

RESEARCH ARTICLE

# Formation and Development of The Institution of Mediation in The Socio-Legal Space

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**VOLUME:** Vol.06 Issue02 2026

**PAGE:** 76-80

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## Abstract

The article traces the formation and development of mediation as an institution within the socio-legal space, treating it as a phenomenon of dual nature – at once a social practice for the consensual settlement of conflict and a legal institution with its own procedures, professional roles, and enforcement mechanisms. Through institutional, historical-legal, and comparative-legal analysis, the study reconstructs the trajectory along which mediation has moved from informal negotiation practice, professionalised through the alternative dispute resolution movement, toward codified legal form. Particular attention is given to international harmonisation – the UNCITRAL Model Law of 2002, the European Union’s Mediation Directive of 2008, and the Singapore Convention of 2018 – and to national codification in the post-Soviet socio-legal space, where the Russian law of 2010 and the Uzbek law of 2018 gave the procedure statutory footing. It is argued that the durability of the institution rests on the alignment of its social function – access to justice and the restoration of relations – with a legal form that renders mediated agreements predictable and, increasingly, enforceable.

## KEY WORDS

Mediation; alternative dispute resolution; socio-legal space; legal institution; institutionalisation; Singapore Convention; access to justice; Uzbekistan.

## INTRODUCTION

Few procedures for resolving disputes have travelled so quickly from the margins of legal life to its centre as mediation. Within a generation it has passed from an informal practice, conducted by community elders, diplomats, and labour negotiators without any settled legal status, to a codified institution recognised in international conventions and national statutes alike. The subject of this article is that passage – the formation and development of mediation as an institution within what may be called the socio-legal space, the field in which social practice and legal form meet and shape one another.

Mediation is best understood as an institution of dual nature. On one side it is a social practice: a structured negotiation in

which an impartial third party helps disputants reach an agreement of their own making, with the aim not only of settling a claim but of preserving, and often restoring, the relationship between them. On the other side it is a legal institution: a set of norms defining who may mediate, how the procedure runs, what confidentiality attaches to it, and what legal weight the resulting agreement carries. The development of mediation is, in large part, the history of the second dimension catching up with the first – of a social practice acquiring legal form.

This dual character explains why an account of mediation confined to either register is incomplete. Studied only as technique, mediation appears timeless and placeless; studied

only as statute, it appears to spring fully formed from a legislative act. The institutional perspective adopted here holds the two together, asking how a diffuse social practice becomes a recognised legal institution, through which stages, and under what pressures. The socio-legal space is the appropriate frame because mediation's institutional consolidation has depended equally on changing social expectations of justice and on deliberate acts of legal harmonisation and codification.

The aim of the study is to reconstruct the formation and development of the institution of mediation across this space and to identify the conditions on which its consolidation has rested. Three questions organise the inquiry. First, what distinguishes mediation as an institution, and in what sense is its nature both social and legal? Second, through which stages has it developed, from informal practice to international convention and national statute? Third, what accounts for the institution's durability – why has it consolidated rather than remained an optional technique? The Uzbek experience, where mediation received statutory footing in 2018, is treated throughout as a national instance of a broader trajectory.

## **METHODS**

The study is doctrinal and comparative. It combines an institutional reading of mediation with the historical-legal method, tracing the procedure's development over time, and with comparative-legal analysis of the principal regulatory instruments. A socio-legal orientation frames the whole: the institution is examined not in isolation from the society that produces and uses it, but as the meeting point of social demand for accessible justice and the legal forms that answer it.

The material falls into three groups. The first is the theoretical and doctrinal literature on negotiation, mediation, and the comparative regulation of dispute resolution [1; 2; 3]. The second is the body of international instruments through which mediation has been harmonised – the UNCITRAL model legislation [4], the European Union's Mediation Directive [5], and the Singapore Convention [8]. The third is national legislation codifying the procedure within particular jurisdictions, represented here by the Russian and Uzbek laws [6; 7].

The analysis proceeds in four steps. It first fixes the concept of mediation as an institution and sets out its constitutive principles. It then reconstructs the stages of

institutionalisation, from informal practice to codified form. It compares the models of regulation adopted at the international and national levels, drawing on the distinction, established in comparative scholarship, between more extensive and more restrained approaches to regulating the procedure [3]. Finally, it situates the Uzbek codification of 2018 within this comparative field.

The study is doctrinal rather than empirical. It describes the formation of the institution and the shape of its regulation; it does not measure the frequency of mediation, the rate of settlement, or the satisfaction of parties, all of which would require separate sociological investigation. Its comparative scope is selective, keyed to instruments of particular importance for the socio-legal space under discussion rather than to an exhaustive survey. Because the relevant legislation continues to evolve, the account describes the institution as it stands rather than predicting its further movement.

## **RESULTS**

As an institution, mediation is constituted by a small set of principles that recur across otherwise diverse legal orders. The procedure is voluntary; the mediator is impartial and independent, holding no power to impose a decision; the process is confidential; and the parties retain autonomy over its outcome, which they reach through cooperation on an equal footing. These principles are not incidental features but the institution's defining core: they distinguish mediation from adjudication and arbitration, in which a third party decides, and they are reproduced, with minor variation, in the practitioner literature and in national statutes alike [2]. Their theoretical foundation lies in the interest-based conception of negotiation developed within the alternative dispute resolution movement, which reoriented conflict from contests over fixed positions to the search for arrangements that serve the underlying interests of both sides [1].

The formation of the institution can be read as a movement through three stages. In the first, mediation exists as informal social practice, exercised without legal recognition wherever communities, workplaces, or states need to reconcile competing claims. In the second, it is professionalised: the alternative dispute resolution movement of the late twentieth century supplied a body of method, training, and doctrine, converting an intuitive practice into a discipline with recognised standards [1; 2]. In the third, it is codified: legislatures and international bodies give the practice

statutory definition, prescribe its procedure, and attach legal consequences to its results. The three stages are cumulative rather than successive; informal mediation persists alongside its professionalised and codified forms, but the centre of gravity shifts decisively toward legal recognition.

The codifying stage has been driven, at the international level, by a sequence of harmonising instruments. The UNCITRAL Model Law on International Commercial Conciliation of 2002 offered states a template for legislation on the procedure, encouraging uniform treatment of its main elements and assisting jurisdictions with little prior experience of it [4]. In 2008 the European Union's Mediation Directive required member states to secure access to mediation in cross-border civil and commercial matters and to establish a balanced relationship between mediation and judicial proceedings, with transposition due by 2011 [5]. The decisive step toward enforceability came with the United Nations Convention of 2018, known as the Singapore Convention on Mediation: by providing for the recognition and direct enforcement of international settlement agreements resulting from mediation, it supplied for mediated agreements something of what the New York Convention had long supplied for arbitral awards [8]. The 2002 model law was itself amended in 2018 to accommodate this new emphasis on enforceable settlement.

Comparative scholarship has shown that these harmonising efforts have not produced a single regulatory template. States have divided between more extensive regulation, which seeks to govern the procedure and the profession comprehensively, and more restrained regulation, which confines itself to the essential substantive questions [3]. The Directive is credited with having given fresh momentum to mediation in Europe by establishing a common framework for cross-border cases, even as its implementation varied considerably among member states [3]. The institution, in other words, has been harmonised in its principles while remaining plural in its legal design.

Within the post-Soviet socio-legal space the institution was codified comparatively late but along recognisable lines. The Russian Federation adopted its law on the mediation procedure in 2010, in force from the beginning of 2011; it grounds the procedure in voluntariness, confidentiality, cooperation, equality of the parties, and the impartiality and independence of the mediator, and defines its relationship to proceedings before state and arbitral courts [6]. Uzbekistan followed in 2018 with a dedicated Law on Mediation, in force

from 2019, whose stated purpose is to regulate relations in the sphere of mediation [7]. The Uzbek law extends the procedure to disputes arising from civil relations, including those connected with entrepreneurial activity and with relations between clients and banks or insurers, as well as to labour and family disputes, and it rests the procedure on the same core principles of confidentiality, voluntariness, cooperation, equality, independence, and impartiality [7]. It reinforces confidentiality with an evidentiary protection, shielding participants from being compelled to disclose, as witnesses, information that became known to them in the course of mediation [7].

Across these instruments the institution performs a consistent socio-legal function. It widens access to justice by offering an extrajudicial route to settlement; it relieves courts of disputes that parties are willing to resolve consensually; and it preserves the social relations that adversarial proceedings tend to consume. These functions are the reason the institution answers a social need and not merely a legal convenience, and they explain why its codification has so often been justified in the language of access to justice and the amicable settlement of disputes [5; 7].

## **DISCUSSION**

The evidence assembled here supports a single connected claim: mediation has consolidated as an institution to the extent that its social function and its legal form have been brought into alignment. Where the practice offered a socially valued way of resolving conflict but lacked legal recognition, its results were only as secure as any private agreement; where legislatures supplied recognition without regard to the practice's voluntary and relational character, they risked reproducing the adjudication mediation was meant to relieve. The instruments surveyed above succeeded to the degree that they hold the two together – codifying procedure and enforceability while preserving voluntariness, confidentiality, and party autonomy [2; 3].

This alignment also names the institution's central tension. Mediation depends on the parties' free participation, yet its wider uptake has often required a measure of institutional pressure, whether through court referral or through statutory incentives to attempt settlement before litigating. The Directive's concern to secure a balanced relationship between mediation and judicial proceedings addresses exactly this tension [5]. A parallel tension runs between informality and

enforceability: the very quality that makes a mediated agreement attractive – that the parties author it themselves – once made it fragile at the enforcement stage, a fragility the Singapore Convention was designed to remedy for cross-border cases [8]. The development of the institution can be read as a series of adjustments to these tensions rather than their final resolution.

Situated in this comparative field, the Uzbek codification of 2018 appears as a national instance of a global trajectory rather than an isolated reform. In adopting the recognised principles and extending the procedure across civil, commercial, labour, and family disputes, the Uzbek law aligns the country's socio-legal space with the international model, much as the Russian law had done eight years earlier [6; 7]. The comparative record suggests, however, that codification is a necessary but not a sufficient condition of an effective institution: the experience of jurisdictions that adopted mediation legislation earlier indicates that statutory recognition takes practical effect only where it is accompanied by a professional infrastructure of trained mediators and by a legal culture disposed toward consensual settlement [3]. For a recently codifying jurisdiction, these are the conditions on which the further development of the institution depends.

Several limitations bound these conclusions. The account is doctrinal, and the claims it makes about the institution's function are claims about legal design rather than measured outcomes; the actual uptake of mediation, and its effect on caseloads and on parties, would require the empirical study this article does not undertake. The comparative frame is selective, and the fast pace of legislative change means that any description of the institution captures a moving object. What the analysis can establish is the shape of the institution's formation – the stages of its development and the alignment of social function with legal form on which its consolidation has rested.

## **CONCLUSION**

Mediation has developed, within the space of a few decades, from an informal social practice into a consolidated socio-legal institution. Its formation can be traced through three cumulative stages – informal practice, professionalisation through the alternative dispute resolution movement, and codification – and its development has been carried forward by international harmonisation and national legislation working in tandem. The UNCITRAL model law, the European

Mediation Directive, and the Singapore Convention supplied, in turn, a legislative template, a regional framework, and a mechanism for enforcing mediated agreements across borders; the Russian and Uzbek statutes brought the procedure into the post-Soviet socio-legal space on the same principled foundations. The durability of the institution rests on the alignment of its social function – widening access to justice and restoring the relations that litigation strains – with a legal form that makes mediated agreements predictable and, increasingly, enforceable. On this evidence the further development of the institution, in Uzbekistan as elsewhere, will depend less on additional legislation than on the professional infrastructure and legal culture that allow a codified practice to become a living one.

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