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Enforceability of agreements to mediate and mediated settlement agreements in Albania

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Abstract: The article aims to examine the provision of the Albanian Mediation Law that provides mediation as a condition for the admissibility of the lawsuit in court when the parties have provided for it in the contract as a preliminary condition before addressing the court. This legal provision is addressed considering the right of access to court and aims to discuss how these agreements to mediate are enforced. In addition, since enforcement of mediated settlement agreements is also a guarantee for the effectiveness and success of mediation, this article also focuses on the analysis of the legal framework and the problems related to their enforcement, which differ depending on how the parties have resorted to mediation (voluntarily, due to the contract, or by referral from the court), and on the type of disputes, where mainly problems arise with conflicts of ownership over immovable property. Besides the analysis of the Albanian Mediation Law, following a comparative approach, the article also addresses the mediation laws of some foreign countries.

Keywords: Agreement to Mediate. Court-referred Mediation. Enforceability. Ex Contractu Mediation. Mediated Settlement Agreement. Self-initiated Mediation.

Summary: **1** Introduction – **2** Methods of referral to mediation – **3** Agreements to mediate and their enforcement – **4** Mediated settlement agreements and their enforcement – **5** Conclusions – References

1 Introduction

The first law regulating mediation in Albania, after the change of the political and economic regime in the 90s, was the law no. 8465, dated 11.3.1999 "On mediation for the amicable settlement of disputes". This law was repealed by the law no. 9090, dated 26.6.2003 "On mediation in resolving disputes". The latter was abolished by the law no. 10385, dated 24.2.2011 "On mediation in resolving disputes", which is currently in force (*from now on referred to as the Mediation Law or ML*). The Mediation Law in force is amended twice, in 2013 and 2018.

The most significant changes were those of 2018, which aimed at increasing the use of mediation, of the professionalism and accountability of mediators, and of the capacities of the Chamber of Mediators, as well as harmonizing the law with the legal framework as a whole and with the Code of Civil Procedure (*hereinafter, the CPC*).[1] The guiding acts of these amendments were mainly the Directive 2008/52/EC of the European Parliament and Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (*the Mediation Directive*) and the Recommendations of the Council of Europe "On certain aspects of mediation in civil, commercial and administrative matters between public administration bodies and private entities".[2] Also, other legal instruments, such as the European Code of Ethics for Mediators, the UNCITRAL Model Law on the Mediation of Commercial Disputes, the Recommendation Rec (1999)19 "On Mediation in Criminal Matters", the Recommendation Rec (2002)10 "On Mediation in Civil Matters", and the Recommendation Rec (98) 1 of the Committee of Ministers addressed to member states on family mediation of January 21, 1998, have been taken into account.[3]

The amendments aimed mainly the formalization, organization, and regulation of the mediators' licensing procedure, as well as expanding the scope of mediation. The extremely large workload of the courts of general jurisdiction[4] because of the reform in the judicial system in Albania seems that dictated the need to expand the

1 Report on the Draft Law "On some additions and changes to the law no. 10385, dated 24.02.2011 "On mediation in resolving disputes", p. 1, https://docplayer.net/77163555-Relation-for-the-project-law-for-some-additions-and-changes-to-the-law-nr-10385-date-per-mediation-in-the- dispute resolution.html.

2 *Idem,* p. 2.

3 *Idem,* p. 3.

4 For the High Court the year 2021 started with a total of 36,288 cases awaiting trial. Courts of appeal of general jurisdiction have experienced an increase in the backlog during 2021 by 24%, recording 22,702 cases in all appeals. Courts of first instance of general jurisdiction had a total backlog as of 2020 of 28,654 cases. *See:* High Judicial Council, Information Bulletin, July-September 2022, pp. 5-6.

scope of application of mediation. To address the issue of the backlog of cases, the Albanian legislator also introduced an unsuccessful proposal for mandatory mediation in 2017.[5] Resolving cases through mediation would not only ease the workload of the courts but would also guarantee a faster resolution considering that the average time to resolve a case in the three trial instances is currently 12 years.[6]

The scope of application of the Mediation Law exceeds that of Directive 2008/52 / EC "On some aspects of mediation in civil and commercial matters". It applies to the resolution of all disputes in civil, commercial, labor and family law, intellectual property, consumer rights, as well as conflicts between public administration bodies and private entities (*Art.2(2*)). Mediation of criminal cases is also allowed, but only for conflicts that are examined by the court at the request of the accusing victim or with the complaint of the injured party, according to articles 59 and 284 of the Code of Criminal Procedure, as well as for any other case allowed by special law. For mediation in criminal cases involving children, the provisions of the Code of Criminal Justice for Minors apply (*Art. 2(3)*).

From the totality of civil disputes for which mediation is applicable under Article 2 mentioned above, the Mediation Law places particular emphasis on certain types of disputes for which it expressly provides for the court's obligation to inform the parties of the possibility of their settlement through mediation. Thus, Article 4 of the Mediation Law provides that:

> The court, or the relevant state body, within the powers provided for in the law, mandatorily notifies, instructs, and as the case may be, informs the parties in a clear and understandable manner about the settlement of disputes through mediation, especially, but not limited to, disputes:
>
> a) in civil and family matters, when the interests of minors collide.
>
> b) in matters of reconciliation in cases of dissolution of marriage, provided for by Article 134 of the Family Code;
>
> c) of a property nature, related to the rights of ownership or co-ownership, the division of property, *rei vindicatio* claims, for action to deny (*actio negatoria*) and for lawsuits for the termination of infringement of possession, disputes arising from non-fulfillment of contractual obligations, as well as those that have as their object the compensation of non-contractual damages.

https://klgj.al/2022/11/buletini-informativ-periodik-korrik-shtator-2022/; *See also:* Judgment of the High Court No. 9, dated 11.04.2022, para. 22.

[5] The Italian legislator adopted compulsory mediation for the same purpose. See: D'ALESSANDRO, Giampiero. The alternative dispute resolution system in Italy: between harmonization with the requirements of European markets and de-juridicalization. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 1, n. 1, 2019, pp. 86, 88.

[6] AFortiori, Duration of judicial processes in Albania, May 2, 2023, available at: https://www.afortiori.al/2023/05/02/kohezgjatja-e-proceseve-gjyqesore-ne-shqiperi/.

Mediation laws of several countries,[7] including the Italian law, pay increased attention to mediating these types of disputes. In the Italian Legislative Decree No. 28/2010, in civil and commercial matters, mediation is provided as "voluntary" for all disputes. However, it is a condition for the admissibility of the lawsuit in court, and therefore "mandatory" for disputes related to co-ownership of land, property rights, division of assets, inheritance, family relations, leasing contracts, credit contracts, financial leases, medical and paramedical liability issues, defamation, insurance, banking and financial agreements, and from July 1, 2023, also for partnership, consortium, franchising, professional employment contract, network, supply contract, partnership and subcontracting.[8]

Unlike in Italy, mediation in Albania is as a condition for the admissibility of the lawsuit in court only when the parties have stipulated it in the contract as a precondition before going to court. The 2018 amendments to the Albanian mediation law introduced such a rule for the first time.

One of the purposes of this article is precisely the analysis of this new legal provision in the light of the right of access to court. It also aims to address how the Albanian legislation guarantees the enforcement of agreements to mediate. Also, since not only the enforcement of agreements to mediate but also the enforcement of mediated settlement agreements is a guarantee for the effectiveness and success of mediation, this article also focuses on the analysis of the legal framework and the problems related to the enforcement of mediated settlement agreements, which differ depending on how the parties have resorted to mediation, voluntarily, due to the contract, or by referral from the court, and the type of disputes, where problems arise mainly with conflicts of ownership over immovable property.

Given these goals, the first part of the article deals with how the parties can resort to mediation to resolve their disputes. The second part addresses the enforcement of agreements to mediate. The third part focuses on the enforcement of mediated settlement agreements.

The article follows an analytical and comparative approach. It addresses the provisions the Albanian Mediation Law concerning enforcement of agreements to mediate and mediated settlement agreements by pointing out several problems in their application and providing suggestions on how to overcome them. Following a comparative approach, the article also addresses the mediation laws of some foreign countries identifying several similarities and differences with the Albanian legislation.

[7] *See*: Kosovo Law No. 06/L-009 "On mediation", published in the Official Gazette of the Republic of Kosovo No. 14, dated August 20, 2018. Article 9, para. 2 provides mandatory mediation for almost the same issues.

[8] BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 11, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf.

2 Methods of referral to mediation

Under the Albanian mediation law, "mediation is an extrajudicial activity in which the parties seek the resolution of a dispute through a neutral third party, the mediator, to reach an acceptable settlement of the dispute, which is not contrary to the law".[9] The Mediation Law provides for three ways in which the parties may resort to mediation: (i) on their initiative; (ii) due to a provision in the contract (*Ex Contractu*); or (iii) referred by the court or prosecutor.

Although not expressly referred to as such in the law, self-initiated mediation is "the procedure of extrajudicial conflict resolution, where two or more parties to a dispute, based on free will, attempt to resolve disputes with the support of a mediator."[10] Thus, in this case, mediation begins at the initiative of the parties themselves, without going to court firstly, when a dispute has arisen between them. In the foreign literature, this type of mediation is referred to as "Full Voluntary Mediation", which is based on the spontaneous agreement of the litigants to mediate disputes that have arisen between them and that they could not resolve on their own.[11] This type of mediation is freely chosen by the litigants and is possible in any dispute regarding rights that they can freely dispose of.[12]

Another way in which the parties resort to mediation is because they have provided in the contract for the obligation to attempt mediation before they can resolve the dispute through arbitration or in court,[13] which in the literature is referred to by the term *ex contractu*,[14] or "mutually agreed mediation".[15]

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9 Art. 1(1) of the Albanian Mediation Law.

10 Art. 1(2) (a) of the Albanian Mediation Law.

11 BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 6, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf; DE PALO, Giuseppe; D'URSO, Leonardo. Achieving a Balanced Relationship between Mediation and Judicial Proceedings, 2016, p. 11, available at: https://www.mondoadr.it/wp-content/uploads/Achieving-a-balance-relationship-between-mediation-and-judicial-proceedings-De-Palo-G-DUrso-L.pdf. This type of mediation is also referred as optional mediation. See: D'ALESSANDRO, Giampiero. The alternative dispute resolution system in Italy: between harmonization with the requirements of European markets and de-juridicalization. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 1, n. 1, 2019, p. 86.

12 BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 6, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf; DE PALO, Giuseppe; D'URSO, Leonardo. Achieving a Balanced Relationship between Mediation and Judicial Proceedings, 2016, p. 11, available at: https://www.mondoadr.it/wp-content/uploads/Achieving-a-balance-relationship-between-mediation-and-judicial-proceedings-De-Palo-G-DUrso-L.pdf.

13 Art. 2 (5) of the Albanian Mediation Law. "If the parties with a contract or written agreement have provided for the condition that mediation will be the first alternative to resolve the conflict, before the judicial one, the court does not consider the case without this condition is met."

14 BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 7, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf.

15 D'ALESSANDRO, Giampiero. The alternative dispute resolution system in Italy: between harmonization with the requirements of European markets and de-juridicalization. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 1, n. 1, 2019, p. 87.

Also, the parties can resort to mediation even after they have initiated a court procedure, when they accept the court's invitation to mediate for the resolution of the dispute between them, known by Albanian law as "mediation referred by the court/prosecutor". According to the Albanian Mediation Law, this mediation begins after (i) the litigants are notified by the court of the possibility of resolving the dispute through mediation, (ii) they have agreed to settle the dispute through mediation, and (iii) the case has been transferred from the court for mediation, under this law, the CCP and the Juvenile Criminal Justice Code (*JCJC*).[16] It becomes evident that the court-referred mediation is not the same as the court-ordered mediation,[17] or as a Required Initial Mediation Session[18] where the court orders the parties to mediate against their will.[19] Albanian courts do not have such a competence. Their obligation under the Code of Civil Procedure is to make efforts to reconcile the parties to the dispute and, or to notify and instruct the parties of the possibility of resolving the dispute through mediation at any stage of the trial, and if the parties agree to refer the case for mediation.[20] Even under the Albanian Mediation Law, the court only should notify, guide and, as the case may be, inform the parties in a clear and understandable manner about the settlement of disputes through mediation.[21]

Unlike some foreign legislation,[22] the Albanian Mediation Law does not provide for mandatory mediation, which is "a preliminary and mandatory mediation effort provided by law as a precondition for filing a lawsuit in court."[23] It also does not provide for "implicit mandatory mediation" as recognized under the Rules of

16 Art. 1(2) (b) of the Albanian Mediation Law.

17 BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 6-7, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf.

18 DE PALO, Giuseppe; D'URSO, Leonardo. Achieving a Balanced Relationship between Mediation and Judicial Proceedings, 2016, p. 13, available at: https://www.mondoadr.it/wp-content/uploads/Achieving-a-balance-relationship-between-mediation-and-judicial-proceedings-De-Palo-G-DUrso-L.pdf.

19 D'ALESSANDRO, Giampiero. The alternative dispute resolution system in Italy: between harmonization with the requirements of European markets and de-juridicalization. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 1, n. 1, 2019, 87.

20 Art. 25 and 158/ç of the Albanian Code of Civil Procedure.

21 Art. 2(4) and 2(5) of the Albanian Mediation Law. Similarly, the Chinese courts may recommend the parties to attempt mediation before proceeding with the trial. See: WEI, Sun. Mediation in China – Past, Present and Future. *Revista Brasileira de Alternative Dispute Resolution – RBADR,* v.5, n. 9, 2023, pp. 61-62. DOI: 10.52028/rbadr.v5i9.ART03.

22 Italian legislative decree no. 28/2010, updated on 2023, Article 5(1); Greek Mediation Law in Civil and Commercial Matters no. 4640/2019, Article 6; Décret nº 2023-357 du 11 May 2023 relatif à la tentative préalable obligatoire de mediation, de conciliation ou de procédure participative en matière civile, available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047537847; In South Korea mediation is mandatory in certain family law disputes. See: KIM, Sae Youn; CHOI, Joonhak. Mediation in South Korea. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 5, n. 9, 2023, p. 147. DOI: 10.52028/rbadr.v5i9.ART08. In Singapore, as well, mediation is mandatory for certain family disputes and small claims. See: SIDDHARTH Jha; LIM, Carina. Evolution of Mediation in Singapore. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 5, n. 9, 2023, pp. 123-124. DOI:10.52028/rbadr.v5i9.ART07.

23 BRUNI, Alessandro. Mediation Italy, May 15, 2023, p. 7, available at: https://conflictresolution.weebly.com/uploads/9/8/2/8/98284/2022_mediation_-_italy__002_.pdf.

Court in Singapore, which impose on the parties an obligation to mediate before or during civil proceedings, otherwise the court may make adverse costs order against the party who did not make efforts to mediate.[24]

The enforcement of agreements to mediate and mediated settlement agreements also depend on how the parties approach mediation.

3 Agreements to mediate and their enforcement

The Albanian Mediation Law provides that mediation is voluntary, and the parties in dispute are free to: a) choose mediation, as an opportunity to resolve disputes provided for in this law; b) determine the conditions, the procedure and the deadlines as far as they are permissible; c) waive, at any time, the right to resolve the dispute through mediation.[25] The parties are free to agree to mediate after the dispute has arisen,[26] or before the dispute arose.[27]

Article 17, para. 2 of the Mediation Law provides for the elements of the mediation agreement's content after the dispute has arisen. Under this provision, the agreement to mediate must be in writing, signed jointly by the parties and the mediator and must determine a) the parties to this agreement and their representatives; b) a description of the object of the dispute; c) the acceptance of the mediation principles and the designated mediator; ç) the place of mediation; d) mediation expenses and mediator's remuneration. The Mediation Law also recognizes the possibility of the parties to verbally agree to resolve the dispute through mediation.

The agreement to mediate concluded before the dispute has arisen is usually part of a multi-tiered dispute resolution clause, under which the settlement of a dispute follows several stages, with the final stage being litigation or arbitration. The agreement to mediate can be a clause in the main contract or a separate written agreement.

The enforcement of the agreement to mediate depends, first, on the way the parties resorted to mediation: *on self-initiative, ex contractu or referred by the court/prosecutor*, and secondly, on the possibilities provided by the law for the enforcement of each type of agreement to mediate. In the case of self-initiated mediation, where the parties spontaneously agree to mediate a dispute that has arisen, the enforcement of the agreement to mediate does not raise any issue relevant of discussion, considering that the conclusion of the agreement to

[24] SIDDHARTH Jha; LIM, Carina. Evolution of Mediation in Singapore. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, v. 5, n. 9, 2023, p. 123. DOI:10.52028/rbadr.v5i9.ART07.
[25] Article 3 (3) of the Albanian Mediation Law.
[26] Article 1(2)(a) of the Albanian Mediation Law.
[27] Article 2(6) of the Albanian Mediation Law.

mediate also marks the beginning of the mediation procedure. The enforcement of the agreement to mediate becomes an essential issue in *ex contractu* mediation and mediation referred by the court/prosecutor.

3.1 Enforcement of the agreement to mediate in ex contractu mediation

Article 2(6) of the Mediation Law provides that: "If the parties with a contract or written agreement have provided for the condition that mediation will be the first alternative to resolve the conflict, before the judicial one, the court shall not consider the case unless this contractual condition is met". Thus, under Albanian law, the enforcement of the contractual obligation to mediate is guaranteed by allowing the courts not to consider a dispute for which the parties have agreed to submit to mediation first. Several questions arise regarding this legal provision. First, what does it mean to "not consider the case?" In other words, from a procedural point of view, what kind of decision shall the court make in such a case? Second, when is the contractual obligation to mediate exhausted? Third, are there guarantees for the protection of access to justice?

Regarding the type of decision that procedurally the court can take, in the absence of an explicit legal provision, the discussion is whether the court:

(i) will suspend the trial for a period of up to 30 days when one of the parties requests it under Article 297(dh) of the Code of Civil Procedure and Article 13 (1) of the Mediation Law? or

(ii) will decline jurisdiction *ex officio* or at the request of at least one of the parties, because a preliminary phase provided for in the contract has not been exhausted? or

(iii) will return the lawsuit as defective because there is no proof of exhaustion of the mediation phase as a necessary precondition for initiating the process? or

(iv) will decide to dismiss the case as a lawsuit that cannot be filed?

In the absence of precise legal regulation (from a procedural point of view) regarding the specific decision of the court and the absence of Albanian judicial practice and legal doctrine regarding the application of this provision, in our assessment, in a purposive interpretation of the provision and compliance with the principle of access to the court and the economy of the process, the court must suspend the trial for a period of up to 30 days if at least one of the parties requests it under Article 297(dh) of the CPC. Then, if such a period expires and the parties did not make any effort to resolve the case through mediation, the court must decide to dismiss the case. Conversely, if the parties have attempted to resolve the dispute through mediation but have not resolved it, the court must proceed with

the trial. Hence, whether the parties have fulfilled the obligation to mediate during the suspension period will be decisive for the fate of the trial. Specifically, the trial will resume if the parties comply with the obligation to mediate but they cannot find a settlement within the period of suspension of the trial, or the court will dismiss the trial if the obligation to mediate is not fulfilled within the suspension period.

The issue is when are the parties released from the obligation to mediate? Will it be sufficient to present the invitation to mediate to the other party? Or a mediator should be at least appointed and hold at least one meeting? We believe that the contractual obligation to mediate is met even by only sending an invitation to mediate to the other party and the party either refuses it expressly or tacitly by not responding within the time limit set in the invitation. Such an interpretation would be in conformity with Article 12(1) of the Mediation Law, which provides that "the procedure for mediation begins after the date of presentation of the invitation to mediate by at least one of the parties to the conflict to the other party" and ensures access to justice, since the opposite interpretation, i.e., that the parties should appoint a mediator and they should hold at least one mediation session, would make the exhaustion of this contractual obligation, which prevents the continuation of the trial in court, dependent by the will of one party to the detriment of the other and risking the passing of the limitation periods.

The reason why we do not think that the court should decline jurisdiction is because, firstly, neither the Albanian procedural law nor the jurisprudence recognizes mediation as a separate jurisdiction, as the only recognized jurisdictions are the judicial, administrative and arbitration.[28] Jurisdiction is the right of a body to resolve issues that are included in their functions, applying the law in any case.[29] The mediators neither order nor force the parties to accept the settlement of the dispute (*Art. 1(3) ML*). Even the foreign doctrine and case law do not link the valid mediation clause with jurisdiction, but with the admissibility of the claim.[30] Secondly, regarding the limitation periods, the Civil Code, which is a qualified law and stands in the hierarchy of norms above simple laws,[31] (such as the ML), does

[28] Judgment of the High Court No. 140, dated 17.01.2008; Judgment of the High Court No. 806, dated 17.06.2008; KOLA TAFAJ, Flutura; VOKSHI, Asim. Civil Procedure. Tirana: Albas, 2018, pp. 322-330; KARANXHA, Anila. Civil judicial jurisdiction according to civil and administrative procedural law. *Albanian Journal of Legal Studies*, v. 8, 2015, pp. 44.

[29] LAMANI, Alqiviadh. Civil Procedure of The People's Republic of Albania, Tirana, 1962, p. 62.

[30] SALEHIJAM, Maryam. Mediation Clauses Enforceability and Impact, *Singapore Academy Law Journal,* v. 31, 2019, p. 614, available at: https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/1473/Citation/JournalsOnlinePDF; CHAHINE, Josephine Hage; LUTRAN, David. The Breach of a Mediation Clause Can Go Unpunished Under French Law: What to do? Kluwer Arbitration Blog, July 3, 2023, available at: https://arbitrationblog.kluwerarbitration.com/2023/07/03/the-breach-of-a-mediation-clause-can-go-unpunished-under-french-law-what-to-do/.

[31] Judgment of the Albanian Constitutional Court No. 19/2007; Judgment of the Albanian Constitutional Court No. 29/2005.

not provide for mediation either as a reason for the suspension or interruption of the limitation periods (*Art. 129 and 131 CC*). Thus, since Albanian law does not regulate the issue of limitation periods in the case of mediation (as a suspensive or interruptive cause), the right of access to the court could be violated if the courts decline jurisdiction.

The Court of Justice of the European Union (CJEU) has also pointed out the importance of taking into consideration the passing of the limitation periods as a result of the enforcement of agreements to mediate. The CJEU, in several cases has held that prior implementation of an out-of-court settlement procedure is compatible with the right of access to court provided that:

> that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs – or gives rise to very low costs – for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.[32]

National legislators, whether inside or outside the EU, are encouraged to take these criteria into account when providing for mandatory mediation in their respective national law.[33] Also, the Mediation Directive in Recital 24 provides that to encourage parties to use mediation, Member States should ensure that their rules on limitation periods do not prevent parties from going to court or arbitration if their mediation attempt fails.

In our opinion (*given that the law has not explicitly provided for the procedure*), the court should not immediately decide to dismiss the case as a lawsuit that cannot be filed (i.e., without prior suspension of the case), not only because of the issue of passing of the limitation periods, as mentioned above, but also in compliance with the principle of the economy of the judicial process. If the court dismisses the case because the party has not exhausted mediation, it is up to the party to exhaust mediation and file another lawsuit again. However, he must pay the filing fee again. Meanwhile, the court realizes this goal of the provision through suspension, which does not pose the party at the risk of losing the limitation

[32] C-317/08, Rosalba Alassini v Telecom Italia SpA; C-318/08, Filomena Califano v Wind SpA, C-319/08, Lucia Anna Giorgia Iacono v Telecom Italia SpA and C-320/08, Multiservice Srl v Telecom Italia SpA, 67 (March18, 2010) ECLI:EU:C:2010:146;C-75/16, Menini and Rampanelli v. Banco Popolare Società Cooperativa 61 (June 14, 2017) ECLI:EU:C:2017:457.

[33] European Commission for the Efficiency of Justice. European Handbook for Mediation Lawmaking, June 13-14, 2019, p. 57, available at: https://rm.coe.int/cepej-2019-9-en-handbook/1680951928

period and, on the other hand, economizes the processes by concentrating the resolution of the dispute in a single process.

Finally, we also do not think that the court should take a decision on the return of the lawsuit as defective either because the parties may have changed the terms of the agreement by another subsequent act (e.g., they may have revoked the mediation clause) for which the court you can only find out if it listens to both parties.

In an expanded interpretation of Article 12 of the Mediation Law, the analysis made above regarding the decision-making of the state court would also apply *mutadis mutandis* in arbitration, when an arbitral tribunal has jurisdiction to decide on the merits of the case.

Both the stay and dismissal of the case are procedural legal actions used to indirectly enforce an agreement to mediate and prevent the parties from breaching such agreements.[34] Most foreign laws explicitly provide that an attempt to mediate is a condition for the admissibility of the claim.[35] However, these foreign laws have expressly provided for the effect of the mediation process on the limitation periods, as well as for the procedure that the court must follow in such a case, which in some cases is preceded by the suspension of the process.[36]

For instance, Italian law[37] provides for *ex contractu* mediation in a very similar manner to Albanian law, determining that when the contract, statute or act of establishment of a public or private body provides for a mediation clause, the attempt to mediate is a condition for the admissibility of the lawsuit. Specifically, when the judge finds that mediation has not taken place or has already started but is not completed, he will schedule the next session after the expiration of the term mentioned in Article 6 (*as of July 1, 2023, three months, which can be extended with another three months if necessary*).[38] In this session, the judge ascertains whether the condition of admissibility is met and, in the absence thereof, declares the inadmissibility of the claim (Art. 5(2) and 5-sexies of the legislative decree no. 28/2010, updated on 2023). The Italian law also provides for mandatory

[34] SALEHIJAM, Maryam. Mediation Clauses Enforceability and Impact, *Singapore Academy Law Journal,* v. 31, 2019, p. 623, available at: https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/1473/Citation/JournalsOnlinePDF.

[35] Croatian Mediation Law, Article 18, Italian Mediation Law (Legislative Decree No. 28/2010 updated in 2023 Article 5 para. 2 & 5-sexies); Article 6 of the Greek Mediation Law no. 464/2019; German Mediation Act, Article 283, para. 3.

[36] Article 6 & 7 of the Italian Legislative Decree on mediation no. 28/2010; Article 9(1) of the Greek Mediation Law no.464/2019; Article 13 of the Kosovo Mediation Law.

[37] Article 5 para. 5-sexies of the Italian legislative decree no. 28/2010, updated on 2023.

[38] MATTEUCCI, Giovanni. Italy "The country, where everything ends in court" New rules on mediation, *Revista Eletrônica de Direito Processual - REDP,* v. 24, n. 2, 2023, p. 79, available at: https://www.e-publicacoes.uerj.br/index.php/redp/article/view/76135/46024.

mediation.[39] In this case, mediation is also a condition for the admissibility of the claim. Inadmissibility must be raised by the respondent or *ex officio* by the court no later than the first hearing. When the judge finds that the mediation has not taken place or has already started but is not completed, the court follows the same procedure as in the e*x contractu* mediation discussed above. (*Art. 5(2) of the legislative decree no. 28/2010, updated in 2023*). The Italian law addressed the issue of the limitation period with the latest amendments of July 2023. This law provides that: "From the moment the other parties are served with the request for mediation, it produces the effects of the lawsuit for the purpose of the limitation period and prevents the expiration of the limitation period only once" (*Articles 6 & 7 of the Legislative Decree No. 28/2010*).

The Greek mediation law also provides for the *First Mandatory Session of Mediation* in the case of e*x contractu* mediation if the parties can dispose of rights relating to the object of the dispute. Based on the new mediation law (*No. 4640/2019*) this mandatory initial mediation session applies to limited cases. Among others, it applies to disputes arising from contracts that contain a valid written mediation clause.[40] In this case, the parties should provide proof of the first mandatory mediation session for the admissibility of the claim (*Art. 6 of the law 4640/2019).* The new Greek law has also dealt with the issue of the suspension of the limitation period, providing that "the mediator's written notification to the parties about the conduct of the mandatory initial session... suspends the limitation period... for as long as the mediation process lasts (*Art. 9(1) of the law 4640/2019*). The Greek law charges the party with damages if it does not comply with the agreement to mediate.[41]

In the Netherlands, the courts cannot decline jurisdiction in the case of e*x contractu* mediation because there is no legal basis for such a decision.[42] In Belgium[43] and England[44] the court may suspend the court proceedings and refer the parties to mediation if one of the parties requests the enforcement of the mediation clause in the case of *ex contractu* mediation. In Austria, the provision that

[39] Italian law (legislative decree no. 28/2010, updated in 2023, article 5 paragraph 1) provides for mandatory mediation in the following disputes: co-ownership of land, property rights, asset division, inheritance, family agreements, leasing, loan, commercial rent, medical and paramedical liability, slander, insurance, banking and financial contracts and (from 1 July 2023) partnership, consortium, franchise, professional employment contract, network, supply contract, partnership and subcontracting.

[40] Article 6 of the Greek Law on mediation no. 464/2019.

[41] Article 7(6) of the Greek Law on mediation no. 464/2019.

[42] PETERS, Nick. The enforcement of mediation agreements and settlement agreements resulting from mediation. *Corporate Mediation Journal,* v. 1-2, 2019, pp. 14-15, available at: https://research.rug.nl/en/publications/the-enforcement-of-mediation-agreements-and-settlement-agreements.

[43] *See* article 1725 and the following of the Belgian Judicial Code.

[44] PETSCHE, Marcus. The enforceability of mediation clauses: A critical analysis of English case law. *Journal of Strategic Contracting and Negotiation,* v. 5, n. 1-2, 2021, pp. 43-59, https://doi.org/10.1177/20555636211017415.

"a mediation clause constitutes a temporary waiver of the right to initiate a judicial process" provides the basis for the possibility of a stay of proceedings. Thus, a claim raised contrary to that clause has not yet become admissible (*mangelnde Klagbarkeit*).[45] In Germany, the claim is temporarily inadmissible.[46] While in France, a lawsuit in violation of an agreement to mediate is "inadmissible".[47]

3.2 Enforcement of the agreement to mediate in Court-Referred Mediation

Under the Albanian legal framework, the court cannot force the parties to resolve the disputes through mediation. Still, the court is obliged to notify and instruct the parties about the possibility of resolving the dispute through mediation. The parties are free to choose whether to settle the dispute through mediation. When the parties initiate a judicial process and later they agree to settle the case through mediation, regardless of the stage of the trial, the court decides to transfer the case to mediation (*Art. 158/ç(2) CCP*) and suspends the trial. Depending on the nature of the dispute the court sets a time limit, which is not longer than 30 days. Each of the parties has the right to request at any time the resumption of the trial (*Art. 13 ML*). If the parties resolve the dispute through a mediated settlement agreement, the court decides its approval unless it is not contrary to the law (*Art. 158/ç (4) CCP*). If the parties fail to resolve the dispute through mediation and, or the time limit set by the court has expired, then the court resumes the trial of the case (*Art. 298(5) CCP*).

Under Article 461(1) CCP, the court tries to resolve the case by agreement even in the appeal process. Even though the law does not expressly provide for the right to refer the case through mediation to the appellate court, in a logical interpretation of this provision, as well as in the application of Article 465(2) CCP, according to which, during the appeal process, the procedural rules applicable at the first instance court are also taken into account as far as they are applicable, in our opinion, the court of appeal has no legal obstacle to refer the case for

[45] See 8 ObA 2128/96s (OGH) (April 17, 1997); 1 Ob 300/00z (OGH) (17 August 2001); and 4 Ob 203/12z (OGH) (January 15, 2013) cited at: SALEHIJAM, Maryam. Mediation Clauses Enforceability and Impact, *Singapore Academy Law Journal,* v. 31, 2019, p. 626, available at: https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/1473/Citation/JournalsOnlinePDF.

[46] Article 282(3) of the German Code of Civil Procedure (ZPO).

[47] Arrêt de la Cour de cassation 21-25.024, 1er février 2023. The French Supreme Court held that the breach of an arbitration clause is not a matter of jurisdiction and cannot lead to the nullity of a decision by which a court has retained its jurisdiction, even though the parties did not initiate mediation before the arbitration procedure. Available at: https://jusmundi.com/en/document/decision/fr-mcba-holding-hhdu-holding-thdu-holding-and-others-v-hd-holding-and-others-ii-arret-de-la-cour-de-cassation-21-25-024-wednesday-1st-february-2023#decision_44585.

mediation. When the parties reach an agreement through mediation and appear before the Court of Appeal within the set time limit, the latter decides to change the court of first instance judgment and approve the mediated settlement agreement unless it is contrary to the law. If the parties fail to resolve the dispute through mediation and, or the time limit set by the court has been met, then the court resumes the trial of the case.

In the case of court-referred mediation, another issue worth highlighting is the willingness of the parties to refer the case to mediation. Under the CCP, the court can suspend the trial if it deems it reasonable, even when only one of the parties submits a request for the settlement of the case through mediation. In this case, the trial resumes when a mediated settlement agreement is not reached and, or the time limit of 30 days has expired. (*Art. 297(dh) & Art. 298/5 CCP*) It is evident that there is a discrepancy between Article 158/ç (2) of the CCP, Article 1(2)(b) of the ML and Article 297(dh) of the CCP. Article 158/ç (2) of the CCP and Article 1(2)(b) of the ML require the consent of both parties for the court to transfer the case to mediation. In contrast, Article 297(dh) of the CCP provides only for the request of one party and the court's conviction on the reasonableness of such party's request, to refer the case to mediation.

This CCP provision exceeds the voluntary concept of mediation supported by the Mediation Law. The CCP stands higher in the hierarchy of legal acts as opposed to Mediation Law. Hence, under Article 297(dh) CCP, the court technically has no prohibition to refer the case to mediation even at the request of one party, when it deems it reasonable. However, in our opinion, despite this inconsistency of provisions, when assessing the fulfillment of the second condition (i.e., "when it deems it reasonable"), the court has the discretion decide to refer the case to mediation only when both parties accept the request to mediate.

4 Mediated settlement agreements and their enforcement

According to Article 22 of the Albanian Mediation Law, when the parties agree on an acceptable solution to the dispute with the mediator, they sign a mediated settlement agreement. This agreement includes: the parties, the description of the dispute, the obligations, and conditions that the parties impose on each other, the manner and the term of their fulfillment, the signature of the parties and the mediator. The parties also determine the time limit for fulfilling the obligations defined in the agreement. The agreement must contain clearly defined obligations.

The mediated settlement agreement should be in writing, except when the mediator and the parties assess that it can be oral given the nature of the dispute and unless is prohibited by law. The mediated settlement agreement is drawn up in three copies, one for each party and one copy for the mediator. The latter must

administer each mediated settlement agreement and the relevant documentation according to the rules established by the National Chamber of Mediators.

The written form of the mediated settlement agreement is necessary to prove its existence. In the case of mediated settlement agreements that contain monetary obligations, the written form is also a condition for its validity (*Article 24/1/c ML*).

The written form of the mediated settlement agreement aims to guarantee its enforcement. It is a requirement in international legal acts and the national laws of many countries. Specifically, the Mediation Directive, the Singapore Mediation Convention and the UNCITRAL Model Law (2018) require that the mediated settlement agreement be in writing to be enforceable. Most countries require this type of agreement to be signed by the parties (e.g., Italy, Germany, France, Greece, Kosovo, North Macedonia). In Greece, Italy, France and Germany, the mediated settlement agreement in certain kind of disputes must also be signed by lawyers as an additional guarantee of its compliance with the law.

The enforceability of the mediated settlement agreement is essential to ensure the effectiveness of mediation and to promote its use. The enforcement of a mediated settlement agreement varies depending on how the parties have resorted to mediation, voluntarily, due to the contract, or by referral from the court.

4.1 Enforcement of mediated settlement agreements in Court-Referred Mediation

The CCP expressly provides for the enforcement of the mediated settlement agreement in court-referred mediation. Under Article 158/ç (4), the court approves the mediated settlement unless it is contrary to the law. The term “contrary to the law” should be interpreted narrowly by the court because not every violation of rules should prevent the approval of the mediated settlement agreement. The mediated settlement agreement should not be contrary to a mandatory norm of the law or public policy. Courts should also take into consideration article 23(2) of the Mediation Law, which provides that “when the case is resolved through mediation, the judicial bodies decide, as the case may be, on the approval of the amicable settlement of the civil case... except in cases where there is invalidity”. Article 24 of the Mediation Law provides for the grounds of the invalidity of the mediated settlement agreement. Thus, the court should approve the mediated settlement agreement unless there are grounds of invalidity provided for in Article 24 of the Mediation Law.

Under Article 24 of the Mediation Law, the mediated settlement agreement is invalid when: a) it is carried out by persons who are not licensed and registered mediators according to this law; b) the dispute, according to the law, must be

resolved only in court; c) contains pecuniary obligations and is not drafted in writing; ç) contains obligations for entities that did not participate in the mediation; d) there is simulation and, for the actual conflict, there are causes of invalidity. Also, the court, besides the cases provided in the Civil Code for the invalidity of legal actions,[48] can find the mediated settlement agreement invalid even when it concludes that it does not respect the public order of the Republic of Albania.

The Code of Civil Procedure provides that special appeal is allowed against the court's decision to approve the settlement of the dispute by conciliation or mediation, or to disapprove its settlement by conciliation (*Art. 158/c CCP*). The wording of this provision puts the parties who have reached an agreement through mediation in an unequal position to those who have reached an agreement through conciliation. Practically, this provision makes it impossible for the party who disagrees with the court's decision to disapprove the mediated settlement agreement to exercise the right of special appeal. For this reason, in our opinion, the provision is incomplete, and it should be revised as follows: "Special appeal is allowed against the court's decision to approve the settlement of the dispute by conciliation or mediation, or to disapprove the settlement agreement reached through conciliation or mediation".

Referring to Article 510(a) of the CCP, the court decision approving the mediated settlement agreement constitutes an executive title. Its content must be in conformity with Article 310 of the CCP. It must include the descriptive part of the approved agreement. The dispositive part of the court decision should contain the litigation costs, the right to appeal and the execution order issued in accordance with Article 511(a) CCP. The execution order is executed by the judicial bailiff.

4.2 Enforcement of mediated settlement agreements in self-initiated and ex contractu mediation

The first paragraph of Article 22 of the Mediation Law provides that when the parties agree to resolve the dispute between them, together with the mediators, they sign the relevant agreement, which is binding and enforceable on the same level as arbitration awards. So, this provision equates the mediated settlement agreement in *self-initiated* and *ex contractu* mediation[49] with arbitration awards, which are executive titles under article 510/ç of the CCP.

[48] Articles 92-102 of the Albanian Civil Code.

[49] We think that in the case of mediated settlement agreement reached in court-referred mediation, it is unnecessary to provide for their enforcement the same as arbitration awards since the court's decisions on the approval of the mediated settlement agreement in application of Article 158/ç CCP and Article 23(1)(2) of the Mediation Law are themselves executive titles under Article 510/a of the CCP.

The fact that the agreement is considered enforceable by law on the same level as arbitration awards means that the execution procedure must be the same as that of arbitration awards. According to Article 46 (1) of Law no. 52/2023 "On Arbitration in the Republic of Albania", arbitration awards are enforced after the issuance of the execution order by the judicial district court. In analogy, mediated settlement agreements reached in *self-initiative* or *ex contractu* mediation are enforced through the issuance of the execution order by the judicial district court.

In addition to Article 22, Article 23 of the Mediation Law provides explicitly that mediated settlement agreements are executive titles when they meet the criteria set forth in Article 22 of this law and they are executed by the bailiffs. So, based on Article 23, the mediation agreement is an executive title in the sense of Article 510/e of the CCP, according to which "Executive titles are…other acts that according to special laws are called executive titles and they are executed by the enforcement office". According to Article 22, the mediated settlement agreement is equated with an arbitration award, which under Article 510/ç of the CPC also constitutes an executive title. Therefore, this double provision of the mediated settlement agreement as an executive title in both Article 22 and Article 23 of the Law on Mediation is unnecessary.

The provision of mediated settlement agreements as executive titles is a very positive legal regulation that facilitates their enforcement and encourages the use of mediation. However, enforcement of these legal provisions is not devoid of problems. There is a discussion regarding the enforcement mediated settlement agreements concerning the transfer of ownership or the division of property. The issue is whether these mediated settlement agreements related to the transfer of ownership of immovable property, legal actions for which the Albanian Civil Code[50] stipulates the notarial form as a condition for their validity, can be registered in the real estate register at the State Cadaster Agency (SCA) without being notarized by a notary or without an execution order issued by the court.

The authors' position is that the SCA should not register mediation agreements concerning the transfer of immovable property ownership without being notarized or without an execution order issued by the court for the following reasons. First, Article 24(2) of Law no. 111/2018 "On the State Cadaster Agency" does not provide that mediators' acts can be registered directly in the SCA. Secondly, Articles 22 and 23 of the Mediation Law provide that mediated settlement agreements are executive titles. Under Article 511 of the Code of Civil Procedure, mediated settlement agreements are not included in those executive titles that are enforceable without

[50] Article 83 of the Civil Code provides that: "The legal action for the transfer of ownership of immovable property and real rights over them must be in the form of a notarial deed and registered, otherwise it is not valid. A legal action is invalid if it does not meet the form requirement expressly imposed by law. …"

an execution order issued by the court. Thirdly, while the parties are free to agree on the transfer of ownership of an immovable property in a mediated settlement agreement, referring to the provisions of the Albanian Civil Code (Article 83), the legal action of the transfer of ownership in itself must be done with a notarial deed so that it can be valid and registered in the SCA.

We are also of the opinion that without having the form of a notarial deed, the court should also refuse to issue an execution order for a mediated settlement agreement related to the transfer of ownership of immovable property because that agreement would be invalid in the sense of Article 24(2) of the Mediation Law and Article 83 of the Civil Code. Although practically, if a mediated settlement agreement only relates to a legal action, which is in the form of a notarial deed, the issuing of an execution order by the court would be unnecessary because the notarial deed itself can be registered directly in the SCA.

As per above, referring to the legal framework in force, we think that mediated settlement agreements concerning the transfer of immovable property ownership should be enforced by signing a special notarial deed for the transfer of ownership, which the SCA can register directly. Whereas, when the mediation agreement is not related to a legal action for which the law requires the notarial form for its validity, for its enforcement it is sufficient to have an execution order from the court.

Mediation laws of several countries provide explicitly for similar solutions concerning the enforcement of mediated settlement agreements concerning the transfer of immovable property ownership. Specifically, the German mediation law[51] does not provide for formal requirements for the mediated settlement agreements. However, if the mediated settlement agreement relates to a legal action for which the law requires a particular form (e.g., the requirement for a notarial form of the contract for the transfer of ownership of a plot of land according to article 311bBGB), this form requirement must be complied with.[52] Also, the Greek Mediation Law provides that an agreement signed by the mediator, the parties and their lawyers is an executive title according to Article 904 of the Greek Procedural Code. It also determines that if the law requires a notarial form for the specific nature of the legal relationship resolved through mediation, then the legal action must be done by a notarial deed.[53] Kosovo Mediation Law[54] also provides that the mediated settlement agreement must be signed by the parties and the

[51] Mediation Act of July 21, 2012 (Federal Law Gazette I, p. 1577), last amended by Article 135 of the Statutory Instrument of August 31, 2015 (Federal Law Gazette I, p. 1474).

[52] WILKING. Felix. The enforcement and setting aside of mediation settlement agreements: A comparison between German and international commercial mediation, 2015, p. 13, available at: https://open.uct.ac.za/server/api/core/bitstreams/c99e6352-2e66-41ba-9942-5f9265045a7b/content.

[53] Greek Mediation Law No. 4640/2019 Article 8(2)(3)(4).

[54] Kosovo Mediation Law No. 06/L –009, published in the Official Gazette of the Republic of Kosovo/No. 14/20 August 2018, Article 14(2) and 14(5).

mediator and must comply with the Law on Obligatory Relations. Compliance with the Law on Obligatory Relations limits the form of the mediated settlement agreement concerning legal actions for which this law requires a particular form (*notarial deed*). Thus, in this last case, the mediation agreement must be made in the form mandated by the Law on Obligatory Relations. Even the Italian law on mediation, Legislative decree No. 28/2010, which applies to both cross-border and domestic mediation processes[55] and foresees compulsory mediation in many cases, including *in rem* rights (*diritti reali*), among other property cases, provides that if the mediated settlement agreement is signed by the parties, the lawyers and the mediator, it becomes an executive and enforceable title. If the agreement concerns the transfer of immovable property ownership, it must be defined in a document drawn up by a public official, usually a notary public (*Art. 2703 cc – civil code*) and be transcribed in real estate registers (*Art. 2643 and 2657 cc*).[56]

5 Conclusions

Over the years, the Albanian mediation law has changed to expand the scope of mediation, increase the professionalism of mediators and the efficiency of mediation procedures, as well as to encourage the use of mediation as a mechanism that will facilitate access to justice and reduce the workload of the courts. For these goals, the Albanian mediation law has defined, among other things, rules that ensure the enforcement of agreements to mediate and mediated settlement agreements. The focus of this article was precisely the analysis of these rules and the problems related to them. The enforcement of agreements to mediate and mediated settlement agreements depend mainly on the type of mediation, whether it is entirely voluntary, *ex contractu*, or court-referred mediation.

Regarding the enforcement of agreements to mediate, in the case of *ex contractu* mediation, from the analysis of Article 2(6) of the Mediation Law, which is considered positive because it guarantees their enforcement by providing that the court does not consider the case if the parties in a written agreement have provided for the condition that mediation will be the first alternative to resolve the conflict, before the judicial one, and this has not been exhausted, the problem related to the specific decision that the court would take in such a case was also highlighted. The recommendation related to this problem is that the law should explicitly foresee from a procedural point of view the decision the court should take

[55] LUPOI, Michele Angelo. Recent developments in Italian civil procedural law, p. 17, available at: https://www.judicium.it/wp-content/uploads/saggi/207/Lupoi%20III.pdf.

[56] Article 11(7) of the Italian Mediation Law (Legislative Decree no. 28/2010, updated on 2023).

in such a case (e.g., suspending the case) as well as foresee mediation (only once) as a reason for the suspension of the limitation periods.

Regarding the enforcement of agreements to mediate in court-referred mediations, the paper pointed out a discrepancy between the norms of the Mediation Law and the Civil Procedure Code. Specifically, under Article 158/c of the CCP and Article 1(2) of the Mediation Law, the court decides to transfer the case to mediation with the will of both parties. Under Article 297(dh) of the CCP, the court technically has no prohibition to refer the case to mediation even at the request of one of the parties, when it deems it reasonable. In the authors' opinion, when assessing the fulfillment of the second condition (i.e., "when it deems it reasonable"), the court should decide to refer the case to mediation only when both parties accept the request to mediate. Also, although the law does not expressly provide for the right of the court of appeals to refer the case to mediation, it is recommended that in a logical interpretation of Article 461(1) of the CPC, the appellate court can refer the case to mediation. If the parties reach a mediated settlement agreement and appear in court within the set time limit, the Court of Appeal must decide to change the decision of the court of first instance and approve the agreement reached through mediation unless it is contrary to the law.

Regarding the enforcement of mediated settlement agreements in the case of *self-initiated* and *ex contractu* mediation, it is very positive the provision in the law that mediated settlement agreements are executive titles and their enforcement is guaranteed through the issuance of the execution order by the court and by the enforcement service. Even in the case of *court-referred mediation,* the court's decision on the approval of the mediated settlement agreement is an executive title. Under Articles 310 and 511(a) of the CCP, it also contains the execution order.

Regarding the issue of the enforcement of mediated settlement agreements related to the transfer of property rights over immovable property, the authors conclude that based on the current Albanian legal framework, the mediated settlement agreement cannot be registered directly in the cadaster (without an execution order or notarial deed). Although the parties are free to agree on the transfer of ownership of an immovable property with a mediation agreement, the transfer of ownership itself must be done by a notarial deed to be valid and registered in the cadaster. In addition, even if the parties conclude a mediated settlement agreement for the transfer of ownership of an immovable property without a notarial deed and ask the court to issue an execution order, the latter must reject such a request because the mediated settlement agreement is invalid in application of Article 24(2) of the Mediation Law. As shown by the comparative analysis, mediation laws of several countries provide explicitly for the obligation to respect the notarial form in the case of agreements for the transfer of immovable property ownership. In response to this problem and to avoid different interpretations, the authors recommend that the

Albanian mediation law should provide for express legal regulation like the laws of the countries analyzed in this article.

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