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# THE ROLE AND SIGNIFICANCE OF MEDIATION AND ARBITRATION AS AN ALTERNATIVE METHOD OF DISPUTE RESOLUTION

Beyjonov Bekzod Beynazar ugli,
Graduate Student of Tashkent State Law University
E-mail: bekzodbeyjonov7798@gmail.com

**Abstract**
The concept of Alternative Dispute Resolution its essence is aspects of the advantage, Alternative Dispute Resolution features of the conflict, the concept of mediation and the essence is the basic principles of mediation, the concept of arbitration courts and essence, basic principles and functions of arbitration courts.

**Keywords:** alternative dispute resolution, mediation, mediation purpose, principles of mediation, arbitration court, principles of Arbitration Court.

**Annotatsiya**
Nizolarni muqobil hal qilish tushunchasi, uning mohiyati, avzallik jihatlari, nizolarni muqobil hal qilishning o`ziga hos hususiyatlari, mediatsiya tushunchasi va mohiyati mediatsiyaning asosiy prinsiplari, hakamlik sudi tushunchasi va mohiyati, hakamlik sudining asosiy prinsiplari va vazifalari.

**Kalit so‘zlar:** nizolarni muqobil hal qilish, mediatsiya, mediatsiya maqsadi, mediatsiyaning prinsiplari, hakamlikn sudi, hakamlik sudi prinsiplari.

**Аннотация**
понятие альтернативного разрешения конфликтов его сущность преимущества аспекты, альтернативное разрешение споров особенности голоса гилиша, концепция посредничества и сущность основных принципов посредничества, понятие арбитража и сущность, основные принципы и задачи арбитражных судов.

**Ключевые слова:** альтернативное разрешение конфликтов, посредничество, цель посредничества, принципы медиации, арбитражного разбирательства, принципы арбитражного разбирательства.

Currently, in the legal system of developed foreign countries, the mediation and arbitration court conciliation procedure aimed at solving the dispute in an alternative way without taking it to court is gaining special importance. The introduction and

implementation of real market mechanisms in Uzbekistan also requires the creation of the necessary legal framework that regulates each area of market relations.

In our country to further strengthen democratic reforms, reliably guarantee the rights and freedoms of citizens, ensure the rule of law and social justice. At the current stage of the liberalization of the judicial system, which is an important direction of these reforms, the mediation arbitration courts have established themselves as an institution of alternative dispute resolution that can be trusted by citizens and entrepreneurs and is functioning effectively.

At the same time, the current stage of reforms in this field requires the creation of a unified system of pre-trial dispute resolution in state bodies, the need to turn mediation, arbitration courts and international arbitration into effective alternative dispute resolution institutions that can be trusted by citizens and businessmen.

In the process of covering this article, the methods of logicality, historicity, consistency and objectivity of scientific knowledge were widely used. In this article, methods of alternative dispute resolution, its features today, foreign experiences, the structure and principles of mediation and arbitration courts and their existing shortcomings were studied and analyzed. "Mediation" and "arbitration" laws of foreign countries and " On Arbitration Courts" of the Republic of Uzbekistan dated October 16, 2006 O`RQ-64-O`RQ were determined as a methodological source. At the same time, from the textbook "Mediation-Theory and Practice" of Khakberdiyev Abdumurad Abdusaidovich, Doctor of Philosophy (PhD), Senior Lecturer, as well as "Dispute Resolution" by Doctor of Philosophy, Associate Professor IMSalimova "alternative methods" training manual was widely used.

It is natural for disputes to arise between participants in civil-legal relations. Of course, they can choose the usual way to solve their disputes, that is, they can go to court. Alternatively, they can resolve their disputes before the court, through conciliation methods - mediation, arbitration, international commercial arbitration - which are currently among the methods of alternative dispute resolution (ADR) and are effectively used in foreign countries.

Alternative dispute resolution refers to ways and means of resolving disputes outside the state's judicial system. There is no single classification of NMH methods, below are some of their types.

Alternative conflict resolution methods have developed under the influence of historical, socio-economic and political factors of each society. Resolving disputes by referring to a third party (impartial) goes back to the ancient history of many societies in the world.

The characteristics of alternative dispute resolution methods are the ability of the parties to choose another third party to resolve the dispute, the flexibility of the procedures, that is, the disputing parties can choose and change one or another procedure, the possibility of customization. Making NMH meals informal, the dispute resolution person offering tea or coffee to the parties can add an informal flavor to the meal and foster a spirit of cooperation between the disputing parties. Sometimes a dispute can be resolved quickly by one party apologizing to the other during the Alternative Dispute Resolution process. In this process, the skill of the person chosen to resolve the dispute is of great importance.

Today, in our country, mediation and arbitration of alternative dispute resolution are widely used. Mediation is the resolution of a dispute by referring the parties to an impartial. However, he does not have the right to advise impartial parties and make a decision on the dispute. It only directs the parties to resolve the dispute themselves. Mediation in this form is the essence of mediation recognized in foreign literature. The purpose of mediation is to help the parties to the dispute to resolve their differences independently, to satisfy their mutual demands and to reach an agreement that is beneficial for both parties.

The effectiveness of such conflict resolution is achieved by opening the capacity for cooperation and communication at the expense of future-oriented goal-directed actions of the disputing parties, which helps the disputing parties to save time, money and emotional resources. Therefore, a number of reforms related to the development of the field of mediation are being implemented in Uzbekistan. In particular, the adoption of the law No. ORQ-482 on mediation in the Republic of Uzbekistan on July 3, 2018 was the first step in this regard . According to this law, mediation is carried out on the basis of the principles of confidentiality, discretion, cooperation and equal rights of the parties, independence and impartiality of the mediator. Mediation has several advantages.

First of all, the main difference between the mediation process and the judicial form of protection of rights in state courts is that the mediator does not make any decisions on the essence of the dispute. All decisions in mediation are made only by mutual consent of the parties. Disputes are resolved in court by judges issuing decisions that are binding on the parties and can be enforced in a mandatory manner.

Secondly, due to the large number of cases in the courts and the fact that the consideration of cases lasts for months, resolving disputes through mediation leads to saving time, often disputes over the same case continue to the second and third instance, the losing party appeals against the court documents. does. Due to the fact that the costs of obtaining legal aid are inextricably linked to the duration of litigation,

the speedy resolution of disputes means that mediation is cost-effective.

Thirdly, mediation is considered a variable process, the parties can arrange the process of dispute consideration according to their wishes, free conditions are created for them to discuss the problem. At the same time, the mediator himself helps the parties to find a way to resolve the dispute. In contrast to the publicity, transparency and openness of court proceedings, the mediation process is characterized by confidentiality. All information received from the parties "does not go outside the wall" and all records of the mediator must be destroyed after the termination of the mediator's activity.

Fifthly, court decisions do not always lead to the desired outcome of the parties (at least one party remains dissatisfied with the outcome of the case), and this situation leads to not only voluntary refusal of execution of court decisions, but also mandatory obstruction of execution of court decisions in the future. During the mediation, all decisions are made by mutual agreement of the parties, and both parties undertake to voluntarily implement the decisions made jointly by them.

Sixth, one of the undeniable advantages of mediation is maintaining a good, friendly relationship between the parties. Mediation is especially effective in solving problems related to the division of property, resolving disputes between spouses, parents and children, and resolving labor disputes.

Not only the desire and will of the parties to overcome the disagreement, but also the ability and experience of the mediator is important. Society's demand for mediation led to the fact that 30 years ago, a new profession - mediator's profession - began to be formed in the world. The activities of mediators are aimed at helping to solve the problems, disagreements and conflicts that have arisen. 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 arguments 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.

At this point, the question arises, why is the method of resolving disputes with the help of mediation not widely used today, despite the fact that the Mediation Institute

is useful and economical for the conflicting parties? Of course, there are many reasons for this.

Mediation Institute came to us. Many still do not know what mediation is. Citizens prefer to protect their rights through the courts. Courts are a reliable means of protecting rights, but in today's modern world, it is more effective to use an easy, fast and cheap method of disputes. Today, we can know that the population of Uzbekistan has exceeded 35 million, and the legal literacy of the population has also increased. Of course, this causes an increase in the number of appeals to the courts , as a result of which the term of consideration of court cases is extended. The length of time it takes for the court to consider the case is not only a problem in Uzbekistan. Especially in Italy, it takes an average of 3 years to process a case in the lower courts. If the court decision is appealed, this period will be extended to 10 years. In the UK, 73% of litigants complain that the English court system is outdated and inefficient. It takes at least 161 weeks for the courts in the City of London, and 195 weeks for the courts outside the city. In European countries, even the court itself turns to mediation, because it is considered easier and faster to make a decision in mediation. In European countries, divorce issues are more often resolved in mediation, and in addition to property cases, family issues, it helps to limit the issue to the parties and not bring it to the public and reach a solution to keep the peace. Therefore, the development of the field of mediation is very useful for the state judicial bodies, that is, it leads to a decrease in the pressure on the courts. That is why everyone can access and see the information about the mediation institute in the field of mediation in law enforcement agencies, local state authorities, regional, district, and city judicial bodies. Hanging in places, law enforcement agencies, in local government bodies, Regional, district, city judges offer mediation support to the petitioner, will stimulate the development of the mediation field.

Problem in the field of mediation is not only that this law has just been adopted and most people do not yet know about the field of mediation. The Law on Mediation itself has several gaps and shortcomings. In particular, the mediation agreement is mandatory for the parties, and its implementation is voluntary. Whether or not the mediation agreement can be used as evidence in court is a gap in the law, that is, if the mediation requirements are not met, the judge will make a decision based on the mediation agreement if the plaintiff adds a mediation agreement to his claim. The judge, who has nothing to do in the legislation, can take into account this mediation agreement only on the basis of his confidence.

The decision of the President of June 17, 2020 "On measures to further improve the mechanisms of alternative dispute resolution" to create a unified system of pre-trial

dispute resolution, to fundamentally increase the role of mediation, arbitration courts and international arbitrations, to increase the trust of citizens and entrepreneurs it serves as an important legal basis for becoming award-winning institutions.

The arbitration court is a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes between business entities. The arbitration court resolves disputes based on the laws and regulations of the Republic of Uzbekistan. Arbitration is one of the most effective ways to resolve disputes. Currently, its legal basis has been created.

From the date of entry into force of the law "On Arbitration Courts" in our country, the activity of arbitration courts along with the state (economic, civil) court has been established, and a new important stage of judicial reforms has begun.

Arbitration courts are not a judicial structure of the state court system, but parallel to it and based on the voluntary agreement of the participants and private-legal relations. Arbitral tribunals are not legal entities. The uniqueness and uniqueness of the arbitration court is that its decisions are supported by the power and authority of the state by issuing writs of execution to the arbitration court by the state courts that grant the judicial official powers. As a difference between the independent arbitration courts and the courts of the state system, first of all it is necessary to emphasize the freedom of the participants in the arbitration court to choose procedural and material law norms.

Arbitration courts ensure the independence, honesty, neutrality and high professional competence of the court. Not only lawyers, but also highly qualified experts from various branches of the economy can be arbitrators. They are not appointed, but are chosen by the parties at their discretion.

The arbitral tribunal ensures the speed and impartiality of the proceedings, while at the same time guaranteeing the strict confidentiality of commercial secrets. Almost all legislation on arbitration courts stipulates that the parties can agree on the place of trial (arbitration) at their own will. This means that a mobile session of the permanent arbitration court may be held for the parties .

The essence of arbitration is that the parties have the right to freely choose the judge who will hear their case. The difference between the arbitration court and the state courts is that the case is considered within a month. The arbitration fee paid by the client is usually set at half of the fee paid to state courts.

Both parties come to arbitration to resolve contractual disputes. They enter into an arbitration agreement to have the case heard by an arbitral tribunal. If one of the two parties does not sign this agreement, the arbitration court will not hear the case. The judge starts the case only after the parties have reached an arbitration agreement. If

the client wants the case to be heard in a place suggested by him instead of in the courthouse, the court will take this into account. However, if the other party does not agree to this, the court will reject it and consider the case in the courthouse. The decision will be based on the wishes of the parties.

The main principles of arbitration courts' activity are given in Article 4 of the Law "On Arbitration Courts". However, we can talk about other general principles of civil (economic) litigation also affecting arbitration.

Arbitration is one of the important practical methods of supporting entrepreneurship. After all, its principles fully meet business needs. The basis of the activity of the arbitration courts is the principle of discretion and trustworthiness of the parties in applying to the body of their choice based on the nature of the dispute.

According to Article 28 of the Law on Arbitration Courts, the arbitrator has no right to disclose the information that has become known to him during the arbitration without the consent of the parties to the arbitration or their legal successors. In addition, according to the above norm, the arbitrator cannot be questioned as a witness about the information that became known to him during the arbitration proceedings. This means that the law strengthens the institution of "testimonial immunity" in respect of confidential information.

Based on foreign practice, 95% of all disputes were heard in arbitration courts in Singapore in 2019. Only 5% of disputes were heard in state courts. The fact that the legal basis for regulating the activity of arbitration courts has been established and is being consistently improved in our country is of great importance in guaranteeing the right of citizens and legal entities to freely apply to the courts. If we pay attention to the numbers, in 2020, a total of 1,454 cases were heard in the arbitration court. We can say that it is little. Because the pandemic, along with many other areas, did not affect the work of the arbitration court.

The arbitration court and civil courts are reflected in the following:

- not only criminal cases, but also civil cases are considered and decided by the arbitration court. (local courts hear only legal entity disputes, while civil courts hear only citizen disputes);
- cases are resolved quickly in the arbitration court;
- the main goal is directed to the agreement of the parties and cooperation between the parties is maintained;
- confidentiality of arbitration proceedings is guaranteed by law;
- the parties are not subject to criminal and administrative liability;
- the decision of the arbitration court comes into force from the day of adoption;

- local courts and courts of civil cases do not have the right to examine the circumstances determined by the arbitration court or to reconsider the content of the decision of the arbitration court;
- the amount of the fee of arbitration courts does not exceed half of the state duty that must be paid when it is considered in the court or the court on civil cases;
- in the event that the decision of the arbitration court is not implemented theoretically, it is guaranteed by the Law to be enforced in the appropriate manner.

In conclusion, we can know that mediation and arbitration courts are very effective in alternative dispute resolution. For this reason, further improvement of this field, correction of gaps and shortcomings in the legislation, implementation of measures for the development of these fields remain a necessary condition for building a legal democratic state and protecting the rights and freedoms of citizens.

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