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MEDIATION AND LITIGATION IN UZBEKISTAN

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Abstract
The institution of mediation appeared in Uzbek law relatively recently, in 2018, with the adoption of a special Law "On Mediation" . Over the next four years, fairly detailed regulation was developed to this law on a number of aspects, which include the consequences of the use of mediation for civil legal relations, the use of mediation in civil and economic court proceedings, and in the process of execution of judicial acts. The procedure for civil and economic proceedings is determined by the Constitution of the Republic of Uzbekistan, Law of the Republic of Uzbekistan "On Courts" , as well as procedural codes.

Introduction

Uzbekistan is taking active measures to inform the population about the mediation procedure in the media and through the resources of the Ministry of Justice in order to make this procedure known to potential users. Information about mediation is brought to the attention of the parties in state courts. By actively turning to mediation by both citizens and legal entities, the burden on the judicial system can be significantly reduced, thereby increasing the quality of decisions made. Thus, steps to popularize mediation in Uzbekistan are regular, systematic and large-scale. Regulation of the mediation procedure does not stand still. In particular, on January 1, 2019, the Law on Mediation came into force, which introduced a number of changes to the Civil, Civil Procedure and Economic Procedure Codes. The Civil Procedural Code and the Economic Procedural Code have introduced corresponding chapters "Conciliation Procedures", which contain provisions according to which the parties can resolve a dispute by concluding a settlement or mediation agreement. It is important to note that dispute resolution through the mediation procedure is possible only in the court of first instance before the court moves to a separate (deliberative) room to adopt a judicial act, as well as during the execution of judicial acts. And the conclusion of a settlement agreement is possible both in the court of first, appellate and cassation instances before the court is removed to a separate (deliberative) room for the adoption of a judicial act, and at the stage of enforcement proceedings. Mediation can also be used in the process of considering a dispute in an arbitration court before the arbitration court makes a decision[1].

The above codes also include provisions that encourage the use of mediation and the development of partnerships. For example, the Economic Procedural Code (hereinafter - EPC;) provides that the plaintiff's failure to comply with the pre-trial (claim) procedure for resolving a dispute with the defendant, when this is provided for by law or agreement (clause 5 of Article 107 EPC), as well as the plaintiff's failure to comply with the procedure for resolving a dispute with the defendant through the mediation procedure, if this is provided for by law for this

[1]Article 15 of the Law of the Republic of Uzbekistan "On Mediation" // National Legislation Database, 07/04/2018, No. 03/18/482/1447.

category of disputes or the agreement is the basis for leaving the application without consideration (clause 51 of article 107 of the EPC). The Procedural Code also determines that the main task of preparing a case for trial in an economic court is reconciliation of the parties (clause 8Art. 163). Failure by the plaintiff to provide documents confirming compliance with the procedure for resolving a dispute with a mediation procedure with the defendant, when this is provided for by law for this category of disputes or by agreement, is grounds for returning the statement of claim (Clause 71 of Article 155 of the EPC);at the request of both parties, if they turn to the court for assistance in peacefully resolving the dispute, there is a possibility of the economic court postponing the trial (Part 1Art. 171 EPC). The conclusion of an agreement to conduct a mediation procedure is the basis for suspending the proceedingsbefore the end of the mediation procedure, but not more than sixty days. The legal consequence of suspending the proceedings is the suspension of all deadlines. The conclusion of a mediation agreement by the parties is the basis for leaving the statement of claim without consideration (clause 53 of Article 107 of the EPC)[2].

The Civil Procedure Code (hereinafter referred to as the Civil Procedure Code) contains similar norms, which are aimed at the use of mediation. For example, a similar rule that determines whether the plaintiff fails to comply with the pre-trial procedure for resolving a dispute with the defendant when this is provided for by law or agreement (clause 10 of Article 122 of the Code of Civil Procedure) or whether the plaintiff does not comply with the procedure for resolving a dispute with the defendant through a mediation procedure (clause 101 Article 122 of the Code of Civil Procedure) is the basis for leaving the application without consideration (clause 10 of Article 122 of the Code of Civil Procedure). The Procedural Code also stipulates that at the stage of preparing the case for trial, the judge.can interview the parties and find out from them the possibility of concluding a settlement agreement or mediation agreement and explains their legal consequences (clause 3 of Article 203 of the Code of Civil Procedure). One of the grounds for returning a statement of claim is the plaintiff's failure to provide documents confirming compliance with the procedure for resolving a dispute with a mediation procedure with the defendant, when this is provided for by law for this category of disputes or by agreement (clause 9 of Article 195 of the Code of Civil Procedure).The conclusion of an agreement to conduct a mediation procedure is the basis for suspending the proceedings before ending of the mediation procedure, but not more than sixty days. The legal consequence of suspending the proceedings is the suspension of all deadlines. The conclusion of a mediation agreement by the parties is the basis for leaving the statement of claim without consideration (clause 103 of article 122 of the Code of Civil Procedure)[3]. The mediation agreement is presented to the court in the form of a separate document, which is attached to the case, as indicated in the minutes of the court session.

The judicial system, supporting the development of alternative friendly forms of dispute resolution, such as the mediation procedure, thereby contributes to increasing the level of legal

[2]Economic procedural code of the Republic of Uzbekistan dated 04/01/2018 // (National database of legislation, 01/25/2018, No. 03/22/759/0213)
[3]Civil Procedure Code of the Republic of Uzbekistan dated January 22, 2018 // (National Legislation Database, January 23, 2018, No. 03/22/759/0213)

culture, developing partnership business relations and the formation of business ethics, harmonization of social relations and reducing conflict in society.

Of course, the advantages of mediation, as opposed to litigation, are freedom in the choice of a mediator by the parties, saving time and financial costs associated with the consideration of the case, efficiency, confidentiality and informality, however, this can only be said if the parties actually implement the achieved mediation agreement.

	Mediation	**Court**
Easy to use	All you have to do is call the mediator and say that you want to resort to mediation	Prepare an evidence base. Collect and attach all supporting documents. Write a statement of claim. Go to the court office to submit an application or submit through the information system
Selecting a mediator/judge	You can choose any mediator that suits you, and also change it during the procedure.	It is impossible to choose a judge, because... Appeal is possible only to a specific court with jurisdiction over the case, and the judge will be appointed by the court.
Expenses	By agreement	Before going to court, you must pay the state fee. Pay the representative's expenses.
Deadlines	The maximum period is 30 days (in particularly difficult situations it can be extended by another 30 days).	Time limits set by the court
Making decisions	Decisions are made by the parties themselves. The scope of action is not limited to claims.	The decision is made by the judge as part of the claims. And this is not always the solution that the parties are counting on.
Execution	The mediation agreement is executed by the parties voluntarily, because they agree on the execution procedure themselves, thereby creating the most acceptable conditions for themselves. In the event of failure to comply with a mediation agreement, a party may apply to the court for a court order for non-performance of the agreement. Such an order will be issued within 3 days without consideration of the case and will have the force of a writ of execution.	The winning party gives the writ of execution issued by the court for execution to a state enforcement agent, who places arrests on the accounts, property, etc. of the losing party. As a result, the losing party cannot work (live) normally and, accordingly, comply with the court decision. In addition, there are additional costs for paying for the services of the state executor.
Bottom line	A win-win outcome because... everyone's interests are taken into account	There is always a loser, and perhaps both are losers.

It is also necessary to dwell on the differences between a mediation agreement and a settlement agreement. The main difference between a mediation agreement and a settlement agreement is

that the former is implemented by the voluntary consent of the parties, while a settlement agreement must be approved by the court. The next difference is that when concluding a mediation agreement, the state fee is refundable4, and upon concluding a settlement agreement, the paid duty is not returned (Civil Procedure Code of the Republic of Uzbekistan, Art. 131).5The legal consequences of concluding a mediation agreement is that the court leaves the application without consideration, which is not an obstacle to re-applying to the court. And if a settlement agreement is concluded, the court terminates the proceedings, which is an obstacle to re-applying to the court if a settlement agreement was previously approved between the parties.

Provisions of the Law on Arbitration Courts[6], namely Article 371 provides for the use of the mediation procedure in the process of considering a dispute before the arbitration court makes a decision. The Law, as well as the procedural Codes, states that if the parties to arbitration conclude an agreement to conduct a mediation procedure, the arbitration court issues a ruling to postpone the arbitration until the end of the mediation procedure. And if the parties enter into a mediation agreement, the arbitration court terminates the proceedings in the case. The above Law also includes provisions encouraging the use of mediation. For example,

The possibility of using the mediation procedure at the stage of enforcement proceedings is provided for both by the Law on Mediation and the Law of the Republic of Uzbekistan on the execution of judicial acts and documents of other bodies[7]. Today, according to government officials, citizens are informed about mediation and know that the entry into force of a court decision does not mean that the disagreements between the parties have been resolved. Often, a debtor who does not agree with the decision tries to prevent its actual execution. Therefore, only an alternative way of resolving the current situation that satisfies the interests of both parties can put an end to the protracted dispute. As practice shows, the agreements reached by the parties during negotiations are more realistic for execution than the forced execution of a court decision. So, when a claimant applies for a mediation procedure, if the enforcement proceedings were not previously suspended in connection with the mediation procedure, this is the basis for the mandatory suspension of the proceedings by the state executor. In the case of a mediation procedure, enforcement proceedings are suspended for a period of no more than fifteen days (clause 6 of Article 36). If no agreement was reached between the claimant and the debtor, or one of the parties refused to continue mediation or the period for its implementation expired, the enforcement proceedings are resumed by the state executor. If the parties to the enforcement proceedings ultimately entered into a mediation agreement, this is the basis for the termination of the enforcement proceedings by the state executor, for which he makes a

[4]Clause 9 of Article 18 of the Law of the Republic of Uzbekistan On State Duty dated 01/06/2020 No. ZRU-600 // (National Legislation Database, 01/07/2020, No. 03/22/769/0421)

[5]Civil Procedure Code of the Republic of Uzbekistan dated January 22, 2018 // (National Legislation Database, January 23, 2018, No. 03/22/759/0213)

[6]Law of the Republic of Uzbekistan On Arbitration Courts dated October 16, 2006 No. ZRU-64 // (Collection of Legislation of the Republic of Uzbekistan, 2006, No. 42, Art. 416; National Legislation Database, 01.30.2018, No. 03/19 /531/2799)

[7]Law of the Republic of Uzbekistan On the execution of judicial acts and acts of other bodies dated August 29, 2001 No. 258-II // (Gazette of the Oliy Majlis of the Republic of Uzbekistan, 2001, National database of legislation, 01/05/2018, No. 03/22/ 762/0290)

decision. It is important to note that in the case of mediation in the process of executing judicial acts and acts of other bodies, the mandatory participation of a mediator operating on a professional basis is required[8].

It is customary to distinguish between two main models of judicial mediation - integrated (in-court), in which the procedure is carried out in the courthouse by one of its employees and a partner, and associated (out-of-court), which is carried out outside of court by a mediator independent in relation to the court and the parties.[9].

Mediation has become a popular method of resolving disputes. In the United States, more than 90% of all civil disputes are resolved before trial, and many are resolved through mediation. Mediation has become so popular that many courts have created their own mediation programs that they either offer to litigants or require them to participate in. However, mediation programs offered by courts differ markedly from mediation programs conducted privately outside of court. Knowing these differences can help parties determine whether they want to allow the court to provide a mechanism to resolve their dispute in court or engage in private mediation before going to court.[10].

Issues of admission to mediation practice and accreditation of mediators are regulated differently in different states.

In judicial mediation programs, mediators are provided by the court and the parties have no say in their selection. Local courts set minimum requirements for mediators' training, experience and area of expertise as one of the conditions for inclusion in the court's register of mediators. Typically, registries of mediators are not compiled by the courts separately, but in cooperation with local bar associations and private ADR organizations. Courts also contract with non-profit mediation groups to provide mediators to the court.

In some states, courts provide their own mediators. In any case, the court appoints a mediator in the case, and the parties do not incur costs. A mediator can be a lawyer, as well as anyone who does this work on a voluntary basis. Mediators must take a course to become certified and be trained in the use of forms required by the court. Many courts use a collaborative mediation model, in which two mediators work with the parties in each case.

Before or during court proceedings, the parties may agree to attempt to resolve their dispute through mediation without any court involvement. This is a private mediation. This process is very different from court mediation. The first difference is how the mediator is selected. In private mediation, the parties or their attorneys select their own mediator, with the consent of both parties, who will be suitable to mediate their case. In private mediation, it is rare for more than one mediator to work on a case. The mediator's services are paid for by the parties; they usually bear the costs equally. Mediator charges either by the hour, by the day, or by the half day[11]. The parties should find a mediator who is knowledgeable about the subject matter of

[8]Part 4 of Article 15 of the Law of the Republic of Uzbekistan “On Mediation” // National Legislation Database, 07/04/2018, No. 03/18/482/1447.
[9]Official sitehttps://lawbook.online/grajdanskiy-protsess-rossii/modeli-sudebnoy-mediatsii-56264.html.
[10]Thomas I. Elkind.// https://www.financierworldwide.com/to-mediate-in-court-or-out-of-court-that-is-the-question.
[11]Thomas I. Elkind.// https://www.financierworldwide.com/to-mediate-in-court-or-out-of-court-that-is-the-question.

their case, has experience litigating or mediating similar cases, and who they believe has the mediation skills necessary to resolve the dispute.

References:

1. О.В. Маврин Технологии урегулирования конфликтов (медиация как эффективный метод разрешения конфликтов) Учебное пособие 2014г. — С.5.
2. Совместный проект Верховного суда Республики Узбекистан, Агентства США по международному развитию (USAID) и Программы развития ООН «Партнерство в сфере верховенства закона в Узбекистане». Альтернативные механизмы разрешения споров обзор зарубежного опыта 2017г. – с.8 // file:///C:/Users/HP_110/Downloads/un_uzb_Alternative_dispute_resolution_mechanisms_rus%20(7).pdf
3. Закон Республики Узбекистан «О третейских судах» от 16.10.2006 №ЗРУ-64 // Национальная база данных законодательства, № 03/19/531/2799
4. Е.В.Ерохина Переговоры как один из способов альтернативного разрешения гражданско-правовых споров. Электронный источник // https://cyberleninka.ru/article/n/peregovory-kak-odin-iz-sposobov-alternativnogo-razresheniya-grazhdansko-pravovyh-sporov/viewer
5. Закон Республики Узбекистан «О медиации» от 3 июля 2018 года №ЗРУ-482 // (Национальная база данных законодательства, 04.07.2018 г., № 03/20/602/0052.
6. С.Марипова. Правовое регулирование и перспективы развития семейной медиации. Электронный источник. https://uza.uz/ru/posts/pravovoe-regulirovanie-i-perspektivy-razvitiya-semeynoy-medi-02-10-2019
7. Хесль Г. Посредничество в разрешении конфликтов. Теория и технология. СПб. 2004 г. — С. 15.
8. Носырева Е.И. Посредничество в урегулировании правовых споров: опыт США // Государство и право. 1997. № 5. — С. 109
9. Коннов А.Ю. Понятие, классификация и основные виды альтернативных способов разрешения спора // Журнал российского права. 2004. — СПС Консультант Плюс.
10. Масадиков Ш.М. Сущность медиации и проблемы ее правового регулирования в Республике Узбекистан //Автореферат дисс. на соис. ученой степени к.ю.н. Ташкент, 2008. – С. 9.
11. Отахонов Ф.Х. Медиация – плюсы и минусы посредничества // Материалы Международных научно-практических конференций на тему «Международный коммерческий арбитраж в контексте судебно-правовой реформы» 28 октября 2009 г. Ташкент: Chashma Print, 2010. – С.253-259.
12. О.В. Маврин Технологии урегулирования конфликтов (медиация как эффективный метод разрешения конфликтов) Учебное пособие 2014г. — С. 10.
13. Марипова С. Меҳнат низоларни ҳал этишда медиация институтининг аҳамияти (назария ва амалиёт) //Юрист ахборотномаси. – 2021. – т. 2. – №. 1. – с. 132-138.
14. Xayrulina A. B. International law: legal aspects of the protection of women's rights in UN system //Review of law sciences. – 2018. – Т. 3. – №. 1. – С. 14.
15. Guljazira A., Asal X. Formation and Development of ADR in Some Foreign Countries and in Uzbekistan //Middle European Scientific Bulletin. – 2021. – Т. 15.