



Студенттер мен жас ғалымдардың
«ҒЫЛЫМ ЖӘНЕ БІЛІМ - 2018»
XIII Халықаралық ғылыми конференциясы

СБОРНИК МАТЕРИАЛОВ

XIII Международная научная конференция
студентов и молодых ученых
«НАУКА И ОБРАЗОВАНИЕ - 2018»

The XIII International Scientific Conference
for Students and Young Scientists
«SCIENCE AND EDUCATION - 2018»



12th April 2018, Astana

**ҚАЗАҚСТАН РЕСПУБЛИКАСЫ БІЛІМ ЖӘНЕ ҒЫЛЫМ МИНИСТРЛІГІ
Л.Н. ГУМИЛЕВ АТЫНДАҒЫ ЕУРАЗИЯ ҰЛТТЫҚ УНИВЕРСИТЕТІ**

**Студенттер мен жас ғалымдардың
«Ғылым және білім - 2018»
атты XIII Халықаралық ғылыми конференциясының
БАЯНДАМАЛАР ЖИНАҒЫ**

**СБОРНИК МАТЕРИАЛОВ
XIII Международной научной конференции
студентов и молодых ученых
«Наука и образование - 2018»**

**PROCEEDINGS
of the XIII International Scientific Conference
for students and young scholars
«Science and education - 2018»**

2018 жыл 12 сәуір

Астана

УДК 378

ББК 74.58

Ғ 96

Ғ 96

«Ғылым және білім – 2018» атты студенттер мен жас ғалымдардың XIII Халықаралық ғылыми конференциясы = XIII Международная научная конференция студентов и молодых ученых «Наука и образование - 2018» = The XIII International Scientific Conference for students and young scholars «Science and education - 2018». – Астана: <http://www.enu.kz/ru/nauka/nauka-i-obrazovanie/>, 2018. – 7513 стр. (қазақша, орысша, ағылшынша).

ISBN 978-9965-31-997-6

Жинаққа студенттердің, магистранттардың, докторанттардың және жас ғалымдардың жаратылыстану-техникалық және гуманитарлық ғылымдардың өзекті мәселелері бойынша баяндамалары енгізілген.

The proceedings are the papers of students, undergraduates, doctoral students and young researchers on topical issues of natural and technical sciences and humanities.

В сборник вошли доклады студентов, магистрантов, докторантов и молодых ученых по актуальным вопросам естественно-технических и гуманитарных наук.

УДК 378

ББК 74.58

ISBN 978-9965-31-997-6

©Л.Н. Гумилев атындағы Еуразия
ұлттық университеті, 2018

Literature:

1. Назарбаев Н.А. Социальная модернизация Казахстана: Двадцать шагов к обществу всеобщего труда // Казахстанская правда, 10 июля 2012. – №218–219.
2. The Message of the President of the Republic of Kazakhstan to the people of Kazakhstan "Strategy" Kazakhstan-2050" – a new political course of the state" // [Electronic resource] – Access mode. – URL: <http://inform.kz/eng/article/2518829>
3. Тулиндинова Ж. «Казахстан-2017: Сказ о том, как выгодно преподавание английского языка!». - Республиканская общественно - политическая газета.- «Central Asia Monitor», 25 августа 2017 г. – <https://camonitor.kz/28610-kazakhstan-2017-skaz-o-tom-kak-vygodno-prepodavanie-angliyskogo-yazyka.html>
4. Образованиемногоязычноммире: УстановочныйдокументЮНЕСКО. – Париж, 2003. – 38 с. [Электронныйресурс]. – Режимдоступа: http://www.unesco.org/new/ru/media-services/single-iew/news/multilinguism__key_to_inclusive_education/#.VNbyXufqCJU.
5. Интернет – ресурс. – <http://nis.edu.kz/>

UDC 34.05(4)(7/8)

FORMATION AND DEVELOPMENT OF THE INSTITUTION OF MEDIATION IN KAZAKHSTAN AND A COMPARATIVE ANALYSIS OF MEDIATION IN ENGLISH-SPEAKING COUNTRIES

Bidauletova B. M.

bota_b99@mail.ru,

Sakenov S. E.

sagidolla.sakenov@mail.ru

1st year student of the Faculty of International Relations of L.N. Gumilyov ENU, 3rd year student of Law Faculty of L.N. Gumilyov ENU, Astana, Kazakhstan

Supervisor – Aigul Kadyskyzy

The term "mediation" entered the modern legal system of the Republic of Kazakhstan not so long ago. At the legislative level, the status of mediators and mediation itself was approved by the Law of the Republic of Kazakhstan "On Mediation" of January 28, 2011. This law was adopted to regulate public relations in the field of mediation organization in the Republic of Kazakhstan and defined its principles and procedure for conducting, as well as the status of a mediator.[1]

Despite the fact that the legislative status of mediation was fixed in the domestic legal system only in the 21st century, we all know that the role of mediators in the traditional legal system of Kazakh people has long been played by the biys institute. They were mediators in their time and solved all important social issues of that time among of the Kazakh people. They were distinguished by their impartiality and justice, they had great authority among the common people. Actually, the ancient right of the Kazakhs found the most filed expression precisely in the activities of the biys. The inspector of public education in the Turgai region and the ethnographer of the 19th century Aleksey Alektrov in his work pointed out: "The Ordynian has got used to sorting out at home all the quarrels, grievances, fights and other squabbles inevitable in his domestic life, the court of biys and old people. Every biy and aksakal in the proceedings considers it a sacred duty to lend to the litigants full impartial justice; he patiently listens to all routine details of both the complaint brought and the justification, and then announces his decision, which is always accepted without question, being sacredly executed".[2]

At present, mediation (from the Latin *mediare* and *mediation* – mediation) is perceived as a conciliatory procedure, based on the negotiations of the conflicting parties involving a mediator (mediator) with the aim of developing a mutually beneficial agreement on controversial issues.

Mediation in its main idea has an archaic origin. The need to attract the third neutral side to resolve conflicts was, first of all, the desire to survive (individuals or groups, in particular, primitive

tribes). The first to apply these methods of reconciliation were the priests and leaders who thus stopped the murders and violence that threatened the tribe itself. Mediation has been quite active in resolving international disputes. It was called in different ways: "mediation", "petition", "offering good services".

The prototype of the future mediation was the arbitration trial, which was carried out by involving a neutral third party, the arbitrator, in settling disputes. It appeared in Europe – England and France 17-18th centuries. It was at this time that a situation arose when the obsolete law did not correspond to the public realities, did not correspond to the spirit of capitalist relations, and the parties more willingly turned to arbitration as faster, cheaper and more competent.

Mediation in its modern sense arose only in the second half of the 20th century. First, it settled in the US, and began to appear in Europe later – England, France, Belgium, the Netherlands, Germany, Austria, Italy and Switzerland.

At the beginning of the 20th century, a new form of conflict arose in the rapidly developing American economy: the struggle between established unions and employers for working conditions and wages. Without the rapid resolution of disputes, there was a threat of strikes, mass layoffs and the temporary closure of entire factories. Then the state decided to create a special service act as a neutral intermediary in conflicts between employees and employers. The Federal Mediation and Conciliation Service was established in 1947.

Secondly, the emergence of mediation was the appearance in the US in the late 1960's, organizations such as Community Mediation and Neighborhood Justice Centers. These are local non-governmental organizations whose activities were aimed at resolving conflicts in families, between neighbors and low-income people. The main idea of such public-oriented mediation was the idea of offering a certain circle of people who, for financial or emotional reasons, refuses to go to court, another venue for resolving disputes with lower access thresholds.

Thirdly, it is necessary to mention the peculiarities of the American civil process, which were developed in the 1960s, especially about some of its negative aspects. Under American law, each party pays for itself the services of a lawyer regardless of the outcome of the case. So for both sides, costs are inevitable. In economic disputes, these expenditures reached astronomical sums. In addition, the process itself became very protracted. The reason for concluding a judicial settlement is exhaustion of resources and disappointment. In such occasions, the advantages of mediation became apparent.

Mediation has become an independent procedure only since the mid-1970. In 1981, Harvard professors Roger Fisher and William Uri expounded the Harvard concept of "joint action", which is based on the delineation of interests and positions. So, in the process of negotiations, the parties designate their legal positions, which are often diametrically opposed. At the same time, the positions of the parties are, first of all, certain needs (interests), which unlike positions are not the opposite. If during the negotiations, these interests of the parties can be determined, a big step will be taken towards reaching an agreement. The mediator builds negotiations in such a way in order to the interests of the parties come to the forefront. And this means that the reached agreement will be mutually beneficial, there will be no winners and losers. An example will be the situation with two sisters and oranges. Each of the sisters declares her position: "I want this orange." The positions of the two sides are opposite, and the gain of one sister means the defeat of the other. Their mother, in order to solve the conflict, cuts the orange in half, guided by the position of the sisters, not paying attention to their real interests. At the same time, the mother could ask to find out that one child would like to squeeze juice from an orange, and the other wanted to get a zest for adding to the dough. The mediator's task is to concentrate the attention of the parties on their real interests, and not on legal positions [3, 63].

With the use of mediation it became clear that in some cases the possibilities of this method are much superior to legal proceedings. Mediation does not require the development of a monosyllabic "black-white" position, but allows for the adoption of differences in points of view, in the interests of the parties. The countries in Europe, which have rich traditions and well-functioning justice systems, have taken this method by integrating mediation into the legal system.

Mediation became more necessary after the 1990s. More than 200 largest American corporations and more than 250 law firms entered into an agreement not to go to court before attempting reconciliation in the event of a dispute. Appeal to the mediator in the United States occurs in 75-85% of cases of conflict situations, while agreements reached during the mediation are performed in 90-95% of cases.

In 2001, the United States adopted the Single Law on Mediation, which brought together more than 2,500 pre-existing state laws that regulated mediation in various areas. The Institute for Dispute Resolution at the Public Resources Center operates here, which provides advice on the selection of intermediaries, prepares professional intermediaries, informs the public about the meaning and content of conciliation procedures, and creates model rules for mediation. In Europe, mediation was legislated later than in the United States. This is partly the reason why it is developing at a much faster pace today. Austria was the first European country where the law on mediation was passed in 2003, and the profession of "mediator" was singled out as a separate full-fledged one. But this happened only 15 years after the first projects on mediation and restorative justice appeared in Austria.

In Slovenia, a legal experiment was conducted in order to develop mediation. About 50 mediators, including judges, lawyers who have been trained in mediation techniques, work daily with litigants to settle the dispute peacefully. As a result, about 40% of cases are resolved without litigation. In 2008, the law on mediation was adopted and successfully implemented in Slovenia, and a new law on alternative methods about settling disputes in courts came into force in 2010, according to which all courts in the country should allow the parties to resort to alternative methods of conflict resolution.

In the early 2000's appeared ideas about introduction of mediation into civil circulation, which later became formalized in draft of normative acts. As a result, the European Commission accepted the European Code of Mediators in 2004. And the European Parliament and the Council published the Directive "On Some Aspects of Mediation in Civil and Commercial Matters" in 2008. This directive, according to the EU Treaty, concerned the settlement of cross-border disputes, but it also established minimum standards and principles of mediation, requirements for mediators, the obligation of states to inform their citizens about mediation and to develop relevant organizations and services. Most importantly, the member states of the EU have obliged by 2011 to adopt the corresponding national legislation on mediation [3, 58].

At the moment, mediation is an indispensable element of conciliatory practice in all European countries. Mediation as a progressive direct of peaceful strategies began to emerge in the post-soviet space only after the collapse of the Soviet Union, from the mid-1990s, most foreign mediators began sharing their knowledge, the experience of several decades of mediation in the US and Europe.

The emergence of mediation in Kazakhstan was due to a number of factors:[4]

1) the burden on the courts has increased due to the conflicts that arose against the backdrop of the economic crisis and, as a result, the increased number of inter-corporate and intra-corporate conflicts;

2) the mediators in some cases began to offer a faster and more accessible solution to the dispute, further promising to preserve confidentiality, which lawyers cannot guarantee in court cases. In addition, the peace concluded before the trial gives the parties the opportunity to continue business cooperation and develop partnerships, which is virtually impossible after the trial.

3) if the dispute is considered in court, then the party filing the claim must pay the state fee for filing the claim. In claims in which the amount of claims is large, the state fee will be huge. And in cases of consideration of the dispute in the mediation procedure, the parties will only pay for the rendered mediator service in accordance with the law. However, in cases where the parties have already filed a lawsuit in court, but then, having withdrawn the claim, turned to the mediator, the entire amount of the state fee is returned. Even during the enforcement proceedings, the parties can be reconciled through mediation, in which case 50 percent of the state fee will be returned.

In conclusion, mediation can be used in disputes over civil, labor, family and other legal

relationships, as well as in criminal cases of small and medium gravity. With an active appeal to the mediation of both citizens and legal entities, it is possible to significantly reduce the burden on the judicial system, thereby improving the quality of the solution of the most important cases. According to international statistics, 30-40% of all disputes pass through the mediation procedure, 85% of them achieved positive results. In Kazakhstan the institution of mediation is only being formed, while in Western countries it has long spread and shows its effectiveness. It is believed that due to the positive experience and history of resolving disputes in the traditional legal system, we have the opportunity to achieve the same peaks of fair justice through mediation.

Literature:

1. Zakon Respubliki Kazakhstan «O mediatsii» ot 28 yanvarya 2011 goda № 401-IV.
2. «Mediatory Velikoy stepi», Gazinur Gizdatov, doktor filologicheskikh nauk, professor, 2011.
3. Osnovy yuridicheskoy konfliktologii i mediatsii / O.V. Luk'yanovskaya, R.G. Mel'nichenko; FGOU VPO «Volgogradskaya akademiya gosudarstvennoy sluzhby». – Volgograd: Izd-vo FGOU VPO VAGS, 2011. – P.58; 63.
4. Ukaz Prezidenta Respubliki Kazakhstan «O Kontseptsii pravovoy politiki Respubliki Kazakhstan na period s 2010 do 2020 goda» ot 24 avgusta 2009 goda № 858.

UDC 004.9

DIGITAL KAZAKHSTAN: HYPE OR REALITY?

Baidollinova D.

dianabaidollinova@gmail.com

L.N. Gumilyov Eurasian National University, Astana, Kazakhstan
Supervisor – D.O.Saliyeva

Introduction. Nowadays Kazakhstan aims to be in the list of the top thirty countries. To reach this goal, one of the criteria is to implement digitalization process and make it work successfully. So the issues whether Kazakhstan is ready to become ‘digital country’ is among the heated debates. For that reason, this research focuses on expanding knowledge about digitalization and assessing the extent to which we are ready for this process. Moreover, the article contains some recommendations of actions that are relevant and needed to be taken to increase effectiveness of digitalization. The relevance of digitalization can be even noticed from the fact that the President took the responsibility to monitor the implementation process and even take strict measures in case the current government fails to reach this goal: “*Can this government fulfill it? If not, we will appoint another government to implement the concept “Digital Kazakhstan”. Digital Kazakhstan is our future. There is no other way,*” says N.A. Nazarbayev. It was announced during the national teleconference “New industrialization of the country: leap of Kazakhstani leopard”. In his speech, the head of state reminded that he had already instructed the government to develop the program. He highlighted that currently it is important not to lag behind, not to “blunder”. [1]

Actually, his position is justified, because the unpredictable rapid development of the digitalization has already become a weighty world trend. Foreign experience shows the effectiveness and improvement in economy: the growth of Gross Domestic Product, creation of new job places, and development of IT. In view of the positive results we should accelerate digitalization. This article investigates the feasibility and effectiveness of the concept “Digital Kazakhstan”.

Research question. The article attempts to investigate the following research questions:

1. Is the concept of “Digital Kazakhstan” hype or reality?
2. What are the strengths and weaknesses of digitalization?
3. What are the opportunities and threats of digitalization?

To begin the discussion we should first define the concept of “digitalization” and buzzword