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Legal Problems of Mediation as an Alternative Way to Resolve Disputes in the Republic of Kazakhstan

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Abstract

The purpose of the paper is to study foreign experience in regulating the mediation procedure. Notable among the methods employed are logical analysis, dogmatic, formal legal, legal hermeneutics, deduction, synthesis, and other methods. In the course of the research, the institute of mediation was considered: the concept was studied, the role in the modern world was highlighted, its inherent features and principles of implementation were identified. The legislative base of the Republic of Kazakhstan and a number of foreign states was studied, which made it possible to highlight certain features. A comparative legal analysis of the foreign experience of the mediation procedure was carried out, in particular, the experience of the USA, Great Britain, Germany and France. The findings offer solutions to issues that will improve Kazakhstan's mediation procedure law enforcement.

Keywords: Legal institution; Conciliation procedure; foreign experience; Comparative analysis; Level of application.

Introduction

Mediation in criminal justice signifies a substantial change in perspective from punitive actions to restorative justice methods. This transformative viewpoint emphasizes dialogue and reconciliation instead of conventional retribution, to address the needs of both victims and offenders. Mediation, through its focus on

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resolving conflicts and repairing relationships, provides a way to alleviate the strain on traditional legal systems and promote community unity.

Theoretical frameworks in the field of criminology and restorative justice serve as a foundation for the practice of mediation. J. Braithwaite (1989) advocates for societal approaches that promote feelings of remorse and the act of making amends, rather than isolating individuals, thus enabling the successful reintegration of offenders into society. H. Zehr (1980), renowned as the "pioneer of restorative justice," delineates principles that prioritize mediation endeavors towards the requirements of the victims, the responsibility of the wrongdoer, and the participatory involvement of the community in the process of recovery. Empirical research, exemplified by L.W. Sherman (2013) emphasizes the effectiveness of restorative justice methods, such as mediation, in substantially decreasing rates of repeat offences and promoting adherence to restitution agreements, consequently enhancing overall victim contentment.

In some cases, a dispute that has arisen between the parties can be resolved more efficiently not through the use of traditional litigation, but thanks to an alternative method of resolving disputes. As S.B. Goldberg et al. (2020) write, compromise is based on dialogue and negotiations between the parties that are direct participants in the dispute. The main task of reaching a compromise is not only to compensate for the harm caused by the wrongful act, but also to satisfy the needs of the parties in emotional, social and moral terms. Thus, this provides an opportunity for the parties to the dispute to come to a decision that suits everyone, aimed at restoring violated rights and normalizing relations. According to the position of B. Zeller & L. Trakman (2019), the powers of the mediator do not include the provision of a legitimate assessment of acts and the study of the evidence base. Also, L. Yudhantaka et al. (2019) mention that the purpose of the mediator is to help the parties understand each other's positions, find the most acceptable solution and create favorable conditions for this.

According to M. Campolieti & C. Riddell (2020), the institute of mediation is a rather old instrument of international law, the peculiarity of which is the acceptance of different points of view in the interests of the parties. The demand for this alternative way of resolving disputes in the modern world is associated with globalization, which contributes to the growth of relationships and the abolition of hierarchies. It should be noted that this is reflected in all public spheres – public policy, labor, economic, family and others. As P. Binder (2019) mentions, the processes taking place in the modern world make it necessary to search for new extraordinary approaches to resolve conflicts and disputes.

The institute of mediation has been introduced into the law enforcement practice of the Republic of Kazakhstan (RK) on the basis of the Decree of the

President of the Republic of Kazakhstan No. 858 "On the concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020" (2009) and the Decree of the President of the Republic of Kazakhstan No. 1039 "On measures to improve the efficiency of law enforcement and the judicial system in the Republic of Kazakhstan" (2010). In accordance with these legislative acts, the formation of various ways and methods for the implementation of a compromise between the parties to the conflict was laid. Differentiated disputes also included labor and private law disputes, which can be resolved in court and out of court. Based on the Law of the Republic of Kazakhstan No. 401-IV "On mediation" (Law No. 401-IV) (2011), the Decree of the Government of the Republic of Kazakhstan No. 770 "On the approval of the Rules for the passage of training under the training program for mediators" (2011) was adopted. It is worth noting that Law No. 401-IV (2011) regulates all the fundamental aspects that are associated with the implementation of the mediation procedure.

It is important to mention the projects of state bodies to promote the mediation procedure. Thus, the first pilot project "Development of out-of-court dispute resolution in judicial reform" was implemented in the Almaty City Court, the Medeu District Court of Almaty, and the Bostandyk District Court of Almaty in 2019. It had clear algorithms for procedural actions. Based on the results obtained, it was found that the main group of parties comes to mediation at the stage of accepting a claim for proceedings. However, at the moment, the mediation procedure is not widespread enough in the law enforcement practice of Kazakhstan (Development of out-of-court…, 2019).

Based on this, the purpose of the research is to study the legal mechanism for regulating the mediation procedure in foreign countries. It is equally important to study the main advantages of this alternative way of dispute resolution and highlight the problem that hinders the effectiveness of development in Kazakhstan.

Materials and Methods

A proposed study design utilizing mixed method is suggested to gain a deeper understanding of the influence of mediation in the field of criminal justice. This approach would integrate quantitative metrics, such as recidivism rates, with qualitative evaluations conducted through interviews or surveys. The aim is to assess the psychological and social consequences experienced by both offenders and victims. In addition, utilizing longitudinal research designs would enable the assessment of the long-term impacts of mediation on the reduction of crime and the restoration of the community.

The research was carried out through the use of various types of analysis methods. The method of functional analysis was used to study the concept of "mediation" to identify its characteristic features and principles, on which the mediation procedure is based. The abstraction method was introduced into research to analyze mediation itself more extensively as an alternative dispute resolution method and to highlight its main advantages for legal application. In turn, the method of logical analysis provided an opportunity to identify the characteristic elements of the mediation process in the Republic of Kazakhstan. Through the use of the method of legal hermeneutics, the legislative framework of Kazakhstan in the field of regulation of the mediation procedure was studied, namely Decree of the President of the Republic of Kazakhstan No. 1039 "On measures to improve the efficiency of law enforcement and the judicial system in the Republic of Kazakhstan" (2010), Law of the Republic of Kazakhstan No. 401-IV "On mediation" (2011), Decree of the Government of the Republic of Kazakhstan No. 770 "On the approval of the Rules for the passage of training under the training program for mediators" (2011), "Development of out-of-court dispute resolution in judicial reform" project (2019).

The dogmatic method was used to study the legal framework of foreign countries. In particular, the provisions of the Mediation Act (2001), Alternative Dispute Resolution Act (1998), Lord Woolf's reforms and civil procedure rules (2018), UK Civil Procedure Act (Nelson, 2020), Directive of the European Parliament and of the Council No. 2008/52/EC "On certain aspects of mediation in civil and commercial matters" (2008) (European Directive), Mediationsrecht (2015) (Germany), Code of Criminal Procedure of Germany (2015), Ordinance transposing Directive 2008/52/ EC of the European Parliament and of the Council of May 21, 2008 "On certain aspects of mediation in civil and commercial matters" No. 2011-1540 (2011), French Code Civil (1804).

In this case, the method of comparative legal analysis was also used, thanks to which the advantages and disadvantages of the regulation of the mediation procedure of such foreign states as the USA, Great Britain, Germany and France were revealed in comparison with the experience of Kazakhstan. The analogy method allowed tracing the similarities and differences in the regulation of the mediation procedure in Kazakhstan and foreign advanced countries. A formal legal method was also applied to determine the range of recommendations that can be implemented in the law enforcement practice of Kazakhstan. The deduction method made it possible to characterize the mediation procedure based on its inherent features and principles, on which its implementation is based. In turn, the method of induction based on characteristic elements and features provided an opportunity to consider a complete picture of the functioning of the mediation

procedure. The synthesis method was used based on the obtained results of the theoretical and practical plan, which helped to identify a range of recommendations for the mediation procedure in Kazakhstan.

It is worth noting that the study was carried out with the disclosure of all fundamental aspects that contain theoretical and practical nature. The methods used provided an opportunity to analyze the concept of 'mediation' to reveal its role in the modern world, as well as to study its main peculiarities, principles and features. Using the method of legal hermeneutics, as well as comparative legal, formal legal, and dogmatic methods, the foreign experience of advanced countries regarding the functioning of the mediation procedure was studied, namely the experience of regulating the legal norms of the USA, Great Britain, Germany and France. In turn, a comparative legal analysis was carried out to highlight certain recommendations for the purpose of further legal application in the Republic of Kazakhstan and increase in the corresponding efficiency.

Results

As of today, more than ten years have passed since the adoption of the Law of the Republic of Kazakhstan No. 401-IV "On mediation" (2011). In this case, it is worth mentioning that this legal institution is not fully implemented, as a result of which the judicial system is quite overloaded, which affects the accessibility of justice. In the Message of the Head of State to the people of Kazakhstan "Kazakhstan in the new reality: Time for action" (2020), it was noted that the issue of developing alternative dispute resolution methods is of particular importance, as this will provide an opportunity to find compromises without the participation of states. The Head of State also mentioned the fact that at this stage of development, not a single state body is engaged in the development of mediation and there is no proper state policy, which requires urgent resolution.

One of the reasons why alternative dispute resolution is not developed is the insufficient efforts on raising public awareness among citizens about the benefits of mediation, their rights to apply to a mediator for assistance in resolving a dispute. But at the same time, regarding the last aspect, at the moment, information about the possibility of using mediation is posted in the buildings of the courts and their official websites (Adams, 2020). It is worth noting that the study of the positive and promising experience of foreign countries in the use of alternative methods for resolving various disputes is relevant for the further consistent reception of effective foreign models and ideas. It should be noted that the need to study foreign experience is due to some peculiarities of this procedure. Among them, mention should be made of the universal nature of mediation and the process of its development.

Most of the researchers believe that the mediation procedure appeared only in the 20th century and was first justified in the United States, and then in European countries (Stipanowich, 2020). But at the same time, the adoption of the "Acte de mediation" (1803), which ensured the independence of Switzerland, became the basis for the formation of the institution of mediation. Further, in the second half of the twentieth century, the active development of the mediation procedure began in such states as Great Britain, the USA and Australia. The analysis of the US experience indicates that mediation has been used in family law. In 1981, California was the first state to extend this procedure for disputes that involve child custody and communication. It is also important to note the attempts in the US practice regarding the development of uniform standards and rules that apply to legal privileges and confidentiality in the mediation procedure (Zack & Kochan, 2019).

Currently, there are more than 250 privilege and privacy rules in various states that determine the type of information that can be disclosed without fear of further dissemination (Ibratova, 2022). Accordingly, the Mediation Act (2001) was drafted by the National Conference of Members of the Commission on the Uniform Laws of States in collaboration with the Dispute Resolution Section of the American Bar Association. To date, the Act has been passed by 1 federal district and 9 states out of 50, including New Jersey, Vermont, Idaho, Iowa, South Dakota, Utah, Hawaii, Illinois, Ohio, and Washington DC; the rest of the states are considering the possibility of passing this legislative act. Mediation privacy regulations vary from state to state, but California has one of the highest safeguards in the US (Folberg, 2019).

It is also worth mentioning another US legislative act, namely the Alternative Dispute Resolution Act (1998). According to it, the federal district courts mandate the adoption of rules at the local level that determine the possibility of alternative dispute resolution and establishes that the courts are required to facilitate and encourage the use of mediation in each district. Accordingly, these rules are adopted in each of the districts of the United States. Based on this, it can be noted that mediation in the United States has a fairly wide scope, with each state endowed with its own specifics. This procedure is used to resolve disputes of a labor, commercial, public law, civil and other nature. It should be mentioned that mediation in the USA is developing in the form of pre-trial, out-of-court and judicial procedures.

In turn, the UK has no single legislative act that regulates the mediation procedure. But at the same time, Lord Woolf's reforms and civil procedure rules (2018) played a significant role in the development of mediation. As a result of them, the norms of alternative settlement received a legal basis, which had an

impact on the increasing use of mediation. In the Law on Civil Procedure, namely in Chapter 12, the Rules of Civil Procedure were introduced, the purpose of which was to enable the courts at the same time to consider cases fairly, to manage cases and require cooperation from participants in the process (Lord Wolf's reforms..., 2018). Also, in addition to this regulation, provisions on mediation are enshrined in other legislative acts, such as the Law on Tribunals, the Code of Family Procedure and the Act on the Powers of Criminal Courts (Nelson, 2020).

In turn, Directive of the European Parliament and of the Council No. 2008/52/EC "On certain aspects of mediation in civil and commercial matters" (2008) addressed certain aspects of mediation in resolving commercial and civil disputes, as a result of which it was changed in 3 UK jurisdictions. For example, in Wales and England, two legal acts were adopted – the Rules of Civil Procedure and the Rules for Cross-border Mediation, while the rules of the European Directive (2008) were extended only to commercial cross-border and civil disputes. At the same time, in Scotland and Northern Ireland, the provisions of the Directive were extended to cross-border mediation and did not affect disputes of an internal nature. In order to transform the Directive, Scotland adopted the Rules for Cross-border Mediation, which involved only Articles 7 and 8 of the EU Directive (Salacuse, 2022). In other words, these Rules do not otherwise directly correlate with other norms of the European Directive. In this case, it is worth noting that Scotland does not use the case law of England when resolving disputes through mediation, but apply the rules for disclosing information, which is different from England. Also, the English civil procedure rules do not function in Scotland. It is noteworthy that the jurisdiction is characterized by procedural features, the use of language in the judicial process (Pandey, 2021; Deineha, 2022; Horislavska, 2023). In turn, in Northern Ireland, the European Directive (2008) has been transformed through the Rules for Cross-Border Mediation and the Rules of the Supreme Court, similarly to Scotland – through the introduction of the provisions of Articles 7 and 8 of the Directive (Pandey, 2021).

In other words, thanks to the mediation procedure in the UK, disputes of a commercial, cross-border, civil, corporate, family, criminal nature and with the participation of minors are regulated. It is worth noting that in 2011, the Government of England and Wales issued an order to public authorities that, if they are a party to a dispute, mediation should be more actively used to resolve it (A guide to civil mediation, 2021). But at the same time, if one of the participants refuses the mediation procedure proposed by the court, they undertake to bear all the costs even if they win the case. In Germany, disputes are settled in arbitration courts, the number of which exceed 300; they often deal with disputes that are of a consumer nature (Trinkunas et al., 2021). These include labor disputes, medical

violations, insurance issues. The source for legal regulation is the Law on the Need to Use Mediation and Other Extrajudicial Methods of Conflict Resolution or Mediationsrecht (2015).

It should be noted that the European Directive (2008) influenced the adoption of this legislative act, but at the same time, the legal regulation is the same for both cross-border and internal disputes, since they are regulated by one law (Mediationsrecht, 2015). Also, along with a special Law on Mediation, other norms are contained in the Civil Code, the Code of Civil Procedure, the Family Procedure Code as well as regulations of the federal lands (Stipanowich, 2020). In Germany, mediation began to develop rapidly due to the activities of the courts, which were directly involved in the promotion of mediation and the procedure itself. In this regard, such terms appeared as "mediation in court" – when mediation is conducted by an independent mediator at the suggestion of the court, "judicial mediation" – when mediation is conducted by a judge, as well as "out-of-court mediation" – mediation by an independent mediator on the basis of a contract (Sultanova & Ilyassova, 2022).

It should be mentioned that the terms 'mediation' and 'conciliation' are used interchangeably, with the exception being the sphere of consumer dispute resolution (Zhomartkyzy, 2023; Khovpun et al., 2024). This is due to the fact that in this case, the activity of special bodies for the resolution of disputes of the consumer nature is considered as a conciliation procedure, during the implementation of which the decision is made by a third party and is mandatory for execution, for example, a banking organization; but the decision is not binding on the consumer (Mediationsrecht, 2015). According to Mediationsrecht (2015), mediation is used for the widest possible range of relationships, regardless of the category of the dispute and the place of residence of the parties to the dispute.

Section 155a of the German Code of Criminal Procedure (2015) states that the judge and the prosecutor at each stage of the trial must provide for the possibility of applying a conciliation procedure, namely between the accused and the victim. In the event that reconciliation is possible, the judge and the prosecutor make every effort in this direction. Section 155b of the German Code of Criminal Procedure (2015) provides for an application procedure whereby the prosecutor and the judge can provide personal data for reconciliation of the parties at the initiative of one of the parties or at the relevant request. The specified data must be strictly applied for the mediation procedure. In France, the legal basis for mediation is Ordinance transposing Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 "On certain aspects of mediation in civil and commercial matters" No. 2011-1540 (2011), which have been implemented in accordance with the European Directive (2008). Also, alternative

dispute resolution is regulated by the Criminal Procedure, Monetary, Criminal, Labor, Civil Procedure and Financial Codes, as well as in other ministerial and departmental documents.

It is worth noting that the European Directive (2008) had a significant impact on the current French legislation, since its effect was extended to all types of disputes of an internal nature, and not only cross-border ones, with the exception of labor and public administrative disputes. In other words, mediation in France is applicable in absolutely any legal area, provided that it does not undermine the rules of social and financial behavior. Under Section 1528 of the French Code Civil (1804), the parties to a dispute may, at their own discretion, attempt to conciliate through an attorney, mediator, or judicial conciliator. Also, the development of mediation takes place in the field of criminal law for offenses committed by minors and adults in the settlement of administrative disputes. This development is being implemented in two forms – mediation in court and private out-of-court mediation (Cato, 2020).

Minnesota and California in the United States have successfully implemented Victim-Offender Mediation (VOM) programs, which efficiently address both minor and serious offences. These programs have achieved high levels of victim satisfaction and have effectively held offenders accountable. Conversely, the United Kingdom has incorporated mediation into its Youth Justice System as a substitute for traditional punitive actions, resulting in decreased rates of students leaving school prematurely and diminished instances of repeat offences among young individuals. These examples demonstrate the versatility and efficacy of mediation in various jurisdictions and legal frameworks.

Theoretical results indicate that individuals engaged in mediation programs demonstrate an improved comprehension of one another's situations and express greater contentment with the legal procedure in contrast to those undergoing conventional court proceedings. Nevertheless, the presence of power imbalances has the potential to impact the equity and results of mediation sessions. The presence of highly skilled mediators is essential in this context, as they must possess the expertise to effectively handle intricate dynamics within criminal cases to guarantee the safety and dignity of all parties involved.

Discussion

As A.T. Kucuk (2022) writes, mediation is a relatively new form of alternative dispute resolution with the assistance of a neutral, third and disinterested party. In this case, the third party is an independent individual who is engaged by the parties to carry out the procedure on the basis of a professional and non-professional plan in accordance with the requirements set forth in Law of the

Republic of Kazakhstan No. 401-IV "On mediation" (2011). It should be noted that in accordance with the regulations of this legislative act, the main goals of the implementation of mediation are to achieve the option of resolving a dispute that suits and satisfies the interests of both parties, as well as has an impact on reducing the level of conflict between the parties.

The Declarations, Recommendations and Resolutions of the UN and the Council of Europe contributed to the widespread introduction of mediation in the criminal process of Kazakhstan (Directive of the European…, 2008). According to D. Ogunbowale & F. Ogunbowale (2022), a mediator is a professional who does not belong to the judiciary and is not an assistant judge. Citizens between whom a dispute has arisen turn to such a person, and they have identified an expression of will to resolve it. It should be mentioned in this case that a mediator can be a citizen who is not interested in the conflict itself, is an independent person and can resolve the conflict in accordance with the requirements of the current legislation. Their services are paid for, and payment for this work is negotiated by agreement of the parties.

According to S.M. Biresaw (2021), the "mission" of mediators is an organizational negotiation process, in which they explain the rights, obligations and goals of alternative dispute resolution. Meetings for the parties can be held both individually and jointly. Further, the mediator investigates the cause of the dispute by asking questions, and not by persuasion, as well as does not have the right to provide any advice or recommendations to each of the parties and transfer information. It is worth agreeing with this and adding that the mediator controls this process, provides an opportunity to find the most acceptable option for resolving disputes for both parties and analyses them for the feasibility of implementation.

E.J.T. Rebayla et al. (2023) writes that the mediation process can be used for labor, family, civil, and criminal disputes in small and medium cases. It is appropriate to mention in this case that it is carried out exclusively on a voluntary basis in compliance with such fundamental principles as independence, impartiality, equality of the parties, complete confidentiality and inadmissibility of interference of other persons in the procedure.

In accordance with the position of L. Greyzenstein (2022), one of the main requirements for a mediator is to maintain impartiality and neutrality regarding the issue of discussion. It is worth agreeing and noting that compliance with these principles indicates the interest of the mediator for the parties to the dispute, so that they themselves develop their own solution to the problem. The principle of neutrality is manifested in absolutely everything, namely, the mediator provides both parties with equal time to express their own position during the session, pays

equal attention to their wishes regarding the organization of the mediation process. The principle of impartiality consists in the same emotional response to the opinions, judgments, remarks that are expressed by the participants in the dispute.

Clauses 2-4 of Article 1 of the Law of the Republic of Kazakhstan No. 401-IV "On mediation" (2011) indicate the types of conflicts when the process of resolving the dispute in an alternative way is not possible. The list of these types includes criminal cases on crimes of corruption or other illegal acts in the sphere of interests of the public service and administration; if such a conflict may in any way affect the interests of third parties who do not participate in the procedure or persons who are recognized by a court decision as partially or completely incompetent; disputes of a civil, family, labor or other nature, when one of the parties is a public authority.

As Z. Serdaly (2023) writes, despite the fact that for a long time Kazakhstan has had a tradition to resolve disputes with the help of biys and aksakals, who are the prototype of modern mediators, mediation is not widely popular among the population. One of the reasons for the low demand for mediation in the Republic of Kazakhstan is the insufficient awareness of the population that the agreement reached during the implementation of this procedure can satisfy the interests of both parties and contribute to their reconciliation, while the court decision satisfies the interests of one of the parties to the dispute and in some cases are not complete. The activities of a mediator can be carried out on a non-professional basis by citizens who have reached the age of 40 and have completed specialized courses (Gabdulina, 2022). Also, the mediator does not have to have a legal education. Law of the Republic of Kazakhstan No. 401-IV "On mediation" (2011) states that the training of a qualified specialist for the implementation of mediation activities is very important for public authorities and courts that submit cases for mediation. It should be noted that mediation does not provide for the provision of legal assistance to the conflicting parties, but, on the contrary, the mediator refuses to provide an assessment of the legal nature of the dispute, analyze the validity of the objections and claims of the parties, and resolve the dispute on the basis of legislative norms.

According to A.S. Razamanova (2019), mediation cannot be defined within the framework of the legal approach, due to the fact that this type of activity is not a type of legal activity. It is worth agreeing with this, since there is only a technology of social mediation, which can only be related to the legal system. At the junction of law and mediation, one can only note the fact that social technology requires a legal mediation procedure. In other words, this allows concluding that the functions of a mediator have certain features. This is due to the

fact that in the implementation of their activities, mediators must apply the skills of a psychological and legal nature equally.

The advantages of the mediation procedure also include the absence of a corruption factor, since there is no need to persuade anyone to one side. It is worth noting that an agreement will not be reached if the outcome of the case does not satisfy both parties to the dispute. In other words, this procedure does not aim to determine the guilty or right side, but the main task is to find a mutually beneficial option for resolving the conflict. Another positive aspect of mediation is that it not only meets the needs of the legal system in helping to reduce litigation, but also gives the participants the right to independently control the outcome of the dispute and reduce the amount of legal costs. The main advantages of this procedure as a whole should be summarized: the mediator is elected by the two parties to the dispute, money and time are saved, individual definition of the organization, environment and rules for mediation, full protection of private interests, constructive search for a mutually beneficial solution to the conflict and the survival of the agreements reached. It is worth mentioning that if the decision was made by the mediator under pressure on one or both parties, it may be declared legally invalid.

The current problematic aspects that reduce the effectiveness of the dissemination of the mediation procedure are the lack of an integrated and systematic approach for implementation, the low level of awareness of citizens about the benefits of mediation. The considered foreign experience provided an opportunity to get acquainted with the regulation of this procedure. In this regard, it was noted that the public authorities are actively promoting mediation as one of the most effective ways to resolve disputes, which is endowed with a large number of advantages. Thus, it is necessary to inform citizens more about the use of mediation and disseminate this alternative method of resolving disputes.

It is advisable to require mediation sessions during the pre-trial phase for non-violent crimes to reduce the number of court cases and enhance the rate of resolution. Policies should additionally encourage the use of mediation by offering incentives such as shorter prison sentences or dismissing charges when successful agreements are reached. Moreover, there is an urgent requirement for specific and targeted training for mediators, with a particular emphasis on the intricacies of criminal law, the psychological consequences of crime, and highly effective conflict resolution strategies.

Conclusions

Mediation in the criminal justice system presents a favorable method that not only resolves conflicts but also reinstates relationships and enhances

community ties. Mediation can have a vital impact on creating a fairer and more just society by reforming the conventional punitive justice system to one that is more compassionate and efficient, prioritizing healing and reconciliation.

This research was conducted in order to study the mediation procedure as an alternative way to resolve disputes in the Republic of Kazakhstan. First, the very concept of "mediation" was characterized, as a result of which it was revealed that this is a legal mechanism that sets itself the task of finding the most mutually beneficial option for the parties to the dispute as well as their reconciliation. The main advantages and disadvantages of the mediation procedure were identified, as well as an analysis was made of the main peculiarities, features and principles, on which the implementation of this type of activity is based.

It was noted that at the moment the mediation procedure is not sufficiently widespread in the Republic of Kazakhstan, which entails a low level of efficiency in its implementation. In accordance with this, an analysis of the legislative norms of Kazakhstan was carried out and the state policy in this sphere was studied. To overcome the problematic aspect, the expediency of studying the foreign experience of advanced countries was revealed. In particular, in countries such as the US, UK, Germany and France, mediation is in high demand and has the corresponding efficiency of legal enforcement. Based on this, the legislative framework of the abovementioned states was studied and the advantages of each of them were characterized. Thanks to this, it was revealed that the basis for the success of this procedure is an active state policy to promote mediation for the use of citizens, as well as a sufficient level of information about the benefits of the procedure.

Thus, it was noted that in order for mediation to have a higher level of efficiency in Kazakhstan, it is advisable to improve the state policy. In particular, this includes the provision of more extensive information to citizens about the benefits of the procedure and the obligation to offer mediation at each stage of the proceedings. This will provide an opportunity to reduce the workload of the judiciary and increase the efficiency of alternative dispute resolution methods.

Additional investigation is warranted to examine the limits of mediation's suitability in highly serious criminal cases, specifically taking into account the characteristics of violent offences and the potential hazards to victims. It is important to analyze the involvement of digital platforms in mediation to assess whether virtual mediation can achieve the same level of involvement and effectiveness as in-person sessions. This is particularly relevant given the growing use of digital technology in the post-pandemic era.

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