

USE MEDIATION IN RESOLVING FAMILY DISPUTES

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Annotation: This article examines the theoretical and practical aspects of the mediation institution in resolving disputes arising from family legal relations. The specific features of mediation, such as voluntariness, confidentiality, equality, consideration of the interests of both parties, and the priority of a psychological approach, are analyzed. Additionally, based on a comparative analysis of foreign experience, the problems of applying mediation in Uzbekistan are identified, and proposals and recommendations for their elimination are developed.

Keywords: family disputes, mediation, mediator, alternative dispute resolution, voluntariness, confidentiality, family law.

Introduction

Family - society and of the state the most main syllable to be , to be peace and tranquility whole state and society of life to peace directly effect shows . Today modern in society family of relationships complexity , distinctions number increase and social - economic of factors effect as a result family conflicts scale is expanding . Family legal disputes are manifested in various forms . Family legal disputes are understood as disputes that arise between family members: spouses, siblings, parents and children or relatives and are regulated by Family Law. Family legal disputes can arise in the form of disputes regarding marriage, alimony, property, kinship relations or guardianship and trusteeship . We resolve disputes arising in this area in court using the Constitution of the Republic of Uzbekistan , the Family Code of the Republic of Uzbekistan, the Civil Code of the Republic of Uzbekistan and the Civil Procedure Code of the Republic of Uzbekistan and other laws and regulations. Today, in democratic countries, alternative dispute resolution methods have been introduced in addition to the judicial procedure , and due to a number of advantages and conveniences, they are widely used in resolving disputes in developed countries. Alternative dispute resolution is a method aimed at resolving a dispute between parties peacefully , taking into account the interests of both parties, and maintaining the relationship between the parties. Alternative dispute resolution includes mediation, arbitration, negotiation, arbitrage, and other methods.

is an alternative dispute resolution method that developed in the 1920s and was widely used, in particular, in countries such as the United States, Great Britain and Australia. Initially, mediation was used to resolve family disputes . This term, according to Sh.M. Masadikov, is a method of resolving disputes between parties with the help of a neutral mediator who helps the parties reach a mutually acceptable solution and does not have the right to make decisions. As Professor HT Odilqoriyev noted, the mediation process is a negotiation process conducted by a competent and qualified specialist with a unique skill and culture ¹. The United Nations Charter has a separate chapter dedicated to “Peaceful Settlement of Disputes”, and according to Article 33, the resolution of disputes through mediation, conciliation, negotiations, arbitration courts is recommended as a means of peaceful resolution of disputes ². In fact, the mediation process has been used in our country since ancient times. That is, since ancient times, our ancestors resolved every disagreement and conflict through compromise, and when a dispute or disagreement arises,

¹HT Odilqoriyev. Legal aspects of the innovative development of the state and society of Uzbekistan / Textbook. –T.: “Innovative Development” publishing house, 2019.- P.127.

² <https://www.un.org/en/about-us/un-charter/chapter-6>

the elders of the community, the elderly , respected fathers and mothers, try to resolve this dispute peacefully. This is an ancient form of mediation.

The Law of the Republic of Uzbekistan “On Mediation”³ reflects the use of the mediation process as an effective means of resolving disputes based on the voluntary consent of the parties and based on confidentiality, equality of the parties and the impartiality and neutrality of the mediator. In particular, the use of mediation in family disputes is an important tool in ensuring humanity, psychological balance and social stability. Family disputes are, of course, personal disagreements. Their main feature is that these disputes are not only legal, but also related to deep psychological and emotional factors, as well as to the honor and reputation of a person . The Family Code of the Republic of Uzbekistan defines human values as a priority in regulating family relations. Therefore, in resolving such disputes, a flexible and humane approach is required, rather than strict legal measures . The use of the mediation process in resolving family disputes is distinguished by a number of advantages. In particular, the high workload in the courts, the lack of the opportunity to deeply analyze family disputes, the open resolution of the dispute even during the hearing, the waste of time and excessive funds, the resolution of the case in favor of only one party as a result of the dispute in court, the consideration of the same dispute in the appellate and cassation instances due to the dissatisfaction of the other party, the nervousness of the parties to the dispute and its impact on their health, and most importantly, the permanent termination of family relations, etc. create the need to use an alternative method of resolving family legal disputes in favor of both parties. Unlike litigation, in mediation, the mediator manages the dispute not only legally, but also psychologically. This is especially important in family disputes and serves to restore communication between the parties. One of the most important features of mediation is its focus on preserving future relationships between the parties, which is of paramount importance, especially in disputes related to the interests of children.

used in resolving family disputes . In particular, 75 to 85 percent of disputes considered in mediation worldwide end with the conclusion of a mediation agreement. Today, we can also see that the mediation process is used in developed countries , and the majority of disputes are resolved through mediation and do not reach the court. In particular, in the USA, 95 percent of disputes as a result of mediation do not even reach the court hearing. In Germany, 91 percent of cases, in the UK 91-95 percent of cases, and in Lower Saxony up to 87 percent of cases are considered through mediation . In Singapore, 95 percent of disputes are resolved through mediation. 99 percent of disputes considered through mediation are successfully resolved . Even more surprising is that despite the fact that the fee paid to the state courts in Singapore is relatively cheap compared to the fee paid to the mediator, that is, the service fee, a large part of the population prefers to resolve their dispute through mediation. The reason for this is the extremely high and strong qualification requirements for mediators . That is, mediators provide professional services. In addition, Singapore also has a register of mediators , which, unlike Uzbekistan, provides information on whether each mediator was able to reach a mediative agreement during the mediation process or not. Then, the population will have the opportunity to obtain complete information about an experienced mediator, and naturally, in such a situation, the mediator will also have to work on himself. In some countries, a mandatory mediation stage has been introduced before going to court. For example, in the UK, India, some US states, and Japan, mediation is mandatory for certain disputes. The principle is not to conclude a binding agreement on the dispute , but to try to reconcile the parties before going to court and encourage them to maintain relations.

³ <https://lex.uz/docs/-3805227>

are even special hotlines for mediators , and if a dispute arises, citizens can call these special numbers, state their requirements for the mediator's qualifications, and a list of mediators who meet their requirements will be provided.

In India, there is a Lok Adhol system , where a panel of mediators, consisting of retired legal professionals, is formed and disputes are resolved based on Gandhian principles of justice. According to Article 226 of the Constitution of India , since the decision of the Lok Adhol system is final and binding and the parties have agreed to resort to this system, there is no appeal against the decision of the Lok Adhol system in a dispute.

forms of mediation in international practice , and the types and procedures for conducting mediation differ, the basic principles of mediation are the same. That is, the principles of confidentiality, voluntariness, equality of the parties, impartiality of the mediator, respect for each other by the parties, etc. are similar. In a number of foreign countries, as in the legislation of Uzbekistan , the specialization of the mediator is not required to be related to the legal sphere . However, it is important that he is reputable , has human qualities, has the necessary knowledge and experience in resolving disputes, and has diplomatic skills.

in Uzbekistan has been developing in recent years, we still have a number of problems in its practical application. In particular, the population's awareness of mediation is insufficient, the number of qualified mediators in the mediation specialty is small, the population's distrust of mediation and the high traditional trust in the judicial system are the reasons why the level of use of the mediation process in family disputes and other disputes remains low. In order to eliminate these problems, I believe that it is necessary to widely promote the institution of mediation and increase legal culture, strengthen the system of training mediators, strengthen the qualification requirements for mediators, gradually introduce elements of mandatory mediation in family disputes, and ensure effective integration between the court and mediation. In mandatory mediation, we do not force the parties to reach a binding agreement, we simply inform the public that mediation is a way to try and, if an agreement can be reached, it will be in the parties' favor, and if an agreement cannot be reached, the dispute can be considered in court.

In conclusion, mediation occupies a special place as a modern, effective and humane mechanism for resolving family legal disputes . Its distinctive features, such as voluntariness, confidentiality, flexibility and psychological approach, make this institution an acceptable tool, especially for family disputes. Therefore, the widespread introduction and improvement of mediation in practice is an urgent task. Foreign experience shows that the widespread use of mediation, while reducing the burden on the judicial system and allowing for in-depth analysis of disputes, serves to resolve disputes quickly and effectively. In this regard, it is important to further develop the institution of mediation in Uzbekistan , raise the legal awareness of the population on mediation, and expand the practice of using mediation in family disputes. In general, the development of mediation as an integral part of the family law system is an important condition for raising the legal culture in society, strengthening social stability and protecting human interests.

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