

## MEDIATION – INNOVATION IN THE LEGAL FIELD OF GEORGIA AND EFFECTIVE MECHANISM FOR THE IMPLEMENTATION OF HUMAN RIGHTS

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**Abstract.** the purpose of the article is to provide an academic overview of mediation – a new form of alternative dispute resolution in Georgia, and to make the issue actual. The entry into force of the Law of Georgia on Mediation is an important precondition for establishing a culture of dialogue in the country and for shifting from the path of public confrontation to the path of social harmony. Although the platform of dispute resolution has been made available at the legislative level, its level of awareness is not so high; this is why we consider it expedient to carry out academic research on the issue, which will serve as an effective means for overcoming such challenge in order to reach such level, where mediation will not be deemed an alternative means of dispute resolution, but will be recognised as an ordinary mechanism for dispute resolution; such a view is summarised below based on the example of developed democracies, among academics, as well as practising lawyers.

**Keywords:** mediation, negotiation, agreement

### I. INTRODUCTION

Modern society is especially prone to disputes, which, by default, leads to the overloading of courts with lawsuits resulting in lengthy and delayed processes of administering justice, as well as financial expenses<sup>1</sup> incurred by parties in dispute. Given the psychological stress, nervousness, emotional distress, and waste of time and money associated with dispute resolution, both society and business entities have always sought and continue to seek answers as to how, and by what mechanisms, to neutralise a conflictual situation, eradicate a source of tension effectively, and maintain harmonious relations with another party to a dispute.

To that end, both natural and legal persons have been striving to find effective ways to

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1. *Esplugues C., Marquis L., New Developments in Civil and Commercial Mediation, Springer, Vol. 6, 2015, 2.*



resolve disputes that would best meet their needs and are better tailored to the interests of parties. The searching for such ways and their planning, by default, should be accomplished using legal means, and from this viewpoint the legal policy of the state should coincide with the interests and needs of the public and correspond to the interests of the citizens, the main component of the public. From the international perspective, the availability of simple, effective, timely and affordable means of dispute resolution is what they need<sup>2</sup>.

It is worth noting that in light of the above mentioned, the state interest has always been and continues to be consistent with the said need, because, on the one hand, with such capabilities in place, the judiciary will be able to relieve itself from the burden of accumulated lawsuits and pending proceedings, and on the other hand, a significant social function will be fulfilled if parties try to maintain sound relations when attempting to resolve disputes by legal means other than court proceedings, because by using alternative means of dispute resolution the parties won't be obsessed by winning or losing, which makes it easier for members of public to coexist and business entities to conduct business relations with other parties despite a conflict, thus ensuring the effective protection of the rights of natural and legal persons. In other words, it is in the interests of both the state, at the macro level<sup>3</sup>, and in the interests of parties to a dispute, at the micro level, to find an effective means of dispute resolution in terms of time and money saving, which will enable both the parties and the state to actually save resources that would guarantee the precondition of social harmony and the effective protection of human rights.

Given the aforementioned needs and reality, alternative means of dispute resolution have always been and continue to be logical and predictable in terms of consequences, which in reality represents an effective means of eradicating social<sup>4</sup> tension and settling conflicts in society, as well as a means of the effective protection of human rights. It can be stated that mediation, as the most effective means of alternative dispute resolution, has recently been introduced in almost all states, including forms<sup>5</sup> characteristic of mediation.

Nowadays, mediation is the fastest growing alternative means of dispute resolution in the world<sup>6</sup>, which is characterised by delegating the power of taking a decision for parties in dispute through the involvement of a third, independent<sup>7</sup>, impartial, and neutral party<sup>8</sup>, within

2. *Carvalho J.M., Carvalho C.*, Online Dispute Resolution Platform in Alberto de Franceschi (ed), *European Contract Law and the Digital Single Market –The Implications of the Digital Revolution*, Intersentia, 2016, 245, 246.
3. *Steffek F.*, Mediation, in *The Max Planck Encyclopedia of European Private Law*, Volume II, Basedow J., Hopt J.K., Zimmermann R., Stier A., Oxford University Press, Oxford, 2012, 1163.
4. *Steffek F.*, Mediation, in *The Max Planck Encyclopedia of European Private Law*, Vol. II, *Basedow J., Hopt J.K., Zimmermann R., Stier A.*, Oxford University Press, Oxford, 2012, 1162.
5. *Jeong S.*, Kritische Betrachtung über die Gerichtsmediation in Korea, in Brinkmann M., Effer-Uhe D.O., Völmann-Stickelbrock B., Wether S., *Festschrift für Hanns Prütting, Dogmatik im Dienst von Gerechtigkeit, Rechtssicherheit und Rechtsentwicklung*, Carl Heymanns Verlag, Köln, 2018, 831.
6. *Alexander N.*, *International and Comparative Mediation*, Wolters Kluwer, 2009, 1.
7. *Blake S., Browne J., Sime S.*, *The Jackson ADR Handbook*, 2<sup>nd</sup> Ed, Oxford University Press, Oxford, 2016, 144.
8. *Trenczek T.M.A., Berning D., Lenz C., Will H.D.*, *Mediation und Konfliktmanagement, Handbuch*, 2. Auflage, Nomos, Baden-Baden, 2017, 50.

the framework of a confidential and structured process<sup>9</sup>, which is the main feature of the European understanding of mediation<sup>10</sup>.

The main point of introducing mediation is to enable parties to resolve a dispute in their best interests, as well as to settle a conflict using their own efforts<sup>11</sup>, at which point they not only end the dispute with the other party, but also create a precondition for maintaining business or personal relations with the other party<sup>12</sup> in a civilised manner, in which process mediation actually plays a functional role for the parties through the effective protection of their real interests; this is because, during mediation, it is not important to identify a party in default<sup>13</sup>, but the parties must rather find the best way out of an existing dilemma in order to maintain their future relations in both their best interests<sup>14</sup>. Mediation helps parties in their self-estimation, helps them to identify the real issues in the claims against each-other, and to find approaches. In legal literature, mediation is often referred to as<sup>15</sup> a ‘process oriented to the future’<sup>16</sup>; mediation allows the parties to obtain long-term results if the process is successfully conducted and completed, where the parties in dispute can use mediation at any stage of the dispute, although it should be taken into account that the earlier the mediation is initiated<sup>17</sup>, the higher the possibility of resolving<sup>18</sup> the dispute through the agreement of the parties<sup>19</sup>.

Through mediation, the parties attempt to agree with each other on their own truth<sup>20</sup>, while legal norms may determine what is believed to be true based on such norms, because, as is known, in some cases, fairness and lawfulness are not compatible<sup>21</sup>. Accordingly, through mediation, the parties try to prove through agreement what they believe to be true, and the final decision on how fair it is<sup>22</sup> in relation to both parties shall be taken by the parties, as fairness in general is a characteristic of the concept of mediation.

For the correct perception of mediation, the parties should understand that they will always

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9. Tutzel S., Wegen G., Wilske S., *Commercial Dispute Resolution in Germany*, 2<sup>nd</sup> Ed, C.H.BECK, Munchen, 2016, 191.

10. EU-Mediationsrichtlinie 2008, Art. 3a.

11. Greger R., Unberath H., *MediationsG : Recht der Alternativen Konfliktlösung*, Kommentar , C.H.BECK, München, 2012, 97.

12. Jones G., Pexton P., *ADR and Trusts: an International Guide to Arbitration and Mediation of Trust Disputes*, Spiramus Press, 2015, 33

13. Wode M., Rabe C.S., *Mediation*, Springer, Berlin, 2014, 27.

14. Alexander N., *Global Trends in Mediation*, 2<sup>nd</sup> Ed, Kluwer Law International, the Netherlands, 2006, 10.

15. Deixler-Hübner A., Schauer M., (Hrsg) *Alternative Formen der Konfliktbereinigung*, MANZ'sche Verlags – und Universitätsbuchhandlung, Wien, 2016, 188

16. Trossen A., *Mediation (un)geregelt*, Win-Management Verlag, Mühlberg, 2014, 470.

17. Kaiser P., Gabler A.M., *Prozessqualität und Langzeiteffekte in der Mediation*, Zeitschrift für Konflikt-Management, Verlag Otto Schmidt, Köln, Heft 6/2014, 180.

18. Roberts M.M., *Mediation in Family Disputes*, Ashgate Publishing Ltd, Burlington, 2014, 180.

19. Fenn P., *Commercial Conflict Management and Dispute Resolution*, Routledge, New York, 2017, 68

20. Wendland M., *Mediation und Zivilprozess*, Mohr Siebeck, Tübingen, 2017, 216, 217.

21. Windisch K., *Fair und/oder gerecht? Fairnesskriterien in der Mediation*, Zeitschrift für Konflikt-Management, Verlag Otto Schmidt, Köln, Heft 2/2015, 55.

22. Steffek F., Unberath H., (eds), Genn H., Greger R., Menkel-Meadow C., *Regulating Dispute Resolution ADR and Access to Justice at the Crossroads*, Hart Publishing, Oxford and Portland Oregon, 2013, 17.

take benefit from mediation, and defend their interests more effectively; in particular, mediation may not end with a specific agreement, but the parties will realise the causes of conflict and dispute better than before, which can become a precondition for resolving the dispute. As a result, participation in the mediation process always ends up positively for the parties if they understand the content of mediation and know how to use the information obtained through the process<sup>23</sup>. Mediation is often referred to in references as a beneficial process (win-win Lösung)<sup>24</sup>, because both parties can reach a mutually beneficial agreement<sup>25</sup> in their best interests through the proper and effective use of mediation, compared with the situation where both parties incur financial damage and the damage related to the use of human resources as a result of court or arbitration proceedings, when the victory achieved by one of the parties is imaginary<sup>26</sup>.

Mediation is a confidential process, where the parties involved on a voluntary basis<sup>27</sup> try to reach an agreement in their best interests without the involvement<sup>28</sup> of a court, and to defend their rights effectively with the assistance of a third, independent and impartial mediator with no authority to make any decision<sup>29</sup>. In particular, mediation tries to find conditions of agreement that are acceptable for both parties<sup>30</sup>.

## I. MEDIATION AS AN EFFECTIVE MECHANISM FOR THE IMPLEMENTATION OF HUMAN RIGHTS

In any legal system, including in the legal system of Georgia, parties in dispute have a constitutional right to appeal to a court<sup>31</sup>, which is also a right ensured and guaranteed by international standards<sup>32</sup>. For centuries, courts have been a place<sup>33</sup> for the resolution of disputes between parties<sup>34</sup>. However, the experience of using court proceedings have proved to the public and to consumers, when they received the courts' case management service, that the dispute resolution, in terms of its form and means, was ineffective. This is especially so in respect of delayed court proceedings and the financial expenses related to the conduct of

23. *Ahmed M.*, An Investigation into the Nature and Role of Non-Settled ADR in International Journal of Procedural Law, Vol. 7, intersentia, Cambridge-Antwerp-Portland, 2017, 216, 217.

24. *Deixler-Hübner A., Schauer M.*, (Hrsg) Alternative Formen der Konfliktbereinigung, MANZ'sche Verlags – und Universitätsbuchhandlung, Wien, 2016, 21

25. *Tsuladze A.*, Comparative Analysis of Mediation in the Courts of Georgia, Publishing house Lawyers, Tbilisi 2017, 14.

26. *Bevan A.*, Alternative Dispute Resolution, Sweet & Maxwell, London, 1992, 1.

27. *Hirsch G.*, Alternative Streitbeilegung: ein neuer Zugang zum Recht, Honorati C., Ohly A., Padovini F., Hirsch G., Picotti L., Knauer C., Patentrecht ADR Wirtschaftsstrafrecht, Müller Verlag, Heidelberg, 2017, 64

28. *Steffek F.*, Mediation, in The Max Planck Encyclopedia of European Private Law, Volume II, Basedow J., Hopt J.K., Zimmermann R., Stier A., Oxford University Press, Oxford, 2012, 1162.

29. *Hirsch G.*, Alternative Streitbeilegung: ein neuer Zugang zum Recht, Honorati C., Ohly A., Padovini F., Hirsch G., Picotti L., Knauer C., Patentrecht ADR Wirtschaftsstrafrecht, Müller Verlag, Heidelberg, 2017, 69

30. *Bäumerich M.*, Güterichter und Mediatoren im Wettbewerb, Duncker&Humblot, Berlin, 2015, 23

31. See Constitution of Georgia, Article 42

32. European Convention for the protection of Human Rights and Fundamental Freedoms, article 6.

33. *Wendenburg F.*, Differenzierte Verfahrensentscheidungen in zivilrechtlichen Konflikten, Verlag Otto Schmidt, Köln, Heft 1/2013, 21.

34. *Tsuladze A.* Comparative analysis of Georgian Court Mediation, world of lawyers publishing house, Tbilisi 2017

proceedings, which instead of protecting human rights, causes a ‘violation’ of human rights, because the parties face a delayed and costly process, with a high likelihood that the outcome will lose relevance after the end of the process. With the initiation of litigation, the parties lose control over the course and outcome of the case<sup>35</sup>. It should also be noted that the resolution of any legal dispute by a court, regardless of the nature or complexity of the dispute, may be proven unjustified in some cases, thus making it necessary to introduce in practice alternative and effective judicial mechanisms that will allow the parties to protect their own interests and rights, by achieving a mutually beneficial agreement. Actually, the traditional forms of dispute resolution, such as court proceedings or even arbitration proceedings, are no longer effective means for dealing with disputes, which are increasing daily, particularly in the light of low-costs and the increasing number of cross-border disputes<sup>36</sup>.

The popularity of mediation and its establishment in practice has many objective preconditions, although the most popular grounds<sup>37</sup> for the establishment of such form of dispute resolution are the obvious benefits in terms of costs and time saving, while in the case of cross-border mediation, the parties are not fully aware of and do not rely on the jurisdiction<sup>38</sup> of the court where litigation is held. Therefore, it is not surprising that mediation has established itself as an effective instrument<sup>39</sup> of dispute resolution.

Alternative dispute resolution (ADR) has significantly developed and successfully established<sup>40</sup> itself in the legal field<sup>41</sup> over the last four decades, and today it has become a part of legal practice and ideology. It has recently been proposed that ADR is an alternative justice<sup>42</sup>, rather than an alternative to justice, where the main thing is that using such form the parties in dispute will obtain a particular result. The statistics of dispute resolution using alternative mechanisms of dispute resolution are increasing on a daily basis<sup>43</sup>. Special directives on alternative mechanisms of dispute resolution are being adopted<sup>44</sup> under the auspices of the European Union, which is a prerequisite for the further establishment of alternative mechanisms of dispute resolution across Europe<sup>45</sup>.

35. *Trenczek T.M.A., Berning D., Lenz C., Will H.D.*, Mediation und Konfliktmanagement, Handbuch, 2.Auflage, Nomos, Baden-Baden, 2017, 35.

36. *Cortes P.*, The Law of Consumer Redress in an Evolving Digital Market, Cambridge University Press, Cambridge, 2018, 101.

37. *Deixler-Hübner A., Schauer M.*, (Hrsg) Alternative Formen der Konfliktbereinigung, MANZ'sche Verlags – und Universitätsbuchhandlung, Wien, 2016, 2.

38. *Berkel G.*, Deal Mediation: Erfolgsfaktoren professioneller Vertragsverhandlungen, Zeitschrift für Konflikt-Management, Verlag Otto Schmidt, Köln, Heft 1/2015, 4.

39. *Rashda R.*, Alternative Dispute Resolution, Lexis Nexis, 2014, 3.

40. *Brown H., Marriott A.*, ADR Principles and Practice, third edition, Sweet & Maxwell, Thomson Reuters, 2011, 1.

41. *Blake S., Browne J., Sime S.*, The Jackson ADR Handbook, 2<sup>nd</sup> Ed, Oxford University Press, Oxford, 2016, 9.

42. *Lindblom P.H.*, Progressive Procedure, Iustus, 2017, 405

43. *Carvalho J.M., Nemeth K.*, Implementation of the Consumer ADR Directive in the EU Member States, EuCML Journal of European Consumer and Market Law, C.H.BECK, Vol 7, 2/2018, 81.

44. See, <<http://eur-lex.europa.eu/eli/dir/2013/11/oj>>. [15.05.2018]

45. *Steffek F.*, The Relationship between Mediation and Other Forms of Alternative Dispute Resolution in The Implementation of the Mediation Directive, (Compilation of in-depth Analysis) European Parliament Directorate-General for Internal Policies, 2016, 51. <<http://www.europarl.europa.eu/supporting-analyses>>. [15.05.2018]

Alternative dispute resolution is used as a general term, which refers to the conflict resolution process, by definition an informal process which is absolutely impartial for the parties involved in the dispute, with the assistance of an independent third party (or parties), who assists the parties in the resolution of conflict in a more informal form and means than those typical to court proceedings<sup>46</sup>; simply put, alternative dispute resolution can be interpreted as dispute resolution through non-judicial mechanisms<sup>47</sup>, whereas the similar form of dispute resolution represents an alternative mechanism of court proceedings<sup>48</sup>.

The popularisation and applicability of the means of alternative dispute resolution significantly depends on the capability of the public and the business sector to contribute to awareness raising<sup>49</sup> with regard to the opportunities and forms of alternative dispute resolution. It is critically important to use the forms of alternative dispute resolution in practice, based on examples of specific cases that would increase reliability with regard to the institution. On the other hand, it is important to pursue a judicial policy that supports the means of alternative dispute resolution, particularly at the early stages of the establishment of such new institutions, as a part of the public truly relies on courts and the position of this part of the public is often taken into account. However, from a purely pragmatic standpoint, in terms of reducing the flow of cases, the extensive use of alternative means of dispute resolution by the public serves as a real benefit for courts<sup>50</sup>. A solid and structured institutionalisation of the mechanism at the legislative level is also an additional precondition to gain credibility for it.

The use of non-judicial mechanisms of dispute resolution is based on the principle of autonomy of parties, as they must choose such form of dispute resolution by their own will and through consensus<sup>51</sup>; subsequently the parties must know not only the mechanism, but they must also trust that the mechanism is credible and effective. Furthermore, the financial expenses<sup>52</sup> related to dispute resolution are also taken into account; using alternative mechanisms of dispute resolution is much cheaper<sup>53</sup> and more attractive<sup>54</sup> than court proceedings. The international legal community agrees that mediation has been widely established since the last quarter of the twentieth century, and especially in the twenty-first century, and its popularity is growing on a daily basis.

46. Ferz S., Lison A., Wolfart E.M., *Zivilgerichte und Mediation*, Universitätsverlag, Wien, 2004, 28

47. Goldberg S.B., Sander F., Rogers E.A., Nancy H., Cole S.R., *Dispute Resolution: Negotiation, Mediation, Arbitration and other Processes*, 6<sup>th</sup> Ed, Wolters Kluwer, 2012, 4.

48. Rana R., *Alternative Dispute Resolution*, Lexis Nexis, 2014, 2.

49. Lord Justice Jackson., *New Approach to Civil Justice: From Woolf to Jackson.*, Conference on Civil Justice Reform :What Has it Achieved?., Hong Kong., 15 April 2010.

50. Kwan Lun M.I., *Alternative Dispute Resolution of Shareholder Disputes in Hong Kong.*, Cambridge University Press., Cambridge., 2017, 24.

51. Kathy M., *Court Referral to ADR: Criteria and Research. 2003, para.6.6.* , <[www.ajja.org.au](http://www.ajja.org.au)>. [15.05.2018]

52. Hopt J.K., Steffek F., *Mediation Principles and Regulation in Comparative Perspective*, Oxford University Press, Oxford, 2013, 38.

53. Alexander N., *Four Mediation Stories from Across the Globe*, The Rabel Journal of Comparative and International Private Law, Max –Planck-Institute für ausländisches und internationales Privatrecht, Band 74, Heft 1, Mohr Siebeck, 2010, 734.

54. Tunay K., *Contract Management&Dispute Resolution in International Construction Business*, BILGE, 2016, 182.

## II. ADVANTAGES AND POSSIBLE DISADVANTAGES OF MEDIATION

A conflict between parties reveals<sup>55</sup> critical moments in the relations of the parties, which, if overcome, can be a successful prerequisite for further successful relations, in which mediation plays a positive role. It is usually said in legal literature that parties to mediation find it easier to analyse the issue after the process, because they have the opportunity to hear each other's arguments<sup>56</sup>, rather than legal justification, and to hear the party's „truth“, because, as is known, „every medal has two sides“<sup>57</sup>, and the truth of the other party assists the party concerned to fully analyse the issue, and the main thing for the parties is to have adequate resources for reaching agreement, which can always be reached if the primary interest<sup>58</sup> of both parties in dispute is the resolution of the dispute.

There are several factors contributing to the establishment and implementation of mediation, including the bureaucratic nature of court and arbitration institutions, the lengthy procedures and expenses associated with these proceedings, and consequently „the order without law“<sup>59</sup> and the prospect of its applicability by default which exists in almost all jurisdictions<sup>60</sup>, just like the real interests of the parties to reach the end of a conflict and agreement. During mediation the parties often reveal their true interests beyond their legal claims<sup>61</sup> and agree on specific ways and means of meeting such interests.

Mediation provides the parties in dispute with a manoeuvrable (flexible<sup>62</sup>) alternative means of resolving the conflict requiring less time<sup>63</sup> and less expenses<sup>64</sup>, while effectively protecting the rights of parties, by relieving courts from the burden of overloaded court proceedings. The positive side of mediation is that if the parties cannot reach agreement during the process, they can always apply to a court<sup>65</sup> to resolve the dispute; however, as a result of mediation, the rights of parties are more protected because the result is a product of both parties and both parties agree on the result.

Through mediation<sup>66</sup>, the parties have a good opportunity to determine the conflict, under-

55. Ulrich H., in Klowait J., Gläßer U., MediationsGesetz, Handkommentar, Nomos, Baden-Baden, 2014, 469

56. Hakimah Y., Alternative Dispute Resolution (ADR), International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, 2012, 36.

57. Bhatt J.N., A Round Table Justice through Lok-Adalat (People's Court) –A vibrant –ADR-in India, 2002, 1

58. von Maik B., Guterichter und Mediatoren im Wettbewerb, Duncker & Humblot, Berlin.2015, 21.

59. Esplugues C., Barona S., Global Perspectives on ADR, Intersentia, Cambridge, 2014, 5.

60. Ellickson R.C., Order Without Law: How Neighbours Settle Disputes, Harvard University Press, Cambridge MA, 1991

61. von Maik B., Guterichter und Mediatoren im Wettbewerb, Duncker & Humblot, Berlin.2015, 22.

62. Hopt J.K., Steffek F., Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, V.

63. Malacka M., Mediation als Appropriate Dispute Resolution im Tschechischen und Slowakischen Rechtssystem in Osteuropa Recht Zeitschrift, Nomos, Baden-Baden, 2018, 91.

64. Hopt J.K., Steffek F., Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 38.

65. Lindblom P.H., Progressive Procedure, Iustus, 2017, 422.

66. Boule L., Kathleen K.J., Mediation Principles, Process, Practice, Butterworths Canada, 1998.12.16.

stand the essence of the problem, and to realise the true causes<sup>67</sup> of the conflict, resolve the conflict peacefully, manage the conflict, and ensure that both parties are winners<sup>68</sup>, (so-called „always ahead situation“)<sup>69</sup>, as well as to prevent further escalation of the conflict and to maintain good relations<sup>70</sup>; Christian doctrine also recommends avoiding conflict<sup>71</sup>. It should also be noted that Islam encourages parties to resolve their conflicts through the mediation (in Arabic, „Sulh“)<sup>72</sup>.

Mediation is a good way for the self-estimation of the parties<sup>73</sup>, instead of court procedures, where a judge performs the same function, i.e. „mediation helps the parties take a decision on their own case“<sup>74</sup>, whereas the court and arbitration tribunal „intervene“ to take a decision on the case of the parties, i.e., mediation allows the parties to protect their rights through the approximation of interests and the reaching of agreement acceptable for both parties.

Mediation is currently perceived as a means to achieve the goal of administration of justice<sup>75</sup>. It is a powerful tool, although less applicable as an alternative means<sup>76</sup> of dispute resolution. The goal of mediation is for the parties to reach agreement<sup>77</sup>, and the relations between the parties in dispute shall be deemed regulated if the dispute is resolved through agreement and this will contribute to the further continuation of future relations between the parties, at which point the goal of mediation will be deemed achieved<sup>78</sup>. As a result of mediation, on the other hand, if agreement cannot be reached, the parties become aware of their positions and real interests during the mediation process, which may also become a prerequisite for the parties to cease a legal dispute or stop the initiation of a legal dispute, which finally should be assessed as a truly positive result of mediation<sup>79</sup>.

Finally, we must bear in mind that the additional benefit of mediation is not only the saving of expenses<sup>80</sup>, but also the saving of time of a court and a judge, as there are no adversarial proceedings as in the case of a court; it is also important that mediation allows parties to solve their own problems, take responsibility and control the course of the process, at which time they can restore relations with each other or start to compromise, or to prioritise their

67. Kumar A., *Alternative Dispute Resolution System*, K.K. Publications, 2016, 233.

68. *ibid*, 233.

69. Haft F., von Schlieffen K.G., *Handbuch Mediation*, C.H.BECK, Munchen, 3 Auflage, 2016, 85

70. Englert K., Franke H., Grieger W., *Streitlösung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen.*, Werner Verlag, 2006. 242.

71. Roebuck D., *Mediation and Arbitration in the middle Ages (England 1154-1558)*, Holo Books, The Arbitration Press Oxford, 2013, 51.

72. Hakimah Y., *Alternative Dispute Resolution (ADR)*, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, 2012, 97.

73. Menkel-Meadow J.C., Love P.L., Schneider A.K., Sternlight R.J., *Dispute Resolution Beyond the Adversarial Model*, Wolters Kluwer Law&Business, Aspen Publishers Inc, 2011, 224.

74. Meyer A.S., Chairman, New York State Mediation Board, 1969, 164.

75. Eidenmuller H., Wagner G., *Mediationsrecht*, otto schmidt, 2015, 7

76. Filler E., *Commercial Mediation in Europe*, Wolters Kluwer, 2012, 277.

77. Goodman A., *Basic Skills for the New Mediator*, Solomon Publications, 2<sup>nd</sup> Ed, Maryland, 2005, 20.

78. Glenewinkel W., *Mediation als aussergerichtliches Konfliktlosungsmodell*, ibidem-Verlag, 1999, 44

79. Waring M., *Commercial Dispute Resolution*, CLP Legal Practice Guides/College of Law Publishing, 2016, 160.

80. Penny B., *Mediation Law*, Routledge Taylor&Francis Group, 2013, 9.



own business interests and private life without stress and tension<sup>81</sup>, where the parties have a greater sense of gratitude towards the proceedings<sup>82</sup> and, as a result, the parties in dispute ensure the effective protection of their rights.

As previously stated, the interest of the public in mediation as an alternative means of dispute resolution is growing daily and it is a truly effective means of resolving disputes between parties in conflict, although there are some disadvantages, which, considering the importance and benefits of mediation, cannot overshadow the advantages of mediation that accompany the alternative means of dispute resolution; in particular, it is evident both from literature sources and practice that the establishment of mediation can lead to the „privatisation“ of justice and the administration of justice may appear in the hands of individuals, thus endangering the normal functioning<sup>83</sup> of the legal system, which may represent a threat; however, it should be deemed a hypothetical opinion, because the correct introduction of such mechanism of alternative means of dispute resolution in any state, as well as the provision of full information to the public, will minimise such risks.

However, it is usually assumed that a party to mediation, who enjoys certain powers in comparison with the other party in a conflict, can agree with the other party<sup>84</sup> in his/her best interests, by using his/her power. There can be such a viewpoint, but a similar risk can exist in any form of dispute resolution, and even in this case, if the parties use mediation correctly, it is quite possible that such a negative aspect is compensated.

From the example of different states, the disadvantage of mediation is its over-regulation, because in such case mediation, as an alternative means of dispute resolution, loses its maneuverable nature, which serves to distinguish it from court proceedings within the limits of the legal framework, and from other alternative forms of dispute resolution, which is its actual benefit and a positive side, rather than the risk that needs to be regulated or the risk as a result of over-regulation.

These and many other negative aspects will be revealed and will have effect only when mediation is not institutionalised in the country and if its manifestation has a fragmented nature, and where mediation is regulated at the legislative level, even in the most elementary form, and where the mediation process is proven in practice and is actually applied by the parties in dispute, the effect of any disadvantage on any subject participating in the process and on the process itself will be actually neutralised<sup>85</sup>.

From this standpoint, the need to disseminate information on mediation should be underlined, as well as the need for goodwill on the part of representatives in the legal field, which will result in the successful introduction in practice and operation of mediation in any state.

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81. *Brown H., Marriott A.*, ADR Principles and Practice, Sweet & Maxwell, Thomson Reuters, 2011, 107.

82. *Penny B.*, Mediation Law, Routledge Taylor&Francis Group, 2013, 9.

83. *Goldberg S.B., Sander F., Rogers E.A., Nancy H., Cole S.R.*, Dispute Resolution: Negotiation, Mediation, Arbitration and other Processes, 6<sup>th</sup> Ed, Wolters Kluwer, 2012, 9

84. *Ibid*, 10.

85. *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 38.



### III. CONCLUSION

In view of all the above, it can be stated that the legal community of Georgia is unanimous with regard to the need to introduce mediation, a mechanism of alternative dispute resolution; at this stage, or at the stage of the adoption of the Law of Georgia on Mediation, there has been no different opinion observed in the public, which undoubtedly has a positive effect on the institution of mediation; it should be taken into account that in some cases, at the stage of the introduction of a new institution in the legal field of Georgia, there has always been discrepancy of opinions as to whether or not to carry out this or that reform or change.

It should be noted that the matter of a unified legislative regulation of mediation as an alternative dispute resolution mechanism is particularly pressing, because, based on the unified normative act, the existence of a so-called framework regulator, on the one hand, will facilitate the correct understanding and application of its essence by parties in dispute, and it will attain the level of significance, which is also of great importance in terms of relieving the judicial system from the burden, and, on the other hand, the broad application of mediation in all cases will become a prerequisite for the Georgian public to engage in dialogue and try to resolve any conflict situation through negotiation, thus protecting their rights, the deficit of which is so evident.

### SUMMARY:

Mediation, as an alternative means of dispute resolution, is rapidly establishing itself in daily practice, as the most acceptable means for parties in conflict to reach agreement.

Before initiating court proceedings, many European countries prefer to introduce forms of the mandatory use of mediation in domestic jurisdictions, thus further promoting alternative means of dispute resolution and increasing its applicability among the public.

Such an alternative form of dispute resolution is widely used due to the possibility of the parties in dispute to save funds and time; there are also some states that seek and work for more innovative forms of applying mediation, which will give broader function and application to the process.

From the example of various countries, mediation has proven to be an effective means of dispute resolution and it has firmly established itself as the most demanded means of alternative dispute resolution, thus justifying the opinion „that the development of the alternative means of dispute resolution has no other option“; the same can be said about the fact that any correctly planned and well-thought reform, which relies on international experience, reflects the correct perception of the needs at the national level, and shall be deemed to achieve success, and such should be the case with the introduction of mediation in Georgia, which will finally guarantee the functioning of effective and fair justice in the country.

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