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The Role of family mediation in conflict resolution: international experience and prospects for Kazakhstan

The article explores the role of family mediation in conflict resolution, analyzes international experience in its application, and examines prospects for its development in Kazakhstan. Particular emphasis is paid to the advantages of mediation compared to litigation, and based on the analysis of foreign practices, key mechanisms and models of family mediation that can be adapted in Kazakhstan are highlighted. In the course of the research, the following methods of the scientific research were used: specifically sociological, comparative legal, formal legal, statistical, logical, system-structural, functional. Based on the methods of scientific research, the concept and essence of family mediation were comprehensively revealed. In addition, family mediation is applicable for conflict resolution in the conduct of family business. In conclusion, recommendations are proposed for improving the national legal framework and developing the institution of family mediation in the country, as well as the possibility of applying family mediation in resolving disputes related to family entrepreneurship.

Keywords: family legal relations, family mediation, dispute resolution, conciliation procedures, mediator, family disputes, confidentiality, voluntariness of mediation, alternative dispute resolution, family entrepreneurship.

Introduction

The family is of particular interest as an ancient social institution that not only ensures the stability of society, but also evolves with it, adapting to innovations and changes. In such a system of intensive, close cooperation, disputes, conflicts, and crises cannot but arise, the signs of which at the moment are:

1. The growing number of divorces and the instability of marriage unions. Modern marriages are becoming less stable, and married couples are inclined to faster decisions about divorce, sometimes without an attempt of meaningful conflict resolution. Divorces often occur due to partners' inability to engage in constructive dialogue, unmet expectations, or lack of financial stability. The emergence of "serial marriages" (several short unions over a lifetime) reflects the declining value of traditional marriage. On the one hand, according to the Ministry of Justice, 124.7 thousand marriages were registered in Kazakhstan in 2024, which is 3 thousand more than in 2023 (121.7 thousand). This suggests that, according to statistics, the country has a stable trend in this regard. On the other hand, Kazakhstan holds a leading position in divorce. In 2024, over 17.7 thousand divorces were registered by the Civil registration authorities, which are 900 more than in 2023 (16.8 thousand). Normally, about 30 % of divorces occur by mutual consent of the spouses, the remaining 70 % through the courts due to disputes over the division of property or the place of residence of the chil-

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dren. The total number of divorces in 2024 was 40.6 thousand. In 2023, Kazakhstan ranked among the top countries with the highest divorce rates — 40.2 thousand, with an annual increase of 400. On average, more than 40 thousand marriages break up in the country every year [1].

2. Changing gender roles and blurring the traditional family model. Women have become more engaged in building careers, taking leadership positions and ensuring financial independence, which reduces their dependence on marriage. Men are less actively involved in child rearing and household management. These changes lead to difficulties in the distribution of roles in the family, which can provoke conflicts and dissatisfaction between partners.

3. Family relationships are increasingly strained, with parents and children engaging less frequently due to competing demands such as work, education, and digital distractions. Virtual communication replaces live communication, which reduces the level of empathy and family support.

4. Economic pressure on the family, for instance, the high cost of housing, instability in the labor market, and inflation make the maintenance of the family difficult. Both partners are forced to work, which leads to a lack of time for parenting and relationship development. Financial disagreements often lead to conflicts and divorces.

5. Weakening of the institution of marriage and the growth of alternative union forms. According to sociologists Ulrich and Elisabeth Beck, we have been struck by the "tyranny of choice" [2]. Society is moving away from the clear and predictable path of "school — institute — marriage — family — children" to diversity, which includes guest marriages, conscious loneliness, "patchwork" families, children born out of friendship and from sperm donors, as well as polyamorous unions, open relationships and Boston marriages (a family formed by female friends who manage a household together). More and more people are choosing civil marriages, unregistered partnerships, or staying single, and formal marriage is no longer considered the only socially acceptable form of family. Personal life has become an individual project, rather than social prescriptions [2; 178].

6. The rise in family conflicts stems from the fact that families function as long-term systems of continuous social engagement, which naturally brings about disagreements and crises. Conflicts between spouses are the most common types of contradictions, and divorces have serious consequences for children: custody disputes, attachment disorders, psychological traumas. Conflicts between generations are becoming widespread when parents do not understand the values and attitudes of young people, and children consider their parents' views outdated. In addition, family conflicts between family members can worsen during the joint management of family business, namely the division of roles in the management of the family business, inheritance and division of shares by the heirs of the family business, and so on. Thus, the crisis of the family as a social institution is caused by a combination of economic, social, psychological and cultural factors. It is family mediation that can become a tool for resolving conflicts, finding compromises and strengthening family ties.

When contradictions arise within the family unit, individuals are confronted with the necessity of determining an appropriate course of resolution. The attention of the state and society to disputes related to family relations is steadily increasing; family disputes are one of the most common categories of lawsuits. Family conflicts are becoming more complex, often accompanied by emotional tension and lengthy court proceedings. Lawsuits can exacerbate conflicts, and their duration negatively affects all participants, especially children. This requires effective mechanisms for their resolution. One of these mechanisms is family mediation, aimed at peaceful resolution of conflicts without judicial proceedings. Mediation has been developing in the Republic of Kazakhstan since 2011; however, its application in family disputes remains limited. The aim of this article is to analyze family mediation as a method of dispute resolution in the Republic of Kazakhstan, identify existing challenges, and determine possible ways to improve it.

Methods and materials

Family mediation is an alternative dispute resolution method based on the principles of voluntariness, confidentiality, neutrality, and equality of the parties. The primary goal of mediation in family conflicts is to preserve relationships between spouses, protect the rights and interests of children, and reach a compromise solution without coercion. At the international level, family mediation is regulated by several documents, including the UN Convention on the Rights of the Child, the European Convention on the Law Applicable to Contractual Obligations, and the UN Guidelines on Access to Justice for Children.

Kazakhstan also strives to implement international standards in the field of family mediation. The Civil Procedure Code of the Republic of Kazakhstan (the "CPC RK"), effective as of January 1, 2016, provides for

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conciliation procedures in Chapter 17 of the CPC RK. According to Article 174 of the CPC RK, conciliation procedures include the conclusion of a settlement agreement, an agreement on dispute (conflict) resolution through mediation, and an agreement on dispute resolution through a participatory procedure [3].

The main regulatory act governing mediation is the Law of the Republic of Kazakhstan "On Mediation" (the "Law"), dated January 28, 2011, which defines mediation as a procedure for resolving disputes (conflicts) between parties with the assistance of a mediator (or mediators) to achieve a mutually acceptable solution, carried out with the voluntary consent of the parties. Family disputes can be resolved with the participation of mediators who have the appropriate qualifications [4].

The Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" also provides for the possibility of applying mediation in cases related to divorce, determining a child's place of residence, alimony collection, and other matters [5].

Family mediation is an alternative way to resolve family disputes, in which a neutral mediator helps the parties come to a mutually acceptable solution, taking into account their interests and emotional needs. This process is aimed not only at conflict resolution, but also at maintaining or restoring constructive relationships between family members, especially in situations involving children. Mediation is an alternative to the judicial dispute resolution procedure or an addition to the judicial procedure, which, in turn, helps to reduce the burden on the courts and increase the number of reconciliations, including in family disputes.

According to the Law, the goal of mediation is to develop a mediated agreement that satisfies the conflicting parties. In court proceedings, lawyers or attorneys typically advocate for one party, and the final decision largely depends on their professionalism, which does not always align with a fair resolution. Theoretically, a mediator maintains a neutral position toward all parties involved in the conflict.

According to Article 7 of the Law of the Republic of Kazakhstan "On Mediation", a mediator must be impartial, conduct mediation in the interests of both parties, and ensure equal participation of the parties in the mediation process. Article 9 of the Law establishes that a mediator can be an independent, impartial, and unbiased individual, who is not interested in the outcome of the case, chosen by mutual consent of the mediation parties, included in the mediator registry, and has agreed to perform the function of a mediator [4].

Family mediation generally involves finding solutions to issues related to marital and parent-child relationships, as well as in the context of family businesses. The application of mediation in family disputes has distinct characteristics, stemming from the differences between family law relations and those of a civil law nature. As we discussed earlier, mediation is justified in various categories of family disputes, including divorce, determining the child's place of residence in case parents live separately, resolving cases of parent-child contact when one parent lives separately, dividing jointly acquired property, issues arising from alimony relations, as well as dividing shares in a family business, and others. In our opinion, introducing mandatory family mediation could, in some cases, help preserve and possibly strengthen the marriage. It is important to note that mediation cannot be applied in cases concerning the deprivation of parental rights, restrictions on parental rights, restoration of parental rights, or the removal of such restrictions. Disputes in these categories must be resolved exclusively through court proceedings, as, due to their legal nature and specific evidentiary requirements, it is impossible for the parties to reach a settlement agreement.

Mediation has been practiced in Anglo-Saxon countries since the 1960s and was later adopted in countries with a continental legal system. Proponents of this procedure consider it an essential element in the development and advancement of civil society. Empirical evidence demonstrates that mediation facilitates the establishment of new informal connections between individuals, ultimately leading to the discovery of joint, unconventional solutions that result in mutually beneficial and acceptable outcomes. In the long run, this process contributes to social stability [6; 53].

The scholarly perspective on the practice of family mediation in the Republic of Kazakhstan is still in the process of formation. It is worthwhile to consider the viewpoints of several foreign scholars on this matter.

Renowned researcher in the field of family mediation, Lisa Parkinson, defines family mediation as a process in which a neutral third party (mediator) assists conflicting parties in reaching a mutually acceptable agreement while minimizing harm to children and preserving opportunities for future cooperation [7; 147].

As is well known, mediation is only possible when both parties participate on an equal footing in discussions, in conditions of physical safety and psychological comfort, and when they are capable of making independent decisions and fulfilling their commitments. Consequently, there are several restrictions on the application of mediation in family disputes, which may be associated with the following factors: repeated instances of domestic violence, either ongoing at the time of mediation preparation or occurring in the recent

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past; child abuse; intimidation, threats, or a significant imbalance of power between the parties; a mental illness affecting one of the parties; the legal incapacity of one of the parties; substance addiction affecting one of the parties; deliberate misrepresentation and the provision of knowingly false information; refusal or inability to adhere to the fundamental principles of the mediation process [7; 147].

According to John Haynes and Susan Fisher, family mediation is a structured process aimed at resolving disputes between spouses or other family members with the participation of a neutral mediator who facilitates effective communication and the search for compromise [8; 214].

Robert A. Baruch Bush & Joseph P. Folger believe that mediation, including family mediation, is seen as a process of transformation in which the parties not only find a solution to the conflict, but also develop new forms of interaction based on mutual understanding and responsibility [9; 278].

According to Constance Ahrons & Katherine Irwin, family mediation is a process that promotes cooperation between former spouses and prevents conflict escalation, particularly in matters related to child-rearing after divorce [10; 198].

The legal definition provided by the European Commission for the Efficiency of Justice (CEPEJ) states that family mediation is a process in which disputing parties, with the assistance of a mediator, seek to reach an agreement on family-related matters, including divorce, parental rights, financial obligations, and other aspects of family relationships [11].

Thus, family mediation is understood as a structured process of alternative dispute resolution in which a neutral third party (mediator) assists the parties in reaching a mutually acceptable agreement while minimizing negative consequences for all participants, especially children.

Different researchers emphasize various aspects of family mediation. Lisa Parkinson highlights the importance of preserving opportunities for future cooperation. John Haynes and Susan Fisher emphasize the structured nature of the process and the mediator's role in communication. Robert Bush and Joseph Folger view mediation as a transformative process that fosters the personal growth of the parties involved. Katherine Irwin focuses on preventing conflict escalation and promoting cooperation between former spouses. The European Commission for the Efficiency of Justice (CEPEJ) provides a legal definition that encompasses a broad range of family issues. Overall, family mediation is a flexible and multi-layered tool aimed not only at conflict resolution but also at improving interaction among family members, fostering a culture of peaceful dispute resolution, and protecting the interests of children. However, in domestic legal scholarship, the psychological aspects of family mediation remain largely unaddressed. Family conflicts are characterized by a high level of emotional involvement, which requires mediators to possess not only legal expertise but also psychological training.

It would be valuable to explore the specific characteristics of family disputes from a psychological perspective in greater detail. Family conflicts are typically marked by high emotional intensity; the parties involved often act not based on rational arguments, but under the influence of strong emotions such as resentment, anger, or disappointment. The presence of children as a particularly vulnerable party further complicates parental disputes, as the conflict may cause emotional trauma to the child — especially when children are used as leverage or become "bargaining chips" in the negotiation process. Family relationships are deeply personal, involving emotional attachments, shared histories, and often a continuing need for contact in the future — for example, in co-parenting arrangements. These factors significantly complicate the mediation process. Moreover, individuals engage in conflict using different communication styles and behavioral strategies. Some may avoid confrontation, while others may demonstrate aggression, passivity, or manipulative behavior. These variations require a highly skilled mediator who is capable of adopting an individualized approach. A family mediator must be equipped with a diverse set of psychological tools. One of the key techniques is active listening, which helps reduce tension and build a climate of trust. Emotional regulation is another essential skill, enabling the mediator to assist participants in managing anger and anxiety, thereby facilitating a shift from emotional reactivity to constructive dialogue. Identifying shared interests helps uncover common ground, paving the way for compromise. The technique of "reframing", in which the mediator rephrases hostile or emotionally charged statements into neutral language, can help the parties re-evaluate the conflict and see the situation from a new perspective. It is crucial that family mediators possess psychological knowledge or undergo advanced training in the field of family psychology. Without such expertise, it is difficult to effectively manage the emotional dynamics inherent in family disputes and to guide the parties toward a resolution that supports both relational healing and the well-being of all involved — especially the children.

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Results

The limited use of mediation in family disputes in the Republic of Kazakhstan can be attributed to the fact that this procedure is not mandatory. In contrast, in several other countries — such as Germany and France — mediation is compulsory for certain categories of cases. This mandatory approach contributes to reducing the burden on the judicial system and improving the overall quality of dispute resolution outcomes.

Despite the existence of a legal framework, the practice of family mediation in Kazakhstan encounters a number of challenges, among which the following can be highlighted: one of the key obstacles to the development of family mediation is the low level of public awareness regarding its potential. Many individuals do not consider mediation as an alternative to court proceedings, either because they are unaware of its existence or perceive it as a complex legal process. There is a widespread belief that family conflicts can only be resolved through the courts, and there are concerns that a mediated agreement may possess less legal force than a court decision. To achieve positive change in this area, it is necessary to implement educational campaigns — through mass media, social networks, and educational institutions — as well as to develop special programs within civil registry offices and courts, where citizens would be informed about the advantages of mediation. It is also advisable to introduce a mandatory informational stage prior to judicial proceedings in family cases, during which the parties would be made aware of the possibilities for pre-trial settlement. At present, not all mediators working with family conflicts possess sufficient knowledge and skills. This highlights the need for comprehensive training and professional development for mediators, particularly in areas that require both legal expertise and psychological competence.

The main issues in the training of family mediators include the absence of unified educational standards, a lack of programs focused on in-depth study of family psychology, conflict resolution, and child psychology. By Order of the Minister of Information and Social Development of the Republic of Kazakhstan dated June 14, 2023 No. 244-NK, the Rules for training in the mediation training program were approved, which establish general provisions, however, the specialized course provides for the topic “Peculiarities of dispute resolution arising from family legal relations”, consisting of 6 hours in total (2 hours of lectures, 4 hours practical exercises). This is absolutely not enough to train professional mediators in this category of cases [12].

It is essential to introduce specialized training courses for family mediators that include mandatory instruction in psychology and child psychology. Additionally, certification criteria should be made more rigorous, ensuring that only professionals with an adequate level of preparation are eligible to practice as family mediators. The development of a mentorship system — where experienced mediators provide guidance and training to new specialists — would also significantly contribute to the overall quality and effectiveness of family mediation practice.

Mediation is actively developing in major cities, where trained specialists, informational resources, and support from the judiciary are available. However, access to mediators in rural areas remains extremely limited. In many cases, mediation services are fee-based, which renders them inaccessible to the rural population. Small towns and villages often lack dedicated mediation centers, and online mediation services are not yet sufficiently developed. To foster the development of family mediation in the regions, it is necessary to implement government-supported programs aimed at promoting mediation in rural areas. This includes the introduction of accessible online mediation platforms for residents of remote regions, as well as the training of local professionals — such as lawyers, educators, and social workers — in family mediation skills. These measures would contribute to expanding the reach of mediation services and ensuring equitable access to alternative dispute resolution mechanisms across the country.

In judicial practice, a unified approach should be established regarding the approval of agreements reached through mediation. This includes the clear legislative enshrinement of the mandatory recognition of mediated agreements in family disputes, the introduction of a standardized format for mediation agreements to facilitate their approval by the courts, and the development of a mechanism for monitoring the implementation of such agreements — potentially involving court bailiffs or notaries.

Mandatory mediation, or the compulsory participation of parties in a mediation process prior to initiating court proceedings, is applied in various forms in a number of foreign jurisdictions. In 2010, Italy introduced mandatory mediation for specific categories of civil and commercial disputes, including family matters. This legislative measure aimed to reduce the burden on the judicial system and to promote the peaceful resolution of conflicts. The initiative was implemented through Legislative Decree No. 28 of March 4, 2010, “On the Establishment and Regulation of Mediation Aimed at Conciliation in Civil and Commercial Dis-

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putes". However, in 2012, the Constitutional Court of Italy declared certain provisions of the decree unconstitutional, which led to subsequent amendments and a relaxation of the mandatory nature of mediation in some cases [13].

The Australian Experience. In family disputes involving child custody matters, Australian legislation mandates compulsory participation in family mediation before a claim can be filed with the court. Exceptions are permitted in cases involving violence or threats to safety. This requirement is governed by the Family Law Act 1975, specifically Section 60-I, which outlines the obligation to attempt family dispute resolution prior to litigation. Exceptions to this requirement are strictly regulated and apply only in circumstances where there is a risk to the safety of any party involved. The relevant provisions are found in Family Law Act 1975 (Cth), Part VII (Australia) [14].

In 2013, Turkey introduced mandatory mediation for labor disputes, and since 2018, it has extended this requirement to certain commercial cases. Although family disputes are not subject to mandatory mediation, voluntary participation is encouraged [15].

In certain federal states of Germany, a mandatory attempt at mediation or another form of alternative dispute resolution is required before initiating legal action for specific civil cases [16].

Singapore has been actively promoting mediation as a means of dispute resolution. In 2019, the Singapore Convention on Mediation was adopted, facilitating the international recognition and enforcement of agreements reached through mediation [17].

Since 2016, Polish legislation requires courts to direct parties to participate in an informational mediation session before initiating legal proceedings in certain civil and commercial cases [18].

Mandatory mediation contributes to reducing the burden on judicial bodies and encourages peaceful dispute resolution. However, its effectiveness depends on the quality of mediator training, public awareness, and the cultural characteristics of society.

Discussion

In the Republic of Kazakhstan, the mediation procedure is carried out on a voluntary basis. The principle of voluntariness is the basic principle of mediation. Despite the voluntary nature of the mediation procedure, family legal disputes often require more targeted intervention focused not only on the legal, but also on the deep personal and emotional aspects of the conflict. In this regard, it seems appropriate to establish, if not mandatory mediation in disputes arising from marital relations, then at least mandatory informational meetings with the mediator. Moreover, as elements of the mediation approach, tools such as conflict counseling and conflict coaching can be institutionalized — methods aimed at the parties' awareness of the nature of the conflict, restoring communication and reducing emotional tension. These practices are not opposed, but, on the contrary, are organically integrated into the mediation procedure, enhancing its preventive and restorative functions.

Conflict counseling is a professional activity aimed at identifying the nature of the conflict, its causes and dynamics, as well as at forming an informed attitude towards the situation among the parties. Within the framework of counseling, a mediator (or a specialist with training in the field of conflictology) helps participants in a family conflict formulate their positions and interests, reduce tension and aggression, and identify a zone of possible mutual understanding. This approach is especially effective at the pre-mediation stage and can serve as a preparatory stage for constructive mediation.

Conflict management coaching is a specialized form of support for conflict participants, aimed at developing their skills of self-reflection, emotional self-control, communication and finding solutions. Unlike consulting, coaching is focused on uncovering the internal resources of the parties and building a positive interaction scenario. It can be used both before and during mediation, including in cases where one of the parties is not yet ready for a direct dialogue, but needs individual support.

By the present time, distinct areas of mediation have effectively emerged, although they have not been legally differentiated in the law. Family mediation stands out as a separate area of practice. The distinctive feature of this field is that the mediator, as a professional and independent arbitrator, specializes in resolving disputes arising from family legal relationships. The recognition of family mediation as a separate dispute resolution method through mediation implies the use of combined techniques, distinguishing this field from other types of mediation, such as corporate or educational mediation. However, there are no formal legal grounds to officially recognize family mediation as an independent area. This is likely due to the fact that resolving disputes in various fields through mediation primarily involves special, non-legal methods of working. For example, when handling family disputes, the mediator must also be an excellent conflict reso-

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lution expert, skilled in psychotherapeutic techniques. Family mediation typically focuses on resolving disputes regarding the division of marital property, the establishment and enforcement of child support obligations, child custody issues, and other related matters [19].

We would like to draw attention to the potential application of mediation for resolving disputes in family businesses. Family business represents a unique form of enterprise where business relationships intertwine with personal ones. In accordance with Article 32 of the Entrepreneurial Code of the Republic of Kazakhstan, the forms of joint entrepreneurship are: 1) entrepreneurship of spouses carried out on the basis of common joint ownership of spouses; 2) family entrepreneurship carried out on the basis of common joint ownership of a peasant farm or common joint ownership of a privatized dwelling [20].

Article 32 of the Entrepreneurial Code of the Republic of Kazakhstan mentions family entrepreneurship, but it does so narrowly — as a form based on joint ownership of a peasant farm or housing. This does not cover, for example, Individual entrepreneurship, Limited liability partnership, opened within the family, where spouses, children, sisters, brothers, etc. work. It is advisable, in our opinion, the following definition of family entrepreneurship. Family entrepreneurship is a form of entrepreneurial activity in which participation in management, labor and (or) business ownership is carried out primarily by members of the same family (including spouses, parents, children, siblings, grandparents, as well as other relatives living together or running a common household), regardless of depending on the organizational and legal form, based on the agreement of the parties and (or) a family agreement [20].

This creates both unique advantages and significant risks, especially when disputes arise. In this context, family mediation becomes an effective tool for conflict resolution, ensuring the application of a balance between business interests and the preservation of family relationships. Family businesses often encounter the following types of conflicts: disagreements regarding the strategic development of the business; disputes over profit distribution and managerial authority; conflicts between generations (senior and junior members of the business); business division during divorce or when one participant exits; inheritance issues and management transitions. Traditional judicial procedures are not always suitable for resolving such disputes, as they may exacerbate family discord and lead to a loss of trust between the parties. For successful implementation of mediation in family businesses, the following steps are necessary: legislative formalization of mediation procedures in family business disputes; development of specialized training programs for mediators that account for the specificities of entrepreneurial activity; promotion of mediation among family businesses through educational and informational campaigns; establishment of specialized family mediation centers that bring together lawyers, economists, and psychologists. Family mediation in the business sphere has significant potential to prevent the destructive consequences of conflicts, fostering not only effective business management but also the preservation of family values. The development of this practice requires a comprehensive approach, including the improvement of legislation, professional training of mediators, and public awareness campaigns about the advantages of mediation as an alternative dispute resolution method.

Conclusions

The analysis of international experience confirms that family mediation is an important mechanism for the peaceful resolution of family disputes, reducing the level of conflict, promoting the preservation of constructive relationships between the parties, and minimizing the negative consequences for children. Different countries apply various models of mediation — ranging from mandatory to voluntary — as well as differing requirements for mediators, procedural standards, and the extent of state regulation. Mandatory mediation can be considered in law as one option, akin to the mandatory pre-court (pre-litigation) dispute resolution process, where before filing a lawsuit, the plaintiff must first approach the defendant with an offer to resolve the conflict peacefully through mediation. Tools such as conflict counseling and conflict coaching can be used as ways to resolve conflict and reduce its severity. The inclusion of these tools in the list of possible stages of the family mediation procedure will increase its effectiveness, prevent the escalation of conflict, and in some cases avoid legal proceedings. Conflict counseling and coaching do not replace mediation, but organically complement it, forming the parties' understanding of their own responsibility for the outcome of the conflict and creating conditions for a sustainable agreement.

Although this idea may be seen as radical, it could yield tangible results in a number of case categories, such as divorce, division of marital property, child custody in cases of separated parents, the exercise of parental rights by the parent living separately, and the communication arrangements between relatives and the child.

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In Kazakhstan, family mediation remains an emerging institution, facing challenges such as insufficient public awareness, a lack of trained specialists, weak integration into the judicial system, and uneven distribution across regions. To effectively implement mediation in family disputes in Kazakhstan, it is necessary to develop the legal framework, enhance mediator qualifications, expand access to mediation procedures, particularly in rural areas, and foster a culture of peaceful resolution of family conflicts.

In the absence of a clear and comprehensive regulatory definition of family entrepreneurship in the legal system of the Republic of Kazakhstan, it is necessary to legislate this institution as a form of entrepreneurial activity based on the participation of family members in management, labor and business ownership. This will not only ensure the legal protection of such subjects, but also create the basis for the development of effective forms of intra-family conflict resolution, including mediation in both divorce and generational change in business.

Thus, it is necessary:

1. To consolidate the term family mediation in the family and marriage legislation.

2. Include tools such as conflict counseling and conflict coaching in the list of possible stages of family mediation procedures.

3. Introduce into the legislation the definition of family entrepreneurship as a form of entrepreneurial activity in which participation in management, labor and (or) business ownership is carried out primarily by members of the same family (including spouses, parents, children, brothers and sisters, grandparents, as well as other relatives living together or leading a common household), regardless of its organizational and legal form, on the basis of an agreement between the parties and (or) a family agreement. In this context, family mediation will become an effective conflict resolution tool, ensuring a balance between business interests and the preservation of family relations.

Therefore, family mediation is not merely a method of conflict resolution, but a promising direction that contributes to strengthening the family as a social institution. International experience proves that family mediation plays a key role in conflict resolution, and Kazakhstan should adopt the best global practices for its further development.

References

1 Кусаинова И. Разводы и экономика: как распад семей влияет на финансовое благополучие [Электронный ресурс] / И. Кусаинова. — Режим доступа: https://inbusiness.kz/ru/news/razvody-i-ekonomika-kak-raspad-semej-vliyaet-na-finansovoe-blagopoluchie#.

2 Кольчик С. Новая семья. Гостевой брак, лоскутная семья и другие форматы отношений в современном мире / С. Кольчик. — М.: Альбина Паблишер, 2024. — 240 с.

3 Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V “Civil Procedure Code of the Republic of Kazakhstan” // The information and legal system “Adilet”. — [Electronic resource]. — Access mode: https://online.zakon.kz/Document/? doc_id=34329053.

4 The Law of the Republic of Kazakhstan dated January 28, 2011 No. 401-IV “On Mediation” // The information and legal system “Adilet”. — [Electronic resource]. — Access mode: https://online.zakon.kz/Document/? doc_id=30927376.

5 The Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV “On Marriage (matrimony) and family” // The information and legal system “Adilet”. — [Electronic resource]. — Access mode: https://online.zakon.kz/Document/? doc_id=31102748.

6 Кали А. Применение медиации в межнациональных семейных конфликтах на примере центральных органов власти Франции / А. Кали; пер. с фр. М.В. Соловьевой // Материалы русско-французской конференции по медиации. — М.: Gemme-France, 2010. — С. 53–60.

7 Parkinson L. Family Mediation: Appropriate Dispute Resolution in a New Family Justice System Family Law / L. Parkinson. — 2nd edition. Lexis Nexis, UK. — 2011. — 438 p.

8 Haynes John M. The Fundamentals of Family Mediation. State University of New York Press / M. John Haynes. — 1994. — 256 p.

9 Bush Robert A. The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition / A. Robert Bush, P. Joseph Folger. — Jossey-Bass. — 1994. — 320 p.

10 Ahrons C. The Good Divorce: Keeping Your Family Together When Your Marriage Comes Apart / C. Ahrons, K. Irwin. New York: Harper Collins, 1994. — 272 p.

11 Пантелеева И.А. Семейная медиация как альтернативная процедура разрешения споров [Электронный ресурс] / И.А. Пантелеева // Вестник ННГУ. — 2014. — Режим доступа: https://cyberleninka.ru/article/n/semeynaya-mediatsiya-kak-alternativnaya-protsedura-razresheniya-sporov.

Buketov University

12 Order of the Minister of Information and Public Development of the Republic of Kazakhstan dated June 14, 2023 No. 244-NK. — [Electronic resource]. — Access mode: https://adilet.zan.kz/rus/docs/V2300032854.

13 Legislative Decree Law on Mediation in Civil and Commercial Disputes of the Italy No. 28, 4 March 2010. — [Electronic resource]. — Access mode: https://www.normattiva.it/uri-res/N2Ls? urn: nir: stato: decreto.legislativo:2010-03-04;28! vig=.

14 Family Law Act No. 53, 1975 (Cth), Part VII. — [Electronic resource]. — Access mode: https://www.legislation.gov.au/C2004A00275/2019-03-10/text.

15 Labor Courts Act of the Türkiye No. 7036, dated 12 October 2017. — [Electronic resource]. — Access mode: https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details? p3_isn=105804.

16 German Mediation Act (Mediationsgesetz) of 21 July 2012. — [Electronic resource]. — Access mode: https://www.gesetze-im-internet.de/mediationsg/BJNR157710012.html.

17 United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), New York, 2019. — [Electronic resource]. — Access mode: https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf.

18 Polish Civil Procedure Code (Amendment 2016). — [Electronic resource]. — Access mode: https://www.wipo.int/wipolex/en/legislation/details/22373.

19 Тесленко Е.А. Медиация в семейном праве [Электронный ресурс] / Е.А. Тесленко // Молодой ученый, 2024. — № 16 (515). — С. 277–279. — Режим доступа: https://moluch.ru/archive/515/113172.

20 Code of the Republic of Kazakhstan dated October 29, 2015 No. 375-V “Business Code of the Republic of Kazakhstan” // The information and legal system “Adilet”. — [Electronic resource]. — Access mode: https://adilet.zan.kz/rus/docs/K1500000375.

Ф. Абугалиева, М. Жаскайрат

Дауларды шешудегі отбасылық медиацияның рөлі: халықаралық тәжірибе мен Қазақстан үшін перспективалар

Мақалада дауларды шешу барысында отбасылық медиацияның рөлі жан-жақты қарастырылған, оны қолданудың халықаралық тәжірибесі мен Қазақстандағы даму перспективалары талданған. Сот талқылауларына қарағанда медиацияның артықшылықтарына ерекше назар аударылады, шетелдік тәжірибелерді талдау негізінде Қазақстанда бейімделуі мүмкін отбасылық медиацияның негізгі тетіктері мен үлгілері айқындалады. Зерттеу барысында ғылыми зерттеудің келесі әдістері қолданылды: нақты-социологиялық, салыстырмалы-құқықтық, формальды-құқықтық, статистикалық, логикалық, жүйелі-құрылымдық, функционалды әдістер. Ғылыми зерттеу әдістерінің негізінде отбасылық медиацияның түсінігі мен мәні жан-жақты ашылды. Сонымен қатар, отбасылық медиация отбасылық кәсіпкерлікті жүргізу кезінде туындайтын дауларды шешу барысында да пайдаланылады. Қорытындыда елдегі отбасылық медиация институтын дамыту және оған қатысты ұлттық құқықтық базаны жетілдіру, отбасылық кәсіпкерлікті жүзеге асыру кезінде отбасылық медиацияны қолдану мүмкіндіктері бойынша бірқатар ұсынымдар ұсынылды.

Кілт сөздер: отбасылық құқықтық қатынастар, отбасылық медиация, дауларды шешу, татуластыру рәсімдері, медиатор, отбасылық даулар, құпиялылық, медиацияның еріктілігі, дауларды шешудің балама тәсілдері, отбасылық кәсіпкерлік.

Ф. Абугалиева, М. Жаскайрат

Роль семейной медиации в разрешении конфликтов: международный опыт и перспективы для Казахстана

В статье рассматривается роль семейной медиации в разрешении конфликтов, анализируется международный опыт её применения и перспективы развития в Казахстане. Особое внимание уделяется преимуществам медиации перед судебными разбирательствами, на основе анализа зарубежных практик выделяются ключевые механизмы и модели семейной медиации, которые могут быть адаптированы в Казахстане. В процессе исследования были использованы следующие методы научного исследования: конкретно-социологический, сравнительно-правовой, формально-юридический, статистический, логический, системно-структурный, функциональный. На основании методов научного исследования были всесторонне раскрыты понятие и сущность семейной медиации. Кроме того, семейная медиация применима для разрешения конфликтов при ведении семейного предпринимательства. В заключении предложены рекомендации по совершенствованию национальной правовой базы и развитию института семейной медиации в стране, возможности применения семейной медиации при разрешении семейного предпринимательства.

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Ключевые слова: семейные правоотношения, семейная медиация, разрешение споров, примирительные процедуры, медиатор, семейные споры, конфиденциальность, добровольность медиации, альтернативные меры разрешения споров, семейное предпринимательство.

References

1 Kusainova, I. Razvody i ekonomika: kak raspad semei vliiaet na finansovoe blagopoluchie [Divorce and economics: how does family breakdown affect financial well-being]. *inbusiness.kz.* Retrieved from https://inbusiness.kz/ru/news/razvody-i-ekonomika-kak-raspad-semej-vliyaet-na-finansovoe-blagopoluchie# [in Russian].

2 Kolchik, S. (2024). *Novaia semia. Gostevoi brak, loskutnaia semia i drugie formaty otnoshenii v sovremennom mire [A new family. Guest marriage, patchwork family and other relationship formats in the modern world].* Moscow: Albina Publisher [in Russian].

3 Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V "Civil Procedure Code of the Republic of Kazakhstan". *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/? doc_id=34329053

4 The Law of the Republic of Kazakhstan dated January 28, 2011 No. 401-IV "On Mediation". *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/? doc_id=30927376.

5 The Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV "On Marriage (matrimony) and family". *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/? doc_id=31102748.

6 Kali, A., (2010). *Primenenie mediatsii v mezhnatsionalnykh semeinykh konfliktakh na primere tsentralnykh organov vlasti Frantsii [The use of mediation in interethnic family conflicts on the example of the central authorities of France]*. (M.V. Soloveva, Trans). Moscow: Gemme-France [in Russian].

7 Parkinson, L. (2011). *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System*. Family Law; 2nd edition. Lexis Nexis, UK.

8 Haynes, John M. (1994). *The Fundamentals of Family Mediation*. State University of New York Press.

9 Bush, Robert A., & Folger, Joseph P. (1994). *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. Jossey-Bass.

10 Ahrons C., & Irwin, K. (1994). *The Good Divorce: Keeping Your Family Together When Your Marriage Comes Apart*. New York: Harper Collins.

11 Panteleeva, I.A. (2014). Semeinaia mediatsiia kak alternativnaia protsedura razresheniia sporov [Family mediation as an alternative dispute resolution procedure]. *cyberleninka.ru.* Retrieved from https://cyberleninka.ru/article/n/semeynaya-mediatsiya-kak-alternativnaya-protsedura-razresheniya-sporov [in Russian].

12 Order of the Minister of Information and Public Development of the Republic of Kazakhstan dated June 14, 2023 No. 244-NK. *adilet.zan.kz.* Retrieved from https://adilet.zan.kz/rus/docs/V2300032854.

13 Legislative Decree Law on Mediation in Civil and Commercial Disputes of the Italy No. 28, 4 March 2010. *www.normattiva.it.* Retrieved from https://www.normattiva.it/uri-res/N2Ls? urn: nir: stato: decreto.legislativo:2010-03-04;28! vig=.

14 Family Law Act No. 53, 1975 (Cth), Part VII. *www.legislation.gov.au.* Retrieved from https://www.legislation.gov.au/C2004A00275/2019-03-10/text.

15 Labor Courts Act of the Türkiye No. 7036, dated 12 October 2017. *natlex.ilo.org*. Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details? p3_isn=105804.

16 German Mediation Act (Mediationsgesetz) of 21 July 2012. *www.gesetze-im-internet.de.* Retrieved from https://www.gesetze-im-internet.de/mediationsg/BJNR157710012.html.

17 United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), New York, 2019. *uncitral.un.org.* Retrieved from https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf.

18 Polish Civil Procedure Code (Amendment 2016). *www.wipo.int.* Retrieved from https://www.wipo.int/wipolex/en/legislation/details/22373.

19 Teslenko, E.A. (2024). Mediatsiia v semeinom prave [Mediation in family law]. *Molodoi uchenyi — Young scientist,* 16 (515), 277–279. Retrieved from https://moluch.ru/archive/515/113172 [in Russian].

20 Code of the Republic of Kazakhstan dated October 29, 2015 No. 375-V "Business Code of the Republic of Kazakhstan". *adilet.zan.kz.* Retrieved from https://adilet.zan.kz/rus/docs/K1500000375.

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