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## **Mediation and Online Dispute Resolution (odr) as an Innovative Form of Dispute Resolution<sup>1</sup>**

*Mediation, as an alternative dispute resolution technique, has been rapidly getting a strong position in a daily usage as the most acceptable form for conflicting parties to come to a solution. Many European countries apply forms of mandatory use of mediation before initiating court proceedings in domestic jurisdictions, further promoting the alternative dispute resolution and increasing its affordability in the society. For the purpose to save own finances and time this alternative form of dispute resolution has many users among conflicting parties. Different states also think and work on more innovative forms of using mediation, which will make this process more important and usable. The article deals with mediation as an alternative dispute resolution and its innovative form – Online Dispute Resolution.*

**Keywords:** *Alternative Dispute Resolution (ADR), Mediation, Online Dispute Resolution (ODR), Online Mediation, Legislative Regulation, Civil Procedural Legislation, Amicable Settlement, Advantages of Mediation.*

### **1. Introduction**

There is no unified definition of mediation<sup>2 3</sup>. Mediation is an old<sup>4</sup>, traditional technique of solving the conflict which was re-discovered in the 20th century as a rapidly growing<sup>5</sup> effective means<sup>6</sup> for solving conflict. Mediation was used<sup>7</sup> centuries ago, its popularity, so called "Re-discover"<sup>8</sup> as an alternative dispute resolution mechanism, especially has been growing<sup>9</sup> since the 1970s, when so-called

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<sup>1</sup> The author would like to thank German Academic Exchange Service (DAAD) for awarding academic scholarship through which this research has been conducted at Max Planck Institute for Comparative and International Private Law in Hamburg (Germany).

<sup>2</sup> *Buhring-Uhle C., Kirchhoff L., Scherer G., Arbitration and Mediation in International Business, Kluwer Law International, London, 2006, 176.*

<sup>3</sup> The word "mediation" has Latin root and derives from the word *medius*, which means "being in the middle", and the term "mediation" derives from the English word *mediation* / to mediate (*vermitteln* in German) which means facilitation.

<sup>4</sup> *Brooker P., Mediation Law, Routledge Taylor & Francis Group, 2013, 1.*

<sup>5</sup> *McLaren R.H., Sanderson J.P., Innovative Dispute Resolution: The Alternative, Carswell, Toronto, 2006, 4.*

<sup>6</sup> *Glenewinkel W., Mediation als aussergerichtliches Konfliktlosungsmodell, 1999, 68.*

<sup>7</sup> *Englert K., Franke H., Grieger W., Streitlosung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen, Werner Verlag, 2006, 239.*

<sup>8</sup> *Von Bargen J.M., Gerichtsinterne Mediation, Mohr Siebeck, 2008, 5.*

<sup>9</sup> *Brooker P., Mediation Law, Routledge Taylor & Francis Group, 2013, 20.*

(In England mediation as a key component of the civil justice system started to develop from 1996, which is known as Lord Woolf's reform, as a result of which some changes were made to the Civil Procedure Act

ADR movement began in the west, and the main focus of this movement was on mediation<sup>10</sup> as the most practical and effective alternative dispute resolution mechanism<sup>11</sup>. Mediation has been formed as a hybrid, because from scientific point of view, it combines elements of law, psychology, psychiatry, ethnology and communication skills<sup>12</sup>.

Many scientists and researchers believe<sup>13</sup> that originality of mediation is that it simultaneously involves absolute voluntariness of parties towards the process, confidentiality of the process is provided, it is characterized with the principles of neutrality and impartiality and which is the most important, mediation offers disputing parties a unique solution and strengthens and stabilizes future personal and business relationships between the them.

There is often expressed a skeptical opinion about mediation that it is the excess supplement to conflict resolution process between the parties, because the disputing parties can find solution around the conflict better than others. Although the practice has shown that disputing parties actually cannot independently communicate in a civilized manner, due to the fact that generally preconditions of conflict do not allow them to act so, but through involvement of the third independent and impartial party in the process, the parties seeking solution, are more productively involved in the dispute resolution process<sup>14</sup>.

Today many lawyers are involved in mediations as mediators or a representative of the parties in mediation; this latter plays an important role in legal practice<sup>15</sup>. Although some part of the society is still skeptical towards the functionality and outcomes of mediation<sup>16</sup>, this new institution becomes more popular every day.

## 2. The Concept of Mediation

Mediation is defined as a structured process based on a trust in which one or more neutral<sup>17</sup> physical<sup>18</sup> person<sup>19</sup> as an out-of-conflict<sup>20</sup> mediator assists the parties to complete the dispute voluntarily

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and the parties of the civil dispute were offered to solve the conflict via out-of-court methods. In particular, as a result of Lord Woolf changes the court was authorized to offer an alternative dispute resolution to the parties, and if the party unreasonably refused to participate in the process, the court has been given the right to impose a penalty to such party.)

<sup>10</sup> *Alfini J., Press S., Sternlight J., Stulberg J.*, Mediation Theory and Practice, 2001, 2.

<sup>11</sup> *Stephen J.W.*, Principles of Alternative Dispute Resolution, West Academic Publishing, 2016, 387.

<sup>12</sup> *Englert K., Franke H., Grieger W.*, Streitlosung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen, Werner Verlag, 2006, 244.

<sup>13</sup> *Spencer D., Brogan M.*, Mediation Law and Practice, Cambridge University Press, Cambridge, 2006, 3.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Reuben R.*, The Lawyer Turns Peacemaker, A.B.A.J. 1996, 54-55.

<sup>16</sup> *Leung E.*, Mediation: A Cultural Change, Asian Pacific Law Review, 2009, 17.

<sup>17</sup> *Kajkowska E.*, Enforceability of Multi-Tiered Dispute Resolution Clauses, Hart Publishing, Oxford and Portland, 2017, 9.

<sup>18</sup> See Law on Mediation in Civil Disputes, Turkey, Article 2, 2012.

<sup>19</sup> *Göksu M.*, Civil Litigation and Dispute Resolution in Turkey, Banka ve Ticaret Hukuru Arastirma Enstitusu, 2016, 275.

<sup>20</sup> *Brown H., Marriott A.*, ADR Principles and Practice, Sweet & Maxwell, Thomson Reuters, 2011, 154.

and with the responsibility of the parties<sup>21</sup>, or the concept of mediation is to let the parties to try and ensure dispute resolution<sup>22</sup> with the help<sup>23</sup> of mediator within the scope of structured conflict process. This is a technique<sup>24</sup> for conducting negotiations structurally aiming to achieve a certain result.

Mediation offers the parties flexible<sup>25</sup> alternative method of solving conflict in exchange of less time, less expenses as well as through reduction of overloading of trial proceedings. Positive side of mediation is that in case of disagreement between the parties in the process, they always are able to apply the court for dispute resolution<sup>26</sup>. Mediation is oriented on parties' interests more than on their legal rights, during which agreement achieved in mediation often more represents commercial compromise<sup>27</sup> of the parties than a decision taken in relation to legal rights; This is a process promoting negotiations<sup>28</sup>.

Mediation is a good opportunity for the parties to define conflict between each other, to understand the concept of claims towards each other, find out actual reasons<sup>29</sup> of conflict, regulate conflict peacefully, manage it and to create so called win-win<sup>30</sup> situation, also, to prevent further initiation of conflict and maintain relationship<sup>31</sup>. In addition, the Christian doctrine also advises people to avoid<sup>32</sup> conflicts.

Mediation is a good way for self-determination by the parties<sup>33</sup> instead of judicial procedures where a judge has this function, or "mediation" helps the parties to decide their own affairs themselves, and the court and arbitration "interfere" in the parties' affairs<sup>34</sup> for resolving the dispute".

There are strong social and constitutional prerequisites<sup>35</sup> why disputing parties should have opportunity of trying to settle the dispute through a third neutral person, because a method similar to an alternative dispute resolution allows the parties to exhaust the conflict, which in turn serves the purpose of the rule of law. This form of dispute resolution helps the parties to have direct communication<sup>36</sup> with

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<sup>21</sup> Eidenmuller H., Wagner G., *Mediationsrecht*, Köln, 2015, 3.

<sup>22</sup> Duve Ch., Eidenmuller H., Hacke A., *Mediation in der Wirtschaft: Wege zum professionellen Konfliktmanagement*, 2011, 83.

<sup>23</sup> Partridge M., *Alternative Dispute Resolution*, Oxford University Press, Oxford, 2009, 89.

<sup>24</sup> Roberts M., *Mediation in Family Disputes*, 4<sup>th</sup> ed., Ashgate, 2014, 8.

<sup>25</sup> Hopt J.K., Steffek F., *Mediation Principles and Regulation in Comparative Perspective*, Oxford University Press, Oxford, 2013, V.

<sup>26</sup> Lindblom H., *Progressive Procedure: The Role of Courts, Access to Justice, Group Actions, Complex Litigation and Alternative Dispute Resolution in Comparative Perspective: Twelve Essays 1985-2015*, Iustus Förlag, 2017, 422.

<sup>27</sup> Kajkowska E., *Enforceability of Multi-Tiered Dispute Resolution Clauses*, Hart Publishing, Oxford and Portland, 2017, 10.

<sup>28</sup> Stephen W., *Principles of Alternative Dispute Resolution*, West Academic Publishing, 2016, 7.

<sup>29</sup> Kumar A., *Alternative Dispute Resolution System*, K.K. Publications, New Delhi, 2016, 233.

<sup>30</sup> Ibid.

<sup>31</sup> Englert K., Franke H., Grieger W., *Streitlösung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen*, Werner Verlag, 2006, 242.

<sup>32</sup> Roebuck D., *Mediation and Arbitration in the Middle Ages (England 1154-1558)*, Holo Books, The Arbitration Press Oxford, 2013, 51.

<sup>33</sup> Menkel-Meadow C.J., Love L.P., Schneider A. K., Sternlight J.R., *Dispute Resolution Beyond the Adversarial Model*, Wolters Kluwer Law & Business, Aspen Publishers Inc, 2011, 224.

<sup>34</sup> Meyer S.A., Chairman, New York State Mediation Board, 1969, 164.

<sup>35</sup> Brand J., Steadman F., Todd C., *Commercial Mediation*, 2<sup>nd</sup> ed., Juta and Company, 2016, 13.

<sup>36</sup> Partridge M., *Alternative Dispute Resolution*, Oxford University Press, Oxford, 2009, 90.

each other, which usually does not take place during a trial and in mediation the parties have an opportunity to overcome the large margin of alienation that is characteristic to a conflict between them.

Mediation is impartial conduction<sup>37</sup> of negotiations on dispute resolution through involvement of third person in nonobligatory process, often called as “conflict resolutions process”<sup>38</sup>. In this process, the mediator has not a right<sup>39</sup> to solve conflict between the parties and make decision<sup>40</sup>, and thus differs from the court<sup>41</sup> and alternative dispute resolution such as arbitration, and the mediator’s authorities differ from arbitrator’s authorities<sup>42</sup>. Mediation offers the parties the opportunity of conducting structured negotiations<sup>43</sup> in line with interests of the parties during which in contrast to the court and arbitration, parties themselves and not mediators<sup>44</sup>, using the main principle of Mediation: Interests and not requests<sup>45</sup>.

Mediation, in modern sense, is interpreted as a process in which the parties take self-determination<sup>46</sup> and make decision on the case itself. International practice has established a practice that the courts must exercise justice, but not "at all costs", and therefore on all cases where expenses can be saved the court advises<sup>47</sup> the parties to apply to mediate.

Adoption of the European Directive on Mediation<sup>48</sup> (2008/52/EC), implementation of which is mandatory for member states since 2011, has developed a new development perspective of mediation in Europe<sup>49</sup> in order to establish a unified framework of mediation standard and support cross-border mediation.

Establishment of Mediation Standard at an international level enforced member states to integrate the legislative act on mediation in their domestic legislation, which increased the requirement towards mediation as an effective dispute resolution technique as well as the need of its further development in non-European countries.

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<sup>37</sup> *Buhring-Uhle C., Kirchhoff L., Scherer G.*, Arbitration and Mediation in International Business, Kluwer Law International, 2006, 176.

<sup>38</sup> *Von Bargen J.M.*, Gerichtsinterne Mediation, Mohr Siebeck, 2008, 13.

<sup>39</sup> *Ibid*, 15.

<sup>40</sup> *Goldberg S. B., Sander F. E. A., Rogers N. H., Cole S. R.*, Dispute Resolution, Negotiation, Mediation, Arbitration, and other Processes, Wolters Kluwer Law & Business, 6<sup>th</sup> ed., Aspen Casebook Series, 2012, 121.

<sup>41</sup> *Menkel-Meadow C. J., Love L. P., Schneider A. K., Sternlicht J. R.*, Dispute Resolution Beyond the Adversarial Model, Wolters Kluwer Law & Business, Aspen Publishers Inc, 2011, 31.

<sup>42</sup> *Eidenmuller H., Wagner G.*, Mediationsrecht, Köln, 2015, 5.

<sup>43</sup> *Schiffer J.*, Schiedsverfahren und Mediation, Carl-Heymanns Verlag, 2005, 6.

<sup>44</sup> *von Schubert M., Haase M.* in *Schiffer J.*, Schiedsverfahren und Mediation, Carl-Heymanns Verlag, 2005, 249.

<sup>45</sup> *Ibid*, 250.

<sup>46</sup> *Boulle L., Field R.*, Australian Dispute Resolution, Lexis Nexis Butterworths, 2017, 58.

<sup>47</sup> *Chern C.*, International Commercial Mediation, Informal London, 2008, 15.

<sup>48</sup> Directive 2008/52/EC, of the European Parliament and of the Council, on Certain Aspects of Mediation in Civil and Commercial Matters, 21 May 2008, <<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0052>>, [30/07/2015].

<sup>49</sup> *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, V.

In terms of definition of mediation, there is a difference in European countries, among the concepts given on the one hand at a level of law, and on the other hand, which are defined by the judges, but the positions on the theory given below are homogeneous and agreed that mediation is the process based on the volunteering of the parties in which the mediator solving the issue without legal form, implements the systematic facilitation of negotiations between the parties for the purpose to make the parties to assume responsibility for dispute resolution.

Everyone agrees that the required characteristic of this process should be the volunteering of the parties to be full participants of the process; only in small cases, the court can force parties to be involved in mediation<sup>50</sup>, while in all other cases it is excluded<sup>51</sup>.

They also agree that the third person involved in mediation process should not have any kind of right to make decision on the issue the essence of which lies in the fact that the parties are liable to take decisions on the issue<sup>52</sup>. The only variety of approaches to the question is observed in the issue whether a third neutral person should have ability to offer a solution in the form of its opinion to the parties<sup>53</sup> involved in the process or what are the limits of rights to act so for the third neutral person.

Consequently, the question about the duration of communication with the third neutral person, in number of cases remains the issue of internal regulations, professional codes and soft law of the country.

Accordingly, as a summary, we can say that from the concept of mediation, which uses a broad consensus<sup>54</sup>, the following mandatory preconditions should be satisfied:

- (1) There must be a dispute;
- (2) Participation should be voluntary;
- (3) Involvement of a third neutral person in the process should be ensured, who will communicate with the parties systematically; and
- (4) Decision-making on the issue is the responsibility of the parties.

Finally, we should take into consideration that additional value of mediation is not the only thing that it reduces costs<sup>55</sup>, the court and the judge's time, is less competitive than trial, but at least it is noteworthy that by using mediation, the parties are allowed to resolve their own problems, assume responsibility and control the progress of the process, during which they can reconnect and start to warm already damaged relations, or constructively to advance its business interests and personal life without stress and effort<sup>56</sup>, during which the parties have a greater feeling of satisfaction towards the proceeding<sup>57</sup>.

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<sup>50</sup> *Kulms R.*, Mediation in the USA in *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 1262.

<sup>51</sup> *Roth M., Gherdane D.*, Mediation in Austria in *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 260.

<sup>52</sup> *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 12.

<sup>53</sup> Chapter 13, C (2) (C ). 729 (Netherlands), *Schmiedel L.*, Chapter 18, B (1) (c ), 920 (Canada) *Ellger R.*, Chapter 22, A(2), pp.1138 et seq (Norway) *Sperr A.* in *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013.

<sup>54</sup> *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 13.

<sup>55</sup> *Brooker P.*, Mediation Law, Routledge Taylor & Francis Group, 2013, 9.

<sup>56</sup> *Brown H., Marriott A.*, ADR Principles and Practice, Sweet & Maxwell, Thomson Reuters, 2011, 107.



### 3. Innovative Direction of Dispute Resolution - Online Dispute Resolution

In parallel to establishing mediation as an effective alternative means of dispute resolution as well as the use of mediation as a form of international dispute resolution, another new innovation in the direction of mediation is being developed in European countries. This is so-called E-justice in mediation process, alternative online dispute resolution - ODR. Although, it should be mentioned that the United States is a real pioneer<sup>58</sup> in this field but as at today a similar form of mediation is already well implemented<sup>59</sup> in many European countries.

Over the years, information technology has being transformed into information communication technologies, which is available through wide range of technical skills of electronic communication. In addition, it should be noted that in parallel to development of e-commerce occurs a need of creation of an appropriate mechanism that will be formed as an electronic means of alternative dispute resolution<sup>60</sup>.

Development of electronic technologies does not have a scale; therefore, ability to solve disputes in electronic space is being created and improved every day<sup>61</sup>. In this direction, one of the developed system operating is ODR program of WIPO<sup>62</sup> (World Intellectual Property Organization) arbitration and mediation center, which offers concerning parties online to solve intellectual property issues through mediation.

On 25 October 2011, the European Parliament adopted another resolution for supporting ADR, which indicates and references to large potential<sup>63</sup> of ODR development on small complaints<sup>64</sup> or cross-

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<sup>57</sup> *Brooker P.*, *Mediation Law*, Routledge Taylor & Francis Group, 2013, 9.

<sup>58</sup> *Bhatia V.K., Candin Ch., Gotti M.*, *Discourse and Practice in International Commercial Arbitration*, 2012, 213.

So called "Online Mediation" was founded in July 1996 in state of Kansas, USA. In particular, a person interested in computers created a web-page which published local news, copied information from radio, television, newspapers and repeated texts of published in newspapers word by word, as a result of which the editor of local print media connected him and accused in the gross violation of copyright. As a result the site was temporarily suspended but the person applied to legal advice, contacted online ombudsman's office, which was a few months-long project founded in Massachusetts Information Technology and Dispute Resolution Center (Amherst) by Jenet Rifkin and Ethan Katsh. In this particular case they fulfilled of function of a mediator by using electronic means (e-mail, Skype, etc.) and the parties has come to an agreement.

<sup>59</sup> Development of ODR in Italy is connected to Milan Arbitration Chamber since 2003, <[www.risolvi-online.it](http://www.risolvi-online.it)>.

<sup>60</sup> *Brown H., Marriott A.*, *ADR Principles and Practice*, Sweet & Maxwell, Thomson Reuters, 2011, 587.

<sup>61</sup> Online mediation service Juripax (offers the mediators the opportunity to have online software for carrying out the process which means online forms, online platforms, proceeding program).

<sup>62</sup> World Intellectual Property Organisation.

<sup>63</sup> Civil Justice Council, ODR-report, 5 (Online Dispute Resolution is not Science Fiction).

<sup>64</sup> *Cortés P.*, *The Law of Consumer Redress in an Evolving Digital Market*, Cambridge University Press, Cambridge University Press, 2017, 44.

(Pursuant to this Regulation the users should be able to settle the dispute online, and accordingly ADR service providers must have ODR technique, since it will be difficult to solve small disputes throughout Europe, such as disputes among consumers, with less financial costs, especially when there are cross-border disputes between the parties).



border litigation<sup>65</sup>, but this form of dispute resolution has critics who believe that the lack of regulation and high price of electronic technology itself is a challenge, which will interfere the establishment of an electronic form of dispute resolution and make it ineffective<sup>66</sup>, on the other hand, they think that the problem of further development of online dispute resolution is concluded in increased use of this form, which will result overloading of online proceeding<sup>67</sup>, which is supposed to become a problem for provider organizations. UNCITRAL in its ODR regulations predicts to fix several millions of cases<sup>68</sup> per year in the nearest future when ODR will be used, and in parallel to E-Commerce development, it can lead to hundreds of millions<sup>69</sup> of consumption.

The legislation of a number of countries may not directly include similar term, but nothing prohibits the use of such technical means in mediation<sup>70</sup>.

The definition of ODR is different in literature<sup>71</sup>, but commonly it deals with dispute resolution through the method which contains an electronic technology component, but the difference is even in this section. One thinks that the dispute should be solved using the electronic technology, but there is another opinion according to which "the dispute is solved by using the information technologies in the electronic environment."<sup>72</sup>

In both cases, technologies play an important role when the process and communication between the parties to the dispute are mostly implemented through online electronic communications tools<sup>73</sup>.

Online dispute resolution (ODR) is perceived as an alternative tool of dispute resolution<sup>74</sup> that is implemented remotely using Internet technologies<sup>75</sup> that enables the parties to participate in mediation using electronic means, listen each other<sup>76</sup>, send information online and save online information<sup>77</sup>.

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<sup>65</sup> *Susskind R.*, *Tomorrow's Lawyers: An Introduction to Your Future*, Oxford University Press, 2013, Ch. 10.

<sup>66</sup> *Cortes P.*, *Online Dispute Resolution for Consumers in the European Union*, 2010, 183.

<sup>67</sup> *Heetkamp S.J.*, *Online Dispute Resolution bei grenzüberschreitenden Verbraucherverträgen*, V&R Unipress, Universitätsverlag Osnabrück, 2018, 54.

<sup>68</sup> *Wahab M. A., Katsh E., Rainey D.*, *ODR: Theory and Practice, A Treatise on Technology and Dispute Resolution*, 2011, 122.

<sup>69</sup> *Rule C.*, *Online Dispute Resolution for Business*, Jossey-Bass Publishing, San Francisco, 2002, 173.

<sup>70</sup> *Esplugues C.*, *Civil and Commercial Mediation in Europe*, Intersentia, Vol. II, 2014, 52-53.

<sup>71</sup> *Heetkamp S.J.*, *Online Dispute Resolution bei grenzüberschreitenden Verbraucherverträgen*, Universitätsverlag Osnabrück, 2018, 31.

<sup>72</sup> *Duwe Ch., Eidenmüller H., Hacke A.*, *Mediation in der Wirtschaft: Wege zum professionellen Konfliktmanagement*, 2011, 209.

<sup>73</sup> *Cortes P.*, *The Law of Consumer Redress in an Evolving Digital Market*, Cambridge University Press, Cambridge, 2018, 101.

<sup>74</sup> In recent years, private service providers of online dispute resolution have been established on the international market: a) eBay's Dispute Resolution Center, which offers a dispute resolution platform in the area of transaction carried out within it; B) Modria - is a company of the former ODR director of eBay and Pay Pal - Colin Raul (2003; 2011), which has acquired online dispute resolution license from eBay and developed and developed its online software; C) The Rechtwijzer - in 2007 Dutch Legal Aid Service Board developed an online portal that aimed to assist the parties involved in the dispute to find a lawyer in electronic space, which in 2014 together with Hill ([www.hiil.org/project/rechtwijzer](http://www.hiil.org/project/rechtwijzer)) turned into online dispute resolution platform. D) Youstice - is also an online platform launched in 2014 which serves online resolution of small cost disputes; E) resolver - [www.Resolver.co.uk](http://www.Resolver.co.uk) - is a private platform that allows users to use the platform to regulate the dispute online.

During using online dispute resolution as an out-of-court mechanism, online form often is called<sup>78</sup> a fourth party to the dispute. Online dispute resolution forms are being developed and in a number of cases, it is possible to register and manage the claim online and this new direction takes the form of alternative dispute resolution mechanism<sup>79</sup>.

The way and form of online dispute resolution becomes an innovative approach which creates additional comfort to the users. Especially is visible the development of practice of certain specific disputes in Europe and different states of the United States through this method, such as consumer<sup>80</sup> or small business disputes (e.g. between the small business companies, the company and its consumer and etc.). Often it is called a specific term ODR<sup>81</sup> (Online Dispute Resolution) in English-speaking community. Moreover, there are scientists who believe that ODR has potential and ability of solving complex high-priced disputes<sup>82</sup>.

Online mediation proponents also pay attention to online integration of the principles of mediation, which is expressed in using electronic signature on the commitment of confidentiality in the agreement on a special form for the parties<sup>83</sup>.

Online mediation<sup>84</sup> has all advantages that is characteristic to traditional forms of alternative dispute resolution, which in some cases may led to less time-consumption and financing costs<sup>85</sup>.

Benefits of online mediation may be<sup>86</sup>:

- it is easy to plan, taking into account the work schedule of the parties and their representatives;
- The parties can be involved in mediation process without the need to leave their home and / or office;
- Online Medication should save costs, including those related to movement, which is especially important when conducting cross-border mediation.
- online space gives the parties more time and opportunity to give prepared answers in the course of mediation.
- online mediation gives opportunity to exchange documents between parties quickly and almost without any extra costs.

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<sup>75</sup> The third UNCITRAL group has also worked on ODR concept, which determined technical criteria.

<sup>76</sup> *Kumar A.*, *Alternative Dispute Resolution System*, K.K.Publications, New Delhi, 2016, 106.

<sup>77</sup> *Cortes P.*, *The Law of Consumer Redress in an Evolving Digital Market*, Cambridge University Press, Cambridge, 2018, 44.

<sup>78</sup> *Heetkamp S.J.*, *Online Dispute Resolution bei grenzüberschreitenden Verbraucherverträgen*, V&R Unipress, Universitätsverlag Osnabrück, 2018, 36-37.

<sup>79</sup> *Ibid*, 38.

<sup>80</sup> See the law of the Federal Republic of German of 19.02.2016 on regulation of disputes in consumer matters: *Verbraucherstreitbeilegungsgesetz*, BGBl, 2016, Teil I Nr.9 vom 25.02.2016, 254-274.

<sup>81</sup> *Bhatia V.K., Candin Ch., Gotti M.*, *Discourse and Practice in International Commercial Arbitration*, 2012, 212.

<sup>82</sup> *Susskind R.*, *The End of Lawyers?* Oxford University Press, Oxford, 2010, 220.

<sup>83</sup> *Brown H., Marriott A.*, *ADR Principles and Practice*, Sweet & Maxwell, Thomson Reuters, 2011, 593.

<sup>84</sup> *McLaren R. H., Sanderson J. P.*, *Innovative Dispute Resolution: The Alternative*, Thomson Carswell, 2006, 7.

<sup>85</sup> *Galves F.*, *Virtual Justice as Reality: Making the Resolution of E-commerce Disputes More Convenient, Legitimate, Efficient, and Secure*, *Journal of Law, Technology & Policy*, 2009 (1).

<sup>86</sup> *McLaren R. H., Sanderson J.P.*, *Innovative Dispute Resolution: The Alternative*, Thomson Carswell, 2006, 8.

On the other hand, it should be mentioned that at the first stage of establishment the main challenge of online mediation is a feature characteristic to mediation, such as the need of personal contact<sup>87</sup> (so-called face-to-face mediation / contact) between the parties to mediation which in a number of cases is mentioned as a main prerequisite for successful completion of mediation in the literature and practical examples also indicate this, however, when there is need and no alternatives, although the use of electronic means has no alternative.

However, it should be noted that, in a number of cases, during disputes between the parties progressing on emotional background<sup>88</sup>, on the one hand mediation by using electronic means may calm down the parties and on the other hand, allow the mediator to carry out the process in a calm environment that will ultimately result in the outcome.

#### **4. Conclusion**

Mediation, as an alternative dispute resolution technique, has been rapidly getting a strong position in a daily usage as the most acceptable way for conflicting parties to come to a solution. Many European countries apply forms of mandatory use of mediation before initiating court proceedings in domestic jurisdictions, further promoting the alternative dispute resolution and increasing its affordability in the society.

For the purpose to save own finances and time this alternative form of dispute resolution has many users among conflicting parties. Different states also think and work on more innovative forms of using mediation, which will make this process more important and usable.

The main interest of the parties to dispute, of course is to solve dispute with less cost, less time and less stressful situation and thus growing popularization and development of mediation as an alternative dispute resolution technique is reasonable and logical.

And in consideration with the fact that seeking effective ways of international dispute resolution at international level, when the parties apply to mediation, is being increased, it is reasonable to apply online mediation mechanisms which will ultimately lead to its institutional development and establishment in practice.

In this direction, we should note the Georgian reality, when mediation, on the background of the absence of special law, as such, has been getting position today. Although the use of online mediation technology in institutional form is still remote perspective for the Georgian reality, but even at initial level of mediation, in our practice there was a need of using simple electronic techniques during mediation when the dispute involved a resident of a foreign country<sup>89</sup>.

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<sup>87</sup> *Esplugues C.*, Civil and Commercial Mediation in Europe, Intersentia, Vol. II, 2014, ISBN 978-1-78068-130-6, 52-53.

<sup>88</sup> *Eidenmüller H., Wagner G.*, Mediationsrecht, Köln, 2015, 34.

<sup>89</sup> Mediation under auspices of Tbilisi City Court mediation center between Ronald Willem Hordeik (representative: lawyer Irakli Kandashvili) and Violeta Gobozova/Hordeik in 2015, case #2/21878-14, reached mediation agreement.

There also were cases of using electronic technical means during carrying out mediation involving participation of the residents of Georgia. Irreversibility of growth of similar needs and our strive to come closer to European standards will endeavor to promote the practice of online dispute resolution in Georgia soon.

### **Bibliography**

1. Directive 2008/52/EC, of the European Parliament and of the Council, on Certain Aspects of Mediation in Civil and Commercial Matters, 21 May 2008, <<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0052>>, [30/07/2015].
2. Law on Mediation in Civil Disputes, Turkey, Article 2, 2012.
3. *Alfini J., Press S., Sternlight J., Stulberg J.*, Mediation Theory and Practice, 2001, 2.
4. *Bhatia V.K., Candin Ch., Gotti M.*, Discourse and Practice in International Commercial Arbitration, 2012, 212-213.
5. *Boulle L., Kelly K.*, Mediation Principles, Process, Practice, Butterworths, Canada, 1998, 12, 16.
6. *Boulle L., Field R.*, Australian Dispute Resolution, Lexis Nexis Butterworths, 2017, 58.
7. *Brand J., Steadman F., Todd C.*, Commercial Mediation, Iuta & Company, 2<sup>nd</sup> ed., 2016, Juta and Company, 13.
8. *Brooker P.*, Mediation Law, Routledge Taylor & Francis Group, 2013, 1, 9, 20.
9. *Brown H., Marriott A.*, ADR Principles and Practice, Sweet & Maxwell, Thomson Reuters, 2011, 107, 154, 587, 593.
10. *Buhring-Uhle C., Kirchhoff L., Scherer G.*, Arbitration and Mediation in International Business, Kluwer Law International, 2006, 176.
11. *Chern C.*, International Commercial Mediation, Informa London, 2008, 15.
12. *Cortés P.*, The Law of Consumer Redress in an Evolving Digital Market, Cambridge University Press, Cambridge University Press, 2017, 44.
13. *Cortes P.*, The Law of Consumer Redress in an Evolving Digital Market, Cambridge University Press, Cambridge, 2018, 101.
14. *Cortes P.*, Online Dispute Resolution for Consumers in the European Union, 2010, 183.
15. *Duve Ch., Eidenmuller H., Hacke A.*, Mediation in der Wirtschaft: Wege zum professionellen Konfliktmanagement, 2011, 83, 209.
16. *Eidenmuller H., Wagner G.*, Mediationsrecht, Köln, 2015, 3, 5, 34.
17. *Englert K., Franke H., Grieger W.*, Streitlösung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen, Werner Verlag, 2006, 239, 242, 244.
18. *Esplugues C.*, Civil and Commercial Mediation in Europe, Intersentia, Vol. II, 2014, 52-53.
19. *Galves F.*, Virtual Justice as Reality: Making the Resolution of E-commerce Disputes More Convenient, Legitimate, Efficient, and Secure, Journal of Law, Technology & Policy, 2009, (1).
20. *Glenewinkel W.*, Mediation als aussergerichtliches Konfliktlösungsmodell, 1999, 68.
21. *Göksu M.*, Civil Litigation and Dispute Resolution in Turkey, Banka ve Ticaret Hukuru Arastirma Enstitusu, 2016, 275.
22. *Goldberg S. B., Sander F. E. A., Rogers N. H., Cole S. R.*, Dispute Resolution, Negotiation, Mediation, Arbitration, and other Processes, Wolters Kluwer Law & Business, sixth edition; Aspen Casebook Series, 2012, 121.
23. *Heetkamp S.J.*, Online Dispute Resolution bei grenzüberschreitenden Verbraucherverträgen, Universitätsverlag Osnabrück, 2018, 31, 36-38, 54.

24. *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013. V, 12-13.
25. *Kajkowska E.*, Enforceability of Multi-Tiered Dispute Resolution Clauses, Hart Publishing, Oxford and Portland, 2017, 9-10.
26. *Kulms R.*, Mediation in the USA in *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 1262.
27. *Kumar A.*, Alternative Dispute Resolution System, K.K.Publications, 2016, 106, 233.
28. *Leung E.*, Mediation: A Cultural Change, Asian Pacific Law Review, 2009, 17.
29. *Lindblom H.*, Progressive Procedure: The Role of Courts, Access to Justice, Group Actions, Complex Litigation and Alternative Dispute Resolution in Comparative Perspective: Twelve Essays 1985-2015, Iustus Förlag, 2017, 422.
30. *McLaren R.H., Sanderson J.P.*, Innovative Dispute Resolution: The Alternative, Carswell, 2006, 4-1, 7-8.
31. *Menkel-Meadow C. J., Love L. P., Schneider A. K., Sternlight J. R.*, Dispute Resolution Beyond the Adversarial Model, Wolters Kluwer Law & Business, Aspen Publishers Inc, 2011, 31, 224.
32. *Meyer S.A.*, Chairman, New York State Mediation Board, 1969, 164.
33. *Partridge M.*, Alternative Dispute Resolution, Oxford University Press, Oxford, 2009, 89-90.
34. *Reuben R.*, The Lawyer Turns Peacemaker, A.B.A.J. 1996, 54-55.
35. *Roberts M.*, Mediation in Family Disputes, 4<sup>th</sup> edition, Ashgate, 2014, 8.
36. *Roebuck D.*, Mediation and Arbitration in the Middle Ages (England 1154-1558), Holo Books, The Arbitration Press Oxford, 2013, 51.
37. *Roth M., Gherdane D.*, Mediation in Austria in: *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013, 260.
38. *Rule C.*, Online Dispute Resolution for Business, Jossey-Bass Publishing, San Francisco, 2002, 173.
39. *Schiffer J.*, Schiedsverfahren und Mediation, Carl-Heymanns Verlag, 2005, 6.
40. *Spencer D., Brogan M.*, Mediation Law and Practice, Cambridge University Press, Cambridge, 2006, 3.
41. *Sperr A.* in *Hopt J.K., Steffek F.*, Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, Oxford, 2013.
42. *Stephen W.*, Principles of Alternative Dispute Resolution, West Academic Publishing, 2016, 7.
43. *Stephen J.W.*, Principles of Alternative Dispute Resolution, West Academic Publishing, 2016, 387.
44. *Susskind R.*, Tomorrow's Lawyers: An Introduction to Your Future, Oxford University Press, 2013, Ch.10.
45. *Susskind R.*, The End of Lawyers? Oxford University Press, Oxford, 2010, 220.
46. *Von Barga J.M.*, Gerichtsinterne Mediation, Mohr Siebeck, 2008, 5, 13, 15.
47. *von Schubert M., Haase M.* in *Schiffer J.*, Schiedsverfahren und Mediation, Carl-Heymanns Verlag, 2005, 249-250.
48. *Wahab M. A., Katsh E., Rainey D.*, ODR: Theory and Practice, A Treatise on Technology and Dispute Resolution, 2011, 122.