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The conciliation of the parties to a dispute by a mediator (mediation)

Askhat Kuzbagarov

Professor of the Department of Civil Law of the North-West Branch of the Russian State University of Justice. E-mail: ashat69@mail.ru. ORCID: https://orcid.org/0000-0003-3039-5624.

Kamil Arslanov

Doctor of Law. Professor. Head of the Civil Law Department. Kazan Federal University. E-mail: kam.arslanov@gmail.com. ORCID ID: 0000-0001-7680-8581.

Abstract: Mediation, one of the forms of conciliation of the parties, has acquired the character of a successful guide to the world of harmony. However, several barriers prevented the proper implementation of the mediation. In-depth research on mediation is needed to find a way to overcome the mentioned barriers. This paper aims to analyze mediation as a modern legal institution, defining its genesis, types, principles, and sources. To achieve this, the author used retrospective analysis to illustrate the peculiarities of the genesis of the concept of mediation, a systemic approach to study the implementation of the idea of mediation in different legal systems, and comparative legal analysis to show the development of the concept in various countries. The article reveals its formation, points of support and opportunities for resolving legal conflicts (disputes). The basic principles on which the mediation procedure is based and what actions the mediator performs are concretized, including in the form of principles and stages of mediation.

Keywords: Conciliation of parties. Mediation. Principles of mediation.

1 Introduction

Conflicts and disputes as a social phenomenon have and will continue to exist, but their character and essence will vary depending on the stage and level of development of society. In this regard, conflict (dispute) as a phenomenon has become an object of sociological, psychological, legal and other studies. At the same time, scientists engaged in its study, strive not only to determine its essence and content, taking into account the specifics of the scientific field, but also to identify ways to resolve them through the resolution of contradictions through legal mechanisms that have found their description, research, and analysis in the legal

literature.[1] In Russia, starting from 1990, the relations on settlement of conflicts of private law nature have passed the way from their scientific cognition, legislative regulation, development, and application of technologies with the help of which they are resolved. In the mid-2000s, the development and implementation of the direction of reconciliation of the parties in Russian society, in the work of the judiciary and other law enforcement bodies, was several times set as a task for the bodies of all branches of government by the Head of State. As a result, today almost all procedural legislative acts in Russia contain norms (chapters) on reconciliation of conflicting parties (conciliation procedures). One of the most widespread has become the mediation procedure.

Mediation is a legal institution that is in the stage of taking root, and therefore we can wish it successful development and wide application. The problems associated with the introduction, development, and improvement of mediation belong to completely different spheres and since the institution in question is relatively new to domestic legal thought, the problems that accompany its development are of interest.

The aim of this paper is to analyze mediation as a modern legal institution, define its genesis, types, principles, sources. To achieve it author used retrospective analysis to define peculiarities of the genesis of the concept of mediation; systemic approach to study the implementation of the concept mediation in different legal systems; comparative legal analysis to show the development of the concept in different countries.

2 Mediation: the genesis

It is impossible in principle to pretend to unambiguously define the origins of mediation as a form of conciliation of conflicting parties. Obviously, it is connected with those natural beginnings that lie in the cultural sphere of relations, endeavors, which are inherent in each of us – to be understandable to the interlocutor, harmonious and educated in communication, in the matter of achieving important goals for oneself. In many tribes, mostly preserved today on the African continent, there are rituals of reconciliation of conflicting people, including with the participation of a reconciler (leader, quasi-mediator). However, not any form

[1] FILIPCZYK, H. ADR in Tax Disputes in Poland – The State of Play and Perspectives. Revista Brasileira de Alternative Dispute Resolution – RBADR, vol. 5, n. 10, pp. 205, 2023; FERREIRA, D. B., GIOVANNINI, C., GROMOVA, E., SCHMIDT, G. R. Arbitration Chambers and trust in technology provider: Impacts of trust in technology intermediated dispute resolution proceedings", Technology in Society, 68, 101872, 2022; GROMOVA, E.A., FERREIRA, D.B., BEGISHEV, I.R. ChatGPT and Other Intelligent Chatbots: Legal, Ethical and Dispute Resolution Concerns. Revista Brasileira de Alternative Dispute Resolution – RBADR, Belo Horizonte, ano 05, n. 10, p. 153-175, 2023.

of conciliation of the conflicting parties constitutes mediation. Historically, any phenomenon is evolutionary, but the evolution of mediation has been accelerated to a greater extent in practical application and study – by the improvement of trade relations. Thus, the use of mediators in the settlement of disputes is noted in the trade of the Phoenicians and Babylon.[2] In Ancient Greece, there was a practice of using intermediaries (proxenetas). The Romans, starting with the Code of Justinian (530-533 A.D.), recognized mediation. They used various terms for the concept of "mediator" – internuncius, medium, intercessor, philantropus, interpolator, conciliator, interlocutor, interpres, and finally mediator. References to mediation are also found in canonical traditions – the Bible and the Koran.

Nowadays, the prescription of mediation finds its expression in the law of many countries of Western Europe (France, Great Britain, etc.), Asia (China, Japan, etc.), the American continent (USA, Canada), etc.[3] In France, mediation originated during the French Revolution of the 18th century as an alternative to judicial dispute resolution. In France, mediation originated during the French Revolution of the 18th century as an alternative to judicial dispute resolution. In the National Assembly on July 7, 1790, deputy L. Prunon called to follow the "temple of justice" through the "temple of concord". It should be noted that his ideas are based on the views and proclamations of J.J. Rousseau to law and public order.[4] The institute of conciliation procedures was enshrined in the Civil Procedure Code of France in 1806.[5] Today's CPC of France preserves the institution of conciliation procedures, moreover, it can be considered quite liberal in this matter. According to Article 21 of the New CPC of France, the judge's duties include reconciliation of the parties, i.e., reconciliation is one of the basic principles of judicial proceedings and has received the name of judicial mediation. The idea of the latter is the result of the judicial practice of the 60s of the last century of the Paris Tribunal of Grand Instance, the Court of Appeal and then the Court of Cassation. According to Article 131-1 of the New Civil Procedure Code of France, any judge may resort to the

[2] KOWALCZYK, B.J. Historical, cultural and legal bases of mediation in common law and continental law systems as well as its Roman origins in Alternative dispute resolution: from Roman law to contemporary regulations. Ed: B. Sitek, J. Szczerbowski, K. Ciućkowska-Leszczewicz, C. Lazaro Guillamon, S. Kursa, A. Bauknecht (Silva Rerum, 2016); CORTES, P. Using Technology and ADR Methods to Enhance Access to Justice, International Journal of Online Dispute Resolution, Vol 5. Is. 1, 103, 2019.

[3] FERREIRA D.B., SEVERO L. Multiparty Mediation as Solution for Urban Conflicts: A Case Analysis from Brazil. BRICS Law Journal. 8(3), 5-26, 2021; FERREIRA, D.B., GROMOVA, E.A. Hyperrealistic Jurisprudence: The Digital Age and the (Un)Certainty of Judge Analytics. Int J Semiot Law, 36, 2261–2281, 2023; GROMOVA E., IVANC T. Regulatory Sandboxes (Experimental Legal Regimes) for Digital Innovations in BRICS. BRICS Law Journal, 7(2), 10-36, 2020; SOLHCHI, M. A., & BAGHBANNO, F. Artificial Intelligence and Its Role in the Development of the Future of Arbitration, International Journal of Law in Changing World, 2(2), 56-76, 2023.

[4] CADIEUX, L. Conciliation procedures in France: tradition and modernity, Russian Yearbook of Civil and Arbitration Procedure, 6, 541, 2007.

[5] CADIEUX, L. op. cit. cit. p. 542.

assistance of a third party to hear the parties and compare their points of view, as well as to facilitate the resolution of differences between them. The achievements in France in the development of mediation are impressive, but not unique.

In Germany, the institution of mediation is about 200 years old.[6] Today, according to Paragraph 278 (2) of the Civil Procedure Code of Germany[7] (hereinafter referred to as the CPCG), in order to resolve a dispute, the court conducts a conciliation procedure, which provides for discussion with the parties to the dispute of both material and formal circumstances of the case. The court is free to assess these circumstances and may ask questions. The personal presence of the parties is mandatory (i.e., the participation of representatives is excluded), and in case of failure to appear, the case is left without motion (see Paragraphs 3, 4 of Article 278 of the CPCG).

Modern mediation in the USA is connected with the experiment conducted in the cities of Atlanta, Kansas City and Los Angeles. They established centers for the settlement of disputes between citizens with the help of mediation specialists. As a result, 82% were resolved without court proceedings.[8]

In the post-Soviet space, the institute of mediation quite quickly (in the historical aspect) found understanding and acceptability for the countries of Belarus, Russia and other countries. Quite successfully this direction is developed in Belarus in economic disputes, cases on which are considered by the system of economic courts of the Republic of Belarus.

Russia has its historical background. Thus, according to Article 1359 of the Statute of Civil Procedure, a settlement deal was considered valid if it was made by a notary with the necessary procedure (Article 89 of the Notarial Regulation). Nothing subsequent verification by the court was required, unless it was the witnessing of the signature of those requesting conciliation. In this case, a judicial procedure of the rite was required (Article 1362 of the Statute).[9] Today the Federal Law No. 193-ФЗ dated July 27, 2010 "On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)"[10] (hereinafter – the Law on Mediation Procedure) has been adopted and is in force, to which we will further refer to reveal the essence of the mediation institution.

6 ALEKSANDROV, I. Alternative ways of resolving economic disputes in Germany (Kluwer Law Internetional, 2006).

7 German Code of Civil Procedure, https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html

8 NOSYREVA, E.I. Alternative dispute resolution in the USA (M., 2005).

9 The Statute of Civil Procedure. Ed. 5th, revised, supplemented and newly processed. Ekaterinoslavl, 1913. P. 685, 686.

10 Federal Law of the Russian Federation of July 27, 2010, No. 193-ФЗ "On the alternative procedure of dispute settlement with the participation of a mediator (mediation procedure)" // Collection of Legislation RF. 2010. No. 31. Art. 4162.

3 Definition, principles, sources, and types of mediation

The definition of mediation. Mediation is one of the technologies of alternative dispute resolution with the participation of a third neutral, impartial, disinterested party in the conflict – a mediator, who helps the parties to work out a certain agreement on the dispute, while the parties have full control over the process of making a decision on dispute resolution and the terms of its resolution. It has certain conditions and rules of conduct, sequence of actions, phases, and is based on the following principles: voluntariness, confidentiality, mutual respect, equality of the parties, neutrality, and impartiality of the mediator, transparency of the procedure for the parties. Judicial protection of rights was and remains a solid foundation of the legal form of protection of rights and legitimate interests by the residual method. It should be noted that in the institution of alternative dispute resolution (*hereinafter – ADR*),[11] the term "alternative" is not unique in reflecting the procedure of dispute resolution with the participation of a mediator, are used: friendly,[12] accelerated, better or innovative dispute resolution.[13]

Domestic legal thought is reflected in the legal definition of mediation – a method of dispute resolution with the assistance of a mediator on the basis of voluntary consent of the parties in order to reach a mutually acceptable solution, which is enshrined in Article 2 of the Law on Mediation Procedure. This definition is not flawless. The systemic interpretation of the above norm with Paragraph 4 of Article 12 of the Law on Mediation Procedure does not fit into the historically established institute of settlement agreement, as they are not identical. Mediation practitioners in Russia are united in the ambiguity of these legal phenomena, which significantly restrains the application of mediation in Russia. Despite some ambiguity in the concept of mediation, nevertheless, the concept of mediation is based on the following features in which the authors are united:

1) the presence of negotiations;
2) participation of a neutral person – mediator.

Some authors put negotiation in the form of "procedure", "process", which should be agreed with rather than denied. Of course, this procedure is not enshrined in normative or even local acts. In negotiations there are stages of preparation, conducting negotiations, and evaluation of achievements.[14]

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[11] FILIPCZYK, H.F. ADR in Tax Disputes in Poland – The State of Play and Perspectives. Revista Brasileira de Alternative Dispute Resolution – RBADR, vol. 5, n. 10, pp. 205-220, 2023.

[12] Reconciliation of disputes in Russian and world practice, http://www.pro-zakon.com/node/64.

[13] ABRAMSON, H. Fashioning an Effective Negotiation Style: Choosing Between Good Practices, Tactics, and Tricks, Harvard Negotiation Law Review, 23, 319, 2018.

[14] BAGULEY, F. Negotiations: Master Class. M., 2005. P. 7; WALTZ, R. The technique of negotiation by notaries: Practical textbook (Center for Notary Research at the Federal Notary Chamber, 2005).

The mediator is a key figure in the negotiation process. He or she must meet certain requirements, the composition of which depends on whether they are acting on a professional or non-professional basis. Thus, a reference to Articles 15 and 16 of the Mediation Law begs the question: Do the restrictions set forth in Article 15 apply to the activities of a mediator on a professional basis? An affirmative answer is quite conducive to the logic and meaning of the definition of the mediator's status, regardless of whether he or she is a professional or not. Thus, according to Article 15(6) of the Mediation Law, a mediator may not be a representative of any party. Article 16 does not establish such a restriction. Does it follow from this that this restriction does not apply to the activities of a mediator on a professional basis? I think the answer is obvious – it does. Taking into account such a reservation, comparing and contrasting such norms, it is possible to identify general requirements for both categories and special requirements peculiar to only one of them.

The requirements common to mediation (non-professional and professional) for a person-mediator are:

1) must be of legal age;
2) have full legal capacity;
3) must have no criminal record;
4) may not be persons holding public positions of the Russian Federation, constituent entities of the Russian Federation, municipal service positions;
5) must not be a representative of any party;
6) must not provide any party with legal, consulting or other assistance;
7) must not be interested (directly or indirectly) in obtaining a result for any party;
8) must be restrained and not make public statements on the merits of the dispute without the consent of the parties.

Special requirements established only for a professional mediator:

1) age not less than 25 years;
2) have higher professional education;
3) to undergo additional professional education on the application of mediation procedure;
4) may be retired judges from the list recommended by the councils of judges of the constituent entities of the Russian Federation.

The source of requirements may also be the parties' agreement for a non-professional mediator and the rules of mediation procedure for a professional mediator.

In order to fully define the status of a mediator, two things should be emphasized. *First*, the mediator's activity should not be characterized as entrepreneurial. Here we can only analogize their status to that of a lawyer[15] or a notary.[16]

Secondly, the issue of mediator's liability is interesting. Article 17 of the Law on Mediation emphasizes civil liability, which is determined by the provisions of the Civil Code of the Russian Federation, and in the case of multiple persons for the damage caused, it may be shared or joint and several. Other types of liability by branch of consequences (administrative, criminal) should not be left out.

Mediation, in spite of its apparent simplicity, carries complexity and ambiguity in understanding and, as a consequence, in the possibility of its application in practice. The success of the latter is ensured by the unambiguous understanding of the essence and place of this institution in the domestic legal system.

Today, we can say with certainty that mediation may well be considered an independent way of settling private law conflicts. We should not exclude the applicability of mediation to the resolution of public law conflicts.

Noting the general understanding of mediation, it should be known that the success of the mediator's activity should not be based on the simple organization and conduct of the negotiation process, but on a *special technology of conducting* the mediation procedure, which is different from other related procedures. The mediator's role in the conduct of conciliation should be to reduce the parties to the conflict to the point where they come to their own decision, based on the position of interest rather than on the position of right or force. Such an approach contains evaluative properties, with the help of which a party to a conflict can take the most favorable position in a legal conflict. It should also be emphasized that the mediator does not have the authority to make a binding decision for the parties.

Thus, mediation is a method of peaceful dispute resolution, which is a formal process of agreeing on positions, carried out with the active participation of a neutral person (mediator), chosen jointly by the parties to the dispute or selected in accordance with the procedure established by them.

The purpose of mediation is not to determine who is right, but to find a compromise solution that will be acceptable and best for the parties to the conflict. The term "search" is not accidental. It gives a wide opportunity for the mediator to show initiative, to demonstrate his knowledge, skills, experience, and competence in achieving the goal of mediation. Just as every case in court is unique, every

[15] See, Par. 2of Art. 1 of the Federal Law of 31.05.2002 No. 63-ФЗ "On advocacy and advocacy activities in the Russian Federation" // Collection of Legislation RF. 2002. No. 23. Art. 2102.

[16] The Basics of Legislation of the Russian Federation on Notarial System of 11.02.1993 // Bulletin of the Congress of National Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation 1993. No. 10. Art. 357.

case in mediation is unique by analogy. All the more so because the psychological component of the latter has an important place. The issue of it deserves separate attention and study.

In order to conduct mediation in a dispute, the parties to the dispute must agree to it. Such consent must have a formal manifestation in the form of an agreement, which must have a written form and may be part of the contract concluded between the parties, because of which the disagreement arose, or be a separate document drawn up before or after the dispute.

The preparatory stage of mediation, which is the selection and appointment of a mediator, should be emphasized. The decision on this issue shall be made by the parties to the dispute by mutual consent. If no agreement is reached, the mediator's candidacy shall be determined by the organization that organizes the mediation procedure (Article 9 of the Mediation Law).

The stages that make up a mediation procedure include:

1. Opening statement. Its purpose is to prepare the parties for the negotiations, to make the mediation process clear and predictable for the negotiators.
2. Presentation of the parties. The purpose is to give each party an opportunity to tell what happened and how they see their conflict situation.
3. Discussion. The purpose of the stage is to formulate issues for negotiation.
4. Cocus. The purpose is to identify the true (real) interests of the parties, to formulate issues for discussion in the wording of this party, to prepare the parties to work at the general session.
5. Exchange of proposals.
6. Preparation and signing of the agreement.

Article 11 of the Law on Mediation defines the procedure for conducting the mediation procedure. It should be understood that the above-mentioned stages of mediation do not constitute the content of this norm. It enshrines the possibility of establishing the procedure by agreement, referring to the rules approved by the organization, which cannot be done by the mediator, such as: to put any of the parties in an advantageous position by his actions, as well as to diminish the rights and legitimate interests of one of the parties.

The relationship of mediation procedure exists within a certain period of time. Thus, according to Article 13 of the Mediation Law, the mediation procedure may not exceed more than 60 days, and in case of complexity of dispute resolution not more than 180 days, except for cases referred for resolution from a court or arbitration court, when the general time limit of 60 days may not be changed.

The final result of the mediation procedure may be a settlement agreement, dismissal of the lawsuit, recognition of the lawsuit, or a mediation agreement, the content of which is defined in Article 12 of the Mediation Law. The latter, unlike other results, is not provided for in either the Civil Procedure Code of the Russian Federation or the Arbitration Procedure Code of the Russian Federation, in connection with which, following the principle of procedural form, the court is not competent to approve such an agreement by its ruling, and therefore it is not subject to enforcement, the list of which is exhaustively defined in Article 12 of the Federal Law of October 2, 2007, No. 229-Ф2 "On enforcement proceedings".[17] Likewise, there is no provision for challenging a mediation agreement. However, it is possible to resort to a method that makes it possible to enforce the provisions of the mediation agreement. This can be done by applying to the arbitral tribunal to have the mediation agreement formalized as a Decision of the arbitral tribunal. For example, according to the Regulations of the United Mediation Service under the Russian Union of Industrialists and Entrepreneurs (Employers) (hereinafter – RUIE), a dispute settlement agreement concluded by the parties as a result of conciliation may be submitted by them to the arbitration court for resolution of corporate disputes under the RUIE for formalization as a Decision of the Arbitration Court (Paragraph 14.2 of the Regulations). Subsequently, this decision may be enforced in accordance with the procedure provided for by Chapter 8 of the Federal Law dated 29.12.2015 No. 382-Ф3 "On Arbitration (Arbitration Proceedings) in the Russian Federation"[18] and Paragraph 2 of Chapter 30 of the Arbitration Procedure Code of the Russian Federation.

Mediation principles. The fundamental ideas and principles on which the mediation procedure is based are called principles. Their theoretical and practical importance cannot be overestimated. They include:

- voluntariness
- confidentiality
- impartiality and independence
- mutual cooperation and equality.

The principles of incentives, full control, permissive orientation, responsibility, transparency, procedural flexibility, direct participation of the parties to the conflict, focus on the individual and on preserving relationships, creativity, leadership role of the mediator, etc., which are also quite acceptable for mediation, contribute to the success of ADR. S.I. Kalashnikova groups them into two categories –organizational

[17] Federal Law of 02.10.2007 No. 229-Ф3 (ed. of 25.12.2023) "On enforcement proceedings" // Collection of Legislation of the Russian Federation. 2007. No. 41. Art. 4849.

[18] Federal Law of 29.12.2015 No. 382-Ф3 "On arbitration (arbitration proceedings) in the Russian Federation" // Collection of Legislation. 2016. no. 1 (part 1). Art. 2.

and procedural, which greatly simplifies their assimilation.[19] Despite the fact that each of the principles is independent, they all form a system, which facilitates their deep understanding and practical application.

Legal regulation of mediation

The sources that determine the mediation activity on dispute settlement include the norms of international law and international treaties of the Russian Federation, as well as domestic normative legal acts.

The first group includes:

1) UNCITRAL Model Law "On the international commercial conciliation and Recommendations for its adoption and application".[20] This act is a set of provisions that are recommended to States for inclusion in their national law; 14 articles cover its content. As the text of the UNCITRAL Model Law is based on the practice of conciliation in many countries, its use in national law by different States is intended to promote uniformity in the law of conciliation. The Model Law on Conciliation includes uniform rules on conciliation with a view to promoting conciliation and providing greater predictability and certainty in its application. In order to avoid uncertainty resulting from the absence of statutory provisions, the Model Law addresses procedural aspects of conciliation, including the appointment of conciliators of peace, the commencement and termination of conciliation, the conduct of conciliation, communication between the conciliator and the other parties, confidentiality and admissibility of evidence in other proceedings, as well as issues specific to the post-conciliation period, such as: the execution of the conciliator's duties as an arbitrator, and ensuring that the conciliation process is conducted in accordance with the rules of the Model Law.

2) Directive 2008/52/EC of the European Parliament and of the Council of the European Union of 21.05.2008 concerning certain aspects of mediation in civil and commercial matters.[21]

According to Article 1 of the Directive, its objective is to facilitate access to dispute resolution by promoting the use of mediation and ensuring a balance between mediation and judicial procedures. The Directive shall apply to disputes at international level in civil and commercial matters, except for rights and obligations which the parties are not entitled to decide for themselves under applicable law. This applies in particular to tax, customs and administrative matters, as well as to

[19] KALASHNIKOVA, S.I. Commentary to the Federal Law "On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)" / ed. by S.K. Zagainova, V.V. Yarkov (M., 2011).

[20] UNCITRAL Model Law "On the international commercial conciliation and Recommendations for its adoption and application", https://www.singaporeconvention.org/model-law/text.

[21] Court of Arbitration. 2008 No. 5. Pp. 139-148.

questions of state responsibility for acts and omissions in the exercise of public authority (asta iure imperii).[22]

3) European Code of Conduct for Mediators (developed by an initiative group of practicing mediators (mediators)), with the support of the European Commission and adopted at a conference in Brussels on 02.06.2004.[23]

In connection with the adoption of the Federal Law of 28.02.2023 No. 43-ФЗ "On the termination of international treaties of the Council of Europe with respect to the Russian Federation"[24], on March 16, 2022, the international treaties, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms (Concluded in Rome on 04.11.1950) and a number of protocols there to ceased to apply to the Russian Federation.

The second group includes:

1) *Federal constitutional laws*. Thus, according to the provisions of the Constitution of the Russian Federation: its preamble affirms civil peace and harmony in the Russian Federation, the realization of itself as part of the world community; Paragraph 3 of Article 17 "the realization of human and civil rights and freedoms shall not violate the rights and freedoms of other persons"; Article 37 "everyone has the right to freely dispose of his/her abilities to work, to choose an occupation and profession" and others.

2) *Federal laws*. First, this is the Law on Mediation. In essence, this law is based on the provisions of the UNCITRAL Model Law on International Commercial Conciliation. It is also worth noting separate norms and Chapter 14.1 of the Civil Procedure Code of the Russian Federation, Chapter 15 of the Arbitration Procedure Code of the Russian Federation, Articles 137-137.1 of the Administrative Procedure Code of the Russian Federation.

3) *Subordinate normative acts*: decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, departmental acts.

4) *Corporate acts may well be included among the sources*.

According to the Law on Mediation, organizations engaged in mediation procedure provision, established as legal entities in the form of associations or non-profit partnerships, have the right to issue acts that are mandatory for such organizations and their members in the form of internal corporate standards on the

[22] European Code of Conduct for Mediators, https://mpc-info.kz/en/description/item/1822-european-code-of-conduct-for-mediators.

[23] Court of Arbitration. 2005. No. 5. Pp. 160-162.

[24] Federal Law of 28.02.2023 No. 43-ФЗ "On the termination of international treaties of the Council of Europe with respect to the Russian Federation" // Collection of Legislation of the Russian Federation. 2023. No. 10. Art. 1566.

rules of mediation procedure, including additional requirements for mediators, as well as standards and rules of professional activities of mediators.

Types of mediation. It is known that classification contributes more deeply and in detail to the understanding of the integrity of a legal phenomenon or category. Mediation is subject to classification.

1) *Depending on the branch affiliation of legal relations in which conflicts arise*: mediation in the sphere of private-law conflicts, mediation in the sphere of public-law conflicts, mediation of labor legal relations; environmental, etc. Mediation in the sphere of private-law conflicts, mediation in the sphere of public-law conflicts, mediation in the sphere of labor legal relations, mediation in the sphere of environmental, etc. Perhaps the first type is the most widespread. Initially, the elements, the totality of which forms today's mediation, were proposed to assist the courts in resolving commercial and other civil cases. Despite the "young" age of the mediation institute in Russia, the possibility of public mediation, which fits in well with modern legal structures, is assumed today. Thus, according to Article 190 of the APC of the Russian Federation, economic disputes arising from administrative and other public legal relations may be settled by the parties according to the rules established in Chapter 15 of the APC, by concluding an agreement or using other conciliation procedures, unless otherwise established by federal law.

2) *Depending on the basis*: voluntary and mandatory mediation. The Russian legislators have adopted the concept of voluntary mediation. Thus, many provisions of the Mediation Law explicitly confirm this and enshrine the principle of voluntariness of the mediation procedure. Mandatory mediation, which means a compulsory procedure for dispute resolution with the participation of a mediator established by law or court, is known in Canada, Australia, in a number of Western European countries, including England and Germany. Thus, according to Paragraph 15a of the Introductory Act to the German Code of Civil Procedure, the legislation of the states may provide for mandatory pre-trial use of mediation in certain categories of cases, in particular: property and legal disputes, the subject of which in monetary terms does not exceed 750 EUR, disputes between neighbors, cases on protection of honor, dignity, if violations were not committed in the press or radio air.[25] Mandatory mediation is always a topic of lively discussion, and in order to learn more about the institution of mediation, it is possible to consider this issue in the framework of a report or written work performed by trainees.

3) Depending *on the subject of application of conflict resolution*: judicial (Germany), out or near judicial (Republic of Belarus); notarial (Germany). The last

[25] German Code of Civil Procedure, https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html.

type is known from the history of domestic law. Thus, according to Article 1359 of the Statute of Civil Procedure, a settlement transaction was considered valid if it was made by a notary with the necessary procedure (Article 89 of the Notarial Regulation). No further verification by the court was required, unless it was the witnessing of the signatures of those requesting the reconciliation. In this case, a judicial procedure of the rite was required (Article 1362 of the Statute).[26] In accordance with Article 1 of the Fundamentals of Legislation on Notarial System of February 11, 1992, the Notarial System in the Russian Federation is also called upon to ensure, in accordance with the Constitution of the Russian Federation, the constitutions of the republics within the Russian Federation, the protection of the rights and legitimate interests of citizens and legal entities, through the performance of notarial acts on behalf of the Russian Federation by notaries stipulated by legislative acts. It seems that in the context of the problems under consideration, the role of notaries today is undeservedly underestimated, they could also be given the competence to give a civil-law transaction – a settlement agreement – not only substantive, but also procedural-legal significance. Another function that can be assigned to notaries today, and which is directly related to the reconciliation of parties in conflicts with private law content, is their possible mediation activities. This direction has been qualitatively developed in notarial activity in Germany.[27] In fact, notarial mediation is rational, economical and is a friendly form of conflict resolution and settlement.[28]

4) Depending *on funding*: private and public mediation. The latter is characterized by the fact that it is financed not by a private or corporate owner, but by the relevant budget (municipal, constituent entity of the Russian Federation or the Russian Federation). Such projects are not widespread. However, the author proposed the possibility of creating regional state programs for training and work under district inspectors of internal affairs bodies – public mediators, who would be from among a certain active group of citizens living in a certain territory, would resolve conflicts on domestic grounds among citizens, which in the natural course of events will acquire the independence of cases with the jurisdiction of their resolution by the executive (police) or judicial authority (magistrate, court).[29]

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[26] The Statute of Civil Procedure. Ed. 5th, revised, supplemented and newly processed. Ekaterinoslavl, 1913. Pp. 685, 686.

[27] See, e.g.: FAHR, P. Mediation in Notarial practice (Alternative ways of conflict resolution) / Edited by Katharina Grefin von Schlieffen and Bernd Wegmann (Wolters Kluwer, 2005); WALTZ, R. The technique of negotiation by notaries: Practical textbook (Center for Notary Research at the Federal Notary Chamber, 2005).

[28] YARKOV, V.V. Mediation in notarial practice (Alternative ways of conflict resolution). P. 10.

[29] KUZBAGAROV, A.N. Mediation in resolving the conflict of its participants with the participation of the IAB of the Russian Federation (police): from the idea to the realities, Actual problems of administrative and administrative-procedural law, 1, 26, 2012.

5) Mediation *with or without the use of modern technical* means should be singled out. Thus, there are known face-to-face mediation and mediation using the Internet (online),[30] which are actively used in different countries.[31]

6) Depending on the *elements of different procedures*, there are: mediation in the classical form and combined mediation. To the latter E.I. Nosyreva refers:

- mediation-arbitration - dispute resolution with the help of a mediator-arbitrator, who in case of fiasco will resolve the dispute on the merits as an arbitrator (for the domestic model this type is acceptable only for mediation in the arbitration court);
- mini-court - dispute resolution with the participation of heads of economic entities (holding, non-profit partnerships), lawyers and an independent third party who presides over the hearing of the case;
- independent expertise to establish the factual circumstances of the case - the parties reach an agreement based on the conclusion of a specialist who has studied the case from the point of view of the factual composition;
- ombudsman - settlement of disputes by an authorized person reviewing a complaint case where there are deficiencies in the activities of state and local authorities or their officials and a private owner;
- private court system or judge for hire - dispute resolution by a retired judge who is authorized both to conciliate the parties and to make a decision on the case that will be binding on the parties.[32]

Each type of mediation is equally valuable and can be applied to the settlement of a particular dispute, especially all of them (except mediation in domestic conflicts) have been tested both in theory and in practice and are quite applicable to the development of civil society in Russia.

4 Conclusion

In conclusion, in the development of this topic I believe it is necessary to consider the following problematic issues of formation and improvement of mediation.

Firstly, theoretical and practical aspects of the application of the mediation procedure, which may include the questions: 1) about Self-regulatory organizations

[30] MAIA, A., FLÓRIO, R.A. Online Dispute Resolution (ODR) / Mediação de Conflitos On-line Rumo à Singularidade Tecnológica? Revista Brasileira de Alternative Dispute Resolution – RBADR, vol. 5, n. 10, pp. 39-51, 2023.

[31] MIROVNOVA, S.N. Utilization of possibilities of the Internet in the resolution of civil-law disputes (M., 2010).

[32] NOSYREVA, E.I. Alternative resolution of civil-law disputes in the USA (Voronezh, 1999), P. 53.

(certification); 2) on abuses in mediation; 3) the mechanism of resolving intra-corporate conflicts; 4) financing; 5) mediation agreement that is not a settlement agreement.

Secondly, the Problematic aspects in the field of education (training in mediation technologies or in the direction of additional education). The need to apply mediation procedures was introduced in the USA. In the theory of civil procedure law is known document "McCreight Report", which was the result of a study of the effectiveness of education in U.S. law schools, conducted in the late 1980s. The document noted the importance of the study of ADR in the framework of legal education, which today is a section in the study of law.[33]

The issues named are not intended to be exhaustive, which can be supplemented independently and studied.

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[33] NOSYREVA E.I. Alternative resolution of civil-law disputes in the USA. Voronezh, 1999. P. 17.

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