

## Appliance Of Mediation In Criminal Matters On The Area Of The Court Of Appeal – Bitola, Macedonia

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**Abstract:** Mediation was implemented in Macedonian legislation with the Mediation Law in 2006, but only in civil matters not in criminal matters. Later, mediation in criminal matters in the Republic of Macedonia is implemented in the year of 2009 with the Changes and Additions to the Law of Mediation from 2006.

The aim of this study is to get the results about the implementation of mediation in criminal matters in part of Macedonia, especially in the region that it is under the jurisdiction of the Court of Appeal in Bitola and is this kind of mediation conducted in practice.

**Keywords:** Mediation, Criminal Law

### 1. Introduction

Mediation as an alternative method to trial is so necessary today in order to solve various types of conflicts in society and it has the effect to relieve the judges of the stifling burden of solving the many and complex causes with which they enter in the courtroom, as the austerity budgets of the institutions of the State do not create the actual premise of enhancing personal schemes within the courts.<sup>1</sup> It is an alternative for conflict resolution, consisted of flexible procedure, accessible from a financial point of view, fit to give the parties the opportunity to resolve conflicts without resorting to the judicial bodies, while avoiding the shortcomings of an evidentiary order, the formalism as well as the psychic and time consumption of specific court proceedings.<sup>2</sup> Mediation belongs to the programs of restorative justice.<sup>3</sup> Restorative justice is process in which the parties in a dispute are working together in finding a way for dealing

with the consequences of the crime committed and its implications for the future.<sup>4</sup> The goal of restorative justice is when a conflict with harmful consequences has occurred - to compensate that damage, to establish the peace between the parties, to create a feeling of empathy in the offender against the victim for the consequences of the felony for which he is responsible, to accept the responsibility for what he has done and to learn to be responsible for his actions in the future.<sup>5</sup> The accent is put on the fact that as consequence of the committed felony was created a conflict situation which resulted with disturbed relations between the offender, the victim and the society, so the goal is reconciliation of victim and offender, fixing or reimbursement of the damage that has been caused and unlike the judicial process which is completely focused on the past, here the focus is on the future.<sup>6</sup>

As a method for resolving disputes it has been implemented and functional in many developed

<sup>1</sup> Stogrin, P., 2014. *Mediation in criminal matters*. Acta Universitatis George Bacovia, (1), p.70.

<sup>2</sup> Dagne L, Tranca A, *Mediation in Criminal Matters*, Universul Juridic Publishing House, Bucharest, 2012, p. 9.

<sup>3</sup> O'Mahony D, Doak J, *Restorative Justice and Youth Justice: Bringing Theory and Practice Closet Together in Europe, Reforming Juvenile Justice*, (eds. Junger-Tas/ Dünkel), Springer, 2008; 165-182.

<sup>4</sup> Lauwert K, Aertsen I, „*European Forum for Victim-Offender Mediation and Restorative Justice*“, 2001. Leuven.

<sup>5</sup> Jovanovska A, Master's thesis „*Mediation procedure in criminal matters with special focus on the area of the Court of Appeal - Bitola*“, University st.Climent Ohridski Bitola, Faculty of Law Kichevo, DS Bitola 2018. p. 16.

<sup>6</sup> Lazetic-Buzarovska G, Nanev L & Kosevaliska O, „*Restorative justice towards children*“, Macedonian journal for criminal law and criminology. 2008; 1 (1): 1-24.

counties. Many European countries implemented mediation in criminal matters many years ago, i.e. in Norway in the early 1980's<sup>7</sup>, in Germany in the mid 1980's<sup>8</sup>, in Sweden in the end of the 1980's<sup>9</sup>, in England in the 1980's<sup>10</sup> and so on. And not only European countries but all around the world there are now over 300 mediation programs for victims and offenders in the U.S. and Canada and about 500 in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand.<sup>11</sup>

## **2. Mediation in criminal matters in the Republic of Macedonia**

The laws for this kind of mediation were implemented in the Criminal Procedure Law and in the Child Justice Law. The rules and the conditions about when and how mediation in criminal matters can be used are regulated in the Criminal Procedure Law, stating that only cases that are prosecuted by private lawsuit which are cases for whom the penalty is predicted to be fine or imprisonment from 3 Months to 3 years are possible to be resolved by mediation.<sup>12</sup> This excludes the prosecutors to be involved in directing the criminals, offenders and victims into mediation. That leaves judges, attorneys and police officers the only ones to have the authority to let the offenders and victims know about the possibility of mediation, and direct them to that procedure for resolving their criminal matter. The judges must have the ability to recognize the criminal cases that are suitable to be resolved through mediation, so when they face those kinds of cases they are obliged to offer and direct the involved parties to solve their dispute through mediation. This is predicted to be on the preparatory hearing, on

the hearing for reconciliation, which is held before the main hearing is to be scheduled. Both sides have to be consent to enter the mediation process and the whole process must be completed in no more than 45 days. If the mediation is not successful, it will proceed exactly where it was stopped before the start of mediation process. If it is successful it ends with their mutual agreement made at the mediator's presence in the mediation process.

The laws for the conditions that need to be fulfilled for the mediation in criminal matters to be possible are regulated in the Child Justice Law. Here it is stated that at mediation can be directed only the victim and the child-offender who made felony for which the Law predicts fine as punishment or imprisonment for no more than 5 years.<sup>13</sup> Here not only the judges, attorneys and police officials can direct the parties to mediation, but also the prosecutors. For a felony against the sexual freedom, sexual morality and gender-based forms of violence on females mediation is excluded.<sup>14</sup>

So, we can establish that in the Republic of Macedonia the laws for mediation in criminal matters are already implemented and the procedure is regulated. But, what we don't know is do we have this kind of practice? Do the judges follow this law and asks the parties to settle their dispute in mediation procedure before continuing the criminal procedure in the court? Do the judges trust that we have capable mediators for solving criminal matters and direct the victims and offenders in mediation procedure? Do the prosecutors direct the victims and the children-offenders to mediation? Are there enough mediators to cover the municipalities of the area that covers

<sup>7</sup>Nylund A, LL.D., „Restorative justice and victim-offender mediation in Norway”, 2007. University of Tromsø

<sup>8</sup>PĂROȘANU A, „Mediation in penal matters for juveniles in Germany”, Department of Criminology, University of Greifswald, 2008. Germany, pg 24.

<sup>9</sup><http://www.justicereparatrice.org/mount/www.restorativejustice.org/editions/2006/august06/vomswe den>

<sup>10</sup> Miers D., Semenjuk M. (2005) Victim-Offender Mediation in England and Wales. In: Mestitz A., Ghetti S. (eds) Victim-Offender Mediation with Youth Offenders in Europe. Springer, Dordrecht

<sup>11</sup> Marty P, Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders? VORP. Retrieved from <http://www.vorp.com/articles/crime.html>

<sup>12</sup> The Criminal Procedure Law, Official paper of RM no.150/2010

<sup>13</sup> Law for Justice for Children, Official paper of RM no.148/2013

<sup>14</sup> Mediation from aspect of the Law of Justice for Children (2016). Retrieved from <http://www.jpacademy.gov.mk/>

the Court of Appeal in Bitola? These are unanswered questions whose answer may give us a view of where we stand with the real implementation of mediation in criminal matters in practice. This is why we made this research, to get these important answers.

### 3. Materials and Methods

#### 3.1 The Research for the Mediation in criminal matters in the Court of Appeal - Bitola area

In the area of the Court of Appeal in Bitola there are 6 Municipalities. They are: Bitola, Prilep, Krushevo, Resen, Ohrid and Struga. In order to get the answers to above mentioned questions we made a research. First we established our target group. In the interest for this research we targeted the judges of criminal matters in the Primary courts of all 6 municipalities, the prosecutors who are working with children offenders and registered mediators who are working with criminal matters. Then we made questionnaires for these target groups with questions who had offered answers. The judges and the prosecutors had to answer the following questions: *"Have you ever suggested to victims and offenders to solve their dispute through mediation?"*, *"Do you trust that we have a well trained mediators?"* and *"Do you believe that mediation in criminal matters can bring positive results of any kind if some disputes are resolved using mediation?"*. The mediators had to answer the following questions: *"Do you think that mediators need more training to perfect their skills?"*, *"Have you ever performed mediation in criminal matters (if yes, how many)?"* and *"When parties are coming to mediation, most often who directed them to mediation?"*

We conducted these surveys in all 6 Primary courts and Primary Public Prosecution and we had answer from almost of them. As for the mediators, we used the internet site of the Chamber of Mediators to find the registered mediators in the area of interest for our research. We got very poor results because in this particular area there was only one registered mediator with a license, only in municipalities of Struga and Ohrid. We contacted the Ministry of Justice and the Chamber of Mediators for information and we found out that before 2014 when the new Mediation Law was starting to be in use, there were 165 registered mediators who were

functioning across the state. The reason for such a big number of mediators to stop working was that with the old Mediation Law for one to be a mediator had to fulfill the conditions to be registered as mediator and to be written in the Chamber of Mediators as a mediator. Later, with the new Mediation Law there were changes made and asked the mediators to pass another exam for getting the mediator license. Many of the mediators were unsatisfied with such a demand and did not undertake this exam, so they lost their right to work as mediators because they had no license. So, for that matter we decided to extend our research not only to the mediators in this particular area, but also on the area of the whole Republic of Macedonia. In the time of the research, which was made in the second half of the year 2017, there were only 27 registered and licensed mediators in Macedonia in general, most of them in Skopje and some in Ohrid, Struga, Tetovo, Veles, Shtip and Kavadarci. We got answers from 15 mediators.

### 4. Results

#### 4.1 Results from Bitola

In the Primary Court of Bitola are 5 judges who are working in criminal matters and we got answers from all of them.

In the Primary Public Prosecution in Bitola we conducted the survey taking opinions from 2 of the Prosecutors who are working with children.

There were no licensed mediators in Bitola, but we conducted the survey with mediators who were working in the period before 2014.

In Bitola we got the following results:

Four of the judges answered positively that they do suggest the mediation as a solution to victims and offenders in all the cases they have and that are suitable for mediation. One of the judges answered that believes that we have a capable mediators, one answered that we do not have capable mediators and 3 of the judges answered that they do not know if the mediators are well trained and capable to solve the criminal disputes with mediation. And on the last question all of the judges answered that they believe that the mediation can bring positive results when some criminal disputes are solved through mediation.

The prosecutors answered that they never suggest mediation to the victims and to the children-offenders. They also answered that they do not believe that we have a well trained and capable mediators. And on the last question they answered that they believe that mediation can bring positive results.

All mediators answered that they do need more trainings to help them master the mediation in criminal matters, that they never had been asked to start mediation in criminal matter and that in civil matter the parties are coming to mediation sent by a judge or attorney.

#### **4.2 Results from Prilep**

In the Primary Court of Prilep are 3 judges who are working in criminal matters and we got answers from all of them.

In the Primary Public Prosecution in Bitola we conducted the survey taking an opinion from 1 of the Prosecutors who are working with children.

There were no licensed mediators in Prilep, but we conducted the survey with mediators who were working in the period before 2014.

In Prilep we got the following results:

Two of the judges answered positively that they do suggest the mediation as a solution to victims and offenders in all the cases they have and that are suitable for mediation and one that never suggests mediation. Two of the judges answered that they believe that we have a capable mediators and 1 of the judges answered that he do not know if the mediators are well trained and capable to solve the criminal disputes with mediation. And on the last question all of the judges answered that they believe that the mediation can bring positive results when some criminal disputes are solved through mediation.

The prosecutor answered that they never suggest mediation to the victims and to the children-offenders. He also answered that he believes that we have a well trained and capable mediators. And on the last question he answered that mediation can bring positive results.

Mediators answered that they do need more trainings to help them master the mediation in criminal matters and that they never had been asked to start mediation in criminal matter. In

civil matter, most often the parties are coming to mediation sent by a judge or attorney.

#### **4.3 Results from Krusevo**

In the Primary Court of Krushevo is one judge who is working in criminal matters and we got answers from him.

The Primary Public Prosecution in Prilep has jurisdiction over Krushevo because in Krushevo as a small municipality there is no Prosecution. So the results we got from the Prosecution in Prilep applies to Krushevo also.

There were no licensed mediators in Krushevo and there were no registered mediators also.

In Krushevo we had the following results:

The judge answered negatively that he never suggests the mediation as a solution to victims and offenders. He answered that he has no knowledge if we have a capable mediators and on the last question answered that he has no knowledge if mediation can bring positive results when some criminal disputes are solved through mediation.

#### **4.4 Results from Resen**

In the Primary Court of Resen is one judge who is working in criminal matters and we contacted her but unfortunately she was not able to give us the answers but she gave us information that she never suggests mediation in criminal matters.

We had no answer from the Primary Public Prosecution in Resen.

There were no licensed mediators in Resen and there were no registered mediators also.

In Resen we had the following results:

The judge answered negatively that she never suggested mediation as a solution to victims and offenders.

#### **4.5 Results from Ohrid**

In the Primary Court of Ohrid are 3 judges who are working in criminal matters and we got answers from all of them.

In the Primary Public Prosecution in Ohrid we conducted the survey taking an opinions from

one of the Prosecutors who is working with children.

There was only one licensed mediator in Ohrid, but we conducted the survey with more mediators who were working in the period before 2014.

In Ohrid we got the following results:

All of the judges answered positively that they do suggest the mediation as a solution to victims and offenders in all the cases they have and that are suitable for mediation. All the judges answered that they do not know if the mediators are well trained and capable to solve the criminal disputes with mediation. On the last question, 2 of the judges answered that they believe that the mediation can bring positive results when some criminal disputes are solved through mediation and one that it cannot bring positive results.

The prosecutor answered that they never suggest mediation to the victims and to the children-offenders and that they do not know if we have a well trained and capable mediators. On the last question the prosecutor answered that mediation can bring positive results.

All mediators answered that they do need more trainings to help them master the mediation in criminal matters, they never had been asked to start mediation in criminal matter and that in civil matter most often the parties are coming to mediation sent by a judge or attorney.

#### 4.6 Results from Struga

In the Primary Court of Struga are 2 judges who are working in criminal matters and we got answers from both of them.

In the Primary Public Prosecution in Struga we conducted the survey taking opinions from one of the Prosecutors who is working with children.

There was only one licensed mediator in Struga, but we conducted the survey with more mediators who were working in the period before 2014.

In Struga we got the following results:

One of the judges answered positively that suggests the mediation as a solution to victims and offenders in all the cases they have and that are suitable for mediation and one that never suggests mediation in criminal matters. Both of

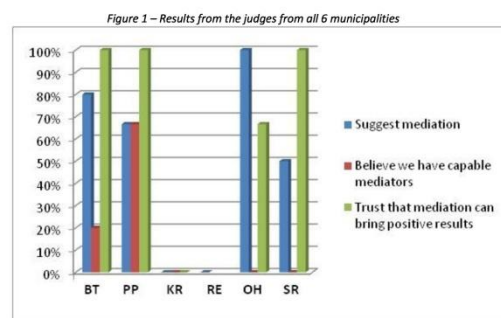
the judges answered that they do not believe that the mediators are well trained and capable to solve the criminal disputes with mediation. On the last question, both of the judges answered that they believe that the mediation can bring positive results when some criminal disputes are solved through mediation.

The prosecutor answered that they never suggest mediation to the victims and to the children-offenders and that they do not know if we have a well trained and capable mediators. On the last question the prosecutor answered that mediation can bring positive results.

All mediators answered that they do need more trainings to help them master the mediation in criminal matters, they never had been asked to start mediation in criminal matter and that in civil matter most often the parties are coming to mediation sent by a judge or attorney.

#### 4.7 The results from all 6 municipalities

Since we got the answers from all our targeted subjects, we can now sublime and represent them in a diagram so we can clearly see the results in graphic view. In Figure 1 we can see the result from the Judges from all 6 municipalities (BT-Bitola, PP-Prilep, KR-Krushevo, RE-Resen, OH-Ohrid, SR-Struga) presented in diagram.

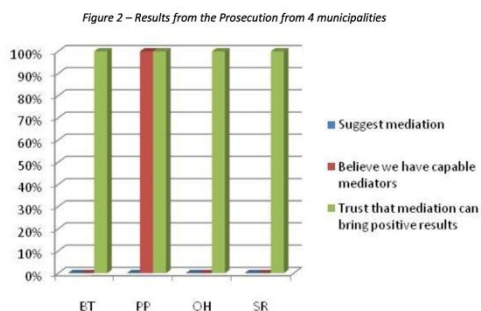


We can clearly see that the judges from Ohrid are all suggesting mediation in criminal matters to victims and offenders, most judges from Bitola and Prilep are suggesting the mediation, judges in Struga 50 % and in Krushevo and Resen none.

Judges in Prilep mostly believe that we have well trained and capable mediators for solving disputes in criminal matters and smaller percentage in Bitola but none in the other municipalities.

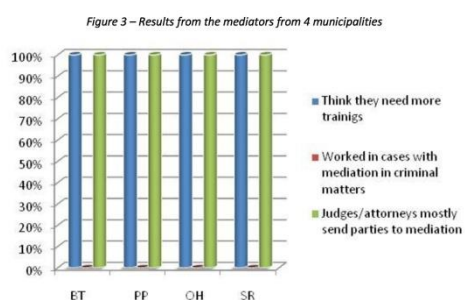
In almost all municipalities all or most of the judges trust that mediation can bring positive results, except in Krushevo. For Resen we had no result.

In Figure 2 are the results from the prosecutors from 4 municipalities, having in mind that the Prosecution in Prilep is with jurisdiction for Krushevo and that we had no answer from the Prosecution from Resen (BT-Bitola, PP-Prilep, OH-Ohrid, SR-Struga).



In Figure 2 we can see that there is no prosecution that is suggesting mediation to victims and children offenders. Only the prosecution of Prilep trusts in the capability in the mediators for solving disputed in criminal matters. All the prosecutions trust that mediation can bring positive results.

In Figure 3, are shown results from the mediators from 4 municipalities (BT-Bitola, PP-Prilep, OH-Ohrid, SR-Struga) in which there were mediators registered by the old Mediation Law or licensed by the new Mediation Law.



By viewing Figure 3 we can see that none of the mediators had the opportunity to work on solving a dispute of criminal matter so far and all of them think that there must have more trainings provided for this type of mediation. All of mediators also said that in their praxis in civil matters in most cases the judges or attorneys directed the parties to mediation.

## 5. Discussion

When analyzing the results that we got, we can see that the judges mostly suggest the mediation in criminal matters. They believe that mediation can bring good results in our society and something has to be done for this kind of mediation to start in praxis. From the results gotten from the mediators we can see that mediation in criminal matters in this area is nowhere to be found. No one from the mediators who were surveyed in this research had the possibility to work this kind of mediation. As we said in the begging of this manuscript, we interviewed not only the mediators from the targeted area but also all of mediators from Macedonia. The result was the same. None of the questioned mediators had worked in mediation in criminal matters. Even if the judges are suggesting dispute solving to the parties they never go to mediation. This may be an indicator that the mediation in criminal matters is not well known to people in general. It is a fact that there are very little or none at all mediators in this area. The prosecutors never suggest mediation to the victims and to children offenders and they believe that mediation can bring positive results. So the problem must be in the system. Even if the mediation in criminal matters is predicted and implemented in the Macedonian legislation, it still cannot be implemented successfully in praxis. This shows that there is a problem in between. Prosecutions were talking about unregulated expenses for the mediation process. They said that the prosecution cannot afford to pay for mediation. Legislation must regulate this matter in order to be functional. Judges were talking about not having trust in mediators that they will successfully resolve the criminal disputes, so if the dispute is not solved in mediation process it goes back to court and that brings extension of time for resolving the case which brings negative points to the judges. They also mentioned the expenses. Mediation must cost less than court expenses so it can be attractive. People should also be familiar with all the benefits from mediation. There are many issues that needs to be worked on so the mediation in criminal matters to be functional. With this research we can conclude that the mediation in criminal matters is not functioning on this area at all, the judges are willing to give this kind of mediation a chance, the prosecution is not willing at all, there are very few or no mediators on this area

for criminal matters but having in mind that there are no quires for this kind of mediation this lack of mediators on the area is not visible. The problems are more than obvious that exist and they are keeping mediation at low level with no possibility to start to function, so it is of great significance those problems to be localized and worked on.

## 6. Conclusion

The results that we got with this research are of great value to the legal system. We got the results that showed that mediation in criminal matters is implemented in the laws in Macedonia, but it has no practice at all especially in the researched area. These results are of big importance because they are an indicator about the fact that mediation in criminal matters is as if does not exist as an option. This triggers many questions that need to be answered. Future researches in this subject can give us more and more answers about why mediation in criminal matters is not yet successful in Macedonia. This is a subject that it is very little researched and it is necessary to make more researches on this topic so we can find where the obstacle lies. When we find the obstacles, we can suggest solutions and we can help mediation to start to develop in Macedonia as it is functional in many developed countries. In those countries mediation in criminal matters is practiced for many years and it is known that it brings many positive results not only in the field of easing the work of the courts, but also to prevent the offenders to commit similar crimes again and it helps those offenders to re-socialize and continue their lives without being labeled as criminals. Victims can also benefit from mediation because they can more easily put end to their suffering and fear of re-victimization. The society has also the benefit because the number of repetitive criminals is minimized. All to all, mediation in criminal matters is known to bring many positive results which is why legislations in many countries throughout the world are implementing it and making it functional in practice. Macedonia is also trying to make mediation in criminal matters to break through but it still has difficulties. With this research we have concluded that legally mediation is predicted to be functional in the system because it is implemented in the Criminal Law, in the Mediation Law and in the Law for Justice for Children. Yet, in practice the results are zero. Mostly the judges are recommending it to the victims and to the offenders but they do not accept. This may be an

indicator that people in general have no idea about mediation and what benefits can bring. Maybe a research about how much are the people in Macedonia introduced with mediation in criminal matters can show us if this is a field that the Ministry of Justice has to work on. Prosecutors' indifference about this kind of mediation is visible from the results that no one from the prosecution offers the children-offenders and victims mediation, mostly because of the expenses. This is an indicator that the Ministry of Justice should work on finding a way to define the expenses about mediation not just in paper but also in practice. Mediators are in need of more training in this particular area, so the Chamber of Mediators should find a way to promote mediation and to organize more training. This research is a pioneer in this area and it should stimulate other researchers to work on this topic bringing more results on this subject which can help mediation in criminal matters to function in practice in Macedonia.

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