

IVANE JAVAKHISHVILI TBILISI STATE UNIVERSITY
NATIONAL CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution

Yearbook

2020-2021

ივანე ჯავახიშვილის სახელობის თბილისის სახელმწიფო უნივერსიტეტი

დავის ალტერნატიული გადაწყვეტის ეროვნული ცენტრი

დავის ალტერნატიული გადაწყვეტა

წელწიწი

2020-2021



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P-ISSN 1987-9199
E-ISSN: 2720-7854

Significance of Mediation in Loan-Related Disputes Against Microfinance Organizations in the Post-Pandemic Period in Georgia

The article aims at determination of effectiveness of the mediation tool in dealing with loan-related disputes against microfinance organizations in the post-pandemic situation caused by COVID-19. The procedural opportunity of applying the mediation can be considered as a means of recovery and rehabilitation of the legal and material situation of the parties involved in a similar type of dispute and affected by pandemic.

The article provides a general overview of mediation as of an alternative means of dispute resolution and the important legislative innovations for its introduction and development in Georgia. The study also focuses on analytical reasoning about the benefits of mediation over other means of dispute resolution in terms of pandemic and post-pandemic situations. The paper also presents the legal status of Georgian microfinance organizations to further assess the status of a party to the mediation process and examines effectiveness of mediation in loan-related disputes against microfinance organizations in post-pandemic conditions.

The study will facilitate the resolution of loan-related disputes through mediation to be recognized as an effective way to improve the difficult situation of the parties affected by pandemic and as an efficient means for the timely exercise of rights.

Keywords: *Lender, Remotely Carried out Mediation, Overdue, Mediation, Mediator, Microfinance Organization, Borrower, Settlement, Pandemic, Post-Pandemic Period, Loan-related Disputes, Loan.*

***“Peace is not the absence of conflict,
but the ability to cope with it.”***
Mahatma Gandhi

1. Introduction

In today's reality it is hard to imagine human relationships without conflict and dispute. The more people involved in a relationship, the higher the likelihood of forming the opposite opinion. Gap of opinion, emotional state of the parties, different values, needs and interests are exactly the factors that may lead people to disagreement.

Negotiations between the parties to a conflict are a process of combining different and mutually opposed positions, starting with a way of communication and ending with a common decision.¹

Classically, conflicts escalate into disputes, with most disputes eventually ending up in court, which is directly proportional to the overload of the court. The destructive effect of disputes is also growing in this regard. In particular, disputes that are not resolved effectively in

* Visiting Lecturer at Tbilisi Open University and European University, PhD Candidate at New Vision University.

¹ Zartman W., *Negotiation and Conflict Management, Essays on Theory and Practice*, Routledge, London, New York, 2008, 7.

time may further become a significant impediment to the democratic and economic progress of states.²

Today, court proceedings and litigation usually take several years. Court expenses and other related costs are also added to time-delayed cases. Sometimes the dispute resolution period is so long that it is possible for the parties to lose their primary legal interest in the dispute. It is in resolving such conflicts that mediation is most beneficial and effective for the parties.

Mediation is an alternative means of dispute resolution, during which the parties have the opportunity to resolve their dispute or conflict through reaching on mutual agreement with the help of a mediator.³ By choosing mediation, the parties avoid not only time-consuming formal court proceedings, but also save time, costs, and as a result obtain a flexible, tailored process, that is controlled by them.⁴

2. Fundamental Characterization of the Alternative Means of Dispute Resolution – Mediation and the Stages of Institutionalization

Mediation is an alternative method of resolving disputes developed from the concept of persistent principles of problem solving and negotiation⁵. The mediation process is voluntary, during which an independent and impartial person – a mediator helps the parties to resolve their disagreement and settle the dispute amicably.

Mediation is an informal process, not bound by strict procedures and giving the parties a real opportunity to refer to their own interests and needs. It is through the existing procedural-essential control that the parties manage to make a mutually desirable decision. The informality of mediation is in some cases more acceptable to the disputing parties than their inclusion in the legal framework and formal processes.⁶

Even a conflict come to a deadlock may become negotiable if, with the help of a mediator, the parties are able to listen to each other and understand real mutual needs. With a full understanding of the other party's position and taking into account the emotions behind him/her or the vital necessities, the parties can understand each other's situation and, without compromising any substantial interest, find a reasonable solution that satisfies mutual interests.⁷ It is the mediator who can identify the real needs and interests of the parties through his/her involvement, which becomes a precondition for settlement.

During mediation, the course and process of the dispute is controlled by the parties themselves, while in litigation, the parties lose control of the case and the process is slowed down. Added to this is the additional risk that the outcome of a legal settlement of the dispute may be undesirable for at least one or both parties. Disputes ended through mediation are

² *Tkemaladze S.*, *Mediation in Georgia from Tradition to Contemporaneousness*, Tbilisi, 2016, 7 (in Georgian).

³ *Commercial Mediation in the UAE and the Laws Concerning Mediation UAE.*, 2019, <<https://heino-nline.org/HOL/LandingPage?handle=hein.journals/counco6&div=24&id=&page=>> [03.09.2021].

⁴ *Ibid.*

⁵ *Folberg J., Golan D., Tsuladze A. (Ed.)*, *Negotiation: Theory, Practice and Law*, Tbilisi, 2018, 284.

⁶ *Tsuladze A.*, *Comparative Analysis of Georgian Judicial Mediation*, Tbilisi, 2017, 25 (in Georgian).

⁷ *Coleman P. T., Deutsch M., Marcus E. C. (eds.)*, *Conflict Resolution (Theory and Practice)*, 3rd ed., Jossey-Bass, New-York, 2014, 25.

acceptable to all parties involved, as their voluntary agreement preconditions the full acceptance against settlement.⁸

A mediator is a person with special knowledge and skills who manages the negotiation process between the parties through recognized methods for conducting mediation and helps the parties to find the best way to reach an agreement with each other and resolve the current dispute.⁹

Regarding the scope of the mediator's action, it is important to note that the mediator does not make any decisions and does not offer certain conditions or solutions to the parties, but rather facilitates consistent and active negotiations between the parties themselves leading them to a common, acceptable decision.¹⁰

The mediation pilot project was introduced in Georgia in 2012, and it was from this period that mediation proceedings were conducted at the Mediation Center of the Tbilisi City Court on civil cases transferred to the Center by the Court.¹¹ Furthermore, in addition to the Tbilisi Mediation Center, judicial mediation centers still function successfully in Rustavi, Mtskheta and Gori.

The past 2 (two) years were especially fruitful in development of mediation as a sector, because in 2019 the Law of Georgia “on Mediation” was adopted, which came into force on 1 January 2020.

Subparagraph “a” of Article 2 of the abovementioned law provides a legal definition of mediation: Mediation – the process, however named or referred to, whereby two or more parties to a dispute attempt to reach an agreement on the settlement of their dispute with the assistance of a mediator, regardless of whether the process is initiated by the parties or on the grounds and according to the procedure determined by law.¹² Also noteworthy is the legal definition of a mediator in Subparagraph “e” of Article 2: Mediator – a natural person registered with the Unified Register of Mediators who meets the requirements of this Law and agrees to conduct mediation, regardless of his/her status and selection/appointment procedure.¹³

The legal definition of a mediator refers to the "Unified Register of Mediators", which requires more specifics. In particular, in terms of innovations in the development of the mediation sector, it is important to note that on 29 November 2019, before the entry into force of the Law “on Mediation”, a Unified Register of Mediators was established based on №1/300 Resolution of the High Council of Justice of Georgia and 55 mediators were registered therein. This can be compared to the so-called accreditation or granting special powers to a mediator, which establishes the legal basis that a mediation case conducted by a mediator registered in the Unified Register, if ended with an agreement, with the consent of the parties, shall be

⁸ Dispute Resolution and Mediation During the Covid-19 Disruption - Maritime and Transport Law Committee, July 2020, <<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=CEB54377-412E-40F2-8328-533902295BD8>> [3.09.2021].

⁹ *Kandashvili I.*, Mediation - an Effective Alternative Means of Dispute Resolution, Tbilisi, 2019, 137 (in Georgian).

¹⁰ The Role of the Mediator – WMO, December 2018, <<https://worldmediation.org/role-of-mediator/>> [3.09.2021].

¹¹ Explanatory card on the Draft Law of Georgia “on Mediation”, <<https://info.parliament.ge/file/1/BillReviewContent/216089>> [3.09.2021].

¹² Law of Georgia “on Mediation”, GLH, 18/09/2019, Subparagraph “a” of Article 2.

¹³ Ibid, Subparagraph “e”.

enforced in accordance with the rules established by the Civil Procedure Code of Georgia, regardless of whether the process took place within the framework of private mediation or judicial mediation.¹⁴

In terms of innovations, it is also noteworthy that in order to regulate the activities of mediators and universal access to mediation, LEPL “Mediators Association of Georgia” was established on 14 December 2019 and its chairman and members of the Executive Board were elected.¹⁵

3. Advantages of Mediation in Pandemic and Post-Pandemic Conditions

The announcement of the new coronavirus COVID-19 as a pandemic by the World Health Organization on 11 March 2020 has caused an actual paralysis of the world.

The global challenge of contemporaneousness has put the study of the advantages of mediation on the order of the day. This issue is especially relevant from the moment when the world began to struggle with the global problems caused by the difficulties of the pandemic. However, with epidemiological conditions still in their infancy, it is difficult to predict how far COVID-19-caused disputes may reach.¹⁶

With the increase of commercial disputes, businesses are increasingly exploring the legal situation and considering what measures they can take to protect their rights/interests. Given the delays associated with the courts, disputes are often not the best solution for the parties.¹⁷ Under the influence of the negative consequences of COVID-19, the parties found themselves in already existing and expected disputes, regardless of their wishes and intentions. In such a case, the probability of reaching an agreement is much higher, as both parties are unintentional, innocent victims of the circumstances.

In pandemic and post-pandemic conditions, mediation is the best solution and effective process to avoid the overlong litigation, court costs and additional stress. The goal of the parties involved in the process is to achieve the desired result.¹⁸

Mediation has a number of advantages, in particular:

Less time and flexibility – Mediation is a faster and more flexible process compared to litigation. In terms of time, disagreements between the parties can be resolved in a shorter period of time than would be resolved during the court hearing. Mediation is also flexible to the extent that if the parties decide to use mediation during the court proceedings, the court proceedings will be suspended until the mediation is completed. In case of failure to settle the dispute, it is allowed to resume the dispute in court,¹⁹ therefore the process will be resumed from the stage exactly at which it was suspended. Regarding the term, it is also important to

¹⁴ Civil Procedure Code of Georgia, Parliamentary Gazette 47-48, 14/11/1997, Chapter XLIV¹³ – Enforcement of Mediation Settlement.

¹⁵ Information on LEPL “Mediators Association of Georgia” - “Mediators Association of Georgia”, <<https://mediators.ge/ka/association>> [3.09.2021].

¹⁶ Mediation Law During Covid-19 - CEDR, 2020, <<https://www.cedr.com/mediation-law-during-the-covid-19-pandemic/>> [3.09.2021].

¹⁷ Dispute Resolution and Mediation during the Covid-19 Disruption - Maritime and Transport Law Committee, July 2020, <<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=CEB54377-412E-40F2-8328-533902295BD8>> [3.09.2021].

¹⁸ *Folberg J., Golan D., Tsuladze A., (Ed.), Negotiation: Theory, Practice and Law*, Tbilisi, 2018, 284, (in Georgian)

¹⁹ Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 14/11/1997, Article 187⁷, Section 2.

note that according to the effective legislation of Georgia, the term of judicial mediation is 45 days, which can be extended by agreement of the parties, while in private mediation the term is fully agreed upon by the parties, although in both cases mediation saves more time than court proceedings.²⁰

Controlled process – the parties have full control over the agreement to be reached, as they negotiate directly and can agree on specific commercial decisions or outcomes under agreed terms. This, unfortunately, will not be achieved in the event of a dispute examination through the courts.²¹

Maintenance of business relations – Forms of dispute resolution can also be assessed in terms of maintaining relationship between the parties. In some cases, it is very important for the parties to resolve the conflict in such a way that it is possible to continue the relationship in the future.²² Mediation helps the parties to focus on communication, which in many cases ensures the maintenance of existing business relationships. This stems from the main purpose of mediation as of an alternative means of dispute resolution, which is manifested in maintaining normal relations for the parties²³

Confidentiality – The mediation process is completely confidential,²⁴ while in the case of a court, the hearings are held in public. Disclosure of the essence of the dispute may even lead to undesirable consequences for the parties. Mediation will ensure confidentiality, maintain a reputation and the long-term nature of the relationship.

Less expenses – Mediation expenses are much lower than those for resolving a case through the courts. It should also be noted that during judicial mediation, in case of completion of the dispute by agreement of the parties, the plaintiff will be reimbursed 70% of the state duty paid by him/her.²⁵ As for private mediation, in this case the remuneration of the mediator's activities is determined by the terms agreed between the parties and the mediator²⁶, which is also much less than the costs incurred by the parties for court proceedings.²⁷

Taking into account all the above-mentioned, a cost advantage of mediation is when the result is achieved by the parties themselves with the help and involvement of a mediator. At this time, it is impossible to attain a result that will not reflect the interests of the parties.

Although one of the mediator's roles in mediation before the pandemic reality was manifested in direct and physical involvement, the pandemic opened up new possibilities for remote mediation.²⁸

²⁰ The Benefits of Mediation and Mediating during Covid-19 lockdown, Furley Page, May 2020, <<https://www.furleypage.co.uk/insights/law-updates/the-benefits-of-mediation-and-mediating-during-covid-19-lockdown/>> [3.09.2021].

²¹ Ibid.

²² *Ostermiller M. S., Svensson R. D.*, Alternative Means of Dispute Resolution in Georgia, Tbilisi, 2014, 279 (in Georgian).

²³ *Kandashvili I.*, Mediation - an Effective Alternative Means of Dispute Resolution, Tbilisi, 2019, 34 (in Georgian).

²⁴ *Tsertsvadze G.*, Mediation, Tbilisi, 2010, 35 (in Georgian).

²⁵ Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 14/11/1997, Section 2¹ of Article 49.

²⁶ Law of Georgia "on Mediation", GLH, 18/09/2019, Paragraph 1 of Article 11.

²⁷ The Benefits of Mediation and Mediating during Covid-19 lockdown, Furley Page, May 2020, <<https://www.furleypage.co.uk/insights/law-updates/the-benefits-of-mediation-and-mediating-during-covid-19-lockdown/>> [3.09.2021].

²⁸ Ibid.

It is hard to deny that technology is causing great transformations in human relationships.²⁹ The use of technology for communication is now a common occurrence that we actively use in both personal and professional life.³⁰

Online mediation occupied a special place among dispute resolution tools. Dispute resolution in this form was created by understanding that virtual relationships of a commercial nature created conflict of a different nature than those created in face-to-face relationships.³¹ Even before the social distancing and similar restrictions imposed by COVID-19 pandemic, the demand for the use of information and communication technology tools outside of e-commerce was growing in various dispute resolution modes, including through mediation. However, it should be noted that such a practice of conducting mediation developed with the gradual and general introduction of technology integration into traditional mediation practice.³²

Remotely conducted mediation also has a number of advantages. In particular, there is no need to postpone mediation until the restrictions are lifted. During mediation, the negotiation process and the opportunity to make decisions are provided, regardless of whether the parties will be in their own home, office or other space. This form of mediation allows the parties, including the mediator, to be in a comfortable and free environment for them and to manage the dispute resolution process. Mediation conducted using a remote platform can also save time and money. For example, the time and expense of travelling to attend a mediation session.³³

Nothing changes in the format of the online mediation process, as both public and private meetings can be held individually with each party. It is also technically possible to use a break and all the procedural means that would be possible during the physical conduct of mediation.³⁴

Online mediation on disputes with highly opposing parties may be a good solution to regulate conflict relationships regardless of a pandemic. Online channels now allow the mediator to manage the process technologically so as to be able to separate the parties in the so-called "online individual rooms". This method also additionally ensures the confidentiality of both the process itself and the communication between the parties.³⁵

When talking about the challenges and benefits of conducting mediation using a remote platform, it is impossible not to mention the effective step timely taken by the Georgian authorities to support the institution of mediation under COVID-19 conditions, in particular: Mediation (remote) was defined as an allowable economic activity in Annex 2 on making amendment to the Resolution № 181 of the Government of Georgia dated 23 March 2020 of Resolution № 211 of the Government of Georgia dated 1 April 2020 "On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the New Coronavirus (COVID-19) in Georgia". This did not hinder the mediation process that started before the

²⁹ *Rule C.*, Online Dispute Resolution and the Future of Justice, San Jose, California, 2020, 1.

³⁰ *Ibid.*

³¹ *Ebner N., Rainey D.*, Online Dispute Resolution and Mediation, Hague, 2020, 2.

³² *Ibid.*

³³ The Benefits of Mediation and Mediating during Covid-19 lockdown, Furley Page, May 2020, <<https://www.furleypage.co.uk/insights/law-updates/the-benefits-of-mediation-and-mediating-during-covid-19-lockdown/>> [3.09.2021].

³⁴ *Ibid.*

³⁵ *Ibid.*

pandemic, on the contrary, several mediation agreements have already been reached remotely on similar disputes during the pandemic.³⁶

4. Legal Status of Microfinance Organizations

In developing countries, a large share of the workforce is either self-employed or employed in small and medium-sized businesses. Low-income, self-employed or informally employed people have limited access to unemployment insurance or health insurance. Such individuals were particularly vulnerable to the factors caused by COVID-19. Microfinance institutions play an important role in supporting poor and low-income households and micro-enterprises.³⁷

Today, 40 microfinance organizations³⁸ are registered in Georgia, the registration of which, according to the effective legislation, is carried out by the National Bank of Georgia. Microfinance organizations in Georgia operate in the legal form of a limited liability company or a joint stock company and carry out the activities prescribed for by the laws and are controlled by the National Bank of Georgia.³⁹ It should also be noted that only microfinance organizations are required to include the term "microfinance organization" or the word "MFO" in their legal name.⁴⁰

A microfinance organization differs from other types of financial institutions, including a commercial bank, and the main distinguishing factor is the amount of registration capital. In particular, if the minimum amount of the paid capital for registration as a microfinance organization should not be less than GEL 1,000,000 (one million) to be replenished in cash, in the case of commercial banks the capital is much higher, and the minimum amount is GEL 12,000,000.⁴¹

The activities of microfinance organizations are also different, the list of which is defined by Article 4 of the Law of Georgia "on Microfinance Organizations". In particular, this activity is to issue micro loans, including consumer, pawn, mortgage, unsecured, group or other loans to legal and natural entities, and issue credit payment cards for such purpose.

Although the abovementioned law stipulates a narrow circle of activities for these types of organizations, at the same time, Article 5 additionally stipulates the maximum amount of the loans to be issued. In particular, the amount of the loan issued to a single borrower should not exceed GEL 100,000 (one hundred thousand). The word "micro-credit" itself, which derives from the provision of Article 5 of the law, is significant. Micro – is a relatively small amount of loans, which is not found in the form of a similar restriction on the loans issued by commercial banks.

In order to develop and support Georgian microfinance organizations, a membership-based non-profit (non-commercial) legal entity – N(N)LE "Microfinance Association" was esta-

³⁶ Mediation - When a dispute turns into an agreement, Tbilisi City Court, September, 2020, <<https://tcc-court.ge/ka/News/mediacia---roca-dava-sheTanxmebad-iqceva>> [3.09.2021].

³⁷ The Impact of COVID-19 on the Efficiency of Microfinance Institutions – NCBI, 2020, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7521446/>> [3.09.2021].

³⁸ Non-bank Institutions Registered in Georgia - the National Bank of Georgia, <<https://www.nbg.gov.ge/index.php?m=529>> [3.09.2021].

³⁹ Law of Georgia "on Microfinance Organizations", GLH, 30, 18/07/2006, Section 1 of Article 3.

⁴⁰ Ibid, Section 3.

⁴¹ №61/04 Decree of the President of the National Bank of Georgia, GLH, 03/05/2017.

blished in 2009. The association aims to develop and strengthen the microfinance sector, as well as to protect the rights and interests of microfinance organizations and to facilitate the coordination of activities.⁴² As of today, the Association unites 21 microfinance organizations registered and operating in Georgia.⁴³

5. Effectiveness of Mediation in Loan-related Disputes Against Microfinance Organizations

Article 1873 of the Civil Procedure Code of Georgia provides for a list of disputes subject to mandatory judicial mediation. In particular, according to subparagraph “c4” of the first section of the mentioned article, judicial mediation can be applied on disputes arising from loan agreements (including electronically concluded loan agreements) concluded by Georgian banking institutions, microfinance organizations and non-bank depository institutions, if dispute subject value does not exceed GEL 10000.⁴⁴

In addition, the judge has the authority granted under the law to assess in advance the circumstances relevant to the case and to transfer the abovementioned case to the mediator without the consent of the parties. As for the case where private mediation has already been used by the parties to the same dispute and it has ended in vain, in such a case the judge decides to transfer the case to the mediator only with the consent of the parties.⁴⁵

It is important to note that the post-pandemic period has had a positive effect on loan-related disputes against microfinance organizations, which in turn was found to be acceptable and authentic to borrowers.

Based on the public information provided by N^o2-0414/4404673 Letter issued by the Tbilisi City Court on 26 February 2021, it is clear that according to the statistics of 2020, 61 loan-related disputes were examined last year, where microfinance organizations were represented as one of the parties. These disputes were transferred to the mediators within the framework of compulsory mediation. 80% of the loan-related disputes transferred to the Tbilisi Mediation Center completed with an agreement. This figure is impressive, as the public information provided by the Mediation Center of the Tbilisi City Court also confirms that mediation is effective in legal obligatory relations, and the total figure of their settlement is 70%.⁴⁶

Given that each dispute between the parties is individual, the scope of the settlement also varies from case to case.

On 22 October 2020, LEPL “Mediators Association of Georgia” and “Global Compact Network Georgia” organized a meeting with representatives of the business sector on the topic “Mediation – a dispute resolution tool having no alternative in the business sector”.⁴⁷ The CEO of

⁴² Activities of the Microfinance Association of Georgia - Microfinance Association of Georgia, <<http://www.-microfinance.ge/activities/>> [3.09.2021].

⁴³ Ibid.

⁴⁴ Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 14/11/1997, Subparagraph „c4“ of Section 1 of Article 187³.

⁴⁵ Ibid, Section 3 of Article 187³.

⁴⁶ N^o2-0414/4404673 Letter Issued by the Tbilisi City Court, 26 February 2021.

⁴⁷ Mediation and Business: a Dispute Resolution Tool Having no Alternative, Mediators Association of Georgia, October, 2020, <<https://mediators.ge/ka/article/mediacia-da-biznesi-davis-gadawyvetis-alternatiuli-meqanizmi/66>> [3.09.2021].

one of the microfinance organizations participating in the meeting, namely of “Eurocredit”, spoke in an official interview with journalists about mediation and noted that several loan-related disputes, which have been going on in court for years, were settled within a month with the help of mediators. The fact that the microfinance sector has started to use mediation was also highlighted, thus saving time, costs and as a result both parties have benefited.⁴⁸

Along with the settlement statistics, the interest of the microfinance sector in mediation is also evidenced by the introductory meeting held in October 2020 between LEPL “Mediators Association of Georgia” and N(N)LE “Microfinance Association”, followed by the signing of a memorandum of cooperation between the associations on 22 October of the same year. Under the memorandum the Contracting Parties agreed on joint projects to be implemented, aimed at introducing and promoting the mediation as a new dispute resolution tool for Georgian and foreign business entities operating in Georgia in the microfinance sector. Specific steps and future joint initiatives for representatives of microfinance organizations were also planned in the framework of the memorandum.⁴⁹

The Covid Pandemic has contributed to the slowdown in global economic growth and the world economy has also faced to a large-scale crisis. The current situation, in its turn, has affected the business sector, including financial institutions.

It should be noted that the post-pandemic period has made the parties to the loan dispute more negotiable with each other. Mediation, for pandemic-affected parties to such disputes, is a means of recovering and rehabilitating the current crisis situation. №02.03.21/1-40 Letter of the microfinance organization registered in Georgia JSC “MFO Euro Credit” dated 1 March 2021, indicates that the company does not provide statistics on settled disputes, which in its turn makes it impossible to determine the exact percentage of settlements, although in the event of a reasonable offer from the borrowers, the dispute with the party is for the most part settled amicably. Cases are settled not only within the courts, arbitration and mediation, but also at the enforcement stage.

Microfinance organizations are more actively involved in the mediation process, and the pandemic has changed their attitudes towards borrowers, making them more loyal to them, as well as laying the groundwork for an individual study of the borrower's condition.⁵⁰ This applies to those who have been directly affected, lost a job or other source of income. In this regard, the report published by the International Labor Organization (ILO) is noteworthy, according to which in 2020 114 000 000 people lost their jobs in the global crisis.⁵¹

As for the scope of the settlement, it depends entirely on the contractual relationship between the parties and the individual agreement, which in turn is confidential. According to the information issued by JSC “MFO Euro Credit” on the basis of №02.03.21/1-40 Letter dated 1

⁴⁸ Working Meeting with CEO of the Microfinance Association - Mediators Association of Georgia, October 2020, <<https://mediators.ge/ka/article/irakli-yandashvilis-samushao-shexvedra-saqartvelos-miksosafinanso-asociaciis-agmasrulebel-direqtortan-baton-iuri-lebanidzestan/59>> [3.09.2021].

⁴⁹ Memorandum of Cooperation has been Signed by and Between Mediators Association of Georgia and Microfinance Association of Georgia - Mediators Association of Georgia, October 2020, <<https://mediators.ge/ka/article/saqartvelos-mediartorta-asociaciasa-da-saqartvelos-miksosafinanso-asociacias-shoris-urtiettanamshromlobis-memorandumi-gaformda/68>> [3.09.2021], (in Georgian)

⁵⁰ №02.03.21/1-40 Public Letter Issued by JSC “MFO Euro Credit” for the Purposes of this Study, 01/03/2021.

⁵¹ COVID-19 and the World of Work, 7th ed., ILO, January 2021, <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_767028.pdf> [3.09.2021].

March 2021, without identifying the cases and the borrowers, it is possible to form a general pattern of what the terms of settlement of the parties to the loan-related dispute may be. As a rule, the scope of the settlement depends on the type of loan issued and the solvency of the borrower, as well as whether the loan is secured or not.

The terms of the settlement are always individual and are based on the contractual relationship with the borrower. The scope of the settlement depends on several factors, including, as already mentioned, the solvency of the borrower and the extent to which a party consents to a mediation agreement.⁵²

Through mediation settlement between the parties, the following terms are often agreed upon:

a) Adjustment of loan amounts in order to reduce its amount. In such a case, it is possible for the borrower to reduce/cancel the overdue interest (penalty), as well as to reduce the interest accrued on it, as well as to adjust the principal debt in some cases. A principal debt adjustment may occur only if the loan is unsecured, and/or a short-term loan is issued, and/or if the party agrees to repay the amount in total;⁵³

b) Drafting a new payment schedule, both with and without loan adjustments. In this case, the loan repayment terms are changed according to the dates favourable for the parties⁵⁴. It should be noted, however, that the history of each borrower's payments and the cause-and-effect relationship with the delay must be taken into account. Especially if the borrower has previously been a prompt payer and is unable to meet his/her obligations due to deteriorating financial condition. This factor leads to a loyal attitude towards him/her and the terms offered by the microfinance organization towards such borrowers are more concessive.⁵⁵

Nº02.03.21/1-40 Letter of JSC "MFO Euro Credit" dated 1 March 2021 also responds to the challenges related to loan-related disputes, on the basis of which it can be said that a uniform practice is to be introduced in the procedural and technical part regarding judicial mediation, which will be the guidelines for each judge or employee of the mediation center.

The issue of search for borrowers, the so-called defendants is also a significant challenge, which is a hindrance, not only in terms of delivery of the relevant suit documents to them, but also completely excludes the participation of defendants in mandatory mediation in loan category disputes.⁵⁶

The post-epidemiological situation has made it clear that due to the loan obligation both parties to the dispute are making reasonable concessions and settling similar loan-related disputes amicably. This is the best solution for both parties in the created situation.

6. Conclusion

The purpose of this article was to demonstrate the effectiveness of the Mediation Institute towards the loan-related disputes with microfinance organizations during the post-pandemic situation caused by COVID-19.

⁵² Nº02.03.21/1-40 Letter Issued by JSC "MFO Euro Credit", 01/03/2021.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

The study has shown that mediation is exactly the tool that provides for the parties involved in such disputes and affected by pandemic the recovery and improvement of the existed situation. Deciding on mediation is an acceptable solution for both parties in the created situation. Under the mediation agreement, on the one hand, the borrower receives the terms of repayment of the loan obligation tailored to him/her, while the microfinance organization is guaranteed to receive from the borrower even a small amount, not to mention the time and costs saved through mediation.

The post-pandemic situation has had a positive impact on the amicable settlement of debt obligatory disputes. Mediation proved to be an effective and flexible process for the parties in the created situation.

The study made it possible to identify the challenges that arise during mediation on similar loan-related disputes. It should also be noted that legal proceedings for loan overdue caused by the COVID-19 pandemic have just begun and it is possible that, in most cases, the relevant proceedings have not even begun on a large scale. Increasing the intensity of mediation cases on loan-related disputes will lead to further intensification of the loyal involvement of microfinance institutions in mediation, while a solvent borrower, even with a minimum payment, will ensure the sustainability of the sector in the face of crisis resolution. In the event of a dispute being settled through mediation and the loyalty of microfinance organizations, it is ensured that the outcome is tailored to the interests of the borrowers, thus not worsening their credit history.

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