

Thematic Report on the Project

„Justice Governance for  
Growth Monitor

(JuDGMeNT)“

**SUPPORT TO ADR:**

**IMPROVING THE LEGAL FRAMEWORK**

**FOR ALTERNATIVE DISPUTE RESOLUTION**

**AND PROVISION OF LEGAL AND INSTITUTIONAL COOPERATION**

**COOPERATION WITH THE JUDICIAL SYSTEM**

**AND THE ENFORCEMENT SYSTEM**

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December, 2016

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APPENDIX 1:



The SEE 2020 Strategy concentrates around four (4) interconnected development pillars of, of out of which the **Governance for growth** pillar has three dimensions: Effective public services, Corruption Prevention and Justice. In the area of *Justice* three priorities are identified, including **"Support to ADR: improving the legal framework for alternative dispute resolution and enabling legal and institutional cooperation with the judicial system and enforcement system."**

The SEE 2020 Strategy highlights that the initial reasons for the use of ADR by "smart" businesses are: save time and money, provide more satisfying processes, allow the parties themselves to resolve the dispute, achieve more satisfying solutions to disputes, preserve good business relations among the parties, use the expertise of the mediator and to preserve confidentiality. Though SEE countries have introduced ADR, the number of requests is still quite modest. All countries in the region face the same problems: a low level of applications for ADR, weak institutional capacities for mediation (mediation centres), a regulatory framework lacking incentive for mediation (or no effective sanctions for abandoning the idea), weak links between courts and mediation centres in terms of referrals, as well as inadequate capacities for sustainable training system among the mediators, judges and lawyers.

There is an indisputable connection between the objectives of this dimension and the negotiation Chapters 23 and 24 and progress in this area will undoubtedly be taken into account when evaluating the progress of countries in the EU accession process. However, it must be emphasized that cross-border or regional cooperation is primarily in the interest of the region aimed at creating a better business environment, increasing jobs and increasing prosperity in our societies.

The implementation of the ADR methods in Macedonia, primarily mediation and arbitration through the application of the provisions of the applicable regulations governing such matters is essential for establishing a system of rule of law which provides the right to a choice on how to resolve the disputes. Regardless of the degree of application of alternative dispute resolution and the level of perception of mediation and arbitration in our country it is necessary to conduct monitoring of the involved institutions and individuals and to support these methods of dispute resolution in order to understand the current situation in this area.

The monitoring which is aimed at the promotion and development of ADR, covers primarily the practice of mediation by licensed mediators, the court proceedings regarding the application of the provisions of the Law on Mediation provisions, the Law on Civil Procedure and the Law on Obligations, conciliation proceedings in labour disputes, arbitration proceedings and all the actions of all stakeholders involved in alternative dispute resolution.

The results of the monitoring cover the period from July to December 2016, and include a brief overview of previously acquired positive benefits from the application of the legislation relating to ADR.

The purpose of the monitoring is through monitoring and evaluation of performance, volume and quality of work of those involved in the monitoring, to assess the current state of the perceived positive benefits and drawbacks in the use of alternative dispute resolution and to enable the establishment of better and more successful institutional cooperation of all stakeholders in the field of ADR.

### 1.1.\* Licensed mediators

The new Law on Mediation and its amendments hereafter LM) established that the mediation process in Macedonia shall be conducted only by licensed mediator - a person who has been issued a license to conduct mediation by the Ministry of Justice of the Republic of Macedonia – A committee for the provision, monitoring and evaluation of the quality of mediation performance.<sup>1</sup> The mediators run all procedures for solving all kinds of mediable disputes for which conflicting parties are in dispute, and have stated their willingness to voluntarily join a dispute settlement through mediation.

At the beginning of 2016, the Ministry of Education started with the organization of mediator examination sessions (four exam sessions) as a requirement to obtain a mediator license. Eighty mediation proceedings have been entered in the mediation proceedings register in the Ministry of Justice (since the entry into force of the law in 2013). A total of 20 agreements on mediation were reached by November 29, 2016.

In the period from March to July 2016, only 3 agreements were reached, in the period from July to November 2016, 17 agreements were reached. This situation clearly demonstrates the growth of the signed agreements.

In terms of legal mediation procedures, performance remains almost the same. In the period from March to July 41 mediation procedure were registered and in the period from July to November, 29 November 2016 additional 39 mediation procedures were recorded.

From July to November 2016 in cases where no agreement for mediation procedure was reached based on a mediator's statement, in accordance with the LM, that procedure is found to be purposeless to be run further.

During the implementation of the monitoring, a total of 10 candidates have successfully passed the licensing procedure, and 9 are registered in the List of licensed mediators published on the website of the Ministry of Justice. Two candidates that applied for the exam have successfully passed all three parts, but they were only issued certificates, not licenses because of the inability in addition to the basic (notary and enforcement) to carry out additional work as a mediator. 9 candidates passed the third part of the exam (interview).

Anyone interested in initiating a dispute resolution through mediation with the other party can choose among nine licensed mediators. Any other practice of mediation by persons who have not passed the licensing procedure and do not possess a license is considered illegal and invalid, especially regarding the implementation of mediation foreseeing a mandatory attempt provided for by Article 461 of the same law.<sup>2</sup>

<sup>1</sup>„The Law on Mediation aims to create preconditions for successful functioning of mediation by introducing modern approaches, methods and forms for its successful implementation, such as:

- subsidizing mediation - in the first four hours of mediation a new model of mediator is created,
- passing a mediator examination (which consists of two theoretical parts and a case study)
- introducing psychological test and integrity test
- issuing licenses to a mediator that will create a new profile of mediators.
- introduction of mandatory mediation in certain areas,
- providing, monitoring and evaluating the quality of mediation is a necessity for a successful and quality implementation of the concept of mediation in the RM.
- Adoption of a Program for the development of mediation that will determine the measures and resources to support mediation (special programs to support mediation are also adopted by the Judicial Council and the Supreme Court).

In line with the CPL provisions, judges competent to act in commercial disputes, at the moment of the receipt of the complaint, need to assess whether the procedure will be conducted according to the Law on Civil Procedure (upon presented proof from a licensed mediator that the attempted mediation ended without success) or the lawsuit will be rejected as inadmissible (if presented evidence is prepared by unlicensed mediator or other person or if the suit is not accompanied with a proof that an attempt was made to solve it through mediation).

Licensed mediators are people with different job profiles and occupations, but all possessing affinities that a mediator should possess such as: mediation skills and to properly direct the parties to the dispute to reach a mutual agreement. Thus, the list of mediators includes, three law graduates that have passed the bar exam, one from the field of defence, peace and security, sociologists, one teaching assistant at the Law Faculty in Skopje, one engineer in computer science, two economists.

Put of a total of nine licensed mediators from the list of mediators, three mediators didn't participate at the survey on the way mediators conduct the procedure and what are the initial results of their work immediately after the licensing, without specifically stating reasons for refusing to participate to the survey.

The tabulated responses from the interviewed mediators, surprisingly showed a positive performance results in the first months of operation. It also means that there is a changing perception on mediation in general in the country not only because of the introduction of the mandatory mediation attempt in commercial disputes under Article 461 of the CPL, but also because there is also interest in a mediation that is based exclusively on the principle of voluntariness. Namely, the parties have decided instead of turning to the court, to opt for mediation, therefore, first cases of reached agreements between legal entities and disputes where both sides are either physical persons or a physical person and legal entity.

The number of mediation cases where respondents acted according to Article.461 of the CPL (providing for a mandatory mediation attempt) already exceeds 80. This number of is taken from the data in six registers of surveyed mediators that they keep for their operations. However, the number of reported and recorded cases in the registry of mediation proceedings kept by the Ministry of Justice does not match the number of registered items in the individual mediators' registers. In this regard there is inconsistency since the number of mediation cases MoJ register is much lower than the actual completed mediation cases.

Namely, under Article 21 paragraph 2 of the LM t the mediator shall report the agreement reached in the mediation to the Ministry of Justice in order to be recorded in its register. Since the law does not require a mandatory reporting of any mediators proceeding in the register kept by the Ministry of Justice, regardless of the outcome of the proceeding with the licensed mediator, some mediators have stated that they report only mediations that have ended with an agreement. Others say that all proceedings need to be reported regardless of the outcome, and some believe that since there was an active mediation and it ended in an attempt, reporting of such cases to the MoJ should be done periodically. It is necessary to mention that the LM does not provide a deadline for the reporting of mediation cases, or the agreements reached in mediation, therefore we come to a situation where recorded data in the Register kept by the MoJ do not correspond to the actual number of cases and do not reflect the true state of the practice of mediation. To overcome this situation it is necessary to intervene with legal amendments on mandatory reporting of every registered case of mediation regardless of the outcome of the dispute, because of the compulsory mediation attempt in commercial disputes.

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<sup>2</sup>Article 461 of the same law provides that: "In commercial disputes for monetary claims whose value does not exceed 1.000.000 denars and in which the procedure is initiated by filing a complaint in court, the parties are required before filing a lawsuit, to try to resolve the dispute by way of mediation. In filing the lawsuit the plaintiff shall submit an attestation issued by the mediator proving that the attempt to resolve the dispute through mediation failed. The court shall reject the lawsuit which does not have attached evidence under paragraph (2) of this Article." This provision of the LCP entered into force in February 2016.

After several months of operation of the licensed mediators they face a lack of a Chamber of Mediators and the need for its immediate constitution since the old Chamber of Mediators which still has legal force is not representative and does not represent the rights and interests of licensed mediators. The existing Chamber is composed only of mediators in possession of a training certificate and who have not passed the mediation exam. This situation actually creates confusion among the parties interested in mediation, when choosing a mediator, since there are isolated cases when they engage mediators who do not hold a license and that in turn leads to invalidity of any outcome of such a mediation conducted by unlicensed mediator to the detriment of parties participating in mediation.

This burning issue and unofficial estimates of licensed mediators practicing mediation illegally were the reason for the submission of several letters written by them to the Ministry of Justice and Mediation Board requesting to overcome the bad trend of disorganization and lack of transparency. It is necessary to take into account the fact that the obtained license is valid for 5 years. Every mediator has invested funds and intellectual labour to work and is unable to work for reasons that do not depend on the mediators themselves, but on the capacity and commitment of the Ministry which should provide the necessary conditions for the work of the mediators and an appropriate promotion of licensed mediators as the only competent to conduct a mediation procedure.

In light of the aforementioned, and in accordance with the provisions of the LM, CPL and the Action Plan of the Government for the development and support of mediation, the Ministry of Justice in cooperation with the Judicial Council of the Republic of Macedonia, sent through its Board, a notification to all courts requiring from them to publish on the bulletin board of the court a list of licensed mediators allowed to conduct mediation. At the same time they request from the presidents of the basic courts to provide a mediation office, according to the spatial possibilities in the courts, in order to allow the licensed mediators whose jurisdiction is on the whole territory of the country to be more accessible to parties in need of a mediator. Such offices, fully adapted to the needs of the mediation procedure, are already fully operational at the Basic Court in Kavadarci, Basic Court in Vinica and Basic Court Skopje 2 in Skopje.

In August the new website of the Macedonian Mediation Centre was launched: [www.mcm.org.mk](http://www.mcm.org.mk) with the aim of providing timely information about mediation and the activities of the centre. The Macedonian Mediation Centre is a non-governmental organization whose main goal and mission is the promotion and practice of mediation in Macedonia, providing information to interested parties about the mediation procedure, organizing training and workshops for the introduction of mediation.

Regarding other activities in the past few months, it is worth mentioning the participation of several licensed mediators in Macedonia at the First International Conference of Mediators from South East Europe "Mediation and the development of communication" held on 22.10.2016 in Zagreb.<sup>3</sup> The conference was attended by mediators from Croatia, Macedonia, Bosnia and Herzegovina and Serbia.<sup>4</sup> Conference participants from various countries reached mutual agreement on the formation and registration of the Association of Mediators of Southeast Europe with headquarters in Zagreb, Republic of Croatia.

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<sup>3</sup> [www.medijator.com](http://www.medijator.com)

<sup>4</sup> <http://medijator.com/program-1-konferencije-medijatora-jie-zagreb-2016/>

## 1.2.\* Courts in the Republic of Macedonia

The competence of basic courts regarding the practice of mediation in civil and commercial disputes, is regulated by provisions of the Law on Civil Procedure and Law of Obligations.

The institutional cooperation of judges and mediators is regulated under article 272 of the LCP.<sup>5</sup> Namely, when a judge at preparatory hearing finds that the dispute can be mediated, he/she offers the possibility of using mediation when it comes to mediation based solely on the principle of voluntariness. In this case, the court, along with the call for a preparatory hearing shall submit to the parties involved in the dispute, a written indication about the possibility of settling the dispute through out of court proceeding, through a mediator. Parties shall answer to this indication on preparatory hearing before the court or by a written submission. However, they may ask to be referred to mediation during the main hearing as well.

The monitoring system of court cases (ACCMIS) has not yet been perfected to the extent to enable a summary of the results of the work of judges in general as to the application of the provisions of the same law on mediation, which is why the team of experts conducted a survey of judges from the basic courts and extended jurisdiction acting in civil matters and business disputes to obtain relevant and accurate information about the situation in this area.

The answers from the interviewed judges who voluntarily participated in the survey indicated that judges acting in the first instance consistently apply the provisions of the LCP and regularly submit to the plaintiff and to the defendant a written indication of mediation. However, on the question whether the parties know about the possibility that the dispute can be resolved through mediation, the majority of respondents considered that the parties are unaware about mediation as an opportunity and that they have the right to choose the way of settling the dispute they are in. Moreover, several survey papers stated that the parties are not familiar with this possibility because in the initiating the procedure, most of them use legal aid from a lawyer who receive on their behalf all written correspondence from the court. Therefore, they think that lawyers do not inform the parties that they have the right to choose an alternative way to resolve the dispute and that at the preparatory hearing before the court the lawyer states that the party is not interested in mediation, or that the party wants the dispute to be solved in court. In this respect, no reason is indicated for this opinion of the judges, so probably they have this attitude from their practice. To the question whether so far parties have sought information or clarification on mediation, the majority of surveyed judges said that the parties rarely directly addressed them to ask for information on mediation.

In some of the survey samples judges did not indicate the reasons for not informing the parties, but directly stated that it is necessary to find a reliable way for the parties to be informed about the methods of alternative dispute resolution and have the opportunity to personally declare whether they want the dispute to be resolved through mediation before they resort to a court hearing.

Since the LCP provision on the written indication to the parties on mediation dates and is applied since 2009, and since then there have been only few cases (according to the respondent judges) where the use

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<sup>5</sup> Article 272 paragraphs 2, 3 and 4 of the LCP provides as follows: "The court is obliged in cases where mediation is allowed, along with an invitation to the preparatory hearing to the parties to submit a written indication that the dispute can be resolved through mediation. Along with the invitation to the preparatory hearing the parties will be required to bring all documents that serve as evidence, and any items to be considered in court. In the invitation, the court shall instruct the parties about the consequences of not appearing at the preparatory hearing, as well as that, they are required to present all facts on which they base their allegations, to present all the evidence that prove the facts, to submit all documents and items they intend to use as evidence and to state whether they agree to settle the dispute in mediation procedure."

Article 273 of the same LCP stipulates: "If the parties agree that the dispute be resolved in a mediation procedure, the court shall issue a decision in accordance with Article 200 paragraph (1) item 6 of this LCP and shall interrupt the procedure. If the parties have not agreed for the dispute to be resolved through mediation, the preparatory hearing shall start with the presentation of the lawsuit, then the defendant shall answer to the lawsuit."

Article 200, paragraph 1, item 6 of the LCP stipulates "The procedure shall be suspended if both parties require to resolve the dispute through mediation or otherwise." Article 203 paragraph 3 of the LCP stipulates "If the court suspends the proceedings in accordance with Article 200 paragraph 6 of this law, the procedure shall continue at the request of one of the parties, and if there is no such a request, the procedure will continue after the expiry of 45 days from the date of interruption."

mediation was requested after the commencement of court proceedings, it appears that the introduction of the obligatory submission of written recommendations to the parties by the court does not give the expected results, the institutional cooperation is not satisfactory, and the opinion of the majority of respondents is that they support such a cooperation in the implementation of the law.

As another valid reason other than failing to establish a direct link between the court and the parties regarding the written remarks that the court is obliged to submit, most respondents judges believe that mediation in our country is not promoted at all or very little as an option for resolving disputes and feel that it is needed to have an "active" promotion of mediation and they stressed that they support promotion of mediation.

It is worth mentioning that, on the other hand, interviewed judges had also a totally different opinion from the above, or said they did not support the mediation and that judges are the ones who need to settle disputes and that a more reliable way to get a good solution to the dispute is a court decision. There were statements such as "judicial power is a separate power and does not need institutional cooperation for the implementation of the law on ADR". There was also a statement saying that the court settlement is a negotiated decision and that there is no need to support mediation which points to the fact that although Macedonia has implemented the European Directive on mediation in civil and commercial disputes in 2008 in the national legislation, the support of part of those involved in this area is still only declarative. The mediation procedure and the possibility of resolving disputes more quickly and beyond the prescribed formal court proceedings is exactly what makes the mediation proceedings differ from settlement before the court, and it is unfounded to say that mediation is the same as a court settlement.

After all, the ultimate goal of the possibility to resolve disputes through mediation is the established right of choice of the parties to protect their interests, and to decide themselves whether the dispute will be resolved in court or through mediation. The possibility that judges have to record a mediation agreement as a court settlements so far has been used by only one of the interviewed judges. He stated the he had not accepted the content of the agreement and no minutes were prepared for court settlement. Since he didn't give reasons for the case, this topic is for another discussion.

The overview of the current situation on one hand and the positive results on the other fully justify the introduction of the mandatory attempt in resolving commercial disputes up to 1.000.000,00 denars. The Republic of Macedonia is not alone in this legal decision given that after the initial evaluation of the implementation of the EU Directive on mediation in 2013, a mandatory attempt was introduced in more than 10 EU countries for certain types of disputes. This was done in order to properly promote and practice mediation that may have previously been considered as a futurist solution, but now it is a real and adequate solution for solving disputes. This is something that enhances the democratic rights of citizens without prejudice to the independence of the judiciary. The expert team is of the opinion that mediation inevitably requires deepening and intensification of cooperation and coordination of the courts.

The expert team is of the opinion that the Academy of Judges and Prosecutors is passive on the issue of organizing seminars and workshops on ADR, in particular on mediation and arbitration. During the period covered by the monitoring no seminars were organized on this topic, although the LSP provision on mandatory attempt for negotiation has become widely popular and is being implemented. So far, the Academy has organized very few seminars and events related to ADR in general and only a one-day seminar on mediation was held in April 2016. Occasionally on the website of the Academy, there are texts published of a foreign mediator Dilberto in English without clarifying whether the Academy supports his statements or it simply thought it would be interesting for those who visit the internet site of the academy and know English. At the moment none of licensed mediators or persons who have completed training of trainers in the field of mediation is reported as a lecturer at the Academy in this area.



## 1.3.\* Ministry of Justice

According to the Law on Mediation, The Ministry of Justice runs the professional and administrative work for the Board. To a significant extent, the success and farther promotion of mediation depends on the readiness of the Ministry of Justice to be a real operational facilitator of the Board. The Ministry of Justice is the institutional factor that needs to realistically and without prejudice perceive the state of mediation and establish a realistic basis for the treatment and promotion of mediation. In practice, the Department of Mediation within the Ministry is staffed with a person responsible for the organization of the mediation exam and a secretary participating in the work of the Board.

## 1.4.\* Board for the provision, monitoring and evaluation of the quality of mediation

Ten members of the Board for the provision, monitoring and evaluation of the quality of mediation, appointed by the Government of the RM, held the first constitutive meeting at the Ministry of Justice on 12.09.2014. From the very outset, the Board has fully conducted its activities in line with the Action Plan for the implementation of the main objective of the Board, implementation of the LM.

During its regular work, the Board conducted a verification of over 1720 exam questions and 53 law case studies and by the end of the June exam session has, it issued 10 licenses to mediators that fully met the requirements set out in the LM. Unfortunately, since the first day of constitution, Board members have not been regularly active.

For a smooth functioning and development of mediation in the Republic of Macedonia and of the mediators who have already obtained their license, the establishment of a new Chamber of Mediators is urgently required. The work of licensed mediators is threatened and carried out in extremely difficult working conditions, taking into account previous oral and written reactions, and due to the lack of organizational form through which they would be presented in the judicial system of the country. What is even stranger is the fact that the old Chamber of mediators is still operating and ignoring the commitment and work of mediators who went through the licensing procedure. The Chamber doesn't provide them with any information relevant to mediation such as the organization of seminars, workshops and other important events related to mediation. On the other hand these invitations are sent to mediators who have attended only training, and have not passed the mediation exam.

The establishment of a Chamber of licensed mediators needs to be a highest priority. A constitutive meeting needs to be scheduled which will fill in the gap created by the old Chamber of Mediators.

## 1.5.\* Labour dispute conciliators and arbitrators

Conciliation and arbitration in labour disputes in the Republic of Macedonia is regulated by the Law on amicable resolution of labour disputes.<sup>6</sup> A key amendment to this law is the introduction of the possibility for settlement of labour disputes by mediation. Thus, parties that have individual dispute have two mechanisms available for resolving the dispute through mediation in accordance with LM or by arbitration pursuant to the amicable settlement of labour disputes. The worker may try to resolve the dispute through mediation, and if this procedure fails, he/she still has the opportunity to try arbitration. As the decision to arbitration is final and binding, there is no other possibility for out of the court proceeding for the same dispute - mediation or litigation.

It is important to note that the amendments to the Law regulate and establish the meaning of the terms arbitration and reconciliation. The amendments stipulate that: *"Reconciliation is part of a third neutral person mediating between two conflicting parties in order to achieve agreement on peaceful settlement of the collective dispute."*<sup>7</sup> While arbitration is defined as follows: *"Arbitration is participation of a third independent party in the resolution of an individual dispute in order to achieve a binding decision on the dispute"*.<sup>8</sup> These definitions help to avoid any confusion with the term mediation, which is regulated with the Law on Mediation.

Otherwise, an overall number of 90 people have been trained so far, but only 41 are licensed as labour dispute conciliators and arbitrators.

Three conferences were organized in the Republic of Macedonia during October, two international and one national. The international conference titled: "Sub - Regional level conference on effective mechanisms for resolving labour disputes" was organized in Ohrid on 18 and 19 October 2016 by the UN International Labour Organization and an EU funded project. This conference was attended by Directors of Agencies, conciliators and arbitrators from Macedonia, Bulgaria, Serbia, Montenegro, Republika Serpska, Kosovo, Albania and Hungary. It was established that 41 people are licensed as conciliators and arbitrators in the Republic of Macedonia.

On 19 October 2016, the first national conference of labour dispute arbitrators and conciliators was held in the Republic of Macedonia. The Conference was titled: *"Current issues of reconciliation and arbitration in the Republic of Macedonia"*.<sup>9</sup> It was emphasized that it is necessary to have a major harmonization between the Law on amicable resolution of labour disputes, the Law on Mediation in the Republic of Macedonia and the Labour Law.

The international conference titled "First Annual meeting of the sub-regional network of agencies for amicable resolution of labour disputes" was held in Ohrid on 20.10.2016. The conference addressed several topics regarding labour disputes, and a review of the regional normative of amicable resolution of labour disputes in the region, more precisely in Macedonia, Serbia, Republika Srpska, Montenegro and Bulgaria. Moreover, the ESAP virtual platform was presented at the conference which should serve as a database of the region on successfully resolved labour disputes.

All three conferences had media coverage, containing information about the event as well as broadcasting short interviews with conference guests on national television channels and local ones from Ohrid.

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<sup>6</sup>Official Gazette of the RM " no.87 / 07 of 12.07.2007. This law was amended by the Law amending and supplementing the Law on Amicable Settlement of Labour Disputes, "Official Gazette" no.27 from 05.02.2014.

<sup>7</sup>Article 3, paragraph 1 of the Law amending and supplementing the Law on Amicable Settlement of Labour Disputes, "Official Gazette" no.27 from 05.02.2014.

<sup>8</sup>Article 3, paragraph 1 of the Law amending and supplementing the Law on Amicable Settlement of Labour Disputes, "Official Gazette" no.27 from 05.02.2014.

<sup>9</sup>Report from the Association of conciliators and arbitrators in labour disputes in the Republic of Macedonia

During November the Association of labour dispute conciliators and arbitrators in the Republic of Macedonia launched their website. Their website is [www.apars.mk](http://www.apars.mk) containing basic information for people interested in labour disputes resolution through reconciliation or arbitration, as well as basic information on APARS, its mission and goals.<sup>10</sup>

## 1.6.\* Arbitrator in the Permanent Court of Arbitration attached to the Economic Chamber

As far as the legal framework of the Republic of Macedonia is concerned, the Permanent Court of Arbitration attached to the Chamber is regulated with the Law on Economic Chambers.<sup>11</sup> The Permanent Court of Arbitration – attached to the Chamber, is established as an independent body, which through mediation or decision, resolves commercial disputes occurring among members of the Chamber and third parties as well as among domestic and foreign legal entities and if the parties agree on the competence of this Court. The decision making, the regulation and the competence, as well as the composition and organization of the permanent court, but also the procedure of selection and dismissal of its members, and the proceeding on cases under its competence, are adopted by the Chamber's Assembly.

Regarding the status of the arbitration decision, the decisions of this court have the force of a judgement. This feature of the decisions of the permanent arbitration court in the Chamber, is expected to encourage the parties in dispute to choose arbitration, bearing in mind the aspect of the finality of the proceedings which is reflected in the validity and enforceability of the arbitration decision, unlike the court proceeding which lasts considerably longer until a final judgement. It should also be noted that the parties should use this tool to solve their disputes because it is a one instance proceeding unlike the court proceeding which is conducted in several instances.

In the Republic of Macedonia, there are two permanent arbitration courts – attached to the Chamber: The Permanent Court - Arbitration attached to the Economic Chamber of Macedonia, which was founded in 1993 and Permanent Court - Arbitration attached to the Chambers of Commerce of Macedonia, founded in 2015.

Both Chambers have published information on their permanent arbitration court on their websites. The Economic Chamber of Macedonia on its website has an individual banner intended for the Permanent Court - Arbitration at the Chamber.<sup>12</sup>

27 Arbitrators are selected for disputes without international element conducted before the Permanent Court – Arbitration attached to the Economic Chamber of Macedonia.<sup>13</sup> 59 arbitrators are selected for disputes with international element conducted before the Permanent Court - Arbitration attached to the Economic Chamber of Macedonia.<sup>14</sup>

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<sup>10</sup> [www.apars.mk](http://www.apars.mk)

<sup>11</sup> Law on Chambers of Commerce, "Official Gazette" no. 17 of 1.2.2011.

<sup>12</sup> <http://arbitraza.mchamber.mk/>. It contains information on four topics: information, competences, organization and advantages. Regarding the organization of the entire chairmanship of this body indicated only the name of the Chairman and Secretary of the Permanent Court - Arbitration attached to the Chamber. Under the part "advantages" a few adopted acts are electronically posted, such as: [Правилникот на Постојаниот избран суд \(Арбитража\)](#), [Правилата за трошоците во постапката пред Арбитражата](#), [Листи на арбитри на Постојаниот избран суд -Арбитража](#), as well as the signed agreements of cooperation with the Arbitrations attached to the chambers in: Slovenia, Croatia, Bulgaria, Ukraine, Russian Federation, Serbia and Kosovo.

<sup>13</sup> Out of the total, 13 arbitrators have a PhD degree, 12 are members of academic staff, 1 arbitrator with a MA degree, 9 work as lawyers and 1 as enforcement agent. See: DECISION on establishing lists of arbitrators of the Permanent Court - Arbitration attached to the Economic Chamber of Macedonia from 30.11.2011

<sup>14</sup> Out of the total, 45 arbitrators have a PhD degree, 38 members of academic staff, 8 work as lawyers and 1 is member of the Academy of Science. DECISION on establishing lists of arbitrators of the Permanent Court - Arbitration attached to the Economic Chamber of Macedonia from 30.11.2011

The Permanent Court - Arbitration attached to the Economic Chamber of Macedonia has signed agreements of cooperation with Arbitrations attached to Chambers of Slovenia, Croatia, Bulgaria, Ukraine, Russian Federation, Serbia and Kosovo.

The procedure before the Permanent Court - Arbitration attached to the Economic Chamber of Macedonia is regulated by rulebooks.<sup>15</sup> This Arbitration has signed agreements of cooperation with other arbitrations from the region and beyond.<sup>16</sup>

Other acts of the Permanent Court - Arbitration attached to the Chambers of Commerce of the Republic of Macedonia are not available on this website and neither a list of arbitrators, except the names of four arbitrators who are part of the Presidency of the Court - Arbitration at the Chambers of Commerce of Macedonia.

During the survey period of this report, there has been no information on a seminar on arbitration organised by any of the Chambers.

During the analysis which is a subject of this report, no activity has been reported regarding the arbitration nor by the Academy of judges and public prosecutors.

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<sup>15</sup>[Правилникот на Постојаниот избран суд \(Арбитража\)](#), while the proceeding costs are regulated under [Правилата за трошоците во постапката пред Арбитражата](#).

<sup>16</sup>[Спогодба за соработка со Арбитражата на Словенија](#) on 16.09.1997; [Спогодба за соработка со Арбитражата на Хрватска](#) on 14.04.1997; Agreement of Cooperation with the Arbitration of Bulgaria; [Спогодба за соработка со Арбитражата на Косово од 23.12.2003](#); [Спогодба за соработка со Арбитражата на Украина](#); no date of signing is recorded [Спогодба за соработка со Арбитражата на Руската Федерација](#) on 28.04.1999 and [Спогодба за соработка со Арбитражата на Србија](#) on 15.11.1999.

# CONCLUSION

As a result of the research conducted to monitor and review the current situation in the field of ADR, the expert team that worked on the third priority is of the opinion that in order to practice mediation and arbitration adequately and as an alternative to court proceedings, it is necessary to make a few decisive steps and to take measures and effectively provide:

1.Stronger promotion of mediation by the competent institutions in order to improve institutional cooperation with the courts in Macedonia and other state institutions;

2.The Judicial Council of the RM and the Supreme Court of the RM, should adopt as soon as possible programs to support mediation; It is also recommended to change the criteria and methodology for assessing the quality of judges, or more precisely judges who have successfully promoted mediation once the trial has started, to be awarded higher marks for their quality;

3.It is necessary to amend the legislation in terms of introducing the mandatory attempt to resolve any disputes that are qualified as mediable by the Law on Mediation;

4.Mediation as a legal institute should be introduced in all textbooks for civil society as early as primary education and in secondary education and textbooks which teach civil and criminal law in higher education institutions.

5.Regarding the work of the courts and the strengthening of institutional cooperation it is necessary to improve and upgrade the ACCMIS system in the courts to monitor the practice of mediation by judges;

6.The Academy for judges and public prosecutors should take over the organization of seminars dedicated to the study of mediation and arbitration and deepen the knowledge of these types of ADR, and can include judges, prosecutors, lawyers, court services and enforcement agents,

7.To organize seminars, trainings and workshops on methods of using ADR with the help and mediation of international organizations that finance this kind of lectures for all stakeholders, especially the business sector, banks and insurance companies.

8.Exchange of experiences with countries which successfully implemented and successfully practiced mediation and arbitration.

9.Amendment of the legislation regulating the area of family law with the aim of introducing the possibility of mediation in divorce disputes and other family disputes

10.The Ministry of Justice to stand up for active, public and transparent promotion of mediation;

11.Constitution of the Chamber of mediators that will protect the interests of licensed mediators and in the first years of constitution financially assist in the interest of promoting mediation.

13.Use the Unions in the Republic of Macedonia to better promote the mediation and arbitration procedures in labour disputes;

14.Sign memoranda for cooperation between the Association of mediators and arbitrators in labour disputes in the country with all Unions in Macedonia;

15.To sign a memorandum of cooperation between the Association of mediators and arbitrators in labour disputes in the country with the Organization of Employers of Macedonia;

16.To make the effort to provide logistical support from the Chambers of Commerce and their regional offices in the Republic of Macedonia to licensed mediators, by offering the appropriate space,

17.To promote the possibility and benefits of using the provisions in the contractual agreements on the procedure for mediation or arbitration;

18.With regard to the Permanent Court - Arbitration attached to the Economic Chamber of Macedonia, to review the possibility to allow as a mediator a person that has been appointed as enforcement agent, based on the Prohibition of other activities and functions related to Article 39 of the Law on Enforcement;

19.To ensure greater transparency in terms of information about the Permanent Court - Arbitration at the Chambers of Commerce of the Republic of Macedonia;

20.To consider the possibilities of combined hybrid forms of mediation - arbitration, in order to allow the parties a combined use of the both procedures in the interest of efficient, economical and speedy resolution of the dispute;

## APPENDIX 1:

Defined indicators for monitoring progress in the priority "Support ADR: improving the legal framework for alternative dispute resolution and enabling legal and institutional cooperation with the judicial system and the enforcement system"

Indicator	Data	Information collection method
Number and type of registered mediation agreements	MoJ, register for recording the mediation procedures	Collecting information from MoJ and mediators by telephone, by written submission and other
Number of initiated mediations	MoJ, register for recording the mediation procedures and individual registers of mediators	Collecting information from MoJ and mediators by telephone, by written submission and other
Number of completed mediations without agreement	Register of MoJ and registers of mediators	Collecting information from MoJ and mediators by telephone, by written submission and other
Number of initiated mediation procedures after filing a suit before the competent court	ACCMIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators
Number of initiated mediation procedures in court during the court hearing	ACCMIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators
Number of initiated mediation procedures in compliance with the LLP for mandatory attempt in commercial disputes	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of voluntary mediation in mediation procedure initiated by a written indication of the court	Register of MoJ, ACCMIIS system in courts, register of mediators	collecting information from courts with extended jurisdiction and licensed mediators and the MoJ

Indicator	Data	Information collection method
Number and type of voluntary mediations initiated before the commencement of proceedings (filing the lawsuit)	Register of MoJ, register of mediators	Collecting information by telephone or by written submission
Number and type of mediation procedures initiated upon indication by the judge and after being entered in the minutes of the preparatory hearing	Register of MoJ, ACCMIIS system in courts, register of mediators регистри на медијатори	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of mediation procedures initiated upon indication by the judge and after being entered in the minutes of the whole hearing	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of court settlement reached in mediation procedure	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of mediation procedures, with no court settlement reached	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of successful mediation in mediation procedure accepted by the judge	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of successful mediation in mediation procedure not accepted by the judge	Register of MoJ, ACCMIIS system in courts, register of mediators	Collecting information from courts with extended jurisdiction and licensed mediators and the MoJ
Number and type of successful mediation in mediation procedure not solemnized by a notary	Register of mediators	Collecting information from licensed mediators
Number and type of successful mediation in mediation procedure solemnized by a notary	Register of mediators	Collecting information from licensed mediators and Chamber of Notaries



<b>Indicator</b>	<b>Data</b>	<b>Information collection method</b>
Number and type of requests submitted to the enforcement agent based on a mediator agreement	Business records of enforcement agents	Collecting information from the Chamber of Enforcement agents
Number of conducted testing sessions organized by the MoJ for mediators examination after the amendments to the LCP	MoJ	Collecting information from MoJ
Types of occupations and professions of licensed mediators	Licence mediators	Collecting information from licensed mediators
Number of seminars on ADR organized by the Academy of Judges and Prosecutors	Academy of Judges and Public Prosecutors	Collecting information from the Academy
Number of seminars on ADR organized by NGOs and international organizations	NGO/MoJ/International organizations	Collecting information by telephone or by written submission
Types of occupations and profession of licensed mediators and arbitrators in labour disputes	MLSP	Collecting information by telephone or by written submission
Number and type of procedures initiated for individual dispute pursuant to the Law on peaceful settlement of labour disputes	MLSP	Collecting information by telephone or by written submission
Number and type of procedures initiated on collective dispute pursuant to the Law on peaceful settlement of labour disputes	MLSP	Collecting information by telephone or by written submission
Number of mediators and arbitrators trained in labour disputes	MLSP; Project on social dialogue	Collecting information by telephone or by written submission
Number of arbitrators and conciliators licensed in labour disputes	MLSP	Collecting information by telephone or by written submission
Number of withdrawn procedures for resolving individual labour dispute in arbitration proceedings	MLSP	Collecting information by telephone or by written submission
Number of adopted decisions on arbitration in individual labour dispute	MLSP	Collecting information by telephone or by written submission

<b>Indicator</b>	<b>Data</b>	<b>Information collection method</b>
Number and type of initiated proceedings before the Permanent Arbitration Court at the Economic Chamber of Macedonia	Economic Chamber of the RM; Chambers of Commerce	Collecting information by telephone or by written submission
Number and type of initiated proceedings before the Permanent Arbitration Court at the Chambers of Commerce of Macedonia	Economic Chamber of the RM	Collecting information by telephone or by written submission
Number of international activities with entities in the field of mediation	MoJ and associations	Information from direct sources, websites, and personal communication
Number of attendances at conferences / seminars / workshops and various forms of association and unification of mediators at regional level	MoJ and associations	Information from direct sources, websites, and personal communication

