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Problems Related to the Implementation of the Mediation Agreement and Issues of their Elimination

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Abstract: There is a need to improve the mechanisms of judicial proceedings aimed at resolving civil and economic disputes through alternative methods, develop simplified types of proceedings, achieve efficiency in the use of mediation procedures through the use of conciliation procedures, reduce the workload of competent courts, simplify procedural procedures and mechanisms, as well as strengthen scientific research in this area. It should be noted that today, special attention is paid to the correct determination of rights and powers for alternative dispute resolution, improving the process of applying the mediation procedure for disputes, recognizing and enforcing their mediated agreements as research areas of important scientific and practical importance. It should be noted that today, in addition to competent courts, various problems are encountered in the consideration of a number of cases on civil and economic disputes through mediation in alternative dispute resolution. This article examines the problems associated with the implementation of mediated agreements and their elimination. It also develops proposals and recommendations for our national legislation in this regard.

Keywords: mediation, mediation procedure, notary, mediative agreement, mediator, compulsory execution, contract.

INTRODUCTION

In the world, self-regulatory mechanisms, in which subjects of social relations have the opportunity to independently establish rules of conduct and determine the procedure for monitoring their observance, are gaining particular importance. The increased activity and responsibility of participants in civil relations allows the state to transfer part of its powers in certain areas to civil society institutions. Foreign experience shows that the resolution and regulation of legal disputes is one of such areas. This, in turn, means that the countries of the world recognize the need to provide the conflicting parties with the right to choose methods of resolving the dispute that has arisen between them using conciliation procedures.

According to the results of the "Rule of Law" index, Uzbekistan's score on the "availability of alternative dispute resolution methods, their impartiality and effectiveness" indicator is 0.59 points on a 1-point scale, 106th place out of 142 countries worldwide, and 14th place out of 15 countries regionally [1], indicating that alternative dispute resolution mechanisms in our country are underdeveloped compared to the world and regional averages and that there is a need to improve their effectiveness.

Mediation is emerging as an institution that provides an effective, civil and humane approach to resolving disputes, as an alternative to traditional court proceedings. This mechanism creates a favorable legal environment for reaching a compromise, taking into account the mutual interests of the parties. At the same time, if the mandatory execution of the agreement reached during the mediation process is not ensured, the practical value and effectiveness of this institution may be seriously questioned. More precisely, the failure to implement the conditions stipulated in the mediation agreement or the existence of legal obstacles to the execution process impedes the full implementation of the goals and objectives of mediation. Therefore, the development of legal mechanisms aimed at

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ensuring the execution of mediation agreements, identifying existing legal and practical problems, and improving the institutional system in this area are one of the important and urgent issues of today.

RESEARCH METHOD

The research methodology employed in this study combines a qualitative and comparative approach to analyze alternative dispute resolution (ADR) mechanisms in Uzbekistan. It examines legislative frameworks such as the laws "On Arbitration Courts" (2006), "On Mediation" (2018), "On International Commercial Arbitration" (2021), and relevant presidential decrees and resolutions to understand the evolution and current state of ADR. Secondary data, including statistics from the Ministry of Justice, reports from the Supreme Court of Uzbekistan, and international frameworks like the 1958 New York Convention, are analyzed alongside case studies from countries such as China, Slovakia, and Singapore. The analysis uses qualitative methods to assess the strengths and weaknesses of Uzbekistan's ADR practices, comparative methods to benchmark these practices against global standards, and case studies to explore enforcement challenges and practical applications. Additionally, the study investigates the potential integration of technology in ADR, drawing on examples from the Beijing Internet Court, Estonia's e-court system, and India’s virtual court platform, while evaluating procedural, infrastructural, and security considerations. Validation is achieved through triangulation of data from legal texts, statistical records, and international practices to ensure a comprehensive understanding of Uzbekistan’s ADR mechanisms. Ethical considerations include adherence to legal and research integrity standards, ensuring confidentiality and compliance with international norms. This methodology aims to identify actionable recommendations for reforming and modernizing ADR in Uzbekistan.

RESULTS AND DISCUSSION

A mediative agreement concluded in a pre-trial procedure is characterized by the characteristics of a civil law agreement aimed at determining, changing or terminating the rights and obligations of its parties.

According to Article 611 of the Law of the Republic of Uzbekistan “On Notary”, a notary shall certify a mediative agreement concluded between the parties if the parties reach a mutually acceptable decision on the terms and conditions of performance of obligations or on the dispute arising from the results of the mediation procedure.

Notarized transactions confirm the emergence of subjective rights. It makes it easier for the interested party to prove their rights. Because the content of the transaction officially formalized by a notary, the time and place of its execution, the intentions of the subject of the transaction and other circumstances are considered publicly recognized and reliable[2].

According to Section 794 of the Code of Civil Procedure of the Federal Republic of Germany, a notarized mediation agreement is recognized as a mandatory enforcement document if the debtor voluntarily agrees to the execution of the mediation agreement in the contract [3]. That is, enforcement proceedings can be initiated without a court decision. In France, the notarized confirmation of a mediation agreement in the form of an acte authentique creates the basis for its transformation into an independent enforcement document. This is a reliable mechanism for further expanding the role of the notary and for enforcement. An acte authentique is a document officially drawn up by a notary and has legal effect, which is valid like a court decision. On the basis of this document, an enforcement application is carried out through a special enforcement office or public (private) bailiffs [4]. In Italy, if a mediation agreement is certified by a notary, it is accepted as a "titolo esecutivo" - that is, an enforcement document. On the basis of this document, enforcement proceedings can be carried out by an enforcement office or without a court decision [5]. In the legislation of France, Germany and Italy, the mechanism for ensuring the enforcement of mediated agreements has a solid legal basis. In particular, in these countries, there is a practice of recognizing mediated agreements as enforceable documents if they are formalized by a notary or a court. This creates the possibility of enforcing mediated agreements not only through the court, but also on the basis of notarial certification, as well as through special enforcement bodies without a court.

As V. Yarkov and V. Medvedev noted, the notarial certification of the agreement concluded with the participation of the mediator, without changing the legal nature of it, serves to create effective and clear legal mechanisms for the implementation of the mediation agreement. Such an approach, namely the notarial formalization of the mediation agreement, allows to strengthen its legal force and guarantee its execution. At the same time, this legal form does not impose any obligations or restrictions on the parties to the mediation agreement, but, on the contrary, increases the level of their legal protection and strengthens confidence in the practical implementation of the terms of the agreement [6].

The fact that the Law of the Republic of Uzbekistan "On Notary" stipulates that a mediative agreement concluded by the parties and certified by a notary has the force of an executive document, and accordingly, its absence in the list of judicial documents and documents of other bodies subject to execution, referred to in Article 5 of the Law of the Republic of Uzbekistan "On the Execution of Judicial Documents and Documents of Other Bodies", indicates the existence of some gaps in the development of the legal mechanism for its execution.

The implementation of the experience of the above-mentioned countries into the national legislation of Uzbekistan will serve to strengthen the legal significance of mediative agreements concluded as a result of the mediation procedure. At the same time, such a solution will increase the reliability of the implementation of the mediative agreement and encourage the parties to resolve disputes through mediation, without bringing them to court.

In accordance with the current legislation, the mediative agreement is binding on the parties and must be fulfilled by them voluntarily, in the manner and within the time limits established in the agreement. However, failure to fulfill the terms of this agreement does not exclude the possibility of the parties to protect their rights and interests in court.

In the case of a mediation agreement, the parties have agreed to perform certain obligations, but its implementation does not entail legal consequences, which means that in practice, if the terms of the agreement are not fulfilled, the parties may apply to the court again. This is reflected in Articles 107 and 109 of the "Economic Procedure Code". According to it, if a mediation agreement is concluded, the claim may be left without consideration, but the plaintiff has the right to re-apply to the court on this basis in the general procedure. However, in practice, the legal mechanisms necessary to ensure the implementation of the mediation agreement have not been fully developed in the legislation of Uzbekistan. In particular, the legal basis for recognizing this agreement as an executive document and its direct submission to the compulsory enforcement process is insufficient. As a result, since the compulsory implementation of the mediation agreement is not ensured, confidence in the effectiveness of the mediation institution may weaken.

In this context, it is important to analyze international experience, including the provisions of the Singapore Convention (2019). As stated in Article 3 of this Convention, each State Party shall implement mediated agreements in accordance with its internal procedural rules and the conditions established in the Convention. At the same time, the Convention does not require a separate agreement on the conduct of a mediated agreement or the intervention of a mediation center for the implementation of a mediated agreement [7].

In other words, if an agreement is reached between the parties during the mediation process, its enforcement can be carried out on the basis of the Singapore Convention. This is much simpler than, for example, the terms of the agreement required for arbitration awards, and creates the possibility of enforcing mediate agreements internationally. In Uzbekistan, the issues of enforcing mediate agreements concluded as a result of the mediation procedure are regulated by a number of regulatory legal acts. In particular:

1. The Law of the Republic of Uzbekistan “On Mediation”, adopted on July 5, 2018. This law establishes the legal basis for the organization and conduct of the mediation process and contains general norms determining the legal nature and implementation of the mediating agreement

reached between the parties. According to the law, the mediating agreement is binding on the parties and must be implemented in accordance with the established procedure.

2. The Civil Procedure Code (CPC) and the Economic Procedure Code (EPC) of the Republic of Uzbekistan. These codes establish the norms for the approval of settlement agreements and mediation agreements concluded by the court, their legal consequences and enforcement (Article 101 of the CPC, Articles 107 and 109 of the EPC). At the same time, it is indicated that in the event of non-fulfillment of the mediation agreement, the parties have the right to apply to the court in accordance with the general procedure.
3. The New York Convention on the Recognition and Enforcement of International Arbitral Awards of 1958. Although this Convention does not directly apply to mediation, the rules set out in it serve to ensure the enforcement of agreements concluded in the field of private international law. In some cases, mediated agreements may be recognized as enforceable instruments along with arbitral awards. Uzbekistan acceded to this Convention in 1996 and its rules are consistent with national legislation.

Singapore Convention (2019) – "Convention on the Enforcement of Agreements Resulting from International Commercial Mediation" Although Uzbekistan has not yet acceded to this convention, this international treaty establishes the legal framework for the direct enforcement of mediated agreements at the international level. According to Article 3 of the Convention, member states shall enforce mediated agreements on the basis of their national legislation and in accordance with the terms of the convention. This does not require the existence of a special mediation center or the determination of the terms of the agreement in advance.

The experience of some foreign countries shows that a simplified enforcement mechanism ensuring the implementation of mediated agreements has been introduced on a legal basis in a number of jurisdictions and is widely used in practice. In particular, in countries such as Germany, Spain, Slovakia and Sweden, which are members of the European Union, as well as in Israel, Turkey, Japan and the Philippines in the Asian region, the USA, Canada, Colombia, Ecuador in the Americas, and Egypt in Africa and the Middle East, legal mechanisms for formalizing mediated agreements and their extrajudicial enforcement are being used in practice [8].

According to Article 43 of the Law of the Republic of Belarus "On Enforcement Actions", one of the parties to a mediation agreement may apply to the court for the issuance of an enforcement document for its compulsory execution. The court shall consider this application within one month, and if the application is satisfied, the relevant document shall be issued for the implementation of enforcement actions [9].

Several legal mechanisms can be distinguished to reduce the risk of non-execution of the mediation agreement by one of the parties to the mediation agreement:

- as an effective means of enforcing the mediation agreement, equating it with an executive document (in addition, the approval of the mediation agreement certified by notaries directly leads to its equalization with an executive document);
- the parties to the mediation agreement may include provisions related to its enforcement in the relevant sections and text of this agreement (in particular, supplementing it with a clause providing for its notary certification and submission to the relevant departments of the Compulsory Enforcement Bureau for enforcement in the event of non-voluntary execution of the mediation agreement);
- Supplementing the Economic and Civil Procedural Codes of the Republic of Uzbekistan with new articles providing for the issuance of writs of execution for the mandatory execution of a mediated agreement.

Although the Law of the Republic of Uzbekistan "On Mediation" stipulates that a mediative agreement is binding on the parties and must be executed voluntarily (Articles 7 and 29), there are no clear

procedural mechanisms aimed at protecting the rights of the injured party and legal situations arising from the non-execution of this agreement. This situation, in turn, indicates that the system of legal guarantees for mediative agreements is not sufficiently developed.

The norms of Chapter 16 of the Economic Procedural Code, which is dedicated to conciliation procedures, exist in isolation from the current substantive and procedural law, and the legal mechanisms for the legal nature and enforcement of the mediating agreement are not sufficiently strengthened. Although the law describes the essence, principles and status of the participants of mediation, the implementation of the agreement and measures to ensure it are neglected.

In our opinion, in order to fully implement the institution of mediation, it is necessary to include procedural norms for the execution of a mediative agreement in the legislation. Practical analysis shows that the parties often agree to mediation only after the judge explains its advantages. Also, many questions arise about what legal consequences will arise if the agreement is not executed. For example, in case No. 4-1001-2308/82421, heard by the Tashkent Interdistrict Economic Court, the plaintiff and the defendant reached an agreement only after the judge explained the essence of the mediation procedure and submitted a mediative agreement approved by the mediator. However, in this process, the procedure for suspending the case, stipulated in paragraph 6 of part 1 of article 101 of the Code of Civil Procedure, was not followed. This indicates legal gaps in practice.

In this regard, we consider it appropriate to include a new paragraph 81) in Article 163 of the Code of Economic Procedure (“Actions of the judge to prepare the case for trial”) with the following content: “81) offers the parties to resolve the dispute by concluding a mediating agreement and provides an explanation of the legal consequences of this agreement”.

This amendment serves to increase the practical effectiveness of mediation, guarantee the implementation of agreements, and strengthen the preventive tasks of the courts.

In practice, it is natural for the parties to conclude a mediation agreement to have doubts about its results and the fulfillment of its terms within the established time and procedure. This is explained, first of all, by the lack of a legal mechanism in the procedural legislation of the Republic of Uzbekistan that guarantees its mandatory implementation in the event of non-fulfillment of the terms of the mediation agreement. According to the current procedure, if the mediation agreement is not fulfilled, the plaintiff can only re-apply to the court in the general procedure - with a lawsuit (Code of Economic Procedure, Article 109).

However, the procedure for applying through a lawsuit requires excessive time and money for the parties. At the same time, this situation negatively affects business relations and prospects for future cooperation, increases the burden on the courts, and leads to the failure to achieve the main goals of introducing a mediation agreement - economic and procedural savings, strengthening mutual trust between the parties, and reducing the number of court cases.

Failure to implement or improper implementation of a mediation agreement reached as a result of the mediation procedure and certified by a notary gives the interested party the right to apply to a notary for a writ of execution.

According to Sh. Masadikov, a mediative agreement should have binding force and be considered a contract, and in this regard, the rules on contracts should be applied to it [10]. In the author's opinion, the application of the rules on contractual relations to a mediative agreement, in particular, the rules on the conclusion, amendment and termination of the agreement, means that it is a legally binding document.

From this point of view, Sh. Masadikov's proposal to evaluate the mediative agreement as a contract is appropriate. However, when approaching the legal nature of this agreement in more depth, it would be appropriate to characterize it not as a direct contract, but as a "voluntary agreement of a contractual nature". Such an approach, on the one hand, makes it possible to apply the general provisions of the Civil Code on contracts to the mediative agreement, and on the other hand, ensures its recognition as a special type of legal agreement, which arises with the participation of a mediator, is aimed at

alternative dispute resolution, has its own content and form. Thus, although the mediative agreement is contractual in nature, its nature aimed at resolving the dispute and the participation of the mediator in the process determine its specific legal status, different from general contracts.

The approval of the mediation agreement by the court leads to its acquisition of the status of an official judicial document. In this case, if the parties do not voluntarily fulfill the terms stipulated in the agreement, it is advisable to include it among the documents subject to mandatory execution. This, on the one hand, increases the effectiveness of the mediation agreement, and on the other hand, serves to prevent legal problems and complications that may arise in the future in the implementation of the terms of the agreement.

Looking at international experience, this approach is being applied in practice in some countries and has proven to be successful. In particular, the Republic of Georgia has introduced legal and institutional measures that allow it to receive high scores on the subcomponents of the "Alternative Dispute Resolution Index". This has led to an increase in the number of cases of resorting to mediation in the country and the positive results achieved as a result of using this method. In particular, in accordance with Article 2, paragraph "sh" of the Law of Georgia "On Enforcement", it is included in the list of documents on which court rulings and writs of execution may be issued on the implementation of mediate agreements, which creates a legal basis for the mandatory enforcement of the mediate agreement [11].

CONCLUSION

The analysis of judicial practice shows that even when a mediation agreement is concluded, the issue of its implementation often remains open, which creates distrust among the parties regarding the conclusion of such agreements. This situation hinders the development of mediation and creates the need to improve its legal and enforceable guarantees.

In this regard, it is appropriate to recognize the mediated agreement as a binding enforcement document, like the settlement agreement and the arbitration award. The possibility of recognizing this document as a basis for binding enforcement increases the legal force of the document approved by the mediator, its practical significance and the trust of the parties.

This proposal is also reflected in international practice. In particular, in Belarus (Law "On Mediation", Article 15), Moldova (Article 33), Georgia (Article 13) and China (Law "On People's Mediation", Article 31), the mechanism for the mandatory enforcement of mediative agreements is enshrined in law.

In order to introduce a similar legal mechanism in Uzbekistan, it is proposed to supplement the Economic Procedural Code with a new Article 292 entitled “Procedures on the issuance of a writ of execution for the compulsory execution of a mediated agreement” and Articles 232^{10}–232^{14} regulating the procedural procedures for its implementation.

A mediation agreement is a civil law agreement aimed at establishing, changing or terminating the rights and obligations of the parties, and its execution is determined by law on the basis of the principle of voluntariness. However, the absence of norms guaranteeing its execution negatively affects the effectiveness and efficiency of mediation. Therefore, equating a mediation agreement to an executive document will strengthen its legal force and create a basis for the full implementation of mediation in our country.

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