

Sources and structure of the federal mediation legislation in the USA

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USA is a birthplace of the mediation procedure. Thus, in 1934 US Congress amended the *Railway Labor Act* 1926. These amendments incorporated establishment of the *National Mediation Board* (NMB). It's main goal is help to maintain the flow of interstate commerce in the airline and railway industries through representation, mediation and arbitration services. As for today the NMB has more than 40 employees (including professional mediators, lawyers, experts), an annual budget of 12,7 million dollars.

In 1947 *Labor Management Relations Act* (also known as *Taft-Hartley Act*) was passed. The act established *Federal Mediation and Conciliation Service* (FMCS), which has a status of US federal agency. The main mission of the agency is to help build better relationships between employees and employers through joint problem-solving and constructive responses to inevitable conflict. FMCS's experts have an authority to mediate any dispute (commercial, family and divorce, adoption, environmental), however, labor disputes are remain to be the most demanded ones [2]. FMCS's mediators can join the dispute procedure not only by parties agreement, but also by their own initiative. One of the most recent disputes, which was mediated by FMCS, was a conflict between *Nation Hockey League* (NHL) and *National Hockey League Players' Association* [3]. As for 2020, FMCS has more than 250 employees, its headquarter located in Washington D.C.

However, it's erroneous to think that mediation in the USA is widely popular and regulated only in the labor disputes. Thus, in 2000 *US Association of Family and Conciliation Courts, Association for Conflict Resolution* developed and passed *Model Standards of Practice for Family and Divorce Mediation*. V.V. Argunov states that "these standards are intended to serve as family mediators' professional and moral standards, provide an information to the parties about advantages of family mediation, increase a credibility of the mediation in the society" [6]. The act sets key principles of the family mediation, professional requirements to a family mediator etc. It's important to note Standard VIII, which underlines child's interests first.

Mediation is also widely used in resolving commercial disputes. In 1984 *American Arbitration Association* (AAA) developed and passed *Commercial Mediation Rules*. This act is quite laconic, consisting of only 17 paragraphs. According to Rules, parties can address to AAA for mediating their dispute.

Notwithstanding the significant amount of acts, that are regulating mediation, there was no a uniform mediation act until 2002. In the begging of 21th century *National Conference of Commissioners on Uniform State Laws* in cooperation with *American Bar Association* (ABA) has developed a *Uniform Mediation Act* (UMA). Discussion on the uniform act were a significant phenomenon is American legal circles, there were published various variants of the project [4].

Professor Shawn Conway stated that “*UMA is an important step in terms of stimulating parties to use mediation*” [5]. Final version of UMA with all the amendments was unanimously approved by the delegates of ABA in 2002 and later on transferred to states’ legislative authorities [1]. The UMA is an uniform act, which means that states can adopt it with certain amendments and reservations, taking into account local legislation and legal culture of the local residents. As for now, the UMA is adopted in 12 US states, including Washington, Vermont, Illinois, New Jersey, Ohio and some more.

The UMA is quite modest in terms of content - it has 16 paragraphs. In paragraph 2 there’re some important definitions regarding to the mediation process. Mediation is defined as “*a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute*”. Mediator is considered as “*an individual who conducts a mediation*”. Mediation party is viewed as “*a person that participates in a mediation and whose agreement is necessary to resolve the dispute*”. Based on these thesis, we can make some conclusions:

1. Active role in mediation process is owned by negotiating parties and based on the negotiations’ outcome they reach an agreement;
2. Mediator is an autonomous participant of the procedure, his main goal is assisting parties in negotiation process and reaching an mutually agreeable solution;
3. Mediator has no authority to force parties to reach a solution, he’s fully neutral.

In summa, we can say that statutory regulation of the mediation procedure in the US on a federal level is quite massive, there’s mediation regulation in particular areas of law (family, commercial, labor) as well as a common one for all branches of law. Based on development of the statutory legislation of mediation we can detect a **tendency**: initially in USA mediation regulation develops in certain spheres of legal relationship (labor, commercial, family disputes), and then forms a uniform legislation, which regulates general, fundamental principles of the mediation.

Источники и литература

- 1) Brudney J. The Uniform State Law Process: Will the UMA and RUAA Be Adopted by the States? / *Dispute Resolution Magazine*. 2002. Summer. P.6.
- 2) Ivanov O.B. State and mediation in labor disputes: USA experience / [Electronic resource: <http://conflictmanagement.ru/gosudarstvo-i-mediatsiya-v-trudovyih-konfliktah-opyit-ssha>].
- 3) McGran Kevin. NHL Lockout: Mediators called in for meetings this week / *The Hamilton Spectator*. Retrieved November 26, 2012. P. 12
- 4) Nosyreva E.I. *Alternative Dispute Resolution in the USA*. – Moscow, 2005., P. 13.
- 5) Shawn Conway. *Uniform Mediation Act (USA): legal privilege for all mediation communications*. *Mediation. TDM*. N 1. P. 6.
- 6) *Alternative Dispute Resolution: Textbook* / Redacted by E.A. Borisova – Moscow, 2019., P. 196. [Chapter’s author – V.V. Argunov].