IRSTI 10.31.91 https://doi.org/10.26577/JAPJ2024.112.i4.a15

S.E. Assanova[1]*, F.S. Karagussov[1], A.A. Nukusheva[2], A.K. Dzhangabulova[1], T.E. Voronova[3]

[1]Al-Farabi Kazakh National University, Almaty, Kazakhstan
[2] Karaganda E.A. Buketov University, Karaganda, Kazakhstan
[3] Toraigyrov University, Pavlodar, Kazakhstan
*e-mail: saida.assanova2020@gmail.com

INTERNATIONAL EXPERIENCE AND COMPARATIVE ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION METHODS

This article is devoted to the scientific study of international legal regulation of such phenomena as mediation through the analysis of the legislation of foreign countries and the national law of the Republic of Kazakhstan. This article presents various points of view of foreign, Russian, and domestic scientists on dispute resolution in the mediation procedure. From a scientific perspective, legal features of dispute resolution in the order of mediation are of particular interest in connection with the relatively new and unexamined phenomenon of modernity, arising from increasing processes of globalization and internationalization of legal systems as well as scientific and technical progress. Particular attention is paid to the analysis of the experience of various countries in mediation, including the USA, Germany, Austria, India, and China, which allows us to identify common principles and features of the application of mediation in different legal systems. The experience of the Republic of Kazakhstan in the development of the institution of mediation, its legislative regulation and prospects for further integration within the EAEU are also considered.

The study emphasizes the importance of mediation as an effective tool for alternative dispute resolution, which helps reduce the burden on the judicial system and develop a culture of peaceful conflict resolution. The article also discusses the main advantages of mediation, such as confidentiality of the process, saving time and financial resources, as well as the ability to maintain business and personal relationships between the parties to the conflict. Particular attention is paid to the role of the mediator as a neutral intermediary who facilitates effective communication between the parties and the search for mutually beneficial solutions.

Key words: alternative dispute resolution; amicable settlement; extra-judicial dispute resolution; judicial system; mediator; parties.

С.Э. Асанова[1*], Ф.С. Карагусов[1], А.А. Нукушева[2], А.К. Джангабулова[1], Т.Э. Воронова

[1]Әл-Фараби атындағы Қазақ ұлттық университеті, Алматы қ., Қазақстан
[2]Академик Е.А. Букетов атындағы Қарағанды университеті, Қарағанды қ., Қазақстан
*e-mail: saida.assanova2020@gmail.com

Дауларды шешудің балама әдістерін халықаралық тәжірибеде және салыстырмалы талдау

Бұл мақала шет мемлекеттердің заңнамасын және Қазақстан Республикасының ұлттық заңнамасын талдау арқылы медиация сияқты құбылыстың халықаралық-құқықтық реттелуін ғылыми тұрғыдан зерттеуге арналған. Бұл мақалада дауды медиация тәртібімен шешуге қатысты шетелдік, ресейлік және отандық ғалымдардың әртүрлі көзқарастары берілген. Ғылыми тұрғыдан алғанда дауларды медиация тәртібімен шешудің құқықтық ерекшеліктері құқықтық жүйелердің жаһандану және интернационалдану процестерінің күшеюінен туындайтын қазіргі заманның салыстырмалы түрде жаңа және зерттелмеген құбылысына байланысты ерекше қызығушылық тудырады, сонымен қатар ғылыми және технологиялық прогресс. Медиация саласындағы әртүрлі елдердің, соның ішінде АҚШ, Германия, Австрия, Үндістан және Қытай тәжірибесін талдауға ерекше назар аударылады, бұл әртүрлі құқықтық жүйелерде медиацияны қолданудың жалпы принциптері мен ерекшеліктерін анықтауға мүмкіндік береді. . Сондай-ақ Қазақстан Республикасының медиация институтын дамыту тәжірибесі, оны заңнамалық реттеу және ЕАЭО аясында одан әрі интеграциялау перспективалары қарастырылған.

Зерттеу сот жүйесіне түсетін жүктемені азайтуға және жанжалдарды бейбіт жолмен шешу мәдениетін дамытуға көмектесетін дауларды шешудің тиімді баламалы құралы ретінде медиацияның маңыздылығын көрсетеді. Сондай-ақ мақалада медиацияның процестің

уақыт пен қаржылық ресурстарды үнемдеу, сондай-ақ жанжал тараптары арасындағы іскерлік және жеке қарым-қатынастарды сақтау мүмкіндігі сияқты негізгі артықшылықтары қарастырылған. Медиатордың тараптар арасындағы тиімді қарым-қатынасқа және өзара тиімді шешімдерді іздеуге ықпал ететін бейтарап делдал ретіндегі рөліне ерекше назар аударылады.

Түйін сөздер: дауларды шешудің балама әдістері; бітімгершілік келісім; дауды соттан тыс шешу; сот жүйесі; делдал; жақтары.

С.Э. Асанова[1*], Ф.С. Карагусов[1], А.А. Нукушева[2],
А.К. Джангабулова[1], Т.Э. Воронова[3]

[1]Казахский национальный университет имени аль-Фараби, г. Алматы, Казахстан
[2]Карагандинский университет имени академика Е.А. Букетова, г. Караганда, Казахстан
[3]Торайгыров университет, г. Павлодар, Казахстан
*e-mail: saida.assanova2020@gmail.com

Международный опыт и сравнительный анализ альтернативных методов разрешения споров

Данная статья посвящена научному изучению международно-правового регулирования такого явления, как медиация, путем анализа законодательства зарубежных стран и национального права Республики Казахстан. В данной статье представлены различные точки зрения зарубежных, российских и отечественных ученых на разрешение споров в порядке медиации. С научной точки зрения юридические особенности разрешения споров в порядке медиации представляют особый интерес в связи с относительно новым и неизученным явлением современности, возникающим в результате усиливающихся процессов глобализации и интернационализации правовых систем, а также научно-технического прогресса. Особое внимание уделяется анализу опыта различных стран в области медиации, включая США, Германию, Австрию, Индию и Китай, что позволяет выявить общие принципы и особенности применения медиации в разных правовых системах. Рассматривается также опыт Республики Казахстан в развитии института медиации, его законодательное регулирование и перспективы дальнейшей интеграции в рамках ЕАЭС.

Исследование подчеркивает важность медиации как эффективного инструмента альтернативного разрешения споров, способствующего снижению нагрузки на судебную систему и развитию культуры мирного урегулирования конфликтов. В статье также рассматриваются основные преимущества медиации, такие как конфиденциальность процесса, экономия времени и финансовых ресурсов, а также возможность сохранения деловых и личных отношений между сторонами конфликта. Особое внимание уделяется роли медиатора как нейтрального посредника, способствующего эффективной коммуникации между сторонами и поиску взаимовыгодных решений.

Ключевые слова: альтернативное разрешение споров; мировое соглашение; внесудебное разрешение споров; судебная система; посредник; стороны.

Introduction

Currently, the significance and effectiveness of alternative means of resolving disputed relations is of great importance for society, which, in turn, contributes to a positive assessment of the role and place of traditional justice in the legal system of Kazakhstan.

In the modern world, a large number of legal disputes arise that can be effectively resolved both in traditional and new ways, both by the judicial system and by extrajudicial methods. The judicial order has been and remains the traditional way of resolving disputes. It is enshrined in the legislation of most states and is a guarantee of the observance of human and civil rights. However, the judicial system is not perfect, and the practice of its functioning has a number of shortcomings, in particular, the overload of the courts with cases, the length of the trial, problems with the mechanism for ensuring the adversarial nature and equality of the parties, the unfairness of judicial decisions, which leads to a negative assessment and rejection by the parties of the court's decision. As a result of court proceedings, the conflict is not always resolved; this is due to the failure to comply with a large number of court decisions.

In many countries of the world, a new approach to the settlement of legal conflicts has appeared, based on the search for a compromise between the parties to the dispute, on the possibility of settling the dispute without going to court. These are various Alternative Dispute Resolution (ADR) methods applicable to most civil cases. In this regard, many questions arise that need to be answered, for example: what are the advantages and disadvantages of

ADR, what types of ADR exist, what is the role of the court, whether Kazakhstan has created a regulatory acts to regulate ADR, etc.

Materials and methods

The scientific novelty of the research is determined and substantiated by a number of conceptual concepts, theoretical provisions and conclusions, analysis of international experience in the field under study and practical recommendations made on the need to use the latest digitalization and automation technologies in order to simplify the process and increase efficiency when applying alternative methods of resolving legal disputes, which allows the process to make the settlement of disputes as convenient, fast and even free as possible.

To achieve this goal, it is necessary to solve the following tasks:

- to analyze overseas experience of law regulation and alternative ways to resolve legal disputes usage;
- to generalize and develop general theoretical knowledge about alternative ways of resolving legal disputes in general and conciliation procedures in particular.

Proposals to use international experience in the course of domestic transformations do not mean simple copying, borrowing all the provisions of theory and law enforcement practice in general, which is impossible due to our historical, legal traditions, legal awareness, economic and social conditions. Therefore, the experience of foreign states must be passed through the prism of Kazakhstani legal institutions, taking into account their peculiarities and characteristics. Critical understanding of foreign practice and legislation in the presence of its own prerequisites, which can play an important role in the development of the national legal system.

Discussion and results

In the late 1980s, in response to the challenges facing the judicial systems in the most developed countries, reforms of the legal dispute resolution system were introduced, with the development and widespread introduction of alternative dispute resolution methods and the revival and improvement of various conciliation procedures, which have become popular. Specialised organisations assist in the conciliation of disputes and primarily trade disputes, such as the London Center for Dispute Resolution–ADR–Group. In the 1990s, using conciliation procedures increased significantly.

In 1976, when the R. Pound National Conference ‘Causes of Popular Dissatisfaction with Administration of the US Justice System,’ now known as the Pound Conference, was held, the alternative dispute resolution movement emerged in the USA. Two documents from the Pound Conference material constitute the political platform for alternative dispute resolution in the USA and other countries. In his report, Chief Justice W. Berger warned that American society had ‘reached the point where our system of justice – both at the state and federal level – could literally break apart before the end of this century, despite a significant increase in the number of judges and administrators and huge financial infusions.’ He highlighted the most serious problems of the judicial system: high court costs, lengthy proceedings, excessive legalisation, and formalisation of procedures that require heavy costs for legal services for citizens and proposed turning to non-formal alternatives (Levin 1979).

The second major document was the report by Professor F. Sander, who presented the concept of multidoor courthouse. In such a court, a special clerk would have preliminarily reviewed the claims received by the court and suggested that the parties choose a method from various options for resolving disputes that would most fully satisfy their needs. M. Capeletti, leading scientist, expanded the concept of access to justice, including alternative dispute resolution methods as an important part of the civil process (Carrie Menkel–Meadow 2000). He described it as an opportunity to amicably settle disputes between parties that have the potential towards preserving relationships, rather than leading to their final break up.

Theoretic developments have become the basis for introducing a national legal regulation of alternative methods of resolving civil disputes in the civil process. The beginning of the widespread introduction of alternative procedures in the US judiciary system was the adoption, in 1990, of the Civil Justice Reform Act, which provided for creating special Advisory Committees in each federal judicial district to develop activities related to informal justice. In the 1990s, Congress passed three statutes (the Administrative Dispute Resolution Acts of 1990 and 1996, and the Alternative Dispute Resolution Act of 1998). These regulations required state agencies to reform a policy encouraging the use of ADR in a broad range of decision-making and the federal trial courts to introduce and make ADR

programmes available to litigants. These initiatives are also included in the Civil Rights Act of 1991; the National Performance Review; executive-order No. 12871 of 5 February, 1996, which provided for the need for federal agencies to use alternative methods of resolving civil disputes before going to court. Later, the relevant provisions were enshrined in the codes of judicial practice of many states. To regulate relationships in the mediation process, in 2001, the Uniform Mediation Act came into force (http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf). In fact, it combined 2,500 different laws governing the mediation procedures in different states.

Starting from the 1990s, alternative methods of resolving civil disputes in the civil process began to develop in the UK. In Lord Woolf's Access to Justice (http://www.dca.gov.uk/civil/final/index.htm), 1995, it was highlighted that high costs of the litigation process made judicial examination inaccessible to many people, and therefore alternative methods of resolving civil disputes could be an effective alternative. The UK has consistently implemented a cautious pragmatic approach to the legal regulation of mediation. Initially, the mediator organisations were founded in this country (for example, in 1989, the ABC Group in Bristol (ADR Group) and the Center for Effective Dispute Resolution in London (CEDR)), and then, over a period of several years, the government-funded research was conducted on the development of alternative methods of resolving civil disputes in the civil process in other countries and opinion surveys to determine the willingness of the British public and business to accept the new institution.

Since 26 April, 1999, the courts of England and Wales have begun to be guided by the new Civil Procedure Rules of 1998 upon completion of reforming and modernisation of legislation. The introduction of the Civil Procedure Rules contributed to the enhanced role of the procedure of alternative methods to resolve civil disputes in the civil process in the event of dispute, since one of the goals of reforming the civil justice system was to develop a new system that would not only allow the parties to resolve disputes without a judicial procedure but also oblige them to try to reach agreement at an early stage through mutual cooperation. Recently, the use of the alternative dispute resolution procedure in the UK has expanded significantly. Recognising the fact that judicial resolution of disputes is the only means of obtaining the expected result has become the main reason for a detailed study of the alternative procedure, determining the scope of its application and forms of existence.

The introduction of alternative methods of resolving civil disputes in the civil process also affected the judicial system. In litigation process, the Practical Direction on Pre-action Conduct document (https://www.justice.gov.uk) encourages the potential plaintiff to inform the potential defendant at the initial stage of the civil process, while formulating the grounds and purpose of the lawsuit, that the plaintiff considers the alternative methods of resolving civil disputes in the civil process (if chosen by the party) as the most appropriate for resolving the dispute. The potential defendant must answer whether it agrees to the alternative methods of resolving civil disputes in the civil process and if not, state the reason of refusal and offer another alternative method or indicate why it does not consider the application of alternative methods in this matter. The common duty of the party's legal adviser is to counsel their client to use the alternative method of resolving civil disputes in the civil process as indicated in the Allocation Questionnaire (https://definitions.uslegal.com/a/allocation-questionnaire/) contained in the Civil Procedure Rules. If the parties agree to participate in mediation at this stage, the limitation period should be suspended for fourweeks, and the case material should be transferred by the court representatives to the mediator. The court can only recommend mediation but cannot force it.

If the mediation procedure is successful, the parties enter into an appropriate agreement to resolve the dispute between them. Requirements for the form and content of such an agreement are determined at the legislative level. According to UK practice, the dispute resolution agreements should be concluded in writing, confirming its content by the signatures of both parties and the mediator (Hopt 2013).

In 2005, Lord Woolf published a review of the working methods of the ECHR. This review was made at the behest of the Secretary-General of the Council of Europe and the President of the ECHR. In his recommendations, he noted that the ECHR should encourage the wider use of national ombudsmen and other alternative methods of resolving civil disputes in the civil process. This will make it possible to divert a large number of complaints from the ECHR as such that should not have been filed to it due to the possibility of resolving the dispute using alternative methods of resolving civil disputes in the civil process (Woolf 2005).

In the EU, to protect consumers, businesses, quickly resolve disputes and unload the judicial system, acts of varying legal force were adopted.

Later, acts of a sectoral nature were adopted for developing alternative methods of resolving civil disputes in the civil process. The Commission Recommendation of March 30, 1998 No. 98/257/EC 'On the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes' noted that all existing bodies would be created on the condition that they are responsible for out-of-court settlement of consumer protection disputes, and they must adhere to the principles of independence, transparency, competition, efficiency, legality, freedom, and representation.

Recommendation no. R (98) 1 of the Committee of Ministers of the Council of Europe to the Member States on *Family Mediation* (adopted by the Committee of Ministers on January 21, 1998) defines the areas of application and mediation process, status of the agreement reached because of the relationship between mediation and proceedings in judicial or other authorised bodies, recommends the governments of Member States to introduce, promote or, when necessary, strengthen family mediation.

The use of alternative methods of resolving civil disputes in the civil process with regard to administrative and criminal proceedings is significantly different from other areas; therefore, separate acts have been adopted wherein emphasis is placed on these features. Recommendation no. R (99) 19 of the Committee of Ministers of the Council of Europe to the Member States of the Council who are interested in organising mediation in criminal matters (adopted by the Committee of Ministers on September 15, 1999) defines the principles that should be taken into account when developing a mediation system in criminal matters. Hre we talk about Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe to the Member States on the alternatives to litigating disputes between administrative bodies and parties – individuals (adopted by the Committee of Ministers on September 5, 2001). It recommends the governments of Member States to promote the use of alternative means of resolving disputes between administrative bodies and parties – individuals, such as internal review, consultation, mediation, negotiated settlement, and arbitration. Note that some scholars take a critical look at the possibilities of using alternative methods of resolving civil disputes in the civil process as regards administrative and criminal matters. The following statements are correct: voluntariness, confidentiality, process rules established by the parties, flexibility, and speed, which are the main characteristic features of alternative methods of resolving civil disputes in the civil process, in these cases are practically absent.

Restorative justice is provided for by several acts of the UN Economic and Social Council, in particular Resolution No. 1999/26 of 28 July, 1999, 'Development and implementation of mediation and restorative justice measures in criminal justice'; basic principles on the use of restorative justice programmes in criminal matters of 24 July, 2002.

On April 2002, the European Commission introduced a Green Paper on the alternative resolution of civil and commercial disputes, critically examining the current situation regarding alternative dispute resolution methods in the EU and initiating extensive consultations with the Member States and stakeholders regarding possible measures to encourage the use of mediation. On 19 April, 2002, the Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to the Member States on mediation in civil matters (adopted by the Committee of Ministers on September 18, 2002) for the wider application of methods of out-of-court dispute settlement suggests that the governments of Member States promote mediation in civil matters, where appropriate, take or strengthen, depending on the circumstances, all measures that they consider necessary with a view to the progressive implementation of the Guidelines on mediation in civil matters'.

Additionally, binding acts were also adopted. So, on 2 June, 2004, the European Code of Conduct for Mediators, which is binding on all mediators who work in the EU, was ratified.

In Opinion No. 6 (2,004) of the Advisory Council of European Judges on the information of the Committee of Ministers of the Council of Europe on a fair trial within a reasonable time and the role of a judge in litigation processes, when considering alternative methods of resolving disputes, it is noted that alternative methods of resolving civil disputes in the civil process are, undoubtedly, a useful and effective means. This is because it emphasises the consent of the parties, which is always preferable to a court decision, the implementation of which is always enforced.

The next step in the development of alternative methods of resolving civil disputes in the civil process was the adoption of directives. Directive 2008/52/EU was developed because of the UNCITRAL Model Law on the International Commercial

Conciliation Procedure of 2002. The laws, regulations, and administrative provisions necessary to comply with the provisions of Directive 2008/52/EU were entered into force by the Member States by 21 May, 2011. Directive 2008/52/EU gave a new impetus to mediation in Europe, establishing a common framework for its use in international disputes. Its goal is to simplify access to alternative dispute resolution methods and to promote the peaceful resolution of disputes by encouraging the use of mediation and ensuring a balanced relationship between mediation and judicial proceeding. Directive 2008/52/EU puts emphasis on the quality, confidentiality of mediation, the possibility of enforcing agreements reached because of mediation by a court or other competent authority, as well as other issues to ensure a strong link between mediation and the judicial process by establishing common EU rules from key aspects of civil process. A Directive is a legal act of the European Union is distinguished by the fact that it only requires Member States to achieve a particular result without dictating national authorities a choice of form and methods for achieving it. Considering the aforementioned, the EU Members and States that have implemented this Directive have the same principles of using mediation in civil and arbitration legal relationships.

To facilitate a better implementation of the Council of Europe's international legal treaties regarding the efficiency and fairness of legal proceedings, the European Commission for the Efficiency of Justice has prioritised a new activity designed to enable the effective implementation of the Council of Europe's treaties and standards regarding alternative dispute resolution. A working group has been set up to develop guidelines that are not binding but are designed to help Member States implement recommendations on Mediation. On 7 December, 2007, the European Commission for the Efficiency of Justice adopted Guidelines No. 13 for the better implementation of existing recommendations on mediation in criminal matters. It adopted Guidelines No. 14 for the better implementation of existing recommendations on mediation in family matters and on mediation in civil matters. Guidelines No. 15 were adopted for the better implementation of existing recommendations regarding alternatives to judicial settlement of disputes between administrative bodies and parties – individuals.

Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to the Member States regarding judges: independence, efficiency and obligations (adopted by the Committee of Ministers on November 17, 2010) underlined. This is regarding updates for enhancing the action of all measures necessary to promote the independence of judges, increasing their efficiency, and strengthening the role of judges and the judicial system as a whole, the need to promote the use of alternative dispute resolution mechanisms in particular.

To enable access to simple, effective, fast and low-cost methods for resolving internal and cross-border disputes arising from sale and purchase or service agreements, two documents were adopted on 21 May, 2013: Directive 2013/11/EU and EU Regulation No. 524/2013 'On online dispute resolution for consumer disputes.'

Directive 2013/11/EU should apply to procedures for the out-of-court settlement of internal and cross-border disputes in respect of contractual obligations arising from sale and purchase contracts or the provision of services between the seller who operates in the EU and the consumer who resides in the EU. Thereby, alternative methods of resolving civil disputes in the civil process should be employed, through which decisions are proposed or made, interaction between the parties is organised to achieve reconciliation.

The Directive had been implemented by Member States by 9 July, 2015, EC Regulation No. 524/2013 of 21 May, 2013 has become effective for states since 9 January, 2016. It envisages the creation of a European ODR (Online Dispute Resolution) platform and support to EU Member States in establishing an effective system for alternative dispute resolution between the consumers and the online sellers. Article 5 of the Regulation provides for the basic provisions and principles for the setting up and operation of the ODR platform. In fact, the platform will be an online site with the functions of filling out a complaint form, informing the parties, determining an arbitrator, and resolving a dispute. As indicated, over 60,000 disputes have been resolved thanks to the ODR platform, and the popularity of this method is growing. In accordance with EU Regulation No. 524/2013 of 21 May, 2013, in July 2018, the European Commission is required to submit a report on the activities of the aforementioned platform.

Thus, it can be concluded that much attention is paid to the issue of alternative dispute resolution in the EU and the results achieved are very significant. The regulations adopted determine a variety disputes, in the resolution of which alternative dispute resolution may be applied, with clear recommenda-

tions to EU Member States having been outlined on the incorporation of such provisions into national legislation. Consequently, each EU member state may have different legislation in the area of alternative dispute resolution, but it will be based on uniform principles.

The development of countries in the studied area can be analysed based on the Rating data. Each country is evaluated on a seven-point scale for assessing the quality of this indicator. Consequently, in accordance with it the legal and judicial dispute resolution systems: 1 – extremely inefficient; 7 – extremely effective. In the Rating for 2017–18, the top ten countries are placed as follows:

1) Singapore −6.2;
2) Finland −6.0;
3) Switzerland −5.9;
4) Hong Kong −5.9;
5) United Arab Emirates −5.7;
6) Great Britain −5.6;
7) New Zealand −5.6;
8) USA −5.6;
9) Netherlands −5.5;
10) Qatar −5.5.

The Republic of Kazakhstan, having received 3.2 points, takes 94th place (although it was placed 85th in the Rating for 2014–15).

Singapore is recognised as an absolute leader in dispute resolution. In January 2017, the Mediation Bill was passed and the Civil Act amended. This was done to anchor Singapore's position as an international dispute resolution centre.

Simultaneously, Singapore's Parliament adopted amendments to the Civil Act, which enshrined the provision on the financing of international commercial arbitration by third parties, if legal costs can be significant. This draft legislation was proposed to protect vulnerable parties to the conflict and safeguard against potential abuse during the legal trial. Previous legislation noted that a party with no interest in the arbitration process is not entitled to assist. The arbitration process financed by the third parties is a feature of arbitration centres such as London, Paris and Geneva. Now Singapore has joined these centres.

The Singapore International Arbitration Center was founded in 1991. In 2016, 343 cases from 56 jurisdictions were submitted to the Center, up by 27per cent than in 2015, which puts it on par with the world's leading arbitration institutions. The total disputed amount is $11.85 billion. Regarding the disputes, they are mostly related to: construction −16 per cent, corporation −16 per cent, trade −19 per cent, commerce −24 per cent, marine −19per cent, others −6per cent.

A fairly popular form of alternative methods of resolving civil disputes in the civil process in Singapore is the appointment of an expert. Most often it is used in construction, intellectual property, energy, and other disputes.

Mediation in Russia is developing extremely unevenly. The experts identify individual regions, where, thanks to the enthusiasts, the specifics of local conditions, and the interested attitude of local state bodies, the development of mediation is going on more actively. These are Moscow, St Petersburg, Ryazan, Nizhny Novgorod, Voronezh, Yekaterinburg, Irkutsk, and Novosibirsk, where the local mediation centres are active. Additionally, the mediation is developing within the Chamber of Commerce and Industry of the Russian Federation system and under the authority of the Russian Union of Industrialists and Entrepreneurs.

Electronic Dispute Resolution: according to scientists, this term is broader than Internet dispute resolution and online dispute resolution. Depending on the methods of dispute resolution, the following main types of ODR are distinguished:

- Dispute resolution using an expert automatic dispute resolution system;
- Online arbitration;
- Online mediation;
- ODR with consumers.

Electronic dispute resolution is a set of methods for the resolution of disputes (conflicts) using Internet technologies. It is also defined as the development of programmes and computer networks for resolving disputes using alternative dispute resolution methods.

In the Netherlands, the Rechtwijzer Justice road map online platform has been used since 2007. It enables couples to agree on a divorce and child support payments.

Global trading platforms, such as eBay, PayPal, Ali Baba and Taobao, have realised the importance of effective dispute resolution between contractors and have developed special electronic systems where the dispute resolution process is as convenient, fast and even free as possible. In the USA, ODR is used in e-commerce by eBay (157 million users) and Amazon (244 million users). To resolve disputes online on eBay, a special programme was developed in the form of a dispute resolution centre (it cost the company 10 million US dollars). It is highly efficient; the maximum period for dispute resolution is 12days. About 60 million disputes are

resolved online annually on eBay, whereas: 90per cent – with special software without human intervention; 50per cent – based on the results of negotiations between the seller and the buyer; 99.999per cent – not appealed in court.

Another well-known open platform for ODR is Modria. It comprises four modules, which are four stages of ODR: problem diagnosis, negotiation, mediation, and arbitration. Moreover, the platform allows the use of these modules in a free sequence, creating an own dispute resolution procedure.

Conclusions

The measures taken in recent years can hardly be called optimal, since the decrease in the workload of courts occurs mainly by reducing the procedural form, expanding its simplified modifications. It seems that such measures should be resorted to last, when all other means of solving the problem have been exhausted. One of the reasons is that any simplified forms of dispute resolution accelerate the process at the cost of an inevitable decrease in the quality of justice, even in cases of the same type. For this reason, it is necessary to use other resources to reduce the judicial burden, not related to the reduction and simplification of the civil procedural form. These other resources include all known forms of ADR: mediation, arbitration, claims procedure and administrative form. Each of these forms in the modern period has obstacles to their effective use.

Positive is the gradual expansion in the procedural law of the provisions regulating the possibility of the parties turning to the mediator after the initiation of the case by the court.

One of the directions in the light of legal transformations is also the improvement of the system of alternative methods for resolving disputes, designed to effectively and efficiently resolve disputes arising in civil law and related spheres of society. This issue is relevant for all countries of the world, which, to a greater or lesser extent, are transforming the systems of civil justice for different periods of time. In this regard, it is obvious that, both developed and developing countries have formed and accumulated a certain experience in reforming this area, which can complement the transformations in Kazakhstan and significantly contribute to the use of such effective ADR mechanisms that will help achieve positive results.

In foreign countries, to overcome these problems, along with traditional legal proceedings, alternative methods of resolving legal disputes are widely used. They do not replace justice and do not deprive interested persons of the right to judicial protection. On the contrary, individuals are given the opportunity to choose between state or non-state forms of resolving legal conflicts, allowing the parties to decide for themselves which type of procedure is suitable for resolving a particular legal dispute.

Nowadays, quite a common trend is the convergence of arbitration with other methods, such as mediation and consultation, as they offer the benefits that arbitration has lost. In this regard, the convergence of arbitration and other types of alternative dispute resolution seems practical both in practice and in regulatory acts, by supplementing the latter with norms on the types and methods of alternative ways of resolving civil disputes in a civil proceeding. Simultaneously, it is important not to limit oneself to the listing of various alternative types of dispute resolution, but to predict new (combined) methods. In particular, scholar offer a step-by-step method of resolving disputes, wherein the parties can turn primarily to mediation or consultation, and for a failure to achieve the desired result, to arbitration.

References

A.N. Kuzbagarov, 'The Reconciliation of Parties to Conflicts of a Private Law Nature: Diss. Dr. of legal sciences' (2006) St Petersburg: St Petersburg University of the Ministry of Internal Affairs of Russia.

Allocation Questionnaire Law and Legal Definition. <https://definitions.uslegal.com/a/allocation-questionnaire/> accessed March 2020.

Carrie Menkel–Meadow, 'Mothers and Fathers of Invention: The Intellectual Founders of ADR' (2000) 16 Ohio State Journal on Dispute Resolution P 1-37 . https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=https://www.google.com.es/&httpsredir=1&article=1542&context=facpub

Christopher Hodges, Iris Benöhr, and Naomi Creutzfeldt, Consumer ADR in Europe (Hart Publishing, 2012).

Klaus Hopt and Felix Steffek, Mediation Principles and Regulation in Comparative Perspective (Oxford University Press, 2013).

Leo Levin and Russell Wheeler (eds), National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, The Pound Conference (St. Paul, Minnesota: West Pub. Co; First edition (January 1, 1979).

Lord Woolf, ‘Access to Justice: Final Report by the Right Honourable the Lord Woolf, Master of the Rolls’ (July 1996) <http://www.dca.gov.uk/civil/final/index.htm> accessed .

Lord Woolf, Review of the Working Methods of the European Court of Human Rights (European Court of Human Rights, 2005) <http://www.echr.coe.int/Documents/2005_Lord_Woolf_working_methods_ENG.pdf>accessed December 2005.

Медиация: о чем говорит зарубежный опыт // https://www.norma.uz/nashi_obzori/mediaciya_o_chem_govorit_zarubejnyy_opyt

Медиация в мире // https://mediacia.com/mediation-in-the-world/

Practice Direction–Pre-Action Conduct and Protocols. < https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct#8.1> accessed 6 April 2015 .

Reports and Statistics. <https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show> accessed 19 November2020.

Two Bills Passed to Boost Singapore’s Position as a Dispute Resolution Hub. <http://www.channelnewsasia.com/news/singapore/two-bills-passed-to-boost-singapore-s-position-as-dispute-resolu-7554516> accessed 6 Feb 2017 year

The Singapore International Arbitration Centre, ‘Hightlights’ (The Singapore International Arbitration Centre, 2 September 2020) <http://www.siac.org.sg/> accessed .

Uniform Mediation Act 2001. Completed by the Uniform Law Commission in 2001, amended in 2003. http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf accessed https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8820c821-7697-5541-0034-cbd3e5d5e4f9&forceDialog=0.

References

1 A.N. Kuzbagarov, ‘The Reconciliation of Parties to Conflicts of a Private Law Nature: Diss. Dr. of legal sciences’ (2006) St Petersburg: St Petersburg University of the Ministry of Internal Affairs of Russia.

2 Allocation Questionnaire Law and Legal Definition. <https://definitions.uslegal.com/a/allocation-questionnaire/> accessed March 2020.

3 Carrie Menkel–Meadow, ‘Mothers and Fathers of Invention: The Intellectual Founders of ADR’ (2000) 16 Ohio State Journal on Dispute Resolution P 1-37. https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=https://www.google.com.es/&httpsredir=1&article=1542&context=facpub

4 Christopher Hodges, Iris Benöhr, and Naomi Creutzfeldt, Consumer ADR in Europe (Hart Publishing, 2012).

5 Klaus Hopt and Felix Steffek, Mediation Principles and Regulation in Comparative Perspective (Oxford University Press, 2013).

6 Leo Levin and Russell Wheeler (eds), National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, The Pound Conference (St. Paul, Minnesota: West Pub. Co; First edition (January 1, 1979).

7 Lord Woolf, ‘Access to Justice: Final Report by the Right Honourable the Lord Woolf, Master of the Rolls’ (July 1996) <http://www.dca.gov.uk/civil/final/index.htm> accessed .

8 Lord Woolf, Review of the Working Methods of the European Court of Human Rights (European Court of Human Rights, 2005) <http://www.echr.coe.int/Documents/2005_Lord_Woolf_working_methods_ENG.pdf>accessed December 2005.

9 Mediacija: o chem govorit zarubezhnyj opyt [Mediation: what foreign experience says] // https://www.norma.uz/nashi_obzori/mediaciya_o_chem_govorit_zarubejnyy_opyt

10 Mediacija v mire [Mediation in the world] // https://mediacia.com/mediation-in-the-world/

11 Practice Direction–Pre-Action Conduct and Protocols. < https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct#8.1> accessed 6 April 2015 .

12 Reports and Statistics. <https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show> accessed 19 November2020.

13 Two Bills Passed to Boost Singapore’s Position as a Dispute Resolution Hub. <http://www.channelnewsasia.com/news/singapore/two-bills-passed-to-boost-singapore-s-position-as-dispute-resolu-7554516> accessed 6 Feb 2017 year

14 The Singapore International Arbitration Centre, ‘Hightlights’ (The Singapore International Arbitration Centre, 2 September 2020) <http://www.siac.org.sg/> accessed .

15 Uniform Mediation Act 2001. Completed by the Uniform Law Commission in 2001, amended in 2003. http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf accessed https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8820c821-7697-5541-0034-cbd3e5d5e4f9&forceDialog=0.

***Information about the authors**:*

Asanova Saida Ergashevna – PhD, Deputy Dean of the Faculty of Law of the Al-Farabi Kazakh National University (Kazakhstan, Almaty c., e-mail: saida.assanova2020@gmail.com);

Karagusov Farhad Sergeevich – Doctor of Law, Professor of Caspian University (Kazakhstan, Almaty c., e-mail: fsk2906@mail.ru);

Nukusheva Aigul Ashimovna – PhD, Professor of Academician E.A. Buketov Karaganda University (Kazakhstan, Karaganda, e-mail: akuka007@mail.ru);

Dzhangabulova Arailym Kuanyshbekovna – Candidate of Law, Associate Professor (Associate Professor) of the Al-Farabi Kazakh National University (Kazakhstan, Almaty c., e-mail: arailym.dzhangabulova@kaznu.kz);

Voronova Tatiana Eduardovna – candidate of political science, associate professor of the Toraigyrov University (Kazakhstan, Pavlodar c., e-mail: tatyana.v.2011@mail.ru).

Авторлар туралы мәлімет:

Асанова Саида Эргашевна – PhD докторы, әл-Фараби атындағы Қазақ ұлттық университеті заң факультетінің декан орынбасары(Қазақстан, Алматы қ., e-mail: saida.assanova2020@gmail.com);

Карагусов Фархад Сергеевич – заң ғылымдарының докторы, Каспий университетінің профессоры (Қазақстан, Алматы қ., e-mail: fsk2906@mail.ru);

Нукушева Айгуль Ашимовна – PhD, Академик Е.А. Букетов атындағы Қарағанды университеті профессоры (Қазақстан, Қарағанды қ., e-mail: akuka007@mail.ru);

Джангабулова Арайлым Куанышбековна – заң ғылымдарының кандидаты, әл-Фараби атындағы Қазақ ұлттық университетінің қауымдастырылған профессоры (доцент), (Қазақстан, Алматы қ., e-mail: arailym.dzhangabulova@kaznu.kz);

Воронова Татьяна Эдуардовна – саяси ғылымдар кандидаты, Торайғыров университетінің қауымдастырылған профессоры (Қазақстан, Павлодар қ., e-mail: tatyana.v.2011@mail.ru)

Previously sent (in English): 23.04.2023.
Accepted: 20.11.2024.