

## SETTLEMENT OF LABOR DISPUTES BY MEDIATION PROCEDURE

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*The article discusses the concept of a labor dispute, ways to resolve it. The advantages of mediation in resolving a labor dispute are listed. The alternative dispute resolution system is the only way to resolve a labor dispute. In the system of alternative dispute resolution, the resolution of a labor dispute through mediation is an important tool for achieving a mutually beneficial solution of the parties.*

**Key words:** labor dispute, conciliation procedures, mediation, labor relations, court.

Labor legal relations are an integral part of civil society and a more developed type of legal relations. Disagreements may arise between the parties to Labor legal relations on legal, economic, and social issues. Disagreements between the employer and the employee lead to a labor dispute. The most important aspects of resolving a labor dispute are provided for by labor legislation. An alternative dispute resolution system is the only way to resolve a labor dispute.

In the system of Alternative Dispute Resolution, the resolution of a labor dispute through mediation is an important tool for the parties to reach a mutually beneficial solution.

In accordance with paragraph 16 of Article 1 of the Labor Code of the Republic of Kazakhstan, a labor dispute is a disagreement between an employee (s) and an employer (s), including those who were previously in an employment relationship, on the application of the labor legislation of the Republic of Kazakhstan, on the implementation or modification of the terms of agreements, labor and (or) collective agreements, acts of the employer [1].

However, in order to correctly formulate the concept of «labor dispute», it is necessary to establish what causes the disagreement between the parties, that is, to determine the subject of the labor dispute. A labor dispute refers to the rights and legitimate interests of parties to an employment relationship that «want to change the relationship between rights and obligations» [2, p. 90].

For the first time in the Republic of Kazakhstan, a separate chapter was devoted to conciliation procedures in the new Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 [3]. In it, the legislator divided conciliation procedures into the following types:

conciliation agreement, dispute settlement (conflict) procedure for Dispute Settlement by mediation participatory conciliation procedures.

In the science of Civil Procedure Law, a settlement agreement is considered as a special civil law agreement, the purpose of which is to settle disputed relations between the parties within the framework of a judicial procedure.

Even at all stages of the trial, reconciliation can reach an agreement until the court goes to the deliberation room to make a decision. Determines the possibility of resolving a dispute by concluding a settlement agreement at the stage of preparing a civil case for trial, at the stage of trial, at the stages of appeal and cassation appeal of judicial acts. The settlement agreement is subject to mandatory court approval. However, if it contradicts the law or violates the rights and legitimate interests of other persons, the court cannot approve such a settlement agreement. A settlement agreement with the employer and the employee on labor disputes must be concluded simply in writing. It is signed by the parties to the employment relationship or their representatives when they have such powers. A settlement agreement concluded in a labor dispute must contain information about the terms, amounts, and terms of performance of obligations between the parties. The settlement agreement may also contain conditions for resumption of work, on postponement or extension of the performance of obligations to recover a monthly salary, on granting the right of claim, on full or partial forgiveness or recognition by the employer of the debt, on the distribution of expenses and other conditions that do not contradict the labor legislation of the Republic of Kazakhstan.

Dispute and conflict resolution is mainly

used in disputes arising from civil legal relations, Labor Relations, marriage and family relations, Bank settlement relations and other legal relations. It is also allowed to consider in the order of mediation in criminal cases, in which there are dozens of cases of non-serious and moderate severity, as well as in cases of criminal offenses. Enforcement proceedings in a civil case are possible in the course of civil proceedings on all relations arising in the state of execution. However, mediation does not apply if one of the parties involved is a state body.

Unlike a settlement agreement, which refers to the «civil court» type of conciliation procedure, mediation can be either «out of court» or «in court», that is, it can be applied both before applying to the court and after the beginning of the trial.

The main advantages inherent in mediation in resolving labor disputes in the course of civil court proceedings:

First, all parties to the Labor legal relationship participating in it must be free and voluntary, and mutually beneficial reconciliation between the parties recognized as employers and employees must be concluded or concluded.

Secondly, there is no unilateral resolution of all emerging labor disputes between the employer and the Employee, whether it is a collective or an individual labor dispute, regardless of the conflict of Labor Relations, that is, there is no unilateral resolution of disputes between the employer and the employee.

Third, the availability of urgency in resolving the dispute. How many stages have passed since the emergence of labor relations disputes, and how many stages have passed before they appear in court in civil cases, are considered annually. Each stage of its labor dispute has its own term. He must first go to the Conciliation Commission. Then it can be considered in the Labor Inspectorate. Among them is the decision in the trade union organization. Then he should come to the court. And if the case is sent for mediation, it can be extended for the first thirty days, and then for sixty days if there are obvious reasons. No one has the right to extend it further. One stage of civil proceedings the hearing of the case in court itself lasts for two months. He could go through all the stages, no matter how many labor disputes he had to deal with. And there are seven such stages. Try to calculate. Therefore, the urgency of the process

of considering a labor dispute in mediation is of great importance.

Fourth, maximum compliance with the procedure of complete confidentiality in a labor dispute. The mediator does not have the right to disclose to anyone the circumstances of the parties to the employment relationship that have become known to him. It is necessary to provide relevant information only when law enforcement agencies send a notification with a request. And in civil cases, the court may consider only confidential cases provided for by law.

All other cases related to labor relations are open.

Fifth, the right to freely choose the candidate of a conciliatory mediator for the parties to labor disputes to submit their cases. And the procedure for consideration of a labor dispute in a civil case is not like that. After you file a lawsuit for the normalization of your labor rights, you do not know who the court hearing your civil case will be on the computer. You will not have the right to choose.

Sixth, spending the minimum financial costs when conducting the mediation conciliation procedure for labor disputes [4]. If you calculate the court costs, starting from the state duty, some costs will be incurred in the civil court process. Moreover, if there is a claim price. At the same time, there may be many financial difficulties, with the expenses of the lawyer representative, the expenses of the expert specialist.

If you apply for the services of a mediator in a labor dispute, you must follow the mediation procedure. Its form and content should always be done accordingly.

The parties to a labor dispute will never agree to use mediation orally. Since it has no legal consequences, it is always carried out on the basis of a written agreement. If the mediation is on a labor dispute in civil disputes or is carried out outside the scope of criminal proceedings on the basis of a strike, then the parties to the labor dispute shall come to an agreement. In that case, they choose one or more mediators at the same time, among them professional and non-professional public mediators.

If the labor relations dispute is resolved by mediation in a civil court hearing, then this case will be transferred to another judge in the court of first instance. This means that, upon the re-

quest and application of the parties to the labor dispute, the mediation may be conducted by the judge who is conducting the proceedings, and in the court of appeal, the case is transferred to one of the judges of the collegiate composition of the court. In the agreement on mediation of labor disputes, the parties to the mediation, who are the employer and the employee, must be the object of another dispute of the labor dispute. In addition, all information about the mediator who will resolve the labor dispute, as well as the necessary terms of the conciliation agreement agreed by our parties are provided. The methods and exact terms of fulfillment of the agreed requirements in the labor dispute and, in case of non-fulfillment, the consequences of non-fulfillment or non-fulfillment thereof.

An agreement on the settlement of a dispute by mediation before a labor dispute in a civil case is considered by a court is concluded by the actions of the parties, who are the employer and the employee, aimed at establishing, modifying or terminating the rights and obligations of civil proceedings. If it means a transaction aimed at protecting the rights violated as a result of non-fulfillment or improper fulfillment of a mediation agreement on such a labor dispute, it is carried out in the ways provided by civil laws.

The court approves the agreement on the settlement of the labor dispute by mediation. If it is not fulfilled to an adequate extent or in case of non-fulfillment, it may be enforced within the framework of executive proceedings.

Participatory procedure for settling labor disputes through conciliation is a completely new procedure. Its essence is that the parties to the dispute in labor relations negotiate without a judge or with another neutral third party with the active participation of lawyers.

In this procedure, lawyers should help the disputing parties to reconcile and find a mutually beneficial solution, because the outcome of the participatory procedure depends on them.

In a labor dispute, the parties may file a claim or submit proposals on the dispute, which may lead to conciliation.

In order to resolve the labor dispute, the parties develop other alternative methods of reconciliation, and their choice of those alternatives is the real source of labor dispute resolution. A written agreement of the parties with the partic-

ipation of lawyers in resolving a labor dispute is a positive result of conciliation.

If we talk about the main differences arising from the resolution of the labor dispute from mediation to the court, the goals of conciliation procedures are not only to work in labor dispute mediation and the employee as parties to negotiate the dispute, but also after mediation, they try to maintain friendly and cooperative relations. During the settlement of labor disputes in the dispute mediation procedure, the parties do not try to prove the right or justify the claims and objections, but on the contrary, they try to reach a resolution of the dispute in a way that satisfies both parties.

It should also be noted that the persons who have concluded this reconciliation agreement will voluntarily implement it in the manner and within the terms stipulated in this agreement. The settlement of the dispute by court-approved mediation procedure, the execution of the agreement is carried out according to the principles of the execution of the conciliation agreement established in the Code of Civil Procedure of the Republic of Kazakhstan.

Nowadays, pre-trial dispute settlement is the most effective means of settling disputes in civil court proceedings.

A comparative analysis of mediation and mediation in labor law allows the parties to establish consensus and find a mutually acceptable solution aimed at eliminating the conflict.

The conceptual difference between the consideration of a collective labor dispute with the participation of a mediator and the settlement of labor disputes by a mediator is an alternative feature of mediation, in contrast to the conciliation procedures provided for the resolution of collective labor disputes, which avoid litigation.

A special feature of mediation is the reduced period of consideration of collective labor disputes at the local level and at other levels of social partnership, which does not exceed three working days and five working days, respectively. Legislation in the field of mediation includes a provision not to allow the mediator to issue decisions for the purpose of settling the dispute, unless otherwise agreed by the Parties. The set of mediation rights provides for the right to make proposals on the substance of the negotiation process, which are not binding on the parties.

The field of labor mediation is limited to the mediation process for participants in individual labor disputes due to the problem of differentiation and unification of the institution of mediation and mediation, which is a form of settlement of collective labor disputes. The specified

participants are employers, employees, people who previously had labor relations with the employer, and people who expressed their intention to conclude an employment contract with the employer when the latter refused to conclude this contract.

#### LITERATURE

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### РАЗРЕШЕНИЕ ТРУДОВЫХ СПОРОВ ПРОЦЕДУРОЙ МЕДИАЦИИ

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*В статье рассматривается понятие трудового спора, пути его разрешения. Перечислены преимущества медиации в разрешении трудового спора. Система альтернативного разрешения споров является единственным способом разрешения трудового спора. В системе альтернативного разрешения споров разрешение трудового спора посредством медиации является важным инструментом для достижения взаимовыгодного решения сторон.*

**Ключевые слова:** трудовой спор, примирительные процедуры, медиация, трудовое правоотношение, суд.