

Detailed information on mediation provided by the Supreme Judicial Council

Mediation

The Recovery and Resilience Plan includes an "Introduction of alternative dispute resolution methods in the judicial system in Bulgaria - pilot introduction of mandatory judicial mediation; completion of the network of judicial centres in all district regions of the country; development of a strategy for the full use of other alternative dispute resolution methods" project, headed by Daniela Marcheva, member of the Judicial Committee of SJC.

The project working group, composed of judges, mediators and lawyers, prepared proposals for amendments and supplements to the Mediation Act and the Civil Procedure Act, which were submitted by Mr. Krum Zarkov, Minister of Justice to the 48th National Assembly and, after a procedure, adopted by the parliament. The Amendments and Supplements Act to the Mediation Act (ASA to the MA) was promulgated in the State Gazette, issue 11/02.02.2023, and was to enter into force on 01.07.2024.

The deferred effect (*vacatio legis*) of the law that entered into force had one sole purpose - to ensure all necessary conditions for the introduction of the institution of mediation - construction and material and technical provision of the judicial mediation centres in all 113 district courts and district 28 courts, or a total of 141 centres, selection and training of mediators in the court centres, etc. At the time of entry into force of the reform law, these conditions were completely absent, and this made it impossible to implement it, as well as the implementation of Reform 3 of the RRP within the planned deadline of 01.07.2024.

The Supreme Judicial Council fulfilled its legal obligation to adopt the ordinances under Art. 25 of the Mediation Act and Art. 84a, para. 4 of the Judiciary Act. In the State Gazette, issue 94/10.11.2023, Ordinance No. 10 of October 30, 2023, on the selection, status and activities of mediators in the court mediation centres and Ordinance No. 11 of October 30, 2023, were promulgated on the structure and organization of the activities of judicial mediation centres. By decision under Protocol No. 35/31.10.2023, the Judicial College of the SJC, on the basis of Art. 341, para. 1 of the Judiciary Act, supplemented the Classifier of positions in the administration of the courts, adding the position of "coordinator of a judicial mediation centre".

SJC has carried out significant work on the construction of mediation centres, and the work on its implementation began with a functional analysis of the presence, respectively lack of mediation premises in the court buildings. Individuals from the working group have been assigned to conduct inspections of court buildings and premises, and reports on the results of the inspections have been prepared by the coordinators.

With the help of the administrative heads of the courts and the coordinators, an analysis was carried out, which showed that there are mediation centres for which the necessary premises cannot be found. For this reason, assistance was sought from the central and local authorities for the provision of properties - state and/or municipal property.

Based on the summarized information from the regional governors, mayors of municipalities and chairmen of courts, an analysis was prepared - a summary of the type and value of the necessary funds for construction and repair activities and for equipping the premises intended for mediation centres. The sum of these values exceeds the amount of financial resources provided for in the project, for which additional targeted funding was requested and the same was denied by the Ministry of Finance.

Despite the limited funds in the budget, the following was implemented:

With decisions under protocols No. 10/12.03.2024 and No. 17/09.04.2024 the Judicial College has approved funds in the total amount of BGN 832,052.12 for carrying out construction

and repair activities, purchasing air conditioners and equipment for the court centres in each regional city in which a regional court and a district court operate.

The identified shortage of financial resources necessitated a review of the possibilities for financing and selecting premises in all regional courts outside the regional cities. The analysis showed the need to secure the activity with a restrictive budget, since at that time it was impossible to provide the full amount of funds necessary for carrying out construction and repair activities and purchasing equipment for the premises intended for this purpose.

After reviewing the schedules of the scheduled court hearings, it was established that in some places it is necessary to initially use courtrooms in the regional courts. For some regional courts, for which it is objectively impossible to use courtrooms, by decision under protocol No. 10/12.03.2024. the Judicial College has approved funds in the total amount of BGN 230,190.99 for carrying out construction and repair activities, purchasing air conditioners and equipment.

By decision under protocol No. 14/26.03.2024, the Judicial College of the SJC opened 28 (twenty-eight) procedures for the selection of a total of 254 mediators, determining their number for each judicial mediation centre in a district court.

The motive of the Judicial Committee for announcing a smaller number of judicial mediators than the number initially proposed by the presidents of the district courts is the need to conduct a selection through no less than two consecutive procedures, thus ensuring not only the quality training of the selected mediators, but also allowing them to participate in selection procedures for different judicial districts.

In order to ensure the timely and transparent selection of judicial mediators and compliance with the principles of equality and competition based on the professional qualities, knowledge and skills of the candidates, the Judicial Committee approved a Timetable for conducting a procedure for selecting mediators (decision under minutes No. 12/19.03.2024, item 34), a Methodology for conducting a written test and assessing candidates for judicial mediators (decision under minutes No. 14/26.03.2024) and a Methodology for conducting an oral interview (decision under minutes No. 22/14.05.2024).

As a result of the procedures for selecting judicial mediators, a total of 233 candidates were ranked.

By decision under minutes No. 14/26.03.2024, item 32, The Judicial College, performing the functions of the SJC, agreed, in the period 27 - 31 May 2024, in the city of Sofia, to conduct training for trainers of mediators for judges, mediators and lawyer mediators, by CEPEJ experts - Ms. Maria Oliveira and Mr. Rimantas Simaitas.

The reason for selecting Ms. Oliveira and Mr. Simaitas is that they participated in the preparation of the Report on the Development of Mediation in Bulgaria of 11.05.2017, in their capacity as members of the Working Group on Mediation (CEPEJ-GT-MED) of the European Commission for the Efficiency of Justice (CEPEJ) and have in-depth knowledge of the development of the regulatory framework regulating mediation in Bulgaria.

The training of trainers of judicial mediators aimed to unify standards and to help compile a single program for specialized training of mediators at district judicial centres.

By decision under Protocol No. 26/11.06.2024, the Judicial College approved a Program for Specialized Training of Mediators at District Judicial Centres, who successfully passed the selection.

SJC fulfilled its obligation to conduct specialized training for the ranked candidates for judicial mediators, by a decision under Protocol No. 26/11.06.2024, the Judicial College

approved a schedule for conducting specialized training for the ranked judicial mediators, as well as a list of trainers who will participate in their conduct.

In the period 12 - 13 June 2024, specialized training was conducted for the successfully selected candidates for judicial mediators from the Burgas Appellate District, in the city of Burgas in the Flora Expo Canter Hall, Burgas Sea Garden. 15 mediators from Burgas District Court (DC), 5 mediators from Sliven DC and 4 mediators from Yambol DC participated in it.

In the period 18-19.06.2024, specialized training was conducted for the successfully selected candidates for judicial mediators from the Plovdiv Appellate District at the Tsigov Chark training base of the Prosecutor's Office of the Republic of Bulgaria, city of Batak. It was attended by 15 mediators from Plovdiv DC, 8 mediators from Pazardzhik DC, 9 mediators from Stara Zagora DC, 8 mediators from Haskovo DC, 2 mediators from Kardzhali DC and 1 mediator from Smolyan DC.

In the period 17-18.06.2024, specialized training was conducted in the building of the Confederation of Independent Trade Unions in Bulgaria, halls Asia, Africa, America and Europe, and the successful candidates for judicial mediators participated in it, as follows: 10 mediators from Pernik DC and 53 mediators from Sofia City Court and Sofia District Court and 1 from Lovech DC.

In the period 17-18.06.2024, specialized training was conducted for the successful candidates for judicial mediators from Veliko Tarnovo Appellate District in halls B107 and B108 at the Confucius Institute, building 5 of Veliko Tarnovo St. St. Cyril and Methodius University. It was attended by 9 mediators from Veliko Tarnovo DC, 2 mediators from Gabrovo DC, 3 mediators from Lovech DC, 5 mediators from Pleven DC and 6 mediators from Ruse DC.

In the period 19.06.-20.06.2024, specialized training was conducted for the successfully selected candidates for court mediators from the Varna Appellate District in the halls of the Varna Chernorizets Hrabar Free University. It was attended by 15 mediators from Varna DC, 5 mediators from Dobrich DC, 2 mediators from Shumen DC, 4 mediators from Razgrad DC, 4 mediators from Targovishte DC and 4 mediators from Silistra DC.

In the period 20-21.06.2024 specialized training was conducted in a hall at the Blagoevgrad Courthouse, with the participation of successfully selected candidates for court mediators, as follows: 8 mediators from Blagoevgrad DC, 5 mediators from Kyustendil DC and 1 from Sofia City Court (SCC).

In the period 26-27.06.2024, specialized training was conducted in a hall at the Montana Courthouse with the participation of successfully selected candidates for court mediators, as follows: 4 mediators from Montana DC, 3 mediators from Vidin DC, 7 mediators from Vratsa DC and 1 from SCC.

The qualified candidates for court mediators have passed the test, successfully completed the specialized training and are registered as court mediators in the relevant court mediation centres.

Within the deadlines established by law, the activity of preparing a technical assignment for the implementation of a module in the Court Case Management System (CCMS) for the administration of the conducted mediations in cases was also completed. Subsequently, the contract concluded between the Judicial Committee and Information Services AD for the design, development and implementation of the Module for the Administration of the Conducted Mediations in Cases and its integration with the existing modules of CCMS was terminated.

By decision No. 11/01.07.2024 in constitutional case No. 11/2023, the Constitutional Court of the Republic of Bulgaria declared almost all provisions governing judicial mediation

unconstitutional. Unprecedented in the practice of the Constitutional Court, all opinions from interested parties such as prominent lawyers and habilitated persons, the Union of the Judges in Bulgaria and mediation organizations were in support of the reform and the introduction of a mandatory element in judicial mediation.

Among the few provisions that were not declared unconstitutional by the Constitutional Court was the provision of Article 84a of the Judiciary Act and the Ordinance No. 11 of October 30, 2023, issued on its implementation, on the structure and organization of the activities of judicial mediation centres.

According to the Order of 03.09.2024 of the CJEU, Fourth Chamber, in case C-658/23, the decision of the Constitutional Court is contradicting Community law, which explicitly states that Article 5, paragraph 2 of Directive 2008/52 of the European Parliament and of the Council of 21.05.2008 on certain aspects of mediation in civil and commercial matters, in the light of the principle of the primacy of Union law, must be interpreted as precluding the courts of a Member State from disapplying a decision of the Constitutional Court of that Member State annulling national legislation under which the admissibility of certain actions which may fall within the scope of that directive is subject to compliance by the claimant with the obligation to attend an information session on the advantages of mediation, where that decision does not fall within the scope of that provision and cannot therefore be contrary to it.

The working group, composed of judges and lawyers recommended by the Supreme Bar Council, mediators and experts from the Legislation Council Directorate at the Ministry of Justice at the SJC, prepared a new draft law, taking into account both the leading motives in the Constitutional Court's decision and the requirements, key stages and objectives for the implementation of Reform 3 of the National Recovery and Resilience Plan. The new ASA of the MA was sent on 25.09.2024 to the Ministry of Finance, together with presentation notes and a table of compliance, with a view to submitting it to the European Commission for preliminary assessment.

By letter dated 10.12.2024, the European Commission notified the Council of Ministers that the proposed draft of the ASA of the MA meets the requirements of the EC and is in good shape, and that Bulgaria is encouraged to continue with further efforts to complete the reform.

Given the fact that the SJC does not have a legislative initiative, with a decision on Minutes No. 15/12.12.2024, point 11, The SJC Plenum adopted the draft Act on Amendments and Supplements to the Mediation Act and the explanatory memorandum thereto prepared by the working group, and sent it to the Minister of Justice for the exercise of legislative initiative. By letter dated 23.12.2024, the Ministry of Justice refused to exercise its right of legislative initiative and proposed that it be submitted to the Parliament by Members of Parliament.

On 29.11.2024, the EC also presented its preliminary assessment of Bulgaria's second request for payment under the RRP, noting that 9 out of 62 key milestones and objectives, including the introduction of mandatory judicial mediation, have not been met satisfactorily, as a result of which the payment under them was suspended in accordance with Art. 24 (6) of Regulation (EU) 2021/241.

Bulgaria has six months from the adoption of the final assessment of the request for the second RRP payment to take action and implement its commitments.