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Conceptual Vision of Court Mediation

The hereby Article aims to provide the reader with the information about the conditions of development of the court mediation in Georgia and sharing with them the vision how to overcome the challenges. In author's view, in order to develop court mediation in Georgia in proper manner it's absolute necessity to have the strategy, which should be based on the analysis of the past experience, existing practice and the received recommendations. Therefore, article reviews the culture of amicable dispute resolution in Georgia, the results of the last 4 years after creating some legislation on mediation in Georgia and the elaborated recommendations. Herewith, in author's opinion, considerations and viewpoint made by Ilia Chavchavadze in his articles carries not only symbolic, but outstanding practical value too. Therefore, based on the values and the vision of the Ilia, article gives a conclusion about the importance of having successful mediation practice for the Georgian Judiciary and the vision how it should be achieved.

Key words: *court mediation, mediation culture, mediation models, vision of court mediation.*

1. Introducion

During the last 20 years, Georgian judiciary went through significant – major or minor – changes, naturally accompanied with the shortcomings. Establishment of a new legal institution is a challenge for successful accomplishment of which mere "copy" of a model law, strategy or action plan developed by a foreign country or international organization is not enough, especially when there is no universal formula for establishment successful mediation centers. Hence, the objective of consideration of the historical experience of dispute resolution, issued recommendations and the outcomes of practice is to identifying the keystones of the court mediation, the vector of its development and define the vision necessary for having successful court mediation in Georgia.

Despite the fact that peaceful regulation of conflict by the help of the third neutral party is long ago applied in Georgia, modern mediation, as an alternative mean for dispute resolution, is just on the initial stage. On December 20, 2011 the Change was introduced to the Civil Code of Practice of Georgia, initially applying to the legal institution yet unknown for the current Civil Code – court mediation.[1] The hereof change was the first step made in view of establishment of the modern model of mediation, which itself is a historical fact. After the legislative changes, interest to mediation in Georgian legislative space has significantly increased, evidenced with initiation of the pilot project of court mediation in Tbilisi City Court, various scientific events organized on mediation issue, scientific articles published and establishment of the Mediators Association since 2012. Correspondingly, if we agree on importance of court mediation as on efficiency thereof in dispute resolution in

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[1] See <https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=29962>, [10.10.2015].

the sphere of private and public law, then we need to develop the approach and the principles in terms of court mediation policy in Georgia.

2. Historical Experience of Dispute Resolution with Settlement in Georgian Law

a) Settlement in Customary Law of Georgia

Inasmuch as Municipalities in Georgian Customary Law used to unify yet non-dissociated legislative, executive and legislative authorities,[2] it is hard to speak on mediation in Georgian Customary Law as of pure forensic institution,[3] especially as of the mechanism of dispute resolution in private law.[4] It is as well noteworthy that Georgian Customary Law did not envisage the strictly dissociated functions of the third neutral party – mediator and the judge as it is in modern jurisdiction currently. The evidence, on the one hand is plentitude of the names of the persons in public service, functions of which along with peaceful dispute resolution, also included: man of law,[5] judge, court secretary, debating mediator,[6] elder, mouravi[7] etc. "According to observations by Mikheil Kekelia, the term "mediator" was not known in Georgian reality till the XIX century. It has been introduced only since 1802", – as stated by the researcher of history of law, G. Davitashvili in his work.[8] On the other hand, the fact that the hereof persons enjoyed the authority of decision-making while relying on "old testaments",[9] e.i. the case law, indicates to their roles as not of only the facilitators to settlement but as of the decision makers. Despite of undoubtedly drastic difference between modern mediators and debating mediators, they also have similarities in lots of aspects, including in the rule of election – that the mediator should be the person acceptable for both parties; organization of the common and individual meetings upon settlement process; organization of sundry meetings for settlement; confidentiality of the information disclosed upon settlement etc.[10]

Along with the mediation institutions in Customary Law, the institution of settler Judge, introduced as a result of the judicial reform in Russian Empire in 1864 was also launched in Georgia.[11] Jurisdiction of the settler judges also applied to the civil cases,[12] the subject of dispute of which never exceeded 500 Rubles and envisaged consideration of the disputes entailed on the basis of personal insults, offense, recover of property rights, commitment of small crimes (crimes to which the

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2 *Kekelia M. (ed.r-in-chief),* Georgian Customary Law, Vol. 4, 1993, 165.

3 *Kekelia M. (ed.r-in-chief),* Georgian Customary Law, Vol. 4, 1993, 165.

4 According to the Customary Law, the Settler Mediators in Georgia were Mostly and Effectively Represented in Criminal Disputes.

5 *Davitashvili G.,* Court Organization and Process in Georgian Customary Law, Tbilisi, 2004, 34.

6 "Debating" – the Judge Elected for Consideration of the Disputable Case – Mediator" – Georgian Explanatory Dictionary.

7 In details, see *Tsulukiani A.,* Debating Mediation Court in Svaneti, magazine "State and Law", 9, 1990, 60.

8 *Davitashvili G.,* Court Organization and Process in Georgian Customary Law, TSU Edition, Tbilisi, 2004, 5.

9 Georgian Customary Law, Vol. 4, Editor-in Chief, Kekelia M., Publishing House "Metsniereba", 1993, 168. With further indication to: *Jibladze D.,* material on Customary Law of Pshavi, 73.

10 *Tsulukiani A.,* Svanetian Debating Mediator Court, Magazine "State and Law", №9, 1990, 67.

11 See <http://www.bibliotekar.ru/teoria-gosudarstva-i-prava-6/187.htm>, [11.09.2015].

12 *Giorgadze I., Gurgenidze N.,* Ilia Chavchavadze: Chronicles of Life and Activity, Bibliographical chronicle 1837-1907, Tbilisi, 1987, 48.

judge was unable to impose the penalty exceeding 300 Rubles). It might be vague for the reader what the settler judge does with mediation, which is quite a grounded question, however if we take high similarity between the settler judge and the mediation institutions into account, (objectives, advantages, tasks and course), we may state that the settler judge is one of mediation forms. In this very view, the terms – mediator and the settler judge are used as synonyms in USA and the Federal Republic of Germany, and the Courts offer services – the alternative means of dispute resolution within the common program, to the court users.[13]

Naturally, inculcation of Russian rules has gradually reduced the functions of the debating mediators on the whole territory of Georgia but their very existence served an effective precondition for establishment of the settler courts and both – in modern Georgia. Peaceful resolution of the court disputes is a well-known institution for the Georgian Court with rich historical experience and no doubt that it was actively used almost in all parts of Georgia and was organically combined with our culture. Correspondingly, when outlining the design, model and form of the modern mechanisms for dispute resolution, we shall attach due attention not to only international experience but to features of our local Customary Law.

As to the settler judges and generally, mechanisms for dispute resolution during Russian annexation, it might not at all become the subject of the hereby Article if not a single significant fact – *Ilia Chavchavadze* was appointed as one of the settler judges.

b. The Concept of Georgian Mediation by Ilia Chavchavadze

Taking the deepth of thinking and analyticalskills, as well as authority of *Ilia Chavchavadze,* the will to re-emphasize the concept by *Ilia Chavchavadze* on peaceful resolution of discord by means of the third neutral party must be clearly understandable in view to underline on the one hand the height of historical development of Georgian legal awareness and culture and on the other hand, importance of the brilliant example of activity of *Ilia Chavchavadze* in capacity of the settler judge in this sphere in successful re-establishment of this institution in modern milieu.

On February 1, 1868[14] *Ilia Chavchavadze* was appointed on the position of the settler judge on the basis of the Order of the Court of the Viceroy of Russia.[15] It is as well noteworthy that the position of the settler judge was not the first position for *Ilia Chavchavdze,* striving to arrange peaceful resolution of disputes, namely prior to this appointment, on November 8, 1964, *I. Chavchavadze* was appointed on the position of the settler mediator of Tbilisi Province, covering Gare-Kakheti and Mtskheta districts.[16] Soon after Tbilisi Province, he was dispatched to Dusheti region on the same position. At that time, the functions of the settler mediator comprised resolution of conflicts and tensions between the nobilities and peasants emerged due to the conducted reforms, dissociation-

[13] Dispute Resolution Programs of California Court, in details see <http://www.cand.uscourts.gov/adr>, [09.11.2015].

[14] *Giorgadze I., Gurgenidze N*., Ilia Chavchavadze: Chronicles of Life and Activity, Bibliographical Chronicles 1837-1907, "Science", Tbilisi, 1987, 48.

[15] It is Noteworthy that the Settler Judges in some Parts of Russian Empire were Directly Elected by People Amongst the Authorized Persons. Unfortunately, this Rule Never Applied in Georgia.

[16] *Giorgadze I., Gurgenidze N*., Ilia Chavchavadze: Chronicles of Life and Activity, Bibliographical Chronicles 1837-1907, Publishing House "Science", Tbilisi, 1987, 44.

specification of the land plots of the peasants and the landowners and composition of the contract awards, due to which, Ilia Chavchavadze, since the very first day on the hereof position, had to walk door-to-door in the villages of Dusheti Province along with the office "writer".[17]

The name of *Ilia Chavchavadze* is associated with establishment of the number of institutions and novelties, including one of the establishments – amicable dispute resolution, which was rarely underlined when speaking about the merit of *Ilia Chavchavadze* in the judicial system. He was not only a practitioner mediator (as a neutral peace-keeper) but his contributions for establishment of culture of mediation in Georgia (amicable dispute resolution) are immense, evidenced with the articles and publications authored by *Ilia Chavchavadze* regarding this issue, particularly including: "Mediation in Georgia", "Settler Judge in Georgia", "Court Quick and Right", "Courts in Georgia", "About Settler Courts".

Attitude of Ilia to mediation is clearly demonstrated in the article published in the newspaper "Iveria" on April 19, 1886 – "About Settler Courts", where he estimates addition of 30 more settlers in Georgian jurisdiction as the fact of utmost importance. Namely, he wrote: "the further life goes on, the harder relations between people are. We encounter brisk trade exchange and hence, importance of the settler court is higher. More and more cases the Court has to deal with and the small number of the Courts is insufficient to meet the requirements of local jurisdiction. And if jurisdiction is as short to fail to deal with local requirements, if due to this shortage not everyone is allowed of easy and quick application to the Court for restoration of justice, then life can no longer be considered as desired due to routine interruptions, affecting first of all the economic life and the moral condition of the population. People need quick and easy, informal Court. Violated rights need to be quickly restored". The hereof issue is still as relevant as in the second half of the XIX century. Even today, we encounter protracted civil litigations and the Courts are overloaded with the pending cases.[18] Addition of the Judges instead of the mediators is still doomed to be the solution of the hereof situation[19], while increase of number of mediators, as *Ilia* presumed, will enable approximation of justice to the people.[20] At that, unfortunately, the incumbent Council of Justice of Georgia is not active enough considering setting up of the Settler – Mediation Centers as a solution of the challenges the Court encounters regardless of heartily support of *Ilia Chavchavadze* to this endeavor. "Workers on daily basis strive to find food, so it is hard for them to walk a long distance, to expect trials, to serve constant visits – all these entail excessive costs and are considered a damage for the people… as we see the greatest troubles people are in as they have to walk to the door of the Court during a whole year, then it means they have to abandon their houses and families and lose their time in the Courts!". "People do not enjoy disputes but strive for quick resolution", and in this single sentence, *Ilia Chavchavadze* manages to form the Court as the concept of service rendered by the body

[17] Tsk. T. IX, 309.
[18] Statistic Data of the Supreme Court of Georgia, see <http://www.supremecourt.ge/statistics/>, [10.11.2015].
[19] The Statement by the Chairman of the Supreme Court of Georgia on Addition of 100 more Judges, see <http://www.ipress.ge/new/7577-raionul-saqalaqo-sasamartloebs-100dan-150mde-mosamartle-daemateba>, [10.11.2015].
[20] *Chavchavadze I.,* On Settler Courts, Newspaper Iveria, 1886, №86.

for jurisdiction, namely necessity to prioritize prompt and effective resolution of dispute. The article by *Ilia Chavchavadze* published in the newspaper "Droeba" (Times) N51 of March 10, 1883 is dedicated to the same issue – "Court Quick and True". As we already see from the title, Ilia Chavchavadze in his article speaks about deficiencies of delayed jurisdiction, indirectly indicating to "imaginable" nature of success of the prevailing party under the conditions of "protracted" jurisdiction: "say, you sued having your claims. What would your opinion be about justice suspending you in one instance for a month, then to another with the same period etc. and as two years pass, states: you won, good luck. And in his publicist letters he provides that "the greater part of people cannot interpret laws, another part cannot tolerate formality, respects a real truth and wants to save time; people rather want their litigations to be quickly accomplished and the judgments to be based on the fact considered by people as the truth".[21]

Unfortunately, deriving from the confidential nature of settlements and due to scarcity of the stationary material kept in the National Historical Archive of Georgia (in informative terms), we failed to obtain most of the material reflecting the mediation process conducted peculiarly by *Ilia Chavchavadze,* though we still discovered two cases where *Ilia Chavchavadze* successfully accomplished mediation between the parties. The first of the cases was in re dispute – the priest Shio Barnabishvili v. Phillippe Arganashvili: "I, as the settler judge, have assured the parties about peaceful resolution of the dispute in the agreement that Arganashvili should indemnify four manats instead of five to the priest and give the lamb back. They agreed on these conditions".[22] Relevantly, Ilia Chavchavadze ceased proceedings and delivered it to the Archive. The second case demonstrates that the habitant of the village Uremi, Tiko Kochorashvili appealed to the Court against her husband – Kutsika Kochorashvili due to his adultery. "I have assured the plaintiff and the defendant on peaceful resolution and on forgiveness of each other's assault and offence, as well as complete restoration of the marital rights and clarity of marital responsibilities between the spouses. The plaintiff and the defendant expressed their consent on my offer and reconciled, asking to terminate proceedings. They could not sign the document due to illiteracy",[23] – as the records provide. The fact that *Ilia Chavchavadze* systematically referred to mediation and was successful therein is clearly manifested in the stationary records of the Historical Archive, though they fail to provide the information about the immediate circumstances and the disputable subject between the parties.[24]

Taking similarity of the institutions of the settler judge on the territory of Georgia in the second half of the XIX century and the modern Court mediation into account, we can unconditionally call *Ilia Chavchavadze* the flagship of Georgian mediation, especially that most of the lawyer mediators in the modern developed countries are former and incumbent judges.[25]

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[21] *Chavchavadze I.,* Settler Judges in Georgia, Letter №6, Publicist Letters, Vol. IV, Publishing House "Sakartvelo" Georgia, Tbilisi, 1987, 359.

[22] See the Protocol of September 23, 1968 in re case №289-1, Kept in the National Historical Archive of Georgia.

[23] See the Protocol of July 23, 1868 in re case C128, Kept in the National Historical Archive of Georgia.

[24] See №f.8-1-2284, № f.31-1-27, № f.31-1-211, № f. 31-1-20268 da № f. 31-1-20650 Folders Kept in the National Historical Archive of Georgia.

[25] Evidenced with the Lists of the Mediators Licensed by the International Mediation Organizations, for Instance: <www.jamsadr.org>, [05.11.2015].

3. Modern Court Mediation Practice after four Years of Adoption of Legislation

On November 21, 2011, the legislative package on "Changes to Sundry Legislative Acts of Georgia"[26] has been initiated to the Parliament, aiming at establishment of the institution of mediation into the judicial system. According to the explanatory note to the draft, "the draft aims at establishment of the alternative mechanism of dispute resolution – institution of mediation to facilitate to elimination of disputes between the parties in compliance with their agreement and increase of public awareness to allow amicable dispute resolution", and the objective of the draft was stated to be provision of quick and effective jurisdiction in the Regional (City) Courts and the Courts of Appeal and facilitation to amicable resolution of disputes between the parties.[27]

The above-mentioned draft was soon adopted – on December 20, 2011 and enacted on January 1, 2012. In view of clarification whether the resources (potential) of improvement of the progress during four years upon enactment lie in the legislative norms or implementation (administration) of the policy undertaken in view of establishment of new institution, we need to severally consider the legislation and the practice.

a. Analysis of the Legislation Regulating the Court Mediation

Achievement of the objective prescribed with adoption of the norms regulating the Court mediation, required the developed legal norms to stimulate application of mediation without prejudice of essence of mediation; to protect the parties of the litigation and the disclosed information but to prevent excessive regulation of the process; in view of effective enforcement of mediation to elaborate the masterly and balanced legal mechanisms. Analysis of the above-mentioned issues requires consideration of the issues as follows:

1. Concept of Mediation

Chapter XXI[1] of the Civil Code of Practice of Georgia – "Court Mediation" fails to provide explanation of mediation, indication to the role of the third neutral party of the process, control of the process outcomes by the parties and the style of the mediator. The hereof issues are neither regulated under any normative acts adopted by the judicial authority. Correspondingly, it still is up to the professionalism and conscientiousness of the practitioner mediators to deal with the number of similar issues, which as a rule, are prescribed with the concept of mediation, for instance: the style of the mediation process conducted by the mediator, whether he/she will offer the mediation conditions to the parties etc.

2. Initiation of the Process

In line with the Article 187[3] of the Civil Code of Practice of Georgia[28], initiation of the Court mediation is possible in the event of consent of the parties on any dispute and with the Court order:

a) On family disputes other than adoption, annulment of adoption, restriction of the parental rights and deprivation of the parental rights;

[26] See <http://parliament.ge/ge/law/7675/15264>, [11.24.2015].
[27] Explanatory Note to the Draft, see <http://parliament.ge/ge/law/7675/15264>, [11.24.2015].
[28] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].

b) On Legal disputes over inheritance;
c) On Legal disputes over neighborhood.

Correspondingly, the legislators, regarding initiation of the process, have opted for the intermediate approach implying admittance of mandatory mediation on the cases of three categories solely and in other events, reserved it in capacity of the subject of voluntary agreement of the parties. A very interesting factor of the legislation regulating Georgian Court mediation is the reservation in the paragraph two of the Article 187^3 of the Civil Code of Practice of Georgia[29] that in the event of voluntary mediation solely, i.e. in the event of agreement of the parties, the dispute can be referred to mediation at any stage, which implies that the adoption of the judgment on mandatory mediation by the Judge is permitted on the preparatory stage solely instead of any stage. It is as well noteworthy that in line with the Article 187^3 of the Civil Code of Practice of Georgia, the judgment on delegation of the case to the mediators shall not be appealed. Hence, we can state that the legislation of Georgia perceives the institution of mediation, more specifically the mandatory mediation as the integral part of Court proceedings. The fact that the disputes of certain categories shall be referred to the mandatory mediation in the manner depriving the parties the right to appeal, and it is rather the decision made in the course of the Court administration instead of restriction of the right to appeal to the Court as guaranteed under the Constitution. This is the very attitude practiced by the Courts of the number[30] of the countries, though in this event it is to be regulated under the decision of the body developing the policy of jurisdiction for the Common Courts – the High Council of Justice. In compliance with the sub-paragraph "e" of the paragraph one of the Article 49 of the Organic Law of Georgia on "Common Courts", "the High Council of Justice of Georgia shall develop and endorse the rule of organizational practice of the Common Courts"[31] and in accordance with the sub-paragraph "u" of the paragraph "g" of the Article 9 of the Rules of Procedure of the High Council of Justice of Georgia, the High Council of Justice shall endorse the rule of organizational practice of the Common Courts and make the decisions on the issues related to due functioning and administration of the Common Court system.[32] Correspondingly, the High Council of Justice, ratifying the Provisions on the rule of organizational practice and activity of the Court mediation, would ensure integration of Court mediation into the judicial system of Georgia.

3. Privacy Protection Issue

The process of Court mediation is safe for the parties first of all in terms that the mediation, in the event of failure of settlement, is not to entail damage to the parties in regards with disclosure of information. Privacy, as an institution, is beneficial and interesting for the parties not willing to refer the conflict with the family member, coworker or partner to the public area (Court). It is of crucial importance for the integral components of mediation: improvement of communication and due obtainment of information. Moreover, inasmuch as unlike the Court proceedings, the mediator upon

[29] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[30] See US Court Mediation Rules, <http://www.cand.uscourts.gov/overview>, [11.05.2015], or Australian Court Mediation rules, <http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/NADRACPublications-A-Z.aspx>, [11.05.2015].
[31] See <https://matsne.gov.ge/ka/document/view/90676>, [12.12.2015].
[32] See <http://hcoj.gov.ge/ge/legal-framework/varios>, [12.12.2015].

mediation strives to achieve mutually beneficial solution by means of "inter-play" of different or common but not contradictory, legal, psycho-social and material interests of the parties, privacy protection issue also has an immense impact on the integral parts of mediation – achievement of creative solution. Deriving, in view of identification of real needs of the parties, the effective Court mediation requires from the mediator to have the capacity to obtain any information, including confidential. Vice versa, if the judicial system fails to ensure due protection from disclosure of confidential information, it can be prejudicial for the parties. Without due guarantees for privacy protection, the parties in the mediation process do not as a rule disclose sensitive information fearing leakage and thus, it appears impossible to obtain the complete picture on the disputable issue. That is why, privacy protection is one of the mainstays of the mediation process and without privacy protection due mediation is doomed to be impossible. The hereof issue has been envisaged by the Georgian legislators, which is clearly evidenced with the Articles 104, 141 and 187^8 of the Civil Code of Practice of Georgia, namely in line with the Article 104 of the Civil Code of Practice of Georgia, the Court rejects the information and the documents, disclosed under the privacy conditions upon Court mediation in capacity of the evidences, save otherwise agreed by the parties.[33] Under the paragraph 1^2 of the hereof Article, this rule shall not apply in the event if the disclosed information or the document is submitted to the Court by the party disclosing them, or if the hereof information or the document was possessed by another party or obtained otherwise under the law and introduced to the Court.[34] As to the Article 187^8 of the Civil Code of Practice of Georgia, it prohibits as parties so the mediators from distribution of the information disclosed under the mediation, and the Article 141 of the Civil Code of Practice of Georgia prohibits interrogation of the mediator in capacity of the witness in regards with the circumstances, about which he/she became aware upon exercise of the functions of the mediator. It is also interesting that unlike regulations in Germany[35] and some of the US States[36], the legislation of Georgia fails to envisage the exceptions from the above-mentioned, which at some extent is in compliance with the European Directive[37] on "Certain Aspects of Mediation in Civil and Commercial Matters", namely despite of the fact that the preamble and the text of the Directive emphasizes importance of confidentiality for the mediation process, the paragraph one of the Article 7 of the Mediation Act envisages exceptions as well – if the confidential information concerns the public order of the country, more specifically the interests of a child or enforcement of the act of settlement. However, the paragraph two of the same Article entitles the signatory countries to undertake stricter rules for privacy protection than it is provided in the Directive itself; inasmuch as

[33] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[34] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[35] You can compare it with the German legislation where according to the Article 4 of the Mediation Act, in exceptional cases the mediator can be exempted from the obligation of privacy protection, namely it is admitted in the event solely if disclosure of information appears necessary for settlement or protection of public order, see <http://www.gesetze-im-internet.de/bundesrecht/mediationsg/gesamt.pdf>, [12.11.2015].
[36] According to the legislation of the State of Wisconsin, the mediators are allowed of disclosing the confidential information in camera in the event if keeping the information disclosed upon mediation confidential is an illegal action, see <http://www.wicourts.gov/services/attorney/mediation.htm>, [10.02.2014].
[37] Directive 2008/52/EC, on Certain Aspects of Mediation in Civil and Commercial Matters, of the European Parliament and of the Council, 21 May 2008, see in details <http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0052:en:NOT>, [03.07.2015].

possibility to secede from the Agreement on Confidentiality, first of all, is conditioned with the public interests prevailing over the private interests of protection. As well in Georgia, exceptions from the privacy protection rule, would likely be better for the mediation institution itself rather than worse. It is true that the rules of the leading Mediation Courts of the developed countries also envisage absolute obligation of privacy protection similar to Georgia (for instance, Court of California[38]), though taking the qualification of mediators in Georgia into account, such settlement can be still related to certain risks.

4. Rights and Obligations of the Parties of the Process

The Civil Code of Practice of Georgia imposes the following rights and obligations to the parties of the Court mediation:[39]

- In line with the sub-paragraph "e" of the Article 31, the Judge shall deter the case if he/she participated in re in capacity of the mediator;
- Authority to deter the mediator shall be granted to the parties on the same basis (Article 187^4 of the Civil Code of Practice of Georgia) as of the basis for deterrence of the Judge;
- In line with the Article 94 of the Civil Code of Practice of Georgia, the person shall not serve in capacity of the representative in the Court, who participated in the status of the mediator in the same case, and in line with the Article 35 of the Civil Code of Practice of Georgia, same restriction shall apply to the expert, translator, specialist and the secretary of the sitting;
- The Article 187^8 of the Civil Code of Practice of Georgia prohibits the mediators and the mediation parties from distribution of the confidential information disclosed upon mediation;
- The Article 141 of the Civil Code of Practice of Georgia on the one hand privileges not to give testimony concerning the information disclosed upon mediation and on the other hand, prohibits serving the witness in the Court concerning the circumstances, disclosed thereto upon exercising the functions of the mediator;
- part one of the Article 187^4 obliges the parties to attend at least two mediation meetings at the appointed time and venue, and in the event of absence without a good reason, the parties shall be imposed with the penalty of 150 GEL;
- In line with the Article 187^5, the mediator, in view of settlement of the parties, is entitled to use the period of 45 days, which can be extended with the same term on the basis of the consent of the parties.

Resuming the hereof regulations, we can state that in line with the legislation of Georgia: 1) the third neutral party shall be deprived of the right to participate in the same case in another status after he/she participated in capacity of the mediator; 2) in terms of confidentiality, the mediators are attributed to the category of the privileged professions, protected from the obligation to disclose the information obtained upon implementation of their professional duties; 3) direct participation of the parties is ensured in the mediation process; 4) the reasonable term is established upon expiry of which the mediator shall resubmit the case to the Court for consideration.

[38] Sanction 1121 (mediator's Reports and Finding) California Evidence Code, see <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=01001-02000&file=1115-1128>, [03.01.2015].

[39] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].

The aim of regulation of the rights and obligations of the parties of the mediation process on the legislative level is to protect the mediation process, the interests of the parties and jurisdiction. Hence, in case of comparison of the hereof obligations of the mediators with the obligations of the mediators of the developed countries (Germany, Austria or (deriving from the liberal approaches) the State of California), we can clearly see that the obligations of the mediators in the process of the Court mediation in Georgia, are not quite perfectly regulated. According to the federal legislation of Germany, namely the Article 5 (1) of the "Mediation Act"[40], the person willing to be appointed as the mediator shall meet the following requirements: pass the mediation training to study the basic principles of mediation, the technique of negotiations and communications, conflict management and the law on mediation, and if the person wills to become the registered mediator, according to the Austrian law on Mediation, he/she needs to: a) be 28 years old and over; b) be of high reliability; c) meet the criterion of professionalism; d) have own responsibility insured with 400 000 EURO. And finally, the persons willing to become the mediators in the State of California[41] shall pass the 25-hour theoretical and practical trainings and sign the Code of Conduct for mediators, envisaging consideration of at least one pro bono case per year.

5. Resolution of the Case with Settlement

There are no any special forms or requirements in Georgia for registration of the settlement achieved in the Court mediation. However, the Article 187^7 of the Civil Code of Practice of Georgia regulates the issue of resolution of the Court mediation. Namely, "if the dispute, within the term established under the law on Court Mediation, is resolved amicably, the Court, on the basis of the mediation, shall adopt the judgment on endorsement of settlement of the parties. The hereof judgment is final and shall not be appealed[42] and shall enter into force without delay". At that, in line with the Article 2 of the Law of Georgia "On Enforcement Proceedings"[43], the judgments entered into legal force on private and administration cases shall be subject to enforcement.

Legislation of Georgia envisages not only the mechanism for simplified enforcement of the settlement achieved upon the Court mediation but in view of resolution of the case through mediation, establishes certain stimulating mechanisms for the Court applicants, including one of the most important factors – economic motive. Namely, in the event of resolution of the dispute through mediation, the amount of the state tax constitutes 1%, however no less than 50 GEL.[44]

In financial terms, the hereof rule for reduction of the Court fees is indeed a good motivator for the parties,[45] however we shall take another issue into account: in line with the Article 208 of the Civil Code of Practice of Georgia, in case of Court settlement (instead of mediation), the Judge shall

[40] See <http://www.gesetze-im-internet.de/mediationsg/__1.html>, [12.12.2014]
[41] See <http://www.courts.ca.gov/rules.htm>, [11.05.2013].
[42] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[43] See <https://matsne.gov.ge/ka/document/view/18442>, [03.11.2015].
[44] Paragraph "a3" of the Article 39 of the Civil Code of Practice of Georgia, see <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[45] As outlined in practice, often the parties upon filing the claim to the Court of the First Instance, completely cover the Court fees, stipulated under the Law of Georgia on "State Fees" – 3%, due to which the Judge, along with approval of the settlement protocol, refunds excessively paid 2% to the parties.

make his/her judgment on termination of proceedings and endorses the terms of settlement, and in the event of termination of proceedings, the paragraph 3 of the Article 6 of the Law of Georgia "On State Fees" allows complete refund of paid state fee.[46] Correspondingly, the hereof record provides better impetus for settlement in the Court in practice than for settlement through mediation. The hereof issue might not be important, though we shall expect the parties to refuse accomplishment of the case with settlement through mediation due to the fact that settlement in the Court hall after accomplishment of mediation process will be more beneficial for the parties.

It is as well noteworthy that even the regulatory norms of the Court settlement in Georgian legislation have some gaps. Namely, in line with the Article 218 of the Civil Code of Practice of Georgia,[47] the Judge, in view of settlement of the parties, is authorized by own initiative or through mediation of the parties, to announce the break during the trial and hear the parties or the representative of the parties solely without attendance of other persons. Besides, the Judge, in view of settlement of the parties, is entitled to indicate to the possible outcomes of dispute resolution and offer the settlement terms to the parties. Whereas the Judge is in capacity of the mediator in the case under his/her consideration and fails to delegate the case to his/her colleague, as practiced in the Courts of German Federation for instance,[48] the settlement process is being exposed to the following problems:

1. The parties and the Judge himself/herself find it complicated to instantly switch from the trial based on the principle of competitiveness to the settlement process based on the principle of cooperation and hence, to change their attitude to the process. Deriving from the hereof fact, the Court settlement processes ongoing in the Courts of Georgia, with high probability are used to continue in the same opposing mode similar to the mode of the trial;
2. The parties, acknowledging that in the event of failure to achieve settlement, the same Judge is to make the decision on the subject of dispute dictated by his/her personal belief, abstain from disclosure of the confidential information that might have impact on the decision-maker. Correspondingly, the fact that the Judge is entitled to hear the parties solely without presence of other persons, cannot serve the guarantee sufficient for the parties to disclose the sensitive information.
3. There is the threat upon estimation of the settlement terms by the third neural party during the settlement process or upon offers that if the parties consider any of them inadmissible, the neutral party upon disclosure – the Judge or the mediator, loses the role of the neutral party for the signatory party and is converted into the "Lawyer" of the opponent. Hence, indication by the Judge peculiarly considering the case, even in view of settlement of the parties, to one of the parties (or both) on the outcome of dispute resolution inadmissible thereby or on settlement terms, undermines the neutral or unbiased image of the hereof Judge in case of continuation of the process, which is quite a crucial issue for jurisdic-

[46] See <https://matsne.gov.ge/ka/document/view/93718>, [03.11.2015].
[47] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[48] *Hopt K. J., Steffek F.,* Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 17.

tion.[49] In view of solution of the hereof problems and neutralization of the risks, the dispute upon Court settlement in Germany shall be delegated to the other Judge entitled to meet with the parties in different milieu to introduce own role and through formation of cooperative attitude between the parties, to try accomplish the judicial discord with settlement. At that, he/she shall not disclose the information to the Judge considering the case, that he/she became aware upon the settlement process. Correspondingly, he/she shall keep confidentiality and in the event of failure of the settlement process, re-delegate the case to the initial Judge.[50]

Likely, the conditional factor of the quite unfavorable statistic data of the settlements[51] achieved through the Court settlement in the Common Courts of Georgia, is the gap in the hereof legislation along with the pure skills of settlement technique of the Judges. Correspondingly, improvement of the legislation regulating the Court settlement in Georgia would be preferable taking the best practice of the leading European countries into account.

b. Practice Analysis of the Pilot Project of Mediation in Tbilisi City Court

After enactment of the legislative norms (January 1, 2012), on May 7, 2012,[52] the Memorandum concluded between the High Council of Justice of Georgia, High School of Justice, Tbilisi City Court, the National Center for Alternative Resolution of Disputes at Tbilisi State University, the "German International Cooperation Society" (GIZ) and the "Judicial Independence and Legal Empowerment Project" (JILEP) in view of practical enactment of the Court mediation was the first step forward. The Memorandum on Cooperation facilitated to launch of the pilot project of Court mediation in Tbilisi City Court and selection of the candidates eligible for the training course on mediation organized with support of the "British Center for Effective Dispute Resolution" (CEDR). The pilot project of mediation of Tbilisi City Court has triggered the mediation meetings in December, 2013. During two years, 44 cases[53] altogether have been delegated for mediation (3 cases in 2013, 13 cases in 2014, 28 cases in 2015). 16 of the cases delegated for mediation have been accomplished with settlement, 25 have been accomplished without agreement and 3 disputes are still under mediation. In percentage terms, 39% of 41 cases was accomplished with settlement and 61% failed. It is noteworthy that during the accounting period, the pilot project covered only the voluntary mediation cases, the most of which – 29 cases were the mandatory legal disputes, 11 cases were the domestic and 4 cases were hereditary disputes.[54] If we take lack of culture of dispute resolution with settlement – mediation into account in current Georgian jurisdiction, evidenced with the official statistic data by the Supreme Court (namely, according to the

[49] An interesting elucidation has been made concerning the hereof issue in the Judgment of the Civil Chamber of the Court of Appeals of Tbilisi of August 6, 2015. See <http://library.court.ge/judgements/63762015-09-11.pdf >, [11.11.2015].

[50] *Hopt K.J., Steffek F.,* Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 18.

[51] See <http://www.supremecourt.ge/statistics/>, [12.12.2015].

[52] See <http://hcoj.gov.ge/ge/sasamartlo-mediatsiis-temastan-dakavshirebit-memorandumi-gaformda/1924>, [28.11.2015].

[53] The hereof statistic data is provided by Tbilisi City Court on December 2, 2015.

[54] The Letter of Tbilisi City Court of November 25, 2015.

information by the Statistic Service of the Supreme Court of Georgia, the following cases have been accomplished with Court settlement on the civil legal disputes in Tbilisi City Court: 8.4% of considered cases in 2012, 7.2% in 2013, 9.6% in 2014 and 9.1% in 2015.[55] The hereof data countrywide is even lower. Namely, the following cases have been accomplished with Court settlement on civil disputes: 8.3% in 2012, 8.4% in 2013, 9.4% in 2014 and 8.5% in 2015.[56]), the data obtained as a result of the pilot project is almost 4 times higher than the percentage index of the Court settlements. Correspondingly, the settlements achieved during the last two years for the mediation pilot project can be considered as quite a successful result.

The administrator of the pilot project of Tbilisi City Court, other than the statistic data of the cases submitted to the Mediation Center, shall initiate the anonymous questionnaire of satisfaction of the parties of the mediation process with the mediation process and the mediator. The leading Mediation Centers[57] consider the results of the questionnaire of satisfaction of the mediation users as the main measurement unit of project success instead of the percentage data of accomplishment of cases with settlement, which is quite logical if we consider the fact that the objective of mediation is not only achievement of settlement but continuation of the dispute in the Court after the parties are assured that dispute resolution by the Judge is the best solution way for the given situation. Relevantly, the lawyer and the client shall leave the mediation process with satisfaction even when the lawyer fails to accomplish the dispute with settlement whereas is aware that it is the event when there was no chance to use settlement, peaceful resolution of the dispute, transformation of relations and other advantages of mediation and not when the parties merely leave the opportunities unrealized or moreover – they lose the opportunities. Deriving from this fact, the questionnaire of satisfaction of the users is one of the best methods to control, maintain and improve the quality of mediation process, which likely will be implemented by the managers of the pilot project peculiarly after some period of time.

The pilot project of Tbilisi City Court, in terms of the number of delegated mediation cases, has nothing to be proud of, though usage of the voluntary mediation at the first phase and enactment of the mandatory mediation only after accumulation of some experience (likely since 2016) shall be considered as the right decision of the managers of the pilot project. As noted, satisfaction of the users is more important than the quantitative index but whereas the questionnaire of satisfaction of the users is confidential, it would be hard to speak about the achievements of the Mediation Center of Tbilisi City Court in this regards, though the fact that the hereof information is accumulated, processed and stored in the base of Tbilisi City Court, is to be undoubtedly hailed.

4. Recommendations of the International Experts

Three reports publicly accessible have been developed concerning the alternative means of dispute resolution, namely the dynamics and prospects of development and state of mediation during the last five years in Georgia. All the reports have been held at various stages of development of me-

[55] The Letter of the Supreme Court of Georgia of November 20, 2015 №118.
[56] The Letter of the Supreme Court of Georgia of November 20, 2015 №118.
[57] See <http://www.jamsadr.com/>, an <http://www.ca9.uscourts.gov/mediation/>, [11.11.2015].

diation with engagement of various experts. Hence, they do represent important documents for study and analysis of the recommendations adopted in view of realization of the trajectory, current and missed opportunities of development of Court mediation in Georgia and that is why they deserve to be individually considered.

In October, 2011 the contracted expert, *Michael Blechman* has developed the evaluation (report) of the alternative means of dispute resolution in Georgia with support under the "Judicial Independence and Legal Empowerment Project".[58] The report covers evaluation of not only the Court mediation but the alternative means of dispute resolution in general. Development of the norms regulating mediation has had not even been triggered during the visit of the expert in Georgia, though this fact makes the hereof evaluation even far more interesting in terms of study of the available opinions and expectations for 2011 of the persons concerned with development of alternative means of dispute resolution in Georgia. In view to accurately foresee the trajectory of development of mediation, we shall outline the records made by the expert as a result of the meeting with the law companies concerning the fact that regardless of recognition of the mediation institution and friendly attitude thereto, the representatives of the law companies were not sure about the extent of efficiency of the hereof institution in Georgia without stimulating mechanisms.[59] Thus, importance of mediation stimulating mechanisms has been initially considered.

Correspondingly, the conclusion developed by the expert on alternative means of dispute resolution in Georgia is as follows: "the prospect of development of mediation in Georgia is quite high, inasmuch necessity thereof is confirmed by the Judges, lawyers and Law Schools and there is the potential to realize the model to facilitate to development of alternative means of dispute resolution".[60]

It is noteworthy that the author of estimation (*M. Blechman*) initially underlined importance of the model. Namely, in view of development of mediation in Georgia, as he presumes, we shall take the experience of development of commercial mediation of the Balkan states by "International Financial Cooperation" (IFC) into account.[61]

In March, 2015, within "Judicial Independence and Legal Empowerment",[62] the "European Center for Dispute Resolution" has developed the report on mediation in Georgia providing interesting observations and recommendations. The hereof recommendation is the most comprehensive report in terms of estimation of development of mediation institution in Georgia. The goal of the expert, Aleš Zalar[63] invited for development of the report was to estimate: the extent of efficiency of

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[58] "Judicial Independence and legal empowerment program" was the 4-year initiative implemented by the "East-West Management Institution" in Georgia with financial support by USAID, See <http://www.ewmi-jilep.org/>, [22.10.2015].

[59] *Blechman M. D.,* Assessment of ADR in Georgia, Assisted by USAID – JILAP Commercial Law team, 2011, 5.

[60] Ibid.

[61] See the report in details, <http://www.ifc.org/wps/wcm/connect/991f510047e98d59a52ebd6f97fe9d91/ PublicationBalkansGivingMediationaChanceADRStory.pdf?MOD=AJPERES>, [11.11.2015].

[62] "Judicial Independence and legal empowerment program" was the 4-year initiative implemented by the "East-West Management Institution" in Georgia with financial support by USAID. See <http://www.ewmi-jilep.org/>, [22.10.2015].

[63] *Zalar A.,* "European Center for Dispute Resolution", the President, the former Minister of Justice of Slovenia, the mediator.

mediation in capacity of dispute resolution mean in Georgia; the course of the pilot project in Tbilisi City Court and impact of the pilot project on development of mediation countrywide.

In view of estimation of the norms regulating mediation, the expert has offered verification thereof by means of the questionnaire developed by the "National Austrian Dispute Resolution Commission"[64] facilitating the persons working on the norms regulating mediation to develop the consistent approaches and respective standards in regards with the hereof issues. The author of the study considers the issues as follows problematic for development of the mediation institution in general in Georgia:

1. Unavailability of the document defining the policy for development of alternative means of dispute resolution, which along with other issues, is entailed with waning support by the donor organizations in the course of development of mediation;
2. Unavailability of the uniform and the standing Advisory Body in view of definition of the policy for alternative means of dispute resolution, to implement the functions of the coordination agency.

Correspondingly, the main challenge for further development of mediation is ineffective system of exchange of information and coordination of processes between the parties engaged in the process of development of media, as well as unavailability of the uniform approach. Hence, despite of the Chapter provided in the Civil Code of Practice envisaging Court mediation, unavailability of the legislative act regulating the mediation institution in general creates incomplete legislative frame in Georgia, failing to comply with the EU respective directives on the one hand and entailing reduction of confidence towards the institution amongst the potential users thereof on the other hand.

In the part of the Court mediation, the expert has noted the positive aspects of the Chapter 21^1 of the Civil Code of Practice[65] of Georgia upon estimating the legislation as follows:

- Opportunity of establishment of mediation in the judicial system with both forms – as the Court mediation, so the Court-related mediation;
- Opportunity of application of mandatory mediation towards the domestic, hereditary and neighborhood disputes;
- Availability of maximal duration – 90-day provision of mediation;
- Imposition of the respective sanctions in the event of failure to appear at the mediation process;
- Other than exceptions stipulated under the law, opportunity of delegation of all civil legal disputes for mediation with the consent of the parties;
- Observance of confidentiality and inadmissibility of the created evidences at the trial in mediation process;
- Enforcement of the settlements achieved by means of the Court.[66]

[64] National Australian ADR Commission, see <http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/NADRACPublications-A-Z.aspx>, [22.10.2015].
[65] See <https://matsne.gov.ge/ka/document/view/29962?geo=on#>, [03.11.2015].
[66] The list is incomplete.

- In line with the developed documents, the gaps in the legislation are as follows:
- In the Civil Code of Practice, incomplete compliance of the Chapter on the Court mediation with the EU respective directives and the UNCITRAl Model Law;
- Unavailability of the criterion for selection and accreditation of the mediators;
- Encouragement of the Judicial Authority and the concrete Courts for development of the mediation programs and respective regulatory norms;
- Disorganization of the issue of financing of the Court mediation;
- Unequal conditions of the settlement achieved by means of the Court settlement and mediation in financial terms;
- Obligation of at least two mediation meetings.[67]

Based on the hereof gaps and positive aspects provided in the current legislation of Georgia, the report provides respective conclusions on the pilot program ongoing in Tbilisi City Court. The recommendation on formation the provision of the pilot program taking the interests of the Court and the users into account is particularly noteworthy. Another recommendation offers mediation to the parties of the dispute at the early stage. Other recommendations also envisage the advices on communication with the users and most importantly, the recommendation on transmission of the pilot project on the domestic disputes to the mandatory mediation, and the neighborhood and hereditary disputes – to the quasi mandatory (soft) model.[68]

The part of the report on Court mediation provides the recommendations not only for Tbilisi City Court but for the High Council of Justice of Georgia, namely, the recommendations to add the quantity of the cases delegated for mediation in the "forms of individual statistics" of the Judges and to add the quantity of appeals to mediation amongst the criterion for effective evaluation of the Judges.

It is hard to state that any fundamental changes have taken place six months after adoption of the recommendations provided in the study. All the recommendations or the ideas provided therein are as relevant as in the end of 2015 during the visit of the experts in Georgia and correspondingly, existing problems were supplemented with another problem – failure to consider the most important recommendations developed by the experts. Although, the High Council of Justice of Georgia launched extension of the pilot projects to go beyond Tbilisi area, established the Association of Mediators and the pilot project ongoing in Tbilisi City Council is to be transformed into the mandatory mediation since 2016 but to complete picture remains unchanged – Court mediation has the slow development pace so far.

Despite, Aleš Zalar served the short-term visit to Georgia aiming at development of the report, he succeeded to thoroughly study the impediments for establishment of mediation in Georgia, the circumstance amongst of which is particularly noteworthy that he recognized the main impediment for establishment of mediation in Georgia not in technical or legislative sphere but in exchange of information between the agencies concerned, coordinated cooperation and joint administration of the

[67] The list is incomplete.

[68] Implying the opportunity to waive mediation on the basis of due ground and in writing within the term of 8 days upon submitting the Judgment.

processes, reflected on administration of the process of establishment of the hereof institution in Georgia.

And finally, the founder of the "Rule of Law Foundation", *Victor Schachter* and the expert of the Foundation, *John Koppel* served the visit to Georgia in May, 2015. Within the visit, the experts studied the norms regulating the Court mediation and held the meetings with the parties in the process of establishment of Court mediation. Based on the information obtained, the engaged specialists have developed the recommendations classified thereby according to the high, mid-high and average priorities. The issues as follows in the list of the recommendations have been granted the top priority:

- Enactment of mandatory mediation;
- Set up of the working group, namely with participation of all parties concerned;
- Provision of the trainings on mediation for the Judges;
- Training for the lawyers to develop the representative skills in mediation;
- Public awareness on values and accessibility to mediation;
- Improvement of evaluation system for satisfaction with the mediation process;
- Constant update of knowledge of the mediators and Judges in mediation skills;
- Establishment of couching and mentor systems for the newly appointed mediators.

Unlike other recommendations, the recommendations issued by the experts of the "Rule of Law Initiative" Foundation are dignified with far practical nature compared to the legal analysis of the norms. Besides, whereas the evaluation has been elaborated for development of the Court mediation solely, it is focused on Court mediation totally and fails to cover the pros and cons of the other mediation institutions in Georgia. Correspondingly, it is oriented to concrete and pilot project details than to the general picture.

5. Conclusion

Successful establishment of the mediation institution for Georgian jurisdiction is the issue of utmost important as in practical,[69] so in theoretical terms.[70] Implementation thereof is rather complicated without academic support. The fact that *Ilia Chavchavadze* wrote about the role and importance of the settlement institution in the course of implementation of law, is the greatest advantage and success indeed for re-establishment of mediation in Georgia. The considerations by *Ilia Chavchavadze* are the greatest heritage for establishment of the culture of legal dispute resolution through settlement in Georgia (and beyond), carrying the symbolic and practical purpose. As the change management experts provide, if we want to change the system we shall have the new system based on and appealing to the old, best practice.[71] The fact that the legal discords have been solved

[69] In practical terms, the number of the pending cases for Court consideration, mid-terms of consideration and the statements of the members of the Council of Justice regarding insufficient number of the Judges allow underlining importance of mediation for jurisdiction. See the official statistic data of the Common Courts of Georgia, <http://www.supremecourt.ge/statistics/>, [11.12.2015].

[70] In ideological terms, importance of establishment of mediation for jurisdiction is establishment of the multi-window Court oriented to early and peaceful solution of the problem, allowing jurisdiction achieving the essence of the Court in successful manner – social peace.

[71] *Heath C., Heath D.,* Switch: How to Change Things when Change is Hard, Broadway Books, New York, 2010, 23.

through mediation during centuries in Georgia was not put to dispute so far,[72] though other than describing the institution of the settler Judge, *Ilia Chavchavadze* has created the concept in his publications of how the policy of the judicial authority shall be in terms of administration, jurisdiction and render of juridical service to the Court users. Namely, he indicated to importance of the judicial service oriented to the rapid, simple and informal jurisdiction. Correspondingly, his expressions do have the potential to become the slogan of Georgian Court mediation and serve the basis for the communication strategy of modern Court mediation.

Obviously, appealing to the historical experience of peaceful resolution of disputes in Georgia is not enough to change the paradigm of Georgian jurisdiction. We, in view to deal with the change management process, need to ensure respective regulations and best management, which is the part of the norms regulating Court mediation on the one hand and the effective administration of the process on the other hand.

Surely, the changes adopted to the Civil Code of Practice of Georgia on Court mediation were of utmost importance for establishment of mediation in Georgian jurisdiction, though they were insufficient, which is obvious from the analysis of the hereof legal norms and obtained recommendations. Namely, the problems are outlined in the concept of mediation – in regards with absence of the definition, Court mediation coordinating body, the document identifying authority of the employees of the Mediation Centers, norms controlling the quality of mediation process, the document defining the professional standard and obligations of the mediators and insufficient boosting mechanisms for mediation. The hereof problems go far beyond acute in the event of transmission to the mandatory mediation. Hence, the rapid and effective way to eliminate the legislative gaps is adoption of the changes to the Provisions of the Court Mediation, Code of Conduct of Mediators and the Rule of Proceedings by the High Council of Justice, which along with problem solution, will grant attractiveness and guarantees to Court mediation. Namely, the "Provisions on Court Mediation" allow regulation of the issues as follows:

- Elucidation of the process of Court mediation – definition (with indication to the role and style of mediator in the process);
- Set up of the coordinating agency of Court mediation;
- Development of the functions and competences of the Administrator of the Mediation Center;
- Development of the minimal standard of professional education of the mediator;
- Development of the provisions on the professional duties of the mediator (if expedient).

Increase of attractiveness of mediation requires enactment of the additional stimulators as follows:

- Prioritization of the case in the event of successful accomplishment of mediation upon consideration thereof in the Court. Namely, in view to prevent the factor of time to serve the impediment for consent of the parties to participate in mediation, prioritized convocation of the sitting "on mediation-tested cases" would be justified in the event of resubmis-

72 *Kekelia M. (ed.),* Georgian Customary Law, Vol. 3, Tbilisi, 1991, 185.

sion of the case to the Court, which requires the High Council of Justice to update the rule of organizational activity and business administration of the Common Courts already being outdated;[73]

– In view of motivation of the Judges, reflection of the number of the cases accomplished with mediation on the "Rule of Evaluation of Efficiency of Activity of the Judges"[74] and on criterion of promotion of the Judges.

The recommendations clearly reveal that transmission to the mandatory mediation would be justified if the judicial system provides adherence to the Ethics Rules of the mediators and norms regulating quality of the process. Correspondingly, it would be expedient for the Council of Justice to develop in participation with all the parties concerned the "Code of Conduct for Mediators" to apply to all the mediators participating in the Court mediations and to ensure protection of the values of Court mediation.

Undoubtedly, regulation of the issues related to administration along with the regulatory norms is necessary for establishment of the mediation institution and effective activity thereof in Georgian jurisdiction. The analysis of the results since enactment of the legislation up-today reveals that elimination of the reasons entailing adoption of the law provided in the explanatory note to the draft and achievement of the outlined goals failed to be achieved during four years,[75] facilitated with the gaps revealed in the course of administration of the project. Namely, sequent and gradual development of Court mediation in the Courts of all instances of Georgia was hindered with unavailability of the common approaches, strategy and action plan of development of mediation in judicial authority, as well as undue engagement of the new composition[76] of the High Council of Justice (as the body developing the judicial policy). The process of establishment of the mediation institution in Georgian judicial system with disorganization of the hereof issues takes place without planning and common coordination. At that, it creates the risks of favoritism and partiality in the judicial system, complicates the administration process necessary for establishment of Court mediation, enhances skeptical attitude of lawyers towards mediation and entails lack of confidence of the users to the mediation. Solution of the hereof problems and effective management, control and development of the mediation centers in the Courts of all three instances entail expediency of the High Council of Justice, in capacity of the coordinating body of the judicial system reform, with participation of the parties concerned and taking the recommendations into account, to develop the strategy of Court media-

[73] Currently, the Ordinance of October 27, 2000 №466 on "Endorsement of the Provision on Organizational Activity and Business Administration Rule in the Regional (City), District Courts, the Common Courts of Abkhazia and Adjara Autonomous Republics" applies in the Common Courts, see <https://matsne.gov.ge/ka/document/view/114292>, [12.12.2015].

[74] With the Decision of September 25, 2007 (#1/208-2007) the High Council of Justice of Georgia adopted the Rule of Estimation of Activity of the Judges of the Common Courts of Georgia, where naturally, the Judge, for the cases accomplished with mediation, fails to obtain respective estimation – points, which serves no additional motivation for the Judge to try to convince the party in privilege of mediation.

[75] The hereof is confirmed with the expectations reflected in the Evaluation of 2011 and real statistic data.

[76] In July, 2013 the High Council of Justice of Georgia was re-composed and on July 22, the new composition convened the first sitting, see <http://hcoj.gov.ge/ge/2013-tslis-22-ivniss-gaimarteba-iustitsiis-umaghlesi-sabchos-skhdoma/2092>, [11.11.2015].

tion and the annual action plan. According to the strategy of the Court mediation, as the recommendations issued by the experts provide, envisages necessity to outline the ambitious objectives and to define the particular steps for achievement thereof to ensure effective integration of the mediation institution into the judicial system. The following shall be the pillar ideas of the Court mediation strategy:

- Increase of Court capacities in terms to deal with the received cases;
- Offer of the flexible service oriented to the Court users;
- Encouragement of early resolution of disputes;
- Increase of degree of satisfaction of the Court users through dispute resolution alternative means.

Establishment of Court mediation requires complex approaches. All details are important for effective enactment of this institution, especially at the initial stage. Establishment of the culture of accomplishment of the mediation – discord with settlement in Georgia requires the judicial authority to pay particular attention to maximal effective usage of the available resources and rapid and peaceful resolution of the disputes upon developing the judicial system strategy[77]. Enactment of mediation institution with the hereof model, with high probability will allow formation of the culture of accomplishment of the disputes with settlement in Georgia on the one hand and achievement of balanced correlation between the cases considered in the Courts and the disputes solved with mediation and on the other hand, unloading jurisprudence, rapid and peaceful resolution of disputes and optimal usage of the available resources. *Ilia Chavchavadze* used to mention priority nature of the hereof issues in the beginning of the XIX century and the same is reiterated nowadays by Georgian and international experts. Correspondingly, it is reliable as for the persons developing the judicial policy, so for the society.

[77] Obligation of development of the strategy and the action plan of the Judicial authority for 2016 was officially assumed by the High Council of Justice under the National Action Plan for 2016 on Implementation of the Agenda of the Georgia-EU Association Agreement. See <http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-mier-momzadda-asotsirebis-shesakheb-shetankhmebisa-da-asotsirebis-dghis-tsesrigis-gankhortsielebis-2016-tslis-samoqmedo-gegmis-proeqti/2519>, [11.12.2015].