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RESOLUTION OF FAMILY DISPUTES THROUGH MEDIATION: LEGAL SIGNIFICANCE AND RELEVANCE OF MANDATORY MEDIATION IN DIVORCE PROCEEDINGS

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The family serves as the fundamental pillar of society. It is within the family that an individual matures, socializes, and develops personal values and a worldview. For this reason, the family constitutes a crucial institution for both the state and society. Currently, the divorce rate in our country has increased markedly. Notably, in January–June 2026, 24.8 thousand divorces were recorded, with a divorce rate of 1.3 per 1,000 population [1]. The growing caseload on courts handling family disputes, adversarial tensions and mutual intransigence between parties during litigation, and the resulting harm to children's interests increasingly heighten the need for fast, cost-effective, and humane dispute resolution mechanisms. From this perspective, the role of mediation in family disputes and its introduction on a mandatory basis acquire substantial theoretical and practical relevance.

Mediation is an alternative dispute resolution method founded on voluntariness and confidentiality, aimed at enabling the parties to reach a mutually acceptable agreement with the assistance of an impartial third party—the mediator. Its significance is particularly pronounced in family disputes, as most of these conflicts are emotional and psychological rather than strictly legal. Mediation shifts the parties from competition to cooperation, shields children from the psychological strain inherent to court proceedings, resolves disputes more swiftly and economically, and, most importantly, preserves essential communication channels for future co-parenting. This final aspect fundamentally distinguishes mediation from a judicial divorce decree: litigation terminates a dispute, whereas mediation restructures future relationships.

As emphasized by L. Parkinson, an expert of the Family Mediation Council at the Law Society of England and Wales, the root cause of conflicts between intimate parties often lies not in formal legal claims or material interests, but in the emotional state of the disputants. Consequently, mediators can frequently achieve more constructive outcomes than judges when addressing such disputes [2].

Current legislation provides for a court-mandated reconciliation period as the sole procedural remedy in divorce cases; however, this mechanism remains largely declarative and lacks a structured implementation protocol. Hence, the introduction of mediation as a mandatory procedural stage is advocated. This approach does not mandate mediation itself, but rather establishes a compulsory initial stage—namely, attendance at an informational mediation session. In other words, the "mandatory process – voluntary outcome" model applies: parties are required to attend an initial informational meeting, while reaching an agreement remains entirely voluntary. Such an approach does not violate the core principle of voluntariness; instead, given that many citizens underutilize mediation simply due to a lack of awareness, it serves to introduce them to its viable possibilities.

Numerous developed jurisdictions have introduced mandatory or quasi-mandatory mediation models with positive results. For instance, Norway is recognized as one of the jurisdictions with the most consistent mandatory family mediation systems. Under Norwegian law, all divorcing or separating parents with children under the age of 16 must undergo a mediation process known as "mekling" and obtain a mediation certificate ("meklingsattest") prior to filing an application for divorce or initiating court proceedings. This procedure is administered through family counseling offices, aiming primarily to assist parents in reaching agreements concerning the child's place of residence, visitation schedules, and related welfare matters. Notably, the mandate in Norway requires meaningful participation in the mediation process itself rather than mere attendance at a single informational meeting. At the same time, empirical research indicates that universal mandates do not always yield satisfactory outcomes in high-conflict family dynamics, where specialized, intensive interventions are required. A vital takeaway

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from the Norwegian framework is the necessity of avoiding a one-size-fits-all model by tailoring mediation services to varying levels of conflict intensity.

The compatibility of mandatory mediation with the right to an effective remedy and a fair trial has been scrutinized repeatedly by the Court of Justice of the European Union (CJEU). In seminal judgments such as Rosalba Alassini and Others (Joined Cases C-317/08 to C-320/08, 2010) and Menini and Rampanelli (Case C-75/16, 2017), the Court articulated the following criteria [3]: mandatory pre-trial negotiation must not lead to a binding decision without the parties' consent, must not cause substantial delays in accessing judicial bodies, must suspend statutory limitation periods, must not generate disproportionate costs for the disputants, and must not preclude interim injunctive relief. Under these conditions, the CJEU held that mandatory mediation does not infringe upon the right of access to justice, as it does not eliminate the right itself, but merely organizes its procedural path.

Conclusion. The analysis demonstrates that in resolving family disputes—specifically in divorce proceedings—mediation acts not as a mere alternative to the judicial apparatus, but as an essential, expedited, cost-efficient, and humane complement to it. International jurisprudence and comparative legal analysis confirm that mandatory family mediation, when properly structured, is fully compatible with the right to a fair trial and plays a pivotal role in settling domestic disputes.

Adopting the "mandatory process – voluntary outcome" framework—making the initial intake meeting compulsory while keeping any substantive settlement strictly voluntary—proves to be the most balanced solution. Accordingly, it is recommended to amend Article 40 of the Family Code of the Republic of Uzbekistan to require courts granting a reconciliation period to refer parties to an initial mediation informational session, while explicitly exempting victims in cases involving domestic violence. Without infringing upon the principle of voluntariness, this approach broadens opportunities for family preservation, safeguards the best interests of the child, and significantly mitigates the procedural burden on the judiciary.

References:

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[2] Parkinson, L. 25 Years Later: Family Mediation in England and Wales // Mediation and Law. Intermediation and Conciliation. 2008. No. 3 (9). P. 16.

[3] Court of Justice of the European Union. Judgment of 14 June 2017, Livio Menini and Maria Antonia Rampanelli v Banco Popolare Società Cooperativa, Case C-75/16, paras. 52–56, ECLI:EU:C:2017:457.

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