

## INCREASING THE ROLE OF THE MEDIATION INSTITUTION IN CONFLICT RESOLUTION

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### ABSTRACT

In the context of the globalization of modern society, the issue of resolving disputes by mutual alternative agreement is of particular importance. The mediation procedure helps the parties to maintain partnership relations, solve problems in social spheres such as family relations, social sphere, economic sphere, corporate and inter-corporate disputes, financial and banking sector. The article focuses on issues of increasing the role of the mediation institution in conflict resolution.

**Keywords:** mediation, purpose of mediation, Rental Mediation Service, Small claims mediation service, court, law, dispute.

### INTRODUCTION

According to the current legislation, relations in the field of mediation are governed by the Law of the Republic of Uzbekistan "On Mediation", the Code of Civil Procedure, the Code of Economic Procedure, the Decision of the President of the Republic of Uzbekistan No. PQ-4754 of June 17, 2020 and regulated by other legal documents.

Mediation is a method of resolving the dispute with the help of a mediator based on their voluntary consent in order to reach a mutually acceptable solution.

Today, as a result of reforms in the field of mediation:

- the notary was authorized to act as a mediator in disputes arising from notarial actions;

- More than 700 mediators were trained at the Lawyers Training Center under the Ministry of Justice. 471 of them are notaries;<sup>1</sup>

- As of October 25 of this year, 297 people were included in the register of professional mediators maintained by the Ministry of Justice of the Republic of Karakalpakstan, regional and Tashkent justice departments;<sup>2</sup>

<sup>1</sup> <http://uzmarkaz.uz/uz/news/yuristlar-malakasini-oshirish-markazida-700-dan-ortiq-mediator-tajyorlandi>

<sup>2</sup> <https://www.minjust.uz/uz/interactive/mediatory/>

- **The Tashkent Mediation Center** non-governmental non-profit organization was established at the Tashkent State University of Law and the Center for Professional Development of Lawyers;

- it was allowed to establish **the Mediation Center** as a non-governmental non-profit organization based on mutual association of professional mediators engaged in alternative dispute resolution.

The institution of mediation was introduced in order to reduce the volume of work in courts, to resolve disputes before the court. However, the high volume of work in the courts remains.

362,611 cases were heard by civil courts in the first instance during the 9th month of 2021, while in 2020, this figure was 291,132. The indicators in 2019 (276,937) were even lower.<sup>1</sup>

In particular, it is observed that the workload of the court on family disputes has increased significantly compared to last year.

71,468 cases were heard by civil courts in the first instance regarding family disputes during the 9 months of 2021, while in 2020 this figure was 67,775.<sup>2</sup>

Based on the analysis of the legislative documents aimed at regulating mediation activities, the following situations that have a negative impact on the use of mediation in resolving disputes were identified:

1) mediation can be used only if there is a mutual desire of the parties. That is, the use of mediation is based only on the will of the parties.

Law of the Republic of Uzbekistan "On Mediation". According to Article 15, mediation is used based on the wishes of the parties.

If all the disputing parties do not agree, mediation cannot be used. The consent of one of the disputing parties is not a basis for the use of mediation.

2) the law does not provide for the authority of the court to appoint mediation in the resolution of disputes when accepting claims for consideration in court. In particular, according to Article 203 of the Civil Procedure Code, at the stage of preparing the case for trial, the judge determines the possibility of a settlement agreement or mediation agreement between the parties and is limited to explaining their legal consequences.

For this reason, disputes that can be resolved on the basis of mediation are forced to be considered by the judge in a court hearing without sending them to mediation.

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<sup>1</sup> [https://stat.sud.uz/file/2021/fib/fib\\_2021\\_9.pdf](https://stat.sud.uz/file/2021/fib/fib_2021_9.pdf)

<sup>2</sup> [https://stat.sud.uz/file/2021/fib/fib\\_2021\\_9.pdf](https://stat.sud.uz/file/2021/fib/fib_2021_9.pdf)

3) The number of professional mediators included in the register of professional mediators is very small in some regions and may not meet the needs of the population for professional mediators.

As of October 25 of this year, there are 6 professional mediators in Khorezm region and 7 in Fergana, Samarkand and Surkhandarya regions.

4) mechanisms encouraging the use of mediation in resolving disputes are not provided for in the legislation. In particular, there are no regulations on the state reimbursement of the professional mediator's fees for disputes with a low value of the claim or on reasonable determination in the legislation.

All of the above cases are the reason why disputes are resolved not by mediation, but by court. This leads to an increase in the volume of cases in courts.

In the first half of 2020, 92,374 lawsuits were processed by civil courts, 61 of them, i.e. 0.07%, were not processed due to the conclusion of a mediation agreement.

In particular, according to the laws of the **US** states of Missouri<sup>1</sup>, Minnesota<sup>2</sup> and Florida<sup>3</sup>, it is required to go through the mediation stage before the lawsuits related to the dispute are heard in court. Mediation of the dispute is not required in certain cases provided by the legislation or when a private mediator is involved.

Under the law of other states, the court has the authority to appoint mediation of the dispute<sup>4</sup>. Mediation can be appointed at the request of one of the parties or at the independent initiative of the court.

Also, a judge (Judge Mediator) who is not directly involved in the dispute can resolve disputes as a mediator.<sup>5</sup>

Also, under the laws of the province of Ontario, **Canada**, there is a procedure for using mandatory mediation before resolving disputes in court.<sup>6</sup> This procedure does not apply to bankruptcy, rent, insurance, construction and inheritance disputes and other cases provided by law.<sup>7</sup>

Mediator's fees are paid in equal amounts by the parties, with the exception of persons with a legal aid certificate.

For information: a legal aid certificate is issued to low-income citizens, who can use the services of a lawyer for free through this certificate.

Also, the maximum amount of fees paid to the activities of mediators included in the register of mediators is determined by the legislation.

<sup>1</sup> <https://www.mow.uscourts.gov/mediation-and-assessment-program-map>

<sup>2</sup> <https://www.mnd.uscourts.gov/sites/mnd/files/LR-16-5.pdf>

<sup>3</sup> <https://www.flsd.uscourts.gov/sites/flsd/files/2020-LocalRulesEffective12-01-2020-FINAL.pdf>

<sup>4</sup> <https://www.justice.gov/archives/olp/file/827536/download>

<sup>5</sup> [https://www.cit.uscourts.gov/sites/cit/files/Guidelines\\_Mediation.pdf](https://www.cit.uscourts.gov/sites/cit/files/Guidelines_Mediation.pdf)

<sup>6</sup> <https://www.ontario.ca/laws/regulation/900194#BK686>

<sup>7</sup> [https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact\\_sheet\\_mandatory\\_mediation.html](https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact_sheet_mandatory_mediation.html)

Compulsory mediation was introduced in **Italy** on the basis of the Presidential Decree "On the Application of Article 60 of the Law "On Mediation" aimed at regulating civil and economic disputes" adopted in 2010.<sup>1</sup> According to it, in particular, lawsuits on disputes arising from real estate, inheritance, family transactions, lease, loan, business lease, compensation for damage caused by driving a vehicle, insurance, banking and financial contracts mandatory mediation process is required before submitting an application.

According to article 1734 of the **Belgian** Code of Civil Procedure, before accepting the claim for consideration, the judge may, at the request of one of the parties or on his own initiative, decide to consider the dispute on the basis of mediation.<sup>2</sup> If all the parties object to the settlement of the dispute by mediation, the judge cannot make a decision on consideration of the dispute on the basis of mediation.

In New South Wales, **Australia**, compulsory mediation can be initiated by a court.<sup>3</sup> The court, at the request of one of the parties or on its own initiative, regardless of the consent of the parties, has the authority to make a decision on consideration of the dispute on the basis of mediation.

There are also private and court-annexed forms of mediation. Mediation offered by the court is carried out by registrars and officers of the court. These employees are qualified mediators.<sup>4</sup> The parties do not have the right to choose the court officer who participates in the mediation.

Mediation proposed by the court is conducted in private and the date of mediation is included in the Court List.

In addition, in a number of foreign countries, in particular, Great Britain, Canada<sup>5</sup>, New Zealand<sup>6</sup>, Singapore, mediation services for certain types of disputes are provided free of charge.

In particular, in the UK, several free public mediation services have been introduced to increase the use of mediation in dispute resolution.

In particular, to resolve disputes where the amount in dispute does not exceed 10,000 pounds, mediator services can be used free of charge through the Small claims mediation service<sup>7</sup>.

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<sup>1</sup> <https://www.camera.it/parlam/leggi/deleghe/10028dl.htm>

<sup>2</sup> <http://www.droitbelge.be/codes.asp#jud>

<sup>3</sup> [https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_practiceprocedure/sco2\\_mediationinthesc/sco2\\_mediationinthesc.aspx](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_practiceprocedure/sco2_mediationinthesc/sco2_mediationinthesc.aspx)

<sup>4</sup> [https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_practiceprocedure/sco2\\_mediationinthesc/court\\_annexed\\_mediation.aspx#costs](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_practiceprocedure/sco2_mediationinthesc/court_annexed_mediation.aspx#costs)

<sup>5</sup> <https://www.ontario.ca/page/family-mediation>

<sup>6</sup> <https://www.cab.org.nz/article/KB00000006>

<sup>7</sup> <https://www.gov.uk/guidance/small-claims-mediation-service>

Also, the Rental Mediation Service has been introduced for disputes related to housing.<sup>1</sup>

Mediators for the above state mediation services are appointed by the Courts and Tribunals Service of the UK Ministry of Justice (HM Courts and Tribunals Service).

In addition, the Civil Mediation Council has established reasonable rates for mediation services for disputes where the value of the dispute is less than £50,000.<sup>2</sup>

The Civil Mediation Council is the largest registration body for mediators in Great Britain and Wales.<sup>3</sup>

In Singapore, mediation services provided by the State Courts' Court Dispute Resolution Cluster are provided free of charge, except for cases in the District Courts.<sup>4</sup>

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For information: The Civil Mediation Council is the largest registration body for mediators in Great Britain and Wales.

In **Singapore**, mediation services provided by the State Courts' Court Dispute Resolution Cluster are provided free of charge, except for cases in the District Courts.

In particular, mediation of claims heard in the Magistrate's Courts, small claims disputes, labor disputes tribunals (the Small Claims Tribunals, Employment Claims Tribunals and Community Disputes Resolution Tribunals). can be transferred. Mediation is free of charge. Mediation requires the consent of all parties.

**Conclusion.** Taking into account the above, it is suggested to implement the following measures based on advanced foreign experience:

1) The following issues are proposed to be considered by a working group composed of qualified experts of the Supreme Court of the Republic of Uzbekistan, the

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<sup>1</sup> <https://www.gov.uk/guidance/rental-mediation-service>

<sup>2</sup> <https://civilmediation.org/fixed-fee-scheme/>

<sup>3</sup> <https://civilmediation.org/who-are-the-cmc/>

<sup>4</sup> <https://www.judiciary.gov.sg/alternatives-to-trial/mediation/what-is-mediation>

General Prosecutor's Office, the Ministry of Justice, the Legal Training Center, professional mediators and lawyers, and members of the scientific community:

- separate areas of law, in particular labor, inheritance, divorce, debt and the use of mandatory mediation in resolving disputes under the credit agreement and contract;

- at the request of one of the parties or, in necessary cases, at the independent initiative of the court, to introduce the procedure for appointing mediation in resolving the dispute;

- introduction of mechanisms related to state reimbursement or rational determination of fees for the work of professional mediators in connection with disputes where the value of the claim is not high;

- to study the problems of establishing the activities of professional mediators in all districts and cities;

2) The Institute of Legislative Problems and Parliamentary Research under the Oliy Majlis of the Republic of Uzbekistan, the Higher School of Judges under the Supreme Council of Judges, the Legal Policy Research Institute under the Ministry of Justice, Tashkent State Law University and the Lawyers Training Center in cooperation with the Tashkent Mediation Center in Uzbekistan conducting joint research on the issues of mediation development;

3) to organize an international conference on the issue of the use of mandatory mediation in the resolution of disputes in cooperation with qualified experts from foreign countries, in particular, the USA, Canada and Italy, where there is a procedure for the use of mandatory mediation in the resolution of disputes arising from civil legal relations ;

4) to conduct a survey among professional mediators, lawyers and judges regarding the effectiveness of the use of mandatory mediation in resolving disputes based on the level of development of the legal consciousness and culture of the population.

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