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MEDIATION AS AN ALTERNATIVE METHOD OF DISPUTE RESOLUTION

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ABSTRACT

The article discusses issues of mediation, the principles of mediation, and analyzes legal acts on mediation issues. It is concluded that in the Republic of Uzbekistan, by legal nature, the legislator does not define this agreement as a civil transaction, in case of non-fulfillment or improper fulfillment of obligations under which the parties have the right to resort to the same methods of protection.

Keywords: mediation, mediator, disputes, reconciliation of the parties, problems, neutrality, voluntariness, impartiality.

Mediation as one of the types of conciliation procedures is provided for by procedural legislation (Article 166 of the Civil Procedural Code of the Republic of Uzbekistan, Article 130 of the Economic Procedural Code of the Republic of Uzbekistan). In the Republic of Uzbekistan, the norms of the Civil Procedural Code of the Republic of Uzbekistan, the Economic Procedural Code of the Republic of Uzbekistan assign the court the obligation to take measures to reconcile the parties and assist them in resolving the dispute.

Currently in Uzbekistan, the main legal act regulating the institution of mediation in protecting the private legal interests of citizens and organizations is the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 "On Mediation"[1].

The parties can resort to the mediation procedure as an alternative method of resolving disputes if they themselves, for example, through negotiations, cannot reach a mutually beneficial agreement, but there is a chance to come to a constructive solution with the assistance of a mediator, without waiting for a court decision[2].

The mediation procedure is defined by the legislator as a method of resolving disputes with the assistance of a mediator based on the voluntary consent of the parties in order to achieve a mutually acceptable solution (Article 4 of the Law of the Republic of Uzbekistan "On Mediation"). Some authors, in particular I. Reshetnikova, Y. Kolyasnikova[3], I.G.Cheremnykh[4], O.V. Sitnikova[5], mediation is considered as an out-of-court way of resolving a dispute between disputants with the participation of a neutral person, as negotiations between parties to the conflict with the participation and under the guidance of an independent mediator who does

[1] https://lex.uz/docs/3805229
[2] Ibratova F. LEGAL ISSUES OF MEDIATION ON INDIVIDUAL LABOR DISPUTES //SCIENTIFIC APPROACH TO THE MODERN EDUCATION SYSTEM.–2022.–2022. – 2022.
[3] Решетникова И., Колясникова Ю. Медиация и арбитражный процесс // Арбитражный и гражданский процесс. 2007. № 5. С. 21.
[4] Черемных И.Г. Перспективы участия нотариуса в процедурах медиации // Право и политика. 2007. –№ 3. – С. 24.
[5] Ситникова О.В. К вопросу о проведении процедуры медиации с участием нотариуса // Нотариус. 2008. – № 5. – С. 27

not have the authority to make decisions binding on the parties, as a process of the parties searching for a joint solution to the problem with the assistance of a third disinterested person. Its main advantages include the efficiency and simplicity of the procedure, relatively low costs (compared to legal costs), independent determination of confidentiality limits, preservation of business partnerships[6].

The principles of mediation are those fundamental principles on which the alternative procedure is based and in accordance with which it is carried out. The first of these is the principle of voluntariness, which means that mediation is used with the mutual voluntary expression of the will of the parties, expressed in an agreement on the use of mediation. Any of the parties has the right to refuse mediation at any stage (Article 7 of the Law of the Republic of Uzbekistan "On Mediation"). Agreement with the result of the conciliation procedure is also voluntary. The second principle of cooperation and equality of the parties is the desire of the parties to the conflict to assist each other in order to achieve the final result and the absence of any procedural advantages for one party over the other (Article 8 of the Law of the Republic of Uzbekistan "On Mediation"). In contrast to the procedural principle of competition, here the parties do not prove their demands and objections, but jointly develop a constructive solution[7]. But by analogy with the principle of procedural equality, the parties have equal opportunities to perform procedural actions, for example, choosing a mediator, determining the procedure for conducting the mediation procedure, expressing their position, the right to individual conversations with the mediator, participating in the development of the terms of the agreement, etc.

In accordance with the principle of neutrality and impartiality, the mediator strives for an independent and fair attitude towards the parties and provides them with an equal right to participate in the procedure (Article 9 of the Law of the Republic of Uzbekistan "On Mediation"). In the absence or impossibility of maintaining impartiality, the mediator must refuse to conduct the conciliation procedure. The lack of interest of the mediator in the conflict is also an important factor (disclosure by the mediator of existing or potential interests in the conflict)[8].

According to the principle of confidentiality, all information related to the mediation procedure is not subject to disclosure, except in cases established by law and unless the parties agree otherwise (Article 6 of the Law of the Republic of Uzbekistan "On Mediation"). As a general rule, participants in mediation do not have the right to disclose information that became known to them during mediation, without the written consent of the mediation party that provided this information, its legal successor or representative. Also, participants in mediation cannot be questioned as a witness about the circumstances that became known to them during the mediation, and information related to mediation cannot be demanded from them, except in cases provided for by law.

Due to the flexibility and voluntariness of the mediation procedure regarding confidentiality rules, the law provides the parties with the opportunity to develop them themselves, agree in

[6] Babakulovna I. F. Mediation as an alternative way to resolution of economic disputes. – 2023.
[7] Ибратова Ф. Б., Ташбаева Т. А. МЕДИАТИВНОЕ СОГЛАШЕНИЕ ПО ТРУДОВОМУ СПОРУ: ТЕОРИЯ И ПРАКТИКА //International journal of professional science. – 2022. – №. 10. – С. 27-34.
[8] Ибратова Ф. Мировое соглашение в гражданском судопроизводстве: теоретические проблемы и практика //Обзор законодательства Узбекистана. – 2018. – №. 4. – С. 35-39.

advance with the mediator, or accept those already proposed by the office[9]. За нарушение принципа конфиденциальности предусмотрена уголовная ответственность (статья 191 Уголовного кодекса Республики Узбекистан). Violation of the principle of confidentiality provides for criminal liability (Article 191 of the Criminal Code of the Republic of Uzbekistan). At the same time, it seems that in order to strengthen the measures, it would be appropriate to introduce disciplinary liability.

In the legal literature there are many reasons for classifying mediation by type, but the most significant seems to be its division, depending on the moment of implementation, into extrajudicial and judicial, which, in particular, is enshrined in the Law of the Republic of Uzbekistan "On Mediation". Thus, mediation can be applied both out of court and within the court process at any time before the court makes a decision on the case.

The parties turn to out-of-court mediation solely on their own initiative and choose a mediator or provider from the mediation services offered on the open market[10]. Judicial mediation takes place if the case has already been initiated by the court. At the stage of preparing the case, the judge takes measures to reconcile the parties, explaining to them the right to resort to conciliation procedures, in particular, mediation. The law establishes the right of the court to suspend proceedings until the end of the mediation procedure, but not more than sixty days, if the parties decide to resort to the procedure in question in civil proceedings (Article 118 of the Civil Procedure Code of the Republic of Uzbekistan, Article 103 of the Economic Procedural Code of the Republic of Uzbekistan).

Mediation is applicable to a wide range of legal disputes (to assess the applicability of a procedure for resolving a particular dispute, the concept of "mediaability" of a dispute has been developed). So, first of all, disputes arising in the private law sphere are the main area of application of mediation, where it is most promising, i.e. disputes arising from civil, family, labor, housing, land, environmental and other legal relations, economic disputes and other cases related to the implementation of entrepreneurial and other economic activities (Article 3 of the Law of the Republic of Uzbekistan "On Mediation"). It should be noted that the legislation of the Republic of Uzbekistan does not regulate the possibility of resolving disputes arising from administrative and other public legal relations through mediation

At the same time, there are a number of exceptions when this procedure is not applicable. Thus, collective labor disputes, disputes arising from civil, administrative and other public legal relations, including economic disputes, are considered non-mediable if they affect or may affect the rights and legitimate interests of third parties not participating in the mediation procedure, or public interests (Part 2 Article 3 of the Law of the Republic of Uzbekistan "On Mediation"). It is worth agreeing with the opinion about the unsuccessfully chosen regulatory formulation in relation to collective labor disputes from the point of view of legal technology, since from a literal interpretation it can be understood that in these disputes mediation is not applicable at all, which does not correspond to reality and the true position of the legislator. Thus, to resolve collective labor disputes, conciliation procedures are used, directly provided for by industry

[9] Babakulovna I. F. Ibratova FB, Yerkebayeva Zh. A. Mediation as an alternative way to resolution of economic disputes //Editorial team.

[10] Ибратова Ф. и др. ПРАВОВЫЕ ВОПРОСЫ ЭЛЕКТРОННОГО ДОКАЗАТЕЛЬСТВА В ЭКОНОМИЧЕСКОМ ПРОЦЕССЕ //International journal of professional science. – 2022. – №. 4. – С. 18-24.

(labor) legislation, and in order to avoid competition of legal norms, the legislator quite reasonably excluded this category of disputes from the scope of the Law of the Republic of Uzbekistan "On Mediation".

Currently, mediation in criminal cases is not used in the Republic of Uzbekistan, but in foreign countries such experience already exists ("restorative justice"). In the literature one can find references to rare cases of the use of criminal legal mediation in certain regions in cases of minors[11]. However, the Republic of Uzbekistan did not regulate mediation in criminal cases either at the level of the Code of Criminal Procedure of the Republic of Uzbekistan or at the level of a specialized law.

The application of the mediation procedure is carried out on the basis of agreement of the parties. A mediation clause is a condition for settlement with the participation of an intermediary (mediator) using the mediation procedure, included in the text of the agreement between the parties (indicated in the main agreement or in a separate agreement).

At the legislative level, a distinction is made between an agreement on the use of a mediation procedure and an agreement on the conduct of a mediation procedure. The first can be concluded by the parties before or after the dispute arises and records the intention to resolve it through the mediation procedure[12]. The second agreement is significant for calculating certain deadlines, since from the moment of its conclusion mediation begins. So, from this moment the thirty-day period for the procedure begins, but in exceptional cases it can be extended to thirty days with the mutual consent of the parties and the mediator. But in the process of executing judicial acts and acts of other bodies, the duration of the mediation procedure is no more than fifteen days (Article 23 of the Law of the Republic of Uzbekistan "On Mediation").

Initiation of mediation can occur by submitting a joint application of the parties to participate in the procedure or by sending a proposal to resort to mediation. Also, one of the parties may contact the mediator with a request to invite the other party to mediation, and in this case, the mediator carries out a number of actions to obtain the consent of the other party to conduct a conciliation procedure.

The procedure for carrying out this alternative method of resolving a dispute can be called quite flexible, since it is not clearly regulated by law and is established by an agreement on the mediation procedure.

The scientific literature identifies various stages of mediation, and, obviously, scientists have not come to a consensus on this issue due to the "plasticity" of the procedure itself due to the granting of the disputants the right to independently establish the procedure for its implementation[13]. But, based on the analysis of scientific positions and current world practice, it is possible to build a certain sequence of stages that together constitute a foreseeable model of the mediation procedure:

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[11] Boboqulovna I. F. et al. NIZOLARNI MUQOBIL HAL QILISH USULI SIFATIDA MEDIATSIYANI HAKAMLIK SUDLARIDA QO'LLASHNING O'ZIGA XOS AHAMIYATI //INTERDISCIPLINE INNOVATION AND SCIENTIFIC RESEARCH CONFERENCE. – 2023. – Т. 1. – №. 9. – С. 88-95.

[12] Ибратова Ф. и др. ПРАВОВЫЕ ВОПРОСЫ СУДЕБНЫХ СИСТЕМ ЗАРУБЕЖНЫХ СТРАН ЯПОНИИ, ФИНЛЯНДИИ И ГЕРМАНИИ (СРАВНЕНИЕ С СУДЕБНОЙ СИСТЕМОЙ РЕСПУБЛИКИ УЗБЕКИСТАН) //International journal of professional science. – 2022. – №. 10. – С. 20-26.

[13] Иванова Е.Н. Медиация как альтернативный суду способ разрешения конфликтов. Развитие альтернативных форм разрешения правовых конфликтов: учебно-методическое пособие. Часть 1 / под общей ред. М.В. Немытиной. Саратов: СГАП, 1999. – С.33–35.

1) pre-mediation stage (initiation of the procedure, selection of a mediator, conclusion of an agreement on the procedure and other preparatory actions);
2) mediation stage (opening the mediation session, stating the positions of the parties, identifying the main interests of the parties, individual meetings with each of them, developing a joint decision, concluding an agreement, closing the mediation session);
3) post mediation stage (monitoring compliance with the terms of the agreement)[14].
The result of an effective mediation procedure is the conclusion of a mediation agreement, which can be reached not only on one, but also on several disputes and even on individual disagreements in the dispute.
The law establishes a written form of this agreement, which specifies the subject of the dispute, the obligations agreed upon by the parties, the conditions and deadlines for their implementation, which are fulfilled by the parties on the basis of the principles of voluntariness and good faith of the parties. Undoubtedly, the main problem is the lack of guarantees that the parties will fulfill their obligations under the agreement, since each of them can change their decision at any time and stop following the agreements reached. If this happens, then the mediation procedure did not make sense and it is not effective[15].
In the Republic of Uzbekistan, by legal nature, the legislator does not define this agreement as a civil law transaction, in case of non-fulfillment or improper fulfillment of obligations under which the parties have the right to resort to the same methods of protection as in case of violation of the terms of any civil law contract, including seek legal protection.
However, the mediation agreement is binding on the parties who entered into it and is executed by them voluntarily in the manner and within the time limits provided for in it. If the mediation agreement is not fulfilled, the parties have the right to go to court to protect their rights. The consequences of failure to comply with a mediation agreement can be established by the parties to the same agreement (Article 29 of the Law of the Republic of Uzbekistan "On Mediation").
The parties can resolve the dispute in full or in part by concluding a mediation agreement. A mediation agreement can be concluded in any case of litigation, but only in the court of first instance before the court retires to a separate (deliberative) room to adopt a judicial act. The mediation agreement is concluded in writing and signed by the persons who entered into the mediation agreement or their representatives. However, unlike a settlement agreement, a mediation agreement is not approved by the court and a writ of execution is not issued for forced execution (Article 29 of the Civil Procedural Code of the Republic of Uzbekistan and Article 131 of the Economic Procedural Code of the Republic of Uzbekistan).
The parties have the right to choose one or more mediators for the mediation procedure. If there is any doubt about the independence and impartiality of the mediator, being conscientious and law-abiding, the latter is obliged to inform the parties and the organization about this.
As is known, the activities of a mediator can be carried out on a non-professional and, conversely, a professional basis (Article 12 of the Law of the Republic of Uzbekistan "On Mediation").

[14] Калашникова С.И. Медиация в сфере гражданской юрисдикции. М.: Инфотропик, 2011. – С.110–121.
[15] Ибратова Ф. Б., Эгамбердиев Д. О. У. СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ПРАКТИКИ ЗАРУБЕЖНЫХ СТРАН ПО ИНТЕГРИРОВАНИЮ СОВРЕМЕННЫХ ТЕХНОЛОГИЙ В ДЕЯТЕЛЬНОСТЬ ЭКОНОМИЧЕСКИХ СУДОВ //International journal of professional science. – 2023. – №. 3. – С. 5-10.

A person who has completed a special training course under the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan, and who has also been included in the Register of Professional Mediators, can carry out the activities of a mediator on a professional basis.

A person who has reached the age of twenty-five years and has given consent to perform the duties of a mediator can act as a mediator on a non-professional basis. A person acting as a mediator on a non-professional basis can also undergo a special training course under the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan.

A person cannot be a mediator:

– authorized to perform government functions or equivalent to it, with the exception of notaries;

– in respect of whom there is a court decision that has entered into legal force declaring him partially capable or incompetent;

– having an outstanding or unexpunged criminal record;

– against whom criminal prosecution is being carried out.

The activity of a mediator is not a business activity.

The parties to the agreement in the rules of the mediation procedure may establish additional requirements for mediators (both non-professional and professional).

In addition, some authors, in particular M.A. Volkova, A.L. Shilovskaya [16], A.V.Milokhova[17], noted the pointlessness of enshrining the institution of "non-professional mediators" in legislation. Indeed, the principle of professionalism should be a priority, which gives reason to believe that it is advisable to abolish the institution of "non-professional mediators". At the same time, mediation is a field of activity accessible to many professions, but through which disputes of a legal nature are resolved to a large extent, which necessitates the need for the mediator to have knowledge in the field of jurisprudence. In this regard, many scientists, not unreasonably, advocate the introduction of provisions on the presence of a legal education of a mediator, which will increase the authority of the institution of mediation itself, since a qualified specialist will resolve the dispute.

In light of the above, it seems advisable to exclude the rule that establishes the possibility of mediation on a non-professional basis, and at the moment there may be no need to rush to introduce the requirement for the compulsory legal education of a mediator, since its regulation may lead to some kind of confusion of mediation institutions and judicial reconciliation.

A mediator can carry out his activities both for a fee and free of charge. However, such activity does not belong to entrepreneurial activity. A mediator cannot be a person: authorized to perform state functions or equivalent to it, with the exception of notaries; in respect of whom there is a court decision that has entered into legal force declaring him partially capable or incompetent; having an outstanding or unexpunged criminal record; against whom criminal prosecution is being carried out.

In continuation of the development of the basic principles of mediation, the legislator established a number of prohibitions regarding the status of the relevant mediator. Thus, due

[16] Волкова М.А., Шиловская А.Л. К вопросу о правовом статусе отдельных участни-ков отношений по медиации // Современное право. 2019. № 3. С. 96–99.

[17] Милохова А.В. Развитие примирительных процедур урегулирования споров в контексте судебной реформы // Законы России: опыт, анализ, практика. 2018. № 8. С. 36–41.

to the principles of neutrality and impartiality of the mediator and equality of the parties in the procedure, he does not have the right to act as a representative of any party, provide legal, consulting or other assistance to one of the parties, carry out the activities of a mediator if there is a direct or indirect interest in the result of the mediation procedure, including the fact that one of the parties is in a family relationship. In accordance with the principle of confidentiality, the mediator does not have the right to disclose information that became known to him during the mediation procedure, including making public statements on the merits of the dispute without the consent of the parties[18].

Speaking about the prospects for the development of mediation in Uzbekistan, it is necessary to have a number of combined conditions, namely the existence of a public need for this procedure, a certain level of legal literacy of the population, organizational resources, budget financing, and competent regulatory regulation. As for the first factor, we can still state the fact that there is a need in society for the mediation procedure. E.A. Borisova previously noted that the introduction of top-down mediation is "less productive than the conscious perception of it by society, understanding of the advantages of this procedure, the needs for it, recognition not only by lawyers, but also by citizens of the country."

Currently, the idea of reconciliation in our country has begun to be "cultivated" more actively, in particular, through the judicial system. In the field of popularization of conciliation procedures, great hopes are placed on the court. Thus, information stands, reconciliation rooms, etc. are created in court buildings. At the stage of preparing a case or trial, the judge explains to the parties the advantages of conciliation procedures, which can lead to a successful resolution of the conflict, indicating the possibility of further consideration of the case in court if agreement is not reached peacefully[19]. Therefore, the orientation of the judiciary towards reconciliation of the parties and convincing the parties of the effectiveness of mediation contribute to its effective implementation. We believe that the court will become a good "conductor" of the institution of mediation into society. The formation of a positive image of mediation in the public consciousness can be carried out with the help of the media and other resources. Therefore, the state's activities in developing and implementing activities aimed at informing participants in civil circulation about the benefits of reconciliation seem relevant.

In order to improve legislation, it is advisable to introduce amendments and additions to the Law of the Republic of Uzbekistan "On Mediation". For example, scientists formulate specific measures of economic incentives for resorting to the mediation procedure in the form of full or partial exemption from fees, compensation for legal costs and expenses in enforcement proceedings, they propose abandoning the institution of mediators on a non-professional basis, and regulating the procedure for conducting the procedure.

In addition, an addition should be made to the procedural legislation that if the disputing parties turned to judicial mediation, i.e. After the dispute has been submitted to a state or arbitration court, the reached mediation agreement should be approved by the court. In case of

[18] Дудник Д. В. и др. Научные основы финансовой, кредитно-денежной и ценовой политики. – 2021.
[19] Boboqulovna I. F. et al. KORPORATIV HUQUQIY MUNOSABAT VA U BILAN BOG 'LIQ NIZOLARNI HAL ETISHDA MEDIATSIYA INSTITUTINING AHAMIYATI //INTERDISCIPLINE INNOVATION AND SCIENTIFIC RESEARCH CONFERENCE. – 2023. – Т. 1. – №. 9. – С. 96-104.

failure to fulfill its terms voluntarily, after the judicial act enters into force, the court should issue a writ of execution, on the basis of which the mediation agreement will be enforced.

There is no doubt that all of these measures will contribute to the successful development and popularization of the institution of mediation in the future, when it will become an effective alternative method of resolving disputes, and the parties will find a way out of the conflict situation together peacefully.

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