Mediation as an innovative way to resolve the conflict arising from the criminal behavior of a minor

Yana Korneeva
Psychology department
Northern (Arctic) Federal University named after MV Lomonosov
Arkhangelsk, Russia
ya.korneeva@narfu.ru

Nina Skripchenko
Psychology department
Northern (Arctic) Federal University named after MV Lomonosov
Arkhangelsk, Russia
n.skripchenko@narfu.ru

Marina Arefina
Psychology department
Northern (Arctic) Federal University named after MV Lomonosov
Arkhangelsk, Russia
venckute@bk.ru

Abstract—Background: Mediation is understood as a set of certain methods used by trained specialists in order to reach an agreement and resolve a criminal law conflict for criminal cases of small and medium gravity. Objective: give a brief description of the legal basis of mediation in relation to the imperfect; provides an analysis of mediation models; objective and subjective criteria for the success of mediation are determined. Methods: The objective criteria of RM were established by analyzing the reports for 2013-2017. RM’s subjective criteria were studied by analyzing the feedback forms of the 225 mediation participants for the period 2016-2017. Results: there is a positive trend in the effectiveness and efficiency of the application of RM procedures in the Arkhangelsk region. Among those surveyed, 98.6% reacted positively to the mediation procedure, assessing it as an effective, free and as individual way to resolve criminal conflicts, of which 36.6% of respondents made suggestions to improve the program, which mostly concerned organizational and technical conditions of the procedure mediation. Conclusions: According to the data of the conducted research, from the point of view of objective and subjective criteria of restorative mediation in the Arkhangelsk region of Russian Federation is a successful procedure.

Keywords—meditation; restorative mediation (RM); minor; the crime; restorative justice (RJ)

I. INTRODUCTION

The presence of juvenile delinquency at all times served as a disturbing sign for society, revealing the problem of the impossibility of providing the necessary conditions for the harmonious and comprehensive development of a child. Periodic decrease in the level of juvenile delinquency does not alleviate the problem, and subsequent “bursts” again force to talk about it, forcing to look for new, adequate modern socio-criminological and political-legal realities, ways and means of influence on juvenile crime. The Arkhangelsk region is not an exception, for which the problem of juvenile crime does not lose its relevance.

Periodic decrease in the level of juvenile delinquency does not alleviate the problem, and subsequent “bursts” again force to talk about it, forcing to look for new, adequate modern socio-criminological and political-legal realities, ways and means of influence on juvenile crime. Of particular concern is the high proportion of teenagers who have committed crimes again. So, in the Arkhangelsk region, it is in 2014 - 19.7%, in 2015 - 22.5%, in 2016 - 26.8%, in 2017 - 32.9%. About 50% of the total number of juveniles who have committed crimes repeatedly are adolescents, in respect of whom the criminal prosecution was terminated due to active repentance (Article 75 of the Criminal Code of the Russian Federation) or reconciliation of the parties (Article 76 of the Criminal Code of the Russian Federation). The low effectiveness of the state response measures used can be explained by the occasional use of recovery procedures in which an independent and impartial third party - the mediator - assists the parties to the conflict in identifying mutual interests and developing a mutually beneficial or mutually acceptable dispute in the shortest time possible.

The conceptual novelty of the reconciliation procedure, or the so-called recovery approach, is that the state recognizes the right of the parties to the conflict to independently seek a mutually acceptable way out of the conflict situation. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) point out the need to establish broad discretionary powers in the area of juvenile justice. (Adopted on 11/29/1985 by Resolution 40/33 at the 96th plenary meeting of the UN General Assembly). Thus, in accordance with paragraph 1.3 of the Beijing Rules, sufficient attention should be paid to the implementation of positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other groups of society, as well as schools and other public institutions, in order to promote the well-being of the adolescent in order to reduce the need for intervention by the law, and the effective, fair and humane treatment of the adolescent in conflict with the law. In accordance with paragraph 5.1 of this document, the juvenile justice system is primarily aimed at ensuring the well-being of the minor and ensuring that any measures affecting juvenile offenders are always commensurate with both the personality characteristics of the offender and the circumstances of the offense. In paragraph 6.1. The Beijing Rules stipulate that, in view of the various special needs of minors, as well as the diversity of measures available, an appropriate amount of discretionary powers should be envisaged at all stages of the trial and at various levels of juvenile justice, including during the investigation, trial decisions and control over the implementation of court decisions. According to paragraph 11.1 of the Beijing Rules, when considering cases of juvenile offenders, it is necessary,
if possible, not to resort to official examination of the case by the competent authority.

II. MEDIATION AS ONE OF THE MECHANISMS OF RESTORATIVE JUSTICE IN THE FRAMEWORK OF CRIMINAL PROCEEDINGS WITH PARTICIPATION OF MINORS

The special relevance of issues related to juvenile justice is also confirmed by the adoption of the Resolution of the Plenum of the Supreme Court of the Russian Federation of February 1, 2011 No. 1 "On the judicial practice of the courts applying the legislation regulating the characteristics of criminal responsibility and punishment of minors" Feb. 11). The Plenum, highlighting the general issues of criminal responsibility of minors, also proceeds from the need to apply measures to minors that provide the most individual approach to the investigation of the circumstances of the act and are commensurate both with the characteristics of their personality and the circumstances of the act. It contribute to the prevention of extremist illegal actions and crimes among minors; ensure their re-socialization, as well as protection of the rights of victims. The Plenum pays special attention to the issue of qualification of judges considering cases of juvenile crimes. Thus, in accordance with paragraph 4 of the said Decree, such cases are subject to consideration by the most experienced judges, who must also possess knowledge in the field of pedagogy, sociology, child psychology, criminology, victimology, the application of juvenile technologies.

Although the provisions of Russian legislation on juvenile justice are to a certain extent conservative, they do not provide for the creation of a system of so-called juvenile justice, nevertheless, over time, and they are subject to change. There is a gradual transition to more progressive methods of juvenile production with the use of juvenile technology, with the allocation of special judicial structures for the consideration of relevant categories of cases. In a number of regions, such as, for example, the Perm Territory, the Rostov and Leningrad Regions, Moscow, and others, social experiments are being conducted on the use of such technologies [1].

Arkhangelsk region is also among the subjects in which the provisions are actively implemented, aimed at the implementation of friendly justice for minors who have transgressed the law. Starting in 2010, in the Arkhangelsk region, pre-trial escorts of minors were introduced step by step who transgressed the law aimed at collecting information about a teenager, studying the situation in the family, the closest environment, and analyzing the resources available for the socialization of a teenager. Since 2013, the implementation of recovery technologies has begun, through the introduction of mediation procedures in criminal cases involving minors.

III. MODELS AND TYPES OF MEDIATION

A description of models and types of mediation will allow a better understanding of the nature and diversity of the reconciliation procedure.

In some works, the authors combine the concepts of type and model of mediation, for example, D.S. Kupalov does not describe the differences [2], S.I. Kalashnikova shares the notion of types and models of mediation, in our work we will rely on the classification of types and models outlined in her work [3].

So, mediation models reflect its procedural features, the type of negotiation process. The model is based on a certain mediation technology implemented by the mediator. Models, in contrast to types of mediation, stand out only in theory and are abstract concepts of the procedure, which allows mediators to improve their skills and attitudes in a particular approach to activity.

Kalashnikova S.I. The following models are described: "L. Grid Riskin", "mediation metamodels" by N. Alexander, model L. Boule and M. Nesik.

O.V. Karyagin in his work “Foreign Mediation Models in Modern Russian Law: Implementation Efficiency” describes such models as the classical one (based on the Harvard negotiation method) and the so-called “narrative mediation” proposed by J. Monk and J. Winslade. Also to this list, in our opinion, it is necessary to add restorative mediation, actively developed in Russia by R. Maksudov, A. Velikotskaya, A.P. Guskova, which is based on the concept of RJ, grounded in the works of N. Christie and H. Zehr.

1. Model "L. Riskin's grid"

Combines two main parameters: the subject of mediation and the role of the mediator (active advice to the parties in making a decision is less active; a narrow subject within the subject of the dispute referred to mediation, or a broad subject when any contradictions and differences of the parties involved in the mediation process are considered) [four].

2. "Metamodels of Mediation" by N. Alexander

The author distinguishes two planes in mediation: the plane of interaction, which characterizes the chosen method of negotiation, and the plane of "intervention", meaning the role and powers of the mediator in the procedure [5].

The interaction uses three main negotiation techniques: integration negotiations, positional negotiations, and "transformational" negotiations (a dialogue aimed at restoring relations between the parties). These techniques differ in purpose and desired result.

Two levels of mediator intervention are identified: the level of the dispute settlement procedure and the level of the dispute. At the procedure level, the mediator needs to possess mediation competences to resolve the dispute, and at the level of the content of the dispute, mediators are individuals who have specialized knowledge in the subject matter of the conflict.


Scientists identify four models that, however, are not clearly defined alternatives to each other: mediation of assistance in resolving a dispute (the classical model), mediation of judging a dispute, "calculated" mediation, and therapeutic mediation.

4. "Narrative Mediation".

Achievement of mutual understanding between the conflicting parties occurs due to the fact that they more deeply and in detail consider those common to all
participants personal and cultural stories (narratives) underlying the conflict. Taking into account the cultural and historical context of the participants in conciliation procedures contributes to a more effective transfer of ideas of mediation in the legal field

5. Classical mediation.

The classical model is based on the Harvard School method of negotiation (Fisher and Urey). Its main provisions are that the problem is differentiated from people, attention is focused on positions (true interests), the goal is to invent mutually beneficial relationship options, while taking into account objective criteria for resolving the issue. The disadvantage may be the loss of the subject of the dispute due to the deterioration of the relationship between the parties and the transition to the individual, therefore, negotiations require separation of the problem from the person’s personality.

6. Restorative mediation (RM).

The recovery model is based on the ideas of RJ, whose goals are to heal the victim, to meet the needs of the victim, a different view of responsibility (correcting the evil that you caused), the opportunity to be forgiven, a space of human relations is being formed.

The main postulate - the offender must bear the obligation to mitigate the harm to the victim for the crime. RJ is opposed to the punitive approach, manifested in the response to the crime.

The goal of RM is to create conditions conducive to the restoration of relationships, the ability to understand each other when solving problems arising in conflict, criminal situations. Results - the development of understanding, dialogue, remedial actions (aimed at correcting).

RM is used as a certain experience in the use of mediation in criminal cases of minors, this practice is based on the self-organization of community groups, the judicial community, and relies on criminal and criminal procedure legislation. (RM standards are developed and adopted by the Russian RM Association, based on existing international and foreign documents: UN General Assembly Declaration 2002/12 “On the basic principles of using RJ programs in criminal cases,” etc.) [7].

In Russia, classical and RM are developing in parallel. In our work we are interested in the RM model.

Before describing the types of mediation we note, since mediation is a multidimensional phenomenon, with this we can explain the numerous number of types of mediation, which we describe below.

Depending on the purpose of L. Bowl and M. Nesik, there are six types of mediation:

- survey mediation (its goal is to determine the subject of the dispute and designate the boundaries of the conflict);
- mediation of conflict resolution (the goal is to resolve a dispute and reach a mutually beneficial agreement);
- mediation of conflict containment (the goal is to develop rules of conduct that are necessary to continue the further dialogue of the parties on the final resolution of the conflict);
- mediation of the conclusion of contracts (the goal is carried out during negotiations on the conclusion of a contract, the formation of a clear understanding of the positions and interests of future partners);
- mediation of the development of a political decision (the goal is to develop political decisions taking into account the interests of the public);
- preventive mediation (with the aim of preventing conflict).

This classification allows you to identify the main directions of application of mediation [8].

Kalashnikova S.I. identifies two types and subspecies of mediation by objectives:

1) preventive mediation (mediation of an agreement, mediation of project support, mediation of a political decision);
2) mediation of a dispute (review mediation; mediation of restraining the development of a dispute; mediation of resolving a dispute).

Federal law N 193-FZ regulates the relations arising in connection with the use of one of the subspecies - the mediation of dispute resolution.

depending on the technology of its implementation stand out:

- joint mediation (when both parties are directly involved in mediation sessions);
- shuttle mediation (shuttle mediation, the mediator holds alternate meetings with each of the parties);
- mediation conducted by one mediator;
- Co-mediation conducted by several;
- “full-time” mediation;
- mediation by phone or using other technical means (actively used in foreign countries).

With the adoption of the Federal Law N 193-FZ (Part 4 of Article 1), mediation is allowed after the initiation of the relevant case in court, the classification of alternative dispute resolution (ADR) methods for two types of grounds for belonging to a particular area of legal regulation is of particular importance:

1) private methods of ADR; independent, they do not depend on their regulation and existence on the judicial system of the procedure, the parties apply on the basis of free will. Mediation is carried out with minimal intervention by the state, whose role is limited to the official recognition of the ADR as a legitimate way of resolving legal disputes and ensuring proper conditions for their functioning and development

2) public (judicial) ADR methods; procedures that exist within the judicial system and are carried out
before and (or) after the initiation of the relevant case in court.

Depending on the category of the dispute, we can distinguish different types of mediation, the scope of application and the nature of the legal relations of the parties are implemented by different models of mediation, differing in regulatory regulation, as well as the procedure for organizing and conducting the procedure:

- mediation on economic disputes;
- family mediation;
- mediation of disputes arising from other civil legal relations;
- mediation of disputes arising from labor and related relations;
- mediation in administrative, including tax, disputes and other publicly legal disputes [9; 10].

To this list should be added two types of mediation, which are developing within the framework of the RJ, dwell on them in more detail.

Mediation in juvenile delinquency

The main task of the mediator is to organize the meeting of the offender and the victim, participation in mediation and other persons (parents, close people from both sides, specialists, representatives of the educational institution, etc.) is not excluded. The meetings are aimed at resolving conflicts between people, discussing and resolving problems arising from a crime, making an apology, reaching agreements, smoothing out harm.

In the course of mediation, people interact (with their values and feelings), and as a result, mediators aspire, to make conciliation actions, to conclude an agreement or a conciliation agreement. The domestic law on mediation does not provide for mediation in criminal cases, but Russian criminal law opens up possibilities for its implementation [11].

Mediation with the criminal process can be linked through the following classification: mediation as an alternative to the criminal process, as part of it and as a supplement. The case may be withdrawn from the criminal process at sufficiently early stages or not initiated; mediation can be included in legal proceedings as its part, technological (non-procedural) element of legal proceedings; mediation as a complement to the criminal process: this is a mediation carried out after the court decision. Its main goal is to satisfy the moral and emotional needs of the parties. [12].

The school mediation service is developing as an RJ institution. The purpose of which is to protect the rights of the child, to prevent bullying in schools, to resolve conflict situations [13].

A trained mediator and student volunteers participate in the work, helping to keep track of discipline at school and track conflicts in the early stages. The principles and programs of the RJ guide the mediator.

Principles of mediation [14]

L.M. Karnozova distinguishes between the principles of RJ, as the basis for a different response to a crime than a punitive one, and the principles relating to conducting mediation in criminal cases, its procedure; healing the victim, reparations, initiating the responsibility of the offender, restoring the relationship.

Criminal mediation adheres to basic principles such as:

- Institutional (voluntary participation, availability of the program, autonomy of services, implementing programs, the possibility of mediation at all stages of the criminal process);
- The work of the mediator (the neutrality of the mediator, the confidentiality of the process, cooperation, equality of the parties).

So, the existence of different models of mediation causes different requirements for the leader. Each model requires certain knowledge and skills. Next, we take a closer look at the RM technology.

IV. SUCCESS CRITERIA FOR RM AS A CONCILIATION PROCEDURE

When reviewing current studies, no studies were found on identifying RM success criteria as a conciliation procedure, therefore, to define criteria, we use normative documents, analysis of RM phases from the point of view of the success of their completion.

D.S. Kulapov considers the mediation agreement as the final positive-cultural result of the mediation procedure, concluded in writing. This is an ideal option to complete the final stage of reconciliation. Mediation agreement - an agreement reached in the process of mediation by the parties to the conflict, contains information about the mediator, certain rights and obligations of the parties to legal relations that contribute to resolving the conflict. Allowed the possibility of the legislator approving a mediation agreement as a settlement agreement if the case was referred to mediation from the court (part 3 of article 12) [15; 16; 17; 18].

The code of mediators of Russia, approved on April 28, 2012 by Protocol No. 3 of the Presidium of the National Organization of Mediators Non-Profit Partnership, defines the moral and ethical standards for the activities of mediators and organizations where mediation is carried out. The mediator must comply with the principles of mediation for its success, it should be impartial and neutral, confidential, open, respectful and supportive of the participants, responsible, conscientious, professionally competent.

Based on the analysis of the RM Standards (developed and approved by the All-Russian RM Association on March 17, 2009), the criterion of mediation success will be compliance with RJ ideas: any crime should entail the offender's obligations to mitigate harm to the victim, creating conditions for liberation from the negative states of the parties and finding them a resource for a joint search for a way out of the situation.

The main goal of RM is recovery actions (apology, forgiveness, the desire to sincerely make amends for the harm), such actions help to correct the consequences of a conflict or criminal situation.
An equally important result of mediation may be an agreement or a conciliation agreement that is submitted to the body that sent the case to mediation.

Since RM is focused on the communication process, the criterion of success will be the establishment of mutual understanding, the acquisition of the capacity for dialogue and the ability to resolve the situation.

Also, success criteria will be the successful completion of the mediation stages, since each stage is of great importance for the most important result of mediation - drawing up an agreement, a conciliation agreement, and gaining the capacity for dialogue.

L.M. Karnozova distinguishes between the principles of RJ, as the basis for a different response to a crime than a punitive one, and principles relating to conducting mediation in criminal cases, its procedure (healing the victim, reparations, initiating the responsibility of the offender, restoring the relationship).

Thus, there are three types of criteria for the success of the lead RM:

1. Objective - concluding an agreement / conciliation agreement, availability of remedial actions (apologies, reparation of damage);
2. Subjective (psychological features) - healing the victim, initiating the responsibility of the offender, restoring the relationship.
3. Personal evaluation of the mediator of his work.

This empirical study is devoted to the assessment of objective and subjective criteria for the success of RM, which was carried out by various institutions of Arkhangelsk and the Arkhangelsk region of the Russian Federation.

V. MATERIALS AND RESEARCH METHODS

The objective criteria of RM were established by analyzing the annual reports submitted by the institutions of Arkhangelsk and the Arkhangelsk region of the Russian Federation on the results of their activities and including the following indicators:

- the number of juvenile crimes at the beginning of the program (beginning of the year);
- the number of juvenile crimes for which the RJ programs were completed;
- the number of completed RJ programs through the mediation of juvenile crimes;
- all received applications for the conduct of RM for juvenile crimes.

We analyzed the data showed from the beginning of the RM programs in the Arkhangelsk region - 2013 to 2017. The results are presented in Table 1.

RM's subjective criteria were studied by analyzing the feedback forms of the mediation participants. In order to identify feedback from those who took part in RM, implemented in the Arkhangelsk region of the Russian Federation for the period 2016-2017. A survey was conducted. 225 respondents who participated in the survey were divided into the following groups: 36.4% - juvenile offenders; 32.9% are parents of juvenile offenders; 14.7% affected adults; 8.9% are parents of affected minors; 7.1% are affected minors. The results are presented in Tables 2, 3 and Fig. 1.

VI. RESEARCH RESULTS

Considering that in the Arkhangelsk region more than 800 socially dangerous acts are committed annually to minors under the age of criminal responsibility, conducting reconciliation programs with this category of minors contributes to the early prevention of offenses and reducing conflict among minors. In the process of the study, the mediation procedures carried out in relation to the specified group of adolescents were also studied.

As can be seen from the data of Table 1, there is a positive trend in the effectiveness and efficiency of the application of RM procedures in the Arkhangelsk region. More than half of the crimes committed by minors are resolved with the help of RJ, namely RM. The number of applications for this procedure for juvenile crimes is steadily increasing. This indicates the relevance and effectiveness of the procedure. More than half of the programs started are successfully completed, which is an important indicator. Thus, from the point of view of the analysis of objective criteria, we can say that RM, implemented in the territory of the Arkhangelsk region of the Russian Federation, is a successful, efficient and popular procedure for juvenile crimes.

According to these subjective criteria, the following can be said. Among those surveyed, 98.6% reacted positively to the mediation procedure, assessing it as an effective, free and as individual way to resolve criminal conflicts, of which 36.6% of respondents made suggestions to improve the program, which mostly concerned organizational and technical conditions of the procedure mediation. Many participants noted that the mediation procedure helped to improve relations, not only between the victim and the guilty, but also between the minor offender and his parents. The displaced adolescents admitted that only after the mediation procedure was carried out, they were able to realize the gravity of the crime committed, sincerely repented of their deeds, not only in relation to the victim, but also in relation to their parents (Table 2).

1.3% of respondents negatively reacted to the implementation of the mediation procedure. That is due to the fact that some minors could not fully realize the danger of the committed act and repent in such a short time.

<table>
<thead>
<tr>
<th>Indicators / year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile crimes - programs started in total</td>
<td>137</td>
<td>209</td>
<td>220</td>
<td>218</td>
<td>297</td>
</tr>
<tr>
<td>Juvenile crimes - number of completed programs</td>
<td>71</td>
<td>72</td>
<td>104</td>
<td>87</td>
<td>159</td>
</tr>
<tr>
<td>Completed programs using mediation</td>
<td>71</td>
<td>71</td>
<td>98</td>
<td>73</td>
<td>86</td>
</tr>
<tr>
<td>TOTAL applications received for juvenile crimes</td>
<td>150</td>
<td>209</td>
<td>220</td>
<td>317</td>
<td>411</td>
</tr>
</tbody>
</table>
TABLE II. FEEDBACK CONTENT FOR ALL MEDIATION PARTICIPANTS

<table>
<thead>
<tr>
<th>Review Content</th>
<th>% mediation participants who gave such feedback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build relationships</td>
<td>10.5</td>
</tr>
<tr>
<td>Solution to the problem</td>
<td>6.4</td>
</tr>
<tr>
<td>Awareness of guilt or apologize</td>
<td>6.8</td>
</tr>
<tr>
<td>Organization of conditions</td>
<td>27.9</td>
</tr>
<tr>
<td>For the future</td>
<td>12.8</td>
</tr>
<tr>
<td>Suggestions for change</td>
<td>4.6</td>
</tr>
<tr>
<td>Leave unchanged</td>
<td>31.5</td>
</tr>
</tbody>
</table>

According to the data of Table 3, it can be seen that the majority of participants in RM are positive to this procedure, see its positive results.

As can be seen from Fig. 1, most participants in mediation consider it possible to leave it unchanged; The main advantage of this procedure is the organization of conditions for reconciliation. As positive aspects of RM, participants noted the following: the ability to realize the guilt or apologize, solve the problem and build relationships. From the point of view of the analysis of subjective criteria, we can say that RM, implemented in the territory of the Arkhangelsk region of the Russian Federation, is a successful, efficient and popular procedure for juvenile crimes.

VII. CONCLUSION

1. Mediation in criminal law is understood as a set of certain methods used by trained specialists in order to reach an agreement and resolve a criminal law conflict for criminal cases of small and medium gravity.

2. Mediation is a measure of RJ.

3. A distinctive feature of RM in comparison with other types is recovery actions (apology, forgiveness, the desire to sincerely make amends for the harm), such actions help to correct the consequences of a conflict or criminal situation; as well as reaching an agreement or conciliation agreement, transferred to the body that sent the case to mediation.

4. Three types of RM success criteria can be defined: objective - concluding an agreement / conciliation agreement, existence of remedial actions (apologies, reparation of damage); subjective (psychological features) - healing the victim, initiating the responsibility of the offender, restoring the relationship; personal evaluation of the mediator of his work.

5. According to the data of the conducted research, from the point of view of objective and subjective criteria of RM in the Arkhangelsk region of the Russian Federation is a successful, effective and popular procedure.

ACKNOWLEDGMENT

This project is supported by RFBR according to the research project № 19-011-00385 A (grant number: 19-011-00385 A).

REFERENCES

[1] Improving the mechanisms of work with juvenile offenders in the Russian Federation: Collection of analytical materials. Moscow. 2010

Fig. 1. 1 Detailed distribution of feedback according to the category (group) of participants in mediation (in the number of people)


