THE CONCEPT AND ROLE OF MEDIATION IN UZBEKISTAN IN THE FIELD OF PROTECTING THE RIGHTS AND LEGITIMATE INTERESTS OF CITIZENS AND LEGAL ENTITIES

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Annotation. The article deals with the protection of violated rights and legitimate interests through the use of mediation, the meaning and place of mediation, confidentiality and neutrality of the intermediary. It is concluded that mediation is an alternative form of pre-trial (out-of-court) or out-of-procedural dispute resolution and conflict resolution to litigation, as well as a set of mechanisms and technologies that provides it and the process of its implementation, voluntarily chosen by litigants.

Key words: mediation, conflict, dispute, confidentiality, mediator, compromise, mediator.

According to the President of the Republic of Uzbekistan Sh.M. Mirziyoyev, we must always remember the words of the First President of the Republic of Uzbekistan Islam AbduganievichKarimov, filled with deep meaning, “Our people first of all need peace and tranquility!”. In today's rapidly changing times, in the face of increasing various threats and challenges, we need to cherish our priceless wealth – peace and tranquility, as the apple of our eye, further strengthen interethnic and interfaith harmony, an atmosphere of mutual respect and kindness in society[1].

The creation and strengthening of a society based on an efficiently operating economy is impossible without the formation of legal mechanisms that ensure the speedy, fair and legal resolution of disputes arising between the subjects of civil circulation[2]. In this regard, no matter how highly the role of state courts in the administration of justice in the field of private law relations is appreciated, one cannot underestimate the importance of the institution of conciliation procedures, the spread of which in the field of protecting the rights and legitimate interests of citizens and legal entities is an indicator of a high level of development of civil society and its connection with the state[3].

In the current period of development of Uzbek society, the importance of protecting violated rights and legitimate interests through the use of conciliation procedures is noticeably updated. This is explained by the fact that social relations in a market economy are characterized by the increasing interaction of the state, their institutions, organizations, as well as individuals in a wide variety of political, economic, cultural and other relations[4]. At the same time, practice shows that in the course of their interaction, these subjects often enter into conflict situations and disputes that require their

[1]Мирзиёев Ш.М. Уверенно продолжим путь национального развития на новом этапе. ИПТД «Узбекистан», 2018. – С.10.
[2]Барышова МВ, Белый ВС, Глущенко ВМ, Ибратова ФБ, Новиков АН, Пронькин НН. Социальное предпринимательство: научные исследования и практика.
[3]Ibratova, F., and F. Esenbekova. "GENESIS AND EVOLUTION OF LEGISLATION ON CONCEPTIONAL PROCEDURES IN THE REPUBLIC OF UZBEKISTAN." *PolishJournalofScience* 38-2 (2021): 20-24.
[4]Ибратова ФБ. Гражданско-правовые проблемы признания банкротами индивидуальных предпринимателей в Республике Узбекистан. Вопросы современной юриспруденции. 2015(5-6 (47)).

resolution[5]. An important role in resolving emerging disputes is played by the historically established legal means of peaceful dispute resolution (medicine, negotiations, mediation, conciliation procedures, international arbitration).

Mediation is a voluntary, special, non-coercive, flexible and, as a rule, closed mechanism for reducing the level of uncertainty and risks between the parties to the dispute and, if possible, resolving the conflict[6].

A. Bennett define mediation as a procedure by which an unbiased third party decides how to resolve the conflict. In the mediation procedure, it is the parties to the dispute, and not the mediators, who determine the terms of the agreement reached. Mediation is about the future behavior of the parties to the dispute rather than the past[7].

Mediation is a procedure in which a mediator, who does not have the authority of a judicial authority, facilitates interaction between the parties to the conflict in order to create conditions for the parties to resolve the conflict.[8]. Additional characteristics of mediation are the confidentiality and neutrality of the mediator[9].While adjudication of a dispute is a formalized process, the outcome of which is binding, mediation offers a flexible approach in which all aspects of a conflict can be considered regardless of their legal significance.

There is such an approach to understanding the very concept of mediation, which assumes that mediation is a method of providing assistance in negotiations, which involves the intervention in the resolution of the dispute by a third party with limited or non-powerful decision-making powers. Mediation, according to this approach, has a long history of informal use in various cultural contexts and is now a professional field. Thus, according to this approach, mediation can also include conciliation procedures, in which the mediator also participates.

However, the more common approach today is that mediation is not a conciliation process, a process in which a third party advises the parties to a dispute with the aim of reaching a compromise that both parties would agree to[10].Also excluded from mediation is arbitration, which is defined as a process in which an impartial third party, after hearing both sides of the dispute, makes a final and usually binding decision.

The basic assumption underlying the concept of mediation is that a dispute is a normal phenomenon, it is dangerous to leave this problem unresolved[11].

The decision as to which type of alternative dispute resolution to use in any particular case depends on the type of dispute, its stage and what type of solution is required. Unlike conciliation and

[5]Ibratova, F. "Problems of a settlement in bankruptcy cases in economic courts." *Norwegian Journal of Development of the International Science* 28-3 (2019).

[6]Ибратова ФБ. ПРАВОВЫЕ ПРОБЛЕМЫ МИРОВОГО СОГЛАШЕНИЯ ПРИ РАССМОТРЕНИИ ДЕЛ О БАНКРОТСТВЕ В ЭКОНОМИЧЕСКИХ СУДАХ РЕСПУБЛИКИ УЗБЕКИСТАН. InПЕРСПЕКТИВЫ РАЗВИТИЯ НАУКИ В СОВРЕМЕННОМ МИРЕ 2019 (pp. 163-170).

[7]*Ridley-Duff R.J., Bennett A.J.* Mediation: developing a theoretical framework for understanding alternative dispute resolution: paper to British Academy of Management, University of Sheffield, 14-16 September. – 2010. - 17 p. - P. 4.

[8]Ibratova FB, Kirillova EA, Smoleń R, Bondarenko NG, Shebzuhova TA, Vartumyan AA. Special features of modern legal systems: cases and collisions.

[9]Esenbekova FT. Esenbekova FT, Okyulov O., Ruzinazarov Sh., Ibratova FB Features of the approval of the world agreement by the economic court: practice and theory. Editorial team. 2019;10(39):90.

[10]Ibratova, Feruza. "Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts." *Middle European Scientific Bulletin* 16 (2021).

[11]Ibratova, F. Bankrotlik to ‘g ‘risidagiishlardaprokurorishtiroki.

arbitration, in mediation the burden of developing and agreeing to an acceptable outcome lies with the parties to the dispute. Mediation can be used at any stage of a dispute[12].

Key elements in peaceful forms of third party intervention in conflict resolution, such as mediation, are the nature and level of consent, and the level of coercion required to reach an agreement.

In order to prevent the conflict from escalating and to resolve the issue, mediation aims to achieve a win-win outcome for both parties, using an approach where both parties feel they are treated equally and receive the same amount of attention, time to speak, preparation and etc.[13]The main thing in this approach is that the mediator is morally impartial within ethical boundaries, that is, the mediator is interested in the mediation procedure itself, but does not have a strong interest in its final result.

Professional mediation services are usually based on an approach whose main and final goal is to solve the problem. This type of mediation practice is based on several key ideas: firstly, it is the idea that the mediator is a neutral intermediary interested only in the process, and not in the essence of the dispute[14];secondly, it is the idea that the polar opposite positions that people take in disputes are due to their basic interests and needs; thirdly, this is the idea that the resolution of the dispute is carried out more efficiently if the personal interests of the parties to the dispute are addressed; and, finally, the idea that the purpose of mediation should be to negotiate a win-win resolution of the dispute in the form of an agreement.

Mediation is an informal procedure that can be adapted to the needs of the parties or to the circumstances of the dispute. Although each mediation procedure is inherently unique in some sense, there are steps in the procedure that take place in almost every case. So, before starting the procedure, the mediator requests a summary of the essence of the dispute in writing (including the facts, the questions that have arisen) from each party. The mediation procedure usually begins with a joint meeting with the presence of all parties. The mediator explains to the parties his role in the procedure, and also notes that this procedure is confidential[15]. The issue then begins to be discussed, whereby the mediator may allow the parties to communicate directly with each other. The duration of the mediation procedure depends on the complexity of the dispute under consideration.

Voluntary dispute resolution methods, such as mediation, are effective in many situations, since the parties to the dispute are given the opportunity to be directly involved in the development of dispute resolution options, which increases the possibility of satisfying the interests of the parties, in contrast to the decision made as a result of the trial of the case. Some researchers believe that in addition to transforming the relationship of the parties and meeting their needs, the increase in the use of alternative dispute resolution methods can lead to the revival of local communities[16].

As many scholars have argued, mediators with experience in litigation and arbitration have an advantage because they can provide the parties with an informed opinion about what the judge or arbitrator would decide if the parties approached them for resolution. spore. In addition, mediators must have well-developed communication skills[17]. The mediation procedure should be conducted

[12]Ibratova, F. (2021). BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS. *Norwegian Journal of development of the International Science*, (2021), 45.
[13]Ibratova, F. TERMS IN CIVIL LAw AND ThEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN ThE REPUBLIC OF UZBEKISTAN.
[14]БРЯНСКАЯ, О. Л., etal. Инновации, тенденции и проблемы в области экономики, управления и бизнеса. 2020.
[15]ДУДНИК, Данил Владимирович, etal. Научные основы финансовой, кредитно-денежной и ценовой политики. 2021.
[16]БРАСЛАВЕЦ, Олеся Николаевна, etal. Человек как субъект общественных изменений: социальные, гуманитарные и психологические проблемы. 2021.
[17]Zh, Kalkanova, et al. "LEGAL ISSUES OF CONCLUSION OF AGREEMENT ON ENSURING THE OBLIGATIONS OF THE DEBTOR IN JUDICIAL SANATION." *Sciences of Europe* 83-3 (2021): 22-25.

on neutral territory, in a room that ensures the confidentiality of this process, in addition, the correct placement of participants should be carried out, for example, so that the parties are not directly opposite each other, but an atmosphere of cooperation is created.

The classical approach to the role of the mediator assumes that the mediator must make decisions and provide his opinion on the actual circumstances of the disputes and their possible outcomes, using predetermined criteria for evaluating the evidence and arguments presented by the parties[18]. The tasks of a mediator applying an evaluative approach to the mediation procedure include finding the facts by correctly assessing the evidence, that is, assessing its persuasiveness, distributing the burden of proof, identifying and applying relevant regulations, rules or customs, and developing an opinion.

Ultimately, one can say that the evaluative approach contributes to the positioning and polarization of the parties, which is contrary to the goals of mediation. A rights-based approach focuses on the legal rights of the parties and seeks to reach a solution that meets the relevant legal criteria of the dispute in a way that is consistent with decisions taken by the courts in similar cases.

The stakeholder approach focuses on the underlying needs or interests of the parties; this approach implies a wider range of possible solutions to the dispute, which concerns the main interests and activities of the parties. As a result of this approach to the mediation procedure, a solution can be developed that satisfies all parties to the dispute, but does not comply with legal norms.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters states that "mediation" means a structured process, whether or not it is referred to as such a name in which two or more parties to a dispute seek to independently and voluntarily reach an agreement to settle their dispute with the help of a mediator. Such a process may be initiated by the parties or proposed or ordered by a court or provided for by the law of a Member State. It includes mediation conducted by a judge who is not responsible for conducting any litigation in respect of the dispute in question. This precludes attempts by the court or trial judge to settle the dispute in the course of the proceedings relating to the dispute in question"[19].

We believe that this definition is more detailed than is usually given in scientific publications, but, nevertheless, suffers from a number of shortcomings that determine its unacceptability. Among such shortcomings should be attributed the lack of depth, the reduction of the concept of "mediation" only to the concept of a process (which, however, is already obvious), in which two parties, through the mediation of a third, resolve their disputes. But from this definition it is difficult to exhaustively understand the differences between mediation and the actual litigation, where there are also litigants and a third party provides some "help".

Based on the foregoing, we believe that mediation is an alternative to litigation form of pre-trial (out-of-court) or out-of-procedural dispute resolution and conflict resolution, as well as a set of mechanisms and technologies that provides it and the process of its implementation, voluntarily chosen by litigants, based on a solidarity desire to reach an agreement a third party (an impartial and neutral mediator), chosen by mutual agreement by the litigants to provide professional comprehensive assistance in a fair settlement of the conflict and the litigants who have resorted to mediation to enter into a stable and constructive dialogue.

[18]Yunusova, M., and F. Ibratova. "LEGAL ISSUES OF THE WORLD AGREEMENT IN BANKRUPTCY AS A PROCEDURAL INSTITUTE." *NorwegianJournalofDevelopmentoftheInternationalScience* 62-2 (2021): 10-14.

[19]Directive № 2008/52/ECof the European Parliament and of the Council of 21 May 2008 on certain aspects of médiation in civil and commercial matters // <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0052:EN:NOT>.

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