

Legal Status of the Mediator, The Importance of the Lawyer as a Mediator in the Case

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Abstract: This article discusses the significance and specificity of mediation in conflict resolution, the role and scope of mediation in international practice. It also analyzes the rights of the parties to choose a mediator when using mediation, the participation of a mutually agreed mediator in the work, its legal status and important aspects, the role of the mediator in reaching a mediation agreement. The role and importance of a lawyer as an intermediary in the case in which he participates, his positive aspects and conveniences will be considered. The status of a mediator and the status of a lawyer are compared. In this regard, the legislation of Uzbekistan and international experience will be studied. It is concluded that in the modern developing world the role and demand for mediation as an alternative method of conflict resolution is increasing. This, in turn, increases the demand for mature professionals in the field of mediation.

Key words: mediation procedure, mediator's legal status, professional and non-professional mediator, lawyer's legal status, bar association.

INTRODUCTION

We know that as society develops, people's legal awareness of rights and obligations increases somewhat, which in turn leads people to different relationships. As the relationship between people expands, conflict will certainly arise. When solving such disputes, a large number of members of our society believe in the court and prefer to turn to it. However, it is not convenient for the parties to see and resolve all types of disputes in court. This can be mainly explained by long procedural periods and high state fees. Also, considering disputes in this order leads to an increase in the number of cases in the courts and poor quality of cases due to lack of time. We are witnessing that various developed countries are widely using alternative methods of dispute resolution in order to eliminate these and similar situations, to use methods acceptable to the parties in resolving the dispute, and to save their relations from deterioration. As the most common of these, we can mention the resolution of disputes through mediation, negotiation and arbitration. Among these, we can mention mediation as the most common and effective method.

LITERATURE ANALYSIS AND METHODS

In the process of covering this article, the methods of logic, historicity, consistency and objectivity of scientific knowledge were widely used. This article analyzed the opinions about the legal status and importance of the mediator in mediation, the national and foreign experiences of the lawyer's participation as a mediator, and the demands placed on mediators.

The laws of foreign countries "On Mediation" and the Law of the Republic of Uzbekistan "On Mediation" dated July 03, 2018 O'RQ-482-O'RQ and the Law of the Republic of Uzbekistan No. 349-I dated 27.12.1996 on Advocacy were determined as methodological sources. At the same time, the scientific works and experiences of legal scholars such as Khudoykina T.V., Sayfetdinova A.F., Krsova V.G., Kolyasnikova Yu.S., Gaydaenko-Sher N.I.

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DISCUSSION AND RESULTS

In order to create wide opportunities for the introduction and use of alternative methods of conflict resolution in our republic, some important actions in the year of priority directions for ensuring the rule of law and further reforming the judicial system are planned for the second year of the state program of the action strategy on the five priority directions of the development of the Republic of Uzbekistan in 2017-2021 done. The first of these was the adoption of the Law of the Republic of Uzbekistan on Mediation No. 482 dated July 3, 2018. Initially, this Law shall apply to disputes arising from civil legal relations, including those related to the implementation of entrepreneurial activities, as well as individual labor disputes and disputes arising from family legal relations, unless otherwise provided by law. The validity of this Law shall not be applied to disputes that affect or may affect the rights and legal interests of third parties who are not involved in mediation, public interest. [1]

Mediation is an unfamiliar term, but the process is not new. From long ago, when a dispute arose in a family, clan, neighborhood, the age of that clan or neighborhood is great, all respected members called the conflicting parties to be honest, tried to reform between them, resolve the conflict peacefully, and we can see this as mediation. The word "**mediation**" is derived from the Latin word "mediare" which means to mediate, to interfere with the purpose of conciliation. Шунинг учун юридик адабиётларда медиация ва воситачилик тушунчалари синоним ҳисобланади. Mediation is considered as a way to resolve the dispute with the help of a mediator based on their voluntary agreement in order to reach a mutually acceptable solution. Section 1 of the German Mediation Code defines mediation as "a confidential and organized procedure in which the parties voluntarily and under their own responsibility seek to settle their disputes amicably with the help of one or more mediators" [2] It is clear that the dispute is necessarily a third party. or is resolved with the help of individuals, and the participation of this person, that is, the mediator, is important.

A mediator is a person engaged by the parties to mediate.[1] It is known from history that in the past, older and more experienced persons tried to mediate the situation and give the right advice to the parties. They recognize Muhammad as the first mediator in Islamic law.

The mediator's role in reaching an agreement

The essence of mediation is reflected in negotiations. In order for them to end successfully, not only the desire and will of the parties to overcome the disagreement, but also the ability and experience of the mediator are important. The mediator does not examine the evidence and does not evaluate the legality of the parties' demands, his main task is to ensure mutual understanding between the parties, to determine and help to implement the possibility of solving the problem under conditions acceptable to all participants. The mediator does everything possible so that the situation and the feelings, interests, wishes and demands of the parties behind it are first stated, then heard, and finally understood by all participants. Only then, with the active participation of the mediator, the evidence will be re-examined and a joint decision, that is, a solution to the dispute acceptable to all parties, will be worked out. This process not only allows you to overcome the conflict and the resulting negative emotions, but also helps to reach new agreements based on trust in the future.[4]

The mediator is liable to the parties for the damage caused as a result of the mediation procedure in accordance with the procedure established by the law.[1]

The mediator is independent in carrying out the mediation procedure. During the implementation of the mediation procedure, it is not allowed to interfere in any way with the activities of the mediator.

The mediator must be impartial, implement the mediation procedure in the interests of the parties and ensure their equal participation in the mediation, and create the necessary conditions for the parties to fulfill their obligations and exercise their rights. If there are circumstances that hinder the independence and impartiality of the mediator, he should refrain from carrying out the mediation procedure.



Legal status of the mediator

Currently, the legal requirements for becoming a mediator are set. They are organized on a professional and non-professional basis. It is established that a person who has passed a special training course according to the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan, and who is included in the register of professional mediators, can act as a professional mediator. The activity of a mediator on a non-professional basis can be carried out by a person who has reached the age of twenty-five and has agreed to perform the duties of a mediator. A person performing the activities of a mediator on a non-professional basis can also undergo a special training course on the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan. In the Russian Federation, mediation activities are carried out on a professional and non-professional basis. In contrast to the Republic of Uzbekistan, the Russian legislation sets age requirements for mediators who work on both grounds. In particular, in the Russian Federation, a person must be 25 years old to become a professional mediator, 18 years old to be a non-professional mediator, and have full legal capacity. In the Republic of Uzbekistan, the register of professional mediators is maintained by regional justice departments, and the register is publicly available on the official website of the relevant justice bodies and the Ministry of Justice. A person's passing through a special training course on the mediator training program is the basis for entering him into the register of professional mediators. Entering information about professional mediators into the Register is considered an official confirmation of the status of a professional mediator and is carried out by entering information about a professional mediator into the Register and issuing an appropriate notification about it.[5]

The procedure for including a person in the list of professional mediators in accordance with paragraph 6 of the Regulation of the Republic of Uzbekistan dated November 29, 2018 No. 3092 "On the procedure for the formation and maintenance of the register of professional mediators" a person who has completed a special training course submits the following documents to the judicial body at the place of permanent residence:

- Application for inclusion in the Register in accordance with Annex 1 of the Regulation;
- copy of passport;
- Questionnaire filled out in accordance with Annex 2 of the Regulation;
- a copy of the document on completion of the special training course.

There is no fee for entering information about professional mediators into the Register.

At this point, let's touch on the fact that there are some differences between professional and non-professional mediators. In particular, a professional mediator provides services for a fee according to the agreement of the parties in the case in which he participated, while non-professional mediators are not paid.

Second, professional mediators - persons who have completed an educational course under the Ministry of Justice of Uzbekistan program;

non-professional mediators - persons over 25 years of age who have expressed their desire to become mediators (they can take a special training course under the Ministry of Justice according to their wishes).

Legal status of a lawyer as a mediator

The legal status of a lawyer is determined by the Law of the Republic of Uzbekistan dated 27.12.1996 No. 349-I on Advocacy. According to it, a lawyer, a citizen of the Republic of Uzbekistan, who has a higher legal education and has received a license to practice law in the prescribed manner, can become a lawyer in the Republic of Uzbekistan. It is not allowed to engage in the legal profession of persons who have been found to be incompetent or have limited legal capacity, as well as those whose convictions have not been completed or whose convictions have not been removed. A lawyer is not entitled to engage in other paid activities, except for:



scientific and pedagogical activities;

Activities in the Chamber of Advocates of the Republic of Uzbekistan (hereinafter referred to as the Chamber of Advocates) and its regional offices;

activity as a patent representative and mediator;

activity as an employee of the legal service of state bodies, economic management bodies, state enterprises, institutions and organizations on a contractual and legal basis;

activity as a judge in arbitration courts and international commercial arbitrations (courts).

Obtaining the status of a lawyer is carried out in the following manner. The license is issued by the Ministry of Justice of the Republic of Karakalpakstan, regional and Tashkent city justice departments (hereinafter referred to as justice bodies) based on the decisions of relevant qualification commissions. A person applying for the status of a lawyer to obtain a license (hereinafter referred to as the applicant) must have at least two years of work experience in a legal specialty, including at least three months of internship in a legal structure (law office, law firm, bar association, legal consultancy) must pass and must pass the qualifying examination. As an employee of the legal service of state bodies, economic management bodies, state enterprises, institutions and organizations, a person who has at least three years of work experience in a legal specialty as a judge, investigator, investigator or prosecutor has the right to participate in the qualification exam without an internship in the legal structure. An applicant who fails to pass the qualification exam will be asked to retake it after at least six months. An applicant who successfully passes the qualification exam must apply to the relevant judicial authority within three months to obtain a license. An applicant who missed this period can apply for a license to a judicial authority only after retaking the qualification exam. The procedure for licensing the legal profession is determined by the Cabinet of Ministers of the Republic of Uzbekistan. An applicant who has received a license in the prescribed manner must take the lawyer's oath within three months and establish a law firm individually or together with other licensed persons or join one of the existing law firms. The lawyer's certificate is issued to the applicant within three working days from the moment of the registration of the lawyer's organization or the documents confirming the applicant's entry into the working lawyer's organization are received by the judicial body. The applicant receives the status of a lawyer from the date of issuance of the lawyer's certificate, the relevant regional department of the Chamber of Advocates is notified about this by the judicial body within three days. From the moment of receiving such notification, the lawyer becomes a member of the Chamber of Advocates. The form of a lawyer's certificate and the procedure for issuing it are determined by the Cabinet of Ministers of the Republic of Uzbekistan.

There are several advantages of a lawyer's participation as a mediator in a case. Today, if we talk about the role of mediation in society, it is known that almost most of the conflict parties still do not understand the concept and importance of mediation. However, many people have a certain worldview about the concept of a lawyer. Therefore, the role of lawyers in the development and expansion of mediation is considered important. That is, the citizen turned to the lawyer for the case. Here, a lawyer can use mediation and there is a possibility of reaching a mediated agreement. At the same time, the lawyer may suggest mediation to the parties. We know that this will be beneficial for both parties. Because legally, a lawyer is a professional. Also, if the parties agree to use mediation later, it will prevent them from having to search for a mediator, consider the case anew with the participation of a mediator, and incur additional costs. This allows you to save a lot of time. In addition, lawyers have an association on the basis of one common chamber, which in turn ensures that lawyers work on the basis of legal and internal rules and rules of lawyer ethics. Mediators are registered only in the Ministry of Justice. Today, no rules of internal procedure or rules of mediator etiquette have been approved for the activity of mediators. This results in each mediator acting as he/she knows.

International experience

Today, the institution of mediation is widespread in countries such as Germany, France, Italy, Spain, Austria, Great Britain, Belgium, USA, Canada, Australia, and New Zealand. Also, in 2002, the Green



Book was developed by the European Commission on alternative dispute resolution for civil and commercial rights.

As a result of the use of mediation in the United States, 95 percent of civil legal disputes did not reach court hearings. More than 90% of court negotiations are settled by agreement of the parties in Germany, on average 40-80% in Europe, 97% in Lower Saxony, and 90-95% in Great Britain. certainly leaves a great impression.

We consider the requirements for a mediator under the German Mediation Code. According to Section 5, Clause 1 of the Code, mediators must ensure their initial training and continuing education. Mediators must also ensure that they have sufficient theoretical and practical skills to provide competent guidance to the parties in the mediation process. Appropriate preparation should include, in particular, the following elements:

the basics of mediation, as well as procedural and framework conditions;

negotiation and communication methods;

conflicting competence;

legal aspects of mediation and the role of law in mediation;

There is currently no credit scoring system for mediator training.

In contrast, the special qualifications of certified mediators are available under Sections 5 and 6 of the Code. Continuous professional development requirements for certified mediators are imposed, including mandatory training, a minimum number of mediation sessions as a mediator or facilitator must be supervised after initial training.

The Department of Justice has issued a statutory ruling stating that someone must describe themselves as a certified mediator if they have completed at least 120 hours of training and specific training content. In addition, the legal decree stipulates that a certified mediator must conduct at least five mediation processes within two years after training, and then conduct supervision.

There are no rules or restrictions regarding the main profession of mediators, nor are there any rules regarding a certain level of education (such as a university degree).

Regarding the duties of the mediator according to the German Mediation Code, the code provides some provisions described in the previous questions. In the event of a breach of such obligations, the intermediary may be liable for damages under the provisions of the German Civil Code (BGB) or, in very rare cases, criminal charges under the German Penal Code. There are no specific civil or criminal provisions, penalties or disciplinary measures against mediators for misconduct, misconduct, etc. Most German insurance companies offer professional insurance for intermediaries, but this is not mandatory. Therefore, no minimum level of insurance is required for German intermediaries.

The mediator shall investigate disputes and notify the parties of a potential dispute as follows:

Section 3.1 of the Code: the mediator must disclose all circumstances that may affect his neutrality and impartiality;

Section 3.2 of the Code: if a person has advised a party, he cannot act as a mediator in the same matter. Such work cannot be confirmed by the parties;

Article 3.3 G of the Code: the mediator must inform the parties if one of his colleagues has advised the party on the same issue. In such a case and after such information, the parties may agree on the services of a mediator in accordance with clause 3.4 of the Code.

As mentioned above, in the event of a breach of such obligations, the intermediary may claim damages in accordance with the provisions of the BGB. The mediator's fees are not regulated by law and are therefore free for negotiations. The parties typically split the mediation fee and agree on joint and several liability. If the parties cannot afford to pay the mediator, the state will not provide legal aid or other financial support for mediation. However, German courts are willing to include the costs of the



mediation proceedings in the total assessment of costs if the mediation is conducted as a court-added mediation.[6]

In short, the role of the mediator is important in resolving disputes through mediation. He should be able to manage the conflict in the middle. For this, of course, the mediator must be a strong psychologist and a person with sufficient experience. At this point, I think it is appropriate to create wide opportunities for lawyers and to give benefits in the use of mediation, and thereby widely promote mediation in society. As a clear example of this, the concept of a lawyer twenty years ago, who he is, how he works, and where to find a lawyer, hardly anyone knew. From this point of view, dissemination of media to society with the support of lawyers is an important factor in its development and alternative and high-quality resolution of disputes.

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