

Comparative Analysis of Mediation Procedures in Kyrgyzstan and Other Countries

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Abstract: The relevance of the research stems from the need to advance alternative dispute resolution mechanisms, particularly mediation, which faces numerous gaps in both legislative and practical spheres. With the adoption of the Law on Mediation in Kyrgyzstan in 2017, the search for alternative dispute resolution mechanisms and methods has become one of the critical areas in the justice sector to ensure the quality and timely right of citizens to judicial protection. However, given all the socio-economic and political circumstances, there are many gaps in the development of mediation as a social practice in Kyrgyzstan: the organization of a market for mediation services, proper legal regulation,

incentives to use mediation as a means of conflict resolution, and a set of clear mediation procedures are required. Based on this, the study aims to conduct a comparative analysis of the legislation of Kyrgyzstan and foreign countries in the field of mediation, as well as to compare mediation procedures and their application. The methodological approach in this study is based on the comparative legal method, which is applied to analyse foreign experiences and the practices of Kyrgyzstan, along with the dialectical method. The study examined the institution of mediation in the Kyrgyz Republic and its historical origins. The study explored mediation as an alternative dispute resolution (ADR) method, focusing on its unique aspects in Kyrgyzstan. The authors conducted a comparative legal analysis of the legislation and peculiarities of the mediation procedure in different countries, including the USA, the UK, Germany, China and several other countries (Sweden, Singapore, and the Netherlands). The practical significance of this study is in its potential to influence legislative reforms in Kyrgyzstan, addressing existing gaps in current laws and improving the mediation framework.

Keywords: Disputes. Mediation. Conflict Resolution. Alternative Dispute Resolution. Conciliation.

Contents: Introduction – Materials and Methods – Results and Discussion – a) Kyrgyz Republic Case – b) Analysis of Foreign Experience – Conclusions – References

Introduction

Mediation in Kyrgyzstan faces several issues that hinder its effective development. Among the main challenges is the insufficient legal framework, which requires further clarification, complicating the practical application of mediation. The Mediation Law, adopted in 2017, needs refinement in some areas to ensure its straightforward implementation in legal practice. Another significant problem is the low awareness among citizens and legal practitioners about the possibilities of mediation. Many people and lawyers are unaware that mediation is an effective alternative to court proceedings, which reduces the demand for this dispute resolution mechanism. The lack of development of the mediation services market also complicates access to mediators, as there is a shortage of qualified professionals (Baimukhametova et al., 2024).

Another issue is social and cultural readiness for mediation. In Kyrgyz society, the culture of mediation is still underdeveloped, and people often choose traditional court processes due to a lack of trust in alternative methods. Additionally, institutional and financial constraints at the state level contribute to the insufficient development of mediation centers, further reducing access to mediation.

Regarding the adaptation of foreign models, several approaches could be beneficial for Kyrgyzstan. The European experience, particularly in Germany and France, could help shape the legal framework for mediation. In these countries, mediation is regulated by the mediator institution, and most mediators have legal

or psychological education, which enhances the effectiveness of the process.¹ Scandinavian countries demonstrate successful use of mediation in family matters, which could also be adopted in Kyrgyzstan to reduce the burden on the courts. The American model, which actively uses mediation in business and labor disputes, could also be borrowed to improve the resolution of corporate and labor conflicts. The model from Eastern European countries, particularly Poland, shows that simplified and accessible mediation procedures can be implemented to resolve minor disputes.²

In recent years, Kyrgyzstan has made significant progress in developing mediation as an alternative method of conflict resolution. In 2022, the Strategy for the Development of Mediation for the period from 2022 to 2027 was adopted. The main goal of this strategy is to increase the awareness and demand for mediation in society and the public administration system by 2027.³ The new strategy outlines the key vectors for developing this practice in the country, aiming to establish mediation as an effective tool for dispute resolution. The Strategy focuses on improving the legal framework and creating a solid foundation for the sustainable functioning of the Republican Community of Mediators of the Kyrgyz Republic. It is important to emphasize that the Republic has already established a favorable environment for the development of the mediation institution. The Constitution of the Kyrgyz Republic,⁴ The national primary law enshrines the state's obligation to support the development of alternative methods of protecting citizens' rights. Moreover, the National Development Programme of Kyrgyzstan until 2026 considers mediation a critical factor in reducing the burden on the judicial system.⁵

Even though the mediation institute in Kyrgyzstan has been operating for less than ten years, many scholars and practitioners think it is functioning quite effectively. Gulsina Kozhoyarova, head of the National Mediation Centre and the Supervisory Board of the Republican Community of Mediators in the Kyrgyz Republic, highlights the current high demand for mediation services. As such, people who face conflict situations and seek help from mediators are satisfied with the results. Clients positively assess the effectiveness of mediators in resolving their disputes.

¹ YANYSHIVSKIY, Mykhailo. Regulation of artificial intelligence in Ukraine in the framework of harmonisation of legislation with EU legal norms. *Democratic Governance*, vol. 17, no. 1, pp. 53-62, 2024. <https://doi.org/10.23939/dg2024.53>

² HORISLAVSKA, Inna. Correlation of mediation as an alternative way to protect civil rights and interests and tort liability. *Law. Human. Environment*, vol. 14, no. 1, pp. 23-36, 2023. <https://doi.org/10.31548/law/1.2023.23>

³ In the near future, the mediation development strategy for the period 2022-2027 will be adopted in Kyrgyzstan, 2022. Available at: <https://e-cis.info/news/566/102097/>

⁴ Constitution of the Kyrgyz Republic, 2010. Available at: https://www.constituteproject.org/constitution/Kyrgyz_Republic_2010

⁵ National Development Program of the Kyrgyz Republic until 2026, 2021. Available at: <https://cbd.minjust.gov.kg/430700/edition/1096469/ru>

At the same time, A. Sheranova⁶ concluded that insufficient outreach to citizens has contributed to the low use of this method for conflict resolution. However, the reason lies not only in the low level of public awareness but also in such aspects as the lack of proper organization of the mediation market and incentives to use alternative methods of conflict resolution and the focus on the Western model of the mediation institution.

Scientific research actively explores the formation and development of the mediation institution. B. Ocaklı et al. 's works are worth noting,⁷ and M.N. Myrzakhanova, K.J. Jymabaeva,⁸ A.V. Ces,⁹ C. Ignat,¹⁰ F. Marion Spengler¹¹ and S. Soares Filho and L. Cichobłaziński.¹² Several other scholars have studied the issue of mediation in the context of a multicultural society and the specifics of mediation procedures in interethnic conflicts. According to scholars, the mediation of interethnic conflicts and the institution of mediation itself should revive Kyrgyzstan's historically established mediation practices rather than adopting Western models. N.Sh. Kolsarieva and A.Ch. Nazarbaeva,¹³ S.A. Rubanov et al.¹⁴ Exploring the issue of comparative analysis of national and international legislation on mediation, the paper addressed the topic of mediation, noting the need to create organizations of mediators in the Republic and the orientation of the Republic's bill to foreign practices.

Foreign scholars also significantly contributed to the study of mediation. D. Helmuth studied the general aspects, principles, and features of mediation

⁶ SHERANOVA, Arzuu. The interplay between formal and informal in conflict prevention, mediation and community security provision in Kyrgyzstan. In: Transformation and Development. Cham: Springer, 2020.

⁷ OCAKLI, Beril, KRUEGER, Tobias, NIEWÖHNER, Jörg. Shades of conflict in Kyrgyzstan: National actor perceptions and behaviour in mining. *International Journal of the Commons*, vol. 14, no. 1, pp. 191-207, 2020.

⁸ MYRZAKHANOVA, Marzhan N., JYMAKAEVA, K.J. Comparative characteristics of national and international legislation on mediation. *Bulletin of the Al-Farabi Kazakh National University*, vol. 80, no. 4, pp. 327-332, 2016.

⁹ CES, Almudena Valiño. Reflections on the viability of mediation as an alternative method of conflict resolution in Spanish penitentiary centers. *Ius et Praxis*, vol. 26, no. 2, pp. 219-231, 2020. <http://dx.doi.org/10.4067/S0718-00122020000200219>

¹⁰ IGNAT, Claudiu. Brief analysis of the dispute resolution methods through mediation in Romania. *Journal of Advanced Research in Law and Economics*, vol. 11, no. 1, pp. 55-58, 2020. [https://doi.org/10.14505//jarle.v10.1\(47\).07](https://doi.org/10.14505//jarle.v10.1(47).07)

¹¹ MARION SPENGLER, Fabiana. With hands given to Pollyanna: Mediation under resolution 174 of the superior council of justice of work and labor disputes. *Revista Jurídica*, vol. 2, no. 69, pp. 375-405, 2022. <https://doi.org/10.26668/revistajur.2316-753X.v2i69.2406>

¹² SOARES FILHO, Sidney, CICHOBŁAZIŃSKI, Leszek. Collective dispute resolution with mediation: Poland and Brazil differences. *Revista Jurídica*, vol. 5, no. 67, pp. 457-468, 2022. <http://dx.doi.org/10.26668/revistajur.2316-753X.v5i67.5265>

¹³ KOLSARIEVA, Nazira, Sh., NAZARBAEV, Nursultan A. Some problems of the formation and development of mediation in the Kyrgyz Republic. *News of Universities of Kyrgyzstan*, vol. 4, pp. 63-65, 2020.

¹⁴ RUBANOV, Sergey A., KUKSIN, Ivan N., MIKHAILIK, Anna A., SHALAJKIN, Ruslan N., ZAJCEV, Vasilij A. Development of the institute of mediation in the countries of the Commonwealth of Independent States. *Res Militaris*, vol. 12, no. 3, pp. 4072-4078, 2022.

using examples from Germany, Scotland, and Switzerland.¹⁵ S.B. Goldberg et al. examined the experience of the United States and concluded that it serves as a crucial criterion for the development of democracy. Mediation is one of the most effective methods for resolving disputes and is a hallmark of a developed civil society, reflecting a high level of legal culture and economic maturity. Conflicts that require only formal rule compliance and do not need legal system intervention can be resolved through alternative methods. While judicial settlement remains relevant, involving a neutral third party helps distribute the load by facilitating amicable resolutions through alternative dispute resolution (ADR) methods, particularly mediation.¹⁶ Mediation itself is a flexible process and differs in its structure from other methods of ADR. Thus, it is an exclusively voluntary act, and the agreement reached during mediation is binding on the parties to the dispute only if they agree to it.¹⁷ In other words, having complete control over the settlement allows all parties to achieve their desired outcome without the stress of litigation.¹⁸

Given the current process of democratizing society and legal relations and the desire to follow the principles of humanism, justice and morality, it is impossible to imagine conflict resolution without alternative methods today. Ukraine is one of the post-Soviet countries where mediation institutions are actively being developed. Due to the similarity of legislative challenges and the country's transformation from a Soviet to a Western model, Ukraine's experience establishing mediation practices is valuable when studying foreign mediation legislation.¹⁹

Mediation will soon serve as the foundation for resolving legal conflicts, speeding up and simplifying reconciliation while ensuring the protection of the parties' rights and interests. Therefore, the study aims to develop alternative

¹⁵ CARLE, Dominik H. A comparative analysis of mediation by examination and critique of the theory and practice thereof in Germany, Scotland and Switzerland. Glasgow: University of Glasgow, 2015.

¹⁶ PALLAI, Katalin. Participatory approaches to dealing with community conflicts and disputes. Part 1 – Suggesting a consistent taxonomy. In: Municipal Communication, pp. 87-100. Budapest: Corvinus University, 2012; LEZAK, Stephen, AHEARN, Ariell, MCCONNELL, Fiona, STERNBERG, Troy. Frameworks for conflict mediation in international infrastructure development: A comparative overview and critical appraisal. *Journal of Cleaner Production*, vol. 239, article number 118099, 2019. <https://doi.org/10.1016/j.jclepro.2019.118099>

¹⁷ STA LAW FIRM. Comparative analysis of ADR methods with focus on their advantages and disadvantages, 2019. Available at: <https://www.mondaq.com/arbitration-dispute-resolution/777618/comparative-analysis-of-adr-methods-with-focus-on-their-advantages-and-disadvantages>; ZIENKIEWICZ, Adam. Objectives of mediation and selection and implementation of mediation strategies and techniques by mediators in civil disputes – Study report (Part III – Interviews). *Studia Iuridica Lublinensia*, vol. 32, no. 2, pp. 303-332, 2023.

¹⁸ NGUYEN, Dzung M. Mediation advocacy and investment mediation, 2022. Available at: https://www.academia.edu/92408519/Mediation_Advocacy_and_Investment_Mediation?sm=b

¹⁹ TOKBAEVA, Albina A., KOZHOYAROVA, Gulsina J., KURBANOVA, Chinara J. Mediation in civil proceedings, 2023. Available at: <http://admin-vshp.sot.kg/public/sites/3/2019/11/metodicheskoe-posobie-mediatsiya-dlya-sudej-okon.-1.pdf>; PURWANTI, Ani, SETIAWAN, Fajar Ahmad, NATALIS, Aga. Mediation as dispute resolution in people's mining. *IOP Conference Series: Earth and Environmental Science*, vol. 1270, no. 1, article number 012010, 2023. <https://doi.org/10.1088/1755-1315/1270/1/012010>

methods of resolving legal conflicts, namely the institution of mediation and its popularisation in Kyrgyzstan. The goal requires addressing several tasks: conducting a comparative legal analysis of mediation legislation, identifying gaps critical to the Kyrgyz legal system, and implementing specific legal practices into the national framework.

Materials and Methods

The study applied several general and unique processes of scientific inquiry, with a focus on the dialectical process, synthesis and analysis, and the comparative legal approach. This research study provides a detailed analysis of the institution of mediation in the Kyrgyz Republic and the current legislation of Kyrgyzstan and foreign countries in the field of mediation.

The dialectical method was chosen to study the essence of the mediation institution, its core principles, and its types and explore its characteristics within the Kyrgyz legal system. This approach allowed for the identification of contradictions between the regulatory acts governing mediation and the actual practices of its application. It also helped construct a clear understanding of how mediation could be integrated into the existing legal system to ensure citizens' rights. Comparative Legal Method was applied to analyze the legislation of various countries (the USA, China, the United Kingdom, Singapore, and Sweden). This method enabled the identification of the strengths and weaknesses of Kyrgyzstan's national mediation laws. Examining the legal frameworks in these countries revealed gaps in Kyrgyzstan's legislation, such as unclear rules regarding mediator qualifications and the absence of a system to incentivize mediation in judicial practice. These insights led to recommendations for improving Kyrgyz law.

Modeling Method was utilized to propose potential legislative changes to address the identified gaps in the legal framework and practice. This method allowed the development of models for regulatory acts that could close these gaps, such as creating a registry of certified mediators, establishing qualifications for mediators, and increasing funding for mediation centers. This method facilitated the formulation of concrete proposals for legislative amendments to improve the mediation system in Kyrgyzstan. The analysis method was used to examine all aspects of the mediation institution's functioning comprehensively. Practically, this method involved analyzing the mediation process itself, the legal acts governing it, and how those laws are implemented in practice. This allowed the study to evaluate the effectiveness of the current mediation mechanisms and identify the practical difficulties that mediators and parties encounter in mediation proceedings.

The formal Legal Method was applied to examine categories such as the right to defend one's interests in court, court competence, and the principles

of jurisdiction and justice, all directly related to the application of mediation in the judicial process. This method helped assess how existing court procedures could integrate mediation and identify the need for its incorporation into the judicial system to alleviate the burden on courts and expedite dispute resolution. Historical and Legal Methods were used to study the origins of mediation in Kyrgyzstan and the history of mediation in Germany. This provided a deeper understanding of how the mediation institution evolved in other countries and helped formulate recommendations for adapting some aspects of the German model to Kyrgyzstan's context.

Statistical Method was used to calculate Kyrgyzstan's competitiveness index compared to other countries in mediation. This allowed the study to evaluate how well-developed the mediation institution is in Kyrgyzstan and determine the steps necessary to improve the country's standing internationally. The Hermeneutic Method was applied to study categories and concepts related to mediation. This method provided the foundation for exploring the definition of mediation and distinguishing it from other dispute resolution methods, such as arbitration or litigation. It played a crucial role in clarifying the theoretical underpinnings of mediation and how it fits within the broader context of alternative dispute resolution.

The materials used in this research consist of scientific works of national, post-Soviet and foreign scholars and practitioners, as well as the regulatory framework of the Kyrgyz Republic. Specifically, the authors studied the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic "On Mediation," the Criminal Procedure Code of the Kyrgyz Republic (CPC), and several regulatory acts of the Republic of Kazakhstan, Germany, the United Kingdom and China. The study's relevance, problems, purpose, and objectives were clearly defined, and the methods used to achieve the results were thoroughly examined.

Results and Discussion

a) Kyrgyz Republic Case

Mediation is one of the most universal and non-jurisdictional methods of dispute resolution. It is gaining rapid popularity in the international arena and meets not only society's current challenges but also provides a quick resolution of conflicts based on the principles of humanism, goodness and morality. It is a universal dispute resolution technology that not only saves time in court proceedings and achieves a more efficient result but also satisfies the interests of all parties to a dispute without litigation.²⁰ Undoubtedly, Kyrgyzstan, as a developing country oriented towards

²⁰ LOSKUTOV, Tymur, ZAGURSKYY, Oleksandr, OSTAPCHUK, Lyudmila, PUHACH, Anatolii, HADZHIEVA, Arzu Bakhriz. The role of mediation in the process of resolving criminal cases: Impact on reducing the Burden

Western European values, democracy, building a law-based society and respect for human rights and freedoms, introduced the institution of mediation seven years ago. However, this institution is still in its infancy and requires development. For example, in 2017, the Kyrgyz government was tasked with ensuring the adoption of a bylaw and regulatory framework for developing the mediation institute. The introduction of mediation and the overall dispute conciliation process is regarded as a key social goal, with mediation itself recognized as one of the most effective tools for conflict resolution.²¹

The period of mass civil protests and the change of power in Kyrgyzstan from 2005 to 2010 led to the weakening of state institutions, which increased conflict situations in the country.²² In post-revolutionary Kyrgyzstan, mediation has played a significant role in peacebuilding processes. Representatives of local nongovernmental organizations, human rights defenders and media workers actively introduced mediation techniques to resolve conflicts. The development of mediation practice received an impetus from a project initiated by the nongovernmental organization (NGO) IRET in 2007. This project, supported by the Organisation for Security and Cooperation in Europe, has effectively prevented inter-ethnic conflict. The project's main goal was to establish a network of mediators to resolve social disputes, especially those arising between ethnic groups.

Following the outbreak of inter-ethnic clashes in Bishkek and Mayevka, the League of Defenders of Children's Rights, with support from the Soros Foundation and Danish Inter-Church Aid, quickly organized mediation training for 500 people.²³ These trained people later formed the Network of Conflict Prevention Committees in the Chui region. The activists underwent comprehensive mediation training for six months at the Institute of Public Policy in Bishkek. In a short time, the Network demonstrated its effectiveness in early detection and prevention of conflict situations at the local level, and later, this approach expanded to cover the entire northern region of Kyrgyzstan. In addition, representatives from the cities of Karakol, Talas, Tokmak and Kara-Suu were trained and educated as part of the project "Strengthening the Role of Mediators in Kyrgyzstan", supported by the OSCE Centre in Bishkek.

on the judicial system. *Pakistan Journal of Criminology*, vol. 16, no. 3, pp. 1023-1036, 2024. <https://doi.org/10.62271/pjc.16.3.1023.1036>; NG, Kwai Hang. Wearing two hats: Problems of "in-trial" mediation in China. In: *Comparative and Transnational Dispute Resolution* (pp. 220–237). London: Taylor and Francis, 2023. <https://doi.org/10.4324/9780429354625-16>

²¹ YESSENBEKOVA, Patima. Results of implementation of conciliation procedures in civil proceedings. *Social and Legal Studies*, vol. 7, no. 3, pp. 95-102, 2024. <https://doi.org/10.32518/sals3.2024.95>

²² ZHAVDOTOVA, Sabina. Institute of mediation in criminal procedures. *Journal of Innovations in Social Sciences*, vol. 1, no. 1, pp. 47-50, 2021.

²³ KOLSARIEVA, Nazira, Sh., NAZARBAEV, Nursultan A. Some problems of the formation and development of mediation in the Kyrgyz Republic. *News of Universities of Kyrgyzstan*, vol. 4, pp. 63-65, 2020.

On 20 October 2010, a protocol for establishing the Association for the Development of Mediation was created.²⁴ At its creation, it consisted of eight organizations and seven individuals. Members of the Association organized and conducted 25 introductory training sessions attended by 540 people, including lawyers, judges, prosecutors, and activists from district administrations in Osh, Karakol, Balykchy, and villages in Chui Oblast. It was necessary to create a proper legal and institutional framework to turn mediation from a little-understood concept into an effective legal tool for dispute resolution. The most important task was to introduce the mediation procedure into the national legal system of Kyrgyzstan. In 2012, a group of deputies, including J. Kenesh, E. Imankooyev, T. Salimova and Ch. Tursunbekov submitted a draft law on settling disputes and conflicts with the participation of mediators (mediation) in the Kyrgyz Republic to the parliament. However, the parliament did not approve and rejected this draft law.

In 2015, a working group was formed to finalize the draft law on mediation. In 2017, deputies G.A. Skripkina, Ch.I. Dzhakupova, and A.S. Koduranov initiated a draft law on mediation.²⁵ On 22 June 2017, the Jogorku Kenesh adopted the Law of the Kyrgyz Republic “On Mediation” No. 161.²⁶ Thus, mediation is a recognized method of conflict resolution enshrined in law, making it a social and legal institution. Introducing restorative justice principles through mediation saves money, prevents crime and improves relations between the parties to a conflict. Mediation is an alternative to harsh punitive policies, offering a more constructive and humane approach to dispute resolution. Mediation is a mechanism for resolving conflicts and a powerful tool for social transformation, helping to build a peaceful and just society.

Despite the significant potential of the Law of the Kyrgyz Republic “On Mediation”,²⁷ specific problems in several aspects became apparent. First, there is a contradiction between the Law of the Kyrgyz Republic “On Mediation” and other laws, as some provisions of the Law on Mediation conflict with the norms of other legislative acts, creating legal inconsistencies and complicating the implementation of mediation procedures. Insufficiently developed mediation infrastructure: The country lacks well-developed organizations promoting mediation and qualified mediators. The legislation does not clearly define mediators’ liability

²⁴ OSMONALIEVA, Nazikgul Zh. Family mediation in the Kyrgyz Republic. *Science, New Technologies and Innovations of Kyrgyzstan*, vol. 11, pp. 158-162, 2019.

²⁵ URBAEVA, Zhyldyz, LEE, Eunju, LEE, Yeonggeul. Reproductive decisions as mediators between education and employment of women in Kyrgyzstan. *Health Care for Women International*, vol. 40, no. 7, pp. 898-913, 2019.

²⁶ Law of the Kyrgyz Republic No. 161 “On Mediation”, 2017. Available at: <https://cbd.minjust.gov.kg/111668/edition/1278996/ru>

²⁷ *Ibid.*

for law violations, which may lead to failure to fulfill their duties and unjustified damage to the parties involved in the conflict. Insufficient popularisation of mediation, as the level of public awareness of mediation as an alternative way of resolving conflicts remains low, which hinders its wider use.

At the same time, the Law of the Kyrgyz Republic, “On Mediation”.²⁸ It contains several progressive provisions with no analogs in other countries’ legislation. This refers to the authority granted to a judge, investigator, or authorized pre-trial investigation body to direct the conflicting parties to an informational meeting with a mediator, who is required to facilitate the session. This provision has great potential to promote mediation and encourage its use for the peaceful settlement of disputes. However, some provisions of the Law of the Kyrgyz Republic “On Mediation” contradict the principle of voluntariness, which is fundamental to the mediation procedure. For instance, Article 62 of the Criminal Procedure Code of the Kyrgyz Republic²⁹ obliges the mediator to admit the suspect, the accused and the victim to an information meeting, which may contradict their free will. Article 39 of the Criminal Procedure Code of the Kyrgyz Republic³⁰ also allows the pre-trial investigation body to involve a mediator in considering offense cases, which contradicts the principle of voluntariness.

Mediators, networks of mediators, non-profit industry associations, and public organizations form it. This process may take several years, as the system must assist state, national and commercial entities. One problem is the Law of the Kyrgyz Republic, “On Mediation”³¹ does not require mediators to have a legal education. Legalizing mediation as a legal dispute resolution tool raises concerns about its effectiveness. Confronted with the specific goals of mediation, Mediators frequently need to interact with judges and lawyers and navigate complex legal frameworks. Mediators require basic legal knowledge to ask pertinent questions, assess the feasibility of transactions, identify potential manipulation, and maintain the trust of all parties involved, especially in complex cases such as criminal, family, labor, and commercial disputes.³² The lack of legal education for mediators can lead to severe problems. For example, poor-quality assistance to the parties involved in the conflict could undermine confidence in the mediation institution and hinder

²⁸ Ibid.

²⁹ Criminal Procedure Code of the Kyrgyz Republic No. 129, 2021. Available at: <https://cbd.minjust.gov.kg/112308/edition/8273/ru>

³⁰ Ibid.

³¹ Law of the Kyrgyz Republic No. 161 “On Mediation”, 2017. Available at: <https://cbd.minjust.gov.kg/111668/edition/1278996/ru>

³² SPYTSKA, Liana. Analysis of the most unusual court decisions in the world practice in terms of the right to justice. Social and Legal Studies, vol. 5, no. 4, pp. 39-45, 2022. <https://doi.org/10.32518/2617-4162-2022-5-4-39-45>

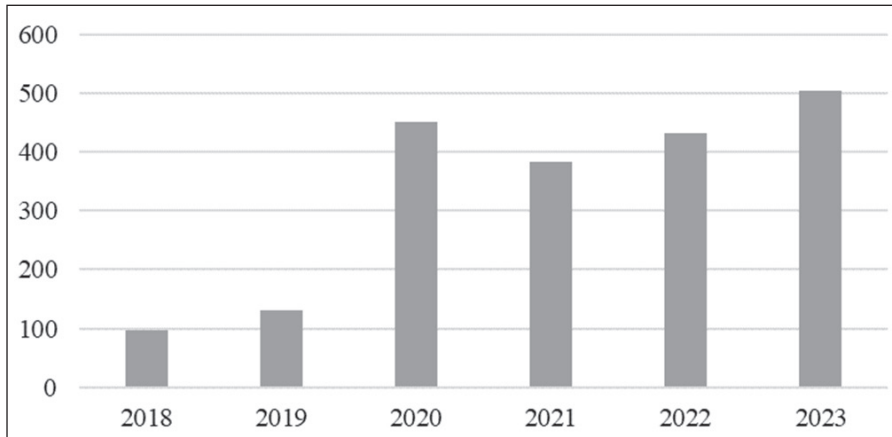
the development of the mediation system. Therefore, for the effective functioning of the mediation system in the Kyrgyz Republic, it is advisable to consider the introduction of mandatory legal education for mediators. This will enable mediators to provide qualified assistance, increase confidence in mediation, and promote its wider use as a peaceful conflict resolution tool.

The Law of the Kyrgyz Republic, “On Mediation”,³³ grants mediation the status of a legal instrument for resolving disputes. This creates favorable conditions for legal professionals to join qualified mediation teams. Retired lawyers, notaries, and former law enforcement officers possess valuable knowledge and experience that they can effectively apply in mediation. Their in-depth understanding of the law and practical experience in resolving legal conflicts allow them to achieve two key goals. First, to guarantee a high level of quality of assistance provided during the mediation process. Moreover, within the current legal framework, it offers practical assistance to parties involved in legal disputes, helping them create valid and enforceable mediation agreements. Thus, the involvement of experienced legal professionals can significantly increase the efficiency and legal validity of mediation procedures. This will enhance confidence in mediation as an effective conflict resolution tool and promote its broader use in the peaceful settlement of legal disputes. In addition, it is worth noting the strengthening of the legal culture in society, as the involvement of lawyers in mediation can be a decisive and influential factor in developing this institution in the Kyrgyz Republic. Their knowledge, experience and credibility will help mediation become an effective tool for the fair and peaceful resolution of legal disputes.

The statistical data presented in Figure 1 can help assess the current effectiveness of the mediation institution in Kyrgyzstan.

³³ Law of the Kyrgyz Republic No. 161 “On Mediation”, 2017. Available at: <https://cbd.minjust.gov.kg/111668/edition/1278996/ru>

Figure 1. Statistics of legal disputes resolved through mediation in Kyrgyzstan from 2018 to 2023



Source³⁴

Figure 1 shows a positive trend in the number of disputes resolved through mediation. From 2021 to 2023, about 1,300 disputes were successfully resolved. Figure 2 shows their classification based on the type of legal relationship.

Figure 2. Classification of disputes resolved through mediation in 2018-2023



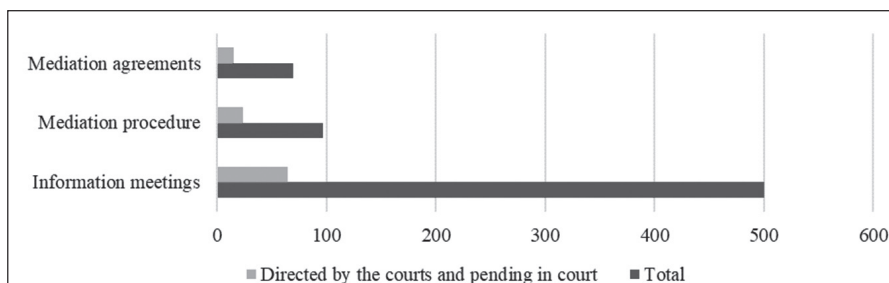
Source³⁵

³⁴ The judicial system contributes to the development of commercial mediation in the Kyrgyz Republic, 2023. Available at: <https://danaker.org/ru/tag/медиация-ru/>

³⁵ TOKBAEVA, Albina A., KOZHAYAROVA, Gulsina J., KURBANOVA, Chinara J. Mediation in civil proceedings, 2023. Available at: <http://admin-vshp.sot.kg/public/sites/3/2019/11/metodicheskoe-posobie-mediatsiya-dlya-sudej-okon.-1.pdf>

Data indicates that mediators in Kyrgyzstan are primarily used to resolve civil and family disputes. The lowest rate is in criminal cases, which suggests the need to develop the institution of mediation in this area. Figure 3 shows the mediation practice in the Kyrgyz Republic as of 1 March 2023.

Figure 3. Mediation practice as of 1 March 2023



Source³⁶

Figure 3 shows that information meetings and mediation procedures are the most common. They facilitate the settlement of various disputes out of court.

Various socio-political factors significantly influence the development and implementation of mediation procedures in Kyrgyzstan. The country's historical context, including the period of civil protests and power changes in 2005-2010, weakened state institutions and increased conflict situations.³⁷ This created an urgent need for alternative methods of conflict resolution, with mediation playing a pivotal role in addressing these issues. The social instability of this period highlighted the necessity of mediation not only as a legal reform but also as a social requirement aimed at managing tensions and promoting peacebuilding.³⁸ The involvement of civil society, particularly non-governmental organizations (NGOs), has been essential in promoting the use of mediation in Kyrgyzstan. NGOs, human rights defenders, and media workers have actively introduced mediation techniques to resolve conflicts, particularly those between different ethnic groups. The IRET project, supported by the OSCE, established a network of mediators to resolve social disputes. This grassroots initiative emphasized how social movements and

³⁶ Ibid.

³⁷ SERIKZHANOVA, Aigerim, NURTAZINA, Roza, SERIKZHANOVA, Inabat, BUKHARBAY, Bolat, TAITORINA, Binur. Evolving Political Cultures in Kazakhstan, Uzbekistan, and Kyrgyzstan: Trends and New Paradigms. *Journal of Ethnic and Cultural Studies*, vol. 11, no. 3, pp. 1-24, 2024. <https://doi.org/10.29333/ejecs/1914>

³⁸ VILKS, Andrejs, KIPANE, Aldona. Economic crime as a category of criminal research. *Journal of Advanced Research in Law and Economics*, vol. 9, no. 8, pp. 2860-2867, 2018. [https://doi.org/10.14505/jarle.v9.8\(38\).35](https://doi.org/10.14505/jarle.v9.8(38).35)

civil society can drive legal reforms by recognizing and addressing the need for non-judicial conflict resolution.³⁹

Inter-ethnic clashes, particularly in Bishkek and Mayevka, further underscored the importance of mediation in preventing and resolving conflicts. With support from international organizations, the League of Defenders of Children's Rights organized extensive mediation training for community members, which helped establish a conflict prevention and resolution network. This demonstrated how political instability and ethnic divisions can accelerate the demand for mediation to foster social cohesion and conflict resolution. The legal framework for mediation in Kyrgyzstan also reflects the country's evolving social and political landscape. The adoption of the Law of the Kyrgyz Republic "On Mediation".⁴⁰ In 2017, mediation was officially recognized as a legal institution. While this legal reform was a significant step forward, the process has faced challenges due to the slow pace of reform and the political resistance often accompanying institutional changes. The failure of the 2012 draft law highlights the difficulties in implementing legal reforms when they conflict with existing power structures or vested interests.

The relationship between legal reforms and social changes in Kyrgyzstan is evident in the context of mediation. Legal reforms, such as adopting the mediation law, aim to align the legal system with broader social changes, particularly regarding democratization and human rights. These reforms reflect a shift from a punitive justice system to one that emphasizes restorative justice, in line with the country's broader social goals of peace, human rights, and cooperation.⁴¹ However, for these reforms to be effective, they must be supported by social changes such as increased public awareness, the development of a professional mediation infrastructure, and a cultural shift toward acceptance of mediation as a legitimate form of dispute resolution. International organizations, such as the OSCE and the Soros Foundation, have played a key role in facilitating both legal reforms and social changes in Kyrgyzstan. Their financial support, along with the training programs and awareness campaigns they have initiated, has contributed to the development of the mediation institution. This underscores the importance of international support in driving domestic legal and social reforms, as it can provide the necessary resources and expertise to help implement change.

³⁹ TYMCHENKO, Ruslana, IVASHCHENKO, Andriy. Theoretical analysis of the concept of "pedagogical technologies" in the context of educational activities. *Society. Document. Communication*, vol. 6, no. 3, pp. 345-358, 2021. <https://doi.org/10.31470/2518-7600-2021-13-345-358>.

⁴⁰ Law of the Republic of Kazakhstan No. 401-IV "On Mediation", 2011. Available at: <https://adilet.zan.kz/rus/docs/Z1100000401>

⁴¹ KRASNOZHON, Neonila. Formation of legal relationship between the Latvian republic and Ukraine in the period of 1992-2019. *Society. Document. Communication*, vol. 6, no. 3, pp. 106-126, 2021. <https://doi.org/10.31470/2518-7600-2021-13-106-126>

Kyrgyzstan's socio-political and legal landscape significantly impacts the adaptation of foreign mediation models. In a country where, following political changes and periods of social instability, there is a lack of trust in formal institutions, including the judiciary, traditional methods of conflict resolution through elders or kinship often remain the primary methods. This can be a barrier to the introduction of formal mediation procedures, as they require a certain amount of trust in new institutions and processes. In addition, the culture of using mediation as an alternative to litigation has not yet been developed at the societal level, which creates some resistance to its implementation.

One of the main problems with the introduction of mediation in Kyrgyzstan is the lack of a sufficiently developed legal infrastructure and qualified mediators. The absence of clear requirements for mediators' education, including legal education, reduces the effectiveness of this tool, especially in complex cases such as criminal or commercial disputes. The underdeveloped mediation infrastructure and limited financial and organizational state support also create barriers to the effective functioning of this institution. In addition, there are gaps in the legislation that make it difficult to integrate mediation into the judicial system and do not ensure clear responsibility of mediators for their actions.

Legal and social difficulties accompany the introduction of mediation in less developed legal systems, such as Kyrgyzstan. Low public awareness of mediation as a dispute resolution tool and its advantages over litigation significantly hinder its development. People, especially in rural areas, may be skeptical of mediation due to a lack of trust in new formal processes. This requires a comprehensive approach, including awareness-raising campaigns, training of mediators, and creating an effective legal infrastructure to support mediation at all levels.

It's important to note that the development of mediation and ensuring equal access to mediation in Kyrgyzstan depends on adequate state support, including in the field of mediator training in the region. In addition, it is necessary to actively disseminate information about the mediation procedure in society due to its professionalism and effectiveness. Improving the mediation institution requires focusing on several key areas of cooperation. These areas include collaboration with government authorities, establishing links with the judiciary, and developing partnerships with various social institutions. This comprehensive approach creates an effective ecosystem for the functioning and development of mediation in multiple areas of public life.

b) Analysis of Foreign Experience

To analyse effective ways of developing the mediation institution in Kyrgyzstan, examining international experiences and identifying common practices and

unique characteristics is valuable. For instance, in Kazakhstan, the Decree of the President of the Republic of Kazakhstan, “On the Concept of Foreign Policy of the Republic of Kazakhstan for 2020-2030”⁴² states that using mediation procedures to resolve interstate and civil conflicts and disputes is a priority area of state policy in the international arena. Kazakhstan adopted Law of the Republic of Kazakhstan No. 401-IV “On Mediation”⁴³ in 2011, laying the foundation for the development of the mediation institution in the country. Mediation is an institution that has developed historically in Kazakhstan. As early as the 18th century, Kazakhstan actively used “Би́и” (“Biyev, “Biyas” for plural), a unique institution of mediation. The “Biyev” court was a group of authoritative persons, which could include, for example, headmen and other community members, to solve the problems of a given social group. The power of such judges was based solely on their authority and reputation. If judges were found to be unscrupulous or dishonest, that court would no longer be used to resolve any dispute.⁴⁴ It is worth noting that this form of dispute resolution is characterized by the absence of formalities. However, despite mediation’s historical roots, the institution is not famous in the Republic today. Different scholars see the reasons for this trend as follows. As such, S. Tinistanova⁴⁵ mentions low public understanding, and A.I. Karipova and A.N. Romanova⁴⁶ share a similar view, focusing on the lack of awareness of the possible outcomes of mediation procedures. Mediation can successfully resolve disputes, leading to positive outcomes for both parties. In contrast, in court proceedings, only one party always gets the desired result, and usually, it is not in full.

According to the 2018 Statistics of Mediation in Kazakhstan, mediation resolved only 4% of civil cases. In contrast, global statistics show that around 40% of all disputes are settled through mediation, with a positive outcome in 85% of cases. The Republic of Kazakhstan, being at the stage of development and formation of the essential elements of democracy, requires a focus on a stable model of the mediation institution that demonstrates high results.⁴⁷

⁴² Decree of the President of the Republic of Kazakhstan “On the Concept of Foreign Policy of the Republic of Kazakhstan for 2020-2030”, 2020. Available at: https://www.akorda.kz/ru/legal_acts/decrees/o-koncepcii-vneshnei-politiki-respubliki-kazahstan-na-2020-2030-gody

⁴³ Law of the Republic of Kazakhstan No. 401-IV “On Mediation”, 2011. Available at: <https://adilet.zan.kz/rus/docs/Z1100000401>

⁴⁴ ABIEV, Y.M., SHERYAZDANOVA, Gulmira R., BYULEGENOVA, Bibigul B., RYSTINA, Idira S., GABDULINA, Beggar A. Mediation in the multicultural society of Kazakhstan: Tradition and modernity. *Utopia y Praxis Latinoamericana*, vol. 25, no. 1, pp. 14-22, 2020.

⁴⁵ TINISTANOVA, Saltanat. Some current problems of mediation in the Republic of Kazakhstan. *The Scientific Heritage*, vol. 78, pp. 28-30, 2021.

⁴⁶ KARIPOVA, Asel I., ROMANOVA, Alina N. Some aspects of the comparative characteristics of mediation in the USA and the Republic of Kazakhstan. *Bulletin of the Academy of Law Enforcement Agencies*, vol. 1, pp. 50-58, 2021.

⁴⁷ KHAMZINA, Zhanna, BURIBAYEV, Yermek, ALMAGANBETOV, Pernebay, TAZHMAGAMBET, Amantay, SAMALDYKOVA, Zaure, APAKHAYEV, Nurlan. Labor disputes in Kazakhstan: Results of legal regulation and

The Anglo-Saxon legal system uses mediation for all types of cases. Mediation in the United States has a long history of informal dispute resolution, dating back to the colonial period. However, today, mediation is widely used in all types of disputes – only 5% of cases opened in the US end up in court, and 80% of cases considered by mediation end up with the desired result for the parties.⁴⁸ Another advantage is the savings on court costs, which the parties involved in the proceedings do not receive back. The US mediation process is different from other countries.⁴⁹ In terms of legal regulation, the United States has a Mediation Act, adopted in 2001, consolidating 2,500 different regulations that previously regulated the activities of mediators in all states.⁵⁰ As early as 1947, the Federal Mediation Conciliation Service began operating to resolve conflicts not subject to judicial review. Over time, it received several powers to resolve disputes in various fields. In the 1970s, it also received disputes with federal authorities.⁵¹ Due to the absence of the division of rights into private and public, the US initially developed the scope of extending mediation to all types of disputes, considering the peculiarities of the Anglo-Saxon legal system. Today, the Federal Service is a federal body with regional and local offices. In addition, the country has both a National Institute for Dispute Resolution and state-run mediation services.⁵² Mediators offer their services in special mediation centers, where they conduct the mediation process. In addition, some so-called private mediators are former judges or lawyers and may also practice law in parallel.⁵³

In the UK, mediation is also an optimal and popular way to resolve disputes, especially commercial ones. However, no legal norms regulate mediation in the UK, as it remains an initiative of law enforcement.⁵⁴ At the same time, courts actively encourage the initiative to use mediation procedures to resolve legal disputes. Special hotline services can be used to find a mediator, depending on the dispute and wishes. To stimulate the use of mediation, the UK uses the following

future prospects. *Journal of Legal, Ethical and Regulatory Issues*, vol. 23, no. 1, pp. 1-14, 2020.

⁴⁸ US vs UK – A comparison of mediation processes, 2017. Available at: <https://www.skuld.com/topics/legal/pi-and-defence/us-vs-uk—a-comparison-of-mediation-processes/>

⁴⁹ IMANBAIEV, Serik M., ROMANOVA, Aida H. Comparative legal analysis of the mediation institute under the criminal procedure legislation of the Republic of Kazakhstan, the USA, and Great Britain. *Criminal Executive System: Yesterday. Today. Tomorrow*, vol. 2, no. 10, pp. 35-48, 2021.

⁵⁰ Uniform Mediation Act, 2001. Available at: <http://intermediation.narod.ru/index/0-35>

⁵¹ KARIPOVA, Aseil I., ROMANOVA, Alina N. Some aspects of the comparative characteristics of mediation in the USA and the Republic of Kazakhstan. *Bulletin of the Academy of Law Enforcement Agencies*, vol. 1, pp. 50-58, 2021.

⁵² MURPHY, Tim. Justice and the common good in dispute resolution discourse in the United States and the People's Republic of China. *Law and Development Review*, vol. 10, no. 2, pp. 305-339, 2017.

⁵³ Statistics of mediation in the world. Association of mediators, 2024b. Available at: <https://mediator.kz/o-nas/news/statistika-provedeniya-mediacij-v-mire>

⁵⁴ MYRZAKHANOVA, Marzhan N., JYMAKAEVA, K.J. Comparative characteristics of national and international legislation on mediation. *Bulletin of the Al-Farabi Kazakh National University*, vol. 80, no. 4, pp. 327-332, 2016.

method: if one of the parties refuses to mediate, this party to the dispute must bear the court costs even if it wins the court proceedings.⁵⁵ It is worth noting that Kazakhstan lacks any state authorities' incentives. The national system can adopt this experience. The expertise and legislation of Germany are also necessary for comparative analysis, given the country's high ranking on the alternative methods index. Mediation in Germany dates back to the Middle Ages when it was used in domestic and interstate conflicts. At the legislative level, mediation is regulated by the Law of the Republic of Kazakhstan No. 401-IV "On Mediation". It implies a confidential procedure in which the parties to a conflict come to a resolution with the help of one or more mediators. Germany requires mediation as a mandatory procedure for disputes involving less than €750, with the right to go to court denied if the dispute is not mediated first. If a judge proposed mediation in open court proceedings, the judge was obliged to refer the dispute to a fellow judge who was also a professional mediator.

The next stage was the legislative establishment of a unique position of "guterichter", whose competence included the out-of-court settlement of disputes by any alternative means. Thus, the German legislator has delineated the boundaries of judicial proceedings and out-of-court conflict resolution. Today, in Germany, mediation is divided into judicial and non-judicial, but the use of mediation techniques in court proceedings is not mediation. However, if a judge uses this method during the proceedings, the parties to the lawsuit do not pay for the mediator's services, as they are already included in court costs. Additionally, in Germany, insurance policies may cover mediator services, and some companies employ in-house mediators. The German government has introduced incentives to encourage the use of mediation in dispute resolution. Specifically, if the parties in judicial mediation agree, 2/3 of the court costs are refunded. Regarding the training of mediators, in Germany, if a mediator does not have a proper legal background, the mediator must have a joint consultation with a mediator-lawyer. According to German law, mediators may only be persons who have completed a 120-hour training course and have confirmed their qualifications within four years. To conduct mediation procedures, a lawyer should also receive special mediation training. At the same time, there is no state register of mediators.⁵⁶

⁵⁵ IMANBAIEV, Serik M., ROMANOVA, Aida H. Comparative legal analysis of the mediation institute under the criminal procedure legislation of the Republic of Kazakhstan, the USA, and Great Britain. *Criminal Executive System: Yesterday. Today. Tomorrow*, vol. 2, no. 10, pp. 35-48, 2021.

⁵⁶ ISMAILOVA, Rana. An overview of the practice of mediation implementation in the top 5 countries according to the AMRS in the Doing Business rating, 2020. Available at: https://www.undp.org/sites/g/files/zskgke326/files/migration/uz/Mediation_ru.pdf

In Kazakhstan, for example, mediators do not have to be lawyers.⁵⁷ To engage in this activity on a non-professional basis, individuals must be at least 40 years old and complete a particular mediation course. It is worth noting that the division of mediators in Kazakhstan into persons acting on a non-professional and professional basis is a significant drawback in the national law system.⁵⁸ Regardless of the type of legal relationship, only a specialist with the appropriate legal competence and education should conduct such activities when resolving a legal dispute. Therefore, joint consultations between a mediator without legal education and one with legal education in Germany should be incorporated into the mediation framework in Kazakhstan. Given the geographical proximity of the regions, it is necessary to study the institution of mediation in the People's Republic of China to assess the techniques and methods compared with Western European countries. Mediation in China is part of the culture, as according to Confucianism, going to court is the last step in resolving a legal dispute. At the legislative level, the institution of mediation in China is regulated by the Law of the People's Republic of China, "On People's Mediation," which defines it as a process where a people's commission helps parties in a dispute reach an agreement through equal negotiation.⁵⁹ Today, mediation in China is divided into judicial and non-judicial, like in Germany. Still, the difference is that judicial mediation in China is held as part of a court process and is funded from the state budget, while in Germany, it is paid by the parties to the dispute in the form of court costs, albeit with several benefits. Laws adopted between 2008 and 2010 govern the mediation procedure, aiming to resolve civil disputes quickly, efficiently, and fairly while promoting social stability and harmony. However, mediation is not mandatory, and if the plaintiff wishes to pursue litigation, the court may be involved.

Judicial mediation is an integral part of the Chinese judicial system, and its procedure is regulated by the Supreme Court of the People's Republic of China's Resolution on the Priority of Mediation and the Combination of Mediation and Proceedings.⁶⁰ According to this ruling, the judge must assess the possibility of using mediation before proceeding to trial. Thus, even when bypassing out-of-court

⁵⁷ RYSKALIYEV, Dauletbai U., ZHAPAKOV, Sabyrzhan M., APAKHAYEV, Nurlan, MOLDAKHMETOVA, Zhanar, BURIBAYEV, Yermek A., KHAMZINA, Zhanna A. Issues of gender equality in the workplace: The case study of Kazakhstan. *Space and Culture, India*, vol. 7, no. 2, pp. 15-26, 2019. <https://doi.org/10.20896/saci.v7i2.450>

⁵⁸ ZHETPISBAYEV, Batyrbek A., BAISALOVA, Gulzira T., SHADIYEV, Kairatbek Kh., KHAMZIN, Amangeldy Sh., BURIBAYEV, Yermek A., KHAMZINA, Zhanna A. Legal support of the process of Kazakhstan accession to the OECD: Potential for improving quality of individual's labour rights regulation. *Journal of Advanced Research in Law and Economics*, vol. 8, no. 7, pp. 2302-2307, 2017. [https://doi.org/10.14505/jjarle.v8.7\(29\).31](https://doi.org/10.14505/jjarle.v8.7(29).31)

⁵⁹ Order of the President of the People's Republic of China No. 34 "The people's mediation law of the People's Republic of China", 2010. Available at: <https://www.uv.es/medarb/observatorio/leyes-mediacion/asia/china-mediation-law.pdf>

⁶⁰ YUWEN, Li. *The judicial system and reform in Post-Mao China: Stumbling towards justice*. Abingdon: Routledge Press, 2014.

mediation and filing a lawsuit in court, the parties to the conflict must consider mediation to resolve a legal dispute. However, in this case, either the judge or multiple judges act as mediators, and, as mentioned earlier, the procedure is funded by the state budget. However, a professional mediator is required to approve a mediation agreement. A way to stimulate the development of the mediation institute in China is to increase the salary of a judge proportionally to the number of cases resolved through mediation. In this way, the legislator encourages increasing the number of mediation agreements facilitated by the judiciary, promoting direct interaction between the judiciary and the mediation institution. Studying foreign experience is critical in the context of mechanisms for the widespread use of mediation to resolve legal conflicts. The fact is that today, the most popular form of protection of rights and legitimate interests is judicial protection in Kyrgyzstan.⁶¹ However, based on the foreign practices analyzed above, it is worth considering such a format as involving the court in promoting mediation. This process is most evident in Germany and China.⁶² This could serve as an incentive for Kyrgyzstan to develop the mediation institution and use it without mandatory directives.

In addition to the German and Chinese legislative practices, it is rational to consider the Dutch model in this regard. For instance, the Netherlands provides for a specific interaction process between the judiciary and a private mediator, namely the Netherlands Mediation Institute. By establishing information points in each court that provide details about the possibilities and outcomes of mediation, plaintiffs or defendants can be adequately informed about their options for resolving the conflict. In addition, the Dutch Agency for Judicial Mediation makes a considerable contribution to the interaction between the court and mediators, which supports and instructs courts in referring cases to mediation and monitoring this procedure.⁶³ Given this, a particular state program could be introduced into national legislation, requiring courts to consider mediation before legal proceedings begin. If applicable, the case could be referred to court mediation with the participation of both a judge-mediator and an external mediator. The experience of New Zealand is also engaging, as it prevents parties from using documents prepared for mediation in other proceedings without mutual written consent. A similar practice exists

⁶¹ BEKMURATOV, Altynbek, MYRZAIBRAIMOVA, Inabarkan, MAMASHOV, Kanjarbek, RAIMBERDIEV, Bektur, TOOKEEVA, Difuza. Impact of leasing transactions on business development in Kyrgyzstan. Scientific Bulletin of Mukachevo State University. Series Economics, vol. 11, no. 3, pp. 21-33, 2024. <https://doi.org/10.52566/msu-econ3.2024.21>

⁶² HUTCHINSON, Danielle, LITCHFIELD, Emma-May, BOGACZ, François. Seven keys to unlock mediation's golden age: A work by 40 authors from around the world, 2020. Available at: https://www.academia.edu/43768092/SEVEN_KEYS_TO_UNLOCK_MEDIATIONS_GOLDEN_AGE_A_WORK_BY_40_AUTHORS_FROM_AROUND_THE_WORLD

⁶³ JAGTENBERG, Rob, DE ROO, Annie, COMBRINK, Lia, PEL, Machteld. Customized conflict resolution: Court-connected mediation in the Netherlands 1999-2009, 2011. Available at: <https://www.rechtspraak.nl>

in Canada, supported by legal frameworks.⁶⁴ Based on this, a similar security guarantee should also be enshrined in Kyrgyzstan, according to which the parties are not allowed to use documents or any other material evidence prepared for mediation in other judicial or extrajudicial proceedings.⁶⁵

Mediation is an effective response to the challenges of our time. The issue is not only about modernization but also about improving judicial efficiency, protecting human rights, and restoring legal interests. Furthermore, mediation could help solve the problem of overburdened courts if integrated into the legal system of the Kyrgyz Republic. The introduction of mediation into the national legal system should be recognized as one of the mandatory stages of pre-trial settlement, with clear guidelines on its scope, such as in criminal disputes. In addition to all the above changes, it is worth launching a trial mediation project funded by state aid. These are free mediation services, as if they were free of charge, without legal assistance guaranteed by the state. Access to such a service should be provided only to specific population groups, for example, socially disadvantaged or subsidized categories. Such measures would promote the wider use of mediation when resolving legal conflicts, offering an alternative to litigation.

Conclusions

The study found that mediation as an alternative dispute resolution method was introduced in Kyrgyzstan in 2017 by adopting the Law of the Kyrgyz Republic, “On Mediation”. Mediation practices developed over a long period, particularly after the political events and inter-ethnic conflicts of 2005-2010. The introduction of mediation was seen as an essential step toward building a lawful society that respects human rights and promotes effective conflict resolution. Despite the positive dynamics, the pace of mediation development in Kyrgyzstan remains insufficient. Several problems exist in implementing the Law of the Kyrgyz Republic, “On Mediation”, such as contradictions with other laws, underdeveloped mediator organizations, a lack of qualified personnel, and low public awareness of the procedure.

Creating a comprehensive mediation system, including professional mediators, their associations, non-profit associations and public organizations, is at an early stage of development. This process can take several years to develop fully.

nl/SiteCollectionDocuments/Customized-conflict-resolution-Court-connected-Mediation-in-The-Netherlands-1999-2009.pdf

⁶⁴ MORRIS, Catherine. The impact of mediation on the culture of disputing in Canada: Law schools, lawyers and laws. In: *Mediation in Asia-Pacific: A Practical Guide to Mediation and Its Impact on Legal Systems*, pp. 67-116. Hong Kong: CCH Hong Kong, 2013.

⁶⁵ PODKOVENKO, Tatiana O. Mediation institute: International experience and Ukrainian prospects. In: *Collection of scientific papers of the Law Faculty of Ternopil National Economic University*, pp. 26-31. Ternopil: Ternopil National Economic University, 2016.

Additionally, there is a significant issue with the absence of a mandatory requirement for mediators to have legal education. This fact raises specific concerns about the effectiveness of mediation procedures, especially when it comes to resolving complex legal conflicts. Mediators' lack of legal training may question their ability to resolve disputes competently with a severe legal component. In this context, the active involvement of professional lawyers in mediation has been encouraged. In addition, for mediation to become widespread, state support for training mediators, especially in the regions, and promoting this institution among the population is needed.

Regarding foreign experience, countries like the US, UK, Germany, and Sweden regulate disputes through mediation. The author concludes that Kyrgyzstan should implement the German practice of mandatory consultation with a lawyer if the mediator is not a lawyer. A way to promote the institution of mediation may be to introduce a unique state program aimed at the interaction of judges and mediators in both judicial and non-judicial mediation. Regarding criminal proceedings, mediation should focus on cases involving minor offenses or negligence. Furthermore, underaged agents of minor crimes should be subject to mediation to reconcile them with the victim, the law and their re-education.

Prospects for studying this problem include the issues of regulating the interaction between mediators and judges, as well as the involvement of the latter in the mediation process. Moreover, the mediation process in criminal cases requires further detailed study. To overcome the challenges of adapting to mediation in Kyrgyzstan, the focus should be on raising public awareness through information campaigns, educational programs, and access to knowledge about the benefits of mediation. It is also vital to improve mediators' professional training, particularly by introducing legal education requirements and creating certification standards for mediators. The role of lawyers in mediation is to ensure the high quality of the process, provide legal advice, assess the legitimacy of agreements, and promote compliance with the law, which increases confidence in mediation and makes it an effective and legitimate way to resolve conflicts.

Resumo: A relevância desta pesquisa decorre da necessidade de aprimorar os mecanismos de resolução alternativa de disputas, em especial a mediação, que enfrenta diversas lacunas tanto na esfera legislativa quanto na prática. Com a adoção da Lei da Mediação no Quirguistão em 2017, a busca por mecanismos e métodos alternativos de resolução de conflitos tornou-se uma das áreas centrais no setor da justiça, visando garantir aos cidadãos o direito à proteção judicial de forma qualificada e tempestiva. No entanto, considerando todas as circunstâncias socioeconômicas e políticas, ainda existem muitas lacunas no desenvolvimento da mediação como prática social no país: é necessário organizar um mercado de serviços de mediação, estabelecer uma regulamentação jurídica adequada, criar incentivos ao uso da mediação como meio de resolução de conflitos e definir um conjunto claro de procedimentos.

Com base nisso, o estudo tem como objetivo realizar uma análise comparativa da legislação do Quirguistão e de países estrangeiros no campo da mediação, bem como comparar os procedimentos de mediação e sua aplicação. A abordagem metodológica adotada baseia-se no método jurídico comparado, aplicado para analisar as experiências estrangeiras e as práticas do Quirguistão, juntamente com o método dialético. O estudo examinou a instituição da mediação na República do Quirguistão e suas origens históricas. Também explorou a mediação como método de resolução alternativa de disputas (RAD), com foco em seus aspectos únicos no contexto quirguiz. Os autores realizaram uma análise jurídica comparativa da legislação e das peculiaridades do procedimento de mediação em diferentes países, incluindo Estados Unidos, Reino Unido, Alemanha, China e diversos outros (Suécia, Singapura e Países Baixos). A relevância prática deste estudo reside em seu potencial para influenciar reformas legislativas no Quirguistão, abordando as lacunas existentes na legislação atual e aprimorando o marco normativo da mediação.

Palavras-chave: Disputas. Mediação. Resolução de Conflitos. Resolução Alternativa de Disputas. Conciliação.

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