

# The collective labor dispute and the usage of conciliation and mediation procedure in collective conflicts

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**Abstract:** The article examines the issues of definitions of collective labor disputes, conciliation procedures for their consideration and resolution. In the science of labor law, the concept of collective labor disputes has not been adequately developed, which naturally causes problems in the application of the relevant norms of the Labor Code, other regulatory legal acts containing labor law norms, collective agreements, social partnership agreements, and local regulations.

**Keywords:** dispute, collective labor dispute, conciliation and mediation procedure

In order to characterize the usage of conciliatory-mediation procedure in labor disputes resolution, a definition and classification of the disputes themselves should be given.

According to scientist K.A.Samoilova, labor disputes are considered as unresolved disagreements between the subjects of labor relations regarding the implementation of labor legislation, the protection of labor rights, regarding the application of the norms of an employment contract or collective agreement, as well as the establishment of new or changes in existing working conditions, including issues of payment labor, working conditions and other disagreements reported to the relevant jurisdictional authority.<sup>1</sup>

According to *Article 541, Labor Code of Republic of Uzbekistan*, labor disputes are unresolved disagreements between an employer and an employee or between employees (their representatives) and employers (their representatives) on the application of labor legislation, other legal acts on labor and labor protection rules, an employment contract, as well as on issues of establishing new ones or changing existing ones working conditions.

Depending on the method of resolution, labor disputes may be of a claim or non-claim nature.

Generally accepted is the classification of disputes by subject composition and subject of dispute into four types:

- collective;

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<sup>1</sup> Самойлова К.А. Индивидуальные трудовые споры как способ защиты трудовых прав // Молодой ученый. - 2019. - № 19 (123). - С. 250-253.

- individual;
- conflicts of interest (economic);
- conflicts of law (legal).

There are different types of labor disputes, and at the final stage of each dispute, a settlement procedure specific to this type of dispute is provided. In most countries, there are several types of labor disputes, and there are separate procedures for resolving each of them. Of course, the differences and patterns that exist in a country reflect the particular path of historical development of its labor relations system.

The most common differences applied relate to:

- individual and collective disputes; and
- disputes about rights and disputes about interests (also called economic disputes). This difference is inherent in the mechanisms for settling labor disputes in many countries.

It is clear that both an individual and a collective dispute can be about rights: a worker may disagree that his treatment is in accordance with the terms of the contract, and a union may be outraged that the treatment of its members is not in accordance with the terms of the collective agreement to which it is a party. is. On the contrary, a dispute about interests is necessarily collective in nature.<sup>2</sup>

In Article 542 Labor Code of Republic of Uzbekistan, types of labor disputes are specified. Depending on the subject composition, labor disputes can be *individual* or *collective*.<sup>3</sup>

Collective labor disputes are unresolved disagreements between employees (their representatives) and employers (their representatives) on the following issues:

- establishing new or changing existing working conditions (including remuneration);
- concluding and amending collective agreements, as well as other legal acts on labor, which, in accordance with the law, are adopted in agreement with employee representatives;
- application of labor legislation, other legal acts on labor and labor protection rules.

Collective disputes can also arise when participants believe that an agreement is not upheld. These rights conflicts have drawn a lot of attention as well, and a lot of cases involving them are filed in labor courts or with alternative forms of dispute resolution like conciliation, arbitration, or mediation. Conflicts over collective labor are an inevitable aspect of working in an organization. Conflicts between the rights and interests of management, owners, and employees - who may be shareholders or public agents - can quickly escalate out of control. Societies create legal systems to govern

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<sup>2</sup> [https://www.ilo.org/static/russian/dialogue/ifpdial/1lg/ch4/index.htm#note\\_1](https://www.ilo.org/static/russian/dialogue/ifpdial/1lg/ch4/index.htm#note_1)

<sup>3</sup> Labor Code of Republic of Uzbekistan

these conflicts as a result. The involvement of third parties in conflict management is a crucial component of these policies. In the conventional method, parties file a claim against one another in court, and the labor court provides the final decision. Globally, the practice of collective conflict management is heavily regulated. The majority of nations have labor laws that protect workers' rights to form unions and works councils, which reflect the interests of the organization's employees. Moreover, in the vast majority of nations worldwide. Additionally, workers have the right to strike in the majority of nations around the world in order to protect common interests.

In addition to the specific methods used to resolve disputes, the structure of the system for resolving labor conflicts may include mechanisms used in collective bargaining practice. For example, the law could include a requirement that, before resorting to a government settlement mechanism, the parties must first use every opportunity to independently reach a mutually acceptable solution or use the dispute resolution procedures provided for in the collective agreement between them. The state settlement system should be based on *conciliation (mediation)* procedures aimed at assisting the parties in finding a mutually acceptable solution in conditions as close as possible to the conditions for concluding a collective agreement. Finally, the dispute settlement system can be used specifically for the purposes of collective bargaining practice by giving the agreements reached in the dispute resolution process the status of a collective bargaining agreement.<sup>4</sup>

A person engaged to assist in resolving a collective labor dispute as a mediator must equally suit both parties, regardless of whether he is appointed by a state body or found by the parties independently, since the successful consideration of a collective labor dispute at this stage is to a greater extent depends on the candidacy of the mediator. The mediator finds himself in worse conditions than members of the conciliation commission and labor arbitrators in the matter of providing guarantees in connection with the resolution of a collective labor dispute. Intermediaries are not included among the entities to which guarantees must apply. It is necessary to include a mediator in the list of persons who have guarantees in connection with participation in conciliation procedures.<sup>5</sup>

Labor relations will inevitably involve collective labor disputes. These disputes can occur at a variety of levels, including the work floor, within organizations, and even at the national and sectoral levels. Cross-border conflicts are a real possibility for organizations that operate internationally. There is a global decrease in the number of industrial activities, such strikes, that result in increased confrontations. ADR is also encouraged globally, especially conciliation and mediation. Several nations, together

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<sup>4</sup> [https://www.ilo.org/static/russian/dialogue/ifpdial/1lg/ch4/index.htm#note\\_1](https://www.ilo.org/static/russian/dialogue/ifpdial/1lg/ch4/index.htm#note_1)

<sup>5</sup> Павловская Ольга Юрьевна - Коллективные трудовые споры в современной России: теоретико-правовой аспект

with the European Community, support the positive resolution of labor disputes involving collective bargaining by means of legislation, social discourse, and mediation. Academic empirical research is currently generally deficient on the various arrangements for third parties, the parties' perceptions and expectations, and the effectiveness.<sup>6</sup>

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<sup>6</sup> Wall, J., & Dunne, T. (2012). Mediation research: A current review. *Negotiation Journal*, 28, 217–244.