MEDIATORS AND THEIR ORGANIZATION IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract:

Mediation is considered as the most important and the most used alternative dispute resolution method which provides a successful and a very qualitative solving of problems that appear between the parties in one dispute. It is fast, effective and very economic procedure which ends with an amicable and mutual agreement between the parties. All of this features of the mediation as an ADR method are possible as a result of the hard work and great skills of the mediator which appears as a third neutral party in the procedure. The main feature that makes the mediation as a perfect procedure that is used a lot in a lot of countries all over the world is exactly the independency of the mediators and their impartiality who with their skills of working, talking and touching deep inside the personality and the interests of the parties will achieve a facilitate and a successful mediation that will put to an end their dispute and also the most complex and complicated cases. It is also considered as a big success for the mediation and also for the mediator to create such an impression to the parties that from the beginning till the end of the procedure he will not take sides and that he will treat parties equally, with fairness and in the most amicable, safe and quiet environment as possible. All this characteristics makes a very clear distinction between the mediation and litigation, and gives one big reason why it has to take over the deserved place that today in our legal system the judicial procedure has. Because of this great features that makes mediators as the main facilitator in the dispute of the parties, in this paper the emphasis will be placed in the enormous role of the his in helping the parties in finding a solution accepted by them and how the mediators are functioning and organized according Law on mediation in Republic of North Macedonia.

Keywords: *Alternative dispute resolution methods, Mediation, Mediator, Law on Mediation, Organization of Mediators in Republic of North Macedonia*

1. INTRODUCTION

Mediation is a kind of an alternative dispute resolution, in which in a peaceful way with negotiations between the parties to the dispute, in the presence of a third party neutral side - mediator, while declaring nonviolence in communication, tolerance and mutual understanding resolving the dispute by finding a solution that is proposed and accepted by all parties to the dispute. In doing so, all parties feel like winners, which will lead to improved relations for the future, with already established communication. In Republic of North Macedonia, to the first mediators were given their licenses after the new Law on Mediation was issued on December 2013 and which entered in force in January of 2014. To be more precise the first licenses were issued in 2015, after organizing the first round of exam for mediators. Before this, mediators worked according to certificates that were given by the Ministry of Justice. The mediator is a person who has completed training for a mediator, is voluntarily selected by the parties to the dispute, possesses the qualities and skills to facilitate communication between the parties and help them reach themselves a solution, without the right to propose or impose solutions and always respecting the principles of the procedure of mediation such as: Confidentiality; Equality; Impartiality; Neutrality; Transparency; Justice; Efficiency; and Effectiveness.

1.1. MEDIATORS IN REPUBLIC OF NORTH MACEDONIA

In the last 10 years in Republic of North Macedonia, a profile of a new profession has been introduced, called Mediators. The mediator as a profession appeared at the most appropriate time possible, at a time when the Republic of North Macedonia has been gripped by the economic crisis. Mediator is neither a judge nor an arbitrator and has no right to advise the parties but only to assist them. Mediators are people who implement the mediation procedure, so they have a very important role to play in implementing and successfully completing the mediation procedure. Such a person should be a professionally trained person with extensive cultural knowledge who will enable the parties a calm and pleasant environment where they will feel safe during their conversations and during the resolution of their disputes. The mediator therefore helps the parties to reach the intended agreement, but without interfering in finding a solution to their dispute and always relying on the principles of the mediation procedure. How the mediators work and how are they organized in Republic of North Macedonia, is precisely regulated in Chapter Seven of the Law on Mediation, according to which the mediator can be any person capable of work, who holds a license to perform the work of mediator.[1] Thus, mediators can be lawyers, jurists, as well as persons of other professions with higher education who have at least five years of work experience, have completed training for mediator, has not imposed against him a ban to stop the exercise of profession, activities or duty and are of course registered in the Register of mediators.[2] One of the key issues regulated by the Law on Mediation is the issue of licensing all persons who wish to be engaged in mediation in the future. This system is equally important because it ensures a certain level of quality of the mediation procedure and the creation of conditions for permanent advancement of

[1] *Law on Mediation*, article 46, paragraph 1

[2] Кадриу, О, (2007), *Осврт на некои новости на Законот за медијација*, Адвокатура, Адвокатска Комора на Република Македонија, pg. 38

mediation. This system is of enormous importance because it ensures a certain level of quality of the mediation procedure and the creation of conditions for permanent advancement of mediation. According to paragraph 2 of Article 46, the license is provided to the person who will take the exam for the control of theoretical knowledge and practical skills of mediation before the Commission for insurance, monitoring and evaluation of the quality of mediation, which he will pass them successfully. The Council is consisted of 10 members appointed by the Government of the Republic of Macedonia: one member nominated by the Chamber of mediators from among the mediators, one member nominated by the Judicial Council of the Republic of Macedonia from among the judges, one member nominated by the Chamber of Lawyers of the Republic of North Macedonia among the lawyers, a member proposed by the Interuniversity Conference among the professors of higher education institutions, a member proposed by the Chamber of Psychologists of the Republic of North Macedonia among psychologists graduated with special license for performing the activity in psychology, a member proposed by the Minister of Justice among the employees working on mediation issues, a member proposed by the Ministry of Labor and Social Policy, a member proposed by the Ministry of Economy, a member employed from the ranks of economic chambers as well as a member proposed by the Consumers Association of Republic of North Macedonia (paragraph 1, Article 57).

The president of the council is appointed by the Government of North Macedonia for a four-year term. Also, the members of the Council are appointed for a period of four years and they cannot be appointed more than 2 consecutive times.[3] In addition to passing the exam for mediators[4], the mediator must also meet the following conditions which are foreseen in the Law on Mediation: to have obtained a university degree for completing higher education VII / 1 or 300 credits earned according to the European Credit Transfer System in the Republic of North Macedonia or a diploma obtained in another country with 300 credits earned and nostrified in our state, to have completed the foreseen and accredited training for training of mediators of at least 70 hours in the Republic of North Macedonia or abroad with a decision for accepting that training, to have at least 3 years of work experience after graduation, to have attended at least four mediation procedures implemented by the mediator who will provide the relevant certificate of participation, to have perform the psychological test as well as the integrity test given by the licensed professional as well as the person who will provide five recommendations from persons of others who know the person professionally and who is a citizen of the Republic of North Macedonia. Training of mediators plays an important role in increasing the quality of the mediation procedure as well as in increasing the skills of mediators. The Law on mediation stipulates that the condition of training mediators in order to obtain a license is mandatory. The training for mediators is performed by

[3] *Law on Mediation*, article 58, paragraph 1

[4] Article 48 stipulates that the exam for mediators can be taken by persons who have submitted to the Council a submission form for taking the exam and who pay the expenses for taking the exam, the amount of which is determined by the Ministry of Justice. The exam for mediator is consisted of three parts: the first part deals with the control of knowledge and understanding of the general theory, the legal rules that regulate the activity of the mediator, the mediator's procedure and the practice of mediation based on written tests, essays and reports. The second part of the exam is consisted of the study of two individual cases for the implementation of the mediation procedure and the questions that the person must answer based on the analysis of the case. While the third part of the exam is realized through the interview of the person in order to evaluate his personal qualities, necessary characteristics and skills and his skills as a mediator.

trainers of mediators and as such can be all persons capable of work who possess a license for training of mediators.[5] The training of mediators is defined as education and training organized to gain practical knowledge and skills that are necessary to perform the work of the mediator, by himself, efficiently and successfully above all. The basic training program, the procedure for accreditation of training and the supervision of training is regulated by law, respectively with article 54. To the training of mediators is given great importance in the most developed countries where mediation is used in resolving a large number of disputes. The Justice Reform Commission in its report recommends that the training and accreditation of mediators is an essential issue for ensuring the quality of the mediation procedure.[6]

2. REQUIRED SKILLS OF MEDIATORS

The results of the training of the mediators ultimately yield unprecedented results in terms of gaining mediator skills. At first, the mediator should leave a good impression on the parties with which he will gain confidence in them.[7] As an illustration of how to get a good impression on the parties, the Handbook for Mediator Training mentions: remembering the names of the parties, during the conversations their names very often to be used by the mediator: words of praise, words of encouragement and words of thanks for that the parties have choose this method for resolving their dispute. Also first of all the mediator must have the ability to COMMUNICATE. Mediators are the “guardians” of fluent communication. When talking about communication, the mediator should not only be careful about how he communicates, but also about the communication of the parties in the procedure. The mediator should take care that the parties communicate with each other properly because the proper communication between them is compatible with the cooperation between them and also he has to take care that the communication is at a level that will ensure the fast solution of their dispute. So, during the communication, care should be taken not only during what the mediator and the parties are talking about, but also to listen to the interlocutor regardless the fact if he is the mediator or the parties. During the communication, it is important that the mediator puts himself in the position of the party or parties so that he has the best and closest approach to the situation and the problem that the party has or the parties have. The mediator must be a good listener at all times. The term good listener means to hear the party who has taken the floor and not to interrupt until the speech is over. It is also in no way allowed for the mediator to be a "passive listener" during the conversation with the parties. During the hearings and talks, the mediator should try to maximize his concentration while listening to the parties. He is in no way allowed to confirm or use the words "yes", "aha" and others after the end

[5] Paragraphs 1, 2, 3 of article 53: The training license is issued to persons who will submit to the Board the request for issuance of a license, as well as evidence for: trainings conducted for trainers of mediators of less than 32 hours in the Republic of North Macedonia, to have a university degree for higher education performed VII / 1 or 300 credits earned according to the European Credit Transfer System in the Republic of North Macedonia, to have knowledge of mediation, conflict resolution, reconciliation and negotiation, to be registered in the Register of Mediators or the relevant register by the foreign state if the applicant is a foreigner, registration in the Register for evidence of mediation procedures or the relevant register by the foreign state if he is a foreign citizen for at least 12 procedures applied for mediation in the last three years and at least 2 recommendations from persons who professionally knows the applicant and testify to his or her ability to transfer theoretical and practical knowledge.

[6] *LRC 98-2010*, paragraph 11.16

[7] *Прирачник за обука на медијатори за обновување на знаењата за медијација*, Project MATRA supported by the Embassy of the Kingdom of the Netherlands

of the conversation. This is because the mediator during the use of these words is considered to be physically present and not concentrated on what is being said during the session. The issue of "passive listener" is also closely related to "selective listening" which means listening to it or listening to the party that is the object of interest for the mediator. This is a feature that should be excluded from the communication skills of mediators, as it violates the basic principle of mediation procedure, the principle of impartiality and the only characteristic of the mediator which provides a qualitative solution to the contentious issue. Another risk of selective hearing is that the mediator during the hearing by not hearing certain information which in fact provides information of great importance for resolving the dispute, the same may not be recorded during the hearing in which case it will result in a non-qualitative dispute resolution. The ability for good communication is also the "non-monopolization" of the conversation, respectively to give space to the parties to express their opinion, to listen to the interlocutor and to concentrate the conversation on topics that are key to the problem, in which direction the mediator should be enough flexible and follow different directions during conversations and not strict to stay the conversation only in one term, to communicate in a language that the parties can understand and not to use terms that are professional and which will not be able to be understood by the parties. Also during the conversation between the parties and the mediator, the mediator should not use terms or characteristics and gestures that are irritating and the same irritate the parties, for example, all the time to gesture with hands or play with the pen and others.[8] Another feature that a mediator must have is "assertiveness" or the ability to defend what one wants, that is, to declare what a person wants but openly. However, in this case the goal is not to secure victory, but the goal is to find a solution and get the best result. So assertiveness in no way should mean aggressiveness. In mediation, assertiveness means that the mediator and the parties must first respect themselves and others, be able to express their desires and needs freely without any hesitation, be able to exercise their rights in the procedure of mediation calmly, without the use of force of violence and without threat. What makes people who are assertive different from other people is that they are calm people and do not like conflict situations at all. During communication, the mediator should often stop and "summarize" what has been said up to a point during the conversation with the parties. Through summary, the mediator gives an overview of what has been said so far, which gives the parties the opportunity to assert or deny their statements, in which case the mediator will allow space for them to be clarified. During the summary, the mediator often asks the question: "If I understood you well, you said ..."[9]. "Paraphrasing" during the mediator's conversation with the parties should be used frequently as the mediator in this way informs the parties that he is listening carefully and actively. In these cases the mediator, by using his own words, repeats what was said by the parties. Also, "review" as a mediator's skill, although it is one of the most difficult and sophisticated communication skills to use, in the same time is of enormous importance. This is like that because it involves getting a statement and focusing on just one segment of it that needs to be negotiated or resolved. The purpose of this mediator's ability is for the negative to become positive, respectively for the complaint to become negotiable for the parties. The mediator must also use "empathic listening" as another of his abilities which forms the basis of the skills and qualities that a mediator must possess. By using this type of listening, the mediator quickly gains

[8] *op. cit*, pg. 16
[9] *op. cit*, pg. 17

trust in the parties, claiming that he or she is aware of what is happening and that he or she understands the parties' perspective, needs, decisions, and feelings. This type of listening forms a closed circle of communication which requires the listener to demonstrate the meaning of what has been said earlier by both the mediator and the parties, reflecting the composition of the interlocutor's message. As empathic listeners, mediators often have to be careful to pay special attention to what is hidden behind an unspoken emotional composition of the parties. The last skill of the mediator to be treated is “sublimation”. Through sublimation, the mediator summarizes all that has been presented to the interlocutor, but in main and brief points. Mediators must also ask questions during the sessions. This does not mean putting the parties under investigation, which is, embarrassing or humiliating them. Questions are a powerful tool for focusing on relevance of the issues. Mediators can ask questions in different ways. Open-ended questions are a perfect way to provoke the parties to talk openly, especially when they have to show their side of the story. This is achieved by asking this question: "How do you look at things?". Closed questions end with "yes" or "no" type of answers or short phrases. So in the case of closed questions asked by mediators, the question "Does this help you most?” helps the mediators to predict what will happen next. Also of great importance are the "investigative questions" which help the mediator to understand and see the issue in depth. As a question that mostly is used by mediators is the question "why?". In addition to investigative questions, of major role are also the “key questions” that are needed to be used when the mediator wants to confirm something or confirm any hypothesis. In these cases the mediator mostly uses the question "am I correct in proposing that ...?". So the mediator should in no way ask questions about things and information that he is curious to know, but the questions should be asked in order to highlight the key information that will help tp resolve the dispute between the parties.

3. ORGANIZATION OF MEDIATORS IN THE REPUBLIC OF NORTH MACEDONIA

The mediators in the Republic of North Macedonia are organized in the Chamber of Mediators of the Republic of North Macedonia. The Chamber of Mediators has the status of a legal entity based in the city of Skopje. The highest body of the Chamber of Mediators is the Assembly of the Chamber.[10] The Chamber of Mediators has a very important function: it protects the honor of mediators and ensures that mediation is implemented in accordance with the basic principles of the mediation procedure provided by the Law on Mediation and in accordance with the Code of Ethics of mediators, and also it takes care for the steps and actions that need to be undertaken for the advancement and promotion of mediation in the Republic of North Macedonia. According to article 38, the Assembly of the Chamber is consisted of all licensed mediators registered in the Registry of mediators. The Assembly of the Chamber performs several tasks which are precisely provided for in the Law on Mediation: the Statute of the Chamber, the Code of Ethics for Mediators, the Chamber's work program, the Board's annual work program, it debates for any objection, complaint or proposal from the Board of Directors or any member of the Chamber in situations where a procedure is initiated to exclude members or repay mediators from the Registry of mediators, also registers and repays mediators from the Registry of mediators, debates for matters relating to the purposes and duties of the Chamber, approves the Rules of procedure of the Chamber of the Assembly, elects the President of the Chamber, elects the members of the Board

[10] *Law on Mediation*, article 37, paragraph 1

of Directors, elects the members of the Supervisory Board, takes care of the careful use of financial means, decides on the amount of membership fee, the method of payment and their use as well as the performance of other tasks specified by law and by the Statute of the Chamber of Mediators. Other bodies of the Chamber of Mediators are: the Chairman, the Supervisory Board and the Directing Council. The candidate who receives a majority of votes from the present members of the Assembly is elected chairman.[11] The procedure for electing the President of the Chamber is regulated by law.[12] The chairman is the one who introduces and represents the Chamber of Mediators. At the same time, according to his function, he is also the chairman of the Directing Council. The President is elected for a term of 2 years with the possibility of being re-elected once again. The President of the Chamber has the duty to sign all decisions of the Assembly and the Directing Council. In the absence of the Chairman, with the authorization or decision of the Directing Council, the Chamber may be represented by any member of the Directing Council.[13] Another body of the Chamber of Mediators is the Supervisory Board. As such body it is consisted of three members elected by the Assembly of the Chamber based on the procedure provided for the election of members of the Chamber in article 39 with a mandate of two years with the possibility of re-election. The first paragraph of article 40 represents the main function of the Supervisory Board according to which this Council monitors the implementation of the provisions of the Law on Mediation, the Statute of the Chamber and other general acts of the Chamber by the bodies of the chamber and controls the material and financial work of the Chamber of Mediators. In addition to the Supervisory Board, the other body of the Chamber is the Directing Council as the executive body of the Assembly. The number of members of the Directing Council is regulated by the Statute of the Chamber, while the mandate is regulated by the Law on Mediation, according to which the mandate lasts two years with the possibility of re-election once again. The board of directors includes a wide range of functions. It prepares the meetings of the Chamber Assembly, determines the proposal of the Statute and other acts of the Chamber, implements the policy and implements the conclusions and decisions approved by the Assembly of the Chamber, takes care of payments and collecting the membership fee, manages and responds to funds and the property of the Chamber and compiles a proposal of the periodic and annual account. The Directing Council also deals with various technical issues such as: provides professional assistance to Chamber members to advance practice in the implementation of mediation, monitors the implementation of the most important rules for mediation, publishes studies, summaries of works, professional manuals and other documents in the field of mediation, organizes scientific and professional meetings on mediation, informs the public about mediation and performs other important tasks defined by the Law on Mediation, the Statute of the Chamber and the general acts of the Chamber of Mediators.[14]

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[11] *Law on Mediation*, article 39, paragraph 9

[12] If the candidates for chairman do not receive a sufficient number of votes, the second round of voting is organized, which includes the two candidates who have the largest number of votes. The candidate who has received the most votes from the members present in the Electoral Assembly, but not less than 1/4 of the total number of members present in the Electoral Assembly, will be considered as the elected chairman in the second round. If the chairman is not elected in the second round, the procedure will be repeated for the third time.

[13] *Law on Mediation*, article 42, paragraph 1,2,3,4

[14] *Law on Mediation*, article 41

4. SUMMARY

For the first time in Republic of North Macedonia, as a result of the reform process of the judicial system, to mediation and especially to the mediators is given appropriate and same treatment as other procedures and legal profiles such as: litigation and lawyers, public notaries and executors. Mediators represent a very important factor in the Chamber to the mediators and act in addition to their basic and assigned activities in accordance with the provisions foreseen in the Law on mediation. The inflexibility and insufficient efficiency and economy of court proceedings on one hand, and the desire of the parties to resolve their civil dispute to the mutual interest on the other, have led to the activity of mediators in the territory of Republic of North Macedonia, as a result of which the parties agrees to authorize a third neutral party known by the profession of mediator to assist them in concluding an agreement without the possibility of imposing a binding solution to them. So, the specific designation of this procedure from other procedures whether judicial or non-judicial is the mediator and his activity in the amicable settlement of disputes between the parties. The main role of the mediator in the entire procedure is consisted of the negotiating activity of the parties in one side and of the mediation activity of the mediator in the other side of the office who guides and directs the parties toward a single and mutual solution of their problem. And what affects in the success of one mediation procedure lead by one mediator? It is the skills and techniques that the mediator uses during that procedure. Therefore, mediator is considered a central figure in procedure of mediation which is considered to have a decisive impact in the success of mediation, even that the complete direction and control of the procedure from the beginning until the end is in the hand of the parties and the passive role of the mediator in the procedure given by Law on mediation.

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