

Mediation Application Areas in the Republic of Belarus and Essentials of Family Mediation Legal Regulation¹

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Abstract: The introduction of the institution of mediation into the Belarusian legislation took place in 2013, and since that time there has been an expansion of the scope of its practical application. Using the analysis method in the study three groups of mediation application areas in the Republic of Belarus were identified: the most popular mediation application areas (family mediation; commercial mediation; mediation in criminal proceedings); potentially demand mediation spheres (school mediation; environmental mediation; labor mediation); not applicable (guardianship; adoption; domestic violence). A legal description of the institution of family mediation in the Republic of Belarus has been developed and proposals to improve legislation in the field of family mediation have been formulated.

Keywords: Mediation. Right to Defense. Dispute resolution. Family Mediation. Family Legal Relations. Mediation in Criminal Proceedings. Belarusian Legislation.

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1 Introduction

Over the past few decades, international law has been steadily working to scale up alternatives to the judicial procedure for dispute resolution. Mediation is the most successful in this area – one of the conciliation procedures, deservedly positively received by the national legislations of many states, and the Republic of Belarus is not an exception.

The purpose of this work is to summarize the most effective experience of introducing mediation mechanisms into Belarusian practice as a conciliation procedure. The achievement of the goal was facilitated by the solution of a number of tasks: the definition of universal and regional standards and principles of mediation applicable to the Republic of Belarus; the study of those areas of public relations where the use of mediation is most in demand and widespread.

The results of the study were obtained on the basis of general scientific methods of cognition (system-structural method) and procedures for analysis, synthesis, generalization of empirical data; special legal methods (comparative legal and formal legal methods).

2 Legal Framework of Mediation Standards

2.1 Universal Standards of Legal Framework for Mediation

Among the key universal standards in the context of this work, which establish the legal framework of mediation as a method of alternative dispute resolution, the following can be distinguished:

- 1) The Conciliation Rules of the United Nations Commission on International Trade Law (UN General Assembly Resolution 35/52, December 4, 1980), which recognizes “the value of conciliation as a method of peaceful settlement of disputes arising in the context of international commercial relations”;²
- 2) The Model Law “On International Commercial Conciliation” (UN General Assembly Resolution 57/18, June 24, 2002), “developed taking into account the practice of applying conciliation procedures in various States and recommended to States for use in national legislation”;³

² Conciliation Rules of the United Nations Commission on International Trade Law [Electronic resource]: General Assembly Resolution 35/52, December, 4, 1980. URL: <https://goo.su/WEyXlr>. Access date: 11.12.2022.

³ Model Law of the United Nations Commission on International Trade Law on International Commercial Conciliation [Electronic resource]: UN General Assembly Resolution 57/18, November, 19, 2002. URL: <https://goo.su/ma43NAJ>. Access date: 05.12.2022.

- 3) The Basic Principles for the Application of Restorative Justice Programs in Criminal Matters (Economic and Social Council Resolution 2002/12, July 24, 2002), in which the restorative process is understood as “any process in which the victim and the offender and, where appropriate, any other persons or members of the community affected by any crime, actively participate in the joint settlement of issues arising in connection with the crime, as a rule, with the help of an intermediary”.⁴

2.2 Regional Standards of Legal Framework for Mediation

The most important principles and norms that defined the regional framework for the implementation of mediation and influenced the formation of the Belarusian mediation model are: the idea to take measures to simplify access to alternative dispute resolution methods and increase their effectiveness (1986);⁵ the idea to oblige judges to encourage the parties reconciliation (1994);⁶ the idea of a wider use of mediation in family disputes, as well as the idea of the mediator’s role as an impartial and neutral party that helps to negotiate and reach their own joint agreements to the parties (1998);⁷ the idea of the need for mediation in criminal cases as an addition to the traditional criminal process or as an alternative to it (1999);⁸ ideas about the advantages of dispute resolution methods in connection with savings, greater freedom of action, obtaining not only a legal solution, but also a fair solution (2001);⁹ the idea of encouraging mediation in civil cases due to its potential to reduce the burden on the courts, but not in order to replace

⁴ Basic principles of the application of restorative justice programs in criminal justice matters [Electronic resource]: Economic and Social Council Resolution 2002/12, July, 24, 2002 // Compilation of United Nations standards and norms in crime prevention and criminal justice. URL: <https://goo.su/ZC9gCQ>. Access date: 11.12.2022.

⁵ On measures to prevent and reduce excessive workload on the courts [Electronic resource]: Recommendation of the Committee of Ministers of the Council of Europe, September 16, 1986, № REC(86)12, §IV. URL: <https://goo.su/EtjCC>. Access date: 05.12.2022.

⁶ On the independence, effectiveness and role of judges [Electronic resource]: Recommendation of the Committee of Ministers of the Council of Europe, October 13, 1994, No. R(94)12, §“e”, Principle V. URL: <https://goo.su/UI9S2so>. Access date: 07.12.2022.

⁷ About family mediation [Electronic resource]: Recommendation No. R (98)1 of the Committee of Ministers of the Council of Europe to the member States of January 21, 1998. URL: <https://goo.su/fRg8mz4>. Access date: 11.12.2022.

⁸ Recommendation on mediation in criminal cases: Recommendation of the Committee of Ministers of the Council of Europe, September 15, 1999, No. 3 REC(99)19 // Human rights: international legal documents and the practice of their application: in 4 volumes / comp. E. V. Kuznetsova. Minsk : Amalfea, V. 1, p. 555, 2009.

⁹ On alternatives to litigation between administrative authorities and private parties [Electronic resource]: Recommendation Rec(2001)9 of the Committee of Ministers to member states, Adopted by the Committee of Ministers on 5 September 2001. URL: <https://rm.coe.int/16805e2b59/>. Access date: 11.12.2022. On multiparty mediation with the participation of public entities in Brazil see: FERREIRA, Daniel B; SEVERO, Luciana. Multiparty Mediation as Solution for Urban Conflicts: A case analysis from Brazil. BRICS Law Journal, Vol. VIII, nº 3, pp. 5 – 29, 2021. <https://doi.org/10.21684/2412-2343-2021-8-3-5-29>.

the judicial system (2002);¹⁰ the idea of implementing the principle of ensuring better access to justice through both judicial and non-judicial methods of dispute resolution (2008);¹¹ the idea of mediation as an instrument of forming ethics of business turnover and harmonization of public relations (2013).¹²

In fact, the establishment of universal and regional standards for the administration of justice and the realization of the right to protection, as well as the efforts made by the legislative bodies of interstate entities, led to the legal consolidation in national legislations, including in the legislation of the Republic of Belarus, of alternative dispute resolution methods, and, as a result, contributed to the expansion of the list of dispute resolution methods and the humanization of national legislations.

3 Areas and Premises for the Mediation Implementation into Belarusian Legislation

3.1 Groups of Mediation Application Areas in the Republic of Belarus

Belarusian authors, along with foreign colleagues, widely cover various aspects of alternative dispute resolution and conciliation procedures in the field of:

- 1) marriage and family relations;¹³
- 2) restorative mediation and criminal procedure;¹⁴
- 3) civil proceedings;^{15 16}
- 4) economic justice;^{17 18}

¹⁰ On mediation in civil cases [Electronic resource]: Recommendation No. Rec(2002)10 of the Committee of Ministers of 18 September 2002, "i". URL <https://goo.su/uPBGQK3>. Access date: 11.12.2022.

¹¹ On certain aspects of mediation in civil and commercial matters (the Mediation Directive) [Electronic resource]: Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008. URL: <https://clck.ru/33NH7a>. Access date: 05.12.2022.

¹² On a Model Law "On Mediation (Out-of-court dispute settlement)" [Electronic resource]: Resolution of the Interparliamentary Assembly of the Commonwealth of Independent States, November 29, 2013 No. 39-14 // Newsletter of the CIS Interparliamentary Assembly, No. 60, 2014.

¹³ ANDRYIASHKA, Maryna V. Out-of-court mediation in resolving disputes arising from marital and family relations. *Justice of Belarus*, No. 9, p. 34, 2014. On the mediator's profession in Brazil see AWAD, Dora R. *Mediação de conflitos no Brasil: atividade ou profissão?* *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 2, nº 4, pp. 57-65, 2020.

¹⁴ RUSMAN, Galina. The active position of the court is the basis for the successful application of alternative measures in criminal proceedings. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 07, p. 89, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.6.

¹⁵ ZDROK, Oksana. Conciliation procedures in the civil process : abstract. diss. ... doct. jurid. Sciences : 12.00.15 / O. Zdrok ; Belarusian State University. Minsk, p. 13, 2019.

¹⁶ TIKHINYA, Valery. Mediation as a conciliatory procedure for the pre-trial settlement of civil law conflicts. *Justice of Belarus*, No. 8, p. 21, 2020.

¹⁷ KAMENKOV, Viktor. Is mediation possible in bankruptcy cases. *Justice of Belarus*, No. 4, p. 24, 2015.

¹⁸ KHALETSKAYA, Tatsiana. Selection and appointment of a mediator in cases initiated in courts of general jurisdiction, including cases considered by economic courts. *Pravo. Economy. Psychology*, No. 1, p. 22, 2017.

- 5) tax relations;¹⁹
- 5) prospects for the development of mediation;²⁰
- 6) education;²¹
- 7) ecology;²²
- 8) healthcare;²³
- 9) labor relations;²⁴
- 10) and others;²⁵

In the national practice of the Republic of Belarus, mediation procedures are most often used in dispute resolution and in the consideration of cases in the field of:

- 1) marriage and family relations (Article 6, Article 13, Article 35¹, Article 36 of the Code of the Republic of Belarus on Marriage and Family, hereinafter – CMF).²⁶ In 2021, the number of mediations conducted on disputes arising from family legal relations amounted to 417 (224 of it – mediation in connection with the dissolution of marriage);²⁷
- 2) criminal procedure (Article 30¹, Article 43, Article 50 of the Criminal Procedure Code of the Republic of Belarus, hereinafter – CrPC).²⁸ According to the Supreme Court of the Republic of Belarus, in the first half of 2022, the courts of general jurisdiction considered 17 134 criminal cases with sentencing.²⁹ At the same time, the number of persons whose cases were terminated by the court of the first instance on appeal

¹⁹ LYUBICH, Oleg. Mutually agreeable procedure for resolving tax disputes with the participation of foreign persons. Justice of Belarus, No. 2, p. 41, 2022.

²⁰ FERREIRA, D. B.; GIOVANNINI, C.; GROMOVA, E.; DA ROCHA SCHMIDT; G. Arbitration chambers and trust to technology provider: Impacts of trust technology intermediated dispute resolution proceedings. Technology in Society, v. 68, 101872, 2022. DOI: 10.1016/j.techsoc.2022.101872.

²¹ BELSKAYA, Irina. The first steps of school mediation in the Republic of Belarus. Justice of Belarus, No. 9, p. 62, 2018.

²² BELSKAYA, Irina. The potential of environmental mediation for Belarus. Justice of Belarus, No. 6, p. 68, 2021.

²³ DENISOVA, V. S. The relevance of the use of mediation in healthcare. Justice of Belarus, No. 2, p. 63, 2021.

²⁴ KAMENKOV, Viktor. The possibility of mediation in individual labor disputes. Labor protection and social protection, No. 10, p. 83, 2014.

²⁵ DYATCHIK, Julia. Mediation and Bar: points of contact. Justice of Belarus, No. 5, p. 68, 2021.

²⁶ The Code of the Republic of Belarus on Marriage and Family [Electronic resource]: The Law of the Republic of Belarus, July 9, 1999, No. 278-Z; ed. by the Law of the Republic of Belarus of 19.05.2022, No. 171-Z. National Legal Internet Portal of the Republic of Belarus, 24.05.2022, 2/2891.

²⁷ The Plenum of the Supreme Court of the Republic of Belarus adopted a resolution “On the application of legislation by courts when considering cases of divorce” [Electronic resource]: Supreme Court of the Republic of Belarus. URL: <https://goo.su/UNtrU>. Access date: 18.01.2023.

²⁸ Criminal Procedure Code of the Republic of Belarus [Electronic resource]: Law of the Republic of Belarus, July 16, 1999, No. 295-Z; ed. by the Law of the Republic of Belarus of 20.07.2022, No. 199-Z. National Legal Internet Portal of the Republic of Belarus, 26.07.2022, 2/2919.

²⁹ Brief statistical data on the activity of courts of general jurisdiction in the administration of justice for the 1st half of 2022 [Electronic resource]: Supreme Court of the Republic of Belarus. URL: <https://clck.ru/33NMJu>. Access date: 26.01.2023.

amounted to 628 people, 195 of them – in connection with reconciliation with the victim³⁰:

- 3) relations between counterparties (Article 40¹, Article 113¹, Article 262¹ – Article 262³ the Economic Procedural Code of the Republic of Belarus³¹; Article 61, Article 160, Article 164, Article 165, Article 280, Article 285, Article 414 of Civil Procedure Code of the Republic of Belarus³² (hereinafter – CPC)). In 2021, the judicial board for Intellectual Property Affairs of the Supreme Court of the Republic of Belarus considered 162 cases, of which 63 cases (38.9%) terminated proceedings at the stage of pre-trial preparation in connection with voluntary settlement of disputes: 34 cases – in connection with the refusals of plaintiffs from claims (Article 164, 1 part, paragraph 3 of CPC), in 29 cases – in connection with the approval of settlement agreements (Article 164, part 1, paragraph 4 of CPC). In 8 cases, applications were left without consideration (in 7 cases – in connection with the conclusion of mediation agreement (Article 165, part 1, paragraph 5 of CPC). In 1 case, the application was left without consideration due to its submission on behalf of the interested person by a person who does not have the authority to sign and present it (Article 165, part 1, paragraph 3 of CPC).³³

At the same time, it should be noted that great prospects are open up for school mediation. The reasons for its implementation are “the stress imbalance of children and adolescents, what is often the cause of conflicts in the school environment; the need to individualize the process of educating the younger generation; the search for new technologies for conflict resolution; the effectiveness of creating “School reconciliation services” in educational institutions in international practice”.³⁴ In the 2015/2016 academic year, a project of school mediation was launched in the Republic of Belarus. Nevertheless, we can't say that school mediation practice is widespread implemented. As well as the use of mediation in the consideration of disputes arising from labor relations, environmental, in the field of healthcare, there

³⁰ *Ibid.*

³¹ Economic Procedural Code of the Republic of Belarus [Electronic resource]: The Law of the Republic of Belarus, December 15, 1998, No. 219-Z; ed. by the Law of the Republic of Belarus of 27.05.2021, No. 113-Z. National Legal Internet Portal of the Republic of Belarus, 29.05.2021, 2/2833.

³² Civil Procedure Code of the Republic of Belarus [Electronic resource]: The Law of the Republic of Belarus, January 11, 1999, No. 238-Z; ed. by the Law of the Republic of Belarus of 27.05.2021, No. 113-Z. National Legal Internet Portal of the Republic of Belarus, 29.05.2021, 2/2833.

³³ Information on the results of the work of the judicial board for Intellectual Property Affairs of the Supreme Court of the Republic of Belarus for 2021 [Electronic resource]: Supreme Court of the Republic of Belarus. URL: <https://goo.su/VJPJ07>. Access date: 07.12.2022.

³⁴ School mediation [Electronic resource]: Center „Mediation and Law”. URL: <https://goo.su/IdciUx>. Access date: 27.01.2023.

are just single facts of the use of mediation technologies, and not an established practice.

3.2 Premises for the Mediation Implementation into Belarusian Legislation

As we see it, and as follows from established international practice, the demand for mediation in Republic of Belarus in current areas, is due to a set of circumstances:

- 1) creating conditions for realization of the right to judicial protection what is guaranteed by the Constitution of the Republic of Belarus³⁵ (Article 60, paragraph 1);
- 2) the intention of the state to unload the judicial system and reduce the burden on one judge;
- 3) the intention of the state to increase the level of independence and responsibility of the disputing parties, to develop corporate ethics, the ability to negotiate, the skills to find comfortable conditions for dispute resolution among counterparties.

3.2.1 Creating Conditions for the Realization of the Right to Judicial Protection

Being first enshrined in Article 11 of the Universal Declaration of Human Rights (1948),³⁶ the legal framework of the right to judicial protection has significantly expanded over time, providing to the subject much more guarantees of its implementation.

This right includes the right to “ a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,³⁷ 1950; Article 14, part 1 of International Covenant on Civil and Political Rights,³⁸ 1966).

³⁵ Constitution of the Republic of Belarus of 1994 [Electronic resource]: The Law of the Republic of Belarus, March 15, 1994 No. 2875-XII; ed. by the republican referendums of November 24, 1996, October 17, 2004 and February 27, 2022. National Legal Internet Portal of the Republic of Belarus, 04.03.2022, 1/20213.

³⁶ Universal Declaration of Human Rights [Electronic resource]: Adopted by UN General Assembly Resolution 217 A (III), December 10, 1948. URL: <https://t.ly/dALk>. Access date: 07.12.2022.

³⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms [Electronic resource]: Council of Europe Convention, Rome, November 4, 1950. URL: <https://t.ly/Vh8v>. Access date: 07.12.2022.

³⁸ International Covenant on Civil and Political Rights [Electronic resource]: Adopted by UN General Assembly Resolution 2200 A (XXI), December 16, 1966. URL: <https://t.ly/tZuJ>. Access date: 07.12.2022.

The interpretation of this right is well reflected in the General Comments of the Human Rights Committee No. 32, according to paragraph 44 of which “whenever appropriate, in particular where the rehabilitation of juveniles alleged to have committed acts prohibited under penal law would be fostered, measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling or community service or educational programs...”.³⁹

3.2.2 Reducing the Burden on the Judicial System and Judges

3.2.2.1 Consideration of Disputes Arising from Marital and Family Relations

The family in the Republic of Belarus is protected by the state, which strives to create the most favorable conditions for its existence. This is indicated in Article 32 of the Constitution of the Republic of Belarus in accordance to which “marriage as a union of a woman and a man, family, motherhood, fatherhood and childhood are protected by the state”.⁴⁰

Among the tasks of the legislation on marriage and family, CMF calls “strengthening the family in the Republic of Belarus as the natural and basic unit of society on the principles of universal morality, preventing the weakening and destruction of family ties” (Article 1).⁴¹

The importance of the institution of the family for the state is evidenced by the content of paragraph 13 of the National Security Concept of the Republic of Belarus, in which among the national interests in the demographic sphere is named “strengthening the institution of the family as a social institution most favorable for the realization of the need for children, their upbringing”.⁴² As goals and objectives of demographic security, the Law of the Republic of Belarus “On

³⁹ General comments No. 32. Article 14: Equality before courts and tribunals and the right of everyone to a fair trial [Electronic resource]: Human Rights Committee, ninetieth session, Geneva, 9 – 27 July 2007, CCPR/C/GC/32. URL: <https://t.ly/Tlqx>. Access date: 07.12.2022.

⁴⁰ Constitution of the Republic of Belarus of 1994 [Electronic resource]: The Law of the Republic of Belarus, March 15, 1994 No. 2875-XII; ed. by the republican referendums of November 24, 1996, October 17, 2004 and February 27, 2022. National Legal Internet Portal of the Republic of Belarus, 04.03.2022, 1/20213.

⁴¹ The Code of the Republic of Belarus on Marriage and Family [Electronic resource]: The Law of the Republic of Belarus, July 9, 1999, No. 278-Z; ed. by the Law of the Republic of Belarus of 19.05.2022, No. 171-Z. National Legal Internet Portal of the Republic of Belarus, 24.05.2022, 2/2891.

⁴² On the approval of the National Security Concept of the Republic of Belarus [Electronic resource]: Decree of the President Republic Belarus, November 9, 2010, No. 575; ed. Decree of the President of the Republic Belarus on 24.01.2014, No. 49. National Legal Internet Portal of the Republic of Belarus, 30.01.2014, 1/14788.

Demographic Security of the Republic of Belarus” specifies “the formation of high spiritual and moral standards of citizens in the field of family relations, increasing the prestige of the family in society” (Article 5).⁴³

Nevertheless, there is a negative transformation of the institution of the family in the Republic of Belarus: high divorce rates, an increase in the number of single-parent families with children, social orphanhood, facts of domestic violence. Belarusian researchers pay attention to the problems of degradation of the family institution in the Republic of Belarus, identify the causes of this negative phenomenon and develop measures aimed at their elimination.^{44 45}

The data of the National Statistical Committee of the Republic of Belarus indicate high rates of divorce in court:

- in 2021: 34,386 divorces (59,649 marriages were registered);
- in 2020: 35,144 divorces (50,384 marriages were registered);
- in 2019: 34,470 divorces (62,744 marriages were registered).⁴⁶

During the first half of 2022, the courts of the Republic of Belarus considered:

- 12,254 claims for divorce of spouses (12,236 claims were satisfied);
- 1,204 claims for deprivation of parental rights (1,087 claims were satisfied);
- 4,759 applications for the recovery of alimony for minor children (4,759 applications were satisfied).⁴⁷

The family is a social institution in which relationships are not amenable to legal influence. It is impossible to put the relations of love, care, friendship, support, warmth between family members into a legal framework. Therefore, it is difficult to provide formal evidence to the court resolving disputes arising from marital and family relations. This has a negative impact on the effectiveness of judicial protection in general.

The solution to these problems can be found in additional procedures to eliminate contradictions between family members, without going to court. Mediation is one of such procedures.

⁴³ On demographic security of the Republic of Belarus [Electronic resource]: The Law of Republic Belarus, January 4, 2002, No. 80-Z; ed. The Law of the Republic of Belarus on 09.01.2018, No. 91-Z. National Legal Internet Portal of the Republic of Belarus, 18.01.2018, 2/2529.

⁴⁴ ANDRYIASHKA, Maryna V. Violence is an additional indicator of the degradation of the institution of the family as a demographic threat. Bulletin of the BarGU. The series “Historical Sciences and Archeology. Economic sciences. Legal sciences”, Issue 6, p. 109, 2018.

⁴⁵ ANDRYIASHKA, Maryna V. Subsidiary indicators of the degradation of the institution of the family as a demographic threat. Justice of Belarus, No. 1, p. 37, 2020.

⁴⁶ Statistical year of the Republic of Belarus – 2022 / I. V. Medvedev, E. I. Kuharevich [et al.]; National Statistic Committee of the Republic of Belarus. Minsk: NSC, p. 53. 2022.

⁴⁷ Brief statistical data on the activity of courts of general jurisdiction in the administration of justice for the 1st half of 2022 [Electronic resource]: The Supreme Court of the Republic of Belarus. URL: <https://clck.ru/33NMJu>. Access date: 26.01.2023.

Nevertheless, despite the high potential of mediation in the field of marriage and family relations, experts point to the insufficient pace of implementation of this tool, distrust and low interest of the disputing parties. It is noted that "... mediation as a conflict resolution tool has not been widely used in our country".⁴⁸

Among the reasons for the rare appeal of Belarusian citizens to the services of mediators are: the novelty of the mediation procedure for the Republic of Belarus; a high degree of conflict between the parties to the dispute; lack of negotiation skills and traditions; insufficient awareness of citizens about the essence of mediation, the procedure for its conduct and positive aspects of its application; lack of public confidence in the mediation procedure itself (society in general is still considers the court as the only possible way to resolve conflicts).

Since September 1, 1999, due to the entry into force of the CMF, the possibility of divorce in an administrative order in the registry office was abolished. From that time until 2013, the dissolution of marriage could only be carried out in court, which significantly increased the average monthly burden on judges. Thus, in 2011, the proceedings of the general courts of the Republic of Belarus received almost 55 thousand criminal, more than 360 thousand civil and about 442,000 administrative cases. The average monthly receipt of cases per judge of the district court for the year was 96.3 cases and materials.⁴⁹

These conditions were a prerequisite for the restoration in the modern legislation of the Republic of Belarus of the administrative procedure for the dissolution of marriage in the civil registry offices. This procedure was familiar to the Belarusian Soviet marriage and family legislation, as it was provided for by Article 34 of the Code on Marriage and Family of the Belarusian SSR of 1969, according to which the dissolution of marriage was carried out in court, and in cases of divorce by mutual consent of spouses who do not have minor children (Article 40), as well as at the request of one of the spouses, if the other spouse is recognized as missing or incapacitated, or convicted of committing a crime to imprisonment for a term of at least three years (Article 41), – in the civil registry offices.⁵⁰

In accordance with paragraphs 19 and 20 of Article 1 and Article 5 of the Law of the Republic of Belarus No. 342-Z of January 7, 2012 "On Amendments and

⁴⁸ The Plenum of the Supreme Court of the Republic of Belarus adopted a resolution "On the application of legislation by courts when considering cases of divorce" [Electronic resource]: Supreme Court of the Republic of Belarus. URL: <https://goo.su/UNtrU>. Access date: 18.01.2023.

⁴⁹ Reducing the burden on judges will improve the quality of judicial proceedings in Belarus [Electronic resource]: BELTA – News of Belarus, 1999 – 2022. URL: <https://goo.su/tUFGq>. Access date: 07.12.2022.

⁵⁰ On the approval of the Code on Marriage and Family of the Belarusian SSR [Electronic resource] : National Legal Information Center of the Republic of Belarus, 2003 – 2022. URL: <https://goo.su/IB4SBdA>. Access date: 07.12.2022.

Additions to the Code of the Republic of Belarus on Marriage and Family”,⁵¹ the administrative procedure for the dissolution of marriages returns to the CMF from January 1, 2013.

In 2013, according to the Supreme Court of the Republic of Belarus, the average monthly workload per judge was 79.5 cases and materials per month.⁵²

In 2019, the staff load in the courts of general jurisdiction of the Republic of Belarus amounted to 71.3 cases and materials per month (in 2018 – 73.5); in economic courts – 73 cases and materials (in 2018 – 76.4).⁵³

Currently, the National Statistical Committee of the Republic of Belarus does not keep records of administratively dissolved marriages. In this regard, the total number of marriages dissolved in the registry office is unknown, which does not contribute to transparency. An approximate picture can be formed by studying data from open sources with fragmentary reports of city and district registry offices. In total, 364 marriages were dissolved by registry offices in the Brest region in 2022.⁵⁴ In particular, 169 divorces were registered in the registry office of the Baranovichi City Executive Committee in 2022;⁵⁵ from January 1 to January 26, 2023, 10 marriages were dissolved in the same registry office department.⁵⁶ This is only one city in the country and without taking into account statistical data on expenses incurred in the registry office department of the Baranovichi district executive Committee. It should be noted that the administrative-territorial structure of the Republic of Belarus assumes the presence of 6 regions and 118 districts. Thus, the introduction of an administrative procedure for the dissolution of marriage is a valuable alternative to the judicial procedure for the dissolution of marriage. The dissolution of marriage in the registry office is possible only by agreement of the spouses, which meets the objectives of the application of conciliation procedures and contributes to the unloading of the Belarusian judicial system.

⁵¹ On amendments and additions to the Code of the Republic of Belarus on Marriage and Family [Electronic resource]: The Law of the Republic of Belarus, January 7, 2012, No. 342-Z. National Register of Legal Acts of the Republic of Belarus, No. 9, 2/1894, 2012.

⁵² On the efficiency of the courts of the Republic of Belarus in 2013 [Electronic resource]: The Supreme Court of the Republic of Belarus. UR: <https://goo.su/et9ypQ>. Access date: 07.12.2022.

⁵³ Criteria for selection of candidates for judges have been updated in Belarus [Electronic resource]: BELTA – News of Belarus, 1999 – 2023. URL: <https://goo.su/f9yht>. Access date: 18.01.2023.

⁵⁴ About the work done in 2022 [Electronic resource]: Brest City Executive Committee. URL: <https://goo.su/QNgVNi5>. Access date: 27.01.2023.

⁵⁵ Divorced three times: records for the dissolution of marriages are set in Baranovichi [Electronic resource]: Nash Krai, 2015 – 2023. URL: <https://clck.ru/33P9BK>. Access date: 27.01.2023.

⁵⁶ At what age they get married and get divorced, they found out in the Baranovichi registry office [Electronic resource]: Nash Krai, 2015 – 2023. URL: <https://goo.su/axvuBtZ>. Access date: 27.01.2023.

3.2.2.2 Consideration of Criminal Cases

The use of mediation in the field of criminal justice is also in demand in order to unload the judicial system. Thus, in the Decision of the Constitutional Court of the Republic of Belarus dated May 17, 2021 No. R-1270/2021 „On compliance with the Constitution of the Republic of Belarus with the Law of the Republic of Belarus „On Amendments to Codes on criminal Liability” is expressed the legal position, according to which “the introduction of the institute of mediation into the criminal process ensures further humanization of criminal law policy and differentiation of punishments, reducing the workload of the judicial system, reducing the number of punishments related to imprisonment, as well as the resolution of problems in the penal enforcement system associated with the execution of penalties in the form of imprisonment”.⁵⁷

Paragraph 6 of Article 2 of the Law⁵⁸ of the CrPC is supplemented by a new Article 30¹ “Reconciliation of the accused with the victim”, according to which reconciliation of the accused with the victim is carried out on the basis of a voluntary expression of will to resolve the conflict (dispute) between them arising in connection with the commission of a crime, including by concluding a mediation agreement; reconciliation of the accused with the victim is carried out voluntarily and personally; reconciliation with minors by the accused or the victim is carried out with the participation of their legal representatives; if reconciliation of the accused with the victim is carried out by mediation, then the accused and the victim choose a mediator for its conduct on their own initiative and mutual consent.

The implementation of mediation procedures in criminal proceedings “makes it possible to implement the concept of humanization and differentiation of punishments, reduces the workload of the judicial system, contributes to the reduction of penalties associated with deprivation of liberty. Accordingly, this leads to the resolution of problems in the penal system associated with the execution of penalties in the form of imprisonment. The release of the accused from criminal liability in connection with repentance, reconciliation with the victim will be a stimulating factor in the law-abiding behavior of the perpetrators of the crime, as well as contribute to a faster and more effective restoration of the violated rights of the victim, reducing the judicial burden”.⁵⁹

⁵⁷ On compliance with the Constitution of the Republic of Belarus with the Law of the Republic of Belarus “On Amendments to Codes on criminal liability” [Electronic resource]: The decision of the Constitutional Court of the Republic of Belarus, May 17, 2021, No. R-1270/2021. National Legal Internet Portal of the Republic of Belarus, 21.05.2021, 6/1798.

⁵⁸ On the amendment of codes on criminal liability [Electronic resource]: The Law of Republic Belarus, May 26, 2021, No. 112-Z. National Legal Internet Portal of the Republic of Belarus, 08.06.2021, 2/2832.

⁵⁹ The Ministry of Justice – on the introduction of the institute of mediation in criminal proceedings and on changes in the CrPC [Electronic resource] : National Center for Legal Information of the Republic of Belarus,

The Belarusian legislator has taken a progressive step to introduce the institution of mediation in the criminal process. While in Russian criminal proceedings, this idea, despite widespread discussion in scientific circles, has not yet received legislative consolidation.

Thus, according to the Federal Law of the Russian Federation No. 193-FZ of July 27, 2010 “On Alternative Dispute Settlement Procedure with the participation of an intermediary (mediation procedure)”⁶⁰, the scope of mediation in Russian law is limited to disputes arising from civil, administrative and other public legal relations, including in connection with the implementation of entrepreneurial and other economic activities, as well as disputes arising from labor and family relations.

At the same time, according to K. I. Popov,⁶¹ certain features of mediation are provided for in Article 76 of the Criminal Code of the Russian Federation, which regulates exemption from criminal liability in connection with reconciliation with the victim: “a person who has committed a minor or moderate crime for the first time can be released from criminal liability if he reconciled with the victim and made amends to the victim of harm”.⁶²

Indeed, this type of release can be considered as a kind of way to settle a criminal conflict: the parties are the victim and the person who committed the crime; this person compensates to the victim damage caused by the crime; the parties make a decision voluntarily; the result of reconciliation is the victim’s statement on the termination of the criminal case. Thus, the dispute that arose between the parties as a result of the commission of a crime is terminated, and the violated legal relations are restored.

However, according to Article 25 of the Criminal Procedure Code of the Russian Federation⁶³ (hereinafter – CrPCRF), a criminal conflict is resolved by an investigator or a court. And that fundamentally distinguishes the reconciliation of the parties from the institution of mediation, as far as a characteristic feature of mediation is the involvement in the reconciliation process of a third person

2003 – 2023. UR : <https://goo.su/UGNEwP>. Access date: 26.01.2023.

⁶⁰ On an alternative dispute settlement procedure with the participation of an intermediary (mediation procedure): Federal Law No. 193-FZ of July 27, 2010 (ed. on July 26, 2019) // Collection of Legislation of the Russian Federation. 2010. No. 31, Article 4162; Collection of Legislation of the Russian Federation. 2019. No. 30, article 4099.

⁶¹ POPOV, K. I. Mediation in criminal law – myth or reality? Military law, No. 2 (72), p. 227, 2022.

⁶² The Criminal Code of the Russian Federation No. 63-FZ of 13.06.1996 (ed. on 29.12.2022) // Collection of Legislation of the Russian Federation. 1996. No. 25, Article 2954; Collection of Legislation of the Russian Federation. 2023. No. 1 (Part I), Article 29.

⁶³ Criminal Procedure Code of the Russian Federation No. 174-FZ of 18.12.2001 (as amended on 29.12.2022) // Collection of Legislation of the Russian Federation. 2001. No. 52 (Part I), Article 4921; Collection of Legislation of the Russian Federation. 2023. No. 1 (Part I), Article 57.

(a mediator) who is not interested in the outcome business and persuades the parties to make a common and satisfactory decision for everyone.

Unlike the mediation procedure, reconciliation of the parties does not mean the mandatory termination of the criminal case. Article 25 of the CrPCRF refers to the right to terminate a criminal case, and not the obligation to do this. The following persons have the right to make such a decision: a court; an investigator with the consent of the head of the investigative body; an inquirer with the consent of the prosecutor.

3.2.3 Increasing the Independence and Responsibility of the Disputing Parties

The State is making efforts to create mechanisms for comfortable dispute resolution between counterparties. First of all, by legally securing the possibility for the parties to choose a way to resolve the dispute. On the one hand, this contributes to increasing the responsibility of the parties, and on the other hand, it contributes to the development of corporate ethics, negotiation skills, skills to find optimal and most comfortable conditions for dispute resolution among counterparties.

In 2013, the Constitutional Court of the Republic of Belarus expressed a legal position according to which “the provisions of the Constitution ... do not exclude the possibility of using alternative methods of conflict resolution under certain conditions”, and also refers that mediation “... does not replace existing jurisdictional mechanisms, but complements them, providing participants in civil turnover with additional opportunities to settle arisen disputes”.⁶⁴ Indeed, the practice of alternative commercial dispute resolution is the most eloquent evidence of these circumstances.

The use of mediation between transnational counterparties require a creation “... the necessary legal mechanisms for the effective regulation of economic and other activities in the interests of man and society”.⁶⁵ The corresponding legal position is expressed in the Decision of the Constitutional Court of the Republic of Belarus in 2021.

The ratification of the Singapore Convention on Mediation (2018) by the Republic of Belarus on June 25, 2020 predetermined the need to take into account its provisions in national legislation, in this regard, the Law of the Republic of

⁶⁴ On compliance with the Constitution of the Republic of Belarus with the Law of the Republic of Belarus “On Mediation” [Electronic resource]: Decision of the Constitutional Court of the Republic of Belarus, July 8, 2013, No. R-841/2013. National legal Internet portal of the Republic of Belarus, 24.07.2013, 6/1324.

⁶⁵ On the state of constitutional legality in the Republic of Belarus in 2020 [Electronic resource]: Decision of the Constitutional Court of the Republic of Belarus, March 11, 2021, No. R-1256/2021. National legal Internet portal of the Republic of Belarus, 18.03.2021, 6/1782.

Belarus No. 89-Z of January 6, 2021 “On Amendments to Laws on mediation” was adopted.⁶⁶

The Constitutional Court of the Republic of Belarus, carrying out mandatory preliminary control of the constitutionality of the legal provisions, highly appreciated mediation as a way of “resolving international commercial disputes, creating a legal mechanism for recognizing and enforcing international mediation agreements reached as a result of the out-of-court mediation procedure in the country, expanding the possibilities of business entities in choosing means of dispute settlement to ensure their rights and legitimate interests in international economic relations”.⁶⁷

4 Mediation in Resolving Family Disputes in the Republic of Belarus

4.1 Advantages of Family Mediation

The mediation procedure, according to Article 3 of the Law of the Republic of Belarus “On Mediation”⁶⁸ is based on the principles of voluntariness; good faith, equality and cooperation of the parties; impartiality and independence of the mediator; confidentiality. The flexibility of the mediation procedure makes it possible to reduce the severity of the conflict that has arisen between the disputing parties, improve communication between family members, and preserve the possibility of further communication between them.

The advantage of family mediation is *reducing the costs of dispute resolution*, compared with the costs of settling such disputes in court. For example, in the Republic of Belarus, spouses wishing to dissolve a marriage and divide joint property pay the following payments:

the state fee for consideration of a claim for divorce (at the same time, the amount of the state fee doubles if a divorce is the second or more for one of the spouses);

the state fee for consideration of a claim of division of common joint property (5% of the price of the claim).

⁶⁶ On changing the laws on mediation [Electronic resource]: Law Rep. Belarus, January 6, 2021, No. 89-Z // National legal Internet portal of the Republic of Belarus, 14.01.2021, 2/2809.

⁶⁷ On compliance with the Constitution of the Republic of Belarus with the Law of the Republic of Belarus “On Amendments to laws on mediation” [Electronic resource]: Decision of the Constitutional Court of the Republic of Belarus, December 28, 2020, No. R-1253/2020. National legal Internet portal of the Republic of Belarus, 12.01.2021, 6/1779.

⁶⁸ On mediation [Electronic resource]: the Law of the Republic of Belarus, July 12, 2013, No. 58-Z ; ed. by the Law of the Republic of Belarus on 06.01.2021, No. 89-Z. National legal Internet portal of the Republic of Belarus, 14.01.2021, 2/2809.

In addition, expert examinations may be appointed to clarify the value of the property. The parties also bear the costs of lawyers for representation in court and drafting the necessary legal documents.

Using the mediation procedure, the parties *pay only remuneration to the mediator*, the amount of which is determined by the agreement. At the same time, in accordance with Article 17 of the Law “On Mediation”, remuneration expenses are equal for the parties, unless a different procedure is defined by their agreement.

The next advantage of mediation is *the shortening of the dispute resolution period*. We have an example. During the dissolution of a marriage, between the spouses arose a dispute on division of common joint property, which they could not resolve without a conflict and appealed to the court. The trial lasted four years. The solicitors of the parties advised them to contact a mediator. The spouses owned an unfinished house with no heating and a plot of land, and the ex-spouses could not make a decision how to divide it. During the negotiations, the parties indicated a solution each of them sees in the current situation. However, the parties could not discuss these decisions, since each statement was accompanied by accusing each other of the causes of the current conflict, the disintegration of the family.

With the help of mediators, the parties realized that it is important not only what they agree on, but also how they do it. The ex-spouses realized that they could not conclude an agreement not only because of a different vision of the situation, but also because of the inability to establish a dialogue among themselves. During the mediation process, the parties worked out rules of conduct that they agreed not to violate. With each subsequent meeting, the negotiations were calmer, which made it possible to discuss the available options for resolving the dispute without mutual accusations. During the mediation process, the true interest of the parties was revealed. Both ex-spouses understood that they did not want to live together in an unfinished house. The parties came to an agreement, under the terms of which one party buys a share of construction materials invested in an unfinished house. The agreement allowed one party to purchase a new separate living space in the city; and to the other party – to finish building a house and stay in the countryside.⁶⁹

4.2 Disadvantages of Family Mediation

The lack in Belarussian family legislation of legal norms defining the features of family mediation is the reason for the lack of demand for mediation as an alternative way to resolve family disputes.

⁶⁹ TARASOVA, N. V. The long-term judicial dispute of the former spouses was resolved thanks to mediation. Lawyer, No. 4, p. 17, 2018.

According to Article 2 of the Law “On Mediation”, it is possible to use family mediation. However, it is not specified which disputes can be submitted for resolution within the framework of mediation. A direct indication of the possibility of mediation is mentioned in the Belarusian family legislation in the following cases:

- when the state body registering acts of civil status accepts an application for divorce, the spouses are explained their right to participate in an information meeting with a mediator (in Article 35¹ of the CMF);
- when the court accepts a statement of claim for divorce, the spouses are explained their right to a voluntary settlement of the dispute with the participation of a mediator, including their right to participate in an information meeting with a mediator (Article 36 of the CPC). The provisions of Article 36 of the CMF are detailed in paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Republic of Belarus “On the application of legislation by courts when considering divorce cases”,⁷⁰ which states that spouses are explained their right to voluntarily settle property disputes and disputes related to the upbringing and maintenance of children with the participation of a mediator.

Consequently, only spouses who are terminating a marriage can accept mediation and only on issues of resolving property disputes, as well as disputes related to the upbringing and maintenance of children.

Despite the fact that these provisions of the Belarusian legislation actually reduce family mediation to mediation used by spouses who are in the process of divorce, we believe that the subject composition of family mediation is much broader.

Firstly, mediation can be applied not only by spouses, but also by ex-spouses, as far as in accordance to Article 13 of the CMF, in the Marriage Contract the parties can provide, among many other things, “types of disputes between spouses (former spouses) arising from marital and family relations”,⁷¹ which can be transferred by them for settlement with the participation of a mediator.

Secondly, there are many disputes in families that are not related to the dissolution of marriage. We believe that mediation can be used to settle a dispute between any family members who have had a strong connection with each other for a long time.

⁷⁰ The Plenum of the Supreme Court of the Republic of Belarus adopted a resolution “On the application of legislation by courts when considering cases of divorce” [Electronic resource]: Supreme Court of the Republic of Belarus. URL: <https://goo.su/UNtrU>. Access date: 18.01.2023.

⁷¹ The Code of the Republic of Belarus on Marriage and Family [Electronic resource]: The Law of the Republic of Belarus, July 9, 1999, No. 278-Z; ed. by the Law of the Republic of Belarus of 19.05.2022, No. 171-Z. National Legal Internet Portal of the Republic of Belarus, 24.05.2022, 2/2891.

Indirectly, such a conclusion follows from the general rule: “in cases stipulated by the agreement of the parties, interested persons, before applying to the court with a claim for the protection of violated or disputed rights arising from marital and family relations, have the right to settle the dispute with the participation of a mediator”⁷² (Article 6 of the CMF).

Thirdly, the Belarusian legislation does not define to which categories of family law disputes mediation is applicable.

Speaking about the mediability of disputes, V. Kamenkov and I. Belskaya argue that “... mediation should be adequate to the problem being solved. The potential of its effectiveness is determined by the following criteria: 1) the interest of the parties in the cost-effectiveness of solving the problem (reducing the cost of funds, time and other resources of the parties to achieve an acceptable result); 2) the willingness of the parties to respect the interests of their partner and fulfill the agreements reached voluntarily and promptly; 3) satisfaction of the parties with independently developed terms of dispute settlement; 4) the desire to maintain business (commercial) partnerships”.⁷³

In addition to these universal criteria of mediation, its legal criteria are also distinguished in the specialized literature. Thus, E. Chichina refers to them the following: the affiliation of the disputed legal relationship to the branches of civil, family or labor law; the private-law nature of the disputed legal relationship; the absence of a legislative ban on mediation⁷⁴. At the same time, E. Chichina rightly believes that “the ban on mediation can be expressed both directly and indirectly: by referring a dispute to the exclusive jurisdiction of the court and the inability of the parties to restore the violated right on their own”.⁷⁵

To these criteria, we also add that a dispute can be settled by mediation only if the nature of the dispute allows for several resolution options.⁷⁶

The specified criteria of mediability of the dispute will not allow mediation to be used in resolving any family dispute. We agree with N. Gordiychuk in her opinion that the use of mediation in family disputes is impossible in resolving such disputes as: numerous facts of domestic violence, continuing at the time of preparation for mediation or occurring in the recent past; child abuse; intimidation, threats, serious imbalance of forces between the parties; mental illness of one of

⁷² *Ibid.*

⁷³ KAMENKOV, Viktor, BELSKAYA, Irina. Article-by-article commentary to the Law of the Republic of Belarus dated 12.07.2013 No. 58-Z “On Mediation” [Electronic resource] : [as of 11.01.2023] // ConsultantPlus. Belarus / LLC “YurSpektr”, National Center of Legal Information of the Republic of Belarus, Minsk, 2023.

⁷⁴ CHICHINA, Elena. Legal criteria of mediability of disputes under the legislation of the Republic of Belarus. *Pravo.by*, No. 2, p. 45, 2017.

⁷⁵ *Ibid.*

⁷⁶ KHALETSKAYA, Tatsiana. On mediability of hereditary disputes. *Scientific works of BSEU*, Issue 11, p. 584, 2018.

the parties; incapacity of one of the parties; drug addiction of one of the parties; deliberate misrepresentation and provision of deliberately false information; refusal or inability to follow the basic rules of the mediation procedure.⁷⁷

We believe that it is difficult to use mediation in relations related to adoption, selection of a child without deprivation of parental rights, deprivation of parental rights, restoration of parental rights. Disputes on these categories of cases can be resolved exclusively in court.

We believe that mediation in the family sphere can be applied due to resolve disagreements arisen in the private legal sphere, when the parties can show autonomy of will in resolving the conflict: divorce, division of property, payment of alimony, parental rights etc.

Family disputes, as a rule, are characterized by increased conflict, unwillingness of the parties to hear each other, the presence of mutual reproaches. A mediator who settles a dispute between family members should strive to “reduce the intensity of passions”, restore friendly relations between family members, and contribute to building a constructive dialogue between them. In addition, the mediator’s task in such disputes is “to take special care of the well-being and protection of the interests of children, to push parents to focus on the needs of children, to remind them of their main duty concerning the maintenance of the well-being of children and to point out to them the need to inform and advise their children”.⁷⁸ All this imposes an increased level of responsibility on the mediator.

Unfortunately, there are no requirements for the specialization of mediators in the Belarusian legislation. According to Article 4 of the Law “On Mediation”, a mediator should not have a legal education. A person wishing to become a mediator must:

- be trained in the field of mediation in accordance with the procedure established by the Ministry of Justice of the Republic of Belarus, or to have experience as a mediator in accordance with proceeding legislation;
- obtain a mediator’s certificate issued by the Ministry of Justice of the Republic of Belarus on the basis of the decision of the Qualification Commission on Mediation.

Currently, a mediator can be a person who has any education (legal, psychological, economic, sociological, etc.) and any profession. In the Belarusian practice of mediation, there is no consensus on who a mediator should be by profession and occupation.

⁷⁷ GORDIYCHUK, Nikolai. Features of family mediation in divorces. Psychology and psychotherapy of the family, No. 2, p. 14, 2017.

⁷⁸ BRYUKHINA, E., CHERTKOVA E. Mediation as an alternative way of settling family disputes in the Russian Federation. Bulletin of Tomsk State University, Law, No. 39, p. 138, 2021.

For example, the Deputy Chairman of the Belarusian Republican Bar Association T. Matusevich believes that “a lawyer is an ideal candidate for a mediator: they are sociable, they know which side to approach in order to settle everything without bringing the dispute to court”; “a lawyer is constantly in conflict, he has the opportunity to foresee its development in the future”.⁷⁹

There can be no definite answer to the question of which profession representative will perform the functions of a mediator in their best way. We agree with the opinion of A. Molotnikov: “the most effective mediator can be only the candidate who has legal knowledge, has the skills of a psychologist and the wisdom of a judge”.⁸⁰

We believe that regardless of the profession and education of a person who has decided to become a mediator, they should have such features as the ability to listen and analyze, the ability to clearly express their thoughts and manage their emotions. The mediator must have the skills of a psychologist: must be able to listen to the parties, must find common ground to resolve the conflict. The mediator must also have special legal knowledge. In this matter, we agree with the point of view of V. Blazheev, who believes that the mediator “must rely on the law” and “act within the law”,⁸¹ “the mediator must have certain knowledge in jurisprudence”⁸² (knowledge in sphere of jurisprudence will let him feel more comfortable in the process of dispute resolution).

With regard to family mediation, some authors propose: to define the criteria of the mediator’s professionalism and to differentiate the areas of specialization of mediators with the definition of special requirements for them (primarily in the field of family mediation); to isolate the norms on family mediation due to the importance of family relations; to develop special requirements for family mediators and training programs for mediators.⁸³

The institute of mediation in the legal system of the Republic of Belarus has a significant potential for its development, including in the field of family relations, however, this potential is not fully realized.

⁷⁹ Mediation in Belarus: how pre-trial disputes are resolved in the republic [Electronic resource]: Sputnik. URL: <https://goo.su/ADld>. Access date: 11.01.2023.

⁸⁰ MOLOTNIKOV, Alexander. Mediation. A new approach to conflict resolution [Electronic resource]: Digest. URL: <https://goo.su/17WDm0>. Accessed: 28.01.2023.

⁸¹ BLAZHEEV, Viktor. We need a culture of out-of-court dispute resolution. *Mediation and law*, No. 2, p. 11, 2008.

⁸² *Ibid*, p. 15.

⁸³ SADOVNIKOVA M. N., ANISHCHENKO A. S. Requirements for a mediator: modern approaches and trends in the development of the Institute. *Siberian Legal Bulletin*, No. 4 (87), p. 114, 2019.

5 Conclusion

- 1) The mediation model implemented in the legislation of the Republic of Belarus correlates with the legal framework of this institution, fixed by universal standards. With regard to regional standards, is used a stipulation: for national legislation of the Republic of Belarus is recommended a Model Law No. 39-14 “On Mediation (Out-of-court settlement of Disputes)”, adopted on November 29, 2013 by a Resolution of the Interparliamentary Assembly of the Commonwealth of Independent States.
- 2) The scope of mediation in the Republic of Belarus can be divided into three groups: the most in demand; potentially in demand; inapplicable.
- 3) The most in demand area to apply a mediation in the Republic of Belarus is family legal disputes. Family mediation has a number of advantages over the judicial procedure for dispute resolution (triple “R”): mediation allows the parties to the dispute to *reduce* costs; the time for dispute resolution is *reduced*; conflict between family members and in society is *reduced*.
- 4) The demand for mediation in the Republic of Belarus, including in the family legal sphere, is insufficient due to disadvantages in the legal regulation of mediation. Significant disadvantages of the legal regulation of family mediation are:
 - the lack of a direct indication of persons who have the right to apply to family mediation to consider a dispute arising from marital and family relations;
 - lack of clear criteria for mediability in family disputes;
 - ignoring the fact that not all disputes can be referred for resolution under the mediation procedure;
 - lack of requirements for the education of mediators and their competencies.

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