Legislation of the Republic of Kazakhstan and foreign countries in the field of mediation

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Abstract

Examining foreign practices helps determine the optimal models of legislation and principles that can be applied in the context of the Kazakh mediation system. Given the issue's significance, the study aimed to deliver an exhaustive analysis of mediation legislation and its implementation in the Republic of Kazakhstan and abroad. The legal nature of mediation was examined, during which the main principles on which the procedure is based were identified and analysed. The research contributed to a comprehensive understanding of the foundational conditions necessary for establishing mediation institutes within a national context, while simultaneously tracing the evolutionary trajectory through which mediation developed into one of the most sophisticated alternative dispute resolution mechanisms. Through systematic comparative analysis, the investigation examined both legislative frameworks and the practical implementation of mediation procedures in the Republic of Kazakhstan and various international jurisdictions. The analytical findings revealed quantitative measures of mediation effectiveness within the Republic of Kazakhstan, establishing comparative benchmarks against international jurisdictions where mediation procedures have been systematically implemented and evaluated.

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Introduction

The judicial system remains the most mature, effective, universal, and

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rational mechanism for defending and challenging violations of rights and legal interests. However, the ongoing evolution of contemporary society has generated increasingly complex social relations, which produce conflicts of interest and add to the intricacy of legal disputes. The growing number, scope, and complexity of such disputes have exceeded the capacity of judicial institutions to resolve them with consistent quality, necessitating sustainable alternatives. While judicial reform can partially address procedural deficiencies, the scale of challenges demands exploring parallel approaches. The transformation of judicial systems highlights the need for mechanisms that complement traditional court proceedings. International experience has shown the success of non-state procedures, giving rise to what Anglo-American jurisprudence terms alternative dispute resolution (ADR). Among these, mediation has emerged as a particularly significant approach. Mediation is a voluntary, confidential process where a neutral third party helps disputing parties reach a mutually acceptable resolution without imposing a decision. It is a key method of ADR, offering a flexible and cost-effective alternative to court proceedings. The implementation of mediation in the Republic of Kazakhstan (its core concepts and governing principles) constitutes the central focus of this investigation.

The relevance of this topic stems from several factors. First, mediation fosters a more amicable and constructive dispute resolution environment. Second, it is economically efficient, avoiding lengthy and costly judicial processes. Third, advancing mediation legislation helps establish a stable, sustainable, and predictable legal environment. Examining the mediation laws of Kazakhstan and other countries facilitates the identification of best practices, their adaptation for domestic use, and the enhancement of mediation's role in dispute resolution. This area remains crucial for academic research, legal practice, and legislative development to ensure its long-term viability.

Moreover, the comparative study of mediation laws poses several challenges. Each country applies distinct models and principles, complicating jurisdictional comparisons. This demands a thorough analysis of national laws and precedents to understand their context and features, especially for developing sustainable mediation frameworks. Evaluating mediation legislation's effectiveness also requires precise analysis and outcome measurement.

A study by Kenzhebekova et al. (2023) highlights mediation's success rates in different countries and its advantages and limitations compared to conventional courts. Kalshabaeva et al. (2022) identified differences in mediation approaches, models, and principles, contributing to a broader comparative analysis and identifying effective legal norms. The evolution of

best practices can be traced in Zayniyeva and Kassymbekova (2020), whose analysis evaluated fundamental mediation principles like voluntariness, neutrality, and confidentiality, and examined how various countries incorporate these principles in practice.

Research by Imanbaiev and Romanova (2021) and Bilyalova et al. (2022) explores mediation across civil, family, and commercial contexts, revealing domain-specific applications and the effectiveness of related legislation. A notable contribution from Kaidarova and Imanbayev (2020) assesses how well legislation protects the rights and interests of mediation participants. Their analysis of legal guarantees, enforcement mechanisms, and procedural safeguards helped determine the overall strength of legal protections and fairness in mediation processes.

This study aims to comprehensively examine the development of mediation in Kazakhstan and assess relevant legislation both domestically and in leading foreign jurisdictions. Its purpose is to enhance understanding of mediation through an in-depth analysis of its essential components. A key task is to clarify the meaning of core concepts and terminology in mediation legislation to promote consistency and shared understanding among legal and professional communities. The main research question is how the mediation practices and legislative frameworks in Kazakhstan compare to those of other jurisdictions, and what can be learnt from international best practices to enhance the effectiveness and sustainability of mediation in Kazakhstan.

Materials and Methods

The methodological basis of the study comprised various methods, including historical analysis, logical analysis, the dogmatic method, the formal legal method, and comparative legal studies. The historical analysis involved tracing the legislative evolution of mediation in Kazakhstan and other countries, considering changes over time, the development of mediation practices, and influencing factors.

The formal legal method focused on analysing Kazakhstani legislation and regulations governing mediation. It enabled the examination of formal legal norms and their interpretation, defining the status, rights, and obligations of participants, procedures, mediator requirements, and alignment with sustainability principles. In conjunction with this, the dogmatic method was used to systematise legal norms, assess their applicability, and identify universally accepted principles and standards in mediation. The logical analysis method supported the evaluation of the

coherence and justification of legal arguments, principles, and procedures. It helped identify logical connections within mediation processes and assess compliance with legislation and recognised norms. This was paired with comparative legal studies, which identified similarities and differences in mediation laws, approaches, and practices across jurisdictions, highlighting the strengths and weaknesses of various systems.

The normative basis of the research included key legal acts: the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011), which defines mediation, regulates mediator competencies, and outlines procedures; the Administrative Procedural Code No. 350-VI (2020) and the Civil Procedure Code No. 377-V (2015), both of which contain provisions on mediation. Comparable foreign legislation was also analysed to enable deeper comparative insights. To address problematic issues, the study conducted in-depth analysis and interpretation of legislation and mediation practices across various contexts. Academic literature and publications were reviewed to clarify ambiguities. Studies by researchers from Kazakhstan, Ukraine, the UK, the USA, Poland, and Japan were utilised to capture diverse perspectives on mediation.

To establish a broader view of international standards applicable to mediation, relevant international regulations were examined, particularly the Singapore Convention on Mediation (2018) and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements (2018), which promote principles of long-term legal sustainability. Special attention was also given to documentation from the Ministry of Justice and the Association of Mediators of the Republic of Kazakhstan, whose regulatory materials helped clarify specific issues surrounding mediation practice in Kazakhstan.

A number of important factors were considered while choosing which foreign countries to compare. First, the selected nations offer a wide range of perspectives on mediation methods since they reflect a variety of legal traditions, including both Anglo-Saxon and Continental systems. Second, the reason these jurisdictions were chosen was because they have a long history of using mediation as a formal conflict resolution process, with differing degrees of incorporation into their legal systems. Finally, the inclusion of nations with sophisticated mediation frameworks made it possible to conduct a thorough examination of institutional frameworks, best practices, and legislative strategies, offering insightful information about how mediation processes are applied and developed across various legal contexts.

Results and Discussion

Legal nature of mediation

The investigation of mediation primarily required a general understanding of the legal nature of this institution, which over the past decades has gained particular popularity in the countries of the world and, in particular, the Republic of Kazakhstan (hereinafter referred to as the RK). Therefore, the analysis of this mechanism appropriately began with a general theoretical framework, which established the conceptual basis for subsequent research. Consequently, the mechanism of mediation was described as legal since its nature is related to legal aspects. All management activities require choosing from several alternative options to achieve the desired state of the system (Zhukorska, 2024; Galymzhan et al., 2020). However, this choice is limited by a certain framework, which forms it. In today's society, it is rare to find a situation where one individual's decision sets universal norms. The study by Kravtsov et al. (2022) led to the conclusion that such norms are always a subjective act of will, while the rules have an objective character, which is due to the formalisation of legal norms. The objectivity of the rules is based on the will that lies in their basis, which reflects generally accepted ideas about what should be at the specified stage of the historical development of society (Khamzina et al., 2021, Nuryshchenko, 2025).

Any non-trivial mechanism, including human activity, requires a universal platform that allows solving emerging problems by cultural and logical norms (Perbawa et al., 2024; Apakhayev et al., 2017). Therefore, the versatility of the platform must be correlated with the complexity of the mechanism. In the context of society, such a communication platform may include internal regulations that may differ from legal regulations and contain other rules. However, as stated by Zayniyeva and Kassymbekova (2020), globally in society, only the law can provide adequate communication and methodological support. As a result of the historical development of society, law has become an integral part of it. It is essentially the embodiment of a cultural, normative, hierarchical, and subordinate system.

Therefore, the processes of mediation are limited and regulated by law, which confirms the legal nature of mediation. In the context of a mediator's work, the right is the basis for controlling social interactions (Ivaniuk, 2024; Khovpun et al., 2024). Thus, the process of mediation has a legal nature because the norms within which the mediator and participants in the conflict realise their tasks are legal, and the dispute is a contradiction between the subjective understanding of the proper and the proper, expressed in law.

Similarities in the approach to this concept were also traced in the studies of Kravtsov et al. (2022), whereas in the findings of Gayo (2022), mediation was considered primarily as a phenomenon that had a socio-cultural beginning.

Mediation in the alternative dispute resolution (ADR) system

The ADR system was generally examined, which is interpreted as a general term that describes various methods of resolving disputes outside the judicial system. ADR is preferred by many commercial parties due to its efficient and confidential dispute resolution principles (Deineha, 2022; Parasiuk et al., 2025). It can also substantially reduce the costs that arise during the judicial resolution of conflicts, thereby contributing to the economic sustainability of the justice system. During the study, it was emphasised that ADR promotes the autonomy of the parties and is more friendly than conventional judicial proceedings, which ultimately create more positive conditions for maintaining and developing relations after the settlement of a conflict.

The most prevalent ADR approaches at the time of analysis were reconciliation, agreement, arbitration, mediation, and negotiations. Theory and practice suggest that arbitration can replace judicial proceedings. Gjorgjioska et al. (2022) studied this topic further. It usually occurs through an arbitration agreement or as a clause in an existing agreement with two or more parties' willing cooperation. An impartial arbitrator decides a dispute in arbitration. Reconciliation, where a conciliator resolves a dispute, was also investigated. Conciliators utilise their judgements and recommendations to help parties reach a settlement, unlike mediators. Reconciliation theory is related to mediation, which requires procedure boundaries.

In general, mediation is defined as part of the broader concept of “ADR”, which by its very nature, is a large system that includes many different ways of resolving disputes in court. In the scientific community, this position has great authority, which has been observed in the papers by Kravtsov et al. (2022), Gayo (2022), and Subrata (2023). After analysing the studies conducted by these researchers, it was established that mediation plays a pivotal and prevalent role in contemporary legal practice, which has been especially evident in recent decades, highlighting its potential for ensuring long-term sustainability in dispute resolution.

Formation and development of the institute of mediation in the RK

The analysis of the formation and development of mediation institute in

the RK reveals that this phenomenon is a relatively new form of ADR in terms of its formal institutionalisation, including the involvement of a neutral third party with no interest in a particular dispute. A distinctive feature of mediation in the study was that it differed from the methods of dispute resolution adopted in the RK, including both conventional and alternative methods. The further development of legal institutions in the country prevented assessing other similar beginnings of mediation during the study. This might be attributed to the fact that, for the first time in international law, such a concept was addressed only in the latter half of the 20th century. Although the roots of restorative justice and earlier conciliatory practices date back much further, shaping the traditional conflict resolution landscape in the region. From the standpoint of historical modelling, it was necessary to examine the social and economic situation in the United States, where a new form of conflict related to the confrontation between emerging trade unions and employers concerned issues of working conditions and wages. The inability to quickly resolve these disputes created the threat of riots, mass layoffs, and interruptions in the production of enterprises.

In the case of RK, the evolution of legal doctrine under the regime of the Union of Soviet Socialist Republics (USSR) and in the subsequent period reflected patterns common to all post-Soviet states, marked by instability across most spheres of governance. In turn, the current situation took away the opportunity to transfer the best experience of advanced states quickly, and as a result, signed by the president of the RK, the Law of the Republic of Kazakhstan no. 401-IV "On Mediation" (2011) and the Law of the Republic of Kazakhstan no. 402-IV (2011) were as late as January 28, 2011. On the other hand, compared to countries from the post-Soviet space, only a few states, including Moldova, could have made such a breakthrough in this area.

Before these laws were passed, restorative justice, international conciliation, and the best dispute resolution methods were studied. This involved studying other countries' experiences, antecedents, and experimental and pilot project results. This analytical and research process has identified the best conflict resolution methods and alternatives. These endeavours sought to produce best-practice laws and policies and offer dispute resolution methods that promote fairness, efficiency, and institutional sustainability.

Further analysis of the situation in the country regarding mediation led to the fact that the relevant processes were activated, which were necessary to ensure the integrity of the mechanism. Thus, as a result, four more stages were identified, but their implementation after the adoption of the above-mentioned law was conducted in parallel. The first was the creation of

specialised mediation centres in the RK, which provide mediation services in various fields, including family disputes, labour conflicts, and commercial disputes, laying the groundwork for the sustainable operation of non-judicial dispute resolution systems. At the time of the study, the United Centre for Mediation and Peacemaking "Mediation", the Centre for Mediation and Law "Parasat", and the West Kazakhstan Centre for Mediation and Negotiation Process were particularly relevant. The next key point in the study is professional education and certification, which was manifested in the training of qualified mediators, for which professional training and training programmes for mediators were developed.

An important stage was conducting information campaigns and educational measures to raise awareness about mediation, its advantages, and its role in fostering legal and social sustainability. Analysing this stage, it can be concluded that its main goal was to attract the attention of society and the legal community to the practice of mediation. The last key fourth point in the formation of the mediation institute was the introduction of changes and additions that should improve the practice of mediation in the country and reinforce its procedural sustainability. For example, in 2016, changes were made to the Law "On Mediation" (2011), which expanded the possibilities of applying mediation in various areas, including family, labour, civil, and administrative law. In 2018, several other changes were made to the law, which increased the status of mediators and improved the conditions for the development of the mediation institute.

Principles of mediation

This study investigated Article 4 of Kazakhstan's Law "On Mediation" (2011), which stipulates five principles: volunteerism, equality of parties, mediator independence and impartiality, non-interference in procedures, and confidentiality. These laws establish mediation as a confidential, voluntary, and equitable procedure facilitated by neutral and independent intermediaries. Jafarov (2021) found that volunteerism assumes parties cannot be forced to engage in alternative dispute resolution. Subject to mutual agreement or legal constraints, parties can withdraw from mediation at any time. Mediation only commits parties to seriously investigate settlement options and temporarily suspend litigation. These principles ensure that mediation is voluntary, confidential, impartial, and sustainable, offering parties an alternative to court proceedings while protecting procedural safeguards and participant autonomy.

This principle has been examined from several perspectives:

- voluntary consent of the parties to resolve the dispute in accordance with the established procedure;
- voluntary involvement in the procedure, the ability to refuse to continue the procedure;
- voluntary performance of the obligation obtained as a result of dispute resolution.

Confidentiality represents a fundamental principle whereby all aspects of a mediation session remain strictly classified from initiation to conclusion, aligning with theoretical frameworks proposed by Jafarov (2021). This principle encompasses comprehensive protection of negotiated information and written documentation, prohibiting unauthorised disclosure to external parties. The confidentiality framework explicitly forbids verbatim recording and electronic documentation during proceedings while extending protection to any information discovered throughout the procedural course, preventing its utilisation in subsequent discussions. Disclosure may occur solely for the portion of the contract that will be performed. Article 20 of the United Nations Commission on International Trade Law (UNCITRAL) conciliation rules provides relevant guidance on this matter, establishing that confidentiality protections operate independently of whether disputing parties subsequently engage in arbitration or judicial proceedings, thereby ensuring that protected information cannot be introduced as evidence in alternative forums:

- comments and suggestions on the possibility of resolving a dispute;
- acknowledgements from the parties during the reconciliation procedure;
- intermediary's offer;
- the fact that the other party is ready to accept the proposals of the intermediary for dispute resolution is not referred to.

Neutrality of the intermediary and independence of its activities:

1. The mediator is disinterested in attaining any outcomes from the procedure during the execution of their actions.
2. The intermediary does not depend on any party on other subjects.
3. The intermediary does not judge, accuse, or defend any of the parties.
4. Interference with the mediator's activities is not allowed.
5. According to the basic regulations, the mediator is not obligated to disclose details of the ongoing procedure to any party; yet, the mediator may report the outcomes to the governing body they represent. Here, this refers to the special bodies that serve the intermediary.

The examination of principles represented a significant aspect of the research. A special importance in their examination at the moment has been

established by many researchers. Jafarov (2021) significantly contributed to comprehending the principle of confidentiality and its implementation.

Mediation in the RK

At this stage, the study turned to an in-depth investigation of the mediation procedure as implemented in the RK. First of all, considering the development and formation of the institute of mediation in the country, a general global comparison of terminology was conducted, among which there were different approaches to the concept of "mediation" from the side of the current legislation of different countries, including the RK, and the analysis of opinions of both researchers related to jurisprudence and practicing lawyers. The following interpretation of this term was proposed: "Mediation – the process of resolving a dispute or conflict between the parties, where mediators help them (the parties) to reach an agreement that will be mutually acceptable to all, while initially based on the principle of voluntary agreement between both parties to the dispute." As for the current situation of mediation in the RK, the analysis allowed asserting with confidence that it is the most effective ADR in terms of its success rate, with 69% of cases resolved through mediation. This was explained by a number of factors that have been described in detail by researchers in the field of civil law, in particular, Zienkiewicz (2021), and in combining the legal and psychological standpoints – in the study of Kaidarova and Imanbayev (2020).

Mediation differs from judicial proceedings in a number of key aspects, such as accessibility, confidentiality, economy, deadlines, and its potential to support sustainable legal outcomes (Morris, 2025; Ospanova et al., 2024). These factors led to the conclusion that mediation is particularly attractive for parties in a conflict since the procedure is aimed at finding a dispute resolution based on the real interests of the parties to the dispute and not just on their initial positions. Further, an investigation of the status of the mediator as the person responsible for conducting the mediation procedure was conducted. Thus, a number of its main obligations were formulated, which were based on the current practice of the Association of Mediators and the Law (2011):

1. Maintaining neutrality and unbiasedness towards the parties to the conflict. They should remain impartial and avoid predicting outcomes during mediation.
2. They should consider the interests and needs of the parties, which should contribute to finding the best solution. Various techniques and tools can be used to encourage constructive discussion and search for solutions.

3. Compliance with the principle of confidentiality and not disclosing information obtained in the course of mediation without the consent of the parties. This helps create a trusting atmosphere, ensures free dispute discussion, and contributes to the sustainability of the dispute resolution framework.
4. Providing the parties with information about the mediation process and its principles, their rights and obligations, and possible options for resolving the dispute contributes to transparency, trust, and the sustainability of mediated outcomes.
5. Responsibility for managing the mediation process, including setting schedules, holding meetings, monitoring compliance with the rules, and maintaining a balance in communication between the parties.
6. Upon concluding mediation, the mediator may aid the parties in draughting a mediation agreement, a legally enforceable document that encapsulates the accord achieved between the parties.

An important component of this institute in the framework of the study was the analysis of the functionality and nature of mediator organisations, which are voluntarily created mediators' organisations that exist for the development of organisational, material, and other conditions necessary to help conduct the procedure by mediators. The main function of the study was to introduce a register of professional mediators by such organisations and to develop and approve conditions for the membership of mediators. In addition, the function included information and methodological support for members, representation of mediators' interests with government bodies, Organisation of professional training of specialists, and improvement of their qualifications, which, for example, in the study by Bilyalova et al. (2022), were also considered to be the main ones. Additional functions in the course of the study were identified as promotion of mediation among the population, for example, ways of conducting thematic educational events and other mechanisms that can influence the development of the institute in the country.

Comparative analysis of mediation procedures in the RK and foreign countries

The study of mediation procedures began with the RK, where most procedural aspects are outlined in Chapter Three of the Law "On Mediation" (2011). Key provisions include the procedure and methods of mediation, its timing and location, the language used, conditions, contract form and content, associated costs, and application across various legal relations (civil, labour, family, and administrative) covering both individuals and legal

entities. The law specifies five methods of mediation: individual meetings, telephone, video conferencing, electronic messaging, and other ICT-based methods not contradicting the law. Aside from individual meetings, all others can be classified as forms of online mediation.

Regarding time, place, and language, the legislation ensures dispositive principles, allowing parties to choose these freely, with the mediator making decisions based on their preferences. The conditions of mediation include voluntary participation, freedom in choosing a mediator, and the mandatory conclusion of a mediation agreement. The latter, as defined in Article 21, includes fourteen essential terms and confirms mutual intent to resolve the dispute. Mediation can be either paid or free, with compensation agreed in advance and shared equally unless otherwise specified.

The study also examined the specific features of mediation across legal domains. While legislation lacks many detailed provisions in civil, labour, family, and administrative cases, it mandates that mediation should conclude within 30 calendar days, with the possibility of a 30-day extension. More specific provisions apply in administrative and criminal matters, where mediation does not imply guilt and proceedings continue. As Imanbaiev and Romanova (2021) noted, mediation in criminal cases is limited to minor or moderate offences without fatal outcomes.

After examining RK's framework, a comparative analysis followed, beginning with the United States and Great Britain – jurisdictions representing the Anglo-Saxon and Continental legal systems. In the U.S., the American Arbitration Association and American Bar Association have issued flexible mediation guidelines. Typically, mediation begins with the parties' consent, a brief statement of the dispute, discussion of expectations, mediator selection, and information exchange. Parties may hold joint and separate meetings with the mediator, aiming to gather as much information as possible to craft a resolution.

The influence of U.S. practice on UK mediation is evident, just as British legal traditions influenced American law. Over time, U.S. mediation became more accessible, while UK mediation became slightly more formal under American influence. Still, core procedures remain similar. Clark (2022) highlighted subtle differences resulting from this formalisation, which the study also explored.

Germany offered another compelling case, where mediation is closely integrated into the judicial system. Court-appointed intermediaries significantly reduce litigation volumes. Mediation is widely taught in German law faculties, making it part of core legal education. A distinctive feature is the "information stage", requiring parties to be informed about mediation before filing a court claim. This pre-court step encourages

consideration of ADR methods and supports judicial efficiency. As Kury and Kuhlmann (2017) note, such integration enhances mediation's popularity and effectiveness in Germany.

In contrast, Ukraine represents a jurisdiction where mediation is still developing. The Law of Ukraine No. 1875-IX "On Mediation" (2021) was only recently adopted, and prior to that, the process lacked regulation. Currently, mediation is applied across family, labour, economic, administrative, and even criminal contexts – primarily to reconcile victims and offenders and restore social ties (Albanesi and Teasdale, 2025; Horislavska, 2025). Due to its novelty, strict mediator requirements apply: completion of a 90-hour training course, including 45 hours of practice. In comparison, RK requires a minimum of 48 hours of training (Order of the Minister of Information and Social Development, 2023).

The study also examined Japan, where cultural attitudes toward the court system have shaped the popularity of ADR. Traditionally, resorting to courts was ethically discouraged, but the need for dispute resolution persisted, leading to widespread mediation use. Japanese law distinguishes between "reconciliation", where the mediator actively proposes solutions, and "mediation", where the mediator remains neutral and facilitates dialogue. This distinction reflects Japan's unique cultural and legal context and highlights the adaptive nature of mediation in diverse jurisdictions.

The system of legislation of the RK and foreign countries in the field of mediation

Since various laws have already been mentioned many times in the study (first of all, the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011)) and codes in this section of the division concerning the legislation in the field of mediation, all key regulatory legal acts were summarised, including some options for their improvement and changes. In fact, the basis for investigating the legislation of the RK in the field of mediation was evidently the analysis of the mentioned law. In addition to investigating the specific features of specific legal relations, attention was paid to the necessary provisions of the procedural nature of the codes: Code of the Republic of Kazakhstan No. 377-V (article 24) (2015); Criminal Procedure Code No. 231-V (article 85) (2014); Code of the Republic of Kazakhstan No. 350-VI (article 121) (2020). Another important part of the legislation in the field of mediation was defined as the order of the Minister of Information and Social Development of the Republic of Kazakhstan No. 244-NC (2023) and codes of ethics developed by the Association of Mediators of the RK. A separate place was given to international

documentation headed by Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 (2008).

For example, paragraph 1 of part 2 of article 21 of the law in the question of the essential terms of the agreement should be reformulated from "date and place of conclusion of the mediation agreement" to "date, place, and time of conclusion of the mediation agreement". Moreover, having examined the experience of Germany, an information stage can be added, during which the participants in the dispute will explain the possibility of resolving disputes by means of mediation to the court proceedings. The next aspect that raised doubts is the absence of a specific body that would maintain the register of professional mediators, which is essential for ensuring the sustainability of mediator accreditation and oversight. At the time of the study, this was done by mediator organisations, but there is no need for a general register for the entire RK that would be controlled by the state. The foundational ideas of mediation may be jeopardised by the establishment of a state-run registry of mediators. By portraying mediators as quasi-state actors, such a system may simultaneously weaken mediators' independence even while it could increase professional accountability and procedural transparency. This change could change mediation's theoretical underpinnings as an alternate, voluntary, and non-coercive method of resolving disputes by undermining the sense of impartiality and autonomy that sets it apart from legal procedures. Therefore, any governmental participation in mediators' certification or registration should be weighed against protections that maintain the profession's self-regulation and the fundamental values of independence and neutrality.

Comparing the data, it was concluded that in other countries, the situation on the issue of the legislative system is similar, though some systems demonstrate higher levels of institutional sustainability. There was also specialised law "On mediation", which was the main act in relation to the procedure; then codes that indirectly remembered the procedure; regulatory acts or practice, which is more typical for the countries of the Anglo-Saxon system; and international legislation. The analysis specifically identified post-Soviet countries such as Moldova, Uzbekistan, and Ukraine, where the situation with regard to legislation is very similar to that of RK.

In the United States, for example, there was a National Institute for Dispute Resolution in the United States, which developed new methods of mediation. The theoretical and practical aspects of mediation in the United States are covered by publications such as Mediation Quarterly and the American Journal of Mediation, which enjoy authority among readers. In addition, in 2001, the Uniform Mediation Act (2001) was adopted, which was in force at the time of analysis. The Uniform Mediation Act in the United States provides for the use of mediation in civil and commercial disputes that

do not affect constitutional issues. There are special procedural rules for certain categories of disputes. For example, for labour disputes, there are arbitration rules and mediation procedures for the labour affairs of the American Arbitration Association. On the other hand, in some countries, the mediation procedure was provided for in the codes many decades ago, which did not require special innovations in legislation, particularly the profile law. In France, the mediation procedure has been fixed in the Criminal Code since 1993. The same applies to labour legislation, in which the relevant study in the Labour Code is devoted to mediation.

RK is a signatory to the Singapore Convention on Mediation (2018), though it has yet to ratify it. Regarding the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements (2018), RK has made significant strides in aligning its national legislation with international standards. Through the Law "On Mediation" (2011), which governs the practices and purposes of mediation in RK, the Model Law's provisions have been integrated into the country's mediation framework. Some elements, like the requirement to employ the mediation procedure in specific situations, are still being discussed further by the legislative body.

Application of mediation procedures in different countries

The study used publicly available statistical data, which allowed assessing the effectiveness of the mediation procedure in actual practice. Thus, the most positive conclusion was that the results in most countries where the institute of mediation was in demand showed quite high indicators of successful resolution of conflicts. On average, the world figure ranges from 70% to 80%. Indicators in the RK are equal to 69%, which separated the country from the statistical average by only one indicator. In general, this result was defined as good but required improvements in comparison with other countries. In general, the indicators in the UK were particularly impressive, at 92%, which indicated a high level of development of the institute and the quality of work of mediators (Tables 1, 2).

However, the results shown in Table 2 were called negative, as they indicated a very low level of mediation demand. This was explained by the fact that citizens of the RK, not looking at various educational campaigns, need to be made aware of the mediation procedure and its role in achieving sustainable conflict resolution. The fact that the indicator was close to the figures in the United States – in the country where mediation originated – could not be used as an argument for the sustainability of the mediation system in RK. The data showed that at the time of the analysis, less than 5%

of cases that were being tried in the United States were completing the process. Table 2 demonstrates that in the vast majority of instances, disputes were settled through alternative techniques, with mediation comprising 5% of the total disputes. In RK, the popularity of the ADR system is comparable to that in America, but further efforts are required to enhance its sustainability through systematic promotion and public education. In other countries, mediation is considered for about 30% of disputes in their total number, which is almost eight times higher than in the RK.

Table 1 – Comparison table of success of the mediation procedure in different countries

Percentage of disputes that successfully ended in the country by mediation	*Value*
Average indicator in the world	70-80%
RK	69%
United Kingdom	92%
USA	80%
Finland	80%

Source: Compiled by the authors.

Table 2 – Comparison table of the demand for the mediation procedure

Percentage of disputes considered by mediation from the total number of disputes	*Value*
RK	4%
USA	5%
China	26%
Slovenia	29%
Austria	30%
United Kingdom	35%

Source: Compiled by the authors.

Conclusions

A comprehensive analysis of the current legislation in the RK and various foreign jurisdictions, alongside a review of scholarly research and statistical data, led to the conclusion that the mediation process has consistently evolved since the enactment of the law in 2011. However, there were many points in which this institute is inferior to the countries of the European Union, the United States or Japan, which was explained by certain circumstances: cultural context, better qualifications of specialists and

extensive experience in the field. The results also showed that the popularisation of mediation among the common population had an insufficient effect, and therefore, the indicators of using the procedure were inferior to those of other countries. Additionally, the study found that the mediation legislation, while not requiring changes based on its findings, highlighted areas where updates could be beneficial.

Particular attention was focused on the legal nature of mediation and its key principles: volunteerism, confidentiality, and neutrality. However, further research requires a more extensive knowledge of other principles of mediation, which will contribute to a better understanding of the legal nature of mediation itself. In the historical context, a connection was established between the court and the modern mediation procedure, which was essential for investigating the formation and development of the institute. In the future, other similar mechanisms that existed before the mediation on the territory of RK may be established. Mediation is recognised globally as a process that emerged in the latter half of the 20th century in the United States, where it remains pertinent and highly advanced. Ultimately, several recommendations were also formed: to review and supplement the current legislation, in particular, the Law "On Mediation" in the question of the existing terms of the agreement; to create a state body that would deal with centralised management of the register of mediators and deal with other key issues; to improve the stages of the procedure, for example, by adding a mandatory information stage; and to provide a more preferred level of public awareness of the procedure to increase the level of its demand.

This can be done by conducting thematic seminars and educational events and using other mechanisms that increase the knowledge of legal awareness among citizens; review the training programme of mediators. The required training time in courses or generally conducting mediation, as a mandatory discipline in higher educational institutions can be increased to train more high-quality specialists. The procedure itself is based on the fact that the parties settle the dispute, avoiding judicial proceedings and supporting a sustainable model of conflict resolution. The results showed that the mechanism is favourable both for the state and for the parties to the dispute and mediators, contributing to the sustainability of dispute resolution practices. Further development of the institute may drain the country's judicial system, which will increase its effectiveness.

References

Albanesi, E. and Teasdale, J. (2025). Law Reform in Small Jurisdictions. Challenges

and Opportunities. *Statute Law Review, 46*(1), hmaf004. Doi: 10.1093/slr/hmaf004.

Apakhayev, N., Madiyarova, A.S., Aigarinova, G., Ryskaliyev, D.U., Buribayev, Y.A. and Khamzina, Z.A. (2017). Current trends of legal regulation of relationships in the social protection sphere. *Man in India, 97*(11), 221-231.

Bilyalova M., Musilimova K., Ilyassova G., Serikbayev A. and Akimzhanova M. (2022). Principles of administrative procedure and proceedings in Kazakhstan against the background of foreign experience. *Public Integrity*, *25*(4), 399-414.

Clark B. (2022). Mandatory mediation in England and Wales: Much ado about nothing?. *Amicus Curiae*, *4*(1), 92-108.

Code of the Republic of Kazakhstan No. 350-VI "Administrative procedural code of the Republic of Kazakhstan" (2020). -- Text available at the website https://online.zakon.kz/Document/?doc_id=35132264.

Code of the Republic of Kazakhstan No. 377-V "Civil procedure code of the Republic of Kazakhstan" (2015). -- Text available at the website https://online.zakon.kz/Document/?doc_id=34329053.

Criminal Procedure Code of the Republic of Kazakhstan No. 231-V (2014). -- Text available at the website https://online.zakon.kz/Document/?doc_id=31575852&show_di=1.

Deineha, M. (2022). Mediation as an alternative method of dispute resolution: International and national practices in legal regulation. *Law. Human. Environment, 13*(4), 16-25. Doi: 10.31548/law2022.04.002.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 "On certain aspects of mediation in civil and commercial matters" (2008). -- Text available at the website https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0052.

Galymzhan, B., Kanatbek, A., Akylbek, I., Akmaral, S., Yernazar, B., Akzada, M., Zhannat, T. and Indira, B. (2020). Constitutional rights of the president in determining the economic development strategy for the period of his office (based on the experience of central Asian countries). *Journal of Legal, Ethical and Regulatory Issues, 23*(6), 1-12.

Gayo S. (2022). Alternative dispute resolution in mining disputes with the mechanism of mediation. *International Journal of Research and Review*, *9*(3), 401-416.

Gjorgjioska E., Gorgieva D. and Stoileva Z. (2022). Alternative disputes resolution for consumer disputes in the European Union. In: *XII International Conference on Economy, Business & Society in Digitalized Environment* (pp. 354-365). Doi: 10.20544/EBSiDE.01.01.22.p29.

Horislavska, I. (2025). Alternative consumer protection methods in the context of civil law recodification. *Law. Human. Environment, 16*(1), 90-104. Doi: 10.31548/law/1.2025.90.

Imanbaiev S.M. and Romanova A.H. (2021). Comparative legal analysis of the mediation institute under the criminal procedure legislation of the Republic of Kazakhstan, the USA and Great Britain. *Scientific Journal Criminal and Executive System: Yesterday. Today. Tomorrow*, *2*, 35-48.

Ivaniuk, V. (2024). Theoretical and legal fundamentals of administrative offences prevention. *Law, Policy and Security, 2*(1), 46-57. Doi: 10.62566/lps/1.2024.46.
Jafarov N.M. (2021). The importance of the principle of confidentiality in mediation. *Scientific Work*, *15*(4), 314-316.
Kaidarova Z. and Imanbayev S. (2020). Mediation in the Republic of Kazakhstan: Psychological and legal support. *Pedagogy and Psychology*, *42*(1), 133-139.
Kalshabaeva M.Zh., Sartaev S.A., Ospanova D.A., Ibrayev N.S. and Useinova, K.R. (2022). Some problems of the development of mediation as an alternative way to resolve disputes in the Republic of Kazakhstan. *Bulletin of the Al-Farabi Kazakh National University*, *104*(4), 12-25.
Kenzhebekova Zh.K., Mussabalina G.T. and Kabyltayeva S.K. (2023). The history of the establishment of the institution of mediation in Kazakhstan: Problems and prospects. *Bulletin of the Karaganda University*, *109*(1), 87-93.
Khamzina, Z., Buribayev, Y., Taitorina, B. and Baisalova, G. (2021). Gender equality in employment: A view from Kazakhstan. *Anais Da Academia Brasileira De Ciencias, 93*(4), e20190042. Doi: 10.1590/0001-3765202120190042.
Khovpun, O., Kichuk, Ya., Petrenko, A., Dombrovska, O. and Metil, A. (2024). Mediation as a conflict resolution tool in criminal proceedings in the context of martial law. *Social and Legal Studios, 7*(1), 264-272. Doi: 10.32518/sals2.2024.264.
Kravtsov D.M., Zinovatna I.V., Burnyagina Y.M., Orlova N.H., Solovyov O.V. and Konopeltseva O.O. (2022). Mediation as an alternative way to solve the labor disputes. *Scientific Notes. Series Law*, *12*, 73-79.
Kury H. and Kuhlmann A. (2017). Mediation in Germany and other Western countries. *Kriminologijos Studijos*, *4*, 5-46.
Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). -- Text available at the website https://adilet.zan.kz/eng/docs/Z1100000401.
Law of the Republic of Kazakhstan No. 402-IV "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on mediation issues" (2011). -- Text available at the website https://online.zakon.kz/Document/?doc_id=30927293.
Law of Ukraine No. 1875-IX "On Mediation" (2021). -- Text available at the website https://zakon.rada.gov.ua/laws/show/1875-20#Text.
Morris, C. (2025). Law Reform in Small Jurisdictions: A Review. *Statute Law Review, 46*(1), hmaf007. Doi: 10.1093/slr/hmaf007.
Nuryshchenko, R. (2024). Genesis, current status, and prospects for the development of the institution of negotiation in Ukraine. *Law Journal of the National Academy of Internal Affairs*, *14*(3), 78-86. Doi: 10.56215/naia-chasopis/3.2024.78.
Order of the Minister of Information and Social Development of the Republic of Kazakhstan No. 244-HK "On approval of the Rules for completing training under the training program for mediators (2023). -- Text available at the website https://online.zakon.kz/Document/?doc_id=34131501.

Ospanova, D., Moroz, S. and Niyazova, A. (2024). The problem of defining "juvenile justice" concept and its principles in legal science. *Journal of Infrastructure Policy and Development, 8*(13), 9250. Doi: 10.24294/jipd9250.

Parasiuk, V., Grabar, N., Zdrenyk, I., Onyshko, O. and Fedina, N. (2025). Harmonisation of Ukrainian legislation with EU law in the field of alternative civil dispute resolution: Challenges and prospects. *Social and Legal Studios, 8*(1), 336-349. Doi: 10.32518/sals1.2025.336.

Perbawa, K.S.L.P., Hanum, W.N. and Atabekov, A.K. (2024). Industrialization of Election Infringement in Simultaneous Elections: Lessons from Sweden. *Journal of Human Rights Culture and Legal System, 4*(2), 477-509. Doi: 10.53955/jhcls.v4i2.170.

Subrata, R. (2023). Mechanisms of alternative dispute resolution in conflict and dispute resolution in Indonesia. *Litigasi*, *24*(1), 151-164.

The Uniform Mediation Act (2001). -- Text available at the website https://goo.su/VqJstW.

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation (2018). -- Text available at the website https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation.

United Nations Convention on International Settlement Agreements resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation") (2018). -- Text available at the website https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements.

Zayniyeva L.Yu and Kassymbekova A.A. (2020). Some aspects of the role of mediation in society. *Bulletin "Historical and Socio-Political Sciences"*, *65*(2), 1-18. Doi: 10.51889/2020-2.1728-5461.35.

Zhukorska, Y. (2024). Attribution of conduct to an International Organisation: Theory and practice. *Law, Policy and Security, 2*(1), 21-32. Doi: 10.62566/lps/1.2024.21.

Zienkiewicz A. (2021). Objectives of mediation and selection and implementation of mediation strategies and techniques by mediators in civil disputes – Study report (part I). *Studia Iuridica Lublinensia*, *30*(5), 601-618.