



Journal Website:
<http://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Family Mediation: A New Form Of Resolving Family Disputes

Muborakkhon Anvarovna Tojjeva

Independent Researcher, High School Judges With The Supreme Judicial Council Of The Republic Of Uzbekistan

ABSTRACT

Today, the role of the institution of mediation in resolving disputes around the world is increasing. Particularly, since 2018, a completely new system - the mediation system - has entered the legislation of Uzbekistan as an alternative way to resolve disputes. Family mediation is one of the types of mediation. This article draws several conclusions based on foreign experience in family mediation, the views of legal scholars, and the study of national legislation as a new form of family dispute resolution.

KEYWORDS

Mediation, family mediation, court, mediator, mediation agreement.

INTRODUCTION

Article 63, Constitution of the Republic of Uzbekistan, states that the family is the basic unit of society and has the right to protection by society and the state.

The second part of the article states that marriage is based on the voluntary consent and equality of the parties.

When a marriage is built on a voluntary basis between the parties, it does not always go on successfully. Neither party has the right to keep the family compulsory. This is followed by the preparation of cases related to the dissolution of the marriage in court, the trial of the case in court, the issuance of court decisions on the case. According to the analysis, the most common and most

mediated procedure in family disputes is divorce [1, pp. 24-28].

THE MAIN FINDINGS AND RESULTS

In accordance with the norms of the Family Code of the Republic of Uzbekistan, a marriage may be annulled by a civil registry office (civil registry office) or by a civil court.

The availability of the opportunity to apply to the civil registry offices for divorce does not limit the right of the parties to apply to the court.

However, starting from 2018, a completely new system - the mediation system - has entered the legislation of Uzbekistan as an alternative way to resolve disputes. In this regard, the Law of the Republic of Uzbekistan dated July 3, 2018 No. 482 "On Mediation" was adopted.

Article 4, of above law, states that mediation is a method of resolving a dispute with the assistance of a mediator on the basis of their voluntary consent, so that the parties reach a mutually acceptable solution, and is carried out by specialized specialists – mediators [2].

Also, according to Article 3 of the Law, the application of this Law applies to disputes arising from civil legal relations, including in connection with the conduct of business activities, as well as in relation to relations related to the use of mediation in individual labor disputes and disputes arising from family legal relations, unless otherwise provided by law.

However, the law does not apply to disputes that affect or may affect the rights and

legitimate interests of third parties not involved in mediation, as well as the public interest.

Family mediation is one of the types of mediation. Today, developed European countries are also widespread among the CIS countries, especially in the Russian Federation.

In these countries, mediation deals with issues such as resolving family disputes, dissolving marriages, and resolving conflicting relationships between parents and children.

According to the lawyer N.A.Kurmaeva, family mediation, as a rule, includes several stages:

- 1) To conduct a stage on mutual representation of the will of the parties on mediation. At the request of the parties, at the end of this stage, an additional conclusion may be reached, which reflects the mutual agreement of the parties;
- 2) Search for a mediator with the intention of concluding a subsequent mediation agreement between the conflicting parties;
- 3) Collection and systematization of information received from the parties to the conflict, their requirements, as well as the identification of third parties involved in the process, the date, time and place of the interview;
- 4) Direct mediation, in which the mediator receives information from the conflicting parties; as well as the study and systematization of third parties involved in the process, the risks involved; work on the gradual achievement of an agreement that satisfies the parties to the dispute;

- 5) Reaching an agreement between the parties to the family dispute and concluding a mediation agreement. If the parties to the mediation are unable to reach an amicable settlement of the dispute and do not sign the mediation agreement, they have the right to go to court [3, p. 15].

These stages are also reflected in the Law on “On Mediation”, which in practice lasts from 90 minutes to 4-5 weeks [4].

If we look at the history of family mediation, we can see that this institution was widespread in Western countries many years ago.

The British Committee on Financial Affairs had put forward its proposal for the introduction of family mediation and thus the abolition of family court proceedings as early as the 1970s. But the government did not pay attention to it in time. In 1978, an independent reconciliation service was formed in Bristol by several volunteers. In 1981, the National Family Conciliation Council (NFCC) was established. The council was later renamed the National Family Mediation Center (NFMCC).

In the Family Law of 1996, the institution of mediation was officially enshrined in law as a paid legal service for resolving family disputes.

Under British law, there is no age limit for becoming a mediator. That is, as in the legislation of Uzbekistan, a person is not required to be twenty-five years old. The mediator must have completed a course of 8 subjects lasting several months in an accredited organization. A mediator who successfully completes the course will be assigned a professional practice consultant.

The new mediator participates as a partner in the work done by his / her advisor and receives from him / her at least 4 hours of lessons per year. After 10 hours of mediation, the mediator should be able to work independently and work to replenish his portfolio with mediation. Completing the portfolio usually takes a period of two years, after which the mediator is eligible to become a member of an association of mediators belonging to his or her field.

To become a family mediator, you must have at least three years of work experience and 50 percent of the work done during this period must be related to family disputes. It is also required to have completed a five-module training course on family conflict mediation [5].

Another feature of the British Institute of Family Mediation is the presence in the state courts of professional mediators in the courts specializing in this field. The parties will also have the right to apply to a mediator after filing a lawsuit to annul the marriage. Another noteworthy aspect is that the case is not accepted by the court before the dispute is considered in mediation. This suggests that the court must consider the dispute by a mediator in order to accept the case in a family dispute [6, p. 16].

Thus, divorces, which began in the 1960s, increased the number of disputes over the division of their property and the appointment of guardians or custodians to children, the increase in workload in the courts and financial difficulties have led to the emergence and development of the institution of family mediation in Britain. As a result, to date, 49% of family disputes are resolved by mediators.

In the United States, too, the institution of mediation was originally applied to family law. In 1981, for the first time among states, California law recognized mediation as a procedural form of guardianship and relationship with children.

In 1990, the U.S. Congress passed the Civil Judicial Reform Act, and to enforce the law, norms were introduced into state procedural codes that recognized the institution of mediation as the primary form of dispute resolution and were widely enforced by the courts.

This provision was further strengthened in 1998 by the Alternative Dispute Resolution Act. In 2001, the Uniform Mediation Act was passed. It stipulates that at any stage of the proceedings, the parties may resort to an alternative method of dispute resolution.

The Australian Law on Mediation, adopted in 1997, cites mediation as a primary method of resolving family disputes, rather than as an alternative method of dispute resolution. As a result of the law, 95% of family disputes are resolved at the pre-trial stage [7, p. 58].

The services of mediators are widely used in the legislation of countries such as Germany, Italy, Spain, law enforcement and judicial practice in resolving family disputes.

Disagreements between spouses related to the continuation of a marriage through mediation in family matters in accordance with the Law of the Republic of Kazakhstan No. 401-IV of January 28, 2011 “On Mediation”, disputes arising over the exercise of parental rights, the determination of the place of residence of the children, the payment of the parents for the children, as well as any other

family relations. During mediation, the mediator must take into account the legitimate interests of the child.

At the international level, documents on family mediation have been adopted between states as well. One such international document is the Recommendation of the Committee of Ministers of the Council of Europe No R (98) 1 of 2 January 1998 on mediation in family matters. These recommendations provide relevant recommendations on the role of family mediation in modern European law, its principles, scope, and process, its interaction with the judiciary, advocacy and international mediation. In short, this document is a guide to the implementation of the institution of mediation [8].

Based on foreign experience in family mediation, the views of legal scholars [9, pp. 1785-1793] and the study of national legislation, the following conclusions were drawn:

Family mediation can resolve issues such as not only the dissolution of a marriage, but also the appointment of a guardian or trustee, the share of the parents in the maintenance of the child, and who raises them;

Family mediation allows for the reduction of long-term civil litigation and the simplification of pre-trial proceedings;

Leads to a reduction in the number of family disputes and the reduction of the burden on the courts;

Leads to a reduction in the cost and time spent by the courts on family matters;

The widespread introduction of the institution of family mediation also contributes to the development of the institution of conciliation, as many other categories of cases are heard in civil courts, with hundreds of people applying to neighborhood civic gatherings. A professional mediator also works to reconcile them and find solutions to their problems, which is his professional duty.

At the same time, there are a number of issues that need to be addressed in order to introduce family mediation in Uzbekistan. These are: specialist in family mediation - professional mediators do not exist in practice, there are mechanisms for their training, but they are not widely promoted and adequately established. In particular, the Family Research Center under the Cabinet of Ministers of the Republic of Uzbekistan aimed to promote family mediation by improving the work of conciliation commissions under citizens' self-government bodies. It was planned to train them at this research center. However, conciliation commissions under citizens' self-government bodies are unlikely to become family mediation centers. This is due to the fact that among the members of the commission there are no experts who are familiar with family law and mediation procedures. We believe that the newly established Research Institute "Mahalla and Oila" under the Ministry of Mahalla and Family Support of the Republic of Uzbekistan pays special attention to the organization of family mediation and the training of independent professionals in this area. In this regard, the order of the Minister of Justice of the Republic of Uzbekistan No. 54-mh dated January 31, 2019 "On approval of the program of training mediators" was adopted, this order approved the program of training mediators

in accordance with the annex and established that special training courses on the program of training of mediators will be organized by the Center for Legal Training under the Ministry of Justice of the Republic of Uzbekistan. The module of the training program of mediators organized at the center provides for the training of family mediators, training courses are based on a combination of theory and practice. But there are specific features of the training of family mediators, the training of which cannot be achieved only through legal education.

Lack of approval of uniform requirements for mediators on family issues. In the above analysis, we noted that when studying the experience of the United Kingdom, Australia, mediators on family issues are trained not only in legal, but also in sociological and psychological modules, their work is directly related to the personal life of individuals. As family mediation becomes more widespread, special requirements for family mediators will become a necessity.

Lack of guidelines and instructions on the organization and conduct of family mediation. The analysis revealed that in countries such as the European region, Canada, Australia and the United States, the organizational, legal and scientific basis for the activities of mediators on family issues has been created. Recommendations with special official status have been developed for them. In the Republic of Uzbekistan, it is expedient to jointly develop recommendations or scientific-practical manuals and guidelines for the implementation of family mediation in cooperation with the Research Institute "Mahalla and Oila" under the Ministry of

Mahalla and Family Support and the Center for Lawyers under the Ministry of Justice.

Lack of family mediation promotion. This applies to all areas of mediation. Although the use of the institution of mediation in the field of entrepreneurship is widespread, the majority of the population is not aware of mediation in resolving family issues. As noted above, conciliation commissions under citizens' self-government bodies cannot act as centers for the implementation of these activities. Because the family mediator not only seeks ways to reconcile families, but also, in due course, works on their divorce, provides a comprehensive solution to the issues of division of property, child support, who will remain in their hands.

Lack of specialized centers for family mediation. On September 18, 2020, the Tashkent Mediation Center was registered by the Ministry of Justice of the Republic of Uzbekistan, but these and similar centers are centers that unite professional mediators in all areas. Advanced foreign experience shows that family mediation centers operate separately from other mediation centers. Given the widespread use of the institution of family mediation, it can be of great importance in our country. At the same time, it is expedient to form their professional associations. Such associations help to provide organizational and methodological support to their activities.

CONCLUSION

Family mediation as a means of resolving family disputes is not reflected in detail in either substantive or procedural law [1]. However, according to the experience of the

United States, Great Britain, France, Canada, Australia, the institution of family mediation and the procedure for its implementation are reflected in the substantive law (Family Law) and procedural law (Judicial Law, Procedural Codes). But this situation is not yet reflected in our legislation.

Certainly, it has not been long since the institution of mediation was introduced into our legislation. There is still a lot of work to be done on this. We believe that this institute, which takes into account the best practices of the world, will spread in our country. Our citizens also understand the importance of this institution not only in business but also in personal life.

REFERENCES

1. Esanova Z. (2018) The role of individual procedural institutions in legal proceedings: the example of civil cases. Review of law sciences. No. 2. – pp. 24-28. (Эсанова З. Роль отдельных процессуальных институтов в судопроизводстве: на примере гражданских дел. Review of law sciences. – 2018. – №. 2. – С.24-28.)
2. Law of the Republic of Uzbekistan "On Mediation" No. 482, adopted on July 3, 2018 <https://lex.uz/docs/3805227> (Ўзбекистон Республикасининг 2018 йил 3 июлда қабул қилинган “Медияция тўғрисида”ги ЎРҚ-482-сон Қонуни <https://lex.uz/docs/3805227>)
3. N.A. Kurmaeva. Advantages and disadvantages of family mediation in Russia. Theory and history of law and state; History of doctrines about law and state. – p. 15. (Н.А.Курмаева. Преимущества и недостатки семейной

- медиации в России. Теория и история права и государства; История учений о праве и государстве. Стр. 15.)
4. How to Become a Family Mediator in the UK URL: <https://www.careeraddict.com/become-a-family-mediator-in-the-uk>.
5. Train to become a family mediator// Family mediators association URL: <https://thefma.co.uk/conference-and-training/train-to-become-a-mediator/>
6. Aubrey-Johnson K., Curtis H. Making mediation work for you. London, 2012. P. 16.
7. Alternative dispute resolution mechanisms review of foreign experience. – Tashkent. 2017. – p. 58 (Альтернативные механизмы разрешения споров обзор зарубежного опыта. Ташкент – 2017. Стр. 58).
8. Recommendation of the Committee of Ministers of the Council of Europe No. R (98) 1 of 2 January 1998 on mediation in family matters. <https://mediation-eurasia.pro/mezhdunarodnye-dokumenty/rekomendacija-r-981-komiteta-ministrov-soveta-evropy-2-janvarja-1998-g> (Европа Кенгаши Вазирлар Қўмитасининг 1998 йил 2 январдаги Оилавий масалаларда медиация бўйича R (98) 1-сон тавсиялари. <https://mediation-eurasia.pro/mezhdunarodnye-dokumenty/rekomendacija-r-981-komiteta-ministrov-soveta-evropy-2-janvarja-1998-g>)
9. Esanova Z. (2020) Priority Aspects Application of the Institute of Mediation in Resolution of Disputes: National and Foreign Experience //International Journal of Advanced Science and Technology. . – Tashkent. 29. – №. 5. – pp. 1785-1793.