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ARGUMENTS REGARDING THE INTRODUCTION OF MANDATORY MEDIATION IN CERTAIN CATEGORIES OF DISPUTES

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In the Republic of Moldova, we believe that the institution of mandatory mediation in certain categories of disputes could be given a chance of success because, in the current crisis that European states are going through due to the armed conflict in Ukraine, it is justified, all the more, for it to it is given a real chance to prove itself, this time from the position of compulsory mediation for a series of minor disputes carried out by mediators and not by other legal professionals. In our opinion, the obligation of mediation can be instituted in all categories of disputes listed in art. 25-30 of the mediation law, but in order to help the Moldovan society through the institution of mediation to overcome these prolonged crises, we propose the legislator to be inspired by the experience of the Italian legislator who found a way to penetrate the national and European legislation.
Keywords: *mediation, conciliation, conflict, mediation law, commercial mediation.*

ARGUMENTE PRIVIND INTRODUCEREA MEDIERII OBLIGATORII ÎN ANUMITE CATEGORII DE LITIGII

În Republica Moldova, considerăm că instituției medierii obligatorii în anumite categorii de litigii i s-ar putea da șanse de reușită întrucât, în actuala criză prin care trec statele europene datorită și conflictului armat din Ucraina se justifică, cu atât mai mult, ca acesteia să i se dea o șansă reală de a se manifesta, de data aceasta de pe poziția de mediere obligatorie pentru o serie de litigii minore realizată de mediatori și nu de alți profesioniști ai dreptului. În opinia noastră, obligativitatea medierii poate fi instituită în toate categoriile de litigii enumerate în art. 25 – 30 din legea medierii, însă pentru a ajuta societatea moldovenească prin intermediul instituției medierii să treacă cu bine peste aceste crize prelungite propunem legiuitorului să se inspire și din experiența legiuitorului italian care a găsit o cale de a penetra legislația națională şi europeană.
Cuvinte-cheie: *mediere, conciliere, conflict, legea medierii, mediere comercială.*

ARGUMENTS SUR L'INTRODUCTION DE LA MÉDIATION OBLIGATOIRE DANS CERTAINES CATÉGORIES DE LITIGES

En République de Moldova, nous pensons que l'institution de la médiation obligatoire dans certaines catégories de litiges pourrait avoir des chances de succès car, dans la crise actuelle que traversent les États européens en raison du conflit armé en Ukraine, il est justifié, d'autant plus, qu'il devrait avoir une réelle chance de se manifester, cette fois à partir de la position de médiation obligatoire pour une série de litiges mineurs menés par des médiateurs et non par d'autres professionnels du droit. À notre avis, l'obligation de médiation peut être établie dans toutes les catégories de litiges énumérées à l'art. 25-30 de la loi sur la médiation, mais afin d'aider la société moldave à travers l'institution de médiation à surmonter ces crises prolongées, nous proposons au législateur de s'inspirer de l'expérience du législateur italien qui a trouvé un moyen de pénétrer la législation nationale et européenne.
Mots-clés: *médiation, conciliation, conflit, droit de la médiation, médiation commerciale.*

АРГУМЕНТЫ ОТНОСИТЕЛЬНО ВВЕДЕНИЯ ОБЯЗАТЕЛЬНОЙ МЕДИАЦИИ В ОТДЕЛЬНЫХ КАТЕГОРИЯХ СПОРОВ

В Республике Молдова мы считаем, что институту обязательной медиации в определенных категориях споров можно было бы дать шанс на успех, потому что в нынешнем кризисе, который европейские государства переживают из-за вооруженного конфликта в Украине, это оправдано, тем более, что ему дается реальный шанс проявить себя, на этот раз с позиций обязательного посредничества по ряду мелких споров, осуществляемого посредниками, а не другими профессиональными юристами. На наш взгляд, обязанность медиации может быть установлена во всех категориях споров, перечисленных в ст. 25-30 закона о медиации, а для того, чтобы через институт медиации помочь молдавскому обществу преодолеть эти затянувшиеся кризисы, мы предлагаем законодателю вдохновиться опытом итальянского законодателя, который нашел способ проникнуть в национальный и Европейское законодательство.

Ключевые слова: *медиация, примирение, конфликт, закон о медиации, коммерческая медиация.*

Introduction

The evolution of the institution of mediation in the Republic of Moldova, compared to the expectations of the experts gathered in the "*Consultative working group in the field of mediation"* [8], who proposed and discussed the opportunities to establish mandatory mediation in certain categories of disputes, could have chances of successful because, in the current crisis that the European states are going through due to the armed conflict in Ukraine, it is justified, all the more, that the institution of mediation be given a real chance to manifest itself, this time from the position of mandatory mediation for a series of small claims made by mediators and not other legal professionals.

This approach, in our opinion, should be started from the current regulation of mediation in the Republic of Moldova, which involves the investigation of the institution of mediation starting from its regulatory sphere, revealed by art.1 of the law which provides: "This law determines the status of the *mediator, the forms of organization of the mediator activity and the requirements for the registration of mediation organizations, the principles of the mediation process and its effects, the particularities of mediation in specific areas, as well as the competence of the authorities and state institutions in the field of mediation."*

Regarding these arguments, we consider that the aspects included in the regulatory sphere are general aspects, universally valid, for the institution of mediation. Therefore, we must bear in mind that these aspects must be addressed to both specialists and non-specialists, i.e. litigants, and the general descriptions addressed could be those of a review of specialized literature in relation to the research topic addressed.

Other universally valid aspects that are worth remembering come from the provisions of art. 4 of Law no. 137/2015 on mediation [16] - *The basic principles of mediation,* and from *the mediation process* regulated by art. 21-24 of the law.

The obligation to mediate can be instituted in all categories of disputes listed in art. 25-30 of the law, but to help the Moldovan society through the institution of mediation to overcome these prolonged crises, with the recommendation to be inspired by the experience of the Italian legislator who found a way to penetrate the legislation Nation and European, in the sense that, according to the Impact Study [27] launched in April 2013 by the European Parliament in relation to the implementation of the Framework Directive 2008/52/EC on mediation, with the title "Restarting the directive on mediation: evaluating the limited impact of *its implementation and proposing*

measures to increase the number of mediations in the EU", Italy, by Decree no. 69/2013 - the so-called "*Compulsory Mediation Decree"* reintroduced mandatory mediation, the motivation being" urgent *provisions for the relaunch of the economy"*. However, the Resolution of the European Parliament dated September 12, 2017 [25], although it includes assessments of the Italian mediation law, does not recommend to the member states the introduction of mandatory mediation, but only considers *"recommendations that will be sent to the governments and parliaments of the member states, looking:*

- the request to the member states to intensify their efforts to encourage the use of mediation in civil and commercial disputes, especially through appropriate information campaigns;

- the need to develop quality standards at the EU level for the provision of mediation services;

- identifying solutions for expanding the scope of mediation to other civil or administrative matters;

- taking additional measures to ensure the execution of mediated agreements in a fast and accessible way , with full respect for fundamental rights, Union legislation and legislation national."

Practically, through this resolution, the European institution leaves it to the discretion of the governments and parliaments of the member states to identify the ways through which the institution of mediation can function.

Under these conditions, I believe that the Italian model of the mediation law could be implemented in Romania and the Republic of Moldova, especially since neither in Romania nor in the Republic of Moldova the real economy can show signs of recovery.

This idea was also reinforced by the Report on the state of mediation in the member states published on 21.11.2018 by the European Parliament [23] in which it is mentioned *that "although mediation is praised and promoted everywhere and by everyone, it is very little used by European citizens and very little encouraged by the member states"*. The same Report praises the progress achieved by Italy in terms of the mediation procedure by using the mandatory *easy -out mediation*, a procedure that passed the constitutionality tests, unlike Romania, given as a negative example of the implementation of mediation because it did not pass the two constitutionality examinations from 2014 and 2018. The Report also notes the fact that if Romania had introduced an Italian-style mediation procedure, *"with a mandatory mediation on the background of the conflict (not just for informing or probing the conflict) with the possibility of the parties to withdraw from the mediation at any time, then the mandatory mediation would have passed the constitutionality test.* The motivation of the Italian legislator "*urgent provisions* for the relaunch of the economy", could also resonate with the Moldovan legislator if it were to start with the treatment of the mediation process from the perspective of the obligation of mediation in civil disputes and between professionals as parties to a commercial or administrative contract that involves a intervention in this process simultaneously with the intervention in the articles contained in Chapter V of the law – Mediation in specific areas, respectively art. 25-34.

In all these specific areas we would recommend that the mediators who will be accredited to carry out mandatory mediations should mainly specialize in the basic specializations.

Thus, mediators specialized in civil, labor, commercial and administrative disputes should mainly be legal professionals and/or economists.

In the case of complex disputes, on the recommendation of a mediation organization, specialized panels could be formed.

In our opinion, after the recommended and proposed interventions, with the involvement of the Ministry of Justice, the Mediation Council and the mediation organizations, the successful implementation of mandatory mediation in the Republic of Moldova could be reached.

Thus, the institution of mediation in the case of the transaction can be used in all the specific areas regulated by the mediation law of the Republic of Moldova, both civil: with or without elements of foreignness , family, consumer protection, labor, commercial and administrative litigation, as well as regarding disputes arising from criminal and contravention cases.

Research methodology used

Starting from a retrospective, historical approach to the researched field, the article offers the possibility of understanding the importance of disputes in the specific fields listed by the mediation legislation and the loopholes and traps hidden in this legislation.

At the same time, the article outlines the perspectives of this issue and helps to acquire its theoretical foundations and the practical applicability of this obtained theoretical knowledge.

Mediation legislation as a distinct special legislation belonging, in particular, to civil law is regulated by legal norms that have as a substitute the same methods of application to knowledge and the legal action as of any branch of law.

The same methods used in the study of any branch of law were used.

Mediation legislation, by nature and its destination is a phenomenon with many and deep connections and social and human interferences.

The research of the phenomenon part of civil law, in this case, aspects regarding the possibility of establishing mandatory mediation in certain specific fields, part of the research of the legal phenomenon, is carried out by using the same methods used in the study of law: general methods and concrete methods. Different general methods could be used in the article, such as: the generalization and abstraction method, the logical method, the historical method, the comparison method, the sociological method, the systemic analysis method and the prospective or forecasting method.

Ideas and discussions

Therefore, the rule is that any conflict stemming from the violation of a subjective right that can be transacted can be submitted to mediation, and the prohibition refers to strictly personal rights, or to rights that the parties cannot dispose of through conventions.

The ban, in general, applies to fundamental rights, related to existence and the integrity of the person, of identification elements or of the non-patrimonial side of intellectual creation rights, as well as of all other rights regulated imperatively by the legal provisions, for which the law prohibits trading [13].

Non-patrimonial personal rights (*jus in personam*) are those subjective rights, which, devoid of pecuniary content, express attributes inseparable from the person of the subject of law [26]. Three categories of personal non-patrimonial rights were classified in the doctrine.

The first category includes rights regarding existence and the physical and moral integrity of the person, such as the right to life, the right to physical integrity, the right to freedom and the freedom of private life, the right to honor, the right to health, i.e. rights that the holder of these rights cannot dispose of, in the second category we have rights regarding the individualization of the natural and legal person, such as the right to the name, the right to the domicile, the right to marital status, and in the case of the legal person, the right to the name, the right to the company or the right to the seat.

Finally, the third category of non-patrimonial rights refers to rights regarding the non-patrimonial side of intellectual creation rights , such as copyright and related rights, inventor's right and the right to industrial designs and models.

All these non-patrimonial rights are of particular importance due to their specific intrinsic characteristics:

- they are rights intimately related to existence human beings, intransmissible, inseparable from individualized persons within the family and society by name, domicile or marital status;

- they are absolute rights, opposable *erga omnes*, against which the general negative obligation of the indeterminate passive subject is imposed not to do anything likely to reach one of these values;

- they are imprescriptible rights under the extinguishing and acquisitive aspect; they are strictly personal in the sense that, as a rule, they are not likely to be exercised by representation [26].

At a first analysis, it would seem that the institution of mediation could not be involved in the settlement of a dispute stemming from the violation of such rights, but the doctrine and judicial practice have ruled that the damage stemming from the violation of a non-patrimonial personal right, classified as moral damage, is subject to a regime of compensation or reparation through non-patrimonial measures, in which case, this new legal relationship may be subject to settlement through mediation even if we are dealing with a possible moral injury.

With regard to civil disputes involving foreign nationals, we remind you that any private law legal relationship with foreign national elements that derives its legal force from the provisions of art. 8 para. (1) of the Constitution [10] which provides that: "*(1) The Republic of Moldova undertakes to respect the Charter of the Organization of the United Nations and the treaties to which it is a party, to base its relations with other states on the unanimously recognized principles and norms of international law",* and from those of the provisions of art. 2576 – 2671 of the Civil Code - Book Five – Private International Law [7].

The mediation of civil disputes with foreign elements based on Law no. 137/2015 on mediation is subject to the same rules and principles.

Thus, art. 26 of the mediation law provides:

"(1) Civil disputes with an extraneous element may be subject to mediation under the terms of this law.

(2) For the purposes of the present law, a dispute in which at least one of the parties has its domicile or headquarters outside the Republic of Moldova on the date on which:

a) the parties concluded a mediation agreement under the conditions of art. 31;

b) the parties were obliged, by the court in the state where the summons was filed, to resort to mediation according to the legal provisions of the respective state.

(3) A civil litigation is, equally, with an extraneous element if, on the date mentioned in par. (2) lit. a) or b), the parties have their domicile or headquarters in the Republic of Moldova, but:

a) the judicial proceedings for the settlement of the dispute are to be initiated in another state;

b) the object of the dispute refers to obligations to be executed in another state or the goods that constitute the object of the dispute are located on the territory of another state;

c) place of performance the basic activity of one of the parties is in another state".

If the execution of the transaction, partially or fully, is to be done on the territory of the Republic of Moldova, the competence to examine and confirm civil and commercial

transactions with extraneous elements resulting from mediation rests with the civil court according to art . 487 para. (2) Civil procedure code which provides: ***"(2) Transactions concluded in civil and commercial disputes with an element of extraneousness*** *is confirmed under the conditions of this chapter if the examination of the dispute settled by transaction is within the competence COURTS courts of the Republic of Moldova and the execution of the transaction, in whole or in part, is to be carried out on the territory of the Republic of Moldova".*

Indisputably, the provisions of para. (2) lit. (b) from art. 26 of the mediation law is worth analyzing in terms of the qualification and competence of the mediators in approaching the mediation styles used in another state.

However, Moldovan and Romanian legislation only regulates the facilitative mediation style.

By ferenda law, in such situations art. should be amended. 26 of the mediation law, in such a way that the Moldovan mediator can also address other styles of mediation, such as the evaluative one, practiced in states where mediation is mandatory.

For a pertinent analysis of the procedure mediation in administrative disputes, we consider the Recommendation of the Committee of Ministers of the Council of Europe no. 9/2001 regarding alternative ways of resolving disputes between administrative authorities and natural persons - arbitration, mediation, conciliation [24], Law no. 793/2000 on administrative litigation from the Republic of Moldova [15], the Administrative Code of the Republic of Moldova [5], Law on administrative litigation no. 554/2004 from Romania [14] since, according to the Moldovan authors Ion Guceac and Victor Balmus [12, page 2 -10], the theories governing administrative contracts in Romania are also valid for the Republic of Moldova, and art. 30 of the Mediation Law regarding administrative litigation disputes, which states*:*

"(1) In disputes arising from administrative litigation reports, the provisions of this law are applied to the extent that they do not contravene the legislation that regulates the negotiation of transactions with the participation of legal entities under public law and the conditions for concluding these transactions. (2) Public authorities and mediation organizations that organize mediation services in the field of administrative litigation may establish additional criteria regarding the qualification of mediators to be trained in the mediation of these disputes and may approve lists of mediators".

Art. 14 para. (1) and (2) of Law no. 793/2000 on administrative litigation requires that:

"*(1) The person who considers himself injured in his right, recognized by law, by an administrative act shall request, through a prior request, the issuing public authority, within 30 days from the date of communication of the act, its revocation, in whole or in part, if the law does not provide otherwise.*

(2) If the issuing body has a higher hierarchical body, the prior request can be addressed, at the petitioner's choice, either to the issuing body or to the higher hierarchical body if the legislation does not provide otherwise.", and if in disputes arising from contentious reports administrative situations are found that do not contravene the legislation that regulates the negotiation and conclusion of transactions with the participation of persons under public law, then mediation is possible.

So, first of all, through points 8-13 of the Recommendation of the Committee of Ministers of the Council of Europe no. 9/2001 regarding the alternative ways of resolving disputes between administrative authorities and natural persons - arbitration, mediation, conciliation, the guidelines of this procedure are drawn:

"pt. 8. Bearing in mind that the main advantages of alternative ways of resolving administrative disputes consist, depending on the case, in: simpler and more flexible

procedures that are faster and less expensive, amicable resolution, involvement of specialists, recourse to the principle of equity and not just to the letter of the law, as well as greater discretion;

Therefore taking into account, where appropriate, the possibility of resolving administrative disputes through other means than by resorting to the courts;

10. Taking into account the fact that the use of alternative ways must not serve the administrative authorities or private individuals as a means to evade their obligations or to violate the principle of legality;

11. Considering that, in all cases, the alternative ways must allow a control by the courts, as this represents the last guarantee both for the rights of the person who appeals to the administration and for those of the administrative body;

12. Considering that the alternative ways of resolving disputes must respect the principles of equality and impartiality, as well as the rights of the parties;

13. Recommends that the governments of the member states promote the use of alternative ways of resolving disputes between administrative authorities and private individuals following, in the legislation and in practice, the principles found in the annex to this recommendation.

Also, in the chapter reserved for the specific features of each alternative method in the Annex to Recommendation no. 9 (2001) relating to conciliation, mediation and transaction, provides:

I. *“**2. Conciliation and mediation***

i. Conciliation and mediation may be initiated by the parties involved, by a judge or may be declared mandatory by law.

ii. Conciliators and mediators must set up separate meetings with each party or simultaneously, with the aim of finding a solution.

iii. Conciliators and mediators can invite the administrative authority to cancel, withdraw or modify the administrative act, for reasons of opportunity or legality.

II**.** ***3. The transaction***

i. The administrative authorities will not resort to the transaction to evade their obligations, unless the law allows it.

ii. Under the law, public officials who take part in a proceeding to negotiate an agreement must be vested with the necessary authority to reach a compromise”.

Comparing and analyzing the Moldovan legislation through the lens of the principles established by this Recommendation, we find that conciliation and mediation can be declared mandatory by law, and conciliators and mediators can invite the administrative authority to cancel, withdraw or modify the administrative act, for reasons of expediency or legality.

The phrase *of opportunity* introduced in the Recommendation can give the mediator a sufficient range of manifestation to manifest and achieve a successful mediation in this specific field, especially if such a mediator would meet the criteria established under para. (2) of art. 30 of the mediation law.

De lege ferenda, the Moldovan legislator could analyze a bill inspired by this Recommendation and approve mandatory mediation in this type of litigation, and the administrative court, based on art. 24 para. (1) from Law no. 793/2000 on administrative litigation, which provides:

“(1) The administrative litigation court examines the application with the participation of the plaintiff and defendant and /or their representatives, under the terms of the Civil Procedure Code, with some exceptions provided by this law”, could reject the request as inadmissible if this preliminary procedure was not carried out, i.e. the attempt to resolve the dispute through conciliation or mediation.

It should be noted that in Romania, according to art. 7 para. (6) from Law no. 554/2004 in

its original form in the case of actions with administrative contracts, the prior procedure had the meaning of conciliation in the case of commercial disputes, with the appropriate application of the Code of Civil Procedure. As an expression of a monistic approach to civil law, and to eliminate the distinction between the legal regime of civil obligations and that of commercial obligations, the procedure of direct conciliation or mediation as it existed in the Code of Civil Procedure from 1865 updated by Law no. 202/2010 – The Small Reform Law [17], and, in which art. 42 provided: "*Article 720^1, paragraph 1 is amended and will have the following content:*

"Art. 720^1 In the lawsuits and claims in commercial matter that can be assessed in money, before the introduction of the summons, the plaintiff will try resolving the dispute either through mediation or through direct conciliation" was removed.

In the Republic of Moldova, neither art.14 of Law no. 793/2000 nor art. 19 of the Administrative Code no. 116/2018 of do not contain references or procedures by which the conciliation or mediation procedure can be carried out.

This legal institution could still show its effectiveness, both in Romania and in the Republic of Moldova [22].

The monistic approach of civil law [6] whereby the prior procedure is provided for by art.193 NCPC, in the case of Romania "***1)*** *Referral to the court can only be made after the fulfillment of a prior procedure, if the law expressly provides for this. Proof of completion of the preliminary procedure will be attached to the summons application.* ***(2)*** *The non-fulfilment of the preliminary procedure can only be invoked by the defendant through a response, under the penalty of forfeiture",* does not give a sufficient guarantee to the holder of the right to action in the matter of the administrative dispute, and, in particular, of a merchant party to an administrative contract.

The current wording of art. 7 of the Administrative Litigation Law no. 554/2004, does not include any reference to the possibility of the parties to meet and negotiate those aspects that could prevent the initiation of litigation regarding the execution of an administrative contract, a similar situation in the case of the legislation of the Republic of Moldova.

The current form of art. 7 of the Administrative Litigation Law no. 554/2004, in the case of Romania, or art. 14 and 15 of Law no. 793/2000 in the case of the Republic of Moldova, allows the injured person, within 30 days, to request the issuing public authority or the hierarchically superior public authority, the revocation in whole or in part, of the contested administrative act [2, p. 258], and in practice there are few cases when such an enterprise is successful.

Civil servants from the hierarchically superior public authority are, as a rule, in solidarity with those of the issuing public authority. In the spirit of conservation, they sacrifice the entrepreneurial spirit of the merchant in favor of preserving the benefits resulting from membership in the bureaucratic body of the public authority.

In this way, the lack of real reform in the public authorities will be replaced by burdening the small entrepreneur without any real justification, part of an administrative contract.

Public entities are obliged to have efficient management, to secure the necessary money from their own sources and, in addition, from allocations from the local budget, within the limits of the amounts approved for this purpose.

In this context, it is much easier to procure the necessary income from the over-indebtedness of tenants, in the conditions where the current ambiguous legislation allows them to achieve their goals [22].

In our opinion, reaching the merchant

in this situation, cannot be in line with the general interest of society, nor with the letter and spirit of the law and the Constitution [9] as stipulated in point 8 of the above-mentioned Recommendation by the phrase “recourse to the principle *of equity and not just by the letter of the law”*.

In the matter of administrative litigation, in Romania, the ÎCCJ by Decision 75/2018 [11] regarding the pronouncement of a preliminary decision to resolve the following legal issue: *“Regarding the express repeal of the provisions* of art. 720^1 of the old Civil Procedure Code*, it is mandatory to go through the preliminary procedure,* regulated by art. 7 para. (6) from the Administrative Litigation Law no. 554/2004*, with subsequent amendments and additions, in the case of actions having as their object the nullity, annulment, execution, termination or resolution of an administrative contract, including in the situation where the action is formulated by a public authority, as well as in the situation where the action is formulated by a public authority on the recommendation/proposal of an internal or international control body?”*, the Court decided that: *”Regarding the express repeal of the provisions of art. 720^1 of the old Code of Civil Procedure, it is mandatory to go through the preliminary procedure, regulated by art. 7 para. (6) from the Administrative Litigation Law no. 554/2004, with subsequent amendments, in the case of actions having as their object the nullity, annulment, execution, termination or resolution of an administrative contract, including in the situation where the action is formulated by a public authority, the recommendation/proposal of an internal or international control body”.*

In the Republic of Moldova, legislation and commercial conflicts are regulated by the Civil Code, Law no. 135/2007 on limited liability companies [18], Law no. 93/1998 regarding the entrepreneur patent [19], *Law no. 220/2007* ***regarding the state registration of persons and of individual entrepreneurs [20], of other laws that are based on legal relationships in which professionals (entrepreneurs) are involved,*** respectively the transaction through the slides of art. 1917 - 1925, and the method by which a dispute is resolved amicably through the mediation procedure is regulated by Law no. 137/2015 regarding mediation.

In such disputes, it is not enough for the role of a mediator to be reduced to the quality of being an agreeable, diplomatic, skilled person, capable only of facilitating the dialogue between the parties.

A successful commercial mediation can be achieved if the mediator, in addition to the qualities listed above, possesses commercial legislation, so that, in the eventuality of concluding an agreement, it is within the limits of the law, that is, it does not violate the rules that concern public order and good morals.

The complexity of commercial relations existing in today’s society cannot be understood unless the mediator in question is able to understand commercial legislation.

The legislation in force recognizes the following categories of legal entities: legal entity under public law, legal entity under private law.

Legal entities under public law are represented by the state and its departments and are created by the will of the legislator.

Legal entities under private law, according to art. 175 Civil Code, includes two categories:

- the first is represented by non-profit legal entities.

- the second category is formed by profit-making legal entities where we meet companies governed by the Civil Code.

- profit legal entities, i.e. both associations and the foundations aim to achieve an ideal, cultural, religious or social goal, the former for the benefit of the members or the community, the latter exclusively for the benefit of the community. Heritage, and therefore the contribution of associations, does not play

an essential role in associations. Their characteristic element is the collaboration of associations. This last element is absent in foundations, while, on the contrary, the heritage factor is essential.

In the case of the second category, the creation of a society is no longer done for altruistic purposes, to achieve some moral goals, but for the acquisition of a material gain, concretely for the benefit of the members who compose it.

The commercial or civil character of the company depends mainly on the object of the company. A company will be commercial if it meets the requirements provided by law for one of the forms of commercial company, provided that the object of the activity is commercial. Traders, unlike non-traders, have a series of commercial obligations such as: the obligation to register with the Trade Register, the obligation to keep accounting records and not to practice unfair competition. In addition, the company may be subject to insolvency proceedings.

Based on these elements, the commercial company can be defined as a group of persons established on the basis of a company contract and benefiting from legal personality in which the associates agree to pool certain assets, for the execution of commercial acts in order to achieve and sharing the benefits achieved.

It is expected that the Republic of Moldova will also have to make some changes and harmonizations in its commercial legislation [21], since, in the framework of the European Council of June 23, 2022, the EU leaders granted the Republic of Moldova the status of a candidate country for the EU, and in this context, they invited the European Commission to submit a report to the Council regarding the fulfillment of the conditions set out in the Commission's opinion regarding the accession application of the Republic of Moldova.

Romania's accession to the EU has imposed and will impose new changes and additions to commercial regulations, in order to be able to meet the demands commercial activity on the scale of the extended European market [4, p.16]. In this context, one of the objectives of the reform strategy of the judicial system in Romania within the *"business environment" chapter* was the revision of the legislation commercial companies in the sense of their alignment with the standards imposed by the community acquis [3] in the matter of corporate governance [1, p. 104], which is expected to take place in the case of the Republic of Moldova. The mediator, professionally trained, employed on the basis of a contract, flexible and able by his qualities to facilitate the dialogue between the parties in conflict, through specific techniques and methods, is able to manage the process of amicable resolution of the conflict. Therefore, before discerning an understanding potential between the parties, must ascertain, in the case of commercial disputes, when the object of the dispute is, for example, a commercial contract, whether or not the conditions have been respected essential for the validity of the convention provided for in art. 199-207 of the Civil Code of the Republic of Moldova.

Therefore, a mediator who has, in addition to the personal qualities inherent in any type of mediation, qualities complemented by a solid education and a qualification in the field of current commercial relations, will certainly be able to successfully resolve a commercial dispute, since the field of application of the mediation institution in this field, it goes beyond the resolution of interpersonal differences in the conditions where social groups or enterprises appear in these types of conflicts. Moreover, the commercial mediator can be called to resolve cross-border conflicts. In such conflicts, difficulties may arise in assessing the validity conditions of the conventions from the perspective of assessing the rules established by art. 171 of the Civil Code, according to which *"(1) The legal person is the subject of*

law constituted under the conditions of the law, having an independent organization and a separate and distinct patrimony, affected by the achievement of a certain purpose in accordance with the law, public order and good morals”.

The practice of mediation, however, has shown that the parties avoid, most of the time, using a mediator whom they know is not specialized in the field related to their dispute.

This inconvenient is not specific only to Romania and/or the Republic of Moldova, being also notified by litigants from other states of the European Union.

Under these conditions, it is understandable reluctance litigants to use the services offered by SAL entities that offer services regarding the alternative resolution of disputes.

Based on these arguments, I believe that, *by law, mediation* in commercial transactions should be mandatory.

Conclusions

The contractual legal nature of mediation led the legislator to delimit the scope of this institution only to those conflicts that concern the subjective rights that the parties can dispose of.

Therefore, mediation can be used in conflicts from all fields, but practice offers us a palette of relevant fields in which it displays its possibilities.

In our opinion, after the recommended and proposed interventions, with the involvement of the Ministry of Justice, the Mediation Council and mediation organizations, the successful implementation of mandatory mediation in these specific areas could be reached.

From the in-depth analysis of the data of the Study [27] it is shown that a minimal form of mandatory mediation would be more appropriate. Two forms of mandatory mediation are considered: mandatory participation in information sessions and mandatory mediation with the possibility of opt - *out*, if the parties do not wish to continue the procedure. The second alternative recorded, as expected, the most positive reactions from the respondents, especially since the option of later withdrawal would at the same time ensure unlimited free access to justice, an idea to which we rally.

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