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THE ROLE OF THE MEDIATION INSTITUTE IN THE HISTORY OF KAZAKHSTAN

Abstract

Mediation is an opportunity for the parties involved in the conflict to independently come to a mutually beneficial solution using the knowledge and experience of a mediator – a professional or public mediator, based on the principles of voluntary participation in the procedure, impartiality and neutrality on the part of the mediator, confidentiality, transparency, acceptance and respect of the parties by the mediator and the parties to each other. Mediation in world practice, and since 2011 officially in Kazakhstan, is a procedure and scope of activity for pre-trial settlement of disputes, a technology for alternative dispute resolution. The meaning of mediation, its traditions in our country stem partly from the Kazakh Khanate, where there was an institution of biys, courts of biys (from the 15th-16th centuries to the 19th century), separate provisions on the peaceful settlement of disputes were applied. Partly in Soviet times, some institutions close in meaning to mediation were used (for example, comrades' courts). But the full introduction of mediation in Kazakhstan was made only in the 2000s, regulated by law since 2011. At the same time, unlike countries with a developed legal system, so far mediation in Kazakhstan is used much less frequently.

Keywords: mediation, mediator, alternative dispute resolution technology, ADR, arbitration, biy court, history of mediation.

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ҚАЗАҚСТАН ТАРИХЫНДАҒЫ МЕДИАЦИЯ ИНСТИТУТЫНЫҢ РӨЛІ

Аңдатпа

Медиация – бұл жанжалға қатысушы тараптардың рәсімге қатысудың еріктілігі, медиатор тарапынан бейтараптық пен бейтараптық, құпиялылық, ашықтық, тараптарды медиатор мен тараптардың бір-бірін қабылдауы мен құрметтеуі қағидаттарына негізделген кәсіби немесе қоғамдық делдал-медиатордың білімі мен тәжірибесін пайдалана отырып, өзара тиімді шешімге өз бетінше келу мүмкіндігі. Медиация әлемдік тәжірибеде, ал ресми түрде 2011 жылдан бастап Қазақстанда дауларды сотқа дейін реттеу тәртібі мен қызмет көлемі, дауларды балама шешу технологиясы болып табылады. Біздің еліміздегі медиация-ның мәні, оның дәстүрлері ішінара билер институты, билер соттары (15-16 ғасырлардан 19 ғасырға дейін) болған Қазақ хандығынан туындады, дауларды бейбіт жолмен шешу туралы жекелеген ережелер болды. қолданылды. Кеңес дәуірінде ішінара медиацияға жақын кейбір институттар қолданылды (мысалы, жолдастық соттар). Қазіргі уақытта медиацияның рөлі жыл сайын артып келеді және әр түрлі деңгейдегі қақтығыстарды шешуде қарапайым халыққа көбірек көмектеседі. Бірақ Қазақстанда медиацияны толық енгізу тек 2000 жылдары ғана жасалды, 2011 жылдан бастап заңмен реттеледі. Сонымен қатар, құқықтық жүйесі дамыған елдерге қарағанда, әзірге Қазақстанда медиация әлдеқайда сирек қолданылады.

Кілт сөздер: медиация, медиатор, дауларды шешудің баламалы технологиясы, ADR, арбитраж, би соты, медиация, медиация тарихы.

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РОЛЬ ИНСТИТУТА МЕДИАЦИИ В ИСТОРИИ КАЗАХСТАНА

Аннотация

Медиация – это возможность сторонам, участвующим в конфликте, самостоятельно прийти к взаимовыгодному решению, используя знания и опыт медиатора – профессионального или обществен-ного посредника, основанные на принципах добровольности участия в процедуре, беспристрастности и нейтральности со стороны медиатора, конфиденциальности, прозрачности, принятия и уважения сторон медиатором и сторонами друг друга. Медиация в мировой практике, а с 2011 году и официально в Казахстане является процедурой и сферой деятельности по досудебному урегулированию споров, технологией альтернативного урегулирования споров. Смысл медиации, ее традиции в нашей стране проистекают отчасти из Казахского ханства, где существовал институт биев, судов биев (от XV-XVI вв. до XIX в.), применялись отдельные положении о мирном урегулировании споров. Отчасти и в советские времена какие-то близкие по смыслу к медиации институты применялись (например, товарищеские суды). Но полноценное внедрение медиации в Казахстане произведено только в 2000-е годы, законом урегулировано с 2011 года. При этом, в отличие от стран с развитой правовой системой пока что медиация в Казахстане применяется значительно реже.

Ключевые слова: медиация, медиатор, технология альтернативного урегулирования споров, ADR, арбитраж, суд биев, посредничество, история медиации.

Introduction

Mediation (from Latin *Mediare* – mediate) is a specific legal institution for out–of-court settlement of disputes in civil cases, when a mediator participates in the settlement - a party not interested in the outcome of the dispute, helping the parties to the dispute to work out a specific agreement on the dispute, make their own decisions on settlement, organize negotiations, etc. Mediation is currently considered as one of the technologies of alternative dispute resolution (alternative dispute resolution, ADR). At the same time, in international practice, 3 ADR institutions are generally used: negotiation, without the participation of third parties; mediation – when a dispute is regulated by an intermediary, helping the parties to agree in a recommendatory manner; arbitration, when a dispute between the parties is resolved with the help of an arbitrator making a binding decision (what is it close to to the judicial resolution of cases). The prototypes of the institute of mediation in the history of mankind appeared quite a long time ago, usually we are talking about the activities of Phoenician merchants, Ancient Babylon merchants about 1000 BC. Also, the practice of using intermediaries to resolve property disputes was used in ancient Greece. In ancient Rome, mediation in dispute resolution was recognized by the Code of Justinian (530-533 AD), and intermediaries were called internuncius, medium, intercessor, philanthropus, interpolator, conciliator, interlocutor, interpres, mediator. Also, disputes were resolved with the help of an intermediary among a number of peoples with traditional culture, intermediaries had a certain honor and respect along with chiefs, tribal elders and priests. In the Kazakh traditional society, both before the adoption of the code of laws "Zhetyzhargy" by Tauke Khan (1680-1718) and after, the biy court had significant powers in court cases. At the same time, that the functions of the biy were available to any free community member who had sufficient authority, knowledge of customary law and eloquence.

Relevance

The modern institution of mediation, as it is currently understood, arose only by the second half of the twentieth century in the countries of Anglo-Saxon law (Great Britain, USA, Australia), further spreading in Europe. If at first mediation was widely used in resolving family disputes, then later it spread to broader areas: conflicts in local communities, conflicts in economic activities, in the public sphere. At the international level, mediation is currently enshrined in Article 33 of the UN Charter, as well as in the UNCITRAL Commission on International Trade Law [17].

It should be noted that the legal regulation of mediation appeared relatively recently in the post-Soviet space. Thus, the law "On Mediation" was adopted in the Republic of Kazakhstan only in 2011, although discussion of its future provisions and prospects for adoption has been conducted since the late 1990s. Many modern researchers note that the provisions of the current law "On Mediation" are closely related to the historical traditions of the Biy institute and the role of biy in the pre-trial settlement of conflicts.

The object of research in the article is the institute of mediation as an alternative dispute resolution technology.

The subject of the study is the historical aspects of the formation and development of mediation in Kazakhstan.

The purpose of the article is to consider the origins and formation features of the mediation institute in Kazakhstan.

Research objectives:

1) to characterize the origins of mediation as an alternative form of conflict resolution in Kazakhstan;
2) to consider the features and role of Biys in the pre-trial settlement of conflicts in the period before the nineteenth century;
3) to characterize the formation and development of modern Kazakhstan legislation on mediation.

Main content

Based on the above research, it is possible to consider the retrospective and historical features of the formation of the mediation institute in Kazakhstan.

In general, most authors consider the beginning of the formation of mediation in Kazakhstan with the Institute of Biys. Biys are peculiar elders who have judicial and intermediary powers, who "should have had individual virtues - wisdom, courage, reputation, honesty, not always "biological seniority", be authoritative in their kind, socially active, and, as a rule, far from poor" [3]. In scientific sources, the Biy court is also called a state institution in the traditional Kazakh society. At the same time, even before the adoption of the "Zhety Jargy" laws of Tauke Khan (1680-1718), the life of Kazakhs was regulated by traditional norms drawn up in the codes "The Bright Path of Kasym Khan", "Yesimkhannyn eski Zholy". Most researchers point to the emergence of Biys as institutions of the court, as well as prototypes of institutions of arbitration and mediation are attributed to this ancient period. As a rule, Biy in the Kazakh steppes were people who were distinguished by intelligence and "impeccable morality, extensive experience in legal proceedings and knowledge of customs" [20]. Researchers describe their special status in the steppe. Biy had four powers at the same time: a military commander, an administrative person, a judge and a representative of the steppe aristocracy. They formed the basis of the national aristocracy. And the term "biy" itself appeared before the XV century, as can be seen from the titles of the Uysun rulers, which included the prefix "bi" (Shyn bi, Onkai bi, etc.). V.V. Radlov claims that the term "bi" is connected with the ancient Turkic word "biik" – tall, omnipotent, great - and assumed the status of an adviser to the ruler" [15]. The role of biys was in the administration of courts on the basis of steppe Kazakh law. S.Z. Zimanov noted that the criteria for the high level of biys and their courts were "independence, professionalism, philosophical reflection, oratory, extreme justice and honesty, free-thinking and populist ideals, mastery of the wealth of turnover and style of folk eloquence, polemical abilities, prudence and resourcefulness in search of a way out of the conflict situations being analyzed" [21].

In general, many authors write about the role of biys in mediation and reconciliation of the parties to conflicts. In addition to the legal resolution of conflicts, there was such a function of biys as "maintaining a reasonable balance between the institutions of the tribal structure and the state organization", "in the use of compromise in the best sense of the word" [3], that is, here we are talking about the mediation and conciliation role, the role of promoting alternative dispute resolution, with Sh.T. Myrzakhanova also points out that the Biy court partly became an institution of mediation formed during the Kazakh Khanate, and its peculiarity was democracy, the right of Kazakhs to choose a judge. Considering that the biy had to be an authoritative, respected and experienced aksakal, whose competence cannot be doubted, hence the confidence in the fairness of his decision, the fairness of his advice on achieving reconciliation. Failure to comply with the principles of independence, disinterest, justice in the future could lead to the loss of public confidence in him, his candidacy would become controversial, hence the activity of biys was based on a very responsible approach to dispute resolution [11].

R. Oskinbayev and N. Kairova argue that in the traditional Kazakh society, law was expressed mainly orally, norms were passed down from generation to generation, and the norms of law included sources:

1) custom (adat or zan);
2) the practice of the biy court;
3) the provisions of the Congress of biys (yerezhe) [14].

These sources were interconnected. At the same time, the judicial precedent (based on the practice of the Biy court) and the provisions adopted by the biy at the congress complemented and even changed the legal customs of society.

It is also necessary to take into account the specifics of the trial at the Biy court. As a rule, court cases could not be initiated just like that, even criminal ones, the initiative of the injured party (daulaushi or talapker – plaintiff), against the defendant (zhauapberushi or zhauapker) was required. Representatives of the plaintiff and

the defendant, witnesses and jurors could take part in the process. The trial was public and adversarial. The choice of the biy was made by agreement of the parties, he could also receive a recusal before the start of the process. Agreement with the choice of the judge and the composition of the court was secured by throwing lashes by the plaintiff and the defendant before the bey-judge. A subsequent withdrawal was no longer possible. It is important to note here that before the trial began, the biy offered reconciliation to the parties, and only when they refused, he began the hearing of the case, also publicly. The Biy listened to the presentation of the positions of the parties, including their representatives, could call witnesses whose appearance was to be provided by the interested party. The verdict (decision) of the biy was passed orally, and the execution was assigned to the defendant. In case of non-fulfillment, they often resorted to the procedure of barymty (forcible cattle rustling). However, such execution often entailed the opposite actions. And then, for example, with multiple mutual cattle rustlings, when it was impossible to determine the legality of barymta, the biy court demanded reconciliation of the parties – salavat [7].

That is why the resolution of disputes and conflicts in society, even often criminal disputes, were often of a conciliatory and compensatory nature, involving the use of compensation instruments: kun (ransom), aiyp (fine), compensation for losses and a number of others [14].As a result, the ultimate goal of biy justice according to the ideology of the medieval nomadic Kazakh society is reconciliation of the parties to the conflict, no matter how complex and acute their mutual claims. The establishment formula of such justice was designated as "reconciliation is the goal and the end of litigation" [16]. A.S. Ibraeva also pointed out that the function of the Biy court was primarily connected not with material compensation for damage to one of the parties, but with the triumph of justice. This is what made this institution democratic and humane. An example can be given with the resolution of a dispute over the kuna (payment of compensation for the deprivation of life to the injured party – the relatives of the deceased). Here, despite the severity of the act, biy also tried to use conciliation procedures and those legal means that somehow compensate for the loss will be fairly applied, will lead to reconciliation, and not to revenge [6].

The emergence of the judicial system of Kazakhstan and the emergence of alternative dispute resolution technologies such as arbitration and mediation are associated with the institutions of biy. Thus, it is possible to note the works of J.M. Dzhampeisova on the institute of judicial oath [5], which acted as a separate regulatory mechanism when considering cases to end internal strife of Kazakhs. As a result, the Biy court was a court of high morality, its principles on which the resolution of cases was based: justice, integrity and independence of the judge, lack of his personal interest in the outcome of the case, moral orientation in making decisions, accessibility of the court and publicity of the decision, possession of oratory by the judge as a means of proving the decision. And what is important – "the court's focus on reconciliation of the parties and full compensation for the damage caused by the offense" [1].

It is also necessary to take into account those provisions on the court of biys, which were studied and described by I.J. Bakhtybayev. In particular, he described the fact that in the pre-colonial period, during the existence of the Kazakh Khanate, there were two types of biy and Biy courts. The first type is the so–called "people's biy". They were not appointed by the authorities and were not elected by the communities, they deserved this title solely on business and moral qualities, hence their moral right to be both an arbitrator who issues his own fair opinion, which is mandatory for the parties to the conflict to accept, and a mediator who promotes the agreement of the parties, the peaceful resolution of the conflict. The second category of biy was already biy-officials, it appeared only at the end of the XIX century. Accordingly, the change in the mechanism of appointment or recognition of a biy significantly affected his perception in society – his moral and business qualities were already recognized not by the people, but by the administration, hence there could be a different attitude to the performance of his duties, to justice, as M.S. Narikbayev writes about it [12].

Considering the listed features of the Institute of biys in the Kazakh Khanate, it can be said that for several centuries, until the end of the XVIII century, this institution significantly influenced not only the strengthening of legal traditions and justice in Kazakh society, but also the development of alternative dispute resolution technologies, which became the prototypes of arbitration and mediation. That is why R. Oskinbayev and N. Kairova rightly claim that the institute of biys is a historical prerequisite for turning to mediation in our country [14]. Also, B. Beknazarov, being the Chairman of the Supreme Court of the Republic of Kazakhstan in 2012, pointed out the similarity of the mediation institute with the Biy court, confirmed that "there are historical prerequisites for applying to the mediation institute in Kazakhstan. It is possible to draw an analogy between mediation and the court of biys, who settled disputes in the Kazakh steppe for many centuries. Like mediators, biy acted as intermediaries in disputes that arose, while there was no formal appointment to this position" [8].

Next, it is necessary to imagine how mediation in dispute resolution has developed since the period when the zhuz of the Kazakh Khanate became part of the Russian Empire. In general, the independent historical development of the law and judicial system of Kazakhstan was complicated by the inclusion into the empire in

1731. This accession led, although not immediately, to the restriction of the application of customary law and the work of the Biy courts. Moreover, Russian laws were introduced on the territory of Kazakhstan, which at that time did not differ at all in the principles of justice and equality. At the same time, a general imperial system of courts began to form on the territory of Kazakhstan, which operated according to Russian laws. Researchers, in particular, Shaimenova A.B., Ilyasova G.A., point out that during the first 80-90 years after the accession of Kazakhstan to the Russian Empire, the Biy court was not affected or canceled, although the institutions of Russian law were introduced in an increasing number of spheres and replaced traditional law. Nevertheless, almost before the period of the revolution, there were biy courts on the territory of the country, and in some areas of the country there were courts of Kazis and mullahs (they were guided by the norms of Muslim law) [16]. S.P. Varenikova also points out that the reformation of courts in Kazakhstan began only in 1734, when, on the basis of the decree of Empress Anna Ioannovna, a "special court" was created for proceedings between Kazakhs and Russians in Orenburg. In 1784, a Border court was established there by decree of Empress Catherine II, later reorganized into a Border Commission (for the analysis of criminal cases between Kazakhs and other residents of the territories). But the majority of civil and criminal cases continued to be considered taking into account the old order and traditions by the Biy courts [18]. The changes were introduced only in the XIX century: in 1822, on the basis of the "Charter on the Siberian Kirghiz", the division of cases into criminal, claim and management complaints was made. The restriction of the activity of the Biy courts also took place on the basis of the "Regulations on the Management of the Orenburg Kirghiz" (1844), when criminal cases were withdrawn from the jurisdiction of the Biy and transferred to the general imperial courts.

At the same time, the appointment of biys by administrations begins, biy-officials appear, who significantly differed from the previously existing biys (authoritative judges recognized by society) [4]. The great Kazakh educator Abai Kunanbayev also spoke about this, noting the significant difference between the "traditional" biys and those biys that began to work during the period of Russian colonization, actually becoming employees of the state: "Not everyone can be a biy among Kazakhs, even if he is elected by the government… He must follow the old norms, and if they no longer correspond to the new time, then they need to be replaced with new ones so that they serve society" [21]. In general, the enlightened part of Kazakh society, who lived in the Russian Empire, reacted ambiguously to the reforms of the institute of biys, which were carried out during the nineteenth century by the Russian imperial authorities. Thus, Kazakh scientist Chokan Valikhanov saw the main advantage of the old Biy court precisely in the absence of a large number of formalities and routine. The leader of the national liberation movement of Kazakhstan at the beginning of the twentieth century, Alikhan Bukeikhanov, generally believed that the Biy court is a people's court in its meaning and form, and its replacement with imperial courts is a step back, a departure from the principles of fair trial, independence of judges and the principle of competence and authority of judges [16].

Considering this, the relevance of the revival of the courts of the Biys and for some time after the revolution of 1917, after the civil war, was discussed in Kazakh society. So, in the 20s of the twentieth century, at meetings and congresses in the counties of Kazakhstan, wishes were often expressed to preserve the institutions of the courts of biy and kazy. But the Soviet authorities did not consider such a system to be correct from the point of view of their own ideology, which is why they began to eradicate it already from the beginning of the 20s [16]. However, T.M. Kulteleev in his research indicates that the norms of customary law in the people's courts of Kazakhstan were used until 1922, in some cases – until 1925 [10].

However, the Soviet system, faced with an increasing burden on the official system, as well as the underdevelopment of the judicial system infrastructure (the remoteness of official courts from villages and villages), began to create its own ADR system, as far as it fit into the Soviet ideology. So, in January 1927, the CEC of the KazASSR discussed quite widely the issue of the establishment of arbitration courts in the villages and villages of the republic. The competence of such courts should have been limited to civil and certain types of labor disputes, except for those that fell within the competence of special courts and institutions. The execution of the case was to be carried out with the help of an arbitration record, attested in the village (aul) executive committee. As a result, on October 8, 1928, the Central Executive Committee and the CPC of the Russian SFSR issued a resolution "On establishing a special procedure for the exercise of judicial functions in auls, villages, villages and settlements of the Autonomous Kazakh USSR", allowing the creation of conciliation commissions (arbitration commissions) under the Soviets if the distance to the nearest People's Court was large, and the property dispute was not in the amount of more than 15 rubles. That is, small property disputes were supposed to be resolved not in official courts, but in similar instances, which were more aimed at implementing conciliation procedures.

Also, in the 20-30s of the twentieth century, "courts of public amateur activity" developed in Kazakhstan, which included production-friendly, rural public, friendly in collective farms. Their goal was also related to the resolution of conflict situations, disputes, and the conciliatory settlement of disputes. As a result, these courts

exempted the official people's courts from minor cases, from cases of private prosecution. In fact, these courts worked until 1937-38, after which, during the "great terror" and the war period, they were liquidated. It was only in the post-war years that ADR mechanisms began to be formed again, which in this case included state and departmental arbitrations. So, since 1959, it has become possible for arbitration courts to resolve disputes between Soviet organizations, since 1979 throughout the USSR in accordance with the USSR Law "On State Arbitration in the USSR" of November 30, 1979, it became possible to resolve economic disputes between enterprises using arbitration as an ADR mechanism.

Materials and methods

Quite a lot of works and research have been devoted to the formation and development of the mediation institute since the XVI century in Kazakhstan. Most authors associate mediation in Kazakhstan and the formation of traditions of pre-trial conflict resolution with the institutions of Biys.

So, the following studies in this direction can be noted. There are quite fundamental studies devoted to the study of the Institute of biys, the courts of biys in Kazakhstan in the period before the arrival of the Russian Empire. The authors of such works include, in particular, Zh.M. Dzhampeisova, T.M. Kulteleeva, M.S. Narikbayev. There are also newer scientific articles devoted to the development of the institute of mediation in Kazakhstan, linking modern mediation institutions with the foundations that appeared during the existence of the courts of the Kazakh Khanate and even in the Soviet period (the existence of friendly courts and other institutions). Such authors include G.M. Baymukhametova, A.M. Bakirova, I.J. Bakhtybaeva, S.P. Varenikova, S.I. Ibraeva, A.S. Ibraeva, Sh.T. Myrzakhanov, M.A. Nazarova and Z.M. Sadvakasov, A.B. Shaimenova and G.A. Ilyasov. The study also uses historical sources, which also describe the legal traditions of the Kazakhs, the courts of Biys, such authors as V.V. Radlov (1870), G. Zagryazhsky (1876).

The research methods used in the article are, first of all, historical and legal analysis and comparative legal analysis.

Discussion

Currently, mediation as an alternative dispute settlement procedure in Kazakhstan has quite great prospects for development. It is important to develop professional communities of mediators, improve legislation in this direction. Nowadays, there are still sufficient differences in the use of mediation in Kazakhstan and other countries where this institution was introduced earlier.

Thus, M.A. Nazarova and Z.M. Sadvakasova point to the following aspects of the development of the institute of mediation in a number of developed foreign countries. For example, in Japan, business circles prefer to choose alternative methods of dispute resolution, taking into account the fact that from an ethical point of view, Japanese business has a negative attitude to the choice of state courts as a dispute resolution tool, hence the prevalence of mediation. In the USA, the entire legal system encourages the resolution of most disputes through ADR, including mediation, which is why courts can recommend working with mediators to the parties to conflicts. And in the field of economic disputes, transactions, conflicts, as a rule, they cannot do without mediators and their participation in negotiations, as a rule. In the UK, access to a mediator for both citizens and businesses is quite simple: there is a telephone service for choosing (recommending) a mediator, if you state the essence of the conflict [13]. But in Kazakhstan, reconciliation procedures have so far been integrated into the current procedural legislation, the judicial system, which is why the development of mediation settlement cannot yet be called strong.

If we consider the overall development of mediation in Kazakhstan, the main problem of development is related to the lack of a comprehensive systematic approach to regulating this procedure, as well as the activities of state bodies and civil society institutions for its development. Undoubtedly, in the future mediation in our country should become a more frequently used tool that society will perceive as a familiar and effective way to resolve disputes and conflicts.

Results

In general, mediation was not used in the Soviet period as an out-of-court peaceful settlement of disputes in the classical sense of the term, as it was implemented in countries with a developed legal system, already since that period. However, there were separate ADR elements, primarily arbitration courts and arbitration. The experience of implementing the work of the "courts of public initiative" as a procedure close in essence to mediation, did not become something determining the future development of this direction for the USSR as a whole, as well as for Kazakhstan of the Soviet period. In the post-war period, the friendly courts are also being restored and started working again. Since 1959, some judicial functions have been transferred to them. For example, in the Regulation "On the State Forest Protection of the Kazakh SSR" approved by the Resolution of the Council of Ministers of the Kazakh SSR of October 28, 1963, it was stated that cases for compensation of a small amount of damage to forestry and other forest violations should be considered in friendly courts. In the Regulation "On Friendly Courts", approved by the Decree of the Presidium of the Supreme Soviet of the Kazakh

SSR dated March 28, 1977, the norm was adopted that friendly courts consider cases of minor offenses that a person commits for the first time. At the same time, such courts themselves were "unprofessional tribunals" at residential buildings, educational institutions, collective farms, enterprises, etc. Those who sat in them were not professional lawyers, but activists with a certain authority. And in general, at that time, friendly courts were considered "as truly democratic methods of conflict resolution, without the use of the instrument of violence of the state apparat [2]. Their goal was not coercion, but influence, and not on the "accused", but on "a person brought to a friendly court." That is, in this case, there was also a dispute settlement procedure similar to mediation, although different in nature, largely ideologized. It is noted that the regulation "On Friendly Courts" of 1977 continued to be formally valid until 1995, this is confirmed by the Decree of the President of the Republic of Kazakhstan, which has the force of the Law "On Amendments and Additions to some Legislative Acts of the Kazakh SSR and the Republic of Kazakhstan" dated December 25, 1995 No. 2725. Although, with the development of market relations, other relations in the civil and criminal law sphere, it is clear that we are talking only about its de jure action, since de facto preservation in society of elements of the so-called "socialist legality", which included friendly courts, was really impossible [2].

In the post-Soviet period, the formation of a new judicial system began in independent Kazakhstan, taking into account the norms and principles inherent in a rule-of-law democratic state. At the same time, ADR mechanisms began to be created in the first years of the existence of the new system. Thus, in 1993, the first arbitration and arbitration courts were established, which were abolished only with the adoption of the CPC RoK in 1999. However, on December 28, 2004, Kazakhstan adopted the law "On International Arbitration", "On Arbitration Courts", from where arbitration and arbitration proceedings became possible again. At the same time, mediation as one of the ADR mechanisms and the prospects for its implementation in the legal system of Kazakhstan began to be actively discussed only in the late 1990s.

In 1999, the Association "League of Consumers of Kazakhstan" conducted a study aimed at understanding the problems of citizens' access to justice, the effectiveness of protecting the interests and rights of consumers in the country. This became the subsequent basis for the development of proposals for the creation and development of a mediation system in Kazakh law. The beginning of the introduction of the institute of mediation in the country can be counted from the adoption of the Decree of the President of the Republic of Kazakhstan "On the Concept of legal Policy of the Republic of Kazakhstan" dated September 20, 2002 No. 949. At the same time, the first conference dedicated to this problem – "The introduction of mediation in Kazakhstan", organized with the support of the Soros-Kazakhstan Foundation by the League of Consumers of Kazakhstan was held only in 2003. According to its results, a six-month experimental mediation service was implemented in Almaty. After that, the project "Improving access to justice through the development of mediation and consumer counseling" was implemented, which was also organized by the League of Consumers of Kazakhstan with the participation of the International Consumer Organization (SiAi), with financial support under the TACIS program of the European Commission. In 2005, the same association held an international seminar "Strengthening access to justice and conflict resolution through mediation". And since 2006, trainings on alternative dispute solutions have been conducted in the regions of the country within the framework of this project. As a result, representative offices of the Republican Public Association "National Chamber of Mediators" were established in a number of cities of Kazakhstan, where, with the adoption of the relevant law, it became possible to consider consumer, labor, family and, in part, even criminal cases of small and medium gravity with the participation of professional mediators [9].

The adoption of the law on mediation was preceded by the Decree of the President of the Republic of Kazakhstan "On the Concept of legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020" dated August 24, 2009 No. 858, on the basis of which the draft law on mediation was developed in 2010, and in 2011 the Law of the Republic of Kazakhstan "On Mediation" No. 401-IV dated January 28 2011 was adopted and entered into force. [19] It can be said that the adoption of such a law pursued the following goals:

1) reduction of conflict and tension of disputes;
2) reducing the burden on the judiciary;
3) acceleration and simplification of criminal proceedings;
4) Development of alternative dispute resolution methods [2].

At the same time, currently 6 organizations of mediators are officially registered in the country, and each of these organizations maintains a register of professional mediators. These organizations also train mediators, conduct seminars, and professional development.

Modern mediation in Kazakhstan is based on international norms. The parties decide for themselves whether to contact the mediator or not, and the mediator, unlike the court, is chosen. If the judge makes a decision strictly in accordance with the law, then the mediator – within the law, but taking into account the interests of the parties. Mediation, unlike the court, is not public, it is confidential. Within the framework of mediation in

Kazakhstan, internal and intercorporate disputes, disputes in the banking and insurance sector, labor, family, some types of civil disputes (including in the field of education, copyright) are currently being considered, in some cases, criminal cases of private prosecution. It is noted that in 2021 alone, up to 10.2% of criminal cases were completed by reconciliation of the parties through mediation procedures [2].

Conclusion.

In general, we can say that the origin of mediation as one of the tools of alternative dispute resolution (ADR) is associated with the activities of the institute of biys – "people's" judges, nominated taking into account their experience, reputation and authority to resolve conflict situations, claims. The biy court differed from the classical court: the biy was chosen by the parties themselves, the court was held only on the basis of a claim by one of the parties, the court was aimed primarily at smoothing out the conflict, compensation for damage, reconciliation of the parties. Proposals for reconciliation were also made before the start of the trial, and could be applied later. There is a connection between the Institute of biys in the Kazakh Khanate and modern mediators, taking into account the fact that Article 15 of the Law of the Republic of Kazakhstan "On Mediation" of January 28, 2011 has requirements for public (non-professional) mediators: having extensive life experience, authority and impeccable reputation. Also, the parties choose a professional mediator independently. The differences are due to the fact that the biy used to perform the function of an arbitrator, a judge whose decisions had to be executed, and only from a part – a mediator, an initiator of reconciliation. During the imperial period in the XIX century, the institute of biys completely changed its meaning and essence, becoming the service of the state, and biys ceased to be "nominees of society".

During the Soviet period, there were attempts to introduce alternative dispute settlement institutions into the country's legal system to relieve the burden on state courts: friendly courts, arbitration courts, arbitration courts. The friendly courts, at the same time, were largely connected with the work of non-professional judges and aimed at reconciliation and binding on certain actions, and not at condemnation and accusation. Nevertheless, these courts did not survive in the post-Soviet period, because they were sufficiently ideologized, their activities were practically inapplicable under the operation of market relations. And the procedures themselves within their framework differed significantly from mediation.

Mediation in Kazakhstan began to be introduced at the instigation of the Association "League of Consumers of Kazakhstan" and the Soros-Kazakhstan Foundation from the late 1990s and further from the early 2000s, when it was included in the Concept of Legal Policy of the Republic of Kazakhstan. Despite the previously conducted experiments on the opening of offices of mediators, officially this area has been regulated only since 2011, with the adoption of the law. Currently, there are 6 professional communities of mediators, and more and more cases of different directions are being considered by them in a pre-trial procedure for reconciliation. But the application of this procedure as a whole in Kazakhstan has not yet been developed strongly enough.

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