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Article

The Institute of Mediation in The Republic of Uzbekistan: Legal Framework, Prospects, and Development of Mediation

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Abstract: This article analyzes the significance, concept, historical evolution, principles, and classification of mediation stages within the system of alternative dispute resolution, in connection with the development of the legal framework of the mediation institute. Mediation plays a significant role in resolving conflicts in the Republic of Uzbekistan, as it offers an alternative means of dispute resolution without resorting to litigation. This process contributes to reducing the burden on the judicial system, saving time and resources of the parties, and maintaining amicable relations between conflict participants. In Uzbekistan, mediation is regulated under the Law "On Mediation" of the Republic of Uzbekistan, adopted in 2018. This law outlines the procedure for conducting mediation, the requirements for mediators, and their legal status. Mediation is actively used in resolving civil disputes (such as family, labor, housing, and commercial conflicts) as well as economic and business disputes.

Keywords: mediation, conflict, intermediation, neutrality, voluntariness, confidentiality, communication, mediation principles, mediation process and stages, mediated agreement.

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1. Introduction

Legal Framework and Significance of Mediation in the Republic of Uzbekistan. One of the new developments within the legal system of the Republic of Uzbekistan is the institution of mediation. It is known that the Law "On Mediation", signed on July 3, 2018, came into effect on January 1, 2019. The accumulated experience of implementing the law and the current reform demands call for further improvement of organizational and legal mechanisms in this regard. From this perspective, the Presidential Decree of June 17, 2020, "On Measures to Further Improve Mechanisms of Alternative Dispute Resolution" is of great importance. Notably, the decree sets the task of developing and popularizing mediation and other methods of alternative dispute resolution. This document serves as a key legal foundation for creating a unified pre-trial dispute resolution system, significantly enhancing the role of mediation, arbitration courts, and international arbitrations, and turning them into institutions that are trusted by citizens and entrepreneurs [1].

Current Trends in the Development of Mediation:

1. **Expansion of the Legal Framework:** Amendments have been made to the Civil Procedural Code that allow the use of mediation in certain categories of criminal cases. Licensing requirements for mediators have been simplified, contributing to an increase in the number of specialists and accessibility of mediation services [2].
2. **Practical Application:** Mediation is actively used to resolve civil, commercial, family, and labor disputes. Special attention is being paid to the development of online mediation under the conditions of digitalization, enabling parties to resolve conflicts remotely.

3. **Training of Specialists:** New educational programs, courses, and seminars are being introduced for the training of qualified mediators. The number of programs teaching mediation methods based on international standards is increasing.

Given the importance of the issues addressed in the law and the decree, the question of embedding the essence of "mediation" and this new institution into public consciousness has become highly relevant. It is vital to explain its importance, value, and advantages to the broader public. The relevance of this alternative dispute resolution mechanism is due, on the one hand, to the high efficiency of mediation in the practices of many foreign countries, and on the other, to the need to revive the values and traditions of our people, historically formed but not yet fully integrated into the modern moment.

Mediation is defined as a method of dispute resolution with the assistance of a neutral and impartial intermediary a mediator based on the voluntary consent of the parties, with the goal of reaching a mutually acceptable solution. Therefore, a comprehensive study of the theoretical and legal foundations, legal and socio-spiritual nature, content, principles, structure, stages, features, and classifications (models) of the institution of mediation has both theoretical and practical significance [3].

The main principles of mediation are **confidentiality, voluntariness, cooperation and equality of the parties, and the independence and impartiality of the mediator.** The law sets out the requirements for mediators, the procedure for mediation, the rights and obligations of the parties, and the conditions for concluding and implementing a mediated agreement. Mediation can be applied both before initiating court proceedings and during a court case, up until the court retires for deliberation. Furthermore, mediation can also be used during the enforcement of judicial acts and the acts of other bodies.

The implementation of mediation into the legal system of Uzbekistan aims to create an alternative mechanism for dispute resolution, reducing the load on the judiciary, saving time and resources for the parties involved, and preserving and strengthening business and personal relationships. Mediation offers the parties the opportunity to independently control the conflict resolution process and to find solutions that satisfy all participants.

First of all, it should be noted that the institution of mediation has ancient historical roots. The method of dispute resolution with the help of third-party intermediation has been used since ancient times, even during the primitive communal system. Historical sources confirm that the method of intermediation was used in the ancient Sumerian, Babylonian, and Phoenician states, particularly in the field of commerce and in resolving conflicts between merchants [4].

The History of Mediation in the World

In Ancient Greece, in the Athenian Republic, intermediaries were also used to resolve various disputes. In Ancient Rome, the **Justinian Code**, created in the sixth century BC, recognized the institution of mediation. Romans referred to dispute resolvers as "medii" (middlemen). These individuals were considered a prestigious category.

The concept of "**murosai madora**" (mutual agreement) is one of the traits inherent in the nature of our ancient ancestors, as expressed in the Avesta and developed since then. From ancient times to the present, tribal elders, later neighborhood leaders and respected community members, especially those of senior age and experience, have played a key role in resolving family and other disputes, such as economic, property, commercial, trade, and debt-related disagreements. These individuals conducted essential and beneficial activities in resolving disputes and facilitating compromises. Virtues such as **tolerance, forgiveness, and reconciliation** are part of the nation's character and remain embedded in the chain of human values.

Mediation – from Latin mediare, meaning to mediate, to stand in the middle, to step between.

Similarly, "**mediation**" (from the English term "mediation") is a method of alternative (pre-trial) dispute resolution in which an impartial, neutral intermediary helps the disputing parties reach a mutually acceptable agreement but does not make any decisions regarding the dispute, and none of the parties has the right to give advice. The institution of mediation dates back to the ancient Franks. There is evidence that it was used as early as the beginning of the 2nd century. Mediation in its current form emerged in the 1970s

in the United States and other countries with Anglo-Saxon legal systems. It has been used in European countries since the early 1990s [5].

Mediation has long been widely practiced in China and Japan. Referring a dispute to mediation before going to court significantly enhances the prestige of the parties in the eyes of an enlightened public. Such behavior does not indicate that the parties fear legal proceedings but rather that they act with reason, wisdom, generosity, restraint, and prudence. Mediation is, after all, an integral part of the legal culture of the Chinese and Japanese peoples.

In the 1960s, a concept known as the **"American rule"** appeared in the U.S. civil court system. Its original meaning is as follows: attorney fees are paid by the parties regardless of the outcome of the case. This means that large expenses are incurred and significant sums are paid.

Mediation has been used in European countries since the late 20th century. While the U.S.-promoted mediation model gained significant popularity in Germany, it was less successful in France. (It is worth noting that Napoleon Bonaparte enacted the "**Mediation Act**" in 1803, which influenced practices in France, Switzerland, and Germany.) In these countries, mediation was integrated into the judicial system, with mediators working directly in the courts [6].

Defining the concept of mediation and understanding its essence aims to create a clear perception of its features and establish its place in the legal and legislative systems of our country. Moreover, mediation is a relatively new institution, and the public is still not fully aware of its benefits. This situation necessitates a deeper understanding of the phenomenon of indirect resolution. Accordingly, the following definition can be proposed: mediation refers to negotiations involving a third, impartial person who does not seek to partially resolve the conflict but instead facilitates communication between the conflicting parties.

As noted by Professor H.T. Odilkariev, mediation is a process of negotiation conducted by a qualified and authorized specialist (representative) who possesses particular skill, delicacy, and culture [7].

2. Materials and Methods

With respect to the methodology of this article, the author analyse the legal regulation, practical usage, and futural prospects of mediation in the Republic of Uzbekistan. The study starts by examining literature and law documents, taking as basis the "Law on Mediation" accepted in 2018, and the following reforms implemented via the Presidential Decree of 17 June 2020. It encompasses a synthesized examination of national legal texts, academic papers, and public reports to extract reliable evidence on the incorporation of mediation in the Uzbek legal framework and its role in dispute resolution in civil, commercial and family law. This qualitative study evaluates mediation, through case studies or interviews with key stakeholders, including mediators, legal professionals, and participants in mediation processes. Alongside this is an analysis of international practices to allow for comparisons and the identification of potential areas for development. Vanderbilt Mediation Research Project The research also includes material taken from sanctioned government reports and statistics about mediation usage – number of mediation cases, success rates and training of mediators, etc. Thirdly, the methodology consists of a prospective analysis based on expert opinions and empirical evidence, giving insights on the likely future development of the mediation institution in Uzbekistan. We analyze digitalization, focusing on legal education, public awareness campaigns, state support, and technology such as online mediation. It further formulates concrete measures that could be taken to improve the framework of mediation in order for it to remain sustainable and to penetrate through the legal culture of Uzbekistan.

3. Results and Discussion

Mediation is an alternative method of conflict resolution based on a new, non-traditional approach.

According to the definition provided in the Law of the Republic of Uzbekistan "On Mediation," mediation is a method of dispute resolution with the assistance of a mediator, based on the voluntary consent of the parties, aimed at reaching a mutually acceptable solution. However, this definition does not exclude that mediation is a process conducted by an impartial expert following specific procedures [8].

Mediation consists of negotiations carried out by a qualified and competent specialist (representative) who possesses particular skill, delicacy, and cultural awareness. The success of mediation largely depends on the mediator's experience, skills, knowledge, diplomatic qualities, authority, and the ability to listen respectfully, reason, analyze, and rationally combine the viewpoints of the parties.

The nature of mediation is also mentioned in the commentary by our ancestor Burkhanuddin Marginaliy in his work "Hidaya." The great thinker argues in his book that a person who agrees to act as an arbitrator must possess all the qualities of a judge. "As long as two people deem someone worthy of being an arbitrator and express satisfaction with their decision, that decision undoubtedly holds validity," says H. Juraev [9].

A mediator does not examine evidence or assess the legality of the parties' claims. The impartial third party the mediator is neither a judge nor an arbitrator and does not make any independent decisions regarding the dispute [10].

The purpose of the Law "On Mediation" is to establish legal conditions for the development of alternative dispute resolution methods and to reduce the workload on the judicial system. The law applies to disputes arising from civil relations, including entrepreneurial activities, individual labor disputes, and family disputes, unless otherwise specified by law. The law does not apply to disputes that affect or may affect the rights and legal interests of third parties not involved in the mediation, or public interest [11].

One of the features of the law is that it defines the key concepts in a separate article, such as "mediation," "mediator," "mediated agreement," "agreement on conducting a mediation procedure," and "agreement on the application of mediation."

Core Principles of Mediation The initiation and step-by-step implementation of the mediation process, when appropriately initiated, is based on specific principles. The law establishes the following key principles of mediation: **voluntariness, confidentiality, cooperation and equality of the parties, and the independence and impartiality of the mediator**. Each of these principles is explained below:

1. **The Principle of Voluntariness:**

The significance of this principle lies in the fact that mediation is applied only when both parties voluntarily agree to it, as expressed in the agreement to use mediation.

The parties have the right to withdraw from mediation at any stage. They are free to choose the issues to be resolved by mutual agreement. It is prohibited to compel the parties to reconcile or accept a decision during the mediation process.

2. **The Principle of Confidentiality**

The principle of confidentiality stems from the professional duties of the mediator. The confidential nature of the mediation process is one of its key advantages over court proceedings.

This principle means that participants in the mediation are not allowed to disclose information that became known to them during the mediation process without the written consent of the party who provided the information, their legal successor, or representative.

Participants in mediation cannot be summoned as witnesses regarding circumstances they learned about during the mediation process, nor can they be compelled to disclose mediation-related information, except in cases provided for by law.

Before the mediation process begins, the mediator must inform the parties of the requirement to maintain confidentiality. Confidentiality must be observed at all stages of the mediation process from its beginning to its conclusion. This principle also affects the clear determination of the start and end points of the mediation.

3. **The Principle of Cooperation and Equality of the Parties**

The mediation process must exclude any unilateral influence over the conditions of the mediated agreement. The procedure is conducted with the aim of achieving a mutually acceptable resolution through the cooperation of the parties involved in the dispute.

The parties to mediation enjoy equal rights in choosing the mediator, determining how the mediation will be conducted, expressing their views during the process, selecting ways and means to defend their viewpoints, receiving information, and evaluating the mutual acceptability of the terms of the mediated agreement. They also bear equal obligations [12].

4. The Principle of Independence and Impartiality of the Mediator

The mediator is independent in conducting the mediation process. No interference in the mediator's activities is allowed during the procedure.

The mediator must remain impartial, conduct the mediation in the best interests of both parties, ensure equal participation, fulfill obligations to the parties, and create the necessary conditions for the realization of their rights.

If there are circumstances that hinder the mediator's independence or impartiality, they are required to inform the parties and refrain from conducting the mediation procedure.

The Law "On Mediation" also contains the following provision:

"The Ministry of Justice of the Republic of Uzbekistan and other interested organizations shall ensure the enforcement of this Law, communicate it to relevant implementers, and explain its essence and significance to the public."

On November 29, 2018, the Ministry of Justice adopted a decree titled "On Approval of the Regulations for the Formation and Maintenance of the Register of Professional Mediators." According to the regulation, **a professional mediator** is an individual who has completed a special training course in mediation approved by the Ministry of Justice of the Republic of Uzbekistan and is listed in the official register of professional mediators.

On **January 31, 2019**, the Minister of Justice of the Republic of Uzbekistan signed Order No. 54-mx **"On Approval of the Mediator Training Program."** Its primary goal is to train mediators in applying mediation to disputes arising within legally defined relationships, teach them negotiation techniques, how to handle stress and disagreements, provide foundational knowledge of the mediation procedure, and develop practical skills in conflict resolution.

Additionally, under the resolution, a **legal framework was established for the creation and functioning of Mediation Centers,** which are formed by the mutual association of professional moderators involved in alternative dispute resolution. Similarly, **Centers for Alternative Dispute Resolution** may be created by the mutual association of professional mediators, arbitration courts, and international arbitration bodies as **non-governmental, non-profit organizations** [13]**.**

Key Stages of Mediation Based on international experience, an analysis of established practices, and legislation introduced in our country, the following **stages of mediation** can be identified:

1. Introduction
2. Joint session
3. Separate meetings (conversations) with each party
4. Continuation of the joint session
5. Negotiations
6. Final mediation agreement

In the United States, Sections §1115–1125 and 703.5 of the California Evidence Code define **confidentiality and guarantees** applicable to the mediation process.

Let us explain each of these stages:

1. **Introduction Stage:**

During the introduction stage, the mediator greets the parties, thanks them for choosing mediation, and expresses willingness to assist. The mediator explains the nature of mediation, the role and status of the mediator, treats participants with respect, politeness, and sincerity, explains the confidentiality of negotiations, and signs a confidentiality agreement. The mediator also works to earn the parties' trust by emphasizing strict adherence to confidentiality requirements.

In their opening remarks, the mediator uses a friendly, calm, and gentle tone to clarify their rights and responsibilities to the mediation participants, declare their authority, and define the powers of the parties. It is important to clarify that the parties are not time-limited during the mediation period and should not be distracted by other tasks. The mediator may ask whether participants have prior experience with mediation.

The mediator should also emphasize the difference between mediation and court or arbitration proceedings, explaining that mediation involves **collaborative problem-solving** aimed at a fair and mutually beneficial resolution. The explained and agreed-upon rules must be documented in writing. The parties should be informed that the mediator will assist in developing a **consensus-based** and fair solution. It must also be clarified that the mediator is **not a judge,** but an impartial assistant helping the parties find a mutually acceptable resolution [14].

2. **Joint Session Stage:**

The mediator begins this stage with humility and caution, speaking softly while continuing to build and strengthen trust between the parties. Remaining neutral, the mediator should ask open-ended questions to uncover the parties' desires, viewpoints (positions), and needs. The mediator must try to identify the root causes of the conflict, the nature of the issue, and the underlying problem.

3. **Stage of Separate Meetings with the Parties**

It is important that each party involved in the mediation process is interviewed separately.

This is because disputing parties may share thoughts or opinions with the mediator during private conversations that they would not express in front of one another. To facilitate this, the mediator must create an atmosphere of mutual respect and trust, grounded in sincerity and humility.

It is best to ask open-ended questions that allow the party to express their views freely. For example:

"My friend (brother, sister, spouse), please tell me, what is the real nature of the issue that's causing this conflict? Explain it to me calmly and in detail…"

"Of course, everything you say will remain between us, don't worry…"

4. **Continued Joint Session Stage**

At this stage, the mediator compiles the information received during the private meetings and resumes the joint session, inviting the parties to collaborate. The mediator seeks to align the parties' viewpoints toward a common resolution.

Each participant in the mediation has their own interests. A brainstorming session may be organized to generate potential solutions. Various options can be discussed, and it is useful to analyze and evaluate each option, noting their pros and cons.

This stage should create space for the parties to talk directly with one another, share ideas, and respond to questions.

5. **Negotiation Stage**

The organization, facilitation, and management of negotiations represent the central and most responsible part of the mediation process. Through negotiations, the disputing parties have the opportunity to present their positions through direct consultations and

reconcile their differences with the help of the mediator. The goal is to bring the parties' positions as close as possible.

The parties may also engage their personal representatives, lawyers, or consultants to help articulate and support their positions.

A very important aspect of this stage is giving both parties the opportunity to express their perspectives and views on the situation. Each party is allowed to speak in turn. The mediator actively listens and, if necessary, takes personal notes.

When parties express their positions, the mediator should not offer opinions, react emotionally to the content, make evaluations, or offer concluding suggestions.

During negotiations, parties can present their demands and proposals for discussion, along with arguments supporting their positions.

The mediator may and should continue the discussion, explaining the pros and cons of each proposal. They may help the parties rethink their positions and keep negotiations going until a mutually acceptable and beneficial solution is found.

If a positive agreement cannot be reached and the process hits a deadlock, the mediator will formally announce it.

Through these negotiations, the mediator seeks to identify the core interests of each party.

Clarifying and discussing the parties' proposals has a positive effect. Based on their cooperation, a solution should be found, including how and to what extent the parties are willing to compromise. Their willingness to understand one another should be encouraged and supported.

6. **Mediated Agreement – Final Stage**

At this stage, all the information discussed during the mediation including negotiations, conversations, and discussions (down to the details) is summarized and structured into a coherent sequence.

The text of a mutually acceptable mediation agreement is drafted collaboratively. Each of its provisions is negotiated and agreed upon by both parties.

The agreement is written in a **neutral, unbiased, and clear language.** It is essential to ensure that the wording and presentation are fully understood by the parties.

The **final text of the agreement** is read aloud to the participants. The **mediated agreement is signed by the parties.** The mediator congratulates the parties on reaching an acceptable agreement and shakes their hands. The mediator expresses satisfaction that friendship has been preserved between the parties and that their cooperation will continue in the future [15].

Law "On Mediation" is titled "Mediated Agreement" and establishes the following:

"If, as a result of the mediation procedure, the parties reach a mutually acceptable resolution of the dispute or the terms and deadlines for fulfilling obligations, a mediated agreement shall be concluded in written form.

The mediated agreement is binding on the parties who have concluded it, and it must be fulfilled in good faith and voluntarily within the timeframe and manner specified in the agreement."

According to Professor M.M. Mamasiddikov, a settlement agreement is a **compromise between the parties**, i.e., a civil law contract. An agreement concluded without court involvement is considered an **out-of-court settlement.** However, this type of agreement does not deprive either party of the right to go to court if one party fails to fulfill or refuses to fulfill the agreement. Such an agreement **acquires legal force only after being approved by the court.**

A court-approved settlement agreement represents an agreement between the parties to resolve their dispute and must meet the following requirements:

As a civil law contract, it must comply with all norms of civil law. The rights and obligations of the parties must be clearly defined. After the settlement agreement is signed and the court proceedings are closed, the same claim cannot be brought before the court

again. If the parties do not fulfill it voluntarily, enforcement will be carried out compulsorily.

S. Maripova asserts that settlement agreements are considered one of the legitimate means to eliminate mutual contradictions between legal relationship subjects, and between members of society in general. The parties define the terms of dispute resolution based on their interests and capabilities through mutual negotiations.

If a mediated agreement is not fulfilled, the parties have the right to apply to the court to protect their rights. The consequences of non-fulfillment may be specified in the agreement itself.

Therefore, mediation is used at the discretion of the parties with the goal of reconciling opposing sides and achieving a peaceful compromise**.** As stated in Article 15 of the Law, "the fact of participation in mediation cannot serve as evidence of admission of guilt."

A frequently asked question concerns whether the mediator's services are paid**.**

Non-professional mediators work free of charge. **The work of professional mediators** may be either paid or voluntary. If a non-professional mediator is hired, expenses for travel, accommodation, and meals may be reimbursed. Who pays and how much is determined by **mutual agreement of the parties.**

Typically, **costs are shared equally** between the parties. If the mediator refuses to conduct the process, they are required to refund any advance payment.

Prospects for the Development of the Mediation Institute in the Republic of Uzbekistan.

The **mediation institute is actively developing** in Uzbekistan, offering an alternative method for dispute resolution that contributes to reducing the judicial system's workload and increasing the efficiency of justice. Since the adoption of the Law "On Mediation" in **2018**, mediation has gained legal recognition and has been applied in various fields, including **civil, commercial, family, and labor disputes.**

Main Findings and Prospects of Mediation:

1. **Increase in Legal Literacy of the Population:** Measures are needed to inform society about the advantages of mediation and its potential in dispute resolution.
2. **Increase in the Number of Qualified Mediators:** Further development of training and certification programs for professionals in the field of mediation is required.
3. **State Support:** The successful implementation of the mediation institution depends on state support and the promotion of mediation. The experience of leading foreign countries shows that state support plays a key role in the development of mediation.

Thus, the prospects for the development of the mediation institution in Uzbekistan are related to strengthening the legal framework, improving the qualifications of specialists, and raising public awareness about the benefits of this method of dispute resolution.

5. Conclusion

To summarize, the mediation institution has great potential in Uzbekistan due to the introduction of the "Law on Mediation" in 2018 and the enhancement of this institution in the context of state policy and national strategy in the Decree of the President of the Republic of Uzbekistan dated November 12, 2020, demonstrating its ability to serve as a way of resolving disputes and significantly relieving the judicial burden and contributing to the timely resolution of conflicts in all spheres. Key findings include the acceptance of mediation in civil, commercial, family and labour disputes; the increased number of trained mediators; and the rise of online mediation platforms. Nonetheless, there are many challenges ahead, especially in promoting public awareness and improving the knowledge of both professionals and the general public on the advantages of mediation.

The present study suggests preserving the state level support which was initiated during the research period, improving the legal framework governing mediation process and expanding training of mediators to make mediation more sustainable and widespread in Uzbekistan. Mediation is obviously not the only method of conflict resolution, and the exact impact, if any, of mediation in some cases can still be investigated here. Also, to better understand the purpose of mediation, we can investigate how to integrate mediation with judicial functions, and by looking at how digital tools can enhance mediation and public access, and how to improve the efficiency of mediation.

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