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FINANCIAL AND LEGAL ASPECTS OF THE MEDIATION IN THE REPUBLIC OF NORTH MACEDONIA

Abstract

In this paper, by using the comparative and analytical method a comparison is made about the financial implications for both parties who are facing with a financial problem of collecting a particular claim, in a court and mediation procedure. The compared data in an appropriate manner show the positive and negative aspects of the two processes separately, and throughout their comparison, it is given an appropriate overview, which also shows the better solution for the parties who are involved in these procedures. At the same time, appropriate recommendations are given on how to proceed further and to give better presentation and overview of the process of mediation in the legal entities in the country. There are several foreign experiences in the mediation process that are presented and it is more than obvious that we all suffer from a lack of information, due to which only in rare situations the mediation is applied for the resolution of financial disputes.

Key words: *mediation, law, finances, benefits*

I. BACKGROUND

Meditation in Republic of North Macedonia is very important because the current regulations in our country provide the basis for the development of mediation. Since the adoption of the Mediation Law in 2006, the importance of the application of mediation in various disputes has been recognized, especially in commercial matters. In order to affirm the alternative ways of resolving disputes and revive this effective tool, the Government of the Republic of North Macedonia, with the aim of supporting mediation, adopts a program for the development of mediation, which sets out measures and means to provide support of mediation. The incorporation of the EU legislation and recommendations for mediation in our country is aimed at improving the work of mediators and greater affirmation of mediation. Such or similar measures would, on the one hand, increase users' confidence in greater use of alternative dispute resolution methods, and, on the other hand, increase the efficiency of commercial courts, thereby promoting business relationships and creating motivating environment for development of economic activities.

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Mediation is an informal, but structured settlement procedure. A mediator is employed to facilitate and assist parties in reaching an amicable dispute settlement.
The main characteristics of mediation are that it provides; a voluntary, non-binding, confidential and interest-based procedure. Parties are free to terminate mediation at any time after the first meeting. No decision can be imposed on the parties involved, and they may or may not agree upon a negotiated settlement. The confidentiality principle assures that any options the parties discuss will not have consequences beyond the mediation process. Interest-based procedure means that the criteria established to reach resolution does not solely adhere to the law, instead it can include considerations concerning financial, business and personal interests as well.
The role of the mediator is to assist the parties in reaching a negotiated agreement. Unlike an arbitrator, the mediator is not a decision-maker. In a facilitative mediation, the mediator merely assists the parties in their communication and negotiations. In an evaluative mediation, the mediator also provides a non-binding assessment of the dispute.
In general, mediation can be applied to all types of disputes. One of the main benefits of mediation is that the parties can agree to take into account a broad range of aspects, especially concerning commercial and business interests. There are numerous reasons why a party to a dispute might choose mediation over traditional litigation or other forms of alternative dispute resolution. Some of them are affordability, timely resolution, private sessions, confidentiality, participation in the resolution of the dispute, and in many cases preservation of the interrelationship between the parties.
The cost of mediation is less than the average cost in time and money for the litigation of a dispute. The mediator's hourly rate is generally lower than the hourly rate for a lawyer. Parties can often schedule mediation within weeks of a decision to mediate or a court order to mediate.
The ability to fashion user friendly resolutions to a dispute is an attractive component of mediation. The parties are empowered to solve their problem in workable terms to achieve a "win-win" solution. This often promotes healing where one party feels tremendously aggrieved or allows the parties to continue their business, employment or personal relationship. In many cases the parties strengthen their working relationship for greater workplace efficiency.
The importance of mediation research in the Republic of North Macedonia from a financial-legal point of view is very important for its affirmation, since mediation achieves judicial efficiency, financially, by reducing costs in litigation and legal costs, increasing financial confidence through financial discipline and increase the legal certainty of the general public in the country, for all entities involved in the legal circulation. An efficient, effective and reliable business dispute resolution system is vital to sustaining economic growth.

II. SHORT HISTORY AND DEVELOPMENT

The beginnings of the development of the mediation process in the Republic of Macedonia, at present the Republic of North Macedonia, are dated not so long ago, that is, with the adoption of the first Law of Mediation in 2006[1]. As well as the overall legislation in the Republic of Macedonia, this law cannot pass the children's diseases to frequent changes in the regulations. In the past 13 years, the law has been changed and amended several times, and as follows, in the Official Gazette of the Republic of Macedonia no. 22/2007, 114/2009, 188/2013, 148/2015, 192/2015 and 55/2016. This kind of trend of changes or alignment with European and international standards has been noted in the entire neighborhood, that is, in all the countries that are contenders for membership in the European Union (EU).

[1] Law on Mediation, Official Gazette of the Republic of Macedonia No. 60 of 15 May 2006

The importance of mediation as an out-of-court settlement of economic disputes is also confirmed by the numerous international documents adopted by the EU and the Council of Europe. In order to affirm the alternative ways of resolving disputes and revive this effective tool, the Government of the Republic of North Macedonia, with the aim of supporting mediation, adopts a program for the development of mediation, which sets out measures and means to provide support. of mediation. The program is adopted for a period of at least four years. Special programs to support mediation are adopted by the Judicial Council of the Republic of North Macedonia and the Supreme Court of the Republic of North Macedonia. Due to the development of mediation in the Republic of Macedonia, the state subsidizes part of the mediation costs. It is to inform the public that a new Mediation Law is currently in parliamentary procedure aimed at incorporating EU legislation and recommendations for mediation in our country. The European flag law aims to promote the work of mediators and to promote greater mediation. The Republic of North Macedonia signed in July 2019 the "United Nations Convention on International Settlement Agreements Resulting from Mediation", known as the Singapore Convention on Mediation. By signing this convention, our country has sent a signal to foreign investors that we are accepting international instruments that guarantee the security of foreign investment and that in the future we expect increased national growth and development of the country through mediation processes.

III. LEGAL ASPECTS OF MEDIATION

The preparation and adoption of the Law on Mediation is primarily conditioned by the total social changes, the need to take over the regulations that are valid in the EU and, of course, the easier resolution of disputes that are too long on the court and cause huge damages suffered by the parties until the dismissal of the dispute, but at the same time *reducing pressure on the judicial system with such disputes*. The Law on Mediation has provided a useful tool, which can result in a quick and in the same time effective way of resolving of the disputes that are existing, but only when the parties involved in the dispute will agree to use this mechanism of peaceful out-of-court settlement of the dispute they have. The reasons for resorting to the EU mediation process and in particular the resolution of cross-border disputes are:

a) no international delivery (invitations, writs, etc.);
b) the parties are personally present (through their representatives);
c) the date and time of the meeting are agreed upon by both parties);
d) a significant saving of material assets and time is enabled; e) there is no attack on the parties but there is bargaining.

Because mediation is future-oriented, it is of much greater preventive importance in future disputes, unlike litigation that generates new disputes[2]. It is also worth mentioning here that the political dispute between the Republic of Croatia and the Republic of Slovenia which was unsuccessfully terminated by arbitration or arbitration, was later resolved positively by the Tribunal. This is exactly the essence of the **term mediation**, it is an out-of-court procedure for resolving disputes on the freely expressed will of the parties with the help of a third neutral

[2] Sanja Marjanovic, European Perspectives on International Mediation in Civil and Commercial Dispute, University of Nis, Faculty of Law, Proceedings of the Faculty of Law at Nisu LV, Nis, 2010, pp.188-189

person - a mediator, who has no right to impose a solution to the dispute[3]. The essential thing, which should be mention for the mediation, is the ***respect for the established principles of voluntary, neutrality and impartiality, confidentiality, exclusion of the public, equality of the parties, availability of the information on mediation in other procedures, efficiency and fairness[4].*** However, it is inevitable to mention the role of the mediator as a facilitator for the successful resolution of the existing dispute. At the same time, the parties to the dispute have the opportunity to escape court and litigation labyrinth, and the application of the Law on Criminal Procedure, the Law on Litigation Procedure, the Law on Courts, the Law on Obligatory Relations and other regulations and for a short time to feel the effects of mediation.

IV. FINANCIAL ASPECTS OF MEDIATION

If we would like to explain in details the financial aspects of the mediation, it would need a number of pages that unfortunately, we do not have on this occasion and that is the reason why we will only give a presentation of the key features that are necessary to be paid for and those are: **court costs, attorney fees, notary fees, expert reports, and certificates from the Central Registry**. On the other hand, in the mediation process, there is only an award for the mediator, which cannot be compared with the awards for the attorney, notary and court fees. For a more descriptive presentation of the costs in the court proceedings process, in spite of the costs in the mediation process, we will present in a tabular overview, which is composed of the presented tables in the "**Economic Analysis of the Costs and Benefits of Small-Value Disputes**". These tables have been taken from this source and at the same time, they are a part of a survey conducted by **the Center for Legal Analysis and Research** and published in 2019. However, we feel obliged at the beginning to clarify a dilemma about the value of the economic dispute for which it is obligatory to make an attempt to settle with mediation, which is a value of up to 1 000 000, 00 denars or (about 16 200 euros). At the same time, here we also present the costs that the parties would pay for the mediator / mediators, whereby the value for the mediator is at least 20 euros for each started hour and at least 30 euros when the procedure is conducted by two or more mediators. In addition, we individually represent the approximate costs for the conduct of the court or civil proceedings.

For a more accurate presentation of the expenses in the litigation procedure, we will present the expenses for a financial dispute in the amount of about 300,000, 00 denars.

Table no. 1 Review of the costs of resolving a financial dispute in litigation

1	Certificates from the Central Registry	256,00 denars
2	Expert report	5401,00 denars
3	Award for a lawyer for the preparation of a notary's motion / lawsuit	4550,00 denars

[3] The term is taken from the Law on Mediation, Official Gazette of the Republic of Macedonia No. 60 of 15 May 2006, Art. 2

[4] More can be seen in the Law on Mediation, Official Gazette of the Republic of Macedonia No. 60 of 15 May 2006, at Art.3 - 9

4	Administrative fee for a notary motion / lawsuit	5400,00-9000,00 denars (payment order) 5400,00-9000,00 denars (lawsuit)
5	Notary award	2100,00 denars plus 2% for each amount over 100 000,00 denars but not more than 18 000,00 den.
6	Notary material costs	250,00 denars (payment order) 250,00 denars (lawsuit)
7	Award of the lawyer for representation at a court hearing	7800,00 denars (payment order) 7800,00 denars (lawsuit)
8	Award of the lawyer for the preparation of an unexplanatory written submission	1300,00 denars
9	Award of the lawyer for the preparation of an explanatory written submission	6500,00 denars (payment order) 6500,00 denars (lawsuit)
10	Administrative fee for a judgment decision	2% of the value of the dispute for a notary (payment order) 2% of the value of the dispute for (lawsuit)
11	Administrative fee for court alignment	¼ of 2% of the value of the dispute for a notary (payment order) ¼ of 2% of the value of the dispute for (lawsuit)
12	Award of the lawyer for preparation of a legal complaint	13000,00 denars (payment order) 13000,00 denars (lawsuit)
13	Administrative fee for an court appeal	2 x 2% of the value of the dispute (payment order) 2 x 2% of the value of the dispute (lawsuit)
14	Total amount of costs	79507,00 denars plus 18,000,00 denars (total **97,507,00 denars**) and **12%** of the value of the dispute on various grounds

[5] The analysis is downloaded in electronic form from the Center for Legal Research and Analysis and is available at the following link: https://cpia.mk/media/files/ekonomska-analiza-na-troshocite-i-pridobivkite-vo-sporovite-od- home-vrednost.pdf

It is important to note that such financial disputes never end in a single hearing, but require three or more hearings, and the amount of costs increases according to point.

The table above lists all the costs the parties have to pay to settle their dispute. The enormous sums allocated for notary fees, lawyer awards, attorneys' fees, court fees are incomparably higher

for any legal and physical entity than the costs of mediating litigation. Apart from the enormous costs presented in table for resolving disputes through litigation, the time frame for resolving the same dispute is much longer than mediation, where the time for verifying all these documents is lengthy and exhausting. Mediation saves clients from unnecessary costs and unnecessary waste of time and resources.

V. POSITIVE BENEFITS FROM THE MEDIATION PROCESS

1. Main benefits

There are numerous benefits to mediation as an alternative form of dispute resolution. Flexibility, the preservation of relationships, timeliness, cost effectiveness and confidentiality are all key positive attributes of the mediation process. These allow for disputes to be resolved as efficiently and successfully as possible, in a fair an equitable manner.The main benefit of this type of out-of-court settlement of disputes for both parties involved in the dispute are:

Avoid Court. Mediation clients typically do not go to court. The mediator or a lawyer usually prepares the documents once an agreement is reached and files it with the court. A judge will then review and sign your judgment. Depending on your jurisdiction you still might have to make a brief court appearance just to tell the court that you agree with the settlement.

Faster Agreements. Litigated cases can take as little as six months and as long as several years. Budget cuts have caused courts to reduce staff and even cut the number of days courts are open. This increases the court's backlog and means that it will take longer than ever to get your "day in court." Mediation, by comparison, occurs on the participants' timeline. Cases often resolve in a few months (sometimes less) because mediation is an inherently efficient process.

Reduced Cost. Traditional litigation is very expensive and the total cost is highly unpredictable. Litigation clients run the risk of having to pay the other side's attorney fees. Mediation is far less expensive because you spend your time actively working on resolving your case rather than filing motions, etc. Mediation costs are fairly predictable because you are present for most (if not all) of the time the mediator spends on your case.

A positive example from the Republic of North Macedonia

1. Legal entity carrier A.
2. Tourism Company B.

For services rendered in the field of transport by legal entity A, for the needs of legal entity B, an amount of MKD 950,690.00 was incurred, and interest on past due period owed by legal entity B. The two parties agreed in writing to settle the dispute through mediation, and in a joint session of the mediation procedure reached an agreement to settle the debt.
The mediation cost was 6000.00 denars[5].

If for comparison we take the above positive domestic example debt of 950,690.00 denars, and default interest for the past billing period, then those 6000.00 denars to be received by the mediator as a reward and costs are simply negligible and incomparable.

2. Other benefits

[5] Due to confidentiality principle, real names of legal entities and mediator are not placed

Mediation is Convenient. Mediation clients work with the mediator to schedule a time that works well for everyone. In litigation, the court schedules hearings, trial dates, etc., with little (if any) input from the clients.
Voluntary Process. Mediation is a voluntary process. Any participant can discontinue mediation at any time and for any reason. While KeepOutOfCourt.com focuses on voluntary processes, there may be situations where parties are required to mediate.
Client Control. Mediation clients decide the terms of their own agreement. The mediator facilitates the negotiation, but the clients make the decisions. There is no final agreement unless both clients agree to it. Participants are able to make sure that a some third party who doesn't know them (a judge) makes a decision they may disagree with.
Greater Client Satisfaction. Mediation participants report a high degree of satisfaction with the mediation process. It is more likely they will abide by their agreements because they helped create the agreement. Litigation is expensive, stressful and uncertain. Litigation clients are typically dissatisfied with the litigation process *even if they are satisfied with the outcome*.
Maintain Privacy. Mediation is a private process. Sessions usually takes place in a mediator's office or a lawyer's office rather than in a public courtroom. Mediation clients are generally allowed to decide what goes into the paperwork (which still becomes public record). In litigated cases you often have ugly allegations and personal information that ends up in the public record – mediation allows you to avoid this.
Preservation of Relationships. Whether in business or in family disputes, preservation of relationships can be a key benefit of mediation. Mediation helps participants focus on effectively communicating with one another as opposed to attacking one another.

VI. EXAMPLES FROM THE PRACTICE

The incidence of violent conflict between States poses the gravest threat to the stability and well-being of the world community. In an increasingly interdependent global system, the consequences of international conflict can extend far beyond the borders of the disputing nations.' Mediation is an effective means for expressing and legitimating third-party interests in peaceful settlement. A third-party intermediary can perform important services in the pursuit of peace. A mediator can be a catalyst to begin the search for peace and thereafter can profoundly affect the internal dynamics of the settlement process. A mediator can provide the disputants with a political safe harbor for the transmission and rationalization of the compromises needed for settlement. International mediation operates most easily when all parties to a dispute are favorably disposed towards peaceful settlement. Contrary to conventional doctrine on mediation, 4 however, the mediator may be able to function successfully in a less than ideal environment. Whatever the setting, international mediation can make an important contribution to global peace and stability.
The brightest example would be the resolution of the political dispute between the Republic of Macedonia and the Republic of Greece that has lasted for a long time since independence, but if we look at the damage or financial implications to its resolution and after its resolution, then we can see the real effects. The dispute escalated to the highest level of international mediation, involving numerous attempts to achieve a resolution. In 1995, the two countries formalised bilateral relations and committed to start negotiations on the naming issue, under the auspices of the United Nations. Until a solution was found, the provisional reference "the former Yugoslav Republic of Macedonia" (FYROM) was used by multiple international organisations and states.

UN members, and the UN as a whole, agreed to accept any name resulting from successful negotiations between the two countries. The parties were represented by Ambassadors Vasko Naumovski and Adamantios Vassilakis with the mediation of Matthew Nimetz, who had worked on the issue since 1994. On 12 June 2018, an agreement was reached between Greek prime minister Alexis Tsipras and his Macedonian counterpart Zoran Zaev, whereby the name "Republic of North Macedonia" would be adopted. A referendum concerning the name change was held in Macedonia on 30 September 2018, with voters overwhelmingly affirming support for EU and NATO membership by accepting the agreement, albeit with a voter turnout of just below 37 percent, lower than the 50 percent threshold needed to validate the result. After the agreement was ratified by both sides, it entered into force from 12 February 2019.

VII. CONCLUSION

The Macedonian judiciary is in the process of reforming and aligning its legislation, as one of the many steps needed to align with the European Union. In the face of all the changes and adjustments, increased business brings more court work, work that is different, with new laws requiring interpretation, new issues to be addressed, and increased workload, often within the reach of limited resources. Faced with the challenges and scarcity of human and technical resources, Macedonian courts are struggling with cases and, as a result, are becoming increasingly unpopular with clients, leaving the impression of expensive but slow and incompetent institutions producing inadequate solutions. All of these issues pave the way for justice for litigants who are long, slow, expensive, indirectly damaging their finances by blocking large sums from the other party, costs of litigation and attorneys' fees. As a result, small businesses, of course individuals, are in a subordinate position. From the point of view of small and medium-sized enterprises, this case can have adverse consequences on the short-term liquidity, solvency and future existence of the company in the market. In the same context, given the obstacles and unfavorable business environment, investors, especially foreign investors, are unwilling to invest and start a business in Macedonia, especially if they do not believe that their business disputes will be resolved quickly, fairly, honestly and effectively. As a consequence of the foregoing, establishing and maintaining an effective and efficient system of resolving the business, personal and political conflicts that occur daily, becomes very important.

The economy depends on it, and social placement dictates the same, especially in transition economies. In this case, ensuring a good process of conflict resolution is essential and crucial. An efficient, effective and reliable business dispute resolution system is vital to sustaining economic growth. On the other hand, a system that is inefficient, ineffective, and lacks confidence can discourage investment, business ventures and ultimately political stability, this problem must not be left without analysis and solution. The potential solution, or at least one of its components, may be found in Alternative Dispute Resolution.

An effective ADR system can support and complement judicial reform, reduce delays and reduce costs of dispute resolution, improving access to justice. It can support economic development by directing the settlement of business disputes in the short term. And while the ADR is not a substitute for the judicial system, it creates an alternative that, while not applicable in each individual case, reduces the time and cost of resolving disputes, and promotes certainty in business dealings. The challenges that the mediation is facing with in the Republic of North Macedonia are so numerous for this small country, but they may be the key to its greater implementation in the daily resolution of financial and many other disputes and problems, because the mediation has it and it is necessary the same to find its place in many other areas.

Namely, there is a great lack of information among the legal entities on the application and the opportunities offered by the mediation, which is necessary as a goal for the Chamber to be more successful in promoting and informing[6]. The second element would be to resolve the dualism between advocacy and the mediation for the successful functioning of the mediation. The third thing is the agreement that will be achieved with the mediation to become an executive document, as well as the court decision that has become legally effective. It should be established obligatory application of mediation not only in disputes up to one million denars, but also in other areas of penal and other areas. It is needed greater aggressiveness by the Chamber and all mediators individually in their public appearances and promotion of the mediation activity through the mass media. In the end, it is necessary to be established an appropriate magazine in which all mediators will apply with their own papers, practical resolved disputes, changes in regulations, foreign experiences and other that is necessary for the development of the profession. The application of mediation is the key to resolving the overwhelming judicial system in the country and thus contributing to its faster and more efficient operation and resolution of the remaining and emerging disputes.

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