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Features of the development of mediation in the Republic of Kazakhstan: a comparative legal analysis

Abstract. *Mediation is an alternative method of dispute resolution that is neutral, does not represent the interests of the parties in resolving the dispute, involves a third party-a mediator who helps the parties reach a certain agreement on the dispute, and the parties have full control over the processes of decision – making and the requirements for its resolution. It is also important to note that there are no exceptions to this rule.*

The article discusses the development of the Institute of Mediation in Kazakhstan as an alternative method of dispute resolution. Due to the lack of proper development of the Institute of Mediation, the opinions of scientists and lawyers will be analyzed, and the factors hindering the development of mediation in Kazakhstan will be identified by comparing the experience of China, Germany, Georgia, and Singapore in implementing and developing alternative dispute resolution methods. In order to distinguish these points, a review and comparative analysis of the scientific works of scientists studying the Institute of Mediation, laws and scientific works of a number of foreign countries on mediation was conducted. The methodological basis of the article is analysis, synthesis, comparative-legal, logical-legal, historical, and statistical methods.

Keywords: *Mediation Institute, mediator, alternative dispute resolution methods, mediation procedure, disputes, volunteering, confidentiality.*

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Introduction

Relevance. It should be noted that the resolution of legal disputes using the mediation procedure has come into force in many developed countries. In the middle of the 20th century, the emergence of a non-state legal institution of an innovative type was to conduct work as a neutral intermediary – with the involvement of a mediator. And now, already in the 80s of this century, the Institute of Mediation has become a relatively independent institution in the countries of the European Community [1].

The introduction of mediation in Kazakhstan began in 2010 with a six-month pilot project in Almaty. Meanwhile, CEDR (Center for Effective Dispute Resolution, UK) has prepared the first 100 mediators. Further, mediation was developed in the private sphere, and several associations were opened.

On January 28, 2011, Kazakhstan adopted the Law "On Mediation" as well as the Law

"On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Mediation Issues." Amendments and additions were made to the Civil Procedure Code of the Republic of Kazakhstan, the Criminal Penal Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Kazakhstan, the administrative Procedural Code of the Republic of Kazakhstan, the Labor Code of the Republic of Kazakhstan, the |Marriage (Matrimony) and Family Code of the Republic of Kazakhstan. Adoption of those laws was a prerequisite for a lot of work to study and analyze the international experience of conciliation procedures, practical issues on the fairness of normalization, as well as the search for effective and alternative forms of dispute resolution.

Today, we can confidently say that the institution of mediation is a more effective alternative approach than the judicial resolution of legal disputes, and it is generally recognized. This, in turn, is explained by the following factors, which are characterized by many domestic and foreign scientists: timing, accessibility, low cost, volunteering and confidentiality, which give mediation a special appeal. The mediation procedure is aimed at resolving disputes and follows from the true interests of the parties involved. In this context, F. Sander suggests using the term "alternative dispute resolution methods," which is common to all procedures, saying that alternative means the ability to choose from "many existing options" [2].

Today in Kazakhstan, the main way to protect the violated rights, freedoms and legitimate interests of citizens is to apply to the court. However, in the conditions of the formation and rapid development of modern civil society, this approach is not sufficiently effective.

Currently, there is a need for a clear and systematic, comprehensive orientation of the regulatory framework in relation to the mediation procedure and its subjects.

As the essence of mediation, researchers believe that it is contradictory, that is, the high level of autonomy of the parties and the harmony of such elements as a common position and achieving a mutually beneficial result.

In accordance with the law "mediation is a procedure for resolving a dispute (dispute) between the parties with the assistance of a mediator (s) in order to achieve a mutually acceptable solution, carried out by a voluntary agreement of the parties" [3].

The problem. The law covers and defines all legal mechanisms. Mechanisms for bringing the disputed parties to a common deal without aggravating the controversial issues that may arise in society, without bringing them to court. However, the statistics of resolving disputes by mediation without bringing them to court are growing from year to year, but in general they have not developed. Finding out what causes it is an issue on the agenda. In this regard, President of the Republic of Kazakhstan Kassym-Jomart Tokayev noted the need to develop alternative dispute resolution methods that allow us to find a compromise without the participation of the state. 10 years have passed since the adoption of the Law "On mediation." However, to date, not a single state body is engaged in its development, there is no public policy. It was said that such a gap should be corrected. [4].

Purpose. An alternative way to resolve disputes in the Republic of Kazakhstan is to identify factors that hinder the development of the institution of mediation by analyzing the works of lawyers scientists on this topic and comparing it with the experience of developed states.

Methodology

The article discusses the development of the Institute of Mediation in Kazakhstan as an alternative method of dispute resolution. In connection with the reasons for the insufficient development of the Institute of Mediation, the opinions of lawyers scientists are analyzed, and factors hindering the development of mediation in Kazakhstan are identified, comparing the experience of China, Germany, Georgia, Singapore on the introduction and development of an alternative dispute resolution method. In order to differentiate these points, a comparative analysis of research of scientists studying the Institute of Mediation and the laws and research on mediation of a number of foreign countries were carried out. According to the results of a sociological

survey conducted by the Kazakhstan Institute for Strategic Studies under the President of the Republic of Kazakhstan on what Kazakhstanis know about mediation, the conclusion was made.

The methodological basis of the article is analysis, synthesis, comparative-legal, logical-legal, historical, statistical methods.

Literature Review

Taking into account the relatively new role of mediation as an alternative method of dispute resolution, we are talking about this legal institution, the issues of its development are widely considered. S. Y. Romanovskaya, drawing attention to the fact that mediation as an alternative method of dispute resolution is not developed at the proper level, gives its main reasons:

- New mediation procedure;
- Poor awareness of mediation and its benefits by individuals and legal entities;
- Popular distrust of this new legal institution [5].

Further, M. S. Raeva and N. I. Kairova associate the main problem of mediation development with the fact that the mediation procedure is not regulated in a comprehensive, systematic way, both by law and in the practical activities of state bodies and in the activities of civil society [6]. "For the further development of mediation in our society, we consider it necessary to promote mediation activities in the mass media." Such an attitude is expressed by M. K. Suleimenov also adheres to the pissymist approach to the situation of mediation in Kazakhstan [7] in his opinion, mediation centers in Kazakhstan are not engaged in reconciling the parties in civil or arbitration processes and the role of a mediator is low, the development of mediation is at a zero level. However, he says that he looks forward to the prospects for its development in the future. To do this, it offers development in the following areas:

1. First of all, promoting mediation;
2. Amendments to the Civil Procedure Code of the Republic of Kazakhstan on the conciliation procedure, oblige the courts to apply the conciliation procedure more widely;
3. Adoption and approval of the rules of professional ethics of a mediator.

Of course, it is impossible to completely agree with this opinion of the scientist. After all, official statistical indicators conducted every year show that mediation is developing from year to year. For example, A.K. Nurzhanova, L.S. Serikova – "for 9 months of 2016, the number of civil cases reduced by mediation was 13,372, for the same period of 2015, its number was 4,760. Currently, there are 967 non-professionals and 1,920 professional mediators in the country, of which the number of disputes settled in person or during the trial of a case in court for 9 months of 2016 reaches 9,000. Further development of the Institute of mediation will contribute to the convenience of all relations in society" [8].

M. I. Dyachuk, studying and analyzing the use of the Institute of Mediation in the Republic of Kazakhstan, notes that there are several organizational issues.

First, the issue related to the implementation of mediation principles. It is believed that the principle of confidentiality is not sufficiently protected. Because for violation of the principle of confidentiality, there is only an administrative penalty in the form of 20 MCI in Article 85 of the Administrative Procedure Code of the Republic of Kazakhstan. Neither the law on mediation nor other normative legal acts provide for full liability for violation of this principle.

Secondly, the issues in the field of training mediators, including the lack of 50 hours in the course of training mediators, are discussed. This, in turn, negatively affects the qualification of mediators, reduces the quality of Service. Mediation should be taught within the framework of a separate specialty or as part of the training of a bachelor's degree in jurisprudence, master's degree. It also concludes that in order to increase the value of out-of-court mediation, an out-of-court mediation agreement concluded for the settlement of legal disputes should have the same value as a judicial mediation agreement [9].

Yes, here you can fully agree with the author's opinion. After all, if the parties do not agree to an out-of-court mediation agreement, then they have the right to consider the dispute in court. The main goal of the development of mediation in the Republic of Kazakhstan

is to reduce the level of conflict situations in society, reduce the burden on the court. And if we drop the essence of out-of-court mediation on the above-mentioned issue, we think that this goal cannot be achieved.

Now let's consider the issues of mediation development with the specifics of development in the neighboring Russian Federation. Researcher of the problem of mediation a.m. Panasyuk notes the high relevance of the introduction of legal dispute resolution using mediation technology in the Russian Federation [10]. The possibility of resolving disputes through mediation in the Russian Federation as a result of many years of work on issues is the Law "On an Alternative Dispute Resolution Procedure (On the Mediation Procedure) with the Participation of an Intermediary" No. 193-FZ, hereinafter – the Law "On Mediation."

However, despite the years of practice of this institution and the presence of appropriate legislative regulation, this exotic method of dispute resolution has not yet gained credibility in practice, in fact, it is not possible to consider conflict situations in an out-of-court framework, resolve disputes without bringing them to court, D.A.Shirev, K.A.Tasenkova believe. The main reasons for this are the lack of awareness of the public or lack of knowledge about the existence of mediation procedures, the lack of training centers, specialized consulting centers. Further, the public's distrust of the Institute of Mediation as a problem that needs to be solved again. Part of this problem can be solved by the standards of the mediator's service, which explain what kind of services a mediator is paid for. However, as in other professions, mediation services do not always have highly qualified specialists. It is not yet clear how the state authorities will solve this problem, whether through licensing or through the creation of a self-regulating organization of mediators [11].

E. V. Lukyanova and T. V. Khudoikina in their research on mediation issues say that "Russian judges recognize that alternative dispute resolution methods are not widely used. He explains that the only reason for this situation is barriers in the form of an ethical principle that do not allow us to show the weakness of the position of the participants in the case" [12].

Giving a positive assessment to the development of mediation in Kazakhstan, M.A.Avdiev believes that the development of mediation in the Russian Federation is almost thirty years behind the global mediation community. These are the factors that hinder:

- Russia has a low level of state regulation in the field of mediation and pursues the corporate interests of individual departments;

- state programs for training mediators pursue the interests of individual training centers and do not take into account the specifics of Russia, its social institutions, and historical experience;

- also in Russia, electronic distance learning courses for training mediators are not developed [13].

As we can see, the situation in Russia is similar to the process of mediation development in our country, at a relatively level. There are still many issues that need to be improved and demanded by the state.

In order to identify the mature experience of each of the different mediation institutions and countries in the legal system, in the next section, comparing the experience of China, Georgia, and Singapore, it is possible to identify factors that hinder the development of mediation in Kazakhstan.

First of all, as for the development of mediation in China and Kazakhstan, Confucian culture, which is widespread in China, believes that the appeal to justice is the last way to resolve a dispute. In the history of the Kazakh people, there was a biy court. The biys considered the disputed issue of the parties and made a settlement decision, which was binding on each of the parties. With the adoption of the law on mediation, we can say that this historical tradition of resolving disputes through conciliation has been revived. And now we are significantly behind China in terms of increasing the number of cases resolved through mediation. If we find out the reasons for this:

In China, mediation is considered part of the culture. During the Qing dynasty of the 17th-20th centuries BC, judges first sent the parties to reconciliation with the help of third parties before considering the case. Confucian

culture, which is widespread in China, believes that applying to justice is the last way to resolve a dispute. In accordance with the law of the people's mediation of the people's Republic of China, "people's mediation – the process of resolving a dispute by reaching a mediation agreement on the basis of equal and voluntary negotiations of interested parties in a dispute" [14]. Today, the PRC uses both judicial mediation and out-of-court mediation to resolve civil, administrative and commercial disputes.

Judicial mediation is carried out within the framework of the judicial process and is financed from the state budget.

Out-of-court mediation is initiated by the parties themselves and conducted by private mediators.

In China, the mediation procedure is regulated by 3 laws adopted in 2008-2010. The purpose of the adoption of these laws is fair and timely resolution of civil disputes, compliance with the legitimate interests of the parties, and the impact on stability and harmony in society. According to the law, in the event of a labor dispute, the parties may apply for mediation procedure to any local centers and mediation committees. If the parties cannot reach a mutual agreement within 15 days, they have the right to bring the case to court. People's committees on mediation have been established, and the city administration can involve mediators of such committees in judicial mediation to exchange experience and conduct analysis.

Judicial mediation is an integral part of the judicial system, and its conduct is regulated by the Supreme Court's recommendation "the priority of mediation and the Coordination of mediation and judicial proceedings. The courts should determine the possibility of mediation in the course of consideration of the case. The mediator can be a judge himself or several judges at the same time. Other mediators may also be invited. In order to execute the mediation agreement, the parties may apply to the court for approval of the agreement. This should be done within 30 tones. The peculiarity of judicial mediation in China is that the salaries of judges increase in proportion to the number of cases resolved by mediation" [15]. The execution of a mediation agreement is mandatory, any of its parties can apply to the court for execution, for which the state fee is not charged. The CIETAC rule equates a mediation agreement with an arbitration decision – thus fulfilling the requirements of the UN Convention on the recognition and enforcement of foreign arbitration decisions. On August 8, 2019, China signed the UN Convention on the international peace treaty, which was achieved as a result of mediation. Therefore, now the mandatory implementation of the mediation agreement in private international disputes is established by the laws of the state.

The concept of mediation in China includes various processes. It uses evaluation mediation, in which the mediator is the judge himself. Evaluation mediation is a type of mediation in which a mediator evaluates an event and influences the results of a dialogue under certain circumstances, and if necessary, offers his own options for resolving a dispute. However, recently the Chinese government has been increasingly advocating facilitative mediation, in addition to judicial proceedings. In this form of mediation, the mediator does not offer options for resolving the dispute, but only takes a position on influencing the decision-making process.

There are also independent specialized mediation centers in China: CCPIT/CCOIC, BAC Mediation Center (Beijing), SCMC (Shanghai Commercial Mediation Center). In addition, mediation centers of the PRC are united in unions (for example, the Beijing mediation Union). Their main goals are to promote mediation, create common rules for its implementation, and professionalize the provision of mediation services. Despite the fact that mediation operations are independent, the state judicial system actively supports and finances them. Interestingly, there is no government agency in China that trains mediators. In the judicial system, judges are not trained to conduct mediation, as they are considered to have the necessary qualifications.

Each center maintains its own list of mediators. Specialists are selected and invited to work by the parties, that is, these mediators are not permanent employees. The sites provide detailed information about the

mediator and his professional activities. Each center determines its own training program for mediators, and there is no single body regulating this issue. Each year, about 9 million cases are resolved through mediation in the PRC, which in turn accounts for 30-40% of cases considered in the courts [16].

The promotion of mediation is carried out in China through various specialized conferences, seminars, summits. Judges are active participants in such measures, that is, since in China the state supports mediation both financially and administratively, the basis for the development of mediation is the courts.

As we can see, the development of mediation in China is fully facilitated by the state, both financially and administratively, and the mediation procedure is mandatory. Despite the state support for mediation in Kazakhstan, the law does not oblige the mediation procedure.

World experience shows that the path from top to bottom proves its effectiveness. An example of this is the experience of Singapore.

Mediation in Singapore, like other Southeast Asian countries, has deep roots. Dispute resolution through mediation has been carried out in Singapore since ancient times. Mediation has historically been conducted by elders. They called on the parties to discuss the dispute and come to a mutually beneficial solution [17]. Modern Singapore has become a global center of mediation as a result of the rapid development of the mediation Institute, which began in the 90th century.

According to the Law of Singapore "On Mediation," "mediation is a process consisting of sessions of one or more mediators to help the parties to the dispute in order to resolve the dispute, identify the causes and consequences of the dispute, consider possible ways to resolve the dispute, establish relations (relations) between the parties, and perform actions to reach a mutual agreement" [18]. there is judicial and extrajudicial (private) mediation in Singapore. In judicial mediation, the judge sends the parties to mediation themselves. All disputes involving a child, as well as issues related to divorce, are considered in family courts within the framework of the mediation procedure. Various ministries and agencies conduct mediation in their specialties. In 2010, the state introduced rules for the use of an alternative method of dispute resolution (hereinafter referred to as the DSPA) when applying to civil courts. In turn, both lawyers and clients should be informed in writing that they have touched upon the possibility of using the DSPA and indicate the decision on using the DSPA in a special form. Two thousand twelve A"presumption of DSPA" has been introduced, that is, if one or more of the parties did not waive it, all civil cases were automatically referred to the DSPA. If the reason for refusing to use the DSPA is not satisfied by the court, a fine may be imposed.

Mediation is conducted in the first instance, not in the Supreme Court. Also, the Supreme Court, as a court of the highest instance, makes special recommendations to judges on which cases should be directed to mediation.

In Kazakhstan, during judicial mediation, a judge transfers the case to another judge for mediation. However, at the request of the parties, the case may be transferred to the jurisdiction of which judge is in the proceedings. For mediation in courts of appeal, the case is usually transferred from the composition of the collegial court to one judge. An appeal to a judge-mediator gives the plaintiff the right to change the subject of the dispute (this provision also applies to economic proceedings).

It is appropriate to show the experience of out-of-court mediation in Singapore on the example of the Singapore Mediation Center (hereinafter referred to as the SMC). It was established in 1997 by the Singapore Academy of Law, which is a government agency. The director of the SMC is always a judge of the Supreme Court. Main activities of the SMC:

- Provision of mediation and other support services;
- Training in DSPA, negotiations and much more;
- Provision of consulting services to protect against conflict situations;
- Accreditation of mediators and maintaining lists;
- Development of mediation and other DSPA;
- Creation of conditions for negotiations and mediation, as well as other DSPA.

During the period from 1997 to 2002, the Ministry of Justice provided financial services to the center on a grant basis. However, in 2002, the SMC was transferred to self-financing.

Unfortunately, Kazakhstan can not boast of such a large number of specialized mediation centers.

There are no specific requirements to become a mediator in Singapore. Many well-known centers independently train and accredit mediators. There are no general state criteria. However, the Government of the country plans to introduce common standards and requirements for mediators.

In Kazakhstan, non-professional mediators can be persons who have reached the age of 40 and judges who have conducted conciliation procedures. Professional mediators can be persons with higher education, who have reached the age of 25, who have a document (certificate) confirming their training under the program for training mediators in accordance with the procedure approved by the Government of the Republic of Kazakhstan, who are on the list of professional mediators, as well as retired judges. The training of mediators consists of a three – stage training system (general mediation course – 48 Hours, special mediation course-50 hours, mediation training course – 32 hours). Each organization maintains its own list of professional mediators. The list of non – professional mediators is maintained by the corresponding Akim. Both professional and non-professional mediators must submit an annual application to the relevant organizations for an extension of their stay on the list, otherwise they will be automatically excluded from the list.

In addition to judicial mediation, there is a separate type of mediation in Kazakhstan. some organizations have been operating since 2008. Each Mediation Center sets its own standards for mediators and prepares them.

At first, when mediation appeared in Sinapur, many were indifferent to it. It took years for lawyers to start advising their clients on the procedure of mediation. In addition, the court introduced the practice of preliminary hearings, in which the parties are explained the specifics of mediation. In 1994, a special pilot project on mediation in courts of the 1st instance was launched. Judges began to be called» mediators-judges». Initially, judges conducted evaluation mediation in most cases. Subsequently, over the years, he switched to facilitative mediation.

In 2010, the practice of applying sanctions for gratuitous refusal to participate in the mediation procedure was introduced; all civil disputes were subject to mandatory application of the DSPA (the vast majority of mediation). Also, for unjustified refusal to use mediation, the court may refuse to reduce the state fee. Thanks to such measures, the number of mediation has doubled. For example, in 2018, 6 thousand civil disputes were resolved through mediation, of which 85% were executed. Here it should be noted that mediation is carried out free of charge by judges.

The prosecutor general's Office of Singapore has prepared a proposal that obliges all government agencies to apply mediation as the first way to resolve disputes and include mediation agreement on the provision of disputes in all contracts with the participation of government agencies.

All labor disputes may also be referred to the dispute resolution commission if it is not possible to reach an agreement only by passing the mandatory mediation procedure. In 2016, a law came into force in Singapore that obliges lawyers to inform clients about the possibility of using the DSPA All disputes involving the child must necessarily undergo a mediation procedure. Also, if the spouses have children under the age of 21 in the process of divorce, the mediation procedure is mandatory. In such cases, mediation can be conducted in court (free of charge), as well as in private centers (paid).

In Kazakhstan, as we have already mentioned, the mediation procedure does not oblige the parties. We think that if there were changes in the laws and the reconciliation procedure, the issues related to the family, including divorce, would be resolved. After all, according to experts, every hour in Kazakhstan, six marriages are canceled. In terms of divorce, it is one of the top ten in the world. Based on data from the National Bureau of Statistics Ranking.kz according to the report prepared by experts, in 2020, 128.8 thousand marriages were concluded in Kazakhstan, which is 7.6%

less than in 2019. And during the year, the number of divorced families amounted to 22.5 thousand [19].

As the comparative legal analysis shows, the implementation of the 'top-down reform' will allow us to determine the priorities of mediation at the level of all branches of government. An important direction in the development of mediation in the Republic of Kazakhstan is to change the way of thinking of jurisprudence representatives. To solve such an experimental problem, it is necessary to form views on alternative dispute resolution methods. Priority should be expressed in the desire to resolve disputes through mediation and negotiations.

Medieval historical documents show that mediation developed in Germany not only in domestic disputes, but also in disputes of an interstate nature. For example, Alvis Contarini was elected as a mediator in the 16th century BC to resolve the territorial tension between the two German lands. In this regard, we can conclude that peaceful resolution of disputes is typical for German culture.

According to the German Law "On Mediation", "mediation is a secret and structured procedure in which the parties come to peacefully resolve disputes with the help of one or more mediators, voluntarily and under their own responsibility" [20].

The introduction of mediation in Germany begins with pilot projects in the courts. In 1999, mandatory mediation was introduced for claims in the sum of less than 750 euros, and if the case did not pass the mediation procedure, the court refused to consider it. In 2001, this rule was changed, and judges were required to recommend that the parties use the DSPA. For example, a case was submitted to the court for consideration, the judge recommended that the parties conduct a mediation procedure, and they agreed. In this case, the judge transfers the case to a colleague who is a professional mediator. If the parties cannot reach an agreement, the proceedings in the case are reviewed. Then there is a new position in Germany "guterich" – a person who is engaged in the DSPA. Thus, the German legislator officially separated the mediation service and the work of judges to reconcile the parties.

Today, there is judicial and extrajudicial (private) mediation in Germany. However, according to the Law "On Mediation," the activity of judges on the use of mediation techniques and procedures is not mediation. In cases where judges conduct mediation, the parties do not pay for its work, since it is included in court costs.

For example, in Bavaria, about 2% of all court cases were resolved through mediation – about 40,000 disputes. For comparison, the volume of civil disputes this year amounted to 1.08 million.

In addition, in Germany, along with judicial mediation, private mediation is well developed. However, such organizations are usually not only engaged in mediation, they often operate under some associations (for example, under the ICC of the International Chamber of Commerce).

The most common disputes that are resolved through mediation are family, inheritance, and commercial disputes. Family disputes played a leading role in the development of mediation in Germany. Mediation was also developed without legal regulation, which was established and established only after the development of relations.

Other than lawyers with special legal education, they cannot provide legal advice. Therefore, if the mediator is not a lawyer, then he or she must conduct joint mediation with the participation of a mediator – lawyer. Only persons who have completed 120 hours of training can become mediators. Also, a certified mediator must complete a 40-hour advanced training course within 4 years. Currently, there are no state or other regulatory requirements for mediating activities in Germany. In this regard, any person other than lawyer can call himself/herself a mediator. Also, mediators do not have a mandatory accreditation requirement in any organization. And there are other rules for representatives of the legal profession. A lawyer can act as a mediator only if he/she has an education in the field of mediation (rules of professional practice of the Federal Association of Lawyers, Section 7 a) [21].

A certified mediator has the right to advertise his/her activities. Each organization

of a mediator has the right to set its own qualification standards for certification. (many organizations have standards that provide for 200 hours of training.)

Various benefits have also been introduced for the development of mediation. In judicial mediation, if the parties reach an agreement, 2/3 of the fee paid is subject to refund, and in Lower Saxony, the fee is fully refunded. In individual mediation, the amount is determined based on the amount of the claim.

In Georgia, there was an earlier term "Bche", meaning judge, which was evaluated within the framework of Bche mediation during Vakhtang VI [22]. Law Book of Vakhtang VI. If there is a dispute between two people, he must go to the judge, however, if the parties do not want to go before the King, patriarch, metropolitan or judge, they can choose one person to settle the dispute. They approach this person by saying that they will make their decision on the dispute. Such a person is an intermediary [23].

It should be noted that the Law "On Mediation" was adopted in Georgia only in 2019. According to this Law: "mediation is a process in which two or more parties, with the help of a mediator, seek to end a dispute by mutual agreement. Even if this process is initiated by the party or initiated on the grounds and in accordance with the procedure established by law" [24]. Such definition corresponds to the definition given in the UN Convention on the international peace treaty reached as a result of mediation.

Today, there is judicial and out-of-court mediation in Georgia. Out-of-court mediation is divided into those carried out by state bodies (labor, notary mediation) or private mediation centers.

Judicial mediation was introduced in 2013. It covers only civil disputes. The judge may, with the consent of the party or forcibly, refer the dispute to mediation, if these disputes relate to a family matter (adoption, deprivation of parental rights, use of force against a woman, etc.) inheritance disputes and disputes between neighbors.

After conducting the mediation procedure, the parties have the right to apply to the court for approval of the mediation agreement. A mediation agreement may be enforced. Privacy issues are also sufficiently regulated by the legislation of Georgia. For example, participants in the mediation process are not invited to interrogate the court on information that became known during mediation. Mediation is a state institution. The court is conducted by a mediation center.

In 2014, the practice of considering labor disputes was introduced. The salary of mediators was paid by the state, and the procedure itself lasted 21 days. At the same time, the notary Chamber of Georgia introduced mediation in the activities of notaries, but this initiative did not find sufficient support.

Private mediation centers are actively developing in Georgia. In addition to various donor projects, which were the basis for the emergence of mediation in the state, mediation centers are also emerging. In 2015, the Georgian Association of mediators with more than 200 specialists was founded. This association independently approves the ethical standards of mediators, rules of conduct, and much more.

Before the adoption of the law on mediation, these rules were the main source for mediators-members of the Association, and now mediators should be guided by the norms of the law.

The Register of mediators may include any person who has not previously been convicted, who has completed a 40-hour training course in the Georgian Association of mediators. (Pre-mediators were trained by experts from well-known foreign companies, such as CEDR). This organization is engaged in training, professional development and certification of mediators.

In judicial mediation, the parties are obliged to choose a mediator from the register within 3 days. If they do not come to an agreement at this time, the Association of mediators of Georgia will appoint a mediator themselves after 3 days.

In private mediation, any person designated by the parties can act as a mediator. (regardless of what is in the register)

Interestingly, the mediation agreement reached as a result of judicial mediation or as a result of the assistance of mediators included in the Register of mediators must be approved

by the court and, accordingly, subject to mandatory execution.

A mediation agreement concluded with the help of a mediator who is not included in the register is subject to execution in the same way as a normal contract and is considered in the same way when applying to the court.

Mediation in Georgia

- to the alliance between the Ministry of Justice and the Supreme Court;
- conducting various trainings for employees of the Department for their further training of mediators;
- adoption of relevant laws and acts in accordance with the law
- pilot projects that demonstrate the positive aspects of mediation;
- dissemination of information about mediation;
- we can assume that it was successfully implemented as a result of the creation of private mediation centers.

Discussion and results

The results of a sociological survey conducted by the Kazakhstan Institute for Strategic Studies under the President of the Republic of Kazakhstan on what Kazakhstanis know about mediation in order to identify factors hindering the development of mediation in Kazakhstan [25]. Respondents with experience of direct or indirect interaction with the judicial system took part in the survey. The survey method was conducted on the basis of an interview with the respondent at the place of residence on the basis of a route quota sample. The sample consists of 3 cities of national significance and 53 urban settlements in 14 regions and 1,200 respondents aged 18 years and older in rural areas.

The main purpose of the questions in the questionnaire is to find out what Kazakhstanis know about mediation. Almost half of the survey participants say that 45.3% do not know about the mediation method of dispute resolution, and 38.8% say that they know this type of approach. 15.9% of respondents used the services of a mediator. Also, when asked what type of dispute resolution you choose, the majority of respondents were those who, if necessary, would like to apply to the court for Dispute Resolution – 46.8%. It was found that 34.6% answered that they are trying to negotiate personally with the other party, 15.9% that I am contacting a mediator, and 2.7% that I find it difficult to answer.

According to the results of the study, it was found that almost half of the respondents who took part in the survey, 45.3%, were unaware of the mediation procedure. According to S. Y. Romanovskaya, M. S. Raeva, M. K. Suleimenov, poor awareness of individuals and legal entities about mediation and its advantages, as well as the opinion of those who wish to apply to the court for dispute resolution, about the unreliability of mediation [5] the results of the survey were reflected in the results of the survey. Based on the results of this survey, we can say that the first factor hindering the development of mediation as an alternative method of dispute resolution in Kazakhstan is the lack of public awareness of mediation, that is, the lack of correct information.

Conclusions

Comparing and analyzing the arguments of the above-mentioned scientists, as well as the experience of other countries, the factors hindering the development of mediation in Kazakhstan can be called:

- Poor awareness of mediation and its benefits by individuals and legal entities;
- Gaps in legislation, non-commitment to the widespread use of conciliation procedures in courts, especially in the resolution of Labor and family disputes;
- This is a public distrust of the new legal institution.

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Қазақстан Республикасындағы медиацияның дамуының кейбір мәселелері: салыстырмалы құқықтық талдау

Аңдатпа. Медиация – бейтарап, дауды шешуде тараптардың мүддесін көздемейтін, тараптарға дау бойынша белгілі-бір келісімге келуге көмектесетін үшінші тұлғаның – медиатордың қатысуымен болатын және тараптар дауларды реттеу бойынша шешімнің қабылдану үдерістері мен оның шешілу талаптарын толықтай бақылай алатын дауды шешудің балама әдісі (ағылш. alternative dispute resolution, ADR**)** болып табылады.

Мақалада дауды шешудің балама әдісі ретінде Қазақстандағы медиация институтының даму мәселелері қарастырылады. Медиация институтының тиісті деңгейде дамымау себептеріне байланысты ғалым заңгерлердің пікірлері талданып, дауды шешудің балама әдісін енгізу мен дамыту бойынша Қытай, Германия, Грузия, Сингапур тәжірибесін салыстыра отырып Қазақстандағы медиацияның дамуына кедергі келтіретін факторлар анықталады. Аталған жайттарды саралау үшін медиация институтын зерттеп жүрген ғалымдардың ғылыми еңбектері мен бірқатар шет мемлекеттерінің медиация туралы заңдары мен ғылыми еңбектеріне шолу жасалып, салыстырмалы талдау жасалды. Мақаланың әдіснамалық негізін талдау, синтез, салыстырмалы-құқықтық, логикалық-құқықтық, тарихи, статистикалық әдістері құрайды.

Түйін сөздер: медиация институты, медиатор, дауларды шешудің балама әдістері, медиация рәсімі, даулар, еріктілік, құпиялылық.

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Особенности развития медиации в Республике Казахстан: сравнительно-правовой анализ

Аннотация. Медиация – это альтернативное разрешение спора (англ. alternative dispute resolution, ADR**)** с участием третьей стороны – посредника, который нейтрален, не представляет интересы сторон при разрешении спора, помогает сторонам прийти к соглашению по спору, а стороны имеют полный контроль за процессом принятия решений.

В статье рассматривается развитие института медиации в Казахстане как альтернативного метода разрешения споров. Анализируются причины неразвитости института медиации, анализируются мнения ученых-правоведов, а также выявляются факторы, сдерживающие развитие медиации в Казахстане путем сравнения опыта Китая, Германии, Грузии, Сингапура по внедрению и развитию альтернативного разрешения споров. С целью анализа этих фактов был сделан обзор и сравнительный анализ научных работ ученых, изучающих институт медиации, законы и научные труды ряда зарубежных стран по медиации.

Методологическую основу статьи составляют методы анализа, синтеза, сравнительно-правовой, логико-правовой, исторический, статистический.

Ключевые слова: институт медиации, медиатор, альтернативные способы разрешения споров, процедура медиации, споры, добровольность, конфиденциальность.

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