



The Importance of Court Settlement in the Macedonian Civil Procedure with Special Reference to Commercial Disputes

Elizabeta Spiroska¹
Natasha Najdenova Levikj²

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Abstract: *Litigations in the Republic of North Macedonia are time-consuming and could last for years. Court settlement as a dispute resolution method could improve the efficiency of dispute resolution in the Republic of North Macedonia. The purpose of this paper is to analyse the importance of court settlement in the Macedonian legal system. This paper consists of an introduction, two parts and a conclusion. The introduction describes the basic issues related to court settlement as a dispute resolution method. The first part analyzes the main characteristics of the litigation in the Macedonian legal system. The second part analyzes the situation with the court settlement in the Republic of North Macedonia. The conclusion summarizes the main findings, observes how they relate to the research question and gives recommendations.*

1. INTRODUCTION

A court settlement is an agreement of the dispute subject that can be concluded by the dispute parties during the litigation (Chavdar, 2004, p. 640). This means that the dispute parties can conclude a court settlement from the filing of the lawsuit until the second instance court issues a decision on the appeal (Chavdar, 2006, p. 496).

The dispute parties may resolve the whole or part of the dispute through court settlement. When the court settlement applies to the entire claim, the litigation is terminated. If the settlement applies to a part of the claim, the litigation is terminated for that part, but continues for the remaining part of the claim.

A court settlement cannot be concluded regarding the claims that the parties cannot dispose of i.e. dispositions of the parties that are: contrary to *jus cogens*, contrary to the provisions of international agreements ratified in accordance with the Constitution of the Republic of North Macedonia and contrary to morality (Law on Civil Procedure, Article 3 paragraph 3). The subject of court settlement cannot be legal relationships that can only be resolved by a judge, for example, divorce, nullity of marriage, or legal relationships that are not under the court's jurisdiction (Chavdar, 2006, p. 496). In this regard, the verdict of the Supreme Court of Macedonia, GZZ No. 56/77 of 31.08.1977, states that in disputes for determining the existence of marriage, the court cannot allow a court settlement regarding the existence or non-existence of marriage (Atanasov, 2023, p.183).

When the court of first instance issues a decision that does not allow the parties to reach a settlement, it will temporarily terminate the procedure until this decision becomes final (Law on Civil Procedure, Article 307 paragraph 5).

¹ International Slavic University St. Nicholas, Str. Marshal Tito No. 77, 2220, St. Nicholas, Republic of North Macedonia

² International Slavic University St. Nicholas, Str. Marshal Tito No. 77, 2220, St. Nicholas, Republic of North Macedonia

Only persons who have legal capacity can conclude a court settlement ([Law on Civil Procedure Article 71](#)); if it is concluded by the legal representative of the party, the legal representative should have special authorization for that, if this is determined by special regulations ([Law on Civil Procedure, Article 73 paragraph 2](#)) and, if the settlement is concluded by a representative who is not an attorney, the authorization is needed ([Law on Civil Procedure, Article 87](#)).

A court settlement concluded in misconception, under coercion or fraud, could, also, be challenged. This should be done by filing a lawsuit in a separate dispute. This is also the position of the Macedonian case law. Namely, the Supreme Court of the Republic of North Macedonia expressed the following: The challenge of a court settlement is possible only if it was concluded in misconception, or under coercion or fraud ([Verdict of the Supreme Court of the Republic of North Macedonia, Gz. 88/93](#)). The party that believes that when concluding the court settlement, they did not freely express their will may request the annulment of the settlement in a lawsuit. Another verdict of the Macedonian Supreme Court (Gz.88/93) states that the court settlement cannot be challenged because the procedure in which it was concluded involved some essential violations of the provisions of the civil procedure under Article 354 of the Law on Civil Procedure, with the exception of those violations that, at the same time constitute reasons for which any agreement may be challenged, in accordance with the provisions of the Law on Obligations. If the court settlement is annulled by a final judgment, it is considered that the process in which the settlement was reached is not yet completed, and the court will continue the procedure in the case in which the settlement was reached ([Decision of the Supreme Court of the Republic of North Macedonia, Gz. 87/95](#)).

The Macedonian case law states that a previous court settlement is not a reason for repeating the procedure under Article 392 of the Law on Civil Procedure, since this law provision only refers to a final verdict. However, such an understanding is debatable and should be questioned because the entire provision of Article 392 is the same both when it comes to a verdict or a court settlement ([Atanasov, 2023, p. 185](#)). In the event that the court settlement is annulled, the mutual payments that the parties made to each other should be returned in accordance with the provisions of the Law on Obligations for the mutual returns of the contracting parties which refers to termination of the contract ([Law on Obligations, Article 121](#)), annulment of a voidable contract ([Law on Obligations, Article 105](#)) or nullity of the contract ([Law on Obligations, Article 96](#)).

When a court settlement has been reached, each party bears its own costs, unless otherwise agreed with the settlement ([Law on Civil Procedure, Article 153 paragraph 1](#)). If a settlement is attempted but fails, the costs are included in the litigation costs ([Law on Civil Procedure, Article 152, paragraph 2](#)). Litigation costs may not include the costs of attempting a settlement if it is undertaken outside of court, even immediately before the dispute is initiated ([Chavdar, 2006, p. 235](#)).

2. THE MAIN CHARACTERISTICS OF CIVIL LITIGATION IN THE MACEDONIAN LEGAL SYSTEM

The Macedonian legal system is part of the civil law legal system. So, the main legal sources in the Macedonian legal system are laws. Concerning civil litigation, the main set of norms is the [Law on Civil Procedure \(2005, with subsequent amendments\)](#). Civil litigation within the Macedonian legal system refers to the procedural conduct of civil courts and parties when hearing and resolving disputes related to fundamental citizens' rights and obligations, particularly those concerning personal and family relations. This includes matters such as labor, commercial, property, and other civil law disputes, unless the law specifies that a court should address certain disputes under a different procedural framework. The Law on Civil Procedure regulates the entire process of civil litigation, from filing a lawsuit to the final judgment and potential legal remedies.

In civil litigation, the court decides within the limits of the claims submitted in the proceeding. The court may not refuse to decide on a claim for which it has jurisdiction. The court decides on the claim on the basis of an oral and public hearing. Any natural or legal person may be a party to the litigation.

The civil litigation has three main levels: Basic Courts, Appellate Courts and Supreme Court of the Republic of North Macedonia. The main stages in a civil litigation are: filing a lawsuit, preparation for trial, trial, judgement and legal remedies (regular and extraordinary). The civil litigation process in North Macedonia typically begins with the filing of a lawsuit by the plaintiff, which is then served to the defendant. The court's role is to impartially examine the case, considering all presented evidence, and reach a legally sound decision based on the facts and applicable law.

In civil litigation, parties are expected to actively engage in the process, presenting their claims and defenses through legal arguments and evidence. In addition, the Law on Civil Procedure emphasizes mediation and encourages settlement between parties before resorting to a trial. Mediation is also promoted as an alternative means of resolving disputes, which can be facilitated by the courts or other accredited bodies.

The legal principle of equality of arms ensures that all parties in civil cases have equal opportunities to present their case, including access to legal representation and sufficient time to prepare their arguments. The courts are required to make their judgments based on law, and their decisions can be appealed to higher courts, which serve as a means of safeguarding the accuracy and fairness of judicial decisions.

The civil litigation costs include the following: court fees, attorney fees, costs fees for expert witnesses, translation costs, travel costs and other costs determined with the Law on Civil Litigation. The court fees are prescribed in the [Law on Court Fees \(2009, with subsequent amendments\)](#). The payment of court fees is a precondition for starting the civil litigation. The attorney's fees are prescribed with the [Attorney's tariff \(2020\)](#). For the poor dispute parties, there is an opportunity for exemption from payment of fees, prescribed with the Law on Court Fees. In the Macedonian legal system [Law on Free Legal Aid \(2019\)](#). The free legal aid shall be exercised as a preliminary legal aid and legal aid in all judicial and administrative procedures. But the question: "Do costs and fees limit access to justice?" is still relevant and should be the subject of separate analysis. Undoubtedly, civil litigation should be designed to ensure fair dispute resolution.

3. COURT SETTLEMENT AND COMMERCIAL DISPUTES IN THE REPUBLIC OF NORTH MACEDONIA

The provisions on the procedure in commercial disputes ([Law on Civil Procedure, Chapter 35](#)) shall apply to disputes arising from mutual commercial relations in which both parties are legal entities, and to disputes relating to ships and inland waterway navigation, as well as to disputes to which navigation law applies (navigation disputes), except for disputes relating to the transport of passengers ([Law on Civil Procedure, Article 462](#)), in disputes arising from mutual commercial relations of shopkeepers and other individuals who, as a registered occupation, carry out some commercial activity i.e. from mutual commercial relations of those persons and the legal entities referred to in Article 462 point 1 of Law on Civil Procedure ([Law on Civil Procedure, Article 463](#)), as well as between these legal entities and foreign natural persons and legal entities arising from their mutual commercial relations, as well as in such mutual disputes of foreign natural persons or legal entities ([Law on Civil Procedural Law, Article 464](#)). The provisions on procedure

in commercial disputes shall also apply when, in addition to the legal entities mentioned, other natural or legal entities participate in the dispute as co-litigants referred to in Article 186 paragraph 1 point 1 of Law on Civil Procedure ([Law on Civil Procedure, Article 465](#)).

If the dispute parties express their willingness to resolve the dispute amicably, the civil court of first instance shall enter the parties' settlement agreement into the minutes ([Law on Civil Procedure, Article 308 paragraph 1](#)). The settlement is concluded when the parties sign the minutes ([Law on Civil Procedure, Article 308 paragraph 2](#)). The minutes may be read aloud by the president of the court council, or each party may read the minutes for themselves. This reading of the minutes must be done before signing, regardless of whether the minutes were dictated aloud to the minutestaker by the president of the court council ([Chavdar, 2006, p.502](#)). The parties will be issued, upon their request, a certified copy of the minutes in which the settlement is entered ([Law on Civil Procedure, Article 308 paragraph 3](#)). Even before initiating litigation, the person who intends to file a lawsuit may, through a civil court of first instance in whose territory the opposing party has his/her domicile or residence ([Law on Civil Procedure, Article 39](#)), attempt to reach a settlement ([Law on Civil Procedure, Article 310 paragraph 1](#)). The court to which such a proposal is addressed will summon the opposing party and inform it of the settlement proposal ([Law on Civil Procedure, Article 310 paragraph 2](#)). This proposal is considered a proposal to initiate a non-contentious procedure, and as such is entered in the court's register for non-contentious cases. The opposing party shall be served with the summons along with the proposal for an attempt at settlement. Personal service is not prescribed for this service, but the court may determine that service be carried out in accordance with the provisions for personal service ([Law on Civil Procedure, Article 137 paragraph 1](#)). If the opposing party does not appear at the hearing, or does appear but no settlement agreement is reached, then the settlement attempt is considered to have failed ([Chavdar, 2006, p. 504](#)). If a settlement agreement is reached, then the court shall proceed in all respects as if it were a settlement concluded during litigation ([Law on Civil Procedure, Articles 307 and 308](#)).

The parties can reach a court settlement both before the civil court of first instance and the civil court of second instance. The parties may conclude a court settlement before the first instance court until the final court decision of the dispute. The parties may conclude a court settlement before the second instance civil court only when the second instance civil court decides at a hearing scheduled for the appeal. The second instance civil court may not administratively return the case to the first instance civil court upon the appellant's proposal for reaching a court settlement, if the court settlement was unilaterally proposed. When the parties have proposed reaching a court settlement after the adoption of a first instance judgment, against which an appeal has been filed, the court settlement record should include data on the first instance judgment, the appeal filed, the statements of the parties, and the manner in which the relations are regulated (in whole or in part). When the parties only partially regulate their relations with the court settlement, the remaining disputed part of the civil legal relationship will be decided upon the appeal against the first-instance judgment. If a court settlement is concluded before the first-instance court, and the case is sent on appeal to the second-instance court, in that case the first-instance court is obliged to notify the second-instance court of the reached court settlement, and the parties may also do so. This general view of the Macedonian Supreme Court only further explains what is not clearly stated in the Law on Civil Procedure provisions on court settlements. This especially applies to when it is possible to conclude a court settlement before a second-instance court ([Atanasov, 2023, p.182](#)). According to Article 351 of the Law on Civil Procedure, the second-instance court decides on an appeal without a hearing as a general rule, and a hearing is scheduled as an exception when the court council finds it necessary to repeat the evidence already presented. In such a case, the question arises whether the rights of the parties to settlement are limited because the

law states that a court settlement may be concluded during the entire procedure, from the filing of the lawsuit to the decision of the second-instance court on the appeal. If the second-instance court decides as a rule without a hearing and as an exception in a public session, then the question arises as to how the exception takes priority over the rule (Atanasov, 2023, p.185). In such a case, it may be considered that the appeal was filed by a person who has no legal interest in it (Law on Civil Procedure, Article 347 paragraph 3) and the second-instance court may dismiss it (Law on Civil Procedure, Article 356).

According to the provisions of the Macedonian Enforcement Law, the court settlement is an executive title (Enforcement Law, Article 12 paragraph 1 point 1).

Throughout the entire procedure, the court will *ex officio* monitor whether a procedure is being conducted for a case for which a court settlement was previously concluded, and if it determines that a procedure is being conducted for a case for which a court settlement has already been concluded, it will dismiss the lawsuit (Law on Civil Procedure, Article 309).

In commercial disputes for monetary claims whose value does not exceed 1,000,000 denars, and for which the procedure is initiated by filing a lawsuit before a court, the parties are obliged, before filing the lawsuit, to try to resolve the dispute through mediation. When filing the lawsuit, the plaintiff is obliged to attach written evidence issued by a mediator (Law on Mediation) that the attempt to resolve the dispute through mediation failed. If this evidence is not attached to the lawsuit, the court will dismiss the lawsuit (Law on Civil Procedure, Article 461).

The parties may also conclude an agreement in a mediation procedure (Law on Civil Procedure, Article 308 paragraph 4) and are obliged to submit it to the court within 8 days of its conclusion. The court schedules a hearing at which it records the concluded agreement in the minutes, which acquires the status of a court settlement if the conditions for concluding a court settlement are met in accordance with Article 307 of the Law on Civil Procedure. The minutes must include the content of the settlement and it is not enough to simply state that the parties have concluded a settlement, since this does not constitute an enforceable document nor can be considered as *res judicata* without stating which party undertakes what obligations in relation to the subject of the dispute, the deadline within which it undertakes to perform those obligations or what rights it recognizes to the opposing party.

Since the settlement can be concluded during the entire civil procedure, and in accordance with Article 308 paragraph 4 of the Law on Civil Procedure, the agreement concluded in a mediation procedure in front of the mediator, also acquires the status of a court settlement, the question arises is it possible and what happens if the dispute parties conclude a settlement in front of a notary. This brings up another question: “Whether an analogy can be applied between concluding a settlement in front of a mediator and concluding a settlement in front of a notary?” (Atanasov, 2023, p. 185). Regarding this issue, we believe that there is no reason not to proceed in the same manner with respect to an agreement concluded in front of a notary as in the case of an agreement reached in a mediation procedure, since in both cases the parties manifest a freely expressed will to have their dispute resolved in this manner.

In the period from December 30, 2024, to January 05, 2025, we addressed requests for public information to 7 courts in the Republic of North Macedonia. The courts were selected on the principle of geographical-regional representation of the larger courts in the country, according to the jurisdiction of the appellate courts, namely the Basic Civil Court Skopje, the court with the largest volume of

cases under the jurisdiction of the Court of Appeal in Skopje, the Basic Courts in Bitola and Ohrid, under the jurisdiction of the Court of Appeal in Bitola, the Basic Court in Gostivar, under the jurisdiction of the Court of Appeal in Gostivar, and the Basic Courts in Sveti Nikole, Strumica and Shtip, under the jurisdiction of the Court of Appeal in Shtip. The request for information was submitted in accordance with the Law on Access to Public Information, with the Basic Civil Court Skopje being submitted in writing, and in the remaining courts electronically. By the time of completion of the research, all courts had responded to the request for public information.

The courts were asked the following questions: How many cases, in civil and commercial disputes, have been resolved in your Court in the last three years; How many court settlements have been reached in civil cases, and how many in commercial cases, and Do, the judges, in accordance with the provision of Article 307 of the Law on Civil Procedure, inform the parties about the possibility of resolving the case through a court settlement and do they actively seek an amicable resolution of the dispute (court settlement)?

Table 1. Number of resolved civil and commercial disputes

Court	Year	Number of resolved civil disputes	Number of resolved commercial disputes	Number of civil disputes resolved through court settlement	Number of commercial disputes resolved through court settlement
Basic Civil Court Skopje	2022	6630	2693	29 (0.437%)	51 (1.894%)
	2023	5400	2851	29 (0.437%)	49 (1.719%)
	2024	5363	2471	34 (0.643%)	88 (3.561%)
Basic Court Ohrid	2022	4913	140	/	Automated Court Case Management Information System (ACCMIS) does not provide the needed information
	2023	4590	33	/	
	2024	4111	18	/	
Basic Court St. Nicholas	2022	1161	No jurisdiction to resolve commercial disputes	12 (1.037)	/
	2023	479			/
	2024	408			/
Basic Court Strumica	2022	3212	904	336 (10.46%)	133 (14.71%)
	2023				
	2024				
Basic Court Shtip	2022	1883	116	22 (1.168%)	1 (4.545%)
	2023				
	2024				
Basic Court Bitola	2022	7281	/	/	ACCMIS does not provide the needed information
	2023	7815	/	/	
	2024	7815	/	/	
Basic Court Gostivar	2022	1527	/		36
	2023	1499	/		20
	2024	1712	/		54

Source: Own research

The analysis of the responses received to the Request for Public Information on the number of disputes resolved in the Basic Civil Court Skopje and the Basic Courts in Shtip, Sveti Nikole, Strumica, Ohrid and Bitola for the last three years (2022, 2023 and 2024), shows the following conclusion: Basic Civil Court Skopje for 2022 showed only 0.437 % civil cases resolved by court settlement, and 1.894% for commercial disputes resolved through court settlement; for 2023 - 0.537% civil cases resolved by court settlement, and 1.719% for commercial disputes resolved through court settlement and for 2024 – 0.643% civil cases resolved through court settlement and 3.561% for commercial disputes resolved through court settlement. Basic Court Strumica, in the last three years, showed 14.71% of resolved civil cases through court settlement, in the Basic Court St. Nicholas the percentage of

civil cases resolved through court settlement is 1.037%, and this court does not have jurisdiction for resolving commercial disputes. In the Basic Court Shtip, the percentage of civil disputes resolved with court settlements for the last three years is 1.168%, and the percentage of commercial disputes resolved with court settlements for the last three years is 4.545%. The Basic Court Ohrid and Bitola provided data on the total resolved disputes (civil and commercial) in the last three years, but for the requested information on how many of these cases were resolved through court settlements, they stated that the Automated Court Case Management Information System (ACCMIS) with which court cases are processed does not provide the possibility of extracting the requested information.

All the courts from which we received a response stated that, the judges in accordance with the Article 307 of the Law on Civil Procedure, inform the parties of the possibility of resolving the case through a court settlement and strive to reach an amicable resolution of the dispute.

4. CONCLUSION

Civil litigation in North Macedonia is a structured and formal process aimed at providing justice in civil disputes. The legal framework should encourage dispute resolution through various means, including court settlement and mediation.

The court settlement should be an expression of the free will of the parties. However, in terms of its validity, it is subject to the general regulations on the validity of litigation actions. The president of the court council should point out to the dispute parties the advantages of the court settlement, which refers to the avoidance of lengthy litigation, its high costs, uncertainty of the outcome. There is a saying among the people that a thin settlement is better than a thick litigation. However, the court's indication to the parties of the possibility of concluding a court settlement should be done in such a way that the parties do not get the impression that the court is pressuring them to end their dispute in this way. The court of first instance may inform the parties of this possibility until the dispute is concluded, i.e. until a final decision is made, and the court of second instance may only do so when the court of second instance decides at a hearing scheduled for the appeal. Until that moment, the parties may freely dispose of their claim and reach a court settlement.

If the court settlement is annulled by a final judgement, it is considered that the process in which the settlement was reached is not yet completed and the court will continue the procedure in the case in which the settlement was reached.

The analysis of research question shows that the obtained percentages of cases resolved by court settlement in the last three years range from 0.437% (the lowest percentage for 2022 in civil cases in the Basic Civil Court Skopje) to 14.71% average value for resolved commercial cases with court settlement in the last three years (in the Basic Court Strumica). Considering that the Basic Civil Court Skopje is the largest court in the state and with the largest volume of cases, all obtained percentage values of cases resolved by court settlement in the last three years are below 1%, which cannot be satisfactory. Also, we should be aware of the fact that this research clearly indicates that the courts lack statistical data, and statistical data is crucial for overcoming obstacles to the development and increased use of court settlements.

Moreover, if we take into account the benefits of reaching a court settlement, such as avoiding lengthy litigation, its high costs, and uncertainty of the litigation outcome, then the obtained data indicate that the dispute parties reach a court settlement in a very small number of cases. The reasons for this should be the subject of some other research and analysis.

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