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**Alternative dispute resolution methods in the legal system
of Kazakhstan**

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Abstract. Given the intensification of the process of mutual influence of the judicial system and the system of alternative dispute resolution, approaches to classification and systematisation of alternative dispute resolution methods require revision. The study aims to identify current trends in changing the structure of the system of alternative dispute resolution in the legal system of the Republic of Kazakhstan. The article uses the comparative legal method to study existing approaches to building a system of alternative dispute resolution; the analysis method was used to characterise the main methods of alternative dispute resolution; the logical-semantic method was used to clarify the conceptual and categorical apparatus; the structural-systemic method was used to study individual components of the system of alternative dispute resolution. The legal system of the Republic of Kazakhstan provides all the most common methods of alternative dispute resolution. The study showed that the system of alternative dispute resolution is evolving under the influence of digitalisation and the mutual influence of the judicial and ADR systems, which leads to their intersection and the emergence of hybrid dispute resolution methods. The study considered different approaches to the systematisation of alternative dispute resolution methods concerning mediation styles, as well as the impact of digitalisation on the system of alternative dispute resolution. The study identifies the theoretical significance, as the basis for assessing the integration of the alternative dispute resolution system into the national legal system, its legislative regulation and forecasting changes in legislation, and the practical significance of systematising the methods of alternative dispute resolution from the standpoint of criteria for determining the methods most appropriate to the needs and objectives of the parties to a particular legal dispute. The study results propose a broad and narrow concept of alternatives, the concept of quasi-alternatives, and possible options for expanding the classification of alternative dispute resolution methods.

Keywords: dispute resolution, conciliation, mediation, negotiation, arbitration, ombudsman, Kazakhstan's legal system.

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Қазақстанның құқықтық жүйесіндегі дауларды шешудің баламалы әдістерінің жүйесі

Аңдатпа. Дауларды баламалы шешу жүйесін және оның мемлекеттің құқықтық жүйесіндегі орнын түсіну осы құқықтық институтты дамытудың маңызды алғышарты болып табылады. Сот жүйесі мен дауларды баламалы шешу жүйесінің өзара ықпал ету үрдісін жандандыру жағдайында дауларды баламалы шешудің тәсілдерін жіктеу және жүйелеу қайта қарауды талап етуі зерттеудің өзектілігін анықтайды. Бұл зерттеудің мақсаты Қазақстан Республикасының құқықтық жүйесіндегі дауларды баламалы шешу жүйесінің құрылымын өзгертудегі қазіргі заманғы үрдістерді анықтау болды. Салыстырмалы-құқықтық әдісті қолдана отырып, дауларды баламалы шешу жүйесін құрудың қолданыстағы тәсілдері зерттелді, дауларды баламалы шешудің негізгі тәсілдерін сипаттау үшін талдау әдісі қолданылды, логикалық-семантикалық әдіс тұжырымдамалық-санаттық аппаратты нақтылауға мүмкіндік берді, құрылымдық-жүйелік әдіс дауларды баламалы шешу жүйесінің жекелеген құраушыларын зерттеу үшін қолданылды. Қазақстан Республикасының құқықтық жүйесінде дауларды баламалы шешудің барынша кең таралған тәсілдері ұсынылған. Зерттеу көрсеткендей, дауларды шешудің баламалы жүйесі цифрландыру және сот жүйесі мен дауларды шешудің баламалы жүйесінің өзара әсері сияқты заманауи беталыстардың әсерінен құқықтық жүйемен бірге дамиды, бұл олардың қиылысуына және дауларды шешудің гибриді әдістерінің пайда болуына әкеледі. Дауларды баламалы шешу тәсілдерін жүйелеуге қатысты ғылыми көзқарастар, атап айтқанда медиация стильдерінің жіктелуі, сондай-ақ цифрландырудың дауларды баламалы түрде шешу жүйесіне әсері мәселелері қаралды. Дауларды баламалы шешу жүйесінің ұлттық құқықтық жүйеге бірігуін, оны заңнамалық реттеуді және заңнамадағы ықтимал өзгерістерді болжауды бағалаудың негізі ретінде теориялық және белгілі бір құқықтық дау тараптарының қажеттіліктері мен мақсаттарына неғұрлым сәйкес келетін әдістерді анықтау өлшем шарттары тұрғысынан дауларды баламалы түрде шешу жолдарын жүйелеудің тәжірибелік маңыздылығы анықталды. Зерттеу нәтижесінде баламалылықтың кең және тар ұғымы, квази-баламалылық ұғымы ұсынылды және дауларды баламалы шешу тәсілдері жіктелуін кеңейтудің мүмкін нұсқалары анықталды.

Түйін сөздер: дауларды шешу, татуластыру, медиация, келіссөздер, төрелік, омбудсмен, талқылау, қазақстандық құқықтық жүйе.

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Система альтернативных способов разрешения споров в правовой системе Казахстана

Аннотация. Понимание системы альтернативного разрешения споров и ее места в правовой системе государства является важной предпосылкой для развития этого правового института. В условиях активизации процесса взаимного влияния судебной системы и системы альтернативного разрешения споров, подходы к классификации и систематизации способов альтернативного разрешения споров требуют пересмотра, что обуславливает актуальность исследования. Целью этого исследования было выявление современных тенденций в изменении структуры системы альтернативного разрешения споров в правовой системе Республики Казахстан. С применением сравнительного-правового метода были исследованы существующие подходы к построению системы альтернативного разрешения споров, для характеристики основных способов альтернативного разрешения споров использовался метод анализа, логико-семантический метод позволил уточнить понятийно-категориальный аппарат, структурно-системный метод использовался для исследования отдельных компонентов системы альтернативного разрешения споров. В правовой системе Республики Казахстан представлены все наиболее распространенные способы альтернативного разрешения споров. Исследование показало, что система альтернативного разрешения споров эволюционирует вместе с правовой системой, поддаваясь влиянию современных тенденций, таких как цифровизация и взаимное влияние судебной системы и системы АРС, что приводит к их пересечению и возникновению гибридных способов разрешения споров. Рассмотрены дискурсивные вопросы подходов к систематизации способов альтернативного разрешения споров, в частности что касается стилей медиации, а также вопрос влияния цифровизации на систему альтернативного разрешения споров. Было определено теоретическое значение, как основы для оценки интеграции системы альтернативного разрешения споров в национальную правовую систему, ее законодательного регулирования и прогнозирования возможных изменений в законодательстве, и практическое значение систематизации способов альтернативного разрешения споров с позиции критериев определения способов, наиболее соответствующих потребностям и целям сторон конкретного правового спора. В результате проведенного исследования было предложено широкое и узкое понятие альтернативности, понятие квази-альтернативности и определены возможные варианты расширения классификации способов альтернативного разрешения споров.

Ключевые слова: разрешение споров, примирение, медиация, переговоры, арбитраж, омбудсмен, разбирательство, казахстанская правовая система.

Introduction

The use of alternative dispute resolution (ADR) has a long history and is considered an integral part of the legal heritage of mankind [1] and a tool for internal democracy [2]. Compromise-based dispute resolution is much more promising in terms of preserving public order and economic functioning than litigation, as it allows for the preservation of interpersonal and business relations between the disputing parties, while a strong-willed court decision based solely on the law often leaves the interests of one of the parties and, in some cases, both, unsatisfied. The second argument in favour of studying and introducing conciliation procedures into the legal system is the permanent crisis of the judicial system caused by the excessive workload of the courts, as well as the high level of court costs, while even unsuccessful conciliation reduces the time and financial costs of subsequent litigation [3].

The development of the ADR system is also in line with Kazakhstan's aspiration to become one of the 30 most competitive countries in the world by 2050 [4]. Significant progress has been made towards achieving this goal. According to the World Economic Forum's Global Competitiveness Report 2019, Kazakhstan's competitiveness index was 62.94 out of 100, while in the previous twelve years, the index averaged 17.5 points [5]. In the context of increasing competitiveness in global markets, ADR methods can simplify dispute resolution and reduce costs by eliminating the need to consider differences in the legal regulation of counterparties belonging to different legal systems [6]. The Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) was adopted in Kazakhstan in 2011, but the situation of insufficient use of ADR opportunities to resolve disputes without involving the judicial system persists [7]. Calling for greater independence in resolving conflict situations, in a speech in Kazakhstan, President K.J.K. Tokayev stressed the need for further development of ADR methods and noted insufficient attention to this institution [8].

Conciliation procedures form a unified system, the knowledge and understanding of which is a prerequisite for the successful integration of ADR methods into the legal system of Kazakhstan. The choice of a particular conciliation procedure depends on many factors, including the specifics of the dispute, the objectives and the relationship between the parties. This makes it both theoretically and practically important to systematise the methods of ADR. From a theoretical point of view, such a systematisation allows for determining the place and types of ADR in the legal system of the state, assessing the degree of their legislative regulation and developing proposals for improving the functioning of the ADR system by amending national legislation. The practical significance of systemising conciliation procedures lies in the ability of the parties to a dispute to choose the ADR method that best suits their objectives and the nature of the legal dispute.

One of the first studies of the ADR system by Kazakh scholars was the work of M.K. Suleimenov [9]. The theoretical and practical aspects of the application of ADR methods in the resolution of disputes in civil proceedings were addressed by S.E. Asanova [10]. M.I. Dyachuk addressed the use of mediation in Kazakhstan [11], determined its advantages over other methods of dispute resolution, and provided a detailed analysis of changes in Kazakh legislation in connection with the Law of the Republic of Kazakhstan No. 401-IV "On mediation" [7]. The issues of assessing the effectiveness of the current legislation in the field of mediation were discussed by S.I. Klimkin and A.G. Kazbayeva [12]. Among foreign studies, it is worth mentioning the work of L.L. Riskin [13], which became the basis for the classification of mediation styles. The history, objectives of the use of ADR and practical recommendations for their effectiveness were presented by B. Strazhishar [14]. The current trends in the expansion of the use of ADR methods in connection

with the digitalisation of the judicial system were considered in the study by P. Cortés [15]. At the same time, the issue of systematisation of alternative dispute resolution methods in the legal system of the Republic of Kazakhstan remains insufficiently researched today. Existing ADR methods, in particular negotiations, being the subject of research in the system of pre-contractual relations [16], [17], as a method of ADR, have not been reflected in modern studies. The ADR system also remains insufficiently researched in terms of its dynamism and the mutual influence of the judicial system and the ADR system.

The study aims to address the system of alternative dispute resolution in the legal system of the Republic of Kazakhstan with due regard to the current trends in its development.

Materials and Methods

To achieve the research objective, the author used a set of both general scientific and specialised legal methods, both separately and in combination. The main methods of the study were analysis, synthesis, logical-semantic, structural-systemic, comparative legal, formal legal, and prognostic methods.

The logical-semantic method was used to clarify and distinguish the concepts of ADR, conciliation and mediation, as well as the concepts of alternativeness and quasi-alternativeness, and the conceptual and categorical apparatus of the alternative dispute resolution system. The structural-systemic method was used to identify the individual components of the ADR system and determine their place within the system of dispute resolution in the Republic of Kazakhstan. The comparative legal method was used to identify similarities and differences between ADR methods, mediation styles and approaches to the systematisation and classification of ADR methods. These methods were applied primarily in the Results section when defining the ADR system, distinguishing its individual methods and analysing approaches to their classification.

The formal legal method was used to analyse the provisions of the legislation of the Republic of Kazakhstan regulating ADR methods, including the legal regulation of mediation and arbitration, as well as mandatory pre-trial and out-of-court procedures. It was also used to identify the legal characteristics of individual ADR methods and the legal criteria relevant to their use. The analysis method was used to examine academic research on ADR and the legal regulation and characteristics of individual ADR methods. The synthesis method was used to generalise the results obtained, combine the individual ADR methods into a single system, and formulate conclusions concerning the classification and development of the ADR system. These methods were applied primarily in the Results section in analysing the relevant legislative provisions and systematising the identified ADR methods.

The prognostic method was used to assess current trends in the development of ADR, including the convergence of ADR and the judicial system, the development of remote dispute resolution and the possible impact and risks of the use of digital technologies in ADR. Its application is reflected in the Discussion and Conclusions sections, where possible directions for the further development of the ADR system and recommendations concerning the use of remote ADR procedures are considered. Based on a synthesis of the information obtained during the study, the advantages and disadvantages of certain ADR methods were identified, criteria for choosing an ADR method were defined, and recommendations were made on the use of certain ADR methods. The regulatory framework of the study was based on the legislative acts of the Republic of Kazakhstan in the field of ADR [7], [18]. The information and empirical basis of the study were formed by the works of legal scholars presented in the academic literature.

Results

Regarding the ADR system in the legal system of the Republic of Kazakhstan, it is first necessary to define what the ADR system is. In this study, ADR is understood as a general concept encompassing various non-judicial methods of dispute resolution, including negotiation, mediation, arbitration and ombudsman procedures. Conciliation procedures are considered in a narrower sense as procedures primarily aimed at achieving an amicable settlement of a dispute. Mediation is regarded as a specific ADR method involving an independent third party who assists the parties in reaching a mutually acceptable solution without having the authority to impose a binding decision. Arbitration, in contrast, involves the resolution of a dispute by an arbitrator or arbitral tribunal through a decision that is binding on the parties. Thus, ADR, conciliation and mediation are not treated as synonymous concepts in this study. At the same time, the degree to which the parties seek reconciliation may vary depending on the particular ADR method, since the purpose of such procedures may include both settlement of the dispute and reduction of the intensity of the conflict [19].

A key element of the ADR system is the notion of alternatives as competition between several options [20]. In this sense, determining the scope of ADR requires distinguishing between the general concept of ADR and the particular methods of dispute resolution included within it. The literature differs on what counts as alternatives. Some scholars oppose ADR to court proceedings, while others include litigation within the broader range of dispute resolution methods. Accordingly, the concept of ADR may be understood either broadly, as encompassing different methods of dispute resolution existing within the legal system, or narrowly, as referring to methods used as an alternative to traditional judicial proceedings. In this study, the narrow understanding is adopted, under which ADR serves as an umbrella concept for dispute resolution methods outside judicial proceedings.

Thus, in this study, the ADR system is defined as a set of dispute resolution methods based on termination (reduction intensity) of conflict and compromise, provided by national legislation or not contradicting it and used as an alternative to court proceedings. At the same time, there is no single approach to determining the specific methods constituting the ADR system. Negotiation, mediation and arbitration are commonly identified as ADR methods, while other classifications additionally include direct negotiation, mediation, arbitration, ombudsman procedures, expert determination, neutral evaluation, fact-finding, private tribunals and other mechanisms. Hybrid procedures, such as mediation-arbitration, as well as mini-trials and structured settlement procedures, may also be included in the ADR framework depending on the approach adopted by the researcher [21], [22], [9], [23]. Informal procedures are incorporated into legal systems in different ways.

Negotiations. Negotiations as a method of ADR do not involve a third independent party, which makes them the fastest and least expensive way to resolve a dispute compared not only to court proceedings but also to other methods of ADR. At the same time, the use of negotiations is limited to situations where the parties to the dispute fully retain the ability to communicate. This method of ADR is characterised as the most common, flexible and informal, allowing the parties to retain maximum control over the process of discussing the subject matter of the dispute. Thus, this method can be recommended if the parties to the dispute maintain communication, are focused on resolving the dispute with due regard for the interests of each party and are willing to compromise. At the same time, when agreeing to negotiate as a method of ADR, the

parties should address the vulnerabilities of this method. It is necessary to establish certain rules in advance regarding the information to be obtained during the negotiations, such as the rule that plea agreements made during negotiations to settle a dispute cannot be used as evidence in court [21].

In addition to the absence of participation of an independent third party in the procedure of reconciliation of the parties through negotiations, the peculiarity of negotiations is that, being an independent ADR method, they are often held simultaneously during other conciliation procedures, which is quite reasonable, since the focus of ADR methods on reaching a compromise implies the establishment of a certain level of communication between the parties, which is impossible without negotiations. At the same time, the role of negotiation as a means of ADR is often underestimated. Following R. Benjamin [24], negotiation is often perceived solely in terms of interest-based decision-making, while the issue of the relationship between negotiation and other modes of ADR is overlooked.

Negotiations are usually regulated by the parties themselves. At the same time, certain rules may be established for the most important areas for the state regarding the mandatory nature of negotiations. As an example of such regulation in the Republic of Kazakhstan, it is possible to cite the provisions of clause 6 of Article 95 of the Law of the Republic of Kazakhstan No. 240-V LRK "On ratification of the Agreement on the Eurasian Economic Union" [25], which, being a ratified act, is part of national legislation. The Agreement provides that disputes shall be resolved through negotiations and consultations in the first instance, and only if the dispute is not resolved through negotiations and consultations within 60 calendar days from the date of the formal written request for such negotiations and consultations, may it be resolved by the court. The very procedure for initiating disputes is regulated by the Procedure for Organising and Conducting Negotiations and Consultations on Disputes Related to the Implementation of a Coherent (Coordinated) Agricultural Policy [26]. Thus, this example demonstrates that negotiations, although generally characterised by the voluntary and informal nature of ADR, may acquire a mandatory pre-trial character where such a requirement is established by a legal act. In terms of the proposed classification, the mandatory nature of negotiations in such cases constitutes a basis for considering them as quasi-alternative dispute resolution. Negotiations are also often the result of the implementation of the law on the claims procedure in cases where such a procedure is provided for.

Mediation. Mediation is among the most common ADR modalities, regulated at both national and supranational levels [27]. Unlike negotiations, mediation involves an independent third party chosen by the parties, whose main role is to facilitate communication between the parties. Unlike litigation, which focuses primarily on establishing the rightness of one party and the liability of the other solely based on legal rules, mediation focuses on defining the issues in dispute based on the actual interests of the parties and finding a solution that can satisfy the needs and interests of all parties to the dispute, trying to achieve a win-win situation as much as possible, with the final decision remaining with the parties.

An obligatory condition for mediation is the consent of the parties. Such an agreement is possible even in cases where communication between the parties is disrupted at the time of the procedure, as restoring it is often one of the tasks of mediation. Situations that preclude the possibility of resolving a dispute through mediation include not only the complete loss of communication between the parties, but also the unwillingness to restore it, the belief that the counterparty is in bad faith, and the desire to achieve victory rather than a compromise

solution. The legal literature points out that mediation's weaknesses in terms of the possibility of an objective assessment of the situation include the inability to demand evidence to support certain claims of the parties [21].

When classifying ADR methods, the existence of such types of mediation as judicial and out-of-court mediation should be addressed. At the same time, the so-called judicial mediation, i.e., mediation initiated by a judge after the initiation of a case in court, can be conducted either by a professional mediator working in the court (the so-called close model) or by a judge-mediator (integrated model) [4]. As a method of ADR, mediation is regulated by the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" [7], which defines mediation as "a procedure for settling a dispute (conflict) between the parties with the assistance of a mediator (mediators) to reach a mutually acceptable solution, implemented by the voluntary consent of the parties". The statutory requirement of voluntary consent confirms that mediation, as regulated by the Law of the Republic of Kazakhstan, belongs to the category of ADR methods based on the voluntary participation of the parties. This distinguishes mediation from those procedures in which prior recourse is mandatory by law.

The law also regulates the scope and principles of mediation; the legal status of mediators, the procedure for conducting mediation, and the specifics of mediation conducted in connection with the resolution of certain categories of disputes (civil, labour, family, criminal, and administrative offences) [7]. Relevant provisions on mediation have been included in other legal acts, namely the Marriage (Spousal) and Family Code, the Land Code, the Labour Code, the Civil Code, the Civil Procedure Code, the Administrative Procedure Code, the Code of Administrative Offences, the Criminal Code, the Criminal Procedure Code, the Entrepreneurial Code, the Code on Taxes and Other Mandatory Payments to the Budget. Thus, a regulatory framework was created to ensure that this method of ADR is used to resolve various categories of cases.

Arbitration. Arbitration (arbitral tribunal) is also a common method of ADR. Similar to mediation, arbitration is fundamentally different from mediation in that it is an independent arbitrator or arbitral tribunal who is authorised to make a decision that is binding on the parties. Arbitration has advantages over litigation in the flexibility of the procedure, the ability to choose an arbitrator with the most experience in cases with a similar subject matter of dispute, and the confidential nature of the arbitration procedure. At the same time, depending on the national legislation and the peculiarities of the national legal system, arbitration may be more expensive than a hearing in court and may have limited (or no) opportunities to challenge the arbitral award if the subject matter of the dispute was determined incorrectly by the arbitrator [21].

In Kazakhstan, this method is regulated by the Law of the Republic of Kazakhstan No. 488-V "On arbitration" [18]. In terms of the system of ADR methods, the Law provides for the possibility of establishing an arbitral tribunal formed specifically to consider a particular dispute or a permanent arbitration. The permanent arbitration shall approve the rules of arbitration and the register of arbitrators who will act in this arbitration. Arbitration for consideration of a particular dispute shall be established by the parties to resolve the dispute and shall remain in force until the dispute is resolved or until the parties decide to refer the dispute to court. Arbitration may be mandatory if the parties have made a relevant arbitration clause in the contract. The legal effect of the arbitral award is a distinguishing criterion for the proposed classification: unlike mediation and negotiations, in which the parties retain the authority to determine the outcome of the dispute, arbitration results in a decision made by the arbitrator or arbitral tribunal that is binding on the parties.

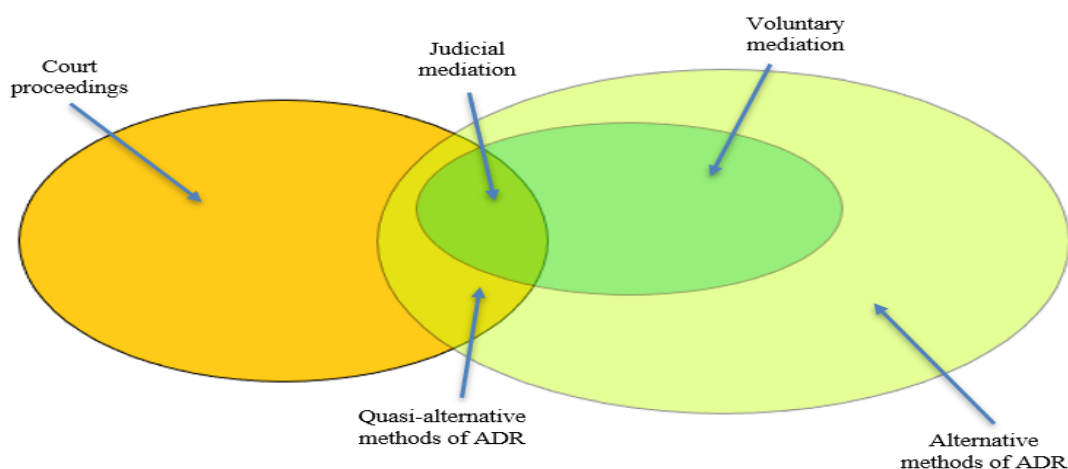
Ombudsman. A specific form of ADR is the ombudsman institution. The ombudsman's activities are usually sector-specific. The term ombudsman means a representative of someone's interests. The ombudsman institution exists in both public and private law. As for private law dispute resolution, the ombudsman is usually an official representing an organisation (corporate ombudsman) [28]. An ombudsman institution can be effective in dealing with highly specific disputes, particularly medical disputes (disputes over the protection of patients' rights or the reputation of doctors) [29]. An example of legal regulation of financial ombudsman activity in the Republic of Kazakhstan is the provisions of Law of the Republic of Kazakhstan No. 258-VIII 'On banks and banking activities in the Republic of Kazakhstan' [30]. The so-called settlement conference, which is an informal confidential meeting of the parties to a dispute held in the presence of a mediator – a bailiff (judge or deputy judge) – is also a separate method of ADR. The role of the mediator is to assist the parties in assessing their positions [31]. The classification of ADR methods can be made on various grounds: participation of an independent mediator in the process (negotiations, in this case, will be opposed to all other ADR methods), adversarial or non-adversarial nature of the process (arbitration is opposed to mediation, negotiation, ombudsman), mandatory and non-mandatory [32], [33].

The legislation of the Republic of Kazakhstan provides for all the most common methods of ADR: negotiations, mediation, arbitration, and ombudsman. The analysis of the relevant legislative provisions shows that the proposed classification is based not only on the formal presence of particular ADR methods in national legislation, but also on their legally established characteristics. Thus, the legislation confirms the distinction between methods according to the participation and role of a third party, the voluntary or mandatory nature of the procedure, and the legal consequences of its application. Speaking about the classification of ADR methods and their place in the national legal system, attention should be paid to the Resolution of the Government of the Republic of Kazakhstan No. 190 'On the classification of branches of legislation of the Republic of Kazakhstan' [34], namely class 230,000,000 'Legislation on pre-trial and extrajudicial resolution of disputes, settlement of legal conflicts', which includes two subclasses: 230,001,000. 'Arbitration and mediation' and 230,002,000. 'Other means of pre-trial and extrajudicial settlement of disputes. It is worth noting the distinction between out-of-court and pre-trial dispute resolution methods. Methodological recommendations "On disputes where the law provides for out-of-court and mandatory pre-trial procedures" [35] define extrajudicial means as 'statutory ways of resolving disputes outside the court in other institutions voluntarily' and pre-trial means as 'compulsory dispute resolution procedures without which recourse to the court is not possible'. This distinction provides a further legal basis for differentiating voluntary ADR methods from quasi-alternative procedures. In this study, quasi-alternativeness is used as a scientific classification criterion to characterise ADR methods that retain their non-judicial nature but acquire a mandatory character by virtue of a legal requirement. It does not replace the legal category of a mandatory pre-trial procedure, which defines the procedural requirement to use a particular procedure before applying to a court. Where the law requires the parties to use a non-judicial procedure before applying to a court, the mandatory nature of such a procedure constitutes the relevant criterion for its classification as quasi-alternative rather than as a purely voluntary ADR method. For example, a mandatory pre-trial procedure is provided for disputes on amendment and termination of a contract; on termination of a property hire agreement; on cargo transportation; on individual labour disputes between employees and the employer; on land disputes; in the field of copyright and

intellectual property protection; and the field of consumer protection; regarding appeals against actions (inaction), decisions of the customer, public procurement organiser, single organiser of public procurement, commissions, expert, single operator in the field of public procurement in the field of railway transportation, in particular when concluding contracts for the supply and collection of wagons, as well as disagreements on their modification and amendment.

Thus, speaking about the ADR system and its place in the legal system of Kazakhstan, it is possible to distinguish its separate component – quasi-alternative dispute resolution, i.e., those that are mandatory in certain categories of disputes strictly defined by law. Figure 1 illustrates how the dispute resolution system will look like if judicial, alternative, and quasi-alternative methods are distinguished (using mediation as an example).

Figure 1. The place of mediation in the dispute resolution system



Source: compiled by the authors.

Regarding the system of ADR methods as the basis for choosing a particular conciliation procedure for dispute resolution, the fundamental factors here may be financial, organisational and legal [36]. The financial factor should be assessed not only based on the cost of conducting a particular ADR procedure but also considering the legal costs that may arise in connection with the trial, as well as a preliminary assessment of the prospects for the trial as a whole. The organisational factor is of particular importance in the case of a cross-border dispute. In this case, when choosing the ADR method, the possibility of conducting a remote procedure should be considered, which is usually not difficult for such methods of ADR as negotiation, mediation or ombudsman, but may require special conditions for the Arbitration hearing. As for the legal factor, the mandatory nature of a specific ADR procedure in the case of, for example, an arbitration clause should be addressed. The second important legal aspect is the possibility of obtaining a binding decision or a new agreement (contract novation) after the ADR procedure.

Discussion

The ADR system exists within national legal systems that are subject to transformation processes, and thus the judicial system and the ADR system are also inevitably subject to both external and mutual influences. To solve problems within the judicial system, many countries are now moving towards expanding the use of mediation and other ADR methods, particularly

regarding the issue of mandatory preliminary recourse to one of the ADR methods for resolving so-called low-value cases, where the amount of the claim is small; family, land and neighbourhood disputes are being actively discussed. For instance, preliminary mediation in family disputes is mandatory under the laws of England and Wales.

There is no single position in the academic literature on mandatory mediation. In defence of its introduction into the legal system, M.A. Uddin [37] points to the possibility of significantly reducing the burden on the judicial system through mandatory mediation, M.N. Umenweke and N.B. Amadi [38] believe that such an approach will reduce the number of cases in which there is no dispute about the law, according to C.H. Van Rhee [1], mandatory mediation will ensure better preparation of cases for consideration in the event of even unsuccessful mediation, since in such a case the issues on which the parties failed to reach an agreement are already clearly defined, and S. Ephrem [39] points out that mandatory mediation can contribute to a fairer and more predictable outcome. Representatives of the opposite position, such as L. Conway [21], point out that this approach “undermines the 'alternative' component” of the ADR system when the use of a particular ADR method turns from an alternative to litigation into its mandatory stage. Both positions are well-reasoned, since the introduction of mediation as a mandatory stage of dispute resolution, even in certain categories of cases, will have both positive and negative aspects. From the perspective of the ADR system, the introduction of mandatory mediation expands the classification of ADR methods, allowing for the distinction between voluntary and mandatory ADR methods. However, such an approach calls into question the observance of the principle of voluntary recourse to ADR methods for dispute resolution. At the same time, this study has demonstrated that the ADR system is dynamic, and we should agree with the position expressed by R. Benjamin [24] that the ADR system will remain unchanged since the ADR methods are influenced by many factors, which makes it impossible to create either stable or universal ADR methods. It is also necessary to address the constant mutual influence of the judicial system and the ADR system, which invariably leads to the emergence of new approaches to building the ADR system and its “intersection” with the judicial system. The above concept of quasi-alternative determines the possibility of expanding the classification of dispute resolution methods, leaving open the question of whether quasi-alternative refers to a broad or narrow understanding of the alternative itself.

Another controversial issue is the organisation of the mediation procedure and the position of the mediator, which allows us to speak of the existence of a certain “system within the system”. The definition of mediation is the same in different legal systems and is generally defined as the resolution of a dispute with the participation of a third independent party – a mediator [22]. At the same time, when submitting a dispute to mediation, one should consider the variability of mediation styles, which should be reflected in the agreement between the parties to resolve the dispute by resorting to mediation. The issue of mediation styles, although not subject to legal regulation, is nevertheless of great practical importance, which makes it appropriate to reflect it in the systematisation of ADR methods. However, there is no single position on mediation styles. In his research, the President of the Mediation Training and Consultation Institute, Z. Zumeta [40] highlights that both clients and lawyers often have difficulties in determining whether a particular ADR method can be classified as mediation and in predicting the outcome of the procedure. This problem is a direct consequence of the diversity of mediation styles, while the issue of mediation styles is not subject to legal regulation. All common classifications of mediation can be reduced to four styles of mediation: facilitative, evaluative, transformational

and traditional. Facilitative mediation aims to overcome communication problems between the parties to a dispute and reach a solution based on the interests of all parties. A more prescriptive style is evaluative mediation, in which an independent expert assists the parties to the dispute by evaluating the proposed solutions.

In some studies, neutral assessment is considered an independent method of ADR [31]. Transformational mediation is more psychologically oriented, as it works with the positions of the parties, guiding them to a new assessment of the situation to develop new solutions. Traditional mediation is nothing more than rigidly structured negotiations [40]. At the same time, there are other classifications. For instance, N.M. Alexander [41] identifies 9 mediation styles: Settlement Mediation, Facilitative Mediation, Transformative Mediation, Positional Bargaining, Interest-Based Negotiation, Dialogue, Expert Advisory Mediation, Wise Counsel Mediation, and Tradition-Based Mediation. Not being subject to legal regulation, certain styles of mediation may become the subject of debate and claims that they cannot be considered mediation in principle, whereas the main problem is not the variability of mediation styles, but the parties' awareness of which style will be used by the mediator and what its features are. This approach is fully justified. At the same time, the study showed that the issue of mediation styles is not reflected in the legislation of the Republic of Kazakhstan. On the one hand, this is reasonable, as there is a wide variety of mediation styles and their combinations. Understanding how the mediation will be conducted is an inalienable right of the parties. Therefore, it is proposed to supplement the duties of the mediator provided for in Article 10 of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" [7] with an obligation to inform the parties, before the mediation begins, about the specific features of the mediation style to be used. In addition, Article 21 of the Law should provide for the inclusion of information about the mediation style in the mediation agreement as an element of the procedure for conducting mediation.

The ADR system can be viewed from the perspective of different bases for classifying ADR methods. One of the bases for such a classification may be the organisational aspect of the in-person or remote conciliation procedure. This aspect has become the subject of active discussion in recent years, when the global problem caused by the pandemic led to a serious crisis in the logistics system for conducting ADR procedures, especially of a cross-border nature, as the possibility of movement and face-to-face meetings was severely limited. On the other hand, the global trend of digitalisation, which during the pandemic played a crucial role in preventing the collapse of the judicial system in some countries (in particular, China), has had an impact on the development of remote conciliation procedures, as noted by A. Kumar and U.P. Singh [42]. The academic literature notes that ADR service providers have demonstrated a high degree of readiness to move to a remote format of work, as they either already had such experience or had received appropriate training, and some of them were initially established to provide remote conciliation services. In particular, Z. Calo and B. Solaiman [43] point out that the development of online dispute resolution is now seen as an integral part of the development of legal systems in general, thus ensuring the resolution of cross-border disputes, and the provision of online ADR services is seen as a way to increase not only the efficiency of the relevant institutions, but also the level of global reputation and overall economic attractiveness of the regions where such services are provided. Thus, the development of online ADR services can make a significant contribution to the further improvement of the competitiveness index of the Republic of Kazakhstan in the global competitiveness ranking.

Today, Article 17 of the Law of the Republic of Kazakhstan No. 401-IV "On mediation" [7] establishes the possibility of conducting remote mediation through joint telephone

conversations between the parties and the mediator; in the form of individual and/or joint conversations between the parties and the mediator via video conference; through the exchange of electronic messages between the parties and the mediator; in other ways using information and communication technologies that do not contradict the requirements of the Law of the Republic of Kazakhstan No. 401-IV "On mediation" [7]. At the same time, there is an opposite position. D.B. Ferreira et al. [44] point out the dangers associated with the rapid spread of technology to the ADR sector. Stressing that this sphere can have a significant impact on the well-being of citizens and society as a whole, the researchers raise the issue of trust in the technologies used in the field of ADR, pointing out that, on the one hand, the widespread use of Internet technologies, including electronic communication, cloud storage, electronic signatures, and online platforms for conducting conciliation procedures, significantly increases the opportunities for the use of ADR, but on the other hand, this area is characterised by common challenges arising from digitalisation, such as cybersecurity, the preservation of personal data, and the potential for privacy breaches.

Given the trend towards digitalisation, the question of restricting the use of the latest technologies in the ADR sector is hardly relevant. At the same time, when classifying ADR methods according to the organisational criterion and distinguishing between face-to-face and remote ADR procedures, it is necessary to agree on the need to ensure the security of electronic communication and to introduce into the legislation the obligation of organisations providing remote dispute resolution services to ensure the security of communication means.

Conclusions

The system of ADR methods is not a stable legal structure, constantly expanding and developing following the requirements of a particular legal system and objective external factors (one of which was the pandemic). As a result, there is a significant number of ADR methods, which is constantly growing both due to the emergence of new and hybrid forms, and a growing trend towards integration of the ADR system with the judicial system, when a preliminary attempt to resolve a dispute by ADR methods becomes mandatory for certain categories of cases, leading to the concept of quasi-alternative. Although this trend is seen as a weakening of the alternative component of the ADR system, it should be recognised as meeting the needs of the legal system, as it not only reduces the burden on the judicial system but also contributes to the stabilisation of society by resolving conflicts underlying or accompanying disputed relations.

In general, the ADR system in the Republic of Kazakhstan can be described as well-established and sufficiently regulated. The national system presents the main ADR methods, such as negotiation, mediation, arbitration, and ombudsman, and defines pre-trial and out-of-court procedures. At the same time, the effective functioning of the ADR system requires raising public awareness of the specifics of using certain methods in terms of their financial, organisational and legal features. The issue of the diversity of mediation styles, requiring mediators to inform clients of the mediation style used and its features, is especially noteworthy. Particular attention should be devoted to the regulation of remote ADR procedures, applying to this system all the criteria applicable to the digitalisation of the judicial system, since the operation of both systems has the same consequences for persons applying to them for dispute resolution, and the development of remote ADR methods is a prerequisite for the growth of the region's economic attractiveness.

Further areas of research include the study of the place of quasi-alternative methods in the dispute resolution system, addressing their impact on compliance with the principle of voluntariness, as well as the study of mediation styles in conciliation procedures and the possibility of their systematisation.

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The authors state that there are no potential or apparent conflicts of interest under this article.

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Adibayeva A.K. – preparation of the Introduction, Conclusion, and Materials and Methods sections, and definition of the study's goals and objectives.

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Aueshova B.T. – preparation of the Discussion and Results sections, objective assessment of the Authors' contributions, correspondence with the editors, and revisions and additions to the manuscript.

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