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MEDIATION IN CRIMINAL AND CIVIL CASES IN THE POSITIVE LAW OF THE REPUBLIC OF NORTH MACEDONIA - SITUATION AND CHALLENGES

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ABSTRACT

The mediation procedure is one of the forms of peaceful, contractual, and out - of - court settlement of disputes. Mediation belongs to the group of evaluative ways to resolve disputes. As such, it offers many innovative advantages over the state trial. Strengthening mediation will simplify access to justice in terms of reviewing free legal aid, court costs, attorneys' fees, and the costs of enforcing judgments. Precisely because of this, the subject of analysis of this paper are the legal limits within which mediation can be used when solving criminal and civil cases in the positive law of the Republic of North Macedonia. The recommendations aimed at improving the application of mediation in criminal and civil cases are in the direction of advancing the term and bringing it closer to the public and structures where its application lies.

Key words: mediaton, civil cases, criminal cases, mandatory mediation, alternative procedure.

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INTRODUCTION

As one of the alternative ways of resolving disputes, the word mediation etymologically comes from the latin term „medius“ which means impartial, neutral or one who walks the middle.

In the theory of extrajudicial dispute resolution, mediation is defined as a procedure in which a third neutral person helps the parties in the dispute reach an agreement using recommendations, negotiations, or suggestions without imposing a binding decision on them. The purpose of the mediation procedure is to conclude a settlement agreement that resolves the conflict of interests between the parties with their mutual compromise.

The mediation procedure is a non - litigation procedure. It is a non - adjudicative procedure and as such it differs from the trial, and because of the principle of voluntariness on which it is based, it takes precedence over it. The dispositive nature of this procedure means that this procedure is initiated, conducted, and concluded according to the autonomy of the will of the parties, with an exception existing in those legal systems where mandatory mediation is regulated only in terms of initiation.

1. Mediation in criminal cases in the Republic of North Macedonia

The role and significance of mediation is extremely important in terms of realizing a strong reform process of the judicial system of the Republic of North Macedonia and fulfilling the current obligations arising from the process of accession to the European Union. Reforms related to mediation as an alternative way of resolving disputes are one of the strategic goals of the Justice Sector Reform Strategy 2017 - 2022 (Ministry of Justice, Justice sector reform strategy for the period 2017 - 2022 with an action plan, p. 17). Namely, the Strategy states that the dysfunctional concept of mediation remains as a remark that has been going on for years in the progress report of the European Commission, so for those reasons it is necessary to stimulate the application of mediation in conditions when the courts are faced with a large number of cases and the use of the alternative way of resolving disputes, which promotes their peaceful resolution, will most directly affect the reduction of the number of court cases, and thus also the relief of the judiciary from unnecessary

handling of cases that could be resolved out of court. The realization of the function of administration of justice (pronouncement of the law) by other, non - judicial bodies, is not an obstacle to the constitution of an integral system of judicial law, to the extent that their decisions are subject of the guarantee of judicial control, as is the case with mediation (Sotiroski and Gurkova, 2011, p. 90). Namely, mediation in criminal proceedings will not cheat the judicial system, i.e., violate legal certainty, it is not contrary to the right of access to the court, and its practice in criminal cases will not arouse the attitude that the crimes for which it can be initiated are not serious crimes. It aims to relieve the courts of disputes that can be settled amicably, and its conception is not intended to compete with the legal profession as such.

Mediation in criminal matters became an integral part of a broader concept of restorative justice, where the main principle is settling the conflict and renewing impaired relationships between the victim, the perpetrator, and the society, which have been impaired by the criminal offense. Mediation is an alternative procedure aimed at settling criminal cases, realized outside of the criminal law system. It is understood as a process, within which the parties concerned - the accused and the aggrieved person, engage in mutual discussion and in cooperation with the mediator try to settle mutual conflicting relationship and agree on how to deal with the consequences of the crime in the future. In a criminal justice context, mediation represents a shift towards restorative justice, which views crime as the violation of one's rights by another. Also, it contains an aspect of reparation that is not a component of mediation in the civil context. As free of charge public service where mediators mediate between the parties to a crime or a dispute and assist them in the negotiations, the purpose of mediation is to discuss the mental and material harm suffered by the victim and agree on measures to redress the harm. Mediation is a procedure either parallel or supplementary to the criminal process and a key objective is to prevent recidivism. Mediation use is based on a criminal offense being regarded as a conflict between the victim (aggrieved person) and the perpetrator. Mediation is conducted by an expert in conflict resolution - a mediator, who leads the negotiation and maintains a forthcoming and balanced approach towards both parties and assists them in finding a solution, not only in damage compensation, but also explanation why the crime has occurred. Mediators in criminal cases guide the complex dynamics between suspect and victim. It is

important that the suspect takes responsibility for the committed crime and its consequences. This makes rehabilitation possible for both parties. Mediation offers the aggrieved person a possibility to understand the situation and its circumstances and increases the probability of expedited damage compensation. It allows the perpetrator to apologize to the aggrieved person, to explain his conduct and to remedy the consequences of the committed crime. Mediation is interconnected with criminal proceedings and its results are also considered in them. From the point of view of procedural criminal law, mediation is a special non - procedural form of dealing with criminal cases, results of which may be projected in the decision on the case.

If the offender admits, during the mediation procedure, having committed the crime, such an attitude means, even if it is unable to remove the evil caused, at least accountability and, consequently, eliminating the feeling of blaming the victim, a feeling frequently experienced with such crimes (Gorghiu, 2013, p. 367). The mediation procedure allows victims to express completely and directly blame their pain and embarrassment caused by the offence, manifestations that are not possible in court of law. Victims can present their uncensored side of the story beyond issues of interest for the criminal trial. By means of such manifestation, it is possible to restore the balance of forces between the victim and their offender; we should not overlook that a successful mediation procedure may have as an effect the victim's restoring their emotional balance, an effect that cannot be reached in a criminal trial (Gorghiu, 2013, p. 367). The victim of a crime primarily seeks to make their assailant liable, and this goal can be more easily achieved via mediation as the offender, by attending the mediation meetings, admits their guilt and show willingness to correct the antisocial crime committed. Thus, the offender represents that he takes responsibility, and the victim leaves the mediation with the feeling that the offender has been held accountable; the mediator, playing a significant role, must act with sympathy and professionalism.

1.1. The arrangement of mediation according to the legal provisions of criminal procedure

This form of dispute resolution is provided by law as an alternative to court proceedings for multiple disputes, and the provisions of the Law on Mediation are also applied in criminal cases, unless otherwise determined by a separate law (Law on Mediation, article 1 paragraph 3,

Official Gazette of the RNM, no. 294/21). The Law on Criminal Procedure regulates mediation as an alternative voluntary way of resolving conflict situations (Law on Criminal Procedure, chapter XXX, article 491-496, Official Gazette of the RNM, no. 150/10). Namely, the Law stipulates that even before the main hearing is scheduled for criminal offenses under the jurisdiction of the individual judge, which are prosecuted under a private lawsuit (mostly crimes from the group of crimes against the freedoms and rights of man (Nuredin,2022) and citizen (coercion, threat to security, violation the inviolability of the home, illegal search, unauthorized publication of personal data), against honor and reputation (slander, insult) and acts against property (theft, arbitrariness, evasion, confiscation of other people's property, damage to other people's property, fraud) for which The Criminal Code explicitly states that they are prosecuted in a private lawsuit, the individual judge can propose that the private plaintiff and the defendant go to a mediation procedure, and if there is consent from both parties and they agree to be referred to a mediation procedure, the individual judge brings decision to refer to mediation (Criminal Procedure Law, article 475). Such a proposal is the result of the procedure's expediency reasons. If the parties do not give their consent within the specified period, the individual judge decides that the proposal to refer to mediation is not accepted and schedules a main hearing according to the provisions for the abbreviated procedure (Criminal Procedure Law, article 491 paragraph 5). The parties of the mediation procedure are the suspect, his defense counsel and the injured party and his attorney. Within three days of the given consent, the parties shall amicably determine one or more mediators from the Directory of mediators and notify the individual judge accordingly. In accordance with the principle of efficiency, the mediation procedure can last up to 45 days from the day of the consent given by the parties to the competent individual judge (Criminal Procedure Law, article 493), because it is the legal deadlines that make the mediation effective in contrast to the long court proceedings that lead to criticism of the inefficiency of the court system. The mediation procedure until the signing of a written agreement is carried out by the mediator in accordance with the provisions of the Law on Mediation (Criminal Procedure Law, article 494). In an agreement with the parties, the mediator will determine the terms for conducting the mediation. Before the mediation procedure starts, the mediator must familiarize the parties with the principles, rules, and costs of the

procedure. In the mediation procedure, the mediator communicates with the parties together or separately.

One of the ways of ending the mediation procedure and the most optimal way to end the dispute is to sign a written agreement with the prescribed mandatory elements it should contain (Criminal Procedure Law, article 496 paragraph 2) in case both parties manage to agree on a joint solution. The Law on Criminal Procedure provides for the other ways that mark the end of the mediation procedure, and which are the basis for the individual judge to schedule a main hearing according to the provisions for the abbreviated procedure (Criminal Procedure Law, Article 495 paragraph 2). The most common way of ending mediation is a written statement by the mediator that no further attempts at mediation are warranted. The mediation procedure, except by signing a written agreement, can end: with a written statement by the mediator, after consultations with the parties, that further attempts at mediation are not justified, on the day of submission of the statement; with the expiration of the 45 - day period ascertained by notification by the mediator; by withdrawing the parties at any time from the mediation procedure without stating the reasons for it, and the withdrawal will be considered from the day of submission of the withdrawal statement; when the mediator stops the mediation procedure with a decision if he considers that an agreement has been reached that is illegal or unenforceable. However, when the mediation procedure ends with the signing of a written agreement by the mediator and the parties to the procedure, it is submitted to the competent court without delay. At the same time, this entails responsibility for the timely fulfillment of obligations by the suspect, who is obliged to submit proof of fulfillment of obligations and reimbursement of the costs of the procedure to the competent individual judge, after which the individual judge brings a decision to stop the procedure, which is submitted to the suspect and the victim. If the deadlines expire, and the suspect does not submit evidence that he has fulfilled the obligations determined by the written agreement, the individual judge schedules a main hearing according to the provisions for the abbreviated procedure (Criminal Procedure Law, article 496).

1.2. Mediation representation in criminal cases

In favor of mediation as a tool for the peaceful resolution of disputes, according to the data of the Ministry of Justice, the number of successfully resolved disputes with mediation is as much as 55% of the total number of mediation attempts registered in the e - register, and this number it is believed to be much higher, given the fact that every mediation attempt is not recorded in this system (Lazetic et al., 2022, p. 8). Regarding the attitude of judges about mediation in criminal cases, its evaluation as a useful mechanism for resolving criminal cases prevails, and fewer of them consider it to be a good mechanism, but without significant achievements, taking into account the negative aspects of the mediation procedure, namely: the parties do not have confidence in mediation, the mediation is not well thought out legally, the mediators do not have authority among the citizens, as well as the fact that the mediation is closed to the public, so this is why mediation in private lawsuits usually does not give positive results in the largest number of cases. The small number of criminal cases in which mediation is used as an alternative way of resolving the dispute, does not go in favor of the strategic direction for greater application of mediation according to the Justice Sector Reform Strategy for the period 2017 - 2022. Judges who judge criminal matters apply the mediation procedure in an exceedingly small percentage (Lazetic et al., 2022, p. 36). At the same time, in no case did the procedure end successfully, that is, with the signing of an agreement. A significant percentage of judges (44%) at the level of courts in the territory of the RNM agree to the introduction of a mandatory attempt at mediation in cases following private criminal lawsuits (Lazetic et al., 2022, p. 84). The introduction of mandatory mediation cannot be a permanent solution, but only a temporary solution for stimulation that should familiarize subjects with mediation and its benefits so that they apply it on their own initiative in the future. The obligation may be the reason for the high number of cases, but also for the high degree of failure in criminal cases. However, the practice of mandatory mediation will change the mental code and thinking in the direction of further consolidating the ways and forms of dispute resolution. The introduction of the mandatory mediation in the RNM in conditions of overloading of the judicial system on the one hand, and lack of judges on the other hand, will actually affect achieving a great relief of the judiciary by transferring the powers to resolve criminal cases

in extrajudicial proceedings that will ensure greater efficiency and economy in handling and reducing the number of pending cases from the relevant area. Mediation is suitable as an alternative solution, and for certain crimes more, and for certain crimes less.

An especially important impact concerning mediation in penal matters in the country has the Council of Europe Recommendation No. R (99) 19 („Penal Mediation Recommendation") where the Penal Mediation Guidelines were used as a basis for legislation (Council of Europe, 2018, p. 20). The legal provisions are especially applicable in criminal cases regarding criminal offences, for which, according to the law, the reconciliation of the parties removes the criminal liability. From the nature of mediation as a mean of reconciling the mutual relations of the conflicting parties, the point of view arises according to which it is most suitable for its application in proceedings after criminal acts against marriage and the family, and the courts have the obligation to offer it to the parties with the possibility of their dispute being resolved through mediation, rather than in court proceedings. A mandatory attempt at mediation or conciliation will enable easier and more painless access to justice for vulnerable categories of persons. Mediation in the criminal justice system can reduce repeat offending because the offender has had to confront the consequences of his actions.

Mediation is regarded as the most suitable alternative to adjudication, because unlike adjudication, mediation is believed to address the causes of disputes, reduce the alienation of litigants, inspire consensual agreements that are complied with, are durable over time, and help disputants resume workable relationships (Northern Territory Law Reform Committee, 1996, p. 4). The courts should encourage criminal mediation because it takes the mystery out of the process for the participants, it gives everyone the chance to speak freely in a much more relaxed setting, and the people whose lives have been impacted have the chance to directly participate in the process and influence the outcome of the matter; when mediation is successful, it frees up court time for the prosecution of matters that cannot be resolved and really need to be tried (Moriarty, p. 4). The recommendations aimed at improving the application of mediation in criminal cases are: greater promotion of the advantages of the mediation procedure; in the case of private lawsuits, after being admitted to the court, they must be submitted to an authorized mediator, and returned to the court after a procedure has

been carried out, that is, after an attempt at mediation has been made or proof that the mediation was unsuccessful; the mediation procedure should be more accessible and better designed; mediators to be more open to the public, to know the laws so that they can successfully help the parties and not be guided by personal interests; legal changes, a campaign for public debate before any legal changes start, a campaign to affirm mediation as a procedure, emphasizing the positive aspects of mediation, to hear the views of practitioners, those facing everyday problems; greater transparency through familiarization with media coverage; education of lawyers to advise the parties on the mediation procedure. The recommendations are aimed at improving the legal solutions for mediation, as well as with the aim of improving the conditions in which the concept and application of mediation develops.

2. Mediation in civil cases in the Republic of North Macedonia

The mediation procedure in macedonian law is an alternative to the civil procedure. This has been the case since the adoption of the first Law on Mediation in 2006 (which was prepared in accordance with the Strategy for the Development of the Justice System for the period 2004 - 2008), until today (Majhosev et al., 2014, p. 121). The mediation procedure was introduced to reduce the overloading of the courts with a considerable number of cases, to enable faster and more economical access of citizens to justice and for the purpose of effective alternative resolution of disputes (Sotiroski, 2011, p. 142).

In this context, even the new Law on Mediation from 2021, which replaced the Law on Mediation from 2013, did not take a major systemic step towards regulating the mutual relationship of mediation in the resolution of all civil cases and civil proceedings. Namely, according to the current Law on Mediation, and according to the Law on Civil Procedure, the mediation procedure is an alternative to the civil procedure. Hence, the possibility of resolving civil disputes through mediation in macedonian positive law depends solely on the will of the parties.

2.1. Mediation according to the positive provisions of civil law

The current statistical data in this regard show that only about a hundred cases have been resolved by the mediators, which is a relatively small number if one takes into account that the possible engagement of

167 mediators in the Republic of North Macedonia is foreseen for the resolution of disputes with the help of mediation (Sotiroski, 2011, p. 138).

Also, judges who judge civil matters apply the mediation procedure in an exceedingly small percentage. According to 73% of the judges, none of the mediation procedures were successful, that is, they did not end with an agreement (Lažetic et al., 2022, p. 36).

It is precisely because of this that the need to introduce a model of mandatory mediation for civil disputes in Macedonian law is imposed, because practice has shown that voluntary mediation does not work effectively by itself. As an example of this, the model for mandatory mediation in commercial disputes, which is regulated in the Law on Civil Procedure, can be taken.

Mandatory mediation in the Republic of North Macedonia was introduced for the first time in 2015 with the Law on Amendments and Supplements to the Law on Civil Procedure (Spirovska, 2021, p. 116). Namely, according to article 461 paragraph 2 and 3 of the Law on Civil Procedure, there is an obligation for a mandatory attempt at mediation in commercial disputes for monetary claims whose value does not exceed 1,000,000 denars, and for which the procedure is initiated by a lawsuit before a court. This is a unique situation where the current Law on Civil Procedure refers to mandatory mediation. In these disputes, the parties are obliged, before filing the lawsuit, to try to resolve the dispute through mediation. This does not apply to procedures by payment order before notaries. When submitting the lawsuit, the plaintiff is obliged to submit written evidence issued by a mediator that the attempt to resolve the dispute through mediation has failed. The court will reject the lawsuit to which the evidence from the mediator that the matter cannot be resolved through mediation is not attached.

In the context of this, it seems that the Law on Mediation from 2021 should undergo amendments and additions in a way that will introduce a mandatory attempt at mediation in family, property, consumer, commercial, labor, insurance, disputes arising from the procedures of notary payment orders and other civil relations in which the parties can freely dispose of their requests.

In accordance with Article 272 of the Law on Civil Procedure, the court is obliged to deliver to the parties, together with the invitation for the preparatory hearing, a written indication that the dispute can be resolved in a mediation procedure, in disputes where mediation is allowed.

The current legal solution applies only to commercial disputes, because currently only mandatory mediation is allowed in them, and in the future, it should apply to all disputes for which mandatory mediation will be provided for.

Introduction and practice of the compulsory attempt for mediation in the Republic of North Macedonia will affect the achievement of great unloading of the judiciary, in the areas that now are heavily exploited and do not show efficiency in solving it. The new concept of mandatory mediation will ensure greater efficiency and economy.

The changes and additions in the direction of introducing mandatory mediation are also in accordance with European secondary law. In the context of this, within the European Union, mandatory mediation is regulated in secondary law, where the Council of Europe sets out the Recommendations for the introduction of a mandatory attempt at mediation (Recommendation No. REC (201) 9 of the Council of Europe, Annex to Recommendation No. REC (2002) 10. The Council of Europe opens the possibility for member states to decide on the eventual acceptance of the offered legal mechanisms.

According to the current legal solution of article 200 paragraph 1 point 6 of the Law on Civil Procedure, if both parties request it, the dispute can be resolved through mediation. It can be concluded from this legal provision that the parties can initiate the mediation procedure during the litigation procedure if there is a mutual agreement for it (Stoileva and Gorgieva, 2019, p. 30). In this case, the litigation procedure will be terminated and the possibility of resolving the dispute in the mediation procedure will be left. In this case, the court is obliged to issue a decision to terminate the civil procedure in accordance with article 273 paragraph 1 of the Law on Civil Procedure.

In accordance with Article 308 paragraph 4 of the Law on Civil Procedure, if the parties have concluded an agreement in a mediation procedure, they are obliged to submit it to the court within eight days from the day of its conclusion. The court schedules a hearing at which it notes on the record the concluded agreement, which acquires the character of a court settlement if the conditions for concluding a court settlement are met in accordance with article 307 of the Law on Civil Procedure.

Article 16 of the Law on Mediation, which regulates the relationship between the litigation procedure and the mediation procedure in the case where the mediation procedure is ongoing, should undergo

amendments and additions. Namely, according to Article 16 of the Law on Mediation, „the parties have no right until the completion of the mediation procedure to initiate arbitration, court or other proceedings for the dispute that is the subject of mediation, except when it comes to temporary measures or security measures“. This article should undergo changes and additions because it is in direct contradiction to article 6 of the European Convention on Human Rights, because it limits the rights of citizens determined by this Convention.

3. Benefits of mediation as an alternative to court proceedings

On the side of the benefits of practicing mediation in criminal proceedings, the mitigating circumstances for the courts and for the parties to a case are significant. Mediation is not a way for the perpetrator to avoid responsibility for what he has done, but a way to face it, perceive the consequences, listen to the victim/damaged and participate in finding a fair and acceptable solution for both opposing parties (Jovanovska and Tuntevski, 2019, p. 2). Namely, conducting mediation in criminal proceedings will lead to: reducing the workload of judges, leaving them the opportunity to better focus on more difficult cases; efficiency in terms of reducing the time for resolving criminal cases, because mediation in criminal proceedings must not last longer than 45 days; cost - effectiveness of the procedure by avoiding court costs and attorney's fees for delaying hearings; one - stage procedure, i.e. simplification of the process due to the avoidance of time and costs for resolving the dispute at a higher level, that is, by appeal; depending on the outcome of the mediation, achieving satisfaction for both parties, which is not the case in court proceedings, where one party is always dissatisfied, starting from the previously reached mediation agreement when both parties agreed to participate in making a decision on the matter; there is autonomy of the parties, namely, the parties are the authority in the procedure, have control over its development, respect the dignity of the other party and have full influence over the process and the outcome and content of the agreement; from the perspective of the defendant/suspect who decides to adopt a conciliatory attitude, the most important advantages are: possibly milder treatment by the court and a chance to reach an agreement with the aggrieved person concerning compensation and redress; the advantage of mediation is the confidentiality, but also the flexibility of the procedure,

which takes place in a pleasant atmosphere for the parties; avoiding a criminal record for the perpetrator; directing the procedure towards finding a common solution and leveling the conflict between the perpetrator and the victim, with the absence of accusation, proof, sanctioning.

Mediation is also a better way of resolving disputes than civil proceedings. The reasons for this should be sought in several directions. First, mediation is an informal procedure. Informality means that the parties can create the rules by which they and the mediator will act. It allows the mediation to take place in a constructive atmosphere that resembles a business meeting. Unlike mediation, when the dispute is decided by a civil court, the actions of the parties and the judge are strictly formal and the same is legally determined in advance.

The initiation and conduct of mediation depend on the will of both parties. This means that, if any of the parties during the procedure decides to withdraw, she will not suffer any legal consequences regarding her personal or her material claim. In civil proceedings, the initiation and conduct of the proceedings depends solely on the will of the plaintiff. The moment he notices that his right is threatened or violated, he can file a lawsuit. Unlike him, the defendant, not of his own volition, becomes a party to the court proceedings. If he refuses to participate in a procedure, by order of the court, due to his behavior, he will suffer legal consequences for his person or material position.

Every individual or business entity strives to preserve its good reputation in society. The knowledge that any type of procedure is being conducted against a subject lead to a decrease in trust in him in the eyes of the public. That is why it is important for legal and natural persons that the procedure in which they resolve the dispute takes place away from the eyes of the public. This is especially important when huge economic giant companies must resolve a mutual dispute, which is increasingly common due to the accelerated trend of globalization, business, the growth of the international economy, investments, and the ambition to create a single economic market. Mediation is a secret procedure and in it the public is always excluded. This means that apart from the parties and the mediator, no one else knows the facts in dispute, the way the meetings are conducted, what is communicated there and the final solution to the dispute, i.e., the settlement. Also, the party can tell the mediator his secrets, but he must not pass them on to the opposite party without his

consent and without any consequence on the outcome of the dispute. Contrary to the mediation, the civil procedure is public because the courts are part of the judicial authority in the state whose function is the administration of justice which is public.

In mediation, there is no proof of disputed facts, its basis is negotiation with the help of a third neutral person-mediator, during which the parties try to harmonize their interests in a constructive atmosphere and resolve the dispute by reaching a mutually acceptable solution. In civil proceedings, the truth or falsity of the claims of the parties is determined through the evidence. Each party tries to prove the truth of its claim or the falsity of the opposite party's claim, to obtain a decision in its favor.

The main purpose for which the plaintiff starts the civil proceedings is the passing of a judgment by the judge, who will be the regulator of the relations between the parties. According to the court ruling, one party must always win the dispute, she is the winner, and if the other party loses, she is the loser. In mediation, the mediator does not have the role of a judge, he is only a „guardian of the procedure"who helps the parties to better understand the nature of the problem, to familiarize themselves with the numerous possibilities that can lead to its solution in whole or in part, which is why a solution cannot be imposed on the parties. Namely, the parties have the main say: they make the final decision on the dispute as an agreement, according to which there is neither a winner nor a loser. Such an agreement allows the parties to maintain and even deepen friendly relations with each other and business cooperation, which is not the case when the dispute is resolved by a state court.

Civil proceedings and mediation also differ in terms of the length of their duration. Court proceedings usually last a long time, their duration is usually measured in months and years, while mediation from negotiation to reaching an agreement takes a brief period of a few days or a few weeks.

A consequence of the short duration of the mediation is its lower cost. According to Ambrose Bierce „Litigation is a machine in which you go in like a pig and come out like a sausage" (Bierce, 1967, 178), which means that litigation impoverishes the parties because they are exposed to a large number of costs starting from court fees, awards and costs of lawyers, expert fees, etc., while in mediation the costs are reduced to the mediator's reward for the work performed.

Conclusion

Mediation in criminal and civil proceedings is carried out little or not at all in our courts. The number of cases that are resolved through mediation is still trivial, when compared to the number of cases for which legal proceedings have been initiated; although after the adoption of amendments to the Civil Procedure Code in 2015, the percentage of procedures in which mediation is used increases, it is mostly seen as an opportunity to prolong the dispute, and not for a successful settlement of the opposing parties (Kocevski and Crvenkovska, 2018, p. 12). However, this does not mean that the application of mediation in both, civil and criminal proceedings is unsuccessful, but that more work should be done to discover the weaknesses that cause non - implementation and to correct them by devising and implementing solutions through which, step by step, the practice of applying mediation will be reached. In our country, the wider application of the mediation procedure would be of immense importance, because it allows considering the mutual interests of the parties and the possibility of reaching an agreement, as an expression of the voluntary approach and will to reach a common compromise.

Mediation, as an alternative way of resolving disputes, offers many advantages for citizens and business entities, but it needs greater affirmation, which can be achieved by taking appropriate affirmative measures, legal changes and strengthening awareness of the advantages it offers as an extrajudicial way of resolving disputes of various kinds. Namely, the best way to apply mediation is a good promotion that will include all information and misinformation about this method of dispute resolution, which will make the parties familiar with mediation and increase their interest in this method of peaceful dispute resolution.

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