

Mediated Agreement on Labor Dispute: Theory and Practice

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ANNOTATION

The article reveals the settlement of labor disputes through the mediation procedure in Uzbekistan. The advantages of the conciliation procedure in the consideration of labor disputes are noted. The norms of the Law of the Republic of Uzbekistan "On Mediation" and the provisions of the Labor and Civil Procedure Code of the Republic of Uzbekistan are analyzed.

KEYWORDS: *mediation, mediator, labor disputes, parties to a mediation agreement, judicial mediation, judicial protection.*

Each subject of labor relations may encounter in his career such a concept as a labor dispute, its resolution, settlement of a labor dispute in pre-trial order. But we can say that not every employee whose rights have been violated goes to court, because he believes that it is not worth suing the employer¹. The employer also does not always go to court. The dismissal of an undisciplined employee is already considered to be getting rid of the employee².

Based on the generally recognized principles of national and international law, the legislator provides both the employee and the employer with ample opportunities to apply for judicial protection³. At the same time, creating conditions for increasing the accessibility of justice, as well as the level of legal protection of subjects of labor relations, requires the use of new approaches not only to resolving disputes, but also to resolving legal conflicts⁴. Introduction of conciliation procedures, out-of-court and pre-trial dispute settlement methods, which reduce the burden on judges and, as a result, improve the quality of justice⁵. At the same time, it is planned to widely introduce mediation procedures as mechanisms for implementing the provisions of the laws of the Republic of Uzbekistan, which provide for the possibility of reconciliation of the parties.

Until recently, the procedure for reconciliation of the parties was expressed in the active role of the court at the stage of preparing the case for trial and, in essence, was reduced to an attempt to avoid the costly and not always effective procedure for considering the case in court by concluding a settlement agreement between the parties⁶. However, as judicial practice on the resolution of labor

¹ Рашидова А. И., Рачкова А. О. Медиация в трудовых спорах //Актуальные проблемы российского права. – 2017. – №. 12 (85). – С. 113-116.

² Ibratova F. Bankrotlik to 'g 'risidagi ishlarda prokuror ishtiroki.

³ Филипова И. А. Медиация в трудовых спорах: опыт США, Германии и Франции и возможности его использования при реформировании российского законодательства //Адвокат. – 2015. – №. 7. – С. 34-39.

⁴ Ibratova F. Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts //Middle European Scientific Bulletin. – 2021. – Т. 16.

⁵ Долинская Л. М. О понятии и применимости медиации к трудовым отношениям //Законы России: опыт, анализ, практика. – 2011. – №. 8. – С. 48-56.

⁶ Головина С. Ю. Проблемы применения медиации при разрешении трудовых споров //Российский юридический журнал. – 2013. – №. 6. – С. 119-126.

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disputes shows, only a small number of cases considered end with the approval of amicable agreements by the courts⁷. This situation can be explained by the fact that the participants in the labor dispute, who decided to enter into legal proceedings, having spent a lot of time preparing for and participating in legal proceedings, in most cases intend to achieve a binding decision for all, and thereby finally resolve the dispute.

On January 1, 2019, the Law of the Republic of Uzbekistan “On Mediation” came into force, which is aimed at developing alternative methods for resolving disputes in Uzbekistan with the participation of independent persons - mediators⁸.

Conciliation and mediation procedures are a consistent resolution (settlement) of a collective labor dispute, initially in the conciliation commission, and if no agreement is reached in it by mutual agreement of the parties using the mediation procedure⁹.

The Labor Code of the Republic of Uzbekistan divides labor disputes into individual and collective¹⁰.

Thus, in Article 259 of the Labor Code it is determined that individual labor disputes are disagreements between the employer and the employee on the application of legislative and other regulatory acts on labor, working conditions stipulated by the employment contract¹¹. Collective labor disputes (conflicts) are disagreements between the employer (association of employers) and collectives of employees (their representative bodies) regarding the establishment of new and changes in existing working conditions, the conclusion, amendment and implementation of collective agreements and agreements¹².

According to the rules, namely on the basis of Article 260 of the Labor Code of the Republic of Uzbekistan, the jurisdiction of labor disputes is considered alternative, since the subject, whose rights and legitimate interests have been violated, chooses the body to consider this dispute. For example, individual labor disputes are considered by labor dispute commissions, district (city) courts¹³. However, Article 269 of the Labor Code of the Republic of Uzbekistan provides for types of labor disputes that are considered directly in court. It should be noted that part 3 of Article 269 of the Labor Code of the Republic of Uzbekistan establishes the inadmissibility of refusing to consider an employee's application on the grounds that the dispute was not considered by the labor dispute commission. In other words, judges cannot refuse to consider a dispute on the basis of not considering a dispute in a labor dispute commission¹⁴.

Consideration of a labor dispute in the Commission for the consideration of labor disputes is one of the types of pre-trial proceedings. Considering that the dispute is being considered at the enterprise

⁷ Ibratova F. BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS //Norwegian Journal of development of the International Science. – 2021. – Т. 2021. – С. 45.

⁸ <https://lex.uz/docs/3805227?ONDATE=21.04.2021>

⁹ МАРИПОВА С. Меҳнат низоларни ҳал этишда медиация институтининг аҳамияти (назария ва амалиёт) //Юрист ахборотномаси. – 2021. – Т. 2. – №. 1. – С. 132-138.

¹⁰ Мурзина Е. А. Медиация как способ защиты трудовых прав //Сибирский юридический вестник. – 2019. – №. 1. – С. 47-52.

¹¹ Ibratova F. Foreign Practice of Use of Mediation on Collective Labor Disputes //American Journal of Social and Humanitarian Research. – 2022. – Т. 3. – №. 10. – С. 57-62.

¹² Babakulovna I. F., Ibraiyimovich E. B., Sodikovich O. S. SIMPLIFIED PRODUCTION IN THE ECONOMIC PROCESS AND ITS FEATURES: NATIONAL AND FOREIGN APPROACH //International journal of professional science. – 2022. – №. 5. – С. 42-50.

¹³ Babakulovna I. F. GROUNDS FOR THE INTRODUCTION OF BANKRUPTCY PROCEDURES FOR AN INDIVIDUAL ENTREPRENEUR OR AN INDIVIDUAL WHO HAS LOST THE STATUS OF AN INDIVIDUAL ENTREPRENEUR //International journal of professional science. – 2022. – №. 1. – С. 5-9.

¹⁴ ГРАБОВСКИЙ И. А., ЛИЛИКОВА О. С. Медиация как институт рассмотрения трудовых споров //Юрист. – 2015. – №. 18. – С. 42-47.

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where the dispute arose, that the specialists are familiar with the working conditions at this enterprise and know the specifics of the work, it can be assumed that this type of pre-trial proceedings is considered effective¹⁵. It should be noted that the new edition of the Labor Code of the Republic of Uzbekistan establishes that the period for applying for consideration of individual labor disputes is suspended for the period of consideration of an individual labor dispute in the mediation procedure¹⁶.

The next type of pre-trial proceedings is the conciliation process after filing a lawsuit in court¹⁷. This provision is provided for by Chapter 17 of the Civil Procedure Code of the Republic of Uzbekistan.

This chapter establishes the procedure for concluding a conciliation or mediation agreement between the parties. The court takes measures to reconcile the parties and assists in resolving the dispute at any stage of the trial¹⁸. As a way that can help stimulate the use of judicial mediation, it is proposed to grant the court the right to send the parties to a mandatory information meeting with the mediator, the purpose of which will be to discuss issues related to the advantages of conducting this procedure compared to litigation on the dispute under consideration (this rule was also enshrined in the new edition of the Labor Code of the Republic of Uzbekistan). To do this, the judge should initially, of course, evaluate the medial ability of the dispute, that is, determine the property of the dispute, in which it can be settled in the mediation procedure¹⁹. For example, the nature and duration of the relationship between the parties, readiness for cooperation, etc. The judge should pay attention to whether the terms of the mediation agreement can restore the violated rights of the participant in the procedure²⁰. For example, an employee in resolving disputes about illegal dismissal, refusal to hire, illegal actions (inaction) of the employer in the processing and protection of the employee's personal data, etc. Unlike a conciliation agreement, which can be concluded at any stage of the dispute, mediation the agreement is concluded before the removal of the court to the deliberation room for the adoption of a judicial act²¹. At the same time, the court will suspend in the event of an agreement on the conduct of the mediation procedure (Article 116 of the Civil Procedure Code of the Republic of Uzbekistan).

The Law of the Republic of Uzbekistan "On Mediation" provides that a mediation agreement is concluded in writing and is binding on the parties that have concluded it. Also, this law establishes that the mediation agreement is executed by the parties voluntarily in the manner and terms provided for in it²². In case of non-fulfillment of the mediation agreement, the parties have the right to apply to the court for the protection of their rights. The consequences of non-execution of a mediation agreement may be established by the parties in the same agreement.

It should be noted that at the present stage, the parties with the participation of a mediator, when concluding a mediation agreement, can use other ways to end the proceedings, in addition to the

¹⁵ Ibratova F. B. et al. Special features of modern legal systems: cases and collisions. – 2017.

¹⁶ Feruza I., Madina A., Asal R. LEGAL ISSUES OF JUDICIAL PROTECTION IN THE ECONOMIC COURT IN UZBEKISTAN //International journal of professional science. – 2022. – №. 4. – С. 5-10.

¹⁷ Рашидова А. И., Дарчинян З. М. Эффективность процедуры медиации в трудовых отношениях //Актуальные проблемы российского права. – 2016. – №. 8 (69). – С. 114-120.

¹⁸ Ibratova F. B. The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity //Middle European Scientific Bulletin. – 2022. – Т. 20. – С. 143-147.

¹⁹ Ibratova F. TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN.

²⁰ Ибратова Ф. Б. ПРАВОВЫЕ ПОСЛЕДСТВИЯ БАНКРОТСТВА ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ ИЛИ ФИЗИЧЕСКОГО ЛИЦА, УТРАТИВШЕГО СТАТУС ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ //Polish Journal of Science. – 2021. – №. 38-2. – С. 20-24.

²¹ Рахимов М. А. Жамоаларга доир меҳнат низоларни хал қилиш ҳуқуқининг таъминланиши //Science and Education. – 2022. – Т. 3. – №. 2. – С. 920-925.

²² Ibratova F. B. Legal consequences of the introduction of a bankruptcy procedure for an individual entrepreneur or an individual who has lost the status of an individual entrepreneur. – 2022.

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approval of the settlement agreement by the court²³. So, in pursuance of their mediation obligations, the defendants apply to the court with statements to recognize the claim, and the plaintiffs - to reduce the claims or refuse the claim.

As mentioned above, the advantage of using mediation is the short timeframe for resolving the conflict, since there is no need to collect evidence, involve witnesses, appoint examinations, etc. Unlike litigation, there can be no third parties in mediation claiming or not claiming independent claims.²⁴ Все субъекты, чьи права затронуты спорным правоотношением, могут принимать участие в медиации, но уже как равноправные участники переговорного процесса²⁵. In this case, the mediator is not the subject of a disputed legal relationship and cannot be a representative of one of the parties. This is an important psychological moment when considering a labor conflict. In practice, it is not uncommon for a representative of an employer to be biased towards an employee, who, in turn, is also hostile and negatively perceives any information coming from him²⁶.

The mediator acts as an intermediary through which the parties independently and voluntarily make decisions. At the same time, the mediation procedure involves communication between the parties as equal partners, despite the fact that the employee is subordinate to the employer.

The principles of the mediator's activity are also neutrality and impartiality. If the parties suspect a violation of these principles, or they have some other reason to doubt the professionalism of the mediator, then they have the right to refuse to participate in the procedure at any time. For the mediator, this is a loss of trust, both of the parties and of the professional community²⁷.

The litigation and mediation procedure have the same goal - the resolution of a legal dispute, as a result of which not only the protection of the rights, freedoms and interests of the participants in the conflict will be carried out, but also the restoration of justice²⁸. Therefore, mediation is another way to achieve this goal in the process of resolving individual labor disputes. We believe that judicial and pre-trial conciliation procedures, while maintaining their independence, are quite capable of interacting and coexisting in a single legal space.

I would like to believe that the institution of mediation in Uzbekistan will develop and become an integral part of the culture in resolving disputes arising from labor relations.

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²³ Рахимкулова Л. У. Меҳнат низолари субъектлари //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2020. – Т. 5. – №. 8.

²⁴ Ибратова Ф. Б., Чориев М., Собиржонов О. ПРАВОВЫЕ ВОПРОСЫ УЧАСТИЯ В ЭКОНОМИЧЕСКОМ ПРОЦЕССЕ ПРОКУРОРА, ГОСУДАРСТВЕННЫХ ОРГАНОВ И ИНЫХ ЛИЦ //International journal of professional science. – 2022. – №. 5. – С. 14-22.

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²⁶ Аллахвердова О. В., Иванова Е. Н. История развития медиации //Вестник Санкт-Петербургского университета. Политология. Международные отношения. – 2007. – №. 2-2. – С. 73-77.

²⁷ Ибратова Ф. и др. ПРАВОВЫЕ ВОПРОСЫ ЭЛЕКТРОННОГО ДОКАЗАТЕЛЬСТВА В ЭКОНОМИЧЕСКОМ ПРОЦЕССЕ //International journal of professional science. – 2022. – №. 4. – С. 18-24.

²⁸ Перова Н., Енютина Г. Применение медиации в трудовых спорах: успехи и возможности. Основные тезисы. По материалам выступления на конференции Фонда гражданских инициатив" Проблемы и перспективы развития института медиации в России" 29 января 2016 года, Москва //Проблемы и перспективы развития института медиации в России: осн. тез. конф. Фонда гражданских инициатив. – 2016.

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