Mediation, a method that is taking off in Albania

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Abstract

The rapid dynamics of economic development and social changes in the contemporary world and in our country, in recent years, is characterized by an increase in the number of disputes and conflicts between individuals. In a general sense we can say that conflict is defined as a situation in which individuals do not agree, or have different needs, interests or values, which result in disagreement, mistrust and tension between them. In such situations, individuals often tend to think that the most common form of dispute resolution is through formal court proceedings. The civil justice system deals with non-criminal law matters that are not family disputes or matters dealt with by the courts. Unlike criminal cases – in which the state prosecutes an individual – civil lawsuits arise when an individual or a business believes their rights have been violated. The application of mediation in the resolution of disputes in the civil, family, criminal, water, etc. fields is a clear indicator of the effectiveness and success in the resolution of disputes, which it carries, thus becoming a very efficient and effective alternative. used for reaching a solution acceptable to both parties involved in disputes in different fields. How is mediation process going on in Albania? Are people aware of its efficasity?

Keywords: alternative dispute resolution, mediation, mediator, civil disputes.

1. Introduction

Society is always in action, therefore during their activity, people, on the one hand by exercising their rights and on the other by relying on their legal action, creates relations that sometimes are accompanied by various disputes. Alternative solution to disputes of a general term, that is to speak one set of methods and techniques aimed at resolving conflict in a non-confrontational way. (Shamir).
Alternative dispute resolution (ADR) includes any process or procedure for resolving a dispute that does not center on adjudication by a judge in a state court. The main characteristic of this way of resolving disputes is that it is a consensual process, since it is the parties who decide on the resolution of the dispute under this way and, of course, on its outcome.
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Carl; Marsh,William; South, James, 2011).

1. History

The first appearances of alternative solutions to disputes are found in ancient times, in the old cultures of human society, at a time when there was no institutionalism, no state, and therefore no courts. Negotiation is used not only between people, but also between people and God. Abraham negotiated with God regarding the fate of the people of Sodom and Gomorrah (Shamir).

The negotiation is also reflected in the Muslim tradition, mentioning here the story of Muhammad's negotiation with God on the number of prayers that the followers of the Muslim religion should perform per day. As a result of the negotiation, Muhammad managed to reduce the number of prayers from fifty times to five, using as his main argument the necessity for people to have free time to carry out their activities.. (Shamir)

Mediation and arbitration were used in Mari Kingdom (present-day Sira) in resolving conflicts between states in 1800 BC. Similarly, during the years 1200-900 BC, the Phoenicians (eastern Mediterranean) practiced negotiation. Arbitration was used in India during the 500s BC, just as the Greeks in the 400s BC used public arbitration in city-states, whose decisions were plastered on the columns of temples, moving to the 300s BC when Aristotle promoted the advantages of arbitration over Court (Barrett & Barrett).

While the first forms of alternative dispute resolution are found in Roman law. Initially, the contract on the way to resolve disputes (compromise) was not binding on the parties. Its obligation was first achieved in the time of Justinian (Corpus Iuris Civilis), and this was found in chapter XI article 56 of the Code of Justinian. (S, 2012)

The applicability of forms of alternative dispute resolution continued and expanded in other European countries. Thus King Alfonso of Spain ordered the use of compulsory arbitration in 1263. Meanwhile in 1632 the Irish Arbitration Act was passed providing the legal basis for arbitration in the country. Meanwhile in the years 1624-1664 during the Dutch colonial period, commercial arbitration gained wide use in New York continuing its use in the years 1664-1776 in the British colonial period. (Barrett & Barrett)

Developments in this field continued with other movements in different countries marking important steps in the development of alternative solutions to disputes.

The practice of mediation was first developed in ancient Greek times and the mediator was known as proxentas and later in the Roman civilization, in which the mediator was described by names such as: internuncius, mediator, philanthropus, interlocutor, interpreter, etc. Justinian's Code recognized and accepted mediation. The role of mediation as an institution in its own right developed greatly, especially in the twentieth century, a development parallel to economic growth. The development of capitalism and industrialism brought about the need for effective and efficient resolution of disputes and conflicts, which are well resolved by mediation. (Bushati & Spaho, 2013).

Mediation in Albania, unlike in other countries, has its traces since ancient times.

Mediation is found in the Canon of Lekë Dukagjin in some of its articles. Thus, the ninety-ninth node of the Canon refers to mediation, providing that the mediator can be a man, woman, boy or girl or even a priest, who have the right to enter house to house and village to village to share words, to avoid conflicts that can cause murder or any other destruction. (Kanuni i Leke Dukagjinit)

A form of organization through which various disputes were resolved were the councils of elders, which according to the Canon had a particularly important role, since they were chosen with great care, first assessing their impartiality. The activity of the councils of elders continued in the period of King Zog, when it was declared that "elders resolve disputes between villagers" the role of mediator and arbitrator becomes clear (Bushati & Spaho, 2013). In the later period, the so-called Social Courts, which were the Village and Neighborhood courts, were established as early as 1968 and were recognized as an integral part of the judicial system. These courts, during the trial, should make all efforts to reconcile the conflicting parties. In 1995, the Albanian Foundation "Conflict Resolution and Reconciliation of Disputes" was established. This organization operates in the resolution of conflicts by reaching agreement in the criminal, family and civil fields. Meanwhile, in 2002, the Mediation Center was founded, which was supported by the World Bank project with the aim of creating a specialized center for resolving disputes. This center is focused on the practice of countries with the common law system, since they are considered countries that already have a fairly consolidated practice in mediation. In addition to the developments in terms of organizations that serve as centers for resolving disputes through mediation in our country, developments have also been made in terms of legislation, which seeks to regulate various aspects of the mediation process. In this direction, the legislation starts its journey with the law no. 8465, dated 11.3.1999 "On mediation and the amicable resolution of disputes". This law defined the main characteristics of mediation as being a social, independent activity that must be developed in accordance with the law in force, as an activity based mainly on the will of the parties, confidentiality, etc. The law has undergone changes/repeals since the beginning and today in force is Law no. 10 385, dated 24.2.2011 "On mediation in the resolution of disputes", which will be dealt with extensively in a separate chapter.

2. *Development of the mediation process*

Disputes are always present in the daily life of human society. There can never be a lack of them, and this is due to the fact of the existence of human society itself, which is the source of birth, development and resolution of disputes.

Disagreement is a natural and inevitable part of human relations. Conflict occurs at all levels of society – from interpersonal, family, tribal, to national and international levels. Conflict is everywhere. By conflict or disagreement, it is meant the conflict of interests between two or more parties about resources, differences of opinions within the group, about power, etc. Regarding the dispute or conflict, we should dwell a bit on the academic difference between the dispute, and according to which the conflict includes coercion and aggressive behavior, while the dispute means disagreement over small issues, which may or may not have elements of destructive or extreme action. All conflicts are disagreements, but not all disagreements are conflicts! (Brown,

Cervenak, & Fairman).
Conflict is a dynamic process. It has a beginning and must pass through several stages before it is completed. At its beginning, several conditions appear, such as the sources of conflict and the creation of the conflict environment. It is very important to identify the sources of disputes, because their solution can be found in them.
Among the sources of disputes, the most common are:

- Disputes over the division of property or ownership;
- Differences in values and beliefs between communities;
- Interests - marital issues;
- Insecurity-differences of wealth and power;
- Power dominance-control and dominance over each other;
- Power struggle-competition between candidates or parties to win elections;
- Mistrust- suspicion between each other;
- Injustice - economic exploitation and other ways;
- Denial of rights to resources, religious practices, political campaigns, etc. (Brown, Cervenak, & Fairman)

Their solution is also found in these sources, since the conflict has evolved because of them.

- People initially used different alternatives, which began to "disappear" with the birth of the state and the construction of courts, which were presented as relevant institutions for the resolution of various disputes. But nowadays there is a return to the "past" as many people now prefer to resolve their dispute through alternative forms of dispute resolution. One of these forms is mediation.
- Mediation is a dispute resolution process in which an impartial third party (the mediator) assists two or more disputants in trying to find a mutually acceptable solution (London).

According to various researchers, the term "mediation" derives from the Latin word "mediare", which means "to be in the middle". However, with the development of mediation over time what mediation is built on is at least consensus. This may be due in part to the expansion of mediation into new areas of dispute and to the increasing involvement of individuals from other professions. (Commission, 2010).
Mediation is assisted negotiation, it is an alternative dispute resolution process, formally voluntary and generally non-binding, in which a third party participates and guides the parties to an agreement that will resolve all or some of the their disputes. This third party may be an alternative dispute resolution professional engaged by the parties, a judge, or a volunteer provided by a court program. The expression "formally voluntary" is due to the fact that there are different cases when mediation is required of the parties by court rules or practices or when the court, due to the circumstances of the case, orders the development of the mediation process. (Rabin)
Mediation can take place outside the context of the judicial process, it can precede the initiation of a judicial or arbitration procedure, or it can take place in the middle of these procedures, pending the decision of the appeal. The most salient aspects of mediation are generally the voluntary and non-binding nature of the process and the confidentiality of the discussions.

While there are many definitions of mediation, most people agree that the purpose of the mediation process is to help the parties in conflict reach a voluntary resolution of their dispute. Therefore, in its simplest form, it can be said that mediation is negotiation that is facilitated by a third party (Alexander,Nadja; Barbieri, Gina Lee; Lorenz,Oliver; Mackie, Carl; Marsh,William; South, James, 2011). Applying this basic definition of mediation makes evident the fact that this process is used every day by people who have not yet realized that they too are engaged in the process of mediation. For example, a manager may informally mediate a dispute between two staff members or a parent may mediate a dispute between two siblings. Such informal mediations are part of everyday life and they resolve a large number of disputes.

Confidentiality is a very important aspect in mediation and means not only that anything said in the process cannot be repeated in court, but also that mediators are often required that statements made by one party are not communicated to the other party. other. To achieve the level of trust necessary to make the process work, the mediator must be truly neutral about the dispute and must disclose any possible source of conflict of interest, bias or bias in the matter.. (Commission, 2010)

The mediation process is very flexible and adaptable to the requirements of the parties, who can agree and set their own rules on how the mediation should be conducted. They select a mediator and are free to leave the mediation session at any time. All of these make mediation a leader among dispute resolution alternatives. Recently, mediation has become one of the most important forms of alternative dispute resolution (Rolandas, 2002).

Mediation brings participants together with a mediator in an informal, neutral setting to share perspectives, identify contested issues, develop options, consider possible solutions, and seek to reach a mutually acceptable agreement on their dispute. Mediation increases communication and understanding between the participants by helping them to resolve their dispute and discuss future relationships.

In general, the mediation process has four or five stages. Parties who have voluntarily agreed to initiate the mediation process may terminate the process at any time and return to the regular court process. Also, the parties who have been ordered by the court to go through the mediation process can stop the mediation at any time after the initial session. The mediation process includes an opportunity for all parties to be heard, to identify the issues that must be resolved in mediation, to generate alternatives for resolution and, if the participants wish, to write a resolution-agreement.

Let's look at the stages of a typical mediation process in turn:

Preparation: In this first point of contact, the mediator or mediators introduce themselves to the parties, explain the benefits that come from the mediation process as well as the rules that guide the process. The mediators determine if all the parties involved in the dispute are present, and if the parties who are present are capable of making a decision and committing to what they should agree on next. Credibility and trustworthiness towards the mediator is created by the parties (Nations, 2007).

The parties should meet with their attorneys to clarify their intentions. Attorneys may submit a brief written statement to mediators. Mediation is not a court hearing. The parties must be prepared to present possible solutions. The parties cannot convince

the mediator that his or her position is "correct" (Media).
In preparing for mediation, each party should carefully consider the issues he/she wishes to discuss, the underlying reasons for his/her position on each issue, what he/she requires from the other party to resolve the dispute, alternative ways of resolving the dispute. the problem that is acceptable to him and to the other party as well as the information he wants to bring to the mediation.
First joint session: Mediator and all parties. In this joint session, the mediator has learned about the points of agreement and resistance that the parties have and helps them to peacefully represent their legitimate demands and possible solutions to each other. If a solution is not strengthened this in the first joint session, additional time is used for mediators and parties to take stock of the situation. If no agreement is reached at this stage, further hearings will continue. The mediator directs questions about the issues and promotes communication between the parties. (Nations, 2007)
Split Sessions: The mediator meets separately with each party. A separate meeting of the mediator with each party allows each party to discuss more specific concerns or goals that they may not want the other party to hear.
Further separate and joint sessions: The mediator helps the parties identify all possible options for settlement and evaluate the alternatives. If the case is complex or the parties have many issues, the mediator may request several additional sessions.
Completion of the process: Once the parties have reached an agreement in principle, it is important to register the agreement in the form required by custom or law. The agreement must be clear in terms of the responsibilities of the party headquarters, be enforceable and the latter must not depend on the actions or inactions of the parties that did not participate in the agreement. Sometimes the parties need the agreement to be approved by the court and this ensures that, first, the agreement reached is in accordance with the law (the parties do not have to agree to do something illegal or that harms a third party) and secondly, the agreement reached through mediation has the force of law (res judicata). (Nations, 2007)

3. Mediation in the Civil Law

The civil justice system deals with non-criminal law matters that are not family disputes or matters dealt with by the courts. Unlike criminal cases – in which the state prosecutes an individual – civil lawsuits arise when an individual or a business believes their rights have been violated. Types of civil cases include:
- businesses trying to recover money owed to them;
- individuals seeking compensation for injuries; or
- individuals or businesses claiming poorly supplied goods or services.

The vast majority of civil cases take place in district courts, where judgments usually require the payment or restitution of money or property. Before a person (or 'party') can bring a claim within the civil courts, they are required to follow the guidelines set out in the relevant mediated dispute resolution modules.
There are a number of dispute resolution processes; however, one of the most used in civil cases is mediation.

The pre-action instructions state that the court may require the parties to provide evidence that they have considered using a dispute resolution process. For consumer disputes, this may involve the use of an alternative dispute resolution (ADR) scheme. Where it is found that a party has unreasonably refused to do so, the court has the authority to apply sanctions, including staying (or 'staying') the case until the required steps are taken, or ordering the guilty party to pay the costs of prejudicial at the end of the process (requiring one party to pay all or part of the other party's court costs). (Justice, 2022)

To achieve these goals, as with pre-action instructions, the rules state that parties and their attorneys should consider using mediation to see if they can resolve their case before it gets to the point of a hearing. This allows the courts to facilitate the use of mediation by ordering a stay for this to take place, and the courts can apply an adverse costs order if they determine that a party has made no effort to try and resolve their case. In some types of cases, the court also offers dispute resolution services, such as HMCTS' Small Claims Mediation Service (SCMS), which offers free mediation appointments for parties involved in lower value claims. (Justice, 2022)

Civil disputes are disputes between individuals, natural and legal persons, as well as legal and legal persons. Civil dispute resolution will be more effective if it can provide a peaceful resolution and favorable settlement.

The effectiveness of law enforcement according to Soerjono Soekanto has 5 (five) factors, among others:

- Legal factors (Law);
- Law enforcement factors;
- Facilities or support facilities;
- Community factors;
- Cultural factors.

Robert B. Seidman posits theories of law of non-transferable law, that the laws of a country derived based on certain social cultural conditions would not be applied simply to apply to a population group living with a culturally different social consciousness. (Barkan, 2009)

Christopher W. Moore describes the continuum of conflict management and resolution approaches that conflicts within societies have different ways of ending and some of the above are optional. Each option has a different mode of formality of process, privacy of access, person involved, third party authority, type of decision being made and amount of obligation imposed by or on the disputing parties. (Benny Riyanto, 2022). On the left side of the circuit (continuation) is informal, a private procedure involving only the disputing parties. While on the right side, one side wore a coercion and often a public act that forced the opponent to obey. (Benny Riyanto, 2022)

The use of the model is determined by the purpose of dispute resolution, complexity and social status. Each model has advantages and disadvantages. The use of the judicial process model, or through the court system, is based on the paradigm of dispute resolution as an application of the rule of law. The existence of a court is intended as a facilitative tool to uphold the authority of law by providing access to justice for disputing parties.

Even in the Albanian legislation, the possibility of applying mediation in the civil field is foreseen, Law No. 10835, dated 24.02.2011 "On Mediation in the Resolution of Disputes", in its article 2 provides, among other things, its application in cases:... of a property nature with the object of a lawsuit up to 500 thousand ALL, as well as for lawsuits for research of the thing, for denial lawsuits and for lawsuits for the termination of infringement of possession." Referring to this provision, we are presenting some of the civil cases that can be resolved through mediation:

1. Disputes arising from the denial or infringement of the owner's property right:
   - violations of the right of ownership by persons directly related to the property, mainly by title to the owner;
   - stripping the owner completely of the ownership right;
   - conflicts related to the exercise of the right of servitude;
   - partial deprivation of ownership rights;
   - partial and systematic damage to property, etc.

2. Ownership disputes:
   - disputes that arise between owners of neighboring properties regarding the dividing lines between two properties;
   - non-fulfillment of contractual obligations in the quantity, quality or term provided for in the contract;
   - disputes arising from unfair competition and commercial relations;
   - disputes arising from the division of property, etc.

During the mediation of a dispute concerning an infringement or denial of the right of ownership or subordination, the mediator must take into account certain rules: (Drejtesise, 2012)

1- to determine if we are facing a conflict between the owner and a third person, or between a person who is a legal successor and a third person;

2- to determine the degree of deprivation of the right of ownership or use, that is, if we are facing an infringement or a complete denial of the right of ownership;

3- to suggest the cessation of the actions that caused the infringement or denial and to aim at the return of the property to the state it was before the infringement or denial action was carried out;

4- to ascertain whether there has been any material damage as a result of the violation of the right of ownership, and if so, how much it is and how this damage will be liquidated;

5- to see the possibility of reaching an agreement to avoid repetition in the future.

The application of mediation in the resolution of disputes in the civil, family, criminal, water, etc. fields is a clear indicator of the effectiveness and success in the resolution of disputes, which it carries, thus becoming a very efficient and effective alternative. used for reaching a solution acceptable to both parties involved in disputes in different fields.

Conclusions

To conclude, as already mentioned, the rapid dynamics of economic development

and social changes in the contemporary world and in our country, in recent years, is characterized by an increase in the number of disputes and conflicts between individuals. In a general sense we can say that conflict is defined as a situation in which individuals do not agree, or have different needs, interests or values, which result in disagreement, mistrust and tension between them. In such situations, individuals often tend to think that the most common form of dispute resolution is through formal court proceedings. However, the judicial procedure is not the only means, and in some cases not even the most suitable means, for resolving disputes between different parties. People more and more are suing mediation as a helpful and fast tool to solve their problems.

However we need to stimulate the use of mediation in the legislation of different countries and this stimulation can be summarized in three main directions:

1. The obligation to inform individuals about mediation and about the benefits that this procedure brings in resolving disputes. The guidelines for mediation clearly emphasize the importance of the role of judges and lawyers in this regard.
2. Individuals can be motivated positively or negatively through monetary subsidies or sanctions. National legislators can guarantee the use of free or reduced-fee mediation for low-income individuals. Sanctions that the parties may face in connection with the refusal to mediate may take the form of fines or increased procedural costs. In some countries, in case of non-participation in the mediation proceedings, without reasonable cause, the judge can provide for the party that has refused payment to the state budget, an amount corresponding to the amount of court fees (eg Ireland, Slovenia, Lithuania , Poland, Turkey and Italy). (Europe, 2019)
3. Mandatory referral to the initial meeting with the mediator, as a condition to start the judicial procedure.

References

Alexander,Nadja; Barbieri, Gina Lee; Lorenz,Oliver; Mackie, Carl; Marsh,William; South, James. (2011). Alternative dispute resolution guidelines. *The World Bank Group*, 2.

Barkan, S. (2009). *Law and Society : An Introduction.*

Barrett, J. T., & Barrett, J. (n.d.). *A history of alternative dispute resolution.*

Benny Riyanto, H. T. (2022). The Repositioning Mediation Court Model in Civil Dispute. *IOP Conference Series: Earth and Environmental Science.*

Brown, S., Cervenak, C., & Fairman, D. (n.d.). *Study circle discussion guide on alternative dispute resolution.*

Bushati, E., & Spaho, E. (2013). Mediation: A concept that has to do not just with the justice system. *Academicus International Scientific Journal*, 54-55.

Commission, L. R. (2010). *Alternative dispute resolution: mediation and conciliation.*

Drejtesise, M. e. (2012). *Komentar i ligjit nr. 10835, datë 24.02.2011 "Për ndërmjetësimin Në zgjidhjen e mosmarrëveshjeve" .*

Justice, M. o. (2022, July). Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093682/mediation-consultation-web.pdf

Kanuni i Leke Dukagjinit. (n.d.).

London, I. C. (n.d.). Retrieved from https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/hr/public/policies/mediation/Mediation.pdf

Media, L. S. (n.d.). Retrieved from https://lawshelf.com/shortvideoscontentvieë/alternative-

dispute-resolution-mediation/
Nations, U. (2007). *Training Manual on Alternative Dispute Resolution and Restorative Justice.*
Rabin, R. J. (n.d.). Retrieved from https://www.akingump.com/a/ëeb/957/aogH4/914.pdf
Rolandas, T. (2002). Could mediation as one of the most important adr forms exist under today's law in lithuania. *International Journal on Baltic law*.
S, M. (2012). *E drejta e arbitrazhit dhe e ndërmjetësimit ndërkombëtar tregtar.*
Shamir, Y. (n.d.). *Alternative dispute resolution approaches and their application.*