Mediation in Russia: problems and prospects in the context of sustainable regional development

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Abstract. The article analyzes the emergence and formation of the institution of mediation in Russia, its legal basis, and implications for sustainable regional development. Signs and features of the mediation procedure under the current Russian legislation, its advantages over the judicial process are highlighted. Disadvantages of mediation due to inadequate legal regulations are isolated and critically analyzed. Proposals for improving the legal framework and modernization of the mediation procedure are formulated with the aim of increasing its effectiveness.

Keywords: mediation, mediation procedure, legal basis, regional development

1. Introduction

In order to reduce financial and minimize material and technical support of judicial activities, as well as the development of alternative and extrajudicial forms of dispute resolution, the Federal Law on Alternative Dispute Resolution Procedure with the Participation of a Mediator (Mediation Procedure) (Federal Law) was adopted on July 27, 2010 in Russia. It was adopted with the support of the EU Directive of 21 May 2008 On Some Aspects of Mediation in Civil and Commercial Disputes, guided by the provisions of the European Code of Conduct of Mediators. The law came into force on January 1, 2011. Thus, the legal basis for the development of a relatively new institution, the institution of mediation, was formed.

Why is the institute of mediation necessary in Russia and its regions? This is perhaps one of those issues that can cause fierce controversy with the exchange of completely opposite opinions. In many ways, the answer depends on who exactly you exactly talk with [1]. Throughout the rich historical experience of using mediation, people have become convinced that when resolving serious disagreements, a mutually beneficial and viable solution is easier to achieve through negotiations rather than using the state enforcement mechanisms. More than that, effective mediation mechanisms are considered to sustain the complicated processes of sustainable development in regions, contributing to conflict resolution and better communication [6, 7, 8, 9]. This largely corresponds to the Sustainable Development Goal No. 16 (Peace, Justice, and Strong Institutions). Consequently, this paper reviews the legal basis used for the development of mediation in Russia, which is an integral component of sustainable development of a country as a whole and its regions in particular.

2. Materials and Methods

Formal legal, comparative legal, and historical methods were used in the study. They allowed to trace the origin and formation of the institution of mediation, to evaluate the advantages and disadvantages of this procedure, its current state and development prospects. Among sociological methods, we used observation, analysis, and synthesis.

3. Results

Distinctive features of the mediation procedure in Russia are as follows. Mediation is voluntary in nature (that is, there are no legally defined categories of cases for which a conciliation procedure is required). The mediation procedure is implemented on the basis of the mutual will of the parties, the principles of voluntariness, confidentiality, cooperation and equality of the parties, impartiality and independence of the mediator (Article 4 of the Federal Law).

Mediation is applied to disputes arising from civil, family, labor, economic, and other business-related relations (Part 2 of Article 1 of the Federal Law). Mediation is also used in cases provided for by federal law and other types of relations (Part 3 of Article 1 of the Federal Law).

Mediation is carried out on the basis of the written agreement of the parties on the application of the mediation procedure before (mediation clause) or after a dispute arises, before or during the consideration of this dispute in court (Clause 5 of Article 2 of the Federal Law). If the mediation procedure (on the basis of an agreement on mediation procedure according to Article 8 of the Federal Law) is held during the consideration of the dispute in court, the judge at the request of the parties may postpone the trial for a period not exceeding sixty days (Part 1 of Article 169 of the Civil Procedure Code of the Russian Federation (the Code of Civil Procedure of the Russian Federation) [3]; Part 2, Part 7 of Article 158 of the Arbitration Procedural Code of the Russian Federation, or APC RF [2]).

The conciliation procedure is conducted by a mediator, who is an independent individual (persons) involved by the parties as an intermediary in resolving a dispute to assist the parties in developing a solution on the merits (Clause 3 of Article 2, Article 9 of the Federal Law).

Requirements for the mediator are differentiated by their status. A person, upon reaching the age of 18 years, having full legal capacity, with no criminal record and no interest in the case and who is not a state or municipal employee, can become a non-professional mediator. A professional mediator must reach the age of 25 years, have a higher education, undergo training courses for mediators and receive a certificate of a professional mediator. The reconciliation of the parties being submitted to the court can only be carried out by mediators who carry out their activities on a professional basis and have the appropriate status (Article 15 of the Federal Law).

The duration of the mediation procedure should not exceed 60 days, if the dispute is submitted to the court; the duration should not exceed 180 days if mediation is carried out before going to court (Article 13 of the Federal Law). The mediation agreement is a final act and completes the mediation procedure in writing. It contains the obligations agreed by the parties, is subject to execution on the principles of voluntariness and good faith of the parties (Article 12 of the Federal Law). A mediation agreement reached by the parties after a dispute submitted to court may be used as the basis for a settlement agreement, the approval of which entails termination of the proceedings (Paragraph 5, Article 220 of the Code of Civil Procedure of the Russian Federation; Part 2, Article 150 of the APC RF).

The advantages of this conciliation procedure are the following: (1) mediation helps save time, money, and emotional strength of the participants in the dispute, because it is held at a free and convenient time for the parties, in a suitable place, which eliminates the duration of litigation; (2) when it is conducted, the setting, organization, procedure, and content of the procedure can be determined individually (the mediator does not adhere to strict judicial procedural rules and procedures); (3) a mediator is focused not so much on conflict (figuring out who is right and who is to blame) or on winning, but rather on a constructive search for solutions and reaching a compromise. A mediator is more a psychologist than a judge or a lawyer; mediation allows dispute participants to maintain good partnerships in the future (if the interests of children are affected after a divorce; in

business with long-term business relationships, etc.). Since mediation is aimed at finding a constructive solution that suits clients and is mutually acceptable for both parties. Very often the parties prefer to maintain complete confidentiality, and court proceedings are usually public [2].

4. Discussion

In Russia, the experience of applying the mediation procedure has already begun to take shape. At the same time with the undoubted advantages of mediation (comfortable conditions, technology of negotiation, loyalty of the mediator), we can identify a number of negative points.

- First, the restriction of disputes in respect of which the use of mediation is possible only in the cases arising from civil, family, labor, economic relations, which automatically excludes housing, land, administrative, public law, and other types of conflicts.
- Second, along with securing the principle of confidentiality of the mediation procedure and prohibiting the mediator without the consent of the parties to disclose information relating to the procedure (Article 5, 6 of the Federal Law), the responsibility and specific sanctions to the mediator for disclosing the information received are not provided. There are only some instructions (Sec. 5.1, Article 56 of the APC of the Russian Federation; Clause 1, Part 3, Article 69 of the Code of Civil Procedure of the Russian Federation that the mediator cannot be questioned about the circumstances that have become known to him in connection with the exercise of his duties. In this case, a person can only sue for harming the dissemination of confidential information [3].
- Third, the procedure for the execution of a mediation agreement is related to the good faith of the parties and is voluntary, and the agreement itself is a civil law transaction. All the above excludes the enforcement of its execution and the responsibility of the participants for non-fulfillment of the fixed obligations, unless the mediation agreement is the basis of the amicable agreement. In other words, a mediation agreement is an ordinary civil law contract, the non-fulfillment of which is regarded as non-fulfillment of obligations under the contract and requires recourse to enforcement mechanisms (court) [4].
- Fourth, at first glance, the mediation clause establishes the obligation of the parties to exhaust the mediation procedure and only after that gives the parties the opportunity to go to court. However, the law allows for the possibility of ignoring the mediation procedure simultaneously with the establishment of imperative (conditional) jurisdiction in relation to the mediation procedure (Article 4 of the Federal Law). This condition automatically levels the binding force of the mediation agreement.

5. Conclusion

The research conducted clearly shows that there are a number of shortcomings of mediation. Given the high importance of mediation for sustainable regional development, we would like to formulate proposals that can improve both the model of mediation procedures in Russia, as well as increase its effectiveness.

The Legislator should fix categories of cases in which the exhaustion of the mediation procedure is mandatory (for example, disputes on divorce, division of marital property, other family disputes; disputes about reinstatement of work, recognition of the transfer as illegal, etc.). Legislation should introduce responsibility and specific sanctions for mediators for disclosing information that became known during the mediation procedure [5].

The Legislator should give a mediation agreement the power of not just a civil transaction, but the strength of the final act. This act should be subject to compulsory execution by securing a separate proceeding in the APC RF and Code of Civil Procedure of the RF on recognition and enforcement of the mediation agreement. In our opinion, it should be done by analogy with the proceedings on the issuance of a writ of execution to enforce the decisions of the arbitration court (Paragraph 2, Chapter 30 of the APC of the RF; Chapter 47 of the Code of Civil Procedure of the RF). In order to stimulate the parties to use the conciliation procedure (mediation) and submit an agreement to the court, the

Legislator should decide on the issue of exempting the parties from court costs in connection with the mediation procedure.

In case of a dispute, the implementation of these measures will allow the parties to more actively address the alternative dispute resolution procedure with the participation of a mediator (mediation procedure). We strongly believe that in order to support mechanisms of sustainable regional development, in particular the Sustainable Development Goal No. 16 (Peace, Justice, and Strong Institutions), we need a stronger social institute of mediation.

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