

# Some Reflections on The Stages of Mediation

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**Abstract:** Within the framework of this article, the concept of mediation, its essence and content are examined, and the stages of the mediation process are analyzed. Based on scholarly debate, a reasoned position regarding the definition of mediation is substantiated. The author's viewpoint is presented concerning the use of the term "stages" in relation to the sequence of conducting mediation, as well as the content of the mediation process. Issues related to the stages of mediation are considered and elaborated separately. Based on examples, the concepts of "position" and "interests" of the parties in mediation are analyzed, and the importance of identifying the parties' interests for achieving a mutually acceptable solution is emphasized.

**Keywords:** Law, interest, mediator, mediation, proposal, mutual agreement, position, needs, principles, process, recommendation, decision, parties, dispute, stages.

**Introduction:** Undoubtedly, the institution of mediation plays an important role in alternative dispute resolution. Analysis of the application of mediation in foreign countries shows that this institution was introduced several decades ago and its application is beneficial for disputants, society, state bodies and organizations, and, of course, courts.

These and other positive aspects of mediation also contributed to the introduction of this institution in our country. Therefore, today, a regulatory framework for the institution of mediation has been created, and special training courses for the training of mediators have been organized. Thus, the fact that courts, as well as other state bodies, recommend the use of mediation to disputants, contributes to the widespread use of this institution in our country.

Undoubtedly, the use of any institution, including mediation, requires knowledge of its legal basis, a correct understanding of the issues of its application, and practical skills in its application.

From this point of view, in particular, in special training courses organized at the Institute for Retraining and Advanced Training of Legal Personnel under the Ministry of Justice of the Republic of Uzbekistan, along with the legal foundations of mediation, classes are conducted aimed at developing practical skills in

applying the stages, methods (techniques) and means (tools) of mediation, which are important in resolving disputes, developed by foreign and national specialists with many years of experience in the field of mediation.

In particular, when teaching the essence and content of the Law of the Republic of Uzbekistan "On Mediation" [1], future mediators, along with the concept and essence of mediation, are informed about the need to be based on the principles of confidentiality, voluntariness, cooperation and equality of the parties, independence and impartiality of the mediator, the parties to mediation, their rights and obligations, requirements for the mediator, his rights and obligations, responsibility, the application of mediation and the requirements of mediation procedures.

The aforementioned Law defines mediation as "a method of resolving a dispute with the assistance of a mediator based on the voluntary consent of the parties to reach a mutually acceptable solution." From this concept, it is possible to obtain information that mediation is carried out due to the emergence of a dispute, mediation is conducted between at least two parties, the decision made as a result of mediation is mutually acceptable to the parties, the voluntary participation of the parties in this process, and the mediator's assistance in the agreement of the parties.

Analysis of scholars' opinions on the concept of

mediation in the literature shows that most align with the concept emphasised in our national legislation. In particular, J. Alfe defined the concept of "mediation as the process by which conflicting parties turn to an impartial third party to reach a consensus and resolve their disputes" [2]. In this case, it can be understood that the achievement of consensus is precisely the achievement of a mutually acceptable solution by the parties to the dispute, and the participation of a mediator as an impartial third party to whom the appeal is made.

"Mediation is the principle of resolving a dispute by entering into free negotiations of the parties with the participation of an impartial person - a mediator (intermediary) to achieve mutual understanding and conclude an agreement that eliminates the conflict situation," in the definition given by F.Otakhanov, the author also cites issues related to the internal process of mediation, including mutual understanding of the parties, entering into free negotiations [3]. However, the fact that these actions and relationships constitute only a part of the mediation internal process, and mediation is recognized not as a "principle," but as a method, is the basis for partial approval of the author's opinion. For example, the recognition of a mediator as an "intermediary" also leads to secondary concepts.

Masadikov Sh. defined mediation as "a method of resolving a dispute between the parties with the help of a neutral mediator, who contributes to reaching a mutually acceptable agreement for the parties and has the right to make a decision" [4]. In this concept of mediation, the author states that the right to make a mutually acceptable decision belongs to the mediator. However, the legislation does not provide information about such rights of the mediator. On the contrary, the fact that the Law of the Republic of Uzbekistan "On Mediation" speaks about the mutual resolution of the parties to the dispute indicates that the decision is made by them.

In this regard, it is appropriate to agree with the position of the American mediator Lee Jay Berman, who has many years of experience. He acknowledged that "the process is more important than the result!" and put forward the idea that the parties should leave the mediator, saying, "I made this decision myself." Moreover, such an attitude of the mediation parties indicates that they have made a mutually acceptable decision based on the principle of voluntariness of mediation.

According to the concept given in the Law of the Republic of Uzbekistan "On Mediation," recognition of mediation as a method requires possession of skills in identifying its mechanisms and instruments, as well as

their practical application.

Although the law states that, among the mediator's rights, legal means and methods of persuading the parties to reach a mutually acceptable agreement on the dispute can be used, their essence is not covered. This, in turn, indicates that such means and methods of mediation can be developed in practice. Undoubtedly, the means and methods of mediation developed as a result of practical experience should not contradict the Law of the Republic of Uzbekistan "On Mediation," that is, they should be based on the principles of mediation, comply with the requirements of the application of mediation and mediation procedures. At the same time, as correctly noted in the literature, the success of the mediation process depends not only on the desire and will of the parties to resolve the disagreements, but also on the mediator's experience and skill in applying the means and methods of mediation [5].

According to experts in the field of mediation, the effectiveness of mediation depends on its implementation in stages.

Speaking about the stages of mediation, we consider it appropriate to clarify the terms. In other countries, including in Russian-language literature, such terms as "stage" (стадия) and "steps" are used for the stages of mediation. In this case, the preparatory part of mediation, the main part of mediation, and the part of the completion of mediation are defined as "stage" [6]. Opinions have been expressed that the main part of mediation consists of "stages." Both of these terms are translated into Uzbek as "bosqich." From this point of view, since the preparatory, main, and final stages represent the sequence of mediation, we consider it appropriate to call them the stages of mediation.

Without denying the authors' opinion that mediation consists of three stages, we will consider the essence of these stages. In particular, the preparatory and final periods (stages) are aimed at solving the organisational issues of mediation, while the main period (stage) directly constitutes the internal process of mediation. In this case, preparation for mediation covers such actions as the conclusion of the "Agreement on the Application of Mediation," the "Agreement on the Implementation of the Mediation Procedure," the resolution of organizational issues, the collection of information, the preparation of the mediation room and the equipment in it, that is, the period (stage) aimed at creating conditions for mediation. The main stage forms the center of mediation and refers to the internal process aimed at implementing mediation. The final stage of mediation is the preparation and signing of a mediation agreement and the exit from mediation. In foreign and domestic literature, there are different

opinions on the stages of mediation, covering the main period. For example, D. Folberg and A. Taylor, emphasising that mediation consists of seven stages, distinguish negotiation as the first stage [7]. Others cite four stages of mediation, including entry, promotion of the parties' positions, problem resolution, and agreement [8].

Based on the analysis of the opinions of the above-mentioned and other authors, we believe that it is correct to divide the main period (stage) of mediation into the following stages:

- 1) introductory remarks of the mediator;
- 2) presentations of the parties (introductory words);
- 3) negotiations;
- 4) hold separate meetings with each of the parties;
- 5) formation of the agenda;
- 6) recommending the development of proposals for resolving the dispute.

It is noted that each of the stages that make up the main period (stage) of mediation has its own content and constitutes a set of internal processes of mediation. At the same time, the opinions of experts on the behaviour that constitutes the stages of mediation are largely similar.

In particular, the stage of the mediator's introductory speech includes the mediator's greeting and acquaintance with the parties, as well as explaining to the parties the essence of the mediation. In particular, when explaining the essence of mediation, the parties are informed about the purpose and principles of mediation, the stages of mediation, the rights and obligations of the parties, as well as the impartiality of the mediator in the mediation process. At the same time, the mediator should ask the parties not to interrupt each other and not to say anything offensive. Finally, the mediator determines whether the parties are ready to participate in the mediation and proposes to proceed to the next stage of the mediation.

At this point, if the parties understand that they are in a state of doubt, distrust, anger, despair, and other similar situations, the mediator must take measures to eliminate these negative emotional feelings. For example, in the mediation process between a former husband and wife, when the wife suspects that she may be harassed and insulted by her husband, the mediator can calm the wife's side by saying to the parties: "I will be with you throughout the mediation process, I will not go anywhere." As a result, the wife's side becomes calm and ready for communication.

At the stage of the parties' presentations (introductory remarks), the parties are given the floor in turn. In this

case, each party expresses its position on the dispute. At this stage of mediation, the main task of the mediator is to carefully listen to the speaking parties, prevent them from interfering with each other, determine whether the parties understand each other, and know what results they want to achieve at the negotiation stage. The mediator listens attentively to the words of each party, summarises the requirements and attitudes of the parties regarding the subject of the dispute, notes important information, and prepares several questions for the parties.

The negotiation stage is recognized in mediation practice as a method of "joint session," the process of exchanging information through a general conversation under the mediator's guidance with the participation of both parties to the dispute ("offline" or "online"), discussing the positions and interests of the parties, and finding options for reaching a mutually acceptable solution for the parties. At the stage of negotiations, the parties are given the opportunity to exchange opinions, express their opinion on the issue of resolving the subject of the dispute, and ask each other questions. During the negotiation process, the parties' will to resolve the dispute may be expressed. It is during the negotiations that the mediator can correctly determine the parties' claims regarding the subject of the dispute and the true causes of the dispute. For this, the mediator may ask the parties many questions.

In theory and practice, the demands or attitude of the parties to the subject of the dispute are called "position," and the reasons for the dispute are called "interest." From this point of view, the following definitions can be given: Position is the claims or statements of the parties regarding the subject of the dispute. It is appropriate to cite the following example: if one of the parties to the dispute regarding the failure to repay the debt on time says: "I demand that my neighbour quickly repay the five million soums I lent," and the borrower expresses their attitude by saying, "I cannot repay the debt yet." It is these that are recognized as the parties' positions on the subject of the dispute regarding the repayment of debt. The parties' putting forward their claims or expressing their position on the subject of the dispute are aimed at achieving their own interests. Thus, a position is a method of achieving an interest.

Interest is a position, that is, the reason behind the claims or reactions of the parties to the subject of the dispute. Such reasons, in particular, consist of demands arising from various "events," "situations," "problems," or human "needs." For example, flooding of an apartment below by neighbours living on the upper floor can be cited as a phenomenon, spouse infidelity

as a situation, and financial difficulties as a problem. Since human needs constitute the majority of disputes resolved through mediation, we will consider them separately. The renowned American psychologist A. Maslow identifies the following as human needs: physiological needs (needs for water, food, and sleep), security needs (stability, ensuring security, having comfortable conditions, such as owning a home or shelter), the need for belonging to a community and love (for example, entering university, finding a job, starting a family), the need for respect, the need for self-recognition (for example, the desire for status, the desire to gain prestige, self-development, career advancement) [9].

It should be noted that the needs of the parties seeking mediation are often different. In such situations, the main task of the mediator is to identify the real needs of the parties. The reason is that in the mediation process, a mediation agreement can be reached not based on the positions of the parties, but by ensuring the interests of each party (stabilisation of the situation, elimination of the consequences of the incident, solution of problems or satisfaction of needs).

If the parties cannot engage in constructive dialogue during the negotiations, the mediator may declare to the parties the need to hold separate meetings with each of them. Consequently, a separate stage of the meeting with each of the parties will be held as needed.

In mediation practice, the main purpose of a separate meeting with each of the parties, often referred to as a "caucus" (Eng. caucus), is to identify the real interests of the parties regarding the subject of the dispute, as well as to try to identify the hidden interests of the parties that they cannot disclose during the negotiations. For example, the person who lent money to his neighbor informed him that he needed the money right now and wanted to buy his son a smart TV for four and a half million soums for his birthday in the coming days. The mediator asked the neighbour's creditor for permission to use this information during the negotiations. The lender did not object.

At the stage of forming the agenda, the mediator recommends that the parties clearly formulate and record the directions for resolving the subject of the dispute during the mediation process. The mediator reads out the agenda formed by the parties to both parties. The main goal of this stage is to prepare the parties for the development of options for resolving the dispute. At this stage, the mediator informs the parties that the resolution of the claims put forward must correspond to reality, be understandable to the other party, and most importantly, recommends that they seek solutions to the dispute based on real needs and

interests, and not positions. In mediation, this type of tool is called "interest orientation," and its essence is expressed in the fact that the parties focus on "Why is this important to me?" rather than "What do I want?" The above example of the subject of the dispute regarding the return of loans in the amount of five million soums helps to understand the essence of this stage. For example, from the relations written by the parties regarding the resolution of the dispute, the party that borrowed money from the neighbor stated that the sale has been suspended due to repair work being carried out in the household appliance store belonging to him, so they cannot give the money yet, and the party that lent money to the neighbor said that he needs the money right now and wants to buy his son a smart TV for four and a half million soums for his birthday in the coming days.

At the stage of recommending the development of proposals for resolving the dispute, the mediator must remind the parties that the proposals submitted should be mutually acceptable, that is, useful, and this is precisely what reflects the essence of mediation. At the same time, in theory and in practice, under the Law of the Republic of Uzbekistan "On Mediation," proposals for resolving the dispute may be made only by the parties, and the mediator may make recommendations only on their proposals (Article 13 of the Law). Consequently, the mediator can only provide the parties with recommendations for resolving the dispute. In particular, in the aforementioned example, the debtor indicated that they had new smart TVs in their store, which were intended to be purchased by the lending party, and offered to cover the debt with a TV. In this case, the mediator, using the means of "facilitation," recommends that the creditor consider the proposal of the debtor. The creditor stated that he liked the debtor's proposal, and the parties reached a mutually acceptable agreement on the dispute. In this example, it was precisely due to the identification of interests that the foundation was created for the parties to reach a mutually acceptable solution.

During the main period (stage) that constitutes the internal process of mediation, the mediator can also use such means (instruments) as "active listening," "reframing," "paraphrasing," "asking open questions," "using neutral speech," "empathy" and others aimed at persuading the parties to reach a mutually acceptable agreement on the dispute in the theory and practice of mediation.

As noted above, the final stage of mediation consists of the stages of preparing and signing a mediation agreement and leaving the mediation. Thus, the final stage of mediation can also end with the refusal of both parties or one party to participate in the mediation or

the notification of the mediator about the inexpediency of continuing the mediation process.

The main reason for the transition to the stage of preparing and signing a mediation agreement is the agreement of the parties to make a mutually acceptable decision on the dispute. The concluded "Mediation Agreement" sets out the mutually acceptable proposals of the parties regarding the dispute. The agreement is written in a way that is understandable to both parties and can be interpreted equally. The parties are also informed about the possible consequences of non-performance of the agreement, which are recorded in the "Mediation Agreement." At this stage, the main task of the mediator is to formalise an agreement that serves the interests of the parties, corresponds to reality, that is, can be executed and ensured. For him, it is advisable for the mediator to check that the concluded "Mediation Agreement" is written clearly and fluently, and to read it aloud to the parties once again.

The main goal of the exit stage is to ensure that the parties understand what needs to be done after leaving the mediator. For this, the mediator must first of all thank the parties for the effective cooperation, check the parties' satisfaction with the results of the mediation, and agree on the channels for establishing contact with the parties.

Observance of this period (stage) and stages of mediation, developed by specialists with experience in long-term mediation practice and applied within the framework of the law, will undoubtedly be effective in achieving a mutually acceptable solution for the parties to the dispute.

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