

Development of online mediation in Russia and the Republic of Kazakhstan

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Abstract: Taking into account the practical and further legal implementation of alternative dispute resolution methods in the Russian Federation and the Republic of Kazakhstan, the legal community pays attention to the legislative consolidation of the status of mediation technology for dispute resolution, since the rights of citizens and legal entities and extrajudicial forms of protection of interests contribute to the development of social harmony, reducing conflict in society, as well as the development of cooperation relations in the long term. The authors drew attention to the implementation and increasing introduction of online mediation. However, in this regard, neither the Russian Federation nor the Republic of Kazakhstan have developed rules for virtual mediation, there are no regulations for conducting the procedure in the online space. The authors propose to standardize this institution.

Today, the use of the mediation institute shows that this mechanism may be necessary as one of the universal ways to resolve conflicts and disputes. When studying the application of the mediation regulations of the two countries, some features and differences were identified, as well as general rules for the use of alternative dispute resolution methods. At the same time, there is no special regulation for virtual dispute resolution in the legislation of the countries under consideration.

The authors recommend expanding the scope of virtual mediation in school life, using this institution more widely in intellectual property law and in other legal relations. Despite the fact that in the countries represented, various ways are used to achieve a mutually acceptable solution between the parties in court and out of court, but, as a whole, the institute of mediation and the institute of online mediation need to be expanded and standardized according to certain models, depending on the disputes under consideration.

Keywords: Alternative Dispute Resolution Methods. Mediation. Online Mediation. Mediation. Mediator.

Summary: 1 Introduction – 2 Literature Review – 3 Methodology – 4 Results – 5 Online-Mediation – 6 Opportunities and Disadvantages of Online Mediation – 7 Conclusions – References

1 Introduction

In recent years, mediation has become increasingly popular in many countries, including Russia and Kazakhstan. This article will consider the development of

mediation, as well as online mediation in Kazakhstan and Russia, the advantages and prospects of using this institution.

In this regard, the features of online mediation are considered and the disadvantages of such a procedure in these countries are noted. The authors raised the question of expanding such a procedure and the necessary steps for its implementation.

In the process of integration processes taking place in the modern world, both in Russia and in Kazakhstan, the norms governing the issues of alternative dispute resolution are converging, especially in the context of the trade development of the two states, family relations, cooperation related to intellectual property.

Therefore, it is necessary to expand and use modern technologies in virtual mediation for quick and effective consideration of disputes between entrepreneurs, in school, family areas, as well as in the field of intellectual property.

The development and convergence of economic, cultural and social integration are aimed at creating regulatory prerequisites for the convergence of issues of alternative dispute resolution of neighboring States. Issues of cultural integration, trade and business cooperation, the connection of national economies will increasingly generate disputes, therefore mediation helps to effectively use its methods related to the protection of rights, both on the basis of international principles and on the national principle of two states. In this regard, alternative dispute resolution, both in Russia and in Kazakhstan, has its positive sides, namely, the participants in such a dispute are independent, they voluntarily enter into mediation relations using an independent and honest mediator.

The Law of the Republic of Kazakhstan «On Mediation» defines mediation as a procedure for resolving a dispute (conflict) between the parties with the assistance of a mediator (mediators) in order to achieve a mutually acceptable solution implemented by the voluntary consent of the parties. The scope of mediation is disputes (conflicts) arising from civil, labor, family, administrative legal relations and other public relations involving individuals and legal entities, administrative bodies, officials, as well as those considered in the course of proceedings on administrative offenses, in the course of criminal proceedings in cases of criminal offenses, crimes. and of moderate severity, as well as relations arising during the execution of enforcement proceedings.¹

The Russian law does not directly list the scope of mediation in criminal legal relations, however, it states that mediation procedures can be applied to public legal relations.

¹ The Law of the Republic of Kazakhstan «On Mediation» dated January 28, 2011 [Electronic resource] — URL: <https://adilet.zan.kz/rus/docs/Z1100000401> (accessed: 10.08.2023).

Public relations in the specific conditions of a market economy, which are formed by the state, their institutions of various organizations, as well as individuals, legal entities, are very often characterized by the growth of various interactions in various legal, political and economic, cultural and other relations. In addition, as experience shows, in the process of interaction, subjects often get into different conflict situations that require their own solutions. Alternative dispute resolution methods and various conciliation procedures always have advantages due to the parties' free choice of intermediaries with high qualifications. In Russia, Federal Law No. 193-FZ of 27.07.2010 (as amended on 26.07.2019) «On Alternative dispute settlement procedure with the participation of an intermediary (mediation procedure)» (hereinafter the Law of Russia on Mediation), in the Republic of Kazakhstan the Law of the Republic of Kazakhstan «On Mediation» of 28.01. No. 401-IV of 2011 (as amended on 01.05.2023) (hereinafter referred to as the Law of the Republic of Kazakhstan «On Mediation») are aimed at improving the productive consideration of disputes using certain features in certain areas: be it family, corporate relations, intellectual property. In this regard, we attribute the institution of alternative dispute resolution to the sphere of both public and private law. Comparing the institute of mediation in Russia and Kazakhstan, it should be noted that in practice in these countries alternative dispute resolution is mainly common in family legal relations. As V.S. Savina points out, regarding Russia, this is also common in consumer protection issues, in housing and insurance disputes, as well as in cases arising from property and other relations (debt collection).² School mediation has also become popular and rapidly developing in Kazakhstan.

2 Literature Review

In modern research, both in Russia and in Kazakhstan, mediation issues are increasingly being discussed. In modern realities, the very nature of mediation and its developing counterpart – online mediation, their advantages, features of the consideration of individual cases on various legal relations are considered. This topic was studied by experts from Russia and Kazakhstan: R.R. Maksudov, A.Ya. Kurbatov, V.S. Savina, S.N. Gavryushkin, A.K. Sheremetyeva, S.N. Velitchenko, E.V. Mitskaya, A.T. Ismagulova and other authors. The authors' conclusions are that the Russian and Kazakh forms of mediation are created on a voluntary basis with the consent of all participants in alternative dispute resolution and are of a private nature.

² SAVINA V.S. Mediation in the field of intellectual property: opportunities and prospects of application. Intellectual property. Copyright and Mixed Rights, №. 10, pp. 35-42, 2017.

3 Methodology

The object of this study is the course and development of individual mediation institutions in Russia and Kazakhstan, as well as the consolidation of the legal status of conciliation procedures in individual areas, the fixation of mediation technologies for dispute resolution. Particular attention is paid to the use of online mediation in dispute resolution, which has begun to develop thanks to digital technologies. The subject of the study were normative legal acts regulating the scope of mediation, modern theoretical views on ways to resolve legal disputes in private and public legal relations. The methodological basis of the research is based on the unity of cognitive, rational and practical activities, a general scientific dialectical method of cognition of natural objective activity, which studies current legal issues of mediation. In the course of the study, systemic-structural, comparative-legal methods were also used. The methodology of the study includes the study of certain aspects of mediation, comparison of the institute of alternative dispute resolution of the Russian Federation and the Republic of Kazakhstan, their relationship in historical terms and their difference. The dialectical method was used to study the doctrine of dispute resolution in the two countries, to determine, first of all, the national influence on individual dispute resolution procedures, especially in the field of family relations, in the field of school mediation and intellectual property law.

Indeed, when it comes to family disputes, «stakeholders involved in mediation often take responsibility for implementing the best available practices, especially when it comes to a child; thus, it benefits one of the most vulnerable segments of society»³.

Assessing school conflicts, we note that it is better to involve teachers to resolve a dispute in the relations of schoolchildren, since «mediation helps the teacher mediator better understand the points of view of others...»⁴.

Mediation is not only a choice of alternatives and a departure from the state court, it is also «a way of behavior in conflict, as a culture of positive communication».⁵

Disputes in the field of intellectual property are the most complex requiring more precise regulation and depend on the one hand on violations of the exclusive

³ GONZALEZ-MARTÍN N. Mexico-U.S. cross-border family mediation: legal issues in Mexico. *Mexican Law Review*. Том 9, выпуск 2, январь-июнь 2017 г., p.139. Pages 129-139.

⁴ GARCIA S., IRIARTEREDIN C. Evaluation of a School Mediation Experience. *Procedia - Social and Behavioral Sciences*. Volume 84, 9 July 2013, p. 185.

⁵ SHARAPOVA A., MARKOV S. Mediation in Russia and China: similarities and differences in the interpretation of an alternative dispute resolution procedure (mediation). *American Scientific Journal*. 2017. Vol. 3 (11). Pages 32-39. https://www.researchgate.net/publication/330728850_MEDIACIA_V_ROSSII_I_KITAE_SHODSTVA_I_RAZLICIA_V_TRAKTOVKE_ALTERNATIVNOJ_PROCEDURY_RAZRESENIA_SPOROV_MEDIACI (accessed: 02.11.2023).

right to various intellectual property objects and on the other, on the parties involved in the dispute.

The system-structural method made it possible to show the features of legal regulation of means and methods, the classification of individual mediation technologies used in mediation in Russia and Kazakhstan. Comparative methods allowed us to show the most acceptable ways to quickly resolve disputes.

4 Results

Mediation in Kazakhstan began to develop actively in 2011 with the adoption of the Law of the Republic of Kazakhstan «On Mediation». This law established the legal basis for mediation and defined its goals, principles and procedures. Since then, mediation has become a widely used dispute resolution tool in Kazakhstan. Mediation has a number of advantages over traditional dispute resolution methods, such as lawsuits. Firstly, mediation is a fast and cost-effective way to resolve disputes. Instead of spending a lot of time and money on lawsuits, the parties can reach an agreement through mediation in a short time and with minimal costs. Secondly, mediation allows the parties to maintain good relations after the dispute is resolved. Since the decision is made by the parties themselves, they feel more satisfied with the result and are ready to maintain further relationships. Kazakhstan, like Russia, strives to create an effective mediation system accessible to all citizens and organizations. More and more people and organizations are realizing the benefits of mediation and are ready to use it to resolve their disputes. In Russia, after the adoption of the Law on Mediation, alternative dispute resolution procedures began to develop. But today, unlike Kazakhstan, this method of dispute resolution is not developing enough in Russia, as it can be quite difficult to persuade the parties to resolve contradictions by mediation due to various circumstances.

At the same time, the Government of Kazakhstan actively supports the development of mediation and provides financial and organizational support. Alternative civil rights protection is developing widely in this country as the economy develops.

In Russia, family mediation centers are working dynamically in the regions, especially within the framework of the Concept of state Family Policy in the Russian Federation for the period up to 1925, it is envisaged to use the institute of mediation everywhere in resolving conflicts in family relations. However, as many experts note, despite the widespread development of regional family mediation,

this institution requires more detailed legal regulation, as it is still in its infancy in Russia.⁶

In 2021, in Kazakhstan, in connection with the adopted amendments to the Law of the Republic of Kazakhstan «On Mediation», the possibilities of alternative dispute resolution were expanded: namely, the areas for the use of conciliation procedures were increased, citizens' expenses in this area were minimized, the activities of professional (in cities) and public mediators (in villages) were divided. In Russia, the mediator's activity is divided into professional and non-professional, which gives free choice to the parties to the dispute.

Mediation unloads the judicial system, not being – contrary to its name – its alternative, but, most likely, its complement.⁷

In Russia, unlike Kazakhstan, cases involving a mediator in intellectual property law are considered much more often. So an interesting case was the dispute over a short literary work that has commercial success, as a result of which the parties agreed on co-authorship of the disputed object. As the well-known mediator Yana Stuf points out, the parties have come to a Mediation Agreement, in which a separate section is devoted to the Agreement on Co-authorship. The proofs of this dispute were drafts belonging to both authors.

Disputes with the results of intellectual activity are complex disputes. So in the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation⁸ all disputes are divided into particularly complex, complex and less complex with assignment of case complexity coefficients.

The use of mediation in resolving disputes in intellectual property law has become a popular way.

Especially if it is connected with the payment of compensation in case of violation of the exclusive right to an object of intellectual property by individual entrepreneurs, who can take advantage of a reduction in compensation in court proceedings and, as practice shows, such payments can be assigned during court proceedings below the existing limits established by the legislation of the Russian Federation from 10,000 thousand rubles to 5000000 million rubles.

In intellectual property law, the role of service objects is also important, therefore, it is proposed to divide the consideration of such disputes between an employee and an employer in more detail. The authors propose to consider service

⁶ GURKO T. A. Formation of the institute of mediation in the field of family disputes in Russia: laws, theories and practices // Sociological science and social practice. , v. 4. n. 2(14), p. 41, 2016.

⁷ DRONZINA T. Mediation. Astana: public opinion. 2015, p. 72.

⁸ Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated July 1, 2014 №. 167 «Recommendations on the application of criteria for the complexity of disputes considered in arbitration courts of the Russian Federation» (Based on the materials of «Consultant-Plus»).

disputes on special online platforms or in a specially designated place, outside the employer's premises.

Another problematic issue, both in Russia and in Kazakhstan, is the involvement of mediators with special professional training in the process, which is of particular importance for intellectual property law, corporate disputes.

The mediation procedure in this sense is beneficial both to the entrepreneur who violated the right for the first time, and to the copyright holder himself. A mediation agreement on the amount of compensation in this sense will not only be beneficial to the parties to the dispute, but will also be subject to a quick solution of the problem.

In our opinion, alternative methods of dispute resolution (mediation) in the field of intellectual property should be regulated depending on the participants, objects, since, for example, the secret of production (know-how) has a trade secret regime, respectively, in such a dispute there is a question of strict confidentiality.

Focusing on family mediation, the most common dispute resolution, it is generally considered that this is a procedure, mainly divorce. However, we believe that the issues of family business, which is diverse, from small to large, the maintenance of elderly parents, the upbringing of children are also a complex process. Also, the solution of complex cross-border family relations can become the subject of mediation. Using the example of the Union of European States, we agree that with regard to cross-border disputes, it is necessary to ensure the full dissemination of the agreement reached in any member State on the basis of general norms of private international law on key aspects of cross-border mediation.⁹

For the Russian alternative dispute resolution in this area, the national peculiarities of the Republic of Kazakhstan are also important, especially if it concerns disputes over the care of elderly parents. Indicative points for the Republic of Kazakhstan are the issues of resolving the rights of heirs in the family business, registration of rights to trademarks (service marks), the use of commercial designations in the family business, taxation issues and others.

Labor disputes are one of the spheres in the countries under consideration, which testifies to the effectiveness of the participation of the mediator, due to the fact that the employee is a less protected party to the labor dispute. However, statistics show that mediation in labor disputes in Russia and Kazakhstan is not popular and not widespread, due to the complexity of the execution of mediation agreements, especially on the part of the employer.

⁹ ESPIUGUES C. Mediation and private international law: improving free circulation of mediation agreements across the EU IN-DEPTH ANALYSIS. p. 1, November. 2016.

However, in the Republic of Kazakhstan, «after the December events in Zhanaozen, the government created a social partnership center, whose functions include monitoring labor relations, resolving labor disputes and preventing them»¹⁰

As part of the unification of Russian legislation and the legislation of the Republic of Kazakhstan, it is necessary in Russia, as in Kazakhstan, to extend mediation to collective labor disputes. This type of dispute resolution is also common in foreign law, where specialized entities are created to solve such special issues.

For comparison, let's consider different types and methods of resolving alternative disputes in the United States. Out-of-court dispute resolution methods of the American legal system have emerged as an alternative to expensive litigation. To adopt the general term «Alternative Dispute Resolution» (Alternative Dispute Resolution) arbitration — ADR. There are currently twenty different dispute resolution procedures in America. It can be noted that ADR acts on three tangible types:

1. Through negotiations between the parties without involving other participants;
2. Using an intermediary to resolve a conflict;
3. Dispute resolution with the help of a professional arbitrator who is independent. These three types are combined into different variants.

Therefore, negotiations are part of any other procedure.

If the parties do not come to an agreement, the form of «mediation-arbitration» is widespread, which means the settlement of the dispute with the help of an authorized mediator-arbitrator.¹¹

The spread of mediation widely and the improvement of the legal framework on this issue will most likely be possible only by taking into account factors such as the level of legal literacy of citizens, their culture and legal awareness, mentality.

Disputes (conflicts) arising from legal relations, as well as disputes (conflicts) considered in the course of criminal proceedings in cases of crimes of minor and medium gravity, criminal offenses, and relations arising in the course of enforcement proceedings, are the scope of mediation. From a philosophical point of view, conflict is a natural part of human life, a corridor of growth, dynamics and stimulation.

¹⁰ BEISSENOVA A., NURBEKOVA ZH., ZHANAAROVA Z., DZYURENICH Y., TUREBAYEVA A. Labour Conflicts in Kazakhstan: A Specific Character of their Solution. *Procedia - Social and Behavioral Sciences* 82 (2013), p. 877.

¹¹ NOSYREVA E. Alternative means of dispute registration in the USA. *Economy and law.* №. 1, pp. 90-96, 1998.

But it is better to get out of any conflict without losses, nerves, money and time. Therefore, dispute resolution through mediation is a necessity of a modern civilized society.

A dispute, conflict (Latin *conflictus* – conflict) is a conflict of goals and views of two or more parties in the course of a relationship. In his article «The Concept of Conflict», Pratik Dave suggests that there are three different views or approaches to conflict:

1. The traditional point of view: it is assumed that any form of conflict is bad and should be avoided. This term has a negative connotation in the traditional sense. This is largely due to the lack of good communication and trust between people, as well as the inability of managers to understand and respond to the needs of subordinates.
2. Approach to human relations: According to this approach, conflict is a natural and inevitable phenomenon and therefore cannot be completely excluded from any organization. In this case, the conflict is viewed positively, since it is assumed that the conflict can improve the work of the group.
3. Interactive approach. The latter approach, the interactive approach, assumes that a certain level of conflict is necessary for the effective functioning of the group. Even a joint team can become static, unresponsive to the need for change and innovation.¹²

The conflict should be resolved in such a way that everyone feels like winners. Therefore, disputes (conflicts) considered in the Law of the Republic of Kazakhstan «On Mediation», it is better not to refer to one concept, but to separate them as «disputes and conflicts».

The prospects of the institute of out-of-court settlement of legal disputes arising from administrative and other public-law relations in the Republic of Kazakhstan, as well as the use of mediation in administrative disputes, are related to its advantages and will be of great relevance today, as noted by Zh.U. Tlembayeva.¹³

However, the Russian legislator did not extend the effect of the Law on Mediation to the administrative and legal sphere, limiting himself only to the sphere of resolving disputes arising from civil, labor and family legal relations.¹⁴

¹² PRATIK D. The concept of conflict in organizational behavior, types and sources of conflicts. Channel of India. p. 40, 2021.

¹³ TLEMBAYEVA ZH.U. Out-of-court registration of legal disputes, appeals from administrative and other social and legal relations in the Republic of Kazakhstan: state and prospects of development. https://online.zakon.kz/Document/?doc_id=37502772 (accessed 16.10.2023).

¹⁴ KUTSENKO T.M. The problems of the implementation of mediation procedures in the proceedings on administrative offenses. *Administrative law and process*. № 1, p. 46-49, 2022.

To date, the introduction of alternative methods of resolving legal disputes using mediation is in demand in the social sphere due to the aggravation of migration processes, since Russia and Kazakhstan are attractive to other republics of the post-Soviet space in an economic sense. Moreover, Russia and Kazakhstan are multinational states, and in this sense, ethno-mediation is an interethnic and interfaith way of resolving emerging conflicts.

Of course, among these problems, one of the important issues related to the well-being of citizens is the issue of society as a whole, the social conditions of citizens formed in the conditions of the modern economic crisis (medical, housing issues, etc.), the increase in family conflicts, the problems of our future youth (education, offenses committed by minors, etc.). Therefore these issues require solutions and assistance from any side – from the state, society, lawyers, conciliators (mediators, arbitrators, etc.), and the parties to the dispute themselves.

It is well known that disputes often arise between underage students everywhere. This fact is also related to crime and crime statistics. According to the survey results, as usual, conflicts with friends and classmates are in the first place (56% and 47%, respectively), conflicts with parents (31%) and conflicts with teachers (11%) are in the second and third place. %) are in fourth place. At the same time, schools, on the one hand, taking into account the underage age and statistics, and on the other hand, as usual, offer to resolve the dispute only by administrative method. To solve this problem, one of the mechanisms that are effective for the educational environment and meet the requirements of modern society is the coordination of school activities. For example, we can say that if teenage schoolchildren work as leaders (mediators), they will not only resolve disputes with the help of mediators, teachers, psychologists, but also show an effective way to prevent conflicts and prevent illegal actions. Teenagers work under the guidance of an adult curator, undergo special psychological training, and also acquire the skills necessary for future adult life, and will probably be perceived by classmates who trust him as a person who helps and finds the right way. Today, school mediation projects are rapidly developing along the way of further application and implementation of mediation on the territory of both the Republic of Kazakhstan and the Russian Federation. In the age of the development of innovative, digital technologies, the project of the school mediation service needs to be developed. Inform schoolchildren and parents about the existence of such sites and specially authorized persons dealing with this type of dispute. The school administration should strive to resolve disputes and conflicts between them, and if they are successfully resolved, it should be possible to conclude a mediation agreement in accordance with the law, even if the educational institution of secondary schools is a «state institution». In the long term, the use of school mediation will have

a positive impact on reducing the level of conflicts in school, creating a more favorable psychological atmosphere, will lead to a new level of relationships based on a culture of mutual understanding, tolerance, mutual support and nonviolence.

Thus, there is a need to distinguish not only certain types of mediation, depending on the types of activities, from offenses, but also from the participation of certain subjects, violations of the rights to the objects used.

«The role of mediation is to help parties to identify those solutions that ensure a win – win solution for both sides of the conflict and therefore being likely to extinguish the conflict»¹⁵ Indeed this is the main purpose of mediation.

5 Online Mediation

Virtual mediation is expanding more and more. This is especially important between participants from different countries in the framework of resolving cross-border disputes. The most important advantages of online mediation are: a certain distance, the absence of borders and, accordingly, costs to the place of dispute resolution.

«Literature on the subject describes two meanings of the term “online mediation” – the first relating to the place in which the legal relation for the dispute was created, and the second having its basis in the online tools used to resolve the dispute, regardless of the place of its creation»¹⁶

Alternative dispute resolution, especially virtual mediation, provides the parties to solve their problem out of court, without going through all the formal procedures established by law.

Of great importance to the parties is the conflict itself and the amount of stress that the parties are immersed in. Therefore, developing online mediation, it should be noted that «the emotional stress arising in any conflict situation is significantly reduced compared to the situation in open court».¹⁷

Virtual mediation expands and improves conflict resolution, and technologies only help to better analyze what is happening with the help of multimedia systems, online questionnaires, questionnaires and other virtual opportunities.

Various online dispute resolution services can be organized by the mediator himself using various technical capabilities of virtual platforms. Disagreements in cross-border trade relations, disputes between consumers of trading services are

¹⁵ RAZVAN-LUCIAN A., STEFU J., OLTEANU C. Mediation in Romania context and principles of action. *Procedia - Social and Behavioral Sciences* 84 (2013) p. 1132. Pages 1128 – 1132

¹⁶ MANIA K. Online dispute resolution: The future of justice. *International Comparative Jurisprudence*. Volume 1, Issue 1, November 2015, p. 79.

¹⁷ RADULESCU DR. M.. Mediation an alternative way to solve conflicts in the international business environment. *Procedia - Social and Behavioral Sciences* 62 (2012), p. 291.

increasing every year, so issues in the digital environment need to be resolved through the widespread introduction of online dispute regulation. In the Russian Federation, such platforms are mainly involved in consumer protection issues, such as, for example, the marketplace support service. Yandex-Market, Ozon, etc. have their own arbitrations.

We agree with the author that for disputes on digital platforms it is advisable to propose «the structure of a unified automated information system that resolves disputes between enterprises and consumers in a digital environment».¹⁸

Due to the expansion of e-commerce, the development of digital technologies, and the use of big data by artificial intelligence systems, the number of disputes is increasing, in the resolution of which a large role is assigned to intermediaries-mediators. In our opinion, such specialists should understand the peculiarity of digital technologies on platforms in order to be able to protect the weak side. Working with big data involves the creation of services using blockchain technologies, which are electronic proofs of concluded transactions, fixing the rights of copyright holders.

For example, since 2017, China's Internet courts have recognized the use of blockchain «as a method of protecting evidence to overcome the risks of hacking or falsification of evidence stored on the Internet».¹⁹

Online mediation, like online court, involves the consideration of disputes using digital technologies, but at the same time online mediation is an alternative digital way to resolve a dispute.

Undoubtedly, the Internet influences the creation of various Internet courts «because of its ubiquity, wide usefulness and low cost, and offers new means to improve the provision of judicial services and the realization of the purpose of the judiciary – to serve people».²⁰

In virtual mediation, a certain algorithm of actions must be established in accordance with the law and the agreement of the parties. Thus, L.V. Sannikova and Y.S. Kharitonova note in their research that «in Russia, access to justice through electronic and information technologies is considered a priority task of the judicial system, indicating the following measures necessary for this: obtaining information in electronic form, both about the activities of the court and about a specific case; technical and software support court proceedings (video conferences,

¹⁸ PALANISSAMY A., KESAVAMOORTHY R. Automated Dispute Resolution System (ADRS) – A Proposed Initial Framework for Digital Justice in Online Consumer Transactions in India *Procedia Computer Science* Том 165, 2019, p. 224.

¹⁹ SUNG H.C. Can Online Courts Promote Access to Justice? *Обзор компьютерного права и безопасности*. Том 39, ноябрь 2020.

²⁰ GUO M. Internet court's challenges and future in China. *Computer Law & Security Review*. Volume 40, April 2021.

devices, ensuring the study of electronic evidence, recording of the court session, exchange of information and documents between participants in the trial and the court, ensuring the security of information stored in the systems)».²¹

In order to conduct online mediation, the parties conclude an agreement in which they agree to participate in the virtual space on a pre-agreed platform, then a Mediation agreement is prepared, where the method of signing it is noted. Digital platforms are becoming increasingly important for a wider range of enterprises and, in fact, are an element of the architecture of the digital economy itself.²² The use of digital platforms is gaining popularity in mediation, but at the same time, if the online platform is not sufficiently protected, then the parties and the mediator will not be responsible for it. The Agreement also describes the process of video recording; the presence of other persons with the consent of the parties to the dispute.

Alternative dispute resolution (AUS) is also offered by the World Intellectual Property Organization (WIPO), which considers, in addition to disputes related to intellectual property objects, domain disputes.

The owner of the domain name, filing a complaint with WIPO, must collectively prove three facts: 1. The disputed domain name is identical or confusingly similar to the trademark or service mark of which it is the rightholder; 2. The owner of the domain name has no rights or legitimate interests in relation to the domain name; 3. The domain name has been registered and is being used in bad faith. The Arbitration Center focuses on the third fact when considering disputes. The targeted and fair use of the domain name is a priority in this regard when considering a complaint.²³

A bona fide owner of a domain name has the right to protect it by any means that do not contradict. Therefore, a mediator dealing with such disputes should understand that the domain can be of different levels, and therefore there may be various mechanisms for its protection and consideration in different national courts.

²¹ SANNIKOVA L., KHARITONOVA Y. Digital Platforms in China and Europe: Legal Challenges. BRICS Law Journal. October 2021, p. 139. <https://www.researchgate.net/publication/355661498>.

²² SINGH MALIK N., KHARITONOVA Y., YANG T. The legal issue of deterrence of algorithmic control of digital platforms: the experience of China, the European Union, Russia and India. BRICS LAW JOURNAL Volume X (2023) Issue 1, p.148. <https://www.researchgate.net/publication/370130377>.

²³ KROBKA N. N. Activities of WIPO on dispute resolution in the field of intellectual property. Scientific notes of the V. I. Vernadsky Crimean Federal University Legal sciences. v . 6 (72), №. 1, p. 334-349, 2020.

6 Opportunities and Disadvantages of Online Mediation

The process of virtual mediation has its own characteristics and positive aspects. At the same time, online mediation processes are constantly growing. Firstly, it is convenient. The process can be carried out at any time and regardless of the place and territory. There is no need to search for a room. Secondly, the parties do not feel pressure on each other in the online space.

In order to conduct the mediation process more effectively, it is necessary to prepare for it. In this regard, mediators create their own specific rules and regulations for preparing for the online procedure. The mediator coordinates all aspects of online mediation with each representative, prepares documents and tests the platform on which the dispute between the parties will be considered.

The mediator introduces the parties to the rules and procedures that the parties must adopt, for example, these are the actions of the parties in an online dispute: the time of messages, answers to each other's questions and the mediator's questions, the reaction of the parties in case of technical failures, the indication of their full data that identifies the parties to the process, the obligation of a permanent broadcast.

In addition, the head of the entire online process himself must be confident in its security and confidentiality. The mediator must notify the parties about the non-disclosure of data, documents and other information to third parties. In this regard, it would be advisable for such a procedure to develop a special document on the non-disclosure of all information to third parties. In addition to the parties directly involved in online mediation, the mediator may invite other persons who provide the technical side of the process, who also undertake to keep confidential information.

Another side of the process in the online space is the recording of the entire course of the dispute. The online recording must also be agreed with the participants of the process.

In our opinion, in the online mediation of both Russia and Kazakhstan, special rules for the consideration of online disputes should be developed, as well as special rules for online platforms for the consideration of disputes in the mediation process.

The disadvantages of modern online mediation arise due to technical failures, the inability to use new digital technologies due to their high cost, and communication limitations.

7 Conclusions

Thus, we believe that in a market economy, the availability of alternative ways to protect violated rights, the improvement of reconciliation procedures are of great importance for the development of civil society and its institutions and its approval from a legislative point of view is necessary.

Based on the above and in order to further develop the institute of mediation in the Russian Federation and the Republic of Kazakhstan, the timely settlement of the scope of mediation contributes to the coordination of public relations, a favorable settlement of conflicts and tensions, and the development of corporate business relations. It is necessary to expand the scope of mediation procedures in accordance with the experience of foreign countries.

Under the influence of the economic crisis in the market era, social relations are becoming more complicated, therefore it is necessary to expand the scope of mediation, since the protection of citizens' rights and freedoms is a high value of any legal and social state.

In order to further develop the project of the school mediation service in the Republic of Kazakhstan, it is necessary to amend the Law of the Republic of Kazakhstan «On Mediation», since disputes between participants of an educational institution, including parents, students and teachers, an educational institution, must be prevented in a timely manner. In the Russian Federation, it is also advisable to declare alternative dispute resolution more openly in this area.

Public authorities and local self-government bodies should have a full dialogue with the population, even if the situation is «socially explosive» – they need to accept criticism, state their position, propose concrete measures to resolve conflicts with an indication of the exact timing of their implementation, work with civil activists and the population in order to spread their arguments.

There should be an understanding on the part of society about the inadmissibility of solving social conflicts by illegal means, the inadmissibility of destabilizing the situation on a separate territory. In order to reach agreement between society and the authorities, it is necessary to involve professional mediators who contribute to the settlement of social conflict and prevent its further escalation. Strengthening the role of intermediaries, giving them moderator functions in resolving disputes and disagreements, will allow the parties to find mutually acceptable compromise solutions.

The introduction of conciliation procedures is one of the main features of dispute settlement. Both in the Russian Federation and in the Republic of Kazakhstan, it is necessary to encourage mediators to carry out such procedures. In order for professional specialists to participate in disputes, it is necessary to

reduce the tax burden that is imposed on mediators, both in Russia (Article 419 of the Tax Code of the Russian Federation) and in Kazakhstan (sub-paragraph 19 of paragraph 1 of Article 1 of the Tax Code of the RK), or it should be other motivating motives to participate in mediation.

On the other hand, mediators in certain disputes must have special or technical or other additional knowledge, as established in the legislation of foreign countries. In this regard, this experience of attracting narrow specialists solves the issues raised promptly. However, the mediator does not advise the parties to the conflict, he helps to resolve the dispute.

Since the Russian Federation and the Republic of Kazakhstan are members of the Eurasian Economic Union (EAEU), an organization that forms trade turnover between the participating countries, there is a need to harmonize norms and create special mechanisms for alternative dispute resolution. Such dispute resolution mechanisms will primarily be aimed at developing business relations between the countries of the Union.

The inclusion of the institute of alternative dispute resolution in the EEC regulations will ensure integration into the national mediation procedures of the member states of the Union.

Based on the above, one of the effective ways of mediation is the speed of dispute resolution, since it is not necessary to present different evidence, to confirm other factors. The dates associated with meditation should not be long, especially since the parties themselves can extend them with the consent of the mediator.

The next factor that matters is the expected solution that will suit both sides, the low salary of the mediator, the confidentiality of all dispute procedures.

As a result of a comparative analysis of the alternative dispute resolution procedure in the Russian Federation and the Republic of Kazakhstan, the authors came to the conclusion that the mediation institute of Kazakhstan is more implemented in other normative acts, in Russia the mediation institute is developing separately. The legal doctrine of the two states classifies in detail certain types of mediation.

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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

LUKMANOVA, Nurgul A.; RAHMATULINA, Rimma Sh. Development of online mediation in Russia and the Republic of Kazakhstan. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 05, n. 10, p. 289-306, jul./dez. 2023. DOI: 10.52028/rbadr.v5i10.ART14.KZ.
