

## Comparative Analysis of Mediation in Some Foreign Countries and Uzbekistan: Possible Questions and Proposals

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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.*

Mediation as one of the methods of alternative dispute resolution is widely and effectively used in many advanced foreign countries. The use of this institution allows the parties to the conflict to maintain partnerships and at the same time resolve the dispute. Through mediation, the losses of the parties to the dispute, both moral and material, are minimized. To reflect the depth of implementation of the institution of mediation in practice in different countries, it is necessary to present their national experience in this area.

### SINGAPORE

Today, Singapore is the world center of mediation, as the rapid development of this institution began in the 90s of the 20th century. According to the Singapore Mediation Law, "Mediation is a process that includes several sessions, in which one or more mediators, through their actions, assist the parties in resolving the conflict."<sup>1</sup>

Singapore has judicial and out-of-court (private) mediation. In the judicial mediation procedure, the judge himself directs the parties to the dispute to the mediation procedure (judicial or private). All disputes related to the child, as well as divorce issues, are resolved by the Family Courts through mediation. Various ministries and departments also practice mediation in accordance with their specialization.

The rules for the use of mediation when applying to civil courts were introduced by the state in 2010. Attorneys and clients must confirm in writing that they have discussed the possibility of resolving the dispute through mediation and submit their decision on its use in a special form. In 2012, there was a practice where all civil courts automatically referred cases to mediation, with the exception of the refusal to use the procedure by one or more parties. If the court considers the reasons for refusal to be disrespectful, this led to the imposition of penalties.

On the example of the Singapore Mediation Centre, which was founded as a non-profit organization in 1997, one can show the practice of introducing out-of-court mediation, where the Singapore Law

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<sup>1</sup>Mediation Act 2017 Republic of Singapore // <https://sso.agc.gov.sg/Act/MA2017>.

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Academy, which is a government body, became the founder. The director of the SMC is always a judge of the Supreme Court. The main directions of the Center's work are: conducting mediation and providing other related services; training in ADR methods, negotiations, etc.; provision of advisory services to prevent conflict situations; accreditation and maintenance of the register of mediators; development and promotion of mediation and other forms of ADR; creation of appropriate conditions for negotiations and mediation and other alternative procedures.

Initially, when mediation was just emerging in Singapore, many were indifferent to it. Mediation as such was not taken seriously in Singapore until support for alternative procedures was introduced by the courts and the Singapore Ministry of Justice.

In 1994, a project was launched on the use of mediation in the courts of first instance: judges began to be called "judge-mediators". Sanctions began to be applied for refusal to participate in mediation without good reason; all civil disputes began to include the mandatory use of ADR, mainly mediation. Since the court has the authority to reduce the state fee, in the event of an unreasonable refusal to conduct the mediation procedure, the court may refuse to reduce it. Thanks to the introduction of such measures, the number of mediations has doubled. For example, in 2018, 6000 civil disputes were resolved through mediation, 85% of them were executed<sup>2</sup>. It should also be noted that the mediation procedure is carried out by judges free of charge.

The Attorney General's Office of Singapore has prepared recommendations according to which, in the event of disputes, all government agencies should use the mediation procedure as the first way to resolve the dispute and in all agreements with government agencies, a mediation clause should be included to refer the dispute to the SMC.

All labor disputes must also go through the mandatory mediation procedure, and only if it is impossible to reach an agreement, then in this case they can be referred to the labor dispute commission. If it is impossible to reach an agreement they can be sent to the dispute resolution committee.

Since 2016, Singapore law has required lawyers to inform their clients of the possibility of using ADR. Mediation should be mandatory for all child-related disputes. Also, in the case of divorce proceedings, if the spouses have children under 21 years old, the use of the mediation procedure is mandatory. At the same time, mediation can be carried out both by the court on a free basis and by a private center, but on a paid basis. The register of mediators includes persons who are engaged in mediation practice. The register is divided into specializations, for example, in the field of labor disputes, family disputes, construction, etc.

In Singapore, the success of mediation is primarily due to the fact that the resolution of disputes in court takes a long time, as sometimes the parties to the dispute have to wait for their invitation to hearings from 3 to 5 years<sup>3</sup>.

## **GERMANY.**

Legislative institutions for alternative dispute resolution are well developed in Germany. In particular, the law on mediation in Germany "Mediationsgesetz" was adopted in 2012. As a result of the study and analysis of German legislation on mediation, it became known that there are two types of mediation in Germany – extrajudicial and judicial.

Disputes in Germany are considered by the courts on the basis of the rules of the procedural code of

<sup>2</sup>R.Ismailova Overview of the practice of introducing mediation in the top 5 countries according to the AMRS rating "Doing Business" Tashkent - 2020. pp. 10 - 14.

<sup>3</sup>R.Ismailova Overview of the practice of introducing mediation in the top 5 countries according to the AMRS rating "Doing Business" Tashkent - 2020. pp. 10 - 14.

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Germany<sup>4</sup>. After analyzing the norms of the code on the use of mediation in resolving disputes, it can be summarized that when resolving disputes in Germany, the court invites the parties to consider the dispute before the case is heard in court (pre-trial). If the parties decide to settle the dispute through mediation, the court terminates the proceedings. Judicial mediation can be applied at any stage of dispute resolution in the first instance. In addition, in accordance with German mediation law, parties to a dispute may, in addition to agreeing to use judicial mediation to resolve the dispute, also resort to out-of-court mediation if the parties deem it necessary.

An important aspect of German dispute mediation law is that when a court refers a case to a court for dispute mediation, it does not limit the process to a specific time limit. The reason for the establishment of these rules in Germany is the existence of disputes between German scientists and mediators. Prior to the adoption of the law on mediation in Germany, mediation was carried out by judges. A procedure conducted by a judge within two hours and within one session is not considered mediation. Reconciliation achieved between the parties in the short term is not always in the interests of the parties. For this reason, the law does not establish a time limit for the use of judicial mediation in resolving disputes. That is, the process can take from several days to months or several years.

It is also necessary to emphasize the following norm of the German Civil Procedure Code on the use of mediation in resolving disputes. Article 253 of the German Code of Civil Procedure is devoted to the content of the application, according to which the applications submitted to the courts contain information on the applied alternative methods of out-of-court settlement of disputes. These norms of German law do not exist in national legislation. However, in fact, it is necessary to include in the content of the claims information about what alternative methods were used to resolve this dispute.

#### **BELARUS.**

Today, mediation is a recognized and sought-after method of resolving disputes around the world. In this regard, Belarus has taken an active position in the development of mediation. In 2013, the law "On mediation" was adopted<sup>5</sup>, which established the organizational and legal conditions for the existence of mediation.

Facilitative mediation operates in Belarus, based on the principles of the neutrality of the mediator and the voluntariness of the appeal to the mediator. The court has the right to recommend to the parties to the dispute to use mediation as a way to resolve the dispute. A distinctive feature of the Belarusian model of mediation is the possibility of enforcement of mediation agreements. In Belarus, mediation is applied to relations arising from civil law, including those related to doing business and other economic disputes, as well as to disputes arising from labor disputes and family law relations, unless otherwise provided by law.

As can be seen from Article 2 of the Law of the Republic of Belarus "On Mediation", in addition to out-of-court mediation, there is also judicial mediation in Belarus. The provisions of the Law of the Republic of Belarus "On Mediation" do not apply to judicial mediation. Judicial mediation is regulated by Belarusian procedural legislation<sup>6</sup>.

#### **GEORGIA.**

Mediation at the legislative level in Georgia was fixed only in 2019. In Georgia, there is judicial mediation, private mediation and notary mediation. Judicial mediation is mediation carried out after

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<sup>4</sup>Code of Civil Procedure of Germany 5.12. 2005 //Übersetzung durch Samson-Übersetzungen GmbH, Dr. Carmen von Schoning. Translation provided by Samson-Übersetzungen GmbH, Dr. Carmen von Schoning.

<sup>5</sup>Law of the Republic of Belarus "On Mediation" dated July 12, 2013 No. 58-3 -o-mediicii

<sup>6</sup>Law of the Republic of Belarus "On Mediation" dated July 12, 2013 No. 58-Z (as amended by the Law of the Republic of Belarus dated December 18, 2019 No. 277-Z) //https://www.mediacia.by/zakon-respubliki-belarus-o-mediicii

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filing a claim with the court, in the manner prescribed by the Code of Civil Procedure Chapter XXII<sup>7</sup>. Private mediation - mediation without filing a claim by the parties, carried out on their own initiative on the basis of a mediation agreement, involves the transfer of the case by the parties themselves to the mediator.

Judicial mediation applies to civil proceedings. The dispute for mediation can be submitted after the court has accepted the case for consideration. There are two forms of judicial mediation: voluntary and compulsory. With voluntary mediation, with the consent of the parties, any civil law dispute can be submitted to the court for consideration. When filing a lawsuit in court, the judge makes a preliminary assessment and, without the consent of the parties, applies compulsory judicial mediation in the following categories of cases: family law cases, except for adoption, cancellation of adoption, restriction of parental rights, deprivation of parental rights, as well as disputes related to violence against women and/or domestic violence; inheritance and neighborly legal disputes; on labor disputes, except for collective disputes; cases related to the implementation of common law; property disputes, if the value of the subject matter of the dispute does not exceed GEL 20,000; non-property disputes.

Mediation is faster, cheaper and more flexible than litigation. The term of judicial mediation is 45 days, but not less than 2 sessions. This period may be extended by agreement of the parties for the same period. When considering a case in the first instance during mediation, 1% is paid instead of 3% of the subject of the dispute. In case of termination of the dispute in court, by agreement of the parties, the plaintiff is returned 70% of the paid state fee<sup>8</sup>. Mediation is an informal process, it is not bound by formal procedures and the parties agree on the rules for conducting mediation, so the parties themselves determine the final result of mediation.

According to notarial mediation, in accordance with the legislation of Georgia "On Notaries", Article 38, a notary can act as a mediator between the parties in family law disputes (except for adoption, invalidation of adoption, restriction of parental rights and deprivation of parental rights); inheritance legal disputes; neighborhood legal disputes; any other disputes, unless the legislation of Georgia defines a special procedure for mediation of such disputes<sup>9</sup>.

If the dispute in the process of notarial mediation ended with the agreement of the parties, the notary draws up an act of settlement agreement, which is notarized. If the parties subsequently fail to fulfill the agreement reached as a result of notarial mediation, the notary has the right, in accordance with the legislation on notaries, to make an executive inscription on the agreement at the request of the parties in the manner prescribed by the Law of Georgia on Enforcement Proceedings<sup>10</sup>.

The positive experience of Georgia in the enforcement of an agreement reached as a result of the notarial mediation procedure could serve to develop and increase the importance of mediation in our country.

## UZBEKISTAN.

Mediation is a relatively new phenomenon in the Uzbek legal system. It was officially introduced in 2018 with the adoption of the Law of the Republic of Uzbekistan "On mediation"<sup>11</sup>. The mediation

<sup>7</sup>Civil Procedure Code of Georgia November 14, 1997 No. 1106-Ic/<https://matsne.gov.ge/ru/document/download/29962/92/ru/pdf>

<sup>8</sup>Civil Procedure Code of Georgia November 14, 1997 No. 1106-Ic/<https://matsne.gov.ge/ru/document/download/29962/92/ru/pdf>

<sup>9</sup>Law of Georgia "On Notaries" dated December 4, 2009 No. 2283-IIc/<https://matsne.gov.ge/ru/document/download/90928/11/ru/pdf>

<sup>10</sup>Law of Georgia "On Enforcement Proceedings" // <https://matsne.gov.ge/ru/document/download//pdf>.

<sup>11</sup>Article 4 of the Law of the Republic of Uzbekistan on mediation No. ZRU-482 03.07.2018 // National Legislation Database, 15.01.2020, No. 03/20/602/0052.

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procedure is understood as a way to resolve disputes that have 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.

The Mediation Law contains a list of so-called “mediable” disputes, the categories of which can be settled using the mediation procedure, these include disputes arising from civil legal relations, including in connection with the implementation of entrepreneurial activities, as well as individual labor disputes and family disputes. Disputes with the exception of disputes affecting the interests of third parties or the public interest. It is important to note that the settlement of the dispute through the mediation procedure is possible only in the court of first instance before the removal of the court to a separate (consultation) room for the adoption of a judicial act, as well as in the process of execution of judicial acts. The possibility of resolving the dispute through mediation may be determined by agreement of the parties. An agreement on the use of mediation is confirmed by a written agreement before or after the dispute arises, including in the form of a mediation clause. The mediation procedure itself, ideally, ends with the settlement of the dispute and the conclusion of a mediation agreement by the parties.

Only two of the three forms of mediation are enshrined in the legislation of our country, namely, pre-trial and out-of-court mediation. It should be noted that the use of the judicial form of mediation is not reflected in the procedural legislation of Uzbekistan. One of the urgent problems in modern procedural legislation is that the current judicial system cannot cope with the volume of cases submitted for consideration, the solution to this problem is the introduction of intra-judicial mediation into the judicial system. Based on the experience of a number of foreign countries in the use of judicial mediation, in particular, based on the experience of Germany, Georgia needs to introduce judicial mediation into the judicial system. But when introducing judicial mediation, only professional mediators should be involved. The experience of other countries in the field of judicial mediation shows that in this process the mediator is a judge-mediator who has completed special training courses. The participation of a professional (judge-mediator) mediator in resolving disputes ensures the success of the institution of mediation. When introducing judicial mediation, only professional mediators should be involved. The experience of other countries in the field of judicial mediation shows that in this process the mediator is a judge-mediator who has completed special training courses. The participation of a professional (judge-mediator) mediator in resolving disputes ensures the success of the institution of mediation. When introducing judicial mediation, only professional mediators should be involved. The experience of other countries in the field of judicial mediation shows that in this process the mediator is a judge-mediator who has completed special training courses. The participation of a professional (judge-mediator) mediator in resolving disputes ensures the success of the institution of mediation. When introducing judicial mediation, only professional mediators should be involved. The experience of other countries in the field of judicial mediation shows that in this process the mediator is a judge-mediator who has completed special training courses. The participation of a professional (judge-mediator) mediator in resolving disputes ensures the success of the institution of mediation.

The legislation of the Republic of Uzbekistan in resolving disputes through mediation should be further improved through the introduction of notarial mediation. This proposal is based on the positive experience of the legislation of the Republic of Georgia on mediation and notaries. An important reason for the need to introduce notarial mediation is the lack of the possibility of enforcement, as well as liability for non-compliance with the voluntary execution of mediation agreements, which is one of the topical issues today, since a mediation agreement, according to national law, does not have the force of an executive document, that is, the parties when resolving disputes use the mediation procedure and come to a mediated agreement, however, if a party does not comply or does not comply with the mediated agreement, or does not perform it properly, the

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enforcement of this agreement is impossible. If notarial mediation is included in national legislation, then a notary with special knowledge will be able to correctly convey to the parties the legal consequences of concluding a mediation agreement. Also, as a result of notarial mediation, the notary makes an executive inscription, which will guarantee the possibility of enforcement, in case of non-performance of this agreement, which will increase the effectiveness of the mediation institution. After all, if the mediation agreement concluded as a result of the mediation procedure does not have legal force, then this agreement will not be enforced.

Mediation as an institution is by no means an alternative to the existing judicial system and does not compete with it. On the contrary, mediation can relieve the judicial system of those disputes that can be easily and quickly resolved out of court. Undoubtedly, the legislation in the field of mediation requires improvement, expansion of its legal application, formation of a high-quality and effective legal model of the mediation procedure.

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