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COMPARATIVE ANALYSIS OF MEDIATION IN SOME FOREIGN COUNTRIES AND UZBEKISTAN: POTENTIAL QUESTIONS AND PROPOSALS

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Abstract

Today, it is no secret that alternative dispute resolution methods, such as mediation, are widely used all over the world. However, in the experience of some countries, there are still problems in the practice of applying and introducing mediation. This article is devoted to the application of alternative dispute resolution and comparative analyses between some developed countries and the Republic of Uzbekistan. The author analyzes the use of alternative dispute resolution methods in Uzbekistan and their features. The goal of this research is to discuss and develop solutions to common problems related to the application and implementation of alternative dispute resolution methods. The current work also provides answers to potential misunderstandings, identifies the problems associated with the use of the mediation procedure, and develops ways to solve them.

Keywords

Alternative dispute resolution, arbitration, negotiations, mediation, pre-trial (claims procedure), commission on labor disputes, out-of-court settlement of disputes, voluntariness.

Resumo

Atualmente, não é segredo que os métodos alternativos de resolução de litígios, tais como a mediação, são amplamente utilizados em todo o mundo. No entanto, segundo a experiência de alguns países, ainda existem problemas na prática da aplicação e introdução da mediação. Este artigo é dedicado à aplicação de métodos alternativos de resolução de litígios e à análise comparativa entre alguns países desenvolvidos e a República do Usbequistão. A autora analisa a utilização de métodos alternativos de resolução de litígios no Uzbequistão e as suas características. O objetivo desta investigação é discutir e desenvolver soluções para problemas comuns relacionados com a aplicação e implementação de métodos alternativos de resolução de litígios. O presente trabalho também fornece respostas a potenciais mal-entendidos, identifica os problemas associados à utilização do procedimento de mediação e desenvolve formas de os resolver.

Palavras-chave

Resolução alternativa de litígios, arbitragem, negociações, mediação, pré-julgamento (processo de reclamação), comissão de conflitos laborais, resolução extrajudicial de litígios, voluntarismo.

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COMPARATIVE ANALYSIS OF MEDIATION IN SOME FOREIGN COUNTRIES AND UZBEKISTAN: POTENTIAL QUESTIONS AND PROPOSALS

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1. Introduction

Today, in Uzbekistan, judicial protection is the predominant method of dispute resolution. However, alternative dispute resolution (ADR) techniques have the potential to be more effective in many cases. Mediation stands out as one type of ADR garnering substantial use internationally while still facing barriers in the Uzbekistan context.

The primary objective of this research is to undertake a comparative analysis of mediation implementations in Uzbekistan against the models of Germany, Singapore, and Georgia, which are renowned for their proficient legal integration of mediation practices. Challenges to mediation uptake in Uzbekistan manifest across three primary dimensions:

- Lack of enforceability limits the power of negotiated voluntary agreements between conflicting parties. Signed resolutions do not carry legal authority or accountability if later breached.
- Undefined pricing and occupational assurances restrict the emergent profession of independent mediators from organizing effectively and promoting the affordability of services.
- Underdeveloped connections to state judicial activities represent a missed opportunity for greater visibility and legitimacy-building of extrajudicial options[1].

Alleviating tensions in these problem areas through targeted legal reforms and multi-sector partnerships can strengthen alternative dispute resolution alignment. More broadened implementation then carries the potential to ease pressure on traditional court cases, allowing more efficient processing for legal cases inherently necessitating full trial attention.

The paper begins by reviewing key principles and theorists grounding alternative dispute resolution as a paradigm, focusing attention on the negotiation and conflict management foundations upholding the mediation technique specifically. Following this review, an analysis compares written laws and observed practices related to the integration and use

[1] Davronov D.A. *Research problems of procedural coercive measures in civil court proceedings*. Monograph. (Tashkent, TSUL, 2021), p. 11

of non-adversarial mediation procedures in Uzbekistan and internationally recognized models. Common barriers are elucidated through a synthesis of procedural documentation and secondary research commentary. In response, specific amendments and supporting programs are recommended to help the practice of mediation reach its full capability as a voluntary recourse, improving the accessibility of dispute settlement to the Uzbek populace.

The need to use the ADR in Uzbekistan is especially urgent in connection with the adoption in 2018 of the Civil Procedure Code[2] (hereinafter referred to as CPC) and the Economic Procedure Code[3] (hereinafter referred to as EPC) in a new edition. In which the relevant chapters ("Conciliation Procedures") appeared, which in turn contain a provision that the parties can resolve the dispute by concluding a settlement or mediation agreement.

2. Literature Review

Uzbek and foreign scientists are conducting research in this regard. Sevarkhon Maripova, Associate Professor of the Lawyer's Training Center under the Ministry of Justice of the Republic of Uzbekistan, gives her opinion that the parties prefer to maintain business and partnership relations, avoid publicity, save time and money, and accordingly resolve the dispute amicably[4]. In addition, Prof. Dr. Thomas Trenczek is the owner and director of the Steinberg Mediation Institute in Hanover, which is one of the leading providers of mediation, coaching, training, and consultancy in Germany, and Prof. Serge Loode[5] expressed his opinion on the execution of the agreement made in the process of alternative dispute resolution. As well, Joel Lee and Teh Hwee Hwee, experts at the Singapore Academy of Law, also analyzed an Asian perspective on mediation[6].

The experience of the world community shows that mediation is one of the most effective methods of alternative dispute resolution. To date, considerable experience has been gained in integrating the mediation procedure with the assistance of a mediator into the legal systems of various states. In many foreign countries, mediation exists and is used as a special form of dispute resolution along with and in conjunction with litigation. Mediation is a relatively new institution for the Uzbek legal system, and the process of its implementation in the legislation took many years. It was officially introduced in 2018 in connection with the adoption of the Law of the Republic of Uzbekistan "On Mediation"[7] (hereinafter the Law on Mediation).

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[2] *Civil Procedure Code of the Republic of Uzbekistan*, dated April 1, 2018; *National Legislation Database*, August 4, 2022, No. 03/22/786/0705; https://lex.uz/docs/-3517337

[3] *Economic Procedure Code of The Republic of Uzbekistan*, dated April 1, 2018; *National Legislation Database*, August 4, 2022, No. 03/22/786/0705. https://lex.uz/docs/5535151

[4] S.A. Maripova, "The importance of the mediation institute in resolving labor disputes," (theory and practice), *J. Lawyer Newsletter*, 2021, no. 1, pp. 132-138.

[5] Professor Thomas Trenczek and Serge Loode. "Mediation "made in Germany" – a quality product," January 2012.https://www.researchgate.net/publication/228096531_Mediation_made_in_Germany_-_a_quality_product

[6] Joel Lee and Teh Hwee Hwee (eds.). *An Asian Perspective on Mediation*, (Academy Publishing 2009). http://www.review.upeace.org/pdf.cfm?articulo=93&ejemplar=18

[7] *Law on Mediation*, July 3, 2018 No. LRU-482; *National Legislation Database*, April 21, 2021, No. 03/21/683/0375. https://lex.uz/docs/4407205

Besides, a group of scientists agrees to enforce it according to the agreement of the parties in both the arbitration and mediation processes. Including Prof. Dr. Thomas Trenczek, owner and director of the Steinberg Mediation Institute in Hanover, which is one of the leading providers of mediation, coaching, training, and consultancy in Germany, and Prof. Serge Loode, both agree that if the dispute outside of the court is resolved through ADR, it is emphasized that the agreement should be focused on execution. In the experience of several developed countries, ADR documents can be focused on execution. In particular, the German Arbitration Institute (DIS) offers a portfolio of alternative dispute resolution proceedings from which the parties can select the most suitable type of mechanism for resolving their dispute. In addition to consensus-oriented methods (mediation, conciliation), decision-oriented types of proceedings (arbitration, adjudication, expertise/expert determination) are also available. Business entities and parties to a dispute may benefit from applying the German experience, depending on the content of the dispute[8].

Therefore, this article analyzes the general problems of using mediation and the obstacles related to applying mediation in the experience of the Republic of Uzbekistan and the experience of developed European countries.

3. Methodology

This comparative study uses qualitative content analysis as the primary research method. This involves an in-depth assessment of mediation-related legislation and scholarly discussion on the topic, with Uzbekistan as the focus case as well as Germany, Singapore, and Georgia for juxtaposition.

Data was collected systematically from the electronic databases of academic journals, national legislative repositories, and justice system open data indexes. The search used terms including "mediation", "alternative dispute resolution," and "voluntary reconciliation" combined with the names of each respective country. Articles were scanned for relevance to the research questions, and the reference tracing technique was also utilized to find additional pertinent studies. Thematic coding will be applied to identify recurring topics across the landscape of literature.

Textual analysis will be performed systematically on the corpus of texts extracted. A structured codebook contains definitions for a priori codes based on alternative dispute resolution theory, which will guide analysis. These include concepts such as "enforceability," "pricing mechanisms," and "integration with the judiciary." New codes will be added as needed to capture specific elements found in the literature. The author will manually categorize segments into different themes during the coding process.

Extracted mediation regulations will undergo doctrinal analysis to compare procedures and requirements established in law across the country's environment. The laws governing enforcement, advertising, trial process involvement, and mediator protection will offer insights into the unique promotion of alternative dispute resolution in each

[8] Professor Thomas Trenczek and Serge Loode. "Mediation "made in Germany" – a quality product", January, 2012. https://www.researchgate.net/publication/228096531_Mediation_made_in_Germany_-_a_quality_product

location. Tables are incorporated to highlight procedural variations for a summarized visual comparison.

4. The concepts and Backgrounds of mediation as a type of ADR

Alternative dispute resolution (ADR) is a set of procedures that are aimed at out-of-court resolution of disputes, but there is no legislative definition of "alternative dispute resolution." Most of the ADR methods existing in the world are not yet familiar to national legislation and dispute resolution practice. Along with the concept of ADR, the concept of conciliation procedures is also used in literature and legislation. Procedural codes only include a reference to the use of conciliation procedures, namely the conclusion of a settlement or mediation agreement, but the code also does not contain a definition of this concept.

According to A.Yu Konnonov, ADR is a system of interconnected actions of the parties and other persons in resolving a dispute that is aimed at out-of-court settlement or resolution through the use of conciliation or other not prohibited procedures and is carried out on the basis of the voluntary expression of the will of the parties[9]. G.V. Sevastyanov understands alternative dispute resolution as "the right to choose any method of resolving a dispute or resolving a conflict not prohibited by law by the subjects of a disputed legal relationship based on a specific situation"[10].

As noted by S.S. Sulakshin, alternative dispute resolution is a method of extrajudicial influence on a conflict, the purpose of which is to eliminate contradictions between the parties to the conflict or to minimize the negative consequences of the conflict for its participants[11].

Some scientists use the term "procedures" when studying certain types of ADR: "Methods of resolving disputes and resolving legal conflicts mean state or non-state (private) procedures regulated by legislation and/or agreement of the parties: state legal proceedings, arbitration proceedings, conciliation procedures, etc."[12]Author M.A. Rozhkova also uses a similar term: "Procedures outside of state resolution and settlement of disputes also include reconciliation (conciliation procedures)"[13].

The term "mechanisms" is also applicable to ADR. For example, a scientific and practical manual by the author N.I. Gaidaenko, she received the title "Formation of a system of alternative dispute resolution mechanisms: a conflict-free society as the basis for combating corruption"[14]. In the quotes mentioned above, various terms like "methods,"

[9] Konnonov A.Yu (2014). Concept, classification, and main types of alternative methods of dispute resolution. *Journal of Russian Law*, No. 12, p. 124.

[10] Sevastyanov G.V. (2016). Alternative dispute resolution: concept and general features. *Arbitration Court*, No. 2, p. 141.

[11] *Alternative ways to resolve disputes between business entities: monograph by S. S. Sulakshin, Center for Problem Analysis and State Management Design* (2013). Moscow: Scientific Expert, p. 78.

[12] Andreeva T.K. (2016) Conciliation procedures in arbitration proceedings. *Arbitration Court*, 2016, No. 1, p. 14.

[13] Rozhkova M.A. & Kluwer M. Wolters (2016). *Means and methods of legal protection of the parties to a commercial dispute*, p. 12.

[14] Semilyutina, N.G., IZiSP, M & INFRA-M (eds.) (2015*). Formation of a system of alternative mechanisms for dispute resolution: a conflict-free society as the basis for combating corruption: scientific and practical. allowance/answer*, p. 75.

"procedures," and "types" are used regarding ADR, which are often considered synonyms by scientists and authors.

An alternative resolution system (ARS) is a set of methods and procedures that are designed to resolve conflicts and disputes outside the traditional court system. It provides the parties to a dispute with the opportunity to find a compromise solution without resorting to lengthy and expensive litigation. The alternative dispute resolution system includes various methods, such as mediation, arbitration, arbitration courts, conciliation, negotiations, and others. These methods can be applied in a variety of areas, including labor relations, family disputes, commercial disputes, civil cases, and others.

The institution of ADR has its origins in ancient times. At certain periods of its historical development, various forms of dispute resolution arose in society. They represented a whole system of methods and procedures capable of resolving a conflict. One of the important institutions for resolving disputes in Uzbekistan has long been the "mahalla". "Mahalla" is a whole system of relationships between residents of one quarter that has existed in Uzbekistan for many centuries and has had a significant impact on the development of Uzbek traditions and their daily lives[15]. In a way, it is a social institution in the form of a community united in a small area. For a long time, the elders who lived there were instructed to resolve conflicts between neighbors, family members, and spouses. Today, conciliation commissions operating under citizens' self-government bodies perform this role. It should be noted that the ADR was once enshrined at the legislative level. So, for example, in the Civil Procedure Code of 1963, there was a Chapter "Comrades' Courts", and for a number of disputes, it was necessary first to apply to the Comrades' court and only later, if the dispute was not resolved by the Comrades' court, to a civil court. With the next branch of judicial and legal reforms, when the Constitution of the Republic of Uzbekistan was adopted in 1992[16] and Article 44 fixed the priority of the judiciary, respectively, the above rules have lost their relevance for that period. It should be noted that at that time, the civil courts considered only 107 thousand cases a year, so the courts, although with difficulty, coped with the load that took place. In 1997, the Civil Procedure and Economic Procedure Codes were adopted, where, of all the ADRs, there was only one way to resolve disputes: the conclusion of a settlement agreement in court and its approval by the court. Adopted in 2006, the Law "On Arbitration Courts"[17] became the first sign in the legal system of Uzbekistan when the institution of ADR was legally enshrined. The gradual introduction of the institution of mediation into the legal system of Uzbekistan as a new way of ADR was associated with the adoption in 2018 of the Law of the Republic of Uzbekistan "On Mediation"[18].

This is how mediation developed in Germany, separating from the state sphere based on civil society. After a while, this picture changed. After initial rejection and criticism from conservative lawyers, judges, and prosecutors, mediation has grown in popularity and acceptance. With the growth of this recognition, mediation began to be integrated into

[15] Khayrulina, Asal (2021). "Institute of mediation as an alternative disputes resolution". *Monograph*, pp. 16-17
[16] *Civil procedure law. A study guide* (2017). https://library-tsul.uz/fu-arolik-protsessual-u-u-i-2017/
[17] *Law on Arbitration*, dated August, 2006, No. LRU-64; *National Legislation Database*, April 21, 2021, No. 03/21/683/0375. https://lex.uz/docs/4407205
[18] *Law on Mediation*, dated July 3, 2018, No. LRU-482; *National Legislation Database*, April 21, 2021, No. 03/21/683/0375. https://lex.uz/docs/4407205

the state judicial system, and so-called "judicial mediation" was born. Judicial mediation means that the new mediation tool has been combined and used in a certain way with regular litigation.

A mediation in Germany gained significant development due to the direct involvement of courts, the following types of mediation emerged in German practice:

- *Judicial mediation*: the judge directly participates in the mediation process and acts as a mediator;
- *Mediation in court*: mediation is carried out by an independent mediator at the suggestion of a judge;
- *Out-of-court mediation*: mediation is carried out by an independent mediator on a contractual basis[19].

In addition, the terms "mediation" and "conciliation procedure" are used interchangeably in German practice, with the exception of the area of consumer dispute regulation[20]. Here, conciliation procedure (schlichtung) means the activity of special bodies for the resolution of consumer disputes, during which a third party makes a binding decision; for example, it is binding on the bank but not on the consumer.

The first mediation projects started in the early 1980s, mainly as divorce mediation and victim-offender mediation (VOM) projects. Amendments to the civil law system and the criminal (between 1991 and 1999) and civil procedure laws (between 2000 and 2002) were necessary because they provided statutory frameworks for court-related mediation schemes. Additionally, there was an important Federal Constitutional Court decision in 2007 – despite it not yet having been fully adopted by courts and legal professionals – that stated, "In a state governed by the rule of law, it is preferable to solve an initially litigious issue by mutual consensus in contrast to a contradictory process and a judicial decision"[21]. When introducing alternative dispute resolution methods into the country's legislation, it is necessary to carefully consider the powers of state courts. The preference for state courts reduces citizens' interest in ADR.

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[19] German law on support for mediation and other forms of out-of-court settlement of conflicts (mediations g) (with brief explanation) pdf.

[20] Kovach, K. & Love L. (1996). "Evaluative Mediation is an Oxymoron", 14(3), 31. https://core.ac.uk/download/pdf/230447658.pdf

[21] Trenczek, Thomas & Loode, Serge (January 2012). "Mediation "made in Germany" – a quality product". https://www.researchgate.net/publication/228096531_Mediation_made_in_Germany_-_a_quality_product

Table 1 - Development of Mediation (Law) in Germany[22]

Until early 1980s	**Almost purely academic discussion**
1985	First mediation projects in family mediation and victim offender mediation.
	Rapidly growing numbers of associations and organisations offering mediation and mediation policy but little practice.
Mid-1990s	Growing practical use of mediation (mainly victim-offender mediation and family mediation).
	Plethora of conferences and training as well as publications.
1991,1994,1999	Amendments of the Criminal Code and Code of Criminal Procedure referring to victim offender dispute resolution/mediation.
2000 and 2002	Amendment of the Code of Civil Procedure referring to ADR in civil matters.
14 February 2007	Federal Constitutional Court decision 1 BvR 1351/01: "In a state governed by the rule of law it is preferable to solve an initially litigious issue by mutual consensus in contrast to an adversarial process and a judicial decision."
25 April 2007	Draft of mediation law in Lower Saxony (not enacted because of a change of government after state elections).
2008	Law to Regulate Legal Services (Gesetz zur Neuregelung des Rechtsdienstleistungsrechts), effective on 1 July 2008: "mediation is not a legal service".
2008	EU Council and EU Parliament: 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 with regard to cross-border conflicts.
12 January 2011	Draft federal Law to Foster Mediation (Gesetz zur Förderung der Mediation).
15 December 2011	The lower house of the German Parliament (Bundestag) accepted the draft Law to Foster Mediation.

Nowadays, technologies are developed and widely used in the legal system that create opportunities to make the ADR process online. The first appearance of online dispute resolution was done via email. This method of dispute resolution is done online. Once the application was accepted for resolution, the other party responded to the application. If no agreement is reached, the parties are directed to the negotiation stage. This was done through an electronic means of communication - e-mail[23]. This is also extending the opportunity to apply ADR and resolve problems between parties.

5. Formation and operating system of mediation in Uzbekistan and some developed countries

The institution of mediation as a form of out-of-court dispute resolution is widely used in world practice. This institution is used as a means of resolving conflict situations as well as family issues and disputes in the business environment. Through mediation, the losses

[22] Trenczek, Thomas & Loode, Serge (January 2012). "Mediation "made in Germany" – a quality product". https://www.researchgate.net/publication/228096531_Mediation_made_in_Germany_-_a_quality_product

[23] Pirmatov, Otabek (2022). Online dispute resolution - fantasy or reality? *Janus.net, an e- journal of international relations*. Vol. 13, No. 1, May – October 2022. https://doi.org/10.26619/1647-7251.13.1.03.

of the parties to the dispute, both moral and material, are minimized. To reflect the depth of implementation of the institution of mediation in practice in different countries, it is necessary to present their national experience in this area.

Because there are still problems with mediation including:

The non-enforcement of the ADR, especially the mediation agreement and arbitration decision, does not allow for a sharp increase in the number of applicants. The mediation agreement does not have the force of an executive document; that is, the parties, when resolving disputes, use the mediation procedure and come to a mediation agreement; however, if the party does not comply with or does not execute the mediation agreement or does not execute it properly, the enforcement of this agreement is impossible.

As defined in Article 51 of the Law of the Republic of Uzbekistan "On Arbitration," adopted in 2006, the application for the issuance of a writ of execution shall be submitted to the competent court by the party to which the decision of the arbitration court was issued in favor of the parties to the arbitration proceedings. According to Article 29 of the Law of the Republic of Uzbekistan "On Mediation," adopted in 2018, "the mediation agreement is binding on the parties to it and is executed voluntarily by them in the manner and within the time frame stipulated in it. If the mediation agreement is not fulfilled, the parties are entitled to apply to the court for the protection of their rights.[24]" This is the reason why the parties are less interested in ADR today.

There is ongoing discussion on the execution of the mediation agreement. Uzbek legal experts, including S. Maripova, Associate Professor of the Lawyer's Training Center under the Ministry, previously discussed the issue of the possibility of a mediating agreement being focused on execution only through the court due to the existence of the principle of voluntariness defined in the law "On Mediation".

The mediation agreement is binding on the parties and governed by contract law. The mediation agreement can be executed in the following ways:

Notarization (Section 794 (1) No. 5 of the Code of Civil Procedure);

Approval of a mediation agreement as amicable if the mediation was conducted by a mediator judge (Section 794 (1) No. 1 of the Code of Civil Procedure);

or in parallel with legal proceedings (section 278 (6) of the Code of Civil Procedure);

transformation of a mediation agreement into an arbitral award on agreed terms (section 794 (1) No. 4a of the Code of Civil Procedure);

transformation of the mediated agreement into an agreement of the lawyers of the parties, which is then registered in the district court (section 795 a (1) of the Code of Civil Procedure)[25].

Also, in the experience of Russia and Georgia, during the mediation process, the parties can confirm the mediation agreement through the state court and focus on execution.

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[24] *Law on Mediation*, dated July 3, 2018 No. LRU-482; *National Legislation Database*, April 21, 2021, No. 03/21/683/0375. https://lex.uz/docs/4407205.

[25] Code of civil procedure as promulgated on 5 December 2005, 10 last amended by Article 1 of the Act of 5 October 2021. *Federal Law Gazette I*, p. 4607. https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html.

The laws of the Republic of Uzbekistan do not specify the issue of a fixed fee for a mediator, and there is no organization to protect the rights of mediators, which prevents the rapid development of this activity.

The institution of mediation in Singapore, as one of the countries in Southeast Asia, has deep roots. Dispute resolution through mediation has existed in Singapore for a long time. The elders, who also carried out this procedure, have historically headed mediation. They invited the parties to discuss the conflict and come up with a solution that was beneficial to both parties. There are plenty of advantages to applying for mediation, and the number of qualified mediators is enough to solve problems and give alternative ways for parties since centers are operating to support mediators, retrain them, and give directions. On the example of the Singapore Mediation Centre[26], which was founded as a non-profit organization in 1997, one can see the practice of introducing out-of-court mediation, where the Singapore Law Academy, which is a government body, became the founder. The director of the SMC is always a judge of the Supreme Court.

In addition, the Judicial Mediation Center is a public institution that conducts the mediation procedure in Georgia. Mediation was introduced into the Georgian court system in 2013 and is used only in civil law disputes. If there are inheritance disputes, disputes between neighbors, as well as family disputes, except for disputes on adoption, deprivation of parental rights, and violence against a woman, in such categories of cases, with the consent of the parties or forcibly, the judge may refer the dispute to mediation[27].

Actually, there is a mediation center in some Asian countries, including Uzbekistan. However, this is not enough to ensure the rights and obligations of mediators, as well as to support them and improve their activities. Therefore, it is desirable to establish centers, like in the experience of Singapore and Georgia.

In addition, according to the legislation of the Republic of Uzbekistan, the mediation process is voluntary, and the legislation allows mediators to work as professional or non-professional mediators. There is no fixed fee for mediators. In practice, this situation does not allow for an increase in the number of people professionally engaged in mediation activities.

In German practice, mediation is not a free procedure; payment is subject to agreement between the private mediator and the parties concerned. The legislation does not regulate the fee for mediation, and there are no statistics on costs. It is quite realistic to assume that the hourly pay can be around 80 to 250 EUR[28]. In order to support the activity of mediators, increase the number of professional mediators, and strengthen the responsibility of the parties, it is desirable to set a fixed price for mediators.

[26] Lee, J. & Hwee, Teh Hwee (eds.) (2009). An Asian Perspective on Mediation, pp.10–11, http://www.review.upeace.org/pdf.cfm?articulo=93&ejemplar=18

[27] Ismailova R. (2020). *Overview of the practice of introducing mediation in the top 5 countries according to the AMRS according to the rating "Doing Business"*, pp. 14–16.

[28] *European e-justice portal*. Official site.: https://e-justice.europa.eu/content_mediation_in_member_states-64-de-en.do?member=1

6. Features of mediation

It is customary to distinguish between two main models of judicial mediation: integrated (intra-judicial), in which the procedure is carried out in the courthouse by one of its employees and a partner, and associated (out-of-court), which is carried out outside the court by a mediator independent of the court and the parties[29]. Mediation in Uzbekistan is a pre-trial and out-of-court procedure for resolving disputes; intra-judicial mediation has not been introduced into the national legislation of Uzbekistan.

Since over 1,500 mediators have been trained in the country to date[30], with the number of disputes that exist in civil and economic courts and despite the fact that the population is not familiar with mediation, in my opinion, it is necessary to introduce a mediation procedure by the court. Of course, our proposal may turn out to be controversial, but in fact, if we consider each court session, all judges begin by offering the parties to reconcile, but at the legislative level, we have not secured their right to participate in judicial reconciliation or invite mediators. Therefore, in our opinion, it is necessary to introduce into the current legislation the right of a party to conduct a conciliation procedure with the participation of a judge. The judge who will conduct the mediation will notify the parties of the time and place of the mediation. He or she has the right to postpone the mediation procedure within the time limits that we have already established in the legislation, from 1 to 60 days, and also invite other people to the mediation procedure if their participation will contribute to the settlement of the conflict. For example, the judge may invite a professional mediator to resolve the dispute. If we turn to the experience of America, mediation has become a popular method of resolving disputes. In the US, more than 90% of all civil disputes are resolved before trial, and many of them are resolved through mediation[31]. Mediation has become so popular that many courts have created their own mediation programs that they either offer or require litigants to participate in. However, mediation programs offered by courts are markedly different from those conducted out of court in private. Knowing these differences can help parties determine whether they want to allow the court to provide a mechanism to resolve their dispute in court or engage in private mediation prior to going to court.

The issues of admission to mediation practice and accreditation of mediators are regulated differently in different states. In judicial mediation programs, mediators are provided by the court, and the parties have nothing to do with their choice. Local courts establish minimum requirements for the training of mediators, their experience, and their scope of expertise as one of the conditions for inclusion in the register of mediators in court. Typically, registries of mediators are not compiled by the courts separately but in cooperation with local bar associations and private ADR organizations. Courts also contract with non-profit mediation groups to provide mediators to the court.

In some states, courts provide their own mediators. In any case, the court appoints a mediator, and the parties do not resort to costs. The mediator can be a lawyer as well as anyone who performs this work on a voluntary basis. Mediators must complete a

[29] Thomas I. Elkind., https://www.financierworldwide.com/to-mediate-in-court-or-out-of-court-that-is-the-question.
[30] http://uzmarkaz.uz/uzc/page/ochiq-malumotlar
[31] Thomas I. Elkind., https://www.financierworldwide.com/to-mediate-in-court-or-out-of-court-that-is-the-question.

certification course and be trained in the use of court-required forms. Many courts use a joint mediation model in which two mediators work with the parties in each case.

In the Republic of Uzbekistan, mediation is one of the most commonly used methods of alternative dispute resolution. According to the legislation of Uzbekistan, mediation has the following features:

The mediation process is voluntary.

A mediation agreement is not enforceable; it cannot be enforced even through state courts.

If the parties do not comply with the mediation agreement, the case can be reconsidered in state courts.

No fixed price is set for mediators.

Non-compliance with the mediation agreement will not result in any consequences[32]. For this reason, the number of mediation agreements before the trial and in the courts is low.

Despite the expiration of four years, mediation in Uzbekistan has also not received its wide development, as has arbitration. The evidence is the statistical data of the Supreme Court of the Republic of Uzbekistan and the Association of Arbitration Courts of the Republic of Uzbekistan on the results of cases left without consideration in connection with the conclusion of a mediation agreement.

We can also see this in statistical numbers:

Table 2 - Courts for civil cases of the Republic of Uzbekistan[33]

Period	Total cases considered	Left without consideration	With the signing of a mediation agreement
2018	453 354	16 832	0
2019	276 937	17 308	-
2020	291 132	22 836	140 – 0,61%
2021	104 023	9 125	60 – 0,65%

Table 3 - Courts for Economic Affairs of the Republic of Uzbekistan[34]

Period	Total cases considered	Left without consideration	With the signing of a mediation agreement
2018	403 340	7 515	0
2019	197 228	4 067	-
2020	104 327	2 694	24 – 0,9%
2021	34 978	734	8 – 1,08%

[32] Khayrulina, Asal (2021). "Institute of mediation as an alternative disputes resolution". *Monograph,* pp. 56-58
[33] Source: Primary date, 2021(https://stat.sud.uz/)
[34] *Idem*.

Table 4 - Arbitration Courts of the Republic of Uzbekistan[35]

Period	Total cases considered	Left without consideration	With the signing of a mediation agreement
2018	403 340	7 515	0
2019	197 228	4 067	-
2020	104 327	2 694	24 – 0,9%

Although the mediation procedure is aimed at unloading the work of the courts, the system demonstrates to the public its disinterest in the introduction of mediation. There are no statistical data on resolving disputes through mediation, and there are cases when judges do not distinguish between the legal consequences of a mediation agreement and a settlement agreement[36].

Undoubtedly, the legislation in the field of mediation requires improvement, expansion of its legal application, and the formation of a high-quality and effective legal model of the mediation procedure.

7. Conclusion

One of the urgent problems in modern civil procedural legislation is that the current judicial system cannot cope with the volume of cases submitted for consideration, and mediation as an institution is in no way an alternative to the existing judicial system and does not compete with it. On the contrary, mediation can relieve the judicial system of those disputes that can be easily and quickly resolved out of court.

One of the most important aspects of the mediation process is the trust of the parties. The reasons for the conflict between the parties will be investigated, and the parties will be provided with the opportunity to continue their relations well in the future. But if the parties do not follow the mediation agreement, the laws of some countries prevent the execution of the agreement. Therefore, it is suitable for state legislation to authorize the enforcement of mediation agreements for specific types of cases, such as contract disputes, debt issues, and non-compliance with obligations, based on the decision of the relevant state courts.

Also, professional and experienced mediators are necessary for the effective implementation of the mediation process. Therefore, it is important to train mediators, improve their qualifications, and develop a support system for them. Based on the analysis, an association of mediators should be established based on the experience of Singapore and Georgia.

Mediation in Uzbekistan, as mentioned above, is a pre-trial and out-of-court dispute resolution procedure; intra-judicial mediation has not been introduced into the national legislation of the country. In my opinion, it is necessary to introduce into the current legislation the right of a party to conduct a mediation procedure with the participation of a judge or a professional mediator who will carry out his activities in court. On the other

[35] Source: https://uzarbitration.uz/

[36] Khairulina, A. & Khabibullaev, D. (2021). "Mediation as a new type of alternative dispute resolution in Uzbekistan". *Society and Innovations*, Vol. 2., No. 3., pp. 494-501.

hand, the "keys to mediation" are in the hands of the judiciary. Therefore, the judges who can inform the parties about the possibilities of mediation, offer the parties to the dispute to apply to this institution, and approve these agreements reached during the procedure. Moreover, at the same time, the congestion of the courts makes mediation an extremely useful tool for the judges themselves, allowing them to get rid of the burden of those disputes on which the disputants can come to an agreement without the intervention of the court. Recent years have clearly demonstrated that the judicial community is very interested in mediation and is ready to take an active part in the development of a new institution.

The inclusion of this change in the legislation of the states, the increase in confidence of the citizens of the country in relation to alternative dispute resolution methods, and most importantly, the reduction of the volume of work in the state courts, allow for considering the dispute between the parties in an impartial, fair, and timely manner.

References

Books

Davronov, D.A. (2021). *Research problems of procedural coercive measures in civil court proceedings*. Tashkent, TSUL.

Kovach, K. & Love, L. (1996). *Evaluative mediation is an oxymoron*. CPR Institute for Dispute Resolution, 14(3), 31.

Rustambekov, I. (2019). *Mediation: A study guide for mediators*. Tashkent: Baktria Press.

Monograph

Khayrulina, Asal (2021). *Institute of mediation as an alternative disputes resolution*. Monograph. Tashkent: TSUL, pp. 56-58.

Journal Articles

Maripova, S.A. (2021). The importance of the mediation institute in resolving labor disputes. *Lawyer Newsletter* (1), pp. 132-138.

Khairulina, A. & Khabibullaev, D. (2021). Mediation as a new type of alternative dispute resolution in Uzbekistan. *Society and Innovations*, 2(3), pp. 494-501.

Pirmatov, Otabek (2022). Online dispute resolution - fantasy or reality? *Janus.net, ejournal of international relations*. Vol. 13, Nº 1, May-October 2022. https://doi.org/10.26619/1647-7251.13.1.03

Konnonov, A.Yu (2004). Concept, classification and main types of alternative methods of dispute resolution. *Journal of Russian Law*, No.12, p. 124.

Sevastyanov G.V. (2016). Alternative dispute resolution: concept and general features. *Arbitration Court*. No. 2., p. 141.

Sulakshin S. S. (2013). Alternative ways to resolve disputes between business entities: monograph. Center for Problem Analysis and State Management Design. *Scientific Expert*, Moscow, p. 78.

Andreeva T.K. (2016). Conciliation procedures in arbitration proceedings. *Arbitration Court*. No. 1., p. 14.

Rozhkova M.A. (2016). Means and methods of legal protection of the parties to a commercial dispute. *Wolters Kluwer*, Moscow, p. 12.

Gaidaenko-Sher N.I. (2020). Formation of a system of alternative mechanisms dispute resolution: a conflict-free society as the basis for combating corruption: Scientific and practical allowance. *Scientific Research Center* INFRA-M, Moscow, p. 75.

Conference Proceedings

Trenczek T. & Loode, S. (2012, January). Mediation "made in Germany" - a quality product. Paper presented at *Development of Mediation* (Law) in Berlin. Germany.

Online Publications

Lee, J. & Hwee, T.H. (Eds.). (2009). An Asian perspective on mediation. *Academy Publishing*. http://www.review.upeace.org/pdf.cfm?articulo=93&ejemplar=18

Ismailova R. (2020). *Overview of the practice of introducing mediation in the top 5 countries according to the AMRS according to the rating "Doing Business"*, Tashkent, pp. 14-16. https://mediator.uz/mediaci/836-obzor-praktiki-vnedrenija-mediacii-v-5-veduschih-stranah-po amrs-po-rejtingu-vedenie-biznesa.html

Legislation

Civil Code in the version published on January 2, 2002 (BGBl. I p. 42, 2909; 2003 I p. 738), last amended by Article 34 paragraph 3 of the law of December 22, 2023, BGBl. 2023 I No. 411, http://www.gesetze-im-internet.de/bgb/BJNR001950896.html.

Act to Promote Mediation and Other Methods of Out-of-court Dispute Resolution' (Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung, BGBl. 2012 I, 1577.

Civil Procedure Code of the Republic Of Uzbekistan. (2018, August 4). National Legislation Data base (03/22/786/0705), https://lex.uz/docs/-3517337.

Economic Procedure Code of the Republic Of Uzbekistan. (2018, August 4). National Legislation Data base (03/22/786/0705). https://lex.uz/docs/5535151.

Law on Mediation dated July 3, 2018 No. LRU-482 //National Legislation Database, April 21, 2021, No. 03/21/683/0375 https://lex.uz/docs/4407205.

Law on Arbitration dated August, 2006 No. LRU-64 //National Legislation Database, April 21, 2021, No. 03/21/683/0375 https://lex.uz/docs/4407205.