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A biy's court and a council of elders as a historical prerequisite for mediation in Kazakhstan

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Abstract: In Kazakh history, there was a tradition of solving various conflicts in society with the help of the biys and a council of elders. These types of government institutions were the most accessible to the people. Their activities were based on the ideology of justice, humanity, and its ultimate goal was to reconcile the disputing parties and lead them to peace. It was every biy's and elder's sacred duty to show full justice to the disputing parties during the settlement of the case. "The ideal of conflict is peace" was found to be one of the main principles underlying the court of biys in nomadic Kazakh society. This, in turn, is one of the main tasks of mediation in modern Kazakhstan.

The article attempts to identify the historical continuity of modern mediation and two traditional institutions (the court of biys and the council of elders) with peacemaking and reconciliation activities. A review of the writings of various scholars and historical archive materials was made to determine the court of biys and the activities of biys aimed at peacemaking and reconciliation. The specifics of the activities of the council of elders, which is one of the oldest institutions in the traditional Kazakh society, were also identified. The principal avenues for the revitalisation and modernisation of traditional institutions in the context of the Republic of Kazakhstan's current developmental trajectory have been identified.

Key words: mediation, conciliation, reconciliation, value, court of judges, council of judges, council of elders, dispute.

Introduction

Relevance. The ultimate goal of every innovation in the field of law of the Republic of Kazakhstan should be consistent with the national legal culture. We believe that taking into account the heritage and national culture of the Kazakh people will be the basis for the correct and effective work of those innovative institutions. One can't disagree with the German philosopher Leibniz's catchphrase: "Today is the offspring of yesterday and the parent of the future." "Old Europe has a thousand-year history," Cohn writes. Franz, - There is no point in trying to forget it: it will affect today even in the future" [1].

In fact, it is only possible to properly understand, evaluate and weigh the present by studying the past. The people of the past were born, brought up and raised under the influence of some demands of life. Each legal institution is created under the influence of historical-genetic, territorial-domestic, religious and other factors of people's life, as well as the general legal structure of the people.

If we look at the history of any state, we can see that it has formed its own methods of conflict resolution based on local characteristics and traditions. According to French researcher N. Rulan, "The task of judicial justice in a traditional society is to achieve the normalization of the disturbed social balance without resorting to predetermined norms" [2].

Mediation has been used in the USA since the second century of the 20th century, and the only reason for its development was to resolve the conflict by reaching an agreement that satisfies the parties equally, without taking it to court, by reconciliation. The need to adopt the Law of the present Republic of Kazakhstan "On Mediation" [3] is also explained by the reasons mentioned above. Mediation is a procedure for settling a dispute (conflict) between the parties with the help of a mediator (mediators) in order to reach a mutually acceptable solution, carried out by the voluntary agreement of the parties.

The goals of mediation are: to achieve a solution to the dispute (conflict) that satisfies the mediation parties; reducing the level of disputes between the parties.

And the only purpose and feature of the biy's court, which appeared several hundred years ago, was not to escalate the dispute, but to give a fair decision to the parties' motives, to preserve the law, to confirm it, and to maintain the peace and cooperation of the society. So, this new legal institution is like a continuation of the Kazakh biys' court, if not for the name of mediation.

In this regard, it is important to learn the traditional Kazakh social and legal institutions - biys' courts and institutions of elders.

The issue of considering the mediation institute in connection with the institute of biys and the council of elders, and the mediator with the judges is relevant, because these two phenomena have almost the same nature, features, and ultimate goal. Even the reconciliation procedures approved by law in Kazakhstan are like a continuation of the peace-making activity of these biys.

The goal. The goals and ideas of the Mediation Legal Institute have many features similar to the peacemaking and reconciliation activities of the Kazakh court of biys and the council of elders. Peace was the main goal of dance activity in Kazakh society. "The ideal of dispute - peace" is one of the main principles underlying the court of biys in nomadic Kazakh society and

its clear version. The purpose of the article is to determine and study the features of mediation activity and the historical continuity of these two traditional institutions with peacemaking and reconciliation activities.

Methodology

The article identifies the historical features of the court of biys and the council of elders in traditional Kazakh culture as the historical origin of mediation, such as the main purpose of calling people to reconciliation and reconciliation.

In the course of the research, many research materials on the history of Kazakh law, historical records of Russian scholars on Kazakh law made in the 19th century, archive materials were used.

The methodological basis of the research is the modern doctrine of jurisprudence, the dialectical-materialist method of cognition, as well as logical, systemic-structural, real-sociological, as well as analysis and synthesis methods.

The methodological basis of the research is the basic rules of legal science explained in relation to the topic discussed in the article in accordance with general scientific principles and ways of creating applied-theoretical research.

Discussion

Academician S.Z. Zimanov said that "The administration of justice in accordance with the legislation of Kazakhstan was based on the ideology of justice, humanity and morality, and its ultimate goal was to reconcile the disputing parties. Simplicity in the consideration of the dispute, ensuring freedom of evidence with Justice, unlimited participation of the parties and representatives of each of the participants in the process, attempts to reconcile the parties and ensure compliance of court decisions with the laws of justice and logic before society, even when severe punishment is imposed on the guilty party, formed the form and content of the court of biys" [4].

The court of biys tried to achieve reconciliation and unity between the parties while considering the disputes of the parties who applied to it. Focusing on maximum justice, bringing two disputing parties to a common agreement, seeking and protecting their interests equally was the main value of the court of biys. The main function of the court of biys was not to compensate for the damage, but to ensure the triumph of justice.

According to tradition, before starting to consider the case in the court of biys, it was necessary to fulfill the following conditions: 1. To present to the parties the agreement to reach a peaceful agreement "reconciliation"; 2. Forgiveness, thereby solving the case by peaceful agreement at the meeting. In this regard, L. Ballyuzek said that "The court of biys always tried to make the parties successful by inviting third parties or other respectable people who are not involved in the case. The goal was to make Kazakhs friends with each other, besides, life itself consists of mutual relations, isn't it?!" [5].

In this regard, A.E. Alektorov in his scientific article called "Biys' Court - People's Court" wrote that "Horde's people are used to solving all domestic disputes, grievances, fights and other disputes through the biys' court and the council of elders.

Every biy and elder considers his sacred duty to do full justice to the disputing parties during the settlement of the case; he will calmly make a decision only after listening to all the details of the complaints and the arguments of the vindicators. His decision shall be fully and firmly enforced. In the court of biys, every case is resolved quietly, respectfully, without any grandeur; raising one's voice is considered a great indecency here. That's why Kyrgyz people feel that the judicial process and investigative procedure in our lower police instance is barbaric, and they are very afraid of it" [6].

I. Kozlov, an eminent scientist who studied the laws of the Kazakh field, who described the features of the judicial power of the Kazakh field, said that "always appealing to the conscience of the disputing parties, the predominance of the spirit of reconciliation in every decision is one of the brightest aspects of the Kyrgyz (Kazakh) court", the author also writes that the biys were owners of impeccable justice and knowledge [7].

In general, the peculiarity of the judiciary according to Kazakh customary law is its democracy, that is, the absence of punishments such as death penalty, deprivation of liberty or bodily harm, as in the merciless laws of the "East". The resolution of all conflicts was civil-legal in nature, that is, in the form of property and non-property responsibility. This is the peculiarity of Kazakh customary law.

The court of biys is the rule of an individual biy or a village elder, the appeal to power is the ruling with the participation of one or more biys, two to eight elders, the highest level is the Council of Biys. The Council of Biys consisted of 6 to 24 judges and was convened to resolve inter-clan, inter-tribal, and inter-ethnic disputes. The court of biys was open, public and popular. Decisions and verdicts issued by the biys had to be approved and appreciated by the people. The consent of the people was considered as a guarantee of the execution of the biy's decision.

The court of biys was implemented by the biys. Biys are connoisseurs and interpreters of customary law, mediators and orators. Biy is an independent third party called upon to assist disputants, but has no coercive (physical) power.

In Kazakh law, a number of rules defining the status of a biy are described by the short version of the rules: "A fair biy has no relatives, an unfair biy has no conscience ", "If the biy is biased towards his close people, the biy will be beaten by God". An important feature of the court of biys is its spirituality, i.e., they pay attention to the spiritual content of the case they are considering, and are always guided by moral principles. "Rich keeps cattle, biy keeps the conscience" was in the minds of the people. Achieving truth and justice was considered the main and ultimate goal of the biys' court. The form and nature of the court of biys is the simplicity of considering the dispute, the existence of judicial justice and freedom of evidence, the possibility of the representatives of the parties to the dispute and other participants to participate in the case, trying to reconcile the parties to the dispute, and the justice of the biy's decisions. The following argument can be made for it:

The biy from the tribe naiman called Saryshuash came to the tribe argyn to dispute the price. The reason for the price dispute was that the argyns had taken more than a hundred horses as hostages from the naiman country. The owner of that horse, the only son of a rich man, chased his horse to Aldabergen who was from naiman country, and it turned out that he

had chickenpox. He died of chickenpox among argyns. Naimans took his remains to their own country and buried them.

Next year, naimans will come and dispute the price. At that time, according to the old Kazakh law, a mediator was hired from neighboring countries to reach peace. That's why the boy called Zhobalai from the tribe kerei was called to be the biy.

The biy Saryshuash demanded the price of three people from Aidabol argyn. Aidabol said to him "I will pay the kun (payment for blood in the form of a material fine) of one person, but I will not pay the kun of three people."

Then Saryshuash said "No, if you come to justice, you are a real thief, why did you take my horse when you had no money? Chasing that horse, naiman Aldabergen died of chickenpox. That's why I insist that you pay the kun of three people."

"Hey, Aidabol, human beings save their lives with conscience and justice. Will you step over your conscience, will you come to justice?" asked Saryshuash biy.

After that, both Aidabol and Saryshuash put in a middleman to come to one solution. The authority of Zhobalai, the boy from the tribe kerei said "Let it be as Saryshuash biy said. Aidabol will have to pay the kun of three people. The kun of one man is 50 cattle. So, Aidabol will pay 150 kun of cattle. Let 50 of these be sara kun, 50 be kara kun, and 50 be dara kun.

Sara kun is 18 aries.

Dara kun is both three-year-old camel and a four-year-old camel considered as the kun of one camel.

Kara kun is a three of them two-year-old horse, two-year-old camel two-year-old cow considered as the kun of one camel."

Both sides were satisfied with this solution. The reason for this is that Saryshuash was happy that he got the kun for three people, Aidabol was happy that he got out of the dispute with 75 camels instead of 150 camels [8]. The main essence of this story is the disagreement dispute between the Argyn and Naiman tribes. In this dispute, we see a third party, the boy biy Zhobalai, who helped to settle the dispute as a mediator between the two tribes.

The decision made by Zhobalai has spread from country to country and even has reached this day.

As we can see, all the signs of a mediation procedure are clearly visible from the peacekeeping activity of the biy in this one incident.

Kazakh biys were formed as an intellectual group that had a deep knowledge of customary law in nomadic society, knew how to use it skillfully, had the ability to speak in front of the people, and knew the history and lifestyle of the people. The court of biys tried to resolve the case by trying to bring the disputing parties to an agreement, and also tried to eliminate abuses of a private and public nature during the resolution of the dispute.

In order to solve such difficult goals, biys had to study in the school of wisdom of the field, pass tests before wise elders, be sharp-minded, eloquent, and experts in Kazakh law. Only when fully responding to these demands, the court of biys was able to establish justice and legal order around.

In this regard, "There was a special class of biys who passed down the norms of Kazakh law from generation to generation, and reformers, dedicated the judicial power to the unity of

the country, and kept the ancient tradition firmly. These Kazakh biys were formed differently from the ruling biys in the East. They were poets all in one: orators, philosophers, thinkers, connoisseurs of customary law and its reformers, military commanders and administrators.

And biy's attitude is that he prioritized the interests of the Kazakh people before the interests of local clans in his work, and at the same time, they were under the control of public opinion. The moral and legal status of Kazakh biy was reflected in the demand of the people - "Don't be a child of your father, be a child of the nation." The famous Aiteke biy, who lived at the beginning of the 18th century, beautifully expressed this opinion by saying, "My life is someone else's, only death is mine," S.Z.Zimanov concluded [8].

D. Samokvasov, one of the well-known researchers who studied Kazakh law, wrote that "in the minds of the people, the title of biy belongs only to a few who have acquired a deep knowledge of the original customs and history of the people" [9].

According to A. Zuev, the author of the extensive article called "Kyrgyz People's Court", "Kazakh biys were so wise and reasonable" that their court "appears as pure and true, bright pages of the quiet life of the patriarchal life of the distant past" [10].

Sh. Ualikhanov in his "Record on judicial reform" "No one officially elects a biy and is not officially approved by anyone.

Like poets, scientists and lawyers in Europe, their importance is based on personal reputation. Shakespeare and Goethe are universally recognized as great poets, but their genius was not based on the decrees of the government or the official election of the people.

In Kyrgyz, promotion to the title of biy does not require any official election by the people and approval by the people's governing authority, only a Kyrgyz who has deep knowledge of court rites combined with the art of oratory is given this honorary title. In order to receive the title of biy, a Kyrgyz must be able to demonstrate his knowledge of law and oratory in front of the people. Rumors about such people quickly spread throughout the field, and their names become known to all and sundry. In this way, the title of the dance becomes like a patent for judicial and legal practice. "The children of persons bearing the title of biy, having extensive legal experience, usually inherit a lot of knowledge, as well as the title of their fathers" [11].

L.F. Balluzek "judge duty is assigned to the so-called biys. This title belongs only to the person who has deep knowledge of the folk customs and historical legends, including the natural mind and the art of eloquence. Only the combination of these natural abilities and their acquired knowledge is worthy of the reputation of a biy, or in other words, biy is a living genealogy of the people, a lawyer or a legislator" [5].

Further, L. D. Andre said, "All cases requiring a court in the Horde are mainly carried out by biys as the main representatives of people's rights. Natural intelligence, experience and exceptional inner qualities combined with exemplary openness are considered to be the best qualities of a biys that gives her the right to carry this title.

Biy's main task is to maintain peace in the village by quickly considering the complaints and thereby stop the conflict from the beginning without allowing hostilities or disputes to drag on." [12].

From the writings of the above-mentioned scientists, it can be understood that the main principle of the activity of the court of biys is peacemaking and reconciliation. This is the main idea of modern mediation activity and should be the main principle of the mediator.

The basic content of the "Institute of Biys", like other ruling institutions in Kazakh society, changed after becoming a Russian colony. During this period, the influence of biys within the society began to weaken.

A. Baitursynuly said that this feature of the court of biys is disappearing, "before the charter was issued in 1822, the Kazakh power (court) was in itself, Kazakhs solved their own disobedience. At that time, there were no elected biys, the dignitaries of the Kazakh people, who were wanted by the people, were the rulers. The two sides came to the biy, and the decision of the biy was considered fair, and there was no way to break it. Kazakh biys like this rarely came to solution that required severe punishment. If very few of the biys came to wrong and unfair solution on purpose, the khan tested whether their solution was right or not.

The Kazakh power was divided into higher and lower levels (instances). After the ancient way of life and customs of the Kazakhs began to change, the people were divided into tribes, a fragmented order lived in different places according to the convenience of the people of each tribe, and the righteous biys that were respected by the ancient people began to decrease..." [13].

According to Ualikhanov's testimony, the Kazakh people responded to the intention of the tsarist government to introduce a colonial court in Kazakhstan: "We already have a court of biys and their council - the people say - and we also have all the beginnings of a conciliation court proposed by the current Russian government.

This court - said the gathered Kyrgyz, - fully satisfies the household requirements of our people, therefore the judiciary and the council should be left in the ancient folk form" [11].

The court of biys, despite 40 years of Russian influence, has preserved its appearance hundreds, perhaps thousands of years ago. In view of this, neither the internal movement of the people nor the influence of Russian institutions and laws could change its ancient and simple form.

If the 40-year rule of Russia, which introduced many new elements into the public life of the Kyrgyz people, had no effect on the ancient Kyrgyz court of judges, if this court could resist the unfavorable requirements of Russian laws (for example, the law of 1854), then it is clear that it fully satisfies the current development of the Kyrgyz people [4].

I.A. Kozlov raised the issue of preserving the "biy's court" in his article "Collection of information on legal customs" [14]. There is also N.N. Maksimov among those who appreciated the work of biys. It can be seen from his scientific works that he highly valued the role of biys.

He suggested compiling a "Compendium of Kazakh Customary Law" and expressed concern to the royal administration that Kazakh norms and institutions were changing due to various external influences. Most importantly, he was opposed to the application of sharia in the legal life of Kazakhs [15].

Further, Sh. Kudaiberdiuly thought about this issue as follows: "Kazakhs do not have an old way of power, but they have a way like a dug dirt road, but that road has been forgotten. The reason was mostly because of the Russian law.

For example, a law about election was convenient because of a bribery and closeness to become a biy. Every person could become a biy and said whatever came to their mouth, and the reason was not recorded. Most of that old way is suitable for today's life. Earlier regulations

often referred to the same line [16]. If they are checked, taken a suitable one, corrected the disapproval of this day's life, and written a project, there would be no such favorable way for the Kazakhs."

Institute of Elders. Among the nomads, great social and political power fell on the main form of self-organization - clan, tribe, union, faces. For example, although the people had private property, they used the land only collectively. In this regard, as a result of the need to solve the problems arising from the violation of the rights of individuals and collective rights, various social institutions have emerged. One of such social institutions is the institution of elders, which occupies a special place in the system of socio-political structures of traditional Kazakh society.

The Council of Elders is an informal form of government. The origin of the Council of Elders dates back to ancient times. For example, A.I. Trenozhkin "In Scythian feudal states, the state apparatus consisted of the head of state and his slaves and executors, several managers or tribal groups attached to a certain territory. They, in turn, obeyed the leaders of the tribe, saying that the tribes were ruled by elders, and at a specially convened council they discussed such issues of public life as relations with neighboring countries, War and truce, division of pastures, resolution of disputes" [17]. Further, the Greek historian Lukian of Samosatsky shows the role of the clan leaders in the Scythian society as follows: "if anyone hits someone equal to him or knocks him to the ground or tears his clothes, the elders may impose a great punishment for this." [18].

Chinese scientist Su Bei Hai writes in his work "History of Kazakh culture" that the foundation of the Kazakh state consists of seven stages. Its first stage is the village. It was the main social organization of the Kazakh nation. He said that the leader of each village is the head of the village. The head of the village is usually an experienced person and has political authority. His tasks are to manage the farm of his fellow villagers, to set the time of seasonal internal migration, to settle disputes fairly, etc.

The second stage is the native land. It was made up of several villages connected by seven ancestors. It is led by elders. The elder is a person of very high status [19]. If we take into account that the term "elder" is used along with the words "head of the clan" and "brother of the country", we can understand that the elders were the rulers of the village. The elder was a leader, a smart man, a negotiator, a spiritual educator of the country, a great mentor.

In the 18th century, the council of elders was the only traditional social institution that organized the life of the social community. The decision of the Council of Elders had legal force. About it, Ivan Falk said, "The existence of patriarchal-tribal life within the tribe was reflected in the preservation of the authority of the head of the tribe - the elders [20].

In the past, older people were called elders, and they were asked for advice as a person with a lot of life experience. They have a right to solve problems such as marriage and family, a disagreement between close relatives, inheritance, etc." he writes [21]. Elders have a special place in Kazakh society, because their work was enormous in ensuring the peace and unity of the village, tribe, country, and state. The description of P.P. Rumyantsev "the real rulers of the Kazakhs are elders, biys, batyrs, and their influence went beyond the clan territory and influenced the affairs of the entire Horde" proves the above opinion. [22]. A.I. Levshin said that

khan himself was afraid of the clan elders among all of his relatives and always tried to live in friendly relations with them [23].

It is known that traditional Kazakh society has a system of traditional power institutions such as "council of clan elders", "council of tribal elders", "court of elders". The institutions "Khan Council" and "Council of Biys", which are of special importance in the governance of the country, originate from this council of elders. This system of power has a great importance in various relations between the village and the tribe. The decision of the elders took an important place in the court of biys and customary law. The biys themselves did not decide important matters without the participation of clan elders. In this regard, based on the research conducted by the Russian Empire in the Kazakh steppes in the first stages of the 19th century, the following data can be given: " in each Kyrgyz horde, there is a selected biy among every of the horde. These biys handle personal and public cases between Kyrgyz people. Several respected elders will be invited to consider this case and the process of solving the case is related to them" [24].

N.I. Krasovsky divides nomads into three classes: officials, biys and elders who are respected for their intelligence and honesty, and ordinary people. Among them about biys and elders, it is said: the rights and obligations of the people are thoroughly protected by a group of people called biys, elders. That is why this class of people is widely respected among Kyrgyz people. Disobeying any of their orders is impossible for Kyrgyz, because it is the voice of the people. He obeys the sultan's orders out of fear, but he does not love him.

They do not follow any order without the advice of their elders. It is described that every word of the elder is accepted by the people as a law [25]. From this record, it can be seen that the authority of the biys and elders was very high among the common people. It was considered one of the traditions of the people to listen to the words of the elders and consult with them.

The council of elders was held to solve the problems arising from the internal situation of the country. Elders of the clan used to discuss and settle the unresolved issues by consulting among themselves.

The council of elders was held at any time depending on the problem that arose.

This is because the council of elders did not deal with the problems of the general population, but the problems arising within the village-region and clan. In particular, they were directly responsible for determination of the clan's spring, winter, summer, autumn pasture settlements in the four seasons of the year, related land disputes, widow disputes in marital relations, hostage disputes, value disputes, as well as other procedures, customs, banquets, sports games such as horse racing and wrestling, etc. and also were responsible for planning and carrying out events in domestic cultural and economic relations in accordance with traditions [26].

The Council of Elders was also involved in the administration of the country. The most important issue for Kazakhs, for whom cattle breeding is the main type of economy, is of course the issue of land, and this is the area where there are many disputes. Therefore, the council of elders determined the land holdings of each clan. The role of the Council of Elders was special in the era of the establishment of the Kazakh Khanate. About this M.B. Olcott says: "Every village had its elder, who was usually respected as an 'elder', who protected the interests of the people and the pastures of his village.

In order to conduct negotiations between one clan and another clan and to arbitrate mutually disputed issues, as well as in order to organize migration and properly divide grazing lands, the

elders used to choose a biy among them. Although the title of biy was passed down from father to son, it was not a hereditary concept, and it was up to the elders to choose who was to be the biy.

Within the larger community of Kazakhs, the authority of clan leaders and elders was stronger than that of the khan [27].

The Council of Elders, like the Institute of Biys, underwent changes after becoming a Russian colony, and its function was abolished with the establishment of the Soviet Union.

Results

The following conclusions can be drawn from the above data:

– It can be understood that the most important principle of the activity of the court of biys and the council of elders is peacemaking and reconciliation. This is the main idea of modern mediation service;

– In traditional Kazakh culture, Kazakhs used to resolve all quarrels, grievances, fights and other conflicts in their homes and marriages through the court of biys and the council of elders. Every biy and elder considered it his sacred duty to show full justice to the disputing parties during the settlement of the case. Decisions and verdicts issued by the biys had to be approved and appreciated by the people. The consent of the people was considered as a guarantee of the execution of the biy's decision;

– The Council of Elders was the only traditional social institution that organized the life of the social community. The decision of the Council of Elders had legal force. A council of elders is held at any time depending on the issue. This is because the council of elders did not deal with the problems of the general population, but the problems arising within the village-region and clan, because the authority of the elders is very high among the people, it is considered one of the traditions of the people to listen to the words of the elders and consult with them. Therefore, in 2019, the Council of Elders was established under the Assembly of the People of Kazakhstan. It's main objectives and tasks are as follow to help the citizens to concentrate around the values of social harmony and unity assistance to state bodies in the prevention of social and domestic conflicts, their resolution, as well as their post-conflict regulation; assistance and direct participation in the implementation of ethno-mediation, the organization of dialogue on issues of strengthening social harmony.

The Council of Elders should be considered as a political institution of great social importance;

– The form and nature of the court of biys is the simplicity of consideration of the dispute, the existence of judicial justice and freedom of evidence, the possibility of the representatives of the parties to the dispute and other participants to participate in the case, to try to reconcile the parties to the dispute, and the justice of the biy's decisions. Predominance of the spirit of reconciliation in each decision was found to be the most distinctive feature of the biys' court. The arbitral tribunal has always tried to make the parties successful by inviting third parties or other dignitaries; The main task of the biy was to maintain peace in the village by quickly processing complaints and thereby stop the conflict from the beginning without allowing hostilities or disputes to drag on.

Currently, in order to modernize the activities of traditional biys, the Council of Biys has been created and works as an advisory body under the akimats. Its main purpose is to organize pre-trial and court reconciliation and help reduce the level of conflict between citizens.

In this way, the state's readiness and enthusiasm to introduce the norms of customary law into the normative base of the country means that they can have a positive effect on the social effectiveness and maturity of the active law.

Conclusion

With the independence of the country, a new impetus appeared in all spheres of public life, including the state structure and legal system. And in recent years, all complex issues with legal significance are considered in terms of the traditional thinking system. Among them, it is important to use the unique historical experience of the Kazakh people in the development of mediation. With the independence of the country, a new impetus appeared in all spheres of public life, including the state structure and legal system. And in recent years, all complex issues with legal significance are considered in terms of the traditional thinking system. Among them, it is important to use the unique historical experience of the Kazakh people in the development of mediation. Currently, a lot of work is being done to modernize the service of traditional biys and the service of the council of elders.

For example, within the framework of the implementation of the pilot project "Reconciliation: before the court, in the court" within the framework of the memorandum of cooperation between the Supreme Court of the Republic of Kazakhstan and the Ministry of Social Development, Councils of Biys were formed in the regions and villages of the country from the ranks of elders and respected people who are skilled in resolving disputes on the basis of traditional "field law". The main purpose of this Council of Biys is to organize reconciliation before the trial and in the court, and to be the basis for maintaining peace and prosperity among citizens. The Council of Biys has been working officially since August 2018 as an advisory body under akimats. The reason for its creation is not only the genetic memory of the people, but also the real reason for the development of the legal reality of modern Kazakhstan, taking into account the revival of the institution of biys [28].

The emergence of the Council of Biys and the Council of Elders is a reflection of the historical continuity of modern legal life with traditional legal culture.

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Билер соты мен ақсақалдар кеңесі Қазақстандағы медиацияның тарихи алғышарты ретінде

Аңдатпа: Қазақ тарихында қоғамдағы түрлі конфликтілерді билер соты мен ақсақалдар кеңесі көмегімен шешу дәстүрі болды. Билік институттарының осы түрлері халыққа ең жақыны болды. Өйткені олардың қызметі әділдік, халықтық және адамгершілік идеологиясына негізделді және оның түп мақсаты дауласушы жақтарды татуластыру, бітімгершілікке жетелеу болып табылды. Әр би мен ақсақал істі шешу барысында тартысушы тараптарға толықтай әділдік көрсетуді өзінің киелі борышы санаған. «Дау мұраты – бітім» көшпелі қазақ қоғамындағы билер сотының негізінде жатқан басты қағидалардың бірі болып табылды. Бұл өз кезегінде қазіргі Қазақстандағы медиацияның басты міндеттерінің бірі болып табылады.

Мақалада қазіргі медиация мен осы екі дәстүрлі институттардың бітімгершілік пен татуластыру қызметімен тарихи сабақтастығын анықтауға талпыныс жасалады. Билер соты мен билердің бітімгершілік пен татуластыруға бағытталған қызметін анықтайтын түрлі ғалымдардың жазбасына және тарихи мұрағат материалдарына шолу жасалды. Сондай-ақ қазақ қоғамындағы ежелден билік институтының бірі болып табылатын ақсақалдар кеңесінің қызметінің ерекшеліктері де анықталады. Қазіргі уақыттағы осы дәстүрлі институттардың жаңғыртылу барысында атқарылып жатқан жұмыстарға шолу жасалды.

Түйін сөздер: медиация, бітімгершілік, татуласу, құн, билер соты, билер кеңесі, ақсақалдар кеңесі, дау-дамай.

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Суд биев и совет аксакалов как исторические предпосылки медиации в Казахстане

Аннотация: В казахской истории существовала традиция решать различные конфликты в обществе с помощью суда биев и совета старейшин. Данные институты были наиболее близки к народу. Так как их деятельность была основана на идеях справедливости и гуманности, а ее

конечной целью было примирение спорящих сторон и приведение их к миру. Каждый бии и старейшина считал своим священным долгом проявить полную объективность к спорящим сторонам при разрешении дела. «Дау мұраты – бітім» (Цель разрешения спора – примирение) являлся одним из основных принципов, лежащих в основе суда биев кочевого казахского общества. Это, в свою очередь, является одной из главных задач медиации в современном Казахстане.

В статье предпринята попытка определить историческую преемственность современной медиации и традиционных институтов с миротворческой и примирительной деятельностью. С целью определения деятельности суда биев, направленной на миротворчество и примирение проведен анализ трудов ученых, обзор исторических архивных материалов. Также определены особенности деятельности совета старейшин, который является одним из древнейших институтов в традиционном казахском обществе. Определены основные направления возрождения и модернизации традиционных институтов на современном этапе развития Республики Казахстан.

Ключевые слова: медиация, миротворчество, примирение, ценность, суд биев, совет биев, совет старейшин, спор.

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