

Terms of mediation in criminal procedure emphasizing mediation Regulations approved in 2015

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ABSTRACT

Objective: This paper was done with the aim to review the requirements and rules on mediation in accordance with regulations approved in 2015 with the library and documentation method. The results show that, one of the innovations of the Code of Criminal Procedure, approved in 2013 is the specific prediction of a criminal case referring to mediation from judicial authorities, in Article 82 of the mentioned law. **Methodology:** In this law, articles 1, 82, 83, 84 and 192, obviously, have discussed the concept of mediation and its implementation conditions. Article 192 of the law explains the duty of interrogator in referring the case to the mediation and the establishment of peace and reconciliation between the parties. Referral to mediation is the action that is predicted with inspiring the teachings of restorative justice and in order to compromise the parties and withdraw minor cases of judicial process. **Results:** To reduce the claims of reason, preventing from reaching the lawsuits to the courts and reducing the volume of lawsuits, in implementation of Article 84 of the Criminal Procedure Code approved 2013 and its amendment "Regulations mediation in Criminal Matters approved in 2015", is issued in seven chapters and 38 articles. **Conclusion:** In these regulations, in addition to terms and definitions (Article 1), important issues such as how to refer to mediation (Article 2 to 6), selecting the mediation and its conditions (Article 7 to 10), the conditions and how to establish the mediation institutions (Article 11 to 14), the responsibilities of mediators (Article 15 to 32), the costs of mediation (Article 33 and 34) and monitoring the mediation process (Article 35 to 37) have been mentioned and have been decided about them.

1. Introduction

Alternative dispute resolution methods such as mediation are now increasingly used in many countries as an effective means of resolving disputes between individuals (Rahami, 2007). According to many fans of restorative justice, mediation is the oldest and the most influential method that is used around the world today, and in many ways, it is distinct from other methods. In a sense, the mediation can be considered the cornerstone and essence of restorative justice. In mediation, a space is created, that the victim and the offender could talk with each other, face to face, without any pressure or monitor from the criminal system (Braithwaite, 2004). The offender talks about committing the crime and his reasons and motives to commit it; and the victim talks about the damage caused by the crime and his needs and demands, and they pursue the process of reconciliation and resolution of conflict. In the meantime, a third party with no interest in the matter and he is neutral (mediator) directs and manages the flow of conversation (Asli, 2006).

Mediation programs that have affected the criminal justice system since the mid-seventies of the twentieth century were appearing for the first time in 1977 at the initiative of one of the probation officers in Canada and then moved to other cities in Canada and America. Mediation, which is rooted in the idea of diversion, through the referral of disputes arising from criminal phenomena to mediation and accepting a kind of village chief in resolving conflicts, has the importance and dignity and played an undeniable role in outlining partnership-based criminal justice policy (Samavati Piruz, 2006).

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One of the innovations of the Code of Criminal Procedure approved in 2013 is a specific prediction of referring a criminal case to mediation by the judicial authority in Article 82 above law. Article 192 of the law explains the duty of the integrator in referring the case to mediation and the establishment of peace and reconciliation between the parties. Referral to mediation is an action that, inspired by the teachings of restorative justice and to reconcile the parties and removing the less important cases from the judicial process. Also, on the implementation of Article 84 Code of Criminal Procedure adopted in 2013 and its amendment and with the suggestion of the Ministry of Justice "law of mediation in criminal cases," was approved in 2015 and was notified. Considering the importance of the issue, this paper explains and reviews the requirements and rules governing the mediation in accordance with regulations adopted in 2015.

2. Materials and methods

2.1 The definition of mediation

Literally mediator is a third party who will reconcile two people or become a mediator to resolve differences and conflicts between them. It means intermediate and cause and mediation is literally mediation, mediator to resolve the dispute between the two of them (Amid, 2008).

According to the definition of mediation, the mediation process involves a third party that is called a mediator or facilitator and helps the victim and the offender to achieve a mutual and a free agreement (Zahr, 2004).

Section "A" of Article 1 of Regulation mediation in Criminal Matters (approve in 29.11.2015 Head of the Judiciary) in the definition of mediation said that "mediation is a process in which the victim and the accused talk with the management of mediator in an appropriate environment about the causes, consequences and the result of alleged crime and ways of compensation for its damages to the victim and the accused and in case of reaching a compromise, obligations and rights of the parties will be determined." and paragraph " c " of this article provides that "Mediation process is a set of measures, in which with the management of mediator and the presence of the victim and the accused and, if necessary, other contributors, in reaching a compromise, like family members, friends or colleagues and the case, members of the community, the official or public or non-governmental concerned institutions talk with each other to resolve criminal disputes and exchange views (Dammer and Albanese, 2013). In the case of an agreement, they prepare an agreement and send it to the relevant judicial authority".

2.3 Criminal mediation in the Code of Criminal Procedure, adopted in 2013

An issue of mediation is the main base of restorative justice. According to a legal article predicted in this law, which is very new and valuable, and so far, has not been considered by the legislator in this manner. The issue of mediation and the conditions of its application is discussed in Articles 1, 82, 83, 84 and 192, obviously (Barak et al., 2010).

Article 192 - Investigation of the plaintiff and accused is secret and solitary, except in forgivable offenses, which they, as much as possible are preceding in court adversarial and the magistrate is obliged, if possible, to try to make peace or refer it to mediation.

Article 82 - In ta'zir crimes grade six to eight, which are suspendable, the judicial authorities may give a deadline that is not more than two months to the accused, at the request of the accused and the consent of the victim or private pretender and by obtaining appropriate security. Therefore, that he tries to obtain the plaintiff forgiveness or compensate of crime. In addition, the judicial authority can refer the case with their agreement to the dispute settlement councils or other person or institution to mediate and for achieving a compromise between the parties. The duration of mediation will not be more than 3 months. The deadlines mentioned in this Article can be extended, if appropriate, only once. If the plaintiff forgives, and the case is forgivable offenses, prosecution is suspended. In other cases, if the plaintiff forgives, or his damage will be compensated, or agreement is reached about the payment, and the accused has no history of criminal conviction, the prosecutor may, after obtaining the consent of the accused, suspends his pursuit from six months to two years. In this case, the prosecutor, in compliance with the provisions of Article 81 of this Law, obliges the accused to perform some commands in the subject of the article. In the case of non-fulfillment of agreed obligations by the accused, without reasonable excuse, at the request of the plaintiff or the private claimant, cancels the suspension of pursuit and continues the pursuit (Terrill, 2015).

Article 83- The result of mediation, in detail, citing its evidence, in the event of parliament, which is signed by the mediator and the parties, will be sent for review, approval, and further action, in each case the relevant judicial authorities. In case of reaching an agreement, the obligations of the parties and the method is required in Parliament document (Hayden, 2016).

Article 84- How doing the work, in public institutions, referred to in paragraph (c) of Article (81) of the law and order of mediation and the person or people who are selected for mediation will be the subject of Article (82) this law, pursuant to the Regulations. Within three months from the date of entry into force of this Act, the Minister of Justice will prepare it and after approval by the head of the Judiciary; the cabinet will approve it (Hascall, 2011).

According to this article, doing things in public institutions and the order of mediation and how to choose the person, or mediator people are subjected to the approval of the Regulations and providing a context for it (Heidari and Porshabanan, 2015).

3. Discussion and results

3.1 Requirements and the rules of mediation, based on regulations adopted in 2015

To reduce the claims, preventing from reaching the lawsuits to the courts and reducing the volume of lawsuits, in implementation of Article 84 of the Criminal Procedure Code adopted in 2013 and its amendment "Rules of mediation in criminal matters" has been issued in 7 chapters and 38 articles. In these regulations, in addition to the definitions and terms, important matters, such as how to refer to mediation, selecting the mediation and its terms,

conditions and establishment of mediation institutions and the monitoring of the mediation process have been pointed out and they have been determined. Now they will be discussed.

3.2 Authority and way of referring to mediators, based on regulations adopted in 2015

According to Article 2, the affairs related to mediation can be organized in any court, under the jurisdiction of a public prosecutor or President Jurisdiction. Prosecutor or head of jurisdiction can refer this dusty to one of his assistants. Also referred to mediation in cases in which governmental departments are the plaintiff is permitted by the laws and regulations (Article 3). To refer a criminal case to a mediator, judicial officials should consider the subject of the dispute, competence, expertise and his acceptability to the parties of the dispute (Article 4). In case that the parties in dispute want or agree to introduce the mediator and the consenting of mediator that they agreed, the mediation after the approval of the judicial authority will be with him. In the absence to determine a mediator by the parties, the judicial authorities can act for themselves (Article 5). The parties of the dispute agreement to refer the case to mediation will be the Parliament document by the judiciary and they will sign it (Article 6).

3.3 Selecting mediator and its conditions in accordance with regulations adopted by 2015

Chapter III of the Regulations Articles 7 to 10 has discussed the selection of a mediator and its conditions. According to Article 7, a mediator can be selected among the local trustees or graduates of different fields with priority given to social work, education, psychology, sociology, law and jurisprudence and principles of law. Judicial authorities can refer the criminal case to the Institute for mediating and in this case, the institute responds to the judge for the mediation (Article 8). A list of qualified persons in mediation will be prepared in any jurisdiction by President Jurisdiction. Preparing this list, simply, is not determined priorities and preventing the referral of mediation to the other (Article 9). The qualification authentication of the mediator is with reviewing judicial authority after mutual agreement. The mediators must be selected among those who have these conditions: (a) the authenticity; (b) a citizen of the Islamic Republic of Iran to mediate about nationals in Iran; (c) lack of ill fame; (d) be at least 25 years (Article 10).

3.4 The conditions of mediation institutions based on regulations adopted in 2015

Chapter IV of the previously mentioned Regulations, Articles 11 to 14, has discussed the selection of the mediator and its condition. According to Article 11, qualified individuals, as stipulated in Article 12 of this regulation, and under the supervision of the judiciary and the legal provisions related to the registration of non-commercial institutions, can create a mediator Institute. The applicants to create a mediator institute, in addition to the conditions set out in Article 10 of the regulations and lack of criminal convictions, must have a bachelor's degree in one of the fields of social work, education, psychology, sociology, law and jurisprudence and principles of law (Article 12). Graduates each of these fields must be trained to take over mediation in criminal matters (Article 13). In order to eligible institutions and mediation licensing, coordination, planning, establishing uniformity and control of the activities of mediation institutions and revocation of the license, throughout the country, the Center for mediation will be formed in the Human Resources Deputy Judiciary (Article 14). The institute of mediation should only be held in a location that is listed on the license (Note of Article 14).

3.5 The responsibilities and authority of mediators, based on regulations adopted in 2015

Chapter V of the previously mentioned Regulations, Articles 15 to 32, has discussed the responsibilities and authority of mediators. According to Article 15, a mediator is responsible to start the mediating tasks as soon as possible, after referring the case from the judicial authority, hold a meeting or mediation meetings within a specified period that is determined by the judicial authority, and give the report of his activities and statements of the parties and their results. The mediator should explain the goals, mediation effects and the subject of the dispute or offense, which led to mediation, to the plaintiff and accused, clearly and transparently. He should provide the field of hearings, statements and negotiations between the parties (Article 16). In the mediation process, the principle is the dialogue between the parties and their efforts, to exchange views and reach an agreement. The mediator has the task of managing the process and facilitates this. The mediator should do his tasks in the utmost impartiality and in his jurisdictions and he should not threat or force the parties to reach an agreement and sign it. In management of meetings between the plaintiffs and accused, he should act so that the victim does not re-experience the victimization, and parties talk to each other with respect, and without resorting to threats and violence (article 17). Mediation meetings are formed with the participation of the parties. If the victim wants that the accused person will be in the meeting, the accused person must be present personally. The presence of other people is permitted with the detection of mediator with respect the provisions of Article 20 (Article 18). If necessary, the mediator can invite the family members, friends, colleagues, neighbors and other persons, including the local community, that by the discretion of the mediator or request of any parties, their presence is useful in a mediation session (Article 19).

3.6 The cost of mediation, based on regulations adopted in 2015

Chapter VI of the previously mentioned Regulations, Articles 33 and 34 has discussed the cost of mediation. In accordance with Article 33, payment of mediation is the responsibility of the applicant and it can be paid equally with the request of the parties. Mediator wage is according to the agreement under Article 10 of the Civil Code. The Human Resources Deputy Judiciary proposes the maximum wage each year and the Head of the Judiciary (Article 34) will adopt it.

3.7 Monitoring the mediation process, based on regulations adopted in 2015

Chapter VI of the previously mentioned Regulations, Articles 35 to 37, has discussed the cost of mediation. In accordance with Article 35, monitoring the mediation process, in each case, is the responsibility of the concerned judicial officials that the criminal proceeding is with him. Parties' of the dispute can inform about the mediator's incompetence and negligence in following up to the relevant judicial authorities (Article 36). On the absence of the parties in the mediation sessions and mediator's report, based on the impossibility to hold mediation meetings f, the referral judicial authorities to mediation should cancel it and continue the proceedings (Article 37).

4. Conclusion

In the first Judicial development program, some cases, such as the need to reduce the incumbency of government in the judicial, increasing citizen participation, respect for the rights and freedoms of the individual, and the absence of unnecessary restrictions, proportionate response to the offense to the type of crime and the use of quasi-judicial bodies and reduce recourse to judicial authorities have been paid especial attention. Their results, in the tangible way, can be found in the criminal procedure Code (adopted in 2013). Among the new experiences of the criminal policy involvement, which is recognized in the new Code of Criminal Procedure, is criminal mediation. This establishment, in addition to being one of the important aspects of restorative justice (meaning repair the damages and effects caused by criminal) is also considered one of the most conventional methods of diversion. The second part of Article 82 the New Code of Criminal Procedure of 2013 is the crimes grade six, seven and eight that its punishments are suspendable, allows the prosecutor to refer the subject of victim complaint with his consent and request of the accused to mediation of the dispute settlement Council, the person or organization that has been created for mediation. Therefore, that reaches a compromise between the parties up to three months. In addition, pursuant to the provisions of Article 192 of the same law, as well: "... in the forgivable offenses, the magistrate is obliged, if possible, to create peace and reconciliation or referred to mediation." The provisions of Article 82 new criminal procedure law, in conjunction with the possibility to refer the matter, in order to achieve reconciliation between offender and victim, in the discretionary crime grade six and seven and eight, show the willingness of the legislator to criminal law mediate of community, with the supervision of the judicial authority. Because, in addition to considering the involved criminal policy, which is combined with the cooperation of citizens and civil society organizations for the diversion and avoidance of the use of repressive responses to crime, it is a restorative justice, which to some extent, closes the criminal justice to civil justice. It fades the traditional boundaries between criminal law and civil rights. However, for the implementation of the provisions of the article and determine Citing legislative to mediation and resolving the ambiguities in this regard, it was necessary, on the basis of Article 84 of the Criminal Procedure Law, the Administrative Regulations on mediation in criminal matters will be adopted. Ultimately, with the Minister of Justice proposal, the head of the judiciary in articles 38 approved this regulation in 2015. In this regulation, in addition to the terms and definitions, important matters such as how to refer to mediation, selecting the mediator and its terms, conditions and the way to establish mediation institutions and monitor the process of mediation, have been mentioned and have been decided about them. Adoption of this regulation removed the practical obstacles facing referral to mediation, in the criminal justice process. Therefore, if judges working in the judicial system will be familiar with this type of new achievements of criminal science and believe its practical implementation, on a number of crimes, the possibility of leaving the matter, of a regular judicial process made possible and by diversion, penal matters, will be resolved outside the judicial system.

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