UDC 349.6

The Actuality of the Credits of the Crimean Reserves by the Federal Status

Kalugin Mikhail Mikhaylovich
student of the Faculty of Law
Kuban State Agrarian University
Krasnodar, Russia
e-mail: kalugin.mikhail@mail.ru

Usenko Anatoliy Sergeyevich
editor of Polymathis Scientific Journal
student of the Faculty of Law
Kuban State Agrarian University
Krasnodar, Russia
e-mail: ceo@polymathis.ru
SPIN code: 9594-2433

Abstract

The consolidation of the institution of mediation in the Russian Federation meant promoting the development of partnership business relations and the formation of the ethics of business turnover, harmonisation of social relations. According to many scientists, this procedure allows to resolve many disputes in a pre-trial order. However, the functioning of this law in full is not possible in practice due to the lack of interest from the citizens to apply to a mediator for resolving the dispute out of court. To solve this problem, the authors suggest a legal analysis of the mediation institutes in the Russian Federation and the Federal Republic of Germany. The authors come to the conclusion that the mediation procedure in Germany is more in demand among the citizens than in the Russian Federation. The authors conclude that it is necessary to improve the current Russian legislation on an alternative dispute settlement procedure with the mediator's participation; in particular, it is proposed to carry out the mediation procedure in Russia only on a professional basis, to give lawyers the right to act as a mediator in pre-trial order. According to the authors, such measures will eliminate possible contradictions in the legislation, improve the quality of the mediator and make the mediation procedure more accessible for the Russian citizens.

Key words: media, mediator, alternative procedure of dispute settlement.

Integration of the mediation procedure into the Russian legal system in 2010 through the adoption of Federal Law No. 193-FZ of October 27, 2010 "On an Alternative Procedure for the Settlement of Disputes involving an Intermediary (Mediation Procedure)" was made to develop partner business relations and formation of business ethics, harmonisation of social relations [1].

According to Ts. A. Shamlikashvili, the adoption of the law on mediation for the Russian legal system is a significant step, which means that the state really contributes to the civil society institutions development and to the formation of the a lawful state foundations [2].

However, in practice, the institution of mediation did not receive wide distribution, which domestic specialists expected from it. So, according to official statistics, 11 cases involving a mediator were considered in 2011 and 10 cases in 2012 [3].

The Presidium of the Supreme Court of the Russian Federation highlights such reasons for the low popularity of reconciliatory procedures as follows [4]:

- absence of mediators;
- the novelty of the mediation procedure;
- lack of advertising in the market of professional mediators;
- low activity of educational work in the state bodies of all structured levels and local self-government bodies, mass media, mediators;
- the dispute resolution in court is a fulfillment delay of unscrupulous persons obligations to contractors;
- a high degree of conflict relations in the society;
- lack of judicial representatives motivation to reconcile the parties that could lead to significantly reduces of their services payment amount;
- the mediation procedure is unnecessary before going to court;
- low level of legal culture and a number of others.

To solve this problem, we propose to make a comparative analysis between mediation institutions of Russian Federation and Federal Republic of

Germany [5]. The Institute of Mediation in Germany, for further comparison with the domestic mediation procedure because it has been actively used since the 80s of the 20th century. According to statistics, mediators have successfully passed 2/3 or 75% of disputes. The fact that the Russian Federation and Germany belong to one legal family, their historical proximity, [6] and their constitutional system foundations similarity makes it possible to study the mediation procedure functioning in both countries and also by using the research results add the current Russian legislation with a view of improving the effectiveness of the mediation procedure.

The modern German mediation procedure model is reflected in the German Federal Law of July 26, 2012 "On Supporting Mediation and Other Forms of Extrajudicial Settlement of Conflicts" [7].

In Clause 1, Paragraph 1 of this Law, mediation is a confidential and structured process in which parties, with the assistance of one or more mediators, of their own free will and under their responsibility seek for a mutually beneficial conflict settlement.

Before the consolidation legislative of the German Federal Law of 26.07.2012, in many German states was practiced a judicial mediation by acting judges of general and specialised courts (labor, social, administrative). So, in case of the parties agreement to the procedure of mediation, the judge, who held a process, referred it to the mediator judge, and the proceedings in this case were closed [8].

Art. 3 of the Federal Law No. 193 includes in the mediation principles in Russian Federation such principles as: voluntariness, confidentiality, cooperation and equality of the parties, impartiality and independence of the mediator.

Thus, we see that legislation on mediation of Germany and Russia is based on general principles. However, there are also significant differences, which are discussed below.

Firstly, only a person who successfully passed a special course under the program of the Ministry of Justice of Germany can become the mediator in Germany. In contrast in the Russian Federation the activity of the mediator is

divided on a professional and unprofessional basis. The program of mediator courses in Germany allows studying the basis of mediation, the general idea of the conflict, the tactics of negotiation, the right of mediation and the role of this right in German legislation to future mediators. In addition, within the framework of this program, the mediators have to be monitored and evaluated by other mediators. At the same time, mediators are required to upgrade their qualifications, which confirmed by the relevant certificate of the Ministry of Justice of the Federal Republic of Germany.

Secondly, one of the types of mediation in Germany is advisory mediation. This activity can be carried out on a professional basis and by lawyers. Such procedure is similar to the practice of lawyers in the Russian Federation [9].

So, in accordance with paragraph 1 of Art. 1 of the Federal Law of May 31, 2002 No. 63-FZ "On Advocacy and Legal Profession in the Russian Federation," the legal profession is understood as qualified legal assistance provided on a professional basis by persons who have received the status of a lawyer in the manner established by this Federal Law, who are individuals or legal entities with a view to protecting their rights, freedoms and interests, as well as providing access to justice.

Considering the social and legal nature of advocacy, we can conclude that the main purpose of such activities is the settlement of a legal dispute.

In our point of view, lawyers are persons who carry out their activities on a professional basis, they are specialists in law and able to resolve the conflict in the parties interests, by not leading it to the process. An additional function of the domestic legal activity is to reduce the level of conflict tension in legal disputes.

Thus, in our opinion, if the mediation institution in Russian Federation to advocacy will be referred to legal activity it will be able to resolve several of the most important problems which are as follows [10]:

— first, the parties will receive professional qualified advice on their legal situation;
— second, the number of clients in lawyer chambers (offices, bureaus)

will increase;

— third, in the interest of allowing lawyers to alternative non-judicial dispute settlement procedures, we suggest that the Bar Associations to develop and adopt appropriate pricing list for mediation activities. In this situation, the lawyer's office (bureau) will conclude a contract with the client to provide mediation services [11];
— fourth, to lay under obligation the lawyers in order to produce at least 10 free consultations a year and report to the corresponding bar of lawyers.

Returning to the analysis of the correlation between the Russian and German legislation on mediation we note an interesting feature of the Federal Republic of Germany Law of July 26, 2012, which fixes the provisions on the compulsory report of the German Government to the Bundestag about the influence of the law on the further development of the mediation procedure and the qualification courses for the mediators. Thus, in accordance with paragraph 1 of paragraph 8 of the Federal Republic of Germany Act of July 26, 2012, the Federal Government provides a report to the German Bundestag until July 26, 2017, including the legislative competence of the federal states in the sphere of judicial expenses, the effects of this Law on the development of mediation in Germany and the situation with the training and upgrading of the mediators. The report should reflect and evaluate the results, as well as the main directions for mediation in Germany. The result of this report is the discussion on the expediency of the other legislative acts adoption, as well as the addition of the mediators who are available in the field of training and advanced training related to the need to guarantee the quality of mediation and protect the interests of consumers.

Regulations on the provision of a report on the mechanism for the functioning of the mediation procedure and training courses for the mediator can remove possible contradictions in the legislation, improve the quality of the mediators and make the mediation procedure more accessible to Russian citizens. We believe that the implementation of this provision in Federal Law

No. 193 of October 27, 2010 is particularly relevant, because it will create a favorable basis for its functioning.

It goes without saying that in Russia there are all of the necessary prerequisites for the mediation procedure successful functioning. Law enforcement activities in this area should be aimed not only at reducing the judicial load, but at also guaranteeing the rights protection of the mediation procedure parties. Summarising, we suggest to supplement the existing domestic legislation:

1. To exclude from Art. 15 of the Federal Law of October 27, 2010 No. 193 the provision according to which the activity of the mediator can be carried out on an unprofessional basis.

2. To develop a unified requirements and schedule of the qualification exams for the position of a mediator. After successfully passing this examination, a person must receive a qualification certificate (license) for the right to mediate activities.

3. To supplement the Federal Law No. 193 of October 27, 2010 with a provision according to which mediators are required to take courses on upgrading their qualifications every 5 years.

4. To exclude the Sub. 2 Par. 6 Art. 15 of the Federal Law of October 27, 2010 No. 193 which prohibits mediators from providing legal, consultative or other assistance to any party.

5. To complete Federal Law No. 63-FZ of May 31, 2002 "On Advocacy and Legal Profession in the Russian Federation" with a provision entitled lawyers to conduct a mediation procedure on a reimbursable basis.

6. To lay under obligation lawyers to produce at least 10 free consultations per year and counted before the corresponding bar of lawyers.

7. To make and take appropriate pricing list for mediation by the Bar Associations.

8. To implement in the Russian legislation the regulations on the provision of a report in 2020 by the Government of the Russian Federation to the Federation Council of the Federal Assembly of the Russian Federation on the mechanism for the functioning of the mediation procedure and training

courses for the mediators.

References

1. Federal Law of July 27, 2010 No. 193-FZ "On the Alternative Procedure for Settlement of Disputes Involving an Intermediary (Mediation Procedure)". *Sobraniye zakonodatelstva Rossiyskoy Federatsii, 2010* (31). In Russian.

2. Shamlikashvili, Ts. A. (2014). *Vnedreniye mediatsii v Rossii [Introduction of Mediation in Russia]*. Retrieved from http://www.mediacia.com/publications/81.html

3. Tomilova, T. A. (2013). Institut mediatsii v Rossii poka ne rabotayet [The Institute of Mediation in Russia Does not Work Yet]. *Parlamentskaya gazeta*. Retrieved from http://www.pnp.ru/news/detail/15277

4. Certificate on the Practice of Application by the Courts of the Federal Law of July 27, 2010 No. 193-FZ "On the Alternative Procedure for Settlement of Disputes Involving an Intermediary (Mediation Procedure)" for the Period from 2013 to 2014. *Byulleten Verkhovnogo Suda Rossiyskoy Federatsii, 2015* (6). In Russian.

5. Usenko, A. S. (2014). V sudakh otkryvayutsya spetsialnyye komnaty dlya primireniya i mediatsii [The Courts Open Special Rooms for Reconciliation and Mediation]. *Zakonnost i pravoporyadok v sovremennom obshchestve, 2014* (20). Pp. 36–40.

6. Saidov, A. Kh. (2003). *Sravnitelnoye pravovedeniye (основные правовые системы современности) [Comparative Jurisprudence (Basic Legal Systems of the Present)]*. Moscow: Yurist.

7. *Grundgesetz für die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany]*. (1949). In German. Retrieved from: https://www.bundestag.de/gg

8. Abolonin, V. O. (2012). Kommercheskaya mediatsiya v Rossii: osobyy vektor razvitiya [Commercial Mediation in Russia: a Special Vector of Development]. *Zakon, 2012* (3).

9. Federal Law of May 31, 2002 No. 63-FZ "On Advocacy and Legal Profession in the Russian Federation". *Sobraniye zakonodatelstva Rossiyskoy Federatsii, 2002* (23). In Russian.

10. Leskova, Y. (2014). Non-Commercial Organizations in New Russian Civil Code: New Problems While Applying the Vested Rules. *Vlast zakona, 2014* (3). In Russian.

11. Tanaga, A. N. (2002). Svoboda vybora vida zaklyuchayemogo dogovora [Freedom to Choose the Type of Contract to be Concluded]. *Byulleten Verkhovnogo Suda Rossiyskoy Federatsii, 2002* (7).