DIFFERENCES AND SHORTCOMINGS BETWEEN THE LAW ON MEDIATION OF UZBEKISTAN AND INTERNATIONAL LEGAL DOCUMENTS

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Abstract. *The main purpose of current article is to analyze the measure taken in order to successfully implement mediation in the Republic of Uzbekistan and identify areas in need of further reform. This article reflects the existing situation on the implementation of the mediation procedure in the Republic of Uzbekistan, reveals the existing legislative framework and draws attention to the gaps.*

The article reveals some problems of introducing mediation at the present stage of development of society, briefly reveals the content of the law "On Mediation", which regulates relations connected with the use of mediation to disputes arising from civil law relations, including in connection with business activities, as well as individual labor disputes and disputes arising from family relations. This article also provides some recommendations for the successful implementation of the institute of mediation in Uzbekistan, as well as the popularization of this institution among the population.

In the article there is the recommendation to develop a strategy for the development and promotion of mediation, to train all students of the jurisprudence in the "Mediation" discipline, to identify commercial mediation as one of the training directions for mediators, to introduce judicial mediation and to make the mediation procedure mandatory for a certain type of cases.

Keywords: *mediation, Commercial mediation, Alternative method of dispute resolution, in court mediation, Law of the Republic of Uzbekistan on mediation, The Singapore Convention on Convention, The survey held by The World Intellectual Property Organization's (WIPO) Arbitration and Mediation Center (WIPO Center).*

ОТЛИЧИЯ И НЕДОСТАТКИ МЕЖДУ ЗАКОНОМ УЗБЕКИСТАНА О ПОСРЕДНИЧЕСТВЕ И МЕЖДУНАРОДНО-ПРАВОВЫМИ ДОКУМЕНТАМИ

Аннотация. *Основной целью настоящей статьи является анализ мер, предпринятых для успешного внедрения медиации в Республике Узбекистан, и выявление областей, нуждающихся в дальнейшем реформировании. В данной статье отражена существующая ситуация по реализации процедуры медиации в Республике Узбекистан, раскрыта существующая законодательная база и обращено внимание на пробелы.*

В статье раскрываются некоторые проблемы внедрения медиации на современном этапе развития общества, кратко раскрывается содержание закона «О медиации», регулирующего отношения, связанные с применением медиации к спорам, возникающим из гражданско-правовых отношений, в том числе в связи с предпринимательской деятельности, а также индивидуальные трудовые споры и споры, возникающие из семейных отношений. В данной статье также приведены некоторые рекомендации по успешной реализации института медиации в Узбекистане, а также популяризации этого института среди населения.

В статье дана рекомендация разработать стратегию развития и популяризации медиации, обучить всех студентов юридических факультетов дисциплине «Медиация», выделить коммерческое посредничество как одно из направлений подготовки

медиаторов, внедрить судебную медиацию. и сделать процедуру медиации обязательной для определенного вида дел.

Ключевые слова: *посредничество, Коммерческое посредничество, Альтернативный метод разрешения споров, Посредничество в суде, Закон Республики Узбекистан о посредничестве, Сингапурская конвенция о Конвенции, Исследование Центра арбитража и посредничества Всемирной организации интеллектуальной собственности (ВОИС) Центр).*

Introduction:

First off, we should know about the general essence and fist of Mediation and Mediation law. It is not a mystery that mediation a form of alternative dispute resolution (thereafter written in abbreviation: ADR). So, mediation law is a branch of legislation which refers to the regulation of the relationship in mediation process. In brief:

"Mediation law refers to a form of alternative dispute resolution (ADR) in which the parties to a lawsuit meet with a neutral third-party in an effort to settle the case. The third-party is called a mediator. It is this person's job to listen to the evidence, help the litigants come to understand each other's viewpoint regarding the controversy, and then facilitate the negotiation of a voluntary resolution to the case. The purpose of mediation is to avoid the time and expense of further litigation by settling a lawsuit early on in the process."

The most common types of ADR for civil cases are mediation, settlement conferences, neutral evaluation, and arbitration. Generally, ADR is any process for the resolution of a dispute out of court. The simplest and most common form of ADR is direct negotiation, and this often leads to a solution. Where direct negotiation does not resolve the dispute, a range of other options may be available.

Furthermore, the following basic concepts are used in the mediation Law:

Mediation — a method of settling a dispute with the assistance of a mediator on the basis of the voluntary consent of the parties in order to reach a mutually acceptable solution;

Mediator — a person engaged by the parties to conduct mediation;

Mediation agreement — an agreement of the parties to mediation, achieved as a result of the use of mediation;

Agreement on the mediation procedure — the agreement of the parties, from the moment of the conclusion of which the mediation procedure has been held;

Agreement on the use of mediation — an agreement of the parties, concluded before the dispute arises or after it arises, about the need to resolve the dispute with the mediation procedure.

In recent years, **Mediation** has been financially vital sector for the government. For instance, "The mediation sector in the UK was estimated to be worth £17.5bn in 2020, and it is estimated that mediation can save businesses around £4.6 billion per year in management time, relationships, productivity and legal fees. Additionally, The mediation sector in the UK was estimated to be worth £17.5bn in 2020, and it is estimated that mediation can save businesses around £4.6 billion per year in management time, relationships, productivity and legal fees".

For this reason, most of industrializing states which actually have been facing much more civil and commercial cases in courts recently have to select the ADR for settling them. For example, dispute resolution mechanisms can be arranged in a continuum. At one end are

processes like which are formal, inflexible, and adversarial, and which depend on neutral third parties to decide the outcome of the process, such as litigation in court, where the outcome is decided by a judge. At the other end are increasingly informal, flexible, and consensual processes such as mediation and negotiation. In these processes, the parties involved in the dispute have greater control over the proceedings and the neutral party, if there is one, supports the process but does not decide the outcome. The most commonly used alternative dispute resolution (ADR) processes are arbitration and mediation.

Main body:

The following trends and innovations are apparent in the literature reviewed for the report: "increasing interest in ADR generally, with governments in high- and low-income countries strengthening and encouraging ADR; increasing interest in mediation, compared with arbitration which appears to be becoming more formalised and may be losing some of the features that distinguished it from litigation; global convergence on the Model Law developed by the United Nations Commission on International Trade Law (UNCITRAL) to provide the basis for harmonised national legal frameworks for ADR, with many countries either directly implementing the Model Law or drawing on it; increased interest in ADR mechanisms located wholly within the private sector, rather than being linked to the justice system; increased recognition in some jurisdictions of traditional dispute resolution mechanisms and in opening up a broader range of ADR mechanisms; and online dispute resolution opening up as a new area of activity, which is still in its infancy but which is likely to grow with the continued growth of online commerce".

Now, I actually want to cite research over the topic how a mediation made a difference in community as a whole. This research has been held by The World Intellectual Property Organization's (WIPO) Arbitration and Mediation Center (WIPO Center) in the last decade. The first of all, we should know about the core conception and, of course exact objective of this international research:

The World Intellectual Property Organization's (WIPO) Arbitration and Mediation Center (WIPO Center) designed the International Survey on Dispute Resolution in Technology Transactions (Survey) to assess the current use in technology-related disputes of Alternative Dispute Resolution (ADR) methods as compared to court litigation, including a qualitative evaluation of these dispute resolution options.

The results of this Survey provide a statistical basis to identify trends in the resolution of technology related disputes. Best practices emerge from the Survey which may help guide intellectual property (IP) stakeholders in their dispute resolution strategies and this Report concludes with a number of observations relevant to such strategies. The Survey Respondents' needs identified also help inform the WIPO Center's ADR services.

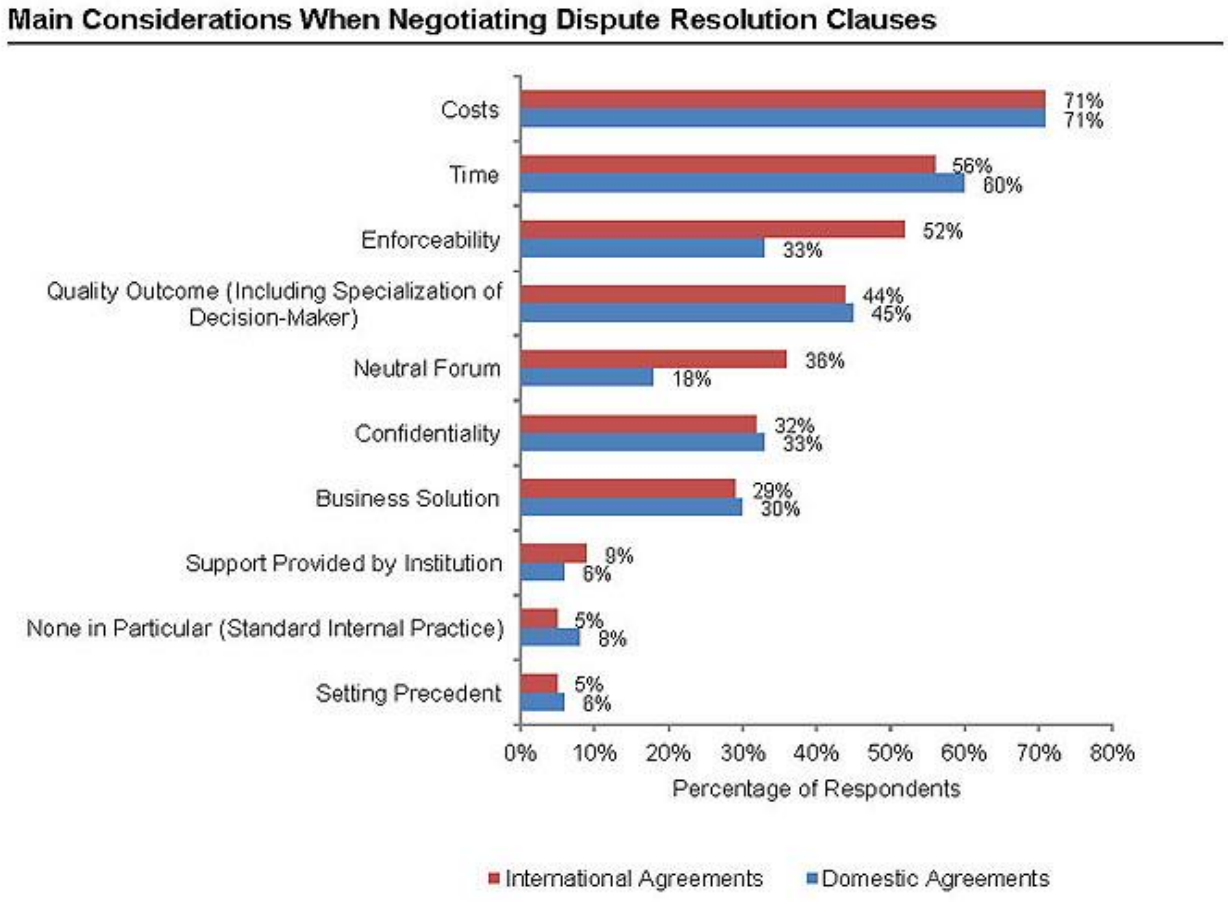
The Survey has been developed with the support of the International Association for the Protection of Intellectual Property (AIPPI), the Association of University Technology Managers (AUTM), the Fédération Internationale des Conseils en Propriété Industrielle (FICPI) and the Licensing Executives Society International (LESI) in collaboration with in-house counsel and external experts in technology disputes from different jurisdictions and business areas. Their collective experience with disputes is reflected in the content, scope and structure of the questionnaire; they also assisted in its distribution.

Well, we had the idea of this universal survey's objective to some extent. What about the subject (in other words respondents) of the research?

393 Respondents from 62 countries completed the Survey. 63 Respondents from 28 countries complemented their written responses with a telephone interview. Respondents are based **in Europe, North America, Asia, South America, Oceania, the Caribbean, Central America and Africa**.

Respondents are law firms, companies, research organizations, universities, government bodies or are self-employed. Respondents range from entities of 1-10 employees to entities of more than 10,000 employees. Respondents are active in different business areas, including pharmaceuticals, biotechnology, IT, electronics, telecom, life sciences, chemicals, consumer goods and mechanical.

The following diagram supplies us with the data regarding the results oof this survey over mediation:



Source: WIPO Arbitration and Mediation Center, International Survey on Dispute Resolution in Technology Transactions

94% of Respondents indicated that negotiating dispute resolution clauses forms part of their contract negotiations.

The next stop upon the survey is **"Choice of Dispute Resolution Clauses"**

Court litigation was the most common stand-alone dispute resolution clause (32%), followed by (expedited) arbitration (30%) and **mediation (12%)**. Mediation is also included where parties use multi-tier clauses (17% of all clauses) prior to court litigation, (expedited) arbitration or expert determination.

Respondents generally perceived a trend towards out-of-court dispute resolution mechanisms.

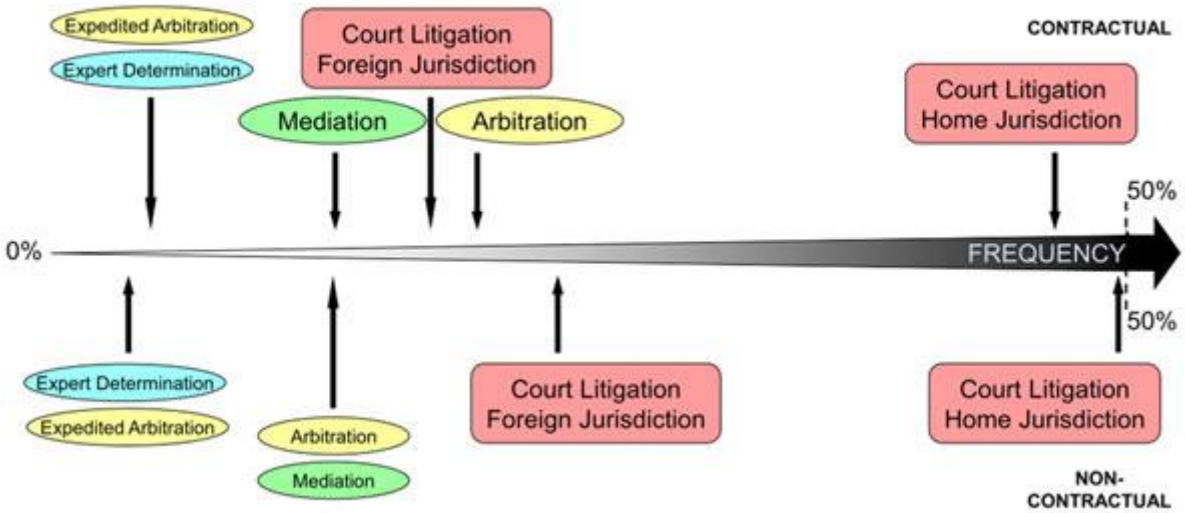
The choice of arbitral institution broadly corresponds to the location of Respondent headquarters.

Cost and time are the principal considerations for Respondents when negotiating dispute resolution clauses, both in domestic and international agreements.

For international agreements, Respondents placed a higher value on enforceability and forum neutrality than they did for domestic transactions. Enforceability also ranked as a motivating factor among Respondents using court litigation and arbitration clauses. Finding a business solution was an important factor for Respondents choosing **mediation**.

Eventually, last part of the survey is the possible procedure in alternative dispute resolution and public court in comparison:

Relative Use of Court Litigation, (Expedited) Arbitration, Mediation, Expert Determination



Source: WIPO Arbitration and Mediation Center, International Survey on Dispute Resolution in Technology Transactions

In the main part of our article, we should talk about the differences and shortcomings between the Law on Mediation of Uzbekistan and International Convention on Mediation (in short: Singapore Convention).

The Singapore Convention on Mediation, formally *the United Nations Convention on International Settlement Agreements Resulting from Mediation* which was adopted on 20 December 2018 and opened for signature on 7 August 2019, is an international agreement regarding the recognition of mediated settlements.

Law of the Republic of Uzbekistan on mediation (adopted by the Legislative chamber on June 12, 2018 and approved by the Senate on June 28, 2018) whose purpose is to regulate relations in the field of mediation.

The advantages of this procedure include: saving time, money and emotional energy of the parties to the dispute; individual approach to the procedure (the situation, organization, rules and content of the procedure are determined by agreement of the parties); the mediator is focused on finding a constructive solution and reaching a compromise; Mediation is conducted on the basis of confidentiality and other principles.

An accordance with Uzbekistan law system, Mediation is a relatively new phenomenon for the Uzbek legal system and was officially introduced in 2018 with the adoption of the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 “On Mediation”. In accordance with this law, the mediation procedure is understood as a way to resolve disputes that have arisen with the assistance of a mediator on the basis of the voluntary consent of the parties in order to achieve a mutually acceptable solution.

Mediation is used only in the court of first instance until the court retires to a separate (consultation) room for the adoption of a judicial act, as well as at the stage of execution of judicial acts. Mediation can also be used in the process of considering a case in an arbitration court before it makes a decision. This procedure is applied in pre-trial and out-of-court procedures; judicial mediation has not been introduced into national legislation.

The Mediation Law contains a list of so-called “**mediable**” disputes, the categories of which can be settled through the use of the mediation procedure, these include disputes arising from civil legal relations, including in connection with the implementation of entrepreneurial activities, as well as individual labor disputes and family disputes. disputes with the exception of disputes affecting the interests of third parties or the public interest.

The Mediation is essentially a voluntary procedure, but certain legal norms provide for its obligatory nature. Article 63 of the Law of the Republic of Uzbekistan "On investments and investment activities" regulates that a dispute arising in connection with foreign investments and investment activities of a foreign investor in the territory of the Republic of Uzbekistan is resolved through negotiations. If the parties to an investment dispute cannot reach a settlement of the dispute through negotiations, such a dispute must be settled through mediation. An investment dispute that is not resolved through negotiations and mediation must be resolved by the appropriate court of the Republic of Uzbekistan. Article 18 of the Mediation Law also provides for the need to apply the mediation procedure by the state body itself, in the event of a dispute with its participation.

One problem is that negotiations, formal and unaided, are by no means a guarantee of success before resorting to some other, more formal and structured means of resolving disputes. This may take the form of mediation or arbitration.

Any type of negotiation regularly requires the parties to compromise. This can cause problems if both parties are uncompromising in their approach. In this case, a different ADR method is usually required.

Formal negotiations entail costs. Moreover, if formal negotiations do not work out, the parties may see it as a waste of time and money.

The pre-trial dispute resolution procedure is understood as the fixing in the contract or the law of the conditions for sending a claim or other written notice from one disputing party to the other, setting deadlines for a response and other conditions that allow resolving the conflict without going to court.

Conclusion:

Ideally, the mediation procedure ends with the settlement of the dispute and the conclusion of a mediation agreement by the parties. It is important to distinguish between the legal consequences of concluding a mediation and court decision.

Mediation agreement	**Court verdict**

Out-of-court dispute settlement	Judicial settlement of the dispute
Scope of application: civil legal relations, entrepreneurial activity, individual labor disputes, family legal relations	Scope of application: on disputes arising from civil, family, labor, housing, land and other legal relations.
A mediation agreement can be concluded in the court of first instance before the court is removed to a separate (deliberative) room for the adoption of a judicial act (CPC RUz, art. 166)	An amicable agreement can be concluded by the parties at any stage of civil proceedings and in the process of execution of a judicial act (CPC RUz, art. 166)
Implemented by the voluntary consent of the parties	Approved by the court
Establishment of separate terms 1 to 60 days	Time limits set by the court
When concluding a mediation agreement, the state duty is refundable (LRU on state duty, art. 18, clause 9)	When concluding a settlement agreement, the paid state duty is not refundable (Civil Code of the Republic of Uzbekistan, Art. 131))
Legal Consequences: Possibility of litigation	Legal Consequences: The judge refuses to accept the application for proceedings if a settlement agreement was previously approved between the parties (CPC of the Republic of Uzbekistan, Article 194, paragraph 2)
The court leaves the application without consideration if a mediation agreement is concluded between the parties (CPC RUz, art. 122, p. 10^3)	The court terminates the proceedings on the case (CPC RUz, art. 124, p. 4.)

All in all, we should reformate some article of our law on mediation in some cases. And I have suggested above some potential changes which could be taken and some possible shortcomes of mediation in Uzbekistan.

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