



PARTICIPATION OF AN ADVOCATE AS A MEDIATOR IN THE RESOLUTION OF FAMILY DISPUTES: NATIONAL AND FOREIGN EXPERIENCE

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Article history:	Abstract:
<p>Received: December 14th 2023 Accepted: January 10th 2024 Published: February 14th 2024</p>	<p>The article discusses the foreign experience of conducting the mediation procedure in resolving family disputes and conflicts, analyzes the requirements that apply to mediators in foreign countries. It is emphasized that the introduction of mediation is a natural trend of the present time, a way to resolve conflicts in the family sphere, allowing you to get the result that suits the parties to the dispute the most. The settlement of family conflicts is a responsible task, therefore, in most foreign countries, special requirements are imposed on the mediator regarding professional qualifications, additional special education on the profile of family mediation, age, practical experience. However, in addition to the requirements for professional skills and skills of the mediator, there is also a list of requirements for the moral qualities of the mediator. It is concluded that in most developed countries of the world, activities. The mediator is regulated by law and is carried out both on a professional and non-professional basis, however, in a number of countries, the legislation of subjects may establish additional requirements for the mediator. At the same time, as in Uzbekistan, professional mediators are most often persons with higher education or who have received additional professional education on the application of the mediation procedure..</p>

Keywords: Mediation, family dispute, family mediation, mediator, conflict, alternative resolution of legal disputes and conflicts .

Today's in the day the following trend note reach possible : mediation past of the century from the end since applied a lot in the states court process from the beginning before mediation services use is mandatory . Foreign countries family right to the circle incoming disputes solution in doing to the court appeal to do instead of the third individuals - to mediators appeal to do an ' mother there is Mediator is independent person , parties by dispute essence according to decision work on the way out help to give for dispute solution in doing intermediary as attraction done independent individuals " [**Error! Reference source not found.**]

Not only that developed countries , perhaps another countries too court to practice based on that

emphasize must be an adult those who did not about dispute solution to be done each how family dispute , if in conflict parents in the middle to the agreement more if achieved more efficient solution will be done . In practice , family disputes solution in doing parents often of the child rights is ignored they leave Children interests protection to do for mediators attraction to do need Family to disputes relatively applied mediation family mediation that is called [1].

This is it the article lighting in the process scientific to know rationality , historicity , consistency and objectivity methods wide was used . This is it in the article mediation - family disputes solution of reaching alternative method and his today's of the day features , abroad experiences and to mediators placed _ _



requirements about thoughts analysis done . Laws "On Mediation" of foreign countries and "On Mediation" of the Republic of Uzbekistan of July 03, 2018 O'RQ-482-O'RQ were determined as methodological sources . At the same time, the scientific works and experiences of legal scholars such as Khudoykina TV, Sayfetdinova AF, Krsova VG, Kolyasnikova Yu.S, Gaydayenko-Sher NI and Ponasyuk, candidate of legal sciences, Andrey Mikhaylovich were widely used.

Resolving family disputes is a very responsible task, therefore in some foreign countries special requirements are placed on the mediator.

In Germany, according to the law of July 21, 2012 "On the support of mediation and other procedures for the resolution of disputes outside the court", the mediator must have theoretical knowledge of the basics of mediation and its procedures, mediation it is necessary to have knowledge in negotiation and communication techniques and conflict management, mediation law (master's degree), practical training and role-playing techniques [2].

One of the decisive factors in the development and implementation of alternative methods of conflict resolution in family relations is the attitude of family center lawyers to these methods, their participation in the creation of a family conflict management system. The German Code of Ethics for Lawyers explains that lawyers are trained to apply the law to real situations. Lawyers also perform professional mediation activities in existing situations, depending on the field of activity. They are responsible for finding a solution that works for all involved, leaving no one behind, disputing parties and family members. A lawyer as a mediator, unlike in court proceedings, does not decide the personal interests of the parties.

There is no single piece of legislation governing the use of mediation in the UK, so mediation is developing mainly through private initiatives, with the active participation of the judicial community aimed at developing mediation. Basically, the institution of mediation is formed with the help of judicial practice. Norms on mediation are expressed in separate documents, family procedural legislation, legislation on courts, the law on powers of courts in criminal cases, etc. It should be noted that mediation is always a voluntary process. In some cases, there is a referral system for mediation. In case of refusal to participate in the mediation procedure for resolving the family dispute , the parties will not be penalized. Various organizations provide free mediation services, including court mediation programs. At the same time, the costs of mediation may be reimbursed in the provision of free

legal aid under the same conditions and principles as in court proceedings. Judges cannot act as mediators in England and Wales. However, courts can act as mediators. In the United Kingdom, the confidentiality of mediation is largely regulated and enforced by agreement between the parties and the mediator. [4]

Lawyers also do not have the opportunity to mediate directly in family disputes . Members of law firms represented in a wide range of national and international family law associations, including the International Academy of Family Lawyers and the International Academy of Collaborative Professionals, are empowered to enter into mediation agreements at the discretion of the parties in resolving family disputes. In this case, the lawyer cannot act as a mediator, being the advocate of one of the parties.

In the United Kingdom, the Civil Mediation Guide developed by the Ministry of Justice helps mediators and lawyers to consider different options for resolving disputes when using mediation in family and business disputes, but they do not advise. It is assumed that their task is to facilitate the conversation between the parties and the other party.

Austria, like Germany, has a clear system of presenting the requirements for the work of a mediator. First of all, the availability of requirements depends on the desire of the mediator to be included in the register of the Federal Ministry of Justice. If a person intends to provide mediation services without being registered in the register, then no requirements are imposed on this person and he can engage in mediation freely. If a person wishes to enter this register, he must apply with a formal written application. According to the requirements of the Federal Law "On Mediation in Civil Matters" dated May 1, 2004 , a mediator must be over 28 years old, have professional qualifications and civil liability insurance. If the above requirements are met, the person will be entered into the register by the Federal Minister of Justice .[5]

The situation is roughly the same in Switzerland. In order to pass the accreditation, the mediator must have the following basic requirements: have a higher legal or humanitarian education ; undergo training. The duration of such training should be at least 200 hours within 18 months . Of these hours, 160 hours are devoted to initial education, part of which is devoted to the chosen specialty (in this case family law mediation) and 40 hours to practice under the supervision of an experienced mediator; 3) availability of practical experience. Practical experience requirements include at least two years of working with families and couples 5].



If the mediator does not have a higher education, it is enough to confirm that the mediator has a general or secondary professional education in the field of social work and extensive practical experience in the field of mediation. Extensive practical experience means participation in at least twenty cases, each of which is assigned at least three sessions over a period of two to five years. At the same time, at least five cases must be concluded with the signing of the mediation agreement within this period, and control must be established for the remaining five cases.

A mediator tries to understand the dynamics of interaction and development of human relations and psychologically reconcile the parties in resolving a family dispute. Confilikitga evaluates the situations of the parties and creates an opportunity for them to come to the same center. Not only in family disputes, but also in other disputes, the lawyer in his role as a mediator develops an abstract, objective, impersonal approach to the conflict. This gives the lawyer a better chance in court and arbitration.

Because lawyers are not usually trained to work with emotions, mediation is out of the question for them. In addition, they develop an egocentric, optimistic, overconfident view of the conflict, fear of defeat. It is known that in court one side wins and the other loses. Therefore, there are cases of rejection of integrative negotiations and mediation based on cooperation. Nevertheless, lawyers, as mediators, offer ways to resolve disputes before the court, such as negotiation and mediation, which allow effective and quick resolution of family issues.

The most developed system of requirements belongs to Canada. Mediation in this country is carried out by the Quebec Association of Family Mediators, founded in 1985. It includes 295 specialists: lawyers, notaries, social workers, educational psychologists who have received additional special training in family mediation. Recognition of the professional training of mediators is governed by the Family Mediation Rules, which are part of the Quebec Code of Civil Procedure. Accreditation is carried out in two stages: temporary accreditation provided by the Association and final accreditation provided by the professional association if the candidate fulfills all requirements for final accreditation 5.

According to the regulation of family mediation, mediators must undergo temporary accreditation and meet the following criteria:

Be a member of the Quebec Bar Association, the Chamber of Notaries of Quebec, the Professional Guild of Vocational and Educational Counselors, the

Guild of Quebec Psychologists, the Professional Association of Social Workers and Family Therapists of Quebec, a professional association. Educational psychologists or health and social services in childhood and adolescence within the meaning of the law on working in an institution with a defense center, as well as meeting the requirements of at least one of the above professional associations;

2) A 60-hour specialized training course on family mediation taken within the five years preceding the application for membership in the association;

3) Having at least three years of practical work experience in the professional association of which the candidate is a member, or having at least 1 year of practical work experience with lawyer activity;

4) undertakes to conduct at least 10 family mediations under the supervision of a mediator accredited by the Association within two years after the accreditation. A mediator is required to have at least 40 family mediation experience. During the same period, the candidate must complete at least 45 hours of advanced training in family mediation. The basic course plan for the training of family mediators includes:

and tax aspects of family mediation and 24 hours of training on the mediation procedure must be conducted by a lawyer;

psychological and psychosocial aspects by a social worker;

on domestic violence. Conducting such training is a requirement for mediators.

The Quebec Association of Family Mediators has made it clear that mediators are initially trained by lawyers. Because lawyers, as mediators, have the right to use the opportunity to reconcile the parties in the work process, even at the execution stages. The Canadian Bar Association also administers mediation exams to register lawyers. This means that lawyers can also act as professional mediators.

The Law of the Republic of Uzbekistan "On Mediation" stipulates that the Mediator's activities can be carried out on a professional or non-professional basis and the requirements imposed on them. According to it, the activity of a professional mediator can be carried out by a person who has passed a special training course according to the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan, as well as entered in the register of professional mediators.

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 Law of the Republic of Uzbekistan "On Mediation" also provides for cases in which it is prohibited to engage in mediation activities. a person authorized to perform public duties or equivalent to it, (except for notaries), a person who has a legally binding decision of the court on being found to be incapacitated or incapacitated, a criminal record that has not been completed or the conviction has not been removed a person and persons against whom criminal prosecution is being carried out cannot perform mediator activities.

According to Article 3, Part 3, Clause 3 of the Law "On Advocacy" of the Republic of Uzbekistan, it can be established that the activity as a patent representative and mediator can be engaged in.

In the Republic of Uzbekistan, the right of lawyers to work as mediators and the compliance with the requirements of the profession are regulated by law.

Unfortunately, not all countries have a clear system of requirements for intermediaries. There is currently no single procedure for admission to the mediation profession in the UK. Mediation does not require special training or any basic professional education. Issues of accreditation and certification of mediators are assigned to private organizations.

In this regard, the Civil Mediation Council, the largest self-regulatory body for civil and commercial mediation in England and Wales, is the most demanding in the certification of mediators. The accreditation system in this organization defines the following:

the mediator must have professional qualifications in the field of law or demonstrate sufficient knowledge of the law to work in the field of civil or commercial mediation;

the mediator must follow the rules of conduct;

mediation procedures (the number of mediations per year is determined), the mediator must improve his qualifications every year.

There is no uniform list of requirements for a mediator in the US. Depending on the country in which the mediator provides his services, different requirements may be imposed on him, which can be divided into 3 categories:

Training. The mediator must have an official document , must have participated in special training lasting from twenty to forty hours;

Experience. This category means that the mediator must participate in a certain number of cases

under the supervision of a mentor. The number of jobs required varies from state to state. In some states, it is not necessary to participate in the proceedings, it is enough to be licensed as a mediator .

Education. In some states, a law degree is sufficient. In other states, such as Pennsylvania, in addition to a law degree, a mediator must have at least a bachelor's degree in the following fields : psychiatry, psychology, psychological counseling and family therapy, or sociology [7].

A striking example of the different requirements for the work of a mediator are the laws of the states of Texas and Minnesota. Texas provides for the passage of the mediator. A minimum of forty hours of certified training. Minnesota has similar requirements, but they only apply to child custody attorney mediators. [8]

However, in addition to the requirements for the mediator's qualifications and skills, there is also a list of requirements for the mediator's ethical qualities. There is a European Code of Conduct for mediators , which often specifies the ethical requirements for a mediator. According to this Code, the mediator is obliged to:

1) to be independent . The mediator has no right to mediate in situations that may affect his independence or cause a conflict of interest. Such circumstances include a personal or business relationship with one of the parties; direct or indirect, financial or other interest, mediation results;

2) act impartially and impartially in relation to any party, maintain "neutrality";

3) to be honest . The mediator is obliged to stop his activities if he considers that the upcoming agreement is impossible or illegal;

4) to be respected . the mediator should try to accept the person as he is and show him that he values and respects his opinion;

5) maintain courtesy. In any case, avoid abusive or otherwise violent forms of communication;

6) support the parties to the dispute ;

7) voluntary participation in the mediation process;

8) maintain confidentiality. The mediator shall not disclose personal information to third parties [9]

The mediator role of the lawyer is also regulated by foreign countries. Lawyers can also engage in mediation activities at the same time. Requirements and obligations are also set for lawyer-mediators. Acting as a mediator requires a lawyer to acquire appropriate specialization and new professional skills. Completion by a lawyer of the training course for professional mediators provided for by the Federal Law "On the



alternative procedure for resolving disputes with the participation of a mediator (mediation procedure)" is the minimum necessary guarantee that a lawyer has the qualification of a professional mediator. Mediator, his level should not be doubted by the parties to the legal dispute. It is not acceptable to practice and advertise as a mediator until the lawyer has received appropriate special training.

If a lawyer helps to resolve a legal dispute as a mediator, any information related to the organization and conduct of mediation shall be confidential to the lawyer, and only all parties to the legal dispute (providers) together **shall have the right to release the lawyer.**

Ponasyuk, Andrey Mikhailovich, candidate of legal sciences of the Russian Federation, according to the results of their research "**Lawyer's participation in the resolution of legal disputes through mediation**" Article 6 of the Federal Law "On Advocacy and Advocacy in the Russian Federation" contains the provisions of the Federal Law "On Alternative Dispute Resolution with the Participation of a Mediator" in order to eliminate gaps in the participation of a lawyer as a mediator in the mediation procedure. (procedure) has been proven in research results. According to it, a lawyer does not have the right to be a consultant, defender or representative of several parties whose interests conflict with each other in a case, but it is indicated by the research results that it is possible to help the parties involved in reconciliation as a mediator. [9]

The role of a mediator in the resolution of legal disputes by a lawyer is allowed only within the framework of the lawyer's activity. By helping the parties to reach a mutually acceptable or mutually beneficial settlement of the dispute, the lawyer-mediator acts in the interests of each of the parties at the same time, but in no way in the interests of one party. will not be interested in resolving the dispute. In the implementation of advocacy in this form, the lawyer works as an independent general assistant of the parties in organizing and conducting joint consideration of disputed issues and developing favorable conditions for ending mutual disputes.

The peculiarity of the lawyer's role as a mediator is that the mediator provides legal assistance to all parties to the dispute in joint resolution of existing disputes between them. At each stage (at each stage) of mediation, the provision of legal assistance by a lawyer-mediator has a special expression.

conclusion, we can say that 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 of the developed countries of the world, the activity of a mediator is regulated by law and is carried out both on a professional and 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.

Different countries use different methods of mediation in resolving marital disputes. Based on the types of family disputes, the stages of mediation are clearly defined in the countries where the essence of mediation is clearly revealed. The role of lawyers-mediators in resolving family disputes is important.

In Canada, family dispute resolution mediators are required to have legal experience. Many parties to family disputes have advised lawyers to accept terms offered on their side of the dispute. Lawyers use their experience to reach an agreement between the parties before the court, rather than to resolve family disputes in the courts. It participates as a mediator in the implementation of the agreement.

An important element of modern legal practice is helping to resolve legal disputes. Lawyers can play an important role in dispute resolution, suggesting that the principal try to reconcile with the other party and effectively helping the parties agree on terms to end their differences. Providing legal assistance to the representatives in accordance with their interests and intentions as much as possible determines the expediency of consideration by lawyers of the possibility and conditions of conciliation procedures for each specific dispute. Participation of a lawyer as a mediator in the resolution of legal disputes can become a fundamentally new and very promising independent type of advocacy.

It would be appropriate for a family psychologist to start resolving a family dispute when there is experience of mediators in family disputes and in the matter of family law. 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 the use of foreign methods, in the legal documents on mediation adopted in our country, setting the places and limits of the use of



mediation in family disputes, as well as the organization of the chamber of mediators, will increase the importance of mediation in resolving disputes in the future.

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