Mediation as a Modern Method of Dispute Resolution in Uzbekistan

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ABSTRACT

The article is devoted to alternative methods of dispute resolution in the Republic of Uzbekistan. The author examines the use of alternative methods of dispute resolution in Uzbekistan and their features. The author also studied the current legislation of the Republic of Uzbekistan on mediation and its current state, indicated the problems associated with the application of the mediation procedure and developed ways to solve them.

KEYWORDS: *Alternative Dispute Resolution (ADR), conflict, arbitration court, arbitration, conversation, intermediary, mediation, mediator, mediation participants, privacy policy, mediation agreement*

Often, the conflict between the parties ultimately gives rise to hostility, fear, hatred, on this basis, people can avoid it. But if this is not possible, then the dispute needs to be resolved.

There are two ways to resolve disputes: judicial and out-of-court settlement (negotiations).

The court applies the law, like any system of social norms, aims to reduce the conflict in society, using, of course, its own specific methods. However, the court closes the chain of legal norms and institutions working with a conflict, since is the last resort. He powerfully liquidates a legal dispute, sometimes transferring a social conflict to a new, not always positive level [1, P.5].

But the judicial model cannot be universal, however much it is unified. It can be said that the judicial system itself has contributed to the emergence of the need for out-of-court dispute resolution and in the emergence of alternative methods of dispute resolution.

One of the key factors in the development of alternative methods of dispute resolution is the insufficient efficiency of the judicial system in considering certain categories of cases, which may be associated with the overload of courts, the length of the proceedings and other shortcomings inherent in the court.

The dispute can be resolved in court, but, as a rule, it cannot be settled, and it remains in the subconscious of the conflicting parties for a long time. The tension and risk of escalation of the conflict persist for a long time. At the same time, the lack of efficiency of the judicial system is not the main factor. Other reasons for the development of alternative forms of dispute resolution is the will of the parties to maintain business and partnership relations.

Therefore, improving the system of using alternative methods of resolving disputes is one of the main directions of reforms carried out today in Uzbekistan, which is aimed at ensuring reliable protection of the rights and freedoms of citizens, as well as solving their problems.

Alternative methods of dispute resolution (ADR) should be understood as methods and means of resolving legal disputes arising primarily from civil, as well as other types of legal relations, from the position of mutual benefit of the parties on the basis of laws and without the participation of state

bodies in resolving the dispute.

The system of alternative dispute resolution (ADR) is a set of means and mechanisms that form the procedures for the resolution and out-of-court settlement of disputes arising between the subjects of legal relations. In this case, the ultimate goal of using ARS is to resolve the conflict at the lowest cost for all its participants [2, C.8].

A number of alternative dispute resolution methods usually include:

arbitration - Dispute resolution with the help of an independent, neutral person - an arbitrator (or a panel of arbitrators), who is authorized to make a decision binding on the parties.

negotiation, representing the settlement of a dispute directly by the parties without the participation of other persons;

mediation, which means settling a dispute with an independent, neutral mediator who assists the parties in reaching an agreement;

Despite the differences in the legal systems of different states, the development of alternative methods of resolving disputes has many similarities, that is, the same methods and forms of pre-trial settlement of disputes are applied, although the procedure is different.

Arbitration has developed among ADRs in the Republic of Uzbekistan.

The essence of arbitration is that both parties rely on the resolution of the dispute by third parties chosen by them and recognize their decisions as binding. In turn, the arbitral tribunal, when considering and resolving disputes, eliminates the arisen dispute between its participants, and thereby protects the violated rights. So, according to the current legislation of the Republic of Uzbekistan, arbitration courts resolve disputes arising from civil relations, including economic disputes arising between business entities. Arbitration courts cannot resolve disputes arising from administrative, family and labor relations, as well as other disputes provided for by law.

Arbitration proceedings Is a public, non-state form of protection of violated rights and legitimate interests.

Consideration and settlement of disputes by arbitration courts is an alternative to proceedings in state courts. Of course, the advantages of arbitration are the free choice of the judge by the parties, saving time, as well as the funds associated with the consideration of the case.

However, in contrast to the predicted results that took place when the Law "On Arbitration Courts" [3] was adopted in 2006, the current situation leaves much to be desired. The population of the country, represented by individuals and legal entities, does not often resort to arbitration due to a number of reasons: unknown court costs and expenses, as well as arbitration fees, low popularity among the population about arbitration due to lack of information.

Negotiation are the main form of human communication in order to resolve conflicts. In the event of a legal dispute, negotiations, even in view of our mentality, are the first step to resolve it.

According to the scientist E.V. Erokhina negotiations are a discussion (mostly oral) initiated by conflicting parties to protect their civil interests, carried out without the participation of a third party, aimed at making a joint decision that can resolve existing differences [4, p. 168].

It should be noted that it is practically impossible to negotiate when the parties show aggression, hostility to each other and do not want to be at the negotiating table, that is, they are at the stage of escalating the conflict. In this case, the mediation procedure can help.

The experience of the world community shows that one of the most effective means of alternative

methods of dispute resolution is mediation. Mediation is understood as the process of resolving a conflict by involving a third party, which is neutral and interested only in the fact that the parties resolve their dispute in the most beneficial way for both of them. In the course of this procedure, the parties to the dispute independently develop a solution acceptable to both parties, and, accordingly, strive to implement it. For this reason, mediation has a special place among other forms of dispute resolution.

The process of implementing mediation into the legislation of the Republic of Uzbekistan took many years, so the Law "On Mediation" was adopted only in 2018 on July 3 [5].

The above law provides for the application of the mediation procedure for disputes arising from civil legal relations, including in connection with the implementation of entrepreneurial activities, as well as individual labor disputes and disputes arising from family legal relations, unless otherwise provided by law. This Law does not apply to disputes that affect or may affect the rights and legitimate interests of third parties not participating in mediation, public interests.

There are two approaches to defining the etymology of the word "mediation" itself. One point of view is that mediation goes back to the Latin word "mediare" - "to mediate", and the other - to the Latin word "medium" - "half" [6].

Experts in the field of conflictology under mediation understand the assistance of a mediating external third - a mediator - in the development, jointly by all participants of an erupted conflict, who are ready to take responsibility, a specific for a given case or problem, an option for resolving or resolving an existing conflict, stable in the future and beneficial for the parties [7, p.15].

E.I. Nosyreva interprets mediation as a process of settling disagreements between the parties with the help of a third independent participant - a mediator (mediator) [8, p.109]. A.Yu. Konnov views mediation as negotiation; but it should be borne in mind that the main difference between negotiations and mediation is the participation of an independent third party in order to resolve the dispute that has arisen [9]. Sh.M. Masadikov understands mediation as a way of settling a dispute between the parties with the help of an impartial mediator who assists them in reaching a mutually acceptable agreement and does not have the right to make a decision [10, p.9].

According to F. Otakhonov, mediation is a procedure for resolving a dispute by entering the parties into voluntary negotiations in the presence of a neutral person - a mediator (mediator), in order to reach mutual understanding and draw up an agreement that resolves a disputed situation [11, C.254].

The legislation of the Republic of Uzbekistan defines mediation as a way of resolving a dispute that has arisen with the assistance of a mediator on the basis of the voluntary consent of the parties in order to achieve a mutually acceptable solution.

Literally translated "mediation" means mediation. It is not the mediator's job to make a decision. It is up to the conflicting parties themselves to develop a solution that is acceptable to both parties and meets their interests.

Reaching an agreement by the parties through conciliation is the best way to resolve a dispute. Mediation is different in that the activity of the mediator is not aimed at resolving the dispute, but at its settlement. It is determined not by the desire of each of the parties to achieve their goals and win the dispute (for example, as it happens when the court is considering a case), but implies more diverse solutions-compromises (temporary or permanent), mutual concessions and agreements reached between opponents, whose fundamental principles voluntariness, independence, cooperation act [12, C.10].

It can also be pointed out that the concept of mediation is slightly broader than mediation. The

mediator can persuade the disputing parties to make a decision. The mediator is guided by the principles where he is prohibited from giving recommendations and persuading the parties to make a decision. The effectiveness of the mediation procedure depends on the following principles:

1. The principle of confidentiality. Information obtained during the mediation procedure is confidential and limited to the circle of persons involved in it. The mediator warns the parties about this and at the end of the mediation, he deletes all saved records made during the procedure. The transfer of data received from one party to the other takes place only with the consent of the party. Of course, if during the procedure it turns out about an impending or committed crime, then this principle does not work, the mediator warns the parties about this before starting the negotiation process (in accordance with part 2 of article 56 of the Civil Procedure Code of the Republic of Uzbekistan, which states that the mediator does not can be summoned and questioned as a witness about the circumstances that became known to them in connection with the performance of their duties),

2. The principle of voluntariness. Compliance with this principle will help to find a compromise for the disputing parties, since no one can force the parties to come to a dialogue if they do not want to. Mutual consent of the parties to participate in the mediation procedure is required and the parties themselves can choose a mediator. Also, unlike in court proceedings, the parties to the mediation procedure can withdraw from the negotiations at any time. Along with this, if one is not satisfied with the proposed mediator, she can ask for his replacement.

3. The principle of cooperation and equality of the parties. The mediation procedure is carried out on the basis of mutual cooperation and equality of the parties in order to achieve a mutually acceptable solution to the dispute. The mediator is responsible for providing the parties with equal rights.

4. The principle of independence and impartiality of the mediator. During the mediation procedure, the mediator is independent, and the legislator indicates that interference with the mediator's activities in the mediation procedure is unacceptable. This principle is related to the principle of equality of arms, since the mediator should not have personal relations with the parties and should be neutral. If you lose neutrality, you must immediately. Terminate the mediation procedure and invite the parties to choose another mediator. Otherwise, this may lead to his accusation of collusion with the second party.

I would also like to dwell on the advantages and disadvantages of mediation in relation to other alternative methods of dispute resolution.

In arbitration proceedings, although the disputing parties are free to choose an arbitrator, this does not contribute to the joint development of a decision. As a result, the losing side remains dissatisfied, which can lead to an escalation of the conflict. In mediation, on the contrary, the parties themselves seek and develop a way out and come to an agreement that is acceptable to all participants.

During negotiations, as mentioned above, the parties experience aggression, hostility towards each other and do not want to be at the negotiating table, that is, they can be in a strong negative emotional confrontation. During the mediation procedure, the mediator can ventilate the negativity of the parties, which will lead to the resolution of the conflict, the development and conclusion of a mutually acceptable solution. Also in mediation, you can use consultation(conciliation), which allows you to work with each party individually separately, in the negotiations, however, this method is not provided [13, C.133].

Among the disadvantages of mediation can be called the inability to fulfill the agreement reached by the parties, the use by one of the parties of the information obtained during the mediation procedure to further exacerbate the conflict. Difficulties also arise in ensuring confidentiality, i.e. fulfillment by

the mediator of the obligation to preserve it, the right to conceal information, including from the competent authorities.

Despite the expiration of three years, mediation in our country has not received its wide distribution, as well as arbitration proceedings.

Mediation is a new means of legal technologies for the settlement of disputes, the adopted legislation "On Mediation" in 2018 is being improved and supplemented with new development prospects. In some countries, mediation is used in the resolution of criminal cases, administrative, housing and land disputes.

Although mediation is aimed at unloading the courts, the system demonstrates to the public its disinterest in the implementation of mediation, there are no statistical data on the resolution of disputes through mediation, there are cases when judges do not distinguish between the legal consequences of a mediation agreement and an amicable agreement.

Of course, the legislation in the field of mediation requires improvement, expansion of legal application, the formation of a high-quality and effective legal model of mediation procedure.

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