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The question of the Russian society's readiness for mediation procedure

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Abstract: The topicality of this article is determined by foreigners' interest in establishing the personal and business relations with the representatives of the Russian society that has the characteristics, including the features of resolving the arising disagreements and conflicts, which are just peculiar to it. This feature is researched through analyzing the regulations, which are used as an empirical material reflecting the social experience in the historical hindsight. This article draws a conclusion that in spite of the Federal Act "About the alternative procedure of settling disputes with the participation of a mediator (mediation procedure)" being adopted on the 27th of July in 2010, the Russian society has not been ready for resolving conflict situations by means of a mediator yet. It is proved by the statistics of the Russian citizens and legal entities' appeal to the mediation procedure and by the results of the sociological surveys. This situation is determined by the fact that the mediation procedures, provided by the legislation in the USSR and Russia, had a number of features: they were obligatory in the cases, determined by the law (in divorce, origin of labour disputes, cases of blood vengeance) and in other cases reconciliation had a non-legal character. The specified features do not give the opportunity to speak about the legal traditions of the Reconciliation Institute (mediation). Moreover, the Russian society is not ready for implementing the standards of the mentioned Federal Act not just owing to the absence of the traditions to resort to the mediation procedure and owing to its mental constants, which prevent "voluntary" implementation. Such features of the Russian mentality were marked out in the special literature. One of them is a legal nihilism that is shown that the adopted laws in practice do not find their vital implementation because of the chronic weakness of the Russian traditions to observe and execute laws. This feature of the Russian society is not always treated as a negative one. Nihilism is a quite normal phenomenon for the legal culture not providing the evidence of the low level of legal sense, weakness of legal traditions at all. It is rather on the contrary: the situation of the mass standard nihilism assumes the very high moral and legal consciousness of the society that confirms the cultural and social adequacy of the written law. Despite law existence providing the mediation procedure, the main way of resolving disputes remains legal recourse in Russia.

Key words: The Russian society; Mediation procedure; Mediator; Reconciliation; Legislation; Nihilism; Disputes

1. Introduction

The Federal Act of July 27, 2010 "About the alternative procedure of settling disputes with the participation of a mediator (mediation procedure)" became one of the innovations of the Russian legislation. According to Part 2, Article 1 of this regulation, its statutory provisions are applied to mediation procedures for disputes being arisen from the civil legal relations including business and other economic activities conduction and also from labour and family legal relations. Both legal entities and citizens can resort to mediation. In this regard, the mediator can intervene in dispute between legal entities (economic disputes), citizens (family disputes), legal entities and individuals (labour disputes).

Its aims are defined in the Act. They are as follows:

1) To create legal conditions for using the alternative procedure of settling disputes with the participation of a mediator as an independent person (mediation procedure) in the Russian Federation;

2) To promote developing partner business relations;

3) To promote forming the ethics of a business conduct;

4) To promote harmonizing social relations.

The necessity to develop the institute being considered for modern Russia is obvious. It is quite possible to agree with the opinion of the developers of the law "About the alternative procedure of settling disputes with the participation of a mediator (mediation procedure)" who believe that the introduction of the mediation procedure will lower a propensity towards the conflict of civil turnover relations and also will relieve the Russian judicial system significantly and orient the country on the further development of the civil society.

Endorsing the opinion of the developers as to this Law, the members of the public also think that the revival and active use of the reconciliation procedures (in particular mediations) in settling the legal conflicts are the innovative direction in developing the domestic law, a powerful

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contribution to strengthening the legal culture of the Russian society, an immutable condition for the successful social and economic growth of our country.

However, the first results, summed up by the participants of the round table on the theme: "The Federal Act 'About mediation' - one year of practicing the law enforcement and development prospects of the legislation on mediation", held by the Mediation Resource Center on the 14th of May in 2012, show that during the time that had passed after the promulgation of the law, the promotion of the mediation procedure in general was reduced to staff training and a number of private initiatives. For this reason, the usage of mediation procedures bears not mass, but exclusively a single character. The law has made a great influence neither on decreasing caseload level that is rather high in the Russian Federation, nor on legal culture development (Litvinova, 2014).

In the supporters' opinion considering the law, the problems as to the legal regulation owning to which the legal system demands them being specified and changed, and also lack of the state program on developing the reconciliatory mediation in Russia are referred to the main reasons, which determine the unsatisfactory situation in developing the reconciliatory procedures. It is difficult to agree with the first reason as, in fact, it means that "lack of practice has found out the legal regulation problems". Nevertheless, it is impossible to deny that the law has not been implemented in due course, because of the lack of the state program on mediation development in Russia.

This program is necessary, as the law adopted in Russia is directed to forming the new relations, which are to settle disputes with the participation of a mediator in society. It is impossible to agree with the opinion of a number of supporters who think that the reconciliatory mediation provisions being included in the existing Russian legislation answer the long-term domestic legal tradition that was unreasonably interrupted twenty years ago.

The supporters of the law consider it as a reflection of those processes and phenomena, which are happening in our society and the state now (Ostanina, 2011). They give the official statistics as a proof that reflects the activity of the Russian Arbitration Courts regarding dismissal of cases in connection with the amicable agreements, concluded by the parties. According to the available statistics of 2007, the dismissal of cases in connection with the amicable agreements on 2,5% of the cases (out of the total cases, considered in the first instance), 2,7% of the cases (in 2008), 3,5% of the cases (in 2009), 3,3% of the cases (in 2010), 2,8% in 2011 (the official document). The given statistical data concern the entrepreneurial entities, which are generally legal ones. The number of the concluded amicable agreements cannot become a criterion for evaluating businessmen's readiness for resorting to the mediation procedures, as reconciliation of parties procedure by its nature is the institute of the entrepreneurial relations, but not the processual ones. The criterion of businessmen's readiness for resorting to the mediation procedure can be the information about the number of the disputes, resolved by businessmen on the basis of negotiations. It is obviously difficult to collect this information.

N. Maximova concludes about the current paradoxical situation in Russia. In her opinion, the paradox is that this "new" service (mediation) has really been used long since. However, this new service is still incredulously perceived in our country (Maximova). N. Maximova gives a reference to the mediators asking them to help to resolve the conflict as a historical tradition as a proof of the "demand for this service" (for instance, to listen to the decision of fathers in any serious dispute/the existing Caucasus custom). N. Maximova writes: "The experts hope that the strengthening of the conditions for carrying out and the rules of mediation at the legislative level will increase the popularity of the service that is widespread in the West". The author also notes that, according to the experts, the main obstacle in this case is the problem of citizens' confidence: no doubt that the government is much more authoritative than private individuals.

It is real so that the reconciliation of parties including the participation of a "third party" is a "normal" and "ordinary" behaviour, owing to some people's traditions. First of all, it is observed in those societies, where the senior generation has the special authority. With good reason, it is possible to admit that the appeal to fathers is the special mental constant of these people. If there were certain traditions of reconciliation, based on the moral standards and customs in society, the new law will not able to increase the quantity of such cases and to force the arguing parties to conclude the written amicable agreement.

2. Methodological approach

The author of the article considers that there is no tradition of reconciliation and the conditions, which promote its being formed in Russia. In spite of the fact that the reconciliation existed in the Russian Empire, in the Russian Soviet Federated Socialistic Republic (RSFSR) and the USSR, this institute had a specific character. This position is argued on the basis of analyzing the empirical material that is presented in the form of regulations. Considering the forms of law as the empirical material is determined by the fact that they are considered as the legal regulation experience in the historical hindsight. Another type of the empirical material is also used as the proof of the conclusions, drawn on the basis of the legal acts analysis. It is as follows: the results of the sociological surveys.

3. Conclusions and discussion

Reconciliation as a possible way of family preservation and resolution of conflicts between

citizens was mentioned in the legislation of the USSR. The reconciliation of the spouses who were willing to dissolve their marriage was provided by RSFSR Code of marriage, family and guardianship laws, dated November 19, 1926 by the Decree of the Presidium of the Supreme Council of the USSR "About some change in the order of considering cases of divorce", dated December 10, 1965, the Code about the marriage and family of RSFSR, dated November 1, 1969. These regulations indicated that courts must take measures to reconciliate spouses who wanted to get divorced. The ways and methods of this reconciliation were applied at the courts' discretion. In practice, the persuasion method was general. The practice of courts was the subject for considering the highest judicial authority - The Plenum of the Supreme Court of the USSR. But these decrees specified the fact that "The court must take measures to reconciliate spouses and has the right to postpone the trial of cases, fixing the term for spouses to reconciliate within six months".

Thus, the reconciliation procedure is applied by the court regardless of spouses' wish and opinion.

The Soviet legislation allowed the reconciliation for labour disputes resolution. The Code of labour laws (1922) provided resolving the labour disputes in the Disputes and Wage-Rates Committees, Courts of Reconciliation and Arbitration Courts. In the pursuance of this code, the Resolution of the Central Executive Committee of the USSR and the Council of People's Commissars of the USSR, which approved the Rules about reconciliatory and arbitration, and judicial examination of labour conflicts on the 29th of August in 1928. These rules defined the order of the organization and the competence of these bodies.

The code of labour laws (1971) provided the possibility of appointing the commissions on labour disputes in the enterprises. According to it, the Decree of the Presidium of the Supreme Council of the USSR, dated May 20, 1974, the Order of labour disputes adjudgement was approved.

The feature of the pre-trial reconciliation of the parties on labour disputes was the fact that it was obligatory.

The Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of RSFSR, dated November 5, 1928 "About the reconciliatory production on a fight against the custom of blood vengeance" is paid attention in the Russian legislation. It was adopted for eliminating the cases of blood vengeance resulting from murders and infliction of bodily injury. To achieve this purpose, the reconciliatory commissions, approved by the relevant executive committees could be organized in the district or regional executive committees. They included the representative of the relevant executive committee (chairman), the people's judge, two representatives of the public organizations and the representative of the local women's organization. If required, the reconciliatory commissions were granted the right to involve other persons with the right of an advisory vote in participating in the reconciliatory production as well as to call witnesses (item 1 of the Resolution). The reconciliatory commissions were also vested with the function to collect the information about the persons who had a conflict between themselves resulting from the blood vengeance (item 2 of the Resolution). According to item 3 of this resolution, the special reconciliatory case considering all the hostile sides must be opened on each established hostility case resulting from the blood vengeance: those who committed a crime and their adult relatives, and other tribesmen (relatives-in-law). As well, the injured persons and their adult relatives, and other tribesmen (relatives-in-law). Each opened reconciliatory case must be considered in the public meeting by the reconciliatory commission. The hostile sides are informed about the date of the case being considered in advance and are invited to be in the commission (item 4 of the Resolution).

In any consent to reconcile, the hostile sides give the corresponding signed up document to the commission. According to the existing criminal legislation, in persons' refusal of reconciliation, the commission sent the copy of the refusal act of their non-attendance to the people's court for bringing them to the court.

As it is seen from the above-stated regulations, the reconciliation procedure was not voluntary for the hostile sides. In any avoidance of reconciliation, they had to be put on trial. The reconciliatory procedure began on the initiative of the reconciliatory commission whose chairman must explain the value of the reconciliatory production and responsibility for the refusal of reconciliation to the hostile sides. This feature of the reconciliatory commissions' activity distinguishes it from the activity of the modern reconciliatory bodies, which begin their work on the initiative of one side or all the arguing ones.

Together with the Legal Reconciliation Institute, the legislation of RSFSR provided the legal consequences for reconciliation extra legally in some cases. For instance, reconciliation as a basis for terminating the criminal prosecution of the person on certain categories of cases was provided by the codes of the criminal procedure of RSFSR dated February 15, 1923 and October 27, 1960. The comrades' courts had to make the decision about cases discontinuance in any reconciliation of the participants of the civil dispute and about the cases of the insult, slander, beating and infliction of slight injury on the victim, brought to responsible in the reconciliation. This situation was provided by the Provision about the Comrades' Courts, approved by the Decree of the Presidium of the Supreme Council of RSFSR, dated March 11, 1977.

Thus, it is obvious that the reconciliation had a number of features within the Soviet period. They were as follows:

1) It was obligatory in the cases, determined by the law (in divorce, origin of labour disputes, cases of blood vengeance);

2) In other cases, it had a non-legal character.

4. Conclusions

The above-specified features do not give the opportunity to speak about the legal traditions of the Reconciliation Institute (mediation).

The Russian society is not ready for implementing the standards of the Federal Act of July 27, 2010 "About the alternative procedure of settling disputes with the participation of a mediator (mediation procedure)" not just owing to the absence of traditions to resort to mediation procedure and owing to its mental constants, which prevent "voluntary" implementation. Such features of the Russian mentality were marked out in the special literature. Nihilism that is expressed in the denial of something, in many cases, of something complete and definite, except but it had admired before. The social nihilism is a legal one. The adopted laws in practice do not find their vital implementation because of the chronic weakness of the Russian traditions to observe and execute laws (Ovchinnikov, 2015). The legal nihilism does not always characterize the negative society and is considered as the very high moral and legal consciousness of the society that verifies the cultural and social adequacy of the written law rigidly (Sinyukov, 2010). The function of nihilism as part of mentality is shown in it. It is proved by the results of the sociological surveys. For instance, only 13% of the respondents agreed with the statement about the necessity of the education to be focused on the Western civilization's way of life and values. 65% of them did not agree with this statement. This world outlook reflects the relation of people to mental values definitely enough (Bakurskiy, 2006).

Based on the above - aforesaid, we can conclude that the Federal Act of July 27, 2010, No. 193-FA "About the alternative procedure of settling disputes with the participation of a mediator (mediation procedure)" is aimed at forming the new relations in society. It is necessary for its effective implementation to overcome its function that contradicts the function of mentality.

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