

4. Новиков, Л.А., Ярославцева Е.И. Семантические расстояния в языке и тексте[Текст] / Л.А. Новиков, Е.И. Ярославцева. – М., 1990. –112 с.

UDC 346.9

APPLICATION OF COMPULSORY MEDIATION IN KAZAKHSTAN AND FOREIGN COUNTRIES

Dronzina T.A.

(professor, Ph.D in Political Science of Sofia University St. Kliment Ohridski, Sofia city, The Republic of Bulgaria, dronzina@gmail.com)

Musabayeva G.N.

(senior lecturer, Phd in Law of M. Kozybayev North Kazakhstan State University, Petropavlovsk city, The Republic of Kazakhstan, mgul1970@mail.ru)

Аңдатпа

Соңғы жылдары Қазақстан Республикасында медиатор қызметтеріне деген сұраныс өсып келеді. Авторлардың пікірінше, медиацияны даулар мен қактығыстарды шешудің сот тәртібінен тыс әдісі ретінде енгізу ұзартылуы мүмкін. Сондықтан олар Қазақстан Республикасы Жоғарғы Сотының кейбір азаматтық істер бойынша міндетті медиацияны қамтамасыз ету жөніндегі пилоттық жобасы жақсы нәтиже беретініне сенеді. Медиация жаңа құқықтық мәдениет пен менталитетті қалыптастырады. Сондықтан, қазақстандық қоғам жана құқықтық мәдениетті қалыптастыру жолында

Түйінді сөздер: медиация (делдалдық), делдал, делдалдық тараптары, делдалдық принциптері, делдалдық мекемесі, келіспеушілік пен дауларды реттеу, мәжбүрлі делдалдық, татуласу рәсімі, дауларды балама шешу, соттан тыс дауларды (қактығыстарды) реттеу, делдалдық аймағы.

Аннотация

В последние годы в Республике Казахстан растет спрос на оказание услуг медиаторов. По мнению авторов, внедрение медиации как внесудебного способа разрешения споров и конфликтов может занять много времени. Поэтому они считают, что пилотный проект Верховного суда РК о закреплении обязательной медиации по некоторым гражданским делам дает хорошие результаты. Медиация формирует новую правовую культуру и менталитет. Поэтому казахстанское общество на пути формирования новой правовой культуры.

Ключевые слова: медиация (посредничество), посредник, стороны посредничества, принципы посредничества, посредническое учреждение, урегулирование споров и конфликтов, принудительное посредничество, процедура примирения, альтернативное разрешение споров, внесудебное урегулирование споров (конфликтов), области посредничества.

Annotation

In recent years demand for rendering services of mediators grows in the Republic of Kazakhstan. According to authors, mediation introduction as extrajudicial way of settlement of disputes and conflicts can be long. Therefore they consider that the pilot project of the Supreme Court of RK about fixing of obligatory mediation on some civil cases yields good results. Mediation forms new legal culture and mentality. Therefore the Kazakhstan society is gradually reconstructed.

Key words: mediation, mediator, sides (parties) of mediation, mediation principles, mediation institution, settlement of disputes and conflicts, compulsory mediation, conciliation procedure, alternative dispute resolution (disputes), out – of – court settlement of disputes (conflicts), areas of mediation.

Introduction

On January 28, 2011, the Law of the Republic of Kazakhstan «About Mediation» was adopted, which gave rise to the development of the Institute of Mediation in Kazakhstan. The law defines the purpose, tasks and principles of mediation, the functions and powers of the

organization of mediators, the legal status of mediators, and others. The analysis of the use of compulsory mediation in Kazakhstan and foreign countries helps to study the legislation and experience of each country in the field of mediation, as well as to highlight the general and specific nature of mandatory mediation at the international level [1].

We are currently watching how the institution of mediation was widely introduced into the legal system of the state, namely the system of protection of the rights and legitimate interests of individuals and legal entities. Demand from the civilian population and entrepreneurs on narrowly qualified mediators, which are centralized in a particular industry and have extensive experience in conducting mediation procedures, is increasing. The topicality of the introduction of mediation is indicated by the new pilot project of the Supreme Court of the Republic of Kazakhstan in 2017. By the order of the Chairman of the Supreme Court of the Republic of Kazakhstan K.Mamy from January 26, 2017 «About Approval of the Provision on the Implementation of a Pilot Project on the Implementation of the Pre – Trial Resolution of Disputes (Conflicts) on Certain Categories of Disputes in the Procedure of Mediation» initially provided for compulsory mediation for 8 types of civil cases. At present five other types of disputes and conflicts have been introduced into this order, and the term of the pilot project has been extended until December 31, 2018 [2].

The purpose of the pilot project is to introduce into the civil judicial proceedings of the pre – trial settlement of certain categories of disputes (conflicts) in the procedure of mediation.

The objectives of the pilot project are:

- 1) expansion of the scope of conciliation procedures;
- 2) minimization of court expenses of citizens;
- 3) identification of the interest of the population in the extrajudicial settlement of a dispute (conflict) [3, p. 57].

Mediation is required for 13 categories of disputes (conflicts):

- in the interests of the child (on determining the place of residence of the child, determining the procedure for communication between the parent and the child, the removal of the child from other persons, the collection of alimony for the maintenance of adult children studying in the system of general secondary, technical and vocational, post – secondary education, higher education system education in full – time education under the age of 21);
- labor, for which no obligatory pre – trial appeal to the conciliation commission is not provided in accordance with clause 1 of Article 159 of the Labor Code of the Republic of Kazakhstan;
- hereditary;
- emerging between neighbors on the definition of the boundaries of the land, the submerge of flats;
- about eviction, on condominium management issues;
- about the dissolution of the marriage and the division of property;
- under loan agreements;
- insurance;
- on the right to own property;
- on contracts of delivery, lease, purchase – sale, transportation;
- protection of consumer rights;
- on corporate disputes;
- related to the provision of medical services.

Participants in the pilot project are specialized inter – district courts for juvenile delinquency; district courts and courts equal to them, dealing with civil cases; specialized inter – district economic courts and mediators.

Let's consider the statistics of the North – Kazakhstan regional court. See Table 1 [4].

Table 1 Form of statistical reporting on the implementation of the pilot project of the Supreme Court for the introduction of pre – trial settlement of disputes (conflicts) for certain categories of disputes in the procedure of mediation. Information as of September 28, 2017

№	Category of affairs	With the use of compulsory mediation
1	in the interests of the child of them:	
	determining the child's place of residence	3
	on determining the order of communication between the parent and the child,	1
	about the removal of a child from other persons	–
	on collecting alimony for the maintenance of adult children studying in the system of general secondary, technical and vocational, after secondary education, in the system of higher education in full – time form of education under the age of 21 (on the collection of alimony for the duration of training)	2
2	Labor disputes (which do not provide for mandatory pre – trial application to the conciliation commission in accordance with clause 1 of Article 159 of the Labor Code of the Republic of Kazakhstan)	16
3	Hereditary	2
4	arising between neighbors on the definition of the boundaries of the land, the submerge of flats (on the disputed ownership of a lot)	–
5	about eviction, on condominium management issues	5
6	about dissolution of marriage and division of property	124
7	Disputes on loan agreements	49
8	Insurance disputes	1
9	On the right to own property	9
10	Under contracts of delivery, lease, purchase and sale, transportation	3
11	On consumer protection	–
12	For corporate disputes	–
13	Associated with the provision of medical services	–
	<i>Total:</i>	<i>215</i>

The given table shows that the largest number of resolved disputes and conflicts through judicial mediation follows from the question of the dissolution of marriage and the division of property – 124, which makes 58 % of all categories of cases, i.e. the majority. Further, according to statistics there are disputes under loan agreements – 49, which is 23 %, as well as in the third position labor disputes 16, which is 7 %, the remaining categories are 12 %.

During the study of the question of the use of compulsory mediation in Kazakhstan and foreign countries, we have become convinced that the demand for compulsory mediation in civil disputes and conflicts is growing. Let's consider the question of the use of compulsory mediation on the example of Europe and the United States. For example, the Republic of Bulgaria.

On 17 December 2004, a mediation law was adopted in Bulgaria, in which mediators can participate in the settlement of civil, commercial, administrative, family disputes, disputes related to consumer rights, and other disputes between physical and / or legal entities [5].

As to the court, in accordance with Art. 11 of the Mediation Act the court has a general right, at its discretion, to invite parties to seek mediation to resolve their dispute.

In addition, Art. 140 (3) and 374 (2) of the Civil Procedure Code establish the right of the court during civil or commercial proceedings to direct the parties to mediation in determining the time of the first public hearing. The parties may independently apply to mediation, or may be directed at mediation also at any stage of the trial. At the time of mediation, the trial is suspended (Article 229 (1) of the Civil Procedure Code. In accordance with Article 321 (2), (3) and (5) of the Civil Code of Civil Procedure, Article 49 (2) of the Family Code, in the event of a divorce trial the court is obligated to send the parties mediation or other procedure for the voluntary settlement of the dispute. If the parties agree to mediation, the trial is suspended only on the basis of a petition of the parties (Article 229 (1) of the Civil Procedure Code), and if in the absence of a party within six months the renewal of the proceedings, the proceedings are terminated (231 (1) Civil Procedure Code). In the case of a mediation agreement, depending on its content, the consideration of the case may be terminated by the court, or by mutual agreement of the parties is continued.

For example, in Italy, as of March 21, 2011, compulsory mediation applies to all disputes of real rights (distance between buildings, servitude, etc.); property section; inheritance; marriage contracts; lease agreements; Gratuitous Grant for Use (on the basis of a notarized certificate); rental of enterprises; Compensation for harm in connection with the responsibility of health workers and institutions and defamation in the press or other media; insurance contracts, banking and financial contracts. Disputes arising from condominiums and compensation for damage from road and water communications are also attributed to this group since March 20, 2012. A party intending to sue is obliged to make an attempt at reconciliation. Together with the statement of claim, the judge must submit a document (a form signed by the mediator), confirming the attempt to conduct the mediation. Even if the dispute falls under the requirement of compulsory mediation, one can always turn to the judge so that he takes urgent security measures. In general, in Italy, the procedure for mediation exists in two forms: voluntary (the parties have the right to decide on a mediation procedure on their own in any civil or commercial dispute) and compulsory [6].

The mediation procedure in France is currently voluntary. However, a mandatory pre – trial procedure for certain categories of disputes provides for a conciliation procedure: for the settlement of disputes relating to the divorce of spouses, as well as cases considered by the councils for the settlement of labor disputes and tribunals for agricultural leases. Special rules relating to family law (Sections 255 and 373 (2) – (10) of the Civil Code – Parental rights and divorce, respectively) also establishes the right of the judge to obligatorily send the parties to the family mediator who, for free, explains to the parties the purpose and the essence of the procedure of mediation. In the event that the parties provided for a mediation clause in the contract, it is mandatory, and before the execution of the case, the case can not be considered by the court. This applies even to those cases where, in the opinion of the parties, the conduct of mediation will be ineffective. If, in a mediation clause, the parties did not specify the

applicable rules and provider of mediation services, the court independently determines such provider (in this case the rules of procedure established by the provider are applied) [7].

For example, in Germany, since the 1980 s, pre – trial and extrajudicial methods of resolving legal conflicts have been introduced. Since 1988, mediation has been actively used in the Small Family Judicial Council at the Evangelist Academy of Arnoldschain, and in 1991, the first congress on mediation took place in Bonn. The norms for mediation are contained in the Introductory Law to the German Civil Procedure Code. The reform of the civil law of 2001 stipulates that in the case of small claims, conflicts with neighbors and accusations of defamation, a mandatory stage of pre – trial settlement is required. Mediation and conciliation procedures are included in German civil law and are based on voluntary participation. In Germany, mediators work directly at courts, significantly reducing the number of potential litigation. Today, mediation is integrated into German courts not only in family matters, but also in courts of general jurisdiction, administrative courts, etc. In most German law schools, a regular course of mediation has been introduced. That is, everyone who is issued from the Faculty of Law, passes the course of mediation [8].

And now let us consider the United States. Since 2005, the United States has a unified law on mediation, which in fact represents a codified document that combines a large number of legal acts. The peculiarity of mediation in the United States was the obligatory nature of its application in a number of cases. For example, at a legislative level in several states (in particular, California) it has been established that courts are considering divorce cases only after an attempt has been made to resolve a dispute involving a mediator. Although mediation is by nature a voluntary procedure, in some cases it has become a semi – mandatory or compulsory procedure. Obligations to pass mediation in some states are established by law (for example, disputes in connection with medical negligence, insurance, family and property disputes, warranty issues under contracts for the sale of goods), in others – it may be ordered by a judge, depending on the individual characteristics of the dispute, from the rules of a specific court mediation program. That is, the answers to questions about whether mediation is mandatory in the event of a dispute and whether mediation is a condition for the consideration of a case by a court depends on many factors at once:

- from the contract of the parties, if any, and from the presence of a mediation clause;
- from legislation: federal and specific state;
- from a specific court authorized to consider the dispute, including from the program on alternative dispute resolution in this court.

There may be programs of both compulsory and voluntary mediation in different areas within one state of New York: it depends on the particular program in court. In Texas, the right of a court to oblige parties to participate in mediation is established by Art. 154.001, 154.021, 154.022 Code of Civil Procedure and Remedies [9].

Methods of research. The result of the study

At the core of this article there are the methods of legal analysis, formally logical and system. In the course of the study, the authors, based on the experience of using mediation in foreign countries, have focused on the use of mediation in civil disputes and conflicts.

Conclusion

Thus, since the adoption of the Law of the Republic of Kazakhstan «About Mediation» it took 7 years. Some experience has been accumulated, which indicates that mediation is enshrined in the legal system of Kazakhstan. Due to the introduction of compulsory mediation, the percentage of extrajudicial settlement of disputes and conflicts is gradually increasing. In the West, people are turning to professional mediators willingly. For example, in England this is 87 % of the conflicting, in the USA – 90 %, in Kazakhstan this indicator is

still at 0.03 % in 2014 to about 10 % in 2018. Mediation is beneficial and the judicial system itself, because it significantly reduces the burden on judges and the timing of cases, reduces the negative emotional burden on the parties.

Literature:

1. Dronzina T. Mediation: teaching and methodical manual. – Astana, 2015. – 320 p.
2. Ertaeva R. On the implementation of a pilot project on the implementation of pre – trial settlement of disputes (conflicts) according to the categories of disputes in the procedure of mediation // <http://www.zakon.kz/4905143-o-realizatsii-pilotnogo-proekta-po.html>.
3. Musabayeva G.N. Collection of legal acts on mediation and their application: a teaching manual. – Petropavlovsk: M. Kazybayev at. NKSU, 2017. – 100 p. / Collection of legal acts on mediation and their application: methodical manual / compiler Г.Н. Musabayeva – Petropavlovsk: SCUU them. M. Kozybaeva, 2017. – 103 p.
4. Statistical data of the North Kazakhstan regional court on a pilot project as of 09/28/2017. – Materials of the cabinet of mediation of the KSU Қоғамдық қлсім. – Petropavlovsk, 2017.
5. Participation of citizens in the administration of justice in the modern world // http://www.ifp.uran.ru/netcat_files/multifile/789/Bulgaria.pdf.
6. Mediation in Italy // <http://bgarf.ru/science/baltic-center-of-mediation-and-conflictology/publikacii/12.pdf> // <https://cyberleninka.ru/article/n/opyt-zakonodatelnogo-regulirovaniya-mediatsii-v-zarubezhnyh-stranah>.
7. Mediation in France // <http://fedim.ru/mediatsiya-v-mire/evropa/frantsiya>.
8. Measurement in Germany // <http://www.mediation-centre.kg/index.php/o-mediatsii/mediatsiya-v-mire>.
9. Mediation in the United States // <https://cyberleninka.ru/article/n/mediatsiya-sposoby-i-zadachi-regulirovaniya-sporov-opyt-zarubezhnyh-stran>.

UDC 325.1

THE FACTORS INFLUENCEING ON MIGRATION OF LABOR RESOURCES INTHE REPUBLIC OF KAZAKHSTAN

Legostaeva L.V.

*(candidate of Economic Sciences, NKSU named after M. Kozybayev,
c. Petropavlovsk, Kazakhstan)*

Balgabayeva S.B.

*(undergraduate, the priority of the department is «Economics is and accounting», SKGU
movement named after M. Kozybaev, Petropavlovsk, sabina_balgabaeva@mail.ru)*

Аңдатпа

Бұл мақалада «көші – қон» түсінігі талқыланып, халықтың көші – қон түрлерінің жіктелуі кеңейтілді. Сонымен бірге, Қазақстан Республикасының еңбек ресурстарының көші – қонына ықпал ететін факторларға басты назар аударылады. Демографиялық факторларға тән белгілер ашылған.

Түйінді сөздер: көші – қон, демографиялық факторлар.

Аннотация

В статье раскрыто понятие «миграция», представлена классификация видов миграции населения. При этом основной акцент сделан на факторы оказывающие влияние на миграцию трудовых ресурсов с Республике Казахстан. Раскрыты признаки характерные демографическим факторам.

Ключевые слова: миграция, демографические факторы.