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Ivaylo Staykov*

Ethics in the activities of the mediator – the legal framework in the Republic of Bulgaria

The scientific study analyzes the provisions of the Bulgarian Mediation Act of 2004 and the Ordinance adopted in 2007 by the Minister of Justice on the procedural and ethical rules governing mediator's conduct. The relevant legal conclusions are made regarding the ethical rules of conduct of the mediator during and after the completion of the mediation procedure, as well as some proposals de lege ferenda.

Keywords: *mediation, mediator, ethical rules, Code of ethics, legal framework, Bulgarian law*

1. Introduction

At the end of 2004, the Mediation Act was adopted (promulgated, State Gazette, Issue 110 of 2004, as amended and supplemented). It is a law on the organization and procedure of mediation, which regulates the matters related to mediation as an alternative out-of-court dispute resolution method, as well as the mediation procedure itself (see Article 1(1)). Article 2 of the law defines mediation (legal definition) as a voluntary and confidential procedure for out-of-court dispute resolution in which a third person – a mediator – assists the disputing parties in reaching an agreement. Pursuant to the statutory delegation under Article 8(4), second sentence of the Act, the Minister of Justice adopted Ordinance No. 2 of 15 March 2007 on the conditions and procedures for approving organisations that train mediators; the requirements for mediator training; the procedures for the entering, de-registering, and removal of mediators from the Unified Register of Mediators and on the procedural and ethical rules governing mediator's conduct (promulgated, State Gazette, Issue 26 of 2007, as amended). Hereinafter, this bylaw will be shirtly referred to as the Ordinance of the Minister of Justice.

Chapter Two and other provisions of the Mediation Act set out the principles of mediation. These are legally enshrined basic guiding principles that convey the most important concepts on which the legal framework of mediation is built. They largely reflect an emanation of the very essence of the mediation procedure and form part of the regulatory framework of this out-of-court method of dispute resolution[1].

The procedural and ethical rules governing the conduct of the mediator, which aim to safeguard their independence, neutrality and impartiality, and thereby ensuring an equal and fair mediation process, are explicitly set out in Chapter IV of the Ordinance of the Minister of Justice. In addition to

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* Associate Professor, D.Sc. (Legal sciences), New Bulgarian University (Sofia, Bulgaria), Department of Law. ORCID: (0000-0002-0994-0280).

1 See in detail *Стайков Ив.,* Принципи на медиацията. – Правен преглед, 2008, № 1, 91-100.

their nature as ethical conduct rules, they also constitute legal obligations of the mediator, as they are regulated in legal norms.

2. European Code of Conduct for Mediators and European Code of Conduct for Mediation Providers

A European Code of Conduct for Mediators (EECM) has been adopted within the framework of the Council of Europe and endorsed by the European Union. It applies to all types of mediation in civil and commercial matters (§ 1, recital II of the preamble).

This act is not normative in nature; however, it largely reiterates the normative requirements set out in the relevant legislative acts of the member states of the Council of Europe and the European Union. Paragraph 1 of the preamble to the Code explicitly states that it establishes a set of principles that mediators can voluntarily decide to commit themselves, under their own responsibility. Organizations that provide mediation services may also adopt the Code by requiring their mediators to adhere to it. These organizations can also inform others about the measures they take to promote compliance with the Code, such as through training, evaluations and monitoring (§ 2 of the preamble).

The Code of ethics sets out requirements such as: the mediator must be competent and continuously update their theoretical and practical skills in mediation; maintain independence, objectivity and impartiality throughout the mediation procedure; ensure the fairness of the procedure; clarify the mode of remuneration for the mediator's activities and establish the determination of their remuneration.

Paragraph 28 of the Basic guidelines for improving the implementation of the existing Recommendation (99)19 on mediation in criminal matters, adopted by the European Commission for the Efficiency of Justice of the Council of Europe (Strasbourg, 7 December 2007, CEPEJ (2007) 13PROV2) states that, given the growing recognition of the EECM in civil and commercial mediation throughout Europe, it is recommended to draw up a special Code of Conduct, tailored to specifics of mediation in criminal cases. This strong endorsement clearly demonstrates the importance of this code in the effective unctioning of mediation as an alternative, out-of-court dispute resolution method.

In some member states of the Council of Europe and the European Union, practical guides and codes of good conduct for mediators have been adopted (Austria, Great Britain, Hungary, Romania). However, such self-regulation practices for mediators are not yet widespread across all EU member states. Directive 2008/52/EC of the European Parliament and of the Council of the European Union, on certain aspects of mediation in civil and commercial matters, which entered into force on 21 May 2008 (see Art. 4, item 1), recommends that member states adopt appropriate legislative measures to ensure consistency in the concepts, scope, and fundamental principles of mediation (such as confidentiality). It also calls for the development and implementation of voluntary codes of conduct for mediators, as well as other effective mechanisms for overseeing the quality of mediation services. The Directive further stipulates that mediators must be informed about the existence of the EECM, which must be made publicly accessible online (§ 17, in fine of the preamble).

The EECM states that organisations providing mediation services may wish to develop more detailed codes adapted to the specific contexts or the types of mediation services they offer, as well as to specific areas such as family mediation or consumer mediation (§ 5 of the preamble).

The 31st plenary session of the European Commission for the Efficiency of Justice of the Council of Europe (Strasbourg, 3-4 December 2018, CEPEJ (2018) 24) adopted the European Code of Conduct for Mediation Providers. As stated in the preamble to the Code, it is coherent and may be used in conjuction with the European Code of Conduct for Mediators developed in 2004 under the auspices of the European Union, as well as the Council of Europe and the European Commission for the Efficiency of Justice reccommendations, guidelines and other instruments on mediation and alternative dispute resolution methods.

According to the definition in Art. 1 of the Code "Mediation Provider" means any public or private entity (including court-related mediation schemes) which manages or administers a mediation process conducted by a third party neutral mediator regardless of their denomination or profession, who provides service under its auspicies in assisting parties to amicably resolve their dispute.

Article 4 of the Code, titled "Rules and ethics of mediation", states that mediation providers should ensure that they apply the European Code of Conduct for Mediators as a minimum standard in the provision of mediation services. Mediation providers shall abide by the rules and procedures governing their performance and the provision of mediation services, as established by national legislation.

Other provisions of the European Code of Conduct for Mediation Providers also include rules that, to varying degrees, are relevant to the ethical conduct of the mediator.

Like the 2004 European Code of Ethics for Mediators, the 2018 European Code of Conduct for Mediation Providers is not normative in nature. The Legislators of the Council of Europe member states may choose to incorporate the rules of this Code into the relevant national mediation legislation as a basic standard for mediation providers (see § 5 of the preamble).

3. Legal Framework in Current Bulgarian Law

As the mediator is a central figure in the mediation procedure, the procedural and ethical rules for their conduct actually are principles of mediation, shaping the legal characteristics of this alternative dispute resolution method[2]. In carrying out their duties, the mediator is guided by the principles of confidentiality of the information received, neutrality, and impartiality in their interactions with the disputing parties, as well as the voluntariness and equality of the parties throughout the mediation procedure.

a. Mediation is a voluntary procedure, as it begins with mutual consent of the parties, can be terminated at any time by either party and aims to reach a mutually acceptable agreement, the content of which is determined entirely by the parties and cannot be imposed by the mediator. This is an

[2] See in detail *Стайков Ив.,* Медиация по трудови спорове. София: Издателство „Авангард Прима", 2009, 241 с.; *Борисов Б.,* Медиацията в българския граждански процес. *Търново В.:* УИ „Св. св. Кирил и Методий", 2018, 242.

important and fundamental principle that manifests itself from the very beginning to the end of the mediation procedure, taking different dimensions at each stage.

b. Another essential principle and specific feature of mediation is the equality of the parties to the dispute. The principle of equality means that the parties have equal opportunities to participate in the mediation procedure at all stages of its development (Art. 5, first sentence, of the Mediation Act). This principle also has another crucial dimension, related to the legal status of the mediator as a participant in the procedure. Through their conduct during the procedure, the mediator must ensure equality between the disputing parties. In line with this principle, several essential obligations arise for the mediator, most important of all is the obligation of independence, neutrality and impartiality. This is also explicitly stated in principle IV, item 2, clause first of Recommendation No. R (2002) 10 of 18.09.2002 of the Committee of Ministers of the Council of Europe on mediation in civil matters – "mediators should act independently and impartially and ensure respect for equality during the mediation process".

The mediator is neither a judge nor an arbitrator in the dispute. He is a third independent and neutral person in relation to the disputing parties. The mediator's independence and neutrality are most apparent when they manage to remain impartial in relation to the disputing parties and their dispute. The mediator must not demonstrate bias towards any of the parties and must not impose a decision on the dispute (Art. 6, para. 1 of the Mediation Act). This legal position is also fully consistent with principle IV, item 2, second sentence of Recommendation No. R (2002) 10 of 2002, which states that the mediator does not have the right to impose a resolution of the dispute on the parties. The mediator is obliged to create a conducive environment for the parties to the dispute to communicate freely in order for them to improve their relations and reach an agreement (Art. 25 of the Ordinance of the Minister of Justice).

The mediator is obliged to take into account and respect the opinion and requests of each of the parties to the dispute (Art. 10, para. 2 of the Mediation Act and Art. 28 of the Ordinance of the Minister of Justice). None of the participants in the procedure holds a dominant position over the others. A kind of continuation of this idea is the right of the mediator to demand respect from each of the disputing parties. Throughout the procedure, the mediator must do his/her best to ensure that the parties do not feel neglected when discussing the disputed issues. The mediator is obliged not to exert pressure on the parties, as his role is not to judge or arbitrate, but to create an environment conducive to free communication, based on mutual respect for their interests. He can only assist the parties in identifying mutually acceptable options for resolving their dispute and help them reach an agreement that satisfies both of them. For the same reason, he does not have the right to provide legal advice and express an opinion on the dispute (Art. 10, para. 1 of the Mediation Act and Art. 27 of the Ordinance of the Minister of Justice)[3].

[3] Here a very important difference between the mediation procedure and the civil court claim proceeding is revealed. With the adoption of the new Code of Civil Procedure (in force from 01.03.2008), the legislator restored the ex officio principle (principle of judicial activity) as one of the basic principles of the civil process. The ex officio principle, with this content, is inapplicable and inadmissible in the mediation procedure.

The mediator has both the right and the obligation to withdraw and terminate the mediation if, based on his own judgment and ethical considerations, he believes that the procedure is not being conducted in a fair and equitable manner for both disputing parties (Art. 10, para. 3 of the Mediation Act). This is especially true if circumstances arise that cast doubt on the mediator's independence, impartiality, or neutrality. When the procedure is fair and equitable, it is both legal and ethical (see Art. 29 of the Ordinance of the Minister of Justice and Art. 3.2 of the EECM). The possibility for the mediator to withdraw, as provided by law, serves as an important legal guarantee for upholding and effectively applying this fundamental principle of mediation. In such cases, the mediation procedure is suspended under Art. 14, para. 1, item 3 of the Mediation Act, until the disputing parties select a new mediator.

Article 3.2 of the EECM states that the mediator must ensure that all parties have the opportunity to effectively participate in the procedure. The mediator must notify the disputing parties and may terminate the mediation if he considers that the continuation of the mediation procedure is unlikely to lead to a resolution of the dispute or if the agreement to be concluded appears to him to be unenforceable or illegal. Only by respecting the equal rights to participate in the procedure, the mediator may also hold separate meetings with them, which in certain cases are particularly important (Art. 13, para. 4 of the Mediation Act). The mediator holds separate meetings with each of the parties when the conversation between them stalls and there is a serious risk that the procedure will fail. Certain rules must be followed during these meetings. The duration and number of meetings with each party must be the same. The mediator is not permitted to share with the participants information obtained in individual meetings with the parties unless he has the explicit consent of the person who provided it (Art. 10, para. 4 of the Mediation Act).

c. The equality of the parties in a mediation procedure can only be ensured if it is conducted by an impartial mediator. Firstly, the mediator can accept to mediate, provided only he can remain neutral and impartial throughout his participation in the settlement of a given dispute (Art. 30, first sentence of the Ordinance of the Minister of Justice). This is an essential ethical rule of conduct for every mediator and he is obliged to withdraw from the procedure if he shows bias (Art. 10, para. 3 of the Mediation Act). The mediator is not impartial in cases where there are circumstances that could be perceived as a conflict of interest. Therefore, at the very beginning of the procedure – when h introduces himself to the parties, the mediator is obliged to disclose any circumstance that can be perceived as such and may subsequently lead to a conflict of interest (Article 31 of the Ordinance of the Minister of Justice). The obligation to disclose these circumstances also exists throughout the mediation procedure. A conflict of interest exists when the mediator has personal or business (professional) relationship with any of the parties, when there is any direct or indirect material, financial or other interest related to the outcome of the mediation, or when the mediator or a member of his organization has acted in a capacity other than that of a mediator, for the benefit of one of the parties to the dispute (lawyer, legal advisor, business partner, etc.) – see also Art. 2.1 of the EECM.

In the event of a conflict of interest, the mediator may proceed with the procedure only with the express consent of the parties. However, he can withdraw even if there is the slightest doubt about the impartiality of the procedure and considers that, under these circumstances, the mediation would not

proceed in a fair and equitable manner. In order to maintain impartiality during the procedure, the mediator must avoid behavior that would give reason to either of the parties to perceive it as sympathy or antipathy. He must refrain from and should not show prejudice and bias based on the personal qualities of the parties such as ethnic origin or sex, education, social and material status, sexual orientation and others, their past or their behavior during the procedure and other similar circumstances (Art. 30, second sentence of the Ordinance of the Minister of Justice). This is both an ethical rule and an explicit normative prohibition of discrimination of one party to the dispute against the other. This provision is a specific manifestation in the mediation procedure of the general prohibition of discrimination (direct and indirect) under Article 4 of the Protection from Discrimination Act of 2003 (in force from 01.01.2004)[4].

d. According to Article 7, para. 1, first sentence of the Mediation Act, the discussions related to the dispute are confidential. This is a key feature of the mediation procedure and it is no coincidence that it is provided for in Article 2 of the Mediation Act as well.

All international treaties on mediation also set out this important principle. Principle IV, item 3 of Recommendation No. R (2002) 10 of 2002 stated that the information about the mediation process is confidential and cannot be subsequently used, unless with the express consent of the parties or national legislation allows it.

Directive 2008/52/EC of the European Parliament and of the Council of the European Union of 2008, by stating that confidentiality in mediation proceedings is of particular importance, obliges Member States to provide in their national law for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent judicial proceedings or arbitration (paragraph 23 of the preamble). Article 7 of the Directive provides that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process. The Directive enables Member States to enact in their national legislation stricter measures to protect the confidentiality of mediation.

The confidentiality of mediation as a form of dispute resolution gives mediation an advantage over court proceedings. This is a key and fundamental difference between the mediation procedure

[4] See about this problem *Стайков Ив.,* Защита от дискриминация при наемане на работа. – В: Актуални проблеми на трудовото и осигурителното право. Том I. Сборник в памет на доц. Елисавета Христова. София: УИ „Св. Кл. Охридски“, 2004, 128-149; Понятие за дискриминация в трудовите отношения. – Правен преглед, 2005, № 1, 22-42; Забраната за дискриминация и задължението на работодателя да осигурява равни условия на труд (чл. 13, ал. 1 от Закона за защита срещу дискриминацията). – Правата на човека, 2005, № 4, 30-49; Национална правна уредба на забраната за дискриминация в трудовите отношения. – В: Scientific Researches of the Union of Scientists – Plovdiv. Series B. Natural Sciences and the Humanities, Vol. VI – Balkan Conference of Young Scientists, 16-18 June 2005. Plovdiv: Union of Scientists in Bulgaria – Plovdiv, 2006, 203-210; Защита от дискриминация при реализация на дисциплинарната отговорност. – В: Сборник трудове от Юбилейната научна конференция по повод 10 години от създаването на НВУ „Васил Левски“, 14-15 юни 2012 г. Том 5 – Научно направление „Социални, стопански и правни науки“. В. Търново: Издателски комплекс на НВУ „Васил Левски“, 2012, 163-170.

and judicial proceedings. Generally, no minutes are kept during meetings with a mediator. Therefore, when a mediator is replaced with another mediator at the request of the parties, the replaced mediator is obliged to provide his successor with information about the progress of the mediation procedure. However, this does not apply to information received during general and private meetings, unless the parties to the dispute have expressly agreed to this. Mediation sessions are not public (they are held behind closed doors) and generally, the presence of third parties is not allowed. Besides the parties to the dispute and the mediator, third parties may be invited to attend the meeting only if both disputing parties agree so. Article 7, para. 1, second sentence of the Mediation Act explicitly required that participants in the mediation procedure keep secret all circumstances, facts and documents that have become known to them during the procedure, i.e. this obligation refers all possible participants in the procedure.

This principle is the reason for the existence of another important obligation of the mediator – to keep professional secrecy regarding the information received during the procedure. This obligation is enshrined in Article 32 of the Ordinance of the Minister of Justice and in Article 4 of the EECM. The mediator is obliged to keep secret all circumstances, facts and documents that have been entrusted to him or have become known to him in the mediation procedure, including the fact that the mediation will take place or that it has already taken place. In addition, the mediator cannot communicate to the other participants in the procedure circumstances that concern only one of the parties to the dispute, without the express consent of the latter (Art. 10, para. 4 of the Mediation Act). He is also obliged to carefully store the documentation on the cases, taking the necessary measures to protect them from loss, theft, destruction, etc. The same obligation also applies to the mediator's assistants, as well as to the persons he trains. The mediator may not disclose the information he has obtained during the procedure, unless a special law or public order considerations oblige him to do so.

The mediator's obligation to keep professional secrecy continues indefinitely after the termination of his functions as a mediator (Art. 33 of the Ordinance of the Minister of Justice). This obligation goes beyond the specific mediation procedure itself and the legislation takes this into account. As an example, during an inspection or audit by a revenue authority under the Tax-insurance Procedure Code (in force from 2006), the mediator, as a third party, may refuse to provide written explanations regarding facts and circumstances that have come to his knowledge in relation to his activities as a mediator, as he is obliged by law to keep them as a professional secret (see Art. 58, para. 2 of the Tax-insurance Procedure Code). This is also provided for the obligation to testify, or the refusal to testify, in civil court proceeding. According to Article 166, para. 1, item 1, second sentence of the Civil Procedure Code, those who were mediators in the same pending legal dispute can refuse to give testimony. An exception to the confidential nature of mediation is also provided for in the cases given in Article 7, para. 3 of the Mediation Act.

In many European countries, generally, the mediator's obligation of confidentiality is almost absolute. This obligation is of a statutory nature (see the relevant legislation of Germany, Austria, Romania, Slovenia, Sweden, Great Britain). In some cases, after the mediation procedure is completed, the confidentiality obligation becomes relative for public interest reasons. The nature of the subject matter of the mediation – civil or criminal, is of importance for this as well. Here are some

examples from foreign legislations, where the mediator's obligation of confidentiality falls away and the law obliges him to perform certain actions: an obligation to submit a report on the outcome of the mediation to the judge/prosecutor in charge of the case (Germany, Austria, Hungary, Romania); an obligation to inform the judicial authorities if one of the parties fails to perform the final agreement (Sweden); an obligation to testify in court on a crime, attempted crime or preparation for a crime, when these acts are revealed during mediation (Slovenia, Great Britain, Germany).

e. According to Article 13, para. 1 of the Mediation Act, prior to commencing the substantive procedure, the mediator shall inform the parties of the nature of the mediation, the basic rules and principles to be applied in the procedure and its consequences. The mediator must fulfil the obligation to inform the parties at the beginning of the first meeting between him and the parties to the dispute. The mediator shall require the disputing parties to express their consent to participate in the procedure in writing or orally, after having established that they have understood the nature and consequences of the mediation. These obligations of the mediator are also mandated by Article 23 and Article 24 of the Ordinance of the Minister of Justice. The legislation ensures the parties' right to information about the nature of the mediation and their legal rights before they agree to act in the procedure and subsequently to be bound by an agreement reached through mediation. As the role and conduct of the mediator are critically important for the implementation of this principle, it is on him that the law imposes the obligation to inform the disputing parties. Such obligations are provided for in Article 3.1 of the EECM.

4. Good Faith in the Mediator's Activities

Article 9, para. 1 of the Mediation Act mandates that the mediator perform his activity in good faith, in compliance with the law, good morals, proceedings and ethic rules of behaviour of the mediator. The concept of "good faith" in law has two different meanings, both of which originate from Roman law[5].

First, there is the concept of ethical good faith. It serves as a standard for the diligent, honest and fair fulfilment of obligations according to customs, the reasonable man's standard of care and the requirements of the law. This form of good faith reflects social ethics in the performance of contractual and, more bradly, legal obligations. It can be traced back to the concept of "bona fides" in Roman law.

Second, there is the concept of legal good faith, which refers to the subjective belief that a particular claim, possession, behavior or similar act is due and legally valid. Article 9, para. 1 of the Mediation Act pertains to the ethical good faith. Acting in good faith means that the mediator must perform his rights and obligations in good faith, earnestly, honestly, diligently and conscientiously,

[5] See *Андреевv М.,* Римско частно право. 5. изд. София: ДИ „Наука и изкуство", 1975, 47, 119-120, 249-271 и др.; *Schermaier J. M.,* Bona fides in Roman contract law. – In: Good Faith in European Contract Law. Edited by Reinhard Zimmermann and Simon Whittaker, Cambridge University Press, 2000, 63-92; *Дождев Д.В.,* Добросовестность (bona fides) как правовой принцип. – В: Политико-правовые ценности: история и современность. Под. ред. В. С. Нерсесянца. Москва: Эдиториал УРСС, 2000, 96-128.

applying the standard of the care of reasonable man. The mediator must remain impartial, avoid showing bias toward any party, and refrain from imposing a resolution on the dispute. Throughout the mediation procedure, the mediator must preserve the independence inherent to the role and carry out his activities "in compliance with the law". This means to perform his obligations properly: stricltly, timely and in due quantity and quality.

Good morals require that the mediator show due respect to each party, safeguard their dignity and honor, and refrain from discriminating against either side. This understanding of the law is embedded in the mediator's obligation to take into consideration and to respect the view of each party to the dispute (Art. 10, para. 2 of the Mediation Act and Art. 28 of the Ordinance of the Minister of Justice). Another essential rule ensuring that the mediator adheres to good morals is that he must agree to mediate a given dispute only if he has the qualifications necessary to help him facilitate a successful mediation process. Therefore, from the outset, the mediator is obliged to clearly communicate to the disputing parties his qualifications, professional knowledge relevant skills, and his prior experience in mediating similar disputes. In line with this, Article 1.2 of the EECM states that the mediator must ensure that he has the appropriate background and competence to handle mediation in a given case before accepting the appointment. At the request of either party, he must disclose information regarding his background and professional experience. If the mediator lacks the necessary knowledge or skills or they are insufficient or if he lacks professional experience in resolving the given type of dispute, not only the unsuccessful outcome of the mediation seems largely predetermined, but the conflict between the parties is likely to exacerabate.

The mediator must accepts to handle the process only if he can ensure his independence, objectivity, impartiality and neutrality (Art. 9, para. 2 of the Mediation Act and Art. 30, first sentence of the Ordinance of the Minister of Justice). When introducing himself to the parties, the mediator must disclose all circumstances that can be seen as a conflict of interest (Art. 31 of the Ordinance of the Minister of Justice, as well as Art. 2 of the EECM). The existence of circumstances that could give rise to reasonable doubts about the mediator's independence, impartiality and neutrality constitutes valid ground for him to recuse himself and, accordingly, to be recused at the request of the parties.

5. Other Rights and Obligations of the Mediator in his Professional Activities

Finally, it is important to highlight some additional rights and obligations of the mediator established by the law, which although not directly linked to a specific mediation procedure, help outline the broader framework the mediator's professional conduct.

a. The mediator may promote his activity in an appropriate way, but is obliged to refrain from using means that give a false impression of the mediation (see Art. 35 of the Ordinance of the Minister of Justice). According to Article 1.4 of EECM mediators may promote their practice provided that they do so in a professional, truthful and dignified way. It is apparent that along with the rights confered, the legal framework also imposes certain legal obligations on the mediator.

b. According to Article 4, second sentence of the Mediation Act, mediators may form associations for the purpose of carrying out their activities. This provision further develops and specifies the constitutional right to freedom of association of the citizens (Art. 44, para. 1 of the

Constitution of the Republic of Bulgaria). Such associations of mediators aim to protect and promote their common professional interests and to support their activities (see Art. 12, para. 1 of the Constitution of the Republic of Bulgaria). These associations must be properly registered and carry out their activities in accordance with Non-Profit Legal Entities Act (in force from 01.01.2001). Importantly, the exercise of this constitutional right to associate must not result in any conflict of interest among mediators or harm the interests of individuals seeking professional mediation services or those already involved in an ongoing mediation procedure.

c. Every mediator, regardless of having undergone and successfully completed the necessary mediation training, holding the relevant certification and being listed in the unified register of mediators, is obligated to continuously improve his theoretical and practical qualifications in the field of mediation. This duty reflects and expands upon the mediator's fundamental responsibility to remain competent and well-informed about mediation procedures. The obligation for mediators to continuously update their theoretical and practical mediation skills is set out in Article 1.1 of the EECM. This obligation stems from the rules of ethics and good faith, as well as from the requirements for competitiveness in carrying out this responsible activity. Article 11a, para. 1 of the Ordinance of the Minister of Justice provides that mediators can periodically improve their knowledge by undergoing additional theoretical and practical training in specialized mediation. While the legal framework grants the mediator the right to improve his qualifications, it does not impose a legal obligation to do so. In my view, this situation should be reversed, and as a proposal de lege ferenda, the relevant provision should be amended to make such professional development mandatory.

6. Conclusion

Since the adoption of the Bulgarian Mediation Act 20 years ago, it has been amended several times. Two years ago, an unsuccessful attempt was made to introduce mandatory judicial mediation in certain types of disputes. The analysis of the mediator's activity has proven that the ethical aspects of this specific professional activity continue to be relevant and are a constant subject of scientific research.

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