

MEDIATION IN CHINA. GENERAL CHARACTERISTICS**Prof. Rafal BLICHARZ¹***University of Silesia in Katowice
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e-mail: rafal.blicharz@us.edu.pl***Abstract**

The article is devoted to the issue of mediation in economic matters in China. Contains contemporary statistical data on mediation in China, and also presents the development of mediation throughout China's long history, highlighting those elements that have influenced the specifics of the Chinese model of mediation proceedings. It takes into account the types of mediation and the rules that govern them. Separately, mediation proceedings before the court and people's mediation proceedings were presented. Both models have many common elements and determine the specificity of the Chinese way of out-of-court dispute resolution.

Key words: *mediation in China; mediation principles; mediation proceedings; types of mediation in China*

JEL Classification: *K40*

I. INTRODUCTION

The systemic, political and social changes in Poland and the world over the recent years, together with the accompanying dynamic development of civilization, have resulted in a clear increase in legal awareness of both non-governmental organizations and institutions, as well as consumers and entrepreneurs. The manifestations of this phenomenon are visible in virtually every area of life. Organizations protecting animal rights, aimed at environmental protection, protection of consumers, patients, all kinds of minorities, entrepreneurs, guarding the urban aesthetics of cities and public spaces, etc., are not only visible in the media space, but increasingly often take real legal steps to enforce the law, including the rights of the stakeholders whose interests they represent. It is significant that such actions are increasingly often taken by individuals, regardless of the activity of institutions and organizations representing particular interest groups. The consequence of this phenomenon is a clear increase in the number of cases that go to court. The gradual, and in some countries avalanche growth of cases in common courts (in Poland, according to a report by the Institute of Justice in 2019, a total of more than 15.5 million cases were handled in common courts in mid-2019) (Siemaszko, Ostaszewski & Włodarczyk-Madejska, 2019) is overwhelming the courts around the world, significantly lengthening the deadlines for handling cases, which ultimately makes the entire judicial system increasingly inefficient (Siemaszko, Gruszczyńska, Marczewski, Ostaszewski & Więcek-Durańska, 2016). The problem is definitely global (Klaus & Steffek, 2013). It has been recognized by many legislators around the world, introducing different solutions to the legal culture of individual legal systems. Usually, lawmakers first of all reach for innovative legal and technical solutions in the field of regulation of formal law (possibility of electronic recording of the course of proceedings, shortening the time limits for performing certain activities in the course of proceedings, especially in the field of consultations with other bodies, introducing presumptions, or extending the adversarial principle at the expense of the objective truth principle). With time, when the introduced innovations become insufficient or in parallel with them, completely new, alternative procedures and rules for conducting disputed cases between the parties become popular (Pecht, 2018). A key role in this respect is played by the so-called alternative dispute resolution, i.e. mediation, conciliation and arbitration (ADR - ADR – English: Alternative Dispute Resolution, Sometimes (especially in the USA) you can also find the abbreviation EDR - External Dispute Resolution). According to data announced by the International Chamber of Commerce, there has been a clear growing trend in recent years to submit cases to ADR. Out of the 142 countries surveyed, in 2016 the number of cases settled

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under ADR increased particularly significantly in Latin America and the Caribbean, while in 2017. In 2017, the number of cases resolved under ADR increased particularly significantly in countries from Latin America and the Caribbean, while in Sub-Saharan Africa (increase by 40%) and Central and Western Asia (increase by 27%). A high level of arbitration in particular remains high in the US and Brazil. In Western and Central Europe (France, Italy, Germany, Spain, the United Kingdom and the Netherlands), on the other hand, the level of interest in alternative means of resolving cases remains relatively low (ICC Dispute Resolution Bulletin, 2018:52 and following). Public statistics covering global, regional and selected countries show that, although ADR schemes are already in place in most countries, their use is relatively rare. The reasons for this state of affairs are different and depend primarily on tradition, culture, social behavior patterns, the judicial model adopted in the societies concerned and other factors characterizing the societies concerned. However, there are also other factors, referring not so much to the characteristics of the whole society, but to specific groups, communities. Unfortunately, an example can be here the reluctance of judges, the attitude of lawyers representing the parties and, in part, the lack of proper preparation of the mediators themselves and other persons entitled to settle disputes amicably (Murzyńska, 2005). Also important in this context are the cultural aspects of the conduct of the dispute, which either significantly reduce the mutual trust of the disputed parties in the possibility of a dignified and effective resolution of the dispute, or make it impossible to conduct the dispute at all, thus marking the allegedly peaceful status quo.

The regulations on ADR adopted in individual countries and the practice of their application, although based on similar assumptions, differ significantly from each other, which is understandable and most often justified in the tradition, culture, organizational structure of the state, the role of the social hierarchy and the systemic assumptions of their law. At the same time, the contemporary globalization of economic turnover, internationalism of enterprises and the international flow of capital make the legal relations between entrepreneurs from different countries no exception to the rule, on the contrary, they create this rule (Wang, 2009; UNCTAD, 2019). Bearing the above in mind, including above all the risk of conflicts between entrepreneurs representing different legal systems, different legal cultures, as well as - what is often equally important - customs in the field of professional economic turnover, the knowledge of regulations governing also ADR in different legal systems and the practice of their functioning becomes of great importance (李林军, 2018; 齐树洁, 李叶丹, 2011). In this context, the solutions adopted in the framework of alternative dispute resolution in China seems to be interesting. It is not without reason that China is perceived as a country in which modern industry and trade is concentrated. This is where entrepreneurs from the European legal area, American, Korean, Japanese and Australian entrepreneurs meet (胡桂华, 冯海侠, 陈博, 2012). As it is commonly known, an inherent feature of any activity, including economic activities, is the potential conflictogenicity within the framework of the established relations, including economic relations. In order to avoid or alleviate disputed situations, it is worth learning more about the specifics and rules governing Chinese mediation. This article concentrates on the mediation procedure in economic matters in China, abstracted from other forms of ADR, as this procedure occupies a special place in the whole of East Asia, especially in China (Leung, 2009; Lai, 2009; Li, 2009).

II. IDEOLOGICAL BASIS FOR MEDIATION IN CHINA

The specificity of the Chinese legal system is a strong interpenetration of law and morality, legal regulations and theories, philosophical concepts. It should be emphasized that since the beginning of lawmaking in ancient China, the traditional accepted ethical, religious values or principles of honor have prevailed in Chinese society, rather than the imposed legal norms. These usually unwritten rules of social behavior are not only at the core of China's modern legal system, but also provide a strong binding bond between law and morality and ethics, in a way that legitimizes the law as a determinant of social behavior. Thus, at the core of this system are the traditional values adopted by Chinese society. Although this is a characteristic feature of all legal systems, the place of values in the Chinese legal system is special. They often play a greater role than the legal norms themselves (Kossof, 2014).

The starting point for understanding the specifics of Chinese mediation regulations is Confucianism, deeply rooted in the Far East culture (Houzhi, 2009; Kossof 2014). Created in China in the fifth century BC by Confucius (Kong Fuzi), the philosophical assumptions about the world, society and the place of man as an

individual entity and a member of a larger community have over the years become the basis of the philosophical and religious system today called Confucianism (the assumptions of Confucius' philosophy were written by his students and today they are available in the book form "Confucian dialogues". Their impact can also be found in the so-called Confucian Pentateuch including the "Book of Changes," "Book of Songs," "Book of Documents," "Book of Customs," and "Book of Spring and Autumn." There was also the "Book of Songs" but it did not survive as a separate book; Xianyi, 2009). Throughout the centuries the system has obviously been clarified and modified, but its main principles remain essentially unchanged (Yao, 2009; Klityńska, 2016; Kania, 2012). The focal point of Confucianism is a specific morality (the so-called Rhine - humanity), which includes both specific norms of behavior and respect, loyalty, the worship of order, peace and order (Wójcik, 1995). Morality understood in this way, however, is not static in nature, but is a process that occurs along with human social development. In order to fully achieve it, man must observe "social moral norms" and customs and be guided by righteousness (the so-called Yi), understood as common sense linked to moral reason. This moral ration was an inseparable element connecting man to the community in which he lives and was based on a balance between what the individual receives from the public and what he gives him. In the organizational structure of the state, loyalty to the ruler (called Zhong), who should enjoy authority, had a particularly important place. This authority is at the same time the sole source of loyalty and obedience to the ruler's decisions. His recommendations should be treated as "benevolent proposals" for achieving "heavenly peace". But obedience to these proposals depends on the will of the people. The ethical assumptions of Confucianism indicate that man's actions aimed at achieving "heavenly peace" should be judged as good, which in correlation with the authority of the ruler means obedience to his recommendations and decisions. With such a holistic approach to the relationship between power and society, the use of state coercion is only permitted in exceptional circumstances. This also applies to state interference in disputed relations between citizens. Confucius stressed the role of the principle of "freedom of society from litigation" (litigation-free society) (Xianyi, 2009). The foundation for the sustainability of a social structure is the respect of the hierarchy adopted in it and the obligations arising from it by each social group. As Confucius preached, only in this way can harmony and peace be achieved. The development of a nation on the basis of these principles is only possible if they are strictly adhered to, which was supposed to ensure proper education and upbringing. Confucius emphasized the importance of educating future generations in a spirit of respect for the "heavenly peace", emphasizing that this is the highest virtue of every human being, which even those who do not have a thorough knowledge of the "heavenly order" should strive for (Tworuszka, 2009). The contemporary analysis of the assumptions of Confucianism underlines the special role of the concept of obedience in this philosophical and religious system. Obedience should form the basis of all social relations, from family (Gawlikowski, 2009) and neighbor relations to power and nation relations. Obedience presupposes a strong social hierarchy (obedience at every level), and to legitimize it, the authority of those in higher positions in the hierarchy is needed (Jarema, 2012). This authority is at the same time supported by the concept of "heavenly peace", which every human being should strive to achieve. Human behavior is morally and ethically evaluated through the prism of actions aimed at the realization of "heavenly peace". The model of social behavior created in this way is deeply rooted in the mentality of the citizens of China People's Republic and to this day determines most of their behavior. Striving to maintain order peace and harmony and observing public morality (social morality) is put at the heart of modern alternative dispute resolution methods, especially mediation. Hence, mediation has its roots in the culture of the Far East (Wang, 2009). Some representatives of Chinese legal doctrine stress that the clash of realities of contemporary court proceedings, which are accused not only of being costly, protracted, but also of increasingly frequent deviation from "natural justice" and "due process", with the specificity of mediation proceedings, leads to the conviction that the formal court procedures differ from the objective truth, and the judgments handed down can be seen as even contradictory to the idea of justice (Houzhi, 2009). Chinese court statistics also reflect the particular philosophical, religious and mental aspiration to settle cases in a consensual manner. Between 1978 and 2004, 72.2 million civil proceedings were conducted in the first instance, of which almost half, i.e. 36.42 million proceedings (50.4%) were concluded as a result of arrangements made in the course of mediation (court mediation) (in 1978, 72.33% of all court cases were resolved through mediation).

III. PAPER DEVELOPMENT OF REGULATION OF MEDIATION PROCEEDINGS

The roots of the Chinese tradition of amicable settlement date back to ancient times (Mo, 2009; Leung, 2009; Li, 2009). As a means of settling disputes, mediation was omnipresent in ancient Chinese society. As a system of amicable settlement, mediation developed during the Ming and Qing dynasties.

However, the period of formal regulation of mediation proceedings in China is usually divided into 4 stages. The first one, called The Revolutionary Base, dates back to the times before the People's Republic of China was established, when all disputes, even complex ones, were publicly resolved by the Chinese leader Ma Xiwu combining elements of court proceedings with mediation (This public way of conducting court proceedings with elements of mediation enjoyed great recognition among the Chinese population and over time adopted the name "Ma Xiwu mode"). The second stage includes the period before the entry into force of civil procedure law in 1982. This time is characterized by the principle of "forced priority for mediation" (Give Priority to Mediation), and, according to Chinese law doctrine, there is even an exaggerated emphasis on the settlement of disputes (through mediation). The next period covers the years between the entry into force of civil procedure law and the 1990's. The amendment to the Civil Procedure Law has somewhat loosened the requirement to use mediation in civil cases, making it mainly dependent on the will of the parties concerned and based on the rule of law, but the judges have continued to use it willingly. The final stage covers the period from the 1990's to the present day. It is the least uniform. Over the past 25 years, the Chinese authorities have first put the emphasis on the judicial process, beyond mediation. Judges started to use this procedure willingly, noting the relative speed and ease of resolving cases in this mode. However, such a policy soon led to a significant increase in appeal proceedings. As a result, the Supreme People's Court re-established the principle of priority for mediation, emphasizing the need to resort to it in every case and, if necessary, to combine it with standard court proceedings. The ruling reinstated the policy of mediation, which met with general public acceptance (In the period from 2001 to 2006, out of 28.21 million cases, 30.8% were settled in mediation), (Wang, 2009). As the Chinese legal literature emphasizes, the return to mediation will again have a positive impact on strengthening social bonds, tightening interpersonal relations, allowing for comprehensive regulation of disputes between the disputed parties (and not, as it is the case in court proceedings, where the court settles only a few disputed issues between the parties), also by making their will become reality. Attention is also drawn to the significantly lower costs of mediation proceedings, but above all to the key principle of facial behavior (Chinese Mian Zi, 面子) (Understood as reputation, honor and self-esteem) by the court and the judge. Mediation proceedings do not compromise the authority of the court and judges. The absence of a court decision in a case ending with a settlement agreement concluded in court mediation is tantamount to a lack of possibility to appeal against it. Consequently, the judge and the court "keep their faces". It should be noted, however, that while at the beginning of the reforms, mediation proceedings within the framework of court proceedings were conducted by judges conducting a given case, subsequent changes in Chinese law in this respect resulting from the need to adapt to international regulations and in connection with the practices applied by judges, are aimed at personal splitting of the person conducting court proceedings and mediation (the so-called "court-mediation"). On the other hand, some authors draw attention to the risk of violation of the rule of law in favor of reaching a compromise, the risk of striving for a rapid conclusion of mediation proceedings, or the desire to raise statistics on the positive conclusion of mediation, as well as violation of the principle of voluntary mediation proceedings (Xianyi, 2009; Mo, 2006; 张金辉, 2007; 张国鹏, 2008; 周卫华, 2009).

Until 10 years ago there was no unified regulation of mediation proceedings in China. However, the changes made in the last decade to the Chinese legislation put in order both the concept of mediation and its legal regulation. China's tradition, culture and philosophy of living in harmony, including the conciliatory conduct of cases is confirmed by Article 111 of the Chinese Constitution, according to which the committees of residents and villagers establish subcommittees for people's mediation, public safety, public health and others that deal with the conduct of public affairs and social services in their territory, mediation in civil disputes, assistance in maintaining public order, and the transmission of residents' opinions and demands and making suggestions to the people's government (The constitution adopted at the fifth session of the Fifth National People's Congress and announced for implementation by the announcement of the National People's Congress on December 4, 1982. The last amendment to the constitution was adopted by the National People's Congress on

March 11, 2018 and entered into force on March 11, 2018). The Constitution refers to the basic type of mediation in China, which is so-called people's mediation. This is in line with the Confucian idea of social harmony, which should be built on every level of society, and not only from above, on the level of government, whether local or central. The basic legal act regulating the mediation procedure, but only for the purpose of people's mediation, is regulated in a specially enacted legal act proclaimed by the President of the People's Republic of China (No. 34) People's Mediation Law of the People's Republic of China (This act was adopted at the 16th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on August 28, 2010 and entered into force on January 1, 2011, hereinafter referred to as the Law of People's Mediation). Importantly, the Civil Procedure Law of the People's Republic of China also regulates the Civil Procedure Law of the People's Republic of China (Law passed by the Standing Committee of the National People's Congress on 27 June 2017, announced by the President of the People's Republic of China by Order No. 71, in force as of 7 January 2017), and in the area of mediation in administrative matters and in administrative court proceedings, the Administrative Procedure Law of the People's Republic of China (Law passed by the Standing Committee of the National People's Congress on 27 June 2017, announced by the President of the People's Republic of China by Order No. 71, in force as of 7 January 2017) or the Law on the Re-examination of the Administrative Case of the People's Republic of China (Article 8 of this Law) (The law, passed by the Standing Committee of the National People's Congress on 1 September 2017, announced by the President of the People's Republic of China by order No 76, in force from 1 January 2018). As regards court proceedings in administrative matters, mediation is generally prohibited. However, mediation is permitted in cases of compensation for public authority offences and in cases related to the exercise by an administrative authority of its discretionary powers under any law or regulation (Article 60 of the Law on Proceedings before the Administrative Courts of the People's Republic of China). Mediation in such cases shall be conducted in accordance with the principle of free will and the rule of law, without prejudice to national interests, the public interest or the legitimate rights and interests of others. In cases not covered by the Administrative Court Procedure Law, the provisions of the Civil Procedure Law (Article 101 of the Administrative Court Procedure Law of the People's Republic of China) shall apply *mutatis mutandis* to mediation proceedings.

In addition to legislation, resolutions of the Supreme People's Court of China and guidelines issued by the Minister of Justice play an important role in the functioning of mediation in China ("Rules of civil procedure in respect of contracts for mediation" issued by National Supreme Court on 5 September 2002; 'Opinions on further action strengthening folk mediation nowadays', issued jointly by the National Supreme Court and Ministry of Justice on 1 January 2002; 'Opinions on strengthening popular mediation and maintaining social stability', jointly issued by the National Supreme Court and the Ministry of Justice on 13 February 2004 and the 'Rules on Folk Mediation' issued by the Ministry of Justice on 1 November 2002 – Mo, 2009). The lack of uniform regulation of mediation proceedings and basing it largely on the Confucian system of values has long been a pain both for the Chinese themselves and for foreign investors. However, the last decade shows how much change has taken place in this respect in China.

IV. TYPES OF MEDIATION

In modern China there are several types of mediation. In addition to judicial mediation, the Chinese also distinguish out-of-court mediation, especially people's, professional, legal, economic and administrative mediation (Article 34 of the People's Mediation Law). However, the most general and at the same time historical division of mediation allows distinguishing two basic levels of mediation. The first is judicial mediation, the second is social (people's) mediation. Historically, mediation could be conducted in three modes: official, according to formally binding legal regulations, in the form of "peaceful conversation" (Chinese *shuohe*), which may have been conducted by a family member, trusted neighbor or friend, or through simple mediation by a court or official. If the case, in the opinion of the person conducting the court mediation, was not suitable to be resolved in this mode, the disputed case could then be resolved in out-of-court mediation, i.e. people's mediation. People's mediation was in two forms. The first was voluntary mediation (Chinese *shuohe*, or extra-judicial mediation), in which disputes between the parties are resolved by trusted family members, friends or neighbors. At this level, mediation can also be initiated by the above mentioned trusted individuals who,

perceiving the conflict and wanting to maintain good social relations (as the Chinese say - harmony) (Guorong, 2002) undertake to mediate the dispute between the parties. This kind of mediation has a special place in the history and tradition of China. Already in ancient China there was a deep conviction that family matters should not be made public (Chinese shuren shehui) (Xiaotong, 2006), and referring any case to court was a serious violation of the principles of social coexistence (social harmony) (Guorong, 2004; Mo, 2009). Such behavior caused the complainant, the defendant to lose face and cover himself up in disgrace (Xianyi, 2009). The second form of people's mediation includes situations in which the parties have referred a case to court, but have decided to settle it by means of mediation with the help of social organizations (e.g., a village official, a group of the elderly, the leader of a local social group) already during the court proceedings (the so-called semi-official mediation, Chinese ban guan ban min).

Despite the many social and economic changes that have taken place over the centuries, there is still a strong belief in China today that the least ethical behavior is to refer disputed cases to court (Mo, 2009). Hence, any kind of mediation is seen as more honorable behavior than a court resolution of a dispute. The strength of this phenomenon is demonstrated by statistical data. For example, in the whole of 2004, there were 4,433,272 civil cases heard by courts in the first instance, and a total of 4,492,157 civil cases were subjected to mediation, 95.9% of which ended with a settlement. In 2006, there were 4,385,732 civil cases heard by courts of first instance, while in mediation proceedings 4,462,818 civil cases were considered in general, 92.1% of which were concluded with a settlement agreement (Xianyi, 2009). In 2007, there were 836,600 People's Mediation Committees in China, which resolved a total of 4,800,200 cases, with 4,868,700 mediators officially registered. The high percentage of successfully completed mediation proceedings is a result of the continuing deep belief of the Chinese in the need to maintain "social order and harmony", but also of the preventive nature of mediation, which allows to halt the escalation of the conflict, which - in common belief - could otherwise lead to crime or social unrest (Xianyi, 2009). Mediation is also seen as a mechanism to repair relations, especially in family relationships. It is not without reason that the Chinese are convinced that a judicial settlement never leads to agreement between the conflicting parties. In addition, it is noted that mediation is conducive to a comprehensive settlement of the conflict situation and allows for a more thorough examination of the grounds for its occurrence. Unlike the court, the extra-normative aspects of a dispute are also examined (Xianyi, 2009; Mo, 2009; Vera, 2004; Chow, 2002).

Currently in China, judicial mediation is the main type of mediation alongside people's mediation. Conducted by the court is distinguished by the fact that it is closely related to and part of a specific judicial proceeding. Judicial mediation is widely used in civil cases, criminal cases and in court-administrative proceedings (only to the aforementioned extent). It is regulated by legal acts regulating civil, court-administrative proceedings and by the law on administrative reconsideration. In court proceedings, mediation may be its essential form, but it may also be a complementary form of seeking a final decision. Regardless of the place of mediation in the proceedings, if a mediation agreement is concluded, it has binding force and is legally equivalent to a judgment. From 2012 onwards, the agreement resulting from mediation is subject to court approval (after prior examination of its legality) and may be subject to judicial enforcement (It is worth to note that on 7th August 2019 China, along with 45 other countries, signed in Singapore the UN Convention on International Agreements (Settlements) concluded following mediation (UN Doc. A/CN.9/942)) - hereinafter also referred to as the Convention. On the basis of this Convention, international mediation agreements become legally effective once they have been approved by the competent national local authorities (in China these are the competent courts). It is worth noting that from 2016 onwards (On the basis of the ruling of the Supreme People's Court of June 2016 on the interpretation of the use of mediation, the courts should cooperate with mediation centres, including in particular the People's Mediation Committees, business mediation centres and industry mediation centres), Chinese courts have been taking successive steps to separate mediation proceedings from the relevant court proceedings, while at the same time combining the two proceedings in a functional way (诉讼与调解对接机制 - the so-called 'mechanism for docking court disputes and mediation'). This is not an institutional separation, but a personal one. The court, perceiving the possibility of settling a case through mediation, should hand over the case to an independent external mediator or a special court mediator. Earlier solutions made it possible to conduct mediation proceedings to the judge conducting the case, which was met

with growing criticism (It happened that the judges conducting mediation proceedings revealed their attitude to the case, putting the parties in an unambiguous situation).

People's mediation is regulated by the People's Mediation Law of the People's Republic of China. The specificity of this kind of mediation is that it is the only one that is comprehensively regulated in one piece of legislation and refers to deeply rooted Confucian traditions in Chinese society. It has been established and distinguished from other types of mediation as a mediation to maintain "social harmony and stability". (Article 1 of the Law on People's Mediation), which supports the system of people's mediation and promotes the resolution of local social conflicts. People's mediation is free of charge and is conducted by special People's Mediation Committees (Article 7 of the Law on People's Mediation), consisting of 3 to 9 people appointed by the local community, and the procedure itself, the requirements for mediators and the rules of concluding a settlement are relatively detailed. People's mediation is based on the principles of striving for a consensual settlement of a dispute based on equal treatment of the parties in the mediation process and respect for their goodwill in resolving the conflict between them (Article 2 of the Law on People's Mediation) (Gang, 2004).

Professional mediation (sectoral, industrial) is a variant of people's mediation (Article 8 of the Law on People's Mediation). It is used in disputes between people who work in the same profession, work in the same industry or belong to the same professional self-government. This type of mediation is, as a rule, paid for, but in practice, industry institutions usually do not charge fees. Mediation is carried out either by a mediation committee specially established by a given industry institution (association, professional self-government) or by a people's mediation committee established by such an institution. In the first case, the mediation committee is supervised by the regulatory authority responsible for the industry institution in question (i.e. the Chinese Securities Regulatory Commission, where the mediation committee has been appointed by the securities association), while in the second case, supervision is exercised by the Ministry of Justice (the administrative justice department of the Council of State at the state level, and at the local level, the administrative justice departments of local governments). Sectoral mediation occurs, among others, in the health care sector, on the securities market, in the construction industry and electronic commerce.

Legal mediation is a mediation carried out by legal institutions, such as chambers or bar councils. This relatively new type of mediation is intended to encourage the use of alternative dispute resolution offered by lawyers, as people who are not only familiar with Chinese tradition, culture and mentality, but also specialists in Chinese law. Legal mediation is paid for. However, according to the recommendations of the Ministry of Justice, the fees for mediation services in a given case should not exceed 50% of court costs.

Economic mediation (commercial) is conducted by specially created, specialized institutions and is paid for. Examples of such institutions are the Beijing Arbitration Commission Mediation Center, Guangdong, Hong Kong & Macau Commercial Mediation Alliance, Shanghai Commercial Mediation Center, China Council for the Promotion of International Trade/China Chamber of International Commerce Mediation Center (CCIT/CCIC) conducts approx. 400 mediation proceedings annually, of which approx. 80% ends with a settlement). The payment of economic mediation makes it unattractive in Chinese society.

And finally, administrative mediation, is conducted by an administrative body which also includes police officers. This type of mediation is most often used in matters of public safety and order, including traffic law.

V. MAIN PRINCIPLES OF MEDIATION

Although each type of mediation has its own specificity, there are certain principles common to all proceedings, which are followed by the parties as well as by the bodies, entities, mediators or institutions conducting the mediation proceedings. Their order is obviously random and does not determine their importance.

Mediation in China is allowed in all court proceedings and in all instances (Article 172 of the Civil Procedure Law). However, it is predominant in civil proceedings and complementary in criminal proceedings. It also occurs in administrative proceedings, although here rather as an exception. As a rule, judicial mediation should be carried out after proceedings have been initiated, but before the first hearing. However, the courts often allow mediation to be carried out also at other stages of the procedure, both during the trial and during the enforcement stage.

A very important principle is to seek a mediation solution to a dispute. As a matter of principle, the Chinese are convinced that resolving a dispute through mediation allows to protect the interests of the parties to a greater extent than a judicial settlement. They are convinced that a compromise between the parties concerned will always be closer to their real needs than a judgment possibly imposed by the court (Xianyi, 2009). According to Article 9 of the Civil Procedure Law, when conducting civil proceedings, the courts should endeavor to settle the case amicably on a voluntary basis and in accordance with the principle of legalism. This solution is in line with Article 18 of the People's Mediation Law, which also requires the court or other authority conducting the proceedings to notify the parties of the possibility of settling a dispute through people's mediation. This principle is accompanied by another regulation (raised to the rank of a principle in the People's Mediation Law), referring to the obligation of mutual respect between the parties, which is manifested, among other things, by refraining from pursuing their rights through arbitration, administrative proceedings or any other judicial procedure (Article 3 of the People's Mediation Law). These provisions are complemented by Article 6 of the People's Mediation Law, according to which the state encourages and supports citizens in their mediation activities.

This principle is also supported by the principle of priority of mediation proceedings over the judicial process. According to Article 122 of the Civil Procedure Law, if mediation is permitted in a civil case, it should be carried out first, unless the parties refuse mediation.

According to the abovementioned mechanism of 'docking of court disputes with mediation', the courts are obliged to cooperate with mediation centers (either internal or external, independent of the court) so that the parties can reach an agreement as soon as possible. The settlement agreement concluded before such mediation centers is subject to court approval and may be subject to enforcement.

Currently, mediation in civil matters in China is regulated by the Civil Procedure Law and the People's Mediation Law. It is based on two cardinal principles. The first is the principle of legalism, the second is the principle of goodwill of the parties involved (Article 100 of the Civil Procedure Law). The principle of legalism in mediation proceedings is understood in two ways. The first one is the duty of the court to act on the basis of facts, which in case of doubt the court should clarify. The second boils down to the obligation to conduct proceedings in compliance with formal and substantive law. The court in the course of mediation proceedings should clearly define the rights and obligations of the parties, and the mediation agreement itself must not be illegal. On the other hand, the principle of the free will of the parties fulfils in a way the essence of mediation. It is understood as a voluntary willingness of the parties to resolve a dispute between them. This principle requires the parties, but also the court to respect each other's free will, as well as to take into account the substantive and procedural law. It should be stressed that the principle of respect for the free will of the parties also applies to the court. This is the result of the above mentioned historically justified experience of the Chinese, who were both forced to mediate (the second stage of development of mediation) and deprived of it (the last, fourth stage).

An immanent feature of the Chinese mediation proceedings in court is the educational function of mediation. According to Article 14 of the Civil Procedure Law, the People's Mediation Commissions conduct their mediation proceedings by means of persuasion and education in accordance with the law and the principle of voluntaries. Mediation is intended to reaffirm and highlight the priority role of mediation in Chinese society.

The same historical experience has formed the basis for the formulation of another principle of mediation, which can be described as the golden rule between the use of mediation and judicial dispute resolution methods. This principle is a guideline for judges to weigh the effectiveness of both methods in resolving a case. With a view also to the economics of the procedure, judges should also constantly improve their mediation skills.

Another principle of mediation is the principle of mutual concessions and limiting confrontation between the parties, while respecting the will of the parties. The parties may not be forced into mediation by a court or other persons or institutions. However, if they wish to mediate, they must be guided by respect for the other party. Mediation in bad faith, i.e. with a view to not reaching a compromise, is not acceptable. Participation in mediation with ill will, if it proves to be detrimental to the interests of the state, Chinese society or a third party, may result in the mediation proceedings being closed by the court and the proceedings being continued by the court (court judiciary). Mediation must also not be abused. It is the task of a judge (in judicial mediation) or a mediation center (in court proceedings and in cases other than judicial types of mediation) to ensure that neither party extends the mediation proceedings. If any of the parties wishes to resign from mediation proceedings (both

before and during the mediation proceedings), the court should immediately take judicial proceedings and cannot draw negative consequences for the party.

These principles are supplemented by the principle of the mediator's impartiality and the obligation to show respect for the parties both by the parties themselves and by the mediator. Insulting the parties (in particular by the mediator) or inducing them to give or accept any benefits of any kind in connection with the mediation process is forbidden and is subject to the order (Article 15 of the People's Mediation Law).

The mediation process in economic matters in China is also characterized by confidentiality. The parties and the mediator conducting mediation proceedings are obliged to keep confidential both private information disclosed during the proceedings and any business secrets that may be disclosed (Article 15 of the People's Mediation Law).

People's mediation conducted by People's Mediation Commissions is free of charge. The fee in mediation proceedings before the People's Courts, as well as before other specialized organizations, even if they exist, is rather low, which, due to the high costs of operation, largely determines the relatively small number of existing out-of-court mediation centers.

Since 1978, China has been gradually opening up to the world, which has triggered dynamic globalization phenomena around the world. China itself has not been spared these changes (Mo, 2009). As a result, these and other phenomena have led to the legal regulation of mediation proceedings, both judicial and extrajudicial (people's) mediation.

VI. JUDICIAL MEDIATION (MEDIATION BEFORE THE PEOPLE'S COURT)

Judicial mediation is regulated by the above mentioned Civil Procedure Law (art. 93 - 99 and 194 - 195). According to art. 49 of the Civil Procedure Law, parties have the right to apply to the court for mediation proceedings. This right is confirmed by art. 18 of the People's Mediation Law, according to which, in the case of a dispute that can be resolved by mediation, a common court or a competent public security authority may, before accepting the case, notify the parties concerned of the possibility to apply to the People's Mediation Commission for mediation. As already mentioned above, such a request may be made by the parties at any stage of the proceedings in any instance and before any court. This means that mediation can be conducted by a court and then the provisions of the Civil Procedure Code on mediation apply to the proceedings, or the parties may wish to refer the case to a people's mediation. In this case, the People's Mediation Law applies to mediation proceedings. Mediation is conducted by the court in accordance with the principle of free will of the parties and on the basis of facts presented by the parties. Mediation is carried out at the seat of the court. If mediation is conducted by the People's Court, it may be conducted by one judge or by a jury. Witnesses may also participate in mediation proceedings upon the court's request, if their participation in the proceedings will be helpful in establishing facts (Article 94 of the Civil Procedure Law). Other persons whose participation in the proceedings will facilitate the court's mediation (Article 95 of the Act on Civil Procedure Law) may also be summoned to the proceedings. Taking into account the principle of free will of the parties, a settlement agreement concluded through mediation must be based on full autonomy of the parties both as to their willingness to participate in the mediation proceedings, concluding a settlement agreement and its content. Under no circumstances may the parties be required to conclude a settlement by means of mediation. The autonomy of the parties' will is obviously not unlimited. Its limits are determined by the second cardinal principle of mediation - the principle of legalism. With this in mind, the People's Court examines the content of the agreement concluded through mediation for its legality (Article 96 of the Civil Procedure Law). If, in the opinion of the People's Court, the mediation agreement concluded by way of mediation is consistent with the provisions of law, including it was freely concluded by the parties, the court approves of its wording by issuing a ruling which specifies the facts of the disputed case, the parties' claims and their findings. The ruling is signed by the judges and court registrars who participated in the proceedings, after which it is delivered to the parties. After the parties sign the judgment, it becomes final (Article 97 of the Civil Procedure Law Act).

Not every settlement reached in mediation proceedings requires the approval of the People's Court. The Chinese Code of Civil Procedure exempts settlements in the following cases from this obligation:

1. divorce cases;

2. adoption cases where the adoption relationship is maintained through mediation;
3. cases in which the settlement can be executed immediately at the place of proceedings;
4. other cases, if specific provisions so provide.

An agreement resulting from mediation which does not require an approval decision shall be recorded in a record (minutes of proceedings, protocol) and shall become legally binding immediately after the signatures or stamps have been affixed in the record (protocol) by both parties and by the Judges and the judicial officer.

If the mediation settlement agreement is concluded when the appeal case is considered, the delivery to the parties of the decision of the People's Court approving the settlement agreement in this instance is tantamount to the revocation of the decision of the People's Court issued in the first instance (Article 172 of the Civil Procedure Law).

A specificity of Chinese civil proceedings is the regulation relating to the case where the parties involved in mediation proceedings act in bad faith. According to Article 122 of the Civil Procedure Law, if, through court proceedings, mediation or otherwise in collusion, the parties to these proceedings maliciously attempt to violate the lawful rights and interests of others, the People's Court rejects their claims and imposes a fine or security measure according to the gravity of the circumstances. Irrespective of the above, if the circumstances justifying the suspicion of a criminal offence occur, these persons are also subject to criminal liability. An analogous regulation applies to bad faith behavior of a party who refuses to comply with its obligation resulting from a mediation agreement. In such a case, the People's Court imposes a fine or arrest on the party or parties (as well as any third parties who have participated, for example, in the collusion) proportionate to the gravity of the circumstances (Article 113 of the Civil Procedure Law. These persons are also subject to criminal liability if such behaviour exhausts the elements of the crime). These solutions are based on the Confucian philosophy outlined above and are a direct emanation of this philosophy in the law.

In the event that the mediation proceedings prove ineffective, i.e. the parties fail to reach or conclude a settlement, but one of the parties withdraws before delivery of the court-approved settlement, the People's Court immediately takes up the court proceedings and decides on the matter itself.

VII. PEOPLE'S MEDIATION

As already mentioned above, since people's mediation has a special place in Chinese history, out-of-court (people's) mediation proceedings are regulated in the Chinese legal system by a separate, specific legal act. This is the aforementioned People's Mediation Law of the People's Republic of China. The People's Mediation Law is the legal basis for the functioning of people's mediation in China, and the mediation system created by this law is consistent with the provisions of the Constitution of the People's Republic of China and is intended to maintain social harmony and stability (Article 1 of the People's Mediation Law). This Act defines people's mediation as a process by which the People's Mediation Commission persuades the parties involved in a dispute to reach an agreement through negotiation, respecting the principle of equality and freedom of the parties. The People's Mediation Law lists as basic principles of the people's mediation procedure the principle of free will of the parties, the principle of equality of the parties, mutual respect of the parties and legalism, covering not only legal regulations but also state policy (Article 3 of the People's Mediation Law). It should be stressed that respect for the rights of the parties concerned is also expressed in their obligation to refrain from pursuing their rights by any means other than mediation. This regulation refers to the Confucian ideology outlined above and the historical traditions of the Chinese people. Although judicial redress is increasingly understood today, it should be remembered that in the China, for many years, the exercise of rights other than mediation was considered dishonorable. This belief is reflected in the regulation of Article 3 of the People's Mediation Law (Mo, 2009).

People's mediation is conducted by people's mediation commissions. At the state level, the administrative justice department of the Council of State is responsible for organization and management of people's mediation, while at the local level, the administrative justice departments of local governments are responsible. The activity of people's mediation commissions is also supported by people's courts, which can give them instructions on how to conduct mediation (Article 5 of the People's Mediation Law). People's mediation commissions consist of 3 to 9 members. The committee is managed and represented by the director and, if necessary, by his or her deputies (two or more). The People's Mediation Committee should reflect the ethnic composition of the

community in which the dispute arose and should also include women, although the People's Mediation Law does not prejudge their percentage participation in the Committee. The members of the People's Mediation Commission shall be elected by the local community at a meeting of the residents or their representatives. In the case of professional people's mediation committees (in a company or public institution), the members of the people's mediation committee shall be elected by the employee meeting, employee representatives' meeting or trade union (Article 9 of the People's Mediation Law). The term of office of the members of the people's mediation commissions is 3 years, but re-election is permitted. The local people's courts of the People's Mediation Commissions maintain lists of their members. The People's Mediation Commissions are obliged to inform the People's Courts also of any change in their composition. Each people's mediation committee shall adopt its own work system (work regulations) and its activities shall be assessed by the local community. As the people's mediation is free of charge, the costs of its activities are provided by the people's committees, district committees, company committees or public institutions, respectively, which have established the respective People's Mediation Committee (Article 12 of the People's Mediation Law).

The People's Mediation Commission employs people's mediators. The people's mediator is also a member of the people's mediation committee. A people's mediator may only be an adult (A natural person over 18 years of age is considered an adult under Chinese law, and a natural person over 16 years of age is considered an adult under labour law if he/she is employed full-time) who is impartial in a given case, decent and devoted to mediation work, has sufficient education (minimum secondary education), understands the policy of the state and has the appropriate legal background (Article 14 of the People's Mediation Law). People's mediators are subject to permanent training organized by the administration of justice departments of local governments. A mediator should have a good reputation. Showing bias, insulting any of the parties, accepting (or applying for) personal benefits, as well as breaching the secrecy of the mediation, including disclosure of any private information of the parties or breaching business secrets as part of the mediation, constitutes a tort of the mediator and triggers his liability. The mediator may be reprimanded for any of the aforementioned acts and (In addition to the reprimand, the mediator may be instructed and obliged to improve behaviour), if the violation is serious, the mediator shall be dismissed (Article 15 of the People's Mediation Law). The penalty is imposed by the People's Mediation Commission. People's mediators enjoy great public trust. Although their work is not remunerated, they are entitled to reimbursement of their lost remuneration if the loss is related to their function as mediators. In the event of an accident while working as a mediator, they are entitled to medical care and maintenance assistance. The costs of medical care or subsistence are borne by the local council, which has set up a People's Commission. If an accident during the mediator's work results in the mediator's death, the mediator's spouse and children shall be entitled to compensation and special protection under the special rules.

People's mediation proceedings may be initiated ex officio by the People's Mediation Committee or at the request of interested parties. The People's Mediation Committee shall initiate the procedure ex officio when an existing dispute between the parties begins to affect or is likely to affect local social relations. The purpose of ex-officio initiation of mediation proceedings is to prevent the escalation of the dispute and thus to pursue the public (social) interest. However, if either party refuses to resolve a dispute through mediation, the people's mediation procedure is not initiated. People's mediation may also be initiated after the case has been referred to a court or other competent authority (according to the nomenclature of the Chinese legal language - public security authority), as mentioned above (Article 18 of the People's Mediation Law).

After filing a motion to carry out people's mediation proceedings or after initiating such proceedings ex officio (i.e. when the parties did not oppose the mediation proceedings), the People's Mediation Commission appoints one or more people's mediators to carry out the proceedings. Mediators may also be appointed by the parties themselves. The number of mediators depends on the nature of the case and the decision in this respect depends primarily on the will of the parties. Depending on the needs, other persons may also participate in people's mediation proceedings if the parties to the dispute agree to do so (this is so-called public mediation) (Unlike public mediation, private mediation takes place with the exclusion of third parties other than the mediator). In such a case, the public mediator may also invite relatives, neighbors or collaborators of the parties, but also experts, as persons with specialist knowledge or experience, to take part in the proceedings. On the same principles, other persons representing specific social organizations, whose participation in the proceedings may be important for the conduct of mediation (Article 20 of the People's Mediation Law), may also be invited to

mediation proceedings. This solution is somewhat different from the solutions commonly adopted in European and American regulations. While from the perspective of Western countries, the participation of experts in mediation proceedings is not a specificity of people's mediation, the participation of relatives, neighbors or other persons in such proceedings can already be considered as such a specificity. It results from the above mentioned culture of Confucianism. The above example is an excellent illustration of how deeply this culture and tradition is rooted in Chinese society. It should be emphasized that the People's Mediation Law even requires people's mediation commissions to encourage impartial, trustworthy people to participate in mediation proceedings, who would be involved in helping to resolve the dispute (Article 20 in fine of the People's Mediation Law).

The People's Mediation Law does not specify precisely neither the place of mediation nor the time when the proceedings should end. It merely provides that it should be conducted at a time and place which is appropriate to prevent disputes from escalating (Article 21 in fine).

In the course of the mediation proceedings, the people's mediator is obliged to observe the generally accepted principles of social coexistence and to be guided by the law and justice towards the parties to the proceedings. People's mediators may adopt various methods and measures to conduct mediation if they believe that they will serve the cause. The procedure is based primarily on hearing the parties, allowing them to express themselves freely, but always respecting the dignity and rights of the other party. After hearing the parties, it is the mediator's task to explain the relevant provisions applicable in the circumstances of the case, but also to draw attention to the state's policy priorities, if they may find them in the dispute (Article 22 of the People's Mediation Law). This solution is somewhat original given the regulations of European countries. It is worth emphasizing that this element of conducting a dispute is not accidental and may play a key role in mediation proceedings. It corresponds to the requirements imposed on people's mediators. As mentioned above, they must be people who understand state policy. Such a regulation is aimed at emphasizing the importance of the general interest, which prevails over the interests of individuals. The tasks of a people's mediator also include persuading the parties (as emphasized by the People's Mediation Law - "patiently") (Article 22 of the People's Mediation Law of the People's Republic of China), helping them to reach an agreement, including proposing various solutions aimed at resolving the dispute (evaluation mediation model). However, the basic duty of a people's mediator is to conduct proceedings based on the principle of equal treatment of the parties and respect for their interests.

The parties to a people's mediation procedure generally have a direct influence on the mediation procedure. The initiation of a people's mediation procedure depends entirely on their will. They also decide on the type of procedure (public or private mediation). They influence who will be the mediator and how many will be. They have the right to speak freely during the procedure. They can also withdraw from mediation at any time and demand its termination. In addition to these rights, the People's Mediation Law also places obligations on the parties. The basic obligation is to make truthful declarations of intent, observe the rules of procedure in force at the place where the proceedings are conducted, respect the people's mediators and the other party, including in particular its rights.

A people's mediator not only conducts the proceedings, but also ensures their proper conduct. If, in the course of the proceedings, he finds that the dispute is likely to escalate to such an extent as to endanger public safety, and in particular if it may lead to the commission of an offence, the people's mediator must notify the competent authorities, including the public security authorities (police and, in cases of corruption, the national supervisory committee), sufficiently in advance.

If the people's mediation procedure does not lead to a compromise between the parties, the people's mediator closes the procedure by informing the parties of their options for further exercising their rights through arbitration, judicial or administrative proceedings depending on the nature of the case (Article 26 of the People's Mediation Law). His tasks also include preparing a record of the proceedings and submitting it to the People's Mediation Committee (before which mediation took place), which archives the files of each case (Article 27 of the People's Mediation Law). However, as the above-mentioned statistics show, in most cases there is agreement between the parties. A mediation agreement can take either oral or written form. The form of the mediation agreement depends on the will of the parties. If the parties consider that it is not necessary to conclude a written agreement, the content of the agreement is recorded in a protocol or a separate document by the People's Mediator and then forwarded to the People's Mediation Committee. The mediation agreement concluded orally shall take effect from the date on which the parties reach agreement and shall be deemed to have been concluded

if the parties have settled all disputes. However, if the parties wish to enter into a written settlement agreement, it should identify the parties, the relevant facts relating to the circumstances in which the dispute arose, the precise nature of the dispute (subject matter) and the parties' respective responsibilities, as well as the arrangements made for settling the dispute amicably, including the time limit and method (modalities) for settling mutual claims. A settlement agreement so drawn up requires the signature of each party, the affixing of a stamp or fingerprints. In addition, the settlement agreement shall be signed by the leading people's mediator and shall be stamped by the relevant people's mediation committee. As soon as the above-mentioned signatures and stamps are affixed, the mediation settlement agreement enters into force (Article 29 Section 3 of the People's Mediation Law). Each party receives one copy of the settlement agreement. The People's Mediation Committee keeps a copy of the settlement agreement in the case file for evidence purposes.

The settlement agreement concluded in the course of the people's mediation procedure is binding on all parties. The parties are obliged to execute the mediation agreement in accordance with the arrangements made, which is monitored by the People's Mediation Committee (Article 31 of the People's Mediation Law). If it is found that the mediation agreement has not been implemented, the People's Mediation Committee calls on the party or parties to act in accordance with the law. However, if any of the parties refuses to implement the mediation agreement or disputes the content of the agreement, the parties may refer the matter to a common court. In such a case, the common court will either rule on the validity of the mediation agreement (in case of doubts as to its content) or issue an enforcement decision. If a common court declares a mediation agreement invalid, the court rejects the request and the case is subject to re-examination as part of the mediation proceedings or, depending on the will of the parties, may be referred to the court (Article 33 of the People's Mediation Law in conjunction with Article 195 of the Civil Procedure Law).

Notwithstanding the above, once a mediation agreement has been concluded before the People's Mediation Committee, the parties may jointly request the approval of the settlement agreement before a common court (The request cannot be made by one party, nor can the people's mediator himself do so). The request should be submitted within 30 days from the date of entry into force of the mediation agreement (Article 30 of the People's Mediation Law in conjunction with Article 194 of the Civil Procedure Law) (Chapter 15. Section 6 of Civil Procedure Law: Confirmation of mediation agreements). The common court examines the content of the settlement agreement for compliance with the law by issuing a relevant decision - a decision to approve the mediation agreement or a decision to refuse its approval and reject the request (Article 195 of the Civil Procedure Law). If the mediation agreement proves to be illegal, the parties may amend the mediation agreement or conclude a new one by means of mediation, and may also bring an appropriate action before the People's Court. On the other hand, if, after approval of the mediation agreement, one of the parties fails to execute the mediation agreement or "fails to execute it in full", the other party may request the People's Court to initiate enforcement.

Notwithstanding the above measures to protect the interests of the parties to mediation, the Chinese Code of Civil Procedure provides for an extraordinary remedy in the form of a request for a retrial of a case that has been resolved by mediation and the settlement agreement has been approved by a final court decision. It is open to the parties and may be triggered if either party proves that mediation has violated the parties' free will or that the mediation agreement is illegal. If the above circumstances are deemed proven, the court will conduct a new procedure (Article 201 of the Code of Civil Procedure).

As already mentioned above, 7 August 2019. The People's Republic of China signed the UN Convention on International Agreements (Settlements) following mediation in Singapore. The main purpose of the Convention is for States Parties to the Convention to honor agreements resulting from mediation that have been concluded in connection with a dispute arising out of international trade. Mediation in the Convention is defined as a process, irrespective of the expression or basis on which it is conducted, in which the parties attempt to reach an amicable settlement of their dispute with the assistance of a third party (the mediator) or third parties without having the power to impose a solution on the parties. The Convention introduces a mechanism for confirming mediation agreements resulting from mediation between parties from different States, making them enforceable in the State of the party who so requests. It applies to mediation agreements drawn up in writing between parties who are established in different countries (Article 1(1) of the Convention) (The Convention does not apply to disputes with consumers, to family, succession or labour law matters (Article 1(2) of the

Convention), or to agreements previously approved by the court or developed in court proceedings, mediation agreements having the same enforceability as a judgment, or to registered agreements that are enforceable as an arbitration award (Article 1(3) of the Convention). The signature of the Convention by the People's Republic of China further strengthens all parties to a potential dispute as regards the enforceability of the arrangements established in a mediation agreement.

VIII. CONCLUSIONS

Deeply rooted in the mentality of Chinese society, Confucianism is an immanent element of its culture. Similarly, the amicable resolution of disputes is a tradition inscribed in China's history since the beginning of the Chinese state. China's history shows that for many years the ADR system, and especially mediation, was at first the primary means of resolving disputes, and in later centuries it supplemented or even replaced the state's formal procedures for administering justice. Summa summarum the Chinese civil judicial system was built largely on the construction of consensual dispute resolution, and this is linked to strong interpersonal relations and the importance of preserving social peace, which is the foundation of Confucianism.

The specificity of the Chinese mediation procedure should be emphasized. Unlike the European or American tradition of mediation, mediation in China was initially neither private nor confidential. It was a form of social civic education, aimed at shaping the attitudes of members of the local community and fostering social behavior - "heavenly harmony". The mediator, as a mentor, was not only seen (and still is) as a person indicating the desired way of settling a specific dispute between the disputed parties, but also ensuring that this settlement was consistent with the policies of local and central government. Such inclusion of mediation in the opinion of some authors may pose a real threat to the rule of law. A mediator is more concerned with social harmony and justice than with the legality of a settlement. This solution, although understandable to Chinese citizens because it is part of their centuries-old culture of conducting a dispute, posed a serious threat and challenge to people from outside that culture. Given China's special international position in business, foreign investors could therefore feel some discomfort when investing in foreign legal realities. Only the recent changes in the law on people's mediation as well as judicial mediation in civil matters have anchored the rule of law and respect for the free will of the parties to a dispute as the foundation of mediation proceedings, making international trade more stable and possible and potential settlements, whether judicial or people's mediation commissions, predictable in the sense of Western culture.

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