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LEGAL MEDIATION: INTERNATIONAL PRACTICES IN EUROPEAN COUNTRIES

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Abstract. In the article, the concept of legal mediation is described from a comprehensive social, legal, and political perspective, the prerequisites for the emergence of mediation and the mediation process in European countries (USA, England, France, Netherlands, Germany, Austria, Italy, Switzerland) are based on comparative analyzes through international experiences. We have analyzed the future mediation of the arbitration court, which is carried out by involving a neutral third party - an arbitrator to resolve disputed issues, for example: land, house property, divorce process, conflicts.

The article also extensively reviews the European Code of Mediators by the European Commission, the guidelines of the European Parliament and the Council "On some aspects of mediation in civil and commercial matters", and discusses how mediation is currently proceeding on a scientific basis. American corporations and more than 250 law firms report that 75-85% of disputes go to a mediator before they attempt to reach a settlement and find a positive resolution.

The relevance of the article is not only the mediation process in European countries, but also the course of this process in Kazakhstan. In comparison, if in foreign countries this is a systematic legal process and is used in practice, in our country, although it is used in practice, there is still a need for improvement.

The article also mentions the Siberian Conflictology Center (Kostanai), Kokshetau Mediation Center (Kokshetau), Mediation and Conciliation Center (Almaty), "Mediation and Law Center" (Karagandy), which is engaged in educational and educational services for the purpose of training mediators through a system of mediation training and seminars. The works of foreign, Russian and domestic scholars on legal mediation are also analyzed.

Keywords: legal mediation, mediator, notarial service, inherited property, conflict, mediation service, conciliation, notary

Basic provisions

In many cases, conflict is understood as one of the forms of human interaction, which is based on various kinds of real or illusory, objective or subjective, to varying degrees, conscious contradictions between people, with attempts to resolve them against the background of the manifestation of emotions.

Conflict is always an intrigue, where the goal and means are carefully disguised, a cruel, insidious intrigue, involving obvious and hidden blows and pleasure from the defeat of the enemy. The word conflict is usually perceived by

people from a negative perspective. They associate this word with hostility and pain, which in reality accompany all those in conflict. However, in organizations, conflict is not necessarily a negative thing. Often, conflicts help participants in the labor process, when they find themselves in conflict situations, to better understand the goals of the organization, turn to their unused reserves and do much of what seems impossible under normal conditions.

It is not even the conflicts themselves that have a destructive effect on people and make it difficult for them to live together, but their consequences: fear, hostility, threats. Controversies affect any sphere of social life and its members: politics, economy, family, national relations, etc. takes place. The field of law is one of them. A generally accepted definition of a legal dispute has not yet been created in science, because legal conflictology is still in its infancy. But there is no doubt that legal conflictology is a type of social conflict, and the legal component is its main distinguishing feature. Mediation was formed only second half of XX century. At first it was based in the USA, and a little later on Europe in countries – in England, in France, In the Netherlands, in Germany, Austria, in Italy, in Switzerland profit be started.

Introduction

Mediation - is a conciliation procedure based on negotiations between disputing parties with the participation of a mediator in order to reach a mutually beneficial agreement on disputed issues. Mediation appeared very early. Bringing in a neutral third party to resolve the conflict was necessary, above all, for survival (individuals or groups, often primitive tribes). Priests and chiefs were the first to use this method, and in this way they stopped the murders and violence that threatened the tribe. It is known that in traditional Kazakh society in the Khanate, mediation activities were carried out by the Institute of biys, as well as by the elders of the tribe and zhuz. Three well-known legal provisions of the period of the Kazakh Khanate were the legal norms of Kasym Khan "Kaska Zholy", Yessim Khan "old Zholy" and Tauke Khan "seven statutes" on the peacekeeping role of judges and elders of the tribe in disputes in the Kazakh Society of that period " [1, pp. 56-58.].

Mediation was especially actively used during the settlement of international disputes. It was called variously: "mediation", "guarantee", "offer of good services".

Mediation is a process of conciliation by involving the disputing parties in voluntary negotiations with the participation of a neutral person - a mediator (intermediary) in order to reach their mutual understanding and make a mutually beneficial agreement. Its symptoms are as follows:

1. Mediation is a procedure for resolving a dispute in a way that supports both of them through communication in such a way that both parties feel they are the winners in the end.

2. Mediation is a voluntary procedure. The success or failure of the mediation procedure depends only on the parties themselves.

3. The activity of disputing parties to choose a mediator, discuss each other's arguments and arguments, and reach a mutually beneficial decision.

4. Only a neutral person who is not a party to the dispute can be elected as a mediator [1].

It is mentioned signs only real general in a way only of mediation nature about understanding give gets including thanks to conflict of participants with themselves but argumentative of the parties mutually agreement according to involved of intermediaries help through regulated.

Mediation was first used professionally in the United States in 1913 in disputes between employers and employees and gradually became institutionalized. Established in the United States under the Civil Rights Act of 1964, the Department of Justice's Community Liaison Office provides negotiation and mediation methods to resolve disputes and disputes arising out of discrimination based on race, color, and ethnic origin. Today, mediation, which is an effective and peaceful means of dispute resolution, is widely used in the countries of the American continent and European countries, especially in the countries that are members of the European Union [2].

In 1998, research on alternative dispute resolution methods began in the European Union. The European Union summit held in Finland in October 1999 invited member states to participate in out-of-court dispute resolution. This call played a positive role in understanding the impact of alternative methods of dispute resolution in facilitating access to justice [3, 948 p.].

XX century to the head towards intense developing America in the economy of the conflict new type profit was: formed labor contracts and wages between unions and employers struggle for size. If disputes are not resolved quickly, revolutions, mass from work produce and factories completely temporary closed drop dangers arises. For example, in 1947 year Mediation and reconciliation service was created.

An enforceable arbitration involving a neutral third party (arbitrator) to resolve the dispute was the image of the future mediation. European countries - England and France XVII-XVIII centuries. are the centers that have emerged in the middle of the case. It is the non-compliance with the social realities of the outdated law, the situations that do not respond to the peculiarities of capitalist relations, that turn to such possibilities as a simple, cheap and competent interval.

The second prerequisite for the emergence of mediation was the emergence of organizations such as "Community Mediation" and "Neighborhood Justice Centers" in the USA in the late 60s. The activities of these local non-governmental organizations are aimed at solving conflicts between families, neighbors and low-income individuals [4].

The features of the American-citizen process formed in the 60s were the third prerequisite. In particular, some of its negative aspects. Under American law, each party pays for its own attorney, regardless of the outcome of the case. Therefore, losses for both parties are inevitable. In the case of economic disputes, these costs reached a very large amount. And the process itself has become very protracted. As a result, exhaustion and frustration often lead to a court settlement. In such cases, the advantages of mediation become clear.

Mediation only 70th of years from the middle from only original became an independent ceremony. In 1981 at Harvard, Roger Fisher and William Uri kind of

professors interests and positions to limit based on “together actions” that called Harvard explained the concept. For example, parties during negotiations mostly vice versa to be found their own legal positions sets out This of agreement maybe that it is not brings. In addition, outside the strict positions of the parties, first of all, known needs (interests) consists of they with principles compared to being the opposite not found.

Description of materials and methods

The article was based on the works of some foreign, russian and Kazakhstani authors such as Fridman Gari “A model of mediation based on understanding”, Hesl G. “Mediation in conflict resolution. Theory and technology”. Also, there are given works of Domestic researchers. For example: The book of Myrzahanova M.N. “Legal conflictology and basis of mediation”, the article of Jekebayeva M.A. and others “Civil society institutions”. In her work Myrzahanova M.N. “Legal conflictology and basis of mediation given descriptions about legal mediation and ways how to solve conflict situations with mediation” [5].

Currently, mediation has reached the highest level of demand - 90th of years to the end towards from 200 more than large American corporation and more than 250 law firms in the event of a dispute to compromise action until done to court do not apply on to agreement now. in the USA conflict of circumstances in 75-85% to the mediator appeals to in addition, mediation of agreements made during 90- 95% will be performed. 2001 year in the USA mediation in various fields service regulator of states to this until action did laws combined.

Mediation single about law was accepted [6]. Austria became the first European country to adopt a law on mediation in 2003, and the profession of "mediator" belonged to a real business. And that was just 15 years after the first projects on mediation and restorative justice appeared in Austria.

Slovenia conducted a legal practice on the development of the mediator. Thus, today mediation in all European countries reconciliation of experience necessary element to be will be found. in Russia mediation disputes adjustment method as already known. To him within peasant society, as well as in high society conflicts adjustment for, for example, of princes enmity mutually disputes take off for addressed. In addition, the concept of mediation by law defined and it conduct principles, him held mediators of organizations legal status has been established. Law from January 28, 2011 in force now [7].

Results

Mediation has emerged as an urgent area of peace strategy for resolving disputes in modern Russia only after the break-up of the Soviet Union, when foreign mediators began training and training professionals in the mid-1990s, when they began to share their exploits and decades-long experience of mediating in the United States and Europe. The beginning of mediation in Russia was associated with a number of factors:

1) Increased work of the courts as a result of conflicts arising in the framework of the economic crisis, as well as the growing number of conflicts in the corporate and inter-corporate;

2) Mediators in some cases have begun to offer quick and affordable solutions to the dispute, but also to maintain confidentiality. In addition, the pre-trial agreement will allow the conciliation parties to continue their business cooperation and develop partnership relations, and this court will discuss the case.

This act to the conflict of participants mediation procedures approves the order of use and legal consequences. Besides that, there of mediators dispute of solution new Kazakh right institute the legal basis of their activities as special representatives has been established. Thus, it is favorable for the development of mediation in Kazakhstan situation does [5, p. 23].

V.F. Yakovlev gave next definition forward attracts: “Mediation – It's a kind of mediation reconciliation between disputing parties agreement make for the purpose of specialist dispute of the parties negotiations within regulation according to represents the function argumentative of the parties their own to the ceremony participation attention translation” [7, p.42].

O.V. Alexandrova gave next definition offers: “Mediation – of the parties own disputes (conflict) two jaw for as much as possible effective that it is resolved interested to be found third neutral of the party through participation the next negotiation” [8, p.17].

This of the method development E.I. Nosyreva from his works to see will be: “Mediation – of the parties their own contradictions third independent participant – mediator help through adjustment ceremony” [9, p. 39].

If a person carries out mediation activities on a professional basis, there to him add on, quite a bit is important requirements put:

- 1) twenty five age full;
- 2) highly professional knowledge there is;
- 3) Kazakhstan of the Republic determined by the government in order to be approved mediators preparation program according to teaching passed the course;
- 4) By itself managed mediators organization to be a member.

Exit should be able to find ways, so a mediator the finality of the negotiation to the goal hand deliver for, to the dispute of participants new has the necessary abilities to create a psychological normal state to be should. What professions service of the field representatives professional Kazakh mediators constitutes a category that is very appropriate the question arises. Mediation in the law on above as mentioned only age limitation up professional of education to be mediators special programs according to preparation from the course passing need about qualification dimensions mark sitting, This there are no restrictions on the direction. So with Law legal disputes according to mediation to spend oriented. This, own in turn, real (legal) and performed agreement for the purpose of development, but also the consensus reached is correct qualified legal counsel of the parties to formulate and approve to an appropriate extent help get necessity shows [10].

Discussion

The absence of disagreement more often speaks of a double standard than of harmony; about stagnation, complacency and degradation, and not about development; about psychosomatic illnesses, and not about self-control. Therefore, conflicts must be studied, as it is necessary to know what to do with conflicts so that they do not spoil our lives.

The causes of conflicts are mismatch:

1. Goals, interests
2. Views, beliefs
3. Personal qualities
4. Understanding information
5. Expectations, positions
6. Distribution of resources
7. Differences in behavior and life experience
8. Differences in attitudes and values
9. Bad communications.

The phenomenon of frustration arises when all possible paths to achieving a goal are blocked. For example, an employee waited long and stubbornly for appointment to a new position. He was confident, and those around him strengthened this confidence in him, that there were no other contenders. But when a real vacancy appeared, someone else was suddenly appointed to the position. The challenger reacts to the event with frustration, which can manifest itself in reactions of aggression, regression and withdrawal.

As mentioned above, the legal terms "mediation" and "intermediary" are mutually synonymous. The first is often used in foreign and translation literature, while the second is a Russian translation of the word and is frequently used by authors who write in Russian.

Modern legal literature provides many definitions of the concept of "mediation". Let's separate the two basic approaches from this category value: mediation is the activity of the mediator (mediator) to settle disputes. G. Hessel said the mediation was "a third party, mediator, who is ready to take all responsibility for the development of the common dispute with all participants...". [11, p.23].

In accordance with Article 1 of the Law On Mediation, the mediation applies in the following cases:

- 1) in the case of collective labor disputes;
- 2) in resolving disputes concerning the rights and interests of persons not participating in mediation;
- 3) resolving disputes in which one of the parties is the state;
- 4) in case of criminal and legal disputes [12, p.42].

The use of mediation in the following areas is more effective:

- family relations (especially in the period of divorce, during the separation of property);
- education and education;
- business and commerce (disputes between companies and their managers)
- economic sector (labor and industrial disputes);
- financial and banking system (industrial bankruptcy);

- tourism and leisure industry;
- insurance system, etc. [13].

However, if the lawyer is involved as a mediator, the main conditions preservation must - to dispute of participants of one from this ago interest protected by lawyer mediator be can't; he is very fair to be is necessary (because whatever one taking a party to the defense is his professional inclination), that because of lawyer-mediator competitive in process defender from the position to the position of support within the framework of cooperation shift must.

The past A judge is a good mediator, but he should be a judge should stop. Previously, he made decisions, he played the main role, and in this case, he has no right to make such a decision, it is only jointly with the parties effort thanks to to come to him will help. In Kazakhstan former the judge ie retired of the judge mediator to be opportunity about problem 9p.2 etc [14].

Literature in the eye's mediation conduct for notary public institute use about is said. if notarial service the basics analyze as for there to mediation typical all signs notary from work to see will be. From everything ago, his justice. Notary public of the legal profession with other representatives compared to only one to the side only "work do" can't because he is really notarial of action of all persons involved in its creation must take into account their interests. Kazakhstani legislation regulating notary services on the ability of notaries to participate in mediation one special instructions no, but this no way means does not mean and entrepreneurship not characteristic citizenship in the field mediation potential notarial in service since long ago in use. For example, notary marriage contract collected while living together property division about agreement, inheritance property division about agreement certification in the course of bringing the parties together and reconciling engaged in because to the notary do not apply ago This of agreement the future rights of participants duties due to misunderstanding conflicts will be.

Conclusion

In conclusion, conflicts, as mentioned above, can be open or hidden. If the former lie on the surface and are visible to the naked eye, then the latter are hidden from the eye of the observer. They are recognized by indirect signs, among which the main one is tension in interpersonal communication. The tasks of a leader are to bring hidden conflicts to the surface and resolve them. The strategy here is extremely simple: you need to find out the cause of the conflict, determine the goals of the conflicting parties, outline areas for convergence of the conflicting points of view and clarify the behavioral characteristics of the subjects of the conflict.

So, the ability to manage conflicts is the most important professional quality of a manager, without which it is impossible for him to effectively carry out his functions. Thus, mediation is characterized by speed, low costs and a future outlook, as well as preventing the disclosure of confidential information. It will lead to decision-making, help the parties of the conflict not only to protect their interests, but also to build constructive relations that are mutually beneficial in the future. The successful and quick end of the dispute depends on the same intermediaries, so the mediator's goal is to bring the parties to an agreement, because he himself does not make decisions for his clients, but only helps them to come to this decision together.

REFERENCES

- [1] Мырзаханова М.Н. Құқықтық конфликтология және медиация негіздері.- Көкшетау, 2016. – 99 б.
- [2] Конституция Республики Казахстан от 5 сентября 1995 года (с изменениями и дополнениями от 2 февраля 2011 года). – Астана, 2012.
- [3] Закон РК «О медиации». 28.01.2011г № 401. https://online.zakon.kz/Document/?doc_id=30927376
- [4] Колотова Н.Н. Конфликты в правовой сфере: уч. пособие. – Екатеринбург, 2008.
- [5] Хесль Г. Посредничество в разрешении конфликтов. Теория и технология. – СПб., 2004.
- [6] Троссен А. Первый вопрос медиатора // Медиация и право. – 2006. – №2.
- [7] Fridman Gi. A model of mediation based on understanding // Law. - 2006. - No.1. - P.39.
- [8] Hiter A. Reconciliation at will. Mediation as a tool for resolving labor disputes // Law Journal. - 2009. - No.11.- P. 55.
- [9] Myrzakhanova M.N., Myrzakhanov Y.N. and al. Mediation in criminal process of foreign countries and prospects for Kazakhstan. - Kokshetau, 2015.
- [10] Myrzakhanova M.N., Kuznetsov A., Tulegenov Sh. Medical mistake: legal aspects. - Yekaterinburg, 2015.
- [11] Efe H, Issayeva M. Kazak Hanlığı Döneminde Geleneksel Hukuk Kurallarının Kazak Topluluğunda Oynadığı Rol [Роль традиционных правовых норм в казахском обществе в период Казахского ханства]. Uluslararası Türkoloji Araştırmaları Sempozyumu, 26-28 Eylül 2019. - Van, 2019. - s. 56-58,
- [12] Джекебаева М.А. Азаматтық қоғам институттары: халықаралық тәжірибе // Әл-Фараби атындағы ҚазҰУ Хабаршысы, «Халықаралық қатынастар және халықаралық құқық» сериясы. – 2023. - Том 102. № 2. - 93-102 бб.
- [13] Jekebayeva M.A. Nassyrova M., Manapbayev N. Civil society institutions // Bulletin Kazakh Ablai khan UIRand WL. Series: International Relations and Regional Studies. – 2023. - No. 1 (51). – P. 156-168.
- [14] Yıldırımoğlu H. Avrupa ülkelerinde ticari arabuluculuk uygulamaları [Практика коммерческого посредничества в европейских странах] // Sosyal Bilimler Dergisi, Hukuk Sayısı. – 2022. – N 21 (44). – S. 945-961 [in Turk].

REFERENCES

- [1] Myrzahanova M.N. Құқықтық konfliktologija zhәне mediacija negizderi [Legal conflictology and basis of mediation]. Kөkshetau, 2016, p.99 [in Kaz.]
- [2] Konstitucija Respubliki Kazahstan ot 5 sentjabrja 1995 goda (s izmenenijami i dopolnenijami ot 2 fevralja 2011 goda) [Constitution of the Republic of Kazakhstan dated September 5, 1995 (with amendments and additions dated February 2, 2011)]. Astana, 2012 [in Russ].
- [3] Zakon RK “O mediatsii”. 28.01.2011, № 401 [Law of the Republic of Kazakhstan “About mediation” [in Russ].
- [4] Kolotova, N.N. Konflikty v pravovoj sfere [Conflicts in the legal sphere]: uch. posobie Ekaterinburg, 2008 [in Russ].
- [5] Hesl' G. Posrednichestvo v razreshenii konfliktov. Teorija i tehnologija [Mediation in conflict resolution. Theory and technology]. SPb., 2004 [in Russ].
- [6] Trossen A. Pervyj vopros mediatora [The mediator’s first question]. Mediacija i pravo, 2006, № 2 [in Russ].
- [7] Fridman Gi. A model of mediation based on understanding. Law, 2006, No.1, P.39.
- [8] Hiter A. Reconciliation at will. Mediation as a tool for resolving labor disputes. Law Journal, 2009, No.11, P. 55.

[9] Myrzakhanova M.N., Myrzakhanov Y.N. and al. Mediation in criminal process of foreign countries and prospects for Kazakhstan. Kokshetau, 2015.

[10] Myrzakhanova M.N., Kuznetsov A., Tulegenov Sh. Medical mistake: legal aspects. Yekaterinburg, 2015.

[11] Efe H, Issayeva M. Kazak Hanlığı Döneminde Geleneksel Hukuk Kurallarının Kazak Topluluğunda Oynadığı Rol [The role of traditional legal norms in Kazakh society during the period of the Kazakh Khanate]. Uluslararası Türkoloji Araştırmaları Sempozyumu, 26-28 Eylül 2019.- Van, 2019, s. 56-58 [in Turk].

[12] Джекебаева М.А. Azamattik qogam institwtтары: khalqaralıq tajiribe [Civil society institutions: international experience]. Әл-Фараби атындағы ҚазҰУ Хабаршысы, «Халықаралық қатынастар және халықаралық құқық» сериясы, 2023, Том 102. № 2, 93-102 бб. [in Kaz.].

[13] Jekebayeva M.A. Nassyrova M., Manapbayev N. Civil society institutions. Bulletin Kazakh Ablai khan UIRand WL. Series: International Relations and Regional Studies, 2023, No. 1 (51), P. 156-168 .

[14] Yıldırımoğlu H. Avrupa ülkelerinde ticari arabuluculuk uygulamaları [The practice of commercial mediation in European countries]. Sosyal Bilimler Dergisi, Hukuk Sayısı, 2022, N 21 (44), S. 945-961 [in Turk].

ЗАҢДЫҚ МЕДИАЦИЯ: ЕУРОПА ЕЛДЕРІНДЕГІ ХАЛЫҚАРАЛЫҚ ТӘЖІРИБЕЛЕР

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Аңдатпа. Мақалада құқықтық медиация түсінігі жан-жақты әлеуметтік, заңдық, саяси қырынан сипатталып, медиацияның пайда болуының алғышарттары және Еуропа елдеріндегі (АҚШ, Англия, Франция, Нидерланд, Германия, Австрия, Италия, Швейцария) медиация процесі халықаралық тәжірибелер арқылы салыстырмалы талдаулармен негізделген. Даулы мәселелерді, мысалы: жер, үй мүлік, ажырасу процесі, конфликтілерді шешу үшін бейтарап үшінші тарапты – төрешіні (арбитрді) тарту арқылы жүзеге асырылатын аралық сот болашақ медиацияны талдадық. Мақалада сонымен қоса, Еуропалық комиссиямен Медиаторлардың еуропалық кодексі туралы, Еуропалық Парламент пен Кеңес «Азаматтық және коммерциялық істердегі медиацияның кейбір аспектілері туралы» нұсқаулары туралы да кенінен қарастырылып, қазіргі уақытта медиация қалай жүріп жатқандығы ғылыми негізде талқыланған. Америкалық корпорация мен 250-ден астам құқықтық фирмалар дау болған жағдайда ымыраласуға әрекет жасалғанша, 75–85%-да медиаторға жүгінеді және оң шешімін табатыны, АҚШ-та түрлі салаларда делдалдық қызметті реттеуші заңдарын біріктірген Медиация туралы бірыңғай заң қабылданғаны жазылған.

Мақаланың өзектілігі тек Еуропа елдеріндегі медиация процесі ғана емес, сонымен бірге Қазақстанда да осы процестің өту барысы сипаттала кетеді. Салыстыра кетсек, шет мемлекеттерде бұл жүйелі заңды процесс болып практикада қолданыста болса, біздің елімізде практикада қолданыста жүргенімен әлі де жетілдіру қажеттілігі байқалады. Медиация туралы тренинг және семинарлар жүйесі арқылы медиаторларды даярлау мақсатында ағартушылық және оқу қызметтерімен айналысатын Сібір конфликтология орталығы (Қостанай), Көкшетау медиация орталығы (Көкшетау), медиация және бітімгершілік орталығы (Алматы), «Медиация және құқық орталығы» (Қарағанды) туралы да мақалада сөз етілген, Құқықтық медиация туралы шетелдік, ресейлік және Отандық ғалымдардың еңбектері де талдана кетеді.

Тірек сөздер: құқықтық медиация, медиатор, нотариалдық қызмет, мұрагерлік мүлік, конфликт, делдалдық қызмет, бітімгершілік, нотариат

ПРАВОВАЯ МЕДИАЦИЯ: МЕЖДУНАРОДНАЯ ПРАКТИКА В СТРАНАХ ЕВРОПЫ

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Аннотация. В статье раскрыто понятие правовой медиации с комплексной социальной, правовой и политической точки зрения, предпосылки возникновения медиации и процесса медиации в европейских странах (США, Англия, Франция, Нидерланды, Германия, Австрия, Италия, Швейцария) основаны на сравнительном анализе международного опыта. Мы проанализировали будущую медиацию третейского суда, которая осуществляется путем привлечения нейтральной третьей стороны – арбитра (арбитра) для решения спорных вопросов, например: земля, жилое имущество, бракоразводный процесс, конфликты. В статье также подробно рассматривается Европейский кодекс медиаторов Европейской комиссии, рекомендации Европейского парламента и Совета «О некоторых аспектах медиации в гражданских и коммерческих делах», а также обсуждается, как в настоящее время протекает медиация на научной основе.

Американская корпорация и более 250 юридических фирм в случае возникновения спора, вплоть до попытки достичь компромисса, 75-85% обращаются к посреднику и находят положительное решение.

Актуальность статьи заключается не только в процессе медиации в европейских странах, но и в ходе этого процесса в Казахстане.

Для сравнения, если в зарубежных странах это является системным юридическим процессом и применяется на практике, то в нашей стране он хоть и применяется на практике, но все же нуждается в совершенствовании. В статье также упоминаются Сибирский конфликтологический центр (Костанай), Кокшетауский центр медиации (Кокшетау), Центр медиации и примирения (Алматы), «Центр медиации и права» (Караганда), которые занимаются образовательными и образовательными услугами с целью обучения медиаторов через систему медиационного обучения и семинаров. Также

анализируются работы зарубежных, российских и отечественных ученых по вопросам юридической медиации.

Ключевые слова: юридическая медиация, медиатор, нотариальная услуга, наследственное имущество, конфликт, медиационная услуга, примирение, нотариус

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