Breaking-up on good terms as responsible parents

Summary:

To be in conformity with all participants to legal proceedings, especially with solicitors and family mediators, the judge in family disputes must always question how to avoid the consequences of a divorce and separation conflicts, which are too often disastrous especially for children. The judge must make every effort that the couple's break-up is not synonymous with the irreparable breakdown of contacts and family. It is a dialogue and the search of a dialogue, which he must support in all conflict situations.

Introduction:

Controversial issue in the family law deserves that the judge gives it a priority for several reasons. The role of judge in family disputes requires a large human involvement, which the sensitive judge appears to be the best capable of.

The role of judge in family disputes is crucial for the security of children, parents, families and society.

Office of the judge in family disputes is a place of separation between unmarried couples and divorces. The judge in family disputes is confronted with problems in the family separation every day.

It is mainly the place where the love ends, which reminds us of the statement by the poet Aragon:

« There is no happy love ».

The judge in family disputes can see the family only through a distorted mirror: separation and divorce.

Because of the couple's failure, such a judge can only have a pessimistic and very negative picture of the couple.

The judge in family disputes who meets all the layers of society, thus sees very diverse ways of separation:

From a good-humored, even anecdotal breakup, to the breakup which leads to open war, over the approved and accepted breakup, reasonable breakup, tolerated breakup, misunderstood breakup, quiet breakup, tearful breakup, financial breakup, breakup with the settlement of outstanding issues, loving breakup ... ...

But when the judge in family disputes listens to the sides separately, the declared or undeclared suffering of adults is always present and often this sense of pleading is described by the phrase borrowed from Marie-Louise France:

« Suffering goes away, the fact that we have suffered does not ».

Ironically, the office of the judge in family disputes should not view the collapse of a couple as a family breakdown. It must be the place in which the family is renewed, the place for rebuilding another family, rather than the so-called traditional family.

Moreover, office of the judge in family disputes is the theatre of the family diversity, diversity in the family functioning.

Faced with the evolution of the family, development of divorces and separations of unmarried individuals, renewed families and an awareness of the harm caused to children who are often victims of parental conflicts, the legislative power gives the judge in family disputes an important role of a peacemaker, while it also gives him new tools, such as family mediation. Legal representative must also recognize the need to calm down any separation to the maximum.

After a short listing of recent laws available in the family law, the ways to create a new framework of individuals, we will deal with their impact on the judge for family disputes and on the legal representative.

I – Legal framework

In the best interests of the child, the main laws that govern the family law in all proceedings in which a child is involved, are intended to calm down the family dissolution.

A – Act on parental authority dated March 4, 2002, which is a visionary law and highly anticipates the ways of thinking, guarantees the equality of each parent – it is a co-parenting. Parents have the same rights and obligations towards the child. It guarantees preservation of the bonds between parents and their children after separation. This law focuses the definition of parental authority to the child's interest. The child has the right for co-parenting; in addition the law requires that the parents include the child in the decisions that concern the child, depending on the child's age and the level of its intellectual maturity (Article 371-1, Paragraph 3 of the Civil Code**).**

It affirms joint custody. The judge in family disputes must apply this type of care after a careful deliberation. The law on joint custody may cause a pain to children. This is an application that can be made by parents and society and which could cause them suffering.

Joint custody does not divide the care in half and half, it is the allocation of the child's time which must be equalitarian, but not necessarily proportional. Thanks to it the parents become equal to each other. Each situation is special and unique. It is appropriate to adjust it for every child "as custom made" and not "off-the-rack". Joint custody requires the least amount of a dialogue between parents. How do we establish joint custody if there is not any parental communication?

B – Divorce Act dated May 26, 2004 seeks to reduce the impact of proceedings and favors an amicable and responsible settlement of the divorce. Legislative power has realized the consequences which have proved to be particularly detrimental to the family ties and to children.

Mitigation and reconciliation are crucial words of this law.

These two laws require from the people in practice, the judges in family disputes, children's judges, lawyers and notaries, to work in a different way than in the past, consensusually and in the lesser conflict, so as to protect the child from the destructive impact of conflicts. Child, child protection and the highest interests of the child are obviously the most important aspects of these two laws.

C – Act on Protection of Children dated March 5, 2007, applicable as of March 7, 2007, is designed to improve prevention and notification of violence and abuse of minors. The pivotal word of this act is prevention. As a guiding principle for the protection of children it clearly presents the criteria in the child's interest.·

This law regulates the Article 388.1 of the Civil Code on the hearing of children. This article essentially states that from now on, each minor capable of differentiating must be informed of its right to be heard and the judge has the same right, if the minor will require that. Every child capable of differentiating is recognized as a legal entity and may ask the judge to be heard in all proceedings involving it.

Nevertheless, it is necessary that we deal with the child cautiously.

The problems the judge in the family disputes faces in the conditions of the family conflict are based on a difficult reconciliation between the child protection on the one hand, which places the child into the position of the legal object, and on the other hand, the child's right to express its views, which places the child into the position of the legal subject.

Duality of the child's interrogation is based on the necessity to allow the child to express itself, but also to protect it against the proceedings, and therefore even against the pressures and not to leave the responsibility of choice on the child.

The child's word often helps parents, lawyers and judges to make decisions. But is it really the most important thing?

Is it not a real question whether the child's word, understanding of the child's word, can assist the child?

Whether understanding of its words can be of service to the child, whether it can protect it, relieve it, or serve it?

It is clear that if we systematically refer to the child's word, even when the child knows that it cannot make any decisions and only expresses its opinion, it can often act as a trap, which could close over the child. Moreover, the reality shows that the child's views often influence its decisions.

The child's word often brings more disadvantages than advantages; while in some families it places the parental authority at risk of being weakened and for that reason it may be a factor in the social breakdown.

And this power granted to the child weakens and exhausts it, instead of shaping it, helping it and protecting it.

Precautionary principle must be the rule. The main danger is in turning the child into a « decision maker ».

In the context of the impasse decisions between their parents, in many proceedings the child becomes the **«** decision maker **»** which resolves disputes and makes decisions.

But as the family mediator Jocelyn DAHAN says:

« We must never give a child an ability to choose, if the child's word has the force of the law, is the child still a child? »

II – The necessity of humanizing separation - Judicial dialogue and not judicial conflict

The judge in family disputes and all participants to legal proceedings must always question how to avoid the consequences of the divorce conflict, problematic separation, which are too often disastrous especially for children. The judge in family disputes must

make every effort that the couple's break-up is not synonymous with the irreparable breakdown of relations and family.

What must be and should be paramount and helpful in all divorce and separation situations are the dialogue and the search for the dialogue.

Dialogue is essential for the successful separation. It should be based on the principle that from the moment the parties are involved in a dialogue and respect each other, it represents a big step for finding a satisfactory solution for all, or at least that the decisions made by the judge in family disputes are better respected, better accepted and better experienced and that is in the interest of children, as well as parents.

In fact today the persons under the jurisdiction of the court expect from the judges to be told not only what they are entitled to, but that the judge will guide them towards the path of dialogue and will negotiate solutions that will have all the chances to be applied effectively.

Moreover, the participants to the court proceedings must be also fully aware that the roots of family conflicts are not only judicial.

Marital conflict is variable. It feeds its roots from different sources. And it would be unfair to think that the rule of law used by lawyers, judges and notaries can correct it alone, or embrace all its aspects.

Application of the rules of law is not sufficient enough to resolve family conflicts which involve affection, emotion, passion, suffering, love and dislike.

All parties to the court proceedings must make the diverging parties to understand that just as they were able to create a couple, they must handle their own legal separation in the same way also, to invent a recovery and to create a separate family.

Separation must be a new beginning, new life, and not a conflict in which there are only losers and mainly the suffering children.

During the separation conflict, the judge in family disputes must constantly focus the debate on the central issues: child, the best interest of the child and preservation of its relationship with both parents.

Such a child needs for its balance a dialogue between parents and not the decisions prepared and imposed by the judge.

The judge in family disputes must unanimously (mainly with lawyers) do everything that the family justice system is not just a justice of conflict, but the justice of a dialogue, a humanitarian justice, which is thinking about the welfare of the couple that is breaking up, and the child who is the true wealth of each country.

For this reason the legislative power gave the participants in the court proceedings, the family judicial system and families a new tool: family mediation.

A – Family mediation:

This tool has been incorporated into the Civil Code and the Act on Parental Authority (Article 373-2-10 of the Civil Code) and the Divorce Act (Article 255 1. and 2. of the Civil Code).

The purpose of family mediation is to return the family language to the level of adults who are responsible for the welfare and interest of all its members, especially the children.

The main objective of family mediation is that the parties reestablish their dialogue, that they would communicate, that they would distinguish the parental from marital, that they would respect each other as parents, think together about the best solutions for their own sake and interest of the child, and if possible that they would record these solutions into written agreements which they may, after contacting their lawyers or notaries, submit to the judge in family disputes for approval.

The use of family mediation allows the judge in family disputes to make better decisions from the moment the parties are involved in a dialogue among themselves.

Experience of its use in a certain number of tribunals demonstrates its effectiveness for couples who are breaking up, if it is thought about at the same time with all participants to the legal proceedings. The legislator encourages the family mediation and thus offers the parents another logic for settlement, the logic of a dialogue and recognition of each other, responsibility for deciding about the family and especially about the children.

To attract and encourage the diverging couples to inform each other about family mediation may be useful; in fact it may seem to be very effective.

Family mediation mainly prevents that the child is left at the mercy of interrogation.

Wouldn't it be good if in the 21st century we finally start to think differently, appealing to the common sense and simply that we would help parents, father and mother together to think calmly and sensibly about what they could do to avoid all the « baloney » for the child and the family they created?

What can we do that the justice would protect the child and at the same time listened to and respected the child's word and helped the child during the proceedings of the parental separation conflict?

Before the divorce proceedings or in its course it is essential to make the parents responsible, to show them what is important for children whose parents are separating, so that the separation would take a place in harmony, in a calm and mutual respect and that the children were informed about the reasons for their breakup, the impact on their child's life and that the mendacious words are destroying the structure of the child's life. We must be truthful with children and tell them that the parents who are separating are not leaving them, but still love them.

For this purpose the family mediation is a valuable tool. It gets rid of conflicts in the parental relationships.

Calm ways must be found in the interest of the child, but also in the interests of adults who are separating.

B – Reflections of trial participants on what the legal separation should constitute in the 21st century.

For example, it is essential that the judge in family disputes unanimously reflects (mainly with the lawyers) within the framework of the reform dated May 26, 2004, particularly over what is « in the child's interest » and in the interest of diverging adults, but also about where did the « error » happen. « Error », which is normally very destructive in the family that is separating.

1 – Meaning of «error».

Within the meaning of the legislature the concept of « Error » must be defined very narrowly, in order to achieve the objectives of mitigation and reconciliation. « Error » must be located and identified in very serious acts, such as domestic violence and serious humiliation, to which one of the spouses was exposed during their life together.

In view of the importance that the concept of « error » gained in the conflict or peaceful settlement of the divorce, thanks to its litigation the judge in family disputes plays a vital role in reducing the number of divorces for error, and the same applies to lawyers who first enter into contact with the person who wants a divorce.

As the singer Michel DELPECH says in the song « Divorced »:

« Even though it is over between us,
the life goes on ».

Two main errors happen during separations and we must not allow them to happen:

- to ignore the error because it would be an insult to the suffering of those who were its victims - and some people need the other person to recognize the error has happened,
- to take advantage of the error, because it means staying in the conflict, settling of outstanding issues, suffering and destruction of families.

To protect families, children and adults, it is necessary to deal with the « error », but not in the spirit of struggle in the heart of the family, but with open approach leading to the reconstruction of the family, even though it is difficult. The objective of most European legislations is to assist the parties to find a way for family mediation, which must become a place of remembrance of the « error » and « errors ».

Family mediation must allow spouses who are separating in conflict to perform reconstruction prior to deconstruction, to clear conflicts of the past in order to conceive the most balanced planning for the future.

It is advisable to « close » the door after error and to « open » the door to family mediation, so that injustice and damage can be discussed at length within the family mediation, and not with the help of more or less truthful and more or less false evidence. This work allows us to proceed with separation in harmony.

It should be noted that in many conflict situations, finding errors does not help the restoration of a dialogue and the preparation of the future. Examination of the errors often parasitizes the whole procedure and carries with it a secondary irreversible damage.

The place for a confidential conversation, which is the family mediation, lowers the number of divorces for an error and guards against allowing the feelings of bitterness to resurface in controversial matters after the divorce. Parties in the family mediation are in fact forced to ask questions and after they have removed the marital ulcer and « spilled out everything they had on their heart » and expressed their resentment, most of them are capable of achieving parenting and family harmony and to deal with the interests of their children and as responsible parents are thinking about it.

Family mediation is obviously not a cure for all situations. But in many separations it helps and guides us towards the dialogue and to induce it. It helps the parties to sign agreements so they can talk to each other and re-establish a minimal dialogue.

As the fellow judge in family disputes says:

« Family mediation is the only tool we have to work with the parties, why then abandon it? »

For the vast majority of the couples this is not the time for everlasting love.

In our time separations are inevitable.

And it is up to the trial participants to be discharged under the best conditions. It is necessary to be aware that family dispute is a specific dispute, which affects emotions and feelings. Unlike the children's judge, the judge in family disputes does not have a special tool that would allow him to influence the emotional or affective dynamics that are behind disputes.

Family mediation is this vector, the instrument capable of affecting the blockage. A specific instrument for the specific dispute. It is thus clear that the application of the measures imposed by the judge in family disputes to the blocked situation is certainly doomed to failure. So the challenge facing not only the judge in family disputes but also the lawyer, is to unblock any situation so that the family dynamics could unfold in the other way.

To want to impose a solution to the blocked situation often only worsens the situation and the person on whom it will be imposed will respond with a feeling of frustration. The judge in family disputes should be aware that consensual justice is more effective than the officially prescribed justice.

The main thing is that after the parties pass through the judge's office, the life goes on. It is necessary to achieve that the family dispute is not confined to the lawyer's office or office of the judge and that the settlement of family dispute is not made in a few minutes in the judge's office and it is not drawn up on a few lines, no matter how convincing and relevant the reasons are and regardless the lawyer's and judge's human and professional quality. And we must never forget that the participants' conduct in the judicial proceedings must be always governed by the « interest of the child ».

2 – Meaning of interest of the child

Parents must understand, and when they are separating, the participants in the trial must remind them that parental authority is not based only on protecting the security, health and morals of the child, but also in ensuring its education and allowing its proper development. They must also be well aware that parental authority is the set of rights and obligations based on the interests of the child. If a different family formats exist, there is only one parental authority, which is based on the idea that a child needs its mother and its father, and they, whether they want it or not, are its parents for the entire lifetime.

It is true that the meaning of the child's interest is an abstract and quite aleatory concept. It often remains a false, foggy and vague word, an empty expression, the opinion of the principle. It's a very nice concept, but often the question arises – how to support this principle? What should I do so that it is not only a utopia, how to turn the interests of the child's into reality? Can the expression interest of the child have a sense in the event of parental conflict? What does the highest interest of the child mean for the lawyer and judge who do not know the personal circumstances of the child, its personal experience and its actual relationship with its father and mother? It is important to admit that we often refer to the interest of the child and that it « reflects in all our methods » and allows us to induce a feeling of pure conscience.

The expression interest of the child is used by every trial participant to reflect its own culture, its own education and experience. Moreover, interest of the child is not the same for

every family. Each parent in a dispute reflects into it its own perception, which is often linked with the suffering of an adult, with a dismissive attitude, with the hatred against the other parent, with the material problems associated with nutrition supplements and contributions to the costs of the child's rearing, contributions to the common household or property settlement.

Whether it is in good faith or in insincerity, very often each party combines this concept of the interests of the child with other, less allowable terms.

It should be noted that each situation is specific and it is attributable to the lawyer and judge in family disputes to give the interests of the child an appropriate response and to make parents accountable.

For this reason, the family mediation represents a valuable help for the participants in the judicial hearing and for the diverging parents.

III – Indispensable partnership between the participants of the hearing

A – The judge in family disputes

For the judge, as well as for the lawyers and notaries, the way of family mediation is a difficult journey. A large number of judges in family disputes are still very reluctant to use family mediation. Many judges in family disputes are confronted with piles of cases which they are supposed to resolve « with eye blinders » and with education, which requires that the judge is able to address and judge. Faced with a law that favors family mediation, we are coming across the independence of judges in the family disputes and many of them are still very reluctant to use it.

But when the judge in a close relationship with lawyers, court secretaries and family mediators decides to use it, to recognize family mediation as a major tool, it will cause a revolution in his work. The function and legitimacy of the judge is to settle conflicts, but nothing prevents that such settlement would necessarily have to intervene in the pain of the parties, but also in the pain of judges in the family disputes, lawyers and notaries.

For some, the role of a judge means to resolve the dispute which two parties create against each other only with the use of the law. However, it should be noted that family conflict is not dealt with simply by using a statutory provision, whether it is appropriate and relevant, and that conflict continues after the assessment, decision and appeal.

Family mediation, as it involves the parties in the conflict resolution, provides the role of the judge who must be the participant in the procedure which is guiding the parties towards the settlement of their dispute.

As the Chairman of the Court of First Instance in Avignon (Vaucluse) Pierre GOUZENNE said:

« I am a judge by refusing to judge ».

In case of the judge in family disputes it is not a sign of resignation, but it is more a question of dynamic approach leading to solving the conflict with the objective of unblocking the situation, so that the family dynamics unfold in such a way that we can obtain an optimal result for all solutions.

As the judge in family disputes in the Court of First Instance in Tarascon (13) Fabienne ALLARD said:

« To order mediation means to tell the parents to be able to decide ».

A judge that suggests family mediation as a remedy is counting on those who are in conflict that they are qualified to separate in harmony and if they have children, that they can do that as the responsible parents.

To those who say that the role of a judge is to resolve the dispute and not « to send it to the off side » and refer to the mediation, it is appropriate to say that in some situations, it is clear that to apply the measures laid down in the deadlock is obviously doomed to failure and that the task of the judge in the family disputes (but the lawyer's task as well) is to do what is in his powers and to use the means which the legislative power made available to him so that the family dynamics regroup into harmony. To want to impose a solution for the blocked situation from either a lawyer or a judge often worsens the position of both of them and creates a feeling of frustration among those on which it was imposed. And especially after the parties pass through the office of their lawyer and judge, the life goes on and it must be remembered that the family dispute is not limited to the intervention of participants in the trial.

It is a gamble. The conflict cannot be resolved in a few minutes in the judge's office or on a few drawn up lines, no matter how convincing and relevant the reasons may be and no matter how competent the lawyer and judge is.

It is true that certain number of mediations does not end with the signing of the agreement between the parties and that certain number of participants in the proceedings will be talking about the « failure » of mediation. The failure is in not recognizing what the family mediation means. To order mediation is not in the delegation of the judge's authority to the family mediator. Family mediation is a tool which helps in making the decision. It plays its role when the parties can discuss things together, when they can re-establish a dialogue. And if the parties are able to listen and respect each other, it greatly facilitates the work of trial participants and especially the judge, in which case the parties are able to use the court's decisions in harmony. Family mediation, which failed to end in an agreement, but which allowed re-establishing of dialogue between parties is in terms of judicial efficiency and satisfaction of the parties better than mediation which resulted in negotiations, signing of agreements, but which ended with the parties that again did not start a dialogue, which cannot communicate together, which cannot discuss anything and which are lacking a parental respect.

The judgment which follows the family mediation that could not result in an agreement, but allowed re-establishing of a dialogue is always better accepted and therefore more effective. In almost all mediations it at least enables the parties to sit together at the same table and to talk again.

In fact the summons to attend the informative interview to family mediation is a shift, a success, which obviously is not tangible and cannot be credited to the work done by the family mediator. Even if it was not followed by the process of family mediation, it may result in the parties' reflection, allowing them to reach a consensus or at least to calm the separation and to have a mutual respect.

There is no doubt that the judge in family disputes who uses family mediation has a different approach to his functions.

As my colleague, Vice President Anne BERARD said:

« To make sound and well reasoned decisions in the family matters does not necessarily mean to make them according to the law.

To arrive at successful conclusion we can't only modify things on the outside, to confuse a dispute with conflict. The conflict, however, is not extinguished with the dispute.

Justice makes a useful deed only if it becomes useless. And it happens when it is not the judge, but the parties themselves, which can jointly solve their conflict.

All that is the main contribution of the family mediation ».

B – Lawyer

Family mediator is not the lawyer‘s competitor.

What might be the advantages and disadvantages of using family mediation to a lawyer?

We can take into account two disadvantages.

The first: lawyer is no longer the master of the time in the proceedings, which may cause problems with the file management and profitability. Some lawyers insist that family mediation can only prolong the proceedings time and increase the costs. However, the practice suggests that family mediation, which usually lasts from three to six months, does not delay the proceedings. Rather the opposite. And even if at the end the parties did not sign a written agreement, from the moment the mediation allowed re-establishing of communication between the parties, the conflict solution appears to be a simpler way for negotiations.

The second: the use of mediation can result in the loss of the client’s confidence, even the very client who want to « fight » the other client. There is no denying that some lawyers may have a behavior of killers, the extremists, « supporters of the fight to the last man » (« I will decimate him »), and to extol mediation in the face of such a type of lawyer is difficult. Some lawyers who attempt to reach reconciliation also run the risk of losing the client. That is the reality which must be taken into account.

But for the lawyer the advantages are very real. We can consider two main advantages:

The first: family mediation allows the lawyer to maintain a certain distance. Some files are very difficult; both in emotional terms as well as in terms of « time » (some files are time eaters). It should be noted that the period of mediation allows the lawyer to get rid of the conflict. For the management of the file it is pleasant.

The second: family mediation allows the lawyer (but also, and perhaps especially the judge) to return to some humanity, because humanity is the most feared force on the Earth. Interest of mediation is to enable the lawyer to withdraw, to retreat into the background. Interest in mediation consists of the acceptance of the idea no to be in the first line. It is the client who will assume that place. With the use of family mediation the lawyer realizes that the most important objective is to achieve that the client can re-establish a dialogue, to remain the player in his file and to accept that the client is competent to solve its own problems. Mediation gives the diverging parties a full power to make decisions for themselves, while the lawyer has the actual role of a legal adviser.

As Louis SAYN-URPAR, the Chairman of the Bar Association in Tarascon (13) says: « The lawyer will focus on essential matters, such as advice and legal form »**.**

It is true that if the two diverging parties re-establish a dialogue again, then the lawyer may work differently. Family mediation obviously serves as the « facilitator » to the legal profession.

Nevertheless it is true that if the family mediation is to have good results, it is necessary that the lawyer does not feel « sidelined » during the mediation, that the family mediator would remind the parties that they must stay in touch with their lawyers, and

especially that before they sign any agreements each party should meet with its lawyer to discuss the contents of the agreement.

It is therefore paramount to work as partners and to recognize and respect the role of each participant, without sectarianism and in the interests of persons under investigation and their children.

Experience shows that if the judicial system uses family mediation, most lawyers do not maintain their files in the same manner, because the proceedings are calm and relaxed, to the great satisfaction of their clients.

Conclusion:

The judge in family disputes can only agree that the rights of the child are reaffirmed again, but must also reaffirm the meaning of parental authority and the parent's obligation to ensure the child's security (physical, emotional and psychological) and the protection that will help the child to become a responsible and independent adult, and of course to listen to the child and give it the love, without which the child cannot grow.

Family must again resume negotiations, dialogues and discussions, and as Jean-Jacques Rousseau says:

« We must treat the child as a child and not as an adult ».

Even in the 21st century we must continue to treat the child as a child.

Child needs to have mature, responsible parents who after their separation are able to create their new mutual roles and who are able to accept their child as a companion to the decisions they are to make.

The concept of parental authority is not synonymous with superiority, even when the upbringing is free of coercion, because the child needs to be close to the responsible adults.

The judge in family disputes must try to delegate or re-delegate the parent's responsibilities, while respecting the child who never deserves to bear the burden of parental marital conflict.

Heading towards these two objectives with a systematic intent to calm the separation requires a balance that is not always easy to achieve.

The judge in family disputes is a juggler, tightrope walker and acrobat with a stick (he has the right balance), who has three problems:

- how to calm the separations, how to reconcile the parents who are parting because of their conflict?

- how to establish formal equality between father and mother, a genuine equality, how to establish a specific forging of co-parenting and in the event of separation to allow parents to fully play their roles with a mutual respect,

and

- how to establish harmony between the rights and obligations of each parent with the highest interest of the child? How to listen to, liberate and respect the child's word and not to turn the child into a judge during its parents' separation, not to make the child a victim

of its words, not to turn the child into the Almighty and not to indirectly give the child a decisive authority.

For the judicial system and for the judge in family disputes, this is a difficult challenge.

From now on, the judge in family disputes feels responsible for the delicate task of finding the equilibrium point of gravity between the three interests, the interests of mother, father and child, which is not an easy thing in a crisis situation.

Even though family mediation is not « a miracle doctor », as it was nicely described by the child whose parents have participated in mediation with positive results, it is a part of the search for better cooperation between parents, in order that it would organize the ways to exercise parental authority with the dialogue and mutual respect, while taking into account the rights and the highest interest of the child and with the objective to calm the separation.

It is an entire culture which is developing, a culture for calming and reconciliation during separations, a culture of parental dialogue, listening, questioning, mutual respect and exchange of views, parental authority, recognized and respected by the child, the child's rights recognized and respected by the parents, the ability of achieving a balance in the heart of the family.

The judge in family disputes must be primarily a factor of the family peace, a social peace factor.

In this context, the judge continues to « talk about the law », but before that offers the diverging parties an opportunity to jointly find what is right and fair for them.

As the jurist and researcher at the University of Montreal Pierre NOREAU says:

« The law is a photograph of the reality, a developer of what is happening in the society. We are encouraged to switch from the standard, a prescribed family law to the law created by the people ».

Regardless of what their family problems are, it is essential that the judge in family disputes together with a lawyer and family mediator unanimously allow the people to be the players in their own lives, while the child will be always a big winner.

In Tarascon, October 2, 2009

Marc JUSTON
Judge in Family Disputes
Chairman of the Court of First Instance
in Tarascon (13)