

NATIONAL CONVENTION ON THE EU INTEGRATION

Working Group I (Judiciary and Fundamental Rights)

Session II: "Alternative Dispute Resolutions"

19 January 2016

Recent Developments:

Mediation is an essential service to support the judiciary during its activity. Given that in the recent years Albania has infringed the Article 6 of European Convention on Human Rights, on excessive length of procedures, an awareness campaign about mediation should be on focus and an aim for the authorities. The mediation service in Albania is relatively young and the level of credibility and trust among the citizens is not high enough yet.

National Chamber of Mediators is legally known as an institution since 2013. This body has an important public function and its activity should be examined from the institutions of public administration provided in the law. It is crucial to mention that the mediation service is offered exclusively only by this institution. One of the principles of National Chamber of Mediators is the "autonomy", which implies that this organism has its own discretion to adopt decisions, regulations for its activity and it is able to auto-financing. This service provides efficient, quick, not very formal and bureaucratic and lower costs for the citizens. Furthermore, the mediators are not necessarily lawyers in their profession, making it easier that for technical cases a mediator of another field can be hired, unless they are registered as mediators.

Problems and Recommendations:

- **Increase the awareness regarding the inter-institutional cooperation and mediation**

The informative and awareness campaigns should be intensified to provide the relevant information about mediation. This will help as well as in the improvement of the inter-institutional cooperation. Providing the appropriate information is required to make people understand that they have other choices when it comes in resolving contradictions or disputes. The main elements to be fulfilled are as followed:

- a) The designation of **an informative campaign in which media will be involved** and the target groups are identified. The close cooperation with the audiovisual media and the press is important. During the process, although media shall respect the rules and regulations which cover the mediation. A qualitative promotion of mediation increases the positive opinion of the citizens about the mediation as a good solution for their disputes. Publishing the training tools such as curricula, brochures or other informative materials can boost the information and awareness level of the public opinion.
- b) **Improvement of cooperation between institutions** about the procedures and mechanisms of reference, based on best practices by other countries more advanced in this direction.

- **Legal Framework Consolidation**

The main goal of this component is the identification of gaps in Albanian current legislation and how to approximate it with the EU Acquis. The promotion of Mediation as a procedure is essential because only in this way it can be provided the free access of citizens into the judicial system. The harmonisation of all laws and Albanian codes such as: Civil Code or the Code of Family is also important. In addition the further progress of mediation is a requisite for the Justice Reform in itself.

- a) **Implementation of Law no. 10385/2011 it is not completed and successful.** The law is a mere translation of Directive 2008/52/EC "*On certain aspects of mediation in civil and commercial matters*" and does not specifically analyse and takes into consideration the practice of mediation in the Albanian context. Even though the efforts to strengthen this process have been constant, yet an effective implementation of mediation in Albania is still lacking.
- b) **Law no. 10385/2011 amended is not approximated** and in full harmonisation with the **other part of Albanian legal framework**, most significantly compared to Codes, in which mediation has a small role. As a consequence the judicial practice is limited when it comes in implementing the institute of mediation.
 - **Training of the actors involved on the mediation process.** Training and qualifications are essential in boosting the professional capacities and skills, as well as increasing the level of awareness about the mediation. During this process the financial support is fundamental, due to the high level of cost and the amount of time that will be spent during the trainings and qualification courses. This procedure will facilitate the specialization in different fields for the trained subjects:
 - **Mediators and trainers of mediation**

- **Judges, other clerks of judicial system or representatives of legal assistance offices.** In most of the cases even these subjects lack the relevant information on mediation, and they do not have the necessary capabilities and knowledge about the procedures and advantages of mediation. This makes difficult to inform and orientate the citizens about mediation and how to use it to solve the disputes.
 - **State Police.** It is an important factor on giving the relevant information about the mediation as a solution for several disputes between citizens. State Police is the first element that is in direct contact with the citizens when there is a dispute, so that's why it is important for the police to give the right information about mediation as a resolution procedure.
 - **Other experts** such as sociologists, psychologists, business operators, public administration employees etc.
 - Establishing **an electronic database** in which all the mediators will be registered, including their contact information and the cases they have solved or are on the process. **This will improve the work coordination and will make possible the evaluation of achievements or setbacks during the NCM activity.**
- **Courts** have not been really active when it comes on inviting mediators for dispute resolutions, especially when the cases have a family or property feature. The courts do not inform the subjects to solve their disputes by using mediation. This should be an obligatory norm during the judicial procedure.
 - **A comprehensive involvement of civil society and different NGO-s in the mediation sector.**
 - Several NGO-s have the potential to offer new mediators which would improve the quality of the mediation process, as well as it will increase the number of mediators.
 - To lower the costs and expenses of state institutions and for an effective performance during the trainings, consultation and different workshops the NGO-s shall be taken into the consideration as partners in supporting the qualification process of mediators and consolidation of National Chamber of Mediators.
 - Civil society with its own expertise should be part of the amendment procedure of the legal framework on mediation, including its mechanisms, activities and other functions.

- NGO-s have higher incentives to offer legal services for free, having a positive impact on the increased number of citizens which choose the mediation as the best way to solve their contradictions.

National Chamber of Mediation Strengthening. During the two- year activity of NCM are assessed some obstacles and issues that do not allow the establishment of a consolidated Mediation Chamber such as:

- There is no a **consolidated and well defined budget** of NCM
- Sometimes **the courts of different districts** do not cooperate with the Chamber and they do not have signed an agreement of partnership. One of this courts is the Berat District Court.
- **Consolidation of National Strategy Framework**, in which the structure of Chamber is provided, and all the institutional framework is included under one umbrella. Until now the first session is accomplished, and the second one is anticipated to begin in April 2016.
- **Adoption of Standardised Documentation** (a process that will start on a second momentum)
- **Increase of monitoring and supervising capacity of NCM**

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