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## Specific Features of the Mediation Agreement in the System of Market Relations

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**Annotation** *In this article, the author describes the commission agreement as a broad user agreement in business relations in the legal system of developed countries, widely used in international and domestic trade relations, as well as the features of the commission agreement in the modern process of improving civil legislation in scientific and practical terms.*

**Key words:** *intermediary, commission agreement, universal contract, commodity exchange, commission valuation, insurance, publishing, wholesale, collateral, transportation intermediary, debt intermediary.*

Contracts occupy a unique position among the legal instruments that govern social relations. Humans have utilized agreements as a highly versatile legal device for governing various social ties for thousands of years.

Contracts are one of the foundations for the creation of civil rights and obligations between the parties, according to Article 8 of the Civil Code of the Republic of Uzbekistan. Contracts, without a doubt, get a lot of attention these days. Because, unlike other legal facts, the parties' will is completely reflected in contracts.

Share construction, cluster production, e-commerce, crypto-currency turnover, land privatization, and other activities are not regulated under the "Concept for Improving the Civil Legislation of the Republic of Uzbekistan"<sup>1</sup> adopted by Decree of the President of the Republic of Uzbekistan No. F-5464 of April 5, 2019. In this regard, the scientific, theoretical, and practical examination of the characteristics of the mediation contract in today's civil law is one of the most serious concerns in the system of mediation interactions.

Today, the brokerage agreement is characterized as a user agreement in business relations in the legal system of all developed countries and is widely used in international and domestic trade relations. According to the definition given in the legal literature, it can be said that the mediation agreement has the following legal features:

<sup>1</sup> Decree of the President of the Republic of Uzbekistan "On measures to improve the civil legislation of the Republic of Uzbekistan" (National Database of Legislation, 06.04.2019, No 08/19/5464/2891).

First, the mediation agreement involves two parties, each of whom has rights and obligations. This characteristic shows that this agreement is bilateral.

Second, the mediation agreement is concluded for a certain fee.

Third, the mediation agreement is consensual in nature.<sup>2</sup>

It is well known that the doctrine of civil law is governed by the concept of a consensual mediation agreement. There are also some that hold contrary viewpoints. B. K. Komarov, in particular, attempted to prove the notion that the mediation agreement is genuine. The scientist claims that there is no need to mediate until the principal gives the item to the intermediary. The mere fact that the mediator and the principle have reached an agreement does not imply that the principal has a legal obligation to deliver the item to the mediator. This is because if the principal has no interest in the outcome of the transaction, he may cancel the assignment and the mediator will not have the right to require him to hand over the item in this case. If the principal does not hand over the goods to the intermediary within the period specified in the contract, then the term is not expired and, accordingly, the responsibility of the principal does not exist.<sup>3</sup>

Of course, it's difficult to disagree with the author's point of view in this case. According to the author, the agreement's consensual nature may be recognized first and foremost in the potential of enforcing it. We can observe how the author approached the client's interests in this situation. The core of the mediation relationship is primarily dictated by the customer's - the client's - interests in completing the transaction. Loss of interest in the transaction shall not obligate the principal to transfer the thing to the intermediary. In accordance with the legislation, the principal may also terminate the mediation agreement at any moment.

The essence of a mediation relationship is that it does not require any action to be taken to deliver the goods or enter into a mediation agreement. Delivery of the goods by the principal on the basis of a mediation agreement is carried out on the basis of a previously concluded contract.<sup>4</sup>

What types of agreements may be allocated to the mediator is a point of contention in the civil law doctrine. It's worth noting that all of these observations are made within the context of the mediation agreement as a whole. The mediation agreement's major point was that the mediator entered into an agreement on his own dime, but on behalf of the principle, in accordance with the principal's assignment.

It is worth noting that A.V. Egorov, who conducted research on the mediation agreement, has made some progress in this regard. The author makes a number of valuable comments on the subject of the mediation agreement, pointing out that there are certain approaches. In particular, in his view, the first approach is seen as a universal legal instrument in which a person (client) achieves a certain result as a result of the activities of another person (mediator) on the basis of a mediation agreement. As a result, many transactions are made through the involvement of an intermediary. As an alternative to this approach, the subject of the mediation agreement should cover a limited range of transactions, taking into account the history of the mediation obligation and its close relationship with trade. These include pre-sale or other transactions of a commercial, transactional nature, which can be executed by the broker himself without the assistance of the principal. In this case, the second approach is preferred.

The preceding viewpoint should not be regarded as exclusive. This is because emphasizing the nature of this agreement as a universal agreement in the study of the mediation agreement's subject might aid in covering the legal nature of the agreement and its extent.

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<sup>2</sup> Team of authors. Civil law. Special section. T.: Ilm Ziyoy, 2008. 482 b.

<sup>3</sup> Komarov B.K. Agreement of the Commission on Soviet Law. Moscow: 1961, p. 4.

<sup>4</sup> Ioffe O.S. Soviet civil law (course of lectures) M.: 1961, p. 4.

There were other views in civil law doctrine that the mediation contract should only be used in the purchase and sale of property. According to V. A. Krasnokutsky, mediation is a task that involves selling or buying anything.<sup>5</sup> A. Shakhnazarov agrees with this opinion. In his view, the element of intermediary activity is the purchase or sale in accordance with the principal's assignment. As proof of his opinion, the author emphasizes the existence of legislation that expands the scope of mediation.<sup>6</sup>

E.A Sukhanov observes that the purpose of the mediation agreement is usually merely the transaction on the sale of the principal's property, focusing on the scope of the agreement.

The foregoing points are difficult to concur with. Because we can see, the authors' viewpoints are primarily established on the basis of legislation that existed during the former Soviet era. Other scholars from the same time period, however, observed the presence of intermediaries in buy and sale contracts, as well as other key categories of intermediation, such as transportation, rental housing, debt intermediation, and other essential types of intermediation.<sup>7</sup>

The Regulation on Cooperation was approved by the Resolution of the ICC of the Republic of Turkestan and the Central Executive Committee of August 15, 1922 "On Credit Cooperation". According to it, citizens of TASSR can establish credit and loan-fund cooperative societies to provide their members with soft loans for their economic needs (equipment, raw materials and tools produced by the members of the company).<sup>8</sup> The purpose of these societies was to serve mainly the poor and middle class cotton pickers by providing loans on a cooperative basis. Such cooperatives have the right to carry out savings, loans, mortgages, loans, trade and brokerage operations.<sup>9</sup>

To some extent, the preceding authors' viewpoints limit the scope of the mediation agreement. The extent of transactions that can be entrusted to an intermediary is now unrestricted by the Republic of Uzbekistan's Civil Code.

In civil law, there are numerous perspectives on the scope of the mediation agreement. Based on the nature of the mediation relationship, these opinions are conveyed in the definition of particular transaction conditions, the structure of which may be entrusted to the mediator.

The objective and substance of the mediation agreement, according to A.V Egorov, is to independently acquire the mediator's rights and obligations and to transmit the property outcome to the principle. As a result, the conclusion of transactions that, if required, can be transferred to another person and implemented by the mediator without the participation of the principal is the subject of the mediation requirement.<sup>10</sup>

From the above, it can be concluded that there are two different views on the definition of the subject of the mediation agreement in civil law:

**First**, the subject of the mediation agreement involves the conclusion of an agreement that gives rise to a property result that can be transferred to the principal;

**Second**, the subject of the mediation agreement involves the conclusion of an agreement that can be executed by the mediator without the participation of the principal.

<sup>5</sup> Krasnokutskiy V.A. The agreement of the commission. Moscow: 1925, p. 17.

<sup>6</sup> Shakhnazarov A. Commission agreement. // Questions about commercial law and practice. Sat. Articles. L.: 1926. p.83.85.

<sup>7</sup> Nosenko D.I. About the commission agreement. //Journal of civil and criminal law. SPb.: 1879.book 1.s.104.

<sup>8</sup> Collection of the most important decrees, decisions and orders for 1917-1922, pp. 193-199.

<sup>9</sup> Zokirov I.B. Formation and development of civil law BNSR and KhNR. T.: 1977.

<sup>10</sup> Egorov A.V. Subject of the commission agreement. / in the book Actual problems of civil law: Collection of articles, issue 5. / Edited by V.V. Vitryansky. -M.: Statut, 2002. -p.110.

The preceding criteria are less in line with the mediation agreement's legal nature. The reason for this is that the scope of transactions that the legislature can delegate to the mediator is not limited. The current legislation has established a distinct framework for contract matters. Article 838 of the Civil Code states that objects transferred from the principle to the intermediary or purchased at the intermediary's expense become the principal's property.

The performance of the obligation assumed by the mediator (e.g., the conclusion of the transaction, the performance of the rights and obligations under the transaction) is, as a general rule, not related to the outcome of the transaction. Execution of the transaction by a third party is not covered by the mediation agreement. Consequently, the outcome of a transaction as a specific property is outside the scope of the brokerage agreement until it is delivered by a third party.

The interest of the principal may be satisfied without the obligatory transfer of the property result of the transaction to him. Naturally, it is not expedient to limit the subject of the mediation agreement on the basis of a criterion that includes the conclusion of a transaction that gives rise to a property result, the subject of which may be transferred to the principal.

The interests of the principal will be secured even without the acceptance of the property result. For example, insurance contracting services. In this case, the intermediary appears on his behalf as an insurer of the principal's property. A property insurance agreement does not necessarily imply a property result. If the insured event does not occur, of course, the principal will not receive payment for the insured event. The inclusion of the insurance contract in the subject of the mediation contract has existed throughout the history of the development of this institution. Therefore, Article 840 of the Civil Code provides for the conclusion of an insurance contract at the expense of the principal.

Another transaction under a mediation agreement is the transfer of the principal's property by the intermediary for safekeeping in his own name. This agreement is also traditionally included in the subject of the agreement at all stages of the development of the mediation agreement. Even in this case, we do not see a property result that can be transferred by the principal. The interest of the principal is expressed in the safekeeping of the property.

If the subject of the brokerage contract is based on an approach that involves the conclusion of a transaction that gives rise to a property result that can be transferred to the principal, then all service contracts must be excluded from the subject of the contract. This is because these contracts do not contain the property result that is handed over to the principal.

It is also worthwhile to comment on the criterion that the subject of the mediation agreement includes a transaction that can be executed by the mediator without the participation of the principal. This criterion does not correspond to the legal nature of the mediation agreement. In particular, an intermediary may not execute an agreement on the sale of a particular item entered into under the performance of an intermediation agreement until the item has been handed over to the intermediary or directly to a third party.

If we take into account that in some cases the agreement with third parties on the performance of the mediation contract can not be executed by the principal without the participation of the principal, it is illogical and inappropriate to limit the subject of the mediation contract to a contract that can be executed by the mediator .

Annex 2 to the Resolution of the Upper House of the Republic of Uzbekistan "On the list of activities for which licenses are required", approved on May 12, 2001, specifies the types of activities to be licensed. In accordance with Article 11 of the Law of the Republic of Uzbekistan "On Licensing of Certain Types of Activities" of May 25, 2000, the type of activity licensed for implementation can be carried out only by

a licensed legal entity or individual. It is prohibited to transfer licenses or related rights to other persons. Licensing activities include appraisal, insurance, publishing, wholesale, pawnshop and other activities. Hence, the ability of an intermediary to enter into certain types of transactions is limited.

An intermediary contract is a universal contract model. From the above, it can be seen that the conclusion of a wide range of agreements on the subject of the mediation agreement includes unilateral, bilateral, fee-based and free transactions.

In conclusion, the criterion that the subject of the mediation agreement includes the conclusion of a transaction that gives rise to a property result that can be transferred to the principal does not correspond to the nature of the obligation and the practice of enforcing the right to have a mediation agreement in civil proceedings. Therefore, it is advisable to apply the rule that "the subject of the mediation agreement includes all types of transactions, except for transactions that by law can be concluded only by the principal."

### List of References:

1. Decree of the President of the Republic of Uzbekistan "On measures to improve the civil legislation of the Republic of Uzbekistan" (National Database of Legislation, 06.04.2019, No 08/19/5464/2891).
2. Civil law. Special section. T.: Ilm Ziyoy, 2008. 482 b.
3. Komarov B.K. Agreement of the Commission on Soviet Law. Moscow: 1961, p. 4.
4. Ioffe O.S. Soviet civil law (course of lectures) M.: 1961, p. 4.
5. Egorov A.V. Subject of the commission agreement. / in the book Actual problems of civil law: Collection of articles, issue 5. / Edited by V.V. Vitryansky. –M.: Statut, 2002. –p.101.
6. Krasnokutskiy VA Agreement of the commission. Moscow: 1925, p. 17.
7. Shakhnazarov A. Commission agreement. // Questions about commercial law and practice. Sat. Articles. L.: 1926. p.83.85.
8. Nosenko D.I. About the commission agreement. //Journal of civil and criminal law. SPb.: 1879. book 1.s.104.
9. Collection of the most important decrees, decisions and orders for 1917-1922, pp. 193-199.
10. Zokirov I.B. Formation and development of civil law BNSR and KhNR. T.: 1977.
11. Egorov A.V. Subject of the commission agreement. / in the book Actual problems of civil law: Collection of articles, issue 5. / Edited by V.V. Vitryansky. –M.: Statut, 2002. –p.110.