

## REQUIREMENTS FOR MEDIATORS IN FOREIGN COUNTRIES AND OTHER EXPERIENCES

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### ANNOTATION

This article will review the foreign experience of conducting mediation procedures in dispute resolution, analyze the requirements for mediators in foreign countries. It was noted that the introduction of mediation is a natural trend of today, a means of resolving conflicts in the family sphere, allowing the conflicting parties to get a more adequate result. It should be noted that in modern Uzbek legislation, the requirements for mediation and the mediator have received their legal consolidation, since in some cases it becomes obvious that this method of dispute resolution is in many ways superior to the traditional judicial process, since the advantages of mediation are numerous: this allows you to reduce the pressure on the judicial system and maintain partnerships between the parties, save time, finances, etc

**Keywords:** mediation, family dispute, legal status of the mediator, alternative resolution of legal disputes and disputes

Following trend can be noted in the implementation of the principle of mediation procedure : in many countries where mediation has been used since the end of the last century, it is mandatory to use mediation services before the start of court proceedings. A reasonable question arises here. What is the mediation process and what role does the mediator play in it? <sup>1</sup>In fact, this is a very complicated question, because mediation is a field in which there are no ready-made directions, and much depends on the professional training of the mediator, as well as on his personal qualities, experience, talent and intuition. In foreign countries, there is a tradition of turning to third parties - mediators, instead of going to court to resolve family law disputes. Therefore, the requirements for a mediator differ in each country based on its own legislation.

In the process of covering this article, logic, historicity, consistency and methods of scientific knowledge were widely used. In this article, mediation is an alternative method of resolving family disputes and its features today, foreign experiences and opinions about the demands placed on mediators were analyzed. The laws of foreign countries "On Mediation" and the Republic of Uzbekistan "On Mediation" of July 03, 2018 O'RQ-482- O'RQ serve as a methodological source. did At the same time, the scientific works and experiences of such legal scholars as Khudoykina TV, Sayfetdinova AF, Krsova VG were widely used.

From long ago, when a dispute arose in a family, clan, or neighborhood, all the respected members of that clan or neighborhood used to call the conflicting parties to justice, try to reform them, and resolve the conflict peacefully, and this practice has been preserved until now. the rest It is not difficult to learn from this that mediation procedures are not a completely new concept for the people of our country <sup>2</sup>. However, the task of creating a legal basis for the use of mediation in conflict resolution has not been resolved until recent years <sup>3</sup>.

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<sup>1</sup>Zagainova S. K. fuqarolik protsessida vositachilik: Finlyandiya va Rossiya tajribasi // arbitraj va fuqarolik jarayoni. – 2013. – № 8. – 48.

<sup>2</sup> Xakberdiev A. A. ARBITRATION COURT: SOME ISSUES OF LAW PROTECTION //World Bulletin of Management and Law. – 2021. – T. 4. – C. 9-12.

<sup>3</sup> KHAKBERDIEV A. HISTORY AND LEGAL CHARACTERISTICS OF THE ARBITRAL TRIBUNAL //International Journal of Early Childhood. – 2022. – T. 14. – №. 02. – C. 2080-2090.

On June 12, 2018, the Legislative Chamber of the Supreme Majlis of the Republic of Uzbekistan adopted the Law "On Mediation" and was approved by the Senate on June 28 of this year. This Law entered into force on January 1, 2019. The scope of mediation in the Republic of Uzbekistan is clearly defined by the Law "On Mediation". According to Article 3 of the Law, mediation procedures are applied to the following:

- disputes arising from civil legal relations;
- disputes arising in connection with the implementation of business activities;
- individual labor disputes;
- disputes arising from family legal relations <sup>4</sup>.

Mediation differs from other methods of dispute resolution, in particular, from court-based dispute resolution, with a number of advantages. First, the settlement of disputes through mediation is carried out in a much shorter period of time compared to the court procedure. The problem of the length of time it takes to consider disputes in court is not only relevant for Uzbekistan. For example, in Italy, it takes an average of 3 years to process a case in the lower courts. If the court decision is appealed, this period will be extended to 10 years. In the UK, 73% of litigants complain that the English court system is outdated and inefficient. It takes at least 161 weeks for the courts in the City of London, and 195 weeks for the courts outside the city <sup>5</sup>. Article 23 of the Law "On Mediation" stipulates that the mediator and the parties must take all possible measures to complete the mediation procedure within a period of no more than thirty days. In this article, the longest periods of mediation are defined. International experience shows that in most cases, the duration of mediation is one working day, sometimes a few hours. In particular, as of November 30, 2018, more than 90% of the cases that ended with the formation of a mediation agreement between the parties at the Singapore Mediation Center were resolved within one working day <sup>6</sup>. That is why mediation is necessary for many countries. Each country has different requirements for a mediator based on its own legislation. For example: Mediation is an effective way to resolve financial, family and economic disputes in the United States <sup>7</sup>. Different States have specific guidelines for mediators. In the US, mediators can practice their professional activities even without obtaining certificates or licenses to conduct mediation proceedings. Mediator certificates are obtained online thanks to special programs, the most popular of which are issued by the American Mediation Association. <sup>8</sup>Those who wish to resolve disputes through mediation in America should remember that US courts can order mediation. Mediators are required to have a law degree from an accredited law school. Some states allow mediators to practice by using degrees they already have or by assessing their previous professional experience, and some states also require court-appointed mediators to have ongoing training. Individuals or companies interested in resolving financial disputes in the US should be aware that this jurisdiction has specific rules that grant immunity or special privileges to mediators. In the United States, there are no regulatory agencies and no single regulatory framework. Mediators do not have state-issued licenses because the certification process is not mandatory <sup>9</sup>.

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<sup>4</sup> Štefánik L., Khakberdiev A., Davronov D. CLASSIFICATION AND TYPES OF ARBITRATION COURTS //Norwegian Journal of Development of the International Science. – 2022. – №. 79-2. – С. 19-25.

<sup>5</sup> Хакбердиев А. А. НИЗОЛАРНИ МУҚОБИЛ ТАРТИБДА ҲАЛ ҚИЛИШДА ҲАКАМЛИК ВА АРБИТРАЖ СУДИНИНГ ЎРНИ ВА УЛАРНИНГ ТУРЛАРИ //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2022. – Т. 7. – №. 4.

<sup>6</sup> Hakberdiev A. A. CHALLENGES OF ARBITRATION IN REFORMING CIVIL AND ECONOMIC PROCEDURAL PROCESSES //Archive of Conferences. – 2021. – С. 159-162.

<sup>7</sup> Yu P., Khakberdiev A. ABOUT PSYCHOLOGICAL FEATURES CONDUCTING AN INTERROGATION //Norwegian Journal of Development of the International Science. – 2021. – №. 60-3. – С. 6-9.

<sup>8</sup><https://iqdecision.com/en/usa-choosing-a-mediator/>

<sup>9</sup> ХАКБЕРДИЕВ А. А. Об инсценировке мошенничества в сфере страхования //Право и правосудие в современном мире: актуальные проблемы уголовного, уголовно процессуального, международного и экологического права. – 2020. – С. 311-315.

However, there is a professional code of conduct that requires intermediaries to avoid any potential conflict of interest. Several agencies that specialize in providing mediation services include an opt-out clause in the contracts signed with their clients. Services provided by mediators are regulated by the rules of arbitration <sup>10</sup>. At this point, if we look at the requirements for mediators in the legislation of Uzbekistan, they are somewhat different. According to Article 12 of the "Law on Mediation" adopted on July 3, 2018, the requirements for the mediator are as follows :<sup>11</sup> The activity of a mediator can be carried out on a professional or non-professional basis. Professional mediator activities can be carried out by a person who has passed a special training course under the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan , and who is included in the register of professional mediators <sup>12</sup>. The activity of a mediator on a non-professional basis can be carried out by a person who has reached the age of twenty-five and has agreed to perform the duties of a mediator. A person performing the activities of a mediator on a non-professional basis can also undergo a special training course on the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan. The following can not be mediators :

public duties or equivalent to it, excluding notaries;

legally binding court decision that he has been found to be incapacitated or incapacitated;

a person whose criminal record has not been completed or whose conviction has not been removed;

a person who is being prosecuted.

Mediator's activity is not considered business activity <sup>13</sup>. Mediator:

mediation procedure, to hold meetings with all the parties at the same time and with each of the parties separately, to give them verbal and written recommendations on resolving the dispute;

mediation procedure.

Mediator:

explaining the purpose of the mediation, as well as their rights and obligations, to the mediation parties before the mediation begins;

mediation procedure;

the use of legal means and methods of persuading the parties to reach a mutually acceptable agreement on the dispute ;

his independence and impartiality, he must inform the parties about it.

may have other rights and obligations under the law <sup>14</sup>.

to the parties for the damage caused as a result of the implementation of the mediation procedure in accordance with the law .

Mediation in the US does not require the parties to have a written agreement. Mediation agreements are considered sufficient documents confirming the intention of both parties to resolve their disputes through mediation. When both parties agree to mediate their differences, they turn to mediators. It is common practice for US courts to maintain a list of mediators who meet their requirements and recommend them to the parties. After that, citizens are free to choose the most suitable mediator to mediate their cases. Now, going back to our own experience, the parties have several rights when choosing a mediator: Mediation parties:

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<sup>10</sup> Хакбердиев А. А. Понятие криминальной инсценировки, его элементы, методы обнаружения и расследования //review of law sciences. – 2020. – №. 1. – С. 167-174.

<sup>11</sup><https://lex.uz/docs/-3805227#-3806804>

<sup>12</sup> Abdusaidovich H. A., Bakhodirovna K. A. An analysis of investigation related to the ethicalities of robberies, thefts on motors vehicles in Uzbekistann //Asian Journal of Multidimensional Research (AJMR). – 2020. – Т. 9. – №. 4. – С. 265-271.

<sup>13</sup> Хакбердиев А. А. Об инсценировке в сфере страхования //теоретические аспекты юриспруденции и вопросы правоприменения. – 2020. – С. 46-51.

<sup>14</sup> Abdumurad K. Ensuring Confidentiality in the Detection and Investigation of the Crimes of Money Laundering //Rechtsidee. – 2019. – Т. 5. – №. 2. – С. 10.21070/jihr. 2019.5. 65-10.21070/jihr. 2019.5. 65.

to voluntarily choose a mediator ;  
to waive the mediator;  
to refuse to participate in the mediation at any stage;  
mediation procedure in person or through his representatives in accordance with the procedure established by law.

and within the terms stipulated in this agreement .

may have other rights and obligations under the law.

In general, it should be noted that today there are no universally recognized standards for mediators, but there is an International Mediation Institute that has developed international certification criteria and qualification criteria for mediators. In most developed countries of the world, the activity of a mediator is regulated by law and is carried out on both a professional and a non-professional basis, but in a number of countries, the legislation of entities may specify additional requirements for the activity of a mediator. At the same time, as in Uzbekistan , professional mediators often have a higher education or have received additional professional training in the application of the mediation procedure, or may be lawyers. As can be seen above, the requirements for mediators abroad are somewhat lighter. A mediator is selected mainly based on the ability to resolve the dispute between the parties and his/her personal qualities, experience, talent and intuition. If mediators' professional activity is classified and they are trained according to the types of disputes (economic, civil and family), the possibility of quick and effective resolution of cases will increase. It is determined that the demands of foreign countries for mediators should be defined depending on the type of dispute, as required by the association of mediators. In the case of using foreign methods, in the legislation on mediation adopted in our country, defining the places and limits of the use of mediation in family disputes and the organization of the chamber of mediators will increase the importance of mediation in resolving disputes in the future.

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