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The Mediation in the Bulgarian and European Law, Bulgarian, European and International Civil Process

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Abstract: The article examines mediation as an alternative way of solving legal and non-legal disputes. Its regulation is in the MA and it is in line with Directive 2008/52 / EC. Ordinance № 2/2007 has implemented the European Code of Conduct for Mediators. Independence, neutrality and impartiality of the mediator is required by the act.

There are provisions in the CPC that encourage parties to use the mediation and resolve the dispute through it. As per Art. 140, para. 3 and Art. 374, para. 2 CPC the court may direct the parties at the open session, to mediation or other ways for arbitrarily settling the dispute. In the divorce process, the court is obliged to do so as well.

A mediator may be only a person, registered in the Unified Register of Mediators with the Minister of Justice. Persons, performing judicial functions in the judiciary system may not be engaged in mediation. The parties may participate in mediation with a lawyer or consult with other professionals. Mediators' associations have the role of coordination centers in relation to mediation.

When mediation is used during a pending litigation process, the commencement of mediation is a ground for the case to be stopped (as per Art. 15, par. 5 MA). During the mediation procedure, limitation does not run. An agreement on a legal dispute,

reached through mediation procedure, can be approved by the court and thus has the force of a court settlement (Art. 18 MA) and in relation with Art. 234 CPC) has the meaning of an enforced court decision including "res judicata" and executive power. The agreement, reached as a result of the mediation itself is not an enforceable ground. However, if it is concluded in writing with a notarization of the signatures, it could be used as a base for issuing of an order for immediate execution and a writ of execution (Art. 417, item 3 CPC).

The article examines the issues of the concluded in Bulgaria through mediation and approved by the court agreement and the application of Regulation 805/2004. Regulation 1215/2012; Regulation 2201/2003; The 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children; Regulation 4/2009; Regulation 650/2012. For agreements concluded through mediation in another non-EU country, the CODE OF PRIVATE INTERNATIONAL LAW (CPIL) applies. As per Art. 122 CPIL, the provisions of Art. 117 – 121 CPIL shall also apply to court settlements if the latter are concluded in a State where are considered as judicial decisions.

Keywords: Mediation; Mediator; Agreement, concluded through mediation; Court Agreement; Executive power

I. LEGISLATION. DEFINITIONS

1. The Mediation Act (MA) is the main law that regulates mediation as an alternative dispute resolution tool (Art. 1). In 2006 and 2011 MA was amended to comply with Directive 2008/52 regarding certain aspects of mediation in civil and commercial matters Art. 8 of the Preamble of the Directive states that it shall be applied only in mediation on cross-border disputes but the member states may apply the Directive in domestic disputes as well. Bulgarian law reasonable applied the Directive frame standards both for cross border and domestic disputes.

Important law concerning mediation is Regulation 2/2007 of the Ministry of Justice for the terms and procedure for approving organizations that train mediators; the requirements for training mediators; on the procedure for subscribing, unsubscribing and deletion of mediators by the Unified Register of Mediators and on Procedural and Code of conduct of the Mediator (Regulation 2/2007 MJ). The Minister of Justice has also approved Standards for Training of Mediators, Procedural and Ethical Rules for Conduct of Mediator, Unified Register of Mediators, and Rules for Supervising the Application of the Requirements for Mediation Training and the Supervision over the training providers as per Art. 2 of the Regulation 2/2007. A European Code of Conduct for Mediators has been established, setting out a set of principles that mediators can voluntarily commit to respect, on their own responsibility.

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2. MA, Art. 2 provides a legal definition of the mediation. It is a voluntary, confidential procedure for out of court dispute resolution where a third party-mediator assists the parties to reach an agreement. The goal is an agreement without the formalities of the courts, whereby to resolve their dispute having a present and future good relationship. As out of court ADR mediation is based on the principles of voluntariness and equal participation of the parties in the procedure. The Parties participate in mediation on their own will and they can withdraw from it at any time (MA, Art. 5). In mediation procedure all matters are dealt by agreement of the parties (MA, Art. 6(2)). Neutrality and impartiality of the Mediators is needed (MA, Art. 6(1); See also section IV, item 2).

The principle of informed consent is abided in the mediation. In mediation the parties shall be informed about mediation process and their rights in this procedure. Compliance with this rule is outlined in the major Code of Conduct for Mediators. When the court directs the parties to mediation (see section I, item 3. CRRA), this direction shall not be reduced to a mere formality.

Confidentiality is another principle of mediation (MA, Art. 7.) The debates arising from the dispute shall be confidential. The participants in the mediation procedures shall keep in secret all circumstances, facts and documents which became known to them with the curse of procedure. (see also section IV, item 3) Exceptions to the confidentiality of the mediation shall be allowed (MA, Art.7) in the cases: this is necessary for the needs of the penal proceedings or related to the protection of the public order; there is need to ensure protection of children interests or prevent impingement on the corporal or mental inviolability of a certain person or the disclosure of the contents of an agreement[1], achieved as a result from mediation, is necessary to enforce and perform the said agreement.

The Civil Procedure Code of 2007 has several provisions that encourage parties to use mediation to resolve their dispute. Both - in common civil cases (Art. 140(3)) and in commercial cases (Art. 374(2)) after the case preparation is over the court shall schedule a hearing for which the parties will be summoned and where the court will clarify: the issues disputed; the applicable law and the court may notify them of the draft of the report on the lawsuit, as well as to instruct them for a mediation procedure or of another way of amicable settlement of the dispute.

According to Art. 78(9) of the CCP, if the case is finalized by an agreement, half of the deposed State fee shall be refunded to the claimant.[2] Courts also have an obligation

1. This cannot be used to breach confidentiality.
2. The expenses for proceedings and for the agreement shall remain for the parties as were done, if not otherwise agreed

to try to refer the case to mediation.[3] The provision of Art. 78(9) is a good financial incentive for the use of mediation.

In the procedure on Matrimonial Lawsuits (CCP, Art. 321), in the first hearing *the court shall be obliged* to instruct the parties again towards mediation or another way of amicable settlement of the dispute. If the parties achieve consent for starting mediation or another way of amicable settlement of the dispute, the case shall be suspended. Each party may request that the proceedings be resumed within 6 months. If such a request is not made, the case shall be terminated. Where an agreement is reached and depending on its content, the lawsuit shall be either terminated or transferred into a procedure of divorce upon mutual consent. If the parties do not achieve consent on a procedure of mediation or of another way of amicable settlement of the dispute, hearing of the case shall be continued.[4]

The special Claim Procedure on Collective Claims provides that the court shall instruct the parties to conclude agreement and shall clarify to them the advantages of amicable settlement of the dispute. The court shall also approve the achieved agreement, reconciliation or another type of agreement for partial or full settlement of the dispute. If it does not contradict to the law and the common moral and if by the included in it measures the damaged interest may be defended in a sufficient degree. The agreement on the settlement of the dispute enters into force once the court has approved it (Art. 384 CCP).

3. There are specific rules concerning alternative dispute resolution in the Consumer Protection Act (CPA). They follow the standards approved with the Directive 2013/11 for alternative resolution of consumer disputes. Those standards apply both for trans-border and national disputes. Under Art. 161m the Consumer Protection Commission (CPC) informs consumers for their rights and obligation in offering and concluding contracts and *the possibilities for out-of-court resolution of consumer disputes. It also decides on motions and recommendations by consumers and consumer associations*.[5] Any agreement that is *against the rules of CPA concerning alternative dispute resolution* is a void, same is valid if it infringes the consumer interest or limits the responsibility of the business entity. The Minister of Economy shall create common and specialized reconciliation commissions for resolution of consumer disputes that meet the requirements of the law (Art. 182 CPA). The list of all approved bodies for alternative resolution of disputes is available at <https://webgate.ec.europa.eu/odr/

3. In a Resolution of the European Parliament of Sept. 9, 2011 concerning the application in the member-states of the Directive and its effect over mediation and its acceptance by courts, the EU Parliament stressed on the positive effects resulting of the financial incentives for using mediation in Bulgarian law as well as on the continuing interest in Bulgarian courts which led to 2/3 of cases referred to mediation being mediated and half of them being settled via mediation
4. However, through mediation the parties can reach an agreement under Art. 49 of the Family Code
5. The CPC encourages the business and its associations to inform consumers about its good practices codes and about the *possibilities of out-of-court resolution of their disputes*

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main/index.cfm?event=main.adr.show>. The main task of them is *to settle disputes between consumers and business entities*.

According to Art. 183e CPA in case of a dispute the consumer shall address it first to the business entity and they shall try to resolve it themselves. When they fail to resolve the dispute directly, the consumer may submit it to the general or sectorial reconciliation commissions depending on the dispute by filing a written application to the CPA along with the documents concerning the dispute. They can be submitted with the commission electronically at the internet address of the commission or through its webpage. A manual on how can a motion be submitted is available at <https://kzp.bg/kak-se-podava-zhalba-signal>. There is no need the parties to the dispute to appear before the commission. The documents can be submitted at the office of the Commission, via internet, post, or fax (offline). According to Art. 183g CPA the general and sectorial reconciliation commissions shall facilitate the dispute resolution between consumers and traders by preparing a reconciliation proposal for the parties.[6] Once the parties accept the proposal and the reconciliation commissions approve it the proposal *is considered a final settlement agreement between them. The parties may give effect to the agreement reached in the conciliation procedure by submitting it for approval to the competent court*.[7] When the parties have reached an agreement but any of them does not fulfill it, the non-defaulting party may ask the court to adjudicate the dispute about the non-fulfillment of the settlement agreement.

According to Art. 184 CPA the Chairman of the CPC *shall determine by an order mediators who shall be employees of the commission and shall facilitate the resolution of disputes between consumers and traders*. The assistance shall be rendered at the request of a consumer by filing an application with the Commission of Consumers Protection and the mediation proceedings shall take place in a settlement, selected among the settlements where the Commission of Consumers Protection has territorial units.

The limitation shall be suspended, where proceedings have been initiated before the general and sectorial reconciliation commission or a mediator. The proceedings before the general and sectorial reconciliation commissions and a mediator shall not be a pre-requisite for filing a court action. (Art. 184a CPA.)

The relevant rules of CPA (Chapter IX, Section 2) do not infringe those of the Mediation Act that adopt the requirements of Directive 2008/52. They shall apply in compliance with the acts adopted by the EU Commission under Regulations 524/2013 (§§12d-12e of the Supplementing Articles (SA) of the CPA). CPA, Art. 181l does not

6. Once the general and sectorial reconciliation commissions have prepared a settlement proposal it shall not deal with the same dispute, no matter whether the parties accepted or not the settlement proposal.

7. Under Art. 18 of the Mediation Act (MA) both parties to the dispute shall confirm before the court the agreement they have reached.

affect the norms concerning the statute of limitations in the international agreements to which the member-states are parties (§§12f-12g SA of the CPA).

4. *The Public Procurement Act (PPA) (section II, p. 12, part "B", p. 25, part "V", p. 17, part D, p. 10) is stating that there should be information about mediation procedures* in the notifications for: starting the procurement procedure; the procurement contract; amendments to the procurement contract if applicable accordingly.

5. As per the Copyright and Related Rights Act (CRRA) (Section I, "a"), in cases of disputes between organizations for collective administration of author's rights and users and/or an organization of users related to signing and performance of a contract between them under this Act, *each of the parties may propose that the dispute is solved through mediation*. Mediator may be any person meeting the general requirements of the Mediation Act, entered into the Common Register of the Mediators at the Minister of Justice and having specialized knowledge in the field of author's rights and related rights. A mediator can be only a person that is registered in a special register of mediators to the Minister of Culture. This register needs to be coordinated with the organizations under Art. 40b of CRRA and the representatives of the organizations of users. The mediator starts the mediation only with the written consent of the parties. The consent shall resolve the question with the remuneration of the mediator and the conditions of payment by the parties. *The mediator shall assist the negotiations and may extend proposals to the parties. He may not resolve the dispute.* If in a dispute about collective management *the mediator has made a written proposal to the parties for resolving the dispute and none of the parties has objected it in a month of receiving the proposal, it is considered accepted by the parties.* The mediated settlement is binding on the parties. *Starting mediation procedure does not limit the parties to refer the dispute to the court*. The opened mediation proceedings shall stay any pending judicial proceedings until its termination. The Mediation Act shall apply to all other questions not dealt by Art. 40g.

7. As per the provision of Art. 110, p. 5 of Regulation of Council of Ministers for Including Education of 2016, the kinder garden, school and the Center for Support of Personal Development, depending on the individual needs of children and pupils provide additional support for personal development in a case of risk – psychologist and/or pedagogic counselor, social worker, and when it is needed – an assistant to the teacher and *mediator from the community of the child or the pupil.*

II. RIGHTS THAT CAN BE SUBJECT TO MEDIATION

1. Disputes that can be mediated are civil, commercial, labor, family, consumer, and other disputes between individuals and/or legal entities including trans-border disputes (Art. 1(1) MA). Those disputes can be both legal and non-legal (Art. 1(3) MA). Mediation is not held if the law requires the dispute to be resolve using another tool (Art. 3(3) MA).

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There are special rules for mediation in family law. Mediation can be used and it is used to avoid the divorce, preserve the marriage (Art. 321 CCP) and the good relations between spouses concerning interests of children, exercising parental rights and personal relations between parents and children.

For the termination of marriage, a mediated settlement is not enough. If such a settlement is reached the court will terminate the marriage on mutual consent without looking for the reasons for the termination of the marriage (Art. 50 Family Code (FC)). The mediation could be successfully used for reaching the mutual consent and the required and allowable for it agreements. In case of divorce on mutual agreement, the spouses shall produce an agreement about the place of residence of the children, exercising the parental rights, the personal relations and the children's support, as well as about using the family home, the spouse's alimony and the family name (Art. 51(1) FC). The agreement shall be confirmed by the court, after verifying if the children's interests have been protected (Art. 49(5) FC). The spouses may agree about other consequences of the divorce (Art. 51(1) FC) and their agreement on those matters shall meet the same standard the court to approve them. The achievement of this agreement is imperatively determined by the legislator as a mandatory condition for court to discontinue marriage due to the mutual consent of the spouses. (Art. 51(1) FC).

In case a divorce claim procedure (Art. 321(2) CPC) the court is obliged in the first hearing to instruct the parties again towards mediation or another way of amicable settlement of the dispute. If the parties achieve consent for starting mediation or another way of amicable settlement of the dispute, the case shall be suspended. Where an agreement is reached and depending on its content, the lawsuit shall be either terminated or transferred into a procedure of divorce upon mutual consent. If the parties do not achieve consent on a procedure of mediation or of another way of amicable settlement of the dispute, hearing of the case shall be continued. According to Art. 49(4) of FC, in any stage of the court case the spouses may submit with the court an agreement on all or some of the matters concerning the termination of their marriage. This agreement can also be reached through mediation. The court will approve the agreement after it makes sure that the interests of the children are well guarded. The court may also ask the Directorate for Social Assistance for a statement. It is recommended in case of matrimonial claims, that the spouses conclude agreement on where the children under 18 years of age will leave; how the parental rights will be exercised; personal relations of the parents with the children; child support and alimony; the use of family home; family name (Art. 51(1) FC). If the parties have not agreed on all matters in the interest of the children, the court shall decide on them sua sponte, in case they are not claimed by either party.

Under Art. 123(2) of the FC, in case of discontent, they may approach a mediator or to apply to the Regional court upon the present address of the child, which shall decide the dispute after hearing the parents, and if needed, the child. The court decision may be appealed following the general procedure. When the parents do not live together they can agree on: where the child to live; exercising parental rights;

personal relations with the child; child support. This can be done both through the court and outside the court. The parents can ask the regional court to approve their settlement, even when it is a mediated settlement (Art. 127(1) FC). The mediated settlement approved by the court is enforceable (Art. 404, p. 1 CCP; Art. 127(1) CCP; Art. 18 MA). Matters that can be a subject to mediation are also those concerning traveling of the child abroad and receiving the documents needed for this, which shall be decided in consent by the parents (Art. 127a FC and Art. 3(1) MA.)

Family-law agreements of parental responsibility for parental responsibility and parental responsibility are of the utmost importance, the place of living of the child under 18 years of age, the use of the family home, and child alimony. They can be both – part of the divorce process and outside of it. Mediation can be used also between couples that live under the conditions of actual family cohabitation concerning the matters of: exercising parental rights; the place of living of the child under 18 years of age; child alimony (Order of the District Court of Varna of April 15, 2016 on civil case 284/2016). Mediation can be also used in disputes between parents who do not live together no matter whether they are married or not, live or have lived under the conditions of actual family cohabitation or they are just parents.

Subjects of the mediation could also be disputes concerning: copyrights and related rights (See section I, item 6); public procurement (section I, item 5); disputes over collective claims (See section II, item 3); consumers disputes (See section I, item 4).

Mediation can be used also in non-legal disputes among which are those among pupils in school. They are important for the peace and rapport in school, among teachers, children, and parents (See section I, item 7).

III. MEDIATION AGREEMENT

The agreement to mediate can be: in a written form as a clause of a contract (Art. 11(4) MA);[8] in the request (submission) for mediation to the mediator or to the relevant Mediation Center. The date the parties have agreed to start mediating their dispute is the beginning of the mediation; *when there is no such agreement the beginning of the mediation is the first mediation session* (Art. 11(1) MA). Consequently, MA allows an agreement to mediate to be orally expressed with the assistance of the mediator at the first mediation session. The rules for operation of some mediation centers state that when only one of the parties of the dispute has submitted request for mediation, the center has one day to send the request to the other party asking to respond providing suitable term (in terms of the particularities of the dispute), whether the party agrees or not to mediate the dispute. If the answer of the counterparty is positive the Mediation Center starts preparation activities for the mediation. Numerous of Mediation centers

8. This clause does not prevent the party to file a case in the court. Mediation is not arbitration.

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have developed templates of request for mediation and applications for informed consent, where there is also explanation about the essence of the mediation.

Parties can reach agreement to mediate in a court hearing of their dispute. CCP (Chapter 1, par. 3) requires the court to inform the parties about the possibility of using mediation and they can agree on this during the court hearing. If such agreement is reached the court shall stop the court procedure.

IV. PERSONS/INSTITUTIONS THAT CAN ACT AS MEDIATOR

1. Mediator can be only a person legally capable who:[9] has not been found guilty of crime; has successfully completed a mediation training;[10] has not been deprived of the right to exercise a profession or an activity; has been registered at the Unified Register of Mediators (URM) to the Minister of Justice.[11] If the person is a foreigner he needs to have permission for permanent or long-term residence in Bulgaria. The latter is not applicable for citizens of EU member states and the citizens of the states of the European Economic Area and Switzerland. *Persons that exercise functions of adjudication within the Justice System cannon mediate (Art. 4 MA.)*

2. The mediator accepts to mediate the dispute only when he can assure his independence, impartiality, and neutrality.[12] He is obliged to fulfill his duties in good faith abiding the law, good moral, procedural and ethical standards of behavior for mediators (Art. 9 MA).[13] During mediation the mediator shall listen to both parties and consider their opinions (Art. 10(3) MA). He will not impose his own opinion and decisions on the parties. The mediator is not an attorney of the parties. During mediation parties can consult attorneys or experts; mediators shall inform the parties about this right (Art. 12 MA). The mediator shall not give any legal advice to the parties (Art. 10(1) MA). This ban poses delicate questions when the parties requested a lawyer-mediator to mediate their dispute out of court. There is an

9. Mediators can create associations. The associations themselves cannot be mediators.
10. The Minister of Justice issues an order to approve the organizations that can train mediators. Regulation 2/2007 defines the requirements an organization needs to meet, in order to be approved to provide mediation trainings as well as the program of those trainings. The program for the 60-hour mediation training is approved in Appendix 2 to Regulation 2/2007. The training is followed by an exam (Art. 10 Regulation 2/2007.)
11. The URM is public and it is available at the web site of the Ministry of Justice at <mediator.mjs.bg/Users/OrgList.aspx>. Regulation 2/2007 also regulates how a mediator can be registered, *withdrawn*, and repealed of the URM.
12. The mediator signs an affidavit for impartiality and neutrality for each mediation she participates in and gives them to the parties (Art. 13 MA). The mediator shall recuse from the mediation at any time when arise doubt about her impartiality and neutrality.
13. Under Art. 34 of Order 2/2007 the mediator shall start a mediation procedure only after the parties has agreed on the terms of his compensation. He cannot define the conditional compensation or the compensation to depend on mediation outcome.

understanding in the practice that regarding the principle of informed consent, the mediator can and shall inform the parties how this kind of matters have been solved as per the law and the court practice. The border-line between informing the parties and advising them is quite delicate. It only depends on mediator's professional experience and ethical standing not to cross it. The mediator is bound: to be impartial and neutral; to listen to the parties; to take into consideration their opinion; not to impose on them his opinion on what is the best solution for their dispute; and not to manipulate the parties.

3. Since mediation is confidential the mediator cannot share with one of the parties what the other party has confined to her without the consent of the latter party (Art. 10(4) MA). The mediator shall keep confidential all facts and documents that she has learned about through mediation. The mediator cannot be examined as a witness about facts that parties in mediation have confined to her and which are material to the dispute unless the party who has confined the information agrees explicitly for its disclosure (Art. 7 MA). The mediator can, furthermore, refuse to be examined as a witness concerning such information (Art. 166(1) CCP).[14]

4. The mediator is not liable if: parties do not reach an agreement; if they reach an agreement but one or both parties does not fulfill it (Art. 10(5) - (6) MA). The mediators shall, however, inform the parties that they can request a court to approve their agreement which will then be enforceable.

V. MEDIATION PROCEDURE

1. Mediation procedure begins on the initiative of the parties (Art. 11(1) MA). Under Art. 21 of Regulation 2/2007 to start mediation both or at least one of the parties of the disputes submit requests for mediation. The request shall content: the names of the parties; their addresses, telephone and fax numbers; brief description of the dispute. If the party requests an association of mediators the request is filed with the association.[15] Those associations function as coordinating centers

14. This rule interpreted in conjunction with Art. 7(1) MA shall be also applicable to any other person that has participated in the mediation, e. g. interpreters and attorneys.

15. Such associations function as mediation centers at: the American Chamber of Commerce in Bulgaria; the Arbitration Court at the Bulgarian Chamber of Commerce; the Bulgarian Association for Out-of-Court Dispute Resolution – Asenovgrad, Plovdiv, Stara Zagora; Varna Association of Mediators; Professional Association of Mediators in Bulgaria; Regional Organization of Mediators – Veliko Tarnovo; Association Justicia; Regional Organization of Mediators – Plovdiv; Association "Mediation Center"; Association for Out-of-Court Dispute Resolution-Burgas; Association Institute for Conflict Resolution; Association Mediators; Association Black Sea Center for Out-of-Court Dispute Resolution; Association Mediator; Foundation "Legal Institute for Training and Out-of-Court Dispute Resolution"; Center for Out-of-Court Dispute Resolution to the Union of Lawyers in Bulgaria; Center for Commercial Mediation at the Chamber of Commerce-Stara Zagora; Mediation Center at 3 MM Consulting ltd. Guidebook / Mediation centers: *http://www.lex.bg/bg/centrovemediacia/page/www.itera.bg* . There is a tax

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concerning mediation. To help parties the mediation centers have prepared information brochures and documents templates such as: agreement to mediate; information form; confidentiality affidavit of the mediation participants; impartiality and neutrality affidavit of the mediator. When only one of the parties has requested mediation, the center contacts the other party and help to acquire her consent for mediating the dispute. If the latter party does not agree to mediate the dispute the center informs the requesting party. When the both parties agree to mediate their dispute, the center identifies a mediator with the proper qualification and experience and offer him to the parties.

2. Art. 11(3) MA states that the court or another competent institution that is requested to resolve the dispute *may propose to the parties to use mediation*. This kind of suggestion the court is offering to the parties during the court process to use out of court methods to resolve the matter. However, the court cannot refer to mediator to resolve the dispute. *The same duty of the court is defined also in Arts 140(3), 374(2), 378 of CCP which have been adopted to apply Art. 5 of Directive 2008/52/EU*.[16] This proposal the court addresses to the parties. The court does not make such proposal to a mediator. It is parties' free choice to use mediation or not.

When mediation is used during a pending case starting mediation is a ground for stopping the case (Art. 15(5) MA.)

The court-annexed mediation centers at the Regional Court of Sofia and Sofia City Court, and the Varna District Court and the Regional Court of Varna have improved the access of parties to mediation.[17] Those two centers have been financed through donor programs. They are located in the court buildings but are not part of it. Those centers have coordinators and provide mediation on cases pending before the courts they work for. The centers coordinate the efforts of: judges who refer cases to mediation; mediators who work with the parties to resolve their disputes; attorneys who help the process of dispute resolution; and coordinators who organize the process to help parties and judges. The coordination and mediation through those two court-annexed mediation centers are free of charge for the parties. Mediators work on volunteer bases.

The court referring the case to mediation does not send the case to the mediator even when parties have consented to use mediation. It is parties who decide whether to use mediation or not. While referring the case to mediation, however, the court

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nn the mentioned centers that is settled to be paid by the parties for the mediation activities done by the centers.

16. In family cases the court is bound to inform the parties about mediation as a tool to resolve their dispute (Art. 321(1) CCP).

17. Under the project "Mediation and the Justice System – Successful Cooperation for Improved Access to Justice and Court Services" (January 2011-July 2012) financed by America for Bulgaria Foundation and implemented by the Professional Association of Mediators in Bulgaria has been created the mediation center at the Regional Court of Sofia and Sofia City Court.

needs to explain to the parties what the assets of mediation are. When in the hearing the parties agree to mediate their dispute and ask the court to stop the case the court shall do it (Art. 15(5) MA and Art. 229(1), p. 1 CCP). In the hearing the parties might not be ready to decide to use mediation. They can ask the court to stop the case, however, and while the case is stopped they can better inform themselves about mediation and reach an agreement to mediate. If within six months none of the parties does not ask the court to reopen the case the court dismisses it.

There are often cases, when parties that have reached a mediated settlement agreement ask the court to reopen the case to approve their settlement agreement as per Art. 18 of MA. Thus, the parties have an enforceable agreement and at the same time use a more informal and less stressful procedure. In practice some judges ask the parties to fill the information form; other judges just tell the parties where they can use mediation and reschedule the hearing for another date. When between the two hearings the parties settle the case and they confirm this before the court, the court approves the mediated settlement agreement, it becomes a court settlement agreement, and parties can enforce it. There are cases when after parties have reached an agreement the plaintiff requests the court to dismiss the case with or without prejudice. The court settlement agreement is enforceable. It is preferable, therefore, parties to request the court to approve their mediated settlement agreement. When it is done the plaintiff shall be reimbursed with half of the court fee paid while the court fee is not reimbursed when the case is dismissed on request of the plaintiff.

3. Parties choose one or more mediators to conduct mediation. They participate in mediation in person or through representatives. The representation power shall be in writing. Attorneys and other professionals can also participate in mediation (MA, Art. 12). At the beginning of mediation, the mediator informs the parties about its nature and consequences. Once the mediator is assured that the parties understand the nature of mediation and its consequences she requests parties' written consent to participate in mediation (MA, Art. 13(1); Regulation 2/2007, Arts 23-24).

In mediation the nature of the dispute is clarified, settlement options mutually beneficial are discussed, the frame of a settlement agreement shall be drafted. In doing this mediator can have caucuses with each party without infringing their right to equal participation in the mediation (MA, Art. 13(4) - (5)). Mediation might take one or two sessions that are scheduled after having parties consent about the time of the sessions (Regulation 2/2007, Art. 22). The mediator shall create an atmosphere favorable for the parties to open discussions to improve their relations and reach a settlement (Regulation 2/2007, Art. 215). He shall help the parties to reach an agreement and to understand its clauses (Regulation 2/2007, Art. 26). The mediator shall not give legal advice but will only assist parties to reach a settlement mutually acceptable (Regulation 2/2007, Art. 27). The mediator respects parties' opinions and requires respect from them. She shall not be prejudice or partial no matter of parties' personal qualities, past, or behavior during mediation.

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The outcome desired is a settlement agreement and this is the goal of mediation.

When mediation is used while pending case, starting mediation is a reason for stopping the case (MA, Art. 15(5)).

4. While mediation is pending the statute of limitations does not apply (MA, Art. 11a). This rule corresponds to the requirement of Art. 8 Directive 2008/52/EU and point 24 of the reasoning for adopting it.

5. Mediation can be stopped: on agreement of the parties, death of the mediator or on the request of one of the parties and in cases described in MA, Art. 10(3). If mediation is conducting during pending case the parties shall inform the court that they have stopped the mediation (MA, Art. 14).

Mediation is completed when the parties reach a settlement. The mediation can be terminated: on mutual consent of the parties; when one of the parties is not willing to participate further in the mediation; when one of the parties passes away; when the legal entity party to a mediation is terminated; six months upon the start of the mediation procedure. When mediation is terminated the pending cases shall be reopened if it was stopped during the mediation (MA, Art. 15).

VI. SETTLEMENT AGREEMENT

1. The content and the form of the mediated settlement agreement are determined by the parties. The parties may adopt default clauses in case of breach of the agreement. The form of the agreement may be oral, written, or written with notarial attestation of the signatures. The written agreement shall state the place and the date when it was concluded, the name of the parties and their addresses, what they have agreed upon, the name of the mediator, the date under Art. 11(2) MA, and the signatures of the parties (MA, Art. 16). A valid mediated settlement agreement is binding only to the parties of the dispute, but not to third parties. An agreement is invalid when it is against or evades the law as well as when it breaches the good morals (MA, Art. 17).

As out of court method for solving disputes, the mediated settlement agreement is a contract. It can have declaratory elements but when parties make mutual concessions it might reregulate prior agreements. With the mediated settlement agreement can renew or terminate prior agreements, to accept new obligations, and others, as per the will of the parties.

The mediated settlement agreement does not have res judicata like a judgment or a court-approved settlement agreement. If one of the parties would file a complaint for a breach of the mediated settlement agreement and submits the agreement with the court, the court will take it under consideration as a relevant fact. When the mediated settlement agreement is valid the court will consider existing the rights and duties the parties have under it.

2. The mediated settlement agreement is not enforceable like a judgment or a case settlement approved by the court. If the mediated settlement agreement is in

writing and the signatures of the parties have notarial attestation the non-defaulting party to the agreement can request the court for an order of immediate payment along with a writ of execution concerning the obligations of the defaulting party to pay certain amount of money or to submit movables (CCP, Art. 417, p. 3)[18]. In this case staying the enforceability procedures may be done only under the rule of Art. 420 of the CCP. The mediated settlement agreement is not directly enforceable but the order of immediate payment is the instrument that makes the agreement enforceable and provides an expeditious enforceability of the agreement. The mediated settlement agreement does not have res judicata and therefore the defense objection under Art. 414 of the CCP is admissible. If the defaulting party files an objection under Art. 414 of the CCP, the non-defaulting party shall file a complaint for declaratory judgment within the time-limit of Art. 415 of the CCP. If the mediated settlement agreement is valid the court will decide the case taking the agreement into consideration.

3. According to Art. 18 MA, the mediated settlement agreement on a legal dispute as per the meaning of art. 1 MA has the power of court agreement and shall be approved by a regional court / item 1/. The court shall approve the agreement when it is not against the law and good morals and the parties have confirmed it.[19] If the agreement is reached on a class action case the court needs to make sure that through the agreement the class interest is well defended. The settlement agreement on a class action case shall enter into force only after it has been approved by the court (CCP, Art. 384). When the parties reach an agreement on a divorce case the court approves it through a judgment after it has made sure that the interests of the children are well preserved. The court approval of the settlement is prerequisite for the divorce by mutual consent (FC, Art. 52(2); CCP, Art. 303(2)).

4. The Parliament deliberation records[20]on the adoption of Art. 18 of the MA make clear that through Art. 18 of the MA the legislator wanted to implement Directive 2008/28/EU. Art. 18 of the MA is applicable when the mediated settlement agreement: is in writing and it meets the content requirements set in Art. 16(1) of the MA;[21] is in writing with notarial attestation of the signatures of the parties. Art. 18 of the MA is not applicable when the mediated settlement agreement is oral. In such case when

18. The use of the payment order procedure is optional for the non-defaulting party. The parties can us the procedure under Art. 18(1) of MA when the mediated settlement agreement is in writing and the signatures of the parties have notarial attestation /see item 3/.
19. The court will also hear the prosecutor if he is a party to the case (MA, Art. 18(2). When the mediated settlement agreement is about paternal rights, child's place of living, and visitation rights the court may hear an officer of the Social Help Directorate.
20. Records of the Parliament Deliberations 0002-01110/21 Dec. 2010.
21. See Gradinarova, T. Procesualni Posledici na Sporazumenieto v Proizvodstvoto po Mediacia. Nauchni Trudove na Rusenskia Universitet 2014, vol. 53, series 7, p. 215-216. order N1519/9.04.2012, civil case N314/2012 of the Varna Regional Court; order N771/21.03.2016, civil case N91/2016 of the Varna District Court; order N973/15.04.2016, civil case N284/2016 of the Varna District Court.

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there is a pending case the parties may ask the court adjudicating it to approve the mediated settlement agreement.

Art. 18 of MA is not precise about the moment when the mediated settlement agreement becomes enforceable. The written mediated settlement agreement in itself is not a court approved settlement agreement. Once the court approves it, however, the written mediated settlement agreement becomes enforceable. In support of this argument is the heading of art. 18 of MA "Making Enforceable the Mediated Settlement Agreement" as well as the fact that through adopting Art. 18 of MA the legislator met the requirements of Directive 2008/52/EU for enforceability of the written mediated settlement agreement and the means to achieve this. Making the written mediated settlement agreement enforceable through Art. 18 of MA the legislator considered unnecessary to amend Art. 401, p. 1 of CCP where enforceability is regulated, specifically the one of court-approved settlement agreement. In addition, as per the Art. 234 CCP the court-approved settlement agreement is equal to a judgment and cannot be appealed.[22] Therefore, the court approved settlement agreement is not only enforceable but it also has res judicata.

5. Under Art. 18(1) MA regional courts are competent to approve mediated settlement agreements. This is so only when the mediated settlement agreement is reached when there is no case filed. In such cases the procedure is protective. The court order[23] for approving the mediated settlement agreement is a prerequisite for the enforceability of the mediated settlement agreement. Since the mediated settlement agreement approved by the regional court has res judicata and it is enforceable if a party to the agreement files a complaint concerning the disputed issue resolved through the agreement the court will dismiss the case based on the res judicata doctrine.[24]

It is common for this protective procedure that the parties need to confirm their mediated settlement agreement before the court.

6. When the mediated settlement agreement is reach during a pending case the court that adjudicates the case shall approve it. Depending on which is the competent trial court to hear the case the mediated settlement agreement may be approved by the competent Regional court (trial court with limited jurisdiction) or the competent District court (trial court with unlimited jurisdiction). If the mediated settlement

22. See Gradinarova, T., op.cit., p. 214-216.
23. judgment N1519/9 April 2012, civil case N314/2012; judgment from 1. July 2013, civil case N8906/2013 of the Regional Court of Sofia; Gradinorova, T., op.cit., p. 217.
24. See also Gradinorova, T., op.cit., pp.218-219.

agreement is reach before a second-instance court (District Court or Court of Appeals)[25] this court will approve it.[26]

Concerning legal safety, it would be better these rules to be implemented in the law. When there is mediation on a pending case it is in a close connection with the adjudication and its goal is to settle the case and to save time and expenses for adjudicating the dispute as well as to preserve parties' good relationships. Furthermore, Under Art. 5 of Directive 2008/52/EU, Art. 140(3), Art. 321, Art. 374(2), Art. 384 CCO the court which the case is pending before shall encourage the parties to use mediation to resolve their dispute. On the other hand, the mediated settlement agreement approved by the court is equal to court approved settlement agreement, under Art. 234 of CCP has res judicata, and the court shall dismiss the case. In addition, in practice most of the mediated settlement agreements are on pending cases. The legislator has financially stimulated the parties to use mediation on pending cases adopting the rule that when on a pending case a mediated settlement agreement is reached and it has been approved by the court the plaintiff shall be reimbursed with half of the court-fee paid /Art. 78(9) CCP and Art. 18 of MA, See section I, item3/.

When the mediated settlement agreement is reached on a pending case (as per art. 234 CCP in connection with art. 18, item 1 MA) the court will issue an order to approve the agreement. The court also puts in the record the content of the agreement approved. The court order for approving the agreement is not appealable.[27] When the agreement is reached before and approved by the trial court after the court approves the agreement it dismisses the case. When the agreement is reached before a second instance court and the second instance court approves it, this court shall declare the judgment of the trial court invalid and dismiss the case.[28]

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25. See order N771/21 March 2016, civil case N91/2016 of Varna District Court; order of 15 April 2016, civil case N91/2016 of Varna District Court. In order N973/15 April 2016, civil case N284 of Varna District Court the parties of the mediated settlement agreement agreed the appellee to withdraw her appeal brief. Therefore, the court dismissed the appeal case and the judgment of the trial court entered into force at the date of the order of the district court for dismissing the appeal case. The court decided that under the mediated settlement agreement the parties accepted moral duties such as to live in a way allowing together to raise their child and to be respectful, patient, and non-offensive to each other. Therefore, decided this part of the mediated settlement agreement is not against the law or good morals but does not need its approval.
26. I belief that mediated settlement agreement may be reached even before the Supreme Court of Cassation. In such case the Supreme Court of Cassation will approve the agreement.
27. See Gradinorova, T., p. 217. See also Stalev, J. Mingova, A., Stamboliev, O., Popova, V., Ivanova, R., p. 494.
28. See Order N771/21 March 2016, civil case N91/2016 of Varna District Court; Order of 15 April 2016, civil case N 91/2016 of Varna District Court; Order N973/15 April 2016 civil case N 284/2016 of Varna District Court.

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VII. SETTING ASIDE A SETTLEMENT AGREEMENT

1. MA and CCP does not have rules concerning setting aside a mediated settlement agreement. The mediated settlement agreement is a contract and it is equivalent to the settlement agreement under Art. 365 of the Obligations and Contracts Act (OCA). Bulgarian legislator has not given more power to the mediated settlement agreement. There is the possibility a party to the mediated settlement agreement to file a complaint asking the court to declare the agreement void (under Art. 26 of OCA) or voidable (under Art. 27 of OCA). Any non-defaulting party to the agreement may terminate the agreement in case of a breach of the other party. These are valid when the parties have not asked the regional court to approve the mediated settlement agreement /See section VI, item 3/

If the mediated settlement agreement is in writing with notarial attestation of the signatures and based on it the court has issued a payment order and a writ of execution to the creditor / See section VI, item 2/ the debtor may file an objection under Art. 414 CCP and thus to avert the mediated settlement agreement.[29] If upon this the creditor files a complaint for declaratory judgment /Art. 422 and 415 of CCP/ in his written answer the debtor may assert affirmative defenses concerning the validity or the termination of the mediated settlement agreement. If the debtor does not do this the court shall evaluate the mediated settlement agreement as non-contested evidence.

2. Jurisprudence and doctrine that when the mediated settlement agreement has been reached when there is no pending case on the dispute the court approving the agreement shall do this through a judgment. This judgment is final and not appealable /Art. 537(1) CCP/ but third parties can file complaint against the judgment if it affects their rights /Art. 537(2) CCP, Interpretive Opinion of the Supreme Court of Cassation 3/2012, Civil Department/. The prosecutor can also ask the court to reverse the judgment the law has been breached /Art. 537(3) CCP/.[30] When the mediation settlement agreement has been reached when there was no pending case on the dispute the regional court approves the agreement through an order that contains the mediated settlement agreement and dismisses the case. This order is a protection act.

It is well settled law that if the court approved settlement agreement is void or voidable a party to it may ask the court for a declaratory judgment to pronounce the agreement void or voidable.[31] If a party does not fulfill its duty under the agreement the

29. If the debtor does not file an objection against the payment order it enters into force and she can only file a complaint under Art. 424(2) CCP. To be the claim admissible the plaintiff needs to assert facts newly founded /Interpretive Opinion of the Supreme Court of Cassation 4/2014, Civil and Commercial Department/.
30. See Gradinarova, op.cit., p. 2017-2018.
31. Interpretive Judgment of the Supreme Court 76/1960 Civil Department; Stalev, J. Mingova, A., Stamboliev, O., Popova, V., Ivanova, R., p. 491-492, 496.

non-defaulting party terminate the contract. Along with declaring the agreement void or voidable the court will find unlawful the courts order for approving the settlement agreement.

It is established law that the parties to it and the prosecutor can ask the court to find void or voidable an agreement for termination of a marriage by mutual consent.[32]

It seems to me that this is not applicable to a mediated settlement agreement when approved by a regional court. This is so because under Art. 234(3) CCP the court settlement approved by the court is equal to a judgment entered into force. It does not correspond also to the nature of mediation as alternative to the court procedures for resolving disputes and the need of their stable and final resolution. Fortunately, through my research I was not able to find a case where the validity of a mediated settlement agreement was raised before a court.[33] This demonstrates that mediations have been successful in resolving disputes voluntarily and preserving good relations between parties.

VIII. INTERNATIONAL MEDIATION

1. Since Bulgaria is a EU member state Directive 52/2008/EU is applicable for it.[34] The Directive is applicable to cross-border disputes on civil and commercial matters, except to rights and obligations that the parties cannot freely dispose of under the applicable law. The Directive has been successfully transposed into MA who is applicable both for local and cross-border disputes (Art. 3(1) MA). Under Art. 2 of the Directive the dispute is cross-border when one of the parties has a place of living of usually or domiciles in member state that is different than the member states where the other parties to the dispute live or domicile.[35] This should be valid to the date: (a) when parties agree to use mediation; (b) the court has ordered mediation; (c) under national law there is an obligation the parties to use mediation; (d) there is an invitation to the parties under Art. 5 of the Directive. For the purposes of statute of limitations and confidentiality in mediation cross-border is also a dispute that when after a being through mediation parties file a lawsuit or they start arbitration in a member state different that the one where the parties usually live or domicile at the date in § 1, (a), (b), or (c).

32. The same is valid for a court settlement.
33. Unfortunately, there is official statistics kept neither by the Ministry of Justice nor by the mediation centers.
34. See the reasoning of the Council of Ministers to the proposal for amending MA in 2011.
35. Under Art. 2, p. 3 for the purposes of §1-2 place of living will be determined in accordance with Arts. 59-60 of Regulation 44/2001. Under Art. 80 Regulation 1215/2012, been into force since 10 Jan. 2015, Regulation 44/2001 has been repealed. When arguments are based on Regulation 44/2001 they are considered arguments under Regulation 1215/2012 and the table for correspondence under in Appendix III shall be used. Consequently, Arts. 62 and 60 Regulation 1215/2012 will apply.

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Consequently, when mediation has started in another member state but after this court procedures on the same dispute are initiated in Bulgaria under the rules of Regulation 1215/2012 rules concerning confidentiality and statute of limitations will be applicable to mediation. This is valid when there has been a mediation in Bulgaria and then, court procedures or arbitration in another member stated on the same dispute.

2. Directive 2013/11/2013 for alternative resolution of consumer disputes amending Regulation (EU) 2006/2004 and Directive 2009/22/EU is applicable to Bulgaria. It is applicable to procedures for resolving local and cross-border disputes between business entity that operates in the EU and consumer in the EU through alternative dispute resolution mechanism that suggests or imposes a solution or get the parties together to find solution by themselves. The Directive is not applicable in: direct negotiations between the business entity and the consumer; judicial settlement conferences; procedures initiated by a business entity against consumer; health services provided by health specialist to patients, including prescribing and fulfilling of medical prescriptions and providing health products. The existence of ADR capabilities before the CPC's general and sectorial committees does not exclude the possibility of resolving disputes through mediation under Art. 184 of the CPA, as well as through the general rules of the MA. /for the transposition of this Directives see section I, item 4/. It is explicitly provided that the rules of Chapter IX, p. II does not affect the rules of MA that transpose Directive 2008/52 and are applicable keeping in mind the legal acts, adopted with Regulation 523/2013 /§§12d-12e of the Supplementing Provisions of the Consumer Protection Act. This is stated in Art. 3(1) of MA.

3. Since Bulgaria is a EU Member State, the Regulation 805/2004 for creating a European Enforcement Order (EEO) for uncontested claims is applicable.[36] The Regulation is applicable to civil and commercial claims except those mentioned in Art. 1(2). It is applicable only to monetary uncontested claims no matter of their amount.[37] Art. 3 of the Regulation defines when a claim is uncontested Under Art. 24 a settlement concerning a claim within the meaning of Article 4(2) which has been approved by a court or concluded before a court in the course of proceedings and is enforceable in the Member State in which it was approved or concluded shall, upon application to the court that approved it or before which it was concluded, be certified as a EEO using the standard form in Annex II. A settlement which has been certified as a EEO in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition (Art. 5).

36. The use of the EEO under Regulation 805/2004 is optional (Art. 28 of Regulation 805/2004 and p. 20 of its Preamble).

37. Regulation 805/2004 is not applicable to claims concerning alimony payments between spouses and family members (Art. 1(1) Regulation 4/2009).

Under Art. 18 MA a mediated written settlement agreement approved by the court is equal to a court settlement. Under Art. 404, p. 1 of CCP and Art. 18 of MA such agreement is enforceable in Bulgaria and it meets the requirements of Art. 24 of Regulation 805/2004 for a court settlement. Therefore, the Bulgarian court that has approved the mediated settlement agreement may issue (based on Art. 24 and Art. 3, (a) of Regulation 805/2004 and Art. 619 (1) of CCP) a certificate for EEO in the form in Appendix II of Regulation 805/2004.[38] The court does not send to the debtor a copy of the request for certificate for EEO. The court does not need to hear the request in an open court. If the court rejects the request its order can be appealable with a motion which again is not sent to the debtor. The order granting the certificate for EEO is not appealable and the court does not send a copy of it to the debtor (Art. 619(2) (3) CCP). The debtor defense is regulated in Art. 10 of Regulation 805/2004. She can ask the court that issued the certificate to rectify it or withdraw it. Article 619(4) of CCP defines that the court issued the certificate is competent to rectify or withdraw it. Another defense the debtor can use is in the Member State where the EEO is enforced given the test of Art. 21 of Regulation 805/2004 has been met.

A EEO concerning a mediated settlement agreement that has been certified in another Member State will be enforced in Bulgaria under the same conditions as a judgment of a Bulgarian court (Arts. 24 and 20(2) of Regulation 805/2004). What is specific for the Bulgarian enforcement procedure is that to be admissible the creditor needs to have a writ of execution, even when she has acquired a favorable judgment or a court settlement. The request to the court for issuing a writ of execution based on EEO for uncontested claim certified in another Member State shall be filed with the district court where is: the permanent address of the debtor; her seat; or where the enforcement will take place (Art. 624(1) CCO.[39] The district court is not competent to check whether the test for certifying the EEO has been met (Art. 21(2) Regulation 805/2004). The certified EED is mandatory for the Bulgarian court in issuing a writ of execution. What the Bulgarian court will evaluate is whether: (a) the certified EEO is meeting the requirements of Regulation 805/2004 about its form; (b) the copies of the EEO submitted with the court is authentic; (c) the mediated settlement agreement and the court approval of it are authentic; (c) whether EEO has been certified as such based on the mediated settlement agreement and the court approval of it.

38. A mediated settlement agreement not approved by a court is not enforceable in Bulgaria. Therefore, it is not authentic instrument under Art. 4(1), 3(d), and 25 of Regulation 805/2004, and a court will not issue a certificate for EEO for it.

39. By place of enforcement shall be understood the place of voluntary fulfillment of the duty as well is the place of enforcement under Art. 427 CCP. Otherwise it would be impossible to be enforced in Bulgaria a EEO issued in another Member State, e. g. for payment of money, when the debtor neither has address in Bulgaria, nor the place of voluntary fulfillment of the duty is in Bulgaria but she has assets in Bulgaria which can be subject to enforcement.

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The court requested issues an order for issuing a writ of execution. The writ is issued along with the order (arg. from Arts. 624(3), 404, p. 2 of the CCP; compare with Art. 407(2) CCP). The order is appealable but if appeal is filed it does not stay the enforcement (Art. 624(3) CCP). Thus, the Bulgarian law has met the requirements of Art. 20(2) of Regulation 805/2004. The possibility the order to be appealed does not correspond to Art. 20(2) of Regulation 805/2004. Instead of referring to Art. 407 CCP concerning how the order for issuing a writ of execution can be appealed Art. 624(3) CCP refers to Art. 623(6) CCP. The later article defines that the order for issuing a writ of execution on certified EEO may be appealed before Sofia Court of Appeals whose decision may be appealed before the Supreme Court of Cassation (SCC). Concerning the appeal before SCC the rules of Arts. 280(1) - (2) and 281 CCP shall apply. Under Art. 624(4) CCP the enforcement may be stayed by the court which adjudicates the case but when the order has res judicata – before the trial court.

If the law of the Member State of origin recognizes the written mediated settlement agreement as an authentic instrument under Arts. 25, p. 1, 4, p. 3, and 3(f) of Regulation 805/2004 and the competent court in that Member State of origin has certified a EEO under the form in Appendix III of Regulation 805/2004, the Bulgarian court can issue a writ of execution and the written mediated settlement agreement to be enforced in Bulgaria.

4. To Bulgaria is also applicable Regulation 1215/2012. It applies to civil and commercial matters except those mentioned in Art. 1(2) of Regulation 1215/2012. In Bulgaria the mediated settlement agreement in itself is not enforceable. Therefore, it is not an authentic instrument under Art. 2(b) of Regulation 1215/2012.[40] If in another Member Sate of origin, the mediated settlement agreement concluded there is an authentic instrument under Art. 2(b) of Regulation 1215/2012 and is certified under Art. 53 of Regulation 1215/2012, it will be enforceable in Bulgaria. A Bulgarian court can refuse to enforce such mediated settlement agreement only under the requirements of Art. 45 of Regulation 12/2012.

The mediated settlement agreement approved by a court /Art. 18 MA/ is equal to court settlement under Art. 234 CCP and is enforceable in Bulgaria. When it is concluded on a cross-border dispute it has the power of a court settlement under Art. 2(b) of Regulation 1215/2012. The court settlement that is enforceable in the Member State of origin is enforceable in all other Member States given that the requirements for authentic instrument are met /Art. 59 Regulation 1215/2012/. The court that has approved the written mediated settlement agreement is competent to certify it under Art. 53 of Regulation 1215/2012. Under Arts. 59 and 39 of Regulation 1215/2012 the

40. Authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose.

certified mediated settlement agreement approved by the court is enforceable in the other Member States without declaration of enforceability being required.

If a mediated settlement agreement has been concluded in another Member State and it has been approved by a court of origin and is certified under Art. 53 of Regulation 1215/2012 the agreement will be enforceable in Bulgaria based on Arts. 59 and 39 of Regulation 1215/2015 without declaration of enforceability being required. According to Art. 41 of Regulation 1215/2012 a judgment given in a Member State which is enforceable in the Member State addressed will be enforced under the law of the Member State addressed. This is also valid for court settlements. A writ of execution issued by a court is required for judgments and court settlements of Bulgarian courts, as well as for mediated settlement agreements approved by Bulgarian courts. Under Art. 622a of CCP, a writ of execution is not needed for the enforceability of judgments given in another Member State. This is a privilege concerning judgments, court settlements, court approved mediated settlement agreements, and authentic instruments given by another Member State.[41] The party may request directly the competent enforcement officer to enforce the authentic instrument submitting a copy of it and the certificate.[42] The enforcement office may refuse to enforce the authentic instrument only on the grounds stated in Art. 45 of Regulation 1215/2012.

5. To Bulgaria is also applicable Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. With practical significance are the issues regulated concerning parental responsibilities,[43] child's place of living, and personal relations between parents and children. Since the importance of these issues to society Regulation 2201/2003 encourages those disputes to be resolved voluntarily (p. 22 of the Preamble). Under Arts. 1 and 3(1) of the MA and 3, p. 2 of Directive 2008/52 in Bulgaria these disputes may be resolved through mediation. This is also valid for cross-border disputes. Voluntary settlements provide the opportunity to be creatively and in details regulated the parental rights and obligations, as well as parental responsibility.[44] In cross-border disputes is very

41. This is not very wise legislative solution and it is not in accordance with Art. 41 Regulation 1215/2012**.**
42. The heading of Art. 622a CCP is "Direct Enforcement under Regulation 1215/2012". The doctrine and the jurisprudence use the term "direct enforcement of enforceable instrument". In practice through the Arts. 622(2), 39, 59, and 53 CCP the Bulgarian legislator provided to the certificate under Art. 53 Regulation 1215/2012 the same enforceability ast to the judgment of court settlement of Bulgarian Court (See also Miteva, D. Novite preki izpulnitelni osnovania v izpulnitelnia process. Dajdjest "Commercial and Contract Law", 2017, issue 2, p. 88).
43. It is not applicable to the cases mentioned in Art. 1(3) and those concerning maintenance. Regulation 4/2009 is applicable to them.
44. Regulation 2201/2003 uses the term "parental responsibility". Bulgarian family law uses the term "parental rights and duties". These two terms describe one and the same thing. The term "the right to exercise parental rights" under Art. 2(9) Regulation 2201/2003 is very close to the understanding in Bulgarian family law about the right of exercising parental rights and duties. The term "right for

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important to be deiced where the child will live, parents' visitation rights including bringing the child for a certain period to a place outside her normal place of living and even outside the country of its normal place of living.

Under Art. 46 of Regulation 2201/2003 the documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognized and declared enforceable under the same conditions as judgments. The mediated settlement agreement itself is not enforceable in Bulgaria. It becomes enforceable only after it has been approved by a regional court /Art. 18 MA/. When the spouses agree to divorce on mutual consent[45] they shall submit with the court an agreement on the children's place of living, paternal rights, usage of family home, alimony payments to children.[46] This agreement may and very often is concluded through mediation. To be legally binding and enforceable it needs to be approved by the court. When they parties cannot agree on divorce by mutual consent the court will issue a judgment but the parties still can reach an agreement on the issues stated in Art. 51(1) of the Family Code (FC). Again, the court needs to approve this agreement (Arts. 51(10 and 49(4) FC). Parental responsibilities, children's place of living, and parental rights, are at issue not only when the spouses seek a divorce. When the parents do not live together through mediation they can reach an agreement about child's place of living, exercising parental rights, visitation rights, and alimony of the child.[47] Once the regional court under which jurisdiction is the present address of the child approves the agreement /art. 127(1) FC/[48] it becomes enforceable and under Art. 46 of Regulation 2201/2003 may be enforced in another Member State.

If in another Member State a mediated settlement agreement has been reached concerning the issues defined in Art. 46 of Regulation 2201/2003 and it is enforceable in the state of origin without being approved by a court, under Art. 46 of Regulation 2201/2003 this agreement will be also enforceable in Bulgaria given that it meets the prerequisites for enforceability of judgments and if it has been certified under Art. 59 of Regulation 2201/3003. If the law of the state of origin requires the mediated settlement agreement to be approved by a court before to be enforceable, to be

personal relations with the child" under Bulgarian law includes personal relations as well as the right to bring the child for a fixed period to a place different than his place of living. (Art. 2(10) Regulation 2201/2003) (Art. 9(10) Regulation 2201/2003).

45. See Popova, V. in Stalev etl. Bulgarian civil procedural law. Sofia 2012, Ciela, p. 711-716.
46. The spouses can agree on other issues as well (Art. 51…sent.2 FC) including mutual assets allocation and the court to approve this agreement through the divorce judgment. Regulation 2201/2003- regarding the property consequences of marriage or other additional issues (art. 8 of the motives of the document). If the agreement addresses maintenance Regulation 4/2009 will be applicable. If the agreement covers mutual assets allocation Regulation 1215/2012 will apply.
47. About enforcement of maintenance duties will apply Regulation 4/2009.
48. This agreement may be concluded within and outside case filed.

enforced in Bulgaria the agreement should be approved by the competent court in the state of origin and certified under Art. 59 of Regulation 2201/2003.

For the enforceability of authentic instruments[49] under Regulation 2201/2003 a summary procedure for recognition needs to be followed that is regulated by the law of the Member State where the instrument will be enforced (Art. 30(1) Regulation 2201/2003). Art. 31 of Regulation 2201/2003 defines the procedure. Its goal is promptness. The request may be rejected only on the grounds stated in Arts. 22-24 of Regulation 2201/2003. Based on Art. 30(10 of Regulation 2201/2003 the Bulgarian legislator adopted Art. 623 of CCP. With the request the party shall submit with the court the documents defined in Art. 37 and 39 of Regulation 2201/2003. The court does not send to the other party a copy of the request.

The trial court will issue an order without summoning the parties for an open hearing but only based on the documents submitted by the applicant. Under Art. 623(3) a preliminary enforcement of the order is not allowed. The requesting party does not receive a writ of execution before the order of the court for recognizing the instrument enters into force. Under Art. 47(2) of Regulation 2201/2003 any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State. Given the rule of Art. 47(2) of Regulation 2201/2003 Art. 405(4) of CCP should be interpreted to allow a writ of execution to be issued based on an appealed judgment under Art. 623(6) CCP. If the opposite is accepted by the time the judgment enters into force the children might have become legally capable and the lack of enforceability of the judgment might have ruined their childhood.

With the order granting the request the court will also decide on the preliminary measures and injunctions (Art. 623(3) CCP). The order granting the request is equal to a judgment (Art. 623(5) CCP). In this case, however, cannot be decided issues concerning disputes about the agreement itself. Under Art. 33 of Regulation 2201/2003 both parties can appeal the order which will be dealt according to procedures for contradictory matters.

If the appeal brief is filed by the party that has requested the enforceability certificate the court shall summon the other party (Art. 33(4) Regulation 2201/2003). If the opposing party does not appear before the court, Art. 18 of Regulation 2201/2003 shall apply. The order can be appealed before the Court of Appeals of Sofia (Art. 623(6) CCP). Art. 623(6), second sentence provides for appeal of the order of the trial court the appeal court to have a hearing in an open court with summoning the parties. This corresponds to the rule in Art. 33(3) - (4) of Regulation 2201/2003. The opinion

49. For its recognition there is no need a request with a court to be filed (Art. 21(1) Regulation). The party that is interested may request the judgment to be recognized or not (Art. 22(2) Regulation 2201/2003).

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of the Court of Appeals of Sofia is appealable before the Supreme Court of Cassation (Art. 623(6), second sentence CCP and Art. 34 Regulation 2201/2003). Enforcement is governed by the law of the Member State where the enforcement will take place.

Section 4 of Chapter III of Regulation 2201/2003 has special rules about recognition of enforcement concerning visitation and access rights (Art. 40 Regulation 2201/2003). Under Arts. 40 and 46 of Regulation 2201/2003 an agreement that is enforceable in the state of origin concerning access rights, including the right the child to be brought to a place different than her place of living for a limited period of time, may be enforce in another Member State without going through the recognition procedure if the court in the state of origin has issued a certificate according Art. 40(2) of Regulation 2201/2003.[50] Concerning enforcement in the state of enforcement this agreement is equal to judgment granted by a court of the state of enforcement. Therefore, based on this certificate a Bulgarian court shall issue a writ of execution. This will be the court whiting which jurisdiction the agreement will be enforced or the permanent address of the debtor is (Art. 624 CCP). The order for issuing a writ a writ of execution is appealable in the same way as the order for issuing a writ of execution based on a judgment of a Bulgarian court. The trial court only does only basic check on the documents submitted (Art. 406(1) CCP).

6. Bulgaria is a signatory state to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. Arts. 60-61 of Regulation 2201/2003 defines how the Regulation relates to those two international conventions. (. See Popova, V. Aktulani problem…. P. 79-80, 89-90, 112-115). A mediated settlement agreement approved by a regional court under Art. 18 of MA may be enforced under the 1980 Hague Convention. Under p. 17-18 of the Preamble of the Regulation in cases of child abduction the return of the child shall be done without delay and for that purpose the 1980 Hague Convention shall apply. It has been clarified through Art. 11 Regulation 2201/2003.

7. Applicable to Bulgaria is also Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.[51] Under p. 13 of its Preamble the Regulation should ensure the recognition and enforcement of court settlements and authentic instruments without affecting the right of either party to such a settlement or instrument to challenge the settlement or instrument before the courts of the Member State of

50. It is optional for the party not to use the recognition procedure. The rules of Chapter III, section 4 of Regulation 2201/2003 does not affect the right of the interested party to request recognition and enforcement of the judgment in correspondence with Chapter III, section 1 and 2 of Regulation 2201/2003.

51. It applies to duties for maintenance deriving from family and spouse relationships.

origin. Court settlements[52] and authentic instruments which are enforceable in the Member State of origin shall be recognized in another Member State following the procedure under Chapter IV of Regulation 4/2009 (Art. 48 Regulation 4/2009) bearing into account weather the Member State of origin is a signatory state to the Hague Protocol. The general requirement is the court settlement or the authentic document to be enforceable in the Member State of origin and to be certified as enforceable.

As per the Bulgarian law, the mediated settlement agreement is neither a court settlement nor an authentic document. On the ground of Art. 18 MA the court may approve a mediated settlement agreement. Then, it will be equal to court settlement even under the meaning of Regulation 4/2009.

Art. 17-22 of Regulation 4/2009 are applicable to enforcement of judgments, court settlements, and authentic instruments whose origin is from a Member State that is a signatory to the Hague Protocol of 2007. For them recognition is not needed (Art. 17 Regulation 4/2009). Nevertheless, to be enforced in Bulgaria such authentic instrument a Bulgarian court should issue a writ of execution. Art. 627b CCP defines how a Bulgarian court may issue such a writ. The request a writ to be issued based on the authentic instrument under Art. 20 of Regulation 4/2009 shall be submitted with the district court within which jurisdiction is the permanent address of the debtor or the place of enforcement.[53] It is considered under the general rules (art. 406 CPC) The court will check only the authentic instrument meets the requirements for such instrument on its face. The order for issuing such a writ will be appealable as if the writ was issued based on a judgment of a Bulgarian court. Thus, Bulgarian law concerning enforcement places on the same footing a judgment of a Bulgarian court with a judgment, court settlement, and authentic instrument whose origin is in another Member State. A district court may refuse or sustain enforcement under the meaning of Art. 21 Regulation 4/2009 (Art. 627b(2) CCP).

Regulation 4/2009, Chapter IV, section II, and Art. 627c of CCP define the recognition and enforcement in a Member State of judgments as well as court settlements and authentic instruments concerning maintenance which origin is in

52. The Regulation defines court settlement and authentic instrument. Court settlement is a settlement concerning maintenance that has been approved by the court or it has been concluded before the court (Art. 2(1), p. 2 Regulation 4/2009). Authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose.

53. By place of enforcement shall be understood the place of voluntary fulfillment of the duty as well is the place of enforcement under Art. 427 CCP. Otherwise it would be impossible to be enforced in Bulgaria a EEO issued in another Member State, e. g. for payment of money, when the debtor neither has address in Bulgaria, nor the place of voluntary fulfillment of the duty is in Bulgaria but she has assets in Bulgaria which can be subject to enforcement.

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a Member State that is not signatory to the Hague protocol.[54] There is an abridged procedure for recognition. With The documents stated in Art. 28 Regulation 4/2009 shall be annexed to the request for recognition submitted. A copy of the request shall not be sent to the debtor. The court does not summon the parties for an open hearing (Art. 29 Regulation 4/2009; Art. 627c (1) - (2) CCP). Art. 30 Regulation 4/2009 defines the scope of the review the court does. The court shall review the documents submitted only on their face. Under Art. 627c CCP the request shall be submitted with the district court within which jurisdiction is the permanent address of the debtor[55] or where the place of execution is. The court decision is appealable in cases stated in Art. 32(5) Regulation 4/2009 (Ar. 32 Regulation 4/2009; Art. 627c (2) CCP). The appeal shall be adjudicated under the rules of contested procedures (Art. 32(2) Regulation 4/2009).

National legislation of the Member State of enforcement but not Regulation 4/2009 applies to the appeal procedure. Under Bulgarian law the court grants a request for recognition with an order that is equal to a judgment (Art. 627c(4) CCP). The court has no jurisdiction however to adjudicate a dispute about the right under the agreement. The order of the court may be appealed before the Court of Appeals of Sofia on the grounds under Art. 32 Regulation 4/2009 (Art. 627c(5) CCP). The opinion of the Court of Appeals of Sofia may be appealed before the Supreme Court of Cassation (Art. 627c(6) CCP) under the grounds of Art. 280(1) CCP for admissibility. Under Art. 280(2) CCP appeals are not admissible before the Supreme Court of Cassation if the amount in controversy is under BGN 5,000.00. The amount in controversy on claims for maintenance can be estimated according to Art. 69(7) CCP – total maintenance payment for three years. The scope of appeal review is the same both before the Court of Appeals of Sofia and the Supreme Court of Cassation.

Under Art. 34(1) Regulation 4/2009 the court where the appeal has been filed may reverse the order of recognition only on the grounds stated in Art. 24. Under Bulgarian law it is not allowed preliminary enforcement of an order granting recognition (Art. 627c (3) CCP, Art. 405(4) CCP). Under Art. 36(3) of Regulation 4/2009 before the time for appeal of the certification of enforcement has been expired or the certification has been affirmed by the Court of Appeals debtor's property is subject only to injunction. This means that within the term under Art. 33 Regulation No. 4/2009 on cassation

54. Regulation 4/2009 uses the term certification of enforcement and the court issues a judgment for certification of enforcement. Art. 627c CCP uses the term allowing the enforcement and the court issues an order. Those terms have the same meaning.

55. This rule does not correspond to Art. 27(2) Regulation 4/2009 which uses the place of habitual residence. Habitual residence is not always, however, the permanent or present address. A party may have habitual residence even without having registered an address. Concerning the place of enforcement under Art. 27(2) Regulation 4/2009 and Art. 627c(1) CCP both place of voluntary fulfillment of the duty and the place of enforcement shall apply. The procedure is for recognition of enforcement and it applies even when the debtor does not have a habitual residence in the state of enforcement but has assets there.

appeal may be enforced. The situation is analogous to that of unrealized judgments of the appellate court (Art. 404, p. 1 CCP).

Under Art. 35 Regulation 4/2009 the court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. I believe that this applies if a claim has been filed against the mediated settlement agreement approved by the court under the rules of the state of origin and the court has granted a motion the enforcement of the agreement to be stopped.

8. Applicable for Bulgaria is Regulation 650/2012[56] on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.[57] Mediated settlement agreement is not mentioned in Regulation 650/2012. Art. 3, p. 1, (h) of the Regulation defines a court settlement - a *settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings*. Under Art. 18 MA *a mediated settlement agreement approved by a court is equal to court settlement*. Under Art. 61 Regulation 650/2012 court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58. Under Art. 46, p. 3 (b) *the court that has approved the agreement shall issue a certificate using the form established in accordance with the advisory procedure referred to in Article 81(2)*, without prejudice to Article 47. Consequently, based on Art. 61, 46, and 3(1) (b) the Bulgarian court that has approved the mediated settlement agreement may issue a certificate and having it the party to request a court in the Member State of enforcement to enforce the agreement. The court in the Member State of enforcement needs first to recognize the mediated settlement agreement approved by the court of origin based on the rules of Art. 45 and the following of Regulation 650/2012. The recognition procedure is defined by the national legislation of the Member State of enforcement.

Based on Ar. 61 of Regulation 650/2012 when in the member State of origin has been concluded a mediated settlement agreement that has been approved by a court in the Member State of origin it will be enforceable in Bulgaria. The mediated settlement agreement approved by a court to become enforceable, however, a court in the Member State of enforcement needs to recognize it (Art. 45 and the following Regulation 650/2012). Under Art. 627e CCP the request shall be submitted with the

56. It shall apply to succession in cases of death also. It does not apply to tax, custom, and administrative matters (Art. 1, p. 1 Regulation 650/2012). It does not apply also to the matters defined in Art. 1, p. 2.

57. The certificate procedure is not mandatory. Interested parties may use other procedures that are on their disposal (e. g. judgments, authentic instruments, court settlements).

district court within which jurisdiction is the permanent address of the debtor[58] or where the place of execution is. A copy of the request is not sent to the debtor. The court does not summon the parties for an open hearing. *Preliminary enforcement of the order granting recognition is not allowed*[59]. The recognition order is equal to a judgment (Art. 627e(5)). The court shall review only whether the requirements of Art. 46(3) and 61(2) of Regulation 650/2012 have been met but has no jurisdiction to review the agreement. The order is appealable before the Court of Appeal in Sofia. The Court of Appeals based on Arts.50-51 of Regulation 650/2012 shall affirm or reverse the order of recognition only when the certification is against the public order in the Member State of enforcement. *The opinion of the Court of Appeal in Sofia is appealable before the Supreme Court of Cassation*. The rules of Art. 280(1)-(2) CCP apply.

Under Art. 53 of Regulation 650/2012 the court which an appeal is lodged under Article 50 or Article 51 with, shall (based on the application of the party against whom enforcement is sought) stop the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal. This will also apply when in the Member State of origin, the court settlement may be challenge by a claim in a contested procedure and staying of the enforcement has been granted by a court as an injunction of the claim.

9. Concerning mediated settlement agreements that has been concluded *not in a Member State the Code of International Private Law (CIPL)* will apply. Under Art. 122 of CIPL Arts. 117-121 of the Code apply also to *court settlements* when in the state of origin, they have the same force as judgments. Consequently, when the mediated settlement agreement has been approved by a court in the state of origin and in that state this mediated settlement agreement is equal to a court settlement which has the force of a judgment this settlement agreement will be recognized and enforced as a judgment. A foreign judgment is recognizable by the institution it has been presented to. If a dispute about the recognition arises it can be resolved through a case for a declaratory judgment filed with Sofia City Court (Art. 118 CIPL).[60]

Based on Arts. 119 and 122 CIPL a mediated settlement agreement to be recognized needs: the party seeking recognition to be file a request with Sofia City Court; with the request the party to submit a copy of the mediated settlement agreement as well as the act of the court of origin approving it; this act shall be certified by the court of

58. In the order the court determines the time for filing of an appeal (Art. 50(5) Regulation 650/2012). The court issues an order on the preliminary measures and injunctions asked for.

59. That is preliminary enforcement while the appeal against judgments is pending. The court shall have an open hearing summoning the parties for it.

60. CIPL has been adopted in 2005 to synchronized Bulgarian law with EU law in the process of Bulgarian accession to the EU. At that time the direct effect of EU regulations was not fully understood. In practice the regime of repealed Regulation 44/2001 has been implemented. It is not well reasoned to have such big trust towards judgments and court settlements of courts from countries outside EU including countries which there no bilateral or multiparty agreements with concerning recognition.

origin that the it has entered into force as well as the mediated settlement agreement approved by the court of origin is equal to a court settlement that has the power of a judgment and it is enforceable in the state of origin. The requesting party shall submit these documents interpreted into Bulgarian and certified by the Ministry of Foreign Affairs of Bulgaria (Art. 121 CIPL). This is a classic recognition procedure. The judgment of the Sofia City Court is appealable before the Court of Appeals in Sofia which opinion is appealable before the Supreme Court of Cassation given the requirements of Art. 280(1) - (2) are met. In the recognition procedure the Bulgarian court cannot adjudicate de novo the dispute that has been resolved through the settlement agreement. The debtor may raise a defense that she has paid the debt. A writ of execution may be issued only after the judgment for recognition has entered into force (Art. 405(5) CCP).

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