

A Journey in Mediation: The Bulgarian Path

By Lynn H. Cole and Bilyana Gyaurova-Wegertseder

Bulgaria, a magnificently beautiful country on Europe's Balkan Peninsula, is often referred to as the crossroads of the Balkans. The country, which is a strange mixture of traditions, superstition, skepticism, and optimism, is poised to join the European Union in 2007 and, as a new member, it will lead the way in the use of mediation in the area. As this article is written, mediation centers are springing up all over Bulgaria and are receiving invitations within their communities to conduct community mediations, to engage in court-related mediations, and to offer assistance to police agencies as well as victim assistance programs. Bulgaria's model of mediation is unique and derives not only from a history of a people long dominated by others but also from its



The official opening of the Mediation Centre in Vratza.

citizens' determination to define their own destiny and to empower themselves in the 21st century. The Bulgarians have suffered for centuries under domination by other countries. At the end of the 14th century, Bulgaria was overrun by the Ottoman Turks. Northern Bulgaria attained autonomy in 1878, and all of Bulgaria became independent in 1908. Although the Turks ruled Bulgaria in a rather laissez-faire manner, the Bulgarian spirit rebelled against the Ottoman yoke. Thus, when the Russians defeated the Turks in 1908, the Bulgarians welcomed their Slavic neighbor. When the Communists took over the country in the 1940s, they also were initially welcomed. But after decades of a regime committed to dominating the individual for the sake of the state, the Bulgarians, rather unexpectedly, found themselves cast adrift when the Communists moved out - literally overnight. When the Berlin Wall fell in 1989, the Communists simply vacated the country, leaving its economy in shambles and starving people standing in long bread lines. Bulgaria then established a parliamentary form of government, which will take the country into the European Union.

The people of Bulgaria, many of whom still live in conditions of poverty, go about their daily lives against a backdrop of distrust of the government - especially of the police. Sofia appears to be bustling, with many of

Bulgaria's youth drawn to the nation's capital for employment. But economic issues are pressing, causing many multigenerational families to live together in small apartments. Nevertheless, these conditions have failed to dampen Bulgarians' indomitable spirit, which has seen the country through harsh times.

But something beneath the surface of government-as-usual and economic bleakness is happening. It is called empowerment and happens in the process of mediation. The Bulgarian people are embracing this approach to dispute resolution.

I discovered this rapidly growing phenomenon during my assignment to Bulgaria as a mediation specialist at an NGO called the American Bar Association's Central and Eastern Eurasian Law Initiative (CEELI). I spent three months immersed in mediation, assisting in drafting ethical, procedural, and educational rules to implement the practice in Bulgaria. I had the opportunity to work with professional men and women, highly regarded as attorneys, whom the minister of justice had appointed to a working group charged with promulgating the ethical, procedural, and educational rules and regulations of Bulgaria's Mediation Act. As I observed, and others readily concede, the most prominent member of the working group is Bilyana Gyaurova-Wegertseder, whose work and reputation define her as the architect of Bulgarian mediation.

Because most important things seem to happen by coincidence (although some would argue that there are no coincidences in life), Bilyana's involvement with alternative dispute resolution - and with mediation in particular - began when she responded to an advertisement after graduating from law school at Kliment Ochriski University in Sofia. She accepted a position with ABA's CEELI. Motivated by her innate sense of curiosity and inquisitiveness, she accepted the position and, almost seven years later, serves as the senior staff attorney at its office in Bulgaria.

The Central and Eastern Eurasian Law Initiative is a public service project of the American Bar Association that is designed to advance the rule of law by supporting the legal reform process in Central and Eastern Europe and the newly independent republics of the former Soviet Union. Through its work, CEELI helps build the legal infrastructure that is indispensable to strong, self-supporting, and democratic, free-market systems. CEELI provides assistance to government ministries, other state institutions, judges, lawyers, law faculties, and nongovernmental organizations in 24 countries throughout the region. CEELI's office in Bulgaria was created in 1991 - the program's first one - and, because of the initiative's successes there, Bulgaria is often referred to as CEELI's poster child.

During the time Bilyana has been working at CEELI, Bulgaria, which joined the North Atlantic Treaty Organization in 2004, was also making progress toward being accepted as a member of the European Union. One component of building a strong free-market system, as espoused by the European Union's Commission, is alternative dispute resolution programs. In its Green Paper published in 2002, the Commission of the European Communities unambiguously stated its support of alternative dispute resolution,

Growing interest is being shown in alternative dispute resolution (ADR) in the European Union, for three main reasons, First, there has been the increasing awareness of ADR as a means of improving general access to justice in everyday life. Second, ADR has received close attention from the Member States, many of which have passed legislation encouraging it. Third, ADR is a political priority, repeatedly declared by the

European Union institutions, whose task it is to promote these alternative techniques, to ensure an environment propitious to their development and to do what it can to guarantee quality.

To no one's surprise, Bilyana has heeded that call and worked for her country - a potential EU member nation - to develop its rightful place in the ADR arena. Mediation currently is one of the major projects undertaken by CEEU. Bilyana began her long and arduous task of developing serious ADR initiatives in 1998. Today she is responsible for the all of CEELI's Bulgarian mediation efforts, including assisting in the development of legislation pertaining ADR, particularly mediation; providing training for attorneys in mediation skills; providing "train the trainer" instruction; establishing the Bulgarian model of court-referred mediation through assistance to implementing NGOs and respective pilot courts.

She notes that in her work she is often confronted with the question, What is mediation? "Even the word sounds strange," she explains, "because it is not in the Bulgarian vocabulary and it is used for the first time in our language. Bulgarians are known to be a very skeptical nation and older people here would ask, 'Do you eat it, do you drink it?' " Others who had lived under the Communist regime took the word "mediation" to mean meeting with a member of the Communist Party who would tell them exactly how, why, and when to settle their disputes. But to Bilyana and to those who are in touch with mediation every day "mediation is a state of mind and a state of life."

Bilyana reports that developing mediation in Bulgaria is not an easy job. The task involves a mediation procedure itself involving many disparate parties, a range of different interests, and many, many exhaustive meetings. The work is a challenge, requiring "great energy, power, and devotion." But, at the same time, she considers it an exciting experience, because she works on something from the moment a project is conceived and nurtures its growth and development to completion. I agree with her assessment. During my three months there, the Minister of Justice approved the working group's mediation submissions for a Uniform Register (similar to the certification process in many states), ethical and procedural rules, and educational training.

But before achieving that success, the group's most significant and challenging project was working for the passage of the Bulgarian Mediation Act. "Few people know how much work was done so that a draft reaches the Parliament and becomes a law in Bulgaria!" Bilyana notes. After months of lobbying various groups and reaching consensus, led by Bilyana and other professional luminaries, the Bulgarian Parliament passed the country's stunningly progressive Mediation Act in December 2004.

The Mediation Act is a short structural document that attempts to combine the best from European legislatures, American ADR traditions, and "humble Bulgarian experiences." The legislation elegantly arranges the existence of mediation procedures within the Bulgarian legal environment and provides an almost universal legal definition for mediation. According to Article 2, "Mediation is a voluntary" and confidential procedure aimed at out-of-court dispute resolution and involving a third-party mediator that assists the parties to the dispute in reaching a settlement." Mediation does not replace court proceedings. The procedure is not an alternative form of justice; rather, it is an alternative to other existing judicial procedures. The mediation procedure increases access to justice in a still fledgling judicial system and provides an alternative by allowing the parties involved - most for the first time - to try to settle their dispute. As Bilyana explains, "Bulgaria, like many

other countries in transition, faces many difficulties related to case delay and huge backlogs in the courts. Having said this, we can conclude that the mediation procedure does not only benefit the parties, it benefits also the courts, More disputes solved through mediation will result in fewer claims filed with the courts and a decrease in the number of cases handled by the judges."

The Bulgarian Mediation Act, akin to American law in this area, explains the- pivotal principles in mediation: neutrality and impartiality, voluntariness, equal opportunities, and confidentiality. Great attention is paid to the voluntary and informal character of the procedure. According to Bilyana, "Mediation is driven by the parties, they set the rules and direct the entire procedure." She also reports that, in Bulgaria, "this concept is a novelty." Before the Bulgaria's transition to mediation, only arbitration was recognized as a method of alternative dispute resolution.

The Mediation Act clearly states that the role of the mediator should be only to support and ease communication between the parties. The mediator is not a judge, an arbitrator, or an attorney and does not impose his or her own decision regarding the dispute. According to Article 10 of the Mediation Act, "The mediator may not provide legal advice" - a statement that Bilyana, a leading member of the working group appointed by the minister of justice, recalls as one of the most disputed texts in the draft. "One can say that it is on one hand very restricting, but on the other hand it gives the mediator the possibility of using varied and creative mediation techniques so that the parties understand their real interests by preserving at the same time his/her neutrality and impartiality. It is more or less a matter of timing and self-control especially for attorneys' mediators." However, the law does not prohibit the participation of other specialists in the mediation procedure; on page 3 of Article 12, the provision states, "Attorneys and other experts may also take part in the mediation procedure."

Bilyana considers confidentiality to be the second driving force behind the mediation procedure. Article 7 of the act specifically sets out the following provision, "Discussions related to the dispute shall be confidential. The participants in the procedure shall keep confidential all facts and documents that have come to their knowledge in the course of the procedure." Confidentiality regarding mediation itself as well as what transpires during the procedure gives the parties a strong sense of security. They have control over not only the procedure but also the information being exchanged during mediation. There are different views and practices about the actual moment in which confidentiality attaches. "One of the most common statements is that confidentiality starts at the moment one or both parties contact the mediation center with the desire to participate in a mediation procedure. Most of the mediation centers in Bulgaria work on this principle."

The initiation of the mediation procedure is also important, and the Mediation Act provides alternatives. As Bilyana explains, "The natural initiators are the disputing parties. Like American mediation in many states, the law gives 'the court or any other competent body handling the dispute' (Article 11, p. 2) the right to refer a matter to mediation." This concept is almost "revolutionary," because it provides the judges with a legal opportunity to refer pending court cases to mediation for resolution. According to Bilyana, "using the word 'revolutionary' is not an exaggeration. Bulgaria has a continental [civil] legal system, according to which judges obey and act only in strict accordance with written law. The lack of legal provisions arranging the court-referred mediation resulted in an opposition among the Bulgarian judges to the mediation, some of them interpreting it even as a denial of

justice." Even though mediation is not mandatory, the text in Article II "opens the door" of the courts to the mediation procedure.

During the course of mediation, the parties can terminate the procedure at any time without providing a specific reason. Bilyana believes that this flexibility engenders a feeling among the parties that they are the "masters of the procedure," thus making mediation a unique tool for parties' recognition of responsibilities and sense of empowerment.

Another aspect of mediation unique to the Bulgarian Mediation Act is that the procedure is not a "job"; it is an additional activity requiring specific skills and can be undertaken by anyone as long as the individual "has legal capacity, has not been convicted of a crime of general nature, and is included in the Unified Register of Mediators to the Minister of Justice. The only restriction is for persons carrying out jurisdictional activities. In other words, magistrates in Bulgaria (this includes judges, prosecutors, and investigators) cannot be mediators."

Finally, the Mediation Act refers specifically to the agreement reached through mediation. In Bilyana's opinion, Article 16 of the act contains a provision that exists only in Bulgarian law - the provision that the form of the agreement may be oral. This text was inspired by the way mediation is conducted in Bulgaria, particularly in individual labor "disputes, almost all of which resulted in oral agreements that were executed within a short period of time. Bilyana believes that this language offers additional empowerment to the parties.

"We love suing each other. We love going to the court, where we can give vent to all our discontent, despair, and negative energy," she candidly explains. Initially, there may be some resistance to using mediation. Parties who dare to try mediation, however, "fall under its spell and are certain to use it again and again." She reports that one of these satisfied citizens described the procedure in rather simple terms, "a painless removal of tumors in the relationship between two people." Bilyana's eyes light up as she adds, "Can you find something better than this' "

I predict that mediation in Bulgaria will be highly successful in a beautiful country where, sadly, poverty is still widespread and incomes are still low, despite a national ethic of hard work. For many decades, the Bulgarian people lived under a system that actively stifled individual motivation and thwarted creative ideas. Because of the dynamics inherent in the process, mediation will serve to transform this country into member nation of the European Union that has a thriving democracy. While Bulgaria was living under communism, mediation was widely distrusted as a process. Today Bulgarians are discovering that mediation *is* the opposite of their Communist experience with the concept.

Something much more dynamic is happening to Bulgarian nationals in a rapidly increasing number of successful mediations. For the first time in their lives, Bulgarians are learning that they have personal control over the resolution of disputes, and they are embracing that idea. They see that they - not others - are the ones who make personal decisions that intimately affect their lives. Once they learn that they have this control, they begin to listen to the other side and determine options that might work if the other side will agree to them. Thus, a give-and-take develops during the process. In learning to listen to and articulate options, this dialogue, which *is* inherent to the process, increases the acceptance of taking responsibility for one's actions, and this act empowers people. Bulgarian mediators are reporting that this process *is* taking place repeatedly; some of the same people are returning to mediation a second time or more often. And the success rate of mediations in Bulgaria is extraordinarily high. Over time, a sufficient number of individuals involved in the procedure can help change the

attitude, tenor, and communication abilities of a community, thereby increasing the strength of that community. When enough communities embrace these dynamics, a nation is empowered. Thanks to the success of mediation, this is Bulgaria's unique path.



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