

NOTARY - PERFORMS THE DUTIES OF MEDIATOR FOR DISPUTES

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ABSTRACT

Consistent work is being done in the country to improve communication between state bodies and citizens, to ensure reliable protection of citizens' rights and freedoms, and to introduce modern mechanisms for solving their problems.

At the same time, the current stage of reforms in this field requires the creation of a unified system of pre-trial dispute resolution in state bodies, the need to transform mediation, arbitration courts and international arbitration into effective alternative dispute resolution institutions that can be trusted by citizens and entrepreneurs.

New institutions are introduced due to the need to improve the system of protection of the rights and legal interests of individuals and legal entities, to expand alternative options for conflict resolution, as well as to radically increase the role of mediation institutes, arbitration courts and international arbitrations in optimizing the volume of work in courts.

Today, we often hear the question "What is MEDIATION and who is the person who implements it, the mediator?"

And around this word, there may be some questions like followings, what are the duties of the Mediator? What kinds of disputes does he deal with?

The Law of the Republic of Uzbekistan "On Mediation" states that mediation is a method of resolving a dispute with the help of a mediator based on their voluntary consent in order for the parties to reach a mutually acceptable decision.

What such persons need for the society can be proved on the basis of simple situations in the society.

Every day, we face family conflicts, property and non-property issues in our neighborhood, our neighbors or ourselves.

The most common cases are disputes between relatives in cases related to the work we started with mutual trust, lending money, giving a free house or claiming our inherited property. Disputes become serious, they have to turn to the court and other law enforcement bodies, and the situation worsens, and coldness develops between relatives and children.

This is definitely a depressing negative situation. However, today a system of guidance has been put in place to clearly resolve such conflicts.

First of all, I would like to note that since this year, notaries engaged in private practice have been entrusted with the task of resolving disputes before the court in matters of property and inheritance - performing the role of mediator.

At this point, it should be said that it is not for nothing that paragraph 1 of the appendix to the order of the Minister of Justice of the Republic of Uzbekistan dated May 2 of this year "Amendments and additions to the instruction on the procedure for notarial actions by notaries" was filled with the addition "he acts as a mediator".

Conflicts between citizens, husbands and wives, and family members often take the form of property disputes. The scope of mediation in the Republic of Uzbekistan is clearly defined by the Law "On Mediation". In particular, according to **Article 3** of the law, mediation procedures are applied to civil legal relations, business disputes, individual labor disputes, and family legal disputes.¹

A notary acts as a mediator in a dispute based on the voluntary agreement of the parties to make a mutually acceptable decision on civil-legal relations, including property and inheritance issues.

A notary acts as a mediator only in disputes arising from notarial acts performed by notaries.

The notary certifies the mediation agreement on the following disputes:

- family disputes (split property);
- disputes related to inheritance (distribution of inheritance property, division of shares among heirs, etc.);
- other disputes (monetary obligations, obligations to transfer property, debt obligations, obligations regarding collateral relations).

Mediation is distinguished from other methods of dispute resolution, in particular from court-ordered dispute resolution, with a number of advantages.

First, the settlement of disputes through mediation is carried out in a much shorter period of time compared to the court procedure.

Article 23 of the Law "On Mediation" stipulates that the mediator and the parties must take all possible measures to complete the mediation procedure within a period of no more than thirty days.

In this article, the longest periods of mediation are defined. International experience shows that in most cases, the duration of mediation is one working day, sometimes a few hours.

In particular, as of November 30, 2018, more than 90% of cases concluded with the formation of a mediation agreement between the parties at the Singapore Mediation Center were resolved within one working day.²

Second, all information relating to the case is strictly confidential during mediation procedures. In particular, **Article 6³** of the Law of the Republic of Uzbekistan "On Mediation" states that mediation participants do not have the right to disclose information that became known to them during the mediation process without the written consent of the party to the mediation that provided them, his legal successor or representative, and about the circumstances that the mediation participants became aware of during the mediation process. that it is not possible to be questioned as a witness, and also that it is not possible to demand information related to mediation from them, in **Article 25**, when using mediation, the mediator has no right to make public statements about the essence of the dispute without the consent of the parties, in **Article 27**, if the mediator has received information related to mediation from one of the parties, he it is determined that this information can be disclosed to another party only with the consent of the party that provided it. The principle of confidentiality is particularly important in family disputes and disputes arising from business relationships.

¹ <http://old.lex.uz/docs/4407205>

² <https://www.mediation.com.sg/>

³ <http://old.lex.uz/docs/4407205>

Because the disclosure of any business entity's conflict with another business entity or client may negatively affect the business reputation of this business entity, cause potential customers and partners to lose confidence in it, and may cause them to refrain from entering into contractual relations with it. Mediation is a reliable protection against such negative consequences.

Thirdly, in disputes resolved through mediation, an agreement acceptable to both parties is reached. A decision in favor of one party in a dispute under court procedure serves to the detriment of the other party. As a result, consideration of a case may drag on for months or even years with appeal, cassation, and control procedures. When using mediation, the parties can also determine the ways and methods of resolving the dispute, the deadlines for fulfilling the obligations specified in the agreement, and the consequences of not fulfilling these obligations by voluntarily concluding a mediation agreement.

In particular, in **Article 29** of the Law "On Mediation", in the event that the parties reach a mutually acceptable decision regarding the dispute arising from the results of the mediation procedure or the conditions and terms of performance of obligations, a mediation agreement shall be drawn up in writing between the parties, and the mediation agreement is for the parties who concluded it. has a binding force, it is determined that this agreement is voluntarily executed by the parties in the manner and within the terms provided for in it, that the parties have the right to apply to the court for the protection of their rights in case of non-fulfillment of the mediation agreement, that the consequences of non-fulfillment of the mediation agreement can be determined by the parties in this agreement itself.

Widespread use of mediation in dispute resolution will not be without benefits for the courts. An unrealistically high caseload is a common problem for the courts of all countries.

In order to implement the mediation procedure, the parties may apply to the notary who performed the notarial act or to another notary by mutual agreement.

The interested party, having explained the content of the demands placed on the other side of the dispute, applies to the notary with an application for the application of the agreement procedure. Notary examines the application within the period specified by law and sends a letter to the parties about resolving the dispute through mediation, indicating the parties, the subject of the dispute, the place and time of the meeting.

If the parties jointly apply to the notary about the use of mediation on the disputed issue, the notary will ask them to submit a simple written agreement on their consent to the implementation of the mediation procedure on this issue.

When resolving a dispute on property or inheritance through a notary, the parties shall submit to the notary their identity documents, the original or a copy of the notarial act that caused the dispute, and a simple written agreement on the implementation of the mediation procedure to resolve this dispute.

The mediation procedure starts from the date of conclusion of the agreement by the parties on the implementation of the mediation procedure.

During the mediation procedure, the notary public has no right to limit the rights and legal interests of the parties, to put pressure on them to make a decision.

During the implementation of the mediation procedure, the notary holds simultaneous meetings with all the parties and with each of the parties separately, gives them oral and

written recommendations on the resolution of the dispute, before the start of the mediation, informs the mediation parties of the purpose of the mediation, as well as their rights and explains their obligations, ensures the exchange of ideas and suggestions by the parties, suggests the type of settlement of the dispute by the parties.

The duration of mediation is determined voluntarily by the parties in the agreement on the implementation of the mediation procedure. In this case, the period should not exceed thirty days. If necessary, this period can be extended up to thirty days by mutual agreement of the parties.

In the event that the parties reach a mutually acceptable decision regarding the dispute arising from the results of the mediation procedure or the conditions and terms of performance of obligations, the notary shall confirm the mediation agreement concluded between the parties.

The mediation agreement shall be submitted to the notary in at least three copies and notarized, one of which shall be kept in the notary's office.

In short, mediation as an alternative method of conflict resolution has been tested in international experience and has a number of advantages, and is taking a worthy place in the national legislation of the countries of the world.

Many countries have adopted their own mediation laws and established mediation centers within the country and internationally.

Countries such as Singapore, Great Britain, and India can be cited as examples. Uzbekistan was not left out of this process. In particular, on June 12, 2018, the Law "On Mediation" was adopted. On January 31, 2019, the training of professional mediators was launched within the framework of the "Mediator Training Program" approved by the Order of the Minister of Justice No. 54. Given that mediation is one of the new institutions in the legislation of Uzbekistan, there are a number of tasks that must be performed for the further development of this institution.

REFERENCE

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