**R E S U M E**

On Doctoral Thesis of Mladen Mladenov

 ***“Managing Conflicts. Alternative Dispute Resolutions in Tax Process (in Context of Revenue Administration)”,***

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This Doctoral Thesis is **separated in three chapters**.

***Chapter One*** is named: “Theoretical-Methodological Problems of Managing Conflicts and Methods for Alternative Dispute Resolutions in the Context of Revenues Administration”

**The borders of the subject’s area** at first sight are limited by the normative base, which regulate Tax-Insurance process, as well by the practice of implementation of Alternative Dispute Resolution. These borders of the subject’s area are extended seriously, giving in account the new realities in legislation and practice.

The subject’s area attains broader expression as well with permanent development of the practice of the implementation of Alternative Dispute Resolution, since here there must be report on not only the national peculiarities, but also the good practices from the other social, administrative and legal systems. The fact of giving an account of Bulgarian and other theoretical formulations of the research problematic creates strong methodological base of the research.

**The object of the research** is the legislative frame, the present and the future opportunities, related practices and the attitude of the administration ant the private subjects for implementation of the Alternative Dispute Resolution for preventing and solving disputes in the Tax-Social Insurance Process. As a matter of fact, the basic components of the object’s area they are the conflicts and the disputes in the Tax-Social Insurance Process and the eventual implementation of non-formal techniques for their solving. The logic follows the clarifying of the concept of the conflict, all its manifestations, the good practices in the global scale, Bulgarian socio-psychological characteristics, related normative base, the system of values of the administration and great number of other factors, which have influence on these techniques for avoiding of disputes between the administration (in the object’s area – Revenue Administration) and the private subjects, which are clients of the public services. The conflict as a concept is the first element of research in the object’s area.

**Aim and assignments of the research** – to analyze possible conflicts and disputes in the Tax-Social Insurance Process, their causes, premises and manifestations, the methods for their solving through formal legal forms, as well as alternative forms for solving disputes in this process.

The aim of the research can be reach by consideration and analysis of normative, documental, theoretical and empiric material, collected by different sources and can be realized with the support of **three basic assignments**:

First, clear formulation of the operating hypothesis and the main Doctoral Thesis, as well as indication of the accents and methods in the research process. This assignment executes its theoretical-methodological role in the research, which is necessary condition for reaching succession and scientific discipline of the present work. Second, scrutiny and juxtaposing of the different methods of Alternative Dispute Resolution. Comparative analysis in multitude aspects, which impose utilization of these social and legal instruments at solving of conflicts and disputes. Theoretical and practical deductions, concerning the effectiveness from the each of these modes in concrete situations, which is developed in Tax-Social Insurance Process. Accent on the opportunities for broader use of each if these methods on the administrative process, based on the Code on Tax-Insurance Process. Third, evaluation of Bulgarian normative, theoretical and practical experience, concerning formal and informal methods of solving disputes in the Tax-Social Insurance Process. Accomplishment of deep analysis of the Tax-Insurance Process and indication of concrete proposals for extension of the applied field of the Alternative Dispute Resolution in this process, by means of legislative and organizational changes.

The aim and the assignments of the research are directed towards development of theoretical formulation in connection with the Alternative Dispute Resolution in the institutional, social and normative milieu, as well as towards pure practical putting into practice, by clear, precise and concrete proposals for changes in the legislation.

The **practical purposefulness** of the aimed results, through placed in the research assignments, constructs conditions for the utility of the present work as for the academic society, as there for the practitioners in the Revenue Administration and the representatives of the citizens and the business, but also for the Bulgarian legislator, who will be able to adopt entire or partially the proposals for legislative changes.

The **assignments of the research** are based on the operative hypothesis of the present work, which are the starting points for building of the Thesis.

They are **two operative hypothesis** of the research. The **first one** is in sense, that the methods of Alternative Dispute Resolutions are preferable in case of Managing Conflicts, and the **second one** – that the methods of Alternative Dispute Resolutions are applicable also in Tax (Tax-Social Insurance) Process. During the process of the verification of the first hypothesis they are considered different kinds and variations of the Alternative Dispute Resolutions, as well as their advantages and disadvantages, comparing with the formal administrative and judicial process. The second hypothesis is checking-up through review of the development of the Bulgarian Tax Procedural legislation during the last years and entering of more and more tools for the Alternative Dispute Resolutions in the Tax Process.

**The main Doctoral Thesis** expresses itself generally in the following: *The conflicts and the disputes are inherent to each social system. In the Public Legal Sphere, where the first side always is the Stage, represented by its authority (institution), and the other side is s private subject, these conflicts and disputes are developed very dynamically and they have got their concrete daily manifestations. The importance and the specificity of the disputes in the Tax (Tax-Social Insurance) Process ensue from this, that they affect word for word each social subject, which in principle has got the property of taxpayer, social insurer, social secured person, self-social secured person. The Doctoral Thesis defends the positions, that the methods of Alternative Dispute Resolution are applicable in the Tax-Social Insurance Process, bringing not only solving of present and future disputes, but also reach the aims from the legislation through new competences (opportunities for action, specified by rights, obligations and responsibilities) of the Revenue Administration.*

The **process of prove** of the main Doctoral Thesis on the level of the scientific research was made through complex approach from different methods of, as well as from permanent analysis of different facts, social and legal institutions, which are the objects of the research. The strongly developed usage of the comparative method allows to be considered the researching area from different points of view, which is the base of comparison with an eye on advantages and disadvantages of the methods of Alternative Dispute Resolution.

**Accents and methods of research** of the object’s area – from instructive and systematical point of view in the process of determination of the methods of research of the object’s area on the first place they must be defined the accents in the research process, because they (on the ontological-epistemological level) lay the base of the entire research instruments, as a matter of principle – without matter of the place of the research area in the social life.

The **accents** in the process of research express themselves in the issues of comparison, issues of development, empirical (facto-logical) investigations, theoretical issues, the problem of the research, review of the available records, specification of the research problem, creation of the research plan, accomplishment of the research, interpretation of the results, announcement of the results of the research.

The downright **methods** of research are: field work, case studies, inquiry, published materials, combination of comparative and historical researches.

***Chapter Two:*** “Bulgarian and Foreign Experience, CONCERNING Alternative Dispute Resolutions in Activities of the Revenue Administration”

The **status and specialty of the conflicts** in Tax Process in Bulgaria is expressed in each procedural phase and with respect to different dimensions of the process. These conflicts might be classified on the base of many their characteristics: according to the type of the Tax-Social Insurance procedure; according to the participants in the conflict; according to the character of the applied legislation in the each case; according to the phase, when the conflict is raised and developed; according to the place, where the conflict develops itself.

The **specialties** of the conflicts in the Bulgarian Tax-Social Insurance Process can be characterize with the following from the point of view of the factors for the conflict: attitudes between the Administration and taxpayers are founded on principle of the compliance; as a rule the relations between the Administration and the person are independent, if the both sides fulfils proper their rights and obligations; the relation between the person and the Revenue Administration aims the fulfillment from the side of the both parts of their obligations, according to the applied legislation; relatively, these relations might be manifested in the period of fem minutes (lodgment of Tax Return), but absolutely, they are eternal, because each person has got the property of taxpayer and social insurer, and the Administration keeps its property as an authority, responsible for the implementation of the Tax-Social Insurance legislation; the balance between the Administration and the private persons must be tried to find always. But the misbalance is manifested when the rights are violated (also the obligations or competences); the history of one conflict can be consider on the way of the accountancy of the Administration; it must be render an account of the “Fiscal Deviation” of the Tax Officials, as well as the psychological attitudes in Bulgarian society, towards the authorities and towards payment of public obligations; the availability of negative, positive and neutral reminiscences of the development of the relations between Revenue Administration and one private subject are different for each concrete case.

There is **non-adequacy of the normative system**, which regulate Alternative Dispute Resolution in the Tax-Social Insurance Process. On the first place, this is the fragmentariness of these flexible modes for settling of disputes. On the second place, some of the very positive effects of ADR lose themselves in their practical implementation. On the third place, in the special Tax-Social Insurance legislation - Code on Tax-Social Insurance Process, there are created norms, which are exception from the general Bulgarian legislation, and following this it is more than sure, that the Revenue Administration will obey namely these norms. On the fourth place, the Bulgarian Revenue Administration is one among the others administration in Republic of Bulgaria, towards which the norms of Law on Administration and Law on Civil Servant have got only the peripheral implementation.

The **problem** when there is a dispute in the Tax-Social Insurance Process and between which parties it is, expresses itself in this, that in each phase and to each one activity or act in order with Code on Tax-Social Insurance Process it can arise a dispute between the Revenue/Municipality Administration and private person. The last can be citizen, legal with commercial or non-commercial purpose, other business or legal subject.

For the time being the **disputes**, which were raised in the Tax-Social Insurance Process are considered mainly on the base of the rules of the clumsy, phlegmatic and very formalistic administrative and judicial way of Appeals.

The **preparation for negotiations** is one extremely important phase for foundation of the base of settling conflicts or disputes.

The **general risks** during disputes are several. The officials of the Bulgarian Revenue Administration in their bigger part are adopted one extreme fiscal deviation. The second risk is rooted in the fact, that the officials from the National Revenue Agency in their contacts with the private subjects in writing and oral style use one very bureaucratic style of expression, which is mixed with Legal Jargon and Tax Terminology. The third risk can be seen in the limited working time of the Tax Officials and the great numbers of their assignments. The fourth risk is rooted in this, that not only the Revenue Administration, but also each bureaucratic structure in principle doesn’t stand corrected. Other risk can be found in the low Tax and Social-Insurance culture of the Bulgarian citizen.

In the **general case** not the concluding the agreement on itself, but the fulfillment of all obligations on the base of it means ceasing of the dispute, because there are not any disputable moments, after both positions are protected on the principle of the compromise and mutual agreement.

The **agreement as basic form** of expression of the freedom of agreement is applicable as well in the Public Sphere. Only until few years in Bulgarian Legal, Sociological and Political Science has subsisted the opinion, that the agreement with the administration is just impossible. The legislation and the practice during the last two-years overturned this paradigm. The explicit norms in the Code on Tax-Social Insurance Process, which provide agreement in the administrative process, prove in undoubted manner not only the development of the legislation, but also the preceding development of the Legal Thought.

The agreement is **kind of contract**. The administration provides public services to the citizens and to the legal entities. In such a way it is the equal subject in the social and the institutional life. Only on the base of this sociological and legal conclusion can be substantiate the thesis for agreement with the Administration.

With the **comparative analysis** of the agreement in Bulgarian and other Legal Systems (thoroughly – the Legal System of the United States of America) it is proved that in the Tax Process in other countries the agreement is included extremely broadly and daily. In Bulgaria, on the legislative level – in the Code on Tax-Social Insurance Process, the word “agreement” exists 17 (seventeen) times, and it’s synonymous forms “consent” – 21 (twenty-one) times, relatively – “contract” – 34 (thirty-four) times. Observing the Scientific Sequence in historical comparative plan it must be mark that in the Law on Tax Procedure (abrogated on 01.01.2000 by Code of Tax Procedures, which is abrogated on 01.01.2006 by Code on Tax-Social Insurance Process) there is not even one provision, concerning agreement, content or negotiation in the Tax Process. It is openly, that there is an evolution in the Tax Process which is transformed in Administrative Process, concerning taxes and social-insurance payments. The core part of these transformations and the new elements is apprehension (even not so wide) of Alternative Dispute Resolution between Administration and private subjects.

There were rending an account some **formal-legal obstacles and socio-psychological attitudes** in the Bulgarian Case, viz. – from the point of view of operative Bulgarian legislation there is inadequacy in the order of the agreements, and socio-psychological attitudes of the Bulgarian people in principle behave to agreement with the great dose of mistrust.

The **continued changes** in the organizational, procedural, material and administrative-penal normative acts, concerning the System of Taxes, Social Insurance Payments and Fees, on their own accounts drive to uncertainty about the implementation of clear rules and criteria in relationships between the Administration and the citizens. But the positive effect is rooted in this, that the new norms (event fragmentary) expressly define more and more possibilities for the usage of the Alternative Dispute Resolution in the Tax-Social Insurance Process. There is in the Republic of Bulgaria a Law on Mediation (State Gazette, Issue 110/17.12.2004).

In the **International perspective**, the comparative analysis is made as regards Social and Legal System of the United States of America, where the **Mediation** is more seriously included in the area of the Tax Process.

The **Ombudsman** as an institution plays an important role as regards Protection of Human Rights and Freedoms. This institution appears as an alternative of the Judicial System, as a form of defense, because the last is too slow and expensive. Even if in the Constitutional States both the State and Local Administrations are called upon to act legally and to protect the rights and freedoms of the citizens, purely and simply the bureaucratic and institutional interest make this form of defense uncertain. In this mode the Ombudsman appears as corrective as regard of an administration’s obligation to respect the rights and freedoms of the citizens. In Republic of Bulgaria is accepted Law on Ombudsman (State Gazette Issue 48/23.05.2003 - in force from 01.01.2004).

In the Law on Local Self-Government and Local Administration is envisaged the option for the Local Parliament (Municipality Council) to elect **Public Mediator**. There is distinct difference from the point of view in the terminology between Ombudsman and Public Mediator. But there is no doubt that the functions of both institutions are identical.

The **Arbitration** embraces commitment of the dispute to the third neutral person or collective body from neutral persons for dispute resolution after hearing of arguments and examinations of evidences.

***Chapter Three:*** “The Necessity of New Formulations and Practical Approaches, concerning the Implementation of Alternative Dispute Resolutions from the side of Revenue Administration”

The **European and Global directions** for development of Alternative Dispute Resolution in Bulgarian Tax Process are reflected, on the first place by the Recommendations of the Council of Europe concerning the Mediation, from which the most important for the study is Recommendation № R (2001) 9 of the Council of Ministers of the member states for the Alternatives of the Judicial Dispute between the Administrative Authorities and private persons. On the other side is the Recommendation № R (85) 13 of the Council of Ministers about the Institution of the Ombudsman.

The **Proposals for extension of applied field** of Alternative Dispute Resolution Methods in Bulgarian Tax-Social Insurance Process is the core contribution moment in the dissertation. Briefly, the proposals for the amendments in the Code on Tax-Social Insurance Process and in the Law on National Revenue Agency, connected with the extension of applied field of Alternative Dispute Resolution Methods in the processes, managed by the Revenue Administration aim widening as to the normative base, as well as more efficient implementation of these modes from point of view of the Revenue Administration and the Courts.

**Necessity of changes in the work organization** for Alternative Dispute Resolution in the Revenue Administration proposes creation of the specialized structure into the Revenue Administration, which will act only in the context of Alternative Dispute Resolution and in such manner, will be the best option for the implementation of these methods in the Tax-Social Insurance Process.

Implementation of the **Rule “Accessible for the citizens language”** in communication with the taxpayers and in negotiations and agreements with them accents to the need of overcome of clumsy, incomprehensible, contradictory, archaic, specialized, too volumetric and tensile, and sometimes – absurd style of expression, to eliminate inoperative style and to achieve the good practices in the daily work, based on the plain stylistics. The Rule “Accessible for the citizen’s language” must be implemented as high value in the Mission of the Revenue Administration and to be the core criterion for the quality of work of each Revenue Administration’s official.

In the EU member states, as well in the United States of America the **Alternative Dispute Resolutions are broadly implemented, are constantly developed** and even there are calls for the increasing of the efforts for more serious implementation of them into the practice.

**Key Words:** Alternative Dispute Resolution, Revenue Administration, Code on Tax-Social Insurance Process, Legal Sphere, Contract, Agreement, Appeal, Mediation, Ombudsman, Arbitration, Taxpayers, Law.