



NEW INSTITUTION: RESOLVING LABOUR DISPUTES THROUGH MEDIATION

**Rakhimov Miryoqub Aktamovich,
Tashkent state university of law, Tashkent, 100047, Uzbekistan**

Annotation: the article analyzes the essence of the mediation procedure and its applicability to labor disputes, reveals the advantages of this method of resolving conflicts in the labor sphere, and also identifies some problems of its implementation. The question of the difference between decision of court, the resolution of a dispute in the labor dispute committee and the mediation procedure is raised. Based on the results of the study, the author concludes that the inclusion of mediation in the labor dispute settlement system meets the goals of increasing the stability of labor relations and encourages employees and employers to find a balance of interests.

Keywords: mediation procedure, settlement of disputes, labor law, labor disputes, individual disputes, mediation agreement, pre-judicial procedure for the consideration of labor disputes, conciliation procedures.

Аннотация: мазкур мақолада медиация жараёни ва уни меҳнат низоларида қўллашнинг моҳияти таҳлил қилинади, меҳнат соҳасидаги низоларни ҳал қилишнинг ушбу усуlining афзалликлари очиб берилади, шу билан бир қаторда медиация тартибини амалиётга жорий этишнинг айрим муаммолари таҳлил қилинади. Бундан ташқари, меҳнат низоларни судларда, меҳнат низолари комиссияларида ҳамда медиация тартибида кўришнинг ўзаро фарқли жиҳатлари очиб берилади. Ўтказилган тадқиқот яқунлари бўйича муаллиф меҳнат низоларини ҳал этишида медиацияни жорий этиши орқали меҳнат муносабатлари барқарорлигини таъминлаш ҳамда ходимлар ва иш берувчилар манфаатлари мувозанатини самарали йўлга қўйиши юзасидан муайян хулосалар ишлаб чиқилади.

Калит сўзлар: медиация жараёни, низоларни ҳал қилиш, меҳнат қонунчилиги, меҳнат низолари, яқка меҳнат низолари, медиация келишув, меҳнат низоларини судгача ҳал қилиш тартиби, келишув жараёни.

Аннотация: в статье анализируются суть процедуры медиации и применимость ее к трудовым спорам, раскрываются преимущества данного способа урегулирования конфликтов в трудовой сфере, а также определяются некоторые проблемы ее внедрения. Поднимается вопрос о разнице между решением спора в комиссии по трудовым спорам, судах и процедурой медиации. По итогам проведенного исследования автор делает вывод, что включение медиации в систему урегулирования трудовых споров, отвечает цели повышения стабильности трудовых отношений, а также стимулирует работников и работодателей к поиску баланса интересов.

Ключевые слова: процедура медиации, урегулирование споров, трудовое законодательство, трудовые конфликты, индивидуальные споры, медиативное соглашение, внесудебный порядок рассмотрения трудовых споров, примирительные процедуры.

1. Introductory remarks.

The intensive integration of our economy into the world economy requires the introduction of new efficient institutions that regulate market relations. Of course, disputes and disagreements arise between employee and employer. The use of mediation in the legal system of Uzbekistan will allow the parties to save time and money, and most importantly to maintain trust. The Law of the Republic of Uzbekistan “On Mediation” was adopted by the Legislative Chamber on June 12, 2018 and approved by the Senate on June 28, 2018. The law came into force on January 1, 2019. This document regulates relations in the field of mediation. The law was developed as part of a program of comprehensive measures to further reform the

judicial and legal system, strengthening the guarantees of reliable protection of the rights and freedoms of citizens, approved by presidential decree on October 21, 2016.

Main goal of this law is to create legal conditions for the development of alternative dispute resolution methods with the participation of independent mediators, as well as diminishing the workload of courts. Mediation is applied to disputes in civil law relations, in the sphere of individual labor disputes and disputes in family law relations. According to this law mediation should be conducted on the basis of the principles of legality, voluntariness, confidentiality, cooperation and equality of the parties, independence and impartiality of the mediator. There is conciliation procedures in Uzbekistan similar to mediation. For example, this is the activity of citizens' self-government bodies to reconcile the conflicting parties. For a long time, aksakals of makhallas carried out a mission to resolve conflicts between neighbors, family members, etc. Disputes between economic entities, not bringing to court, considered arbitration courts. The time has come at the legislative level to introduce the institution of mediation, to widely practice the settlement of disputes in the civil and economic legal field using alternative procedures.

In this regard, M.Mamasiddikov said that indeed, mediation is a process which is confidentiality based on a voluntary, non-binding, a dispute arising from contractual and legal relationships is resolved by neutral third party through mutual compromise. A neutral third-party mediator is not a judge or arbitrator, not accept any independent decision by arising dispute [1]. "Mediation" is a new concept for our practice, and it is a process of reconciliation between the two parties [2]. Mediation is a way of resolving a dispute through a mediator's support based on voluntary consent of the parties [3].

Mediation as part of alternative dispute resolution (ADR) instruments is, in general, a completely unregulated field, as far as legal provisions are concerned. Its definitions in legal literature focus on "fast", "flexible" and "efficient" procedures, and reference normally is made to quick solutions in a networking and electronically working world. It also is said to work in favour of "cooperation instead of confrontation" and of a "consense-oriented policy understanding" [4].

If there was a universal understanding of what mediation is, we can partly fulfill the aims and objectives of the paper. Generally, researchers consider mediation a form of third party "assisted negotiation process" [5].

As it has been said, mediation is the process whereby an independent third party acts as a facilitator to bring about an agreement between the disputing parties as to the terms of a settlement of the dispute. The parties negotiate the terms of a settlement agreement between themselves, with the assistance and guidance of the mediator.

2. Mediation in solving labor disputes.

According to the Labour code of Uzbekistan there are two types of labor disputes one of them is individual labor disputes and another is collective labor disputes. It should be note that individual labor disputes are disagreements between the employer and the employee regarding the application of legislation and other labor regulations as well as working conditions stipulated by the employment contract.

In accordance with Article 260 of the Labor Code individual labor disputes are considered by labor dispute commissions and district (city) courts [6]. Employee has the right, at his or her choice, to apply to the labor dispute commissions or directly to the court. The procedure for the consideration of individual labor disputes is regulated by the Labor Code, and the procedure for handling cases of labor disputes in district (city) courts is determined, in addition, by the Civil Procedure Code of the Republic of Uzbekistan.

Table 1. The distinguish of Judicial process, Labor dispute commissions and Mediation

№	Judicial process	Labor dispute commissions	Mediation
1.	Judicial process is an adjudicatory process where a third party (judge) decides the outcome	Labor dispute commission is part of alternative dispute resolution process where commission solves the dispute between the parties.	Mediation is a negotiation process and not an adjudicatory process
2.	The decision is binding on the parties	A binding decision of labor dispute commission is reached only if representatives of the employer and the trade union committee arrive at a mutually acceptable agreement.	A binding settlement is reached only if parties arrive at a mutually acceptable agreement
3.	Procedure and decision are governed, restricted	Procedure and decision are regulated by Labor Code	Procedure and decision are not governed, restricted

4.	Decision is appealable	Decision is appealable during the 10 days	Decree in terms of the settlement is final and is not appealable
----	------------------------	---	--

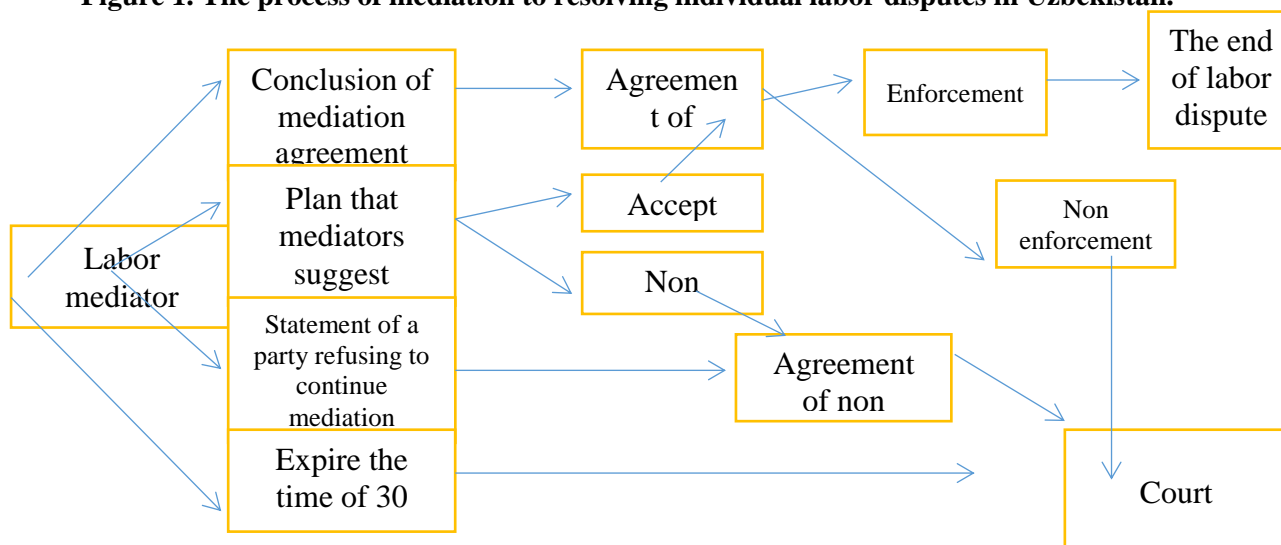
Mediation is defined as process where the parties to a dispute in labour relations: the employer and the labour union – invite a neutral third party, the mediator, to help them resolve their differences. This mediator has no power of decision concerning the conflict between the parties, but helps to find and reach a mutually acceptable and voluntarily reached solution. The mediator supports both parties by special negotiation skills and techniques and does not solve the dispute by authoritarian means.

In accordance with the Law of the Republic of Uzbekistan “On mediation” mediation is applied on the basis of the will between the employee and the employer. Mediation can be applied out of court, in the process of consideration of the dispute in court, before the court is removed to a separate (advisory) room for the adoption of a judicial act. The fact of participation in mediation cannot serve as evidence of admission of guilt. In cases stipulated by law, the authorized state body may, having postponed the proceedings, set a deadline for the mediation procedure. When conducting a mediation procedure, direct intervention by a state authority is prohibited. The specifics of the mediation procedure after the initiation of the proceedings in court is determined by procedural legislation. The mediation agreement reached by the parties during the mediation procedure during the trial, during the consideration of the dispute by the authorized state body, is immediately sent to the court or to the authorized state body. When a dispute is resolved by a mediation agreement in the mediation procedure, the paid state fee is refundable. The mediation procedure begins on the day the parties conclude an agreement on the mediation procedure. The agreement on the mediation procedure is drawn up in writing form. The agreement on the mediation procedure must contain the following information: about the parties, about the subject of the dispute, on the procedure of the mediation procedure, mediator, obligations agreed by the parties, terms and conditions for their implementation, the language, place and date of the mediation procedure, about the duration of the mediation procedure [7].

During the mediation procedure, the limitation period is suspended. For the mediation procedure, the parties, by mutual agreement, choose one or several mediators. Mediation procedure is established, as a rule, by an agreement on the mediation procedure. When conducting a mediation procedure, the mediator does not have the right to place any of the parties in an advantageous position, nor detract rights and legitimate interests of one of the parties.

The duration of the mediation procedure is determined by the agreement on the mediation procedure. At the same time, the mediator and the parties must take all possible measures to ensure that the mediation procedure is completed within a period of not more than thirty days. If necessary, by mutual agreement of the parties, the period of the mediation procedure may be extended up to thirty days.

Figure 1. The process of mediation to resolving individual labor disputes in Uzbekistan.



3. The advantages and disadvantages of mediation in resolving labor disputes.

When we talk about the advantages of mediation it should admit that mediation is as part of alternative dispute resolution instruments as well as it is a cost effective and efficient mechanism for resolving disputes. There are many positive sides of mediation in labor relation. They are followings:

The procedure is speedy, efficient and economical.

The procedure is simple and flexible. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day to day activities.

The process facilitates better and effective communication between the parties which is crucial for a creative and meaningful negotiation. Mediation helps to maintain relationships between the parties.

Mediation is a fair process. The mediator is impartial, neutral and independent.

Mediation is also confidential in nature. It means that statements made during mediation cannot be disclosed in civil proceedings or elsewhere without the written consent of all parties.

Despite the aforementioned potential benefits of mediation, it is necessary to acknowledge that mediation also has drawbacks. The main disadvantages of mediation are the following:

Cases in which parties do not want to settle the case in mediation and prefer to go to courts. Parties may prefer to go to courts rather than settling a case in mediation in the following situations; where all parties' interests are exclusive and they can only be satisfied by a complete victory.

Problems related to the voluntary nature of mediation. Parties may distrust the proposal of the other party to solve the conflict in a particular procedure.

Lack of power of mediation for imposing a final solution. Mediation is not an appropriate means for any or every kind of disputes, therefore, mediation cannot substitute courts completely.

4. Concluding remarks.

All in all, mediation can be a proper means to improve access to justice if the system is designed according to the legal guarantees for fair mediation and attending to the conditions for effective mediation. In Uzbekistan legal system generally mediation is considered as new part of alternative dispute resolution instrument in labor disputes. That's why, it is infancy and not popular. Most disputes in general and labour disputes in particular reach the courts.

What measures, in the opinion of the authors of the article appear to be the most necessary to promote the ideas of mediation in Uzbekistan?

Firstly, the government should give education programs helping employees, employers and unions change their minds of mediation. When they understand advantages of mediation, they will accept mediation for managing labor disputes.

Secondly, the government provide valuable supports for many mediation initiatives such as subsidies mediation programs and projects for development of private mediation.

Thirdly, it is necessary to introduce compulsory study of the basics of mediation in Tashkent State University of Law, and the corresponding disciplines should be taught starting from the second course. Special programs consist of foundation course in which mediator is taught in an interdisciplinary context drawing from legal, communication and psychological theories.

References:

1. M.Mamasiddikov. *Solving disputes out of court helps to reduce workloads in the courts.* 30.09.2013. [Electronic resource]. – Access mode: <http://huquqburch.uz/uz/article/2391>.
2. R.Rasulov. *Mediation is a compromise path.* 22.11.2018. [Electronic resource]. - Access mode: <http://huquqburch.uz/uz/article/6931>.
3. A.Abdumajidova. *Mediation and mediator.* 13.01.2019. [Electronic resource]. - Access mode: <http://huquqburch.uz/uz/article/7113>.
4. Hans-Juergen Zahorka *Mediation in Labour Relations: What Can Be Learned From the North American and EU Example? Labour Legislation and Arbitration Project. EuropeAid/113649/C/SV. Annex 5. – P.2.*
5. C.H.Spurin (2002, 10 18). *The role of experts in alternative dispute resolution (ADR). Autumn conference 2002 of the society of expert witnesses, pp. 1–10.*
6. *Labor Code of the Republic of Uzbekistan (Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1996, Appendix № 1, 1997, № 2, Article 65, of 10.01.2019, № 03/19/514/2450).*
7. *Law of the Republic of Uzbekistan "On mediation" (The national database of legislation, dated 04.07.2018, № 03/18/482/1447).*