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MEDIATION IN THE REPUBLIC OF NORTH MACEDONIA: MAIN FEATURES AND TRENDS^{557 558}

MEDIAÇÃO NA REPÚBLICA DA MACEDÓNIA DO NORTE: PRINCIPAIS CARACTERÍSTICAS E TENDÊNCIAS

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ABSTRACT: The right to access to justice in the Republic of North Macedonia traditionally means the right to access to court and judge. Mediation as alternative dispute resolution method is yet to be popularized among the general public and legal practitioners. The main reason why mediation was introduced in the Macedonia`s legal system was to overcome the situation with backlog and pending cases in courts. This paper analyses the present situation of mediation in the Republic of North Macedonia with aim to draw attention on some of the most important features and trends regarding mediation procedure and mediators thus to answer the question: Do these features brought or will bring additional quality to mediation

system? The paper provides a brief comparative overview of the laws` provisions concerning mediation procedure and mediators. Namely, the mediation system in the Republic of North Macedonia was introduced in 2006 through the Law on mediation. In 2013 the new Law on mediation was adopted, and in 2021 again, the new Law on mediation was adopted. This approach of bringing new laws *eo ipso* arises the question: Were these kinds of changes necessity and effective? Mandatory mediation which was introduced in 2015 as a mandatory step for certain types of disputes before the commencement of civil procedure, is one of the most important characteristics of Macedonian

⁵⁵⁷ Artigo recebido em 19/02/2024 e aprovado em 19/06/2024.

⁵⁵⁸ O presente texto corresponde à comunicação apresentada no II Congresso Internacional de Direito Processual Civil sobre os “DESAFIOS DA DESJUDICIALIZAÇÃO DA JUSTIÇA”, realizado na Universidade Portucalense, a 15 e 16 de dezembro de 2023, organizado pelo Instituto Jurídico Portucalense, em parceria com a Universidade do Estado do Rio de Janeiro, a Universidade Estácio de Sá, a Universidade de Vigo, o Instituto Brasileiro de Direito Processual, a Associação Brasileira Elas no Processo e com a Associação dos Registradores Cíveis de Pessoas Naturais do Brasil (ARPEN BR), com o apoio do Contrato Programa UIDB/04112/2020, financiado por fundos nacionais da República Portuguesa, através da FCT I.P.

mediation system. As a novel the system for licensing of mediators was designed, but the introduction of the licensed mediator resulted in legal solution contrary to the rule *lex retro non agit*. The National Mediation Council was created as a body for ensuring, following and evaluating the quality of mediation services, and it is closely associated to the Government. The mediation agreement as an executive document, and statute of limitation and preclusion are also among the main futures of the mediation system in the Republic of North Macedonia. At the same time, the paper discusses the consequences these legal solutions produced, the tendency of the legislator and the desired outcomes.

KEYWORDS: mediation, mediator, mandatory, quality, North Macedonia.

RESUMO: O direito de acesso à justiça na República da Macedónia do Norte tradicionalmente implica o direito de acesso ao tribunal e ao juiz. A mediação, como método alternativo de resolução de litígios, ainda não é amplamente conhecida pelo público em geral e pelos profissionais do direito. A principal razão para a introdução da mediação no sistema jurídico da Macedónia foi a necessidade de lidar com atrasos e processos pendentes nos tribunais. Este artigo analisa a situação atual da mediação na República da Macedónia do Norte, destacando algumas das características e tendências mais importantes relacionadas ao procedimento de mediação e aos mediadores, para responder à pergunta:

essas características trouxeram ou trarão uma qualidade adicional ao sistema de mediação? O artigo oferece uma visão comparativa das disposições legais sobre o procedimento de mediação e os mediadores. O sistema de mediação na República da Macedónia do Norte foi introduzido em 2006 com a Lei sobre Mediação. Em 2013, uma nova Lei da Mediação foi adotada, seguida por outra nova lei em 2021. Essa abordagem de constante atualização legislativa levanta a questão: essas mudanças foram necessárias e eficazes? A mediação obrigatória, introduzida em 2015 como uma etapa prévia obrigatória para certos tipos de litígios antes do início do processo civil, é uma das características mais notáveis do sistema de mediação macedônio. Como inovação, foi implementado um sistema de licenciamento de mediadores, mas a introdução do mediador licenciado resultou em uma solução jurídica que contraria a regra *lex retro non agit*. O Conselho Nacional de Mediação foi criado como órgão responsável pela garantia, monitoramento e avaliação da qualidade dos serviços de mediação, estando estreitamente ligado ao Governo. O acordo de mediação como documento executivo e o estatuto de prescrição e exclusão também são características principais do sistema de mediação na República da Macedónia do Norte. Simultaneamente, o artigo discute as consequências dessas soluções jurídicas, as tendências legislativas e os resultados desejados.

PALAVRAS-CHAVE: mediação, mediador, obrigatoriedade, qualidade, Macedónia do Norte.

INTRODUCTION

The Republic of North Macedonia (hereinafter: North Macedonia) is a part of the civil law legal system. The right to access to justice in North Macedonia traditionally means the right to access to court and judge. According to the last survey on the confidence in the judiciary in North Macedonia, only 1% of the citizens have full confidence in the judiciary.⁵⁵⁹ In 2022 the number of the civil and commercial litigious cases in front of the first instance courts was as follows: incoming 43 007 cases, resolved 36 763 cases, pending cases to 31 of December 2022 - 31 404, there is no available information about the pending cases older than 2 years,⁵⁶⁰ and the disposition time is 312 days.⁵⁶¹ The data shows that the number of resolved cases for the reference year is almost the same as pending cases.

The main reason why mediation was introduced in the Macedonia`s legal system was to overcome the situation with backlog and pending cases in courts. The mediation system in the Republic of North Macedonia was introduced in 2006 through the Law on mediation.⁵⁶² This legal framework, which, for the first time introduced mediation in the legal system of North Macedonia, was prepared through the regional project of the International Finance Corporation World Bank Group (hereinafter: IFC). Namely, the IFC started the introduction of alternative dispute resolution methods in the territory of the Western Balkans, in the conditions of dysfunctional domestic legal systems, market economies in transition, uncertainty among investors and legal uncertainty.⁵⁶³ According to the this time reports, the enterprises, identified the contract enforcement as the main obstacle to doing business.⁵⁶⁴ During this period, the only way to settle

⁵⁵⁹ International Republic Institute. National Survey of North Macedonia April-May 2023. [online]. 10 July 2023. [Accessed 25 January 2024]. Available at:

<https://www.iri.org/resources/national-survey-of-north-macedonia-april-may-2023/>, p.22.

⁵⁶⁰ European Commission for the Efficiency of Justice (CEPEJ). HFIII: Towards a better evaluation of the results of judicial reform efforts in the Western Balkans-phase II “Dashboard Western Balkans II”. [online]. 21 July 2023. [Accessed 25 January 2024]. Available at: <https://rm.coe.int/20230721-wb-dashboard-deliverable-1/1680ad53aa>, p.200.

⁵⁶¹ European Commission for the Efficiency of Justice (CEPEJ). HFIII: Towards a better evaluation of the results of judicial reform efforts

in the Western Balkans-phase II “Dashboard Western Balkans II”. [online]. 21 July 2023. [Accessed 25 January 2024]. Available at: <https://rm.coe.int/20230721-wb-dashboard-deliverable-1/1680ad53aa>, p.203

⁵⁶² Law on Mediation, Official Gazette of the Republic of Macedonia No. 60/06.

⁵⁶³ IFC Advisory Services in ECA. *Alternative Dispute Resolution Program (ADR) in the Western Balkans: Giving Mediation a Chance*. International Finance Corporation World Bank Group. 2010. p.13.

⁵⁶⁴ See: International Monetary Fund. Country Report No. 05/339. [online] September 2005. [Accessed: 20 January 2024]. Available at: <https://www.imf.org/external/pubs/ft/scr/2005/cr05339.pdf>.

the agreed and unfulfilled obligations was the court procedure.⁵⁶⁵

In 2013 the new Law on mediation was adopted.⁵⁶⁶ During the period of preparation of this law, new project was implemented: the “MATRA project - Support to improvement of the implementation of mediation in Macedonia”.⁵⁶⁷ The main goal of this project was to contribute to the improvement of the implementation of mediation in civil and commercial disputes.⁵⁶⁸ The expectation was a wider impact of the project activities, especially on the reform of the judiciary – reducing the burden on the courts and the backlog of cases, resulting in a positive impact on other priority sectors, such as the development of the private sector.⁵⁶⁹ The project was implemented by a national non-governmental organization, and the immediate

beneficiary of the project was the Ministry of Justice of North Macedonia. The project activities and results were approved by the Ministry of Justice and the Government.⁵⁷⁰ There is no official data how this project influenced the improvement of the mediation in North Macedonia. But, in 2021, the Ministry of Justice of North Macedonia stated that the Law on Mediation from 2013 did not produce the expected results.⁵⁷¹

In 2020, again the same non-governmental organization implemented the project “Mediate, do not hesitate”, which overall objective was to contribute to increasing the overall usage rate of the mediation as an alternative dispute resolution method.⁵⁷² Thus defined project goal, indicates that the previously project did not produce the expected results. But the same non-governmental organization is again part

⁵⁶⁵ Advisory Services in ECA. *Alternative Dispute Resolution Program (ADR) in the Western Balkans: Giving Mediation a Chance*. International Finance Corporation World Bank Group. 2010. p.13

⁵⁶⁶ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16.

⁵⁶⁷ The project was funded by the Embassy of the Kingdom of the Netherlands in Skopje, and implemented by the European Policy Institute in Skopje in partnership with T.S.M. Asser Institute in The Hague, Netherlands. During implementation EPI was in close cooperation with the Centre for Conflict management (CVC) of the Netherlands.

⁵⁶⁸ See: European Policy Institute Skopje. MATRA project - Support to improvement of the implementation of mediation in Macedonia. [online]. 24 October 2018. [Accessed 10 January 2024]. Available at: <https://epi.org.mk/post/7489>.

⁵⁶⁹ *Ibid*.

⁵⁷⁰ *Ibid*.

⁵⁷¹ Ministry of Justice of the Republic of Macedonia. Regulatory Impact Assessment Report. [online]. 27 April 2021. [Accessed 10 January 2024]. Available at: https://ener.gov.mk/files/propisi_files/report/28_1862751818%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%20%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%BD%D0%BA%D0%B0%20%D0%BD%D0%B0%20%D0%B2%D0%BB%D0%B8%D1%98%D0%B0%D0%BD%D0%B8%D0%B5%D1%82%D0%BE%20%D0%BD%D0%B0%20%D1%80%D0%B5%D0%B3%D1%83.pdf. p.3

⁵⁷² See: European Policy Institute, Skopje. Mediate, do not hesitate. [online]. 01 October 2020. [Accessed: 15 January 2024]. Available at: <https://epi.org.mk/post/15674>.

of the interdepartmental working group for the drafting of the Law on Mediation from 2021.⁵⁷³ Considering the previous facts, the following question arises by itself: Why are projects implemented at all, when they do not show results? During the implementation period of this project, again a new Law on mediation was adopted in 2021.^{574 575} After all, the mediation scheme remains expensive and difficult for consumers to access.⁵⁷⁶ This approach to revival the mediation eo

ipso arises the question: Were these kinds of changes necessity and effective?

The real substantive change in the mediation system in North Macedonia was made through Law on civil procedure, and that change was the introduction of mandatory mediation.

This analysis is focused on mediation in North Macedonia, but the research showed that lessons learned from Macedonian experience could be

⁵⁷³ Ministry of Justice of Republic of Macedonia. Regulatory Impact Assessment Report. [online]. 15 October 2018. [Accessed 10 January 2024]. Available at: https://ener.gov.mk/files/propisi_files/plan/1_1762209293lzvestaj%20za%20PVR%20-Zakon%20za%20medijacija%20%20za%20objava%20na%20ENER.pdf. p.4.

⁵⁷⁴ Law on Mediation, Official gazette of the Republic of North Macedonia No. 294/21.

⁵⁷⁵ In the document "Analysis of the application of mediation in North Macedonia", prepared within this project, it is claimed that the legal solutions contained in the Law on mediation from 2021 are new and improved. See: Lazhetic Gordana, Koshevaliska Olga, Nanev Lazar. "Analysis of the application of mediation in North Macedonia. [online]. 2022. [Accessed 10 January 2024]. Available at: <https://epi.org.mk/wp-content/uploads/%D0%90%D0%9D%D0%90%D0%9B%D0%98%D0%97%D0%90-%D0%97%D0%90-%D0%9F%D0%A0%D0%98%D0%9C%D0%95%D0%9D%D0%90-%D0%9D%D0%90-%D0%9C%D0%95%D0%94%D0%98%D0%88%D0%90%D0%A6%D0%98%D0%88%D0%90%D0%A2%D0%90.pdf>, p.9. We do not agree with this position because the insight into the "Regulatory Impact Assessment Report" prepared by the Ministry of Justice of the Republic of North Macedonia, indicates that repeatedly the subject of observation and change is the same legal decisions, which during the process of drafting and adoption of the

previous Laws on mediation were marked as problematic: the exam for mediators, the body for monitoring and evaluating the quality of mediation, the passivity of the bodies that are legally obliged to promote mediation (such as the Academy of Judges and Public Prosecutors), and the purpose of the new Law on mediation is again achieving a successful and functional concept of mediation. See: Government of North Macedonia Ministry of Justice. Regulatory Impact Assessment Report. [online] 27 April 2021. [Accessed on 10 January 2024]. Available at: https://ener.gov.mk/files/propisi_files/report/28_1862751818%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%20%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%BD%D0%BA%D0%B0%20%D0%BD%D0%B0%20%D0%B2%D0%BB%D0%B8%D1%98%D0%B0%D0%BD%D0%B8%D0%B5%D1%82%D0%BE%20%D0%BD%D0%B0%20%D1%80%D0%B5%D0%B3%D1%83.pdf. p.3.

⁵⁷⁶ European Commission. North Macedonia Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. [online]. 8 November 2023. [Accessed 15 January 2024]. Available at: <https://telma.com.mk/wp-content/uploads/2023/11/North-Macedonia-2023-KOMPRESIRANO.pdf>. p.87.

very useful for the other states that aim to increase the use of mediation. Mediation literature should be enriched with practical aspects of laws implementation in different countries, because this aspect has significant impact on the development on mediation. This analysis fills this gap in the mediation literature. In addition, this paper enriches discussions on practical use of mediation in North Macedonia.

1. MEDIATION PROCEDURE – MAIN FUTURES

The hallmark of the Macedonian mediation regulation is the introduction of mandatory mediation. Mandatory mediation in North Macedonia was introduced in 2015 with an amendment of the Law on civil procedure.⁵⁷⁷ Namely, article 47 of this law⁵⁷⁸ amends and supplements article 461 of the Law on Civil Procedure in a way that three new paragraphs are added after paragraph 1. Pursuant to paragraph 2 of this article, commercial disputes for monetary claims whose value does not exceed 1,000,000,000 (million) Macedonian denar, and in which the procedure is initiated by a lawsuit before a court, the dispute parties are obliged, before filing the lawsuit, to try to resolve the dispute

through mediation. Paragraph 3 of the same article stipulates that when filing the lawsuit, the plaintiff is obliged to submit written evidence issued by a mediator that the attempt to resolve the dispute through mediation has failed. And paragraph 4 determines that the court will reject the lawsuit to which such evidence is not attached. It follows *a contrario* that the obligation for mandatory mediation does not apply for other civil disputes regardless of the value of the dispute, for commercial disputes for monetary claims whose value exceeds 1,000,000 (million) Macedonian denar, as well as for commercial disputes for which the procedure is not initiated by a lawsuit before a court, regardless of the value of the dispute (e.g. notarial payment orders).

These changes began to apply from January 31, 2016. Several results were expected of proposed solutions: more effective realization of human rights, encouragement of use of mediation as a dispute resolution method, reduction of the number of commercial litigations and improvement of the overall business climate in the Republic of North Macedonia.⁵⁷⁹

We state that the introduction of mandatory mediation is one of the most

⁵⁷⁷ Law on amending and supplementing the Law on Civil Procedure, Official Gazette of the Republic of Macedonia No.124 from 23 July 2015.

⁵⁷⁸ The article 461 of the Law on Civil Procedure, Official Gazette of the Republic of Macedonia No. 79/05, 110/08, 83/09 and 116/10 read as follows: "The provisions of this law shall be applied in the procedure in commercial disputes, if the

provisions of this chapter do not specify otherwise."

⁵⁷⁹ See: Ministry of Justice of the Republic of Macedonia. Regulatory Impact Assessment Report. [online]. 16 October 2014. [Accessed: 17 January 2024]. Available at: https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=18793.

important steps in the Macedonian mediation system. Namely, the statistic shows that the number of the mediation procedures had significantly increased after the introduction of mandatory mediation. The total number of mediations between 2007 and 2016 could not even reach a three-digit number, since 2017 a huge difference has been noticed. Licensed mediators, until October 2020, have shown the entry of 1837 cases in the register for the record of mediation procedures at the Ministry of Justice of North Macedonia. Sixty-eight percent of these disputes or 1241 ended with an agreement, while the greatest success is in labor disputes, where out of 948 disputes, 99.6 percent or 945 disputes were concluded with agreements reached. In commercial disputes, the percentage of success is 28 percent. In 2022, a mediation agreement was reached in 397 out of 918 disputes.⁵⁸⁰

The future of mandatory mediation in North Macedonia depends of the changings of Law on Civil Procedure which are in process. The attorneys are strictly against the mandatory mediation. Their explanation is that mandatory mediation is nothing else but increased costs, delaying the civil procedures and limited access to justice for citizens, because instead of the cost procedure reduction, the introduction of mandatory mediation, will, according to them, result in increased costs for the dispute parties.⁵⁸¹

Another problem is the inconsistency between different laws which contain solutions relating mediation. Thus, the Law on civil procedure determines that the court is obliged, in disputes in which mediation is allowed, together with the invitation for the preparatory hearing, i.e. the first main hearing for disputes of small value,⁵⁸² to deliver to the litigants a

⁵⁸⁰ European Commission. Commission Staff Working Document, North Macedonia 2023 Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy. [online]. 8 November 2023. [Accessed: 18 January 2024]. Available at: <https://telma.com.mk/wp-content/uploads/2023/11/North-Macedonia-2023-KOMPRESIRANO.pdf>. p.21

⁵⁸¹ Macedonian Bar Chamber. Remarks on the Law on Civil Procedure. [online]. 14 October 2020. [Accessed: 18 January 2024]. Available at: https://ener.gov.mk/files/Comment/25_%D0%97%D0%90%D0%91%D0%95%D0%9B%D0%95%D0%A8%D0%9A%D0%98_%D0%9E%D0%94_%D0%90%D0%9A%D0%A0%D0%A1%D0%9C_%D0%9D%D0%90_%D0%9F%D0%A0%D0%9

[5%D0%94%D0%9B%D0%9E%D0%93_%D0%97%D0%9F%D0%9F_%D0%9E%D0%91%D0%88%D0%90%D0%92%D0%95%D0%9D_%D0%9D%D0%90_%D0%95%D0%9D%D0%95%D0%A0751423975.docx](https://www.mba.org.mk/index.php/mk/arhivana-informacii/item/721-akrsm-dostavi-zabeleshki-na-predlog-zakonot-za-parnichna-postapka),

<https://www.mba.org.mk/index.php/mk/arhivana-informacii/item/721-akrsm-dostavi-zabeleshki-na-predlog-zakonot-za-parnichna-postapka>.

⁵⁸² Pursuant to Article 430 of the Law on Civil Procedure (Official Gazette of the Republic of Macedonia, No. 7/2011, 124/2015), disputes of small value are disputes in which the claim refers to a claim in money that does not exceed the amount of 600,000 Macedonian denar. Disputes in which the lawsuit does not refer to a claim in money, and the plaintiff stated in the lawsuit that he agrees to receive a certain amount of money that does not exceed the amount of 600,000 Macedonian denar, instead of fulfilling a certain

written indication that the dispute can be resolved through mediation.⁵⁸³ In this invitation, the court should indicate to the litigants that they are obliged to declare whether they agree to resolve the dispute in a mediation procedure no later than the preparatory hearing, except for disputes of low value: at latest at the first hearing for the main hearing.⁵⁸⁴ Contrary to this provision, article 18 paragraph 3 of the Law on Mediation from 2021, stipulates that the judge may, at any stage of the litigation process, terminate it and refer the parties to mediation, but only with the consent of dispute parties. These legal solutions arise the question: can mediation be used at any stage of the litigation procedure or not? What is certain is that such legal solutions produce legal uncertainty.

Furthermore, if the court terminates the litigation procedure because both parties requested it in order to resolve the dispute through mediation (article 200 paragraph 6 of the Law on civil procedure), the court will, at the request of one of the parties, continue the litigation procedure, and if there is no such request of any of the dispute

parties, the procedure before the court will continue *ex officio* after the expiration of 45 days from the day of termination (article 203 paragraph 3 of the Civil Code Procedure). The Law on Mediation from 2021 determines that the mediation procedure ends after the expiration of 90 days from the day of initiation of the mediation procedure, regardless of its outcome, i.e. it determines a longer period for the implementation of the mediation procedure.⁵⁸⁵ Also, the Law on mediation from 2021, prescribes that by submitting a request for the initiation of a mediation, the limitation period for the claim that is the subject of the dispute begins and lasts until the completion of the mediation, but not longer than 90 days from the date of submission of the request.⁵⁸⁶ In this regard, the Law on Mediation from 2013 determined 60 days for the completion of mediation procedure from the day of the start of the mediation, i.e. it determined a longer period for the implementation of the mediation procedure than Law on civil procedure.⁵⁸⁷ These legal solutions bring confusion to mediation users. There is no doubt that the mediation should be

request, are considered as disputes of low value. Disputes in which the subject of the lawsuit is not a monetary amount, but the handover of a movable object whose value, which the plaintiff stated in the lawsuit, does not exceed the amount of 600,000 Macedonian denar, are considered as small value disputes.

⁵⁸³ Law on Civil Procedure (Official Gazette of the Republic of Macedonia, No. 7/2011, 124/2015), article 272 paragraph 2 in connection with article 436 paragraph 2.

⁵⁸⁴ Law on Civil Procedure (Official Gazette of the Republic of Macedonia, No. 7/2011, 124/2015),

article 272 paragraph 4 in connection with article 436 paragraph 4.

⁵⁸⁵ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 25 paragraph 1 point 9.

⁵⁸⁶ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 20 paragraph 1.

⁵⁸⁷ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 16 paragraph 1.

fast. Namely, it is one of the main benefits of mediation. But also, there is no doubt that the legal solutions must not bring confusion. These facts point to the conclusion that the new law on mediation did not overcome the shortcomings of the previous law, on the contrary, it accepted and expanded them.

The Macedonian Law on mediation from 2021 contains another paradox. Namely, the Macedonian Law on Mediation from 2021 excludes the voluntariness of mediation in the following cases: in relation to mandatory mediation, when the mediation results from a previously concluded agreement of the dispute parties, when a court or other competent authority refer the dispute parties to mediation.⁵⁸⁸ The voluntary nature of mediation is one of the basic guiding thoughts for all those connected to mediation; mediation, by definition is a voluntary; and mandatory mediation, contractual mediation or referral to mediation does not exclude the voluntariness of mediation.⁵⁸⁹

Favorable solutions present both in the Law on Mediation from 2013 and in

the current Law on mediation from 2021 are those that refer to mediation agreement as an executive document⁵⁹⁰ and statute of limitation and preclusion.⁵⁹¹ The essence of the law decision that, the mediation agreement is an executive document is that, if the parties want to give the agreement the power of an executive document, the contents of the agreement in written form, signed by the parties shall be verified by a notary according to law; and if the mediation procedure is conducted upon a court referral, it is mediator's duty to inform the court about the final result of the mediation procedure within three working days from the completion of the procedure. Within three working days upon signing the agreement reached as a result of a referral to mediation during termination of court procedure, the mediator shall submit the agreement to the court and it shall be regarded as grounds for court settlement. The essence of the law decision about the statute of limitation and preclusion is as follows: upon reaching the mediation agreement, suspension of the period of prescription of the claim, which is the

⁵⁸⁸ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 7 paragraph 3.

⁵⁸⁹ See: Berman, Lee Jay. Voluntariness in Mediation: An Historical Perspective! [online]. February 2003. [Accessed: 19 January 2024]. Available at: <https://www.mediationtools.com/articles/voluntariness.html>; Rosalba Alassini and Others, Joined cases C-317/08 to C-320/08; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136/3 of 25 May 2008, Available at:

<https://hsfnotes.com/adr/2017/07/04/cjeu-holds-that-mandatory-mediation-is-not-inherently-precluded-by-eu-law/>.

⁵⁹⁰ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 22, Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 28.

⁵⁹¹ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 16; Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 20.

subject of dispute, shall start and shall last until the end of the mediation procedure, which may not last longer than 60 days⁵⁹² i.e. 90 days⁵⁹³ of the date of commencement of the mediation. When the mediation procedure is completed without reaching settlement, the period of prescription of the claim shall continue to run from the time of completion of the mediation procedure in which no agreement has been reached. Parties that began a mediation procedure shall not begin, simultaneously or during the mediation procedure, a lawsuit, arbitration or other proceedings for the dispute that is the subject of mediation, unless it is a temporary measure or security measures.

The mediation agreement as an executive document, and statute of limitation and preclusion are also among the main futures of the mediation system in the Republic of North Macedonia; very important features, having in mind previously said that population in North Macedonia is used to and familiar with trials, courts and judges, although only 1% of the citizens have full confidence in the judiciary. These features will bring mediation closer to the general public.

2. MEDIATORS – MAIN FUTURES

The Law on mediation from 2013 created the system for licensing of

mediators. But, the introduction of the licensed mediator resulted in legal solution contrary to the rule *lex retro non agit*. Namely, article 46 of the Macedonian Law on mediation from 2013 provided that only a natural person who has legal capacity and who is licensed to perform mediation activities can act as a mediator. The Law prescribed that a license for the mediator shall be issued to the person who has fulfilled the conditions prescribed by the law.⁵⁹⁴ By 2013, there were 155 mediators who had gained the status of mediator according to the to the Law on mediation from 2006, and the Law on mediation from 2013 did not recognized them the acquired right to perform mediation services. Actually, the Law on Mediation from 2013 with its article 63 prohibited them from performing mediation services, regardless of the fact that these persons had acquired the status of mediator in accordance with the previous law. Instead of recognition of the acquired right, the Law on mediation from 2013 obliged them to pass the licensing procedure. This situation with persons who already were mediators according to the previous Law on Mediation, arises the question: Is it legal acquired rights to be taken away by latter law? In this regard article 52 of the Macedonian constitution should be considered. Namely, article 52 of the Constitution of

⁵⁹² Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 16.

⁵⁹³ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 20.

⁵⁹⁴ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 46.

the Republic of North Macedonia determines that laws and other regulations cannot have retroactive effect, except in cases where it is more favorable for the citizens.⁵⁹⁵ Despite its contradiction to the Constitution of the state, this legal solution was not annulled, on the contrary, it resulted in the deprivation of the right to mediate for 155 mediators, and thus the violation of their honor and reputation.

In this sense, a parallel with the remarkably similar situation that arose among attorneys, can be drawn. Namely, in 2006 an attorney's exam was introduced as a condition for becoming an attorney, as separate and different exam from the bar exam. Thus, article 23 paragraph 8 of the Law on Amendments and Supplements to the Law on Advocacy (Official Gazette of the Republic of Macedonia No. 60/06 of 2006), provides that persons who have passed the bar exam before entry into force of this law, and are registered in the Register of attorneys, they will continue to practice law without passing the attorney exam. The article 40 paragraph 2 of the Law on Advocacy⁵⁹⁶ provides that attorneys registered in the Register of the Bar Association of the Republic of Macedonia, prior to the adoption of this law, retain their acquired rights.⁵⁹⁷

The above analyzed legal solutions, created another absurd situation in the Republic of North Macedonia, this time connected to the legal changes relating mandatory mediation. Mandatory mediation came into force in North Macedonia in January 2016. Having in mind previously said about the mandatory mediation: written evidence that there was an attempt for resolving the dispute through mediation, could be issued only by a licensed mediator, but until March 2016 in North Macedonia there weren't licensed mediators at all, and until July 2016 there was only one licensed mediator. According to the Law on Mediation from 2013, the then mediators could not perform mediation services without being licensed. Thus, we had mandatory mediation, but we didn't have mediators.

With the Law on mediation from 2013, a Committee for ensuring, following and evaluating the quality of mediation was created. The Committee was composed of ten members appointed by the Government of the Republic of Macedonia: one member proposed by the Chamber of the mediators registered in the Mediator Directory; one member proposed by the Judicial Council of the Republic of Macedonia from the judges in that

⁵⁹⁵ The Constitution of the Republic of North Macedonia, available at: <https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf>

⁵⁹⁶ Law on Advocacy, Official Gazette of the Republic of Macedonia No.59/2002, 60/2006, 29/2007, 106/2008, 135/2011, 113/2012, article 40 paragraph 2.

⁵⁹⁷ About the situation of the mediators in the Republic of North Macedonia see more at: Spiroska Elizabeta. Mediator's status in the Republic of North Macedonia. Book of proceedings, International Conference on Social Science and Humanities. 10-12 June 2021. North Macedonia. p.247-252.

Council; one member proposed by the Bar Association in Macedonia from the lawyers; one member proposed by Inter-University Conference from the professors in the institutions for higher education; one member proposed by the Chamber of Psychologists in Macedonia from the qualified psychologists with a special license for conducting psychological activity; one member proposed by the Ministry of Justice from the employees that work on questions from the area of mediation; one member proposed by the Ministry of Labor and Social Policy from the employees that work on questions from the area of mediation; one member proposed by the Ministry of Economy from the employees that work on questions from the area of mediation; one member proposed by the chambers of commerce in the Republic of Macedonia and one member proposed by the Association of customers in the Republic of Macedonia.⁵⁹⁸ The Government also, appointed a president chosen from the Committee that represented the

Committee and carried out other actions determined by law.⁵⁹⁹ In 2013, the Ministry of Justice of the Republic of North Macedonia, as the proposer of the then Law on Mediation, claimed that the innovations in the area of trainings for mediators, the mediators` licensing and the evaluation of mediators by the Committee for ensuring, following and evaluating the quality of mediation⁶⁰⁰ will contribute in increasing the quality, professionalism and competition among mediators.⁶⁰¹ In 2018 and 2021, when proposing to adopt a new Law on Mediation, the same proposer, i.e. the Ministry of Justice, claimed that the Committee for ensuring, following and evaluating the quality of mediation was dysfunctional and had problems in carrying out the obligations and powers established by law.⁶⁰² Despite this finding regarding the Committee for ensuring, following and evaluating the quality of mediation, this same Committee was a part of the group that worked on the new Law on Mediation from 2021.⁶⁰³ And instead of learning a

⁵⁹⁸ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 57, paragraph 1.

⁵⁹⁹ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 57 paragraph 2.

⁶⁰⁰ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 56.

⁶⁰¹ Ministry of Justice of the Republic Macedonia. Regulatory Impact Assessment Report. [online]. 19 June 2013. [Accessed: 19 January 2024]. Available at: https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=14263.

⁶⁰² Ministry of Justice of the Republic Macedonia. Regulatory Impact Assessment Report. [online]. 27 April 2021. [Accessed: 20 January 2024]. Available at: https://ener.gov.mk/files/propisi_files/report/28_1862751818%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%20%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%BD%D0%BA%D0%B0%20%D0%BD%D0%B0%20%D0%B2%D0%BB%D0%B8%D1%98%D0%B0%D0%BD%D0%B8%D0%B5%D1%82%D0%BE%20%D0%BD%D0%B0%20%D1%80%D0%B5%D0%B3%D1%83.pdf. p.3.

⁶⁰³ *Ibid.* p.4.

lesson and accepting another functional solution, the Law on Mediation from 2021 once again provides for such a Committee, only now under a different name: the National Mediation Council. The National Mediation Council was created as a body for ensuring, following and evaluating the quality of mediation, but it is closely associated to the Government, actually it is governmental body. The Council has its own budget, approved by the Government's Decision.⁶⁰⁴ The Council is composed of a National Mediation Coordinator, four members and a secretary.⁶⁰⁵ The Government appoints the National Coordinator for Mediation.⁶⁰⁶ The government selects the members of the Council on the basis of a public announcement.⁶⁰⁷ The secretary of the Council is elected from administrative officers in the state administration.⁶⁰⁸ Therefore, it is again the governmental body.

In 2013, when amending the Law on Mediation, the proposer - Ministry of Justice, claimed that there was a sufficient number of mediators, and what was missing was the application of mediation in practice.⁶⁰⁹ But in 2018 and 2021, the same proponent claimed that the number of licensed mediators is small; and the mediator exam is complex and inadequate thus affected the small number of licensed mediators.⁶¹⁰ According to the Law on Mediation from 2013 the mediator's exam consisted of three parts: first - theoretical part, which inspected the theoretical knowledge; second part - case study, which inspected the ability to implement the process of mediation in practice and the third part, which assessed the candidate's personality and characteristics and practical skills, abilities and knowledge for mediation.⁶¹¹ The first part of the exam consisted of minimum 50 questions with five options

⁶⁰⁴ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 63 paragraph 3.

⁶⁰⁵ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 64 paragraph 1.

⁶⁰⁶ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 64 paragraph 2.

⁶⁰⁷ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 64 paragraph 5.

⁶⁰⁸ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 64 paragraph 6.

⁶⁰⁹ Ministry of Justice of the Republic Macedonia. Regulatory Impact Assessment Report. [online]. 31 January 2013. [Accessed: 19 January 2024]. Available at: https://ener.gov.mk/Default.aspx?item=pub_reg

ulation&subitem=view_reg_detail&itemid=1203 9. p.2.

⁶¹⁰ Ministry of Justice of the Republic of Macedonia. Regulatory Impact Assessment Report. [online]., 27 April 2021. Available at: https://ener.gov.mk/files/propisi_files/report/28_1862751818%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%20%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%BD%D0%BA%D0%B0%20%D0%BD%D0%B0%20%D0%B2%D0%BB%D0%B8%D1%98%D0%B0%D0%BD%D0%B8%D0%B5%D1%82%D0%BE%20%D0%BD%D0%B0%20%D1%80%D0%B5%D0%B3%D1%83.pdf. p. 3.

⁶¹¹ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 48.

to choose, from which only one is correct, two are similar and one is not correct in small range.⁶¹² The second part of the exam consisted of two studies of case related to conducting the process of mediation.⁶¹³ The third part of the exam was taken in front of a Commission of five members, consisted of representatives of the Committee.⁶¹⁴ The Commission graded the person for mediator with a grade “satisfactory” or “non-satisfactory”.⁶¹⁵ The professional and administrative affairs required for carrying out the exam for mediators were done by the Ministry of Justice, and the exam was technically carried out by a legal entity registered in the Central Registry and chosen by the Minister of Justice.⁶¹⁶ The Law on Mediation from 2021, supposed to bring substantial changes in the exam for mediators, with aim to produce functional mediators’ exam system. But, according to the Law on Mediation from 2021, the exam for a mediator consists of two parts: the first part - theoretical part, which assess theoretical knowledge of the candidate and a second part - practical part – case studies, in which personal qualities and characteristics and practical skills, abilities and knowledge of mediation are

evaluated.⁶¹⁷ The analysis shows that there is no substantial change in relation to the mediators’ exam defined by the previous and current Law on Mediation, but simply the previous three parts of the exam have now been combined into two. The exam is conducted by a Commission established by the Minister of Justice, consisting of five members and their deputies, who have distinguished themselves in the field of mediation, have professional experience of at least ten years, and are members of the academic community, judges or other professions, as well as licensed mediators at the proposal of the Chamber of mediators of the Republic of North Macedonia, taking into account that the members should come from different professions.⁶¹⁸ The Minister of Justice appoints the President of the Commission, as well as the Secretary of the Commission from among the employees of the Ministry of Justice of North Macedonia.⁶¹⁹ It remains unclear why so many competences have been placed in the hands of the Government, when the same decisions in previous laws did not produce results, a fact that has been established by the Ministry of Justice itself, which is part of the

⁶¹² Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 50 paragraph 10.

⁶¹³ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 50 paragraph 11.

⁶¹⁴ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 50 paragraph 12.

⁶¹⁵ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 50 paragraph 12.

⁶¹⁶ Law on Mediation, Official Gazette of the Republic of Macedonia No. 188/13, 148/15, 192/15, 55/16, article 50 paragraph 1.

⁶¹⁷ Law on Mediation, Official gazette of the Republic of North Macedonia No. 294/21, article 55 paragraph 1.

⁶¹⁸ Law on Mediation, Official Gazette of the Republic of North Macedonia No. 294/21, article 55.

⁶¹⁹ Law on Mediation, Official gazette of the Republic of North Macedonia No. 294/21, article 55 paragraph 6.

Government and which appears as the proposer of the legal solutions concerning the mediation.

CONCLUSION

The previous analysis showed few key lessons learned from the Macedonian mediation experience which could be used by other states through their course of mediation development.

Mediation as alternative dispute resolution method is yet to be popularized among the general public and legal practitioners in North Macedonia. Our study showed that policy choices and legal solutions are of great significance. Bringing new mediation laws all the time does not guarantee the development of mediation. In order to develop mediation in wanted direction, it is necessary to find the right legal solutions. Legal solutions and their practical implication must be aligned with the relationship between theory and practice. The inconsistency of laws undermines legal certainty and negatively affects the entire legal system, and of course the development of mediation. Inconsistency of legal solutions produces confusion, especially among the dispute parties and it has a negative effect on the revival of mediation. Legal solutions should not introduce confusion, but facilitate the use of mediation, facilitate the path to reaching a solution to the dispute, and thus resulting in a positive impact on the mediation development.

The development of mediation necessarily needs the help from the state, but too much power relating mediation in the hands of the Government, could result in opposite.

The mediation agreement as an executive document, and statute of limitation and preclusion are very important features, in judicial systems where the population is used to and familiar with trials, courts and judges.

Also, we have no doubt that mandatory mediation brings mediation closer to the general public.

Finally, we can conclude that when it comes to the mediation policy choices and legal solutions, policy makers and legislators should be mindful of what do both theory and practice suggest, having in mind that, one size does not fit all. Also, in finding functional solutions, all interested parties should be involved.

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