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THE CONCEPT OF ALTERNATIVE DISPUTE RESOLUTION METHODS AND THE LEGAL NATURE OF EXISTING INSTITUTIONS (MEDIATION AND ARBITRATION COURT) IN PRACTICE

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ANNOTATION

In this article, alternative methods of conflict resolution: specific features of the analysis of national and foreign experience are mentioned. The concept of alternative methods of conflict resolution, methods, its importance, formation process, positive and negative aspects are highlighted.1Alternative methodsqof dispute1resolution: mediation, arbitration1are analyzed. The scope of application of these methods, i.e. individual labor disputes, disputes arising in connection1with the implementation1of entrepreneurial1activities,1individual labor disputes1and disputes arising in family1legal relations, as well as international standards and the advanced experience1of some foreign1countries, and the positive aspects of the national legislation suggestions and recommendations aimed at implementation of the system and improvement of the legislation are given.

Keywords: dispute, alternative, settlement, arbitration, arbitral tribunals, mediation, negotiated agreement.

ANNOTATSIYA

Mazkur maqola- nizolarni hal qilishning muqobil usullari: milliy va xorijiy tajriba tahlilining o‘ziga xos xususiyatlari keltirib o‘tilgan. Nizolarni hal -qilishning muqobil -usullari tushunchasi, usullari, uning ahamiyati, shakllanish jarayoni, ijobiy va salbiy jihatlari yoritilgan. Nizolarni hal qilishning muqobil usullari: mediatsiya, hakamlik, arbitraj sudlari tahlil qilingan. Ushbu usullarni qo‘llanish doirasi yani yakka mehnat nizolar tadbirkorlik faoliyatida yuzaga keladigan nizolar va oilaviy huquqiy munosabatlatda kelib chiqadigan nizolar shuningdek, xalqaro standartlar va ayrim xorijiy davlatlarning ilg‘or tajribasi o‘rganilgan holda ijobiy jihatlarini milliy qonunchilik tizimiga implementatsiya qilish va qonunchilikni takomillashtirishga qaratilgan taklif va tavsiyalar keltirib o‘tilgan.

Kalit so’zlar: nizo, muqobil, hal etish, hakamlik, arbitraj sudlari, mediatsiya, muzokara kelishuv

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АННОТАЦИЯ

В данной статья упоминаются альтернативные методы разрешения конфликтов: особенности анализа отечественного и зарубежного опыта. Освещены понятие альтернативных методов разрешения конфликтов, методы, их значение, протсесс формирования, положителные и отритсателные стороны. Анализируются альтернативные способы разрешения споров: медиатсия, арбитраж. Сфера применения этих способов, то ест индивидуалных трудовых споров, споров, возникающих в связи с осуществлением предпринимателской деятелности, индивидуалных трудовых споров и споров, возникающих1в семейных правоотношениях, а также международных стандартов и передового опыта некоторых зарубежных стран, и приведены положителные стороны предложений и рекомендатсий натсионалного законодателства, направленных на внедрение системы и совершенствование законодателства.

Ключевые слова: спор, альтернатива, урегулирование, арбитраж, третейские суды, медиация, мировое соглашение.

As people interact in any society, in order to regulate these relations, it is necessary to create norms related to certain rights and obligations. Even if we look at history, even before the creation of the state, laws and regulations embodied the rights and obligations of the public or representatives of certain strata. Today, as a result of the development of social and economic relations, the legal consciousness and legal culture of citizens are developing. Therefore, the violation of certain laws and regulations means that the rights of society or other persons will be harmed. Such situations, in turn, make it a task for the states to establish institutions that protect the rights of citizens. Currently, resolving all arising disputes through the courts can increase the volume of work not only for the parties, but also for state courts. therefore, it is considered necessary to pay attention to the issue of developing methods of resolving disputes through the court. first of all, it significantly reduces the number of claims to state courts, and secondly, it encourages individuals and legal entities to resolve disputes faster. Generally speaking, Alternative Dispute Resolution is a set of practices and methods aimed at resolving legal disputes between parties out of court . Alternatively, methods of alternative dispute resolution are procedures, methods, and mechanisms aimed at out-of-court settlement of disputes arising between participants in legal relations , established by law, agreement of the parties, or local documents . Today, even in our country, great importance is attached to alternative dispute resolution methods. Alternative dispute resolution methods are

less formal than court proceedings and can significantly ease the burden on the court system in resolving disputes.

Speaking about the concept of alternative dispute resolution, first of all, it is important to understand each word separately in order to accurately interpret or apply the words "alternative dispute resolution".

In particular, if we talk about the concept of "alternative", in the legal literature it is defined as "Alternative is a choice that can be chosen or have one of two or more possibilities". This means that dispute resolution mechanisms are guaranteed at the pre-trial stage, in addition to the official court process.

Another important word 1 used with ADR is 'dispute', where conflicts in practice create a specific dispute.

Another element of alternative dispute resolution is "resolution". Resolution is the act of finding a solution or trying to find a solution to a problem or dispute between the parties. "Resolution" is a complex process that occurs between the parties - by finding the most appropriate way to reach an agreement. Generally speaking, the mechanism of alternative dispute resolution is the process of resolving various disputes before the court or during the court process.

According to some legal literature, "Methods of alternative dispute resolution" are used in two different meanings. The first meaning means that the parties agree to end the case without a court decision, and the second meaning means one of the methods chosen by the parties to solve their problems outside of the official court process, i.e. arbitration, mediator or others. It is no exaggeration to say that arbitration, arbitral tribunals, conciliation agreements and mediation institutions have become the main methods of dispute resolution not only in our country, but also worldwide . These processes necessarily mean that the legislation on the areas regulated by these institutions should be improved.

Today, even in the CIS countries, the interest in the methods of pre-trial and out-of-court dispute resolution is rapidly increasing year by year. In Russia, alternative dispute resolution appeared as a separate concept in the mid-1990s. According to Russian legal scientist EAVinogradova, "Interest in out-of-court dispute resolution procedures is primarily manifested in the study of the experience of other countries where informal jurisdiction, legislative trends aimed at the development of alternative forms and improvement of proceedings are well developed and successfully applied."

In turn, the Republic of Uzbekistan has also taken a historic path in the field of development of alternative methods of conflict resolution. In particular, the "Strategy of actions on the 5 priority directions of the development of the Republic of Uzbekistan in 2017-2021" in the direction of further reforming the judicial system and ensuring

the rule of law "Conciliation processes (mediation), which defines the tasks of the main concepts and mechanisms of resolving economic and civil disputes before the court) on the draft law of the Republic of Uzbekistan was intended to increase the quality and efficiency of the provision of fair conciliation institutions in the civil and economic process.

Therefore, on July 3, 2018, the President of the Republic of Uzbekistan adopted the Law "On Mediation". The law provides for the introduction of the mediation institution, which is one of the alternative methods of resolving civil-legal disputes before the court, and its main goal is to resolve disputes between conflicting parties. the possibility of a solution was created on the basis of mutually beneficial conditions and the principle of equality. Creation of a new system, which serves to create wide opportunities and favorable conditions for the members of the society, was achieved in our Republic .

The term alternative dispute resolution is used to refer to various mechanisms of dispute resolution, in which disputing parties are prevented from resorting to court for dispute resolution, and more emphasis is placed on the settlement of disputes through negotiations . In many cases, alternative dispute resolution methods are proving to be a viable alternative to traditional methods due to their high efficiency and flexibility.

At this point, a legitimate question arises: what are the traditional or national conditions for this system, which is widely used in Western countries, to spread widely in our country. Doctor of legal sciences, Professor M.Mamasiddikov, who systematically approached this issue, expressed the following opinion, "It seems permissible to talk about our national values and traditions aimed at reconciling the parties to the conflict, and the procedures already in force in our country." The traditions of Islam are related to all aspects of human life, they served to ease relations between people through reasonableness and doing good to others, and encouraged the parties to resolve disputes peacefully. In order to preserve humane relations, especially in the family and business, he called for forgiveness and peaceful resolution of disagreements.

Based on this, it can be said that the alternative method of dispute resolution consists of the procedures, methods and mechanisms specified in the legislation, agreement of the parties or other internal local documents aimed at resolving disputes arising out of court.

At this point, it can be said that there are several reasons for the use of alternative dispute resolution methods in the legislation of our Republic:

First, in our country, the consideration of disputes through state bodies, commissions, councils or in court can cause various inconveniences for entrepreneurs and citizens. For example, when considering a case in court, the court costs are quite expensive, and most of the disputing parties may not be able to pay it financially;

Second, it takes an average of one to two months to consider a particular dispute in court, and even then, a 30-day deadline has been set for a court decision to enter into force. As a result, there is a risk of hearing the case in higher instances and changing the decision by the courts. As a result, when the parties have a dispute in the first instance and then appeal to the court of the second instance, the consideration of the case in the appeal instance is extended for at least two months, and in the case of cassation for another month. This, in turn, means that there is a need to introduce other conciliation institutions besides state courts in resolving disputes;

Thirdly, today, the volume of work in civil and economic courts has increased, and this volume may cause a decrease in the quality of solving cases. Taking this into account, it means that the number of claims to state courts should be reduced by establishing other non-judicial institutions for dispute resolution.

If we look at the experience of developed countries, we can see that the following methods are widely used in the process of alternative dispute resolution: a) negotiations; b) negotiations with the participation of a mediator; c) reconciliation (compromise); g) mediation (mediation), d) arbitration (arbitration court) y) mediation - arbitration; y) expert judgment (summary); j) independent decision; z) mini-process; i) determination of cases; k) commission on conflict resolution; l) private court; m) initial unbiased assessment; n) "multi-door court"; o) council for pre-trial settlement of disputes; p) includes a simplified court of advisers (prisyajni) and other procedures.

It is appropriate to dwell on the existing types (forms) of these methods when theoretically revealing the legal concept of alternative dispute resolution.

Today, there are the following types of alternative dispute resolution:

- arbitration courts (arbitration);
- mediation;
- negotiation (agreement);
- arbitration courts (regarding international disputes);
- appeal councils for pre-trial settlement of disputes before state bodies.

One of them is the arbitration court, which (temporary or permanent arbitration court) is a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes arising between businesses.

Arbitration courts are not a court structure in the state court system, but an alternative to it, and are organized in the presence of a non-governmental non-commercial organization based on the private-legal and voluntary agreement of the participants.
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 through 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. Arbitration courts are not legal entities. The peculiarity 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 powers of judicial official authority. 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 of the dispute review in the arbitration court in choosing procedural and material legal norms. That is, it covers concepts such as the parties' free choice of the judge conducting the trial, the composition of the court, the place and time of the trial, and the language of the proceedings.
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 (civil, economic) court has been launched, and a new important stage of judicial reforms has begun.
All provisions of applicable law express the specific nature and nature of arbitral jurisdiction. The law provides for voluntary dispute resolution, which means that it is possible to resolve a dispute without resorting to state courts. The parties may refer their property disputes to an appropriate arbitration court.
A party to an arbitration agreement's choice to arbitrate does not waive their constitutional right to have their property interests protected in state court.
and success of the definitions defined in the law, and on the basis of this, it is possible to limit or combine the private-legal and public-legal elements of legal relations related to the ownership of certain property in one form or another.
But in any case, the decisions of the arbitration courts are binding only for the respective parties to the dispute and only affect their mutual rights and legal obligations, and do not create any binding legal consequences for third parties, especially for state authorities.
Another method of alternative dispute resolution is the institution of mediation. The concept of mediation comes from the Latin word mediage - mediation. Mediation is only an interested third party, negotiations with the participation of a neutral party: the parties themselves to resolve their disputes (conflicts) in the most beneficial way

for the disputing parties. The fact that 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 decision, is increasing the demand for alternative methods of disputes. Article 33 of the Charter of the United Nations recognizes mediation as a means of resolving disputes. EU Directive 52/2008 of the European Council and Parliament of May 21, 2008 relates to certain aspects of mediation in commercial and civil matters, and the concept of mediation is defined as follows: It is the process of turning to a third party for help, regardless of whether it is initiated by the parties, invited, appointed by the court, or prescribed by national legislation.

Mediation is based on certain fundamental principles and has its own internal structure, and it has a special place and importance in the dispute resolution system. Although mediation is considered as one of the alternative methods of dispute resolution, it can be used in civil legal situations, which have several important differences from other methods, in particular, from the agreement and arbitration method, as well as from disputes arising between persons performing entrepreneurial activities, as well as from family legal relations and individual labor disputes. It is possible to mediate disputes.

As for negotiation as an alternative method of conflict resolution, negotiation is an informal process of communication between two or more parties with the aim of resolving disputes or disagreements. By its very nature, negotiation is a clear example of a conciliation procedure, as it is carried out voluntarily by the parties. No one can force the parties to negotiate . A decision binding on the parties will not be made as a result of the negotiations. Nevertheless, in most cases, the parties try to resolve disputes through negotiations.

For this reason, the negotiation does not have a separate legal basis and appears as part of the institutions of alternative resolution of all disputes. Negotiation has always been used to resolve disputes verbally. To date, it is used as a small component of existing methods.

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