Mediation

Principles and Regulation
in Comparative Perspective

Edited by
KLAUS J. HOPT
and
FELIX STEFFEK
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Mediation in Bulgaria:
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A. Definition of Mediation and Legal Framework

(1) Definition of Mediation

(a) Statutory Definition

The Bulgarian Mediation Act of 2004 (MA) describes mediation as an alternative method for resolving legal and non-legal disputes (Art. 1 MA). The notion of mediation is defined in Art. 2 as a ‘voluntary and confidential procedure for out-of-court resolution of disputes whereby a third party—the mediator—assists

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1 Dürzhaven Vestnik 2004 no. 110.
the disputants in reaching a settlement’. Three fundamental principles of mediation are stated in some detail in Arts. 5–7 MA, namely: voluntary recourse and equal treatment; neutrality and impartiality of mediators; and confidentiality. Those principles are defined further in Regulation No. 2 of the Ministry of Justice of 15 March 2007 and in the Procedural and Ethical Rules of Conduct for a Mediator (PERCM) approved by an Order of the Minister of Justice.

Possible subject-matters for mediation according to the law are the following: civil, commercial, labour, family disputes and administrative disputes concerning consumer rights. Mediation can also be used in other disputes between natural and/or legal persons, including cross-border disputes. Furthermore, mediation is to be conducted in the cases provided for in the Criminal Procedure Code. Mediation is not to be conducted, however, if a law or another statutory instrument provides another procedure for the conclusion of a settlement agreement. Cross-border disputes have received a legal definition in s. 1 of the Amending Act of 2011 corresponding to Art. 2 of the EU Mediation Directive 2008/52/EC.

(b) Comparison with other ADR Mechanisms

International arbitration is regulated in the Act on International Commercial Arbitration of 1988. National arbitration is based on Art. 19 of the Civil Procedure Code of 2007 (CCP). In both cases, there is no direct reference to mediation. The CCP states, however, that the judge hearing the case must inform the parties about mediation and other methods for alternative dispute resolution. The judge must do this with the order setting a date to hear the case in an open session. Though not explicitly stated in the CCP, it is possible—and it does happen in practice—that judges refer a case to mediation during or even after the first hearing.

2 Naredba No. 2/15.03.2007 g. za usloviata i reda za odobravanje na organizaciite, koito obuchavat mediatori; za iziskvaniata za obuchenje na mediatori; za reda za vpisvane, otpisvane i zalichavane na mediatori ot edinii registr na mediatorite i za procedurnite i etichni pravila za povedenie na mediatora. For the principle of voluntary recourse and equal treatment, see Arts. 23–6. With regard to the principle of neutrality and impartiality, see Arts. 27–31, and for the principle of confidentiality, see Arts. 32–3.

3 Order of the Minister of Justice no. 17 June 2005, LS-04-364, based on s. 1 of the MA.

4 Art. 3(1) MA.

5 Art. 3(2) MA.

6 Art. 3(3) MA.

7 Dürzhaven Vestnik 2011 no. 27.

8 Dürzhaven Vestnik 1988 no. 60.

9 Art. 140(3) CCP.

10 Between 15 September and 31 December 2011 there were 45 cases referred to the Settlement and Mediation Center (SMC) of the Regional Court of Sofia (RCS). Out of those 45 cases, 22 cases were referred by the judge hearing the case during or after the first hearing but in an open session. In 23 cases, the parties contacted the SMC directly after having received information in writing from the judge hearing the case or after having learned about the SMC through other ways (all statistical information concerning the SMC was kindly provided to us by cont. ...
hearing. Moreover, judges have even made referrals to mediation while hearing cases on appeal.11

(2) Legal Framework

(a) State Regulation

The MA was enacted in 2004 as the first legislative basis for mediation in Bulgaria.12 Since then it has been amended several times,13 most recently in April 2011.14 The MA consists of 18 articles. The 2006 amendment of the MA authorised the Minister of Justice to issue a regulation on the certification of the organisations providing mediator training and on the training standards for mediators.15 The Minister of Justice issued such regulation on 15 March 2007 (Regulation No. 2).16 Regulation No. 2 covers several areas. Firstly, it specifies the requirements that training organisations should meet to be certified as such.17 Secondly, it provides for the minimum requirements of mediator training.18 Thirdly, it establishes an official public Uniform Register of Mediators.19

Lüchezar Nasvadi, coordinator of the SMC). The RCS is the trial court with limited jurisdiction for the city of Sofia. It is the largest trial bench in Bulgaria with 138 sitting judges.

11 Between 15 September and 31 December 2011, judges of the Sofia City Court (SCC) referred 12 cases to the SMC while pending on appeal. SCC is the trial court with unlimited jurisdiction for the city of Sofia. It also hears on appeal all cases from the RCS.

12 Even then, however, the CCP provided that the judge hearing the case should invite the parties to settle the case. The judge must do this on at least two occasions: at the first hearing before starting the collection of evidence and after the conclusion of the collection of evidence (Arts. 140(3), 149(1) CCP.) Unfortunately, most judges fulfill their duty by merely asking the parties to settle without doing anything further. This shortcoming of Bulgarian judicial trial culture was first recognized more than 40 years ago. In 1968 the Supreme Court issued an en banc opinion requiring trial judges to be more active in ‘inviting parties to settle the case’ (see Postanovlenie na plenuma na Vrhovni sud 6–1968 (PPVS)). Apparently the results were not very satisfactory because only seven years later the Supreme Court in a second en banc opinion clearly stated that courts need to be more active in moving parties’ positions closer without telling them what would be the outcome of the case, but rather by informing the parties about the advantages of a settlement, namely saving time and money (see PPVS 5–1975.) These opinions are not directly related to mediation, but they can be seen as the basis for creating a new culture requiring judges to be more active not only in trying to settle cases but also in promoting the use of mediation and making referrals to mediation.

13 Dürzhaven Vestnik 2006 no. 86 and 2011 no. 9.
14 Dürzhaven Vestnik 2011 no. 27.
15 Art. 8(4) MA.
16 See fn. 2 above.
17 Art. 28 Reg 2.
18 Ibid, Arts. 8–11a.
Fourthly, Regulation No. 2 sets forth guidelines on the mediation procedure.\textsuperscript{20} Finally, it further develops the principles set out in the MA.\textsuperscript{21}

On 16 June 2006, the Minister of Justice issued an order approving procedural and ethical standards for mediators.\textsuperscript{22} There are no specific court rules regulating mediation. Mediators and judges working for the Settlement and Mediation Center (SMC) of the Regional Court of Sofia (RCS) have adopted rules on how the SMC will operate, what requirements mediators need to meet to work for the SMC, what referral procedure is to be followed and a basic procedure for complaints.\textsuperscript{23}

(b) Private Regulation

Some private mediation providers have adopted their own rules.\textsuperscript{24} Those rules mainly cover the following: operation of the mediation provider, requirements mediators need to meet, mediation procedure, some rules of ethical conduct and fees.

B. Institutional Integration of Mediation in Dispute Resolution Procedures and Substantive Law

(1) Mediation, Courts and Arbitration

(a) Private Mediation

From 1 March 2006 through 10 January 2012, a total of 958 certified mediators were registered in the Uniform Register of Mediators.\textsuperscript{25} Those mediators hold mediations privately either in mediation centres,\textsuperscript{26} where more than one mediator works, or in the offices of individual mediators. There are no official statistics regarding either the number of private mediations held annually or the settlement rate achieved. Unfortunately, there is no institution responsible for collecting and evaluating such statistics. Private mediation centres also do not report the number of the cases they mediate nor their settlement rate. Some authors state that there

\textsuperscript{20} Ibid, Arts. 21–5, 34.
\textsuperscript{21} Section A(1)(a) above; Arts. 23–33 Reg 2.
\textsuperscript{22} See fn. 2 above.
\textsuperscript{23} See <www.srs.justice.bg/srs/158-Правилна%20на%20програмата>.
\textsuperscript{24} The Rules of the Professional Association of Mediators in Bulgaria (Rules of PAMB) can be found at: <www.pamb.info/index.php?option=com_content&view=article&id=59&Itemid=81&lang=bg>. The Rules of the Mediation Center at the Bulgarian Chamber of Commerce and Industry (BCCI) (Ustav i pravila za mediacija (UPM)) can be found at: <www.mediation.bcci.bg/index.php3?view=USTAVIPRAVILAZAMEDIACIJA&vfile=it5.htm>.
\textsuperscript{26} There are at least 24 such centres throughout the country. Their contact information can be found at: <www.lex.bg/bg/centrovemediacia/page>.
are about 300 private mediations in Bulgaria annually with a settlement rate of approximately 60%.27 The Minister of Justice has certain supervisory functions over mediation. Thus, the Minister is responsible for admitting mediators to the Uniform Register of Mediators and maintaining the register.28

(b) Court-annexed and Judicial Mediation

The law does not allow mediation activities to be carried out by persons performing functions related to the administration of justice within the judicial system.29 This creates a serious problem as regards to encouraging judges to promote mediation. Those who have experience in trying to advance mediation have likely noticed that the most vocal proponents of mediation are the mediators, ie individuals who have themselves tried to mediate disputes, who have enjoyed the experience and who have continued to pursue it in the future. Courts are by far the biggest dispute resolution providers. From this perspective, it is not very wise to forbid judges—even when acting on a voluntary basis—from mediating cases referred to them by other judges within their own jurisdiction. Particularly, one loses the possibility of gaining dedicated supporters of mediation among the population of judges—ie the key category of professionals who, along with attorneys, deal with disputes on an everyday basis.

One might ask if the legislation really meant to completely forbid judges from mediating. The legislative proposal of the Bulgarian Council of Ministers did not include a general ban on mediation by judges. Between the first and the second hearing of the legislative proposal, however, MP Mihail Mikov, former Minister of the Interior, proposed that a corresponding text be included in Art. 4. Thus, the Parliament adopted the ban. During the discussions, some of the MPs argued that mediation is a private business, yet judges may not combine judicial and private functions. From this, however, it can be inferred that the legislature did not intend to forbid judges from serving as a mediator on a voluntary basis on pending cases not being heard by them. Also in support of this conclusion is the argument of Sevdalin Bozhikov, then Deputy Minister of Justice, that there are countries where judges engage in such conduct.

Efforts to develop court-annexed mediation programmes (CAMP) began in 2004. First, in July 2004 the Regional Court of Plovdiv (RCP) along with the Bulgarian Association for Alternative Dispute Resolution (BAADR) started a CAMP by contracting a non-profit organisation (BAADR) to provide neutral third parties and administer the programme. The neutrals received a small compensation figure through a grant from ABA CEELI and USAID. The project

28 See section E(2)(b)(ii) below.
29 Art. 4 MA.
was implemented between 1 September 2004 and 30 July 2006. During the second year of the project, the regional courts of Asenovgrad, Stara Zagora, Burgas, Vratsa, Mezdra, and Bíla Slatina used the model of the RCP and started their own CAMP. BAADR reports that by the end of 2006 courts had referred 236 cases for mediation to the three centres in Plovdiv, Asenovgrad and Stara Zagora. This resulted in 128 actual mediations, and the parties settled in 97 of them; in other words, the settlement rate was roughly 76%. BAADR reports that in 91 of the cases settled the parties fulfilled the agreement achieved through mediation. As of 2010 none of these courts continue to report on the activities of their CAMPs, and the programmes do not appear to be active.

In 2009 the RCS started its efforts to establish a CAMP. First, in March 2009 twelve judges of the court underwent a 32-hour mediation training conducted by American experts. In April 2009, eleven of those judges developed a schedule under which each of them made themselves available for one day every three months to mediate cases referred by their colleagues. Thus, the programme started as a fully judicially driven mediation programme. The judges referred cases only among themselves until December 2009. There were 23 cases referred and six cases settled. The numbers were not very high but were still encouraging. Meanwhile, in the summer of 2009 judges and mediators from Sofia drafted rules for the future CAMP. The chief judge of the RCS selected a volunteer coordinator in October 2009. In December 2009, the RCS provided a space for the SMC and the mediators were selected. The SMC started to operate on 1 March 2010 with 46 volunteer mediators and 11 volunteer judges. Thus, the programme transformed very quickly from a judicially driven mediation programme to a CAMP where the court relied on pre-trained volunteer mediators and volunteer judges. The court provided facilities and a coordinator responsible for the everyday activities of the SMC. A group of mediators and judges working for the SMC was responsible for quality control and publicity.

From 1 March 2010 until the end of 2010, there were 86 cases referred. Sixty-eight of the cases were referred by a total of 17 judges. In 19 of these cases, one

31 See <www.baadr.com/nie.php>.
32 The training was made possible through a grant of the Bulgaria Fund and the German Marshall Fund administered by PAMB. The European Judicial Association for Mediation (GEMME) and the Fulbright Commission in Bulgaria supported the project.
33 Those mediators were from two major mediation associations: the National Association of Mediators (NAM) and PAMB.
34 The Rules can be found at: <www.srs.justice.bg/srs/158-Правила%20на%20програмата>.
35 In the meantime, the US Department of Justice, the US Embassy in Sofia and the RCS started the Judicial Mentoring Initiative. Under this initiative, two judges from California spent over eight months consulting the RCS on case management. These judges also helped considerably with commencing and developing the SMC.
36 For more, see G. de Palo and M. B. Trevor, 28 Alternatives No. 8, 155, 157 (2010).
or both parties did not appear. Mediations were ultimately held in 49 of the cases judges referred (ie 72%), and 10 of these cases settled for a settlement rate of only 20%.

In 18 cases, one or both parties asked the coordinator of the SMC for mediation. There was no mediation in 11 of these cases, or 61%. In seven cases there was mediation, and one case settled for a settlement rate of only 14%. The results clearly showed that many judges still did not know about the SMC. Particularly, there were deficiencies in the referral procedure, administration and quality control of the programme.

In January 2011, the RCS started the implementation of a second project.\(^\text{37}\) The goals were to increase the awareness of judges in Sofia about mediation and the operation of the SMC and to improve the administration of the SMC and its quality control. To fulfil the first goal, judges participated in several mediation trainings. By December 2011, as many as 46 judges from Sofia had completed mediation training.\(^\text{38}\) This immediately resulted in an increase in the number of judges referring cases to the SMC.\(^\text{39}\) To fulfil the second goal, the programme consulted with experts from the US.\(^\text{40}\) The coordinator of the SMC also underwent training on the administration of CAMPs at the Hastings College of Law, San Francisco. Volunteer mediators also completed additional training. The programme improved its operational capacity by implementing a computer-based case management program in December 2011 provided by the World Bank. The project also increased decision-takers’ awareness about mediation as a short training was conducted by a US federal district judge for the Chief Justice, the most senior judge of the RCS, the Deputy Speaker of the parliament, a member of the Board of the National Bar Association and several other judges. Following the example of the RCS, the District Court of Smolían (DCS) started a CAMP in June 2010.

(c) Mediation and Arbitration

A number of the arbitration courts in Bulgaria also provide some kind of mediation.\(^\text{41}\) In their rules of operation these courts use three terms to describe a procedure similar to mediation: posrednichestvo, pomirenie, and mediacii\(^\text{a}\)
Comparing the procedures for mediation and conciliation, no clear difference can be found. This is also valid for posrednichestvo and mediation. The only significant difference is that those neutrals who conduct pomirenie and posrednichestvo can be more evaluative and offer the parties a settlement proposal. The rules of some of the arbitration courts provide that, with the parties’ consent, the person who conducts posrednichestvo/pomirenie can arbitrate the case if the case does not settle.

(2) Institutional Integration and Incentives for Mediation

(a) Principle of Voluntariness and Advice by the Courts

Mediation in Bulgaria is voluntary. There is no mandatory pre-action mediation. There are also no direct incentives for mediation.

The court before which a dispute is brought may only propose to the parties that the case be referred to mediation; it does not have the right to order mediation. The same is also true for family law cases.

(b) Agreements to Mediate

It is possible for the parties to stipulate mediation in a clause to their contract. If a party to such an agreement breaches the agreement, breach of contract remedies may be available. Under Art. 79(1) of the Obligations and Contracts Act (OCA), in case of a breach of a contract the party can request either fulfilment of the contract along with compensation for the delay, or compensation for the damages

42 Some authors use these three terms interchangeably (see Z. Stalev, A. Mingova, O. Stamboliev, V. Popova and R. Ivanova, Българско граждански процесуално право, pp. 783–4.)
43 The term can be translated into English as conciliation.
45 The term can be translated into English as mediation.
46 The Bulgarian Industry Association has also adopted Rules for Arbitration (Pravilnik na arbitrazhiu sud pri Bugharska stopanska kamara (PASBSK), available at: <www.bia-bg.com/serviceCategory/20/cat/25/pg/1> The Rules provide for posrednichestvo. The only noticeable difference from mediation is again that the posrednik (the person who is doing posrednichestvo) must look for and must provide the parties with a settlement proposal (see PASBSK, Art 12(1)).
47 Art. 12(3) PASBSK.
48 Art. 3(3) PPASBTPP (Pravilnik za pomirenje na arbitrazhia sud kum Bulgaria turgovsko promishlena palata – Rules for conciliation of the Arbitration Court of the BCCL).
49 Art. 21 UPM.
50 Art. 11(4) MA.
resulting from the breach of contract. If the party chooses fulfilment of the contract, it needs to prove two elements: (i) a valid mediation clause between itself and the other party; (ii) a breach of this clause by the other party (ie non-appearance for mediation by the non-complaining party in spite of an invitation to mediate by the complaining party). If the complaining party successfully establishes these two elements, the court orders both parties to enter into mediation. If the non-complaining party does not abide by the court judgment, the judicial enforcement officer can impose a monetary sanction of 200 leva.51

If by the time the complaining party files the case this party no longer has an interest in going to mediation, the party can ask the court for compensation of the damages resulting from the breach of the mediation clause. In this case it also needs to prove the existence of damages it has suffered and that those damages have been a direct result of the non-complaining party’s breach of contract.

There is, however, not a single case reported resulting from a breach of a mediation clause. Therefore, it is hard to predict what courts will decide if such a case is filed. It is also hard to predict what the result would be if the court were to order the non-complaining party to go to mediation—ie whether this would lead to a settlement or improved communication between the parties. Given that many jurisdictions have adopted mandatory mediation, however, some positive outcome might be at least expected.

(c) Cost Incentives and Sanctions

When parties settle a case, the court must return to the plaintiff half of the court fee already paid under Art. 78(9) CCP.52 Thus, if the case is settled through mediation and the court approves the settlement, the plaintiff will be reimbursed half of the court fee. There are no sanctions if parties do not go to mediation although they have agreed on this. At the start of the SMC at the RCS, this was a serious problem. In 28% of the cases referred by judges, one or both parties did not appear for mediation, although they had previously agreed to attend. The only two solutions mediators and judges came up with were for judges to implement better selection of the cases referred to mediation and to collect as much contact information from the parties as possible,53 as well as for mediators to have a pre-mediation telephone call with each party to confirm the mediation session. These efforts in fact led to an improvement. From 15 September 2011 through 31 December 2011, there were 45 cases referred to the SMC; 22 of these cases were referred by judges whereas the other 23 cases were filed at the SMC when one or

51 Art. 527(1) CCP.
52 The court fee can be quite substantial given that in most cases it is 4% of the amount in controversy. Thus, if the amount in controversy is 500,000 leva, the court fee would be 20,000 leva.
53 One judge went even further, sending reminder e-mails to parties before the mediation date that had been set.
both parties asked the coordinator for mediation. In all 22 cases referred to mediation by judges, there was a mediation session. There were seven cases where one of the parties asked the coordinator for mediation but the other party refused to participate.

(3) Effects of Mediation

(a) Limitation Periods

In 2011 a special provision was adopted stating that the statute of limitation does not run for the duration of the mediation procedure.\(^54\) This is a very important amendment. Before 2011, a provision on the suspension of statute of limitation existed only for proceedings before the courts.\(^55\) The new law was adopted in compliance with Art. 8 of Directive 2008/52/EC. The initial legislative proposal by the Ministry of Justice read that the statute of limitation should not run during the mediation procedure and for one month after the mediation procedure was terminated. The motivation behind this proposal was that parties would need some time to decide whether or not to file a case after termination of the mediation procedure. There was a significant debate in the Parliament on whether the law needed to be adopted. Eventually, the proposed one-month supplement was rejected.

(b) Effect of Mediation on Court Proceedings and Arbitration

The CCP contains no rule stating that the court is not to proceed with a complaint if the parties simultaneously participate in mediation of the same dispute. Therefore, it is procedurally admissible to file a case while mediation is pending. If parties decide to use mediation while their lawsuit is already pending, and both parties have asked the court to stay further proceedings,\(^56\) the court will stay the proceedings for six months; if within the six-month period no party asks for reopening of the case, the court will dismiss the case without prejudice.\(^57\) If, however, the parties have not asked the court to stay further proceedings, the proceedings will continue as otherwise scheduled.\(^58\) In that case, the parties could go to mediation (i) during the time between receiving the scheduling order for the first hearing and the first hearing itself; (ii) during the time between the first hearing and the second hearing, or any subsequent hearing after that; (iii) once

\(^{54}\) Art. 11a MA.
\(^{55}\) Art. 115(1)j OCA.
\(^{56}\) Art. 229(1) no. 1 CCP.
\(^{57}\) Ibid, Art. 231(1).
\(^{58}\) The only exception is in divorce cases, where if the parties agree to enter into mediation, the court has to stay further proceedings for six months even without a motion by the parties (Art. 321(3) CCP).
the case is ready to be decided during the 30-day period the court has to pronounce its judgment. Just which approach the court will choose depends to some extent on the parties, but also on the sound judgment of the judge hearing the case as to what would be best for the administration of justice in the specific case.\textsuperscript{59}

(4) Costs

(a) Costs of Mediation

The state has not regulated mediation fees in Bulgaria. Private providers have adopted their own fee schedules. They charge two types of fees: intake fees and mediation fees. The intake fee begins at 50 leva and goes up to 200 leva. The mediation fee starts at 50 leva per hour and goes as high as 80–100 leva per hour depending on the amount in controversy and the parties. For cases with an amount in controversy over 100,000 leva, at least one private provider charges a fee of 1\% of the amount in controversy.

(b) Effect on Court Costs

A prior, unsuccessful attempt at mediation and its associated costs has no effect on the cost of later court proceedings in the same matter. The court costs have to be paid in full in addition to the costs of the mediation proceedings.

(c) Legal Aid

According to Art. 21 of the Legal Aid Act\textsuperscript{60} (LAA), legal aid can be provided: (i) for consultation regarding the settlement of a dispute before a case has been filed; (ii) to prepare the filing of a case; (iii) for representation in a pending case; (iv) for representation if arrested by the police. The LAA does not explicitly provide for legal aid in mediation. But since the LAA states that legal aid can be provided for consultation regarding the settlement of a dispute before the filing of a case, refusing legal aid for mediation would be illogical given that one of the main goals of mediation is to settle a dispute. The logical conclusion would be that legal aid can be provided in mediation.

\textsuperscript{59} In the cases referred to SMC, the parties have only rarely asked the court for a further stay of proceedings. More often they used mediation while proceedings were pending.

\textsuperscript{60} Dürzhaven Vestnik 2005 no. 79.
(5) Outcome

(a) Successful Mediation

(i) Settlement

The contents and the form of the mediation settlement are to be determined by the parties to the dispute. The settlement may be oral, in writing or in writing with notarial attestation of the signatures. A written settlement must include the place and the date of mediation, the names of the parties and their addresses, the points of the settlement, the name of the mediator, the date of the commencement of mediation and the signatures of the parties to the dispute.\(^{61}\) The MA does not require the mediator to sign the mediation agreement. In 2011, an additional paragraph (2) was added to Art. 16 MA.\(^{62}\) Under this new provision, the parties may stipulate liability in the settlement for non-performance of obligations that are prescribed in the settlement. The mediation settlement is binding solely on the parties to the dispute and may not be held adverse to any person who did not participate in the proceedings.\(^{63}\) The settlement will be binding on the parties solely in respect of what is covered by it.\(^{64}\) A settlement which contradicts or evades the law, or a settlement which is in conflict with good morals, will upon request by one of the parties be declared null and void by a court.\(^{65}\) There are no special provisions on challenging mediation settlements. Therefore, the general rules on contracts would apply.

(ii) Enforcement

There are several ways to enforce a mediation settlement. If the mediation agreement is in writing with notarial attestation of the signatures, the non-defaulting party may file a motion for an order of payment, submitting the mediation settlement to the court.\(^{66}\) In that case the court will check only whether the settlement is valid on face value and whether it proves that the defaulting party is in debt to the non-defaulting party.\(^{67}\) If these two elements are presented, the court will issue an order of payment along with a writ of execution. Once the defaulting party receives a request from the judicial enforcement officer to pay voluntarily, it can either remain silent or file an objection against the payment order with the court within two weeks of having received the request to pay. If the defaulting party remains silent, the judicial enforcement officer will proceed with enforcing the payment order. If the defaulting party files an objection with

\(^{61}\) Art. 1(1) MA.
\(^{62}\) Ibid, Art. 16(2).
\(^{63}\) Ibid, Art. 17(1).
\(^{64}\) Ibid, Art. 17(2).
\(^{65}\) Ibid, Art. 17(3).
\(^{66}\) Art. 417 no. 3 CCP.
\(^{67}\) Ibid, Art. 418(2).
the court, the court will order the non-defaulting party to file a complaint within one month. If the non-defaulting party fails to comply, the order of payment will be reversed; if the non-defaulting party files such complaint, the case proceeds through the ordinary procedure.

If the mediation settlement is reached while a law suit is pending, the parties have two options: (i) to reduce the settlement to writing, have their signatures attested by a notary and subsequently follow the procedure described, or (ii) to have their settlement approved by the court. If the parties choose the first option, in case of non-compliance with the mediation agreement the non-defaulting party may enforce the agreement in the manner described above. If the parties choose the second option, in case of a non-fulfilment of the mediation agreement the non-defaulting party may directly ask the court for a writ of execution. The parties’ decision whether to have the settlement in writing with their signatures attested by a notary or, alternatively, to have the agreement approved by the court, will depend not only on the parties’ evaluation of the enforceability of each respective mechanism but also on the corresponding costs they will incur.

Before the 2011 amendment of MA, in those instances where there was no pending law suit and where the settlement was oral or in writing but without notarial attestation of the signatures, the non-defaulting party needed to file a case to obtain a judgment against the defaulting party and, thereafter, a writ of execution. In other words, the mediation settlement as such was not enforceable. Through the 2011 amendment of the MA, parties to a mediation settlement have received a new option for enforcement of the settlement beyond the described options. Under Art. 18 MA, even if there is no pending law suit the parties can ask the court to approve their settlement. This new law was adopted in compliance with Art. 6 of Directive 2008/52/EC. The motion needs to be filed with a regional court. The procedure is non-adversarial, and the court will only determine whether the agreement comports with the law and good morals. If the settlement meets these two prerequisites and both parties confirm the settlement before the court, the court will approve it.

If a party to a mediation agreement subsequently defaults, the non-defaulting party can move for a writ of execution directly on the minutes of the hearing at which the court approved the agreement. There are no specific rules for the review of settlements which have been reached in mediation proceedings.

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68 Ibid, Art. 414.
69 Ibid, Art. 234.
70 Ibid, Art. 404 no. 1.
71 Art. 18 MA. Dürzhaven Vestnik 2011 no. 27
72 Regional courts are the trial courts with limited jurisdiction up to 25,000 leva in civil and commercial cases and up to 50,000 leva in real estate cases. In probate and labour law cases, regional courts have unlimited jurisdiction (see Arts. 103–4 CCP.)
73 Art. 18 MA. See also Art. 234(1) CCP.
It is not clear what fees are to be paid by parties wanting to have their agreement approved. Since the procedure is non-adversarial, one could argue that the court fee would be a fixed fee determined by the court, but not more than 80 leva. One could contend, however, that parties could thus evade the law by completing a sham mediation over a purported real estate dispute in order to secure a very cheap title in the form of a court-approved mediation agreement. There has not yet been a case reported on this issue.

(b) Unsuccessful Mediation

Under Art. 15(1) MA the procedure is terminated when: (i) the dispute is settled; (ii) the parties mutually consent to the termination of the procedure; (iii) one of the parties refuses to participate in the procedure; (iv) one of the parties dies or, in case of a legal person, the legal person ceases to exist; or (v) six months have passed from the start of the procedure. In practice, the mediation procedure might continue even after the six-month period has elapsed if both parties agree on this. Mediators can terminate a mediation if their own judgment and ethical considerations lead them to the conclusion that the mediation is not proceeding justly and fairly. Neither the law nor academic literature has elaborated when a mediation is not proceeding justly and fairly.

Once the mediation is terminated, and if it has been held on a case pending before a court that has been stayed because of the mediation, the court proceedings will continue. In this situation the court will not reopen the case sua sponte, but only on the request of one or both parties. The court has no duty to check whether the mediation was terminated. Therefore, the court will dismiss the case without prejudice if: (i) the court stayed the proceeding on the mutual consent of the parties; (ii) the six-month period for staying the proceedings has elapsed; and (iii) none of the parties has asked the court to reopen the case.

If on a case pending before a court the parties do not reach an agreement within the six-month period for conducting mediation, the court will proceed with the case. There is no issue on the statute of limitation because the statute of limitation does not run while the case is pending. The law does not say, however, whether the statute of limitation will start to run if the parties have not reached a settlement within the six-month period on a dispute where no case has been filed and where they would like to continue the mediation procedure. Applying the law

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74 If the case is pending, the court fee will be 2% of the amount in controversy.
75 The court fee for approving a settlement on a pending case will be 2% of the amount in controversy. Conversely, the parties to a mediation agreement reached on dispute where no case has been filed would have to pay only 80 leva regardless of the amount in controversy.
76 Art. 7 PERCM.
77 Art. 15(3) MA.
78 Art. 231(1) CCP.
79 Ibid.
80 Ibid. See also section B(3)(b) above.
strictly, one could argue that the statute of limitation stops running only during the six-month period for mediation. In support of this argument are also the motives of the Ministry of Justice which proposed this amendment. A countervailing argument could be that no matter how long a court proceeding takes, the statute of limitation does not run; for mediation, the solution should be similar.

(6) Confidentiality

The initial rule on confidentiality was very short and stated only that all discussions in connection with the dispute are declared confidential. The participants in a mediation procedure are bound by the obligation to respect the confidentiality of all circumstances, facts and documents that have come to their knowledge in the course of the procedure. In 2007, the new CCP provided that mediators can refuse to testify before the court in a civil case when they have mediated or are mediating the same dispute. Thus, the confidentiality of mediation was strengthened.

In 2011, Art. 7 MA was amended. The amendment was in compliance with Art. 7 of EU Directive 2008/52/EC. According to the new Art. 7(2) MA, the mediator may not be interrogated as a witness, regarding such circumstances as have been confided to the mediator by the parties and which are of relevance for the outcome of the dispute that is the subject of the mediation, unless the party which has confided the information expressly gives its consent. Exceptions from the confidentiality of mediation are admissible when: (i) it is necessary for the purposes of criminal proceedings or if connected to the protection of public policy; (ii) it is required to ensure the protection of the interests of children or to prevent harm to the physical or psychological integrity of a given person; or (iii) where disclosure of the content of the agreement resulting from mediation is necessary to implement or to enforce that agreement.

C. Structure of Mediation

(1) Commencement of the Mediation

The initiative for commencing mediation lies with the parties to the dispute. Each of them may propose resolution of the dispute through mediation. The parties

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81 Art. 7 MA before the amendment of April 2011.
82 Very soon after the MA was enacted, legal commentators criticized Art. 7 as insufficient and too brief to guarantee the confidentiality of mediation (see K. Rusev, Съвременno pravo, 2005, No. 4, 70, 72).
83 Art. 166(1) no. 1 CCP.
84 Art. 7(3) MA, as amended in April 2011.
may also stipulate in advance, as a clause to their contract, the resolution of a possible future dispute through mediation. In any event, mediation is based on an agreement of the parties. A (non-binding) proposal for resolution of the dispute through mediation may also be made by the court or another competent authority before which the dispute has been brought for a ruling. In this case, at least in the SMC of the RCS, the parties can select a mediator from the SMC list of mediators. The judge or the coordinator could also assist the parties in selecting the mediator, bearing in mind the character of the dispute as well as the competency and experience of potential mediators.

The beginning of the procedure is now defined in the law as the day on which the parties to the dispute have reached an express agreement on the commencement of mediation. In case no express agreement exists, the commencement of mediation is the day of the first meeting of all participants with the mediator.

(2) Appointment of the Mediator

(a) Mediator Agreement and Selection of the Mediator

The agreement between the parties and the mediator is not regulated as such in the Mediation Act. Some private providers use a mediator agreement. The SMC also uses a mediator agreement. It mainly covers the duties of the mediator and the mediation procedure.

The mediators are selected by the parties from those listed in the Uniform Register of Mediators. If the parties have not selected a mediator, the private provider they have chosen may propose a mediator to them. If the case is referred to a CAMP, at least in the SMC of the RCS, the parties can select a mediator from the list of mediators working with the CAMP. The judge or the coordinator could also assist the parties in selecting the mediator, bearing in mind the character of the dispute as well as the competency and experience of potential mediators.

85 Art. 140(3) CCP. See also: Arts. 145 (3), 149(1) CCP; Art. 11(3); ch. 2 Art. 1 PERCM.
86 Art. 11(2) MA as amended in April 2011.
87 For the mediation agreement used by PAMB, see: <www.pamb.info>.
88 Art. 12(1) MA.
90 Judges have access to a list of mediators with a short resume for most of them attached. The drawback of this approach is that sometimes cases are not distributed proportionally among all mediators. This creates dissatisfaction among the mediators who receive less referrals. The positive result is that it increases the likelihood that the parties will secure a mediator who has the necessary qualifications and experience.
(b) Role of the Mediator and Co-mediation

There is no official distinction between different types of mediation. Mediation may be conducted by one or more mediators. No existing provisions specify particular roles to be played when more than one mediator is used. The mediators may have a similar professional background, but it is also possible that their qualifications and roles in the mediation process are configured differently so that they complement each other (e.g., in a family law dispute, one mediator might have a legal education whereas the other will be a psychologist).

SMC uses both solo mediation and co-mediation. Co-mediation was not initially practised, but it was later adopted to address two issues: (i) to allow a greater number of mediators to gain experience and (ii) to improve overall quality by teaming less-experienced mediators with more experienced colleagues.

(3) Mediation Procedure

(a) Course of the Mediation Procedure

Prior to the conducting of the proceedings, the mediator must inform the parties about the essence of mediation and the consequences of mediation and must require their written or oral consent to participate in the mediation. In the course of the procedure, the substance of the dispute must be clarified, the mutually acceptable options for solution must be specified and the possible framework of an agreement must be outlined. Nowhere is it specified what the role of the mediator is in this regard. A mediator can use both joint sessions and private caucuses, having in mind the parties’ equal rights of participation in the proceedings.

(b) Parties

(i) Parties’ Duties in Mediation

Bulgarian law regulates only the duties of the mediators, not those of the parties. Under Art. 12 OCA, however, the parties in negotiations have to act in good faith. If a party does not act in good faith, it is responsible for damages incurred

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91 Art. 12(1) MA.
92 Co-mediation obtains good results on the condition that the coordinator knows and has a good feeling about the personality and temperament of the mediators with whom the coordinator is working. Out of 38 mediations held at SMC from 15 September until 31 December 2011, 24 were co-mediations.
93 Art. 13(4) MA. See also ch. 2 Arts. 6-8 PERCM.
94 Art. 13(5) MA. See also ch. 2 Art. 9 PERCM.
by the opposing party. To the extent that parties are negotiating through the procedure of mediation, Art. 12 OCA could apply if a party to mediation breaches its duty to act in good faith.

(ii) Personal Attendance versus Virtual Mediation; Multi-Party Mediation

Online mediation is not provided for in Bulgaria, nor is it expressly forbidden. Online mediation is not provided for in Bulgaria, nor is it expressly forbidden.96

A mediation procedure is conducted in the presence of the mediator(s) and the parties or the representatives of the parties.97 Article 12 MA states that the parties may participate in the mediation personally or through a representative. Chapter 2, Article 4 PERCM goes further, however, stating that parties must be present at the mediation in person. They may participate in mediation through a representative, including an attorney, only if the case allows it or requires it and the other party agrees.98 If a party is represented in a mediation, the power of attorney must be in writing.99

In Bulgaria, while multi-party mediation is not excluded by law, there are no special rules on this kind of mediation.

(c) Advisors and Other Third Parties

Lawyers are allowed to participate in the proceedings; the same is true for other specialists.100 If other specialists participate in mediation, they must sign an affidavit affirming that they will obey the principles of mediation.101 Other duties are not regulated in any further detail.

(4) Conclusion of the Mediation

(a) Suspension of Procedure

Possible grounds for suspension, eg suspension upon agreement of the parties or because of the resignation or death of the mediator, are regulated in Art. 14 MA. If the mediation is held while a lawsuit is pending, the parties must immediately inform the court about the suspension of the mediation.102

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95 For more about responsibility for damages resulting from a breach of the duty to negotiate in good faith, see K. Stoichev, Pregovori za skliuchvane na dogovor i preddogovorna otgovornost.
96 At least one Skype mediation was conducted at the SMC.
97 Art. 12(2) MA.
98 Ch. 2 Art. 4 PERCM.
99 Ibid.
100 Art. 12(3) MA.
101 Ch. 2 Art. 5 PERCM.
102 Art. 14(2) MA.
(b) Termination of Procedure

A total of six grounds for terminating the procedure are listed in Art. 15 MA, namely: reaching a settlement; mutual agreement of the parties; withdrawal of one of the parties; death of one of the parties to the dispute; dissolution of a legal person who is a party to the dispute; and (since the reform of 2011) the passage of six months since the commencement of the mediation procedure. Another ground for terminating the mediation is when the mediator’s own judgment and ethical considerations lead her to believe that the mediation is not proceeding justly and fairly.\textsuperscript{103}

(c) Mediation Settlement

Successful mediation is terminated by a settlement (sporazumenie) of the parties. No other mechanism for concluding a mediation is provided for. A partial settlement is possible but not regulated in the law. Once completing a mediation session, the mediators of the SMC file an electronic report with the coordinator. The report includes information on whether the parties appeared for mediation, how long the mediation lasted and what the outcome was. This information, along with the information from the intake form, is entered by the coordinator into the computer-based ADR case management system. Recently, the coordinator of SMS developed a form used to notify the hearing judge as to what happened with the mediated case.

D. Particular Fields of Law

(1) Small Claims Mediation

There are no small claims mediation programmes in Bulgaria. Both SMC at RCS and SC at DCS started as general CAMPs. Between 15 September and 31 December 2011, the majority of cases referred to SMS had an amount in controversy under 5,000 leva.

(2) Consumer Law

With the enactment of the Consumer Protection Act (CPA) in 2005,\textsuperscript{104} Conciliation Commissions were established at the Consumer Protection Commission (CPC). The main goal of the Conciliation Commissions is to help consumers and

\textsuperscript{103} Ch. 3 Art. 7 PERCM; for more on the grounds for terminating a mediation procedure, see section B(5)(b) above.

\textsuperscript{104} Dürzhaven Vestnik 2005 no. 99.
merchants to settle disputes arising in relation to breaches of warranty and the use of unfair or misbalanced clauses in a consumer contract. It is hard to define the character of the procedure used by the Conciliation Commissions. On one hand, their goal is to enable the parties to reach a settlement by themselves. On the other hand, the Conciliation Commissions hold sessions open to the public, receive evidence submitted by the parties, give hints to the parties if they do not present certain evidence, keep a record of the actions taken at a session and provide a settlement proposal.

In 2010 there were 506 filings of conciliation procedures with the Conciliation Commissions. A conciliation procedure was held in 204 of the filings. In 58 of them, the parties settled the dispute; in 44 of them the parties did not settle; in 102 instances the procedure was still pending at the end of 2010.105

In 2011, the CPA was amended.106 Now the law provides that mediators can also help consumers and merchants to settle their disputes.107 The chair of the CPC nominates the mediators, and the Minister of Economy, Energy and Tourism appoints them as officers of the CPC.108 The law does not give any further detail on what background mediators need to have and what their function will be.

(3) Family Law

The Family Code of 2009109 provides that the court is to direct parties to settle their dispute through mediation or another ADR method.110 The CCP also states that the court is to direct the parties to mediation or another ADR method during the first hearing.111 If the parties agree to enter into mediation, the court stays further proceedings.112 If none of the parties asks the court to reopen the case within six months of the proceedings having been stayed, the court will dismiss the case without prejudice.113

There are no family law mediation programmes in Bulgaria. In the spring of 2011, the SMC realised that family law mediation requires a higher degree of training and skill. Therefore, the SMC specially selected 12 of its certified mediators who were family law attorneys, psychologists or mediators with some experience in family mediation. Those mediators started to work voluntarily three days a week at the Family Law Department of RCS to provide information to parties and receive immediate referrals from judges. The efforts continued in the
autumn of 2011 with slightly reduced intensity. This sub-programme is still in its formation phase.

(4) Labour Law

The Labour Code does not provide for mediation. The Collective Labour Disputes Resolution Act\(^{114}\) (CLDRA) states that collective labour disputes are to be resolved through negotiations and that, where unsuccessful, the parties can attempt conciliation (posrednichestvo) or arbitration conducted by trade unions or employers’ associations and/or the National Institute of Conciliation and Arbitration (NICA).\(^{115}\) NICA was established with the amendment of CLDRA in 2001.\(^{116}\) NICA is an executive agency of the government.\(^{117}\) In 2003, NICA adopted Rules for the Conciliation and Arbitration of Collective Labour Disputes (RCACLD).\(^{118}\) RCACLD describes the conciliation procedure,\(^{119}\) the main principles of conciliation\(^{120}\) and ethical rules of conduct for conciliators.\(^{121}\) There is no noticeable difference between the conciliation procedure described in RCACLD and mediation. The Regulation of the Structure and the Function of NICA (RSFNICA) provides how conciliators are selected for the NICA list of conciliators.\(^{122}\) In 2010 there were four requests at NICA to start a conciliation procedure. In three of these instances, the other party did not respond and no conciliation procedure was held. As to the other request, a conciliation procedure was held and the dispute was settled.\(^{123}\)

(5) Patent and Trade Mark Law

Until recently the law did not specifically provide for mediation in patent and trade mark disputes. However, in 2011 the Patent Law Act (PLA) was amended.\(^{124}\) Under Art. 40zh(1) PLA, in case of a dispute between an organisation for collective management of copyrights and a user, or an organisation of users of such rights on the formation or fulfilment of a contract, any party to the

\(^{114}\) Dürzhaven Vestnik 1990 no. 21.
\(^{115}\) Art. 3(1) MLDA. See also, Art. 4(1), as amended in 2001.
\(^{116}\) Dürzhaven Vestnik 2001 no. 25.
\(^{117}\) Art. 4a(1) MLDA.
\(^{118}\) The rules can be found at: <www.nipa.bg/?q=bg/node/106>.
\(^{119}\) Arts. 4–10 RCAMLD.
\(^{120}\) Ibid, Arts. 11–12.
\(^{121}\) Ibid, Arts. 26–32.
\(^{122}\) Arts. 9–14 RSFNICA.
\(^{124}\) Dürzhaven Vestnik 2011 no. 25.
contract can propose that the dispute be resolved through mediation. Article 40zh PLA authorises the Minister of Culture to draw up a list of mediators who can mediate the disputes described.\footnote{Art. 40zh(2) PLA.} PLA defines further what requirements a mediator should meet to be included in the list.\footnote{Ibid.}

(6) Public Law and Criminal Law

None of the Administrative Procedure Code, the Social Security Code and the Tax Procedural Code provide for mediation. Article 3(2) MA states that mediation can be held in cases provided in the Code of Criminal Procedure (CCrP), but this still has no provisions on mediation.

E. Mediators

(1) Duties and Liability

The rules of conduct and the duties and liability of mediators are regulated in Art. 9 MA. It is provided by the law that the mediator must act in good faith and in compliance with the law, good morals and procedural and ethical rules of mediator conduct as determined in a special ordinance.\footnote{Order of the Minister of Justice no. 17 June 2005, LS-04-364, based on s. 1 of the MA.; Art. 9(1) MA.} For each assignment to conduct a procedure, mediators must be able to guarantee their independence, impartiality and neutrality.\footnote{Ibid., para. (2).} In the event of circumstances that might cast doubt on the independence, impartiality and neutrality of a mediator, the mediator is obliged to withdraw from the procedure.\footnote{Ibid., Art. 10(3).}

PERCM has further developed the duties of mediators. PERCM has stated that mediators must disclose any facts that might be viewed as a conflict of interest at the time of their introduction.\footnote{Ch. 2 Art. 9 PERCM.} PERCM has also defined what could be viewed as a conflict of interest. These had been: personal or business relations; financial or other interests based on the results of mediation; and the mediator having previously acted in another capacity to the benefit of one of the parties in the dispute.\footnote{Ibid, Art. 10.}

The 2011 amendment of the MA further detailed the potential conflicts of interest subject to disclosure. Now, there is a duty to disclose when the mediator:
(i) is the spouse or relative of one of the parties or one of a party’s representative; (ii) lives in a quasi-marital relationship with a party to the dispute; (iii) has been a representative or proxy agent for one of the parties to the dispute; or (iv) when other grounds exist which lead to reasonable doubts with regard to the impartiality of the mediator.\textsuperscript{132} For each procedure, the mediator has to sign and deliver to the parties to the dispute a declaration attesting to their impartiality and disclosing any of the (applicable) above-mentioned circumstances.\textsuperscript{133}

The mediator is not allowed to give legal advice.\textsuperscript{134}

During the procedure, the mediator is obliged to comply with the desires of each party with respect to how mediation is conducted. The mediator may not communicate to the other participants in the procedure any details concerning only one of the parties without the consent of the party concerned.

(a) Delegation of Competences

The MA does not provide for a delegation of competences. PERCM states, however, that the mediator to a dispute may be replaced by another mediator at the parties’ request.\textsuperscript{135} In this case the mediator substituted must provide the information regarding the mediation procedure to the new mediator.\textsuperscript{136} This does not include the information the substituted mediator received in joint sessions or caucuses with the parties, unless the parties have explicitly agreed to such disclosures.\textsuperscript{137}

(b) Liability

Liability of mediators is not regulated expressly in the MA. It is only stated that the mediator will not be liable for non-performance of the agreement\textsuperscript{138} or if the parties fail to reach a settlement.\textsuperscript{139} PERCM states that mediators are liable for their actions if they breach the MA or PERCM.\textsuperscript{140} Given that neither the MA nor PERCM gives any details on a mediator’s liability, general rules of civil liability will apply.

\textsuperscript{132} Art. 13(2) MA.
\textsuperscript{133} Ibid, para. (3).
\textsuperscript{134} Ibid, Art. 10(1).
\textsuperscript{135} Ch. 2 Art. 11 PERCM.
\textsuperscript{136} Ibid.
\textsuperscript{137} Ibid.
\textsuperscript{138} Art. 10(6) MA.
\textsuperscript{139} Ibid, para. (5).
\textsuperscript{140} Ch. 3 Art. 20 PERCM.
(a) Education

To become a mediator, one must have first successfully completed a mediation training programme.\textsuperscript{141} The training takes 60 hours and it includes a theoretical and practical component.\textsuperscript{142} The theoretical component consists of three subcomponents. The first is an introduction to mediation that discusses conflict, settlement and mediation as an ADR method. It further covers: the role of the courts; participants in mediation; principles of mediation; and procedural and ethical standards. The second theoretical subcomponent explains the mediation procedure: starting the procedure; the selection of a mediator; the phases of a mediation procedure; the role of the mediator and tools to improve communication; the suspension and termination of mediation; and the settlement agreement. The third subcomponent covers a comparative review of legislation and mediation practice, as well as mediation in different types of disputes. The practical component includes participation in simulations and their subsequent analysis. Each trainee must take part in at least three simulations.\textsuperscript{143}

(b) Admission

(i) Procedure

Only natural persons can be mediators. They are allowed to form associations. It is expressly stated that no persons performing functions in relation to the administration of justice in the judiciary system may act as mediators.\textsuperscript{144} No other limitations exist in respect of particular professions. The majority of mediators have a diploma in law.

A mediator is required to be a legally competent individual who: (i) has not been convicted of an offence requiring public prosecution;\textsuperscript{145} (ii) has not been deprived of the right to exercise a profession or conduct an activity;\textsuperscript{146} (iii) has successfully completed a mediation training programme;\textsuperscript{147} and (iv) has been listed on the Uniform Register of Mediators.\textsuperscript{148}

If the mediator has a foreign nationality, the person must be a citizen of either an EU Member State, another country belonging to the European Economic Area

\textsuperscript{141} Art. 8(1) no. 2 MA.
\textsuperscript{142} Art. 8 Reg 2.
\textsuperscript{143} Art. 2 and app. 2 Reg 2.
\textsuperscript{144} Art. 4 MA.
\textsuperscript{145} Ibid, Art. 8(1) no. 1.
\textsuperscript{146} Ibid, no. 3.
\textsuperscript{147} Ibid, no. 2.
\textsuperscript{148} Ibid, no. 5.
or Switzerland, or the person must have a permit for long-term or permanent residence in the Republic of Bulgaria.149

(ii) Uniform Register of Mediators with the Minister of Justice

All mediators must be entered in the Uniform Register of Mediators, for which they will receive a certificate from the Minister of Justice. If the entry into the register is denied, the candidate can appeal to the Supreme Administrative Court.150 The Uniform Register of Mediators falls under the competence of the Minister of Justice.151 The following details are entered into the register: name, personal identification number, citizenship, education, profession, additional specialisation in the field of mediation, the organisation where the person has received her mediation training, foreign language skills, contact data and the number of the mediator on the Register.152 Any changes to these details must be notified to the Register within 14 days.153 The deletion of the mediator from the Register is also recorded. The Uniform Register of Mediators is open to public inspection.154 The fees for being entered in the Uniform Register (and for the approval of organisations that train mediators) are regulated in a schedule which has been adopted by the government. The fees are 20 leva for a mediator and 100 leva for a training organisation.

(iii) Revocation

If the essential requirements are no longer met, the Minister of Justice issues an order deleting a mediator from the Uniform Register. This order may be appealed to the Supreme Administrative Court.155 The MA does not provide for a sanction against an individual who provides mediation services without being admitted to the Register.

(c) Practice

Only persons who are registered in the Uniform Register of Mediators may use the title of mediator. The MA and PERCM provide for the main principles of mediation and for the duties of a mediator. The law does not, however, provide for any disciplinary mechanism for mediators. The Minister of Justice has supervisory functions only concerning the Uniform Register of Mediators and the admission of training organisations.

149 Ibid, Art. 8(2).
150 Ibid, para. (5).
151 Ibid, Art. 8a(1).
152 Ibid, para. (2).
153 Ibid, para. (4).
154 The Uniform Register of Mediators can be found at: <www.justice.government.bg/MP PublicWeb/default.aspx?id=2>.
155 Art. 8a(5) MA.
(d) Education Institutions

The organisations that deliver training to mediators need a special approval from the Minister of Justice. The terms and conditions for their approval, as well as the requirements for mediation training, are defined in Regulation No. 2. If the approval is denied, the organisation has the right of appeal before the Supreme Administrative Court. The law is very broad concerning the requirements an organisation needs to meet to be allowed to offer mediation training. Under Art. 2 Regulation No. 2, a training organisation is to have specialists qualified in mediation. Neither the MA nor Regulation No. 2 defines what ‘qualified in mediation’ means. The law does not make any provisions regarding the education and training required of the training organisation specialists.

F. Critical Analysis and Empirical Evidence

(1) Acceptance and Dissemination

Mediation in Bulgaria is still in its infancy. Generally, people know very little about it. Promotion of mediation mainly relies on the individual efforts of mediators and some judges. To some extent this is provided by the initial certification training for mediators but also through the work of private mediators as well as mediators and judges working for the CAMPs.

(2) Implementation of EU Mediation Directive and UNCITRAL Model Law

The EU Mediation Directive 2008/52/EC was implemented in 2011. As a consequence, some substantial changes and improvements have been made in the MA. It is now stated expressly in the law that mediation also applies to cross-border disputes (although this may have been tacitly implied previously); cross-border disputes are legally defined under Art. 2 of the Directive. Under the influence of Art. 7 of the Directive, the provision on confidentiality has been made more detailed; in particular, there is a new provision stating that the mediator may only give evidence as a witness regarding information that has been confided to the mediator by the parties in a mediation process with the express consent of the party concerned. Besides this, mediators have been

156 Art. 8(5) MA.
157 There were over 20 publications in the national press and media on the opening of the SMS.
158 See amendment of the Mediation Act, Durzhaven Vestnik 2011 no. 27.
159 Section 1 of the supplementing provisions MA.
160 Art. 7(2) MA.
obligated to disclose their relationship to a party (familial or otherwise) as well as other circumstances that may give rise to a reasonable doubt concerning their impartiality.\textsuperscript{161} Another positive result of EU harmonisation is the adoption of a new Art. 11a MA regulating the effect of the commencement of mediation on the statute of limitations.\textsuperscript{162} In this context, the day of commencement of mediation has now been defined by law.\textsuperscript{163} Article 6 of the Directive has led to a new regime for the enforcement of agreements resulting from mediation.\textsuperscript{164} Whereas foreigners without a long-term residence permit for Bulgaria are generally barred from acting as mediators in Bulgaria, there is an exception for EU citizens and for nationals from the European Economic Area or Switzerland.\textsuperscript{165}

Some authors argue that to some extent Bulgarian legislation is based on the UNCITRAL Model Law on International Commercial Conciliation of 2002 (UNCITRAL Model Law).\textsuperscript{166} This was stated also by Jordan Borisov, a member of the group at the Ministry of Justice that worked on the initial legislative proposal for the MA.\textsuperscript{167} The present authors, however, could not establish a direct transposition of any of the UNCITRAL Model Law provisions into Bulgarian law, though some general concepts are the same.

(3) Regulating Mediation

The regulation of mediation in Bulgaria is still very basic, thus giving a great deal of freedom to mediators, mediation organisations and courts to try different models. However, once mediation begins to be used more frequently, serious consideration may need to be given to the lack of (i) clear standards for admitting training organisations, (ii) unified standards by which these organisations certify mediators who complete their training programmes, and (iii) any quality control system.

Hopefully, the individual efforts of some courts will lead to more sustainable programmes. This will prove effective the role of the Bulgarian courts in promoting mediation, and then it will be up to the state to intervene in encouraging the design and implementation of future mediation programmes.

\textsuperscript{161} Art. 13(2)\textsuperscript{−}(3).
\textsuperscript{162} See section B(3)(a) above.
\textsuperscript{163} Art. 11(2) MA.
\textsuperscript{164} Art. 18 MA. See also section B(3)(a)(ii) above.
\textsuperscript{165} Art. 8 MA.
\textsuperscript{166} See K. Rusev, Stāvremeno pravo 2005 vol. 4, 71–72. Rusev argues that Arts. 5–7 and Art. 11(2) of MA from 2004 were transposed from the UNCITRAL Model Law.
\textsuperscript{167} See Record No. 15 of the Discussions at the Legal Committee from 15 April 2004.
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