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Research Article

The Role of Tax Mediation in Resolving Tax Disputes

Prof. Dr. Irakli GABISONIA
Georgian Technical University,
i.gabisonia@gtu.ge
ORCID: 0009-0008-1323-8524

Dr. Tamar BARAMIA
Georgian Technical University,
baramiatamari07@gtu.ge
ORCID:0009-0001-4395-0917

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Abstract

This article delves into the fundamental principles and significance of mediation while examining mediation models from various foreign countries, such as Germany, Austria, and the United States of America. The authors comprehensively outline both the advantages and disadvantages of mediation in a clear and concise manner. A noteworthy emphasis is placed on the pivotal role of tax mediation in enhancing tax legislation. Within this context, the authors provide specific recommendations for modifying tax legislation norms, with the aim of refining tax laws to better serve the needs of taxpayers. According to their insights, these proposals promise to create a more taxpayer-centric and streamlined tax legislation framework.

Introduction

Ilia Chavchavadze, a prominent Georgian writer known as the "Father of the Nation" and a lawyer by education, emphasized the importance of settling disputes to achieve a fair and expedient resolution. In an article titled "About Conciliation Courts," published in the "Iveria" newspaper on April 19, 1886, Ilia wrote: "People need swift and straightforward, informal justice, desiring the rapid restoration of their violated rights." Mediation, an ancient and essential method for resolving disputes, has been an integral part of the Georgian legal system (COUNCIL OF EUROPE, 2017). Terms like Bche, Khevisberi, Morvi, Sjuli's man, and others were used to refer to the institution of a mediator in Georgia (Takashvili 2012, p. 77). In the early 19th century, the terms "mediator" and "mediational court" began to be used and established in Georgia (Davitashvili 2011, p. 287).

The concept of mediation is often considered unclear and ambiguous, with various definitions provided by Georgian and foreign scholars. Nevertheless, each definition underscores that mediation is a method of dispute resolution often referred to as "alternative dispute resolution" (ADR) (Tkemaladze 2016, p. 12).

Alternative Dispute Resolution (ADR) is a mechanism for resolving disputes outside the national court system (Kandashvili 2022, p. 274). In ADR, disputes are reviewed and resolved based on the parties' agreement, utilizing methods such as arbitration, mediation, conciliation, or other non-judicial dispute resolution processes. Mediation, derived from the Latin adjective meaning to take an intermediary position between two opposing views or parties, offers a neutral and impartial approach to finding a middle-ground solution (Butler 2004, p. 2). In legal dictionaries, mediation is defined as the intervention of a third party in international disputes between other states (Chanturia 2016, p. 12).

Alternative dispute resolution is not a simple process; rather, mediation itself has the necessary methods to achieve its objectives. It is often considered the best approach for managing conflicts and monitoring parties' obligations (Kurdadze, Khunashvili 2012, p. 415).

In the modern legal landscape, Georgia has introduced various forms of mediation, including judicial mediation, notary mediation, revenue mediation, and medical mediation. It's worth noting that

these types of mediation, despite internal similarities, are fundamentally distinct from each other (Murghulia 2016, p.4).

"Court mediation" can be considered a form of alternative dispute resolution that is conducted with the court's permission and active involvement. The degree and extent of judicial intervention in mediation procedures vary across different states. In court mediation, the mediator does not make a decision; instead, the parties themselves reach an agreement, which is then formalized through a court-approved judgment. In cases of disagreement, parties retain the option to bring the matter to court through standard legal procedures (Fitskhelauri 2006, p. 22).

When parties reach an agreement within the legally defined timeframe for mediation, the court issues a final, non-appealable ruling approving the parties' settlement based on one party's motion. Court mediation, often referred to as mandatory mediation, represents a modification of classical mediation. The core principle of mediation is voluntariness, with parties voluntarily agreeing to refer their dispute to a mediator for resolution. In court-mediated cases, the state, acting on behalf of the parties, compels them to seek resolution before proceeding to court. Parties in these cases do not have the choice to opt out and are obligated to engage in mediation before formal courtroom proceedings. To enable the state to fulfill its obligations and regulate issues related to judicial mediation, a comprehensive legal framework is essential (Tsertsvadze 2010, p. 162).

The Role of Tax Mediation in Improving Tax Legislation

In the context of Georgian tax legislation, tax mediation served as an alternative method for resolving tax disputes, addressing contested issues prior to the issuance of an audit report and a tax assessment. Under the directive of the head of the revenue service No. 31275, dated July 8, 2013, the mediation process was structured into two distinct stages (Kandashvili 2022, p. 42).

During the first stage, mediation was conducted directly at the deliberative council of the audit department within the financial control division. The second stage involved mediation at the Mediation Council of the Revenue Service. The Mediation Board of the Revenue Service played a crucial role in defining the procedures for reviewing the taxpayer's stance on the draft Tax Audit Act. It acted as an intermediary between the taxpayer and the audit department, providing recommendations (Kandashvili 2022, p. 95).

Within the Revenue Service's system, the Mediation Council assessed the taxpayer's position before the Tax Inspection Act draft was finalized, and before any tax assessments or penalties were imposed. The introduction of the Tax Audit Act draft review in the Mediation Council of the Revenue Service marked a significant change in Georgian tax legislation, initiated in early 2011. This institution was actively utilized by taxpayers (Revenue Service of Georgia 2013, article 1).

Under the mediation process, taxpayers had the right to present their stance on the draft audit act to the Revenue Service, allowing them to correct any inaccuracies in the audit act following a tax audit, prior to the imposition of taxes. Specifically, the tax authority sent the taxpayer a draft of the tax audit act, offering a 5-day window for the taxpayer to notify the audit department of their position regarding the issues outlined in the audit act. This included a request to rectify any errors. In the event that the audit department fully or partially accommodated the taxpayer's position, the draft audit act would be amended, and tax assessments recalculated. Subsequently, the revised draft of the audit act was returned to the taxpayer, affording them another opportunity to present their position should they disagree with any aspect. If the audit department's decision remained unfavorable, mediation could be continued by lodging a claim with the Revenue Service, moving on to the second stage of mediation at the Mediation Board (Official website of the Revenue Service of Georgia).

The process of appealing the Tax Audit Act draft in the Mediation Council was free of charge, sparing taxpayers any additional costs. The taxpayer's stance was reviewed with their direct participation, if they chose to attend, along with the involvement of the audit department and revenue service leadership (Official website of the Revenue Service of Georgia).

The final step in this stage was the resolution of the dispute in the Mediation Council of the Revenue Service. Following a decision, the Tax Inspection Act was approved, and the administrative act for assessment was issued, leading to the issuance of a "tax demand" to the taxpayer (Official website of the Revenue Service of Georgia).

In summary, it can be stated that this particular stage of tax dispute resolution had more advantages than disadvantages. However, as per the consolidated 2023 Order creating the Dispute Review Board of the Revenue Service, new rules governing its activities and mediation regulations in the customs and tax monitoring departments have brought some changes to tax mediation. Notably, the Mediation Board of the Revenue Service has been transformed into the "Dispute Review Board of the Revenue Service." Furthermore, regulations for mediation in the tax monitoring departments have been established. In light of these changes, tax mediation has evolved in the following ways (East-West Management Institute 2012, p. 76):

According to the first article of Appendix 8 of the mentioned order, the rules for mediation in the Tax Monitoring Department are determined by the Tax Monitoring Department's Deliberative Council. These rules pertain to the draft protocol prepared following the current control (inventory) conducted by the Tax Monitoring Department and the consideration of the taxpayer's written or electronic stance (East-West Management Institute 2012, p. 7).

According to the second article of Appendix 8, the Tax Monitoring Department provides the taxpayer with the draft protocol for review, notifying them of their right to submit a written or electronic stance to the department within 5 working days of receiving the draft protocol. The taxpayer is allowed to present their position, accompanied by relevant materials/evidence, within the same timeframe. Additionally, the taxpayer can request an extension for submission, specifying the duration and grounds (East-West Management Institute 2012, p. 76).

Mediation in tax disputes offers several advantages, including no accrued taxes during the appeal period, which ensures that no measures to secure tax debt payment are enforced against the taxpayer. This period also safeguards the taxpayer from facing criminal charges due to discrepancies in the tax declaration, saving them from unnecessary costs such as state fees. Other benefits include the expeditious consideration of taxpayer viewpoints, a reasonable timeframe, and high-quality examination of taxpayer opinions and evidence. The revenue service acts as a mediator between the taxing authority and the taxpayer, promoting a new approach to dispute resolution, flexibility in the process, the option to reach a tax agreement, confidentiality based on mutual agreements, voluntariness, and strengthened cooperation (East-West Management Institute 2012, p. 76).

It's worth mentioning the drawbacks of tax mediation, particularly those related to tax dispute mediations, although they may be common to other forms of mediation. The timeframe for reviewing the complex and intricate tax audit act draft and submitting the taxpayer's stance is relatively short, which can lead to the submission of insufficiently substantiated positions. Additionally, the effectiveness of the institution is highly dependent on the head of the tax authority, who ultimately makes decisions on the matters under review (Official website of the Revenue Service of Georgia).

To align with international best practices and the European Union's directive, it is advisable that Georgian legislation consider redistributing the balance of interests to handle cases where parties and/or the mediator are directed to breach the confidentiality principle and disclose information shared during mediation. If parties touch upon issues conflicting with prevailing interests (e.g., public interest) during mediation, the mediator should be obligated to use such information for cooperation with the relevant authorized bodies, without imposing any responsibility on the mediator in such cases (Official website of the Revenue Service of Georgia).

1.2. Models of Mediation in Foreign Countries

1.2.1. The German Model

The contemporary model of mediation in the Federal Republic of Germany traces its origins to the end of the last century. Notably, judicial mediation, as per the law adopted on July 21, 2012, is distinctly recognized as one of the alternative methods for dispute resolution. Alongside this, other methods exist, such as case conciliation, during which the case's situation and the dispute's circumstances are deliberated during a conciliation session involving the parties, with active involvement from the judge. It's important to note that mediation differs from this process in that the primary focus of mediation is not the mediator, although the mediator plays a significant role. Instead, it is the parties themselves who take responsibility for reaching an agreement. Court mediation and independent mediation institutions operating outside the court system are distinct from each other in

Germany. The Mediation Act regulates the activities of these mediation institutions, ensuring compliance with European regulations (Official website of the Revenue Service of Georgia).

While court mediation for a limited range of issues had already been extended in Germany before the 2008 European directive, this directive significantly spurred the development of mediation, including within the court system. The German legislator recognized independent mediation institutions as an effective means of dispute resolution, aiming to alleviate the court's workload and reduce costs. Additionally, the institution of the conciliation judge was preserved and its functions were enhanced, refined, and modernized. This institution gained greater importance in terms of successfully settling cases and reducing the cost of justice. As of today, disputing parties in Germany are no longer obligated to approach a mediation institution before filing a claim in court. However, with the new Mediation Act, the statement of claim must explain whether the parties attempted mediation and, if not, why they did not, or what prevented them from doing so. The legislator has also imposed on lawyers the obligation to advise their clients regarding the use of mediation, amending the professional regulations for German lawyers. Lawyers are now required to elucidate the advantages of mediation to their clients and discuss the expected outcomes if mediation is employed (Orders of the Head of the Revenue Service 2011, #2168, #10757).

Given Germany's federal system of governance, the financing of the local judicial system is determined by local government. Consequently, different models of court mediation financing have been established in various regions (Small and Medium Enterprises Association of Georgia 2012, p. 7).

In the Federal Republic of Germany, the concept of mandatory mediation did not meet expectations. It failed to achieve the anticipated cost savings for the justice system. This may partly be due to the fact that parties are more inclined to settle when the dispute is already in the court process rather than at its initial stages. As a result, mandatory mediation before the court trial led to a loss of credibility for the mediation institution and turned it into a form of "secondary justice." Although it was unlikely that the German legislature would change anything regarding mandatory mediation after the decisions of the Constitutional Court, the opposite occurred: the scope of issues subject to mandatory mediation was significantly narrowed. Consequently, proponents of mandatory mediation did not see their expectations realized (Tsertsvadze 2013, p. 97).

1.2.2. Model of the United States of America

In the United States, the practice of mediation gained widespread recognition during the 1960s. Initially, it was primarily utilized in family and labor disputes but gradually extended its reach into the business sector. In the United States, there exists a notable inclination to resolve as many disputes as possible through mediation. The "National Institute for Advanced Conflict Resolution" is at the forefront of developing innovative mediation methods, and the American Bar Association brings together around 13,000 professionals in the field of alternative dispute resolution (Tsertsvadze 2013, p. 97).

In Argentina, the 1995 Law on Mediation and Conciliation established mandatory mediation, wherein a mediator is appointed once a lawsuit is filed in court. A similar practice can be observed in Belarus, where mediation has been mandatory in civil and economic disputes since 2013 (Small and Medium Enterprises Association of Georgia 2012, p. 7).

The foundations of alternative dispute resolution (ADR) in the United States can be traced back to the 1990 "Civil Law Reform Act," which was drafted into law, and the 1996 "Civil Law Reform" decree issued by the Clinton administration. The "Civil Law Reform Act" prompted federal districts to develop action plans for fair, swift, and cost-effective alternative dispute resolution methods aimed at reducing litigation expenses and trial durations. Simultaneously, federal agencies were directed to employ peaceful and cost-efficient alternatives to resolve private legal disputes National Center for Alternative Dispute Resolution 2013, p. 97).

The "Dispute Resolution Act" played a pivotal role in introducing mediation into the executive branch, regulating disputes related to labor, licensing, mineral extraction, taxation, and environmental and energy resources issues through mediation (Gniza 2017, p. 70).

Critics of ADR rules in the US, along with evidence preservation rules, have raised concerns about the protection of parties' rights when using evidence disclosed in the mediation process. Balancing the needs of justice, the rights of the involved parties, and the mediation institution while upholding the right to refuse to testify is a complex task (Tsuladze 2018, p. 78).

Mediation wasn't the initial alternative dispute resolution mechanism introduced in the United States. However, it gradually emerged as a prominent option due to its ability to align with the interests and needs of the parties involved. Various historical and legal events, including the enthusiasm of judges and other justice system representatives for innovative dispute resolution methods, played a significant role in promoting mediation. The active participation of judges in court mediation projects fostered a serious commitment to this approach among parties. This development can be attributed to the unique characteristics of the US legal system, especially its judiciary, as well as the strong presence of local self-government (Espilugus C., Iglesias J. L., Palao G. 2013, p. 185).

1.3. Positive and Negative Aspects of Mediation

When discussing the issue of mediation, it's essential to consider both the advantages and disadvantages of this process. The arguments presented by supporters and opponents of mediation are both interesting and significant (Espilugus C., Iglesias J. L., Palao G. 2013, p. 79).

The ideal utilization of mediation as an effective dispute resolution mechanism is achieved through voluntary mediation. In voluntary mediation, the parties initiate the process themselves, creating a space focused on problem-solving and conflict transformation, rather than winning a battle in a larger psycho-social-legal conflict. Voluntary mediation does not suffer from the drawbacks of mandatory mediation. However, it's legitimate to question how, in the absence of prior agreement, disputing parties can be convinced to engage in mediation. Is there already a conflict between them, or are they just addressing potential issues? (Espilugus C., Iglesias J. L., Palao G. 2013, p. 78) While various answers exist, one of the most reliable solutions is to enhance public awareness of the positive aspects of voluntary mediation through effective communication with the public. Every case successfully settled through mediation serves to popularize this method. Hence, introducing mandatory mediation in countries without an established mediation practice can be justified. Based on user satisfaction indicators from the mandatory mediation process, the outcomes seem to validate the court's measures in compelling parties to participate in mediation. However, some critics argue that this curtails the parties' freedom of choice within the process (De Palo G., Trevor B. M. 2012, p. 131).

Traditionally, the court is seen as a conservative institution. Frequently, it struggles to meet the demands that international business naturally expects from alternative, more professional, faster, and reliable dispute resolution mechanisms. The parties themselves ultimately decide whether to continue negotiations or opt out (De Palo G., Trevor B. M. 2012, p. 131).

As we have emphasized throughout, alternative dispute resolution methods offer numerous advantages, such as cost-effectiveness, accessibility, speed, and better enforcement of results, which lightens the burden on the official court system. Furthermore, it is possible to develop smaller and simplified procedures within the formal judicial structure, like small claims courts and mandatory conciliation proceedings (Tsuladze 2018, p. 107).

Businesspersons are particularly drawn to mediation because it doesn't impose any obligations on them during the procedure. If a party considers mediation a waste of time and money, they can halt negotiations at any point and pursue arbitration (if there's an arbitration agreement) or go to court. Importantly, mediation is viewed as a means to save time and money, not only for the parties but also for the state, which allocates significant resources for protracted legal disputes (Getia 2013, p. 8).

It's essential to recognize that mediation is a supplement to the justice system, not a substitute for it. Mediation can contribute to dispute resolution, but it cannot wholly replace it. The principle of "everything that is not forbidden is permitted" plays a significant role here. The scope of mediation ends where legal prohibitions or other objective circumstances leave no room for parties to reach an agreement. The negative aspects of mediation are often underrepresented, but to form a complete picture, these should also be considered (Tsuladze 2018, p. 137).

In cases of mediation failure, it results in a complete waste of time and money for the parties. It's conceivable that unscrupulous parties might misuse mediation to gain time and delay dispute resolution, although this is not the norm (Spencer D., Brogan M., Brogan C. M. 2006, p. 26).

Alternative Dispute Resolution (ADR) encompasses procedures designed to resolve disputes efficiently and save resources. Regardless of the differences in the nature of disputes, the parties involved, the chosen procedure, and the degree of third-party involvement, ADR offers a means to reduce time spent on disputes, as well as personal and indirect costs incurred during the dispute resolution process. These costs encompass time management errors, damage to future business relationships, and legal expenses (Spencer D., Brogan M., Brogan C. M. 2006, p. 26).

Confidentiality is a crucial aspect of successful mediation. Parties typically sign a confidentiality agreement before commencing mediation to ensure that their information will not be used in any subsequent judicial review (Zalar 2004, p. 2).

Mediation is a valuable process for low-income parties who lack the financial means to hire legal representation in court and fear they may lose their case without an attorney. Through mediation, parties can determine the outcome of dispute resolution themselves, actively participating in the process (Tsuladze 2018, p. 175).

Statistics indicate that 80% of disputes involving mediation reach a full agreement, and this process requires significantly less time and financial resources. As a result, mediation has become a vital component of the legal system and culture in developed countries. In European countries, roughly 40-50% of civil disputes are resolved through mediation, while in the United States of America, only 5% of civil disputes proceed to court (Mcllwrath, Savage 2010, p. 187).

In discussing the positive and negative aspects of mediation, it's crucial to consider the recommendations and evaluations of Alesh Zalar, an expert from the European Center for Dispute Resolution. According to his study, the following issues pose challenges to the development of the Mediation Institute in Georgia (Allen 2004):

- The absence of a document defining a policy for the development of alternative dispute resolution methods (Tsuladze 2018, p. 42).
- A lack of a unified and permanent advisory body to coordinate the policy for alternative dispute resolution (Tercier 2006, p. 89).
- Regarding independent mediation institutions outside the court system, the following issues are identified as problematic in the expert's report (Shackelford 2004 p. 343):
- The lack of a clear definition of mediation, leading to confusion in certain cases where the term "mediation" is used to describe dispute resolution methods in which a third neutral party possesses decision-making authority (Raoul Wallenberg Institute 2012, p. 25).
- The absence of provisions for spreading mediation to international disputes in the legislation.
- Inconsistencies in issues related to mediator education and quality management of the mediation process (Berger 2006, p.28).
- The legislation does not provide for free legal assistance in representation during the mediation process (Tsuladze 2018, p. 49).
- The legislation does not address the use of mediation in international or domestic disputes for the protection of consumer rights (Roberts 2008, p 13).

CONCLUSION

Mediation serves as an alternative approach to resolving disputes, wherein two or more parties, with the assistance of a mediator, seek to reach a mutually agreeable resolution. This method is primarily employed in private legal matters, either through court proceedings or private mediation services. The direct mediation process provides the involved parties with an opportunity to engage in open discussions regarding their differing perspectives on the contentious issue and work toward a solution that satisfies all parties involved (Tsertsvadze 2010, p. 40). Unlike court proceedings and arbitration, mediation empowers the disputing parties to make their own decisions. Furthermore, the mediation process is entirely customizable to suit the needs and preferences of the parties. Consequently, any agreements reached as a result of this process, which can fully or partially resolve conflicts, can be achieved quickly and at a reduced cost (Tsertsvadze 2010, p. 45).

In the context of tax-related legal matters, the Tax Monitoring Department has ratified a mediation rule that outlines the procedures for reviewing the written or electronic positions of taxpayers and their representatives during deliberations at the Tax Monitoring Department. These deliberations are associated with draft protocols prepared following the conclusion of current control assessments.

To further facilitate tax mediation, it is essential to evaluate the possibility of signing a tax agreement between the revenue service and taxpayers. Such agreements can serve to reduce a taxpayer's tax liability, minimize fees, and alleviate related fines and penalties imposed by tax authorities. It's important to note that tax agreements cannot be executed for current payments calculated in accordance with Articles 155 and 205 of the Tax Code of Georgia, specifically, those related to personal registration cards and annual declarations of profit, income, and property taxes from the most recent tax year (Tsuladze 2018, p. 59).

It is advisable to introduce specific amendments to the Tax Code of Georgia. These changes would include the incorporation of the term "tax agreement-mediation" into the Code and relevant legislative acts. Additionally, there should be a clear definition of the issues for which mediation between the Revenue Service and taxpayers may be pursued.

While administrative-legal relationships are typically characterized by a hierarchical structure, it is prudent to utilize mediation in the realm of tax-legal relations. This can be particularly effective in the implementation of tax obligations, tax control procedures, and measures related to tax debt security (Zalar 2018, p. 207). The utilization of tax agreement-mediation with regards to tax debt and payment terms has the potential to enhance the protection of taxpayers' rights, foster a culture of tax compliance, and contribute to the clarification and refinement of various ambiguous tax regulations (Tsuladze 2018, p. 208).

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