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IVANE JAVAKHISHVILI TBILISI STATE UNIVERSITY
NATIONAL CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution

Yearbook, 2017

SPECIAL EDITION

Award-Winning Articles of the National Mediation Paper Competition

The special edition presents the award-winning articles of the National Mediation Paper Competition organized by Ivane Javakhishvili Tbilisi State University National Center for Alternative Dispute Resolution. The contest was held within the framework of Mediation Academic Enhancement Project implemented with the support of the European Union (EU) and the United Nations Development Programme (UNDP).

This publication has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its contents are the sole responsibility of Ivane Javakhishvili Tbilisi State University National Center for Alternative Dispute Resolution and do not necessarily reflect the views of the European Union and the United Nations Development Programme (UNDP).

TBILISI, 2018

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Mediation in Juvenile Justice

The present paper discusses implementation of mediation as alternative justice in juvenile justice, its preconditions, principle, legislative regulations and its gaps. Participants of mediation, their role and rights and obligations. Advantages and last statistics of mediation based on the example of Georgia.

Key Words: *juvenile, diversion, mediation, victim, best interest, conference of mediation, mediator, prosecutor, social worker, legal representatives, latent, prevention, resocialization, stigmatization, confidentiality, ethics of mediation, agreement.*

1. Introduction

The nature of the children is secret of secrets. The child is the human and more difficult it is to know it as it is written with allegory if this is true and not with broad and full letters, as the completed person. We shall not be surprised that what we find in the river, we see it in its source. The child is the source, beginning of the great person.

Ilia Chavchavadze

“Mediation exists as long as the organized society of humans exist.”¹ Disputes of private law were settled by the negotiations with the help of the neutral person. Mediation came from criminal law to private law. According to the recommendation to the EU Council, in criminal law, with traditional

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¹ *Austermiller S.M., Swenson D.R., Alternative Dispute Resolution: Georgia, Tbilisi, 2014, 124 (in Georgian).*

criminal law proceedings mediation is considered as additional or alternative tool oriented to solve the problem.²

There is no winning party in the mediation process. It is the alternative dispute resolution tool promising the parties to settle the dispute by negotiations. This capacity may be considered as one of the reasons that mediation is recognized as the best mean to settle the cases when the accused juvenile is the criminal.

Behavior of the juvenile³ conflicting with law represents violation of legal, cultural and social norms caused by the teenagers evaluating the events unreally. They take into account subjective, in the present case, requirements of freedom and independence more than objective reflection and evaluation of the reality.⁴

Reasons of behavior of the juveniles conflicting with law are various and multidimensional and obey to objective regulations of the specific historic period affecting dynamics, structure and main tendencies of development of criminality. Therefore, diversion and mediation are second opportunities for juveniles aiming to correct, “label” them, avoid forming as the criminal, fast reintegration into society.

Nowadays, restoration justice is one of actual themes in criminal law as the civilized world agrees that sentencing the person, especially if he/she is the juvenile, shall be replaced by the mean which will not be threat to the social security and will adjust to the condition of the accused.⁵ Hence, we think to discuss mediation in juvenile justice, its aims, principle, legislative requirements and how successful was mediation in practice on Georgian example.

² *Gvenetadze N., Kvachadze M., Tsiklauri-Lamikhi E., Gabunia M., Juvenile Justice – Diversion and Mediation, Tbilisi, 2012, 145 (in Georgian).*

³ *Kavtushvili E., Juvenile Conflicting with the Law in Psychological, Theological, Pedagogical and Legal Perspective, Journal “Justice and Law”, №4 (52), Tbilisi, 2016, 97 (in Georgian).*

⁴ *Ibid, 98.*

⁵ *Kutateladze M., Diversion Based on the Best Interest of the Juveniles According to Juvenile Justice Code, Journal “Justice and Law”, №4 (52), Tbilisi, 2016, 108 (in Georgian).*

2. Diversion as the Precondition of Mediation

Article 3(7) of the Juvenile Justice Code (hereinafter – JJC) explains diversion. It is the form of releasing from criminal liability, alternative mechanism for criminal prosecution aiming to support respective development of the juvenile and integration into society, avoid repeating the crime. Professionals working on this program toil to the main goal – return the perfect citizen to the society who will not commit the crime.⁶ According to the criminological view, theoretical grounds for diversion is normality, episodic nature and spreading to all societies of juvenile crime.⁷ For this reason, some authors interpret it as “normal behavior, typical for persons of that age.”⁸

The main goal of diversion is to correct the teenager, protect him/ her from the stigmatization of justice, solve the conflict fast and prevent inevitable process of forming him/her as a criminal in jail, less economic expenses, spending less resources (the opportunity for the prosecutors to spend time on more important cases).⁹

Diversion is used if there is a probable cause that the juvenile has committed less serious or serious crime. Before November of 2014, engaging the juvenile committing the crime in diversion and mediation program was possible only if less serious crime was committed. After November 11, 2014, the program included serious crimes as well.¹⁰ It should be also mentioned that there was a change in June 23, 2011 in the Order N216 of the Minister of Justice dated November 12, 2010 on “Approval of Manual Instructions for Prosecutors Regarding Diversion and Mediation and Main Terms of the

⁶ *Javakishvili L.*, Discussing Juvenile Diversion and Mediation Program, National Center for Alternative Dispute Resolution, Journal “Alternative Dispute Resolution – Annual”, TSU Publishing, Tbilisi, 2016, 180 (in Georgian).

⁷ *Shalikhshvili M.*, Juvenile Diversion and Criminal, Criminological and Psychological Aspects of Mediation, Tbilisi, 2013, 17 (in Georgian).

⁸ *Kherkheulidze I.*, Juvenile Crime and its Causing Reasons in Juvenile Justice System, Journal “Journal of Law”, №2, Tbilisi, 2012, 292 (in Georgian).

⁹ *Shalikhshvili M., Mikadze G.*, Juvenile Justice (Manual), 2nd ed., Tbilisi, Fribourg, Strasbourg, Tbilisi, 2016, 94 (in Georgian).

¹⁰ See, <<http://prevention.gov.ge/page/28/geo>>.

Agreement to be Executed between the Parties. According to the change, diversion and/or mediation was subordinated to crimes committed jointly by more than one person¹¹ which is good. However, law is debatable excluding use of diversion for previously convicted juveniles or juveniles who had previously participated in diversion-mediation.

Before the preliminary hearing, the prosecutor makes a decision regarding diversion. Diversion may be also used after beginning the court proceedings. The court is entitled to use diversion on its own initiative or return the case to the prosecutor based on the well-grounded motion. The prosecutor will offer the juvenile the diversion and in case of consent, will decide on diversions. Before making such decision, the court listens to the position of the other party. Mediator gets involved in the process as soon as the prosecutor decides on diversion which itself increases number of cases finished by mediation.

In case of deciding on diversion, the prosecutor is entitled to execute the diversion or diversion and mediation agreement with the juvenile. If refusing to the diversion of the juvenile, the interview report is made indicating the reasons for refusing the diversion. The report is signed by the prosecutor and the juvenile and/or his legal representative. However, the latter, including the advocate, is entitled to ask the diversion to the superior prosecutor.¹²

Diversion shall be reasonable and proportionate to the committed crime. During the diversion proceedings, it is prohibited to oblige the juvenile to take actions that would violate his dignity and honor, tear him/her away from normal education process and main work, damage his physical and/or mental health. Several diversion actions can be taken together towards the juvenile which shall be determined based on an individual assessment report created according to the legislation of Georgia. In it prohibited to use stricter diversion measure than minimum sanction determined under law.¹³

¹¹ *Shalikashvili M., Mikadze G., Juvenile Justice (Manual), 2nd ed., Tbilisi, Fribourg, Strasbourg, Tbilisi, 2016, 26 (in Georgian).*

¹² Article 39 of JJC.

¹³ Article 42 of JJC.

3. Mediation – Resolving Conflict by Agreement

Mediation represents the next part of diversion. In order to conduct the mediation process, it is necessary to have the consent of the victim and desire to participate in the mediation process. At the time of diversion, desire of the victim does not make any difference. Hence, we can say that diversion may be conducted without mediation and mediation, as the next step of the diversion, cannot be imagined without diversion.

In Georgia, mediation history of modern criminal law begins from 2010, from undertaking the program of juvenile diversion and mediation. Today, program of juvenile diversion and mediation relies on international experience and general principles of restoration justice.¹⁴

Mediation is the dialogue process between the juvenile conflicting with law and the victim (Article 3.9 of JJC), led by the mediator – “neutral person chosen by the parties”¹⁵ who aims to reconcile the juvenile and the victim including solving the conflict “outside the justice of criminal law”.¹⁶

Nowadays, in most countries (including: Canada, England, Finland and United States of America) before the case goes to court, juvenile criminals are entitled to meet their victim during the mediation. Together they discuss: what did the criminal do and why; how did the crime damage the victim; how can the criminal reimburse the damages.¹⁷

Mediation is divided in two stages: at the first preconference stage, mediator supports beginning the dialogue between the parties. At this stage, the mediator separately talks with the juvenile and victim regarding purpose, goals, rules of mediation and supposed terms of the agreement. The aim of

¹⁴ *Javakhishvili L.*, Discussing Juvenile Diversion and Mediation Program, National Center for Alternative Dispute Resolution, Journal “Alternative Dispute Resolution – Annual”, TSU Publishing, Tbilisi, 2016, 179 (in Georgian).

¹⁵ The New German Mediation Act – Paving The Way for Mediation As Established Standard in Dispute Resolution, 2012, <<http://www.shearman.com/~media/Files/Document-Manager-Files-from-BDS/MediationsG.pdf>>.

¹⁶ *Gabunia M., Beridze T.*, Criminological Aspects of Mediation, Journal “Justice and Law”, №1, Tbilisi, 2013, 64 (in Georgian).

¹⁷ *Chown P.L.*, Juvenile Justice, The Letric Law Library, <<https://www.lectlaw.com/files/cjs08.htm>>.

this stage is to guarantee voluntary and informed participation of the parties in mediation process and reach consensus regarding supposed terms of the agreement. After the preconference stage, mediator leading the conference appoints the meeting for the parties attended by the juvenile, his/her representative, victim, prosecutor and social worker as well. The goal of the conference is to realize the committed crime and its results by the criminal.¹⁸

It shall be also mentioned that, “institutionalization of mediation puts the agenda on the need to improve legal culture and awareness of the dispute resolution”.¹⁹ Unlike other countries, in Georgia there are no legislative regulations for ethical norms of mediators. This can be considered as the legislative gap of law. Especially ethical norms of mediators discussing the cases of juveniles. “The law in the first place shall secure creating solid guarantees for protecting rights of the juvenile.”²⁰ Hence, setting standards for ethics of mediator will solve the problem. Ethical norms will guarantee the link between procedural and social justice and also, it will be the guiding compass for the mediator in mediation process. Besides, the parties will be able to use protection mechanisms if the mediator violates ethical obligation.²¹

Persons of mediation are specific in juvenile justice. The interests of the child shall be taken into consideration and the victim shall feel the justice. The mediator shall create the comfortable environment, shall not address the parties severely and rudely, especially when it comes to the juvenile. The ideas and proposals of the mediator shall be didactic for the juvenile and shall create the friendly environment. The juvenile shall feel that by the way of the mediator, the state is talking to him/her and the state agrees to forgive the committed crime, settle and give the chance to correct.

¹⁸ *Chubinidze K.*, Diversion and Mediation Process of Juveniles, Materials of II Scientific Conference of Law Students, Publisher Ilia State University, Tbilisi, 2012, 60 (in Georgian).

¹⁹ *Chitashvili N.*, Originality of Certain Ethical Obligations of Advocate-Mediator and Necessity of Regulations, Journal “Law Journal”, №2, Tbilisi, 2016, 29 (in Georgian).

²⁰ *Shekiladze Kh.*, Essence of the Principle of Priority of Juvenile’s Best Interests, №2, Tbilisi, 2016, 267 (in Georgian).

²¹ *Chitashvili N.*, Originality of Certain Ethical Obligations of Advocate-Mediator and Necessity of Regulations, Journal “Law Journal”, №2, Tbilisi, 2016, 30-31 (in Georgian).

4. Participants of the Mediation Process

In mediation process, the main participants are juvenile, legal representative, victim, mediator. Protector or juvenile, prosecutor, social worker also attend the conference. Below we will explain each of them separately.

4.1 Mediator

Mediation conference is led by the mediator – neutral, independent, qualified, professional who, by using the appropriate method, tries to show the real (and not only legal) interests of the parties, to get them close and by this way to reach the outcome just, worthy and winning for both parties.”²² It shall be noted that mediator’s “definition and role in mediation process differs depending what type of mediation is used, what is the goal of mediation program or how is the local practice. For example, according to the Statute of Florida, mediator is the person helping the parties to underline their interests, jointly reaching the solution of the problem, gives the parties the alternative way of dispute resolution however, the mediator is not limited only to these functions”.²³

In the mediation process actions of the mediator are affected by many factors including personality, professional skills, education in mediation sphere, ideology, belief, ideas and point of views towards mediation process, responsibility of the mediator, rules and laws of professional regulation affecting on “mediation market”.²⁴

²² „Mediation Solve the Dispute by Agreeing“ page 13 (Brochure), <[http:// www.library.court.ge/upload/mediacia_triplet_flyer_9_2013.pdf](http://www.library.court.ge/upload/mediacia_triplet_flyer_9_2013.pdf)> (in Georgian).

²³ *Shalikashvili M., Mikadze G.*, Juvenile Justice (Manual), 2nd ed., Fribourg, Strasbourg, Tbilisi, 2016, 124 (in Georgian).

²⁴ *Tsertsvadze G., Arevidze M., Vasadze E., Tvaury R., Ivanidze G., Makhauri P., Zhizhiashvili T., Takashvili S., Khuchua T., Jibladze B.*, Legal Regulations Perspective of Mediation in Georgia, National Center for Alternative Dispute Resolution, Tbilisi, 2013, 124, <<http://ncadr.tsu.ge/admin/upload/7706Edited-Final-Version-final.pdf>> (in Georgian).

4.2 Claims Towards the Mediator

According to the Ministers Committee of the Council of Europe: mediators invited from all circles of the society, shall know well about local culture and society. Before executing mediator rights, the mediators attend the trainings aiming to give good knowledge regarding: skills to solve the conflict, specific requirements for working with the victims and criminals, main knowledge about criminal justice.²⁵

“During mediation, the mediator shall be: neutral and not partial (to any party); discoverer of the parties’ interests and not representatives of the interests (of any party); responsible for mediation process; creative and not pretentious; respective to the personality of the participants and not oriented on the result using all means, communicative and not uptight; patient and not impatient.”²⁶ “In addition, it is very important for the mediator to have the skill to create environment safe for the parties, encourage the parties, support expression of their ideas or position and have a direct dialogue.”²⁷

4.3 Mediator’s role in mediation process

The mediator’s main role is to by any means help the parties to reach the agreement.²⁸ Determining the comprehensive role of the mediator is very hard. It shall be determined on the case by case basis. Therefore, in mediation process mediator himself/herself defines his/her role.

Before mediation begins, mediators shall be informed about all the facts regarding the case and they shall be given the documents by respective bodies of criminal justice. Mediation shall be impartial and shall be based on

²⁵ Recommendation of Ministers Committee of the Council of Europe №R (99) towards 19 member states addressing mediation in criminal cases (adopted on September 15, 1999 by the Ministers Committee at the meeting №679 of the deputies of the ministers.

²⁶ *Shalikashvili M., Mikadze G., Juvenile Justice (Manual), 2nd ed., Tbilisi, Fribourg, Strasbourg, Tbilisi, 2016, 116 (in Georgian).*

²⁷ <<http://ganrideba.ge/?action=page&pid=46&lang=geo>>.

²⁸ Roles of the Mediator, Mediate.com – everything mediation, <[https:// www.mediate.com/divorce/pg31.cfm](https://www.mediate.com/divorce/pg31.cfm)>.

the facts of the case and needs and also desires of the parties. The mediator shall be attentive on the vulnerable factors of the parties. Mediation shall be effective but by the pace comfortable for the parties.²⁹

4.4 Prosecutor/Social Worker

According to the principle of legality, the prosecutor's office, authority for criminal prosecution decides whether or not the juvenile shall participate in mediation. While deciding on commencing/not commencing the criminal prosecution, the prosecutor considers the public interest.³⁰

After the prosecutor decides not to commence the criminal prosecution, with his/her chosen form and frequency pays attention to fulfillment of obligations of the agreement by the juvenile, on the daily basis familiarizes with the report of social worker/probation officer, in needed talks with the criminal and his/her parents (legal representative) regarding the progress and the problems. The prosecutor is entitled to check the fulfillment of the agreement himself/herself. In case of improper fulfilment of the agreement, the prosecutor abolishes or leaves in force the decision, changes the measure and/or continues the duration of the agreement. In case of abolishing the decision, the prosecutor is entitled to begin or renew the criminal prosecution of the juvenile.

After making the decision regarding diversion of the juvenile, the prosecutor contacts National Probation Agency - the legal entity of the public law of Ministry of Corrections of Georgia and gives them the case of the juvenile.³¹

With respect to the participation of social worker in diversion of juvenile and mediation process, it aims to learn individual need, skill and social environment of the juvenile which is the basis of collaborating diversion/diversion and terms of mediation agreement. The social worker works out the bio-psycho-social evaluation of juvenile, conclusion of the evaluation

²⁹ *Shalikhshvili M., Mikadze G., Juvenile Justice (Manual), 2nd ed., Fribourg, Strasbourg, Tbilisi, 2016, 116 (in Georgian).*

³⁰ *Shalikhshvili M., Juvenile Diversion and Criminal, Criminological and Psychological Aspects of Mediation, Tbilisi, 2013, 52 (in Georgian).*

³¹ See, <http://ganrideba.ge/?action=page&p_id=11&lang=geo>.

and recommendatory terms of the agreement indicating fulfilment of which terms will be positive and support correction of the juvenile. Based on the conclusion, prosecutor with social work and during mediation, with the mediator, defined the terms of the agreement. They consider the interest of the victim and act based on the best interests of the juvenile. Social worker helps the juvenile to socially integrate which shall significantly help to the prevention of repeated crime.³²

The prosecutor and the social worker are not obliged to participate in mediation conference. This is dependent on their will.

4.5 Victim

“Apologies are powerful. They resolve conflicts without violence, repair schisms between nations, allow governments to acknowledge the suffering of their citizens, and restore equilibrium to personal relationships”.

Deborah Tannen

In criminal law, the victim exercises limited rights, but is actively included in mediation process and is given the opportunity to consider his/her opinions excessively.³³

There is no crime without the victim. The victim may be a person, organization, society or state. The victim of the crime suffers economic loss, social, moral, physical and mental damage which are ignored by the state control bodies (court, police, prosecutor’s office, justice system) due to the resocialization of the criminal. They forget that the victim of the crime also requires to “return” to the society. Most of the victims claim to fully restore damages, to assure that there is no blame of his/hers in the crime and the criminal understands that the action was the mistake and condemned by the

³² See, <http://ganrideba.ge/?action=page&p_id=11&lang=geo>.

³³ *Tsertsvadze G., Arevidze M., Vasadze E., Tvauri R., Ivanidze G., Makhauri P., Zhizhiashvili T., Takashvili S., Khuchua T., Jibladze B.*, Legal Regulations Perspective of Mediation in Georgia, National Center for Alternative Dispute Resolution, Tbilisi, 2013, 109, <<http://ncadr.tsu.ge/admin/upload/7706Edited-Final-Version-final.pdf>> (in Georgian).

society.³⁴ All this is guaranteed by mediation process, by commencing dialogue between the parties.

5. Juvenile/Legal Representative/Advocate

For the purposes of criminal liability, the juvenile is the person who has attained the age of 14 years by the date of committing the crime but has not attained the age of 18.³⁵ The juvenile conflicting with law is the person who has supposedly violated criminal legislation, is imputed of such violation or is the criminal of the violation. Considering the sentenced, accused, probationary and diverse juvenile.³⁶

Participation of the juvenile in mediation process in the main factor. Didactic/pedagogical conference aims to correct the juvenile without a criminal case. It gives the opportunity to the participants of mediation to think about their actions, the criminal to understand the burden of his/her actions. Mediation guarantees the chance to take the decision for the participants expressed in taking the responsibility to re-socialize the victim and the criminal, to teach the criminal juvenile to have mutual relationship with other persons and to respect the norms recognized in the society.³⁷

The legal representative is the close relative, a supporter, guardian, care giver who participates in a criminal proceeding in order to protect the interests of the juvenile and exercise the rights of the juvenile besides the right that itself shall be used by the juvenile due to their nature.³⁸ The close relative may be the parent, adoptive parent, child, adoptee, grandfather, grandmother, sister, brother, spouse (including the divorced spouse).³⁹

³⁴ *Shalikashvili M.*, *Victimology – Science about Victim of the Crime*, Tbilisi, 2011, 14 (in Georgian).

³⁵ Article 3.1 of JJC.

³⁶ Standards for suppliers of psycho-social rehabilitation services working with teenagers having conflict with law or having deviant behavior.

³⁷ *Shalikashvili M.*, *Juvenile Diversion and Criminal, Criminological and Psychological Aspects of Mediation*, Tbilisi, 2013, 110 (in Georgian).

³⁸ Article 3.11 of JJC.

³⁹ *Ibid*, Article 3.19.

Participation of the legal representative in mediation conference constituted the psychological support to the juvenile, therefore such participation is mandatory. However, it is a question, what happens when the juvenile does not have the legal representative, or his/her residence is unknown. The law leaves open the matter who shall attend the mediation in such circumstances.

One of the participants of mediation shall be exceptionally noted – the advocate. As the professor Moris Shalikashvili states, as in mediation the mediator is the guarantee to reach useful and acceptable agreement for both parties, participation of the advocate is not mandatory especially if the protector tries to dictate the opinion to the client in order to justify the fee.⁴⁰

6. Mediation Principles in Juvenile Justice

Mediation in juvenile justice is executed based on the following principles: maximum assistance to use of alternative mechanisms, voluntariness, proportionality, confidentiality, inadmissibility of stigmatization, considering best interests of the juvenile⁴¹, direct participation of the parties.⁴² According to the functional assignment, the principle may be divided in two groups: 1. Principles typical for originalities of mediation execution bodies and status of the participants (organizational principles); 2. Principles typical for mediation execution rule (procedural principles). The first group contains principles of voluntariness and neutrality, the second group contains principles of confidentiality, independence, collaboration and equality of the parties.⁴³

Participation in mediation process is a voluntary decision. The parties may at any stage refuse to participation in diversion/mediation process.

⁴⁰ *Shalikashvili M.*, Juvenile Diversion and Criminal, Criminological and Psychological Aspects of Mediation, Tbilisi, 2013, 59 (in Georgian).

⁴¹ *Javakishvili L.*, Discussing Juvenile Diversion and Mediation Program, National Center for Alternative Dispute Resolution, Journal “Alternative Dispute Resolution – Annual”, TSU Publishing, Tbilisi, 2016, 182 (in Georgian).

⁴² *Westerfield R.*, When is the right timing for a mediation, Resolution Disputes Worldwide, 2013, 1, <<https://www.jamsadr.com/files/uploads/documents/articles/westerfield-timing-mediation-abtl-2013.pdf>>.

⁴³ *Kokhreidze L.*, *Legal Aspects of Court Mediation*, Journal “Justice and Law”, №4, Tbilisi, 2013, 21 (in Georgian).

Reaching the goals set by the program would be impossible without voluntariness. It is very important to have realized consent of the victim for participation in mediation process. Because of this it was necessary to increase the role and involvement of the mediation in diversion and mediation program. Nowadays, based on the practice, we can say that while working the mediators spend much time and energy on the victims in order to understand their role and function.

According to the principle of proportionality, obligations set to the juvenile shall be proportionate to the actions committed. The abovementioned principle guarantees that the juvenile will not be imposed the stricter measure than the sentence.⁴⁴

Confidentiality is one of the main and important principle of mediation due to the fact that “itself justice requires protection of confidentiality”.⁴⁵ Obligation of the mediator to be silent with respect to mediation derives from the agreement between the parties and the mediator.⁴⁶ Mediator may not be witnessed about the case where he/she was mediating.⁴⁷ Confidentiality is on the grounds not to stigmatize the juvenile. Exactly principles of protection of confidentiality and inadmissibility of the stigmatization are main and fundamental principles protecting the juvenile and give such big importance to the program of juvenile diversion and mediation.

Unlike criminal law, norms of juvenile justice consider “best interests of the juvenile”.⁴⁸ The best interest of the child in criminal justice shall be interpreted as the right to: be protected, have feeling of safety and welfare; protect the rights to health, education and development; the main point is the

⁴⁴ Order №29 of February 22, 2011 of the Minister of Corrections and Legal Support of Georgia “On Approval of the Role and Activities Rules of the Social Worker while Preparing-Fulfilling the Agreements regarding Diversion and/or Diversion and Mediation” Article 2.

⁴⁵ *Tvauri T.*, Standard of Binding Confidentiality Principle in Mediation Process, National Center for Alternative Dispute Resolution, Journal “Alternative Dispute Resolution – Annual”, TSU Publishing, Tbilisi, 2015, 27 (in Georgian).

⁴⁶ *Tsertsvadze G.*, Mediation Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 35 (in Georgian).

⁴⁷ See, <http://www.library.court.ge/upload/mediacia_triplet_flyer_9_2013.pdf>.

⁴⁸ See, <<http://legalmatch.typepad.com/criminallaw/2014/11/can-alternative-dispute-resolution-fix-the-juvenile-justice-system.html>>.

realization-rehabilitation of the child and his/her return to the society as the member.⁴⁹ “While deciding the best interests of the child, the decision maker shall consider his/her personality, wills, situation, family condition”.⁵⁰ The definition does not give the complete and exhaustive definition. Therefore, it leaves the decision maker that broad discretion to define best interests of the juvenile case by case.⁵¹

7. Result of Mediation Process – Agreement Between the Parties

“Successful mediation shall be executed in the form of the agreement. Such agreement is a usual contract.”⁵² After executing the agreement, fulfilling terms of the agreement by the juvenile is supervised by the social worker. In case of violation of the terms of the agreement, the social worker returns the case to the prosecutor. The prosecutor is entitled to begin for the second time the criminal prosecution of the juvenile.⁵³

The agreement on diversion and mediation aims to diverse the person from criminal liability and impose obligations to fulfill terms of the agreement. The agreement also reflects terms of dialogue and settlement between the diverse and the victim. Mediator in detail introduces the terms of the agreement to the participants of mediation conference and makes sure that every term is clear and acceptable for all participants. After this the participants make comments and examination, if necessary, the parties may make changes in the agreement. Such changes shall be consented by every participant, prosecutor and the social worker. After reaching the consensus, the mediator finishes working on the text of the agreement on diversion and

⁴⁹ *Tvauri T.*, Standard of Binding Continentality Principle in Mediation Process, National Center for Alternative Dispute Resolution, Journal “Alternative Dispute Resolution – Annual”, TSU Publishing, Tbilisi, 2015, 29 (in Georgian).

⁵⁰ *Vardzelashvili I.*, Priority of Juvenile’s Best Interests as the Importance of the Importance Principle of Juvenile Justice Code in Court Practice, Journal “Actual Issues of Criminal Law”, №1, Tbilisi, 2017, 73 (in Georgian).

⁵¹ *Shekiladze Kh.*, Essence of the Principle of Priority of Juvenile’s Best Interests, №2, Tbilisi, 2016, 284 (in Georgian).

⁵² *Tsertsvadze G.*, Mediation Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 200 (in Georgian).

⁵³ <http://ganrideba.ge/?action=page&p_id=1061&lang=geo>.

mediator. The agreement enshrines the results of the conference. The mediator distributes the project of the agreement and gives time to the parties to see the text of the agreement. The participants are entitled to ask questions and get explanations. The conference is closed by signing the agreement.⁵⁴

To see what obligations may be imposed on the juvenile, we would like to present the agreement on diversion and mediation executed in 2017. 15 years old juvenile committed the crime according to Article 178(1) of Georgian Criminal Code. The juvenile apparently secretly for its unlawful appropriation took another person's purse with the ID, plastic cards and 120 GEL within. With the mentioned agreement the person was obliged to: be included in psycho-rehabilitation program of non-governmental organization in order to prevent antisocial actions (8-10 sessions); be included in recreative, sportive and cultural activities organized by the non-governmental organization; attend individual sessions with probation social worker on "vital values" (7 session); attend individual sessions with probation social worker on "planning the future" (7 session); with the help of social worker of National Probation Agency get acquainted with Georgian legislation regarding the crime he/she has committed; help to arrange the duties of the organization's personnel established under the agreement (1 day in a week); according to Article 45(1-c) of JJC not to leave the house during 23:00-07:00.

According to these conditions, we think that this agreement guarantees resocialization of the juvenile (once a week helping the personnel serves supporting relationship with the society, acquiring new friends) and also obligation of the juvenile to attend the sessions has pedagogic (didactic) character. With respect to not leaving the home, it serves the preventive goal as other measures determined under this agreement. And engaging in cultural and sportive activities, in our opinion, guarantees release of the juvenile from "criminal energy" and having new interests.⁵⁵

⁵⁴ Order №384/ს of November 3, 2016 of the director of LEPL Crime Prevention Center of Ministry of Justice of Georgia on approval of action rules of mediators participating in diversion and mediation process and working documentation, Article 10.

⁵⁵ Agreement regarding diversion and mediation №684 requested from LEPL Crime Prevention Center of Ministry of Justice of Georgia.

Statistics

The legislator made an important decision regarding including mediation in juvenile justice law. However, in addition to legislative requirements, it is important how successful is mediation in practice. This can be ascertained by the statistics below.⁵⁶

Indicator of mediation finished successfully according to the number of diverse persons. (Cases where was precondition of mediation)

	6 months of 2014	6 months of 2015	6 months of 2016	6 months of 2017
Successfully finished	16% (13 conferences of mediation)	59% (71 conferences of mediation)	42% (105 conferences of mediation)	37% (143 conferences of mediation)

Statistics related to the index of mediation in 2017 (6 months)

Reason	Quantity	Percentage
No victim	22	7%
Mediator refused to mediate	115	36%
Victim refused to mediate	183	56%
Other	4	1%
Total	500	

Mediation statistics (Statistics of 2014-2017)

	6 months of 2014	6 months of 2015	6 months of 2016	6 months of 2017
Juveniles under age 21 in diversion and mediation programs	113 cases	146 cases	320 cases	500 cases
Where the preconditions of mediation existed	107 cases	146 cases	302 cases	474 cases
Mediation was held	17 cases	86 cases	128 cases	176 cases
Percentage	16%	59%	42%	37%

⁵⁶ Full: Report of Diversion Programs (Diversion/Diversion and Mediation Program) of 2017 6 months (January-June) see, <http://ganrideba.ge/res/files/52/Report_2017_%20month_Diversion%20and%20Mediation.pdf>.

Victim statistics

	Diverse persons from age 14 to 18	Diverse persons from age 18 to 21	Diverse persons from age 14 to 21
Natural person	136	134	270
Legal entity	107	101	208
Without victim	10	12	22

Statistics of the district prosecutor's offices of 2017⁵⁷

Name of the prosecutor's office	Quantity
District prosecutor's office of west Georgia	8
Prosecutor's office of Autonomous Republic of Adjara	1
District prosecutor's office of Samtskhe-Javakheti	0
District prosecutor's office of Kvemo Kartli	2
District prosecutor's office of Tbilisi	21
District prosecutor's office of Shida Kartli and Mtskheta Mtianeti	4
District prosecutor's office of Kakheti	1
District prosecutor's office of Samegrelo-Zemo Svaneti	3
Main prosecutor's office in Tbilisi	16

8. Conclusion

As the conclusion we may say that mediation as alternative dispute settlement mechanism is the best mean to fight with juvenile crimes. It guarantees not only best interests of the juvenile but inclusion of the victim and protection of his/her rights. Mediation has didactic, pedagogical character.

It is welcomed that number of successful mediations have been raising during the years. This outlines the advantage of mediation, especially when nowadays the courts are overloaded with cases.

However, even though mediation has advantages, several problematic issues exist in the legislation. As mentioned above, the legislation does not refer to the issue regarding the legal representatives when the juvenile does not have legal representatives or his/her location is unknown.

Also, one important issue is non-existence of ethical norms of the mediator which is much important to conduct mediation in juvenile justice in

⁵⁷ Full data of regional prosecutor's office see at <[http:// ganrideba. ge/ res/files/ 52/Report_2017_%20month_Diversion%20and%20Mediation.pdf](http://ganrideba.ge/res/files/52/Report_2017_%20month_Diversion%20and%20Mediation.pdf)>.

order to perfectly protect both parties' interests, claims and justify their expectations.

In addition, we agree with the consideration existing in legal science. We think that having previous conviction, previous diversion/ participation in mediation program shall not be the hindering circumstance for including the juvenile in mediation. Mediation shall not be only one chance given to the juvenile.

Lastly, we can say that despite the successful conferences, mediation in juvenile justice needs improvement and development as it is one of the most important goals for the country to protect interests and rights of the juvenile.

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