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MEDIATION IN CRIMINAL PROCESS: THEORETICAL ASPECTS

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ABSTRACT

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THE GENERAL CHARACTERISTICS OF THE STUDY

The relevance of the topic and its degree of development. Since the middle of the twentieth century, different trends began to emerge in different legal systems to ensure the effectiveness of the administration of classical justice and the elimination of material damage caused by crime within the legal forms of combating crime. One of these trends is related to alternative solutions to criminal prosecution. One of these alternatives, the institution of mediation, which ensures the restoration of public relations as much as possible broken by the commission of a socially dangerous act, is important in terms of the social compromise. Due to its positive aspects and the success of its results in the countries where it is applied, this trend has gradually acquired an international character and has become the standard of criminal proceedings in modern times. Within the framework of the Council of Europe, where the Republic of Azerbaijan also shares its legal traditions, the Committee of Ministers has adopted four separate acts on provisions related to the mediation in the legal system:

1) Recommendation on Family Mediation No. 1 №R (98) dated January 21, 1998;

2) Mediation No. 19 №R (99) in criminal cases dated September 19, 1999;

3) Alternatives to judicial review between administrative authorities and the parties No. 9 Rec (2001) of September 5 2001;

4) Mediation in civil cases No. 10 Rec (2002) of September 18, 2002.

The Special Act of the Committee of Ministers of the Council of Europe on the mediation in criminal matters is a Recommendation No. 19 R (99) of September 15, 1999 on ‘Mediation in Criminal Proceedings’. It contains recommendations to the member states of

the Council of Europe on mediation in criminal matters. These recommendations are intended to be enshrined in the national legislation of the member states of the Council of Europe, considering the principles in force in their legal systems. All this is a key factor in the criminal procedure legislation of the Republic of Azerbaijan, which actualizes the comprehensive study of the institution of mediation law.

Furthermore, in Part II of Recommendation No. 11 of 1985 of the Cabinet of Ministers at Council of Europe on 'The Status of Victims in Criminal Law and Criminal Procedure', while assisting the member states' governments in conducting research and expanding its scope regarding the victim, it was recommended to study the possible advantages of mediation and reconciliation. Research on this topic has an important role in revealing and interpreting the advantages of mediation in the national legal system.

Every society has historically formed features of the process of reconciliation between people. Such features are formed by the interaction of various elements and are objective. One of the main tasks for the establishment and functioning of this institution is to study them and apply them in mediation as an activity aimed at achieving reconciliation.

The establishment and operation of mediation in the legal system is primarily related to the protection of the rights of the victim in criminal proceedings. The material, moral and physical damage to the victim of a crime is part of the system of conditions required for the criminalization of an act. For this reason, if the criminal proceedings do not eliminate the damage caused by the act committed, in fact, justice is not achieved. Therefore, the amendments made to Article 68 of our Constitution of 1995 on 26.09.2016 established the right of the victim to demand the compensation from the government for the damage caused by the

crime. According to this article, the rights of a person who has suffered as a result of a crime, as well as the abuse of power, are protected by law. The victim has the right to participate in the administration of justice and to demand the compensation for the damage caused to him/her. In addition, everyone has the right to demand the compensation from the government for damage caused by illegal actions or inaction of government authorities or their officials. In modern times, the importance of criminal prosecution in criminal proceedings has increased to such an extent that it is impossible to claim that a fair trial has been conducted without compensation for the damage caused to the victim of the actual crime. In this regard, the importance of mediation is to prevent the legal status of the victim from becoming unprotected. It is mediation that makes the activity carried out during the commission of a crime directly dependent on the will of the victim and connects him/her with it. It is important to consider mediation as an important legal institution not only in terms of the rights of the victim, but also in terms of the rights of the accused. This legal institution allows the accused to remedy the damage caused by the crime and to prove that he/she was rehabilitated without severe punishment. Therefore, this legal institution is important in terms of the rights of both parties and their legal status.

The relevance of the topic is also one of the main priorities of issues of the development of mediation institute as an alternative solution to disputes between small and medium entrepreneurs in the President's Decree on the "Strategic Roadmap for the production of consumer goods at the level of small and medium enterprises in the Republic of Azerbaijan" dated December 6, 2016. The document mentioned sets out the prospects for the development of the institution of mediation law in the legislation, and states that the active application and integration of this institution in the legal field

began in the first years of the independence. These factors have led to the strengthening of the legislative framework of the institution of mediation in our country as a method of out-of-court settlement of disputes, as well as the intensification of the interpretation of this institution in the national legal system.

In addition, one of the facts confirming the relevance of the issue is the one that the Council of Europe's 2018 report named "Prisons and Prisoners" notes that Azerbaijan ranks third among the member states of the Council of Europe in terms of the number of prisoners. With this number, Azerbaijan lags behind the Russian Federation and Georgia. On February 10, 2017, the President of the Republic of Azerbaijan signed a Decree “Improving the activities in the penitentiary system, humanizing the punitive policy and expanding the use of alternative punishment and coercive procedural measures not related to isolation from society. Thanks to this decree, according to the report of the Ministry of Justice, while in 2015 the number of detainees in penitentiaries in our country was more than 24 thousand, in 2018 this figure was 21,800. If we take into account that the daily cost of each prisoner is around 10 manats, this figure is more than 80 million manats a year. This leads to the allocation of huge amount of money is from the budget. If mediation is used in criminal proceedings, this figure will decrease even more. This fact has already been confirmed in the practice of countries that use mediation. At the same time, the application of mediation in the resolution of relations arising from the commission of less serious crimes that do not pose a major public threat will liberalize the penalties in the punishment system and will prevent the emergence of convictions among citizens.

The most important fact demonstrating the relevance of the issue is the discussion of the draft Law on Mediation (hereinafter the Law) in the Parliament of the Republic of Azerbaijan and its

adoption from the first reading. On March 29, 2019, a law consisting of 39 articles was adopted in our country. Article 3 of the law specifies the scope of mediation.

According to the article, mediation is applied to the cases mantioned below:

- civil cases and economic disputes (including the disputes of external elements)
- disputes arising from family relations;
- disputes arising from labor relations;
- disputes arising from administrative legal relations

Prior to the adoption of the law, Azerbaijani legislation considered an alternative solution to disputes, but their use was not high. Provisions on the settlement of legal disputes through alternative mechanisms in civil law existed before the adoption of this normative document. However, until the adoption of this normative document, the use of alternative dispute resolution methods in our country did not work at the desired level. Because there were no necessary legal mechanisms to ensure the application of alternative dispute resolution methods. In addition, civil society's knowledge on alternative dispute resolution, its nature and importance was limited.

Unfortunately, Article 3 of the Law does not provide for criminal relations in the areas regulated by mediation. However, in modern reality there is a great need for it. For this, first of all, it is necessary to study the international legal aspects of the issue. The legal framework for mediation in criminal proceedings has been significantly improved by recent amendments to the Criminal Code of the Republic of Azerbaijan. With the amendments and additions made to the Criminal Code on October 20, 2017, important aspects of mediation have emerged. Articles 73, 73-1 and 73-2 of the Criminal Code provide for the termination of criminal liability for

certain crimes against property and economic activity on the condition of reconciliation with the victim and payment of a certain amount to the government's budget. In these cases, it is necessary to start the mediation process and implement this procedure. However, effective implementation of this institution in criminal proceedings is not possible, as the legislation does not address the necessary organizational and procedural issues for it.

For the formation of the theoretical basis of the possibility of application of mediation in the criminal process of the Republic of Azerbaijan and the necessary legal mechanism, the establishment of necessary ideals in legal thinking about the essence and content of this institution, the creation of an opinion in the legal community about the need to trust this legal institution and for other purposes the study of theoretical and practical aspects of mediation is considered relevant in the science of national criminal procedure. One of the main facts confirming the practical significance of the issue is the sufficient number of materials on the criminal prosecution, which was terminated due to the reconciliation of the parties. The mediation institution is of special importance for the reconcilation of the accused and the victims as well as for the settlement of criminal tensions between them.

As for the degree of development of the topic, issues related to various aspects of the problem of mediation in the criminal process of the Republic of Azerbaijan were studied in the national legal literature within the institute of termination of criminal proceedings, no comprehensive attention was paid to its analysis in the international law.

M.A. Jafarguliyev, J.H. Movsumov, Kh.R. Alakbarov, R.Isgandarov, M.H. Mustafayev, K.N. Salimov, F.Javadov, F.M. Abbasova, F.Y. Samandarov, A.H. Kishiyev, J.I. Suleymanov, M.S. Gafarov are among the authoritative national authors and foreign

authors such as V.L. Golovko, H. Besemer, Kh. Zer, N.N. Apostolova, A.A. Shatlikova, E.E. Zaguba, N.S. Shatikhina, M.D. Karjanov and others paid special attention to the analysis of this issue.

The national authors mentioned above studied this issue as an integral part of other topics. There is no independent research work on this topic in the national legal literature after the adoption of new criminal procedure legislation. In contrast, in the foreign legal literature, especially in Russia, Turkey, Germany, and France, one can find many scientific works on mediation in criminal proceeding. There is no separate scientific work on the analysis of national legislation in the context of international aspects of mediation. One of the first researches in the national legal literature on this topic is the candidate's dissertation on "Termination of the criminal case in the preliminary investigation" written by R.H. Iskandarov in 1975. Later, Kh.D. Alakbarov who is one of the national researchers has several monographs on this topic. Among them are his doctoral dissertation on "Problems of the possibility of compromise in the fight against crime", defended in 1992, the monograph "Exemption from criminal liability", published in 2001, and many other works. Another dissertation in the national legal literature is M.A. Zeynalov's dissertation on "Possibility of compromise in criminal proceedings" defended in 2006. Many works on this subject have been written in Russia.

The researches of the mentioned national and foreign authors have made substantial and important contributions to the development of the science of criminal procedure. At the same time, it should be noted that these works, as a rule, are written in the context of the relevant foreign legislation and from the point of view of another topic. There is not a complex research work written that would consider the standards of international law in the study of mediation issues. There are no innovations in the scientific literature

in substantiating many of the proposals and recommendations made on this topic. Many of them are based on the ideological foundations of the old or classical justice, which can not be considered effective and efficient in terms of restorative justice.

There is no independent monographic research work on this topic in the national criminal procedure literature, which is carried out taking into account modern legislation and reflects the theoretical concepts of the modern times. This work is an independent monograph on the mediation in criminal proceedings of the Republic of Azerbaijan and international law.

The object and subject of research. The object of research is the mediation in modern criminal proceeding, and the public relations regulated by the existing international standards related to its place and role in the mechanism of legal regulation.

The subject of the research includes general theoretical and special criminal procedure literature on the problem under study, criminal procedure legislation of the Republic of Azerbaijan, and some foreign countries, laws of the Republic of Azerbaijan and foreign countries on mediation, official statistics and recommendations of the Committee of Ministers at Council of Europe.

The goals and objectives of the study. The main purpose of the study is to clarify the place and role of mediation in the settlement of criminal disputes, and whether it is possible to develop this institution within the framework of classical justice, to evaluate the national legislation in terms of the demand of the international law and to suggest solutions by revealing the current shortcomings, to organize the preparation of proposals and practical recommendations for the improvement of the national legislation. The following tasks have been identified to achieve the set goal:

- to determine the essence and importance of mediation in criminal proceedings and to give it an author's definition;

- to retrospectively analyze the criminal procedure legislation of the Republic of Azerbaijan on the basics of mediation in criminal proceedings;

- to investigate the gaps in the newly adopted and newly enacted Law and suggest ways to eliminate these gaps

- to analyze the institution of mediation in the context of the principles and objectives of criminal proceedings;

- to compare the international standards related to the institution of mediation with the national legislation;

- to study the legislation of some foreign countries in the field of mediation;

- to identify current problems and suggest solutions by analyzing the legal basis of mediation at the stage of preliminary investigation and trial.

The research methods. The methodological basis of the dissertation is the main provisions of the dialectical philosophy. Formal-legal, comparative research method was used during the research. During the research, analysis, synthesis, induction and deduction, as well as the logical analysis, comparative analysis, systematic approach and other methods of scientific cognition were widely used.

The main provisions of the defense. In accordance with the objectives of the research, based on its content, the following new scientific provisions are to be defended:

1. The institution of mediation in criminal proceedings is understood as a set of legal norms regulating the relations between the accused (suspect) and the victim in the activity carried out by the mediator in connection with the elimination of the consequences of the crime.

2. The retrospective analysis of mediation issues gives grounds to say that this institution has not existed in its current sense since the beginning of the formation of the modern legal system. In the territory of Azerbaijan, this institution was applied in a different form by Sharia courts. Resolving mediation issues was one of the main responsibilities of the judge in sharia courts. In other words, the main task of the judge in sharia courts was to compensate the damage caused by the crime and to ensure an aquittal by reconciling the parties. Therefore, there are historical grounds and conditions for the detailed regulation of mediation issues in detail in the national legal system in modern times.

3. Manifestations of the principle of inevitability of criminal liability can be observed in the system of tasks of criminal proceedings. According to Article 8.0.5 of the Code of Criminal Procedure, one of the tasks of criminal proceedings is to determine the guilt of people accused of committing a crime, to punish them and to administer justice in order to acquit innocent persons. It is logical to conclude that the purpose of justice is **to identify and punish those accused of committing crimes.** In other words, there is a cause-and-effect relationship between determining the guilt of the accused and imposing a sentence on him/her, and the guilty people must be punished. It should be noted that the recent amendments to the procedural legislation have changed the main activities of the law enforcement agencies in terms of their purpose. Thus, the legislation no longer focuses on the fight against crime in criminal proceedings, but on the protection of every citizen from illegal attacks. From this point of view, we believe that the purpose of justice should not be to only punish the guilty, but to establish justice. In this regard, the goal of punishment should be removed from the list of goals of justice.

4. The relevant item in the following wording should be added to Article 3 of the Law to the application scope of ‘Mediation’:

3.1.5. disputes arising from criminal legal relations.

5. Although the release of a person from criminal liability under mediation confirms that the relevant act has been committed and that the person is related to it, it does not give grounds to say that the perpetrator is guilty of this act. Taking into account the position of the case law of the European Court of Human Rights and the requirements of the presumption of innocence, we believe that the legal force of the decision to terminate the prosecution in connection with the reconcilation in the case of other people shall not have the obligatory legal force for court.

6. The exemption of a person from liability may be connected with his / her identity or the elimination of the act committed from public safety. In cases where the person has committed two or more crimes at the same time, if it is possible to acquit him/her by means of reconciliation for one of the crimes, then it cannot be claimed that the public safety of his/her identity has been eliminatedBecause in this case, the person’s trial for crimes not related to reconciliation continue, and this is the main feature that confirms that he/she is a public danger. Therefore, the release from the responsibility by reconciliation is associated with the elimination of the public danger of the act.

7. A recidivist who has for the first time committed a crime which does not pose a great public danger or who has fully compensated for the damage caused by Articles 73.2, 73-1 and 73-2 shall be released from liability if he/she reconciles with the victim. The law does not allow a person released from liability to be released from liability if he/she commits the same act again although he/she had previously committed a major socially dangerous act. It would be more correct to eliminate such a contradiction in the future

8. Since much of the information required to initiate criminal proceedings cannot be obtained through statutory and regulated investigative actions, they are collected through other procedural actions, changing their forms. The point is that in many cases, credible evidence, which is important as proof, can be obtained through urgent investigative actions, or the circumstances which are important for a criminal case can be clarified through these means. In such a situation, it is not possible to identify these cases without initiating a criminal prosecution, and in fact the effectiveness of mediation is reduced without initiating the prosecution. These can be added to the justification of the thesis on the abolition of the ban on investigative actions before the criminal case.

9. As a result of many crimes specified in Article 73-2 of the Criminal Code of the Republic of Azerbaijan, damage is inflicted on the government, where it would be illogical to make a reconciliation on human relations as a condition for release from criminal liability along with the compensation of the damageIf it is not possible to reconcile on the relevant crimes, then the release from liability under these articles considers compensation for damages solely in connection with the activities of the offender. The compensation by the offender is called release from liability for sincere remorse. Taking into account the requirements of the legislative technique on the structure of the normative legal act, Article 73-2 should be established as Article 72-1 of the Criminal Code.

10. Articles 73.2, 73-1.1, 73-1.2 and 73-2 of the Criminal Code, Articles 129.1, 130.1, 131.2, 133.2, 143, 178.2, 179.2, 186.2.1, 187.2, 189-1.1, 189-1.2 189- 1.2-1 criminal prosecution is carried out in the form of public prosecution. In public prosecutions, criminal prosecution may be initiated by the authorities without a complaint from the victim. In this case, if the victim does not demand compensation for the damage and does not want to reconcile with the

accused and initiate criminal prosecution, there is no need, for the initiation of prosecution except in exceptional cases. The exclusion of the criminal prosecution by the reconciliation in these crimes is as in the case of special charges. It cannot be considered correct to condition the fact of reconciliation of the victim with the culprit as a ground for release from criminal liability with full compensation of the damage. In the case of reconciliation and full compensation, the exclusion of criminal prosecution makes the act committed look more like a delicacy, and the circumstances that are necessary to criminalize the act are unclear. As a solution to the problem, we offer the followings as a way out of the situation:

Article 39.1.9 of the Code of Criminal Procedure of the Republic of Azerbaijan shall be amended and its content shall be given as follows:

“39.1.9. when the accused is reconciled with the victim (in the case of criminal prosecution as a private prosecution, as well as in the cases provided for in Articles 73.2, 73-1.1, 73-1.2 and 73-2 of the Criminal Code) "

11. According to Article 280.4 of the Code of Criminal Procedure of the Republic of Azerbaijan, in case of termination of criminal proceedings in connection with the circumstances provided for in Articles 39.1.1, 39.1.2, 39.1.11 and 39.2 of this Code, it is not allowed to include the provisions to the decision that would doubt the innocence of the person whose criminal proceedings have been terminated. If there is a reasonable doubt that a person is guilty, he/she should not be found guilty, which should also exclude the possibility of questioning his/her innocence. From this point of view, it is necessary to establish in the CPC the basis of Article 39.1.11 as one of the grounds for acquittal, as termination on acquittal grounds without inclusion in Article 55.2.

12. Until 25.06.2020, Article 305.1 of the CPC, which provided the grounds for termination of proceedings on a criminal case or simplified pre-trial proceedings in preparation for trial, contained only a reference to Article 39. Until that date, the termination of the reconciliation at the stage of preparation for the trial could only take place at the initiative of the public prosecutor. Prior to making appropriate additions to the CPC, such a position was demonstrated that such discretionary authority of the court should be established at the stage of preparation for trial. Therefore, in our first articles on the dissertation, it was suggested that Article 305.1 of the CPC be amended to read as follows:

"305.1. If the case (cases) provided for in Articles 39 and 40 of this Code are determined at the preliminary hearing, the court shall issue a reasoned decision to terminate the proceedings on the materials of the criminal case or simplified pre-trial proceedings. "[1]

On June 25, 2020, the legislation was amended and the article was given in the following wording:

"305.1. In the cases provided for in Articles 39, as well as Articles 40.3 and 40.4 of this Code, the preparatory hearing of the court shall make a reasoned decision to terminate the proceedings on the materials of the criminal case or simplified pre-trial proceedings. When the circumstances excluding criminal prosecution relate to a part of the charge, the criminal proceedings shall be terminated only in that part. " In our opinion, this change in the legislation on the eve of the completion of the dissertation shows that our position is justified.

[1] Kishiyeva A.Z. Mediation in the criminal process of the Republic of Azerbaijan: general provisions // Law, 2017, № 03 (269)

13. It is necessary to add to the list of crimes to which mediation can be applied all crimes of public and private accusation, some public accusations.

The scientific novelty of the research. The scientific novelty of the research is conditioned by the fact that it is the first comprehensive research work on the comparative analysis of the institution of mediation in terms of international standards in the criminal process, which includes the termination of criminal prosecution on the basis of conciliation under the new Criminal Procedure Code of the Republic of Azerbaijan adopted in 2000. In addition, it is the first comprehensive research work since the adoption of the Law on 'Mediation', which is devoted to the comparative analysis of foreign experience in this field in terms of generalization related to the study of gaps in the law, and their elimination.

The theoretical and practical significance of the research. The practical and theoretical significance of the research is that effective results have been achieved on the application of law based on theoretical provisions, research of international agreements and analysis of practical materials, as well as on how to improve the performance of investigative authorities and courts of the Republic of Azerbaijan. The research work can also be used for the purpose of further scientific research, in teaching the relevant section of the subject of "Criminal Procedure" in the law faculties of various educational institutions, as well as in the professional development of law enforcement officers. The legislative proposals put forward in the dissertation can be used in the process of harmonization and implementation of national law with international standards

The approbation and application. The main provisions and results of the dissertation are reflected in the scientific articles published by the author, speeches at international and national

conferences and reports to the staff of the "Criminal Procedure" department of BSU.

The name of the organization where the dissertation work was carried out. The work was carried out at the "Criminal Procedure" department of BSU.

The total volume of the dissertation with characters, indicating the volume of the structural units of the dissertation separately. The total volume of the dissertation is 259,223 characters, excluding gaps, appendices and bibliography. The first chapter consists of 86,592, the second chapter 64,578, and the third chapter 61,157 characters.

THE MAIN CONTENT OF THE WORK

In the introductory part, the relevance and degree of development of the topic, the object and subject of the research, the research goals and objectives, the research methods, the main provisions, the scientific novelty of research, the theoretical and practical significance of the research, the approbation and application of the research, the name of the organization where the dissertation is performed, the total volume of the sections of the dissertation separately, the total volume of the dissertation in characters have been indicated.

The first chapter of the work, entitled **"The concept, essence, significance and historical development of the institution of mediation in criminal proceedings"** consists of three paragraphs.

The first paragraph of the first chapter, entitled **"The concept, essence and importance of the institution of mediation in criminal proceedings"** states that the consideration of human interests is one of the important tasks to improve the legal regulation mechanism of crime control policy. One of these directions in

criminal law policy is the institution of reconciliation and mediation, which is one of its manifestations.

Although the definition of mediation given in Recommendation No. 19 (R) 99 of the Committee of Ministers of the Council of Europe dated September 15, 1999 on 'Mediation in criminal matters' is successful in terms of international legal aspects of the issue, it cannot be considered successful in terms of the national legal systems in terms of its peculiarities.

Thus, in our opinion, the measures taken by the judge included in this definition in connection with mediation should be considered not as mediation, but as an integral part of the classical justice.

Mediation in criminal proceedings is the process of developing and adopting a reconciliation agreement for both parties to resolve a criminal dispute arising between the accused and the victim with the help of a third impartial person.

The fundamental difference between mediation and classical justice is that in the administration of justice in criminal cases, first of all, the issue of criminal liability of the accused is resolved, and at the same time the issue of compensation for the damage caused by the crime is solved. In the mediation process, on the contrary, the issue of liability of the accused is resolved depending on the compensation and elimination of the damage caused by the crime.

Although issues related to mediation are connected to criminal procedure law, the process itself is not carried out directly within the framework of criminal procedure.

The application of mediation in the legal system not only reduces the number of cases investigated and resolved, but also eliminates tensions and social contradictions in public relations related to the dispute between the parties.

The second paragraph of the first chapter, entitled **"Historical development of mediation in the criminal process of the Republic**

of Azerbaijan" states that the settlement of mediation issues was one of the main tasks of the sharia court judge in Azerbaijan in the early XIX century. In other words, the main task of the the sharia court judge was to ensure the exemption from criminal liability by compensating the damage caused by the crime and reconciling the parties. Therefore, there are historical grounds and conditions for the detailed regulation of mediation issues in the national legal system in modern times. However, a retrospective analysis of the criminal procedure legislation shows that the 1864 CMIN did not have a termination of criminal prosecution on the basis of discretionary powers, which is a key feature of the institution of mediation. With the CPC of the Azerbaijan SSR dated 1923 the right not to initiate or refuse the initiated criminal prosecution on the basis of discretionary powers, which was a prerequisite for mediation, was added in 1930 as Article 4a. According to this article, if the acts committed by the offender, although officially, show signs of danger to the general public, but are insignificant and do not have harmful consequences or are not of general danger due to certain socio-political circumstances prosecution may not be lifted, or the lifted prosecution could be completed in each period. If we consider and analyze the issues of mediation in the CPC of the Azerbaijan SSR of 1960, it is impossible to come across any provision in this regard.

The third paragraph of the first chapter, entitled **"The mutual relationship of the institution of mediation with some principles of criminal procedure",** first of all, expresses an attitude about the relationship between mediation and the principle of inevitability of responsibility, and states that it does not accept the punishment for the crime in any case by referring to the institution of impunity, by refusing the principle of the inevitability of legislative responsibility.

Another principle of interest in interaction with mediation is the presumption of innocence. Although the release of a person from

criminal liability through mediation confirms that the relevant act has been committed and that the person is related to it, it does not give grounds to say that the perpetrator is guilty of this act. From this point of view, we consider that the legal force of the decision in other people's cases on the termination of criminal proceedings by reconciliation should not be binding on the court, as in Article 65.2 of the CPC.

The paragraph concludes that there is no conflict between the mediation and the existing presumption of innocence of the criminal process and the principle of inevitability of liability, but that some invalid provisions of the past hinder the development of this institution and its expansion into the legal system.

The second chapter of the work, entitled **"International standards for mediation in criminal proceedings and the experience of some foreign countries,"** consists of two paragraphs.

The first paragraph of the second chapter, entitled **"International legal regulation of relations in mediation in criminal proceedings"**, states that there are many universal and regional agreements on the application of mediation in international law. These sources can be divided into two parts in terms of the subject matter of mediation: agreements that indirectly reflect the norms related to mediation, and agreements that directly reflect the norms related to mediation.

The first type of sources is the universal treaties, which contains human rights norms. Thus, requirements related to mediation can be found in such documents as Articles 14 and 15 of the 1966 Covenant on 'Political and Civil Rights'; Paragraph 7 of the 'Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power'; The UN Convention on the 'Rights of the Children', the UN's 'Minimum Standards of Justice for Children', the UN Convention on the 'Elimination of All Forms of

Discrimination against Women', the European Convention on the 'Rights of the Children', etc.

As for the second type of sources, it is emphasized that 4 resolutions were adopted in the legal system of the Ministerial Committee at Council of Europe on the issue of direct mediation:

1) Recommendation No. №R (98) 1 "Family Mediation" dated January 21, 1998;

2) "Mediation in Criminal Cases" No. №R (99) 19 dated September 15, 1999

3) Rec (2001) 9, "Alternatives to judicial review between administrative authorities and private parties" No. Rec (2001) 9 dated September 5, 2001;

4) "Mediation in civil cases" No. Rec (2002) 10 dated September 18, 2002.

In addition, the has taken into account certain issues related to mediation in other resolutions and made recommendations to member states in this regard. One of such resolutions is Recommendation of Comittee of Ministers at European Council No. Rec (2000) 19 dated October 6, 2000. In the recommendation, the issues related to mediation were illustrated as one of the additional responsibilities of the prosecutor's office.

The paragraph concludes that the institutional implementation of mediation in the national legal system in criminal proceedings is one of the necessary tasks.

The second paragraph of the second chapter, entitled **"Mediation in the criminal proceedings of some foreign countries"** states that in the criminal law theory of foreign countries, the mediation is considered as an expedited or tolerant trial involving various options for the legal settlement of legal disputes, legislators and law enforcement officials use this institution as a mechanism to simplify criminal procedures.

In some countries, the institution of mediation is regulated by the CPC, in others by separate legislation (for example, in Kazakhstan), as well as by acts on juvenile justice, and in some, although not legally regulated (UK), it exists outside de facto criminal procedural legal regulation.

Another classification criterion of mediation in criminal proceedings in the legal literature is based on the preconditions for the emergence of mediation and its inclusion in law enforcement practice. Based on this, Anglo-Saxon and continental models are distinguished. Within the Anglo-Saxon model the rehabilitation of the damage to mediation is seen as a manifestation of the theory of justice. Mediation is considered here as a method of public settlement of criminal disputes, and therefore is not clearly regulated by law. This group includes the United Kingdom, the United States, Canada, New Zealand and others. belong to. In countries belonging to this model, mediation has developed in the process of establishing special mechanisms for resolving civil disputes, generally referred to as “alternative disputes resolution”.

Under the continental model, mediation is seen as a procedural institution and is usually enshrined in law as an alternative to criminal prosecution. This group includes France, Germany, Portugal, Austria, Norway and others. can be attributed. In this group of countries, mediation is initiated by a court or a prosecutor. It should also be noted that in some foreign countries, mediation procedures between the victim and the juvenile offender have been established in the CPC, as well as in the CC. The French CPC regulates issues related to the mediation of minors.

The third chapter of the work, entitled **"Issues of improving the legal regulation of mediation in pre-trial and trial proceedings"** consists of two paragraphs

The first paragraph of the third chapter, entitled **"Issues of legal regulation of the institution of mediation at the stage of preliminary investigation"** states that the decision dated July 2011 on the Constitutional Court's 'Interpretation of Articles 37.4, 39.1.9, 40.2 and 41.7 of the Criminal Procedure Code' acts as a normative basis for the existence of mediation in the investigation. In this decision, Article 73 of the Criminal Code of the Republic of Azerbaijan (Articles 73-1 and 73-2 attached to the Criminal Code can be added here - ed.) is presented as the legal basis for a simple mediation.

The paragraph asks whether the termination of the proceedings which excludes criminal prosecution should be considered mediation in the case of reconciliation between the perpetrator and the victim,. Based on the analysis, the question is answered on this basis that the termination of criminal proceedings on these grounds as simple mediation can be referred to as the above-mentioned informal type of mediation. These cases can also be considered as mediation.

One of the positions presented in this paragraph is that in order to ensure the effectiveness of the mediation process in individual criminal cases, tactical recommendations and harmonized scientific results should be developed for the successful completion of communication between the accused and the victim in ancillary areas of law, especially in criminology and legal psychology.

One of the most important issues related to mediation is the timing of the mediation process. We believe that if the victim does not object to the continuation of the mediation process or agrees to carry out this process, the timing should not be a matter. In the end, given the probability that this process will not be successful, the approach to stopping the flow of time can be considered successful.

The second paragraph of the third chapter, entitled **"Issues of legal regulation of mediation in court"**, states that the possibility of mediation at the trial stage is one of the most serious questions.

It is not a general rule to mediate in court or to terminate a criminal case on the basis of reconciliation or on the basis of simplified pre-trial proceedings. This can be clearly seen in the content of Article 40 of the CPC. Article 40 sets out the general grounds and procedures for non-prosecution. This article establishes the general authority to have such a decision made by the investigating authorities as a general rule. This is a logical decision. It is known that the court does not initiate criminal proceedings, and it is logical that the power to decide whether to prosecute does not belong directly to it. From this point of view, it is a general rule not to apply mediation or reconciliation at trial stage. However, in some cases, mediation issues may also arise at trial stage. It is possible that the grounds for termination of the proceedings on the basis of reconciliation have been overlooked, or that these grounds arose later, rather than during the initial investigation. Mediation can be mediated at the trial stage by changing the charges, changing the description of the crime at the court's own initiative or at the request of the parties, as well as introducing the provision by the new criminal law into the legislation which is about the possibility of the termination of the criminal prosecution due to the reconciliation.

As a result of the analysis of the content of the paragraph, it is concluded that it is more expedient to regulate the implementation of mediation at the trial stage in a separate article. The following information may be contained in this article

- bases and conditions of mediation in court;
- the rights of the authorized people to appoint mediation;
- procedural rules of appointment of mediation;

- the task of explaining the rights and responsibilities of the participants related to reconciliation by the mediator, as well as the legal results of the cases where reconciliation will take place or not;

- the scope of cases where mediation can be carried out by a judge, etc

In the concluding section, the main theoretical generalizations and suggestions are presented in a systematic way.

The appendix contains the content and results of the opinion poll conducted among the interns.

The following scientific works of the author have been published on the topic of the dissertation.

1. Mediation in the criminal process of the Republic of Azerbaijan: general provisions // Law, 2017, № 03 (269), p. 123-128.
2. On the history of development of the institution of mediation in the criminal process of the Republic of Azerbaijan // Law, 2017, № 10 (276), p. 115-121.
3. Some notes on the institution of mediation in criminal proceedings of Azerbaijan // "Law Enforcement: Theory, Methodology and Practice" Collection of materials of the International Scientific-Practical Conference. Theses of scientific additions. Ukraine, Kiev, 2017, p. 105-108
4. Some general issues in the context of the basic principles and tasks of the criminal process of the institution of mediation // Law, 2019, № 06 (296), p. 84-88.
5. Considerations on the application of the institution of “Mediation” in criminal proceedings // Law, 2019, № 07 (297), p. 49-56 (co-authored with M.S. Gafarov).

6. Expert's activity as a mediator: theory and legislation // News of the Police Academy, 2020, № 1 (25), p. 93-96

7. New trends in the improvement of the institution of mediation law in justice // Materials of the Republican scientific conference on "Innovative trends in ensuring regional development: realities and modern challenges." Mingachevir State University, December 11-12, 2020, p. 474-477.

8. Mediation issues in criminal proceedings of foreign countries // Materials of the I International Scientific Conference on "Sustainable Development Strategy: Global Trends, National Experiences and New Goals". Mingachevir State University, December 10-11, 2021, p. 366-369.

9. On the prospects of mediation in criminal proceedings in the Republic of Azerbaijan // Law and Government: Theory and Practice, 2021, № 11 (203), p. 250-252

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