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Foreign Practice of Use of Mediation on Collective Labor Disputes

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ANNOTATION: The article discusses the foreign practice of using mediation in collective labor disputes. The legislation of the USA, Canada, China, England, Scotland on the use of mediation in collective labor disputes is analyzed. It is concluded that Uzbekistan should adopt the Law "On mediation in collective labor disputes", which regulates the organization and conduct of the mediation procedure in this category of cases, it would also be necessary to fix the definition of the concept of mediation in collective labor disputes, the principles and rules for the implementation of the mediation procedure , as well as the basic requirements for mediators.

KEYWORD: collective labor dispute, mediation, dispute resolution, conflicts of interest, mediation and conciliation service.

In the doctrine of foreign countries, labor disputes are usually divided into two types depending on their subject: conflicts of interest (economic) and disputes about rights (legal)[1].

Conflicts of interest arise in the absence of agreements or other formal legal grounds for claims between the parties. Usually they are associated with the requirements of establishing new or changing existing working conditions. Disputes about rights, on the other hand, arise from violations of agreements or laws and concern the application or interpretation of rules established by legal acts or treaties. Accordingly, individual labor disputes are most often disputes about rights, and collective labor disputes are conflicts of interest[2].

In the theory of labor law of foreign countries, the considered classification is of great importance, since the type of dispute largely determines the mechanism for its settlement. In particular, conflicts of interest are traditionally resolved through conciliation procedures, including mediation, and legal disputes are usually considered in jurisdictional bodies[3].

In foreign legal literature, the question of the possibility of mediation in collective labor disputes about rights has long been debatable. In modern scientific works, it is resolved positively. In particular, A. Gladstone notes that in many disputes about rights, for example, those related to the interpretation of the provisions of a collective agreement, a compromise solution is possible. In addition, the use of the mediation procedure

[1] Gladstone A; Settlement of Disputes over Right. В кн.: Roger Blanpain, Jim Baker. Comparative labour law and industrial relations in industrialized market economies. Kluwer Law International, – 2004. – P.597.
[2] Ibratova, F., and F. Esenbekova. "GENESIS AND EVOLUTION OF LEGISLATION ON CONCEPTIONAL PROCEDURES IN THE REPUBLIC OF UZBEKISTAN." *Polish Journal of Science* 38-2 (2021): 20-24.
[3]Gladstone A. Settlement of Disputes over Right. В кн.: Roger Blanpain, Jim Baker. Comparative labour law and industrial relations in industrialized market economies. Kluwer Law International, 2004. – P. 597.

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serves, among other things, the purpose of informing the parties of their rights and obligations, thereby eliminating the need to go to court[4].

Separate elements of mediation were used already at the beginning of the 19th century. In 1838, US President Martin Van Buren acted as a mediator to resolve a conflict that led to a shipyard strike. It is believed that this was the first time that mediation was used to resolve a collective labor dispute[5]. The idea of introducing conciliation procedures was actively promoted in the 1940s, when in some labor arbitrations the dispute resolution process was more like mediation than litigation[6].

In 1960, the United States Supreme Court heard three cases on the application of the union "United Steel Workers of America" (United teelworkers of America), which went down in history as the "Trilogy" of steel workers (Steelworkers Trilogy), as a result of which the place and the leading role of arbitration in resolving collective labor disputes were determined.

With the passage of the National Labor Relations Act on July 5, 1935, and the conclusion of the high-profile U.S. Supreme Court trials in 1960 by the United Steel Workers, arbitration was formally recognized as the primary institution for resolving individual and collective industrial disputes. Labor mediation has not disappeared, but this method has faded into the background compared to the more formal institution of arbitration. Subsequently, the similarity of arbitration to the litigation led to the emergence of problems inherent in the American judicial system: long proceedings and high costs. As an alternative, mediation was proposed, a huge role in the revival and development of which was played by professors at Northwestern University (Illinois) Stefan Goldberg and Jane Britt[7].

It should be noted that for many years of application in foreign countries, the mediation procedure for collective labor disputes has proven its effectiveness in relation to this category of cases. For example, in the United States, mediation in collective labor disputes has taken shape as an independent type of mediation (collective bargaining mediation), along with conciliation procedures for resolving employee complaints (grievance mediation).

In Canada, mediation is a mandatory element of the settlement of a collective labor dispute. The Federal Mediation and Conciliation Service of Canada not only conducts mediation procedures, but also provides dispute prevention services, conducting trainings in collective bargaining and joint conflict resolution. In the event of a dispute, the Minister of Labor may appoint a mediator at any time on his own initiative or at the request of one or both parties. In almost all cases, mediation is provided by employees of the Canadian Federal Mediation and Conciliation Service[8].

It should be noted that in foreign countries it is also common practice to create specialized state organizations and bodies that resolve disputes arising from labor relations[9].

[4]Gladstone A. Settlement of Disputes over Right. В кн.: Roger Blanpain, Jim Baker. Comparative labour law and industrial relations in industrialized market economies. Kluwer Law International, 2004. – P. 597.

[5] A Timeline of events in modern American labor relations. Follow the progress of modern mediation and conflict resolution// http://www.fscs.gov/intemet/ itemDetail.asp?categoryID^21 &itemlD= 15810

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For example, in the United States, the Federal Mediation and Conciliation Service (FMGS) and the Mediation Research & Education Project, Inc. (MREP) deal with these issues. In accordance with the FMGS and MREP data, the mediation procedure is in demand and effective. Thus, according to the MREP statistical report for the period from 1980 to 2007, the Corporation considered 3570 disputes, of which 3061 (85.7%) were settled in mediation, 447 (12.5%) were resolved in arbitration, 62 (1.7%) were not completed. In 2007, 45 disputes were considered, of which 40 (88.9%) were settled in mediation, 0 (0%) were resolved in arbitration, 5 (11.1%) were not completed. According to the annual reports of the FMCS in 2010, the Service conducted 5329 mediations on disputes that arose during collective bargaining, of which in 86% of cases the parties reached an agreement, in 2020 - 1753 mediations on disputes arising as a result of violation of the terms of the collective agreement, of which, in 74% of cases, the parties reached an agreement (in 2020 - 1728 mediations, of which 75% were completed by reaching an agreement)[10].

The experience of the United States in the field of alternative resolution, collective labor disputes was largely accepted in the UK. The English analogue of the Federal Mediation and Conciliation Service is the Advisory Conciliation and Arbitration Service (ACAS), created by the Employment Security Act 1975 as an independent body designed to assist in the settlement of individual and collective disputes through alternative methods, including mediation. As a general rule, any complaint lodged with the Labor Tribunal (the principal labor dispute tribunal in England, Wales and Scotland) is registered and automatically forwarded to ACAS. After receiving a copy of the complaint, the mediator appointed by the Service addresses the parties to the dispute with a proposal to start the mediation procedure.

If the dispute cannot be resolved through conciliation, the case is referred back to the Labor Tribunal. At the same time, since the complaint was previously registered, regardless of the duration of the mediation procedure, the parties are not afraid of the expiration of the three-month period established by law to apply to the jurisdictional body for the protection of violated rights[11]. The parties to the dispute may voluntarily initiate mediation without first applying to the Labor Tribunal. In this case, the aforementioned period shall not be suspended. Under the Employment Act 2002, the employee and the employer are required to attempt to resolve the dispute amicably, with the Labor Tribunal empowered to sanction a party that has unreasonably refused to cooperate or has shown excessive stubbornness in the process of reaching an agreement.

In the countries of continental Europe, mediation in labor disputes is used much less frequently than, for example, in the UK and the USA. This is largely due to the presence of a fairly effective system of labor justice. At the same time, the labor courts are also focused on the speedy and mutually beneficial settlement of pending cases. For example, in accordance with the German Labor Procedure Code, the court is obliged to attempt to reconcile the parties[12]. As a rule, this function is performed by the chairman in the preliminary hearing, and only if it is not possible to reach an agreement, the court meets in full (two non-professional judges, each representing employers and trade unions, respectively, and one professional judge - chairman) and considers the case on merits[13].

In Finland, the entire labor conflict resolution system is aimed at maintaining industrial peace. At the same time, the applicable methods of settlement are determined by the type of labor dispute. Special mediation procedures are provided for collective labor conflicts of interest.

[10] Sixty-First Annual Report, 2008, Federal Mediation and Conciliation Service // http://vvvvw.fincs.gov/internet/itemDetail.asp?categoryID=228&itemlD=17315.

[11] Esenbekova, F. T., Okyulov, O., Sh, R., & Ibratova, F. B. (2021). Features of the approval of the world agreement by the economic court: practice and theory. *International journal of professional science*, (5), 90-96.

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[13] Забрамная Е.Ю, Шмелева Н.С. Обзор систем разрешения трудовых споров, применяемых в развитых странах //http://mvw.tradsud.rU/ru/docs/publications/4.

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In accordance with the current legislation in Finland, a system of bodies has been created - the National Conciliator and the Regional Conciliators, which are part of the Ministry of Labour. It is also allowed to form a conciliation council to consider an individual case – (ad hoc) or appoint a temporary conciliator[14].

Separate mediation techniques are used by the Labor Court in resolving collective disputes about rights and by civil courts when considering individual complaints from employees and employers.

In many European countries, organizations similar to the British ACAS or the American FMCS have been established, for example, the Federal Court of Conciliation in Austria, the National Office of Conciliation and the Bar Association in Finland, the National Office for Conciliation in Sweden, etc.[15]

The experience of the People's Republic of China is interesting The Law "On Mediation and Arbitration of Labor Disputes" was adopted, which came into force on May 1, 2008. This legal act was developed in order to resolve labor disputes fairly and in a timely manner, protect the interests of the parties, as well as promote stability and harmony in relations. In accordance with Article 10 of the Law on Mediation and Arbitration of Labor Disputes, the PRC has established a three-stage system of bodies competent to conduct mediation: at the organizational level, an enterprise committee for mediation of labor disputes; at the base level (in the smallest administrative-territorial unit of the region) and at the volost level (quarter administration level) - mediation organizations.

The Law of the People's Republic of China "On Mediation and Arbitration of Labor Disputes" regulates the most common issues related to the conciliation procedure. It establishes that, based on the results of mediation, the parties draw up a written agreement that is binding. If such an agreement is not reached within 15 days from the date of acceptance of the application, or if the agreement reached is not fulfilled, the parties have the right to apply to arbitration. Pursuant to Article 16 of the Labor Dispute Mediation and Arbitration Law of the People's Republic of China, if the employer fails to fulfill the contract regarding delayed wages, medical expenses for the treatment of work-related injuries, economic subsidies and compensations within the prescribed period, the employee may apply to the People's Court for collection of payments. The people's court is obliged to issue an appropriate order.

According to Article 51 of the Law of the People's Republic of China "On Mediation and Arbitration of Labor Disputes", an agreement on mediation or a decision of an arbitration body that has entered into force must be fulfilled within the prescribed period. If one of the parties fails to comply with the agreement (determination) within the prescribed period, the other party may apply to the People's Court for implementation based on the relevant provisions of the Civil Procedure Code of the People's Republic of China. The people's court that accepted the petition for consideration must, in accordance with the law, bring the agreement (determination) to execution[16].

In the Republic of Uzbekistan, the situation is different. In accordance with Part 1 of Article 3 of the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 "On Mediation", mediation procedures can be carried out on disputes arising from individual labor relations, with the exception of collective labor disputes. However, this provision seems to be very controversial, because historically mediation appeared as a special procedure for the settlement of collective labor disputes.

There is no doubt that the procedure for organizing and conducting mediation in collective labor disputes has a number of features, which are due to the multidimensionality of the subject of the conciliation procedure,

[14] Лехтинен Л. «Сравнительный анализ: разрешение трудовых споров в Финляндии и в Российской Федерации»// Государство и право. - 2001. № 5. - С. 44-45.

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[16] https://chinahelp.me/work/zakon-knr-o-mediatsii-i-arbitrazhe-trudovyih-sporov

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the plurality on each of the parties, the high social significance of collective disputes and their consequences, as well as many other factors.

Based on the foregoing and based on foreign experience, it would be advisable to adopt in Uzbekistan the Law "On Mediation in Collective Labor Disputes", which regulates the organization and conduct of the mediation procedure in this category of cases. It should fix the definition of the concept of mediation in collective labor disputes, the principles and rules for the implementation of the mediation procedure, as well as the basic requirements for mediators.

It seems that the issues of organization, control, accreditation of mediators in collective labor disputes can be included in the competence of the Ministry of Employment and Labor Relations of the Republic of Uzbekistan. At the same time, it is necessary to ensure the training of appropriate, qualified personnel capable of mediating collective labor disputes.

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