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DEVELOPMENT OF MEDIATION IN BULGARIA FOR THE PERIOD 2017-2022 - TENDENCIES AND PERSPECTIVES

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Abstract: *The objective of this report is to examine the development of the mediation institute for the period 2017-2022 in the Republic of Bulgaria. Due to the lack of a legal obligation to maintain statistics by the Ministry of Justice on the conducted mediation procedures and success rates, until now there was no available data on mediation in Bulgaria, despite the fact that it has been legally regulated since 2004. In implementation of a project financed by the state budget, statistical data were collected by conducting a survey in all courts in Bulgaria, in which mediation centers have been established and in organizations registered under the Mediation Act and conducting the procedure. The methods used for the study are analysis of administrative records, survey, comparison, induction, deduction, generalizations and conclusions. Some of the results of the study are as follows: the number of mediation procedures conducted increases significantly every year, except for the period of COVID-19; out-of-court mediation is on the rise during the global pandemic; in terms of the agreements reached in mediation - the success rate is almost twice as great in the pre-trial phase as compared to the mediation carried out in the judicial phase; the majority of practicing mediators are lawyers by education. In conclusion, the tendencies are for an increase in the number of lawyers practicing mediation and a significant increase in the number of mediation procedures, both due to the promotion of the procedure in Bulgarian society by the government and non-governmental organizations. The perspectives are towards even wider and more successful application of mediation as a way to resolve disputes both out of court and within judicial proceedings and its imposition as a new culture of communication.*

Keywords: *Mediation, Bulgaria, Global pandemic, COVID-19, Statistical data, Survey.*

INTRODUCTION

The mediation is one of the most actively promoted alternative dispute resolution methods in the European Union. Mediation has established itself as a better dispute resolution procedure in the modern European society, as a flexible method of conflict management that adapts to each specific situation, to each conflict, due to the possibility to take place before, during and after legal proceedings. At the supranational level, the main regulatory act is the Mediation Directive /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/. It is a part of the secondary legislation of the European Union and according to Art. 288 of the Treaty on the Functioning of the European Union, it should be transposed by each member state. Thus, the legislative regulation of mediation in each individual member state is at a different level – some countries have taken significant measures to introduce mediation, through legislation and detailed procedural rules - such as Italy (Palo & Keller, 2012), and in others the procedure has no significant application.

In Bulgaria, since the adoption of the Mediation Act almost twenty years ago, good practices have been achieved in various public spheres regarding the use of mediation as a voluntary extrajudicial procedure (Georgieva, 2021). The state allocated significant funds and took many measures in this direction, tangible in several main areas - education, healthcare, social activities, judicial system, etc., which formed a permanent state policy regarding mediation.

The European Commission for the Efficiency of Justice has been monitoring the development of mediation and its application in EU member states for several years (CEPEJ, 2019). It has repeatedly established the absence of any statistical data in some countries or the presence of partial data (CEPEJ, 2018) - for example, collected during the implementation of a specific project or by the courts during mediation in the judicial phase. Systematic data collection is important for several reasons: it allows performance to be assessed and compared with other alternative dispute resolution

(ADR) methods; low success rates in certain countries may signal insufficient training of mediators or insufficient promotion/incentives by the state; it would improve scientific research in the field and initiate legislative amendments. As of 2023, Bulgaria also does not meet the requirements set by the Council of Europe and the Bulgarian Ministry of Justice does not maintain official statistics regarding the number of mediations conducted in the country over the years, success rate, education of practicing mediators, etc. The objective of this report is to examine the development of the mediation institute for the period 2017-2022 in the Republic of Bulgaria. In implementation of a project financed by the state budget, statistical data were collected, which made it possible to analyze the development of the procedure, to summarize the tendencies and to assume the institute's perspectives.

EXPOSITION

Legal Regulation of Mediation in Bulgaria

In Bulgaria, mediation is regulated by a separate normative act - the Mediation Act. It was adopted in 2004, three years before the admission of Bulgaria as a member of the European Union. Nevertheless, the law provides for all the basic principles of mediation, which were subsequently laid down in Directive 2008/52/EC and facilitated its transposition in 2011. There are provisions referring to mediation in a number of other acts - e.g. Civil Code, Family Code. Art. 3, para. 1 of the Mediation Act regulates the application of mediation in civil, commercial, labor, family and administrative disputes related to user rights, and others disputes between individuals and/or legal entities, including when they are cross-border. Current legislation provides for a referral to mediation at the judge's discretion. The provisions oblige the court to guide the parties but does not create an obligation to the parties to participate in a mediation procedure or other means of voluntary settlement of the dispute. This is one of the main characteristics of the mediation procedure - its voluntariness (Mozhaikina, 2020). Under the provisions, referral to mediation is at the discretion of the judge and it is possible at different stages of the process.

Methods

The objective of the research is to collect statistical data and perform an analysis of mediation procedures in Bulgaria for the period 2017-2022. When conducting the research, two methods of statistical data collection (Todorova, 2014) were mainly used:

1. Survey/questionnaire - it was addressed to all Mediator Training Organizations registered in the period 2007-2019 in Bulgaria and in which there is a functioning mediation center, as well as to all courts in which a mediation center has been established. This approach was chosen because the centers of these organizations employ a large number of mediators with different education, which is why they conduct a significant number of procedures. There are 3,778 mediators registered in the Unified Register of Mediators to date, but as no membership fee or any other tax is payable, this register only contains the number of trained mediators, not practitioners. Many of these mediators have a different profession and have never practiced mediation, but used the training to upgrade their skills and acquire additional qualifications.

The survey was conducted over a period of three months and data was collected from 24.14% of all organizations to which the survey was sent. Some of the organizations refused to participate in the survey because they believed the data contained sensitive or confidential information, and others stated that they did not keep any statistics as they are not obliged by the law. The survey contains 14 questions with multiple sub-questions such as: number of mediations conducted for each of the studied years, number of agreements reached, number by individual types of mediation - family, cross-border, etc., number of procedures conducted in co-mediation, education of mediators, number of agreements reached depending on the professions of the mediators, need for additional training, participation of children in the procedure, initiation and awareness of mediation. In this report, the data obtained will be discussed only on a part of the questions included in the research subject, due to the large volume of information collected.

2. Analysis of administrative records - according to the Judiciary System Act, the presidents of courts in Bulgaria have an obligation to prepare an annual report on the activities of the court, which contains statistical data on many indicators, including the mediation procedure. The reports are published on the websites of the courts and are available for a period of at least 10 years back, which

allows access to accurate information and data on the activity of each court, collected in accordance with the requirements of the law and a certain methodology. The analysis was carried out on data for all courts in Bulgaria in which there is a mediation center for the studied period, therefore the accuracy of the data is 100%.

Results and Discussion

The summarized results of the study are as follows:

Section I: Mediation conducted in the court mediation centers.

The collected statistics are about the number of mediation procedures conducted in the period 2017-2022 for all mediation centers at the courts and the number of procedures that ended with an agreement (or a waiver of claim) /fig. 1/.

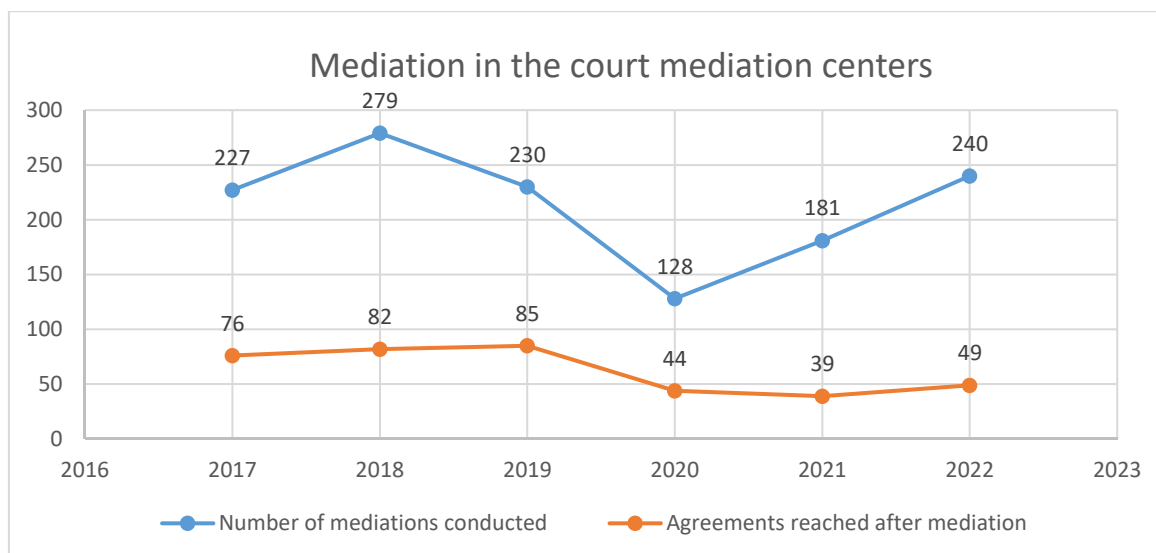


Figure 1. Mediation conducted in the court mediation centers for the period 2017-2022

There was an increase in the number of mediations conducted until 2018, a slight decrease in 2019 and a very sharp decrease in 2020, during the global epidemic of COVID-19. In Bulgaria, as in many other countries during this period, the administration of justice was strongly affected by the measures imposed by the government. Disruptions mostly took the form of the postponement or adjournment of court proceedings, the extension of deadlines and remote proceedings (Markov, 2021) which also affected the conduct of mediation procedures in the mediation centers at the courts.

The success rate of mediation was calculated as percentage between the number of procedures conducted and the number of those that ended with an agreement or a waiver of claim. The success rate of mediation centers in the courts in Bulgaria during the research period is as follows: 2017 - 33.48 %; 2018 - 29.39 %; 2019 - 36.96 %; 2020 - 34.38 %; 2021 - 21.55 %; 2022 - 20.49 %

Section II: Mediation conducted in out-of-court mediation centers

The statistics collected are about the number of mediation procedures conducted for the period 2017-2022 from mediation centers in Mediator Training Organizations and the number of procedures in which an agreement was reached. /fig. 2/.

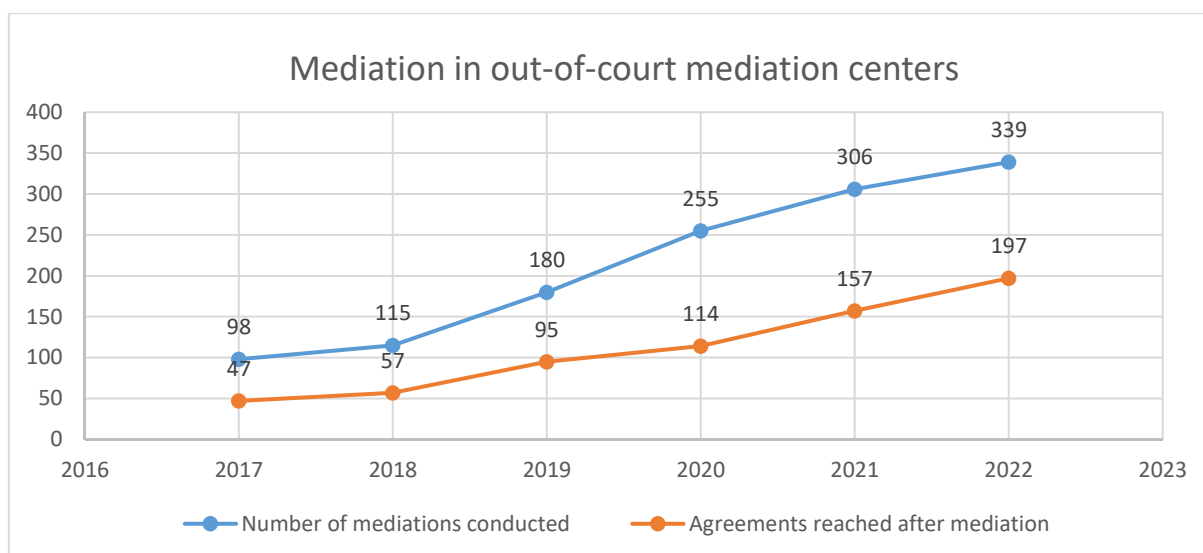


Figure 2. Mediation conducted in out-of-court mediation centers for the period 2017-2022

In the case of mediation conducted in out-of-court mediation centers, a continuous growth in the number of procedures was observed during the researched period. This growth is observed even during the global pandemic of COVID-19, as the main reason for this is the possibility of using online mediation (Quah, 2022). The ban on face-to-face meetings, the forced remote work and the need for a time-saving and cost-effective way to resolve conflicts has established mediation as the preferred alternative dispute resolution (ADR) procedure (Sourdin & Zeleznikow, 2020).

The success rate of mediation was calculated as percentage between the number of procedures conducted and the number of those that ended with an agreement. The success rate of out-of-court mediation centers in Bulgaria during the research period is as follows: 2017 - 47.96 %;

2018- 49.57 %; 2019 - 52.78 %; 2020 - 44.71 %; 2021 - 51.31 %; 2022 - 58.11 %

Section III: Education/profession of the practicing mediators

The survey collected data on the education/profession of practicing mediators, number of procedures conducted by profession of mediators, number of agreements reached by profession of mediators.

The study shows that the largest number of practicing mediators have a legal education - 87%, followed by psychologists with 4% and social workers with 1% /fig. 3/. The "other" column includes all other professions - engineers, economists, teachers, human resources experts, administrators, persons with secondary education and many others, which are below 1 percent individually.



Figure 3. Mediations conducted by profession of the mediator

Based on the collected data and a comparative analysis of the number of agreements reached by profession, it was found that lawyers have the highest success rate - 51.12%, followed by psychologists and social workers, who have the same success rate - 37.5% /fig. 4/.

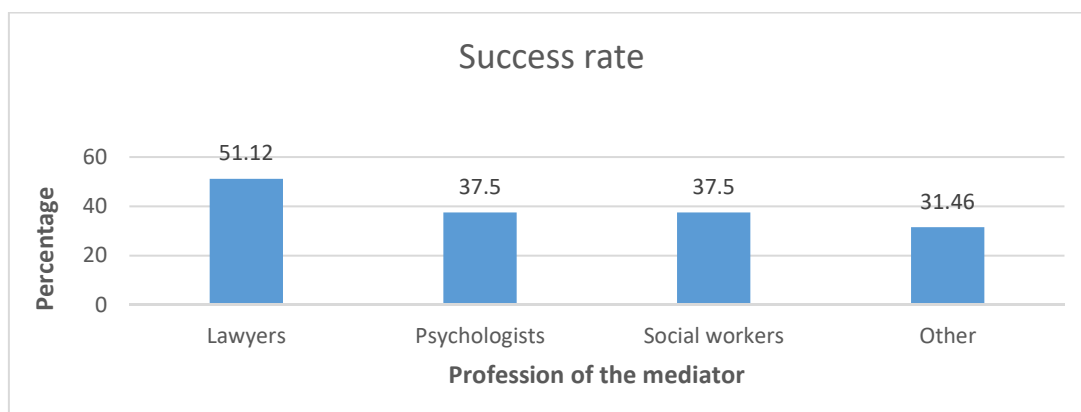


Figure 4. Success rate by profession of practicing mediators

CONCLUSION

An increase in the number of mediation procedures conducted in Bulgaria during the period 2017-2022 was found, except during the period of the spread of COVID-19, when there was a sharp decline in the number of mediations in the court mediation centers due to the restrictive measures imposed by the government. Out-of-court centers have not seen a drop in the numbers during COVID-19 due to the ability to conduct online sessions. Out-of-court mediation is on the rise during the global pandemic unlike mediation in court mediation centers.

In terms of the agreements reached in mediation - the success rate is significantly higher when the procedure is conducted before the dispute enters the judicial phase - 58.11% (out of-court mediation) compared to 36.96% (mediation in court mediation centers) /Note: the highest percentages per year for the period under study are indicated/. This tendency in Bulgaria is in accordance with the observations of other researchers on the topic of conflict management and the most appropriate time for mediation who have found that „mediation has a curvilinear relationship with time and the ending of disputes. Mediation efforts that occur soon after disputes begin have the best chance of reducing expected future dispute duration...” (Regan & Stam, 2000).

The largest number of practicing mediators in Bulgaria are lawyers by education.

The perspectives and the main goals of mediation are: the imposition as a new culture of communication, the promotion of mediation as a method of alternative dispute resolution, reducing the workload of the court through judicial mediation, increasing the efficiency and trust in the judicial system.

Mediation helps conflict resolution happen by changing from a "culprit-oriented" model to a model of improving the system and implementing a win-win strategy. Most often, conflicts are defined as significant differences in viewpoints about goals or the best ways to achieve those goals. Poorly managed conflicts in various social spheres can lead to many undesirable consequences, including those related to increased public danger. At national and European level, considerable efforts are being made to disseminate and inform about the procedure, not only because of the multiple benefits for the parties to the conflict, but also because of the social and economic benefits for the countries where it is successfully implemented. Considering the positive effect of the procedure - improvement of relations between the parties to the dispute, positive social and psychological aspects, mediation is established as one of the best and preferred procedures for alternative dispute resolution in modern society.

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