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Research Article

BUILDING A COMPULSORY MEDIATION PATHWAY: BULGARIA AS A LIVE EXPERIMENT IN DISPUTE SYSTEM DESIGN?

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ABSTRACT

Background: *Bulgaria has had a statutory mediation framework for over two decades, yet mediation remains underused compared with court adjudication. In the context of judicial reform and caseload reduction, Bulgaria adopted rules in 2023 that introduced mandatory judicial mediation pursuant to which parties to pending court proceedings are required to attend a free-of-charge mediation information session of up to three hours before the first open hearing. The provision was scheduled to come into force on 1 July 2024. On that date, however, the Bulgarian Constitutional Court (Decision No. 11 of 1 July 2024, Constitutional Case No. 11/2024) declared the core provisions of the reform unconstitutional, reviving the question of how far the legislature can require a mediation step without impairing access to justice. In July 2025, Bulgaria adopted a revised model centred on mandatory participation in a mediation information meeting during pending proceedings for specified categories of disputes subject to additional referral by judges.*

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This article analyses the new model, positions it within European approaches, and identifies design requirements for legislation that can stimulate mediation uptake without creating procedural barriers.

Method: *The article employs doctrinal and comparative legal analysis. It examines the 2025 amendments to the Bulgarian Civil Procedure Code and the Mediation Act, introducing mandatory participation in a mediation information meeting, and considers them in light of the Bulgarian Constitutional Court's reasoning on proportionality and effective access to court. It situates Bulgaria's approach within European standards, particularly the interpretation of mandatory ADR/mediation models by the Court of Justice of the European Union and the European Court of Human Rights, as well as the mandatory mediation models applicable in Italy, Lithuania, Spain, Greece, and Cyprus. The analysis also draws on international discussions on the design features of effective mandatory mediation models, including incentives, costs, procedural safeguards, and protections in cases involving violence or risks to children, to offer suggestions regarding the features an effective mandatory mediation approach should adopt.*

Results and Conclusions: *The 2025 Bulgarian mandatory mediation model is best characterised as a hybrid: it combines a legislatively defined set of case types with broad judicial discretion and multiple statutory exceptions. It compels attendance at an information meeting (not mediation itself), does not require settlement, does not automatically stay the court case, and limits adverse costs consequences to a modest fee, all features aimed at meeting constitutional proportionality requirements. At the same time, its effectiveness will depend on implementation choices (funding, quality control of mediators, clear referral criteria, and workable incentives). The Bulgarian trajectory confirms the broader European trend: mandatory or semi-mandatory mediation mechanisms can be compatible with the right to effective judicial protection, but only when designed to avoid turning ADR into a procedural barrier and when safeguards for vulnerable parties are robust. The ultimate conclusion is that it may be advisable to adopt uniform, mandatory mediation procedures that apply across the EU and form the backbone of an efficient mediation ecosystem across the Union that truly promotes out-of-court dispute settlement.*

1 INTRODUCTION

Although mediation has been regulated in Bulgaria for more than twenty years under the Mediation Act,[1] public and professional recognition of mediation as a realistic alternative to court adjudication remains limited. Over time, Bulgarian policy debates gradually shifted from purely voluntary mediation toward approaches under which, rather than relying solely on a judge, the parties are encouraged or directed to work with a mediator, who supports communication and assists them in seeking a mutually acceptable solution under conditions of voluntariness and confidentiality.

1 Law of the Republic of Bulgaria 'On Mediation' [2004] State Gazette 110 (amended 8 July 2025) <https://lex.bg/laws/ldoc/2135496713> accessed 5 January 2026.

Parties often value mediation because it may produce agreements that reflect their interests and, where needed, can be given enforceability through subsequent court proceedings. Nevertheless, mediation historically remained non-mandatory and was not a procedural prerequisite for filing or continuing court proceedings, thereby constraining its practical scope. This triggered a debate in recent years on whether and how to amend the legal framework so that parties would be required, at least, to attempt consensual settlement through an out-of-court process.

These discussions developed in the broader context of judicial reform: as a tool to reduce the courts' caseload, increase party satisfaction with dispute administration, and align Bulgaria with practices already adopted in many European and non-European jurisdictions. As a result, the transition toward mandatory judicial mediation was included as a key step in Reform C10.R3 ("Introduction of mandatory judicial mediation") under Bulgaria's National Recovery and Resilience Plan.[2]

Within the set timelines, amendments to both the Mediation Act and the Civil Procedure Code were adopted and published in State Gazette No. 11/2023, scheduled to come into force on 1 July 2024. During the deferred coming-into-force period, the Supreme Bar Council filed a constitutional challenge against the relevant provisions of the Mediation Act and the Civil Procedure Code. On 1 July 2024, the day the contested rules were to become applicable, the Constitutional Court issued its decision in Constitutional Case No. 11/2024 (the "Constitutional Court decision on mandatory mediation"), declaring each of the challenged provisions unconstitutional.[3]

The declaration of unconstitutionality reignited debate on the future of judicial mediation in Bulgaria and the direction reform should take. This culminated in the adoption of new amendments to the Civil Procedure Code, promulgated in State Gazette No. 55 of 8 July 2025,[4] introducing a mandatory mediation information meeting (up to three hours) in a broad range of proceedings, aimed at explaining to parties the principles of mediation and how it might support the resolution of their dispute.

This article critically examines the newly adopted model (a second attempt at "mandatory mediation" in Bulgaria) and compares it with established mandatory mediation models in the European Union, situating Bulgaria's approach within the broader landscape and outlining possible avenues for improvement. Separately, the article seeks to offer guidance on the requirements for a well-functioning model of mandatory mediation, based on the comparative analysis conducted and the processes that should be undertaken in the course of identifying a country's mandatory mediation model.

2 Reform C10.R3 "Introduction of mandatory judicial mediation" see, Council of Ministers of the Republic of Bulgaria, 'National Recovery and Resilience Plan' (amended 2025) <https://nextgeneration.bg/14> accessed 5 January 2026.

3 Case No 11/2024 (Constitutional Court of the Republic of Bulgaria, 1 July 2024) <https://www.constcourt.bg/bg/case-660> accessed 5 January 2026.

4 Civil Procedure Code of the Republic of Bulgaria [2007] State Gazette 59 (amended 8 July 2025) <https://lex.bg/laws/ldoc/2135558368> accessed 5 January 2026.

2 RESEARCH METHODOLOGY

The methodology deployed in preparing this article primarily involves doctrinal-comparative methodology, combined with normative institutional design analysis. While the reform trajectory in Bulgaria serves as the central empirical referent, the article does not aim to offer a purely descriptive case narrative focused on the mediation design of a particular country. Rather, Bulgaria serves as a *case through which* broader questions of the design of mandatory (or semi-mandatory) mediation are tested against constitutional and European standards of effective judicial protection, proportionality, the voluntariness of outcomes, and procedural fairness.

The core method used herein is a doctrinal interpretation of the 2023 and 2025 amendments to the Bulgarian Civil Procedure Code and the Mediation Act, their interaction with the national mediation framework, and their place within the broader European framework. The analysis reads the new provisions in light of the Bulgarian Constitutional Court's reasoning (Decision No 11 of 1 July 2024, Constitutional Case No 11/2024) on the constitutional limits of imposing a compulsory ADR step within pending proceedings, with particular attention to proportionality, legal certainty, and access to court. Doctrinal analysis is used to (i) map the normative structure of the 2025 model (triggers, exceptions, legal consequences, incentives); (ii) identify how the legislature attempted to "repair" the constitutional defects of the 2023 model; and (iii) evaluate the internal coherence and foreseeable operation of the rules from the standpoint of procedural law and constitutional requirements. To situate the Bulgarian model within wider European practice, the article applies a structured comparative approach. The comparison is functional rather than taxonomic: it examines how different jurisdictions address the same regulatory problem, stimulating mediation uptake without creating a procedural barrier through varying combinations of (a) categorical referral, (b) judicial discretion, (c) sanctions/incentives, (d) time limits and limitation-period protection, and (e) safeguards for vulnerable parties. Within this comparative framework, the article draws on EU and Council of Europe standards to identify design features that tend to be legally decisive (e.g., absence of mandatory settlement, avoidance of substantial delay, cost proportionality, access to interim measures, and operational opt-outs).

The methodology used in drafting this article further focuses on the case law of the Court of Justice of the European Union and the European Court of Human Rights as the principal supranational benchmarks for assessing the compatibility of "mandatory mediation" models with the right to effective judicial protection. The relevant jurisprudence is used not merely as background, but as a set of criteria to assess whether the Bulgarian legislative design (as a hybrid information-meeting model within pending proceedings) plausibly satisfies the established European thresholds and safeguards.

To situate Bulgaria within wider European practice, the study adopts a structured functional comparison. Rather than classifying jurisdictions by formal labels ("mandatory" vs. "voluntary"), it examines how legal systems address the same regulatory problem,

stimulating mediation uptake without creating a procedural barrier, through varying combinations of (a) categorical referral, (b) judicial discretion, (c) sanctions and incentives, (d) time limits and limitation-period protection, and (e) safeguards for vulnerable parties. Within this framework, the article further undertakes a comparative analysis of national jurisprudence in Italy, Lithuania, Greece, Spain, and Cyprus to examine how mandatory mediation models have evolved.

It should be further stressed that this manuscript is non-empirical. It does not evaluate settlement rates, user satisfaction, or system-level outcomes of the 2025 Bulgarian mandatory mediation model, as the reform is recent and comprehensive implementation data is not yet publicly available. Any claims about expected effectiveness are, therefore, framed conditionally and linked to identifiable implementation variables, funding, mediator capacity, quality assurance, and the consistency of judicial referral practice. The article's contribution is primarily doctrinal and analytical: clarifying constitutional and European parameters, explaining the internal logic and safeguards of the 2025 framework, and identifying design choices that determine whether a compulsory element operates as a facilitative nudge or an access-to-justice barrier.

Building on the doctrinal and comparative findings, the article develops a normative synthesis of "design requirements" for constitutionally and EU-law compatible mandatory mediation mechanisms. This step is methodologically distinct: it translates the legal constraints (constitutional proportionality; access to court; voluntariness of outcome; equality of arms; legal certainty) into operational design propositions (scope calibration; meaningful exceptions; proportionate consequences; funding and quality assurance; workable judicial referral criteria; safeguards for violence/child-risk cases). The recommendations are grounded in identified legal criteria and comparative practice, rather than being purely policy-driven.

The study further relies on primary legal sources (Bulgarian legislation and amendments, Constitutional Court decision and separate opinions), EU legal instruments and jurisprudence, ECtHR standards under Article 6 ECHR, and relevant academic literature on mandatory mediation, ADR and access to justice. Secondary sources are used to contextualise policy objectives and to reflect scholarly debate on mandatory ADR, but the analysis and conclusions remain anchored in the interpretation of legal norms and jurisprudential criteria.

It should also be clarified that the manuscript is non-empirical, as it does not present a statistical evaluation of settlement rates or the implementation outcomes of the 2025 model. The reform is recent, and comprehensive implementation data is not yet publicly available. Accordingly, claims regarding expected effectiveness are framed as conditional and tied to identifiable implementation variables (funding, mediator capacity, quality control, and consistent referral practice). The contribution of the article is therefore primarily doctrinal and analytical: it clarifies the constitutional and European parameters

of the model, explains its internal logic and safeguards, and identifies legally relevant design choices that determine whether "mandatory" mediation functions as a facilitative nudge or an access-to-justice barrier.

3 THE CONCEPT OF MANDATORY MEDIATION

Before offering additional insights into the mandatory mediation model that has emerged in Bulgaria, it is worth explaining what mandatory mediation is.

Mandatory mediation may be defined as a process that requires parties to a dispute to participate in a structured, neutral, and facilitative process aimed at informing them of the nature of the process and how it may be practically helpful to them, while preserving the voluntariness of any agreement reached. Unlike voluntary mediation, it compels attendance or initial engagement while avoiding coercive settlement tactics that could undermine self-determination.[5] Academic sources emphasise this distinction by asserting that "*at its core, mandatory mediation aims to familiarize parties with the process or to initiate it, without compelling them to reach a settlement.*" [6] Such forced attempts to familiarise parties with the principles of mediation and raise their general understanding of how best to use it in the context of their specific dispute have, however, always been accompanied by raised concerns. Mandatory mediation is often criticised on three main grounds: doubts about efficiency, concerns that compulsion undermines party self-determination, and the risk that it restricts effective access to the courts;[7] however, proponents argue that if framed as mandatory attendance/consideration rather than mandatory settlement, and supported by safeguards, mediation can legitimately advance justice by reducing delay and cost, narrowing issues early, supporting proportionality and case management, improving the parties' sense of voice and procedural fairness, and enabling more durable, tailored outcomes (with courts remaining available where adjudication is needed).[8] Empirical reviews of court-connected programmes provide support for these claims, finding that design choices and implementation matter for settlement, time/cost effects, and participant experience, and that mediation can deliver perceived fairness and meaningful participation even where settlement is not reached.[9]

5 CH Remco van Rhee, 'Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective' (2021) 4(4) Access to Justice in Eastern Europe 7, doi:10.33327/AJEE-18-4.4-a000082.

6 Giuseppe De Palo, 'Da Promessa à Prática: Solucionando o paradoxo da mediação na Europa' (2025) 3(3) Revista Trabalho, Direito e Justiça, e143, doi:10.37497/RevistaTDJ.TRT9PR.3.2025.143.

7 Frank EA Sander, 'Another View of Mandatory Mediation' (2007) 13(2) Dispute Resolution Magazine 16.

8 Michael Bartlet, 'Mandatory Mediation and the Rule of Law' (2019) 1(1) *Amicus Curiae:* Series 2 50, doi:10.14296/ac.v1i1.5066.

9 Roselle L Wissler, 'The Effectiveness of Court-Connected Dispute Resolution in Civil Cases' (2004) 22(1-2*) Conflict Resolution Quarterly 55,* doi:10.1002/crq.92.

At the same time, rule-of-law analyses emphasise that any "mandatory" model must preserve voluntariness of outcome, protect against coercion,[10] and provide meaningful opt-outs and procedural guarantees to address access-to-justice and autonomy objections, while comparative work highlights both the promise and the limits of mandated schemes across jurisdictions.[11] For a balanced treatment, it is common to acknowledge leading critiques cautioning against over-reliance on ADR and the potential dilution of adjudicative justice, and to use them to justify robust safeguards rather than to reject mediation outright.[12]

To date however, the legitimacy of mandatory mediation has been confirmed by the European Court of Human Rights (ECtHR)[13] and the Court of Justice of the European Union (CJEU)[14] as in a mandatory mediation model, the parties' core obligation is typically limited to inviting the other party and attending an initial session with a mediator to explore whether mediation could help resolve the dispute. This "mandatory attempt" strikes a pragmatic balance between full compulsory mediation and a purely voluntary regime, in which parties have no duty to initiate or attend a preliminary meeting. Across the EU, particularly in jurisdictions such as Italy, Lithuania, Spain, Greece, and Cyprus, mandatory mediation schemes have been introduced primarily to ease court congestion, lower dispute-resolution costs, and encourage faster, more comprehensive outcomes.[15] Beyond these operational goals, legislators often aim to trigger a broader cultural shift toward consensual settlement, ultimately strengthening social cohesion and stability.

10 Dorcas Quek, 'Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program' (2010) 11(2) Cardozo Journal of Conflict Resolution 479.

11 Sameer Ali, 'Conciliation Beyond the Courts – Aspirations and Limits of Mandated and Voluntary Court Mediation Programmes from a Multi-Jurisdictional Perspective' in Burkhard Hess and others (eds), *Comparative Procedural Law and Justice* (2024) pt 15, Ch 2 <https://www.cplj.org/a/15-2> accessed 25 March 2026.

12 Hazel Genn, 'What is Civil Justice For? Reform, ADR, and Access to Justice' (2013) 24 *Yale Journal of Law and the Humanities* 397.

13 *Ashingdane v the United Kingdom* App no 8225/78 (ECtHR, 28 May 1985) <https://hudoc.echr.coe.int/eng?i=001-57425> accessed 5 January 2026; Case C-35/22 *CAJASUR Banco SA v JO and IM* (CJEU (Fourth Chamber), 13 July 2023) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022CJ0035> accessed 5 January 2026.

14 Joined cases C-317/08, C-318/08, C-319/08 and C-320/08 *Rosalba Alassini and Others v Telecom Italia SpA and Others* (CJEU (Fourth Chamber), 18 March 2010) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0317> accessed 4 January 2026; Case C-75/16 *Livio Menini and Maria Antonia Rampanelli v Banco Popolare - Società Cooperativa* (CJEU (First Chamber), 14 June 2017) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CJ0075> accessed 5 January 2026.

15 This has been found to be true, particularly for family disputes where mandatory mediation schemes across the EU have been depicted in the following article: Indre Korsakoviene, Julija Branimirova Radanova and Agnė Tvaronavičienė, 'Mandatory Mediation in Family Disputes: An Emerging Trend in the European Union?' (2023) 53(2) Review of European and Comparative Law 67, doi:10.31743/recl.15707.

The compatibility of mandatory mediation attempts with fundamental principles, especially effective access to justice and voluntariness, has been extensively debated.[16] Nevertheless, several Member States have chosen to test whether a structured "nudge" toward mediation would increase uptake in practice. In some jurisdictions, results have exceeded expectations. Italy is frequently cited as a leading example:[17] for roughly the past fifteen years, it has operated an "easy opt-out" model requiring parties, in many civil and commercial matters (and sometimes by judicial order in pending litigation), to attend an initial session at a mediation body accredited by the Ministry of Justice before proceeding in court. The Italian approach has faced repeated legal challenges, including arguments before the Italian Constitutional Court and in EU-law contexts, claiming that mandatory mediation interferes with the right to bring a case before a court.[18] This shows that not only the content and form of the mediation model are important, but also the way it is introduced to society, an aspect that has also been reconfirmed by recent developments in Bulgaria prior to adopting the mandatory mediation model.

4 MANDATORY MEDIATION IN THE EUROPEAN UNION CONTEXT

Before analysing in full the newly emerged mandatory model in Bulgaria, it is worth further exploring the wider European Union context in which it is positioned. The earliest EU-level policy discussion on mandatory mediation can be traced to the European Commission's 2002 Green Paper on ADR, which linked out-of-court resolution to improved access to justice through reduced caseload and lower time/cost burdens, while cautioning that mandatory schemes must not violate the right of access to court under Article 6 ECHR.[19] The consultation revealed polarised national views, indicating that Member States differed significantly in their willingness to embrace a unified mediation approach.

These divergences persisted even after Directive 2008/52/EC on mediation in cross-border civil and commercial disputes ("Mediation Directive") (transposed in into Bulgarian law by the Mediation Act amended in 2007).[20] While the Directive does not fully harmonise national mediation regimes, Article 5(2) explicitly permits Member States to introduce

16 Timothy Hedeen, 'Coercion and Self-Determination in Court-Connected Mediation: All Mediations are Voluntary, but Some are More Voluntary than Others' (2005) 26(3) The Justice System Journal 273.

17 Giovanni Matteucci, 'Mandatory Mediation, the Italian Experience, a Case Study–2025' (2025) 16(1) Beijing Law Review 353, doi:10.4236/blr.2025.161017.

18 Giovanni Matteucci, 'Civil Process and Mediation in Italy' (2024) 15(3) Beijing Law Review 1347, doi:10.4236/blr.2024.153080.

19 European Commission, 'Green Paper on Alternative Dispute Resolution in Civil and Commercial Law' (COM/2002/0196 final, 19 April 2002) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52002DC0196> accessed 5 January 2026.

20 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 'On Certain Aspects of Mediation in Civil and Commercial Matters' [2008] OJ L 136/3 <https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng?utm_source=chatgpt.com> accessed 5 January 2026.

mandatory mediation provided access to the judicial system is not prevented**.** It leaves open how "mandatory" mediation may be implemented, allowing it to operate before or during proceedings and to be supported by sanctions or incentives.[21]

The compatibility of mandatory mediation with EU law has been repeatedly debated. In the Italian preliminary reference in Case C-492/11 (Giudice di pace di Mercato San Severino),[22] the referring court questioned whether a mandatory pre-trial mediation requirement, and possible cost consequences for non-participation, could conflict with Article 47 of the Charter, the Directive, and ECHR principles. Although the CJEU did not decide that reference (because parts of the Italian framework were declared unconstitutional in 2012 and the questions became hypothetical), the questions themselves reflected the core tension: how far may procedural obligations go before they become a barrier to justice?

Subsequently, in Joined Cases C-317/08 to C-320/08 (Alassini),[23] the CJEU accepted that mandatory ADR/mediation may be permissible when the scheme:

1. does not force parties into settlement;
2. does not cause substantial delay in bringing proceedings;
3. suspends limitation periods during the procedure; and
4. causes no or only insignificant costs for parties; and
5. allows for the adoption of interim measures.

It was, therefore, concluded that if national legislation imposes a mandatory out-of-court settlement procedure, which fully meets the above criteria, the principles of equivalence and effectiveness or the principle of effective judicial protection, are not violated or disproportionately restricted. These conditions are widely treated as a baseline EU standard for compatibility of mandatory mediation mechanisms with effective judicial protection.[24]

A few years later, in 2017, the CJEU revisited and refined the criteria developed in *Alassini*. In *Menini and Rampanelli* (the *Menini* case),[25] the Court was asked whether making mediation a prerequisite to bringing a claim before a court is compatible with the Consumer ADR Directive, which stresses that ADR should be voluntary. The CJEU

21 F Peter Phillips, 'The European Directive on Commercial Mediation: What it Provides and What it Doesn't' in Arthur W Rovine (ed), *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers* (Brill 2008) 311, doi:10.1163/ej.9789004175556.i-382.104.

22 Case C-492/11 *Ciro Di Donna v Società Imballaggi Metallici Salerno S.r.l (SIMSA)* (CJEU (Third Chamber), 27 June 2013) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62011CJ0492> accessed 5 January 2026.

23 Joined cases C-317/08, C-318/08, C-319/08 and C-320/08 (n 14).

24 Giovanni De Berti, 'ECJ Finds Italian Rules on Mandatory Mediation Consistent with EU Law' (*International Law Office*, 29 April 2010) <https://www.dejalex.com/wp-content/uploads/2017/12/pubb_100429.pdf> accessed 5 January 2026.

25 Case C-75/16 (n 14).

reaffirmed its *Alassini* approach, holding that mandatory mediation may be acceptable provided it does not hinder consumers' right of access to the courts, and reiterated the *Alassini* criteria as the benchmark for assessing its compatibility with the right to justice. In addition, the Court introduced two consumer-specific requirements. First, under the Consumer ADR Directive, consumers cannot be compelled to be represented by a lawyer in ADR proceedings; however, Italian law requires legal assistance in mandatory mediation, which the CJEU found inconsistent with Articles 8(b) and 9 of the Directive, as these provisions ensure access to ADR without the burden of legal representation costs. Second, the Court ruled that national rules must not excessively limit a consumer's ability to withdraw from mediation: since Article 9(2) of the Directive permits parties to leave the procedure at any time, a national rule requiring consumers to provide special justification to withdraw conflicts with EU law.

In contrast, the UK (before leaving the EU) adopted a more sceptical stance in Halsey v Milton Keynes General NHS Trust [2004] 4 All ER 920, rejecting compulsory mediation but allowing adverse costs consequences where a party unreasonably refused mediation. The judgment also formulated criteria to assess unreasonable refusal: (i) nature of the dispute; (ii) clarity of applicable law; (iii) whether other ADR was tried; (iv) proportionality of mediation cost to the claim; (v) urgency; and (vi) the refusing party's prospects of success. The decision sparked significant debate, including criticism that it overstates mediation as a barrier rather than a facilitative process.[26]

The latest judgment in this area from an EU perspective is *Investcapital Ltd v TK*.[27] In that case, the CJEU reaffirmed that Member States may provide for mandatory mediation before or after court proceedings, provided that the right of access to justice remains protected. The Court also offered an important clarification, stating in essence that Article 5(2) of the Mediation Directive, read together with the principle of primacy of EU law, does not prevent a national court from disregarding a Constitutional Court ruling that annulled domestic legislation making certain actions admissible only if the claimant attended an information session on the benefits of mediation, where that constitutional ruling itself falls outside the scope of Article 5(2) and therefore cannot be contrary to it. Romanian and Bulgarian scholars have interpreted this approach as strengthening Member States' discretion to adopt mandatory mediation schemes: the CJEU suggested that obliging parties to attend an informational meeting on mediation is not, by itself, incompatible with EU law, which may prompt renewed consideration of models previously rejected.[28] Overall, the CJEU's case law indicates that mandatory mediation can be integrated into national

26 Miryana Nesic, 'Mediation – On the Rise in the United Kingdom?' (2001) 13(2) Bond Law Review 20, doi:10.53300/001c.5383.

27 Case C-658/23 *Investcapital* (CJEU (Seventh Chamber), 3 September 2024) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202406067> accessed 5 January 2026.

28 Yuliya Radanova, 'Forms of Mandatory Judicial Mediation in the Context of the Right of Access to Justice' (2022) 3 Contemporary Law 43.

legal systems provided the national framework complies with the established criteria designed to preserve a fair balance between the compulsory nature of ADR and the right to effective judicial protection.

Against this comparative background, the Bulgarian model should be analysed and positioned against the evolving criteria for designing a mandatory mediation model.

5 BULGARIA AND THE CONSTITUTIONAL COURT AS A POSITIVE LEGISLATOR IN THE FIELD OF MEDIATION

A proper assessment of Bulgaria's currently operative approach to mandatory mediation requires a brief step back to the legislative package adopted in 2023 and annulled by the Bulgarian Constitutional Court immediately prior to its scheduled entry into force on 1 July 2024. The 2023 model sought to stimulate mediation uptake by embedding an obligatory procedural step within the litigation pathway. In practical terms, it required parties in defined categories of disputes to engage in mediation at a specified procedural moment, with procedural consequences for non-compliance. The mechanism was intended to shift dispute resolution behaviour through institutional design rather than through voluntary market uptake. Under the annulled framework, once civil proceedings were initiated and the dispute fell within statutorily defined categories (or where the court so ordered), the parties would have been obliged to attend a free, court-based **mediation procedure of up to three hours**. The cases, listed in the Civil Procedure Code as subject to such obligation, include disputes concerning the partition of co-owned property and the allocation of its use; monetary claims arising from co-ownership; divorce and issues relating to parental rights, the child's place of residence, and maintenance; modification of measures concerning the exercise of parental rights and the resolution of disagreements in that sphere; remuneration or compensation arising from employment relationships, as well as claims for the recognition of unlawful dismissal, its annulment, and reinstatement; monetary and non-monetary claims in civil disputes where the value of the claim does not exceed BGN 25,000 (app. EUR 12 500); commercial disputes regardless of the value of the claim; and contractual and property disputes up to a specified amount. The session would be conducted by a mediator working in newly established court-annexed mediation centres. The mandatory session aimed to inform the parties about the benefits of mediation and how it could help resolve their dispute. Crucially, the scheme did not compel parties to reach a settlement and was not designed as "full" compulsory mediation; rather, it functioned primarily as a mandatory initial informational meeting intended to acquaint parties with mediation and evaluate its potential utility in the dispute. In this sense, the model sought to preserve mediation's voluntary character, understood as the absence of any duty to settle, while nevertheless imposing a procedural duty to participate in an introductory session once litigation had already commenced.

In anticipation of implementation, the Supreme Judicial Council (SJC/VSS) adopted two implementing ordinances in October 2023: one regulating the selection, status, and activities of mediators within judicial mediation centres, and another governing the structure and organisation of those centres. By late June 2024, only days before the Constitutional Court's judgment, the selection and training of judicial mediators intended to staff the newly established centres (created under an unchanged provision of the Judiciary Act, art. 84a) had been completed, underscoring the degree of institutional commitment already invested in the reform.

The legislative package was challenged by the Supreme Bar Council of Bulgaria, which initiated Constitutional Court proceedings on 6 March 2024[29] to test the constitutionality of the civil procedural code provisions that were to come into force on 1 July 2025. The Council argued that mandatory participation, limited even to an informational session, unduly constrained effective access to justice, particularly because non-attendance triggered significant cost-related consequences. The arguments put before the Constitutional Court mainly focused on the fact that, through such "mandatory" participation in an informative meeting, effective access to justice is impeded, and that refusal to participate is sanctioned by requiring the non-participating party to bear the costs of the entire case. Ten separate submissions were filed with the court by a range of public institutions and professional organisations, including the Bulgarian Ministry of Justice, the President, the Association of Judges in Bulgaria, the National Association of Mediators, and the Professional Association of Mediators in Bulgaria,[30] all supporting the newly adopted mandatory mediation model and arguing that it is consistent with the Bulgarian Constitution. The only concern raised in these submissions came from the Association of Judges in Bulgaria, which questioned the costs sanction for refusing to participate in mediation, namely, the rule requiring non-participating parties to bear all procedural expenses regardless of the outcome of the case. The Constitutional Court dismissed all those professional positions and approached the amendments to the Mediation Act and the Civil Procedure Code as a single "unified normative complex" that should be invalidated as in breach of the Constitution. The Court's reasoning, as analysed in the relevant scholarship, centred on three main concerns: (1) the model risked delaying access to court and timely adjudication; (2) it undermined the principle of voluntariness by introducing coercion into participation; and (3) it raised rule-of-law objections, including deficiencies in clarity and predictability.

Notably, the Court did not dispute the legitimacy of the underlying policy objectives, namely, encouraging ADR, reducing court workload, and aligning with broader European developments. Its critique focused instead on institutional design. A recurrent implication

29 Constitutional claim of the Supreme Bar Council of Bulgaria No 276 (Constitutional Court of Bulgaria, 6 March 2024) <https://www.constcourt.bg/bg/dl-05d52ed7c60b9fc9311b1382bce25844343213c7> accessed 5 January 2026.

30 All positions that were filed before the Constitutional Court under its constitutional case No. 11/2024 assessing the constitutionality of the mandatory mediation model, see Case No 11/2024 (n 3).

of the Court's analysis is a preference for mandatory pre-trial ADR mechanisms, rather than those imposed after proceedings have been initiated. This orientation was linked to EU case-law, including *Alassini*, which accepts mandatory pre-litigation conciliation/mediation where appropriate safeguards are respected.

Further constitutional objections were directed at the scope of disputes captured by the mandatory referral mechanism and the absence of sufficiently coherent criteria. In particular, the Court criticised the exclusion of the state and state institutions from the mandatory regime, viewing this carve-out as an unjustified privilege. Similar concerns were raised regarding the handling and exclusion of various consumer disputes, suggesting an uneven and insufficiently reasoned legislative categorisation.

A decisive element in the Court's invalidation concerned the cost-sanction mechanism (CPC art. 78a), which allowed a party who failed to attend the initial mediation meeting to be ordered to bear all litigation costs, regardless of the outcome on the merits. The Court considered this constitutionally unacceptable because cost allocation in civil proceedings should generally reflect success or failure in the litigation, not compliance with a preliminary procedural step. The provision was also deemed insufficiently clear to guide consistent judicial application. While comparative systems may impose consequences for non-attendance, these are more commonly framed as targeted and proportionate measures (e.g., fixed fines or limited cost consequences) rather than an outcome-blind shifting of all costs.

The scholars also highlight a separate opinion by Judge Sonya Yankulova, which draws a conceptual distinction between coercion to attempt mediation (i.e., to attend an initial session) and coercion within mediation (i.e., to negotiate or settle).[31] On that account, a requirement to attend an introductory meeting does not, in itself, negate voluntariness because it does not compel agreement; the constitutional problem arises when participation is coupled with sanctions that effectively operate as a barrier to judicial protection.

Beyond doctrinal considerations, the judgment generated immediate practical and policy challenges. For some stakeholders, the judgment confirmed that compulsory elements must remain narrowly tailored and procedural consequences must be proportionate and predictable. For others, it highlighted the need to redesign the mechanism rather than abandon the objective of promoting mediation uptake. Importantly, the public debate after annulment did not only address constitutionality in the abstract; it also engaged implementation questions such as mediator capacity, funding, quality control, and how referrals can be made workable in routine court practice without creating unequal burdens for weaker parties. Concerns were raised in public discussion that failure to implement the reform might entail financial consequences under the National Recovery and Resilience Plan, including a potential exposure of BGN 100 million (i.e., approximately EUR 50 million),

31 Separate opinion of Judge Sonya Yankulova in Case No 11/2024 (Constitutional Court of the Republic of Bulgaria, 1 July 2024) <https://www.constcourt.bg/bg/act-9841> accessed 5 January 2026.

although no confirmed outcomes were identified at the time of writing. A further unresolved issue relates to the legal position of the already selected and trained judicial mediators. Given that the ordinances and selection procedures were adopted to operationalise a statutory framework later declared unconstitutional, questions arise as to whether affected mediators might pursue state liability claims grounded in legitimate expectations and legal certainty, assessed through the prism of art. 7 of the Bulgarian Constitution, the State and Municipal Liability for Damages Act, and relevant fundamental rights considerations. As typically framed, such claims would require proof of (1) an unconstitutional norm, (2) damage (pecuniary and or non-pecuniary), and (3) a causal link, although claims for speculative future earnings would likely face evidentiary difficulties.

In sum, Bulgaria's annulled 2023–2024 "judicial mediation" model illustrates the constitutional sensitivity of mandatory ADR design, particularly where mandatory post-filing participation is combined with severe cost sanctions. This background is indispensable for evaluating the contours and legal sustainability of any subsequent or currently operative mandatory mediation arrangements.

Separately, this reconfirms that constitutional courts play a pivotal role in reviewing the constitutionality of mandatory mediation schemes and may invalidate legislative designs they consider incompatible with fundamental rights, most notably the right of access to justice and the principle of mediation's voluntariness. In practice, however, some constitutional courts go beyond a narrow compliance review and adopt a more substantive, policy-tinged assessment that also scrutinises the *effectiveness* or institutional soundness of the proposed mandatory mediation model. This development reflects a broader shift in constitutional adjudication: rather than acting solely as "negative legislators" in Kelsen's classic sense (annulling unconstitutional norms), constitutional courts increasingly operate as de facto "positive legislators" by shaping, through their case law, the models that may or may not be tolerated.[32] In the Bulgarian context, the Constitutional Court not only annulled the previously adopted provisions on mandatory mediation, but also signalled how future reforms could be designed to withstand constitutional scrutiny. In essence, the Court indicated that a compulsory mediation step may be permissible in principle, provided it does not operate as a procedural barrier; most notably, it should not stay court proceedings and should not be coupled with cost-allocation rules that penalise non-attendance at the mediation meeting. As a consequence, the Bulgaria legislature drew lessons from the Constitutional Court's decision and took the next step by promulgating a new legal framework that favours mandatory mediation.

32 Allan R Brewer-Carías, *Constitutional Courts as Positive Legislators: A Comparative Law Study* (CUP 2011) 5, doi:10.1017/CBO9780511994760.

6 THE NATURE OF THE NEWLY ADOPTED MODEL OF JUDICIAL MEDIATION IN BULGARIA AFTER THE CONSTITUTIONAL COURT'S DECISION OF 1 JULY 2024

Mandatory judicial mediation in Bulgaria was reintroduced through amendments to the Civil Procedure Code promulgated in State Gazette No. 55 of 8 July 2025.[33] The stated aim of these provisions was to remedy the constitutional defects identified by the Constitutional Court in the earlier model and to replace it with a framework aligned with the Court's understanding of the constitutional limits on imposing additional procedural obligations on parties before the judiciary proceeds to examine the merits of their dispute. Nonetheless, the reform was not preceded by any meaningful, in-depth assessment: the new draft was introduced without comprehensive analysis or further empirical or impact studies to inform its design.

The 2025 amendments created new Article 140a of the Civil Procedure Code. Under Article 140a (1), the court obliges the parties personally to participate in an information meeting on mediation where an action or application concerns, inter alia:

- management of a co-owned property or allocation of its use (Ownership Act, Art. 32(2));
- monetary claims under the Ownership Act (Arts. 30(3) and 31(2));
- partition (Ownership Act, Art. 34) – at the stage of carrying out the partition;
- divorce under the Family Code (Art. 49(1)), together with the mandatory joint claims (CPC, Art. 322(2));
- disputes on a child's residence, parental rights, personal relations, and maintenance (Family Code, Arts. 123(2) and 127(2));
- modification of residence, parental rights, contact, and maintenance following divorce upon changed circumstances;
- measures on personal relations with grandparents (Family Code, Art. 128);
- maintenance;
- remuneration or compensation arising from employment, as well as claims for unlawful dismissal and reinstatement;

33 Civil Procedure Code of the Republic of Bulgaria (n 4); Law of the Republic of Bulgaria 'On Amendment and Supplementation of the Civil Procedure Code' [2025] State Gazette 55 <https://www.ciela.net/svobodna-zona-darjaven-vestnik/document/2137251770/issue/7409/zakon-za-izmenenie-i-dopalnenie-na-grazhdanskiya-protsesualen-kodeks-(dv-br-59-ot-2007-g)> accessed 5 January 2026.

- civil contractual/tort/unjust enrichment/agency-without-authority claims with claim value up to BGN 25,000;
- commercial disputes under CPC Art. 365(1), regardless of the claim value.

Article 140a (2) expands the court's ability to order such a meeting by granting the judge discretion to assess whether mediation is suitable, including: whether the parties have ongoing relationships; whether multiple related cases exist; whether there are multiple claims and counterclaims; whether costs are proportionate to the material interest; whether facts are undisputed; and other circumstances indicating suitability for mediation. This pushes judges toward a more detailed case-specific suitability analysis, rather than a purely categorical referral.

Article 140a(3) introduces important exceptions: the obligation does not apply, for example, if the first notice was not personally served on the defendant (or an authorised legal recipient), if the claim has been admitted by the respondent, if there is evidence of violence by the opposing party or risk to the life/health/interests of a child, if participation would jeopardise adjudication within a reasonable time, if the parties cannot dispose of the right at issue, or if other circumstances suggest mediation is unlikely to succeed. This further strengthens judicial discretion and embeds safeguards for vulnerable situations.

Accordingly, Bulgaria's developing approach can be described as a discretion-based hybrid**:** while the law formally defines categories of cases in which the court "shall" refer parties to an information meeting, judges retain broad power, based on exceptions and suitability criteria, to decide whether the obligation will be applied in practice. The model integrates features of (a) categorical systems (often associated with the Italian approach) and (b) discretionary systems (common in some common law jurisdictions).[34]

A second key feature is the nature of the "mandatory" obligation**.** The statutory duty concerns only an information meeting**,** not mediation itself. It does not bind parties to achieve any particular outcome and is not backed by a severe sanction. The principal consequence of non-compliance is limited to payment of the cost of one hour of the information meeting under Ordinance No. 12 of 28 July 2025 (BGN 60 or app. EUR 30).[35] During the information meeting, the case is not stayed, and procedural steps continue, highlighting that the 2025 approach is designed to avoid delay and run in parallel with the court process.

The framework also introduces incentives: if a case ends with a court settlement after mediation, the claimant receives a 70% refund of the state fee; and if the agreement is reached through mediation conducted at a court mediation centre after the mandatory

34 Nesic (n 26).

35 Order of the Supreme Judicial Council No 12 of 28 July 2025 'On Mediators and Procedures in Judicial Mediation Centers' [2025] State Gazette 62 <https://bgmediation.com/biblioteka/normativni-aktove/sadebni-centrove/> accessed 5 January 2026.

information meeting under Art. 140a, the refund rises to 85%. A similar rule applies to appellate fees when a settlement is reached during appeal proceedings.

Under Article 140b (1), the obligation to attend an information meeting is a one-time obligation for the entire dispute, regardless of the instance. The meeting is held within a period set by the court, but the parties may, by mutual agreement, attend later and may request a stay under CPC Art. 229(1)(1). Where the statutory conditions for decision-making are met, the court may proceed to judgment even if no information meeting occurred, particularly if the court did not instruct attendance or one party did not attend. The court postpones the case for an information meeting or mediation only upon the request of **all** parties. Where mediation produces an agreement submitted to the court, it is reviewed under CPC Art. 234 or Art. 321(5).

In light of the Constitutional Court's critique of the earlier model as impairing access to justice, the 2025 regime (Arts. 140a–140b CPC) formally addresses the key constitutional objections: proportionality, voluntariness (no forced settlement), limited costs, no procedural barrier to court, and explicit protection for violence-related cases.

As the regime is now in force, the next question is where Bulgaria's model stands vis-à-vis EU models and standards. Upon a closer examination of the existing mandatory mediation models, distributed across categorical mandatory mediation, discretionary mandatory mediation, and quasi-mandatory mediation,[36] the newly emerged mandatory mediation model in Bulgaria does not fit coherently into any of the existing categories. This is because it combines categorical triggers (a defined list of dispute types in which the court "shall" order an information meeting) with broad judicial discretion and multiple safeguards/exceptions, while limiting the "mandatory" element to a one-off informational session. This one-off informational session would run in parallel with the proceedings and is backed only by modest, non-preclusive cost consequences and fee-refund incentives - features that place it between classic categorical schemes, discretionary referral models, and softer quasi-mandatory "nudge" approaches without fully belonging to any single category.[37]

7 CONCLUSIONS AND RECOMMENDATIONS

The mandatory judicial mediation model adopted by Bulgaria in July 2025 is best described as a hybrid model. It does not neatly fit the two categories often used in scholarship, strict categorical mandatory models versus fully discretionary referral models. Its hybridity is apparent, first, because it compels a settlement-oriented step after a case is already pending

36 Korsakoviene, Radanova and Tvaronavičienė (n 15).

37 Mandatory mediation in the legal doctrine is classified into certain models depending on the degree and source of the mandatoriness: categorical mandatory mediation, discretionary mandatory mediation, and quasi-mandatory-mediation. See, Daniel Kaufman Schaffer, 'An Examination of Mandatory Court-Based Mediation' (2018) 84(3) Arbitration 229.

in court (after pleadings and adversarial positioning have begun), rather than functioning as a true pre-action gatekeeping stage.

Second, the state's involvement appears comparatively stronger than in many systems: initial costs are effectively socialised (with only modest cost consequences for non-attendance), and mediator activity in court mediation centres is organised through enhanced control, selection, and mandate-based engagement linked to specific courts. This makes the Bulgarian model distinctive and, to some extent, a compromise that reflects competing institutional and professional interests.

Whether this framework will succeed in producing meaningful settlement rates and improving mediation culture remains an empirical question that can only be answered after sufficient implementation time. For now, a cautious inference is that Bulgaria has joined the growing group of jurisdictions treating mediation as structurally connected to effective judicial functioning and improved access to justice, while attempting to do so in a constitutionally cautious manner, shaped by the Constitutional Court's 2024 decision.

Notwithstanding the above, the "live experiment" currently unfolding in Bulgaria - where legislative design is being tested in practice as a tool to stimulate mediation - has already suggested several practical lessons. One recurring theme in comparative practice is that such frameworks are often easier to justify and implement when understood less as "mandatory mediation" in the strict sense and more as a mandatory information-and-suitability step. In this context, terminology is not cosmetic: it can affect legitimacy and uptake. Bulgaria's experience confirms that the label "mandatory mediation" may trigger well-known, historically rooted resistance, particularly where parties perceive that they are being forced into an unfamiliar process or pressured to settle. A more accurate and publicly acceptable framing - such as an obligatory information meeting or an obligatory attempt to consider mediation – may help reduce misinterpretation and improve the reform's "sellability" to the public. In that sense, wording can function as an initial design lever within a broader mediation ecosystem, of which any court-connected meeting is only one component.

Second, the legal duty to attend such mediation information meetings should be carefully limited in scope and intensity. It is advisable to extend such obligation only to attendance at a short, structured mediation information meeting (ideally sixty to ninety minutes, subject to a clear statutory maximum), during which a neutral mediator explains the core principles and mechanics of mediation, conducts a basic suitability assessment, and outlines realistic, case-specific pathways for using mediation. Crucially, this step should preserve the parties' autonomy in full, by neither compelling them to mediate nor pressuring them to settle. This calibrated approach may allow legislators to promote informed engagement with mediation while safeguarding access to court and maintaining the voluntary nature of both participation and settlement. Simultaneously, the latter may further specify the scope of obligations that mediators conducting such information sessions bear, as well as the systems of control being put in place to ensure strict compliance

with them. The model should further embed voluntariness at the core: parties remain free to settle or not, to withdraw at any time, to choose their mediator (from accredited rosters, with party choice as default), and to shape the process (joint session, caucuses, online/hybrid, language, accessibility). To ensure proportionality and constitutional robustness, the scheme should avoid hindering effective access to justice by avoiding substantial delays in filing or progressing a claim. Furthermore, such information sessions should suspend or protect limitation periods during any required step; impose no or negligible cost on parties for the mandatory step (state-funded, or a nominal fee with waivers); and provide clear safeguards for fairness (confidentiality, neutrality, informed consent, and access to legal advice, including allowing counsel to participate). Statutory exemptions should be explicit and operational, especially for violence or coercion risks, urgent interim relief, power imbalance, child protection concerns, or where parties cannot freely dispose of the rights at issue. Finally, the design should be supported by infrastructure: quality standards and training for mediators, predictable referral criteria for judges/registries, and incentives that encourage good-faith engagement without penalising legitimate choice (e.g., modest fee-shifting only for unreasonable non-attendance, plus positive incentives such as fee refunds or reduced court fees if settlement is reached).

If a jurisdiction seeks to implement a system incorporating compulsory elements, comparative practice suggests that it is most effectively approached as a **system** reform rather than as a stand-alone procedural amendment.[38] One plausible sequencing model begins with a constitutional and human rights compatibility assessment, translating proportionality, legal certainty, and access-to-court concerns into clear statutory parameters (narrow obligations, time caps, cost rules, limitation-period protection, and exemptions).

A next step commonly involves defining scope with precision, either by targeting dispute categories that are plausibly more amenable to consensual resolution or by using a discretion-based suitability test constrained by clear criteria, while preserving the ability to bypass the step where it would be futile or unsafe. Further design choices typically include operational detail on timing, notice, mediator appointment (often with party choice as a default), compliance criteria (attendance and receipt of information rather than settlement), and proportionate consequences for non-compliance.

The fourth step is to build the institutional architecture necessary for the model to function: clear accreditation and ethical standards, sustainable funding mechanisms (for court-connected mediation centres, public vouchers, or fee waivers), training and quality assurance requirements, oversight arrangements, and a transparent allocation of roles among courts, ADR bodies, professional organisations, and mediators.

38 Agnė Tvaronavičienė, Indrė Kasiulaitė and Yuliya Radanova, 'Designing an Effective Mandatory Mediation Model: Guidelines from the International Jurisprudence and National Constitutional Limits' (2025) 8(3) Access to Justice in Eastern Europe 36, doi:10.33327/AJEE-18-8.3-a000119.

The fifth step is to engage stakeholders early and continuously, judges, bar associations, mediators, consumer organisations, and institutional repeat players, both to reduce predictable resistance and to ensure that the model is workable in practice. Engaging these actors before and during implementation can help surface predictable friction points, such as unclear referral criteria, capacity constraints, cost allocation, confidentiality concerns, and the handling of vulnerable parties, and can reduce the risk that the reform is perceived as externally imposed or as a hidden barrier to court access. A practical way to operationalise this is to use structured consultations, drafting guidance (e.g., referral criteria and standard information scripts), and regular feedback loops during the first implementation phase.

Where feasible, comparative experience also suggests that piloting can be a useful risk-management tool before national rollout. Rather than introducing a new mandatory element across all courts and case types at once, a legislature may choose to test it in a limited number of regions or in dispute categories that are typically considered more "settlement-amenable" (for example, certain family, neighbour/co-ownership, or lower-value civil claims). Pilots allow the system to gather operational data (referral rates, attendance, time impacts, user experience, costs) and to adjust practical parameters, such as scheduling, mediator capacity, exemptions, and communication materials, before scaling. Even without definitive settlement statistics at an early stage, a pilot can provide concrete evidence on whether the mechanism is working as a facilitative nudge or creating delay and confusion, and it can build legitimacy by showing responsiveness to practitioner and user feedback.

An example of such consultations is the manner in which Lithuania introduced mandatory mediation in family disputes, with effect from 1 January 2020. This reform formed part of a broader national mediation policy[39] that predated the transition to mandatory family mediation. That strategic approach is further reflected in the Ministry of Justice's structured follow-up, including a dedicated ex post evaluation plan and the publication, on 30 December 2022, of an ex-post evaluation report on the impact of mandatory family mediation, indicating that the reform was implemented and subsequently reviewed within a broader policy cycle and system-building agenda. More broadly, Lithuania's mediation policy trajectory may be traced to earlier national policy planning, including the Minister of Justice's 2015 Concept for the Development of the Mediation System, which frames mediation as a system to be developed through coordinated regulatory and institutional measures and suggests that coordination among the various stakeholders is a condition *sine qua non* for the success of any mandatory mediation framework.

39 Order of the Minister of Justice of the Republic of Lithuania No 1R-268 of 17 September 2015 'On the Approval of the Concept for the Development of a Conciliation (Mediation) System' [2015] TAR 13939 <https://www.e-tar.lt/portal/it/legalAct/b84a2a305d3b11e589fccd6fa118e11c> accessed 5 January 2026.

The sixth step is to embed monitoring and evaluation directly into the law through mandatory data collection (including referral rates, attendance, conversion to mediation, settlement outcomes, time-to-resolution, party satisfaction, and cost impacts), periodic public reporting, and a statutory review clause that enables calibrated adjustments after an initial implementation period. Taken together, these steps increase the likelihood that the design of a mandatory information session on mediation will meaningfully raise mediation uptake while remaining legally robust, administratively feasible, and fully consistent with parties' rights and effective access to justice.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЗАПРОВАДЖЕННЯ ОБОВ'ЯЗКОВОЇ ПРОЦЕДУРИ МЕДІАЦІЇ: БОЛГАРІЯ ЯК РЕАЛЬНИЙ ЕКСПЕРИМЕНТ У РОЗРОБЦІ СИСТЕМИ ВИРІШЕННЯ СПОРІВ?

Юлія Раданова

АНОТАЦІЯ

Вступ. *Болгарія має законодавчу базу для медіації вже понад два десятиліття, проте ця процедура залишається недостатньо використовуваною порівняно з судовим розглядом. У контексті судової реформи та зменшення навантаження на справи, Болгарія у 2023 році ухвалила правила, що запроваджують обов'язкову судову медіацію, відповідно до яких сторони судових проваджень, що розглядаються, повинні відвідати безкоштовну інформаційну сесію з медіації тривалістю до трьох годин до першого відкритого слухання.*

Це положення мало набути чинності 1 липня 2024 року. Однак того ж дня Конституційний Суд Болгарії (Рішення № 11 від 1 липня 2024 року, Конституційна справа № 11/2024) оголосив основні положення реформи неконституційними, знову порушивши питання про те, наскільки законодавчий орган може вимагати проходження етапу медіації, не обмежуючи доступ до правосуддя. У липні 2025 року Болгарія затвердила переглянуту модель, зосереджену на обов'язковій участі в інформаційній зустрічі з медіації під час розгляду певних категорій спорів, які судді можуть додатково скеровувати на таку процедуру. У цій статті аналізується нова модель, яка позиціонується серед європейських підходів, та визначаються вимоги до розробки законодавства, яке може стимулювати використання медіації без створення процесуальних бар'єрів.

Методи. *У статті застосовуються методи доктринального та порівняльно-правового аналізу. У ній розглядаються зміни 2025 року до Цивільного процесуального кодексу Болгарії та закону «Про медіацію», що запроваджують обов'язкову участь в інформаційній зустрічі з питань медіації, з огляду на міркування Конституційного Суду Болгарії щодо пропорційності та ефективного доступу до правосуддя. Підхід Болгарії розглядається в межах європейських стандартів, зокрема тлумачення моделей обов'язкового альтернативного вирішення спорів/медіації Судом Європейського Союзу та Європейським судом з прав людини, а також моделей обов'язкової медіації, що застосовуються в Італії, Литві, Іспанії, Греції та на Кіпрі. Аналіз також спирається на міжнародні дискусії щодо особливостей ефективних моделей обов'язкової медіації, зокрема стимули, витрати, процесуальні гарантії та захист у справах, що пов'язані з насильством або ризиками для дітей, щоб запропонувати рекомендації щодо того, які риси має мати ефективний підхід до обов'язкової медіації.*

Результати та висновки. *Болгарську модель обов'язкової медіації 2025 року найкраще охарактеризувати як гібридну: вона поєднує законодавчо визначений набір типів справ із широкими судовими повноваженнями та численними законодавчими винятками. Вона зобов'язує відвідувати інформаційну зустріч (не саму медіацію), не вимагає врегулювання, не зупиняє автоматично судову справу та обмежує негативні фінансові наслідки (судові витрати) помірним збором – усі ці риси спрямовані на виконання конституційних вимог пропорційності. Водночас її ефективність залежатиме від варіантів впровадження (фінансування, контроль якості медіатора, чіткі критерії направлення та дієві стимули). Болгарська траєкторія розвитку підтверджує ширшу європейську тенденцію: обов'язкові або напівобов'язкові механізми медіації можуть бути сумісними з правом на ефективний судовий захист, але лише тоді, коли вони розроблені таким чином, щоб уникнути перетворення альтернативного вирішення спорів на процесуальний бар'єр, і коли гарантії для вразливих сторін є надійними. Кінцевий висновок полягає в тому, що може бути доцільним розглянути питання про затвердження єдиних процедур обов'язкової медіації, які застосовуються у ЄС та формують основу ефективної екосистеми медіації у всьому Союзі, що дійсно сприяє позасудовому врегулюванню спорів.*

Ключові слова. *Медіація; обов'язкова судова медіація; інформаційна зустріч із питань обов'язкової медіації; неконституційність; Конституційний суд Болгарії; італійська модель обов'язкової медіації; доступ до правосуддя.*