(підготовка); криміналістична техніка (засоби і методи). Наголошується, що досліджені позиції вчених щодо криміналістичного забезпечення висвітлюються через призму сучасної структури криміналістичної науки, якій приділяється в статті певна увага. Підкреслюється, що усталеною є точка зору, на чотиричленну систему науки криміналістики, котра складається з таких розділів, як: «Історія та методологія криміналістики», «Криміналістична техніка та технологія», «Криміналістична тактика та технологія», «Криміналістична методика», якої дотримується й автор статті.

Аналізуються позиції вчених щодо розширення криміналістичної науки такими розділами як: «Інформаційні основи розслідування злочинів» (А. М. Ішин); «Криміналістична інформатика» (В. Ю. Толстолуцький); «Криміналістична стратегія» (А. В. Дулов). Наголошується, що структура науки криміналістика, хоч і визначається більшістю вчених як чотиричленна, проте, у зв'язку з науково-технічним прогресом, допускається трансформації як закономірний процес розвитку криміналістичної науки та обумовлені нагальною потребою реалізації завдань практики у боротьбі зі злочинністю. Проте, підкреслюється, що дане питання вимагає ґрунтовних досліджень з переконливою аргументованістю та наукових дискусій.

Ключові слова: *система криміналістики, розділи криміналістики, криміналістичне забезпечення, наукова категорія, науково-технічний прогрес, розвиток криміналістичної науки, боротьба зі злочинністю, потреби практики.*

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MEDIATION IN CRIMINAL PROCEEDINGS: PROSPECTS FOR DEVELOPMENT

Abstract. The article is devoted to the study of the institution of mediation in the Kyrgyz Republic. The concept, goals, objectives of the institution of mediation, the introduction of the institution of mediation into civil proceedings, which contributes to the creation and development of an effective institution of mediation in the country, is also given. The principles of mediation and the results of the application of the conciliation procedure for further criminal proceedings are disclosed. It is proposed to consider mediation precisely as an independent type of professional activity, which consists in providing qualified assistance to participants in disputed legal relations in resolving a dispute that has arisen between them.

Key words*: mediation, mediators, dispute, conflict resolution, citizens' rights and freedoms, out-of-court disputeresolution procedure, conciliation procedures, trial.*

Relevance of the study. At the present stage of development of the Kyrgyz Republic, the main goal of legal reform is the formation of a national legal system.

The concept of legal policy of the Kyrgyz Republic from 2020 to 2025 determined [1] that in order to maximize the rights of participants in criminal and civil proceedings, timely protection and restoration of violated rights and freedoms of the individual, the interests of society and the state, measures to improve civil and criminal procedural legislation could also be focused on securing a variety of ways and means of reaching a compromise between the parties to conflicts (mediation, mediation, and others), both judicially and extrajudicially, including the obligation to discuss the possibility of using measures of conciliation procedures

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when preparing a case for trial, as well as the development of out-of-court forms of protecting the rights of citizens.

Recent publications review. Actual problems of mediation in criminal proceedings and it's prospects for development were investigated by scientists Kh. Alikperov, A. Arutyunyan, Yu. Baulin, O. Belins′ka, L. Volodina, I. Voytyuk, A. Hayduk, L. Holovko, O. Hubs′ka, V. Zemlyans′ka, L. Lobanova, V. Malyarenko, L. Salo, Z. Symonenko V. Trubnykov and others.

The article's objective is to study the features of mediation in criminal proceedings and to discuss the prospects for development.

Discussion. The need to introduce alternative forms of dispute resolution, including conciliation procedures, is due to a number of reasons.

First. A heavy burden on judges considering disputes in civil and criminal cases, which affects the quality of justice.

Second. The procedure for considering disputes in the courts of first instance requires a certain amount of time and effort, including financial costs.

Third. Court decisions, as a rule, satisfy only one side, the other side remains dissatisfied, which entails a lengthy appeal procedure (appeal, cassation). Each of these instances has its own time frames, the case can take months, and in some cases even years. These circumstances cause not only evasion from voluntary execution of court decisions, but also obstruction of their compulsory execution.

Unfortunately, the domestic legal system in the field of criminal proceedings is characterized by the fact that many of its legal institutions are not used properly, although they could, with the right approach, significantly simplify the achievement of the goals enshrined in legislation.

In the Kyrgyz Republic, from January 1, 2019, with the entry into force of the Criminal Code, the Criminal Procedure Code and the Misconduct Code, mediation is applied to disputes arising from criminal law relations provided for in part 2 of Art. 1 of the Law "On Mediation" in cases of misdemeanors entailing responsibility, and a number of less serious crimes, in particular, theft in small amounts, causing death by negligence, hooliganism [2].

What is the institution of reconciliation of the parties, mediation in criminal proceedings at present, and how mediation can complement and develop the reconciliation of the parties?

Reconciliation of the parties is the joint activity of the victim and the accused to achieve an acceptable result for both parties in the framework of a criminal case, enshrined in an agreement between them, expressed in compensation for harm to the victim by the accused in a negotiated form and in the victim's refusal to bring the accused to criminal responsibility.

Reconciliation of the parties means a refusal of the victim from his initial claims and demands against the person who committed the crime, the refusal of the request to bring him to criminal responsibility, or a request to terminate the criminal case initiated at his request, in the proper procedural form; in other words - ending the conflict between the guilty party and the victim by restoring the relations broken by the crime.

In many countries with a developed judicial system, alternative dispute resolution (mediation) is actively encouraged. Using this method in Western countries, not only civil but also criminal disputes are resolved. In this case, we mean the procedural element of the state's influence on the person in the commission of a crime and the consequence, the theory of restorative justice comes to the fore, the meaning of which is reduced to the transfer of the conflict to the parties themselves, that is, the victim and the accused. The principle of restorative justice is that the person who committed the crime would repent before the victim, voluntarily, with the knowledge of his guilt, atone for the harm caused to him, let himself go through the suffering he experienced and help to cope with the consequences of the crime. In turn, a person who has committed a crime is given the opportunity to take the path of correction, to fully realize the illegality and social danger of his act, as well as to avoid criminal prosecution by the state.

For any state, the implementation of the principle of restorative justice is a way to save financial resources, prevent crime and improve relations between the parties to the conflict in order to avoid new misunderstandings, and limit the coercive and punitive policy. The procedural element of the idea under consideration is mediation.

The wide spread of the institution of mediation in the criminal process is evidenced not only by serious European practice, but also by the presence of a considerable number of Recommendations, Declarations and Resolutions of the UN and the Council of Europe.

For example, Recommendation No. R (99) 19 of the Committee of Ministers to member states of the Council of Europe on mediation in criminal matters takes into account the existence of a wide variety of forms and approaches to mediation and states that "legislation should facilitate mediation" and "mediation in criminal matters must be a universally available service ... at every stage of the administration of justice". Article 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on November 29, 1985, provides that, where necessary, informal dispute resolution mechanisms, including mediation, arbitration and customary courts, should be used. law or local practice to promote reconciliation and provide redress to victims.

It should be noted that such documents recommend that the governments of the member states review their legislation and practice regarding the position of the victim in criminal law and criminal procedure and "examine the possible merits of the systems of mediation and conciliation" (Recommendation R (85) of the Committee of Ministers of the Council of Europe of 28 June 1985), "to enable the victim to benefit from mediation, restorative justice" (Recommendation No. R (2003) 20 of the CMCE of September 24, 2003), call for "the use of mediation as a way to reduce recidivism" (UN Economic and Social Council Resolution No. 1995/9 of July 24, 1995), propose "to carefully consider the possibility of removing criminal cases from the system of formal judicial proceedings, with unconditional respect for the rights of suspects and victims" (CMCE Recommendation No. R (2000) 19), noting that "mediation helps to increase in the minds of people, the role of the individual and the community in the prevention of crime tensions and various kinds of conflicts, which may lead to new, more constructive and less repressive outcomes of this or that case" (Recommendation No. R (99) 19 of the CMCE of September 15, 1999).

These international documents are the results of the successful promotion of the institution of mediation in Western countries, where it has gone a long way from complete misunderstanding by the legislator to criminal procedural consolidation. They are intended to serve as a reference point for those member states of the UN and the Council of Europe, where the institution of mediation is just emerging, including for our state.

Mediation in the criminal process of the Kyrgyz Republic is perceived as an informal way of resolving conflicts, as well as a method of restorative justice. And the principle of voluntariness, confidentiality is strictly observed in it, and most importantly, they are looking for a mutually beneficial solution that suits both parties, while in court the decision is made by the court. The institution of mediation is new and only developing, since it has not been applied earlier in the modern history of the Kyrgyz Republic, however, the traditions of peaceful settlement of disputes through negotiations with the assistance of an authoritative person - "danaker" (conciliator) - existed in Kyrgyzstan for centuries.

In accordance with the provisions of Articles 61 and 62 of the Criminal Code of the Kyrgyz Republic, the court (judge), the prosecutor, and also the investigator, with the consent of the prosecutor, has the right (but is not obliged) to terminate the criminal case with the release of the person from criminal liability due to a change in the situation, if the committed act has lost a socially dangerous the character or person has ceased to be socially dangerous, except for criminal cases on a crime provided for by part three of Article 281 of the Criminal Code of the Kyrgyz Republic, committed by guilty persons in a state of alcoholic, drug or other intoxication; on crimes provided for by Articles 224, 225 and 303-315 of the Criminal Code of the Kyrgyz Republic.

However, it seems more expedient to terminate the criminal case not only on the basis of the victim's statement, but also on the corresponding conciliatory agreement between the parties. In the legal literature, proposals have been repeatedly expressed about the need for such a conciliatory act, concluded within the framework of the institution of reconciliation in criminal proceedings3. This document should reflect the circumstances indicating the reconciliation of the parties, such as, for example: the voluntariness of the reconciliation of both parties, information about the procedure, methods, amounts and conditions for making amends, etc. Written confirmation of these circumstances may include a description of actions that testify to the confession of guilt, remorse on the part of the accused (suspect), and his understanding of the consequences of the crime. This may be of particular importance in criminal cases involving minors. In this regard, the legal practice of Germany is of particular interest. For a long time, German specialists have been engaged in detailed studies of the problems of reconciliation with the victim (Tater − Opfer − Ausgleich (TOA) − literally "criminal victim - reconciliation") in criminal law for juvenile offenders. The prerequisites for

the acceptability of the procedure for reconciliation with the victim were developed in German practice as a result of work on projects at various "pilot sites". Generalization of practice made it possible to identify certain criteria, presumably representing the optimal prerequisites for the acceptability of the reconciliation procedure:

– the existence of a thorough investigation of the circumstances of the case and the admission of guilt by the suspect;

– the presence of a victim who can be personified. Such subjects can be individuals or legal entities;

– voluntariness and consent of the parties, since a peaceful settlement of a dispute can only be based on a willingness to dialogue, coercion in this case is unacceptable;

– compliance with the principle of the severity of the crime (that is, reconciliation with the victim would be too costly in the case of, for example, a minor offense).

Even with these innovations, the issue of criminal procedural guarantees for the fulfillment of obligations to make amends within the framework of the institution of reconciliation remains unresolved. It seems that in view of the need to make amends for the harm caused, the use of the institution of reconciliation requires a change in the regulation of the timing of the proceedings. It seems that the institution of suspension of proceedings in the case can be used here.

However, in order to make changes to the timing of the proceedings, it is necessary to analyze not only the existence of legal prerequisites, but also the state of law enforcement practice. It is necessary to monitor a number of processes, including a study of the forms and methods of management within the framework of the activities of executive authorities vested with powers in the field of criminal justice. In this connection, the issue of legal regulation of conciliation procedures and mediation requires the deployment of analytical work adequate to modern conditions and the organization of a special regime of scientific and public discussions. The development of mediation in criminal proceedings requires a special careful study, starting from the level of legislative regulation to the level of practically oriented "pilot sites" with projects of "point" implementations, a comprehensive description of which, despite all its relevance, has not yet begun.

Another important issue, which is also touched upon by mediation, is the observance of the principles of criminal proceedings. Actually, why mediation should not be regulated by the norms of the criminal procedure code is because the principles of mediation do not always fully correspond to the criminal procedure principles.

Let's start with the benefit of the doubt. The right of a suspect or an accused not to admit his guilt shall be valid throughout the entire proceedings in a criminal case. Mediation is another matter. Conciliation proceedings are impossible by definition if the offender does not admit his guilt (at least in a social aspect). In addition, it is necessary to legislate the impossibility of re-bringing a person to criminal liability for committing the same crime if the proceedings have already been terminated in connection with an agreement reached during mediation. By the way, the desire to take part in mediation, as well as participation in mediation itself, cannot be regarded as evidence of a person's admission of his guilt in committing a crime.

Significant differences in the settlement of the same issue are also found in relation to the right of the suspect (accused) to defense. Is it right, should a lawyer be present during the mediation process? After the research, M. Groenheisen emphasizes that the chances of a successful agreement are reduced by the presence and participation of lawyers. The Basic Provisions on the Role of Lawyers, adopted at the Eighth United Nations Congress on Crime Prevention in 1990, emphasizes that anyone has the right to seek the help of a lawyer at all stages of criminal proceedings. The UN document on the fundamental principles of mediation provides guidance that the parties to the process should have the right to legal advice before and after the recovery process. However, a lawyer can act during mediation, but only as an observer.

However, one of the most difficult conceptual questions is the question: who is the mediator? (i.e. who will be the third independent party to the dispute?). For example, in England and Wales, mediation can be carried out by specialized mediation services, in Finland – by a service auxiliary to the official judicial system dealing with compensation for victims of crime, in Norway - by mediation councils at the municipality, in the Czech Republic and Poland – by non-governmental organizations that have challenged the state system. justice, etc. In general, two ways of solving this problem are possible: either mediation is carried out

within the framework of a criminal process (for example, by a prosecutor or a judge) or outside it by a third party.

Summarizing the above, it can be noted that at the moment in the theory of criminal procedure there is no single criterion for distinguishing mediation cases: this is both the severity of the crime, and its excuseful nature, and a special procedure for the proceedings. It seems to us that such a criterion should be the object of criminal encroachment. In other words, mediation may well be applicable in cases of crimes against property, crimes of minor gravity and less serious crimes. The introduction of mediation is not only about taking care of the parties, but also about the process itself as a whole: its simplification and acceleration. In order not to break the existing system of grounds for terminating criminal prosecution, mediation should be introduced as a process, the positive result of which determines the end of the proceedings.

Mediation was seen as an important element of judicial reform, designed, on the one hand, to reduce the burden on the courts, and, consequently, to improve the quality of justice, on the other, to relieve tension in society by introducing a new alternative method of peaceful settlement of disputes and conflicts in the pre-trial and extrajudicial procedure with the help of mediator - a neutral, impartial figure, not representing the interests of any then the sides. After some time, we can already talk about how the law on mediation works, how successfully mediation is advancing and developing in our country, how it is perceived by judicial and law enforcement agencies, lawyers, mediators themselves, and society as a whole. On this score, there are many different assessments and opinions, but one thing remains indisputable – mediation is needed, and it should be developed and improved in every possible way, as an independent institution, introducing into it progressive principles of the existing world experience in the formation and development of mediation, without allowing a rollback, which happened already in one of the neighboring states.

The use of various methods of protecting the rights and freedoms of citizens along with judicial protection is permitted by the Constitution of the Kyrgyz Republic: paragraph 2 of paragraph 1 of Article 39 provides that “the state guarantees everyone protection from arbitrary or unlawful interference in his personal and family life, encroachment on his honor and dignity, ensuring the development of extrajudicial and pre-trial methods, forms and methods of protecting human and civil rights and freedoms "

In addition, the Law on Mediation defines mediation as a procedure for resolving a dispute with the assistance of a mediator (mediators) by harmonizing the interests of the disputing parties in order to reach a mutually acceptable agreement . One of the important issues is the scope of mediation. According to article 1 of the Law on Mediation, mediation can be applied in disputes arising from civil, family and labor legal relations. As for the use of mediation in disputes arising from criminal law relations, this is possible only in cases directly provided for by law (paragraph 2 of Article 1 of the Law on Mediation).

In the Law on Mediation, mediation is defined as a procedure for resolving a dispute with the assistance of a mediator (mediators) by harmonizing the interests of the disputing parties in order to reach a mutually acceptable agreement [6].

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Despite the many advantages of mediation, its use does not always give the expected results. It is noted that mediation is effective in cases where both parties want and strive to resolve the conflict, plan to continue business relations. This position implies the willingness of the parties to peacefully settle the disputed issue, to cooperate constructively and conscientiously, to make concessions and find a compromise, to voluntarily fulfill the agreements that the parties have reached as a result of the mediation.

In this regard, I would like to draw your attention to one of the fundamental principles of mediation - voluntariness (Articles 3 and 4 of the Law on Mediation). This principle is manifested in the fact that the use of mediation to resolve a conflict or a disputable issue is a voluntary desire of the parties and the parties cannot be forced by anyone to use mediation.

It should be noted that the Law on Mediation grants a judge [7], an arbitrator [8], an investigator [9] and an authorized official of an inquiry body [10], the right to direct the parties to a dispute, a misdemeanor case and a criminal case in their proceedings , for an information

meeting with a mediator, and in this case the parties have no right to refuse to participate in such a meeting [11]. However, the parties, by virtue of the principle of voluntariness, of course, themselves decide on the need for mediation and have the right to refuse to conduct it.

The provisions of the Law on Mediation regarding the principle of voluntariness also provide for the following:

– any of the parties has the right to refuse to continue the mediation at any time during the mediation (Article 23);

– the execution of the agreements reached by the parties as a result of the mediation must be voluntary (paragraph 3 of Article 4).

It is very important for the parties to understand from the outset that the agreements reached as a result of mediation must be implemented voluntarily, as stipulated by the Law on Mediation. If one of the parties refuses to fulfill the agreement reached, there is no enforcement mechanism in mediation: neither the mediator nor anyone else has the right to force the parties to comply with the mediation result.

In the event that mediation was carried out in the framework of judicial or arbitration proceedings, it seems possible to use the provisions of Article 22 of the Law on Mediation, according to the mediation agreement, the court or the arbitral tribunal can approve the settlement agreement in accordance with the procedural law or the applicable rules of the arbitration court (paragraph 4 of Article 22 of the Law on mediation). Thus, this provision works in the case of mediation in the course of litigation or arbitration proceedings. In addition, in accordance with the Law on Mediation, the parties to mediation have the right to provide in the mediation agreement for the execution of a notary's executive inscription in order to fulfill the conditions of the mediation agreement (paragraph 5 of Article 22 of the Law on Mediation).

Thus, it may turn out that, having spent time, money and other resources on mediation, the parties will not be able to achieve the desired result - the resolution of the disputed issue, and the parties or one of the parties will have to further make efforts to resolve the dispute.

According to Art.499 of the Criminal Procedure Code of the Kyrgyz Republic, reconciliation of the parties (including through mediation), with the exception of cases of misconduct and a number of less serious crimes. The point is that mediation is such a settlement of a dispute that does not infringe on the interests of any of the parties. As a result, each of the parties satisfies the interest. The mediator assists the parties in resolving the conflict, while the decision is made by the parties themselves. That is why, as world practice shows, 86% of mediation agreements are executed. In countries where mediation is mandatory, out of 100% of all disputes referred to mediation, only 27% return to the courts. The main consumers of this service include: construction companies, banks, airlines, pharmaceutical holdings, mining and gold mining companies, industrial organizations. Also, a large percentage of family and commercial disputes are successfully resolved through mediation.

In the Kyrgyz Republic, the Chamber of Commerce and Industry of the Kyrgyz Republic is actively involved in the provision of mediation services, and includes:

Corporate mediation: disputes between founders, shareholders on the sale of a stake, management in an organization, sale of shares; disputes between participants, shareholders and top managers related to the determination of remuneration, development strategy of the enterprise; disputes over the implementation of projects; issues of protection of honor and dignity of business reputation.

Commercial mediation: disputes between borrowers and creditors to collect amounts; conflicts associated with poor quality medical services; conflicts in the construction business between customers and construction companies.

Family mediation: conflicts between spouses; conflicts between parents and children; disputes over the determination of the place of residence of children; disputes related to the division of property, both during divorce and during cohabitation; - conflicts between relatives regarding the maintenance of parents.

Thus, an open discussion of sensitive issues in a wide format allowed the participants to develop a number of constructive recommendations. In particular, it was recommended to improve the legislation on mediation in order to expand the scope of its action and the use of mediation in administrative (tax) disputes. In addition, it was recommended to develop standard training programs, quality standards for the provision of mediator services. And an important factor is informing the population about commercial mediation, while focusing on interaction with the business community. And it is very important now, in a pandemic, to think

about the possibility of conducting remote mediation.

"Mediation saves time and money. In court, the case is considered for a long time, and the state duty on economic disputes is charged when the statement of claim is filed, and these are quite large amounts". The mediator's fee in resolving a dispute is not tied to the amount of the dispute, the mediation procedure is much faster. And in mediation, the parties themselves make the final decision.

Conclusions. For the widespread development of mediation and ensuring equal access of citizens to the assistance of a mediator, government support is urgently needed for the training of mediators in the regions. As practice has shown, today the help of mediators is especially in demand in remote areas - for economic reasons, as well as the mentality of rural residents who do not want to go to court and thereby wash dirty linen in public in a compact living in society. We hope that restorative mediation (mediation in criminal-legal conflicts), given its capabilities and advantages, will eventually become necessary everywhere, if we jointly make efforts to develop this institution.

In this regard, we consider it expedient to create a permanent platform where representatives of the legislative, judicial and executive authorities, local authorities, law enforcement agencies, public organizations, business structures and the media can regularly meet to discuss the draft concept for the development of mediation in the country for 2020-2025, as ell as current mediation issues arising from practice.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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8. The Law of the Kyrgyz Republic "On Arbitration Courts in the Kyrgyz Republic" dated July 30, 2002 No. 135 does not contain a correlating norm.

9. The authority of the investigator to send the accused and the victim to an information meeting with a mediator is provided for in Article 35 of the Criminal Procedure Code of the Kyrgyz Republic.

10. The authority of the authorized official of the body of inquiry to send the accused and the victim to an information meeting with the mediator is provided for in Article 39 of the Criminal Procedure Code of the Kyrgyz Republic.

11. Clauses 1 and 2 of Article 20 of the Law on Mediation, subparagraph 7 of paragraph 5 of Article 41, subparagraph 3 of paragraph 2 of Article 45 and subparagraph 5 of paragraph 2 of Article 47 of the Criminal Procedure Code of the Kyrgyz Republic.

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MEDIATION IN CRIMINAL PROCEEDINGS: PROSPECTS FOR DEVELOPMENT

Abstract. The article is devoted to the study of the institute of mediation in the Kyrgyz Republic. Also the concepts, goals, objectives of the institute of mediation, the introduction of the institute of mediation in civil litigation, which contributes to the creation and development of an effective institute of mediation in the state. The principles of mediation and the results of the application of the reconciliation procedure for the subsequent criminal prosecution are revealed. It is proposed to consider mediation as an independent type of professional activity, which consists in the provision of qualified assistance to participants in disputed legal relations in the resolution of the dispute that arose between them.

Keywords: *mediation, mediators, dispute, conflict resolution, rights and freedoms of citizens, out-of-court dispute resolution procedure, reconciliation procedures, judicial process.*