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## THE ESSENCE OF THE SETTLEMENT AGREEMENT CONCLUDED IN THE MEDIATION PROCESS

### Abstract

If the parties reach a consent as a result of the mediation process, a settlement agreement is signed. A settlement agreement is an indication of the dispute resolution. The requirements of the legislation should be followed when drafting this agreement, which is concluded through the helping of a mediator. In addition to the rules for concluding a settlement agreement, attention should also be paid to its implementation procedure. Because sometimes in practice, despite the fact that the agreement was concluded based on the consent of both parties, there are cases of refusal to implement it. Therefore, since it is one of the actual issues, in this researching, the nature of the settlement agreement concluded as a result of the mediation process, what powers the agreement gives to the parties and what obligations it imposes have been determined. In addition, what rules should be followed when the agreement is concluded and the implementation stage of the agreement after the conclusion was also touched up on.

**Keywords:** *mediation session, mediator, settlement agreement, implementation, voluntary*

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### Mediasiya prosesində bağlanan barışıq sazişinin əhəmiyyəti

#### Xülasə

Mediasiya prosesi nəticəsində tərəflər razılığa gəldikləri təqdirdə barışıq sazişi imzalanır. Barışıq sazişi mübahisənin həll edilməsinin göstəricisidir. Mediatorun vasitəçiliyi ilə bağlanan bu razılıq tərtib olunan zaman qanunvericiliyin tələblərinə riayət olunmalıdır. Barışıq sazişininin bağlanma qaydaları ilə yanaşı, onun icra proseduruna da diqqət yetirilməlidir. Çünki bəzən praktikada sazişin hər iki tərəfin razılığına əsasən bağlanmasına baxmayaraq, onun icrasından boyun qaçırma hallarına rast gəlinir. Odur ki, aktual məsələlərdən olduğu üçün bu araşdırmada mediasiya prosesi nəticəsində bağlanmış barışıq sazişinin xarakteri, müqavilənin tərəflərə hansı səlahiyyətləri verdiyi və üzərlərinə hansı öhdəliklər qoyduğu müəyyən edilmişdir. Bununla yanaşı, saziş bağlanan zaman hansı qaydalara əməl edilməli və bağlandıqdan sonra razılaşmanın icrası mərhələsinə də toxunulmuşdur.

**Açar sözlər:** *mediasiya sessiyası, mediator, barışıq sazişi, icra, könüllük*

#### Introduction

Mediation is one of the alternative and flexible dispute resolution procedures. The mediator's role is to guide the parties achieving the solutions in disputable matter. Through joint meetings with the parties and separate groups, the mediator helps both parties to clearly define the issues, understand each other's position and approach a solution which is available for two sides. The mediator has only an auxiliary role in this process and their opinions are not binding on the parties. However, if the parties come to an agreement with the proposal of the mediator, a settlement agreement is signed between the parties, directed to implementation and the implementation of this

agreement is mandatory for the parties, as it implies liability for the parties in case of voluntary non-performance.

In the article 1.0.7 of the Law on Mediation of Azerbaijan Republic defines the settlement agreement and states that this act is a written agreement reached between the parties as a result of the mediation process. It is known from the given definition, that the settlement agreement is concluded in written form. Concluding the settlement agreement in written form is one of the main requirements of the law. Failure to comply with this requirement may make it difficult to enforce the agreement in the future (Law on Mediation of Azerbaijan Republic, 2019).

Besides, the requirements can be different depending on the legislation of states. For example, according to German law mediation settlement agreement reached with the assistance of a certified mediator takes the legal nature of a private contract. The mediation code does not contain any requirements regarding the form of this contract. Therefore, an oral agreement is possible according to German law. In practice every mediation settlement agreement is in written form. This is to avoid the inevitable difficulties arising after one party challenges the content of the settlement in the aftermath. Only if the settlement agreement itself is about a legal transaction that legally requires a certain form which the settlement agreement must be signed in this form. For example, the settlement agreement by which one party agrees to transfer or acquire ownership of a plot of land must be recorded by a notary (Wilking, 2020: 14).

In addition to this requirement that the agreement be in writing, common practice stipulates a number of elements that must be specified in the agreement. Some of them are these:

- Identification of the parties: the names, addresses, communication ways of the parties to the disputable matter;
- Summary of the dispute: a brief description about the scope of the dispute;
- Requisites of the mediator: information about the mediator's identity and which organization he or she is a member of;
- Terms of settlement: the specific terms and conditions under which the parties have resolved their differences;
- Payment provisions: details of any payments that must be made by one party to the other;
- Confidentiality provisions: a clause restricting the parties from disclosing the agreement's contents to third parties and determining the liability for violation of breaching the settlement agreement conditions;
- Requisite blocks: space for signatures of parties and date of agreement (3).

The legislation of Azerbaijan Republic, The Law on Mediation is determining the all compulsory elements for the settlement agreement structure. According to article 33 of this law, the settlement agreement structure contains the following information:

- date and location where the contract is drawn up;
- the identity information about the parties;
- subject of the dispute;
- information about the mediator (mediators) and the mediation organization if the mediation process is carried out through a mediation organization;
- conditions accepted by the parties in the direction of dispute settlement, methods and terms of fulfilling those conditions;
- the consequences of non-implementation or improper implementation of the terms of the settlement agreement;
- other conditions in accordance with the Civil Code of Azerbaijan Republic, this Law and other normative legal acts (4).

After the conclusion of the settlement agreement, the next main stage is its implementation and monitoring of the implementation process. For this, first of all, it should be possible to fulfill the obligations in the settlement agreement. For example, if one of the parties undertakes an obligation that is dependent on a third party, prohibited by law or otherwise impossible to perform, problems may arise in the implementation of such a settlement agreement.

It is recommended to consider the quantification of obligations in the settlement agreement. For example, the funds that the parties have to pay must be clearly stated. The settlement agreement should also specify the period of performance of the obligations, so that there is no dispute about this in the future. For example, if one party undertakes to make any payment or perform any work, for the agreement to be valid it must be clear and specify the amount of the payment and the period within which it is to be paid (Smith, 2008: 56-57).

As well, one of the main issues to be noted is how to regulate the implementation of the settlement agreement. Although the settlement agreement is signed by the parties and the mediator, it is the duty of the parties to ensure the implementation of the settlement agreement. At the same time, the mediator must follow the procedure of implementation of the agreement. Unless otherwise stipulated in the contract, the settlement agreement becomes binding for the parties from the day of its signing. The settlement agreement must be executed voluntarily. If the settlement agreement does not specify a separate period between the parties, the settlement agreement must be executed voluntarily within 10 days from the day of signing.

### **Conclusion**

It can be noted as a result for the relevant case, if the parties reach an agreement at the end of the mediation process, the voluntary signing of the reconciliation agreement concluded with the help of the mediator, the importance of following the rules for the structure when the agreement is concluded, and the fact that the agreement is binding for the parties from the moment of signing were taken into account. At the same time, it was tried to determine the period for the voluntary execution of the agreement, and in case of refusal to voluntarily execute it, it creates liability for the parties determined by the legislation.

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