



THE ROLE AND IMPORTANCE OF MEDIATION IN THE CONDITIONS OF MODERN MARKET RELATIONS

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ABSTRACT: - This article examines the legal nature and characteristic features of the commission contract in the civil legislation of the Republic of Uzbekistan. Despite the traditional presence of the rules on the commission in the Civil Code, the author believes that the contract of the commission is little studied in the national legal literature and requires further research.

As a research task, the author attempts to draw attention to the special position of the domestic legislator in some rules on the commission, which are of a debatable nature. The article notes the positive approach chosen by the legislator on the right of the commission agent to make a transaction for himself, as well as the right to remuneration when making a transaction for himself.

KEYWORDS: Commission; elements of the commission agreement; competitive environment, representation, substitution, counterparty, commission agent, delcredere.

INTRODUCTION

Modern market relations are unthinkable without the participation of persons who contribute to the establishment of economic ties between producers of goods and services, between them and consumers.

Intermediaries are an integral part of a developed market and a necessary condition for the progressive development of society itself.

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It is well known that the well-established mechanism of the functioning of the economy is directly related to the state of law. At the same time, today many acts of domestic legislation are distinguished by defects in legal technology and gaps in legal regulation. However, according to the domestic legislator, the current degree of development of intermediary services is not sufficient, not only in quantitative terms, but also, above all, in qualitative terms.

The legal regulation of intermediary activity as an element of an effective economy needs to be adjusted. This is due to the fact that, despite the fact that the category of mediation in a variety of meanings is used in the normative legal acts of the Republic of Uzbekistan, the concept of mediation remains legally uncertain. Due to the multitude of existing concepts and terms, it is often difficult for civil turnover participants to figure out what kind of mediation they are talking about.

At the present stage of development of the national economy in the conditions of already relatively established economic relations and competitive environment, it becomes relevant not only to improve the existing technologies of organizing intermediary activities, but also to introduce new methods of product promotion for the national economy of the Republic of Uzbekistan. Both for the manufacturer and for any intermediary, a modern competently designed technology of the product promotion channel to the end consumer is now important, which reduces costs, expands opportunities for providing additional services and ultimately increases the financial result, which allows you to win in the competition for the consumer. Intermediaries are an integral part of a developed market and a necessary condition for the progressive development of society itself. It is well known

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One of the most promising and rapidly developing sectors of the economy, as practice shows, is the service sector, the rapid growth of which is a distinctive feature of the economic situation of the early 21st century. The services market covers a wide field of activity - from trade and transport to finance, insurance, and, of course, mediation.

The increasing importance of intermediary services has led to the need for coverage of this area. That mediation activity has recently become widespread, new types of mediation contracts have appeared in the domestic civil legislation.

Mediation, therefore, is a type of representation carried out on a contractual basis.¹ Mediation always presupposes relations of representation, whereas representation may arise from a law, acts of state and other competent authorities, on the basis of labor relations, court decisions, etc., in addition to a contract. Mediation activity is always carried out by virtue of the contractual obligation relationship existing between the parties and represents the provision of services by one person to another person.

Below it is important to highlight the characteristic features of mediation that determine its legal nature.²

The first sign: the relationship of obligation between the intermediary and the interested party. There are no surprises here – the intermediary is obliged to perform certain actions in favor of the interested person

¹ Commercial law: textbook [Text]/ V.I. Afanasyeva, Yu.N. Bogdanova, V.V. Warmund, etc.; ed. by R.V. Shagieva; ed. by O.V. Efimova, T.V. Kazanina, R.V. Shagieva.– Moscow: JUSTICE, 2020. pp. 169-190.

² Golyshev V.G., Golysheva A.V. Delusion regarding the nature of the transaction as a basis for its invalidation // Lawyer. 2020. No. 4. pp. 23-27.

(transfer property, perform work, pay money, etc.) on the basis of binding legal relations. The interested person, in turn, has the right to demand from the debtor the fulfillment of his duties.

The second feature is characterized by the fact that the activity of the intermediary is carried out in the interests and at the expense of the interested person. At the same time, these interests may be obvious to third parties – both in the activities of an attorney, for example, and not obvious, as in the activities of a commission agent. And since the mediator conducts business in the interests of others and as a result, his activities are carried out at the expense of the interested person.³

In this case, the actions of the intermediary have exactly the legal, and not the economic opportunity to attribute the result of their activities to the property sphere of the interested person. It is known that the economic opportunity of a seller of a product that has a stable demand from buyers involves actions to cover losses on one operation by increasing the selling price to other buyers of this product. This possibility is very acceptable, but it is regulated by economic laws. The legal possibility of attributing to someone else's account the results of their own activities, both positive and negative, is regulated by law intentionally for such cases. The most frequent of its grounds are institutions that formalize the conduct of someone else's business. The actions of a person who acts at his own expense, for example, resells the purchased item, occur at his own discretion and are based on his personal interests. Such discretion is undoubtedly formed under the

³ Karpichev M.V. Actions in someone else's interest in the mechanism of ensuring subjective rights and freedoms // Scientific works. Russian Academy of Legal Sciences. – M., 2017. p. 57.

influence of a number of factors, which include political, economic, legal and a number of others. However, it seems that the effect of these factors relates to the general conditions of functioning in the market. It does not in any way represent an individual settlement based on the legal relationship between this person and his counterparty. This significantly distinguishes an economic intermediary from an intermediary in the legal sense.⁴

The norms governing the commission's contract are contained in Chapter 48 of the Civil Code of the Republic of Uzbekistan, which includes 17 articles. The Commission Contract is one of the civil law contracts, the norms of which have never been amended since the adoption of the Civil Code of the Republic of Uzbekistan (Special Part).

In special areas of trade where a professional trade intermediary participates, the general rules on the commission specify the norms of special legislative acts. Certain types of commission agreements are also regulated by the Law of the Republic of Uzbekistan No. 387 "On the Securities Market" dated June 3, 2015, the Law of the Republic of Uzbekistan No. 573 "On Currency Regulation" dated October 22, 2019, etc.⁵ A number of by-laws also establish special rules for individual commission contracts, for example, Decree of the President of the Republic of Uzbekistan dated April 14, 2021 No. UP-6207 "On

⁴ Karpichev M.V. "Alien", "common" and "own" interests in civil law // Interests in law. Zhidkov readings materials of the All-Russian Scientific Conference. - M., 2017. pp. 343-350; Golyshev V.G., Golysheva A.V. Network form of implementation of educational programs as a way to improve the quality of education / In the collection: New technologies for assessing the quality of education. Collection of materials of the XV Forum of the Guild of Experts in the field of vocational education. Under the general editorship of G.N. Motova. 2019. pp. 151-155.

⁵ <https://lex.uz/acts/4562846>

measures for further development of the capital market".

By virtue of Article 832 of the Civil Code of the Republic of Uzbekistan, under the commission agreement, one party (the commission agent) undertakes, on behalf of the other party (the committeeman), to make one or more transactions on its own behalf, but at the expense of the committeeman, for remuneration. The commission agreement must be concluded in writing.⁶

M.I. Braginsky notes a characteristic feature of the commission – the substitution. The substitution in the commission is expressed in the fact that the party to whom the commission is assigned (the commission agent), acting on his own behalf, replaces the party who made the order (the committeeman) [3, p.403].

The modern commission agreement in the Republic of Uzbekistan has the following features:

I. The commission agent undertakes to make transactions on behalf of the other party;

II. The construction of this contract in the Civil Code of the Republic of Uzbekistan assumes transactions in respect of property not owned by the seller;

III. The commission agent acts on his own behalf, but at the expense of the committee. By virtue of Article 834 of the Civil Code of the Republic of Uzbekistan: "The commission agent must fulfill all obligations and exercise all rights arising from the transaction concluded by him with a third party. The commission agent is obliged to execute the commission taken upon himself in accordance with the instructions of the committee, and in the absence of such instructions in the commission contract — in accordance with

⁶ The Civil Code of the Republic of Uzbekistan. Dated August 29, 1996. ((National Database of legislation with the latest amendments on 05/8/2022, No. 03/22/770/0424) <https://lex.uz/>

business practices or other commonly imposed requirements, on the most favorable terms for the committee. If the commission agent has made a transaction on terms more favorable than those specified by the committee, the additional benefit is divided equally by the parties, unless otherwise provided by the contract";

IV. Unlike an assignment, a commission contract is always paid. The parties to the contract are the committee and the commission agent. The Civil Code of the Republic of Uzbekistan does not contain any restrictions relating to the subject matter of the commission agreement.

The parties to the contract can be both individuals and legal entities with sufficient legal capacity and legal capacity.

The subject of the commission agreement is the provision of intangible services in the form of a transaction on behalf of the committee.

The definition of the subject of the commission contract is a prerequisite for its conclusion, since the subject is the only essential condition in the commission contract. The Civil Code of the Republic of Uzbekistan does not contain any special instructions regarding the subject matter of the commission contract. Given the special regime of registration of real estate transactions, we consider it necessary to limit the range of things that are the subject of the transaction in the commission. To do this, it is necessary to fix in Chapter 48 the rule that real estate transactions cannot be included in the subject of the commission agreement and can be implemented, for example, under an assignment agreement.

By virtue of paragraph 1 of Article 833 of the Civil Code of the Republic of Uzbekistan, the committee is obliged to pay remuneration to the commission agent, and, if he has assumed such an obligation, then pay additional

remuneration. Thus, the legally established presumption of its retribution applies to the commission contract, i.e. the committee must pay remuneration to the commission agent in any case.

The committee is obliged to pay remuneration to the commission agent, and in cases where the commission agent has assumed responsibility for the execution of the transaction by a third party (*delcredere*), also additional remuneration, in the amount specified in the contract. If the contract does not provide for this amount and cannot be determined based on its terms, the amount of remuneration is established in accordance with part four of Article 356 of the Civil Code of the Republic of Uzbekistan.

If the commission agreement has not been executed for reasons depending on the committee, the commission agent retains the right to commission remuneration, as well as reimbursement of expenses incurred. In the event that the price is not provided for in the paid contract and cannot be determined based on the terms of the contract, the contract must be executed at the current price. For example, in a situation where the parties have not stipulated in the contract a condition on the amount of the commission agent's remuneration in the expectation that he will be able to sell the goods at a price higher than stipulated in the contract and will keep the difference as remuneration.

Chapter 48 of the Civil Code of the Republic of Uzbekistan establishes the rights and obligations of the parties to the commission agreement.

The main duty of the commission agent is to make a transaction on behalf of the committeeman on his own behalf and at the expense of the committeeman, as well as to transfer everything received under the transaction to the committeeman upon execution of the transaction.

By virtue of Article 834 of the Civil Code of the Republic of Uzbekistan, the commission agent is obliged to fulfill all duties and exercise all rights arising from the transaction concluded by him with a third party.

This provision is specified in the 2nd paragraph of Article 834 of the Civil Code of the Republic of Uzbekistan as follows: The commission agent is obliged to execute the commission in accordance with the instructions of the committee, and in the absence of such instructions in the commission contract — in accordance with business practices or other commonly imposed requirements, on the most favorable terms for the committee. If the commission agent has made a transaction on terms more favorable than those specified by the committee, then the additional benefit is divided equally by the parties, unless otherwise provided by the contract.

In cases where the commission agent assumes responsibility to the committee for the execution of the transaction (*delcredere*), he is entitled to additional remuneration in the amount stipulated in the commission agreement.

The commission agent is not liable to the committee for non-fulfillment by a third party of a transaction made with him at the expense of the committee, except in cases when the commission agent did not show the necessary care in choosing this person or assumed responsibility for the execution of the transaction (*delcredere*).

In case of non-fulfillment by a third party of a transaction concluded with him by a commission agent, the commission agent is obliged to immediately inform the committee about it, collect and provide the necessary evidence, and also, at the request of the committee, transfer to him the rights under such a transaction in compliance with the

rules on assignment of claims (Articles 313 -- 317, 319, 320 of this Code).

Assignment of rights to the committee under the transaction on the basis of part five of this article is allowed regardless of the agreement of the commission agent with a third party prohibiting or restricting such assignment. This does not release the commission agent from liability to a third party in connection with the assignment of rights in violation of the agreement on its prohibition or restriction.⁷

The commission agent has the right to deviate from the instructions of the committee according to the rules on the assignment, if, according to the circumstances of the case, it is necessary in the interests of the principal and the attorney could not previously request the principal or did not receive a timely response to his request. The civil legislation of the Republic of Uzbekistan provides for the consequences of deviations by the commission agent from the agreed transaction price.

In the first case, if the commission agent sold the property of the committee at a price lower than agreed with the committee, the commission agent is obliged to reimburse the committee for the difference, unless he proves that he did not have the opportunity to sell the property at the agreed price and the sale at a lower price prevented even greater losses, as well as that he did not have the opportunity to receive a preliminary the consent of the committee to deviate from his instructions. Compensation of the difference in price is a kind of punishment for the commission agent for improper performance of the contract.

⁷ The Civil Code of the Republic of Uzbekistan. Dated August 29, 1996. ((National Database of legislation with the latest amendments on 05/8/2022, No. 03/22/770/0424) <https://lex.uz/>

The second situation arises when the commission agent bought the property at a price higher than agreed with the committee. In this case, the committee who does not want to accept the purchase is obliged to inform the commission agent without delay. Otherwise, the purchase is recognized by the committee.

The commission agent has the right to accept the difference in price to his account, which makes it impossible for the committee to refuse the transaction.

The peculiarity of the legal position of the commission agent is that he is not responsible to the committee for non-fulfillment by a third party of the transaction. The exception is those cases when the commission agent either did not show the necessary care in choosing this person, or assumed responsibility for the execution of the transaction (delcreder).

If a third party fails to execute a transaction concluded with him by a commission agent, the commission agent is obliged to immediately inform the committeeman about this, collect the necessary evidence, and also, at the request of the committeeman, transfer to him all the requirements for the transaction in compliance with the rules on assignment of the claim.

Summing up, the commission's agreement in the legislation of the Republic of Uzbekistan belongs to the group of agreements regulating mediation activities.

The Civil Code of the Republic of Uzbekistan allows for the possibility of concluding a commission agreement between citizens. However, the remuneration of the commission contract is indicated as an unconditional sign of the commission in the legal definition of the commission contract. Given the fee-based and risky nature of the commission, the commission agreement should be classified as an entrepreneurial

transaction. Regardless of the presence in the Civil Code of the Republic of Uzbekistan of the norm granting the commission agent the right to make a transaction for himself, the subject of the commission agreement is the transaction with a third party. The right of the commission agent to make a transaction for himself, we believe, should be considered an exception to the general rules of the commission.

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