Problem aspects of mediation dispute resolution

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Abstract
Legal features of dispute resolution in the order of mediation are of particular interest in connection with the relatively new and unexamined, from a scientific point of view, phenomenon of modernity, arising from increasing processes of globalization and internationalization of legal systems, as well as scientific and technical progress. This article is devoted to the scientific study of the international legal regulation of such phenomena as mediation on the example of the analysis of the legislation of foreign countries, and law of the Republic of Kazakhstan. This article presents various points of view of international and Kazakh scientists on the subject of dispute resolution in the mediation procedure. It was concluded that the mediation has a number of advantages, which satisfies the need of a person, society and the state to solve conflicts quickly and efficiently with minimal losses.

Key words: mediator, parties, judicial system, amicable settlement, legal mechanisms.

Introduction

The Mediation Institute was first used in Roman law and has Latin roots. Resolving a conflict situation with the use of mediation procedures is an alternative to legal proceedings. Mediation in the modern sense began to develop in the second half of the 20th century in the states of Anglo-Saxon law – Australia, Great Britain, and the USA. The first attempts to apply mediation were made in resolving disputes in the field of family relations. Subsequently, mediation gained recognition in resolving disputes of the widest range, ranging from family conflicts to complex multilateral conflicts in the commercial and public spheres.

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Dispute resolution in court is always long and sometimes expensive process. In addition, disputes that are resolved in court, especially civil law carry a significant burden on the judicial system, both because of its quantity, and because of the insignificance of the subjects of the dispute. But at the same time, each review procedure is regulated by law and must be carried out in the appropriate sequence, time certainty, and so on. At the same time, person most often goes to court in the event of a property dispute that does not require such a thorough analysis of legislation or the application of judicial practice or other exceptional means of resolving such a dispute. In fact, such disputes can be resolved outside the judicial procedure through the use of instruments of contractual relations, which have been put into practice in the so-called conciliation procedure. Its essence comes down to achieving a balance of interests by searching for various options for resolving the situation. The conciliation procedure is not imperative, as a court decision, but the parties reach an agreement and undertake mutual obligations to comply with it. This, in turn, simplifies the lives of citizens, which allows them not to spend resources on resolving conflicts in courts, but to use resources to increase personal and public well-being.

In order to peacefully resolve a conflict situation, the institution of amicable settlement is widely used in the judicial practice of many foreign states. The literature separates the following foreign models of procedures aimed at reconciling parties to controversial legal relations (Akhmach, 2013): a settlement agreement as an alternative to a court decision – using extrajudicial means of entering into a settlement agreement for reasons of complexity, length and cost of legal proceedings in states such as the United States, England and others; the use of amicable settlement as a preliminary solution to the conflict. This model provides the right of the parties to the consideration of the dispute in court on their own to peacefully resolve the case, without using judicial procedures (France, Spain, the Netherlands, etc.). Special structures are created in order to reconcile the parties in the courts; during the conclusion of amicable settlement, a protocol is drawn up which has the force of a court decision (Japan) (Ivleva and Nichkova, 2018).

With the regular use of mediation in conflict resolution, this can qualitatively affect the development and well-being of society. The qualitative changes that mediation can bring to the economic and political situation of the country and society contribute to the use of resources in other spheres of life.

The article is aimed at the study of the international legal regulation of such phenomena as a mediation on the example of the analysis of the legislation of foreign countries, and also of the national law of the Republic of Kazakhstan.

The objectives of the study are:

- to analyze the international legal regulation of a mediation dispute resolution;
- to make a comparative analysis of legal regulation of mediation of the national law of the Republic of Kazakhstan and foreign countries;
- to find out the main advantages and disadvantages of mediation.

The methodological and empirical basis for writing this article was formed by general scientific and special legal methods: systemic, historical-legal, formal-legal, and others. When analyzing the doctrine, models of le-

gal regulation and the practice of mediation in foreign countries, the comparative legal method was widely used.

The development of national legislation on mediation in Kazakhstan

Mediation is designated as one of the main priorities of Kazakhstani justice, as a huge potential for the development of the legal system, contained in the implementation of alternative ways to resolve disputes and conflicts (Naukenova, 2017). In the Address of the President of the Republic of Kazakhstan N. Nazarbayev to the nation "Kazakhstan's Way – 2050: Common Aim, Common Interests, Common Future", an important direction was defined that "the judicial system should become transparent and accessible in practice, simply and quickly resolve all disputes" (Zhumagulov, 2015). In the "Kazakhstan – 2050" Strategy, the Head of State noted that "all disputes on insignificant issues should be transferred to extrajudicial means of resolving a dispute – that is to mediation" (Zhumagulov, 2015).

Prerequisite for the emergence of norms of national legislation on mediation in Kazakhstan is the preceding historical development of mediation in the global space. The basis for the formation of existing national legislation were: Directive 2008/52/EG of the European Parliament and of the Council dated May 21, 2008 on certain aspects of mediation in civil and commercial matters; Model Law of the United Nations Commission on International Trade Law on the International Commercial Conciliation Procedure, adopted by the General Assembly Resolution dated November 19, 2002; UNISTRAL Conciliation Rules adopted by General Assembly Resolution 35/52 (New York, 1981).

Article 3b of the European Union Mediation Directive states that mediator may be any person, regardless of his/her status, profession, or method of appointment. Thus, the profession of mediator is not limited to a narrow circle of certain categories of individuals, for example, lawyers. Point 5 of Art. 3b of the EU Directive defines mediation as a process in which an impartial third party facilitates dialogue between two or more parties in dispute (Directive 2008/52/EU…, 2008).

In Kazakhstan, the development of national legislation on mediation was triggered by the Decree of the President of the Republic of Kazakhstan dated August 24, 2009 No. 858, which approved the Concept of the legal policy of the Republic of Kazakhstan for the period from 2010 to 2020. This Concept outlines the need to consolidate various ways and means of reaching a compromise between the parties of private-law conflicts, both in court and out of court, including the obligation to discuss the possibility of using reconciliation procedures in preparing cases for court proceedings, as well as out-of-court forms of protection of rights. The next step confirming the further development of mediation processes in Kazakhstan was the adoption of the Law of the Republic of Kazakhstan "On Mediation", which was enacted on August 5, 2011. Its sphere of action includes disputes (conflicts) arising from civil, labor, family and other legal relations involving physical and (or) legal entities. This law gave legal entities opportunity to independently determine the order, time and location of mediation procedures involving third neutral, impartial, non-interested party in a dispute/conflict party – the mediator (Zhumagulov, 2015).

There is no clear difference between mediation and other related concepts. As a result of the inaccuracy of the wording in their definition in the law, a problem of the conceptual mediation apparatus arose. Mediation, as part of mediation, relies on a basis in the form of a negotiation process, with all its principles and laws. In mediation, the mediator's role is managerial - to facilitate negotiations. Reconciliation does not fully comply with the principles of the negotiation process. In the negotiation process, the principle of the trinity is formulated: procedures, content and communication. Due to jurisdictional features, the implementation of meaningful work with the parties is difficult. The content of the dispute in court fits in the lawsuit, and working with the content requires two components: time and special training of mediators.

The mediator's purpose is to determine the lower limit of parties' positions regarding their readiness to make concessions and to quickly find an advantageous solution. Moreover, parties often do not have control over a situation. At the same time, reconciliation erases, to varying degrees, the lines between the resolution of the dispute and the arbitration, and the viability of the decision is reduced. Reconciliation is justified in disputes that do not affect serious and financial relations. It is possible in disputes with the absence of an emotional factor and the absence of the need to extend relations, to save face. Unlike the conciliation process, mediation is a deeper work with parties. It is fully consistent with the principles of the negotiation process, and it reframes positions of the parties in a managerial rather than directive approach.

Moreover, the practice demonstrates the effectiveness of the use of mediation for arbitration courts. In other countries, it prevails over reconciliation, especially in complex matters. The closure rate in Europe is 5, in our little experience, it is 7. That is, one mediation closes 5-7 cases at once. In a situation of reconciliation, it closes only one case.

The analysis of scientists' works about the mediation procedure

The inclusion of mediation to the mechanisms of social life actively contributes to the accelerated development of the institutions of civil society, where the main actor and subject of the processes and relations taking place in him is a person with the entire system of his needs, interests and values. The enforcement of the law "On Mediation" contributes to the development of a culture of relationships, helps to direct the energy of interpersonal, social conflicts and contradictions to positive direction of mutually beneficial agreements.

You can agree with T.V. Khudoykina (2012) that the formation and development of the institute of mediation is of particular importance for the system of training mediators, which should be multi-staged and include specialized centers, law schools (faculties). As Yu.V. Belousov notes, based on the results of the analysis held by the European Commission for the Efficiency of Justice, in various European countries, the use of alternative dispute resolution methods has become widespread. The researcher explains the nature of this phenomenon by the fact that such procedures contribute to improving the efficiency and quality of the judicial system by providing citizens with alternative standard court proceedings. The most common among them are: mediation, conciliation and arbitration. It should

be noted that the mediation procedure is one of the most effective alternatives for adjudicating cases (Ivleva and Nichkova, 2018).

According to L.G. Lichman, decision rendered in a short period of time may have negative consequences. First, the conflict between the plaintiff and the defendant, the adjudication of the judgment does not only cease, but, on the contrary, is exacerbated. Secondly, they are still awaited by the continuation of the resolution of the dispute in the courts of appeal and cassation instance and the stage of execution of the court decision, that is, new material, moral, psychological, psychiatric, temporary and other expenses. To reduce these negative consequences, specifically in civil proceedings, it would be appropriate to use the experience of other countries on conciliation procedures (mediation procedures) (Ivleva and Nichkova, 2018). A.S. Tsibulyak-Kustevich speaking about the advantages of reconciliation before a powerful, "forceful" decision of the case by the court, when "winner" and "defeated" are determined on the basis of lengthy resource-intensive procedures, turns to the point of view of Ye.A. Nefedyiev, who argues that reconciliation allows the parties to achieve subjective justice, since the real circumstances of the case are known only to them and, unlike in the court, they are not bound by the claims (Ivleva and Nichkova, 2018).

In the context of judicial practice, L.G. Lichman (2013) notes that in the event of settlement of the dispute in court, the courts must find out whether the parties are not willing to enter into amicable settlement. As of the nature of the mediation agreement, one should refer to the point of view of V.V. Masyuk (2013), who, on the basis of a thorough analysis of theoretical material, identifies three groups of approaches to understanding the essence of this agreement. The first approach boils down to the fact that this agreement is considered as treaty that has substantive, civil, nature. The second approach assumes that this is procedural agreement or procedural act. The third point of view is that the essence of an agreement on mediation is that its legal nature is complex – material and procedural, or private and public.

Entries related to the mediation procedure, after its completion, are destroyed, although in certain cases, according to N.V. Sukhova (2013) seems expedient to keep them. In order to resolve conflicts, non-legal education may be significant (for example, knowledge of psychology, economics, medicine, engineering, etc.), but legal knowledge for mediator is necessary. It should be noted that, for example, in the USA the mediator can also have any profession and qualification; often mediators are those who do not have a legal education. However, in practice, persons with certain experience and knowledge in the field of jurisprudence (Illuyev, 2013) are more in demand. A.K. Sheremetyeva (2013) believes that a qualified mediator is a person who has not only a good understanding of the content (economic, medical, informational, etc.), but also the legal component of the conflict and the skills of a psychologist/conflictologist.

In this case, the skill of a mediator also depends on the level of his training as an intermediary, his personal qualities and abilities (Sycheva, 2013). According to the point of view of F.K. Svobodnyi (2013), the mediator must have a good memory and quick response, be attentive, collected, sociable, psychologically stable. He "should be able to imagine the mental state in which his interlocutor will be in order to model the upcoming conversation", which requires knowledge of both the subject of the dispute and the personality characteristics of the interlocutor.

In the conflictological literature, among the functions of the mediator, there are: organizational, analytical, control, as well as active listening, generating ideas, expanding resources, preserving psychological climate and learning (Allahverdova, 2007). P. Muratshina (2011), analyzing the practice of the regulatory establishment of the institution of amicable settlement in the civil law of some European countries, notes that, for example, French civil law, and in particular, the French Civil Code has similar institution, but its application is possible only when there are interested parties.

In turn, S.V. Vasilyeva (2015) notes that the amicable settlement is inherent in the civil procedure relations of most European countries. At the same time, the application of the civil procedure legislation in the resolution of any public-law conflicts is not limited. M.L. Skuratovskyi (2011) emphasizes that the process of reconciliation itself is more important not for civil but for economic and legal disputes, and exactly in the sphere of economic process its theoretical and methodological evolution takes place, the experience of which is important and necessary for the implementation of dispute resolution. Confirmation of this can be found also in the practice of the US judicial proceedings and the UK court proceedings (McCain, 1997). At the same time, there is a point of view, in particular, in the works of J. Barkay and E. Kent (2014) that the institution of reconciliation in general should be moved beyond the procedural regulation of disputes in order to substantially reduce the burden on the judicial system in the cases where a positive result can be achieved already at the stage of negotiations and establishing the essence of the contradictions arising between the parties. In this context, the point of view of D.L. Davydenko (2005), who relies in his research on the results of the work of K. Anokhin that the amicable settlement can be considered both a judicial transaction and an extrajudicial tool for resolving a civil law conflict on the basis of full-fledged civil law contract.

Consequently, the question arises whether the settlement is a civil law transaction, or is it a separate procedural act, the feature and difference of which from the court decision is that it bears dispositive element without establishing the truth in the case, and is characterized only by achieving a balance of interests, satisfying both parties and which is not against the law. On this occasion, D.V. Sokolyanskyi (2012) identifies a number of differences in amicable settlement from a civil law transaction: amicable settlement concerns only disputed legal relationship that is the subject of a legal process; it is concluded in the presence of the court, with its participation, brought to the attention of the court; special forms of confinement were established for it.

As for the time of the conclusion of the amicable settlement, then, according to A.S. Tsibulyak-Kustevich (2010), the actions of the participants in the process aimed at the peaceful settlement of the dispute should be as concentrated as possible at the preparatory stage of the pre-trial investigation, since it is the stage that has the greatest potential for achieving reconciliation. By giving a special role to conciliation procedures, including the stage of preparing a case for a trial, the participation of the parties in such procedures should be attributed to the rank of their procedural duties, for which non-compliance may be provided for responsibility, and evasion from participation in conciliation procedures can be considered as opposition to correct and timely consideration and resolution of the case. A.G.

Bortnik (2009) notes that the procedure for settling a dispute, regardless of the stage at which it is carried out, may require the parties to discuss its terms, which cannot always be done during litigation.

The application of the mediation procedure in the Republic of Kazakhstan

Based on the Latin origin of the word mediation (medium) as intermediation, intervention with the purpose of reconciliation, or (from Latin mediare mediate) – a form of extrajudicial resolution of disputes using third neutral impartial side – the mediator, it can be concluded that mediation is the softest form of alternative dispute resolution. During the mediation procedure, parties of the conflict independently come to mutually beneficial solution, based on the experience, knowledge and skills of the mediator (intermediary). Dispute resolution is entirely dependent on the will of the disputants themselves.

Since August 5, 2011, the Law "On Mediation" has been in effect on the territory of the Republic. The law was enacted on August 5, 2011 and since then many mediators have marked August 5 as the day of Kazakhstani mediation. Point 5 of Art. 2 of the Law of the Republic of Kazakhstan "On Mediation" defines mediation as a procedure for resolving a dispute (conflict) between the parties with the assistance of the neutral side of the mediator in order to achieve mutually acceptable solution (Law of the Republic of Kazakhstan…, 2011). The general provisions of the Law are as follows: the objectives of mediation are to achieve a resolution of the dispute (conflict) that suits both sides of mediation and reduce the level of conflict of the parties (Art. 3 of the Law); the use of mediation is allowed in the settlement of disputes (conflicts) arising from civil, labor, family and other legal relations with the participation of individuals and (or) legal entities.

Mediation cannot be applied: if one of the parties of the conflict (dispute) is a state body; if disputes (conflicts) affect or may affect the interests of third parties not participating in the mediation procedure, and people recognized by the court as incapable. According to the Article 25, with the use of mediation, disagreements between spouses regarding the continuation of marriage, the exercise of parental rights, the establishment of the place of residence of children, the contribution of parents to the maintenance of children, as well as any other disagreements arising in family relations can be resolved.

In connection with the adoption of the Law "On Mediation", relevant amendments were made to the Code of Civil Procedure of the Republic of Kazakhstan. According to these additions, an agreement concluded within the framework of a mediation procedure during a civil process is equal to an amicable settlement, and the functions of the court for its approval are similar to those of the court for approving the amicable agreement. The issue of responsibility of the parties for non-execution of the agreement or improper execution of the agreement is equally resolved (Smagulovm, 2017).

Cases that can be dealt with the mediation: The precedent can be dangerous. Direct negotiations are at a standstill. A faster/cheaper conclusion is needed. Avoid publicity. Reputation issues are affected. Continue the relationship between the parties. Commercial disputes. Labor, corporate dis-

putes. Disputes in the banking and insurance industry. Support for projects involving multiple parties. Family disputes. Disputes related to copyright and intellectual property. Mediation in education. Intercultural conflicts. Consumer disputes. International conflicts (Pel, 2009). Thus, we see that a sufficiently large number of disputable legal relations can be settled with the help of mediation.

According to Art. 11 of the Law of the Republic of Kazakhstan “On Mediation”, parties are obliged to execute an agreement on the settlement of a dispute (conflict) in the manner and within the time provided for by this agreement. With the consent of the parties, lawyers, translators, experts, if their participation is required, and assistant mediators can also participate in the mediation process. Mediation starts from the moment, or more precisely, from the date of the conclusion of the mediation agreement (p. 1, Article 23 of the Law of the Republic of Kazakhstan “On mediation”). The mediation agreement is drawn up in writing, signed by the parties. The form and content of the mediation agreement are established by Art. 21 of the Law of the Republic of Kazakhstan “On Mediation”.

In accordance with Art.60-61 of the Code of Civil Procedure of the Republic of Kazakhstan in the framework of a civil process, a representative of a party can enter into a mediation agreement only if it is specifically provided for in the power of attorney issued by the represented (Civil Procedure Code…, 2015). Based on Art. 26 of the Law of the Republic of Kazakhstan "On Mediation" grounds for termination of mediation are: the parties sign an agreement on the settlement of a dispute (conflict) – from the date of signing such an agreement; the mediator establishes circumstances precluding the possibility of resolving the dispute (conflict) through mediation; written refusal of the parties to mediate due to the impossibility of resolving a dispute (conflict) by mediation – from the date of signing by the parties of a written refusal; a written refusal by one of the parties to continue the mediation – from the day of sending written refusal to mediator; expiration of helding mediation – from the date of its expiration.

According to (Civil Procedure Code…, 2015), an agreement on the settlement of a dispute is in writing and signed by the parties. The agreement should contain information about the parties of mediation, the subject of the dispute, the mediator(s), as well as the terms of the agreement agreed by the parties, the ways and terms of their execution and the consequences of their non-execution or improper execution. An agreement on the settlement of a dispute (conflict) shall be executed by the parties of the mediation voluntarily in the manner and time provided for by this agreement. An agreement on the settlement of a conflict enters into the force on the day of its signing.

Mediation in the settlement of disputes arising from civil, labor and family relations can be applied both before the court’s appeal “pre-trial mediation” or “extrajudicial mediation” and after the start of the trial, conditionally called “judicial mediation” which is carried out in the framework of the instituted legal proceedings: in civil proceedings and in criminal proceedings. Resolving disputes without going to court is a real opportunity not only to resolve the conflict, but also to preserve or restore relations broken by the conflict. However, the parties, being in conflict, accompanied by strong negative emotional experiences, are usually not able to conduct constructive negotiations themselves. It is for these reasons that it is advisable to involve a third neutral person for negotiations – intermediary-mediator (Isayenkova, 2016).

The main goal of the mediator is to organize negotiations in such way that the parties come to a mutually beneficial solution. One of the main principles of mediation is that the conflicting parties participate in the process voluntarily. At the same time, the negotiation process itself is fully owned and controlled by the parties. And the responsibility for the results – the agreement that parties accept is also fully owned by them. As a result, mediation is effective in 90% of cases, and the agreements reached during the mediation process (according to different data) are fulfilled by 80-85% (Crowley and Graham, 2010).

If mediation is carried out outside the framework of a civil or criminal procedure, the mediator and the parties must take all possible measures to ensure that this procedure is terminated within a period of not more than sixty calendar days. In exceptional cases, due to the complexity of the dispute to be resolved (conflict), the need to obtain additional information or documents, the period for conducting mediation may be extended by agreement of the parties of the mediation and with the consent of the mediator, but not more than thirty calendar days (p. 9 of Article 20 Law of the Republic of Kazakhstan “On Mediation”).

If mediation in a civil proceeding has ended with an agreement on the settlement of a dispute (conflict): the agreement is signed by the parties of the mediation and enters into force on the day of its signing (Article 27 of the Law of the Republic of Kazakhstan “On Mediation”); with the signing of an agreement on the settlement of a dispute mediation ceases (sub clause 1) of Art. 26 of the Law of the Republic of Kazakhstan “On Mediation”).

One copy of the agreement is immediately sent by the parties to the judge with the appropriate statement for approval (chapter 5 of article 27 of the Law of the Republic of Kazakhstan “On Mediation”). After the termination of the proceedings, a secondary appeal to the court in a dispute between the same parties, on the same subject and on the same grounds, is not allowed. If the court's decision to terminate the proceedings in connection with the approval of an agreement on the settlement of a dispute through mediation, has entered into legal force, the court refuses to accept a new statement of claim on the same subject and on the same grounds. An agreement concluded as part of the mediation procedure in a civil proceeding is equated to amicable settlement and the court’s functions on its approval are similar to those of a court on approval of amicable settlement. The issue of liability of the parties for non-execution of the agreement or improper execution of the agreement is equally resolved – it entails enforcement. If the agreement is not fulfilled, the party may apply to the court with a statement about the enforcement of obligations set forth in the agreement (Yurchenko, 2011).

Currently, mediation is a method of resolving disputes (conflicts), recognized and demanded on a global international scale. The international instruments on mediation include: Directive 2008/52/EU of the European Parliament and of the Council of the European Union dated May 21, 2008 on certain aspects of mediation in civil and commercial matters; Recommendation No. R (99) 19 of the Committee of Ministers of the Council of Europe dated September 15, 1999 on mediation in criminal matters; Model Law of the United Nations Commission on International Trade Law on the International Commercial Conciliation Procedure 2002; Conciliation Regulations of the United Nations Commission on International Trade Law (UNCITRAL) 1980; Justification of the draft of EU Directive "On some

aspects of mediation in the civil and business sphere"; European Code of Conduct for Mediators dated June 2, 2004, as well as at the level of individual states (Resource Mediation Center).

The experience of foreign countries in the mediation process

Australia. Interesting, from a practical point of view, is the experience of the legal framework of foreign countries regarding the settlement of disputes in the mediation process. For example, in 1991, the Australian government passed the Court of Justice Act (mediation and arbitration), under which the Family Court and the Federal Court of Australia were given the right to offer the parties the opportunity to bring a mediator and an arbitrator to resolve the dispute. In most Australian universities, a lawyer's course in lawyers training program includes the course on dispute resolution.

Section 51 of the Australian Constitution states that Parliament has the right to enact laws related to the "conciliation and arbitration to prevent and resolve sectoral disputes that extend beyond one state". In 1995, the National Alternative Dispute Resolution Council ("NADRAC") was established, currently consulting the Federal Attorney General on issues related to the regulation and evaluation of alternative dispute resolution (ADR) processes and procedures. The professional organizations of ADR include: lawyers – participants in alternative dispute resolution, the Australian Association for Dispute Resolution, and the Australian Institute of Arbitrators and Mediators. The most widely used alternative dispute resolution is used in Australia in family law, where this method is called "primary" and not "alternative dispute resolution", and where 95% of issues are resolved by extra-judicial means. The development and implementation of ADRs are mainly carried out by the Federal Court and arbitration courts, they pay more attention to mediation and conciliation procedures than to such methods as evaluation or arbitration.

There is also the resolution of disputes through the Internet, where the mediation process is provided through the National Center for Automated Information Research, dealing with problems related to the use of the Internet. The Virtual Magistrate deals with complaints through the Internet about messages, ads and files allegedly infringing copyright or trademark rights, illegal use of classified trade information, defamation, abuse, unfair trade practices, inappropriate (obscene, pornographic and etc.) materials, violation of the right to privacy, etc. The Australian Conciliation and Arbitration Commission, established in 1956 operates together with the Industrial Court of Australia under the auspices of the federal government, which deals with disputes between enterprises in the private sector.

The United Kingdom. In the UK, alternative legal methods for resolving legal conflicts have become common since the 1980s. Since 1993, they have been officially recommended to the parties by the judges of the Commercial Court (divisions of the Supreme Court, the Chancery Court and the Royal Bench Court). In 1996, the Commercial Court was given the authority to postpone the proceedings for a certain time in order to facilitate and enable the parties to use alternative methods of conflict resolution. Subsequently, such an appeal became mandatory for the parties. When referring the case to the ADR, the size of the claim and the cost of its consideration within the framework of the ordinary judicial system are taken into ac-

count. If the costs exceed the price of the claim, it is advisable to order the ADR. Mediation has also been used in the UK to resolve disputes arising in Northern Ireland. Intermediaries were also professional intermediaries (the Quaker House group, established in Belfast in 1982; the Northern Irish Intermediary Network, established in 1991), and non-professionals who were trusted by people involved in the conflict.

In 1999, the reform of Lord Wolfe introduced a wider use of ADR. The court has the right to suspend the procedure until the dispute is resolved using alternative methods. Subsequently, an assessment of the material and time costs of resolving the dispute is carried out. If there is an unjustified refusal to turn to alternative methods, a party may be sanctioned, for example, for cost recovery. And now the procedure of reconciliation with the participation of a neutral intermediary-mediator in the UK is very popular. There is a special service – a hotline, where you can call from any end of the country, describe the conflict, express your wishes regarding the mediator, and you will be offered a whole list of specialists that fit your requirements. In the UK, mediation is not a compulsory pre-trial procedure, but if one of the parties refuses the mediation procedure proposed by the court, it must bear all legal costs, even if it won the case.

Germany. In Germany, mediation is fairly effectively integrated into the justice system. Mediators work directly in family courts, in the courts of general jurisdiction, in administrative courts, etc., significantly reducing the number of potential lawsuits in courts. There are more than 300 arbitration courts or conciliation councils (Schlichtungsstelien) dealing with various disputes. Most conciliation councils deal with consumer issues: banking, medical violations, insurance, construction, and labor law issues. Since January 1, 2000, a stage of pre-trial settlement is necessary in relation to petty monetary claims (up to 500 German marks), conflicts with neighbors and defamation charges. The rest of the conciliation procedures are not legally binding and are based on voluntary participation. In most German educational institutions, a mediation course is taught, all law graduates take this course. It should be noted that with such a broad application of mediation, the law on mediation in Germany was introduced only from July 2012.

Austria. Austrian law establishes that an agreement on the results of mediation conducted in connection with the existing judicial proceedings may be recognized by the court, while the mediation agreement as a result of pre-trial mediation does not receive judicial protection. It is interesting that in most countries the "mediator" profession is not recognized as a separate profession; it exists as a specialty in addition to the main profession. One of the few countries in the world where the profession of a mediator is included in the nomenclature of professions is Austria.

India. In India, agreements reached during mediation are equally valid with arbitration (arbitral) decisions, regardless of whether this procedure was initiated within the framework of the existing judicial proceedings or not.

Japan. Mediation procedures, in particular, mediation, as a tool for resolving internal disputes have traditionally been widely distributed in Japan. The commitment of the business community in Japan to alternative methods of dispute resolution is traditionally associated with the ethical side – a negative attitude to the choice of the state court as a way to resolve conflict.

USA. An interesting example is the United States, where the entire system of law is aimed at ensuring that most disputes are resolved voluntarily before the trial, and the judge can interrupt the court and recommend the parties to work with a mediator. Without mediators in the sphere of economics, politics, and business, no serious negotiation process takes place in this country. In particular, in accordance with the Mediation Rules applied in the federal court of the western district of Michigan, a case may be referred to mediators at the initiative of the court even without notifying the parties. In the United States, to refer to non-judicial forms of dispute resolution, the common term is "Alternative Dispute Resolution" and the official abbreviation is ADR. American lawyers currently have about twenty different dispute resolution procedures (Nosyreva, 2005).

China. The use of alternative dispute resolution has a long cultural tradition in China. It was used before the Cultural Revolution, and from the beginning of the 80s it was again used to resolve disputes using such methods as mediation, conciliation, arbitration, and ordinary court. Already in 1986, there were 950000 intermediary committees and 6000000 intermediaries who settled 7300000 disputes (this year alone), including family disputes over inheritance, alimony, debt, housing, and land plots under construction, production and management, on honor, economic disputes and some minor criminal cases.

According to expert estimates, about 30% of disputes in China are settled out of court. In this country, as well as in Hungary, if the parties reached an agreement in the framework of mediation and approved it in the manner prescribed for consideration by arbitration courts, such an agreement acquires the power of an arbitration decision and is subject to execution in an appropriate order. This procedure allows, without requiring approval of an agreement on the results of mediation in such a way as is provided for settlement agreements, to provide mediation agreements with the possibility of state coercion to perform, and state supervision over their legality, regardless of the availability of judicial proceedings.

The PRC Law on Mediation and Arbitration on Labor Disputes provides the possibility of recourse to a mediator for conducting mediation in the event of a labor dispute. According to Article 16 of this Law, if there is a mediation agreement on delayed wages, medical expenses for the treatment of industrial injuries, economic subsidies and compensation, in the event that the employer does not fulfill the agreement within the prescribed period, the employee may, according to law, apply the mediation agreement to the people's court petition for collection of payments. According to the law, the people's court must issue an order to collect payments.

Italy. Civil Procedure Code of Italy contains many provisions on the reconciliation of the parties. In addition, on January 17, 2003, Law No. 5 was adopted in this country (entered into force on January 1, 2004), which establishes a compulsory mediation procedure for resolving corporate and many financial disputes.

According to this Law, if a mediation procedure is provided in the agreement of the parties or internal documents of a corporation, the court may not consider the dispute until the parties have conducted mediation. The law also confirms the powers of public and private organizations with successful experience in dispute settlement to provide organizational support for the mediation procedure, subject to their registration with the Ministry of Justice (Art. 38). According to Article 5 of Decree No. 28, who in-

tends to go to court for a resolution of the dispute regarding joint ownership of real estate, real rights, division of property, inheritance rights, family contracts, lease contracts, gratuitous leasing, leasing of enterprises, and compensation for damage remedies and damages caused by medical workers, compensation for defamatory information spread by print media or other mass media, contracts of insurance, banking and financial contracts should have recourse to the mediation procedure.

Most disputes arose from property rights, lease agreements, insurance and banking contracts, from compensation for harm associated with the provision of medical services (Kizdarbekova *et al.*, 2018). At the same time, in 30.62% of cases both parties appeared, and in 52.88% of these cases, the parties were able to agree on a settlement of the dispute. The data on the structure of mediation types are also interesting: 75% of appeals are in cases where the mediation procedure is a prerequisite for a subsequent appeal to the court (mandatory mediation), 23% is voluntary mediation and 1% is mediation conducted on the basis of a judge's decision. At the same time, 83.99% of those who offered to start mediation turned to the services of lawyers, while 79.48% of their opponents did not use the services of lawyers.

Russian Federation. In the Russian Federation, on July 27, 2010, the Federal Law of the Russian Federation No. 193-F3 "On the alternative dispute resolution procedure with the participation of a mediator (mediation procedure)" was adopted (entered into force on January 1, 2011). The purpose of mediation, in accordance with this Law, is to settle the dispute and reach a mutually beneficial agreement. The Russian model is voluntary, carried out on the basis of mutual agreement of the parties. The time of the mediation proceedings is limited to sixty days, unless the parties agree on other terms. The duration of the mediation procedure may be extended by agreement of the parties and with the consent of the mediator. The duration of the mediation procedure should not exceed one hundred eighty days (Federal Law…, 2010).

Ukraine. As an alternative form of dispute resolution, mediation has been used in Ukraine for more than 12 years, but at the legislative level this issue is currently not resolved. Mediation is regulated at the community level of mediators, in which the norms and standards of mediator activity are determined by internal acts, the so-called acts of self-regulation (Karmaza *et al.*, 2018).

Belarus. Conciliation procedures have been used for a long time and actively in the Republic of Belarus, but the Law "On Mediation" was adopted only on July 12, 2013, 17 articles of this law (out of 19) come into force on January 24, 2014. According to the Law, mediation in civil disputes can be applied both before the parties appeal to the court in civil or economic proceedings, as well as after the initiation of proceedings in court. The law also extends to mediation, which is carried out in other types of legal proceedings stipulated by legislative acts.

Conclusions

Thus, we can make the following conclusions. The main advantages of mediation are:

- Flexibility, non-official and informality of the procedure. The parties decide on what conditions they will enter into an agreement or terminate mediation. They can also exercise control over their own business independently (without lawyers).
- Mediation does not find out who is right and who is to guilty. The main goal of mediation is a constructive search for a solution to the contradictions that have arisen.
- Mediation solves the problem of enforcement in court.
- Results can be discussed, which the court cannot offer.
- Saves time and money. Compared to the judicial procedure, resolving a dispute through mediation is not a lengthy one and can significantly save the resources (money and time) of the participants.
- A winning solution for both parties. In the process of mediation there is no winner and loser. The goal of mediation is to find a solution that will satisfy both parties.

In conclusion, it should be noted that the mediation procedure, as well as the national legislation, is far from ideal and therefore it is necessary to pay attention to the process of improving the norms of substantive and procedural law in the regulation of the mediation procedure. The positive practical experience of foreign countries can be used. And to understand that a comprehensive approach based on the interaction of the state, various representatives of the legal community and society as a whole should become the key to the successful integration of mechanisms and alternative methods for settling disputes through mediation. Due to the abovementioned advantages, mediation satisfies the need of a person, society and the state to solve conflicts quickly and efficiently with minimal losses. The introduction of mediation also increases the level of well-being of society due to its practicality and effectiveness in terms of saving time, money and effort in resolving conflicts through lawsuits.

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