome of mediation, aiming to be reconciliation

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[2] The Code of Lek Dukagjini, Article 99, nr 669.

and discover what elements of reconciliation are found in these processes to influence the outcome of reconciliatory mediation.

This research is looking for the answers to the following issues related to the practice of mediation in Albania: Why people resort to traditional mediators? From whom does the request for intervention come from? What are the reasons for conflict/murder? What is the nature of these conflicts? Did the mediators use any law or any resources to make parties reconcile? What norms or values do they use to influence the parties to reach agreement? Did the mediators appeal for Truth, Justice, Mercy, and Peace?

The study is composed in total of six chapters. The first chapter is introduction to this study's objectives. In the second chapter an exploration of the main concepts and frameworks relevant to this study, such as: culture in conflict resolution, mediator's strategies and roles, reconciliation, restorative justice. The third chapter is a historical overview on Albania's economic, social and political state, the customary laws - the Kanuns - and their usage today in the resolution of conflicts, blood feuds and third party interventions. In fourth chapter, research methods that are employed to collect the empirical data, approaches to analyze the data and the rationale behind their usage will be explained.

The fifth chapter contains a description of the mediation process, the analyses of the empirical data through the tools and frameworks made reference in the literature review, chapter one and the cultural context. In this part a discussion of the findings providing the connection between the strategies used during the process and the outcome of mediation in relation with the context and the behavior of the mediator will be presented. The discussion progresses to explore the question on the elements of reconciliation during and at the end of these processes, compared to what the literature says about reconciliation. And lastly the sixth chapter draws conclusions and implications of this study.

The contribution this study hopes to make to the conflict resolution field is on three levels. At the empirical level this study aims to initiate conflict resolution researches on the third party intervention practices in the community/communal level in contemporary Albanian context. Much research has been done on community mediation methods in different cultural contexts; however there is no systemic study on community mediation on the roles (strategies/techniques) of the mediators in Albania, who represent quite a particular case in how community mediation is practiced in another traditional or semi-traditional setting. Despite the many NGOs working on conflict resolution, created immediately after the fall of communism still little systematic work is done on the work of these traditional/customary mediators.

At the theoretical level this study aims to enrich the literature on third party with other strategies and techniques and what Albanian mediators can teach us in the practice of mediation in community mediation in penal cases. It is an effort to examine Albanian traditional conflict management practices and therefore to establish what is new and what can be recognized as different in the plethora of CR traditional mechanisms.

The findings of this study will be a reflection of the tools (techniques and strategies) used by the customary mediators in reconciliatory community mediation. At the practical level, the findings of my study will hopefully serve the purpose of improving the quality of the reconciliatory mediation in Albania.

Chapter 2

Literature Review

Culture, Conflict Management and Resolution

In this chapter an exploration of the main frameworks and concepts relevant to this study, such as: culture in conflict resolution, ADR, mediation, mediator's strategies and roles, reconciliation, restorative justice will be presented.

2.1 Culture and Conflict

In the literature as well as in practice, culture is an important component and at the same time cause of conflicts, how we perceive them, how we try to manage and how we solve them. Culture is important in determining the manner in which people perceive, evaluate and choose to deal with conflict. Kluckhohn states that: "Culture consists in patterned ways of thinking, feeling and reaction, acquired and transmitted mainly by symbols, constituting the distinctive achievements of human groups, including their embodiment in artifacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values" (1951, 86, cited in Cohen 1996: 109)

There are many definitions of culture when we discuss conflict and conflict resolution. Avruch states that culture constitutes of "different norms, values, and beliefs for socially appropriate ways to 'process' conflicts and

disputes, including their management or resolution" (2003: 3). On this same point of view Fry and Bjorkqvist (1997) acknowledge that "conflict resolution, as a cultural phenomenon, is highly connected with and dependent on a society's relevant norms, practices and institutions." According to Avruch, culture provides an idiom for talking about matters such as complexity, incomplete systemicity, change, interpretations, interests, power, justice, force and coercion – essential issues when talking about conflict resolution (1998: 106).

Culture affects considerably perceptual orientations towards time, risk or uncertainty, affect (in self and others), hierarchy, power or authority, thus it influences the way how people communicate effectively (Avruch, 2003: 3-4). It can be said that culture is in a way our hidden 'lens' to react to conflicts. Many anthropological investigations of conflict resolution have looked within particular indigenous cultures in Africa and Asia and have emphasized the culturally specific nature of conflict resolution processes (Fry and Fry, 1997; Callister and Wall, 1997; Fred-Mensah 2000; Tuso, 2000; Deng, 2000; Faure, 2000; Masina, 2000). These studies show that different cultures have been developing through time their own formal and informal ways of managing conflict and many of these methods still survive nowadays' challenges and social conditions.

2.2 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is one of the current methods that sprang from the traditional ways of managing conflict. Golberg et al (1992: 6 cited in Tidwell, 1998: 15) argues that ADR is a new form of the already existing forms of indigenous dispute resolution. ADR emerged in the 1970s and refers to the out-of-court or before-court interactions between the disputing parties to a dispute or conflict (Burton, 1996: 15). ADR involves a

set of procedures and processes designed to offer alternatives to the court based adjudicated conflict settlement. "Alternative" in ADR context means 'alternative to courts' (Burton, 1993: 61).

Being an alternative to courts, ADR has had an impact in the legal field. ADR has been defined in different ways. Scimercca defines ADR "to include only those alternatives to the legal system that use a third intervenor in a non-coercive manner (1991: 30). ADR relies more on the strength of its practice and the institutionalization of CR that it can provide. There is a wide variety of processes and practices of ADR. Scimercca listed the most important ones: *adjudication, arbitration, court-annexed arbitration, conciliation, facilitation, med-arb, mediation, mini-trial, negotiation,* and *ombudsman* (1991: 29). It is acknowledged that many had seen personal growth and development as an end to the ADR practice, for instance many believe that mediation offers a more humane response to individual needs than does the court (Scimercca, 1991: 31). However, Burton criticized the practice of ADR as, according to him, it makes no distinction between dispute and conflict. He stated that the word "Resolution" in its title it is misleading and that the word "settlement" is somehow more appropriate in this case, since it is a form of applying the legal norms in an informal way (1996: 15-16). In the next section we will discuss about mediation as one of the main practices of ADR.

2.3 Mediation

Mediation is a very old practice of ADR and actually one of the oldest forms of conflict resolution (Wall, Stark and Standifer 2002: 370), and as such it is very often still considered today – among a plethora of conflict resolution

mechanisms and as well as ADR processes - a prevailing form of conflict management and resolution. Bercovitch maintains that mediation is one of the most important and significant tools to manage, deal, or resolve disputes among conflicting parties (1992: 1).

Mediation as a process is studied in different levels such as international, societal, community or interpersonal level; as well as in different contexts and cultures. Bercovich himself asserts that there are various formal definitions of mediation. Different definitions of mediation are used in the literature by different scholars from the very broad ones to the more specific, describing the goal of the mediation and/or the qualities of the mediator. Each definition emphasizes one or more of these essential features of the process. According to Bercovitch, most definitions developed to a) capture the gist of what mediators do and hope to achieve, b) distinguish between mediation and other related processes of third party interventions, and c) describe mediators attributes (1992: 5).

Avruch, for instance, tries to describe what mediators do and what they try to achieve. He defines the mediation as "third party intervention to bring conflicting parties together in a neutral and unthreatening setting, to help them analyze the deeply rooted or underlying causes of their conflict, to facilitate unhampered communication between them and to encourage creative thinking about possible solutions" (1998: 85). Bercovitch features mediation process as an extension and continuation of conflict management, being non-coercive, nonviolent and nonbinding form of intervention, and on mediators' influence in the conflict he states that the process is done on voluntary bases and its functioning on an ad hoc basis only (1997: 129). Likewise, Avruch defines the characteristic of mediation as a non-coercive intervention of a third party (1998: 83).

Focusing more on the mediators' attributes, Moore (1987) defines mediation as "the intervention into a dispute or negotiation by an acceptable,

impartial and neutral third party who has no authoritative decision making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute" (cited in Bercovitch, 1992: 6). Spencer and Yang (1993) see mediation as the assistance of a third party not involved in the dispute or conflict that may have a status that gives him or her power with the disputants. They suggest that he/she can also be an outsider who may be regarded as a suitable neutral go-between (cited in Bercovitch 1997: 129).

Putting together and evaluating all the above definitions, for the purpose of this thesis I will operationalize mediation as defined by Bercovitch: "a process of conflict management, related to but distinct from the parties' own efforts, where the disputing parties or their representatives seek the assistance, or accept an offer of help, from an individual, group, state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force or invoking the authority of the law" (1992: 5).

2.3.1 Cultural Variations in Mediation

Culture comprises a wide variety of worldviews, beliefs, assumptions and behaviors that are characteristic of specific groups of people. A valuable description views culture as the system of meaning and values shared by a community informing its way of life and enabling it to make sense of the world. Cohen stated that culture is necessary element for the existence of communal life (1996: 109). Although culture does not predetermine behavior in detail, it does assign meaning, establishes norms[3] and defines roles (Cohen, 1996: 108). Although these norms are infrequently written down or openly

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[3] Feldman defines group norms as 'the informal rules that groups adopt to regulate and regularize group members' behavior' 1984, 47).

discussed, they often have a powerful, and consistent, influence on group members' behavior (Hackman, 1976, in Feldman, 1984, 47)

Sociologists have employed the concept of social norms to explain how individual behavior is influenced by the society or environment. The literature by *norms* refers to 'informal social regularities that individuals feel obligated to follow because of an internalized sense of duty, because of a fear of external non legal sanctions, or both' (McAdams, 1997: 339- 340). Additionally, Axerold stated that norms constitute a powerful mechanism for regulating conflict in groups, even when there are more than two parties and no central authority (1986: 1095).

Wall et al. (2001: 371) state that for mediation to occur two independent processes should preexist: the disputing parties must request or permit a third party to mediate and the third party must agree to mediate. They state that norms and expected benefits influence these two pre-existing processes. Norms which are embedded in the culture are a motivation force to request the assistance of a third party. Bjorkqvist says that the reason why norms are formed is to prevent latent and potential conflict, and also "norms are ritualized ways of handling conflict" (1997: 26). In many societies there are various culturally legitimized paths of behavior dedicated to the resolution of conflicts, the settlement of disputes and the allocation of responsibility, for communal interests and public morality. They are often principal means by which disputes are settled, conflict resolved and "the moral fabric of the community maintained" (Just, 1998: 107, White, 1998: 188).

Laue (1981, 71) argued that one of the most important things for the intervener is his or her acceptance by the parties in conflict, thus being given the legitimacy to intervene. It is not possible thus, to mediate a conflict if one of the parties refuses to enter the process or to collaborate. Wall et al stated that in a society it is the norms or laws (as well as expected payoffs) that determine the interacting parties motivation to seek assistance from a third

party as well as the third parties' motivation to intervene in a conflict (2001: 373). Kreisberg notes that,

> "every social system, whether a society or an organization has a culture with rules about how conflicts should be managed. These usually include rules about mediation. In traditional societies, mediators tent to be political or religious leaders of their communities; and they use resources of their position to help resolve the conflict. In many small traditional societies the goal is to heal the rupture that the conflict may have caused and to ensure that cooperative relations within the community are sustained….in highly differentiated societies, especially in Western societies, the judicial system tends to focus on the disputants and strives to determine who is right, discover or construct a mutually acceptable agreement between the disputant. The mediation process nevertheless, tends to be different in large relatively bureaucratized societies, than in small, traditional societies. Disputes tent to be treated in relative isolation, the mediator roles tend to be professionalized and the value of mediator neutrality is emphasized." (1998: 240)

Similarly Cohen, comparing mediators in low context, individualistic cultures and high context, collectivist cultures[4] maintained that American mediators are expected to be impartial, trained professionals. They are not expected to preach, but to provide services for the parties such as assisting communication and creating alternative options. On the other hand, the Middle Eastern mediator has not a professional role, he - for women do not qualify - has a social status given by birth, and is chosen among local notables. He is expected to separate the adversaries, meticulously protect their honor, save face[5] and restore equilibrium between them, if necessary even by

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[4] Ting-Toomey (1988) drew distinctions between the attitude of individualistic, low-context cultures toward face and that of the collectivistic, high context cultures. In the low-context cultures (such as Australia, Germany, the United States) conflicts are seen as the legitimate struggle of competing interests, are handled either in a problem solving manner, minimizing subjective desires and needs, or through adversarial techniques of open confrontation. Debate, challenge and refutation and controversy carry no threat to the ego (cited in Cohen, 1996: 114).

[5] On the linguistic level as well there is a difference between low and high context cultures. In the United States for example, the mediators use language in a very direct, unadorned and explicit way. Cohen points out that the more traditional, collectivist honor-based cultures are meticulous about 'protecting

supporting the weaker party (1996: 108). Thus from one culture or society to the other the roles and expected behaviors and attitudes of the mediators change according to the established norms of the society. Similarly, in many cultures, diversity is present in the procedures and types of mediation processes depending on the types of disputes or conflicts.

2.3.2 Victim -Offender Mediation

In this part I will elaborate on the features of a special mediation practice, Victim – Offender Mediation (VOM)[6]. Mediation between parties who have experienced crime towards each-other is one of the most skilled and delicate responsibilities which any person or group of persons could undertake or could be assigned (Marshall, 1999: 27-29). Mediators' task is never easy, while trying to make the parties to reconcile or reach an agreement. Specifically, when referring to the mediator or the intervener in such cases where crime is involved, mediators' task becomes even more difficult and there are certain skills and abilities needed, which as described by Marshall:

> "Not only is intensive training necessary, but mediators must also be selected for their ability not to take sides, their empathy for different kinds of people, patience, ability to control the essential conditions while empowering the parties to take control of the content, ability to remain calm and uninvolved when emotions are on display, and mental agility. Such skills have been found to be widely spread across the population and are by no means related to educational level."
>
> (Marshall, 1999: 27).

VOM is a process that allows various needs to be fulfilled, according to the requirements of the parties. It is often seen as a process where the

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the face of the parties and prefer to communicate elliptically and nonverbally' (1996: 114).

[6] It is often considered as the practice of restorative justice principles, on which I will talk extensively in the next sections of this chapter.

mediator aims to achieve justice through apologies and reparation[7] (for the victim, especially) Despite the fact that material reparation to the victim would be one of the outcomes of this process, there are some victims who are happy with an apology and explanation and do not take into account the material reparations (Marshall, 1999: 26). Similarly, Zehr (1985) stated that in such processes where the mediator/s aim to achieve justice between parties, specifically restorative justice, "above all perhaps, victims need an experience of forgiveness' and although it is possible for victims to forgive in the absence of those who perpetrated the offence, sincere apologies are likely greatly to assist the process of "letting go" of the crime experience" (cited in Strang, 2002: 22). This hints to the steps that mediators should follow in order to reach the desired outcome.

Another relevant issue to be taken into consideration in VOM practices is the relation between parties. The parties in VOM (unlike most other forms of mediation) are not to be considered balanced or equal. When the offender admits an offence, the offender has taken the responsibility to make a good action towards/reward the victim. This even applies in cases when the offence has arisen out of a dispute or fight with the victim, and in which the victim may have been equally at fault or even more (Marshall, 1999: 24).

Mediation in cases when between parties have experienced crime towards each-other is a difficult process, as we mentioned before. This is because as in most cases of mediation, the mediators operate in environments that consist of disputing parties, their constituents and other constituents (Bercovitch and Wells, 1993: 4). Thus the process is even more complex and difficult when it involves more parties, as it does in the case of conferencing for instance – a type of VOM. Conferencing involves the circle of relatives,

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[7] Reparation is an essential element of to achieve justice in VOM (Marshall, 2002: 27). Reparation may be in the form of: financial payments, work for the victim, work for a community cause selected by the victim, specific undertakings (e.g. to attend a counselling course), or a mixture of these (Marshall, 1999: 11).

supporters and significant other people that each party has. This community serves as a basis for involvement and intervention. 'Community' does not have to correspond to any particular physical or geoFigureical entity. Each person or party has his/her own community concentrated on him/her. The extent to which these person-centred networks can be effective, of course, changes from one case to the other (Marshall, 1999: 27-29). VOM shows the complexity of the mediation process in cases where severe crime is involved, and how the behavior of the mediator is shaped by the specific characteristic of environment, the parties involved, the issues and the nature of the dispute.

2.4 Mediator Roles: Strategies and Techniques

The above discussion gives us an idea of the characteristics and procedures of mediation as well as the mediators' characteristics and expected behaviors in different settings and circumstances. The very fact that mediation is practiced in diverse situations, forums, conflicts and cultures has led to variations in both procedures of mediation and mediators' roles as well. In the literature on mediation considerable attention has been devoted to the question of mediator roles and strategies. Therefore, in the literature there are a number of roles to describe what mediators do to achieve their goals. For many scholars, the mediator him/her-self has been the focus of study. Scholars such as Ronald Fisher, Louis Kriesberg and Christopher Mitchell consider the term "mediator" as a complex one that covers numerous kinds of third party roles (cited in Avruch, 1998: 83). Rubin identifies a comprehensive set of roles: formal versus informal roles, individual versus representative roles, invited versus non-invited roles, advisory versus directive roles, content versus process roles, permanent versus temporary roles and conflict resolution versus conflict prevention roles (Rubin, 1981, 8-19).

Kreisberg brings to our attention the wide variety of the mediators' roles and their dimensions. In his classification he includes:

- o the quasi mediator, a member of one of the adversary parties who carry out some go-between activities;
- o the ad hoc informal go-between, a person acting and an individual or as a representative of a political or religious organization and becomes a communication channel between the parties;
- o consultant or trainer, a person or organization that provides training and consultation services in conflict resolution methods;
- o facilitator in problem-solving workshops, a convenor who brings together a few members of the opposing sides and guides and facilitates their discussions;
- o facilitator and members of dialogue groups;
- o facilitator and non-aligned parties in conference;
- o institutionalized mediator; ad hoc facilitator; ad hoc dealmaker

(Kreisberg, 1998: 231-238).

Many scholars have also listed some of the types of assistance or possible mediating services that the mediators offer to the parties, such as: providing space for communication; providing information; helping adversaries to begin negotiations; help penetrate emotional barriers; help stall deterioration; face-saving; changing procedures; helping invent new options; representing persons not represented in the negotiation; constructing deals; adding resources; generating pressure for an agreement; rallying support for an agreement (Kreisberg, 1998: 231-234).

Bercovitch using Touval and Zartman's categorization places the mediator's roles on a spectrum ranging from passive to active involvement (1992: 17). Touval and Zartman (1985) talked about the modes of the mediator and they refer to three modes or principal strategies: 1) communication, 2) formulation and 3) manipulation (cited in Bercovitch, 1992: 16). The mediator serves as a communicator for the parties when the direct contact and other communication channels between the adversaries are closed due to the conflict and its consequences. The mediator helps the parties

not to loose face or appear weak if concessions are made. To perform this role it is important for the mediator to use: tact, careful wording, sympathy, accuracy and confidentiality. In the second mode, formulation strategies, the mediator influences the substance of the negotiation. He or she makes use of formulas to reach a negotiated solution to the conflict; provides common understanding of the problem or a shared notion of justice to govern an outcome. In the third mode, the mediator acts as a manipulator. The mediator is maximally involved in the solution as well as in the conflict, almost as a party, and somehow transforming the parties' decision-making process. He/she uses his/her power to bring the parties to an agreement. In a way the mediator manipulates the parties to reach an agreement as well as pushes them to move towards the resolution of the conflict (Zartman and Touval, 1996: 454-455).

These classifications of the mediators' roles lead us to another category which is important to define the behavior of the mediator, the strategies. Several scholars would argue that, in order to categorize the actions taken or what mediators do, we should look at the mediation strategy they adopt in different conflicts or different contexts. Bercovitch and Huston (2000) for instance, state that the practice of mediator roles revolves around the choice of strategies and techniques that the mediators will use to reach the outcome they aimed for the process (174). Kolb defines strategy as "an overall plan, approach or method a mediator has for resolving a dispute …it is the way the mediator intends to manage the case, the parties and the issue (Kolb 1983, 24, cited in Bercovitch, 1997: 136). Similarly, Bercovitch defines mediators' strategy as a plan or approach the mediator applies to solve a dispute or to reach a certain outcome (1992: 16). In a latter article Bercovitch defines mediator's strategies simply as behaviors (Bercovitch, 1997). On the other hand, mediators' tactics are seen as the practical measures, techniques, and instruments that are used to achieve certain outcomes. 'Tactics are behavioral specifics of a strategy.' (Kolb, 1983, cited in Bercovitch and Wells, 1993: 5) What Kolb (1983), Bercovitch and Well (1993) or Callister and Wall

(1997) call 'a technique', Moore calls it a 'move'. According to him 'a move' for a mediator is a particular act of intervention or 'influence technique' aiming at the people in the dispute (Moore, 1986: 57). Thus the mediation strategies and techniques or tactics as part of the conflict resolution toolbox of the mediators are also important in influencing the process and outcome of the mediation.

Mediator's strategies or behaviors intend to change, modify, settle or resolve a conflict in cases where the parties cannot reach an agreement on their own. Bercovitch (1997) argues that the reason for this huge interest on the mediators' strategies and techniques is mostly because many scholars consider that the enactment of these behaviors comprises the "heart" of mediation (135). Bercovitch and Huston, working on the above framework from Zartman and Touval, elaborated their own mediators' strategies. Each of these has several techniques or tactics which the mediator uses to affect aspects of conflict or the kind of interaction between parties (cited in Bercovitch, 1992: 16):

Table 1. Mediator's strategies

1)Communication-Facilitation Strategies – *a fairly passive role, channeling information to the parties, facilitating cooperation, exhibiting little control on the process and substance of the mediation.*	2)Procedural-Formulation Strategies – *more formal role, control over the process, determine structural aspects of the meetings, control the constituency influence, media publicity, the situation powers of the parties resources.*	3) Directive-Manipulation Strategies – *the most powerful form of mediation, influence on the content and substance of the bargaining process, providing incentives for the parties, aims to change the way issues are framed and the behavior associated with them.*
Make contact with parties	Choose the meeting sites	Change parties expectations
Gain the trust and the confidence of the parties	Control the pace and formality of the meeting	Take responsibility for concessions
Arrange for interaction between the parties	Control physical environment	Make substantive suggestions and proposals
Identify issues and interests	Establish protocol	Make parties aware of the cost of non-agreement
Clarify situation	Suggest procedures	Supply and filter information
Avoid taking sides	Highlight common interest	Suggest concessions parties can make
Develop a rapport with parties	Reduce tensions	Help negotiators to undo commitment
Supply missing information	Control timing	Reward party concessions
Develop a framework for understanding	Deal with simple issues first	Help devise a framework for acceptable outcome
Encourage meaningful cooperation	Structure agenda	Change expectations
Offer positive evaluation	Keep parties at the table	Press the parties to show flexibility
Allow the interests of all parties to be discussed	Help parties to save face	Promise resources or threaten withdrawal
	Keep process focused on issues	Offer to verify compliance with agreement.

(Adopted by Bercovitch and Rubin, 1992: 17 and Bercovitch and Huston, 2000: 176)

The above classification of mediators' strategies in 1) Communication-Facilitation, 2) Procedural-Formulation and 3) Directive-Manipulation strategies by Bercovitch and Huston (2000) mostly refers to the international level. However it is one of the most comprehensive ones in terms of categorization of the mediator's strategies and techniques because it takes into consideration many contextual factors that influence the process, and the choice of the strategy by the mediator.

Callister and Wall (1997) came up with a culture sensitive list of thirty-eight techniques of mediation, many of which are similar to the above techniques under the three approaches however some other techniques are different because the data they used comes from community and organizational mediation and not only from the international mediation and which are applied in the Japanese culture. They came up with a very comprehensive table of the Japanese mediators' techniques and they demonstrated that the Japanese are nonassertive mediators in their community and organizations. Some of the particular techniques found from their study involve:

- *Educate* - Mediator educates, persuades, or advises one disputant as to how he or she "should" in general think or act;
- *Critisize* - Mediator criticizes a disputant's person, attitude, and behavior or uses a specific label such as, "You are rude."
- *Have drink with disputants* - Mediator has a drink with the disputants prior to agreement.
- *Drink; capstone* - Caps the agreement with techniques other than a drink.
- *Calls for a break* - Stops the quarreling; has disputants get rest(s). Picnic, gettogether
- *Example* - Cites example or similar case
- *Cite moral principles* - Mediator points out a specific moral obligation or societal norm
- *Reconcile* - Mediator negotiates a general compromise.
- *Have a third party educate* - Mediator has a third party to educate, persuade, or advise one or both disputants on how they "should" think or act.
- *Obtain forgiveness* - Mediator asks one disputant to tolerate or forgive the other.
- *Being vague* - Mediator is intentionally vague when describing the situation or asking for concessions.

(Callister and Wall, 1997: 318)

The above discussion shows that mediators' pool of strategies and techniques is vast and they have to take appropriate decisions on which approach or

strategy to apply, which techniques to use, depending on many factors which
we will discuss in the coming section.

2.5 Process and Context: Determinants Affecting Mediators'
Approaches

Mediation is seen in the literature within a lager framework which
somehow shapes its procedures and outcomes. As we discussed in previous
sections, mediation is adaptive, responsive and reflects different problems,
different parties, different situations and it operates on an ad hoc basis only
(Bercovitch, 1992: 4). Bercovitch argued that the mediation system includes
a) parties b) a mediator c) the process of mediation and d) the context of
mediation (1992: 7). These elements interplay with each other and are
influential to each other.

Mediators in international, national, regional, community or
interpersonal conflicts hope to influence the process in order to achieve a
certain expected outcome. Thus mediators aim to influence the process and
outcome of mediation. Mediators however cannot choose any strategy or
tactics they wish regardless of the circumstances. The mediation literature
discusses the determinants of the mediation approach and offers us some of
the reasons why this is so.

In this section the question of what shapes mediators' approaches:
strategies and techniques, will be explored. A thorough analysis of the factors
influencing the choice of these strategies, which are part of the mediation
process, will be presented. Even though the aim of this study is not to look at
variables influencing the outcome of mediation, the discussion below on the
determinants of the mediators' approaches cannot be completely isolated from

the discussions found in the literature on the relations context – process – outcome, since the three are closely interrelated.

2.5.1 Determinants affecting the Mediators' approaches

Mediators aim to influence the process of mediation but also in turn their approaches or their strategic choices are affected by the context of the dispute or conflict. For many scholars the context is defined as the nature of the parties, the nature of the dispute and the environment where the conflict evolves. Mediators function within a system that is composed of the disputing parties, (and their relationship), the mediator, a number of concerned audiences or constituencies and other factors such as societal norms, political institutions and economic pressure (Bercovitch, 1992: 18). The structure and practice of mediation reflects the context of the situation and the nature of the parties (Bercovitch, 1992: 4)

> "Mediation operates within a system of exchange and social influence – the parameters of which are the actors, their communication, expectations, experience, resources, interests and the situation in which they all find themselves. Mediation is not a linear cause-and-effect interaction; it is a reciprocal process. It influences and is, in turn, influenced and responsive to the context and environment of the conflict."

> (Bercovitch and Houston, 2000: 171)

.

Different scholars identify similar or almost similar factors that influence their choice. Kolb (1983) acknowledges that the choice of any form of mediation behavior or strategy is seldom random. It is influenced, to a certain extent, by factors peculiar to the conflict and internal to the mediator (cited in Bercovitch, 1997: 136). Likewise, Bercovitch and Wells 'the choice of the strategies or mode of behavior depends on a) the kind of actors they are and b) the kind of dispute they intervene in' (1993: 4). The strategies and

behavior of mediators differ, not simply because of mediators' differences but because of differences in the nature and context of a dispute and the characteristics of the parties involved. Mediation strategy and behavior must reflect these factors in order to be effective (Bercovitch, 1992: 19). Bercovitch also pointed out that these roles and the choice of the strategies or tactics are not dependent only on the mediator himself but on the contextual factors of the dispute and the interests and resources of the mediator (1992: 17).

Kreisberg (1998) states that mediators try to adopt their behavior with respect to the specific conflict at hand. He talks about four major kinds of determinants shaping mediator's roles, thus their approaches: a) the cultural setting, b) the institutional context c) the characteristics of the conflict and d) the characteristic of the mediator (239-241). Wall et al. as well maintain that during the mediation process the mediator has to decide on the approach or the role that he/she wants to play and this decision is influenced by many factors or determinants, such as environment (cultural, political, etc), mediator's training, disputants' characteristics and nature of the conflict (2001: 371). Among the environmental factors, culture is the strongest one and probably the most diverse one. Literature shows that very often the techniques the mediators choose vary from one culture to another or from one physical environment to another, depending on the values and the norms of a society.

Bercovitch and Wells state that 'when mediators intervene in a dispute, they do so from the perspective of their own cultural background' and this cultural background may influence the choice of the strategies they employ in solving conflicts and disputes (1993: 3). The specific rules, beliefs, attitudes, behaviors and symbols that make up the conflict are imposed and they may even govern the process of mediation (Bercovitch, 1992: 4). Callister and Wall (1997) showed the value of history in the prediction of mediation approaches. They showed that the Japanese have a preference for the use of

intermediaries and how the value of social harmony in the Japanese society is reflected in their way to resolve conflicts.

Another influencing factor is that part of the mediators' assistance is dependent on the relationships: relationship of the mediator has with parties and the relationship between parties. It is a fact that mediators can have many types of relationships with disputing parties and the nature of the relation can considerably have an effect on the process and the type of intervention that is initiated (Moore, 1986: 57). Moore (1986) looks at the variations in the mediator roles and identifies three broad types of mediators by looking at the relationship between the mediator and the parties: (1) *social network mediators*, individuals who are sought because they are connected to the disputants; and are generally part of a common social network (2) *authoritative mediators*, persons who have an authoritative relationship to the parties, and thus have more power or actual capacity to influence the outcome of a dispute and (3) *independent mediators*, are "outsiders" and are perceived to have no personal vested interest in the intervention or its outcome (Moore, 1986: 43-55). Related to this discussion, according to Kolb, whichever intervention strategy mediators might make use of, their essential aim in any conflict are to change: (1) the physical environment of conflict management, (2) the perception of what is at stake, (3) the parties' motivation to reach a peaceful outcome (cited in Bercovitch, 1997: 136).

Another theme discussed in the literature is assessment of the outcome of mediation. It is as simplistic as it is erroneous to regard mediation outcomes as related to mediation process only. Mediation must not be analyzed or understood in terms of a simple cause and effect model in which a particular strategy invariably produces a desired process and outcome (Bercovitch, 1992: 18). The context in which a dispute occurs affects its process and outcome.

In a study which examines the influential factors of the successful or unsuccessful outcomes in international mediation, Berchowitch and Lamare stated that the outcome is determined by the context of the dispute and the process of mediation. They conceived context as comprising two variables a) the nature of the parties and b) the nature of the dispute; and process as comprising two other variables: a) the identity and characteristics of the mediator and b) the nature of the mediation strategy.

Table 2. A contingency framework of international mediation

Nature of Dispute	Identity of Mediator	Settlement
Identity of Parties	Nature of Strategy	Partial Settlement
		Cease-fire
		Unsuccessful
		Offered only
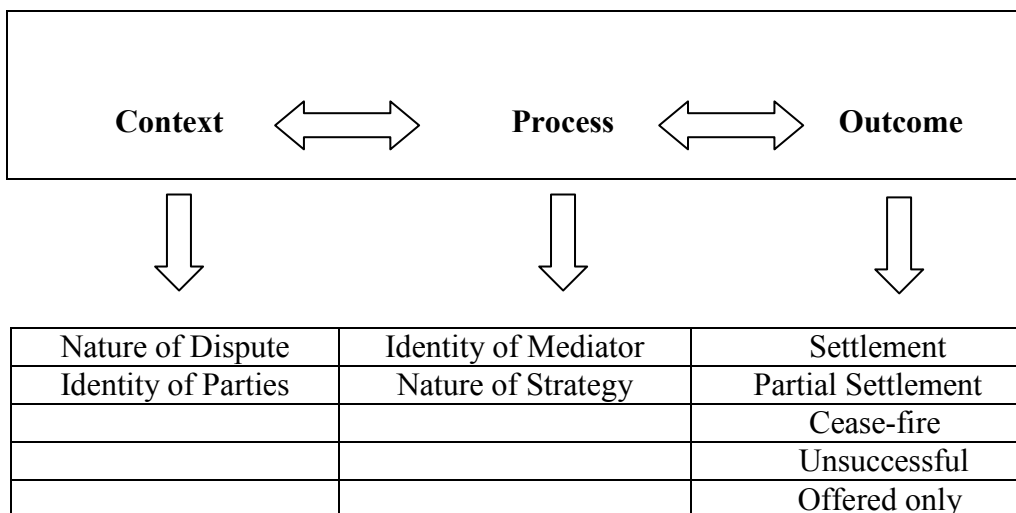
(Bercovitch and Lamare 1993: 296)

This framework is useful to understand how context and process is defined in this study. Thus the choice of mediators' strategies, as part of the process, is influenced by the context. Process and context are closely interrelated. Process, strategies and tactics are deduced from the broad context in which a mediator operates (Bercovitch, 1992: 18).

In their review of the mediation literature Wall et al. acknowledge that besides the level of conflict, the availability of the resources, and type of issue and commitment of the disputants to the mediation process there are other intervening factors such as: mediator's rank, disputant's power, stage of the conflict and visibility of the mediation (2001: 383). For the purpose of this

study, the context factors that influence the choice of mediation strategy and techniques can be best understood within a framework which organizes the dimensions and processes of mediation into temporal sequences. This framework represents the interplay among 1)prior conditions that are antecedent to mediation such as nature of the dispute, nature of the issues, nature of the parties and nature of the relationships, 2) the actual process of mediation which includes the identity and rank of the mediator, mediation strategy and behavior and 3) subsequent mediation outcomes (Bercovitch, 1992: 19).

Before moving to the outcome section it is necessary to clarify that in this study I will look at the strategies used by mediators in community mediation in cases of murders and what factors that affect the choices of strategies or behavior they employ in these cases. In addition, I will look at the outcomes[8] of these mediations to explore what elements of reconciliation are found more appealing during these processes.

2.6 Reconciliation and its Elements as Outcome of Mediation

Depending on the context and environment where conflicts take place, the nature of the dispute, the nature of the issues and the nature of the parties, the outcomes of the mediation processes can be diverse. For instance in the community level there could be agreement on certain issues, reconciliation between parties, or none of them; in the international level there could be agreement, ceasefire, peace (long-term or short-term). In the sections below we will see how reconciliation and restorative justice, which are usually considered as mechanisms, methods and even processes of conflict

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[8] Outcome in community mediation is usually it is expected to be reconciliation between disputing parties.

management and resolution, are also considered as expected outcomes of an intervention and/or mediation process.

2.6.1 Reconciliation

Some scholars have looked at reconciliation as a mechanism. Assefa for instance defines reconciliation as a conflict handling mechanism (2001: 336). For Lederach reconciliation is a peace building mechanism, which "represents a place, the point of encounter where concerns about both past and future can meet" (1997: 27). On the other hand, some other scholars such as Galtung see reconciliation as 'the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relations' (2001: 3). Fisher states that reconciliation involves reestablishing harmony and cooperation between antagonists who have caused harm in either a one-sided or mutual way (2001: 26).

> "Reconciliation refers to the process by which the parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable. It is a way then of advancing peace and, optimally, justice as well."
>
> (Kriesberg, 2001: 48)

Kriesberg (1997) identifies the basic elements of reconciliation, categorizing them in: 1) the units involved (individuals, officials, groups, peoples); 2) the dimensions of reconciliation (acknowledgement, acceptance, apology, redress, forgiveness); and 3) the possible degrees of reconciliation (full or partial, accommodation, coexistence) (cited in Fisher, 2001: 27).

Research has brought many scholars to identify same or other elements and components of reconciliation, however arranged in other ways. Lederach identifies four major concepts or components of reconciliation: Truth, Mercy, Justice and Peace. These four components seem to include other important

concepts in reconciliation: *Truth* (Acknowledgement, Transparency, Revelation, and Clarity), *Mercy* (Acceptance, Forgiveness, Support, Compassion, and Healing), *Justice* (Equality, Right relationships, Making things right, Restitution) and *Peace* (Harmony, Unity, Well-being, Security, Respect) (1997: 27).

The research in various cultures shows that every culture makes use of and emphasizes different values, norms and beliefs to achieve a peaceful outcome which often is reconciliation between disputing parties. Assefa as well stresses the importance of almost similar elements of reconciliation: acknowledgement of the harm (Acknowledgement); sincere regret and remorse (Transparancy); readiness to apologize (Acknowledgement and Revelation); readiness to let go the anger (Forgiveness, Acceptance and Healing); commitment by the offender not to repeat the injury (Security); sincere efforts to redress past grievances and compensate for the damage (Retributions); entering a new mutual relationship (Right relationships ,Unity and Harmony) (2001: 337). Worthington states that reconciliation restores trust (2006: 197). Kriesberg too, sees the possibility of reconciliation at least on these four dimensions: Truth - in the sense of shared understandings; Justice- in the form of punishment for the guilty one; Remorse and forgiveness – either expressed independently or carefully exchanged; Personal and group security (2001: 60).

All of the above elements of reconciliation are interrelated to each-other and play an important role in the successful outcome of mediation especially in cases where crime and consequently justice is involved. Mediators in these cases have a lot of control over whether the basis for reconciliation is set, since they can affect how much mutual trust is build between the disputing parties during the conflict resolution process. Mediators can facilitate reaching the goal of restoring justice, reconciling parties and attaining a peaceful solution (Estrada-Hollenbeck, 2001: 81).

2.6.2 Restorative Justice

In this section I will present the reader with the main principles and issues of restorative justice as well connections between the goals of its processes and the processes themselves will be provided.

According to Kriesberg, justice refers to 'a multifaceted, ongoing set of processes moving towards social relations that they regard as equitable by the people engaged in them.' (2001: 48) However justice is never fully realized since as we discussed above in the reconciliation section, it involves contradictory qualities and changing standards of equality, right relationships, making things right and restitution (Kriesberg, 2001: 48). An 'alternative justice paradigm' was represented by Zehr (1990) as Restorative Justice. The core of restorative justice practice, and what is most innovative about it, is the breakdown of the barriers between legal processes (the 'criminal justice system') and community action, as well as the introduction of personal involvement in what are generally impersonal, highly regularized, often bureaucratic, procedures (Marshall, 1999: 23).

A commonly recognized definition of Restorative Justice is that it is 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future' (Marshall, 1999: 5). Restorative justice represents as well a problem-solving approach to crime which engages the parties themselves and the community in general, in an active relationship with legal agencies (Marshall 1999: 5). It involves the interaction between victim and offender, including personal reconciliation, atonement and, possibly forgiveness, entirely compatible with religious principles (especially, but not only, Christian) and given justification in those terms. This approach to justice places particular importance on benefits to victims and enabling offenders to assume active responsibility for putting right the harm they had caused – including both

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natural justice and having a more impact on the offender than simply being punishment from the court (Marshall, 1999: 29).

Marshall states that Restorative Justice is not only an academic theory of crime or justice, but embodies the accumulation of experience in working effectively with particular crime problems (Marshall, 1999: 7). Restorative Justice is based on the following *assumptions*:

- that crime has its origins in social conditions and relationships in the community
- that crime - prevention is dependent on communities taking some responsibility (along with local and central governments' responsibility for general social policy) for remedying those conditions that cause crime
- that the aftermath of crime cannot be fully resolved for the parties themselves without facilitating their personal involvement
- that justice measures must be flexible enough to respond to the particular exigencies, personal needs and potential for action in each case
- that partnership and common objectives among justice agencies, and between them and the community, are essential to optimal effectiveness and efficiency
- that justice consists of a balanced approach in which a single objective is not allowed to dominate the others.

(Marshall, 1999: 6)

Restorative Justice is not applicable only to minor offences, but also in cases of more severe crimes. In terms of victim benefits, but also in terms of prevention the practice of restorative justice has shown that it is beneficial to work in this way with serious crimes, especially. Restorative justice opposes almost all of the principles underlying legal or retributive justice. However, it is not a replacement for criminal justice rather would normally take place alongside it (Marshall, 1999: 8-9). Van Ness (1996) depicted the fundamental principles of restorative justice theory in the following manner: 'Crime is primarily conflict between individuals resulting in injuries to victims, communities and the offenders themselves; only secondarily it is lawbreaking' (cited in Estrada-Hollenbeck, 2001: 74).

Marshall argued that restorative justice is represented as a shift from criminal to civil law (1999: 27). Estrada-Hollenbeck, taking a critical stand on the legal criminal justice process states that the over reaching aim of the process should be to reconcile parties while repairing the injuries caused by crime. The criminal justice process should facilitate active participation by victims, offenders and their communities. The government, courts laws or other criminal justice institutions should not dominate the process (2001: 74). Nils Christie (1977) treated "crimes as conflicts between the parties that had been 'stolen' out of their hands by the State and should be returned to the parties" (cited in Marshall, 1999: 29).

> "Strict legal justice, removed from public participation, may be seen as partial and insufficient, leading to demands for greater severity as the only way in which victims and the general public are currently able to have a voice. Victims may not feel any sense of justice when their needs have not been met (except, vicariously, a desire for revenge)
>
> (Marshall, 2002: 27)

Marshall however explains that, restorative justice is not any particular practice, but a set of principles which may guide the general practice of any agency or group in relation to crime. These principles are:

- making room for the personal involvement of those mainly concerned (particularly the offender and the victim, but also their families and communities)
- seeing crime problems in their social context
- a forward-looking (or preventative) problem-solving orientation flexibility of practice (creativity).

(Marshall, 1999: 5)

The principles of Restorative Justice have been derived from experiences in grass roots rather than from any academic theory. Restorative justice practice has been developed at the grass roots by those working on mediation among offenders and/or victims and represents what has been found to work at that level (Marshall, 1999: 20). Mediation in such cases is in the form of direct meetings between victims and offenders. The aim of this method is to empower the parties, to give them the possibility to keep control of their own

dialogue, which cannot happen through a go-between. This experience gives the parties the chance, to meet each-other face to face, to have direct experience of each other, to make their own judgments, to express themselves directly and to have a more meaningful and emotive experience. However, Marshall (1999) refers to the British experience as contrasting this ideology. Most mediation in Britain has been conducted without a face-to-face meeting. He also provides some possible reasons for the high rate of indirect mediation in Britain:

- reluctance among most victims to meet their offenders directly mediators being excessively concerned not to be seen to be putting any pressure on victims to take part, or being over cautious;
- mediators subconsciously preferring indirect mediation because it leaves them in control, and is quicker and simpler to carry out.

(Marshall, 1999: 27)

Practices such as victim-support mediation, conferencing, and problem - oriented policing and both community- and institution-based rehabilitation programs are based on the need for engagement between two or more of the various parties and they aim to achieve restorative justice (Marshall, 1999: 7). For instance, in cases of group conferencing the community is given a more direct role. Whilst the highlight in victim-offender mediation is on the victim's suffering and how the offender may make reparation for this, group conferencing is essentially an extension of victim-offender mediation to include many parties – the offender's family, the victim's family or supporters (or several victims together), and community contacts of the offender who may possibly offer support or help (a teacher, employer, neighbor, youth - worker, church contact, etc) (Marshall, 1999: 14). These practices have been inspired by the indigenous practices of community justice still in use among non-Western cultures, for instance the indigenous populations of North America (Native American sentencing circles) and New Zealand (Maori justice). These indigenous practices and experiences have contributed to the

development of family (or community) group conferencing (Marshall, 1999: 7).

Historically and in modern times, restorative justice systems exist among indigenous people. In many of these countries that have indigenous populations with strong ancient traditions of managing their own disputes and conflicts practices of restorative justice coexist as an alternative to legal procedures. In Canada for instance, a model of conferencing has been developed and modeled on native Canadian customs. This is known as circle sentencing, a process that places the highest value on healing the community and it includes a high level of community involvement and control. Haley as well (1996) maintained that a form of restorative justice system has existed with legalistic justice in Japan for more than forty years (cited in Estrada-Hollenbeck, 2001: 75).

However, these processes are more significant to communities with a strong identity and a tradition that includes these practices (Marshall, 1999: 15). These methods or practices are found to be very effective (or more effective than the formal courts) in countries that have populations which comply with ancient traditions and norms to manage their disputes and conflicts. Marshall recognizes one problem that these processes usually face is the tendency of many of their younger members to loosen their communal ties and become Westernised, thus these processes have little power over them. This phenomenon happened in the traditional Maori clan-based practice in New Zealand (1999: 15).

Mediation programs are more often seen as fair by victims taking part than is the court process (Marshall, 1999: 27). For the processes to be restorative for either party, any direct participation must be free and all parties must feel respected. They need to feel committed to an outcome that they feel they have had a full part in deciding, and so that they will feel the process has been fair and acted in response to their needs.

'Research on parties' attitudes after mediation (e.g. Umbreit, 1994) reveals that victims more often perceive mediation as fair than they do the court process. This is almost certainly because they have been given a chance to have their say and to have their personal needs taken into account. The offender, because of his/her actions, has an obligation towards the victim, and it is reasonable to expect some attempt to take responsibility and offer reparation.'

(Marshall, 1999: 24)

Many scholars have considered reconciliation between parties as the outcome of restorative justice mediation processes. Mediation is considered a common approach used to achieve restorative justice. Zehr's work attached restorative justice ideas to mediation, specifically victim-offender mediation (cited in Marshall, 1999: 29). In many cases the outcome the mediators seek is usually to end the violence, however very often mediation also seeks a restorative justice outcome (which usually has the ideal goal of reconciling the disputing parties) (Beer and Stieff, 1997 in Estrada-Hollenbeck, 2001: 79-81). Thus in restorative justice, reconciliation between the victim and perpetrator is a desirable outcome and often an attainable goal.

2.7 Conclusion

Culture is important in determining the manner in which people perceive, evaluate and choose to deal with conflict. Cohen (1996) states that although culture does not always predetermine behavior in detail, it does assign meaning, establish norms and define roles (108). Although these norms are not always written down or openly discussed, they often have a powerful influence on group members' behavior (Hackman, 1976, in Feldman, 1984, 47). In a society, it is the norms or laws that determine the interacting parties' motivation to seek assistance of a third party as well as the third parties' motivation to intervene in a conflict (Wall et al, 2001: 373). Thus from one

culture to the other, the roles and expected behaviors of the mediators change according to the established norms of the society.

Mediation is one of the most important and significant tools to manage, deal, or resolve disputes among conflicting parties. It is considered as a very old practice of ADR and actually as one of the oldest forms of conflict resolution (Wall, Stark and Standifer 2002: 370). A special mediation practice is Victim – Offender Mediation (VOM). It is mediation between parties who have experienced crime towards each-other. It is one of the most skilled and delicate responsibilities which any person or group of persons could undertake or could be assigned (Marshall, 1999: 27-29). VOM as a process illustrates the complexity of the mediation process in cases where severe crime is involved, and how the behavior of the mediator is shaped by the specific characteristic of environment, the parties involved, the issues and the nature of the dispute.

The very fact that mediation is practiced in diverse situations, forums, conflicts and cultures has led to variations in both procedures of mediation and mediators' roles as well. Therefore, in the literature there are a number of roles to describe what mediators do to achieve their goals, what strategies and techniques they employ. Strategy is defined here as a plan or approach the mediator applies to solve a dispute or to reach a certain outcome (Bercovitch, 1992: 16) and techniques or tactics as 'behavioral specifics of a strategy' (Kolb, 1983, cited in Bercovitch and Wells, 1993: 5). Bercovitch and Huston (2000) classify mediators' strategies as 1) Communication-Facilitation, 2) Procedural-Formulation and 3) Directive-Manipulation strategies. The classification they provide is one of the most comprehensive ones in terms of categorization of the mediator's strategies and techniques since it takes into consideration many contextual factors that influence the choice of the strategy by the mediator and in turn influences the process and outcome of the mediation which is what we will focus in this study.

The mediators' pool of strategies and techniques is vast. Mediators however cannot choose any strategy or tactics they wish regardless of the circumstances. They have to take right decisions on which approach or strategy to apply, which techniques to use, depending on many contextual and process factors. For many scholars the context is defined as the nature of the parties, the nature of the dispute and the environment where the conflict evolves. In this study, the context factors that influence the choice of mediation strategy and techniques are understood within a framework which organizes the dimensions and processes of mediation into temporal sequences. This framework constitutes: 1)prior conditions that are antecedent to mediation such as nature of the dispute, nature of the issues, nature of the parties and nature of the relationships, 2) the actual process of mediation which includes the identity and rank of the mediator, mediation strategy and behavior and 3) subsequent mediation outcomes (Bercovitch, 1992: 19)

Mediators intervene in a dispute, based on the perspective of their own cultural background' and this cultural background may influence the choice of the strategies they employ in solving conflicts and disputes (Bercovitch and Wells, 1993: 3).

Depending on the context and environment where conflicts take place, the nature of the dispute, the nature of the issues and the nature of the parties, the mediation outcomes can be diverse. Mediation is a common approach used to achieve restorative justice (which has as an ideal goal the reconciliation between the victim and perpetrator is a desirable and attainable goal) the way in which it is conducted affects its effectiveness in achieving this goal (Beer and Stieff, 1997 in Estrada-Hollenbeck, 2001: 81). Thus, mediators intervene using the strategies of mediation, which can be affected by the context and process of the conflict. Mediators are guided by the principles of restorative justice and they aim at the reconciliation of parties as an outcome. The literature show that mediators have a lot of control over whether the basis for reconciliation (which is often considered a direct goal and in accordance with

the restorative justice principles) is set, since they can affect how much mutual trust is build between the disputing parties during the conflict resolution process (Estrada-Hollenbeck, 2001: 81). Mediators with their behaviors (strategies and techniques), as part of the process, are capable to facilitate reaching the goal of restoring justice, reconciling parties and attaining a peaceful solution.

CHAPTER 3

HISTORICAL, CULTURAL AND SOCIAL OVERVIEW

BACKGROUND OF THE LEGITIMACY OF THE CUSTOMARY

MEDIATORS IN ALBANIA

Albania represents quite a particular case for the study of self-governing (or self-justice) practices, which exist parallel to the state authority. Self-government is accepted to be especially applied in the northern part of Albania, although the phenomenon is present throughout the whole country at various degrees (Mile, 2007:5). These practices are centuries-old and usually are based on the customary laws or the Kanun[9] of Albanians (Mile, 2007:5) which to some extend are applied still in nowadays Albania to solve conflicts in the community. Blood feud (*gjakmarrja*) and/or revenge murders (*hakmarrja*)[10] are the most obvious and infamous among them (Mile, 2007: 5).

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[9] The Kanun of Albanians is expressed in its three main variants of old codes: Kanuni i Lek Dukagjinit (The Code of Leke Dukagjini), Kanuni i Skenderbeut (The Code of Skenderbeu) and Kanuni Papa Zhulit or Kanuni i i Laberise (The Code of Papa Zhuli) (Hata, 2006: 45). In this study we will referring mostly to the Kanun of Lek Dukagjini and in short I will be referring to it as *the Kanun*, the common term for customary law in Albania.

3.1 The Customary Law (Kanun) and its Main Concepts

The customary law, the traditional code or as it is referred in Albanian the 'Kanun' of Albanians has been expressed in its main variants: Kanuni i Lek Dukagjinit (The Code of Lekë Dukagjini[11]), Kanuni i Skenderbeut (The Code of Skenderbe) and Kanuni i Papa Zhulit or Kanuni i Labërisë (The Code of Papa Zhuli) (Hata, 2006: 45). Among them the Code of Leke Dukagjini, which is applied in most of Northern Albania, has been most influential and has attracted the attention of most of the researchers.

The Kanun of Lek Dukagjini is one of the most studied Albanian traditional codes, mostly because it was applied in a wide geographical area such as in the mountains of Lezhë, in Dukagjin, in Shkodër, in Gjakovë, in Kosova/o, and even among the Albanian population in parts of Serbia, Montenegro and FYROM (Macedonia) (Fox, 1989: Introduction, xvii). The Kanun is composed of decrees which regulate all aspects of life, including such aspects as the arrangements of marriages, the boundaries of fields and the payment of taxes (Vicker and Pettifer, 1997: 132). The Code of Lek Dukagjini in a broader sense can be defined as a set of norms and rules of social activities, based on specific moral concepts such as honor, loyalty, trust,

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[10]Blood feud is different from revenge. Elezi (2000) attempts to distinguish between blood feud (gjakmarrja) and revenge (hakmarrja), believing that this distinction is fundamental to handling properly the phenomenon of blood feud. According to him, a blood murder is committed in order to take the blood of a previous murder against murder attempts and attempts to cause serious or light injury. On the other hand revenge murder is committed as a retaliation for having been subjected to beating, quarrel, insult, violence and previous offences. (Mile, 2007: 20)

[11] The Code of Lek Dukagjini was collected and arranged by Shtjeven Gjecov, a Franciscan priest, published in 1933 and was translated in English and published by Leonard Fox in 1989.

belief, assurance for safety and truce, encompassed in the Albanian society (Mile, 2007: 55). Thus, the code is a mixture of legal norms and social norms, sanctions and social sanctions. One can find in the Code of Leke Dukagjini norms regarding family life, marriage, property, the concept of *besa*[12], wedding, work, church, murder etc, as well as sanctions such as death penalty, blood feud, expulsion, fines, burning of the house, *sodumja* (destruction of the plants, meadows, gardens etc. through burning or weeding out) to *leçitja* (ending of the social relations with the punished person) and *faqja e zeze* ('black cheek' – dishonor and bad imagine in the community) (Mile, 2007: 55). The Kanun had a highly complex legal code which was arbitrated by a Council of Elders (Vickers and Pettifer, 1997: 132). It was transmitted orally from one generation to the next and written down only in the nineteenth century (Vicker and Pettifer, 1997: 132).

The Code is a complete description of highlanders' life and customs. It contains, either directly or indirectly, references to *honor* in all of its articles. There is a whole chapter on personal honor. There is no definition of what honor is in the Kanun but there is an article which explains when a man is dishonored:

> "A man is dishonored:
> a) If someone calls him a liar in front of a group of men;
> b) If someone spits at him, threatens him, pushes him, or strikes him;
> c) If someone reneges on his promise of mediation or on his pledged word;
> d) If his wife is insulted or if she runs off with someone;
> e) If someone takes the weapon he carries on his shoulder or on his belt;

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[12] 'Truce' according to the Kanun of Lek it is 'a period of freedom and security which the family of the victim gives to the ofender and his family temporarily suspending pursuit of vengeance in the blood feud until the end of the specific term' (Fox, 1989: pg 166)

f) If someone violates his hospitality, insulting his friend or his worker;
g) If someone does not repay a dept or obligation;"

(Fox, 1989: 130-132)

Because morality of the Albanian highlander was based on honor, the concepts of *besa* (truce), *beja* (oath), or *miku* (the guest) etc, which are mentioned in the Kanun, although highly important were not fundamental; "these were only possible through the coupling of the medium of language with the medium of honor" (Mile, 2007: 55). For instance, *besa* as being more than a promise, plays an important role in the highlanders' society, since it implies that everyone giving his *besa* to another had thereby committed himself in public; if a person abided by the *besa* all would consider him a honorable man but if he did not, then he would lose his honor and be respected no more. It important to explain that, *besa* emerged as an 'institution' because the culture of the highlanders was not based on writing but mostly on spoken language (Mile, 2007: 52).

3.2 Blood feuds, Third Party Interventions and Reconciliation in the Customary Law

The Albanian Kanun, as we mentioned above, has its own prescription for conflict resolution. As a form of 'self-justice' the blood feud has been an important part of the customary law. Blood feud represents a kind of coercive institution that guarantees compliance with and maintains social order. Blood feud is seen as a sanction for all legal and moral facts (i.e. custom) (Mile, 2007: 20). The anthropologist Antonia Young states that:

> "bloodfeuds and their resolution have long existed, particularly in stateless societies, where tribal concepts of political organization persist, for the defence of family, clan or tribe, both as group and as individual feuds. In most such societies, alongside the practice of bloodfeuds, are mechanisms for

reconciliation by various ritual means of the exchange of assets, such as valuables, food, tools, cloth, money or women in marriage. Tribal societies, which use blood feuds and their resolution, have been observed in many areas of the world, although there are variations in their detailed rituals performed. In the usually rural context, there are many mediation options in the traditional culture including family mediation, clan resolution processes and mediations by religious leaders or other third parties."

<div align="right">(2006: 3)</div>

Such is the case also of the Northern Albanian Code where the role of the state as an arbiter is unwelcome by such a community (Mile, 2007: 46). In the code there are specific articles on against whom, when and how to seek vengeance for a wrongdoing in the community. The Kanun attempted to regulate the *hakmarrje* (revenge) or *gjakmarrje* (blood feud), a system of revenge killing widespread in Albania at the time, in the fifteenth century (Vickers and Pettifer, 1997: 132). According to the Kanun of Lek Dukagjini, everyone had to be treated equally in order for it to be fair and acceptable to the people. For instance, if in one case 'insult' was not sanctioned with 'blood feud' and in another case it was, this would create confusion and problems for the legal system based on the code (Mile, 2007: 22).

The only means that the highlanders had for controlling blood feuds was reconciliation (*pajtimi)*, as foreseen in the Code of Lek Dukagjini and the Code of Skanderbeg, etc. The code has certain provisions for reconciliation:

"Reconciliation of blood is accomplished in two ways:
a) Through intercession by friends of the family of the victim and by the parish priest;
b) Through a general amnesty declared by the Chiefs House of Gjomarkaj, and the man of the Baner (bajraktar). In this case the House of Gjomarkaj receives 500 grosh for each murder." [13]

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[13] This second prescription was applicable at the time when the Kanun emerged, thus nowadays it doesn't apply to the practice. Mile states that the only concrete sanction against the blood feud (itself a sanction) was the provision in the code of a big amount of money (*grosh*) and goods that the family of the ofender (*dorerasi)* had to give to the family of the victim and to

(Art. 969 in the Kanun of Lek Dukagjini, Fox, 1989: 138)

The Albanian Kanun has also its own prescription for mediation processes (*ndërmjetësim)*, mediator's role and mediator's honor, stated in articles 965-68 of the Kanun. "The one who endeavors to bring about reconciliation between the family of the victim and the family of the ofender is called a 'mediator of blood' (*shkues i gjakut* or *ndërmjetës)* (Art.965 in the Kanun of Lek Dukagjini, Fox, 1989: 182). In another article it says "the mediator[14], like the messenger, does not incur guilt and is not considered culpable" (Art. 667 in the Kanun of Lek Dukagjini, Fox, 1989: 138). In the Kanun it is specified that the mediator 'may be a man or a woman, a boy or a girl, or even a priest' (Art.669 in the Kanun of Lek Dukagjini, Fox, 1989: 138), however the role of the mediator has been usually taken on by the respected (male) elders of the tribes and villages (Young, 2006: 6). In the Albanian context a third party intervenes in most of the cases only after a killing or even more has taken place, that is why the mediators mediate aiming reconciliation. (Marku 2007: Gjoka 2007).

When families are in feud the mediators are used to ask for *besa*. *Besa*, or the truce, could be used to cover a certain period or purpose and during its duration the feud became dormant, or temporarily halted. The moment it expires, however the blood feud restarted (Vickers, 1999: 5-6, Vicker and Pettifer, 1997: 132). However in two cases – when the Guest was killed while in *besa* of the head of the household and when it concerned a raped woman, the code itself denies the parties the right to reconcile.

The code of Leke Dukagjini did not provide for an institution in charge of the argumentation if a murder for instance was simply a case of intentional

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the authorities (*bajraktari* and the council of Elders) for the spilled blood. Also the reconciliation process required money, thus raising considerably the financial cost of taking blood (2007: 31).

[14] In the Kanun it is referred to the mediator as '*ndërmjetësi',* the middle man.

or an unintentional event to cause injury and even loss of life (Mile, 2007: 22). However upon *oath* (*beja*) the persons involved in litigation did have the right to express their complaints (i.e. arguments) before/in front of the Council of Elders (*pleqnia*) (Mile, 2007: 22).

The code has certain provisions for reconciliation, which were also supported by the popular saying (also reflected in the Kanun) that 'to forgive the blood is bravery' (Mile, 2006: 41). To tie this discussion on revenge, bloodfeud and honor Mile evaluated that the Albanian society is ambivalent with regards to honor of forgiveness: it simultaneously neglects and pays attention to it. Since it means to be marginalized and disdained by the society to the point of being ashamed from oneself, one usually chooses to involve in blood feud in order to show honor. He argues that, it is not a single individual that induces one (or a family) to revenge an offence or a killing and consequently confine oneself, rather it is the whole community with the values and norms it. On one hand although to forgive the blood has been considered bravery and honorable, but on the other to 'take the blood' or revenge was also considered bravery (2007: 24).

In the Kanun there are some religious elements as well, which refer mostly to Christianity since the population of the northern mountainous areas, where the Kanun was applied remained Christian. This population did not turn to Islam as it happened to the majority of the Albanians, partly because they lived in remote mountainous areas, and almost autonomous from the Ottoman rule. There is a whole chapter in the Kanun on church and its properties, the parish priest and its duties, as well as on the servants and workers of the church (The Code of Lek Dukagjini, Fox, 1989:1-8).

However most importantly some concepts related to mediation and reconciliation are related to religion in the Kanun. For instance, the priest can also be a mediator. "The priest, in order to avoid difficulties, mediates not on

his own name but in the name of the parish or the name of the Banner.[15]"
(Art.675 in The Code of Lek Dukagjini, Fox, 1989:138) *Beja* (oath) is as well
an important concept which according to the Kanun of Lek Dukagjini, 'it is a
religious utterance by means of which a man, wishing to exculpate himself
from a shameful accusation must touch with his hand a token of faith while
calling upon the mane of God in testimony of the truth' (Fox, 1989: 120).
Another religious element is found in the the reconciliation ceremony which
involves the making of the cross on the door of the offender's family by a
member of the victim's family.

> "It is a law that when blood money has been payed and the
> meal has been eaten, attended by the guarantors of the
> blood and the guarantors of blood money, the owner of the
> blood makes a cross on the door of the ofender's house".
> (Art.983 in The Code of Lek Dukagjini, Fox, 1989:184)

Thus the religious aspect, reflected in the Kanun, has been important in the
Albanian society as well as in mediation and reconciliation.

3.3 Historical Overview on Albania's Social and Political state in connection with the Customary Law (The Kanun) and the Customary/Traditional Mediators

Different historical periods and political regimes have shaped the
character of Albanians today as well as their traditions related to family,
community, conflicts, regulations and justice. In this section a historical
overview of the survival of the traditional code (the Kanun), till nowadays,
will be provided.

Albania's past has been shaped by the Ottoman domination of the
territory from the fifteenth century until the beginning of the twentieth
century. During Ottoman times, Albanian clans/tribes in the more inaccessible

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[15] Banner is the English version of *Bajrak*, a specific area the ruler of which
was called *Bajraktar*.

mountainous regions remained somehow free of Ottoman control and the population there kept their own self administration by paying to the Albanian lords fixed tributes (*bajraktarë*[16]) to live by the laws of their own traditional code (Vickers and Pettifer, 1997: 132). In the fifteenth century, blood feud or revenge was considered an adequate tool restoring justice in the communities while there was no Albanian State (Mile, 2007: 24). The endemic feuds were widespread as families/tribes/kins were using the revenge (*hakmarrje*) to regain their honor in the community in cases of conflicts. However, serious social and economic hardships were caused not only by the death of many young men, but also so many others had to go into hiding (male family members and relatives of the offender), sometimes for several years in order to escape a revenge[17] killing (*gjakmarrje*) from the family of the victim (Vicker and Pettifer, 1997: 132). Lek Dukagjini[18], in the fifteenth century could not prevent, but did stipulate some rules (the ones that now are referred to as the laws of the Kanun of Lek Dukagjini) in an attempt to control and discourage feuds. The Kanun of Lek Dukagjini for instance, decreed that if a man was seriously insulted, his family had the right then to murder the offender but in undertaking this, the family would be then expect to face a revenge murder by the victim's family. The original victim's nearest male

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[16] *Bajraktarët* were military leaders of their clan/tribe and were appointed by the Ottomans to this office, not by their compatriots. *Bajraktarët* held civil and administrative powers. It was their duty to recruit troops for any battle that the Ottomans intended to fight. In peace time bajraktar*ët* exercised civil duties, such as collecting taxes.

[17] Women, however, were held in such low esteem that they were exempt from all feuds, as was the potential victim caught while in the company of a woman. Children of both sexes were also immune from the hakmarrje. (Vicker and Pettifer, 1997: 132)

[18] He was an Albanian prince of the 15th century, to whom the Kanun is attributed. Though the unwritten law of the Albanians has been in place long before the fifteenth century, when Lek Dukagjini, a contemporary of Skanderbeg, collected and codified the mores and folkways of Northern Albanians, we now recognize them as the "the Code of Lek Dukagjini" by Shtjefen Gjeçovi (Mile, 2007: pg).

relative was then obliged to assassinate his relative's ofender. (Vicker and Pettifer, 1997: 132)

This situation continued until Albania was under King Zog[19] (1928-1939). Under the Ottomans, neither the higher strata of the Elders and *bajraktarë* (considered as the high social strata of the highlands) nor the Ottoman rulers were interested in controlling and ending or eradicating of blood feud as a phenomenon. Mile, explains this fact with the rational that the *bajraktarë* benefited financially from it in the form of fines, while the latter, the Ottoman authorities, because through *bajraktarëve,* had found a less costly way to govern the highlands without having to govern them (2007: 8). Nevertheless, King Zog made serious efforts to control the blood feud phenomenon. He managed to considerably reduce the number of blood feud murders through the strategy of weakening the highlanders' institutions, especially that of bajraktar*ëve* (Mile, 2007: 35). However, these attempts to weaken the customary law were considered as external attempts (i.e. external to the legal system of highlanders), thus these attempts achieved only minimal results (Mile, 2007: 36). Thus until 1944, the beginning of Communism, the Kanun was essential in the life of the Northern Albania society.

In 1945, at the end of the Second World War, the country from a monarchy became a republic. The political power went to the communists, led by Enver Hoxha and they held it until the beginning of 1990s. Communists continued to use the Criminal Code of 1928 adopted by King Zog. In this code a revenge murder (blood feud was considered one form of revenge) was labeled a 'qualified murder', thus deserving severe punishment (Mile, 2007: 36). The Communist regime was a dictatorship practically and it did even better than King Zog in terms of diminishing the power the Kanun had on the population. In the 1960s they managed to stop the application of the Kanun, as

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[19]Albania had proclaimed indepencence from the Ottoman Empire 1912.
(Vicker and Pettifer, 1997: 132)

well as the phenomenon of blood feud and revenge murder. Besides educational, organizational and judicial measures, the communist regime applied severe punishment of dissent, such as very long prison sentences, deportation and death penalty (Mile, 2007: 36-39). This situation lasted until the beginning of the 1990s when the regime was overthrown.

3.3.1 Customary Law and Mediation in Post Communist and Present – Day Albania

After the end of the communist regime in Albania in 1992 and the following several years of social and political disorder the state lost control in many parts of the country (Voell, 2003). During these years of political unrest, economic collapse, mass emigration, general strikes and most importantly as a result of the lack of or almost non-existent state structures, there was the revival of customary laws, in particular "The Code of Lek Dukagjini" (in Albanian *Kanuni i Lek Dukagjinit*), in the rural mountainous areas of Northern Albania (Voell, 2004). Even though it was assumed that the communist regime had eradicated the practice of the old Kanuns (especially in reference to blood feud phenomenon), from 16 years now, the Customary Law and the Albanian Constitution have been coexisting.

With the collapse of Communism, years of contained revenge-killings have erupted. The Communist regime maintained to have wiped the feuds out, but in reality it had only been suppressed. The re-emergence of revenge murder and blood feud became and remained a festering wound especially in northern Albanian society (Vickers and Pettifer, 1997: 132). In the north where land was scarce and the economy was weak, the peasants were re-establishing revenge (*hakmarrje*) to end the many unsettled disputes since before the Second World War or the ones that had arisen over the redistribution of the land in the wake of land privatization. In the first half of the 1992 there were nineteen blood-feud murders around the city of Shkoder

(main city in the Northern Albania). The new democratic country, after 1990: saw blood feud and revenge murders re-starting out of all traditional causes, but now also property related causes became especially prominent. (Vicker and Pettifer, 1997: 4)

It is argued that the distribution of the land (which once was communal or cooperative land) was made differently in the northern highlands in comparison to other areas of the country, where land distribution per soul/person was the case. This situation caused many conflicts on the right to land ownership (Mile, 2007: 41). Distribution of land in the Northern Highlands of Albania and the speculations with the instructions of the Law created other premises for conflict. This act of defiance towards the rules of the state created the premise for the restitution of the Code. 'The restitution of the Code necessitated the reestablishment of the pre-communist Council of Elders (pleqni/pleqesia) and the Headman (kryeplak) and the Code's rules were in theory at least followed exactly; each clan in a village elected a representative to sit on the council, and those in turn chose the headman of the village among them, regardless of the political affiliations. Some villages for example chose a descendant of a former *bajraktar* or similarly a prosecuted family[20] descendant to be headman. (Mile, 2007: 40)

By mid-1993 the Albanian government had become conscious of the highly negative effect on international public opinion of such blood feud killing (stemming from various reasons such as property issues) added to the riots and other political and social unrest of the time. Considerable resources were therefore channeled into improvements in policing (Vickers and Pettifer, 1997: 132). The control of blood feud during this period was centered on prevention and reconciliation (Mile, 2007: 41). Blood feud was considered as

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[20] Political prosecuted families during communism, gained a lot of importance in the post-communist period. This is due to the fact that some of them were Bajraktar's descendents, so they gained their prestige back; some of them were political.

a tool restoring justice while there was no Albanian State; but today it is a problematic extra-legal practice that negatively affects the socio-economic life of those involved in it (Mile, 2007: 7). Very often the government (the state) and justice institutions are accused of not being present enough in regulating the life of the people in Albania. In this way they are accused of stimulating the revival of the Kanun life in the rural areas (Hata, 2006: 45). Mile maintains that the state has shown itself unable to punish those guilty for murder due to conflicts on issues such as land, water, honor, jealousy and therefore these murders bring about feuds (2007: 42). The link between weak state and extra-legal practices (blood feuds and revenge killings in this case) is seen more noticeably when talking about the events of 1997[21] that reduced the Albanian state institutions to ruins. In 1997: the number of murders in general and blood feud murders in particular reached a peak. In Shkodra[22] district (includes the urban area of the city of Shkoder and the rural areas) for instance it is indicated that from 76 murders in general in 1997: 32 were for blood feud. With the strengthening of the state apparatus and increasing of security, both the number of blood feud murders and their ratio to the total number of all murders have been reduced significantly. In 2006: again referring to Shkodra district, the number of murders was nine and only two were committed for blood feud (Mile, 2007: 45).

3.3.2 Non-Governmental Organizations working in Conflict Resolution in Albania

Since 1992, the country has been struggling with a social, political and economic unrest and transition. This in a way caused the inability of the

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[21] In 1997: due to the breakdown of the pyramid schemes the country entered a phase of social-political instability. Civilians angry with the government attached and looted the army's arms depots. These events resulted with a large number of arms in the hands of the civilians (Vicker and Pettifer, 1997: 132).

[22] The main city of Northern Albania.

government to deal with conflicts between its citizens. And, still today solutions given by the court are not seen by the people as restorative justice but as a postponement of justice (Mile, 2007: pg). It is in this part that the civil society got involved in community mediation. The increasing numbers of feuds in the rural communities during the past fifteen years, which can be considered to be a transitional period for the country, required mediation; this has given the possibility to many individuals and groups to take on the role of mediator (Young, 2006: 6). Especially, blood feuds' persistence and development even more in the northern regions of the country, has given the possibility to a few non-governmental organizations to work on conflict resolution, mediation and reconciliation in Albania. (Young, 2006: 6). Two of the most active ones are: The National Mission for the Reconciliation of Bloodfeuds (*Misioni Mbare Kombetar per Pajtimin e Gjaqeve*), founded in 1995 and The Foundation for Conflict Resolution and Reconciliation of Disputes (*Fondacioni per Zgjidhjen e Konflikteve dhe Pajtimin e Mosmarrveshjeve*), which was founded also in 1995 (Young, 2006: 6). However there are other organizations which operate in the field of conflict mediation such as Committee of Nation Wide Reconciliation (*Komiteti I Pajtimit Mbarekombetar),* All-Nation Reconciliation Mission Mother Teresa (*Misioni i Pajtimit Mbarekombetar Nene Tereza*), Association of the Missionaries of Peace (Lidhja e Missionareve te Paqes), Besa Association (*Shoqata Besa*) (Voell, 2003: 4).

Nowadays mediation (including mediation in penal cases) is considered an extra-judiciary approach, which was made a legal practice with the passing of the following mediation laws: The first one Law no.8456 was passed in 1999 and then replaced with Law no. 9090 in 2003 on 'Mediation in Dispute Resolution'. Mediation is mostly practiced by these NGOs which are merging the Mediation law and the customary law in their practice (Elezi, 2006: 215). Voell (from the data collected through an interview with the head of one of these organizations) states that "the organization was founded not because they wanted to solve conflicts through the customary law" but,

because they saw the need for a more cultural appropriate approach and especially in cases of blood feud (or its prevention) (2003: 3). These organizations have as essential components of their teams of mediation and reconciliation elderly, experienced, respected men who work diligently to resolve feuds (Young, 2006: 6). The organizations purposely select important figures in the communities that may be able to fulfill the role of the mediator. Frequently, these people were already performing the role of the traditional mediator (Voell, 2003: 5).

These conflict mediation and reconciliation NGOs have done a lot of work not only in mediating conflicts but also in identifying types of conflicts, main issues of concern that bring people to feuds. During the period of transition two main groups of conflicts appeared. They were new conflicts and old ones. The former were the result of the new phenomena of transition, and the latter revived after long-aged pause of the totalitarian state rule. The main kind of conflict, which resisted the period of communist rule, was blood feud. The new conflicts inflicted during the period of transition have been various. According to a survey conducted by Peace and Justice Center[23] the most common ones are: property conflicts; conflicts inflicted when one fails to fulfill the obligations or when one damages the real or unreal estate; revenging and blood feud conflicts; conflicts between the individual or groups of individuals and the local or central state organs/authorities; conflicts inflicted in the job relations between the employer and the employee; conflicts in the family. These types of conflicts can lead to blood feuds as well. (Peace and Justice Center, 2001: 109).

This shows that a lot of research has been done on the eruption of conflicts, in particular blood feuds, revenge murders and issues concerning these types of conflicts. However, almost no research has been done specifically on the role of these mediators (acting in organized formal or

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[23] An NGO based in Shkoder, Albania, working to promote peace and reconciliation.

informal groups) play in community conflicts in the contemporary Albanian context. Thus the aim of this study is to focus on the role of the Albanian mediators play in reconciling families in feud or preventing a starting feud.

CHAPTER 4

METHODOLOGY

In this chapter research methods, approaches used to collect and analyze the data, as well as the grounds upon which choices are based will be presented. In this part some issues related to the research will be discussed, such as the scope of the research, methodology of case selection and data collection as well as methodology of case analysis.

4.1 Scope of the Research

This study is a qualitative and exploratory research. The empirical data are collected by conducting semi-structured interviews (with mediators in Northern Albania, in Shkoder, Malesia e Madhe, Lezhe, Mirdite, Lac-Kurbin) during the period September-October 2007.

My research question is*: What are the roles of the traditional mediators in Northern Albania, (what influences the choice of these roles) and what elements of reconciliation are found in the Albanian mediation?* This research seeks to conduct a systematic analysis of the roles (expressed in terms of strategies and techniques) adopted by the customary mediators to influence

the process and the outcome of the reconciliatory mediation and what contextual factors influences the choice of their strategies. This research aims to explore:

- The nature and source of the penal conflicts - which involve the criminal offence of murder - that are brought to the mediators
- The third party roles and the contextual characteristics of the penal conflicts
- The conflict resolution process of intervention performed by the traditional mediators and identifying the special techniques and strategies that are used by the mediators in Albania as well as the underlying assumptions of the choice of strategies and techniques, practices and actions that took place during the conflict resolution processes.
- What elements of reconciliation are found mostly in the conflict resolution processes in the Northern Albanian context?

A systematic and sequential description of the conflict resolution processes and mechanisms, as described by the mediators, is presented and the cases they intervened are categorized according to different variables which influence the choice of strategies: such as reason of the murders (or nature of conflict), who asked the intervention, the relationship and history between parties. The outcomes of these processes are aimed to be reconciliation, thus in this study also examines what elements of reconciliation are mostly stressed during the mediation process in order to reach the reconciliatory outcome.

4.2 Research Approach

In order to answer my research question, in the following sections I will talk about the research methods used in this study: methodology of data collection and frameworks for the analysis of the data.

4.2.1 Methodology of data collection

The data for this research were collected through semi-structured in depth-interviews with customary mediators who work on community mediation in Northern Albania. In this study I will examine mediation in cases of murders and/or blood feuds. Mediation between families in all cases of murder is very sensitive, and thus kept strictly private during the process. Thus subject of my study is a very sensitive one. Because of the privacy reasons and mostly the intense feelings of the parties involved in such cases I could not participate in any mediation session.

The interviewees were contacted through the NGO-s (Foundation "Conflict resolution and Reconciliation of Disputes" and "Committee of Nationwide Reconciliation") working in the field of community conflict resolution and reconciliation in Northern Albania[24] The contact with the heads of the NGO-s helped me in the identification and selection of mediators. I contacted the heads of these NGOs who were able to direct me to prominent and active mediators in Northern Albania, as well as to get me in touch with these individuals. My interviewees thus were not chosen randomly, they were considered by the heads of the NGO-s as the most experienced in mediation,

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[24] Because the practice of mediation based on the customary law (Kanun) is more wide spread in the north of the country I decided to focus in that area.

very active mediators in their areas, active members of these NGO, prestigious persons due to other personal reasons. The unit of analyses for the data collection process will be the mediation cases.

I conducted interviews with eleven mediators from a wide geographical area in northern Albania: Shkoder, Lezhe, Mirdite, Malesi e Madhe and Lac Kurbini. The twenty-seven cases the mediators narrated were from a wide geographical area and due to the internal migration of the population of the recent seventeen years in Albania, it is difficult to find villages or cities with a homogenous population in terms of geographical area origin. The mediators noted that they mediate cases from a wide variety of areas in Albania even though they are not from that area themselves. Most of the interviews took place in the houses of my informants. All of the interviews are tape recorded with the consent of the interviewees.

Understanding the meaning of their actions or behaviors and the reasons behind these actions or behaviors was as important as explaining the process. Specifically, I asked them to narrate cases where there was a murder or more, thus where they avoided initiation of blood feud or where they stopped an on-going one. Most of the murder cases that my interviewees described were caused by either a momentarily fight, previous fight, honor offences, car accidents, accidental shooting, business/financial disputes.

In order to learn about the practice of mediation in such cases, I obtained the data through semi-structured in depth-interviews and detailed case narrations. Prior to the interview I gave general information on the purpose of the study, and explained what kind of information related to their practice and experience I was looking for. During my semi-structured interviews, composed of open-ended questions and closed – ended questions (Neuman, 2006: 286), I asked the same questions to all of my interviewees, in

order to generate knowledge on the four sections of my interview[25]: A) Interviewee Background, B) Conflict Case Background, C) Role of the mediator in conflict resolution process and D) Outcome of the mediation. The interviews started with some general questions on the mediators' backgrounds (section A):

> How long have you been mediating?
> How did you get involved in mediation? How did you decide to become a mediator?
> Are you mediating alone or with a committee?
> What kind of conflicts did you mediate? (Differentiate)
> Who were the parties? Why did they come to you in stead of going to the court?
> Whom did the request come from? Who initiated the intervention?
> Why did they come particularly to you? (What sources or particular background do you have?) Have you ever been a party?

Then the mediators were asked to describe chronologically a case where they intervened (section B). Some of the main questions were:

> Describe sequentially a case where you mediated. Who were the parties involved?
> Whom did the request come from? Who initiated the intervention? What were the reasons for conflict? From how long was the conflict going on?
> Why did they come to you in stead of going to the court?
> Why did they come particularly to you? (What sources or particular background do you have?)

In the third part the interview aimed to explore the role of the mediator in conflict resolution process I ask questions like: Can you describe your role in this mediation? How did you get involved? Did you use any specific strategy to influence the process? How did you make contact with the parties? Did you use the same procedure and technique for the same cases? At last, in the last part relate to the outcome of the mediation I ask questions: What was the outcome? Did the parties reconcile? Why did / do not the parties agree? Did they sign any document? In this part I also try to generate knowledge on

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[25] See the interview protocol in Appendix B

indicators of the four elements and the sub-elements of reconciliation that are more emphasized in Albanian mediation process. Some of the questions were:

> Did you use any law or any resources to make parties reconcile? (The customary law)
> Did you use any specific norm or value to influence the parties to reach agreement such as Truth, Mercy, Justice, Peace?

4.2.2 Methodology of Case Analyses

Firstly, I looked at the process of mediation by focusing on what techniques and strategies the mediators use during the process of mediation. In order to analyze the techniques used by customary mediators in Northern Albania I used Wall and Callister (1997) framework of the Japanese community mediator whereas to examine the strategies of the mediator the framework by Bercovitch and Huston (2000) was used. In this framework the roles of the mediators are defined according to the strategies that they use: Communication - Facilitation strategies, Procedural strategies and Directive strategies. I regarded this framework as the most suitable for my case because it allows me to look at the influence that the context factors had on the choice of the strategies (Bercovitch, 1992).

The purpose of using both of these frameworks is that Wall and Callister's framework is more culture-sensitive and has more detailed techniques which is more useful to describe the process of mediation that takes place in the traditional Albanian setting. However, almost similar in its content of techniques, Bercovitch and Huston's (2000) framework divides the techniques in three strategic approaches: Communication - Facilitation strategies, Procedural strategies and Directive strategies, and this is mostly useful for our analysis, which is related to the factors affecting the choice of these approaches.

Lastly, I looked for elements of reconciliation in the processes of the mediation cases narrated by the mediators in order to discover what elements of reconciliation the customary mediators emphasized more during the process to reconcile families, thus what elements of reconciliation are found in the Albanian mediation context. In order to trace the elements of reconciliation, I used the Lederach's framework of reconciliation:

> *Truth* (Acknowledgement, Transparency, Revelation, and Clarity)
> *Mercy* (Acceptance, Forgiveness, Support, Compassion, and Healing)
> *Justice* (Equality, Right relationships, Making things right, Restitution)
> *Peace* (Harmony, Unity, Well-being, Security, Respect)

The literature offers many definitions of *reconciliation* depending on how the scholars see is as process, as an outcome, as a mechanism or other. I chose to use the above framework first of all because it sees reconciliation as a process and secondly because it encompasses many elements and sub-elements which other frameworks do not take in consideration.

There are two reasons for using of all the above frameworks (for the strategies and techniques as well as for the reconciliation elements) instead of doing a purely exploratory research. The first reason is that these frameworks serve as guidance for the author as to what can be considered or identified as strategies, techniques and elements of reconciliation. The second and main reason is that this study attempts to link the claims of the wide literature on mediation and what the reality of mediation practice is, in such a specific context as Northern Albania.

As a conclusion, it is necessary to recognize some shortcomings and limitations of the research methodology used. The first one is that traditional mediation in Albania, in cases of murders or blood feuds, is done mostly in groups and a shortcoming of this study is that the data are collected from the in depth-interviews with only one member of the mediators groups in the

specific cases that will be analyzed. Due to time constrains, because the mediation processes go on for years, and the impossibility to contact all the members of the group the data was collected by one mediator. However the mediators said that the group acts as one and we hope that this will not constitute a threat to the validity of the knowledge generated in this study since the data collected from the interview was very detailed.

The second shortcoming is that both of the frameworks that I used to analyze the techniques and strategies used by the mediators do not differentiate between techniques used for different parties, especially in cases where there is a victim and an offender such as in Victim-Offender Mediation, where the mediators in many cases apply different techniques and strategies to different parties. The third limitation is the fact that there are many definitions of reconciliation provided by many scholars, depending on different experiences with different cultures. Thus, this fact in a way can be considered as a limitation to finding other reconciliation elements or to directing the research towards certain elements specified in the framework that it is used in this research.

CHAPTER 5

DATA DESCRIPTION AND ANALYSIS

In this chapter the process of community mediation and third party approaches implemented by customary mediators in cases where there was one or more killings are analyzed. This chapter is composed of two parts. The first part is a descriptive presentation of the mediation process in Albania. Cluster presentation of the findings will be provided on the nature and characteristics of the conflicts, third parties, the conflict resolution methods and techniques used and results and outcomes achieved. In the second part, there will be an analysis of the data presented in the first part.

5.1 Description of the empirical data

5.1.1 The Mediation Process

In community mediation in Northern Albania, mediation stems from the necessity of the offender's or perpetrator's family to reconcile with the victim's family, to prevent revenge or more blood shed. Mediation also stems from the third parties' or mediators[26] will to be involved to prevent or stop a feud and to reconcile the families. The level of hatred and negative feelings is

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[26] The Albanian term for mediator is '*ndërmjetës*' which means 'middleman'

very high in cases of killings independent of the reasons and circumstances of the killing. Such cases necessitate more intense interventions and more active involvement of the third party than in other cases. In cases of killings, in Northern Albania, whether intentional, accidental or due to momentary fights the mediators usually do not intervene directly. One of the parties, usually the party who caused the death requests the intervention in order to avoid going to court, blood feuds, and cycle of victimization or revenge, requests the mediators to intervene. The third parties usually accept and act as customary mediators and reconciliators, taking a reconciliatory approach. This intervention happens often when the parties know who committed the crime or cause the death of a person.

The purpose of the intervention is to stop an ongoing feud or to avoid vengeance, to achieve forgiveness for the blood and reconciliation between the families, and in some cases to achieve restorative justice. One of my informants describes the steps after they receive a request as:

> "1 – we study the situation
> 2 – we get the group of mediators together
> 3 – we ask for the union of the tribe/kin in a collective meeting.
> 4 –we go and tell our opinions in the meeting with all the tribe/kin members."
> (P. T. Personal interview, Bajzë, Malësi e Madhe, September, 2007)

Mediation in Albania is typically done in groups. To influence the parties, mediators act individually but also as a group. "Sometimes we are leaders and initiators and sometimes we are participants and contributors to the mediation initiated by someone else" (N. L. Personal interview, Vau Dejës, Shkoder, September, 2007). One of the interviewee states, because it is a group decision to forgive the blood of family members, group mediation is needed. Another interviewee also explained the purpose and value of the group mediation in these cases:

> "Mediation with a group has more value than mediation as an individual, especially when the members of the group are selected people, because the family who has to forgive says 'oh well all the important people came to ask me to forgive the blood'. Also people can change their minds and when you are mediating as an individual that is risky. It is important to find the person that is more acceptable by the parties. The family feels more respected and honored when many important people come to ask for forgiveness. The family members can forgive easily and they feel more comfortable with themselves to forgive in this situation. Religious figures also are important to be included in the groups."

(A.I. M. Personal interview, Ura e Shtrenjt, Shkodër, September, 2007)

Using the same logic, another interviewee also stresses the importance of group mediation and the members that a mediation group should have in order to have positive results in their work:

> "Mediation is done in groups because "Trimi I mirë me shokë shumë" – The good and brave man has many collaborators. You cannot have good results if you are alone, even God has the disciples to help him (from a Christian point of view). In the resolution of conflicts I, personally collaborate with many structures, from the most reputable people in a neighborhood/village or the headman of the neighborhood/village, however the *bajraktar* is the one who has a great amount of importance and value since the past times. These are very influential people and this very fact has to be exploited because the mentality of the highlander is such that respects them a lot. So it is necessary to collaborate with people especially with the ones who are predisposed to positively help. The members of the group are considered equal to each other ('I barabartë mes të barabartëve') however somebody should be the organizer – we are all mediators, we all do the job and the result or decision has to be collegial."

(A. K. Personal interview, Shkodër, September, 2007)

However, there are some conflicts in which the mediators intervene alone, keep even the interventions secret for the rest of the community because some cases are close family matters (F. L. Personal interview, September, Bushat, Shkodër, 2007). "Sometimes I mediate alone, small things or when it is about honor, specifically women's honor, it is better to mediate alone because

certain things might have happened and that is better to keep them private and in the family". (N. L. Personal interview, Vau Dejës, Shkoder, September, 2007).

There are various parameters for the evaluation of mediation practices. In my analyses I will focus on the following mediation parameters: a) nature and types of murders that lead to mediation, b) the mediators' backgrounds c) mediator's roles: strategies and techniques used during the intervention processes. These three variables are closely interrelated to each other, for example nature of the dispute can determine the mediators' techniques and approaches.

5.1.2 Nature and type of conflicts

All of the cases in this study are penal cases, as they involve murders, specifically with one or more murder by one or both parties. Murders and accidents that cause death are very fragile cases for the mediators. Even though they all involve loss of human life, mediators still differentiate between cases based on the reasons and circumstances of the murder. During the interviews my informants referred to many cases, however information given was insufficient to be considered for this study; only in twenty seven cases there is sufficient and detailed information. In this section, a presentation of the empirical data on the nature and types of conflicts will be given.

The informants reported that the most common case that they are asked to intervene were murders that happened due to land ownership disputes. However during these last 16 years the country has passed through a transitional period there are various reasons of murders. I classified the cases according to the reasons for the conflict. In the twenty-seven (27) cases the

reasons behind the murders were momentary fights (MF), conflict from a longer time and previous fights (PF), car accidents (CA), accidental shooting (AS), honor offences (H) and business disputes between partners (B).

Figure 1: Reasons of the killings

	MF	PF	CA	AS	H	B
■ Total Nr. Of Cases 27	10	5	2	2	5	3
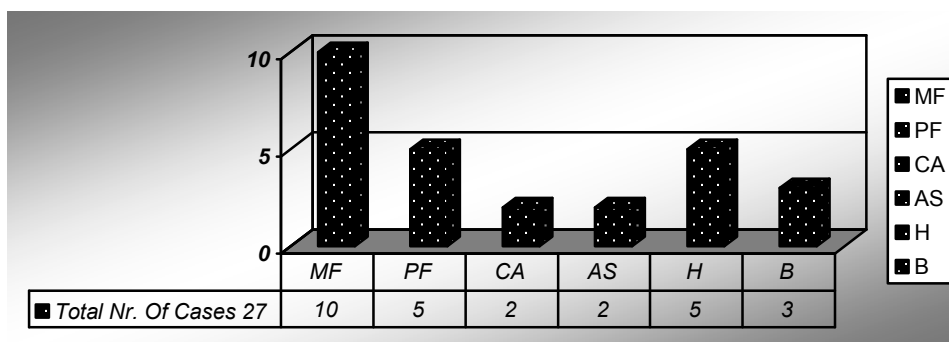
Momentary Fights (MF) – I consider as momentary fights cases such as: a quarrel in the market between a seller and a group of young boys during which the seller stabbed one of the boys; a fight preceded by a debate between a policeman and a villager, when the policeman shoots the villager; momentary fights and exchange of offences between friends in bars when they were drunk ends with one killing the other, for example one case happened between emigrants in England; or a momentary dispute between two Albanian emigrants in Greece over the price of labor; a momentary quarrel between a minivan driver and a young passenger, where the driver stabbed the passenger.

Previous Fights (PF) – I consider as previous fights to be cases such as: a long-time rivalry between two young boys in the village, where one ambushes the other in order to murder him; a quarrel in the streets between boys with cars after which one party ambushes the other; conflicts started between a previous owner and the new owner of land, where the former kills the latter because he would not sell the land back to him; or when two cousins have a fight and one of them motivates another third party to murder his cousin.

Car Accidents (CA) – There are two cases of car accidents that my informants told me both of which are very particular. In one the driver got out of the highway in a very high speed and killed three women and a little boy, all of whom were related with each other, and in the other case a minivan driver was suspected to have killed a woman however the victim's family was not completely sure.

Accidental Shootings (AS) – In this category I included two cases that were reported to me by my informants as accidental killings. In one case, a young man after being captured for being suspected to have stolen some cows in a village nearby tries to escape and the guard shoots him to prevent him from escaping but not with the intent to kill him. The other case is when in a theft, the thief killed the owner of the house thinking that he was armed.

Honor Offences (H) – In this category I included cases that were reported to me as offences to the honor of a person in a Northern Albanian context. Reasons vary; for example, after being beaten the victim ashamed and offended becomes the perpetrator together with the help of his father and brother by killing one of the adversaries; a young man thinking that his father was attacked and killed by a family which accused him of adultery with a woman from their own family, kills the son of his father's attackers; three brothers kill the ex-husband of their sister, because he treated her badly and divorced her (which was not acceptable to them); in a wedding party the uncle from part of the bride's father kills the uncle from part of the bride's mother, and then kills himself in order not to leave blood 'debts'. The latter in a very drunk state had offended the former, calling him names, and swearing to his family; two villagers fight and one feels he had been offended and beaten more, and thus dishonored decided to avenge by killing.

Business Disputes Between Partners (B) – I put under this category murder cases which were described by the mediators having been primary because of monetary or financial reasons. Two young men were business

partners as well as friends, however one killed and stole all the money from the other; again two friend and business partners, specifically in illegal business in Belgium, quarrel over the profit of their business and again with the degeneration of the fight one kills the other; two business partners fight over profits while drunk and end up by one killing the other.

The existence of harmed people on each side and the severity of conflict is another differentiating characteristic which makes the murder cases more complex. In twenty-one (21) out of twenty – seven of the cases there was one murder, thus one sided wrong-doing or OS in Figure 2. Included here is one case where there were four murders at the same time causing four different parties to be harmed caused by one party, again one sided wrong-doing. In four (4) cases out of the twenty-seven, there were murders on both parties (TS). In one of these four cases the feud had reached a certain stage, that after the initial murder was committed both parties had committed two other revenge murders. Lastly, in two (2) cases there was one murder and then perpetrators committed suicide[27] (OSS). The mediators act differently in each of the above cases. It is important to differentiate in the severity of conflict because the number of people killed makes the case more complex and more difficult to manage. It is never easy to deal with cases of killings however the mediators differentiate between cases. When there is only one killing, they have to convince or to work more with only one party, and thus it can be considered easier to handle. However in cases where there are killings on both parties, even though the mediators get a request from one of the, in some cases they still have to work with both parties at the same time, appease them and try to convince both parties not to continue the feud as was case no.5 (F.L. Personal interview, Bushat, Shkodër, September, 2007).

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[27] In case where the ofender commits suicide according to the Kanun the blood cannot be revenged. In the Kanun of Lek Dukagjini, Chap 133, Art. 958, it is written that "If someone kills himself, his blood remains unavenged"(*Kush vret vedin shkon gjak-hupës*). In these cases the mediators mostly intervene to reconcile the families because there is no need to ask for forgiveness of blood.

Figure 2: Severity of conflict
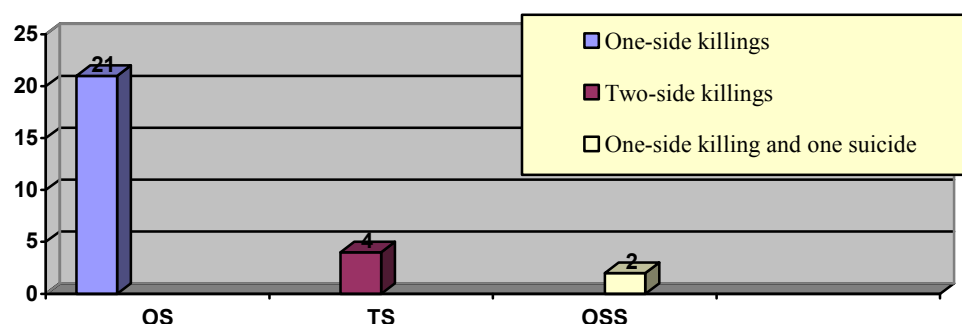
Another analysis can be done based on where the request for intervention originates. Usually the request comes from the family of the party who had done the murder in order to ask for forgiveness and reconciliation with the victim's party in order to avoid revenge. The party or family that requires forgiveness almost all of the cases is isolated, confined within their houses[28], and thus they send someone else like a woman a distant relative or a close friend to request the intervention of mediators (N. L. Personal interview, Vau Dejës, Shkodër, September, 2007). If there is just one murder, they require forgiveness of the blood for the offender and reconciliation between the families, tribes or kins. If there are murders by both parties the request comes from the family who revenged, who killed last, in order to ask for reconciliation since they feel that they are even after having taken revenge. The victim's family rarely comes to ask for mediators' intervention, but sometimes it happens because they might have received death threats by the perpetrator's family (F. L. Personal interview, September, 2008).

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[28] After a killing has happened, accidental or not, usually the killer's family/kin/tribe confined itself immediately in order to escape revenge.

Figure 3: Requests for intervention
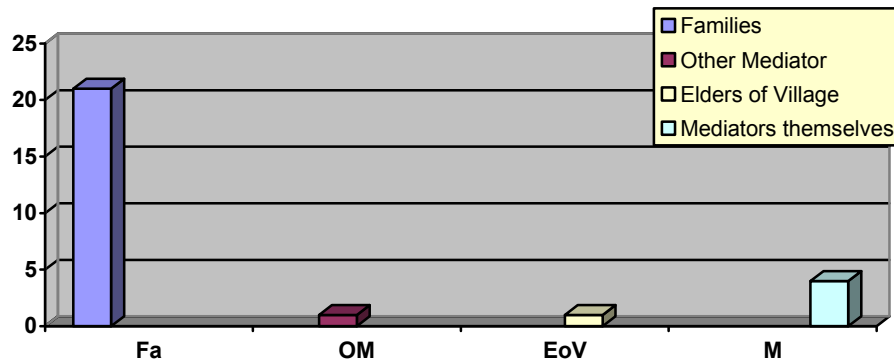
In four (4) cases however, the mediators do not wait for a request, formal or informal, from any party but initiated the intervention (M in Figure 3) because they had either blood relations or a close friendship with the party who was confined. In twenty-one (21) cases the request came directly from the confined party or family, such as father and brothers, relatives from part of the fathers' family line of the offenders, through close relatives not included in the feud or through friends of the family of the offender. In one (1) case, the request to intervene in that specific case was made by another third party who could not achieve positive results and in one (1) other case the request came from the elders of the village of the tribe who had committed the last murder, since it was an ongoing feud with another neighboring village.

5.1.3 Nature of the parties

The nature of the parties in terms of a) the relationship between the parties and b) the number of parties in conflict is another data analysis which might provide useful insights.

Figure 4: Relationship between parties
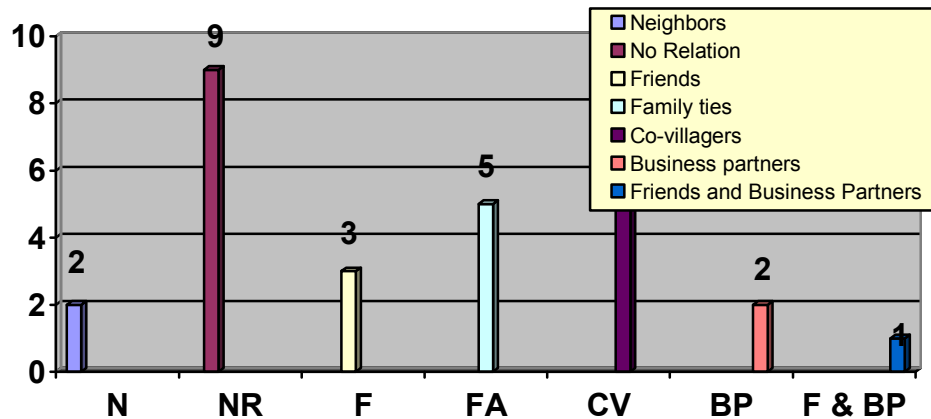
As can be observed by Figure 4 the relations between the parties as well as the histories between them varied. In two (2) cases the parties were neighbors (N). One of these cases was accidental shooting and one case of previous fight. In nine (9) cases the parties did not have a relationship, among which there are two cases of a previous fight in the street among young boys from different villages, one case of accidental shooting, four case of momentarily fights, and two cases of car accidents. In three (3) cases the parties were friends. They all ended up harming each-other due to momentary fights. In five (5) cases the parties had family ties; they were relatives or in-laws. Among these cases one case was due to a previous fight, two cases of honor, and two of momentarily fights. In five cases the parties were co-villagers two killings happened due to momentary fights and three happened due to previous fights. In two cases the victim and the offender were business partners; in one of them the killing happened after a momentary fight in a drunk situation and in the other due to business issues); and in one case the victim and the offender were friends and business partners and they fought over business issues.

The number of parties in the conflict is another characteristic of the cases narrated by my informants. Out of the twenty-seven (27) cases, in twenty-five (25) of the cases that were reported, the conflict was between two parties, thus the mediators mediated between two families; in two (2) cases of

offenders killing two people at the same time, mediation was between the two victims' families and the offender's family; in one (1) particular case the mediation was between four families of car accident victims and the family of the driver.

Figure 5: Number of parties in conflict
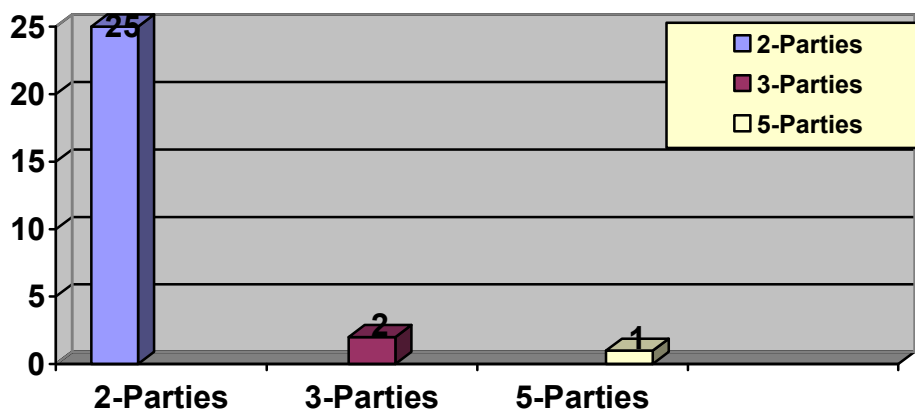
Out of the twenty-seven cases my informants reported to me that in five cases the murders happened abroad, however the murders served as catalyzing factors to start a feud between the families in Albania.

Figure 6: Venue of the murder
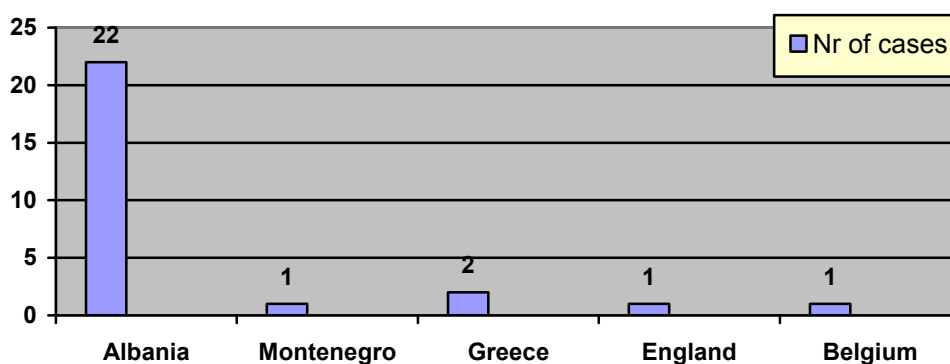
5.1.4   The Mediators

My data are based on the interviews with eleven mediators (*ndermjetësa*). The mediators' legitimacy and social prestige derive not only

from the Kanun of Lek Dukagjini or Kanun of Skenderbej, but also from their background, family origin, their long experience and the reputation they gained in the community. Ten (10) of my informants' origin is from the rural areas and only one (1) of them is originally from an urban area. Six (6) of my informants live in rural areas, whereas five (5) of them live in urban areas.

Figure 7: Family origin and residence of the mediators
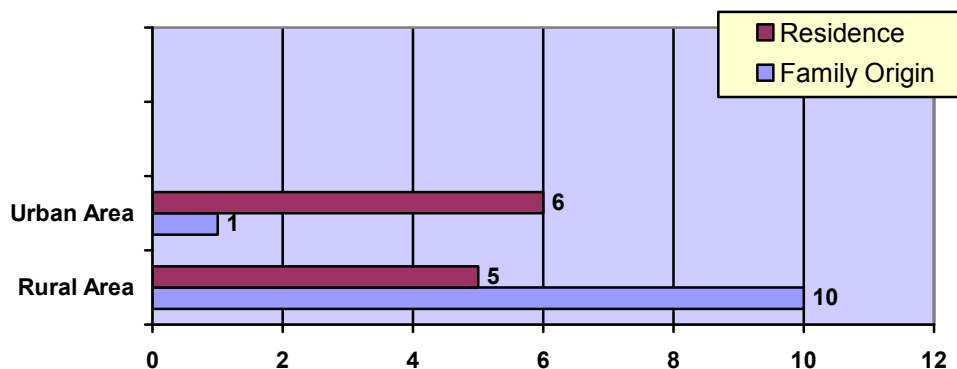
Figure 7 shows that the mediators originate mostly from rural area, however many of them migrated to the urban area during the beginning of the 1990s, as a result of transition from the communist regime.

My informants argued that people refer to them as mediators because of their background, current position or status as descendants of once leading families[29] in their area of origin. All of my informants reported having started practicing in 1991-1992: thus most of them have been mediating informally for 15-16 years. They explained that, after communism, and when the Albania was in a delicate transitional period, people approached them because of the following reasons: they are descendants of the bajraktar[30] family (BF); their

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[29] They refer as 'leading families' to the families whose members were either *'Bajraktar'* or members of *'pleqnia'*, elders of the village, in the past.

[30] They were principally military leaders that owed their office to the Ottomans. *Bajraktarët* held civil and administrative powers, however after the fall of Communism they acquired importance in the life of rural people in terms of managing their conflicts, especially property related. See Chapter 2 for more detailed information.

fathers and grandfathers were part of the council of elders (pleqnia/pleqesia) (CE); they themselves were teachers and well-known, respected and prestigious figures; they were also respected for their knowledge of the Kanun; they are descendants of ex-prosecuted families who were prosecuted for political issues (EP) (from the Communist regime), a fact that gave prestige to them in the post-communist period. Some are also descendants of ex-prosecuted families and descendants of the bajraktars' families (EP & BF) or descendants of an ex-prosecuted family and descendants of members of the council of elders (EP & CE). The informants had a number of different backgrounds comprising of all these categories. Four (4) of my informants are descendants (sons or great sons) of the bayraktars' families, thus they were involved in mediation because of their family background. One of them is also from a family prosecuted during the communist regime. Three (3) come from a family whose fathers or grandfathers were always part of the elderly groups of villages. One (1) mediator came from a family who was persecuted during communism. One (1) was both from a prosecuted family and also whose grandfather was always part of the elderly groups of villages. My informants reported that due to these facts related to their backgrounds and prestige they play an important role in mediation in rural areas, where traditional community mediation is frequently used in disputes between families, tribes or kins.

Figure 8: Mediators' backgrounds

	BF	CE	T	EP	EP & BF	EP & CE
Nr of Mediators	3	3	2	1	1	1
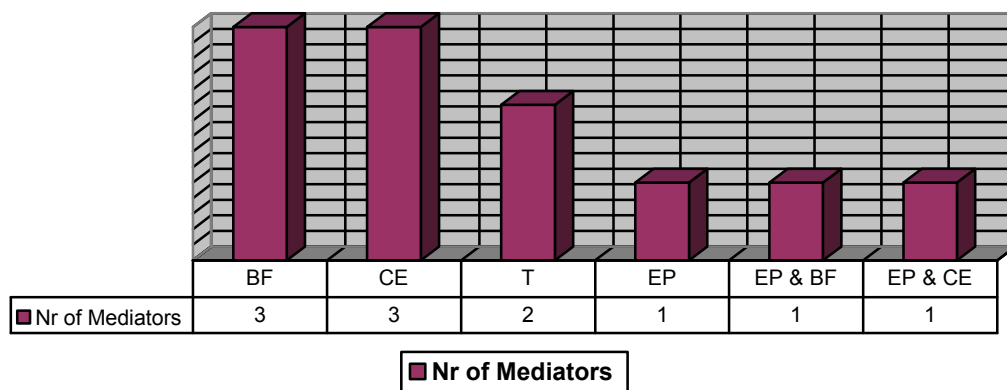
Nr of Mediators

The mediators come from both Muslim and Christian background: four (4) of them are from Muslim families and seven (7) of them are from Catholic families. However, they state that their religion does not affect their role as mediators because they mediate in Muslim and Christian families with the same principles. A Muslim mediator is respected in a Catholic family and vice versa, however they mediate in groups most of the time and the groups are always formed of mixed religions[31].

My informants say that people come to them personally and ask for their intervention because of the following reasons:

Table 3: Motivation for asking the assistance of the specific traditional mediator

REASON	MEDIATOR NR.
Hereditary traditions (leading family in the village or area) - the public opinion accepts me because of this tradition in my family.	1, 4,8, 10
I am accepted in every family in the area because I am perceived as trustworthy and honest / I have good personal reputation / I am reliable/ good reputation/ people have good opinion of me.	1, 6, 7, 10
I am neutral to all parties / I am impartial, I go only for the truth	1, 4
The fact that I do not accept to take money (financial rewards)- I do not work for money – no monetary interests	1, 4,6,10,11
They know I am a person that does the job/ People see us as capable, wise and skilled.	1, 4
I have a long experience on such issues / They call me specialist in these issues, and experienced, and dedicated/ I am well known as a mediator	4, 5, 7
I did not abuse in decision taking, and material or moral issues while intervening.	4

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[31] This is also due to the fact that Albania's population is mixed in terms of religion. According to Antonia Young (1997) in *Religion and Society in Present-Day Albania* approximately 71% Moslem to approximately 29% Christian, or to break it down further 55% Sunni Moslem to 16% Bektashi (of which about 5% are Shiite) and 19% Orthodox to 10% Catholic. For more information see http://www.ciaonet.org/wps/yoa01/

I knew the parties personally	5
I do the intervention only for God's sake and to keep peace in the community.	6, 10, 11
I always preach peace, collaboration and communication	7
People close to the parties knew I was dealing with these issues/mediation and thus suggested that I intervened	8

Almost all of the mediators reported that they intervene to reconcile the families. Mediators say that whoever has a problem goes to a person that has a good reputation among all and that one trusts (F. L. Bushat, Shkoder, Personal interview, September, 2007). "The parties contact the mediators because they are sure and confident that we will reconcile them, thus we will solve their problem". (F. L. Bushat, Shkoder, Personal interview, September, 2007)

Usually the offender or murder has been punished by the government, but the mediators are asked to stop or to prevent the possible blood feud between families. One of the mediators state that the government takes care of the perpetrator, however they do not take care of the security and safety of the family or kin members who might be targets of vengeance by the victims' family. My informants say that people refer to them or cases are referred to them by court laws, police or other institutions to resolve or settle conflicts and not to the appropriate governmental institutions such as the court because of the following reasons: disadvantages of courts, lack of trust in the governmental authorities and courts and the power the tradition or Kanun laws has on the people.

CATEGORY	REASON	MEDIATOR NR.	TOTAL
Disadvantages of Courts	'Our method of mediation and resolution of conflicts is more stable and complete that the way used by the state law.'	1	1, 2, 5, 10
	The court does not play any role in the relationship between the families	2	
	The court has a lot of tiredness, it tires the parties	5	
	The court has a lot of expenses	5	
	The court never leaves the parties in good relations	5	
	We go to reconcile the parties/families	10	
Lack of trust in the government/courts	We are perceived as trustworthy and honest/ People trust us that is why they chose us	4, 10	1, 4, 5, 7, 8, 10
	People come to me because there is the domination of the Kanun and not the state law – the strength of the Kanun	1, 10	
	People do not trust the courts / Lack of trust in the rule of law	5, 7, 8, 10	
Tradition/Kanun Power	The tradition is stronger than the state laws and that you cannot apply the laws without taking in consideration the tradition. 'Conflicts that generate from tradition should also be solved using the traditions of the country'	1, 5, 7, 8, 11	1, 2, 5, 7, 8, 9, 10, 11
	Because of this inherited customary idea not to go to courts	1	
	The court decisions cannot influence the relations between the parties and cannot prevent other blood revenges	2, 9, 10	

One informant explains that in cases of murders they mediate for reconciliation between families in conflict. The government and the court takes care of (or punishes) the offender but as mediators they try to reconcile the parties (i.e. the family of the victim with the family of the offender) so that the murders or killings do not continue. "The court has its own duty and we

have our own duty. The court doesn't solve the conflicts; it only gives a decision/punishment/sentence according to the proofs presented there. We do not call the offender's party criminal" (A.K. Personal Interview, Shkodër, September 2007). They go to ask for forgiveness for the family members of the offender, and for the murder not to be revenged. They justify this intervention with the aim that the parties reconcile after the 'forgiveness of the blood' is achieved. Forgiveness as well as reconciliation can be partial, since the victim's family forgives all the family members except the offender.

The mediators also point out another difference between their process and the court process. "If you try to solve a problem through court you do not have a good relation with anybody, if you solve it through reconciliation you can still be in good relations. In the court there is always a guilty person but, in reconciliation (or reconciliatory mediation) there is no guilty person" (P.K. Personal interview, Mirditë, September, 2007). My informants reported that in most of the cases during the mediation of a case where there was a murder they did not try to find or establish the guilty party but they just try to reconcile the families. This mediator also thinks that the one, who mentions the word 'guilty', looses the reconciliation of the parties.

Anther important factor pointed out by my informants is the parties' strong obedience to tradition. Twenty-five of the cases that my informants narrated happened in the rural area and to families whose origin is in the rural areas - some had moved recently to the urban areas - and thus they preferred and believed more in the traditional norms and laws in solving conflicts. Thus they required traditional mediation for these actions. The victims' families very often think that the state can do its own and they will do their own. Two mediators referred to an expression, which sounds too strong but shows the logic behind the traditional ways of conflict resolution, 'më vrave, do të vras/ të vrava' meaning 'if you kill me, I will kill you' – *an eye for an eye* principle (P.GJ. Personal interview, Lezhë, September, 2007 and K.B. Personal interview, Shkodër, September, 2007)

5.1.5 Techniques and Strategies Used

As shown in the previous chapter of the literature review, characteristics of the mediation process as well as mediators' expected behaviors, which are part of this process, differ depending on the circumstances and contextual factors of the conflict cases. They play different roles, and use different strategies to accommodate the parties, deal with the issues, and take into consideration the cultural setting and other contextual components. In this section the strategies and techniques used by the Albanian mediators in different cases will be presented.

5.1.5.1 Mediators' Techniques

In close relation with these third party roles and approaches in the following section I will explore the mediation techniques and processes, and features of community mediation in Albania.

One informant describes some important elements of an intervention: 1- to open dialogue 2- to know the circumstances 3- to create the confidentiality needed with the parties 4- to know to whom to address, that person has to have a personality closer to reconciliation than to violence 5 – to prepare the parties psychologically to forgive and not just ask for forgiveness. (P.K. Personal interview, Mirdite, September, 2007)

Callister and Wall's (1997) table of the mediator's techniques is being used in this analysis to show what techniques are frequently used during the traditional mediation in the Albanian context. In coding my cases I used the

same technique used by Kose (2002). I regarded this as the most appropriate method because it provides a comprehensive description of the process of mediation. My coding is not a sequential one, because during the in-depth interviews it was impossible for my interviewees to trace the strategies sequentially since the interventions in many cases went on even for more than 6 months.

Table 5: Group Mediation Techniques[32] used by Customary Mediators in Northern Albania.
(Adapted from Callister and Wall, 1997)

Techniques/Case Nr.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
1. Meet separately with disputants	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
2. Listen to other's point of view	*			*	*				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
3. Educate	*	*		*	*		*	*	*		*		*	*	*			*			*	*	*		*	*	
4. Get apology	*				*	*	*		*		*						*								*		
5. Put disputants together			*																								
6. Gather information	*	*	*	*	*		*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
7. Argue for concessions	*	*		*	*	*	*		*	*	*	*	*	*	*		*	*	*	*	*	*	*	*	*	*	*
8. Get grasp of situation	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
9. Provide objective data																	*										
10. State other's point of view	*	*		*			*		*				*	*			*	*	*	*	*	*	*	*	*		
11. Criticize					*								*			*											
12. Call for empathy	*	*	*						*					*		*				*	*	*	*	*	*		
13. Meet together with disputants																											

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[32] Please refer to Appendix 1 for detailed explanations of all the mediation techniques listed in the table.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
14. Mediator assists	*		*	*	*								*	*		*											*
15. Gather information from third parties			*		*		*	*	*	*		*	*	*		*	*	*	*	*	*	*	*	*			*
16. Cite dependency	*	*					*					*				*		*	*	*	*	*			*	*	*
17. Structure	*		*				*									*										*	*
18. Have drink with disputants	*	*	*			*	*		*			*	*	*		*		*	*	*	*	*	*		*	*	*
19. Formalization																											
20. Provide logical explanation	*	*		*	*		*	*	*	*	*	*			*	*	*		*	*	*			*			
21. Drink; capstone	*							*	*			*				*				*					*	*	
22. Wave third party assist	*		*	*			*					*				*		*	*	*	*		*	*			
23. Analyze the disputants	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
24. Call for break																											
25. Threaten	*					*																					
26. Example	*	*		*		*	*		*			*				*			*				*			*	
27. Praise disputants		*	*			*	*											*		*		*	*	*			
28. Cite moral principle	*		*	*	*	*	*	*	*	*		*				*		*		*	*	*	*			*	*
29. Reconcile	*	*	*				*		*			*				*	*	*							*	*	*
30. Relax	*		*	*	*		*	*			*	*				*			*	*				*			
31. Have third party educate	*	*	*						*			*				*		*		*	*	*	*				*
32. Note cost to third party				*	*		*	*				*								*						*	
33. Obtain	*		*		*		*	*	*			*	*	*		*	*	*	*	*	*	*			*	*	*

forgiveness																										
34. Meet with third parties present	*	*	*			*		*			*	*	*			*	*	*	*		*	*	*	*		*
35. Quote law or rule	*	*	*	*	*	*		*	*					*		*	*			*	*	*		*	*	*
36. Written agreement		*				*					*		*		*	*	*			*			*	*	*	
37. Being vague								*	*		*	*	*			*			*	*		*	*	*		*
38. Have third party criticize																					*	*	*	*	*	
39. Separates disputants																										
1a.*Besa (truce)*	*	*			*	*					*		*	*	*				*			*	*	*		
2a.*Beja (oath)*	*														*									*		
3a.*Blood money-retribution*	*			*																				*		
4a.*Relationship with the parties*	*	*	*									*		*	*	*			*	*		*		*		*
5a. *Expression of optimism*	*		*																							
6a. *Reference to God*	*		*				*	*	*			*			*				*	*		*	*	*		
7a. *Wait for the right time to intervene*	*	*	*								*					*		*	*			*				
8a. *Usage of a 2ary or other 3rd party to gain entrance to the parties*	*	*	*				*	*		*		*				*	*	*	*	*	*			*		*

9a. *Collects a group of influential people*	*	*	*	*		*	*	*					*							*	*	*	*	*	*		*	*						*
10a. *The mediator provides information to the parties*		*	*	*	*	*	*	*	*	*	*									*	*	*		*			*					*		
11a. *Use selective information to create tolerance*		*					*							*											*	*		*	*					
12a. *Mediator adopts his speech according to the character of the parties*													*							*	*	*	*					*						
13a. *Take specific actions*			*	*		*		*		*											*			*	*	*		*						*
14a. *The 'meal of the blood' or (Buka e gjakut)*	*						*	*					*		*					*	*							*			*		*	

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As we can see from the table not every column and row is marked, meaning that my informants did not use them. In the next sections a sequential description of the mediation process and the rationale behind the use or lack of use of certain techniques will be provided.

5.1.5.2 Analysis the Marked Columns and Rows

In this section the mediation process conducted by my interviewees will be presented by using the marked techniques in the table above. The marked columns and rows include the list of techniques provided by Callister and Wall (1997) and also some other techniques (No.1a-14a) which were reported as influential techniques to achieve positive outcomes from the interviewees. The added techniques reflect some of the features of the Albanian traditional mediation and techniques the mediators use, which are not represented in Callister and Wall's table. A more detailed analysis of these added strategies will be provided in the next section.

The process of mediation, as described by all of my informants is developed in the following way: after a murder happens, the perpetrators' family, relatives or kin contacts a mediator; the mediator may have his own group or forms a group[33] with the appropriate people who can be influential in the resolution of the conflict, meaning the reconciliation of the parties. They always meet separately with the parties[34], specifically the members of the victims' family and the members of the perpetrators' family. They listen to their points of view[35] for the occurrence; firstly they listen to the offenders' or

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[33] Technique nr. 9a in the table nr.3

[34] Technique nr. 1 in the table nr.3

[35] Technique nr. 2 in the table nr.3

perpetrators' family side, since they are usually the requesters and then they also gather information from others[36], such as people in the community, friends and relatives. In such cases they always try first to understand the situation, analyze its causes[37]. They try to analyze the characteristics of the parties:[38]family ties, area of origin, religion, economic situation and so on, in order to know how to intervene to the victim's family; they try to think who can be a good collaborator and contributor to prevent vengeance or stop a feud and then help the parties reconcile. In order to decide how to intervene they also gather information from other third parties[39], however this technique is used all over the process not only at the beginning. Very often the mediators have to wait to intervene until the feelings of the victims' family have somehow appeased[40] since the cases involve the loss of lives. It is thus a strategic decision to wait for the right time to intervene.

All of my informants reported that it is common that people that they do not know directly, or even do not know at all, call for their help to intervene. In these cases, in order to gain entry to the family of the victim they always use another third party or a secondary party from the community, who is willing to help. Once they gain entry to the family of the victim through another third party or secondary party[41] such as a relative, a close friend, in-laws, a neighbor, a co-worker to the family members of the victim. The mediators try to negotiate reconciliation between the parties. In meetings they state the other family's point of view to the victim's family[42], not at all

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[36] Technique nr. 6 in the table nr.3

[37] Technique nr. 8 in the table nr.3

[38] Technique nr. 23 in the table nr.3

[39] Technique nr. 15 in the table nr.3

[40] Technique nr. 7a in the table nr.3

[41] Technique nr. 8a in the table nr.3

[42] Technique nr. 10 in the table nr.3

justifying the murder, but mostly justifying their requests for *besa[43]*, forgiveness and reconciliation. The mediators usually call for empathy by putting a positive face on the disputants and praising them or their family members[44]. They always ask the victims' party to 'forgive the blood' of other party.[45] Thus they especially when they refer to the victims family members, they report that they treat them with more tact and showing even more respect. They say that the victims' party should be 'taken care of' more than the offender's party, since they are the ones who are going to forgive (Xh.G. Personal Interview, Shkoder, September, 2007).

The mediators stated that they try to educate, persuade or advise the disputants[46] individually as to how they should think or act in relation with the occurrence and with the adversary party or family. Very often mediators argue for concessions[47], and they sometimes specifically propose certain concessions mostly to the victims' family members, since they are the ones who are supposed to forgive the blood. In order to convince the parties to make concessions the mediators express similarities and interdependency in disputant's goals, fates and needs as well as costs and benefits of the disagreement and agreement,[48] especially in cases when the parties are part of the same kin, in-laws or neighbors.

It is very common for mediators to have a drink[49] with any of the members of the families in feud during the process of mediation, and they discuss the issues such as: concessions, ways to get out of the conflict without

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[43] Technique nr. 1a in the table nr.3

[44] Technique nr. 12 in the table nr.3

[45] Technique nr. 33 in the table nr.3

[46] Technique nr. 3 in the table nr.3

[47] Technique nr. 7 in the table nr.3

[48] Technique nr. 16 in the table nr.3

[49] Technique nr. 18 in the table nr.3

harming anyone any more, etc. These meetings take place in informal settings such as the houses of the victims' families, or in the house of the perpetrator when the mediators visit in order to keep them informed[50] about the steps and stage of the mediation. In this way they channel information between the parties. These meetings happen sometimes also in coffee shops, especially when the mediators are acquainted with the parties or after a certain time has passed trying to reconcile the parties. Mediators, by talking with the offenders or perpetrators, in case they are not in jail, or his family or kin members, try to get the apology[51] for what happened in order to pass it to the victims' family members, who are resentful and ready to take revenge in many cases.

There are cases when the mediators make an effort to create more direct channels of communication between the parties and in a way they structure the parties' relation[52]. In case No.3 the mediators organized that some members of the offender's family or relatives, who were actually confined due to fear of revenge, to visit the father of the victim in the hospital; or in another case the mediators convinced the parties to come to separate meeting in the house of one mediators. This was done for the purpose of trying to convince them to forgive the blood. In some case the mediator seek to create their own relationship with the parties[53], by visiting their house often and not with the purpose of directly asking for concessions but mostly to create an atmosphere of trust which might lead to future concessions.

At the beginning of mediation for murder cases, the mediators who intervene ask for *Besa[54]* (truce), which is considered a smaller concession in comparison with forgiveness of the blood. They sometimes ask for *besa* more

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[50] Technique nr. 10a in the table nr.3

[51] Technique nr. 4 in the table nr.3

[52] Technique nr. 7 in the table nr.3

[53] Technique nr. 4a in the table nr.3

[54] Technique nr. 1a in the table nr.3

then once. They all state that the purpose of asking for *besa* at first is to let the victims' family calm their feelings. Then during the *besa* (truce) time they try to push for reconciliation or forgiveness, through widening the network of the people who can help for the reconciliation of the parties. (N.L. Personal interview, Vau Dejës, Shkodër, September, 2007) The mediators state that always the purpose is to work with honesty, to try to reconcile and not to dishonor anyone (P.T. Personal interview, Bajzë, Malësia e Madhe, September, 2007).

When asked what they say to the parties in order to make them accept reconciliation, the mediators say that they start by praising the disputant, family or kin that is being addressed,[55] however not disregarding the qualities of the adversaries. They sometimes have to be vague when talking about issues which related to the murder[56] or use selective information to create tolerance[57]. They state that when dealing with a case where there is a murder or more you do not 'dig' more because in that way you do harm. In such cases it is impossible to establish or accuse one guilty party or person. They very often refer to other cases[58] of a similar nature and how people behaved in those situations and also point out the cost of non-agreement[59], for instance the younger generations, children living with the weight of being in conflict, having to take revenge, or having to kill. When the parties are still hostile they make specific statements to calm the disputants[60], expressing optimism about the situation[61] and refer to specific moral principles and Albanian societal

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[55] Technique nr. 27 in the table nr.3

[56] Technique nr. 37 in the table nr.3

[57] Technique nr. 11a in the table nr.3

[58] Technique nr. 26 in the table nr.3

[59] Technique nr. 32 in the table nr.3

[60] Technique nr. 30 in the table nr.3

[61] Technique nr. 5a in the table nr.3

norms.[62] Such norms are prescribed also in the Kanuns, such as 'being a man of honor', 'being a man of *besa'*, 'the one who forgives is stronger and braver than the one who kills' as well as religious principles such as "Jesus Christ forgave the people who crucified him, so you should forgive as well, if you are true believers" (A.K. Personal Interview, Shkodër, September, 2007). They also refer to laws, usually customary laws (the Kanun of Lek Dukagjini or The Kanun of Skënderbeg) which were used in cases where families abide by it. When asked they say they use the Kanun, as well as religious laws such as "God is the one who gives you the life and only God can take it."

In order for their intervention to be more fruitful most of the times (especially when it is not a honor case related to a woman) they involve other third parties,[63] usually the uncle 'daja', the brother of the victims' mother, to their meetings. These meetings are mostly visits at the homes of the victims' family members. My informants also referred to other techniques to influence the parties, such as instructing another third party on how to educate, persuade or advise one or both disputant on how they should think or act[64] or they instruct this third party on how to criticize the parties' behavior[65]. The advising and educating technique as can be seen from the table is used in many of the cases, whereas the criticizing technique is used more rarely, mostly in cases where the behavior of the disputants becomes an obstacle to the mediation process or reconciliatory outcome. When parties do not find an agreement point on who is right *Beja[66](oath)* is used in some cases. Sometimes in a conflict, there are no facts such as who committed a killing or caused the death of a person and if the killing was planned or was just a momentary hot debate which resulted in the death of people. In those cases

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[62] Technique nr. 28 in the table nr.3

[63] Technique nr. 34 in the table nr.3

[64] Technique nr. 31 in the table nr.3

[65] Technique nr. 38 in the table nr.3

[66] Technique nr. 2a in the table nr.3

the party who is accused has to take an oath of not being the guilty one. This type of technique to reach a solution was used in two of the cases narrated by my informants. However some of them say they do not like to use it as a technique anymore since they are afraid that people are not sincere. "I try to reconcile the parties without resorting to *beja* because if one lies, he/she has to be accountable to God" (F.L.Bushat, Personal Interview, Shkoder, September, 2007)

There are various outcomes of the intervention: a) the victim's family can forgive the perpetrator and reconcile with the other family or b) only reconcile with (forgive) the other family, without forgiving the perpetrator, or c) do none of the above, and wait to take revenge, or d) just not do anything at all, not forgive and not revenge. As prescribed in the Kanun, forgiving the blood and reconciliation with the offender's family might require the payment of the blood money[67] by the offender's family to the victim's family. Nowadays, forgiveness of the blood and reconciliation does not require payment of blood money. Generally it is the perpetrator's family that offers to pay blood money and it is the mediator who proposes this to the other family. If the victim's family accepts then the mediators calculate the amount of the compensation according to the Kanun – customary law. In order to reach a peaceful and attainable outcome they negotiate on behalf of both parties. First they decide arbitrarily according to the Kanun and then they negotiate with both parties. Some of my informants say that generally they do not get involved in the establishment of the amount of the blood money; some say that the parties asked this from them and thus they did the calculations according to the Kanun and then negotiate it with the parties. Some mediators say that they do not try to convince the disputant using the money payment in cases of murders because that would be considered as 'selling the blood' but they use it when the case involves injuries resulting in hospital expenses and living expenses for the time the injured person stays out of work because of

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[67] Technique nr. 3a in the table nr.3

the injuries caused by the other party (K.B.Personal Interview, Shkoder, September 2007).

The outcome of the mediation process is finalized with the 'meal of the blood'[68], where the parties have a meal together in the house of the offender as a sign of reconciliation between the families. However nowadays *formalization*[69] of the process of mediation which ends successfully is done through the signing an agreement or an Act of Reconciliation (*Akt-Pajtim* in Albanian). This agreement is signed in many cases, depending on whether the parties will if they wanted a written agreement or not. Out of the twenty-seven cases described by my informants, in ten of them an agreement was signed.

Lastly, the informants always back up all their techniques with a rationale[70] and explanations referring either to the specific cases, parties' characteristics or to the general stand towards cases of murder. For example all of them said that they adopt their techniques and especially their speech according to the characteristics of the parties[71] and that is why the groups they form for the intervention are diverse in terms of mediators with different beliefs, if they are more religious or if they obey more to the customary laws and area traditions.

According to Marshall (2002) the relevant issue to be considered in victim-offender mediation practices is the relationship between the parties. The parties in VOM, unlike most other forms of mediation, are not to be considered balanced or equal (24). A shortcoming of Callister and Wall's (1997) table is that it does not differentiate between the techniques the mediators use with the disputing parties. Because penal cases are delicate and

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[68] Technique nr. 14a. in the table nr.3

[69] Technique nr. 19 in the table nr.3

[70] Technique nr. 20 in the table nr.3

[71] Technique nr. 12a in the table nr.3

they involve the loss of human life from one or both parties, the mediator treats the parties somewhat differently, or by applying different techniques with different parties. My informants say that they treat them with equal respect, however they all also state that in order to create a relationship and gain their trust and confidence, usually they are more careful and try to reward, praise or approach the victims' family members because they are the one who have to make a 'big concession', by forgiving the blood.

5.1.5.3 Analysis of the Added Rows

In this section I will explain more in detail some of the added rows and the reason of the addition of these new techniques to Callister and Wall's table. These added techniques reflect the features of the traditional Albanian mediation and it was necessary to include them in order to give a more complete picture of the mediation process.

Some of these techniques used, such as asking for *besa*, asking for *beja*, *the blood money*, and *the meal of the blood*, derive directly from the Kanun of Lek Dukagjini. *Besa (truce)* is 'a period of freedom and security which the family of the victim gives to the offender and his family temporarily suspending pursuit of vengeance in the blood feud until the end of the specific term' (Fox, 1989: pg 166). The mediators use this technique with the victims' family. *Besa* is a first step before asking for bigger concessions, such as forgiveness and reconciliation. *Beja (oath)* is "a religious utterance by means of which a man, wishing to exculpate himself from a shameful accusation must touch with his hand a token of faith while calling upon the name of God in testimony of the truth" (Fox, 1989: 120). Beja is also another tool the mediators use in their mediation practice, when the parties are suspicious of each other's words. The *Blood money-retribution* is a prescription of the Kanun of Lek Dukagjinim, where the party of the offender

pays a sum of money to the family of the victim. In my cases there were practices of blood money however the mediator were not always predisposed to tell if there was payment of the blood or not. This may be due to another a contradictory norm in the Kanun which says 'Blood is not payed with money', this in a way is also a societal norm in some areas. In the Kanun it was specified that the blood money had guarantors that are chosen by the family of the victim; the time limit for the payment is specified by the elders and the men who arranged the reconciliation (Fox, 1989: 184). The '*meal of the blood'* is the final step towards reconciliation. It is very often used in the current mediations, concluding with an agreement between the parties. As referred to in the Kanun of Lek Dukagjini "it occurs when the mediators of the reconciliation of blood, together with some relatives, comrades, and friend of the 'owner of the blood' go to the house of the offender to reconcile the blood and eat a meal to observe that reconciliation" (Fox, 1989: 184).

5.1.5.4 Analysis of the Empty Columns and Rows

Traditional mediators in Northern Albania in penal cases do not usually include techniques such as: *putting disputants together, or meeting together with both disputants.* It is very uncommon that the parties can come together to talk about a murder case. When there is a murder in the case, the intensity of the feelings of the victims' family is high and even after sometime passes it is very difficult to arrange a meeting between the victims' family and the perpetrators' family, because there might be an ongoing feud. The meeting of the families happens only at the end of the whole mediation process when the parties are ready to reconcile or when the mediator has done his job in convincing them that it is better to reconcile and stop the on-going feud. The same logic applies for the two other techniques: *calling for a break* and *separate disputants.* Since the mediators almost never put the parties together they do not apply the above mentioned techniques.

Another technique which is rarely used is *providing objective data* about the dispute or the disputants. This is related to the fact that a killing has happened and there is no justification for the act, thus the mediators try to be as vague as possible when referring to the situation. Even if the victim was at fault they try to have a balanced approach in respecting the parties. *Criticizing* the disputants is also rarely used. The mediators are more able to criticize the behaviors of the perpetrator's family rather then the victim's family, even in a case when the victim was to be blamed for provoking the murder. (K.B. Personal Interview, Shkoder, September 2007). The mediators state that the victim's family or kin is respecting them by listening to their words and to their advice. In this way the families are honoring the mediators. It is very rare that the mediators use *threatening*. The mediators state that even though they are not successful in their attempts to make parties reconcile, they almost never threaten because they want to have the possibility to go again to the parties.

5.1.5.5 Mediators' Strategies and Roles

The literature about the mediator roles and approaches suggests that these roles are closely related to the nature or type of dispute and the nature of the parties, their relationships and histories). Consistent with the literature my informants appealed to different approaches and mediator roles in various kinds of disputes according to the nature of the parties. My informants state that they adjust their behaviors, strategies, and roles according to the nature of the dispute, in our cases the reason of the murder, the disputants, in our case the families in feud, or other peculiarities of cases. The mediators use different roles in different cases depending on the reasons behind the murders, the nature of the parties, and the history of their relationships. In some cases

acting as an adviser, in some other cases as a family elder, or other cases like a jury or an arbitrator can be more effective.

In my analyses of the interviews with the mediators I found that the strategies that they mostly made use of were either *Communication – Facilitation*, (Cases Nr. 1, 3, 4, 5, 6, 9, 10, 12, 13, 16, 18, 19, 20, 22, 23, 25, 26, 27) where the mediator takes a fairly passive role, channeling information to the parties, facilitating cooperation, exhibiting little control on the process and substance of the mediation; or *Directive-Manipulation*, (Cases Nr.2, 7, 8, 11, 14, 15, 17, 21, 24) where the mediator exercises the most powerful form of mediation, influencing the content and substance of the bargaining process, providing incentives for the parties, aiming to change the way issues are framed and the behavior associated with them. The reason for the frequent use of facilitation or manipulation strategies over procedural ones, is that the mediators do not have much control over the procedure of the mediation process. In a way it is an informal setting and most of the procedural strategies do not apply. In cases when facilitation is used the parties seek a third party to serve as channels of communication, thus the use of this strategy is explained by the fact that in terms of relations between parties in nine cases the parties did not know each-other or in cases where they had a previous relationship they had also previous fights which cut communication between parties. In cases where manipulation was used the third parties are more involved in the issues, and more imposing in terms of the settlement of the parties. The use of this strategy can be explained by the fact that in our data we have ten momentary fights and that in twenty-one of the cases there was one-side killing, and in seven of them the mediators used manipulation to settle the dispute, especially to convince the victim's party to forgive and reconcile.

Table 6: Mediator's Strategies

1)Communication-Facilitation Strategies	Nr. of times/ cases used	2)Procedural-Formulation Strategies	Nr. of time/ cases used	3)Directive-Manipulation Strategies	Nr. of times/ cases used
Make contact with parties	27	Choose the meeting sites	1	Change parties expectations	13
Gain the trust and the confidence of the parties	16	Control the pace and formality of the meeting	0	Take responsibility for concessions	13
Arrange for interaction between the parties	4	Control physical environment	1	Make substantive suggestions and proposals	16
Identify issues and interests	25	Establish protocol	0	Make parties aware of the cost of non-agreement	14
Clarify situation	6	Suggest procedures	0	Supply and filter information	7
Avoid taking sides	20	Highlight common interest	0	Suggest concessions parties can make	20
Develop a rapport with parties	20	Reduce tensions	19	Help negotiators to undo commitment	5
Supply missing information	12	Control timing	3	Reward party concessions	10
Develop a framework for understanding	20	Deal with simple issues first	1	Help devise a framework for acceptable outcome	22
Encourage meaningful cooperation	6	Structure agenda	0	Change expectations	6
Offer positive evaluation	7	Keep parties at the table	18	Press the parties to show flexibility	27
Allow the interests of all parties to be discussed	20	Help parties to save face	9	Promise resources or threaten withdrawal	2
		Keep process focused on issues	12	Offer to verify compliance with agreement.	0

(Bercovitch and Huston, 2000: 176)

In the second mode, formulation strategies, which are reported as not being much used by my informants, the mediator influences the substance of the negotiation. He or she makes use of formulas to reach a negotiated solution to the conflict; by providing common understanding of the problem or a shared notion of justice to govern an outcome (Zartman and Touval, 1996: 454-455). All of these techniques refer to cases where the parties meet together and where the mediator has control of the environment. As explained in the techniques section however, in traditional mediation in Albania the parties almost never meet. The mediators are the ones who go to meet and contact the victims' party or family members at their houses. However, some of the techniques under the *Procedural-Formulation* are also used commonly, such as *reduce tensions,* in which the mediators try to put a positive face on the offender's party, or try to explain the happening as something which came from God and parties are not to be blamed (F.L. Personal interview, Bushat, Shkodër, September, 2007); *or keep parties at the table,* metaphorically used, all of them reported to keep the negotiations going by paying regular visits to the parties or keeping in touch through other third parties.

As we have seen above and as the literature shows, the choice of the strategies is not random, it is dependent on certain factors, contextual or procedural. What is the reason that they use more communication-facilitation and directive-manipulation and not procedural? In the below analyses attempts are made to connect the possible factors and the choice of the strategies the mediators used in the twenty-seven cases that are being analyzed in this study.

5.2 Pattern, Data Analysis and Interpretation

The literature shows that the outcome of an intervention is determined by the context of the dispute and the process. The context is conceived as comprising two variables a) the nature of the parties and b) the nature of the dispute; the process comprises two other variables: a) the identity and characteristics of the mediator and b) the nature of the mediation strategy (Berchowitch and Lamare, 1993: 296). The following part of this chapter is focused on the connections between the context, process and outcome of the mediation processes. Bercovitch's (1992: 19) framework of 1)prior conditions that are antecedent to mediation such as nature of the dispute, nature of the issues, nature of the parties and nature of the relationships, 2) the actual process of mediation which includes the identity and rank of the mediator, mediation strategy and behavior and 3) subsequent mediation outcomes will be used. The two frameworks obviously overlap. The context in this study is considered in terms of a) the nature of conflict and b) the nature of the parties. Whereas the process is considered in terms of the strategies the mediators use. The rank of the mediators is difficult to analyze since group mediation is used. The context and process connection is expressed in terms of the contextual factors (characteristics of the conflict and of the parties) that influence the choice of mediation strategies. Process and outcome connection is expressed in terms of mediation strategies and outcomes of mediation.

5.2.1 Analysis of the Determinants of the Choice of the Strategies (Context and Process)

As indicated in the literature review chapter, the strategies the mediators choose to use are shaped by many contextual factors and peculiarities of the cases. In this section I will look at variables that cause difference in approach to see whether there is variation in terms of the variables. There are various parameters for the evaluation of mediation

practices. An analysis on how these contextual factors and the mediation strategies, identified in the previous sections interact between each-other will be presented.

5.2.1.1 Nature of Conflict

In this section I will look at the choice of strategies with reference to different contextual variables: nature of the conflict including the reason for the killing, the severity of conflict or people killed, and who asked for the intervention. Depending on the above variables, the mediators use different strategies to push the parties to forgiveness and/or reconciliation.

5.2.1.2 Reason of Killing

In terms of the nature of conflict I tried to differentiate between the cases of killings that happened due to different reasons.

Figure 9: Strategies used in different types of conflict
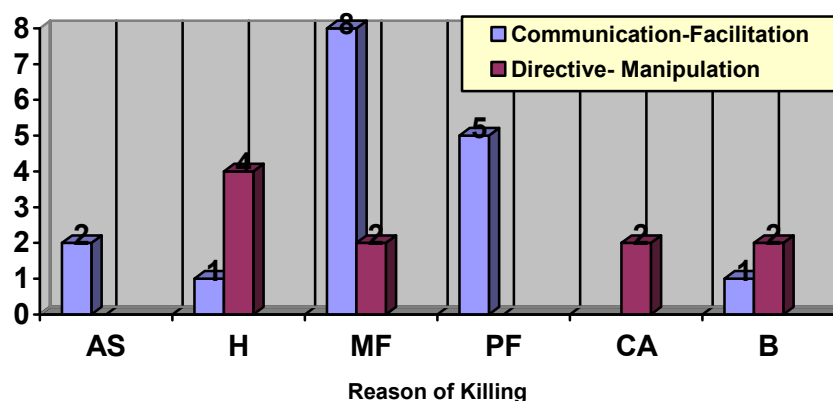
AS – accidental shooting   H – honor killing
MF – momentarily fight killing   PF – previous fight killing
CA – car accident   B – killing due to business disputes

From the data collected and represented in Figure 9 we can say that mediators used Communication-Facilitation in two cases of accidental

shootings, one case of honor killing, eight cases of momentary fights, five cases of previous fights, and one case of business disputes. Whereas the mediators appear to use the Directive – Manipulation strategies less, accordingly they use them in four case of honor, two cases of momentarily fight, and two cases of business disputes.

From the Figure 9 we can see that there is variation depending on the type of the killing and also within specific types. In honor killings, for instance, though the mediators use more directive manipulation strategies there is one exception where they use the facilitation approach. The same can be observed in the momentarily fight cases where in the majority of cases the mediators use facilitation however there are also two cases where they used manipulation. In cases of honor, mediators use directive manipulation strategies. When it comes to cases of honor, both related to women or offences to the person, people are very sensitive and do not forgive easily, thus this can explain why the mediators in four cases used manipulation, a more imposing approach to make the parties reconcile.

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Cases of momentary fights, which represent also the majority of cases in numbers, are mediated using both communication-facilitation and directive manipulation approaches. However there is a dominance of the communication – facilitation strategies which allows us to generalize to a certain extend that the tendency of the mediator in such cases is to use communication-facilitation. In such cases their role as communicators and more as go-betweens is necessary. Rather than directing or manipulating the process the parties need someone to help their communication after the killing, since some of the parties did not have a previous relationship. In cases of previous fights as well the tendency seems to be the use of communication-facilitation strategies. Parties know each-other and in many cases they have family ties. The mediator here acts more as a face-saver.

The only patterns from which we can draw some conclusions are the cases of honor killing, momentary fight and previous fight killings. Due to the small number of cases in the other types of killings, it is very difficult to determine if that is the tendency of strategies chosen according to the reason of killings. We can argue here that there is a relationship between mediation strategy and reason of killing. The data show that there are patterns which demonstrate that the strategy of the mediation is influenced by the reason of killing.

5.2.1.3 Intensity of Conflict

The intensity of the conflict, in terms of the number of people were killed on each side, is another influencing factor in the choice of mediation strategies. In twenty-one, of the twenty – seven cases, there was one killing or one sided wrong-doing. In one of these cases there are four murders, four different parties were harmed caused by one party (again one sided wrong-doing); four of the cases there were murders on both parties and two cases there were one killing and then suicide by the offender.

Figure 10: Strategies used in different types of conflict according to the severity of conflict

OS- one-side killing   TS-two-side killing   OSS –one killing and suicide of the killer
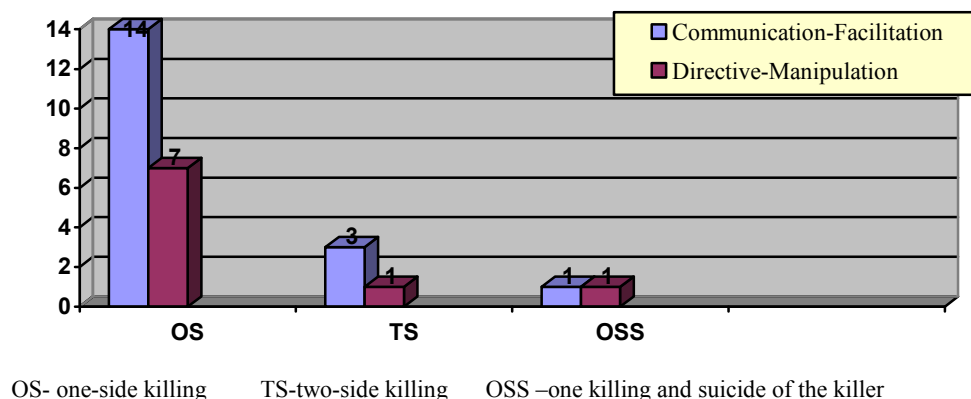
As we can see from Figure 10 in cases of one-side killings the mediators used both communication-facilitation strategies in fourteen cases

and directive-manipulation strategies in seven cases. We can say that there is an inclination to use communication-facilitation in cases where there is one-side killing.

For the two other columns Figure 10 shows that in cases of two-side killings and in cases where there was a killing and a suicide, both communication-facilitation strategies and directive-manipulation were used. Even though there are seven cases where directive manipulation was used, we can state that there is a tendency towards communication-facilitation in cases of one-side killing. This can be explained by the fact that in many reported cases the killings are not motivated or planned such as momentary fights and accidental shootings. Using the same logic as previously the mediators act more as channels of communication where there is need to open communication between parties.

In all cases with more than one killing the mediators used communication-facilitation strategies in four cases and directive-manipulation strategies in two cases. Due to the small number of cases where there is more than one killing we cannot make generalizations as well establish a relationship between this variable and the choice of strategy. Therefore, it could be argued that the severity of conflict somehow constitutes a determinant of the mediation approach however we are cautious to claim that there is a certain pattern.
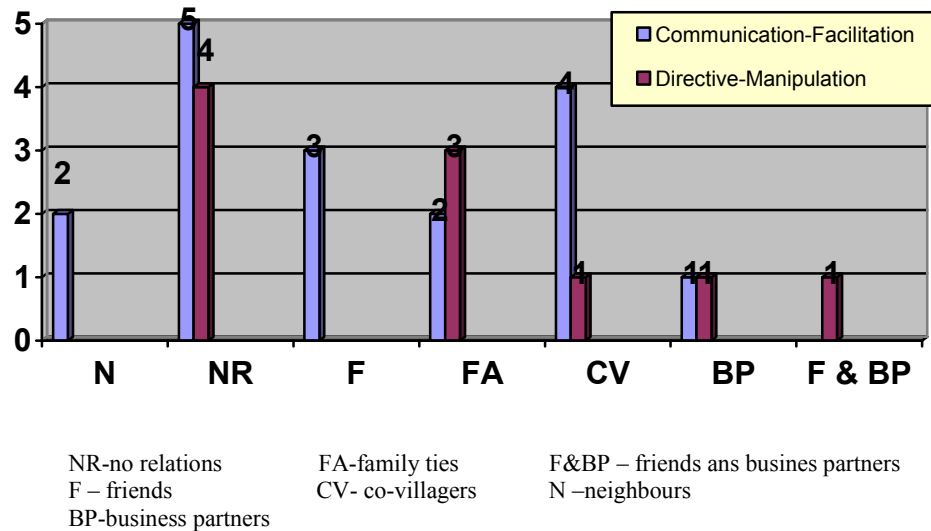
5.2.1.4 Nature of the parties

In the literature as well as in practice, the nature of the parties is an important component in the analyses of the factor influencing the choice of strategies. The nature of the parties in this study is conceived as a) the relationship or history between parties and b) the number of parties in conflict.

5.2.1.5 Relationship/History

The relationship and history between the parties is one of the contextual factors which the mediators consider very important in order to intervene. They need immediately need to get to know what the relation and history between the parties are before choosing a strategy.

Figure 11: Strategies used in different types of conflict
according to the relationships b/w parties

| NR-no relations | FA-family ties | F&BP – friends ans busines partners |
| F – friends | CV- co-villagers | N –neighbours |
| BP-business partners | | |

Looking at Figure 11 we can establish two main groups in terms of relations between parties: 1) when they knew each other, i.e. parties were neighbors, family, co-villagers, business partners, friends and business partner and 2) where the parties did not know each other or had no relation prior to the killing. In cases where the parties had a relationship (six cases) a directive manipulation approach was used and in twelve cases a communication-facilitation approach was used. In cases where the parties did not have a relation, (five cases) mediators used communication – facilitation and in four cases they used directive manipulation.

Here it is argued that there is a tendency to use communication-facilitation in cases when parties knew each other, or had a relationship, however the difference in number between the cases that was used communication facilitation and the cases that was used directive manipulation does not allow us to make confident generalizations.

5.2.1.6 Number of Parties in Conflict

Another important and influential factor that adds to the complexity of the conflict as well as the choice of strategies is the number of parties in conflict.

Figure 12: Strategies used in different types of conflict
according to the no. of parties in conflict
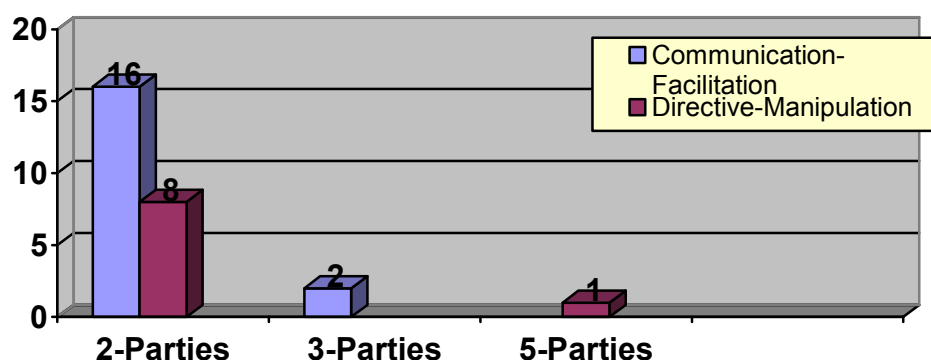
Related to mediators' strategies my informants reported twenty four cases of two parties in conflict, in sixteen of these the communication – facilitation approach and in eight of them directive-facilitation approach is used; in two cases of three parties the mediators used communication-facilitation; and in one case where five parties were involved they used directive-manipulation strategies. Observing Figure 12 we can argue that there is a tendency to use communication facilitation when there are two parties involved. Whereas when there are more than three parties involved it is hard to understand what the tendency is because of the small number of cases.

Thus in cases where two parties are involved we can just say that there a small difference in the number of cases in which communication-facilitation strategies or directive manipulation are used. This fact does not allow us to make generalizations and to establish safely that there is a pattern of strategy and number of parties.

5.2.1.7 Request for Intervention

In the literature on mediation it is stated that for mediation to occur two independent processes should preexist: the disputing parties must request or permit a third party to mediate and the third party must agree to mediate. Wall et al. state that norms and expected benefits influence these two pre-existing processes (2001: 371). Norms which are embedded in the specific culture are a motivation force to request the assistance of a third party. Thus, from whom the request of intervention come is a variable which was considered relevant in this analysis. My interviewees, as indicated in the previous section, state that most of the times they are requested to intervene by the family of the offender but sometimes they intervene on their initiative, and some other times they are requested by other third parties.

In the four cases presented by my informants, the mediators did not wait for a formal or informal request, from any party but they initiated the intervention[72] and they used communication-facilitation strategies; in twenty-one cases the request came directly from the confined family[73]- in twelve of them they used communication – facilitation and in nine directive – manipulation strategies; in one case the request to intervene was made by

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[72] Because, as they explained, they had either blood relations or they had with close friendship with the party who was confined – the offender's family.
[73] Usually the father and brothers, relatives from part of the fathers' family line of the offenders request the mediators help through close relatives not included in the feud or through friends of the family of the offender

another third party who could not achieve positive results and a communication – facilitation approach was used; in one particular case the request came from the elders of the village of the tribe who committed the last murder, since it was an ongoing feud with another neighboring village. The mediators again used a communication-facilitation strategy.

Figure 12: Strategies used in different types of conflict according to the request for intervention
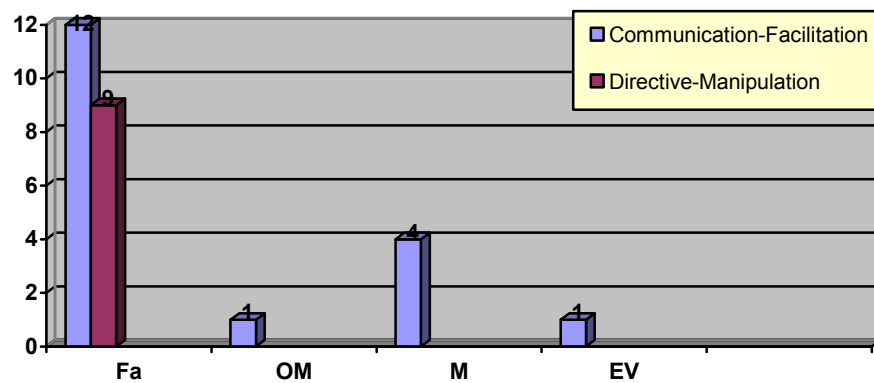
Fa- family requested the intervention   EV – the elders of the village requested the intervention
OM – other mediators requested the intervention   M – mediators themselves intervened

Depending who makes the request for intervention the mediators apply different strategies. Figure 12 shows that in cases where the family or relatives of the offender request the intervention there are variations in the mediators' approaches, which are very close in numbers and thus we can not find a pattern. Whereas when the intervention is requested by a third party, when the mediators themselves or other third parties or when the mediator intervene without the request of the families, it seems that the tendency is to use more communication-facilitation techniques. We can speculate that in these cases the mediators use communication – facilitation because they are under more pressure to gain entry in the conflict. Referring to the list of the communication-facilitation strategies, the mediators in such cases, where they are not invited by any party, they exhibit little control on the process since they are more focused to *make contact with the parties*, to *gain the trust of the parties* and also to *develop a rapport with them.*(Bercovitch and Huston,

2000:176). A non-invited third party cannot use directive-manipulation strategies but mostly communication facilitation because they need entrance and approval first by the parties while becoming a channel of communication for the parties.

5.2.2 Strategies and Outcomes (Process and Outcome)

In the below section the relation between the process, the mediators' strategies and the outcome of the mediation will be explored.

5.2.2.1 Outcomes of the Mediation Processes

The main issues discussed in these cases are the forgiveness of the perpetrator, of the family, and reconciliation between the families of the victim and offender, which implied forgiveness of the blood. In terms of possible outcomes our cases represent a rich variety of possible outcomes that might come out of the mediation processes in cases of killings in the Northern Albanian setting. The outcomes of twenty-seven (27) cases described by my informants fall into the following:

Figure 13: Outcomes of processes
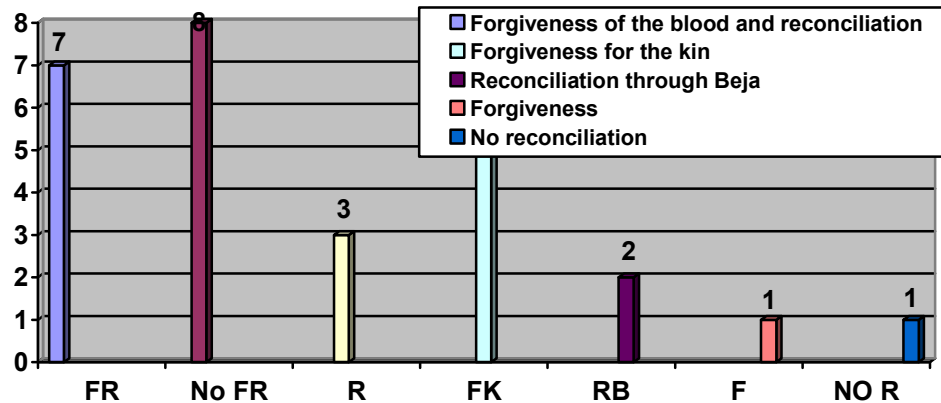
FR - Forgiveness of the blood and reconciliation   No FR - No forgiveness, no reconciliation
R - Reconciliation   FK - Forgiveness for the kin (relatives)
RB - Reconciliation through *Beja*   F - Forgiveness

Forgiveness of the blood and reconciliation (FR) – this type of outcome is when there was one-sided murder between the two parties and after many attempts the family of the victim accepts to forgive the blood of their murdered member and reconciles with the family of the perpetrator.

No forgiveness, no reconciliation (No FR) – in this case the family of the victim neither accepts to forgive nor reconciles with the family of the perpetrator. This can be the case when there are murder cases from one party or from both parties. The possibility for revenge is still open, the perpetrator as well as the family or kin might be under death threat.

Reconciliation (R) – reconciliation usually happens when there are murders on both sides. In this case the parties usually accept to reconcile because they think they are even and they do not want to go on with murders anymore.

Forgiveness for the kin (relatives) (FK) – this outcome is when the victims' party does not forgive the blood, thus does not forgive the perpetrator. However the mediators convinced the victims' party that the relatives should be granted forgiveness.

Reconciliation through Beja (RB) – in this case reconciliation between families is achieved through an oath made by the guarantors of the accused

party (or supposedly perpetrators' party). If *beja* (the oath) is accepted as true by the victims' party then the parties reconcile.
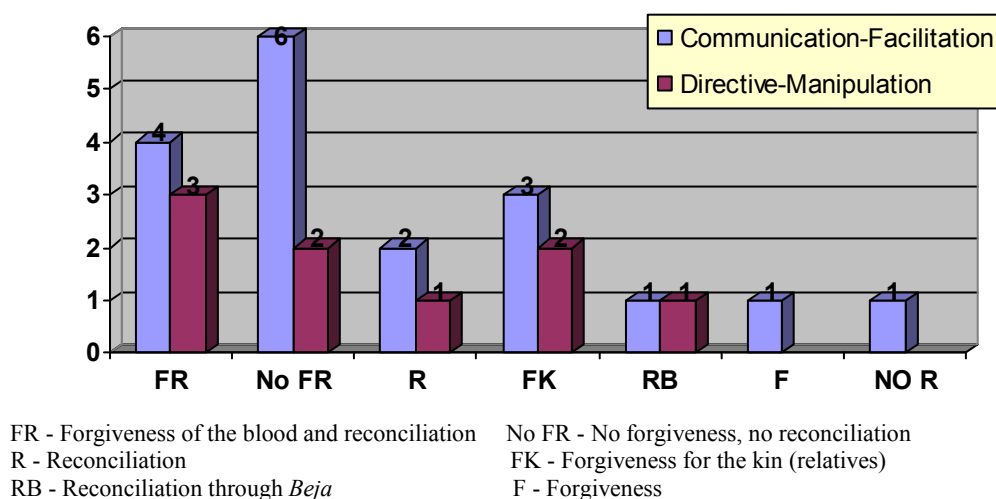
Forgiveness (F) – this is the case when the blood is forgiven from the victim's party, however they do not reconcile with the perpetrator's family.

No Reconciliation (No R) – this is a case where there was one killing and then the perpetrator committed suicide. In this case it was implied that there was no place for revenge and thus only formal reconciliation between the families in conflict, which did not happen due to various reasons in the families' relationship dynamics.

5.2.2.2 Connections between the Strategies and Outcomes

In this section connections between the process and the outcome are explored. In Figure 14 the outcomes are expressed in terms of what strategies are used in each type of outcome.

Figure 14: Strategies used in different types of conflict according to the outcome

FR - Forgiveness of the blood and reconciliation   No FR - No forgiveness, no reconciliation
R - Reconciliation   FK - Forgiveness for the kin (relatives)
RB - Reconciliation through *Beja*   F - Forgiveness

The interviewees state that the desired outcome in all cases of intervention is reconciliation or positive steps towards reconciliation between the families of the victims and the offenders. Reconciliation within this context is usually considered the desired outcome. From the accounts of the mediators it seems in some cases the parties reached an agreement to either forgive the blood or forgive the kin. Some of them also performed a formal ceremonial reconciliation, signing the *Act-Pajtim* (agreement of reconciliation). Even though reconciliation is the desired outcome in these cases, reconciliation as defined in the literature is difficult to be measured as a reached outcome.

In order to understand if there is a relation between the outcome and strategies we can group the outcomes of the mediation process narrated by my informants into two groups in terms of agreement and non-agreement. Thus we can consider the cases where there was forgiveness and reconciliation, reconciliation, and reconciliation through beja, forgiveness and forgiveness for the kin as agreements. These agreements are made in order to stop or prevent the blood feuds between parties. Some of these outcomes even though are not the desired outcome for the mediation they can be considered as steps forward towards reconciliation of the parties.

Figure 15: Strategies used in terms of reached agreements between parties

C-F – communication –facilitation strategies   D-M- directive-manipulation strategies
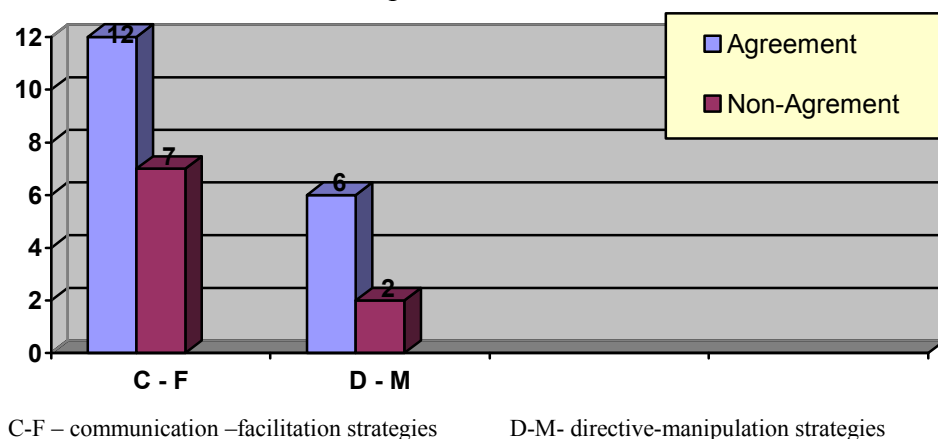
From Figure 15 it is observed that another way to look at the outcome is in terms of reached agreement or not. Communication – facilitation strategies seems to produce more agreements, however they produce also more disagreements. Here we can not say that there is a clear pattern while looking at the agreements and disagreements that each strategy produced however in DM there is a tendency to produce more agreement, even though the numbers which show this fact are low.

As a result, a safe statement on the relationship between the strategy and the outcome can not be established. Looking at the previous results of the analyses we can assume that in a context, where these penal cases are mediated, strategies alone do not influence the outcome but in combination with other process factors such as the identity and rank of the mediator, which were not analyzed in this study, or other case specific contextual factors.

5.3 Reconciliatory Mediation - Tracing Elements of Reconciliation

As a ultimate analyses this study tries to trace the elements of reconciliation that can be found in the process and in the outcome of traditional mediation in Albania. I consider as important to examine both process and outcome since they are closely interrelated.

Using the data collected by my interviewees, I will present their work during the mediation process, what values and what elements of reconciliation are appealed more in the given context; what are their perceptions of how the parties respond to their strategies to promote reconciliation, and what it means when there is a reconciliatory outcome.

5.3.1 What is mediators' understanding of reconciliation and its elements as a process and outcome?

On one hand 'reconciliation' is considered a formal or procedural act in the Albanian mediation context. Mediation in this context has as a purpose to guarantee the durability of the agreement, where both parties sign an agreement in which the victim's family agrees to forgive the blood and to reconcile with the family of the offender. However it is both an outcome and a process. As an outcome it implies a new relationship that emerges between the two conflicting parties/families. In Assefa's words this relationship comes as a consequence of processes such as acknowledgement, sincere regret and remorse, readiness to apologize, readiness to let go of the anger, commitment by the offender not to repeat the act, sincere efforts to redress the grievances and compensate the damage caused to the extent possible, entering into a new, mutually enriching relationship (2001: 340). One interviewee when asked whether reconciliation occurred between the families after the mediation process replied: 'Reconciliation is when you see the parties together; when they visit each other, have meals together.' (PK, Personal Interview, Mirdite, September, 2007)

Many conflict-handling processes such as adjudication, arbitration and even negotiation and mediation have an adversarial method to establish responsibility for the conflict or its consequences. On the contrary, the fundamental nature of reconciliation is the voluntary initiative of the conflicting parties to admit their responsibility and guilt (Assefa, 2001: 340). The incentives for a change in feelings and attitudes, in reconciliation are generally internal and voluntary, whereas in other approaches they are sometimes external and to certain extent coerced (Assefa, 2001: 340). In all of the twenty-seven cases referred by my informants, one of the parties requested reconciliation. In some cases forgiveness first and then reconciliation whereas, in the other cases mediator made steps towards reconciliation and forgiveness.

During this process in which the mediators go to the house of the victim to ask to forgive the blood to the other party, the victims family undergoes to certain extent to a lot of pressure before deciding to forgive or not. The mediators also emphasize the difference between reconciliation and forgiveness. One of them reports: "Some people say 'I forgive him for the blood' but I do not want to reconcile' so it is something different to reconcile and something different to forgive' (P.K. Personal Interview, Mirdite, September, 2007). The procedure is that after the victim's party 'forgives the blood' the mediators ask from the victims parties to reconcile with the offenders' For the party of the victim reconciliation is the most difficult thing because that implies to become very close, like a family with the ofender and/or his family. Forgiveness is an internal process which the family who has to forgive has to undergo (P.Gj. Personal Interview, Lezhe, September, 2007).

> 'The decision to forgive and/or to reconcile comes in a slow and gradual way and slowly when the circumstances become appropriate. At the beginning they did not say 'yes' then until they were calmed down and apeaced"
> (A.K. Personal interview, Shkoder, September, 2007)

Thus forgiveness and in turn reconciliation is a difficult result to be achieved for the mediators and one of the main elements of this process is that it goes on indefinitely and many attempts are required by the group of mediators. One of the informants states that:

> "Every single person that intervenes for reconciliation, even though they did not achieve the desired result, they still had a result, had an influence on the party. It is like a tree that you try to put down and even though you did not achieve other people will also try to cut it and then in one moment that tree will come down (*Nuk pritet lisi me nji te rame*), so you need many interventions"

(N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007)
Thus many efforts, many peoples own time is needed to be successful in reconciling the victim's family with the offender's family.

In community mediation, various cultures emphasize different values, norms and beliefs to achieve a peaceful outcome which often is forgiveness and reconciliation between conflicting parties. Among many other scholars, Lederach identifies four major concepts or components of reconciliation: Truth, Mercy, Justice and Peace. These four components seem to include other important concepts in reconciliation: *truth* (acknowledgement, transparency, revelation, and clarity), *mercy* (acceptance, forgiveness, support, compassion, and healing), *justice* (equality, right relationships, making things right, restitution) and *peace* (harmony, unity, well-being, security, respect) (1997: 27).

When referring to the societal values that the mediators in Albania stress during the process, the mediators interviewed referred to 'forgiveness' coupled with personal honor. Using their words:

> "The social value and norm that we mostly appealed was 'forgiveness' It is in the tradition of our people to forgive; it is also in the Kanun 'it is braver to forgive than to kill'. So the idea of forgiveness is as honorable and brave (burrnore), divine and humane"
>
> (A.K. Personal Interview, Shkoder, September, 2007)

> "The one who forgives remains noble (*burrnor*); the ones that forgave remained with noble inheritance; in very way the one who forgives is more highly esteemed/appreciated (by the society)"

(A.I.M, Personal Interview,Ura e Shtrenjte, Shkoder, September, 2007)

> "The one who forgives is 'twice' a honored man" and "It is honorable to forgive because you gain the respect of others."
>
> (N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007)

> "The one who forgives is braver than the one who kills."
>
> (P.T. Personal Interview, Bajze, Malesi e Madhe, September, 2007)

"To forgive is the biggest bravery for a man."

(P.K. Personal Interview, Mirdite, September, 2007)

Mediators as well as the parties, to whom these phrases were directed, are part of the same Northern Albanian context. Therefore, forgiveness and personal honor are very important values in this society.

5.3.2 Truth, Mercy, Justice and Peace

Let us examine each element of reconciliation as defined in the literature one by one according to Lederach's framework which I used during my interviews.

When asked about *truth*, in other words whether the Albanian mediators appealed to find the truth of the circumstances of the killing, most of them said they do not try to do fact-finding in order to talk about it with the parties. "In a reconciliation you do not analyze why and how one was killed" (A.K. Personal Interview, Shkoder, September, 2007). The reasons for this as another informant explains are that:

> "In many cases the parties do not want clarification of the situation if you open that discussion you are lost, so never touch it. You should say that you only want to reconcile'
>
> …………………………………………………
>
> You should not try to find/accuse the guilty one. The parties in conflict should always be considered innocent. Of course one person is guilty but you do not have the right to say that someone did this mistake"
>
> (P.K. Personal Interview, Miredite, September, 2007)

Thus mediators take into consideration that it is difficult for the parties to talk about an event that took the life of one member of their family, and even though one of the parties is more in fault they try to create equality between the parties. Moreover, in some cases the one who undertook the crime is known, either by the mediator, by the party or by both.

When talking about *justice* and how do they treat the parties the mediators express different stands. Some of them state: 'we treat parties the same' (A.I.M, Personal Interview, Ura e Shtrenjte, Shkoder, and F.L. Personal Interview, Bushat, Shkoder, September, 2007) or "for me the parties are equal, I try to reconcile them and I also tell them to be careful not to repeat the same mistake" (P.T. Personal Interview, Miredite, September, 2007); another mediator states that 'we treat the parties according to the situation, they are different" (N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007). The mediators again reiterate that it is important for them as mediators not to judge the parties:

> "In reconciliation you cannot judge, whose fault it was. You are intervening to get *besa* and/or to ask for forgiveness, and not to use a scale to establish how guilty each of the involved persons were, because in this way the conflict escalates and becomes even worse"

(N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007)

In trying to reconcile the families it is important also to create equality and the right relationships between the parties. One of the informants reported:

> "I create right relationships between the parties by supporting to the victims' parties/families, because their family members lost their lives, but also saying that also the offender's party (the driver-involuntary) has the right to ask for forgiveness. It is being a brave and honored/honest man (burrni) to ask for forgiveness"

(N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007)

Supporting the same idea another mediator states that "granting forgiveness is very valuable, but also asking it is also very valuable because one has understood and repented for the harm caused to the other" (Gj.M. Personal Interview, Lac Kurbini, September, 2007)

There are cases when restitution is used in the reconciliation process. One of the informants explains three different cases for the role for the retribution: in some cases blood money was demanded, in some cases blood money was not asked; and some cases money was given voluntarily to the victim's family (N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007). However mediators stated that 'almost always something is given by the offenders' parties to the victim's parties but we do not get involved how much or less is given (N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007). Some of my informants say that generally they do not like to get involved in the establishment of the amount of the blood money, some others say that the parties asked this from them, and thus they did the calculations according to the amount established in the Kanun, and then they negotiated with both parties.

On the issue of why the blood money is given there are different explanations. One is that 'the money is only an economical help/assistance' to the family who lost a working father or son (Gj.M. Personal Interview, Lac Kurbini, September, 2007). Another explanation is that after reconciliation 'there was payment of blood money, and this money is like a guarantee because if they get the money, it refrains them from another revenge killing. In cases of another killing they have to give the money back', thus blood money serves as a guarantee (A.I.M. Personal Interview, Ura Shrenjte, Shkoder, September, 2007).

When there is no payment of the blood money, because the victim's family did not did not request it, one of the mediators said that they

encouraged the offender to always take care of the family who forgave the blood. He said that they talked to the offender's family in a way to encourage them to be grateful forever to the victim's family: 'It was the 'honor, honesty or nobility' of this family that did not ask for any reward or money but you should do something to reward them, to show your gratitude' (P.Gj. Personal Interview, Lezhe, September, 2007) or 'the one who is forgiven remains always in dept'(A.I.M, Personal Interview, Ura e Shtrenjte, Shkoder, September, 2007).

Mercy is one of the reconciliation elements which the mediators hesitate to use. 'We do not refer to 'mercy' very much, the parties do not like it' they report. In many cases none of the parties were sincere and they wanted to blame each other, thus using the word 'mercy' did not help (P.T. Personal Interview, Bajze, Malesi e Madhe, September, 2007). The mediators stated that the parties do not accept forgiveness (described by Lederach, 1997: as a component of mercy) as mercy from the other party but as an act that everybody should do' Parties think that 'mercy comes only from God' (P.K. Personal interview, Mirdite, September, 2007). Mediators however refer very much to *peace* and its elements harmony, unity, well-being and security as future outcomes and incentives for achieving reconciliation. One of the mediators says "I use only words of peace to make the parties reconcile" (P.T.Personal Interview, Bajze, Malesi e Madhe, September, 2007). They often the appeal 'pushka asht damtore nuk bjen mire'-'the gun[74] is harmful, it doesn't bring anything good' (Y.M. Personal interview, Stongolem, Shkoder, September, 2007). When the conflict is still going on 'the parties in conflict are scared to get out of their houses'(F.L. Personal Interview, Bushat, Shkoder, September, 2007), however after the reconciliation is done they feel safe because the other party will not take revenge (N.L. Personal Interview, Vau Dejes, Shkoder, September, 2007).

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[74] After 1997: when the army's depots were destroyed and in many young people had machine gun stolen from these depots.

5.3.3 Reference to Kanun and God

The whole procedure of intervention to prevent a feud or to reconcile the families in a feud is based upon old practices which are prescribed in the customary law (the Kanun), and most of the mediators claimed that they operate according to the Kanun rules. Most of the informants stated that they operate usually according to the Kanun law to solve conflicts and to reconcile families. However, they stated that in families where Kanun[75] is used and acknowledged, they refer to Kanun and 'burrni' (manly honor/honesty)', otherwise they refer to God. One mediator reports what he had told to the victim's party:

> "I said 'according to the custom he is subduing to
> you, he is asking for your forgiveness and you have
> all the elderly who will share the burden with you'
> but I say this where the Kanun is recognized"
>
>   (F.L. Personal Interview, Bushat, Shkoder, September, 2007)

One mediator stated that he uses more reference to God and only formally he refers to the Kanun[76] (A.K. Personal Interview, Shkoder, September, 2007); and another also reported that he referred more to Shariat Law[77] and less to the Kanun. From the accounts of the interviewees it is

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[75] Even though in the Kanun there are some references to God, most of it is composed of traditional rules of mostly a patriarchal nature.

[76] In the Kanun there are many references to God, especially as a reference to Catholic religion.

[77] Fox (The Code of Lek Dukagjini, Introduction, 1989) maintains that in times of the Ottoman Empire in the Balkans, the Kanun of Lek dukagjini was influenced in certain parts by the Shariat Law used by the Ottomans. Thus overlaps in practice can be found here as well.

noticable that there is a strong reference to God. One mediator states that 'reconciliation is done only on God's behalf'. (Gj.M. Personal Interview, Lac Kurbini, September, 2007); another mediator says 'A person should forgive the blood: for the sake of God and faith and for the sake of the children (P.K. Personal Interview, Miredite, September, 2007). When asked what they say to the victim's family to make them reconcile with the offenders' one of the mediators stated: "our word were 'only for the mercy of God you should forgive" (P.T. Personal Interview, Miredite, September, 2007). Another mediator on the same issue stated: "I gave the example of Jesus, that God has said to forgive; God has said that to commit suicide is crime, so what about killing the other; are you a man of God? Do you go to mass? Then you will go against God?" (F.L. Personal Interview, Bushat, Shkoder, September, 2007).

5.3.4 The Reconciliation Ceremony

Usually after some time passes, in many cases after a few years, after an agreement is reached to forgive the blood, the reconciliation process is finalized with a reconciliation ceremony. The mediators say that the day of reconciliation ceremony is established, sometimes on a religious holiday, depending on the parties' religion (Y.M. Personal interview, Stongolem, Shkoder, September, 2007).

The ceremony is performed as prescribed in the Kanun: it starts with having a coffee at the house of the family who forgives and continues with having a meal *(The 'meal of the blood'- Buka e gjakut)* at the family who granted forgiveness of the blood. It is a very emotional moment and 'when parties meet each other the day of the reconciliation ceremony they even cry' (Y.M. Personal interview, Stongolem, Shkoder, September, 2007). Kanun also prescribes that after the blood money has been paid and the meal has been eaten, one of the members of the victims family, father or brother usually, has

to make a cross on the door of the offender's house. The sign on the door is a sign of 'reconciled blood. This is of course a practice of the Catholic families. Two of my informants reported to have used it as a ritual at the end of the ceremony. Except for the very last practice of the cross on the door, the other practices and the rules of these processes prescribed in the Kanun are followed also by the Muslim families and families of different religions.

In conclusion, the definition of reconciliation for my informants is not different than that provided in the literature. However the elements of reconciliation in the literature cannot be found in the reconciliation process in the Albanian context. Different values are found more to be used during these processes. Mediators in these cases have a lot of control over whether the basis for reconciliation is set, since they can affect how much mutual trust is built between the disputing parties during the conflict resolution process. Mediators can facilitate reaching the goal of restoring justice, reconciling parties and attaining a peaceful solution. However mediators are bound with the cultural values and norms. The mediation process in Albania is guided by values such as 'forgiveness is honorable' and 'forgiveness is based God's laws'. This reconciliatory mediation process comprises in a way of many reconciliation elements that are prescribed in the literature, however their interpretation in the Albanian cultural context they differ.

CHAPTER 6

CONCLUSIONS

The structure and practice of mediation reflects the context of the situation and the nature of the parties (Bercovitch, 1992: 4). Literature shows that very often the techniques the mediators chose vary from one culture to another or from one physical environment to another, depending on the values and the norms of a society. Bercovitch and Wells state that 'when mediators intervene in a dispute, they do so from the perspective of their own cultural background' and this cultural background may influence the choice of the strategies they employ in solving conflicts and disputes (1993: 3). The specific rules, beliefs, attitudes, behaviors and symbols that make up the conflict are imposed and they may even govern the process of mediation (Bercovitch, 1992: 4). Thus, the choice of mediators' strategies, as part of the process, is influenced by the context where the conflict takes place. Strategies and tactics are thus deduced from the broad context in which a mediator operates (Bercovitch, 1992: 18).

Even though since 1999: there is the Mediation Law now in Albania, mediators have been gaining entry in conflicts between families mostly based on the customary law. Parties in Albania (a community oriented culture) refer to the mediators because of: a) the disadvantages of the courts b) lack of trust in the government/courts and c) the power of tradition.

Albanian mediation shows to bare the characteristics of the cultural context in which it takes place. The specific rules, beliefs, attitudes, behaviors and symbols that make up the conflict are imposed and they may even govern the process of mediation (Bercovitch, 1992: 4). The values of personal honor, *besa*, and *beja*, which are found in the Albanian customary law, Kanun, in a way guide the mediation process as well.

Examining the twenty-seven cases of mediation in the Albanian context we can conclude that most of the killings happened due to momentary fights and mostly they were people who had relations with each other. However we observed that mediators had to mediate also many cases where the parties had experience a previous fight or had not known each other at all till the moment of the fight and the subsequent killing.

Most of the requests come from the families of the offenders. Norms which are embedded in the Albanian culture are a motivation force to request the assistance of a third party. Bjorkqvist states that "norms are ritualized ways of handling conflict" (1997: 26). However there are cases where the mediators intervene by themselves without having a formal or informal request, or when requested by other third parties.

6.1 Mediators' Strategies

In accordance with the literature, the nature of the conflict, the nature of the parties has an influence in the choice of these strategies. Therefore, process and context are closely interrelated (Bercovitch 1992). In most of these cases Albanian traditional mediators adopt a communication-facilitation approach. Cases of momentarily fights, which represent also most cases in numbers, are mediated using both approaches communication-facilitation and directive manipulation. However there is a dominance of the communication – facilitation strategies which allows us to generalize to a certain extend that the

tendency of the mediator in such cases is to use communication-facilitation. In such cases their roles as communicators and more as go-betweens were necessary. The data show also that there are patterns which demonstrate that the strategy of the mediation is influenced by the reason of killing.

There is a tendency to use communication-facilitation in cases when parties knew each other, or had a relationship however the difference in number between the cases that was used communication facilitation and the cases that was used directive manipulation does not allow us to make safe generalizations. In cases where two parties are involved we can just say that there a small difference in the number of cases between the cases in which communication-facilitation strategies or directive manipulation are used. This fact does not allow us to make safe generalizations and to establish that there is a pattern of strategy and number of parties.

In this study we looked at the outcome of mediation in terms of reached agreement or not and in combination with the strategies used. The data suggests that communication – facilitation strategies seems to produce more agreement; however they produce also more disagreements. Here we can not say that there is a pattern while looking at the agreements and disagreements that each strategy produced. Therefore no clear relations are found between the strategies and the outcome. However looking at the previous results of the analyses we can assume that in a context, where there are penal cases strategies alone cannot influence the outcome but in combination with other process factors or the contextual factors. Wall et al. acknowledged that besides the level of conflict, the availability of the resources, and type of issue and commitment of the disputants to the mediation process there are other intervening factors such as: mediator rank, disputant power, stage of the conflict and visibility of the mediation are mostly influential (2001: 383).

6.2 Reconciliation

The approach the mediators apply has all the characteristics of mediation as defined by the literature and their main aim or expected outcome is reconciliation between the families, full or partial. Examining the mediation process and the elements of reconciliation the study shows that the reconciliatory mediation performed in northern Albania is in tune with the restorative justice principles.

Albanian community mediation bares the characteristics of VOM. The mediation of murder cases in Albania show the complexity of the mediation process in cases where severe crime is involved, and how the behavior of the mediator is shaped by the specific characteristic of environment, the parties involved, the issues and the nature of the dispute. Mediation is seen as a process that allows various needs to be fulfilled, according to the requirements of the parties. It is also seen as a process where the mediator aims to achieve justice through apologies and reparations. Albanian Traditional Mediators abide by the Restorative Justice principles:

- making room for the personal involvement of those mainly concerned (particularly the offender and the victim, but also their families and communities)
- seeing crime problems in their social context
- a forward-looking (or preventative) problem-solving orientation flexibility of practice (creativity).

(Marshall, 1999: 5)

Mediators in these cases have a lot of control over whether the basis for reconciliation is set, since they can, for instance, affect how much mutual trust is build between the disputing parties during the conflict resolution process (Estrada-Hollenbeck, 2001: 81). The study showed that 'reconciliation' as understood by the mediators in Northern Albania and as it is defined it the literature overlap: reconciliation as a new relation. However mediators' conception of truth, mercy, justice and peace is different from what the literatures presents. The social value and norm that we mostly appealed

was 'forgiveness' coupled with honor. Mediators in the Albanian setting showed that they can facilitate reaching the goal of restoring justice, reconciling parties and attaining a peaceful solution

6.3 Theoretical Contributions of the Study

On the theoretical level, this study contributed by adding fourteen techniques in the list of techniques provided by Callister and Wall (1997).

1a. *Besa(truce)*
2a. *Beja (oath)*
3a *.Blood money-retribution*
4a. *Relationship with the parties*
5a. *Expression of optimism*
6a. *Reference to God*
7a. *Wait for the right time to intervene*
8a. *Usage of a 2ary or other 3rd party to gain entrance to the parties*
9a. *Collects a group of influential people*
10a. *The mediator provides information to the parties*
11a. *Use selective information to create tolerance*
12a. *Mediator adopts his speech according to the character of the parties*
13a. *Take specific actions*
14a. *The 'meal of the blood'or (Buka e gjakut)*

These techniques reflect the features of Albanian mediation but they also give us insight on other techniques the mediators use in community mediation in penal case. These techniques are bounded by the cultural background and the rules of the Customary Law (beja and besa), however other tell us about new techniques which are not found in the table of Callister and Wall of the mediators techniques.

An observation related to Callister and Wall's (1997) table is that it does not differentiate between the techniques the mediators use with different disputing parties. It can be recognized that this table does not derive from studies of mediation of penal cases. And because the penal cases are delicate and they involve the loss of human lives from one or both parties, the mediator treats the parties somehow differently, or better say apply different

techniques with different parties. My informants say that they treat them with equal respect, however they all also state that the usually they are more careful and try to reward, praise or approach (in order to create a relationship) the victims' family/tribe/kin members in order to gain their trust and confidence, because they are the one who have to do a 'big concession', by forgiving the blood.

6.4 Methodological contributions

In term of methodological contributions this study contributes in the application of a framework of techniques which is used to describe individual mediators' techniques in group mediation and in special cases such as penal cases.

6.5 Limitation of this research

There are certain limitations to be addressed in terms of the sample and one of them is the small number of mediators as well as the small number of cases which limits the researcher form drawing safer conclusions sometime.

Another limitation is that traditional mediation in Albania, in cases of murders or blood feuds, is done mostly in groups and a shortcoming of this study is that the data are collected from the in depth-interviews with only one member of the mediators group in the specific cases that will be analyzed. However due to time constrains, impossibility to contact all the members of the group. However they act as one and I think this does not contain a threat to the internal or external validity of the research.

The second is that both of the frameworks that I used to analyze the techniques and strategies used by the mediators do not differentiate between techniques used for different parties, especially in cases where there is a victim and an offender such as in VOM, where the mediators in many cases apply different techniques and strategies to different parties.

The third limitation is the fact that there are many definitions of reconciliation provided by many scholars, depending on different experiences with different cultures. Thus, this fact in a way can be considered as a limitation to finding other reconciliation elements or to directing the research towards certain elements specified in the framework that it is used in this research.

6.6 Future research suggestions on the subject

Firstly, in order to provide some more insight of the process, or/and of the dynamics of the mediators' groups' in community mediation, research could be expanded interviewing more members of the same group in order to get more detailed and accurate information.

Secondly, in a future research in order to examine in more detain how and what reconciliation and reconciliation elements are used to promote reconciliation between parties, interviews could be done also with the parties in conflict on this subject, specifically.

Table 7: Mediators' Mediation Techniques

Callister and Wall's (1997)

Nr.	Techniques	Description
1	Meet separately with disputants	Meets with disputants separately; respectively
2	Listen to other's point of view	Mediator has disputants state their points to him or her.
3	Educate	Mediator educates, persuades, or advises one disputant as to how he or she "should" in general think or act.
4	Get apology	Mediator has one disputant apologize or acknowledge his or her faults.
5	Put disputants together	The mediator brings the disputants together for a meeting.
6	Gather information	Mediator collects or asks for information from the disputants or others. Also, the mediator does research to obtain information.
7	Argue for concessions	Mediator argues for or proposes a specific concession or agreement point. Also negotiates a compromise.
8	Get grasp of situation	Grasps the cause (analyzes situation)
9	Provide objective data	Mediator provides objective data about the dispute or the environment (e.g., inflation is 20%).
10	State other's point of view	Mediator presents or argues other disputant's point of view. Also includes asking a disputant to see the other disputant's point of view.
11	Criticize	Mediator criticizes a disputant's person, attitude, and behavior or uses a specific label such as, "You are rude."
12	Call for empathy	Mediator enhances the other disputant or calls for respect of the other. The mediator puts a positive face on the other disputant, noting that he or she is a good person.
13	Meet together with disputants	Meets with disputants together, has dialogue with them. Requires disputants to state other's point of view. Also has disputants state their point of view to each other.
14	Mediator assists	The leader personally offers or gives assistance. Mediator takes a specific action.
15	Gather information from third parties	Information, opinion, and advice obtained from third party.
16	Cite dependency	Mediator expresses similarities or interdependence in disputants' goals, fates, and needs. Includes mentioning personal costs of disagreement and benefits of agreement.
17	Structure	The mediator restructures the disputants' working relationship in some manner.

18	Have drink with disputants	Mediator has a drink with the disputants prior to agreement.
19	Formalization	Caps the agreement with techniques other than a drink.
20	Provide logical explanation	Mediator backs up any technique with logic.
21	Drink; capstone	Mediator has drink with disputants to cap the agreement.
22	Wave third party assist	Mediator offers or gets third party's assistance for the disputants or the leader.
23	Analyze the disputants	Analyzes disputants and grasps each disputant's characteristics.
24	Call for break	Stops the quarreling; has disputants get rest(s). Picnic, gettogether.
25	Threaten	Any threat from the mediator.
26	Example	Cites example or similar case.
27	Praise disputants	Mediator praises the disputant who is being addressed. A "stroking" approach in which the person or behavior is said to be good.
28	Cite moral principle	Mediator points out a specific moral obligation or societal norm.
29	Reconcile	Mediator negotiates a general compromise.
30	Relax	Mediator makes specific statements to calm the disputants.
31	Have third party educate	Mediator has a third party to educate, persuade, or advise one or both disputants on how they "should" think or act.
32	Note cost to third party	Mediator points out costs of dispute to others, cites an obligation (to others) not to dispute. Includes noting benefits of agreement to others.
33	Obtain forgiveness	Mediator asks one disputant to tolerate or forgive the other.
34	Meet with third parties present	Mediator brings additional third-party disputants to a meeting.
35	Quote law or rule	Mediator quotes a specific law or rule that is relevant to the dispute.
36	Written agreement	Has disputants sign a quasilegal written agreement governing their future behavior.
37	Being vague	Mediator is intentionally vague when describing the situation or asking for concessions.
38	Have third party criticize	Mediator has a third party criticize a disputant's person, attitude, or behavior
39	Separates disputants	Mediator separates the disputants.

APPENDIX B   **Interview Protocol Form**

Faculty of Arts and Social Sciences

Conflict Analysis and Resolution MA Program

**Master Thesis Research: Reconciliatory Mediation in Northern Albania:
The role of Customary Mediators**

Interview Protocol

Interviewee (Title and Name): _____

Interviewer: Alma Shkreli, MA student in Conflict Analysis and Resolution, Sabanci University

<u>Sections:</u>

A: Interviewee Background

B: Conflict background

C: Role of the mediator in conflict resolution process

D: Outcome of the mediation

E: Role of the mediator in the outcome

Other Topics Discussed:_____

Documents Obtained:

_____

_____

_____

Post Interview Comments:

_____

Introductory Protocol

To facilitate our note-taking, we would like to audio tape our conversations today. Please sign the release form. For your information, only researchers on the project will be privy to the tapes which will be eventually destroyed after they are transcribed. In addition, you must sign a form devised to meet our human subject requirements. Essentially, this document states that: (1) all information will be held confidential, (2) your participation is voluntary and you may stop at any time if you feel uncomfortable, and (3) we do not intend to inflict any harm. Thank you for your agreeing to participate.

We have planned this interview to last no longer than _____ hour. During this time, we have several questions that we would like to cover. If time begins to run short, it may be necessary to interrupt you in order to push ahead and complete this line of questioning.

Introduction

You have been selected to speak with me today because you have been identified as someone who has a great deal to share about mediation in cases of blood feuds. This research project as a whole focuses on how the role of the customary mediator influences the process and the outcome of the reconciliatory mediation in Northern Albania. This research has two main objectives. The first one is to make an analytical and systematic analysis of how does the role of the customary mediator influence the mediation process, by looking at the strategies and techniques used. The second objective is to look at the outcome of mediation which is aimed to be reconciliation and discover what elements of reconciliation the Customary mediators emphasize during the process. This study does not aim to evaluate your techniques or experiences. Rather, we are trying to learn more about the mediation process through the strategies and techniques used by the customary mediators, and hopefully learn about elements of reconciliation that the Albanian society complies with.

A. Interviewee Background

Personal information of the mediator

Age_____
Ethnicity_____
Religion_____
Educational Background _____

How long have you been mediating?

How did you get involved in mediation?

How did you decide to become a mediator?

Are you mediating alone or with a committee?

Do you mediate alone? Why? Do you mediate with a committee? Who leads the committee? Why?

How many cases have you mediated?

What kind of conflicts did you mediate? (Differentiate)

Who were the parties?

Why did they come to you in stead of going to the court?

Whom did the request come from? Who initiated the intervention?

Why did they come particularly to you? (What sources or particular background do you have?)

Have you ever been a party?

B. Conflict background

Describe sequentially a case where you mediated.

Who were the parties involved?

Why did they come to you in stead of going to the court?

Whom did the request come from? Who initiated the intervention?

Why did they come particularly to you? (What sources or particular background do you have?)

What were the reasons for conflict?

From how long was the conflict going on?

How were the power relations between parties?

Were there any issues non-negotiable and impossible to mediate?

C. Role of the mediator in conflict resolution process

Describe your role in mediation.

How did you get involved?

Probe: Who asked for your intervention\ mediation? Why? Was it your initiative? Why? How did you intervene? Why?

The Process

Did you use any specific strategy to influence the process?

How did you make contact with the parties? Do you meet separately with the parties?

Was there any means that you could control the process?
Did you try to build a relationship with the parties? How?
What was your attitude towards each part? According to your opinion, how did the parties perceived you?
Did you try to build a relationship between the parties? How?
What did you do during the mediation process in order to facilitate communication between parties?
How did you do to make parties get closer to each other's?

If there are contradicting facts, how do you find\search for the exact facts?

Did you use the same procedure and technique for the same cases?

Did you apply any sanction of non –compliance?
Did you reward anybody who changes position?

Why would they change position?

D. Outcome of the mediation

What was the outcome?

Did the parties reconcile?

What made the parties believe that this is the right/just decision? How do they come up with alternatives and solutions?

Why did / do not the parties agree?

Did they sign any document?

E. Role of the mediator in the reconciliatory outcome

Did you use any law or any resources to make parties reconcile? (The customary law)

Did you use any specific norm or value to influence the parties to reach agreement?

Did you appeal for Truth, Justice, Mercy, and Peace?
Did the parties respond to appeals for Truth?

Probe: Was there honest acknowledgement of the harm or injury each party has caused to the other?
Did the parties show transparency on the issues or actions? Were they issues or actions clear?
Was there revelation and open accountability of their actions towards each other?

Did the parties respond to appeals of Mercy?

Probe: Was there acceptance and forgiveness for the other part
Was there any kind of support from one party to the other?
Did the parties show compassion and healing signs?

Did the parties respond to appeals of Justice? How?

Probe: Did you try to making things right?
How was the idea of creating equality between parties received?
How did you manage to create the right relationships between the parties?
Was there any form of restitution?

Did the parties respond to appeals of Peace? How?

Probe: Did they respond to appeals of harmony in the community?
Were ready to reestablish unity and well-being in their communities
How did they feel about security for the lives of the other family members and respect for them?

Post Interview Comments and/or Observations

The failure cases did you follow up the case? Explain other cases?

Who else does mediation? Women, other people?

APPENDIX C   **Table 8: Detailed Data Summary of 27 Cases**

Case Nr.	Mediator Nr.	Reason of Killing	Strategy Used	Intervention Request	Relation & History b/w Parties	Severity of Conflict	Nr of Parties in Conflict	Outcome
1	1	AS	C-F	M	NR/as	OS	2	FR
2	1	H	D-M	Fa	NR/pf	OS	2	FK
3	2	MF	C-F	Fa	NR/mf	OS	2	FR
4	3	PF	C-F	Fa	FA/pf	OS	2	No FR
5	3	MF	C-F	OM	FR/mf	TS	3	No FR
6	4	MF	C-F	Fa	NR/mf	OS	2	No FR
7	4	CA	D-M	Fa	NR/ca	OS	5	FR
8	5	H	D-M	Fa	FA/h.pf	OS	2	FR
9	5	MF	C-F	Fa	CV/mf	OS	2	FR
10	5	PF	C-F	Fa	CV/pf	OS	2	No FR
11	6	B	D-M	Fa	BP	OK + S	2	R
12	6	B	C-F	Fa	BP/mf	OS	3	FK
13	6	PF	C-F	M	CV/pf	OS	2	FK
14	7	MF	D-M	Fa	NR/mf	OS	2	FR
15	7	H	D-M	Fa	FA/h	OS	2	No FR
16	7	MF	C-F	Fa	CV/mf	OS	2	FR
17	8	CA	D-M	Fa	NR/ca	OS	2	RB
18	8	MF	C-F	Fa	FR/mf	OS	2	F
19	8	MF	C-F	Fa	FR/mf	OS	2	No FR
20	8	B	C-F	Fa	FR/bp	OS	2	No FR
21	9	H	D-M	Fa	CV/pf	TS	2	No FR
22	9	MF	C-F	M	NR/mf	OS	2	FK
23	10	PF	C-F	EoV	Nv/pf	TS	2	R
24	10	MF	D-M	Fa	FA&N/mf	OS	2	FK
25	10	PF	C-F	M	NR/pf	TS	2	R
26	11	AS	C-F	Fa	N/as	OS	2	RB
27	11	H	C-F	Fa	FA/mf	OK+S	2	No R

Reason of Killing
AS – accidental shooting
H – honor killing
MF – momentarily fight killing killer
PF – previus fight killing
CA – car accident
B – killing due to business disputes

Strategy Used
C-F – communication-facilitation strategy
D-M – directive-manipulation strategy

Intervention Request
Fa- family requested the intervention
M – mediators themselves intervened
OM – other mediators requested the intervention
EoV – the elders of the village requested the intervention reconciliation

Severity of Conflict
OS- one-side killing
TS-two-side killing
OK+S –one killing and suicide of the

Relation & History b/w Parties
Nv –neighbouring villages
NR-no relations
FA-family ties
FR - friends
CV- co-villagers
N -neighbours

Outcome
No R - no reconciliation
R – reconciliation
FR - forgiveness and reconciliation
FK - forgiveness for the kin
F-just forgiveness
No FR – no forgiveness and reconciliation
RB – reconciliation through beja

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