DOI: 10.52028/rbadr.v6.i11.ART14.RU

The notarial mediation as an alternative way of resolving legal disputes in the Russian Federation

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Abstract: Mediation technologies are one of the alternative ways to resolve judicial disputes, and extrajudicial methods to resolve legal conflicts are a priority and promising direction. The mediation institute affects many aspects of social relations and is relevant in foreign legal orders and the Russian Federation. This paper aims to analyze the concept of notarial mediation as an alternative way of resolving legal disputes in the Russian Federation, define the issues related to its implementation, and further perspectives on its development. A set of methods was used to achieve the aim of the paper. Thus, the authors applied a systemic approach to study the implementation of the concept of "notarial mediation" in the Russian Federation. Also, comparative legal analysis was used to address the development of the concept of notarial mediation in different countries from a comparative perspective. The authors concluded that notarial mediation in the Russian Federation, one of the methods of out-of-court reconciliation, is becoming increasingly popular and in demand as an institution of dispute resolution with the help of a notary and a mediator (conciliator). Participation of a notary in the certification of the mediation agreement on the results of the mediation procedure guarantees the legality of the agreements reached and gives the mediation agreement executive force.

Keywords: Mediation. Alternative methods of dispute resolution. Mediation agreement. Notary. Notarial mediation. Certification of mediation agreement.

1 Introduction

Modern Russian legislation provides for several types of conciliation procedures or alternative dispute resolution, which should include negotiations, mediation, conclusion of an amicable agreement, application to the intermediate court (arbitration) and other conciliation procedures that do not contradict the current legislation. These procedures aim at the resolution by the subjects of law of the dispute arising between them on terms mutually acceptable to them by finding an acceptable option for the conflicting parties to resolve the problem.

Extrajudicial conciliation as a form of resolution of legal conflict is the most preferable, civilized way of protection of violated rights in foreign legal orders.[1] Currently, in Russia the issues of extrajudicial conciliation are in the spotlight of scientists, legislators, and practitioners. The effectiveness of mediation procedures conducted by a mediator on the basis of established legal norms is ensured by the presence of a third party not interested in the conflict – a mediator, who helps the parties in dealing with the conflict situation by applying special skills in the field of communication, conflict analysis and management, organization and conduct of negotiations, conciliation procedures in conjunction with legal training.[2]

The mediator does not make a decision on the dispute, their role is to facilitate the discussion on its settlement, and the parties themselves take an agreed decision to sign an appropriate agreement on mutual terms. This is not an ordinary mediation procedure, because it involves interpersonal legal relations even being realized within the legal framework and entailing legal consequences. The mediator becomes a translator from the language of conflicts and emotions to the language of facts, rights and obligations, translates the thoughts of one party to the other and helps the parties to reach an agreement.[3] Mediation is one of the most effective dispute resolution procedures, as the parties overcome the conflict by their own will, come to an agreed solution and subsequently, as a rule, do not revise or challenge this decision.

Legislative regulation of the mentioned procedure occurred with the adoption of the Federal Law No. 193-ФЗ dated 27.07.2010 "On alternative dispute

1 PRESCOTT, J.J., SPIER, Kathryn E., YOON, A. Trial and Settlement: A Study of High-Low Agreements. The Journal of Law & Economics, vol. 57, n. 3, 699, 2014; JOSÉ, Pascal da Rocha. The Changing Nature of International Mediation. Global Policy, vol. 10, n. S2, 2019; 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.

2 GLAZOV, D.V. Mediation as an Alternative Way to Protect Inheritance Rights in Notary Practice. Notary Bulletin, n. 8, p. 10, 2023.

3 KARPUNINA, O.V. Notarial Certification of Mediation Agreements: Issues of Theory and Practice, n. 2, p. 30, 2022.

resolution procedure with the participation of a mediator (mediation procedure)" (hereinafter - the Mediation Law). As of October 25, 2019, the Russian legislation on the possibility of notary participation in the mediation procedure when certifying a mediation agreement came into force. The demand for notarization of mediation agreements is growing, as the notary ensures the guarantee of compliance with the terms of the parties' agreement, its legal purity, and such mediation agreement acquires additional legal weight and enforceability.

That is why the aim of this paper is to analyze the concept of notarial mediation as an alternative way of resolving legal disputes in the Russian Federation, define the issues related to its implementation, and further perspectives of its development.

To achieve mentioned aim of the paper the set of methods were used. Thus, authors applied systemic approach to study the implementation of the concept "notarial mediation" in the Russian Federation. Also, comparative legal analysis was used to address the development of the concept of notarial mediation in different countries in comparative perspective.

2 The modern approaches to mediation

One of the peculiarities of mediation as a procedure of alternative dispute resolution is the mobility of its procedural form and the lack of strict certainty in its content. If the judicial process carries out according to strict procedural rules established by law, the procedural structure of mediation is dynamic, often unwritten. The lack of universal rules and standards of mediation, the diversity of practices, approaches to understanding its content, as well as the marked difference in the styles of practicing mediators are just a few factors that make it impossible to develop a unified concept of mediation, containing clear criteria for its definition, and thus to distinguish it from other procedures similar in content and certain features.[4]

Mediation procedure is quite popular and in demand in foreign legal orders, where it is usually carried out only on a professional basis and affects a wide range of social relations.[5] To date, the study of Russian and foreign legislation, as well

[4] ABOLONIN, V.O. Judicial Mediation: Theory, Practice, Prospects. Moscow: Infotropik Media, 2015, 42; FERREIRA, D.B., GROMOVA, E.A. Hyperrealistic Jurisprudence: The Digital Age and the (Un)Certainty of Judge Analytics. Int J Semiot Law, 36, 2261, 2023; 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.

[5] JAYADI, H.; HASIBUAN, H.; KUNTADI, K.; SUSANTO, H. Analysis of the Efficiency of Mediation Methods in Handling Conflicts. Journal of Law and Sustainable Development, vol. 12, n. 1, pp. 1-16, 2024; SINIŠA, Vuković. International Multiparty Mediation: Prospects for a Coordinated Effort. Global Policy, vol. 10, 2, 2019.

as special doctrinal literature and available practice allows us to identify three main approaches to the understanding of mediation, which can be conditionally labeled as cumulative, framework, and exclusive.[6] Each of these approaches to the understanding of mediation has a number of peculiarities and consists mainly of the following.

Cumulative approach. In this approach, mediation is seen as the broadest possible "cumulative concept" (German Containerbegriff), which includes all possible variants of conciliation procedures with the participation of a mediator, from any form of indirect negotiations in political conflicts and wars to school, family, and domestic reconciliation.[7] This understanding of mediation bases on the notion of its ancient origin and genesis in diplomacy, with its subsequent adoption in business and everyday practice of conflict resolution. This approach does not allow defining the essence of mediation and includes unreasonably wide range of procedures and forms of conflict resolution, different in character.[8]

Framework approach. In this approach, mediation performs as a framework concept that combines certain types of procedures involving an independent third party who does not have the authority to resolve a dispute in most civil, family and commercial disputes, excluding conciliation procedures in political and a number of other conflicts.[9] This understanding of mediation is based on the classification of all alternative forms of dispute resolution into three groups, where the first group includes forms involving direct interaction between the conflicting parties (negotiation), the second group includes forms involving a mediator without authority to resolve the dispute (mediation), and the third group includes forms involving a mediator with authority to resolve the dispute (arbitration).

Special approach. This approach understands mediation as a special procedure similar to other types (such as moderation or conciliation), but with a number of specific features, mainly related to the understanding of the mediator's role, the techniques used in the procedure, and the implementation of the basic principles underlying mediation.[10] In this approach, the definition of mediation becomes more complex and includes, in addition to its general standard description as "a procedure involving a mediator who does not have the power

6 LOHVINENKO, M., STARYNSKYI, M., RUDENKO, L.; KORDUNIAN, I. Models of Mediation: Theoretical and Legal Analysis. Conflict Resolution Quarterly, vol. 39, n. 1, 51, 2021.

7 KREISSL, Stephan. Mediation – von der Alternative zum Recht zur Integration in das Staatliche Konfliktlosungssystem. SchiedsVZ, n. 5, 230, 2012.

8 GLASL, F. Mediation zwischen Anspruch und Wirklichkeit. Eine Bestandsaufnahme von 2009 in sieben Thesen. Gesprächspsychotherapie und Personzentrierte Beratung, n. 3, 129, 2009.

9 HIDALGO, L.R.; LEBOVITS, G. Alternative Dispute Resolution in Real Estate Matters: The New York Experience. Cardozo Journal of Conflict Resolution, vol. 11, p. 437, 2010.

10 CLAYTON, G.; DORUSSEN, H. The Effectiveness of Mediation and Peacekeeping for Ending Conflict. Journal of Peace Research, vol. 59, n. 2, pp. 107-301, 2022. DOI: https://doi.org/10.1177/0022343321990076.

to resolve a dispute and assists the parties in finding a solution", a number of additional criteria, which may include "mutual benefit of the solution reached", "the mediator has special education, knowledge, and skills in conflict resolution", "the development of a solution based on the interests of the parties" (i.e., the final solution should be reached within the framework of a special cooperative strategy, which in English-language literature is called "win-win", i.e., such a variant of the solution in which both parties win).[11]

According to Paragraph 2 of Article 1 of the Law on Mediation, the following categories of cases may be settled by mediation: civil, family, labor (except for collective labor disputes), corporate, administrative and other cases related to public legal relations, including in connection with business and other economic activities. At the same time, if such disputes concern or may affect the rights and legitimate interests of third parties not participating in the mediation procedure or affect public interests, it is impossible to conduct such procedure. Thus, the subjects of mediation legal relations may be both citizens and legal entities, public-law entities, public authorities. Mediation as a method of dispute resolution is most in demand for the following categories of cases: family disputes (disputes related to the upbringing of children, disputes on the division of jointly acquired property between spouses); labor disputes (on reinstatement at work, on wages, on compensation for damage caused in the performance of official duties, etc.); housing disputes; land disputes; consumer protection disputes; disputes related to inheritance of property; disputes in cases on protection of honor, dignity, and business reputation; disputes on recovery of amounts under the loan agreement, credit and in other cases. The expansion of the range of cases of application of mediation to resolve disputes in administrative legal relations seems to be positive.[12] In foreign legal orders, mediation is applied to a wide range of social and public relations, in particular, it is very relevant in the sphere of economics and environment.[13]

[11] GOLDWICH, D. Win-Win Negotiations: Developing the Mindset, Skills and Behaviours of Win-Win Negotiators. Singapore, p. 15, 2010.

[12] YUDINA, Yu.V. The Mediation Procedure as a Type of Reconciliation in the Modern Russian Civil Procedure. Arbitration and Civil Procedure Journal, n. 2, p. 47, 2021.

[13] FENG, Zhiyuan; LI, Yali. 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; 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, 2023; 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, 132, 2015.

3 The notarial mediation

Despite the wide range of the above-mentioned legal relations to which the mediation procedure may be applied, only certain legal relations are the subject of the notarized certified mediation agreement. Based on the systematic interpretation of Article 59.1 of the Fundamentals of Notarial Legislation of the Russian Federation, Paragraph 2 of Article 1 and Paragraphs 4 and 5 of Article 12 of the Law on Mediation, researchers make a reasonable conclusion that disputes arising only from civil and family legal relations (in terms of property relations) can be settled by concluding a notarized mediation agreement.[14] As a rule, these are various types of obligatory agreements between legal entities and individuals: on the fulfillment of monetary obligations, obligations to transfer property, on voluntary compensation for harm caused, agreements on contractual settlement of family law and inheritance disputes.[15] Mediation agreement may be complex and contain terms on settlement of disputes arising from both civil and other legal relations, which the legislation allows. Therefore, a notary may certify a mediation agreement on a dispute arising out of civil legal (in particular, corporate) or family (in terms of property relations) relations, while the agreed terms for the settlement of other categories of disputes will be contained in a mediation agreement concluded in a simple written form. At the same time, different terms of a dispute arising out of civil and/or family legal relations may be subject to a single mediation agreement certified by a notary.

Unlike court proceedings, mediation implies the parties' voluntariness, their cooperation and equality, an expedited informal procedure and confidentiality. Mediation also provides for the impartiality and independence of the mediator. Mediation provides an opportunity for the parties to the dispute to preserve partnership or friendly relations in the perspective of further cooperation, as well as to avoid financial expenses and loss of time spent on consideration of cases in courts.[16]

A mediator must be present during the mediation procedure. The mediator shall not pressure, manipulate, influence or resolve any conflicts for the parties. While conducting the mediation procedure, the mediator shall have the right to meet and communicate with each of the parties individually and with all parties together, and they shall not put any of the parties to the dispute in an advantageous position or diminish the rights and legitimate interests of the other. The mediator

[14] ZAGAJNOVA, S.K. Urgent Issues of Law Enforcement by a Notary When Certifying Mediation Agreements. Notary Bulletin, n. 9, p. 7, 2020.
[15] KORSIK, K.A. Mediation in the Practice of Notaries. Notary Bulletin, n. 9, p. 3, 2020.
[16] YAROSHENKO, T.V. Notary's Mediation Activities: Relevant Issues. Notary, n. 1, p. 18, 2023.

shall try to organize such conditions of negotiations under which the parties could reach a concrete mutually beneficial solution satisfying the interests of all parties. The mediator shall not have the right to represent the interests of any party to the dispute, to provide counseling, legal or other assistance to any party to the dispute, as well as to have any interest in the result of the mediation procedure conducted by them, in particular, to be a relative of one of the parties. The mediator may make a public statement on the merits of the dispute only with the consent of the parties. When drafting the mediation agreement, the mediator's task is to check its terms and conditions for feasibility and satisfaction of the parties' interests, which indirectly indicates the presumption that the mediation agreement is enforceable by the parties.[17]

Mediators in the Russian Federation may be both professional and non-professional participants. Mediator activity on a *non-professional* basis may be carried out by persons who have reached the age of 18, have full legal capacity and have no criminal record. More serious requirements are imposed *on professional* mediators: older than 25 years old, any higher education, additional professional qualifications (a special certificate for mediation procedures), full legal capacity, legal capability and no criminal record. A retired judge may act as a professional mediator. Professional mediators may unite in self-regulatory organizations, which shall be registered in accordance with the procedure established by law. Additional requirements for mediators, including those acting on a professional basis, establish by agreement of the parties or special rules for conducting mediation procedures, which shall be approved by the organization engaged in ensuring the conduct of such procedures. Only professional mediators may appear in court. *The notarization* of a mediation agreement shall also carry out with the participation of a mediator acting on a professional basis or a mediator-representative of an organization engaged in ensuring the conduct of mediation procedures, in accordance with Paragraph 2 of Article 59.1 of the "Fundamentals of Legislation of the Russian Federation on Notarial System".

Mediator's activity is not business activity; it may proceed either on a compensated or non-reimbursed basis. Mediators may engage in any activity not prohibited by the legislation of the Russian Federation, except for filling certain public positions.

At the same time, there are the following problems of the mediation procedure in the Russian Federation: related to difficulties in selecting a mediator; citizens' misunderstanding of the role of the mediator as a subject of legal

[17] ABOLONIN, V.O. Mediation Settlement Agreement: Content and Enforcement in Law of Russia and Germany. Notary Bulletin, n. 9, p. 24, 2020.

relations, contributing to the resolution of the dispute between them; claims to the competence and professional qualities of the mediator; lack of legal literacy and unwillingness of the parties to agree peacefully.[18]

In general, the mediation process in the Russian Federation appears in three agreements: an agreement on the application of the mediation procedure (mediation clause), an agreement on the conduct of the mediation procedure and a mediation agreement.

A mediation agreement (mediation clause) is a preliminary agreement concluded by the disputing parties in writing before or after a dispute arises on the settlement of a dispute over a specific disputed legal relationship through mediation. This agreement may exist either as a stand-alone agreement or as a separate document or a clause in a specific type of contract.

An agreement to mediate is an agreement between the parties in writing specifying the mediation procedure itself. It is from the conclusion of this agreement that the mediation procedure in respect of a particular dispute is considered to have been initiated. Such an agreement shall contain five main details: the subject of the dispute (one or more issues); the mediator, mediators, or an organization engaged in mediation; the procedure for conducting the mediation procedure; the terms of the parties' participation in the costs of the mediation procedure; and the timing of the mediation procedure.

A mediation procedure conducted in accordance with the law ends with the conclusion and signing of *a mediation agreement* or with the parties' refusal to reconcile further. At the same time, the dispute may or may not yet be submitted to the court. In a mediation agreement, the parties resolve disputes, conflicts, and issues of primarily legal nature.

The Conclusion of a mediation agreement in a simple written form is relevant if the parties will execute it voluntarily. In order for it to be enforced and have the force of an enforcement document, it is necessary to continue its execution by notarization or by applying to the court. In particular, if the parties have reached a mediation agreement as a result of a properly conducted mediation procedure *after the dispute has been referred to the court*, such an agreement may be approved by the court or arbitration court as a *settlement agreement* under Article 153.7 of the Civil Procedure Code of the Russian Federation.

If a mediation agreement arises out of a dispute within the framework of civil legal relations and is reached by the disputing parties as a result of the mediation procedure *without referring the dispute to the court*, it is a civil law

[18] KIVLENOK, T.V. The Role of Mediation in The Resolution of Legal Conflicts. Herald of Civil Procedure, vol. 10, n. 4, p. 170, 2020. DOI: 10.24031/2226-0781-2020-10-4-167-177.

contract. The agreement implies not only the resolution of the dispute, but also the achievement of certain aims, counter concessions and obligations. Therefore, the rules on obligations and contracts may also apply to mediation agreements. In particular, according to Article 12 of the Law on Mediation, the rules of civil legislation on novation, assignment, forgiveness of debt, set-off of counterclaims, and compensation for damage may be applied to them.

Notarization of the mediation agreement is not mandatory, however, only in case of notarization it will have the force of an enforcement document, as well as its notarized copy according to Article 12 of the Federal Law "On enforcement proceedings". A mediation agreement shall be certified by a notary according to the rules of certification of contracts, therefore the notary shall explain the meaning and significance of the transaction to the parties and verify the legality of the contract, including whether each of the parties has the right to execute it. This means establishment of the identity of the parties by the notary, verification of the legal capacity of citizens and legal capacity of legal entities, verification of conformity of will and declaration of will, mutuality of free will of the parties. A mediation agreement certified by a notary shall enter into force from the moment of its notarization. Until the moment of its execution, it may be terminated at any time by mutual consent of the parties.

A notary may not certify a mediation agreement in the presence of a dispute in court or a dispute already considered by court.[19] At the same time, according to a number of researchers, if a dispute between the parties is already in court, but in order to settle it the parties have decided to conclude a contract in notarial form, then the subject of notarial certification will not be a mediation agreement, but such a contract made in accordance with the provisions of Article 53 of the Fundamentals of Legislation of the Russian Federation on Notarial System.

Mediation agreement shall protect the interests of all parties and shall be enforceable based on the principles of good faith and voluntariness of the parties. A mediation agreement shall contain information on: the parties to such an agreement, the subject of the dispute, the mediation procedure conducted, the mediator, as well as the obligations, terms, and conditions of their fulfillment agreed upon by the parties. The parties to the mediation agreement shall independently and freely form its terms and conditions without typification of civil law contractual or obligatory mechanisms, in particular, they shall choose any method of securing the obligation, termination of the obligation, may choose and combine several contractual and legal constructions. The mediator is not a

[19] ZAGAJNOVA, S.K. Urgent Issues of Law Enforcement by a Notary When Certifying Mediation Agreements. Notary Bulletin, n. 9, p. 9, 2020.

party to the mediation agreement, but information about their participation shall be indicated when certifying such agreement, they shall sign the mediation agreement if it is notarized according to Article 59.1 of the Fundamentals of Legislation of the Russian Federation on Notarial System. The notary shall identify the mediator and verify their legal capacity. The parties to the mediation agreement must be the same persons as those specified in the mediation agreement. At the same time, when concluding a mediation agreement, the Law on Mediation allows the parties to be represented by a power of attorney, which should clearly state the possibility of the proxy to conclude such an agreement on appropriate terms. On the moment of the conclusion of the mediation agreement, the mediator no longer conducts the mediation procedure at the notary's office, since by the time of the certification of the agreement, the wills of the parties and its terms should have already been agreed upon.

As a general rule, the mediation procedure may be conducted for a maximum of *sixty days.* If the dispute is complex enough, if it is necessary to obtain additional information or provide additional documents, this period may be increased by agreement of the parties and with the consent of the mediator up to *one hundred and eighty* days. However, such prolongation of the term is possible *only in the extrajudicial order* of the mediation procedure.

In the Russian Federation, the notarial system does not belong to the bodies of state power, and the notary does not have the status of an official. At the same time, the notary realizes public-law powers, since all notarial acts are performed on behalf of the state. Notarial certification of a mediation agreement does not change the character of the transaction, but it significantly affects the procedure for its execution, since it is equated with enforcement documents. All other out-of-court conciliation agreements, as well as transactions that have undergone state registration, are deprived of this possibility.

According to the legislation of the Russian Federation, the role of a notary as a guarantor of the legality of contracts when certifying a mediation agreement is limited to the appropriate general verification actions, in particular, the verification of the capacity of the parties, the authority of the mediator, the existence of an agreement on the mediation procedure, the absence of a court dispute, the compliance of the contract with applicable law, the absence of violation of the rights and legitimate interests of third parties, as well as to the verification actions provided for a specific type of contract.[20] The notary participates in the process of execution of the agreement reached by the parties after the

[20] MIKHAILOVA, E.V. Notarized Mediation Agreement: Legal Nature, Procedure for Execution and Challenge. Notary Bulletin, n. 2, p. 20, 2022. DOI: 10.53578/1819-6624_2022_2_17.

mediation procedure, only fixates the final result of mediation – the conclusion of the mediation agreement, the notary does not conduct the procedure itself, as this is the competence of the mediator. When studying foreign experience, it becomes obvious that the development of the institute of mediation agreement in the Russian Federation is at the initial level, and the use of its capabilities and resources for the legal system should be developed. In many European countries, specifically in Austria, Germany, Belgium, France, the Netherlands, Switzerland, a notary can directly act as a mediator and participate in conciliation procedures.[21] In particular, the experience of such foreign countries as France and Germany shows that a notary can quite successfully combine the professional activity with the resolution of disputes and reconciliation of parties, while not pretending to the role of a judge, applying expert legal knowledge and neutral position in relation to the parties to assist in negotiations and reconciliation.[22] For example, in Germany, in accordance with the Civil Procedure Code of the Federal Republic of Germany Paragraph 1 of Article 5, notaries, being public functionaries, in addition to their main notarial activity, represent a kind of conciliation service, i.e., they are obliged to carry out conciliation procedures in relation to certain types of cases listed in the law, in particular in case of inheritance disputes or other issues related to the establishment of property rights. The rules of notarial mediation and the procedure for conducting this procedure in the Federal Republic of Germany are stipulated by law (§20 of the German Notarial Act). A notary has the right to be a mediator if this activity does not contradict the principles of impartiality, independence, and confidentiality. The effectiveness of notarial mediation in this sphere is very high, which is due to the elaboration of this mechanism, as well as the high authority of notaries in German society. The German legislation on notarial mediation also enshrines the principle of a notary's liability for concluding and certifying a knowingly legally unenforceable mediation agreement. The notarial mediation procedure in Germany may be conducted exclusively by notaries who have undergone special training based on the recommendations of the Federal Chamber of the Notarial System. By virtue of notarization, the agreement reached during mediation is enforceable and can be enforced out of court.[23]

The practice of interaction between notaries and conciliation technologies is also present in France, where a Mediation Center was organized in the activities

[21] VERSHININA, E.V.; KONOVALOV, D.V.; NOVIKOV, V.S.; KHOKHLACHEVA, S.V. Concept and Types of Mediation Set Forth in the Legislation and Expounded in the Legal Doctrine in Russia, France, Spain, and the USA. Herald of Civil Procedure, vol. 10, n. 6, p. 150, 2020. DOI: 10.24031/2226-0781-2020-10-6-137-176.

[22] KOKOVA, D.A. Prospects for Strengthening the Notary's Role in Mediation Procedure: Comparative Legal Aspect. Notary Bulletin, n. 8, p. 20, 2023.

[23] ROMANOVSKAYA, O.V. Notary in Russia and Germany: Comparative Legal Experience. Electronic scientific journal «Science. Society. State», vol. 8, no. 1, p. 82, 2020; GUSHCHINA, L.I.; RABOTA, E.O. Experience of Mediation in Notary Activities of Germany and Russia. Essays on the Latest Cameralistics, n. 2, 36, 2020.

of notaries in Paris. According to French notarial legal acts, a notary may perform the functions of mediator and arbitrator. The legislation also defines the spheres of action of notarial mediation in France, namely: family law, real estate contracts, commercial relations involving legal entities. There are also imperative restrictions on mediation activities conducted by a notary: he cannot conduct mediation procedures between individuals and merchants. In order to become a mediator, a French notary must undergo special training, after which he or she may directly start mediation procedures.

An important characteristic of the system of providing mediation procedures to the notary community abroad is the degree of unification achieved in the European region. The European policy is aimed at raising the importance of mediation, which is not only seen as a means to traditionally relieve the burden of the courts, but is presumed to be a special kind of justice, since European citizens often face difficulties in accessing the judicial system, and thus mediation is actually seen as a real opportunity to realize the principle of access to justice. A number of international instruments clearly define the main characteristic of mediation: the possibility of providing an effective and accessible out-of-court resolution of legal conflict in civil and commercial cases.[24]

At the same time, the notarization of meditative agreements in the Russian Federation has a number of indisputable advantages. First, notarization of contracts confirms the emergence of subjective rights and, accordingly, makes it easier for an interested party to prove its right, since the circumstances of a contract officially recorded by a notary are presumed to be legal, obvious, and reliable. Consequently, it becomes easier for each party, if necessary, to prove the fact of out-of-court settlement of the dispute on agreed terms.[25]

If the parties apply to a notary for certification of the mediation agreement, in case of its non-execution, it is possible to avoid filing a lawsuit in court: such a mediation agreement is an enforcement document that can be directly submitted to the bailiff service. Direct enforcement allows avoiding significant costs of enforcing the mediation agreement through a new application to the court, which in turn increases not only the attractiveness of the mediation procedure itself, but also the importance of the functions of the notarial system as an institution of preventive justice.

Thus, in case of a conflict, the parties may resort to the assistance of a mediator, who will help them to agree on all the terms of the dispute with the subsequent execution of the mediation agreement, including through its notarization, or, in

[24] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Strasbourg, 21 May 2008.).

[25] ZYLEVICH, S.Yu. Notarization of Mediation Agreements. Notary Bulletin, n. 2, p. 15, 2022.

the case of independent settlement of the dispute, without the assistance of a mediator, seek the assistance of a notary, who assists participants of civil turnover in exercising their rights and protecting their legitimate interests in accordance with Article 16 of the Fundamentals of Legislation of the Russian Federation on Notarial System. In the latter case, the notary will certify the agreement of the parties as an ordinary transaction, explaining to the parties their rights and obligations, as well as the consequences of the notarial action being performed, with the possibility of including the right to make an executive inscription of the notary on this contract.[26] Since any conciliation procedure is based on the principles of voluntariness, impartiality, equality of the parties, and their cooperation, regardless of the subject who carries out such conciliation procedure, the main thing is to settle the dispute, resolve the conflict and draw up an agreement in a form acceptable to the parties.

4 Conclusion

The main and most significant difference between all alternative dispute resolution methods and the court is their voluntariness both in the aspect of resorting to such a method of dispute resolution and in the process of execution of the decision taken. It is alternative ways of dispute resolution that help to establish relations between the parties more quickly and effectively, as the parties to a dispute, first, take responsibility for their dispute, voluntarily with the help of a mediator find a solution that will satisfy their interests, while remaining within the law. But in Russia, unfortunately, the formation of the system of extrajudicial settlement of civil legal relations is still in its infancy.

Mediation procedure as a type of conciliation procedure, including with the participation of a notary, is relevant and in demand in civil turnover. It serves to settle conflicts out of court, thereby reducing the burden of the courts and preserving good relations between the disputing parties, as the parties resolve the dispute by signing an agreement on mutually acceptable terms. Mediation activities of a notary in the Russian Federation include the following elements: the notary verifies the legality of the agreement reached earlier with the help of a mediator before certifying the mediation agreement; the notary performs explanatory work; the notary certifies the mediation agreement, which reflects the results of the parties' negotiations and contains the mediator's signature. Among the positive characteristics of a notarized mediation agreement are the following: low costs as compared to court proceedings; confidentiality; extraterritoriality (application to a notary allows the agreement to be executed remotely, when the parties to the contract are located in

[26] YARKOV, V.V. Mediation in Notarial Activities: New Opportunities and Their Limits. Notary, n. 1, 5, 2020.

different cities of the Russian Federation and do not have the opportunity to meet in person in one place); enforceability of the decision, since such an agreement has the force of a writ of execution; optimization of the judicial burden; the process of mediation; and the use of notarized mediation agreements. Today, the request of the state, business, and society for more active use of mediation, primarily with the participation of notaries, is becoming increasingly relevant.

Notarial mediation is relevant, and the role of a notary in mediation agreements is obvious. Today, many authors point to the possibility of developing the participation of notaries in mediation. It is noted that the use of any mediation procedures in notary offices can reduce the number of subsequent appeals to the courts, increase the efficiency and speed up the production of notarial actions themselves. One of the promising directions of mediation development is the integration of this procedure and technologies into the activities of notaries. Actualization of notarial mediation primarily aims at increasing the efficiency of protection of rights and legitimate interests of persons.

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

KUZNETSOVA, Olga; ANDROPOVA, Tatyana; BAKULINA, Lilia. The notarial mediation as an alternative way of resolving legal disputes in the Russian Federation. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 06, n. 11, p. 233-248, jan./jun. 2024. DOI: 10.52028/rbadr.v6.i11.ART14.RU.