

Mediation and judicial conciliation in family disputes in Russia: issues and perspectives for development

Farida Khamidullina

Doctor of Legal Sciences, Professor, Professor of the Civil Law Department of Kazan (Volga Region) Federal University. E-mail: inbox7575@inbox.ru. ORCID: <https://orcid.org/0000-0002-7418-993X>.

Pavel Yakushev

Chairman of the Judicial Composition of the Vladimir Regional Court. Doctor of Law. Associate Professor. E-mail: yakushev.pa@yandex.ru. ORCID ID: 0000-0002-5829-2574.

Abstract: The article considers the factors influencing Russia's insufficient spread of mediation and judicial conciliation. It is substantiated that eliminating these factors will contribute to the development of conciliation procedures. The article aims to analyze the factors influencing the insufficient spread of mediation and judicial conciliation in Russia and offers ways to overcome them. The authors applied formal legal analysis to investigate the legal regulation of mediation and judicial conciliation. A systemic approach was used to address the mediation and judicial conciliation issues in Russia and offer ways to solve them. The article gives examples from court practice illustrating positive results in the form of concluded amicable and mediation agreements with the court's assistance in achieving reconciliation by the parties to the dispute and studies the terms of amicable agreements. It also substantiates the ability of family disputes to be resolved by mediation and reveals procedural violations, which courts allow when approving amicable agreements.

Keywords: Alternative dispute resolution. Conciliation procedures. Mediation. Judicial conciliation.

Summary: **1** Introduction – **2** Mediation and judicial conciliation: legal regulation and court practice in family disputes – **3** The issues of mediation and judicial conciliation in Russia and ways to solve it – **4** Conclusion – References

1 Introduction

In Russia, mediation and judicial conciliation are relatively new legal institutions that do not have a long historical and legal tradition, which is one of the factors influencing the insufficient application of these institutions in modern Russian society.

Legal literature notes that the legislation on mediation and judicial conciliation began to regulate “relations that have not yet developed in society as factual”, which led to the lack of use of new legal conciliation institutions.¹

According to statistical data, in Russia in 2021 only 287 family disputes and 25 labor disputes were settled through mediation and judicial conciliation.² At the same time, the total number of civil cases considered by the courts in 2021 amounted to more than 30 million cases.³ In 2022, 434 family disputes and 33 labor disputes were settled through mediation and judicial conciliation.⁴ The total number of civil cases heard by courts in 2022 amounted to more than 34 million cases.⁵

These statistics indicate systemic problems of mediation and judicial conciliation institutions in Russia, which requires analyzing them and finding ways to overcome them.

The article aimed at analysis of the factors influencing the insufficient spread of mediation and judicial conciliation in Russia, and offers the ways to overcome it. To achieve mentioned aim of the paper, the set of methods were used. Thus, authors applied formal-legal analysis to analyze legal regulation of mediation and judicial conciliation. Systemic approach was used to address the issues of mediation and judicial conciliation in Russia and offer ways to solve it.

2 Mediation and judicial conciliation: legal regulation and court practice in family disputes

In Russia, mediation is both one of the alternative (out-of-court or pre-trial) methods of dispute resolution and one of the types of conciliation procedures that applies after a case has been accepted for court proceedings.⁶

¹ Nosyreva E.I. Mediation as a social and legal institution // Mediation: Textbook / Edited by A.D. Karpenko, A.D. Osinovskiy. Moscow: Statut, 2016; CLAYTON, G.; DORUSSEN, H. The Effectiveness of Mediation and Peacekeeping for Ending Conflict. Journal of Peace Research, vol. 59, n. 2, 107-301, 2022; DHIAULHAQ, A., DE BRUYN, T., GRITTEN, D. The Use and Effectiveness of Mediation in Forest and Land Conflict Transformation in Southeast Asia: Case Studies from Cambodia, Indonesia and Thailand. Environmental Science & Policy, vol. 45, pp. 132-145, 2015; FENG, Zh., LI, Y. Natural Resource Curse and Fiscal Decentralization: Exploring the Mediating Role of Green Innovations and Market Regulations in G-20 Economies. Resources Policy, vol. 89, 2024.

² Summary statistical data on the activities of federal courts of general jurisdiction and justices of the magistrate for 2021. Report on the work of courts of general jurisdiction on the consideration of civil, administrative cases at first instance (Sections 1-2, column 14), <http://www.cdep.ru/index.php?id=79&item=6120> (date of address: March 1, 2024).

³ *Ibid.*

⁴ Summary statistical data on the work of federal courts of general jurisdiction and justices of the magistrate for 2022. Report on the work of courts of general jurisdiction on consideration of civil, administrative cases at first instance (sections 1-2, column 14), <http://www.cdep.ru/index.php?id=79&item=7645> (date of access: March 1, 2024).

⁵ *Ibid.*

⁶ VERSHININA, E.V., KONOVALOV, D.V., NOVIKOV, V.S., KHOKHLACHEVA, S.V. The concept and types of mediation in the legislation and legal doctrine of Russia, France, Spain and the USA, Bulletin of Civil Procedure, 137-176, 2020.

The basic normative legal act regulating legal relations related to mediation is Federal Law No. 193-Φ3 dated July 27, 2010 “On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)”, which came into force on January 1, 2011.⁷

The mentioned Federal Law defines the mediation procedure as a method of dispute resolution with the assistance of a mediator based on the voluntary consent of the parties in order for them to reach a mutually acceptable solution (Paragraph 2 of Article 2), establishing the following principles of the mediation procedure: voluntariness, confidentiality, cooperation and equality of the parties, impartiality and independence of the mediator (Article 3). The parties may conclude an agreement on the use of mediation by setting a period of time during which they undertake not to apply to court for the resolution of a dispute that has arisen or may arise between them; if the dispute is pending in court, the parties may apply mediation at any stage of the process until the decision on the case (Article 4, Paragraphs 2 and 3 of Article 7); mediators work both on a paid and unpaid basis (Article 10).

Article 59.1 of the Fundamentals of the Legislation of the Russian Federation on Notarial System⁸ provides for the procedure for certifying a mediation agreement. At the same time, according to Paragraph 3.1 of Article 12 of Federal Law No. 229-Φ3 of October 2, 2007 “On enforcement proceedings”,⁹ notarized mediation agreements or their notarized copies are enforcement documents.

In addition, a number of provisions on judicial mediation in relation to the relevant types of legal proceedings are contained in the following normative legal acts: the Arbitration Procedure Code of the Russian Federation, the Civil Procedure Code of the Russian Federation (hereinafter – the CPC of the Russian Federation), the Code of Administrative Procedure of the Russian Federation and others.

In Article 153.3 of the CPC of the Russian Federation to conciliation procedures the legislator refers: *negotiations, mediation, judicial conciliation*, as well as “other conciliation procedures”, if their use does not contradict the federal law.

In accordance with Article 153.1 of the Civil Procedure Code of the Russian Federation, the court shall take measures to reconcile the parties, assist them in settling the dispute, guided by the interests of the parties and the objectives of legal proceedings. The reconciliation of the parties carries out on the basis of the principles of voluntariness, cooperation, equality, and confidentiality.

⁷ Federal Law of July 27, 2010, No. 193-Φ3 “On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)” // Collection of Legislation of the Russian Federation. 2010. No. 31. Art. 4162.

⁸ The Basics of the Legislation of the Russian Federation on Notarial System of February 11, 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.

⁹ Federal Law of October 2, 2007, No. 229-Φ3 “On enforcement proceedings” // Collection of Legislation of the Russian Federation. 2007. No. 41. Art. 4849.

The parties shall enjoy equal rights to choose a conciliation procedure, to determine the terms of its conduct, as well as the candidacy of a mediator, court conciliator. The parties may conclude an agreement on these issues.

By virtue of Article 153.2 of the Civil Procedure Code of the Russian Federation, conciliation proceedings may be conducted at the request of the parties or at the suggestion of the court.

In this case, the court's proposal to conduct conciliation may be contained in the ruling on acceptance of the statement of claim for proceedings, on preparation of the case for trial or in another ruling on the case, as well as may be made orally by the court.

For consideration by the parties of the possibility of using a conciliation procedure, the court may declare a break in the court hearing.

If the parties agree with the court's proposal to conduct conciliation, the court shall issue a ruling on conducting conciliation and, if necessary, on postponing the trial.

The ruling on conciliation shall specify: the identity of the parties, the subject of the dispute and the range of issues for the settlement of which conciliation may be used, the terms of conciliation, other instructions necessary for the proper conduct of conciliation.

At the request of a party, the conciliation procedure may be extended by the court.

Of all the categories of cases considered by the courts, the most suited for resolution via mediation, in our opinion, are cases involving disputes arising out of family legal relations. As rightly noted by O.I. Velichkova, family disputes are one of the most beneficial for mediation procedures, since the parties to a family conflict are bound by personal relations, they are far from indifferent to how this conflict will be resolved, and with all the heat of passion in family disputes, they, more than anyone else, are ready to compromise for the sake of preserving normal relations in the future, which is especially acute when it comes to a child.¹⁰

The signs of capability of family disputes to be resolved by mediation are: regulation of family relations not only by law, but also by other social regulators (morals, traditions, customs, religious rules, etc.), which provides the mediator with additional instruments to assist the parties to the dispute to reach a mutually acceptable solution; the personal character of family relations; the connection of the subjects of the family conflict not only by the subject of the dispute, but also by other relations, which makes it possible to contribute to the regulation of the

¹⁰ VELICHKOVA, O.I. Improvement of family legislation on mediation, *Actual issues of Russian law*, 1, 55, 2017.

conflict in a complex manner; the ongoing character of the relations between the parties to the dispute; and the fact that the parties to the dispute have not yet reached a mutually acceptable solution.

With regard to cases involving disputes over the upbringing of children as a special category of family cases, such cases are the culmination of a family drama, and the main objective of a judge considering a case involving a dispute over the upbringing of a child is to reduce the level of conflict in the parents' relations and to take exhaustive measures to reconcile the parties.

In certain constituent entities of the Russian Federation, disputes related to the upbringing of children are quite often resolved through the conclusion by the parties of amicable agreements and their approval by the court, which testifies to the active role of the court in reducing the level of conflict in parental relations and taking measures to reconcile the parties.

For example, every year in the Vladimir region, about 30% of cases on disputes about children end with the conclusion of amicable agreements. This figure is higher than in any other category of cases. It should be emphasized that we are not talking about mediation procedures or judicial conciliation, but about amicable agreements reached by the parties with the assistance of the court, with subsequent approval by the court.

Thus, in 2014, in relation to the conclusion of amicable agreements, proceedings were terminated in 38% of all cases considered on disputes on determining the place of residence and determining the order of communication with the child, in 2015 – in 37% of cases, in 2016 – in 35% of cases, in 2017 – in 34.3% of cases, in 2018 – in 33.7% of cases, in 2019 – in 29% of cases, in 2020 – in 40% of cases, in 2021 – in 31% of cases.¹¹

In some courts, the figure is significantly higher. For example, in 2021 in the Gus-Khrustalny City Court of the Vladimir region 100% of cases (5 cases) on disputes on determining the order of communication with the child by the parent living separately, were ended by approval of amicable agreements.

Undoubtedly, the measures taken by the courts to encourage the parties to conclude amicable settlements are commendable, since they contribute to the establishment of friendly relations between the parties and, consequently, are in the interests of the children and make it possible to resolve the dispute without traumatizing the psychology and health of the child living with one of the parents.

¹¹ YAKUSHEV, P.A. The role of the court in conciliation procedures in cases of disputes on child-rearing, Harmonization of private and public interests in family law of the Russian Federation. Scientific School of Doctor of Legal Sciences, Professor, Honorary Worker of Education of the Russian Federation O.Yu. Ilyina: monograph. (Moscow: UNITI-DANA: The Act and the Law, 2023); LOHVINENKO, M.; STARYNSKYI, M.; RUDENKO, L.; KORDUNIAN, I. Models of Mediation: Theoretical and Legal Analysis. Conflict Resolution Quarterly, vol. 39, n. 1, 51, 2021.

Settlement agreements are approved not only in cases of child-rearing disputes in the courts of first instance, but also in cases on appeal.

For example, in October 2022, the Vladimir Regional Court considered a case on the appeal of the mother of a 6-year-old girl against the decision of the district court, which determined the order of communication of the child with the father and grandmother, who live separately from the child.¹² The main controversy between the parties was the moment at which the child should start communicating with the grandmother and father. According to the out-of-court psychologist's report, which was provided by the mother, since neither the father nor the grandmother had not communicated with the child before, the child's mother had entered into a new marriage and the child perceived the mother's new husband as the father, it was necessary to prepare the child psychologically for such communication, and the communication should not begin before the child reached the age of 7. According to the conclusion of the forensic examination, the most important thing for the child is certainty, so the sooner the child is informed that he has his own father and grandmother, the better, so the communication should begin right now, when the child is 6 years old. The court agreed with this position and communication was established in the absence of the mother.

During the consideration of the case, the judicial board explained to the parties to the dispute that the child, on the one hand, is very lucky that all the gathered love the child very much, want to communicate with them, and the Judicial Collegium sees and feels this; on the other hand, the child is unlucky that the parents cannot agree, and it is in the power of all those present to maximize all the advantages of the situation.

As a result, the parties concluded a settlement agreement, under the terms of which communication with the child by the father and grandmother begins when the child reaches the age of 6 years and 6 months, and in the first year the communication will take place in the presence of the mother. Overall, the initial level of conflict between the parties was significantly reduced.

The reconciliation of the parents and the actual resolution of the dispute in the interests of the child is evidenced not only by the conclusion of amicable agreements, but also by *the termination of proceedings* in connection with the *dismissal of the lawsuit or the recognition of the lawsuit*. This is expressly mentioned in Paragraph 1 of Article 153.7 of the Civil Procedure Code of the Russian Federation. Such cases are also not uncommon.

¹² Appellate Order of the Judicial Collegium for Civil Cases of the Vladimir Regional Court of October 27, 2022, in case No. 33-3808/2022 // Archive of the Vladimir Regional Court.

For example, the appellate definition of the Judicial Collegium for civil cases of the Vladimir regional court of 12.01.2021 accepted the refusal of the lawsuit for dissolution of marriage, determination of the place of residence of the child and the collection of alimony and terminated the proceedings in the case.¹³

A promising way to popularize mediation is the interaction of courts with mediators. For example, in the Vladimir region, the courts interact with the non-profit partnership “Vladimir Regional Association of Mediators”, which since 2017 has been implementing a project to develop family mediation, supported by the Presidential Grants Fund. Every year, the Vladimir Regional Association of Mediators conducts at least 100 mediations (mostly pre-trial and out-of-court). Mediators conduct lectures for expectant mothers at maternity schools, a *reconciliation lounge* operates in the marriage palace, and a *mediation restaurant* was created as an experiment in the prevention of family dysfunction. The trainings held there are aimed at helping young people to better understand themselves and each other.¹⁴

A unique experience in the development of mediation operates in Ivanovo region, where mediator’s systems are paid for at the expense of the municipal budget on the basis of the Resolution of the head of the administration of the Teikovo urban district of September 7, 2012, No. 506 “On approval of the Complex of measures for the application of the mediation procedure in the territory of the Teikovo urban district”.

As practice shows, after a family dispute goes to court, in most cases the parties turn to mediators after they have been informed about the mediation procedure by the court, and, as a rule, the mediation procedure ends with the conclusion of a mediation agreement, the legal part of which is approved by the court as a settlement agreement.¹⁵

Thus, by the ruling of the Leninsky District Court of Vladimir city dated March 6, 2023, on the case on the lawsuit of the children’s father against the children’s mother to determine the place of residence of two minor children: a son, born in 2010, and a daughter, born in 2013,¹⁶ in the period from March 1, 2023, to February 14, 2023, mediation procedure was conducted with the assistance of a

¹³ Appellate Order of the Judicial Collegium for Civil Cases of the Vladimir Regional Court of January 12, 2021, in case No. 33-64/2021 // Archive of the Vladimir Regional Court.

¹⁴ FOMINA, E.V. Interagency interaction in the field of application of mediation in family disputes to protect the rights and interests of children. Legal and psychological aspects of consideration by the courts of civil cases on disputes about the upbringing of children: materials of the interregional scientific-practical conference. Vladimir: Transit-ICS, 45, 2022.

¹⁵ Information on the results of the study of the application of mediation procedures by courts in the Vladimir region for the period of 2021 - 9 months of 2023 (prepared by the Judicial Collegium for Civil Cases of the Vladimir Regional Court) // Archive of the Vladimir Regional Court.

¹⁶ Order of the Leninsky District Court of Vladimir city of March 6, 2023, in case No. 2-549/2023 // Archive of the Leninsky District Court of Vladimir.

mediator. Under the terms of the settlement agreement, the place of residence of the son and daughter was determined at the father's place of residence.

The mentioned settlement agreement also established the procedure for communication between the mother and the children. In particular, the parties agreed on the following: a mother living separately has the right to communicate with her children, participate in their upbringing and resolve issues regarding the children's education and medical intervention; the father with whom the children live should not interfere with the children's communication with their mother, if such communication does not damage the physical and mental health of the children or their moral development; communication between the mother and her daughter and son will take place at the place of residence of the mother or at the place of residence of the father, or in places of rest for the children by prior agreement; during the working week (from Monday to Friday), the mother has the right to meet with her son and daughter, as well as to visit the son and daughter at the address of their place of residence with the father at least 3 times, the visiting time is determined by prior agreement; every weekend (Saturday, Sunday), the mother has the right to see her son and daughter at her place of residence with the right to leave her daughter and son for an overnight stay (overnight), visit places of recreation and walks with her children, as well as communicate and spend time with her relatives; by mutual agreement of the parties, the period of meeting between the mother and the children can be increased, namely from Friday evening before Saturday; the parties, by prior agreement, determine which days off in the current calendar month the children spend with each parent, while the children spend at least half of the days off in the calendar month with their mother; on vacations, holidays and non-working days with a continuous duration of 4 or more calendar days, the mother has the right to see her son and daughter for at least half of their duration; if the duration of holidays is less than 4 calendar days, then the parties, by mutual agreement, taking into account the interests of the children, determine their pastime; during the children's summer holidays, the mother has the right to see the children in the above order, including the right to a joint holiday with the children, the total duration of which must be at least 1 month; each of the parents is given the right to separately travel with their children on vacation both on the territory of the Russian Federation and abroad, provided that the parent has agreed in advance, no less than 15 calendar days in advance, with the other parent on the time, period, conditions and a place for such rest; preliminary agreement of the parties in all cases is achieved by exchanging messages using SMS or WhatsApp messenger; each party is obliged to notify the other party of a change in their place of residence and telephone number for communication on issues of communicating with children, or a change in significant circumstances within

one day from the date of the corresponding change; the parties equally undertake to take care of the welfare and health of their son and daughter; the parent with whom the children are at a certain moment undertakes, upon first request, to provide the other parent with detailed information about the whereabouts of the children, their state of health, and other information on issues relating to the children; parents undertake, by mutual agreement, to resolve all issues related to the health, upbringing, and education of children, including jointly choosing specific educational institutions, medical institutions, institutions of additional education, deciding when, where and with whom the children will relax; each of the parents, in the presence of children, excludes and does not allow critical statements regarding the other parent, in conversations with children or in their presence does not give negative assessments of the children's grandparents; each parent does everything in their power to prevent their relatives, friends, and acquaintances from making negative statements about the other parent and their relatives in the presence of children; Parents maintain friendly relations in the presence of children and do not discuss problems of personal relationships.

The agreement states that it is concluded for a period of 1 year. In the future, the parties prolong it or conclude a new one.

The Decision of the Oktyabrsky District Court of Vladimir city of December 22, 2022, on the case on the lawsuit of the father of the children to their mother to determine the place of residence of the son, born in 2013, daughter, born in 2016, and the recovery of alimony approved the settlement agreement on the results of the mediation procedure, conducted in the period from October 4, 2022, to December 5, 2022, with the assistance of a mediator, under the terms of which the place of residence of the daughter is determined at the place of residence of the mother, the place of residence of the son – at the place of residence of the father¹⁷. Also established the order of communication between parents and children and the amount of alimony paid by each of the parents (1/2 of the minimum subsistence level).

When considering the Sobinsky city court of the Vladimir region of the case on the lawsuit of N. to M. on the determination of the place of residence of the son, born in 2016, the court Decision of February 15, 2023, at the request of the plaintiff the consideration of the case postponed for the settlement of the dispute through mediation, the result of which was a mediation agreement concluded by the parties as a settlement. The Decision of the Sobinsky City Court of the Vladimir region of April 26, 2023, approved the amicable agreement, under the terms of

¹⁷ Order of the Oktyabrsky District Court of Vladimir city of December 22, 2022, in case No. 2-3891/2022 // Archive of the Oktyabrsky District Court of Vladimir.

which the place of residence of the son is determined at the place of residence of the mother, established the order of communication between the father and the child.¹⁸

Article 153.6 “Judicial conciliation” is dedicated to judicial conciliation in the Civil Procedure Code of the Russian Federation, according to which judicial conciliation is carried out on the basis of the principles of independence, impartiality and good faith of the judicial conciliator.

The procedure for judicial conciliation and the requirements for a judicial conciliator are established by the Regulations on judicial conciliation approved by Resolution of the Plenum of the Supreme Court of the Russian Federation No. 41 “On approval of the Regulations on judicial conciliation” dated October 31, 2019.¹⁹

A retired judge may be a judicial conciliator. The list of judicial conciliators shall be formed and approved by the Plenum of the Supreme Court of the Russian Federation²⁰ on the basis of proposals of cassation courts of general jurisdiction, appeal courts of general jurisdiction, supreme courts of republics, territorial, regional courts, courts of cities of federal significance, courts of autonomous regions, courts of autonomous districts, district (fleet) military courts on candidates for judicial conciliators from among retired judges who have expressed a desire to act as a judicial conciliator.

The candidacy of a judicial conciliator is determined by mutual agreement of the parties from the list of judicial conciliators and approved by a court Decision. Since the court conciliator is a retired judge, the parties have the opportunity to receive the assistance of an experienced, highly qualified professional.

The judicial conciliator has the right to negotiate with the parties and other persons involved in the case, to study the documents submitted by the parties, to familiarize themselves with the case file with the consent of the court and to take other actions necessary for the effective settlement of the dispute.

The judge shall have the right to request information on the progress of the conciliation procedure no more often than once every fourteen calendar days.

Judicial conciliation is an accessible conciliation procedure for the parties, since it is paid for from the federal budget.

The institution of judicial conciliation was not widespread. Speaking at the plenary session of the Council of Judges of the Russian Federation on December

¹⁸ Order of the Sobinsky city court of Vladimir region dated April 26, 2023, in case No. 2-431/2023 // Archive of the Sobinsky city court of Vladimir region.

¹⁹ Resolution of the Plenum of the Supreme Court of the Russian Federation of October 31, 2019, No. 41 “On approval of the Rules of judicial reconciliation” // Bulletin of the Supreme Court of the Russian Federation. 2020. No. 1.

²⁰ Resolution of the Plenum of the Supreme Court of the Russian Federation from January 28, 2020, No. 1 “On approval of the list of judicial conciliators” // Legal Reference System “Consultant Plus”.

5, 2023, the Chairman of this body of the judicial community V.V. Momotov noted that currently “the potential of judicial conciliation has not been fully discovered”, the number of judicial conciliators is 351, which is insufficient for Russia given the number of population and remoteness of settlements; in 2020 the number of settlement agreements approved as a result of judicial conciliation amounted to 163, in 2021 – 399, in 2022 – 439, i.e., there is a positive dynamics, most of the resolved cases belonged to the category of family disputes.²¹

Despite the fact that judicial conciliation is not widespread in the Russian Federation as a whole, there is a positive practice of using this conciliation procedure in some subjects. For example, in Ivanovo region in 2021, the parties turned to the assistance of a court conciliator in 90 cases, including in disputes over child-rearing, and amicable agreements were concluded in 47 disputes.²²

3 The issues of mediation and judicial conciliation in Russia and ways to solve it

The following circumstances can be attributed to the main issues related to the application of mediation and judicial conciliation in the resolution of cases on family disputes.

1. Lack of historical experience in the application of mediation and judicial conciliation in Russia.

According to E.A. Borisova,²³ the formation of mediation as a social institution requires: the emergence of a social need for this procedure; the formation of a special social environment in which mediation and other conciliation procedures would take their place in the system of values; the availability of the necessary material, financial, labor, organizational resources to offer the services of specialists for conflict resolution.

Legal literature also notes that a characteristic feature of the institution of mediation in Russia is the fact that this institution initially appeared as a legal one, and only then the work on its formation as a social one began.²⁴

²¹ Electronic resource, <http://ssrf.ru/news/vystupleniia-interv-iu-publikatsii/52649> (date of address: 10.02.2024).

²² MALYSHEVA, O.B. Practice of application by the courts of the Ivanovo region of the procedure of judicial reconciliation in disputes about the upbringing of a child, Legal and psychological aspects of consideration by the courts of civil cases on disputes about the upbringing of children: materials of the interregional scientific-practical conference (Vladimir: Transit-ICS, 2022).

²³ BORISOVA, E.A. The general characteristic of mediation. Alternative dispute resolution: Textbook / Edited by E.A. Borisova (Moscow: Gorodets Publishing House, 2019).

²⁴ MINKINA, N.I. Mediation as an institution of modern Russian society // Journal of Russian Law. 2023. No. 10. Pp. 55-67; 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; FERREIRA, D.B., SEVERO, L. Multiparty Mediation as Solution

In this regard, in order to create a “social basis” for the spread of mediation, it is necessary to: improve the legal framework for mediation procedures and the activities of mediators and court conciliators; promote mediation and judicial conciliation, explaining the benefits of mediation procedures to the population; create and develop professional associations of mediators; disseminate mediation through network associations of mediators.²⁵

2. The time limits established by the procedural legislation for consideration of the case.

It is extremely difficult to reconcile warring parents of a child within two months. Civil procedure law does not grant the court the right to suspend the proceedings for conciliation, the court can only postpone the trial (Paragraph 2 of Article 153.2 of the Civil Procedure Code of the Russian Federation). In 2019, the CPC RF was amended:²⁶ Article 154 was supplemented with Paragraph 4.1, according to which the period for which the trial was postponed for the purpose of reconciliation of the parties is not included in the time limits for consideration of cases, but is taken into account in determining a reasonable period of legal proceedings. Nevertheless, the construction of suspension of the proceedings is preferable, since in case of postponement it is necessary to immediately specify the date of the next court hearing, which may prevent the parties from conducting a quality conciliation procedure.

3. Obstacles to reconciliation of parents on the part of their representatives, for whom, sometimes, the main thing is to make money on the family conflict, and not to settle it.

4. The true motives for going to court: jealousy and resentment of the other parent, the desire to “keep” the former spouse, the desire to solve material issues, using the child as an object of bargaining, various forms of abuse of rights on the part of parents, etc. Sometimes only in the court of appeal instance (knowing about other cases between parents) it is possible in a complex to consider all family relations, to reveal the real motives of appeal to the court and, having understood them, to induce the parties to peaceful resolution of the situation.

5. Possibility to appeal against amicable agreements only in cassation procedure. In accordance with Paragraph 11 of Article 153.10 of the Civil Procedure Code of the Russian Federation, the Order to approve a settlement agreement is

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.

²⁵ Karpenko, A.D., Merenkova, E.A. The modern state of mediation development in Russia, *Conflictology of the XXI century. Ways and means of strengthening peace: Proceedings of the Second St. Petersburg International Congress of Conflictologists* (St. Petersburg, 2014).

²⁶ Federal Law No. 197-Φ3 of July 26, 2019 “On amendments to certain legislative acts of the Russian Federation” // Collection of Legislation of the Russian Federation. 2019. No. 30. Art. 4099.

subject to immediate execution and may be appealed to the court of cassation within one month from the date of issuance of such Order. The impossibility of appealing to the appellate instance court against an Order to approve a settlement agreement reduces the possibility of reconciliation between the parties to a dispute about the upbringing of a child.

The elimination of the above factors will contribute to the development of conciliation procedures in resolving disputes about the upbringing of children.

6. Procedural violations committed by courts when approving amicable agreements based on the results of conciliation procedures.

When courts approve amicable settlements, they do not always take into account the following circumstances:

a) the requirement of the legislation on the need to seek the opinion of the child must also be observed when the court approves a settlement agreement.

A child who has reached the age of ten must express their opinion on the subject of the settlement agreement. This circumstance is pointed out in section six "Consideration by the courts of the case of determining the place of residence of children in the event of separation of parents" of the Review of the practice of the courts in resolving disputes related to the upbringing of children.²⁷

At the same time, sometimes when approving a settlement agreement, some courts do not ascertain the opinion of the child, which is inadmissible. Thus, when approving the amicable agreement in the case on the lawsuit of S.K. against S. Yu. to determine the place of residence of minors K., born in 2001, and D., born in 2005, and on the counterclaim for the same, the Gus-Khrustalny City Court of Vladimir region did not find out the opinion of the children;²⁸

b) when approving an amicable settlement agreement in a case involving a dispute over the upbringing of a child, the guardianship and custody agency's report on the living conditions of the child and of the person claiming to raise the child, as well as the opinion of the guardianship and custody agency, must be examined.

Since any court Order on disputes concerning the upbringing of children must be taken in their interests, when approving an amicable settlement agreement, the court must verify whether the child's rights and legitimate interests will be respected in the implementation of its terms. Therefore, when approving a settlement agreement, the court must examine the report of the guardianship and custody agency on the inspection of the living conditions of the child and the

²⁷ Review of the practice of resolving by courts of disputes related to the upbringing of children (approved by the Presidium of the Supreme Court of the Russian Federation 20.07.2011) // Bulletin of the Supreme Court of the Russian Federation. 2012. No. 7.

²⁸ Order of the Gus-Khrustalny City Court of the Vladimir region of September 7, 2016, in case No. 2-1535/2016 // Archive of the Gus-Khrustalny City Court of the Vladimir region.

person claiming to bring up the child, as well as the opinion of the guardianship and custody agency. The opinion of the guardianship and custody body may be expressed by its representative in the court session or contained in a written opinion of the guardianship and custody body on the conclusion of a settlement agreement (the draft settlement agreement must be sent to the guardianship and custody body).

The above rule is not always observed by the courts. For example, the Kirzhach District Court of the Vladimir region, approving on November 3, 2020, the amicable settlement agreement in the case on the lawsuit of S. to E. to determine the order of communication with the children, the opinion of the guardianship and custody agency did not identify the opinion of the guardianship and custody agency, acts of inspection of the living conditions of the child and the plaintiff did not examine.²⁹ In the decision to approve the settlement agreement, the court limited itself to a formal indication that “the settlement agreement is not contrary to the law, made in the interests of the parties and the children, their fulfillment of the terms of the settlement agreement does not violate the interests of other persons”.

In most cases, however, when courts approve amicable agreements in cases involving disputes over the upbringing of children, they send their drafts to the guardianship and custody agencies, which provide opinions on the compliance of the terms of the amicable agreements with the interests of the children;³⁰

c) the court is not entitled to approve the settlement agreement in part, change or exclude from it any conditions agreed by the parties.

This rule is contained in Paragraph 8 of Article 153.10 of the Civil Procedure Code of the Russian Federation.

The court may not exclude any terms from the settlement agreement agreed by the parties or change its content. The settlement agreement shall either be approved as a whole, or the court shall issue a ruling refusing to approve the settlement agreement.

However, the court has the right to propose to the parties to exclude certain terms that contradict the law or violate the rights and legitimate interests of other persons from the amicable settlement agreement. If certain terms of the settlement agreement do not correspond to the interests of the child, it is necessary to raise this issue for discussion and propose the parties to adjust these terms.

²⁹ Order of the Kirzhachsky District Court of the Vladimir region of November 3, 2020, in case No. 2-695/2020 // Archive of the Kirzhachsky District Court of the Vladimir region.

³⁰ Information on the results of the study of the application of mediation procedures by courts in the Vladimir region for the period of 2021 - 9 months of 2023 (prepared by the Judicial Collegium for Civil Cases of the Vladimir Regional Court) // Archive of the Vladimir Regional Court.

4 Conclusion

Thus, for the development of institutions of mediation and judicial conciliation in Russia it is necessary: to improve the legal foundations of conciliation procedures and the activities of mediators and judicial conciliators; promote mediation and judicial reconciliation, explaining to the population the benefits of conciliation procedures; create and develop professional associations of mediators; distribute mediation through network associations of mediators; improve procedural legislation (in particular, give the court the right to suspend proceedings in a case to conduct a mediation procedure; provide for the possibility of appealing rulings on the approval of settlement agreements on appeal); at the level of the Supreme Court of the Russian Federation, analyze violations committed by the courts when approving settlement agreements based on the results of conciliation procedures, and develop recommendations to prevent them.

In addition, support for the traditional family values existing among the peoples of Russia, which include a special attitude towards family and children, and the desire to preserve human relations between relatives regardless of the severity of the conflict, will promote the spread of amicable agreements, mediation procedures and judicial conciliation in the consideration of family disputes.

References

- BORISOVA, E.A. The general characteristic of mediation in: *Alternative dispute resolution: Textbook* / Edited by E.A. Borisova. (Moscow: Gorodets Publishing House, 2019).
- CLAYTON, G.; DORUSSEN, H. The Effectiveness of Mediation and Peacekeeping for Ending Conflict. *Journal of Peace Research*, vol. 59, n. 2, 107-301, 2022. DOI: <https://doi.org/10.1177/0022343321990076>.
- DHIAULHAQ, A., DE BRUYN, T., GRITTEN, D. The Use and Effectiveness of Mediation in Forest and Land Conflict Transformation in Southeast Asia: Case Studies from Cambodia, Indonesia and Thailand. *Environmental Science & Policy*, vol. 45, pp. 132-145, 2015. DOI:10.1016/J.ENVSCI.2014.10.009.
- FENG, Zh., LI, Y. Natural Resource Curse and Fiscal Decentralization: Exploring the Mediating Role of Green Innovations and Market Regulations in G-20 Economies. *Resources Policy*, vol. 89, 2024. DOI: 10.1016/j.resourpol.2023.104556.
- 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.
- 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. <https://doi.org/10.21684/2412-2343-2021-8-3-5-29>
- 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. <https://doi.org/10.1007/s11196-023-10015-0>

FOMINA, E.V. Interagency interaction in the field of application of mediation in family disputes to protect the rights and interests of children. Legal and psychological aspects of consideration by the courts of civil cases on disputes about the upbringing of children: materials of the interregional scientific-practical conference (Vladimir: Transit-ICS, 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, jul./dez. 2023. DOI: 10.52028/rbadr.v5i10

KARPENKO, A.D., MERENKOVA, E.A. The modern state of mediation development in Russia, Conflictology of the XXI century. Ways and means of strengthening peace: Proceedings of the Second St. Petersburg International Congress of Conflictologists (St. Petersburg, 2014).

LOHVINENKO, M.; STARYNSKYI, M.; RUDENKO, L.; KORDUNIAN, I. Models of Mediation: Theoretical and Legal Analysis. *Conflict Resolution Quarterly*, vol. 39, n. 1, pp. 51-65, 2021. DOI: <https://doi.org/10.1002/crq.21315>.

MINKINA, N.I. Mediation as an institution of modern Russian society, *Journal of Russian Law*, 10, 55-67, 2023.

NOSYREVA, E.I. Mediation as a social and legal institution, In: *Mediation: Textbook* / Edited by A.D. Karpenko, A.D. Osinovsky (Moscow: Statut, 2016).

PRESCOTT, J.J.; SPIER, Kathryn E.; YOON, Albert. Trial and Settlement: A Study of High-Low Agreements. *The Journal of Law & Economics*, vol. 57, n. 3, p. 699-746, 2014. DOI: <https://doi.org/10.1086/677297>.

MALYSHEVA, O.B. Practice of application by the courts of the Ivanovo region of the procedure of judicial reconciliation in disputes about the upbringing of a child. Legal and psychological aspects of consideration by the courts of civil cases on disputes about the upbringing of children: materials of the interregional scientific-practical conference (Vladimir: Transit-ICS, 2022).

SINIŠA, Vuković. International Multiparty Mediation: Prospects for a Coordinated Effort. *Global Policy*, vol. 10, n. S2, 2019. DOI: <https://doi.org/10.1111/1758-5899.12698>.

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. DOI: <https://doi.org/10.54934/ijlcw.v2i2.56>

VELICHKOVA, O.I. Improvement of family legislation on mediation, *Actual issues of Russian law*, 7, 50-55, 2017.

VERSHININA, E.V., KONOVALOV, D.V., NOVIKOV, V.S., KHOKHLACHEVA, S.V. The concept and types of mediation in the legislation and legal doctrine of Russia, France, Spain and the USA, *Bulletin of Civil Procedure*, 1, 137-176, 2020.

YAKUSHEV, P.A. The role of the court in conciliation procedures in cases of disputes on child-rearing. Harmonization of private and public interests in family law of the Russian Federation (Moscow: UNITI-DANA: The Act and the Law, 2023).

Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

KHAMIDULLINA, Farida; YAKUSHEV, Pavel. Mediation and judicial conciliation in family disputes in Russia: issues and perspectives for development. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 06, n. 11, p. 125-140, jan./jun. 2024. DOI: 10.52028/rbadr.v6.i11.ART07.RU.
