

PROBLEMS IN THE INSTITUTIONAL DEVELOPMENT OF MEDIATION IN THE REPUBLIC OF UZBEKISTAN

Masadikov Sherzodbek Mahmudovich

Head of the Department of "Civil Law and International Private Law" at UWED,
Candidate of Legal Sciences, Associate Professor

Nizomova Shahrigul Karimboy qizi

Master's student specializing in "International Business Law" at the University of
World Economy and Diplomacy

Shahrigulnizomova12@gmail.com

Abstract: This article elucidates the distinctive features of mediation in alternative dispute resolution and explores promising directions for the development of mediation in our country.

Keywords: mediation, mediator, dispute, mediation institute

ПРОБЛЕМЫ ИНСТИТУЦИОНАЛЬНОГО РАЗВИТИЯ МЕДИАЦИИ В РЕСПУБЛИКЕ УЗБЕКИСТАН

Аннотация: В данной статье освещаются отличительные особенности медиации в альтернативном разрешении споров и исследуются перспективные направления развития медиации в нашей стране.

Ключевые слова: медиация, медиатор, спор, институт медиации

O`ZBEKISTON RESPUBLIKASIDA MEDIATSIYANING INSTITUTSIONAL RIVOJLANISHIDAGI MUAMMOLAR

Annotatsiya: Maqolada mediatsiyaning nizolarni muqobil hal qilishdagi o`ziga xos xususiyatlari va mamlakatimizda mediatsiyaning rivojlantirishdagi istiqbolli yo`nalishlar yoritib berilgan.

Kalit so`zlar: mediatsiya, mediator, nizo, mediatsiya instituti

Mediation is understood as an alternative form of conflict resolution that is impartial and fair, involving a third party - a mediator who has no vested interest in the dispute. The mediator assists the parties in reaching a specific agreement regarding the conflict. In mediation, the parties maintain full control over the decision-making process concerning the resolution of the dispute and the terms of its settlement[1].

According to legal scholars, employing mediation as an alternative method of dispute resolution allows for time savings and reduces court expenses for the conflicting parties - citizens, organizations, and business entities.

Doctor of Juridical Sciences Shonazar Berdiyev listed the following as the main advantages of mediation and its distinctive features that set it apart from other alternative dispute resolution methods:

- freedom of choice;
- reliance on justice;
- direct participation in developing and making decisions;
- parties' agreement with the decisions made;
- the possibility to withdraw from the process at any time;
- time and cost efficiency in case consideration;
- ensuring confidentiality;
- flexibility of the process and its adaptability to the situation and requirements;
- the entire process being free from any forms of corruption[2].

Based on the aforementioned characteristics of mediation, it can be stated that during mediation proceedings, parties can swiftly resolve their disputes without resorting to court, consulting a lawyer, or paying state fees and other expenses related to court costs. This is achieved by reaching a mutually beneficial decision in a convenient place, time, and conditions suitable for both parties. However, citizens rarely take advantage of such mediation opportunities. The main reasons for this can be attributed to the following:

Firstly, citizens lack sufficient information about the institution of mediation. The primary reason for this can be attributed to the late adoption of the Law "On Mediation."

If we refer to the practice of foreign countries, the Law "On Alternative Procedures for Resolving Disputes with the Participation of a Mediator (Mediation Procedure)" came into force in the Russian Federation on January 1, 2001[5]. The Law "On Mediation" was adopted in Kazakhstan on January 28, 2011[6], and in Belarus on July 12, 2013[7]. In the Republic of Uzbekistan, it was adopted on July 3, 2018, and entered into force on January 1, 2019.

Secondly, special rooms and conditions have not been established in mahalla citizens' assemblies and public service centers for disputing citizens to utilize mediation services. In cases of family disputes, resolving the conflict through mediation without going to court would create a foundation for positive resolution of these disputes and prevention of unnecessary expenses.

Thirdly, there is a lack of norms regarding the assignment of tasks to judges at the stage of preparing a case for trial to explain to the parties the possibility of resolving the dispute by concluding a settlement agreement and using the mediation procedure by mutual agreement. With the presence of this norm, citizens would be informed about resolving their disputes through mediation at the court stage, which would result in saving time in dispute resolution and help reduce the court's workload.

In France, claims received by the court are first mandatorily submitted to the conciliation department, and the dispute is resolved in a closed court session through agreement. Representatives elected from both sides participate in the conciliation department, focusing their activities on terminating the case based on agreement. This does not deprive individuals of their right to judicial protection. On the contrary, individuals are provided with the opportunity to choose between state and non-state forms of dispute resolution, and the parties themselves determine which procedure is most appropriate depending on the nature of the disagreement that has arisen[3].

Fourthly, the absence of a simplified procedure for state registration of mediation activities as non-profit organizations with legal entity status through justice authorities. The existence of societies or organizations related to mediation activities can not only encourage clients to use mediation but also help overcome psychological barriers in the process of utilizing the mediation procedure.

Looking at the experience of foreign countries, there are several professional organizations for mediators in the USA. These groups include the American Arbitration Association, the Federal Mediation and Conciliation Service, the National Mediation Board, the Civil Mediation Council, the Institute of Arbitration Judges, the United States Institute of Peace, the UN Department of Political Affairs, and Court Arbitration and Mediation services[8]. These organizations provide opportunities for professional mediators to enhance their qualifications. Additionally, a mediator can work in personal settings in any state without a license, certificate, or registration. Mediator certification can also be obtained online through programs such as the National Association of Certified Mediators[9].

Fifthly, improving the qualifications of professional mediators by incorporating foreign countries' experiences into training courses. Taking Singapore as an example, this country has established several requirements for becoming a mediator, and they are awarded bronze, silver, and gold certificates. The process of obtaining these certificates depends on the volume and quality of mediation dispute resolution and is implemented in stages.

Sixthly, a list of registered professional mediators should be conveniently and permanently displayed in court buildings for citizens. This system is currently being gradually implemented in practice. However, it has not yet been fully realized. If implemented in our practice, it will allow citizens to familiarize themselves with the mediation process and voluntarily select mediators.

Seventhly, there is a lack of enforcement mechanism. That is, after a mediation agreement is reached, the parties do not undertake to fulfill the terms of the agreement. This, in some cases, leads to violations of the agreement terms, resulting in the case being brought to court, as well as a loss of citizens' trust in mediation.

According to A.A. Romanov, "Due to the absence of clear enforcement or mandatory execution mechanisms for mediation agreements in the law on mediation, parties in most cases prefer to resolve disputes through court proceedings to avoid potential delays in the future"[4].

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