International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

INSTITUTE SUBORDINATION TO COURTS AND OTHER ORGANS IN CIVIL PROCEDURAL LAW

https://doi.org/10.5281/zenodo.8262854

Esanova Zamira Normurotovna
zamira.esanova@mail.ru
Professor of the Department of civil procedural and economic procedural law, TSUL

Abstract

This article is devoted to the topic of subordination, which is one of the oldest and most relevant institutions of civil procedural law, the content of this topic includes which body is competent to consider disputes (cases), its criteria and conditions, as well as the limits of the competence of the court and other bodies in this area.

The task of subordination in a broad sense determines the forms of protection (judicial or extrajudicial resolution) of the rights and interests of individuals (individuals and legal entities).

In a narrow sense, it is understood to belong to a number of state bodies and organizations empowered to protect violated and disputed subjective rights of individuals and legal entities and their legally protected interests. The subordination of cases plays a key role in delineating their powers from each other.

The article also includes aspects of subordination, which is a broad concept in relation to jurisdiction, similarities and differences with this procedural institution.

At the same time, the article provides detailed information and analysis of several types of subordination in civil procedural law, including alternative, contractual, imperative and exceptional types.

At the end of the article, problems related to the topic of subordination, suggestions and recommendations for their solution, and the author's conclusions are presented.

Key words

subordination, jurisdiction, civil case, dispute, indisputable case, administrative procedure, authority, court, out-of-court procedure, arbitration, mediation, power, establishment, notary.

INTRODUCTION. In the theory and practice of civil procedural law, the institution of relevance has a special place, it is considered one of the most important topics in the conduct of civil court cases. Because through this institution, it is possible to understand which body will consider and resolve cases (disputes) and which body is authorized to resolve this case.

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

The current trend of global conflict resolution shows that it is necessary to study the causes of emerging conflicts, to strengthen effective and targeted legal promotion activities in the prevention of conflicts, to develop mechanisms for resolving disputes before the court (arbitration courts, mediation settlement procedures, community gatherings, trade unions and other structures that help legal regulation of labor relations, various agencies and offices, departments of hokimiyas, etc.) can be an important factor in solving the problem at the right time and in the right place, and putting an end to conflicts[38].

Relevance of the study. It is appropriate to explain the relevance of the chosen topic with four aspects:

First, as the number of appeals to the courts increases, there is a great need to know the conditions and criteria of the institution of relevance and to promote it widely;

Secondly, in connection with the widespread introduction of alternative methods of dispute resolution, in practice, the need to further expand the procedural privileges of procedures before the court, and to further strengthen the existing procedural rules;

Thirdly, taking into account the presence of interrelated (interrelated) requirements, separation of powers of courts (especially civil, economic, administrative courts), refusal to accept the application, reduction of the number of decisions on returning the application, analysis of their root causes is of urgent importance to do;

Fourthly, the subject of relevance of civil cases is considered one of the most ancient and relevant institutions of civil procedural law, there are not enough researches and scientific developments on the subject in national jurisprudence.

Literature analysis. In a number of educational literature and scientific developments (in particular, national proceduralist scientists Mamasiddikov M, Khabibullaev D, Salimova I, etc.) it is stated that "Applicability is the limitation of the authority to consider and resolve arising disputes by courts and other bodies." These definitions represent a narrow understanding of relevance and help to facilitate its application in practice[39].

[38] Esanova Z. Fuqarolik protsessual huquqi. Umumiy qism. Darslik. – Toshkent, Yuridik adabiyotlar Publish. 2022. – 328 b.; Эсанова З. Роль медиации в разрешении споров и правоприменении (анализ отечественного и зарубежного опыта) //Обзор законодательства Узбекистана. – 2019. – №. 3. – С. 38-41.

[39] Fuqarolik ishlari bo'yicha sudga murojaat qilish tartibi / X. Yodgorov [va boshq.] -Toshkent : Baktria press, 2016. – 224 b.; Fuqarolik protsessual huquqi. Darslik. Mualliflar jamoasi. – T.: Lesson press, 2020. – 232 b.; Esanova Z. Fuqarolik protsessual huquqi. Umumiy qism. Darslik. – Toshkent, Yuridik adabiyotlar Publish. 2022. – 328 b.; Fuqarolik protsessual huquqi. Darslik // Mualliflar jamoasi. Yu.f.d., prof. M.M.Mamasiddiqovning umumiy tahriri

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

Jurisdiction is a broad concept in relation to the judiciary, in which not only the court, but also all state power and management bodies, enterprises, organizations, institutions, non-governmental non-profit organizations, associations, citizens' self-government bodies participate in resolving disputes according to their authority.

In the judicial system, it is determined that disputes belong to the judicial authorities and between the branches of the judicial system, the type of dispute, the status (composition) of the subjects, the address and location of the individuals and legal entities participating as parties, and the location of the subject of the dispute are referred to the court. These two institutions (subject) are interconnected, complement each other, but have separate norms, special concepts and a specific procedural order.[40]

RESEARCH METHODS. In the process of writing the article, the theoretical and legal analysis, practical explanation, logical and procedural analysis, comparative analysis, interpretation methods were used.

MAIN CONTENT. "Chapter 5" of the Code of Civil Procedure. These two concepts represent two independent procedural institutions.

Eligibility determines the forms of protection of the rights and interests of persons (individuals and legal entities) (judicial or non-judicial resolution). Because today there are a number of state bodies and organizations that have the authority to protect the violated and conflicting subjective rights of individuals and legal entities and their interests protected by law. Relevance of cases plays a key role in distinguishing their powers from each other.

If the relevance of the case is determined on the basis of non-conflict, this is called the general criteria of relevance, and such requirements are mainly resolved by the bodies authorized to resolve the case before the court (hokimality, registry office, MFY, notary, public education and other bodies).

If applicability is determined by the existence of a dispute between the parties, these are called special criteria of applicability, and such claims are resolved through the courts. For example, the fact that the demand for divorce at the request of one of the husband or wife is disputed, or there is no application of one party to establish paternity, indicates that such requests apply to the court. Therefore, the general and special criteria of applicability serve to determine the forms of protection of the violated right. But there are such civil cases in disputes related to

ostida. – Toshkent. “Adolat” nashriyoti. 2022. – 572 b.; Эсанова З.Н. Фуқаролик ишларининг судловлиги: назарий қоидалар ва илмий-амалий таҳлил. // Scientific Impulse: Vol. 1 No. 4 (2022): Научный Импульс. – Б. 322-327.

[40] Эсанова З.Н. Фуқаролик ишларининг судловлиги: назарий қоидалар ва илмий-амалий таҳлил. / Vol. 1 No. 4 (2022): Научный Импульс- С. 322-327

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

family law that only the court can handle. Examples of such actions include invalidating a marriage, depriving a child of parental rights, taking away a child without depriving him of parental rights, and restoring parental rights.

In the civil procedural law, it is established that there are the following types of relevance:

o Alternative;

o Contractual;

o Imperative;

o Exclusively.

The alternative is selected based on the applicant's choice. The claimant chooses where to apply to the court, if he wants, to another body to resolve the dispute (problem). The dispute that arose can be resolved not only by the court, but also by other bodies, for example, the governor's office, registry office, notary, arbitration courts, mediator, etc.

For example, a divorced mother applied to a notary, not a court, to collect alimony for her child, and notarized an agreement on the payment of alimony, or a banking institution applied to an arbitration court, not a court, to collect a loan debt from a client.

Contractual - chosen according to the agreement of the subjects (parties) of the contract.

For example, in the event of a dispute, the parties to the contract mutually agree in advance on which authority to contact in the terms of the contract, or to resolve the dispute in court or relevant bodies (possibility of pre-trial settlement).[41]

Imperative (conditional) - legal documents indicate the obligation to comply with the procedure for resolving the dispute before the court, otherwise, according to Article 122 of the Criminal Code, 10) the plaintiff did not comply with the procedure for resolving the dispute with the defendant before the court, provided that this is provided for in the law or the contract, the court leaves the application unseen.

For example, settlement of individual labor disputes, collection of arrears for utility bills, collection of debt for goods purchased on credit, subscription fee for citizens' use of telecommunications networks, local, long-distance and international telecommunication services and payment of penalty for non-payment of subscription fee on time debt recovery or debt recovery based on notary

[41] Эсанова З. Производство по делам, связанным с решением третейского суда и исполнение судебных определений по делу (при анализе законодательства Республики Узбекистан) 2020.-С.399-402; Эсанова З. Н. Фуқаролик суд ишларини юритишда процессуал муддатлар: назарий таҳлил //Formation of psychology and pedagogy as interdisciplinary sciences. – 2023. – Т. 2. – №. 15. – С. 104-109.

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

enforcement letters.

Exclusively - it is not required to follow the pre-trial procedure of dispute resolution, only the court can solve this problem. The resolution of the dispute does not come under the competence of any body other than the court, and it is not possible.

For example, deprivation of parental rights; annulment of marriage, objection to paternity, reinstatement, annulment of sales contract; Declaring a citizen incompetent and others strictly belong only to the jurisdiction of the court.

RESEARCH RESULTS. Jurisprudence is a procedural institution that legally regulates the delimitation of the authority to resolve disputes between different bodies.

There are criteria to limit eligibility, including:

- Considered as an interdisciplinary legal institution;
- State bodies have a mechanism for the distribution of authority;
- clearly indicates the direction of appeal to the court or other body;
- Considers the subject of the dispute;
- Disputed or non-disputed situation is investigated;
- The nature of work (sources of creation) is taken into account;
- Importance is given to the composition of subjects;
- The possibility of settling the case before the court is studied;
- It is taken into account that the law or contract provides for the resolution of the dispute.[42]

As the basis for determining relevance, it is appropriate to cite the following:

- Law
- Contract
- Candidate selection
- Mandatory pretrial settlement procedure.

These principles make it easier for the subject of the dispute (legal entity, applicant) to choose which body to apply to, or to strictly follow the procedure specified in the contract before the court.

Forms of protection of the rights and legal interests of individuals and legal entities before the court (out of court) play an important role in elucidating the topic of relevance. For example, in world practice, alternative ways of resolving disputes (disagreements) (agreement, mediation agreement, arbitration, etc.) are

[42] Esanova Z. Participants of executive production: theoretical rules and analytical results //Review of law sciences. – 2020. – T. 4. – №. 2. – C. 33-38.

becoming more and more widespread. The main purpose of this is to widely promote reconciliation procedures (agreement, mediation), recognizing that it is an institution that has justified itself in the practice of foreign countries, and to promote the use of alternative methods of dispute resolution, as well as mutual coordination of the burdens of courts and other bodies (simplification, reduction) consists of

RESEARCH RESULTS ANALYSIS. Within the framework of scientific analysis and discussion, some of the methods of resolving cases before the court, in particular arbitration and mediation procedures, are also researched.

Usually, as reforms in the judicial system progress to a new stage, the procedures (procedures) for solving disputes (problems) acquire a new meaning. In this sense, the adoption of the Law of the Republic of Uzbekistan "On Arbitration Courts" became important in the regulation of relations in the sphere of the organization and operation of arbitration courts in our republic. According to this law, permanent and temporary arbitration courts will be established in the Republic of Uzbekistan.

The need to establish arbitration courts in Uzbekistan is expressed in the following:

First, the experience of foreign countries has proven itself;

Secondly, there is a need to resolve disputes in an alternative way (before the court and outside the court) in the national practice;

Thirdly, in the practice of competent courts (economic court or court of civil cases) there is a large number of burdens and this situation has led to a number of problems;

Fourthly, a certain part of arising disputes (especially related to civil legal relations, as well as economic disputes) will be resolved quickly and at low cost without the participation of state courts;

Fifth, the shortness of the dispute review period, the simplicity of procedural processes, the priority of the principle of reconciliation (reconciliation and compromise) between the parties;

Sixth, according to the results of the case, it is provided that the right of the parties to appeal to competent state courts is available (unlimited).[43]

According to the Law of the Republic of Uzbekistan "On Arbitration Courts", the arbitration court (permanent arbitration court or temporary arbitration court) is

[43] Subkhonov S. M. Special proceedings in civil proceedings //Galaxy international interdisciplinary research journal. – 2022. – T. 10. – №. 8. – C. 58-64.; Z.N Esanova - The court proceedings connected with the decision of arbitration: in the example of civil cases// Academicia: an international multidisciplinary research journal, №11, 2021. – B. 1428-1454.

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes arising between business entities;

Arbitration courts do not resolve disputes arising from administrative, family and labor legal relations, as well as other disputes provided for by law.

The arbitrator can be a citizen of the Republic of Uzbekistan elected by the parties to the arbitration agreement or appointed in the prescribed manner to resolve the dispute in the arbitration court.

Mediation. In recent years (in the last 20 years) in the world, the role and importance of the institution of mediation in resolving and eliminating disputes and the scope of legal regulation are becoming more and more important. As proof of this, almost all countries (developed and developing), including the CIS member states, are adopting special laws regulating the field of mediation (in particular, other normative legal documents) and numerous scientific studies contributing to the development of the field.

At the moment, the purpose of reconciling the parties in the courts, introducing the institution of mediation into the process of mandatory execution, resolving cases by peaceful procedural means is actually aimed at the practical application of the principles of peace, impartiality, speed, efficiency and reconciliation. The main trend of the activity of civil and other courts today is aimed at the above goals.

In most of the legal literature, the results of conciliation (reconciliation) of the parties in resolving conflicting issues (problems) are seen in procedural actions such as a settlement agreement, a mediation agreement, the claimant's withdrawal from the claim, the defendant's recognition of the claim. Such resolution of the issue (problem) does not create any difficulty in ensuring the execution of the court decision (judgment), and there is no need to apply measures to ensure enforcement.

Chapter 17 as amended by the Code of Civil Procedure. Called the Conciliation Procedures, it outlined the basis and procedure for concluding a settlement agreement or mediated agreement.

In scientific studies, it is emphasized that mediation is a method of resolving disputes between disputing parties by independent, impartial (neutral) third parties (mediators) mutually beneficial to both parties (arriving at a mutually acceptable decision).

As stated in Article 4 of the Law, mediation is a method of resolving the dispute with the help of a mediator based on their voluntary consent in order to reach a mutually acceptable decision.

International Journal of Education, Social Science & Humanities.
Finland Academic Research Science Publishers
ISSN: 2945-4492 (online) | (SJIF) = 7.502 Impact factor
Volume-11| Issue-8| 2023 Published: |22-08-2023|

Scientific developments and the Law indicate the following types of mediation, in particular, out-of-court (vnesudebnaya), pre-court (dosudebnaya), in-court (sudebnaya), post-court (poslesudebnaya) types of mediation.

Mediation cannot be resorted to per se, the law contains conditions for its application, according to which,

First, mediation is used based on the wishes of the parties;

Secondly, mediation can be used out of court, in the process of considering a dispute in court, until the court enters a separate room (consulting room) to receive a court document, as well as in the process of executing court documents and documents of other bodies.

Thirdly, mediation can be used even during the arbitration process before the decision of the arbitration court.

Fourthly, if mediation is used in the process of execution of court documents and documents of other bodies, the participation of a mediator who performs his activities on a professional basis is required.

Mediation is a method of resolving the dispute with the help of a mediator based on their voluntary agreement in order to reach a mutually acceptable decision.

Terms of Use of Mediation:

- Mediation is used based on the wishes of the parties.
- Mediation can be used in an out-of-court procedure, in the process of considering a dispute in a court procedure, until the court enters a separate room (consulting room) to receive a court document, as well as in the process of executing court documents and documents of other bodies.
- Mediation can be used during the arbitration process before the decision of the arbitration court.
- If mediation is used in the process of execution of court documents and documents of other bodies, the participation of a mediator who performs his activities on a professional basis is required.
- The fact of participation in mediation cannot serve as evidence of guilt.

CONCLUSIONS. The following conclusions were reached in the process of studying the issues of relevance of cases to courts and other bodies:

First, in order to further clarify the applicability of civil cases, especially the applicability of disputes related to insurance, credit, pension, intellectual property, fraudulently obtained property recovery, which have been seen in courts in recent years, and to ensure convenient implementation in practice, the Supreme Court

Plenum "Civil Cases Court and Other It is appropriate to adopt the Decision "On the basis and procedure for determining the authority of the bodies".

Second, it is appropriate to issue the third paragraph of Article 26 of the Civil Procedure Code in the following wording: "3) cases to be resolved by order specified in Chapter 18 of this Code." Because Chapter 18 of the Federal Criminal Code does not provide other types of court proceedings, only cases that are considered in order of order, there is no need for the conjunction "and" in this text. This third part refers only to cases that are considered in order of order.

Third, it is proposed to supplement Article 26 of the Civil Procedure Code with the following third part: "When resolving disputes, the parties must strictly follow the procedure for resolving disputes before the court established by law or contract, with the exception of the rules of alternative application." Because most of the petitions (lawsuits) submitted to the courts in recent times are sent back to the plaintiff (representative) through rulings on refusal to accept the petition or the return of the petition, mistakes are made in the material and procedural law. In such cases, if disputes arise in the process of concluding a contract, the parties, based on the selection of alternative ways to resolve them, include mediation and the stages of initial consideration of cases in arbitration courts as a condition. they ignore.

REFERENCES:

1. Fuqarolik ishlari bo'yicha sudga murojaat qilish tartibi / X. Yodgorov [va boshq.] -Toshkent : Baktria press, 2016. – 224 b.
2. Fuqarolik protsessual huquqi. Darslik. Mualliflar jamoasi. – T.: Lesson press, 2020. – 232 b.
3. Esanova Z. Fuqarolik protsessual huquqi. Umumiy qism. Darslik. – Toshkent, Yuridik adabiyotlar Publish. 2022. – 328 b.
4. Fuqarolik protsessual huquqi. Darslik // Mualliflar jamoasi. Yu.f.d., prof. M.M.Mamasiddiqovning umumiy tahriri ostida. – Toshkent. "Adolat" nashriyoti. 2022. – 572 b.
5. Эсанова З.Н. Фуқаролик ишларининг судловлиги: назарий қоидалар ва илмий-амалий таҳлил. // Scientific Impulse: Vol. 1 No. 4 (2022): Научный Импульс. – Б. 322-327.
6. Esanova Z. Fuqarolik protsessual huquqi. Umumiy qism. Darslik. – Toshkent, Yuridik adabiyotlar Publish. 2022. – 328 b.
7. Esanova Z. Participants of executive production: theoretical rules and

analytical results //Review of law sciences. – 2020. – Т. 4. – №. 2. – С. 33-38.

8. Эсанова З.Н. Производство по делам, связанным с решением третейского суда и исполнение судебных определений по делу (при анализе законодательства Республики Узбекистан), 2020. – С.43-47.

9. Эсанова З. Роль медиации в разрешении споров и правоприменении (анализ отечественного и зарубежного опыта) //Обзор законодательства Узбекистана. – 2019. – №. 3. – С. 38-41.

10. Салимова И.М. Иқтисодий низоларнинг тааллуқлилиги (назарий-ҳуқуқий ва процессуал жиҳатлари) ю.ф.ф.д., (PhD) диссертация автореферати – Т.: ТДЮУ, 2020. – Б. 49.

11. Турсунов А., Эргашев З. Дальнейшее повышение роли института медиации в разрешении споров: зарубежный опыт //Актуальные вопросы и перспективы цифровизации судебно-правовой деятельности. – 2022. – Т. 1. – №. 01. – С. 124-130.

12. Рустамбеков И. Сущность и особенности медиации //Обзор законодательства Узбекистана. – 2019. – №. 1. – С. 84-86.

13. Исмаилова Р. Ш. Особенности формирования в Узбекистане института медиации в качестве внесудебного порядка урегулирования спора //Московский журнал международного права. – 2020. – №. 1. – С. 123-132.

14. Esanova Z. N. Possibilities of using information and communication tools in civil proceedings: the experience of Uzbekistan //Models and methods in modern science. – 2022. – Т. 1. – №. 8. – С. 135-140.

15. Эсанова З. Роль медиации в разрешении споров и правоприменении (анализ отечественного и зарубежного опыта) //Обзор законодательства Узбекистана. – 2019. – №. 3. – С. 38-41.

16. Subkhonov S. M. Special proceedings in civil proceedings //Galaxy international interdisciplinary research journal. – 2022. – Т. 10. – №. 8. – С. 58-64.

17. Esanova Z- The court proceedings connected with the decision of arbitration: in the example of civil cases// Academicia: an international multidisciplinary research journal, №11, 2021. – В. 1428-1454.

18. Эсанова З. Производство по делам, связанным с решением третейского суда и исполнение судебных определений по делу (при анализе законодательства Республики Узбекистан) 2020. – С.399-402.

19. Эсанова З. Н. Фуқаролик суд ишларини юритишда процессуал муддатлар: назарий таҳлил //Formation of psychology and pedagogy as interdisciplinary sciences. – 2023. – Т. 2. – №. 15. – С. 104-109.