

Family mediation: theoretical and legal aspect

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Abstract: This article examines the significance of the use of family mediation in the resolution of family conflicts from the point of view of theoretical and legal aspects. The context of the work also touches upon the significant issues of mediation regulation at the legislative level concerning the rights and obligations of the participants of the process. The author analyzes the basic principles of family mediation and identifies the advantages of this approach over court proceedings in resolving family disputes. Special attention is paid to the mediator's role and functions in the conflict resolution process. The article also examines the legislative framework regulating family mediators' activities, status, rights, and obligations. The article's main idea is that family mediation is an effective tool for resolving family conflicts, contributes to the safety of family relations and allows the parties to come to a mutually beneficial solution to the problem independently. The article argues in detail the positive sides of family mediation, substantiates the need for its application in modern society and identifies the need for further research in this area for a detailed understanding of all the pros and cons of the use of family mediation in contemporary society.

Keywords: Mediation Institute. Family conflicts. Mediator. Protection of family rights.

Summary: **1** Introduction – **2** Application of mediation in the resolution of family disputes – **3** Subjects of mediation activities – **4** Conclusion – References

1 Introduction

The Family Code of the Russian Federation (hereinafter – Family Code) is based on the need to strengthen the family and family values.¹ This task is realized by improving the existing domestic system of protection of family rights, as well as creating additional necessary conditions for the resolution of family law conflicts.

¹ Family Code of the Russian Federation from 29.12.1995 No. 223-ФЗ, The Russian newspaper. No. 17. 27.01.1996.

Trends in the development of legal knowledge, transformations in the social and legal system dictate the need to use new approaches to the resolution of legal disputes. The creation of appropriate mechanisms that provide the parties with a choice of methods and ways of resolving family law disputes is an urgent state objective. Thus, in the Russian Federation, alternative ways of resolving legal conflicts are becoming more and more widespread. One of such ways is the institute of mediation, which is also used in the dissolution of marriage. The importance of the study is to comprehend mediation as an alternative way of dispute resolution in the dissolution of marriage. This legal institution contributes to the humanization of legal relations arising in the sphere of civil jurisdiction.²

Recognition by the Russian state of the priority of human and civil rights and freedoms has led to fundamentally new approaches to understanding the ways of implementation of the constitutional principle of state (judicial) protection. In the legal systems of states all over the world, there is a clear trend that is aimed at simplifying, as well as facilitating access to justice.³

Many authors make tremendous efforts to study the institute of mediation, thus revealing the regularities of its development and its introduction into Russian legislation. The relevant issues are overloaded courts, lengthy court proceedings, and in some cases – unqualified consideration of the case and other shortcomings inherent in the judicial system of the state. At the last meeting of the Council of Judges of the Russian Federation, detailed statistics on the handling of cases by Russian courts in 2023 were presented.⁴

Over the last 9 months, the courts have considered 602 thousand cases, 258 of which – in general procedure, the remaining 344 – in special procedure. A Russian judge, on average, considers up to 180 cases and materials per month, and 62% of judges overwork more than twice, while the optimal load should be from 10 to 16 cases per month. In order to process the number of documents that are received annually by district courts only, the staffing level of judges throughout Russia should be increased by 2.1 times, experts argue.⁵

Despite its obvious advantages, mediation is struggling to make its way. According to the Mediation Resource Center, out of the cases considered by the courts of first instance in 2023, only 59 cases resulted in amicable agreements with the participation of a mediator, while in the world practice up to 70-80% of

² Civil Procedure Code of the Russian Federation from 14.11.2002 No. 138-Φ3. The Collection of Legislation of the Russian Federation.18.11.2002. No. 46.

³ ERMAKOVA, E.P. Features of Online Settlement of Consumer Disputes by e-commerce Platforms in the People's Republic of China. *Journal of Digital Technologies and Law*, 1(3), 691-711, 2023.

⁴ VI All-Russian Congress of Judges, <http://www.ssr.ru/siezd-sudiei/846> (31.03.2024).

⁵ Research of the Higher School of Economics has fixed overload of 62% of Russian judges, <https://www.rbc.ru/society/17/04/2018/5ad094389a79472df75fa052> (31.03.2024).

cases are resolved with the participation of a mediator and end with the conclusion of an agreement between the parties.⁶

The Federal Law No. 193-Φ3 dated July 27, 2010 “On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)” (hereinafter – Mediation Law) is dedicated to the mediation procedure.⁷

This law introduced a fundamentally new “institution” of extrajudicial settlement of legal disputes – mediation procedure – into the Russian legal culture, which causes the need to understand its essential characteristics, principles of activity, place in the system of resolution and settlement of legal disputes. The possibilities of application of the mediation procedure are quite wide. In general, the volume of resolved conflicts can be conditionally divided into two groups of disputes: legal disputes and non-legal disputes. The Law on Mediation regulates the resolution of legal disputes, including those arising from family legal relations.

Unlike other legal relations, family legal relations are characterized by a close intertwining of legal ties between subjects - family members, because the dissolution of marriage can affect the rights and interests of not only spouses, but also other family members. In this regard, the issues of application of mediation as a method of dispute resolution related to the dissolution of marriage need theoretical understanding. Article 18 of the Constitution of the Russian Federation enshrines the following provision: “Human and civil rights and freedoms are directly effective; they determine the meaning, content and application of laws, the activities of state authorities, local self-government bodies and are ensured by justice”.⁸ However, modern legislation developing this constitutional provision, including in terms of regulation of mediation procedures, needs improvement.

2 Application of mediation in the resolution of family disputes

Family disputes belong to special private law types of conflicts, which are resolved by the courts. This is primarily due to the fact that family legal relations include, in addition to property relations, also personal ones. The second group of relations almost does not lend itself to legal regulation due to the fact that it is based on complex psychological processes.

In the Russian Federation, the resolution of family law disputes involves State bodies and their officials, such as guardianship and custody bodies, the

⁶ Family disputes, <http://mediators.ru/rus/about/> (31.03.2024).

⁷ Federal Law of 27.07.2010 No. 193-Φ3 “On alternative procedure of dispute resolution with the participation of a mediator (mediation procedure)”, The Collection of Legislation of the Russian Federation, 02.08.2010, No 31, Art. 4162.

⁸ Constitution of the Russian Federation (adopted by popular vote on 12.12.1993), The Collection of Legislation of the Russian Federation, 14.04.2014, No. 15, Art. 1691.

prosecutor's office, internal affairs bodies, commissions on minors and the protection of their rights, civil registry offices and others whose main objective is to protect the family rights of citizens.

The most frequent and complex family disputes are cases related to the dissolution of marriage. Difficulties that arise in resolving family disputes are primarily due to the presence of acute psychological conflict between spouses, which often makes it difficult to reach a compromise.

The increase in the number of court decisions confirms the fact that after the entry into force of the court decision, the dispute between the spouses is not exhausted and the dissenting party by all means influences the situation, further aggravating the conflict. We believe that the resolution of family disputes should take place not only within the judicial process, but also outside, namely through an alternative procedure of dispute resolution with the participation of an independent person – mediator.

According to the practice of application by the courts of Law on mediation, through the application of the mediation procedure various categories of family disputes were settled, such as:

- 86 cases on disputes related to the division of jointly acquired property between spouses;
- 78 cases on disputes related to the upbringing of children;
- 44 cases on the dissolution of marriage of spouses with juvenile children;
- 32 cases involving other disputes arising out of family legal relations.⁹

In addition, as practice shows, the actions of mediators during the period indicated in the certificate were not challenged both in courts of general jurisdiction and in arbitration courts. There are no cases of lawsuits against mediators (in particular, for compensation for damage caused by them as a result of mediation procedures), and there are only a few cases where mediation agreements have been challenged in court.

The advantage of the mediation procedure in resolution of family conflicts is predetermined by the many positive aspects of mediation. The mediation procedure is conducted only with the mutual consent of the parties on the basis of the principles of equality, confidentiality, voluntariness, independence, and impartiality of the mediator-mediator, with simultaneous active participation of the spouses in the search and development of the terms of a mediation agreement to resolve

⁹ The information about the practice of application by courts of the Federal Law from July 27, 2010, No. 193-Ф3 "On alternative procedure of dispute resolution with the participation of a mediator (mediation procedure)" for the period from 2013 to 2014 (approved by the Presidium of the Supreme Court of the Russian Federation on April 1, 2015).

the conflict. The result is the creation of conditions for reaching a compromise between the disputants, reflected in the true interests and needs of the parties, which are fulfilled by them on a voluntary basis.¹⁰

The main aim of a mediator with knowledge of family conflictology in the resolution of family conflicts is to smooth the dispute between the parties, reduce tensions and eliminate contradictory disagreements for the subsequent development of consensual solutions to the issues under discussion, which will form the basis of a mediation agreement.

The mediator's objective when participating in the resolution of a family conflict is to assess the conflict situation, organize negotiations between the spouses, identify the most optimal solutions, and encourage cooperation between the parties.¹¹

Judicial resolution of a family dispute, where the decision is always made in favor of one of the parties, leaving the other party "lost", which contributes to the strengthening of the family conflict. In this case, situations may arise where the "losing" party to the dispute may resort not only to legal means of protecting their rights (e.g., appealing a court decision), but also to actions that lie outside the law (e.g., threats or child abduction). In this situation, mediation allows the spouses to prevent such a development and direct their actions in a peaceful direction. In case the family cannot be preserved, the spouses will at least have the opportunity to restore and continue peaceful relations and further cooperation.

Another aim of the mediator is that after the mediation agreement is concluded, neither spouse should feel like a party that has lost. The spouses should remain in friendly and good relations, which will be in the best interests of the children.

¹⁰ 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; 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, 205, 2023; FERREIRA D.B., SEVERO L. Multiparty Mediation as Solution for Urban Conflicts: A Case Analysis from Brazil. *BRICS Law Journal*. 8(3), 5, 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, 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, 153, jul./dez. 2023; GROMOVA E., IVANC T. Regulatory Sandboxes (Experimental Legal Regimes) for Digital Innovations in BRICS. *BRICS Law Journal*, 7(2), 10-36, 2020; HALOUSH, H.A. The Liberty of Participation in Online Alternative Dispute Resolution Schemes. *International Journal of Legal Information*, 36(1), 102, 2008; 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, 39, 2023; 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.

¹¹ TROFIMETS, I.A. Mediation and dissolution of marriage, *Russian judge*, 10, 17, 2014.

When regulating a family conflict, the help of a mediator is simply necessary, as it is a question of preserving, and somewhere even of restoring normal relations between both parents, as the upbringing of a mentally healthy person (a common child) is the aim not only of the parents themselves, but also of the state. After all, a child of any age suffers from the separation of parents, from tense conflict relations between them.

Therefore, parents should make a decision aimed, first, at the well-being of their child; it is also important to enable the child to maintain contact with both parents after their divorce.¹²

Mediation is also of great importance in the dissolution of marriage in court. The mediation agreement should contain conditions regulating the provisions on the division of jointly acquired property, and in the presence of juvenile children – provisions on the issues of further residence of children after the dissolution of marriage, the order, and amount of alimony. Timely submission to the court of such an agreement significantly removes from the court the obligation to independently resolve the issues, which will greatly simplify the dispute resolution procedure, thus the court will be entrusted with only one objective – making a decision on the dissolution of the marriage.¹³

As established by the civil procedural legislation, when preparing the case for trial, the judge must take measures to conclude an amicable agreement between the spouses, including through mediation.

As practice shows, the use of mediation technologies is possible at any stage of court proceedings. These legislative norms are not conducive to the active application of mediation in the resolution of family disputes, because they delay the duration of court proceedings, reset them: instead of considering the dispute on the merits, the judge is looking for ways to smooth out the family conflict that has arisen between the spouses, seeking to try on the parties, which in the end does not always have a positive impact on the existing dispute between the spouses.

The effectiveness of the use of family mediation as a way to protect the rights and interests of citizens, including juveniles, is confirmed by the practice of application in foreign countries. In many countries, mediation is an obligatory stage in the resolution of family law disputes. In addition, in most cases, mediation is provided as a social service. Relevant laws are in force in the USA, Austria,

¹² MIKHEEVA, YU.YU. Mediation as a way to protect the rights and interests of spouses in resolving disputes related to the dissolution of marriage, Traditions and innovations in the system of modern Russian law: a collection of papers (Moscow: RG-Press, 2019).

¹³ AKSECHUK, L.A. Mediation agreement: content and classification, Human and civil rights and freedoms: theoretical aspects and legal practice: proceedings of the annual International Scientific Conference. (Ryazan: Concept, 2016).

and Germany. On June 4, 2002, in Brussels, with the support of the European Commission, the European Code of Conduct for Mediators was adopted, which establishes the foundations of the institution of mediation.¹⁴ In turn, the European Union issued a number of directives regulating the activities of mediators.

Having analyzed the practice of Russian courts, we can conclude that the trend of mediation agreements and cases of resorting to professional mediators to settle family disputes is not high as it is at the very beginning of its formation”.¹⁵

3 Subjects of mediation activities

The spread and integration of mediation into the legal culture indicates that the practice is responsive to the demands of the modern world. As noted by practicing mediators, due to the fact that the population has a low level of legal literacy, representatives of the “mediator” sphere of jurisprudence are responsible for educating the population about the possibilities and advantages of family mediation, for the conscious choice of the most appropriate way of dispute resolution. For each legal specialty, the approaches, role, opportunities, and tools to eliminate a conflict situation can and should be different.

Foreign practice of mediation application indicates that the use of mediation technologies in court can effectively penetrate society and become more in demand in the resolution of family conflicts.

Promotion of mediation in society and its subsequent application as the most priority method of rights protection goes through several stages. At the first stage, judges, in case of mutual desire of the parties, give them the opportunity to apply to a professional mediator. At the second stage, the mediator identifies issues of interest to the parties by means of negotiations – the development of a constructive solution. At the third stage, under the mediator’s supervision, the parties conclude a mediation agreement. At the fourth stage, the judge approves the amicable agreement, having verified that this conclusion is indeed the will of the parties.

As practice shows, the judge himself can also perform the functions of a mediator if he has the necessary knowledge and skills in the field of family conflictology. As of October 25, 2019, according to the amendments to the Mediation Law, retired judges may also act as mediators on a professional basis. Lists of retired judges who have expressed a desire to act as mediators on a professional

¹⁴ PARKINSON, L. On the development of mediation in other states, on the prevalence of family mediation in Europe and the USA (M.: Interregional Center for Management and Political Consulting, 2010); MIKKOLA, M., KHAZOVA, O. Child custody disputes in Finland and Russia, Ed. by Bukvel, 2012.

¹⁵ ELISEEVA, A.A. Family Law at the turn of XX-XXI centuries: to the 20th anniversary of the UN Convention on the Rights of the Child (Moscow: Statut, 2011).

basis are maintained by the councils of judges of the constituent entities of the Russian Federation. In many countries, judges also act as mediators. In order for a judge to act as a mediator, it is necessary for that person to understand the essence of the procedure, the advantages, positive aspects of its application, as well as where the boundaries of its applicability lie. Judges will be effective agents by competently explaining and encouraging the parties to resort to mediation in cases where the dispute can be settled out of court.¹⁶

In many countries, mediation is used both in first instance courts, as well as in appellate proceedings.¹⁷ In the appellate courts of Canada, the United States of America and Slovenia, there has been an increase in the use of mediation as an alternative dispute resolution method. In these countries, family mediation is most often used at the stage of appealing a judicial act.

The widespread use of mediation as one of the ways of dispute resolution was started as early as September 1, 2009, with the adoption of the project on the use of mediation in the court of appeal. Thus, G. Ristin in his work "It's not over yet. Alternative dispute resolution at the level of appeal" wrote "According to statistical data, already since 2009, out of 70 cases considered in a month, in which mediation was offered in the court of second instance, in 20% of them the participants decided to resort to this procedure, and 33% of them were successfully resolved".¹⁸

According to the Russian Federation, judges cannot act as mediators. However, they can quite successfully facilitate the reconciliation of the parties. To date, there is a practice of application of mediation skills by Russian judges. These facts allow us to assert that there is a tendency to integrate the mediation approach in the activities of judges. It is through judges that information about the mediation procedure¹⁹ and its advantages is disseminated in society. This contributes to the fact that the idea of mediated dispute resolution can take root in the minds of people as an effective way of resolving family conflicts.

The Fundamentals of the Legislation of the Russian Federation on Notarial System Law provide an opportunity for a notary to act as a mediator. This is

¹⁶ OTIS, L., REITER, E.H. Mediation by judges: a new phenomenon in the transformation of justice, *Mediation and Law*, 1-3, 12, 2011.

¹⁷ BERNARD, K. Mechanism fine-tuned for 20 years: Mediation in the Federal Court of Appeals of the Ninth Federal District of the United States, *Mediation and Law*, 2, 34, 2010.

¹⁸ RISTIN, G. Not everything is resolved yet. Alternative dispute resolution at the level of appeal, *Mediation and Law*, 4, 18, 2010.

¹⁹ D'ALESSANDRO, G. The alternative dispute resolution system in Italy: between harmonization with the requirements of European markets and de-juridicalization, *R. Bras. Al. Dis. Res. – RBADR*, ano 01, n. 01, 100, 2019.

confirmed by the fact that the notary certifies the mediation agreement reached by the parties in accordance with the mediation agreement.²⁰

In some cases, the notary may advise the parties to contact to a mediator in order to resolve the conflict amicably. In addition, the notary may also act as a mediator or apply a mediation approach in its activities.

A striking example is the certification of alimony agreements of the parties, agreements on the division of jointly acquired property, marriage contracts and others.

Sazonova M.I. noted that “notary in its essence is a mediator at the genetic level. After all, he, representing the interests of the parties, acts as a conciliator in the certification of all kinds of agreements, contracts. He balances the civil turnover. Due to this, he reduces the burden on the courts, freeing the state from additional investments in the judicial system”.²¹

Despite the fact that the Law on Mediation came into force back in 2010, mediation remains a new, little-studied institution in the Russian Federation. And that is why the notary needs to know the basics of mediation activity to fulfill his direct duties.

Thus, M.I. Sazonova notes that: “In order to widely use mediation, it is necessary to train people who will be able to apply it correctly”.²² After mastering the skills of a mediator, a notary can contribute to the formation and development of the institution of mediation. Moreover, the mastering of mediation²³ skills by a notary will contribute to the formation of a positive image as a representative of this profession.

According to G. Brook, “the attitude of lawyers to alternative dispute resolution depends to a large extent on their personal qualities. If a lawyer is inclined to aggressive adversarial litigation, it is unlikely that he will pay due attention to mediation. If a lawyer believes it is his duty to provide his client with a positive and cost-effective resolution of the dispute at an early stage, he is more likely to resort to mediation”.²⁴

In addition to notaries, in the course of their direct duties, lawyers can also inform citizens who have sought their assistance about the possibility of settling a dispute through mediation. As practice shows, until recently lawyers perceived the

²⁰ Fundamentals of Legislation of the Russian Federation on Notarial System (approved by the Supreme Court of the Russian Federation 11.02.1993 No. 4462).

²¹ In the old days they used to say: “a notary is a secular priest”: Interview with M.I. Sazonova, *Mediation and Law*, 2, 19, 2010.

²² See. *Ibid.*

²³ Directive 2008/52/EC of the European Parliament and Council of 21 May 2008, on certain aspects of mediation concerning civil and commercial matters. <https://eur-lex.europa.eu/legalcontent/IT/TXT/PDF/?uri=CELEX:32008L0052&from=EL> (31.03.2023).

²⁴ BROOKE, G. Mediation should not be imposed, *Mediation and Law*, 4, 46, 2009.

mediation procedure exclusively as a competing institution. However, despite this, the mediation procedure of dispute resolution contains a number of advantages for the lawyer. With the help of mediation, the lawyer creates conditions for finding the most effective and suitable to the parties' conditions for conflict resolution, which will help to prevent the latter from being dragged into long-term and costly litigation. At the same time, the party who has applied for help develops trust in the lawyer as a professional who is able not only to bill, but also to actually assist in the resolution of disputes. It can be assumed that the formation of trust to the lawyer in the future can contribute to repeated cooperation in case of conflict and disputes.

In accordance with the norms of the Law on Mediation, a mediator cannot advise the parties, including on legal issues. The mediator's duty is to recommend the parties to seek legal assistance. Applicants need qualified assistance in concluding a mediation agreement. Thus, the need for a lawyer only increases. The role of the lawyer himself is in another:²⁵ the lawyer contributes to getting the party seeking help to identify the most appropriate option for the settlement of the dispute, as well as in the realization of his interests. In addition, the lawyer and independently can act as an intermediary.

According to Part 3 Article 15 of the Law on Mediation, the activity of a mediator is not entrepreneurial. A mediator is an independent link in the settlement of a conflict situation. The only aim to which he should strive is to work in the interests of both parties. But if we talk about the activities of a lawyer-mediator,²⁶ then in this case there is no conflict of interest at all.

That is why a mediator²⁷ must be completely neutral, i.e., he must not be bound to the parties or to one of the parties by contractual obligations to provide legal assistance or be subordinate to one of the parties to the conflict.

The Federal Law of May 31, 2002, No. 63-ФЗ "On advocacy and advocacy activities in the Russian Federation"²⁸ (hereinafter – the Law on Advocacy) and the Advocate's Code of Professional Ethics of January 31, 2003,²⁹ do not expressly prohibit an advocate from acting as a mediator. Thus, the right of an advocate to be a mediator does not contradict the provisions of the Law on Advocacy. Art. 9 of the Code of Professional Ethics of Advocates prohibits an advocate from engaging

²⁵ THANH, H.B. Applying Conflict Coaching to Handle Vietnamese Family's Conflicts. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 03, n. 05, p. 125-135, jan./jun. 2021.

²⁶ SHASHANK, G. *Alternative Dispute Resolution: The Indian Perspective* (Oxford University Press, 2018).

²⁷ OMKAR, A. KRISHNAMURTHY, K. *The Art of Negotiation and Mediation: A Wishbone, Funny bone and A Backbone* (LexisNexis, 2015).

²⁸ Federal Law of 31.05.2002 No 63-ФЗ "On advocacy and advocacy activities in the Russian Federation", The Collection of Legislation of the Russian Federation, 10.06.2002, No. 23, Art. 2102.

²⁹ Code of Professional Ethics of the lawyer (adopted by the First All-Russian Congress of lawyers 31.01.2003), Bulletin of the Federal Chamber of Lawyers of the Russian Federation, No. 2, 2003.

in other (in addition to advocacy) paid activities and providing legal services outside the scope of advocacy. Accordingly, an advocate should carry out mediation activities within the framework of the advocate's practice.³⁰ Since advocacy is a professional activity of an advocate, the provision of mediation services by an advocate is possible only on a professional basis.

The possibility of lawyers in corporate disputes to become mediators is promising. This will contribute to the fact that the institution of mediation will be publicly recognized and will not be rejected due to the good faith work of mediators. The classical work of a lawyer differs from the work of a mediator by the following features:

- sphere of activity, which is connected with a comprehensive study of the arisen contradictions and conflict situations of different subject categories;
- independent and impartial mediator in the person of a lawyer, who carries out a mutually acceptable search for conditions for the resolution of the arisen dispute;
- a special procedure carried out within the framework of advocate's activity and the advocate-mediator's role in it.

On the basis of the above-mentioned features, the advocate's activity within the mediation procedure can be characterized as a completely new tool in the advocate's activity.³¹

A lawyer-mediator³² considers the specifics of the legal regulation of the dispute, as well as the legal position of the parties in it. He shall assist the parties in finding the most appropriate solution that will take into account the interests of each party. Within the framework of mediation activity, an advocate shall consider and identify legal and extra-legal peculiarities of the arisen conflict. It follows from this that the lawyer's activity within the framework of mediation activity is aimed at the use of legal norms, within the framework of which it is possible to find various options for resolving the dispute. Consequently, within the framework of mediation the dispute is resolved not as in a judicial procedure, but by the disputing parties. In such cases, the parties to the dispute are fully responsible for the fulfillment of the mediation agreement.

³⁰ KOZIATINSKAYA, A.V. Participation of a lawyer in extrajudicial dispute resolution, Extrajudicial dispute resolution in territorial communities: Materials of the fourth scientific-practical conference (Kaluga, 2001); DEMIDOVA, L.A., SERGEEV, V.I. Advocacy in Russia (M., Prospekt, 2005); VAIPAN, V. Conflict of interests in advocacy. Commentary to Article 11 of the Code of Professional Ethics of the lawyer, Law and Economics, 6, 108, 2007; MELNICHENKO, R.G. Advocacy (M.: Statut, 2009).

³¹ VOSKOBITOVA, M.R. Participation of the lawyer in the realization of the right of citizens to appeal to interstate bodies for the protection of human rights and fundamental freedoms. M., 2009.

³² VERMA, A. Negotiation for human beings: what, why and how? Revista Brasileira de Alternative Dispute Resolution – RBADR, Belo Horizonte, ano 04, n. 08, p. 17-37, jul./dez. 2022.

A mediation lawyer³³ is in charge of the overall management of the mediation procedure. Although he facilitates the reconciliation of the parties, he cannot determine the issues that will be resolved³⁴ in the future. Also, the lawyer-mediator cannot adjust³⁵ the terms of the agreement, allowing the parties to independently decide important conditions in the settlement of the conflict. This will subsequently affect their responsibility for the fulfillment of the paragraphs of the mediation agreement. The mediation procedure is a colossally new area of the lawyer's activity, which allows him to expand the range of professional skills.

The foreign experience of lawyers' participation in alternative ways of dispute resolution, including acting as a mediator, is very extensive.³⁶

Mediation activities are widespread in the countries of Western Europe and Scandinavia. There, legal assistance in conflict resolution is considered by advocates and lawyers, which is their exclusive prerogative. This sphere of legal relations is actively mastered.³⁷

Some lawyers and advocates instead of conducting cases in court specialize in negotiations, another part – in other alternative methods, including mediation.³⁸ Foreign practice shows that the participation of a lawyer in the resolution of family disputes and conflicts is recognized as a natural element of professional advocacy.

Almost 14 years have passed since the adoption of the Law on Mediation, and, as practice shows, mediation is slowly but surely entering the life of society. Russian lawyers very rarely apply in practice the approach of combining advocacy and mediation activities, as their foreign colleagues have been doing for a long time.

The state, public authorities and the legal community also face the mission of building a state based on the rule of law, eliminating legal nihilism and improving legal culture in general. This aim cannot be achieved without improving the level of professional training of legal personnel. The use of alternative ways of dispute resolution, focused on the responsibility of the parties themselves, on their awareness when making a decision, is a necessary part of a lawyer's arsenal. Like any other effective institution, mediation should and can be in demand in the Russian Federation.

³³ PANCHU, S. *Mediation Law and Practice: The Path to Successful Dispute Resolution* (Lexis Nexis, 2022).

³⁴ VLADIMIROVICH, M.A., SERGEEVICH, E.K. Alternative dispute resolution in digital government. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 07, p. 119-146, jan./jun. 2022.

³⁵ KRYVOI, Y., DAVYDENKO, D. Consent Awards in International Arbitration: From Settlement to Enforcement, *Brooklyn Journal of International Law*, 40 (3), 843, 2015.

³⁶ GOLANN D., FOLBERG, J. *The roles of advocate and neutral* (New York: Aspen Publishers, inc., 2006); NOLAN-HALEY. J.M. *Alternative dispute resolution: In a nutshell* (West Publishing Co., 1992); MOORE, Ch.W. *The Mediation Process. Practical Strategies for Resolving Conflict* (London: Jossey-Bass Publishers, 1986).

³⁷ ENTRINGER, F. Development with Insurance, Mediation and Law. *Mediation and Conciliation*, 1, 12, 2010.

³⁸ RICHBELL, D. Mediation in Russia has huge opportunities, *Mediation and Law. Mediation and Conciliation*, 1, 48, 2010.

4 Conclusion

As a result of the conducted research, analysis of the legislation of the Russian Federation, as well as the practice of applying the mediation procedure in the resolution of matrimonial and family disputes, it can be concluded that mediation is currently one of the promising forms of settling family disputes. In some regions of the Russian Federation, the practice of concluding amicable agreements and seeking the assistance of mediators for the resolution of family disputes has increased over the last three years.

Targeted informing of the population about the advantages of mediation procedures will contribute to the expansion of the practice of mediation procedures. Improving legislation and raising the level of professional training of mediators are also necessary elements. A mediator should have knowledge of family law, psychology and conflictology, pedagogy, as well as be able to skillfully use various methods of dispute resolution, which will be focused on the responsibility of the parties and their personal awareness.

Thus, the integration of the institute of mediation into the existing procedure for the resolution of family disputes will make it possible to fully realize the advantages of the mediation procedure with the traditional court procedure. Mediation has a huge potential because it is gaining importance against the background of the constantly changing mood in society.

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