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MEDIATS Mediation: Training and Society Transformation

GEORGIAN MODEL FOR REGULATING MEDIATION IN THE BACKGROUND OF LEGISLATIVE REFORM

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Abstract. *Article provides a general overview of legislative provisions of law of Georgia "On Mediation" and accompanying legislative amendments adopted by the Parliament in Georgia in 2019 and highlights the specific characteristics of Georgian regulatory model of mediation. The paper examines the evolution of mediation in Georgian legal system from its initial introduction in sectoral legislation in 2011 to adoption by the parliament of Georgia of a new law "On Mediation" and its accompanying legislative changes. The article argues that sound legislative basis is one but not the only precondition for the well-functioning mediation system. Public trust and awareness of stakeholders is another factor in order to achieve that aim. Article explores the legislative novelties and highlights the important changes in this field of law. In author's opinion the new law fills the legal gaps that existed prior to the reform. At the same time, the article underlines the weaknesses of new legislation that need to be addressed for further development and full implementation of mediation in Georgia.*

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Introduction

Legislators and regulators are faced with the problem of overloaded justice system. For many, traditional adjudicative model of litigation is time-consuming and expensive. Impartiality of judges and independence of judiciary still remains unachievable goal in many parts of the world. These problems can be mitigated with the introduction of well-developed regulatory framework for various alternative dispute resolution mechanisms. Mediation has long been considered as one of the popular methods for solving the conflicts in societies.

Although alternative dispute resolution mechanisms and mediation have a rich presence in Georgian legal history, mediation legislation is a relatively new concept in the modern Georgian legislation. The first legislative activities in the field of civil law mediation started only recently with the introduction of court mediation 2011, followed by the notarial mediation in 2012 and mediation in collective labor disputes.

Soon it became evident that the sectoral legislation hindered the formation of coherent and well-developed mediation system and there was a need for further legislative reform.

On 18 May 2019 the Parliament of Georgia adopted the Law of Georgia "On Mediation" and legislative package deriving therefrom, by which amendments were introduced to several legislative acts, namely Civil Procedure Code of Georgia, Civil Code of Georgia, Organic Law of Georgia on Common Courts, Law of Georgia on "Enforcement Proceedings", Criminal Procedure Code of Georgia, General Administrative Code of Georgia, Law of Georgia "on Accounting, Reporting and Audit", Law of Georgia "on State Duty", Law of Georgia "on Arbitration". Mentioned legislative amendments will be discussed along with the relevant provisions of the law of Georgia "On Mediation"

Some provisions of the new law "On Mediation", by which establishment of association of mediators became possible, was enacted upon publication, however, essential provisions of the law came into force only from 1st January 2020.

Due to the novelty of the legislative reform it is still early to comprehensively assess whether the goals of the reform have been fully achieved. At the same time, it is possible to make some conclusions regarding the mediation model suggested as a result of this reform.

The aim of this article is to provide the brief overview of the basic principles and main provisions, as well as the structure and the scope of the mediation legislation.

Literature Review

Vast literature exists on the development of mediation and current trends in legislative and regulatory models of mediation and the prospects of successful introduction of mediation in post-socialist countries in particular.

There is a broad consensus among the scholars that development of mediation in general and its legislative framework in any society is greatly influenced by the cultural context. Mediation, in the words of Nadja Alexander (2001), "does not exist in vacuum. It operates against a backdrop of national dispute management culture and institutional rules and regulations" [1, p. 1]. Another prominent mediation scholar, Shahla F. Ali, (2018), based on the different national experiences, also stresses the "prominent influence of unique domestic factors in a country's eventual adoption of a particular mediation model" [21, p. 273].

It has been pointed out, that any successful mediation program in a given country is dependent on the existence of public trust to legal system and procedural equality. Whether the countries with a socialist heritage qualify for this requirement is subject to debate. Emily Steward Haynes (1999) has emphasized the existence of public trust and respect of legal institutions to function effectively and also noted that that emerging postsocialist legal institutions in central and Eastern Europe had "neither this base of well-established procedural equality nor substantive fairness in both statutory and common law" and that "consequently, any successful mediation design should not be wholly implemented by either the legal system or the government" [13, pp. 257-258, 281].

Steven Austermiller (2006) has summerized three main arguments which are generally are put forward against appropriateness of mediation and ADR in emerging legal systems – lack of public trust in the legal system that would carry over to a mediation program, no credible threat of effective enforcement of the mediated settlement, and its cultural inappropriateness for societies like post-communist Europe [5, pp. 144-145].

In Georgian legal literature devoted to the history of mediation in Georgia, there is substantial evidence of use of mediation in the past. As Sophie Tkemaladze (2017) notes "mediation was a developed method of dispute resolution already at the early, pre-stage of social development in Georgia" [23. p.10].

Michael D. Blechman (2011), international expert, in an assessment of development of ADR in Georgia, conducted even prior to the initial introduction of court mediation in Georgian legislation in 2011, came to the conclusion that the prospects for developing mediation in Georgia were "reasonably good" largely due to the recognized need of such an instrument within the legal profession and governmental agencies and their perception that mediation fitted well with the Georgian culture [8, p.3].

Thomas J Stipanowich (2015) made an observation that mediation practice and its regulatory framework was "evolving in diverse ways" also reflecting, among other factors, "the influence of the marketplace (which often means the legal marketplace), the role of culture, and the interplay between mediation and systems of adjudication" [22, p. 1200].

It is interesting to note that importance of legislation on the development of mediation is debatable. As an international evidence review of mediation in several common law countries conducted by Scottish Government (2019) shows, in the case of the United States legislation when there is already a growing culture if acceptance of mediation, while in case of Australia the culture would not have grown without legislation [20, p. 18]

It seems that there is no direct correlation between the adoption of mediation legislation and the real usage of that ADR instrument. Carrie Menkel-Meadow (2016) maintains that comprehensive efforts to study the use of mediation so far have demonstrated a "less then optimistic view of the relationship between enabling or encouraging legislation or procedural rule drafting and the actual usage of mediation." [17, p. 35]. Yet, comparative studies provide an evidence that many countries do not have consolidated mediation legislation at all. Sophie Pouget (2013) has observed that out of hundred economies surveyed, 54% did not have a consolidated law encompassing substantially all aspects of commercial mediation [18, p. 9].

On the other hand, the function attributable to the legislation in the development of mediation should not be underestimated. As Marie-Anne Birken and Kim O'Sullivan (2019) have pointed out a specific mediation law need not be a pre-requisite of development of mediation. On the other hand, EBRD's experience shows that such legislation serves to legitimize the practice in the eyes of business, the judiciary and legal advisers and does have a useful promotional effect [7, p. 215].

Furthermore, mediation legislation can be assessed in light of the regulatory robustness rating

system criteria as proposed by Nadja Alexander (2017). Thus, congruence of domestic and international legal framework, transparency and clarity of content of mediation laws, certain and predictable regulation of insider/outsider confidentiality, with some flexibility and insider/court confidentiality, enforceability of mediated settlement agreements and international mediated settlement agreements, impact of commencement of mediation on litigation limitation periods cannot be evaluated without recourse to the legislative context [4, pp. 6-13].

As to the nature and types of mediation legislation, legal scholars use several methods for distinguishing the various legislative tools used by the regulators. "There is no perfect model law on mediation that could be applicable to any country", as L. Rozdeiczer and A. Alvarez de la Campa (2006), the authors of the IFC's "Alternative Dispute Resolution Manual" note, but there are critical features that should be considered when drafting the mediation legislation [10, p. 38] Moreover, "European handbook for Mediation Lawmaking", prepared by CEPEJ - European Commission for the Efficiency of Justice (2019) encourages the drafters of the national mediation laws to address the following issues in the draft laws: scope, definitions, mediator, invitation of mediation, mediation process, mediation settlement, means to incentivize mediation, information on mediation and transitional provisions [10, pp. 6-7].

Legislative acts in the field of mediation can be classified in many ways. Roby Carrol (2002) provides an illustration of three types of legislation in the field of mediation. These three types include procedural, regulatory and beneficial legislation. According to the author one legislative act can contain all three types, or one or two only. The procedural legislation highlights the institutionalization trend in the field of mediation, while the regulatory and beneficial legislation reflects the codification trend.

As Carrol points out, procedural legislation "specifies mediation as a dispute resolution process", while the regulatory legislation "regulates the practice of mediation by mediators". Lastly, beneficial legislation "supports the mediation process by clarifying the rights, obligations and protections of parties to mediation, mediators, and, to a limited extent, third parties to the mediation." [9, pp. 172-173].

Another distinction, as proposed by Nadja Alexander (2008), can be made in connection with procedural laws and interface laws. The latter category includes the laws "dealing with the interface between the mediation process and other proceedings". In the author's point of view, "legislation better serves the objectives of regulatory provisions dealing with what happens when mediation process interface with the legal system" [2, p. 16),].

Nowadays two core models of mediation regulation are known. Based on the legal sources of mediation, Klaus J. Hopt and Felix Steffek (2013) differentiate between two models of mediation regulation at a macro level: extensive regulation entails detailed regulation of not only mediation process, but also of mediators' profession, and restrained regulation is expressed in less legislative interference in the field of mediation [14, pp. 17-19].

As for the scope of scope of regulatory plan, Nadja Alexander and Felix Steffek (2016) draw a line between general, sector specific and integrated approach [3, p. 23]. Regarding the issue of different legal regimes for national and cross-border mediation, Carlos Esplugues (2015) proposes the division among countries accepting either monistic or dualistic approaches [11, p. 23-24].

Aims

The purpose of this paper is to analyze the general structure, system and the general regulatory principles of new mediation law of Georgia and its accompanying acts. The paper aims to explore the regulatory goals of the legislator in introducing the legislative reform and role that this legislation can play in further development of mediation in Georgia. The author's aim is to investigate the positive aspects brought about by the new legislative framework, as well as the shortcomings of existing legal regime.

Due to the novelty of legislative acts and the breadth of problems associated with the regulation of mediation in general, it would be beyond the scope of this paper to scrutinize every aspect of mediation regulation scheme but this article will contribute to the further research of the regulatory aspects of mediation and further elaboration of legislative tools in Georgia.

Methods

Several methods were used in analyzing the

regulatory framework for mediation in Georgia. The paper discusses the evolution of the legislative provisions on mediation in the national legislation culminating with the adoption of the law "On mediation" and uses doctrinal research and policy analysis of the core concepts and principles behind the legislative reform found in the policy briefs of national and international organizations, as well as in the governmental policy documents and the explanatory notes to the legislative act.

Results and Discussion

As it was already mentioned above, before enactment of the new law, the legislative provisions on mediation in Georgia were very scant and dispersed in various legislative acts. There was a need for a more broad and detailed legislative approach. Despite the existence of legislative toolkits, model laws and best practices in mediation regulation field, success of institutionalization on mediation largely depends on the suitability of proposed legislation to the peculiar needs of each country. Thus, it becomes more important to analyze the major provisions and principles of the Georgian legislative acts in this field which will shed a light on the approaches taken by the Georgian legislator in overcoming those difficulties.

1. Mediation regulation prior the introduction of the law of mediation of Georgia of 2019

The first legislative act that introduced the mediation in Georgia was the 2011 amendments to the Civil Procedure Code of Georgia. Special chapter was added to the Code which only regulated court mediation. Article 1873 provided the list of cases subject to mediation. Cases in the field of family law (with the exception of adoption and restriction or deprivation of parent's rights), as well as the inheritance and disputes among neighbors were subject to mediation irrespective the will or consent of the parties involved. Any other dispute could also have been transferred to court mediation with the consent of the parties to the dispute. Thus, the legal act contained the triggering mechanisms of court mediation but some important procedural, standard-setting, as well as beneficial legislation was absent.

Shortcomings and scarcity of legislative provisions was somehow compensated with the legal act of the High Council of Justice of December 14, 2016 on the "Rule of Administration of Court Mediation Process" which contained several aspects of organization and administration of court mediation.

Pilot project was launched in the capital but the use of mediation was very limited. Thus, the number of cases transferred to court mediation under the pilot project did not exceed 27 per year in 2013-2016. There were 51 court mediation cases in the years 2017 and 2018 each, while in 2019 that number decreased to 31.

Beside the legislative tools, other instruments have also been implemented to facilitate the parties to make use of court mediation. Since 2016, by the decision of the High Council of Justice of March 14, 2016, additional question has been added to the civil claim and response official forms, which requires the parties to state their position on the issue of transferring the case to the court mediation.

Overall, there is a consensus in the Georgian legal literature that the court mediation project did not meet the desired results and that the relevant legislation had significant gaps. Aleksandre Tsuladze (2016) in an article exploring the conceptual vision of court mediation and the recommendations of international experts, shared the point of view that despite the sectoral regulation of court mediation in Georgia in the form of the special chapter in the Civil Procedure Code, non-existence of legislation regulating the mediation in general led to the "incomplete legislative frame" and "reduction of confidence towards the institution amongst the potential users thereof" [25, p. 152]. Even more decisively, Levan Zhorzholiani (2015) asserts that those provision were "very week" and "lying dead awaiting awakening" [28, p. 125].

Another instance of mediation in civil cases is associated with the introduction of legislative amendments to the law of Georgia on Notaries of March 16, 2012. The only article 381 added to the law called "notarial mediation" serves as the legislative basis of this institution in the legal system till today. The said article empowers the notaries to act as the mediator between the disputing parties in family law disputes (with the same exceptions as found in the court mediation), inheritance law and neighbor law disputes. Besides, notaries can act as mediators in any other disputes unless the legislation provides for a special procedure for mediating such disputes. The law stipulates that the notarial

mediation can be carried out only with the consent of the parties to the dispute. Specific feature of notary mediation is the possibility for a notary to draw up a settlement agreement in the form of notary act and in case of non-fulfilment by any party of obligation under this settlement agreement may be enforced without recourse to a court on the basis of the writ of execution issued by a notary. The law gives mandate to the Minister of Justice to regulate the procedure of notarial mediation. By the order of the Minister of Justice of Georgia of August 10, 2013 special chapter XI (articles 99-110) on notarial mediation was added to the "Instructions on Carrying Out Notarial Activities". Article 100 of the instructions defines the notarial mediation a process of resolution of a private law dispute under which process the parties with the assistance of one or more mediator-notaries are trying to conduct negotiations with the aim of reaching agreement. There is a mention of principles of notarial mediation – neutrality and impartiality of mediator-notaries, self-determination of parties, confidentiality. In connection with the confidentiality principle, it is noteworthy that article 102 declares the process of mediation to be confidential. Mediator is prohibited from disclosing information received during the mediation. As for the parties to the notarial mediation, the rules are more flexible. Unless otherwise agreed between the parties, no information or document disclosed in the process of mediation can be used as an evidence at court, arbitral tribunal or any other dispute resolution agency. This rule does not apply if the document or information is used by the party which it disclosed or if the other party to mediation received that document or information from other lawful source.

Article 105 provides general rules for the mediation process. Obviously, notarial mediation legislation leaves open the issues of influence of mediation on limitation periods and its effect on court proceedings in connection with the same dispute.

Ministerial Order obliges the Chamber of Notaries of Georgia to organize the teaching courses in mediation for notaries and to maintain the register of certified mediator-notaries on its web-page. Currently, there are more than 75 certified mediator-notaries and the register is available online.

Until 2016 use of notarial mediation was rare. With the adoption of law of Georgia of June 3, 2016 notarial mediation can also be used in the case of a dispute between the parties during the implementation of the state project of special administration measures in regard to the systematic and sporadic registration of real property.

As regards the mediation in collective labor disputes, relevant provisions can be found in the "Labor Code of Georgia" and governmental resolution #301 dated November 25, 2012 on "Review and resolution of collective disputes with mediation procedure". Those legal acts have been amended in December of 2020 with the effect that some of the provisions within the Code were rearranged and modified.

Collective Dispute between an employer and a group of at least 20 employees or between an employee and an association of employees shall be resolved through the conciliatory procedures that involves direct negotiations, or mediation if one of the parties to the dispute sends an appropriate written notification to the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. At any stage of negotiations, a party may apply to the Minister in writing to appoint a mediator to initiate mediation. After receiving such a notification, the Minister shall appoint a dispute mediator. Additionally, in the case of public interest, the minister may appoint a mediator on her own initiative as well.

Collective Disputes Mediation Organization Service of the Ministry shall select a candidate from its own register of mediators who must be then appointed by the Minister.

A dispute mediator shall not be obliged to disclose any information or documents she became aware of as a mediator.

The Labor Code sets administrative sanctions for failure by an employer or an employees' association for failure to participate in conciliation procedures, or for noncompliance with a reached agreement in mediation. The sanctions include a warning, or a fine.

As regards the enforcement of agreements reached as a result of mediation the Labor Code stipulates that a party to the dispute may apply to a court for the enforcement of the agreement. The rules established by the Code of Civil Procedure of Georgia apply to the enforcement proceedings. With the adoption of the law on amendments to the

Code of Civil Procedure of Georgia of September 29, 2020 special chapter XVIV14 has been added to the Code that regulates the enforcement of mediation agreements resulting from collective labor disputes. Application for enforcement shall be lodged to the relevant city (region) court. The court shall decide on the issue of enforcement within 10 days without oral hearing unless the court decides otherwise. The court may refuse enforcement of mediation agreement in collective labor disputes only if the content of such agreement contradicts the Georgian legislation, public order, or because of its content it is impossible to enforce agreement. Decision of the court granting enforcement is final and cannot be appealed, whereas the refusal of enforcement can be challenged through lodging a private complaint to the court.

2. Aims of legislative reform of 2019

It must be noted, that generally success of mediation is not resulting only from the choice of regulatory model. However, existence of coherent regulatory environment plays significant role. Hence, discussions on legislative regulation of mediation preceded the adoption of the new law "On Mediation". Thus, among the Georgian mediation scholars, Irakli Kandashvili (2017), argued for the necessity of creating the framework mediation law which would encompass both the court (judicial) mediation and commercial mediation and establishing a professional regulatory body for future mediators [15, p. 114-122]. On the other hand, Tsertsvadze (2013), drew attention to positive and negative sides of regulation and made several important recommendations for the future reform [24, p. 21-24]. Gurieli (2020) is supportive of the extensive regulation model which would also reflect all the relevant issues from the mediation practice and the mediation theory [12, p. 137].

Kobaladze (2019) suggested that the proposed future mediation model should not be analogy of a legislation of any particular European country but individual and subject to assimilation with Georgian legal practice [16, p. 40].

Aim and the goals of the new legislation are explicitly articulated in the Explanatory Note to the new mediation law. Some of the problems leading the legislator to enactment of the new law were the overload of court system, absence of proper institutional underpinning for mediation, scarcity of legal norms regulating the activities of then existing mediation associations. Enactment of the new law was considered as a means of use of "radical measures" – increase of demand and supply in the field of mediation.

The drafters acknowledged that pilot projects of court-mediation did not meet the expected results because of lower awareness and lack of trust among the legal professionals and the society at large. In addition to several non-regulatory problems hindering the development of mediation in Georgia, the drafters specifically mentioned the areas stemming from the then existing legislative and regulatory framework: non-existence of unified state policy, lack of legislative guarantees defining the superiority of mediation over adjudicative system (including the protection of confidentiality and exclusionary rules of evidence for the information received in the process of mediation), absence of code of ethics of mediators and the standards of certification and continuing education for mediators, as well as functioning system of liability rules and sanctions against the mediators.

Most importantly, the explanatory note makes reference to the obligations of Georgia under the Association Agreement and Association Agenda between the European Union and Georgia 2017-2020. The Association Agenda specifically mentions the necessity to develop alternative dispute resolution mechanisms, including mediation.

Reception of the new mediation law from the legal scholars so far has been positive. Gurieli (2020) considers the enactment of the law as "an attempt of approximation of national institution with the standards aimed to the democratic values" [12, p.130].

Thus, it is interesting to examine the structure, content and nature of the new law of Georgia "On mediation" and amendments it brought about in Georgian legislation.

3. Adoption of Law of Georgia On Mediation of 2019

The new law envisages necessary norms of institutionalization of mediation, firstly notions of mediation and mediators itself, core principles of mediation, main responsibilities of mediator, issues related to conclusion and enforcement of mediation agreement and mediation settlement. The process of mediation itself did not come within regulatory grid. In this part, the Georgian law elicits features characteristic to restrained regulation model.

However, special features are typical to mediators' professional regulation, which includes elements of state regulation (obligation of membership in the unified professional union of mediators, professional and qualification requirements towards mediators) and self-regulation (establishments of mediators' obligatory qualification and professional, as well as behavior standards by the association of mediators of Georgia).

Attempt to regulate by law court mediation, as well as private (voluntary) mediation must be considered as an important novelty. Although, it is obvious that taking into account specifics of court mediation, it is usually subjected to higher level of regulation than private mediation.

4. Structure of the law On mediation

The new law "On mediation" consists of 19 articles, which are arranged into four chapters. In chapter I of the law general provisions are reflected. The first article outlines scope of application of the law. The second article defines important terms (mediation, mediator, mediation agreement, mediation settlement, etc.), while in the third article principles of mediation are enumerated.

Chapter II of the law (mediation process) is the most comprehensive one and considering issues regulated therein, it significantly exceeds the scope of the title. In addition to rules for selecting mediator and circumstances to be considered during selection (in cases of judicial, as well as private mediation), here we find rules, which list circumstances precluding a person from participation in a mediation as a mediator, and in case of former mediator, includes circumstances prohibiting participation of the same person afterwards with other status on the same or related issues. In terms of legislative technique, it could be better to detach obligation of providing information by mediator to parties from article 6 and have it as a separate article.

Article 7 of the law determines the moment of initiation of mediation, as it is crucial to indicate exact moment of its commencement, because of important legal consequences attached to it, first of all, in terms of suspension of period of limitation and application to the court or arbitration on the same issue. In article 7 only the latter issue is regulated, and suspension of period of limitation is governed by article 12. In the same article, the immanent principle of mediation is described – voluntariness, which gives right to the party of mediation to refuse to participate on any stage during mediation process, if not regulated otherwise by the mediation agreement.

In article 8 of the law, rules of general nature regarding mediation process are presented. Legislator does not try to regulate in details methods and means for conducting mediation by the mediator, which is justified, as it is important to give mediators possibility to maximally display their skills in the mediation process.

Article 9 regulates two independent, but inter-related issues and maybe in this case also it would be justified to separate them. The issue envisaged in first and fourth paragraphs relates to determination of the exact moment of completetion of mediation and issuance of document certifying this fact by the mediator, which is also important in terms of period of limitation. In the second and third paragraphs the written form of agreement resulting from mediation and rules for its signing are determined. It would be desirable that issues related to mediation agreement have been regulated with the separate article in the law.

Article 10 of the law enunciates the scope of application of confidentiality principle in mediation, Rule of remuneration of mediator is regulated under article 11, for cases of judicial, as well as private mediation.

The fact that initiation of private mediation suspends the period of limitation, derives from article 12 of the law. According to article 13 the court has an authority to enforce agreement resulting from mediation upon application of either or both parties of the same mediation.

The third chapter of the law is devoted to form of professional organization of mediators. Article 14 establishes legal person of public law – Georgian Association of Mediators, which is self-regulatory body for mediators. In the same article authority of general meeting, highest body of Association of Mediators, and provisions regarding maintenance, publication and accessibility of mediators' register are prescribed. The law delegates regulation of other issues related to membership in the association and activity of association itself to the Statute of The Georgian Association of Mediators.

Authorities and rules for formation of the Executive Council of the Georgian Association of

mandatory memmbership, in relation to the case-law of the Constitutional Court of Georgia and European Court of Human Rights, exceeds the scope of current overview. However, it is obvious that there is a significant difference between professional activities of lawyers, notaries and mediators.

Georgian Association of Mediators produces unified register of mediators, approves ethical standards of mediators and rules of procedure for disciplinary legal proceeding towards mediators, and imposes disciplinary liability towards mediators. Core principles and directions of activity of Georgian Association of Mediators, and other issues related to its activity are determined by the statute of Association.

In December of 2019 the first meeting of mediators was conducted and bodies of Association of Mediators were elected.

As it follows from the provisions of the law "On Mediation", mediation ethics and disciplinary proceedings for violation of ethical standards is based on self-regulation. Adoption of the Code of Ethics is scheduled for the next general meeting of mediators in 2021.

Association of Mediators of Georgia has adopted a "Strategic Development Plan for 2020-2025" that envisages five main priorities of development and indicators thereof. The first priority concerns the functioning the high-professional standards in mediation and increase of number of mediators. Sharing the professional knowledge and skills has been set as another priority. Third priority aims to support the full implementation of court mediation and increase of court mediation cases. Development of mediation environment and interdisciplinary harmonization has also been identified as one of the priorities. It sets the aim to form a coordinated policy for different mediation forms (notary mediation, collective labor dispute mediation). Finally, the association sets an aim to ensure its financial stability and organizational efficiency.

Leaving the notarial mediation and collective labor dispute mediation out of scope of the new law has consequence in terms of professional regulation of mediators too. Besides the Association of Mediators of Georgia and its member mediators, notary mediators are united in the Chamber of Notaries of Georgia. Another register of mediators is maintained for collective labor dispute mediators. Thus, unity of professional standards for all mediators is questionable.

Conclusion

Adoption of the new law "On Mediation" is a result of work during several years and its adoption is definitely a step forward in fostering the further development of mediation in Georgia.

New legislation provides the legal guidance for mediators and disputants, sets the fundamental principles of mediation, sets triggering mechanisms for commencement of private, as well as the court mediation cases and interaction of mediation process with traditional dispute resolution mechanisms.

At the same time, we have identified several shortcomings of the legislation. First of all, despite the enactment of a special law "On Mediation", the new law does not apply to other models of civil mediation, namely, the notarial mediation and collective labor dispute mediation that existed before the new general law came into force. Sectoral legislation in those fields covers only small part of the list of issues which are crucial for the functioning of well-developed mediation in collective labor disputes and notarial activities. There are three different registers of mediators individually maintained by the Association of Mediators of Georgia, Chamber of Notaries of Georgia and the Collective Disputes Mediation Organization Service. It can be said that the adoption of the new law did not bring about the desired coherence and unity of mediation system.

Most importantly, public awareness of mediation is still low even after legislative reform. One of the priorities of the Association of Mediators of Georgia is to raise the public awareness within society without which the new legislative framework will be ineffective.

In contrast to the positive attitude towards and promising expectations of mediation within the legal professionals, as the research commissioned by UNDP and EU (2019, 2020) confirmed large part of the Georgian population and businesses entities are unaware of the mediation. 2019 population survey on ADR in Georgia and 2020 business survey on ADR in Georgia shows that 80% of Georgian citizens and businesses never heard of mediation [26; 27]. But that situation can be changed in a positive way, as the same studies reveal that 56% of mediation users assess them positively and after receiving more information on mediation, more than

half of both companies and citizens opined that they would rather choose mediation than apply to a court for adjudication if disputes arise.

Amendments have not brought any significant increase in court-mediation cases. On the contrary, there were only 8 court mediation cases in 2020. That means that public awareness of the benefits of mediation is as much important as the well-developed legislation.

In general, the legislation covers all the essential areas and incorporates important rules which are paramount for successful functioning of mediation.

Although, it is impossible to reach successful implementation of mediation and justification of high expectation towards it only by the adoption of the law, but the new Georgian law creates good precondition for further development of Georgian model of mediation.

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