## MEDIATION AS A WAY TO RESOLVE COMMERCIAL DISPUTES

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At present, the modern business community is increasingly giving preference to new ways of resolving conflicts. This is primarily due to the development of foreign trade, high technology, electronic commerce, as well as the expansion of economic relations in the modern world. Growth in the number of foreign economic commercial transactions has led to the fact that the parties to the transactions need quick, efficient and qualitative resolution of disputes arising between them. In this situation, alternative ways of dispute resolution, which allow the resolution of conflicts arising in the implementation of business activities, are of particular relevance. One such method is mediation.

In 2002, the UNCITRAL Model Law on International Commercial Mediation and International Settlements reached through Mediation was first adopted (amended and supplemented in 2018). The law is designed to help states reform and modernize their laws relating to mediation. It provides uniform rules regarding the mediation process and aims to promote the use of mediation and certainty in its use. The law aims to promote the active use of mediation worldwide and to ensure wider access to justice [1].

In Belarus, mediation as a method of dispute resolution was first mentioned in 2011, in connection with a pilot project in the system of economic courts, and in January 2014 the Law «On mediation» entered into force. According to this law, mediation is a negotiation between the parties with the participation of a mediator in order to settle a dispute(s) of the parties by reaching a mutually acceptable agreement [2]. According to Article 2, mediation may be used to settle disputes arising from civil relations, including in connection with entrepreneurial and other economic activities [2].

Today, mediation is one of the most popular forms of alternative dispute resolution, common in various jurisdictions and in cross-border disputes. It is particularly effective in the case of ongoing commercial relations, but is in principle applicable in almost all cases, except when it is the judicial remedy and the result in the form of a judicial decision (e.g. injunction) which is of fundamental importance to the parties.

The main categories of cases referred to mediation are disputes about non-fulfillment or improper fulfillment of contractual obligations under contracts of sale and delivery, collection of debts under a loan agreement, termination of a rental agreement and eviction from occupied premises, recovery of damages. Economic disputes arising from contracts of work, services, disputes in the field of electricity, insurance, corporate disputes are successfully resolved. Besides, there are facts in the mediation practice when the parties have settled economic cases on recognition of invalidity of transactions and on protection of business reputation already submitted to the court.

Resorting to the institution of mediation is appropriate in the vast majority of cases. The main question is usually not whether mediation can bring or bring the parties closer to an amicable settlement, but at what point is it most appropriate. Even when mediation does not directly lead to a settlement (e.g., because it is started at too early a stage of the dispute), it can help the parties to identify and focus on the key issues in dispute and, therefore,

their core interests. Mediation can take place several times during the course of a dispute, and the parties may refer to it more than once [3].

It should be noted that mediation in commercial disputes has certain specifics. First, in commercial mediation, the personal aspect of the conflict is less pronounced than in disputes between citizens. The parties to the dispute have a certain rationality in their judgments, behavior, when working out the terms of dispute resolution. In commercial mediation the parties activity is aimed at achieving the most profitable commercial solution, which will allow to get the best economic result in the optimal timeframe [4, p. 139].

The second feature of commercial mediation is the participation in the settlement of disputes of persons who have no personal interest in the dispute. The participants are not only heads of commercial organizations, but their representatives – lawyers, economists, accountants – who may not have the information and competence necessary to settle the dispute. In this case, the mediator shall be able to identify and involve all necessary decision-making competences. In the process of mediation, the mediator shall pay special attention to the legal and factual powers of representatives, monitor compliance with the procedure of approval, endorsement and formalization of decisions made [4, p. 139].

Commercial mediation is a safe procedure, because nothing can happen without the will of the parties involved. Mediation occurs by the mutual, voluntary desire of the parties to negotiate. Legally, the parties express their consent to participate in mediation by signing a Mediation Agreement. The agreement may be concluded in the form of a single document or by exchange of letters. According to Article $40^1$ of the CPC of the Republic of Belarus, commercial mediation may be conducted before going to court, as well as after initiation of court proceedings before proceeding on the merits [5].

Thus, commercial mediation is a type of mediation aimed at settling a dispute between business entities. Such mediation is particularly effective in the case of ongoing commercial relations. However, it is applicable in almost all cases, except for those where it is judicial remedies and the result in the form of a court decision that is of principal importance to the parties. It is the commercial mediation that can help in settlement of disputes and conflicts between partners, suppliers, clients, competitors, etc.

## REFERENCES


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