

Legal Issues of the Principles of Mediation in Civil Legal Proceedings

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ANNOTATION: The article discusses the meaning, essence and legal issues of applying the principles of mediation. The classification of systematization of the principles of mediation is given, defining their interrelation and interdependence. It is concluded that the content of the principles of mediation are multidimensional and affect both the organizational and the procedure for conducting the mediation procedure.

KEY WORDS: mediation, principles, voluntariness, neutrality, confidentiality, equality of the parties.

Mediation in one form or another has long been used in resolving conflicts (disputes) on the territory of Uzbekistan. For example, conciliation procedures similar to mediation are widely used in practice by citizens' self-government bodies (mahallas) in resolving disputes that arise between residents of the mahalla - neighbors, married couples. Our people have strong qualities such as honor and dignity, modesty and conscientiousness¹. And this often becomes the reason that people do not go to the courts to resolve family problems. Solving everyday issues within the mahalla with the help of wise aksakals, activists without too much formality is an ancient custom of our ancestors. Today we are reforming the judiciary on the basis of just such views. To this end, the practice of conciliation is widely used in the courts. This allows you to solve problems without scandals, paperwork, mutual insults². Aksakals, parents, mentors of youth living in mahallas help to strengthen high moral qualities in society, promote reconciliation³.

Of course, at present in Uzbekistan, the most common, perfect, effective, universal and optimal is the judicial form of protection of violated or contested rights and legitimate interests⁴. However, in modern conditions of intensive development of all spheres of society's life, there is a complication of social relations, the consequence of all spheres of society's life is a complication of social relations, which results in an increase in clashes of interests of participants in these relations and the qualitative

¹Ibratova, F. B., et al. "Special features of modern legal systems: cases and collisions." (2017): 60-60.

²Дудник, Данил Владимирович, et al. "Научные основы финансовой, кредитно-денежной и ценовой политики." (2021): 64-64.

³Отахонов Ф. Правовые основы и перспективы развития медиации в Узбекистане // Правосудие. 2019. – №6. – С.98.

⁴Ibratova, F. B. "The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity." *MiddleEuropeanScientificBulletin* 20 (2022): 143-147.

complexity of legal disputes⁵. Today there is no doubt that the number, complexity and scale of disputes are increasing so much that the judicial system is objectively unable to ensure their proper resolution⁶.

In this regard, in the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No. UP-4947 "On the strategy of action for the further development of the Republic of Uzbekistan"⁷ the issue of introducing elements of restorative justice, in particular mediation, into national legislation and law enforcement practice seems to be relevant. The need to solve it is due to both the liberalization of judicial and legal policy and the need to optimize procedural procedures.

According to Article 4 of the Law of the Republic of Uzbekistan dated July 3, 2018. No. ZRU-482 "On mediation" mediation is a way to resolve a dispute that has arisen with the assistance of a mediator on the basis of the voluntary consent of the parties in order to achieve a mutually acceptable solution⁸.

Mediation, like any kind of activity, is carried out on the basis of certain principles that express public views and ideas about the organization and procedure for resolving disputes with the assistance of a mediator. After the adoption of the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 "On Mediation", in which certain principles of mediation received their legislative consolidation, it became possible to consider them as legal principles, that is, the initial normative and guiding principles for regulating new Russian law institute.

According to Sh.M.Masidikov, mediation is based on certain fundamental principles, has an internal structure, which determines its special place and importance in the system of alternative dispute resolution. Although it is a type of alternative dispute resolution along with such dispute resolution methods as conciliation and arbitration (arbitration), it has a number of significant differences:

- the essence of mediation is the settlement of the dispute by the parties with the help of a neutral third party - an intermediary who assists them in reaching a mutually acceptable agreement and does not have the right to make a decision on this dispute.
- in arbitration proceedings, the judge makes a decision on the dispute, which is binding on the parties. And in the conciliation procedure, a third party contributes to the settlement of the dispute up to advising the parties on the content of the dispute. Whereas in mediation, the mediator does not perform such functions, i.e. does not give advice to either side.
- in the mediation procedure, the mediator only contributes to the settlement of the dispute, defining the contours that are aimed at reaching a mutually acceptable agreement by the parties. This means that the parties themselves find ways to resolve the dispute, are co-authors of the agreements reached. The mediator serves as a guide that leads the disputing parties to their destination - "agreement"⁹.

⁵Довлатова, Галина Петровна, etal. "Инновации, тенденции и проблемы в области экономики, управления и бизнеса." (2021): 83-83.

⁶Гулямова Д. Институт медиации в некоторых зарубежных странах. //Сборник статей международного круглого стола на тему: «Актуальные вопросы развития гражданского процессуального права». – Ташкент, 2018. – С.103.

⁷Указе Президента Республики Узбекистан от 7 февраля 2017 года №УП-4947 «О стратегии действий по дальнейшему развитию Республики Узбекистан». Собрание законодательства Республики Узбекистан, 2017 г., № 6, ст. 70, № 20, ст. 354, № 23, ст. 448, № 29, ст. 683, ст. 685, № 34, ст. 874, № 37, ст. 982. <http://www.lex.uz/ru/docs/3107042>

⁸<http://www.lex.uz/docs/3805229>

⁹Масидиков Ш.М. Сущность медиации и проблемы ее правового регулирования в Республике Узбекистан. Дис...на соискание ученой степени кандидата юридических наук. – Ташкент, 2008. – С.12-13.

It should be noted that the principles of law have been thoroughly studied both within the framework of the general theory of law by H.R. Rakhmankulov¹⁰, Kh.T.Odilkoriev¹¹, E.M. Abzalov¹², A.A. Mukhammadiev¹³, S.S. Alekseev¹⁴, V.I.Leushin¹⁵, as well as in branch sciences. In the science of civil procedural law, the works of Sh.Sh.Shorakhmetov are devoted to the problems of principles¹⁶, D.Yu.Khabibullaev¹⁷, Sh.M.Masidikov¹⁸, M.A. Gurvich¹⁹, V.M. Semenov²⁰, K.S. Yudel'son²¹, V.V. Yarkov²² and other scientists.

According to Kh.T. Odilkoriev and E.M. Abzalov, the principles of law act as a guiding idea, an empirical rule, a leading criterion for the process of formation, development and movement of rights²³. As Kh.R. Rakhmankulov admitted, legal principles are understood as the basic and basic norms that express the essence and content of legal norms²⁴.

According to A. Mukhammadiev, the principles of law reflect the important laws of the development of society in the norms of the legal system. This lack of expression means that important laws of social development are not connected with the legal system. This in turn means that it has nothing to do with the legal system. This can lead to the development of a legal system that lags behind the development of society and the temporary nature of the rule of law. In this regard, the principles of law should, of course, be reflected in the rules of law²⁵.

According to Sh.Sh. Shorakhmetov, the principles of civil procedure are the main guiding norms of civil procedural law²⁶.

There is no doubt that the principles of mediation are of great importance²⁷. Firstly, they predetermine the further development of mediation, representing the basis for self-regulation of

¹⁰РахманкуловХ.Р.Предмет, метод и принципы гражданского права. – Ташкент, ТДЮИ. 2003. – С.33.

¹¹Теория государства и права / Ответственные редакторы Х.Б.Бабаев, Х.Т.Одилкориев. – Ташкент. Издательский дом экономики и права. 2000. – С.215.

¹²Теория государства и права / Ответственные редакторы Х.Б.Бабаев, Х.Т.Одилкориев. – Ташкент. Издательский дом экономики и права. 2000. – С.215.

¹³Мухаммадиев А.А. Действие гражданских принципов в рыночных отношениях. Дисс... на соискание кандидата юридических наук. – Ташкент, ТГЮИ, 2006. – С.28.

¹⁴Алексеев С.С. Право: азбука-теория-философия: Опыт комплексного исследования. – М: Статут, 1999. – С. 293.

¹⁵Теория государства и права: Учебник для вузов / Отв. ред. В.Д.Перевалов. – 3-е изд. - М.: Норма, 2005. – С. 120.

¹⁶Шоракхметов Ш. Гражданское процессуальное право Республики Узбекистан. – Ташкент, Адолат. 2001. – С.24.

¹⁷Хабидуллаев Д.Ю.Фукаротикпроцессуалхукукиннингтамоилларивауларни суд амалиётидататбиқетишмуаммолари. Юрид.фанларинормозодиилмийдаражасиолшучунезилганавтрефет. – Тошкент: ТДЮИ. 2007. – Б.18.

¹⁸Масидиков Ш.М. Сущность медиации и проблемы ее правового регулирования в Республике Узбекистан. Дис...на соискание ученой степени кандидата юридических наук. – Ташкент, 2008. – С.12-13.

¹⁹Гурвич М.А. Принципы советского гражданского процессуального права // Избранные труды. Краснодар: Совет. Кубань, 2006 – Т.2. – С.125-194.

²⁰Семенов В.М. Конституционные принципы гражданского судопроизводства. – М.: Юридическая литература, 1982. – С.59-60.

²¹Юдельсон К.С. Советский гражданский процесс. – М.: Госюриздат, 1956. – С.31-32.

²²Плешанов А.Г. К вопросу о принципах современной системы гражданской юрисдикции России // Российский ежегодник гражданского и арбитражного процесса. – 2006. № 5. – С.131.

²³Теория государства и права / Ответственные редакторы Х.Б.Бабаев, Х.Т.Одилкориев. – Ташкент. Издательский дом экономики и права. 2000. – С.215.

²⁴РахманкуловХ.Р.Предмет, метод и принципы гражданского права. – Ташкент, ТДЮИ. 2003. – С.33.

²⁵Мухаммадиев А.А. Действие гражданских принципов в рыночных отношениях. Дисс... на соискание кандидата юридических наук. – Ташкент, ТГЮИ, 2006. – С.28.

²⁶Шоракхметов Ш. Гражданское процессуальное право Республики Узбекистан. – Ташкент, Адолат. 2001. – С.24.

mediation activities, as well as acting as a guideline for the legislator in improving the institution of reconciliation of the parties with the assistance of a mediator. Secondly, the selection of principles makes it possible to individualize mediation as an independent type of extrajudicial activity, to determine the qualitative originality of the rules for its organization, conduct and features of legal regulation in comparison with jurisdictional methods of resolving legal disputes²⁸. Finally, the principles of mediation underlie the practical activities of the mediator to resolve the differences between the parties. All this necessitates the definition, systematization and study of the principles of mediation.

Currently, some authors make an attempt to consider the principles in the framework of the study of certain types of activities, in particular, jurisdictional activities.

So, A.G. Pleshanov singles out the principles of civil jurisdiction as an independent legal phenomenon, by which he understands the fundamental principles reflected in the norms of various branches of law and legal institutions that determine the essential features of jurisdictional activity, its nature, as well as the prospects for the development and improvement of civil jurisdiction, which are the basis for the interpretation of norms; regulating jurisdictional activities, and to overcome the gaps existing in them²⁹.

Considering that the principles of mediation were originally formed as principles of activity, it seems possible to consider them in this vein³⁰. *Thus, the principles of mediation can be understood as the fundamental principles of organizing and conducting mediation as an out-of-judicial method of resolving legal disputes.*

According to Article 5 of the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 "On Mediation", mediation is carried out on the basis of the principles of confidentiality, voluntariness, cooperation and equality of the parties, independence and impartiality of the mediator.

D.L. Davydenko, in addition to the above, also calls the parties complete control over the results of the procedure, the non-confrontational nature of the negotiations, a wide range of possible mutually acceptable solutions, disputes³¹.

O. Kholmiraev and R. Sagatov highlight the following principles of mediation: equality of the parties, voluntariness, mutual respect, confidentiality, transparency of the procedure, impartiality of the mediator³². According to F. Otakhanov, mediation is carried out on the basis of the principles of confidentiality, voluntariness, cooperation and equality of the parties, independence and impartiality of the mediator³³.

²⁷Ibratova, F., and F. Esenbekova. "GENESIS AND EVOLUTION OF LEGISLATION ON CONCEPTIONAL PROCEDURES IN THE REPUBLIC OF UZBEKISTAN." *Polish Journal of Science* 38-2 (2021): 20-24.

²⁸Ibratova, Feruza. "TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN."

²⁹Плешанов А.Г. К вопросу о принципах современной системы гражданской юрисдикции России // Российский ежегодник гражданского и арбитражного процесса. - 2006. № 5. - С. 131.

³⁰Ibratova, F. "BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS." *Norwegian Journal of development of the International Science* 2021 (2021): 45.

³¹Давыденко Д.Л. Как избежать судебного разбирательства. Посредничество в бизнес-конфликтах. - М.: Секрет фирмы, 2006. - 42 с.

³²Холмирзаев О., Сагатов Р. О роли и значении медиаторов в странах Центральной Азии // Правосудие. Ташкент 2019. №3. - С.98.

³³Отаханов Ф. Правовые основы и перспективы развития медиации в Узбекистане // Правосудие. 2019. - №6. - С.98.

Analyzing the prospects of the institution of mediation, I.V. Reshetnikova notes that the development of mediation must comply with the principles of the named institution, a. namely: voluntariness; confidentiality, equality, parties, mediator neutrality; remuneration of mediation (the basis for appeals to an intermediary is the agreement of the parties, respectively, payment for the services of an intermediary is carried out "also on a contractual basis"). In addition, as a starting point for mediation, the author emphasizes its alternative (to the judicial procedure for resolving a dispute) character and notes that mediation is carried out outside the court and is not regulated by procedural legislation³⁴.

G.V. Sevastyanov, developing the concept of private procedural law, refers to the fundamental principles of the law of alternative dispute resolution the principles of trust, permissible direction of regulation of relations in the field of alternative dispute resolution, freedom of choice and conclusion of an agreement on the application of the method of alternative dispute resolution based on the mutual will of the parties, confidentiality, optionality, procedural equality of the parties, assistance to the parties in resolving the dispute and settling the conflict. At the same time, the author highlights the principles that emphasize the qualitative specifics of individual methods, alternative dispute resolution. In particular, for procedures based on reaching a compromise (mediation), these are: equality of the parties and persons contributing to the achievement of an agreement, reconciliation of the parties, etc.³⁵

Some authors highlight the principles of responsibility of the parties, transparency of mediation,³⁶procedural flexibility, informality, direct participation of the parties, focus on the individual, focus on maintaining relationships, creativity, focus on the future, the leading role of mediators in the conciliation procedure³⁷.

К первой группе относятся такие принципы, как добровольность и нейтральность медиатора; ко второй группе – принципы конфиденциальности, самостоятельности, сотрудничества и равноправия сторон. Taking into account the fact that any activity has its own organizational bases and basic rules for implementation, it seems correct to single out two groups of mediation principles depending on their functional purpose:

- 1) principles characterizing the features of the organization of conduct, mediation and the status of its participants (organizational principles); And
- 2) principles characterizing the procedure for conducting mediation (procedural principles).

The first group includes such principles as the voluntariness and neutrality of the mediator; to the second group - the principles of confidentiality, independence, cooperation and equality of the parties.

The above classification makes it possible to systematize the principles of mediation, to determine their interrelation and interdependence. A systematic analysis of the principles provides a deeper understanding of the features of organization and conduct, the mediation procedure, its differences

³⁴Решетникова И.В. Перспективы развития посредничества в российском праве // Российский юридический журнал - 2005. № 1. - С. 99.

³⁵Севастьянов Г.В. Альтернативное разрешение споров — частное процессуальное право. С. 394-397.

³⁶Авимская О.В. Принципы медиации (посредничества) // Третейский суд. - 2009. №5. - С. 155.

³⁷Договорное право (Учебник) / Под ред. М.А. Рожковой - С. 372.

from other methods of settling and resolving disputes, as well as the prospects and limitations of integrating the mediation procedure into the activities of jurisdictional bodies³⁸.

It is important to emphasize that the content of many of the listed principles is multidimensional and affects both the organization and the procedure for conducting the mediation procedure.

³⁸ Барышова, Мария Владимировна, et al. "Социальное предпринимательство: научные исследования и практика." (2019): 60-60.