



USE OF MEDIATION IN THE ARBITRATION PROCESS

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Annotation

In this article, the aspects aimed at improving the legal documents regulating the mechanism of the use of mediation in the process of arbitration courts by scientifically analyzing the attitude of citizens to alternative dispute resolution methods are highlighted, and at the same time, for the improvement of mediation, "Preparation according to directions" training courses", "Improving the mechanism of ensuring mediation execution", "Conducting the post-mediation court proceedings in a closed state", "Applying mediation to minor crimes" concepts, evaluating the effectiveness of legal documents and the working mechanism, aimed at developing the procedure for the execution of legal consequences after mediation suggestions of important practical importance have been developed

Keywords: court of arbitration, concept of mediation, state duty, court of arbitration fee.

Аннотация

В данной статье выделены аспекты, направленные на совершенствование нормативно-правовых документов, регламентирующих механизм применения медиации в процессе арбитражных судов путем научного анализа отношения граждан к альтернативным методам разрешения споров, и в то же время на совершенствование медиации, «Подготовка по направлениям» обучающие курсы», «Совершенствование механизма обеспечения исполнения медиации», «Проведение пост медиативного судебного разбирательства в закрытом состоянии», «Применение медиации к преступлениям небольшой тяжести» концепции, оценивающие эффективность правовые документы и рабочий механизм, направленный на разработку порядка исполнения правовых последствий после медиации, разработаны предложения, имеющие важное практическое значение

Ключевые слова: третейский суд, понятие медиации, государственная пошлина, арбитражный сбор.





Annotatsiya

Mazkur maqolada fuqarolarning nizolarni muqobil hal etish usullariga bo'lgan munosabatlarini ilmiy tahlil qilib hakamlik sudlari jarayonida mediatsiyani qo'llash mexanizmini tartibga soluvchi qonun hujjatlarni takomillashtirishga qaratilgan jihatlari yoritilgan bo'lib va shu bilan birgalikda, mediatsiyani takomillashtirish uchun "Yo'nalishlar bo'yicha tayyorlov o'quv kurslari", "Mediatsiya ijrosini taminlash mexanizmini takomillashtirish", "Mediatsiyadan keyingi sud jarayonini yopiq holatda olib borish", "Mediatsiyani yengil jinoyatchilikka tatbiq etish" tushunchalari, qonun hujjatlarni samaradorligi va ishlash mexanizmini baholash, mediatsiyadan keying huquqiy oqibatlarini bajarish tartibini rivojlantirishga qaratilgan muhim amaliy ahamiyat kasb etuvchi takliflar ishlab chiqilgan

Kalit so'zlar: hakamlik sudi, mediatsiya tushunchasi, davlat boji, hakamlik sudi yig'imi.

Various reforms are being implemented in our country to create and develop consistent working mechanisms for preventing legal violations of relations between citizens and legal entities and protecting their legal interests. One of the main directions of these legal reforms is the implementation of alternative methods of conflict resolution and the development of its legal foundations and sources. We can see the opposite in the field of law of the Republic of Uzbekistan in the modern world, when different methods of conflict resolution are being formed and developed. The Republic of Uzbekistan has modern methods of alternative dispute resolution. They are Arbitration Courts, International Commercial Arbitration Courts and Mediation. Arbitration courts are one of the alternative methods of dispute resolution and are a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes arising between business entities. International arbitration courts are an alternative method of resolving disputes similar to local arbitration courts, and mainly consider economic disputes and disputes between business organizations. The Law "On International Commercial Arbitration" was adopted in the Republic of Uzbekistan on February 16, 2021.

In the Republic of Uzbekistan, several laws have been adopted and have followed a historical path to improve alternative methods of conflict resolution. For example, the "Strategy of Actions on 5 priority areas of development of the Republic of Uzbekistan in 2017-2021" was adopted, which aims to develop the judicial system of the Republic of Uzbekistan and form alternative methods of solving economic and civil disputes. For this reason, on July 3, 2018, the President of the Republic of Uzbekistan adopted





the Law "On Mediation". For the purpose of development, we should note that on June 17, 2020, the Decision of the President of the Republic of Uzbekistan No. PQ-4754 "On measures to further improve the mechanisms of alternative dispute resolution" was adopted. because these legal documents put into practice made it possible not only to protect the rights and legal interests of citizens and entrepreneurs in competent courts, but also to effectively and positively solve the problem using alternative dispute resolution methods.

Alternative dispute resolution is procedures, methods and mechanisms aimed at resolving disputes between citizens or legal entities established by law or between participants of legal relations outside the state's judicial system. Alternative dispute resolution methods have been used in foreign countries for many years and are developing together with it. Even the sixth chapter of the United Nations Charter is devoted to "Peaceful settlement of disputes" and Article 33 of this charter provides for the settlement of disputes through negotiation, conduct, investigation, mediation, conciliation, together with arbitration or The international importance of this field has been further developed by the fact that the settlement of disputes was established as a means of peaceful settlement of disputes . In our country, consistent reforms have been implemented regarding the introduction of alternative methods of conflict resolution, their legal bases are being strengthened in material and procedural legislation and are gradually improving.

The establishment of arbitration courts in the Republic of Uzbekistan is inextricably linked with our country's accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on June 10, 1958 on December 22, 1995. This shows that the Republic of Uzbekistan intends to recognize the decisions of foreign arbitration courts and undertake to ensure their execution. This, in turn, led to the introduction of dispute resolution methods, formation of arbitration courts and arbitration courts in our country.

The adoption of the Law of the Republic of Uzbekistan "On Arbitration Courts" on October 16, 2006 and its entry into force on January 1, 2007, arbitration courts began to operate in our country.

This law provides a legal definition of the arbitration court as the main concepts, according to which the arbitration court is a permanent arbitration court or an ad hoc arbitration court, which resolves disputes arising from civil legal relations, including business disputes. is a non-governmental body that resolves economic disputes arising between entities. Arbitration courts have several advantages in addition to alternative resolution of disputes between citizens and legal entities. They are as follows:





- Low costs compared to competent state courts.
- Option for the parties to choose an arbitrator.
- Confidentiality of Arbitration Proceedings.
- That state courts have no right to review an arbitral award.
- Existence of a mechanism of mandatory enforcement in case of voluntary non-execution of the decision of the arbitration court.
- Voluntary execution of the decision of the arbitration court.
- The decision of the arbitration court comes into force from the moment of its adoption, the absence of appeals and cassation bodies.
- Short-term review of state courts.
- Preservation of mutual cooperation relations between the parties.

The above-mentioned advantages lead the arbitration courts to take their place in the judicial system of the Republic of Uzbekistan and to reduce the volume of disputed cases that are resolved by them to the competent courts. However, in addition to the advantages listed in arbitration courts, there are also disadvantages, one of which is the use of mediation in arbitration proceedings.

Of the Law "On Arbitration Courts" of the Republic of Uzbekistan emphasized this. According to it, mediation in arbitration proceedings can be used until the decision of the arbitration court is adopted. If the parties to the arbitration agree to conduct mediation procedures, the arbitral court shall issue a decision to postpone the arbitration until the completion of the mediation procedure. If the parties reach a mediation agreement, the arbitral tribunal terminates the arbitration. According to the content of this law, mediation can be used in the process of the Arbitration Court, but the mechanism for returning the amount of money paid to cover the costs of the arbitration court is not available in the Law "On Arbitration Courts", one of the shortcomings in the field of arbitration courts. The reason for this shortcoming is that in the competent courts, if an arbitration or mediation agreement is concluded between the parties to resolve the dispute, the state tax will be returned. It is defined in clauses 9. As a result, there is a gap left open in the Arbitral proceedings as to whether or not the expenses incurred due to the use of mediation will be reimbursed. According to the information given above, in the process of resolving a dispute between citizens or legal entities in the competent court, the judge of the competent court shall refund the state tax due to the use of mediation or dispute resolution methods based on the consent of the parties during the process before the hearing of the judges. At the same time, in Article 37 of the Law of the Republic of Uzbekistan "On the Execution of Court Documents and Documents of Other Bodies", that is, if



the parties voluntarily agree to a mediation agreement during the enforcement proceedings, the enforcement proceedings will be terminated by the state bailiff .

In addition, there are several advantages of mediation, which are as follows:

1. It is possible to resolve the dispute in a shorter period of time than the competent courts of the state.
2. The parties have the opportunity to freely choose a mediator and mediation procedures.
3. Taking into account the interests of the parties in resolving disputes.
4. A favorable agreement has been reached between the parties in mediation
5. Conducted on the principle of confidentiality.
6. Conducting the mediation process in a place convenient to the parties, in a convenient situation and informally.
7. Low cost of dispute resolution.

These listed advantages serve as an incentive to use mediation and dispute resolution methods rather than competent courts in resolving disputes between citizens. However, in practice, the fact that citizens do not fully understand the benefits of mediation and do not trust it, and at the same time, they see mediation as a means of recovering the state duty in the court process, indicates that the concept of alternative methods of dispute resolution and the legal basis of the working mechanism have not been strengthened in our national legislation. Also, several shortcomings in the practice have been causing the citizens' attitude to mediation to change negatively. In this regard, the following can be pointed out as shortcomings of the implementation of the mediation institution:

- The concept of "mediation" is not fully formed among citizens, and legal awareness and culture are insufficient to understand the essence of mediation and its benefits.
- The system of training mediators is not up-to-date and there is no mechanism to control the quality of training.
- Inadequate trust in the mediator in resolving disputes between citizens or between legal entities.
- Inadequate formation of a sufficient professional personnel base for conducting the mediation process.
- Inadequate training courses and insufficient number of hours spent on training professional mediators
- The mandatory enforcement mechanism for ensuring its enforcement after mediation is not clearly defined in our national legislation.
- Mandatory mediation procedure for certain categories of cases has not been established.





To avoid several of the above-mentioned problems, at the same time, taking into account the fact that the mediation institute has entered our legal field as a new institute, to conduct scientific and theoretical researches aimed at the development of the field of mediation, to create scientific developments, to this field, which is used in practice in foreign countries to study the relevant legislation and experience, and at the same time, to carry out extensive propaganda.

In conclusion, we can say that alternative dispute resolution methods are aimed at creating convenience in resolving disputes between citizens, as well as reducing the workload of competent state courts. Therefore, it is necessary to support the scientific-theoretical research aimed at the regulation of the mechanism in the process of conducting arbitration court proceedings and applying mediation. At the same time, taking into account that Arbitration Courts are non-governmental bodies, in case of mediation in arbitration proceedings, the costs of the mediation process will be covered by the arbitration courts hearing the case. We have determined the tasks of improving mediation and changing the relations of citizens in a positive direction, and in order to achieve this goal, it is appropriate to develop and prepare draft laws aimed at improving legal documents in the field of mediation. At the same time, training of mediators by fields, i.e., organization of "Training training courses by fields" and systematization of work divided into fields, improvement of the mechanism of ensuring the execution of mediation in order to ensure the execution of the mediation agreement. and ensuring cooperation with the state organizations that ensure execution, taking into account the principle of confidentiality in the mediation process, ensuring "Conducting the post-mediation trial in a closed state", mediation is regulated in Article 211 of the Code of Administrative Responsibility and Article 661 of the Criminal Code it is necessary to develop legal documents on the application of mediation for violations of the law and create a mechanism for their operation.

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