RESOLUTION OF HOUSING DISPUTES IN THE CIVIL PROCESS

Abstract. To date, new norms have been adopted that lay the foundation for the implementation of the new Civil Procedure Code. The aim of the article was to describe the mediation as a legal phenomenon of decisive housing disputes and the identification of its practical procedural resource. Negotiations between the parties while the case was in court proceedings were always conducted, but for obvious reasons they should have been conducted outside the framework of the proceedings. In the process orbit, the result of the negotiation relationship could be manifested - the conclusion of a settlement agreement, subject to approval by the court. Having determined the specifics of a legal phenomenon, its place in a number of other judicial procedures (settlement of the dispute by the court on the merits, conclusion of a settlement agreement, execution of the decision), it is possible to designate a practical framework for the application of mediation rules.

Keywords: disputes, process, tangible property, housing, legal proceedings, negotiations, legal phenomenon, mediation.

INTRODUCTION
Among the innovations, a special place is occupied by mediation, which is a new step by the Kazakhstan legislator, aimed at using reconciliation procedures in legal proceedings and reducing the "degree of conflict" in litigations. A special place of mediation in Kazakhstan's legal reality is also explained by the fact that the legislator, in order to standardize new procedures, did not introduce separate rules into the existing procedural codes. Instead, an independent regulatory legal act was adopted - the Law of the Republic of Kazakhstan "On Mediation", after which the norms detailing the provisions of this Law were incorporated into the procedural legislation. This step of the legislator is explained by the fact that mediation as a procedural mechanism is applicable both in civil and in criminal proceedings (with certain restrictions), and thus the adopted special Law became a single regulatory framework, designed to perform inter-sectoral functions. The first problems were identified from the moment of the adoption of the Law, and experts still restrainedly evaluate this regulatory innovation. Evaluation of laws is traditionally associated with the criteria of its effectiveness, and in this sense, legislation on mediation is not an exception. Consistently introducing mediation rules into procedural legislation, the legislator attempted to synchronize the new normative act on mediation with the codified acts of the procedural block.

MAIN PART
Among the more detailed issues that today require the attention of scholars and practitioners, we should mention the limits of the use of mediation (expansion / contraction of the regulatory framework of application), the activities of mediators in the procedural field as participants in procedural relations and as representatives of the professional community; organizational forms of activity of mediators and prospects for improving these forms. Special attention should be paid to the issues of professional training of mediators, increasing their qualifications and the issues of their taxation, etc. The isolation of the mediator as a new subject of procedural relations poses the problem of rational placement of new rules in industry laws - regulatory legal acts of substantive and procedural. In the scientific direction, where the subject of research is mediation, there is a lack of work on this topic.
In modern conditions, this seems to be the most optimal way to minimize the number of conflicts in civil circulation and in the sphere of family, labor, land, agricultural, housing and other legal relations. Mediation is a proven mechanism of world law practice, it has enough advantages in Kazakhstan conditions and can generally alter not only civil, but also criminal justice in a positive way. The need for mediation. Modern procedural models that are aimed at reducing the time for resolution of disputes began to be applied since 1999. With the adoption of the current Civil Procedure Code of the Republic of Kazakhstan, which replaced the regulatory code of the Code of Civil Procedure of the Kazakh SSR, the courts were freed from the need to conduct “full-format” proceedings on cases whose result was obvious. The procedural form for this innovation was the order proceedings, previously unknown to the civil process of the Soviet type. Further, other significant in their regulatory purposes, innovations in legal proceedings were introduced, and a significant step in the further improvement of the civil procedure industry was the introduction of the institute of mediation into legal proceedings (2011). As noted above, experts have differently appreciated the innovation, but the obvious fact is that it has an undeniable potential that, if used rationally, will largely save the national civil justice from the “birthmarks” of the Soviet judicial process: red tape in resolving cases and non-execution of judicial decisions. What are the prerequisites for an active search for ways to reduce the number of litigations? Today it is indisputable that the increase in the number of judges is not a panacea for the problems of national justice; suffice it to say that the in-depth specialization of the courts did not reduce the number of cases brought before the courts. In addition, the increase in the number of judgments rendered by the courts does not mean that the number of judicial acts executed accordingly increases. From year to year, an increasing number of subjects are involved in the orbit of the judicial process: these are citizens, legal entities, state bodies, international organizations, etc. With all the diversity of the subject composition of the disputed (conflict) legal relations of all these subjects, one thing unites: this desire as quickly as possible resolve a legal dispute and obtain procedural guarantees of the execution of agreements, if any, have been achieved. In this sense, mediation is an effective legal tool that in Kazakhstan’s realities can show its positive qualities.

The effectiveness of mediation is proven by international law enforcement experience. The courts of England and Wales traditionally actively support mediation, because it seems to be a relatively quick and inexpensive alternative to litigation and has a high potential for success. When the court cannot persuade the parties to resolve the dispute through mediation, it may even impose monetary sanctions on the parties who unreasonably (in the court’s opinion) refused it, may even suspend the proceedings on their own initiative in order to give time for a decision on mediation.

Substantive law does not always cope with its regulatory functions, or there are problems with law enforcement. Neither one nor the other for the losing party is of fundamental importance, a specific subject operates with the concepts of the validity and fairness of a judicial act. If the court decision does not meet these criteria, then it cannot be considered lawful in the representation of the participant in the process. In such a situation, mediation as a procedure and a mediator, as a procedural figure can provide a rational ending of the case, which ultimately can The courts have a specialty of judges in specific disputes. There are different categories for housing disputes. Now there are a lot of cases on eviction from housing on claims of second-tier banks. As a security for the performance of its obligations to the bank, an individual provides his housing as a pledge. In case of non-fulfillment of the obligation to the bank, this entails the foreclosure of this property under the terms of the contract and, subsequently, eviction.

Changes to the CCP facilitate the work of the courts. Take an example with representatives. The judge, in the process of studying the materials of the case, saw during the trial that the representative, who had no legal education, had incorrectly formulated the stated requirement. That is, the dispute exists, and the requirement is not based on law. As a judge, showing equal and respectful attitude towards the parties, we cannot give preference to anyone. At the same time, you think: “How is it possible!”? The person (the representative - approx. Author) does not even know how to formulate this requirement. The fact that now representatives should be with higher legal education, eradicates such situations. Now we live in a legal state. Citizens and legal entities in full enjoy the rights granted by law. And in recent times the trend is this - going to court in the state language.

The program “100 steps” of the President of the Republic of Kazakhstan will affect the quality of justice. If we take the 16th step, which concerns the transition from the five-level judicial system to the three-level, then this will significantly reduce the time to consider litigation. The parties, taking advantage
of their rights, turned to the appellate court after the first instance, then the cassation system, and then the supervisory one. After the appeal appeal, the judicial act comes into force. However, using their rights, the parties could appeal against a judicial act that entered into force both in cassation and in supervisory review. In the case of the three-tier system, the judicial act which entered into force after the appellate instance can be appealed only by cassation. That is, the judicial act that entered into legal force was revised twice, and now - only once. We believe that this is a positive thing. The cassation instance will now be in the Supreme Court of the Republic of Kazakhstan. Supervisory authority will not. Also before, there were two instances in the regional court: an appeal that reconsiders a judicial act that has not entered into legal force, a cassation that reconsiders a judicial act that has already entered into legal force. Now, since 2016, the appeals instance is in the regional courts, in the courts of the city of Astana and Almaty, and the cassation instance is in the Supreme Court.

Here is a possibility that the emergence of procedural mediation schemes in the future will be ahead of the lawmakers process, which in Kazakhstani conditions (and in the conditions of other CIS countries too) will resemble elements of case law. Practical examples in the legal field can be cited again from the use of modern communication resources. In addition, it is highly desirable that mediation mechanisms for the types of disputes (by category of cases) be developed in parallel in the criminal and civil procedural areas with a prominent manifestation of the elements of their unification. With the current trends, it can be assumed that mediation will be spread, the beginning of this process is laid. In the city of Astana, there is the “Republican public association” Union of Professional Mediators “Kelsu”, which has a staff of qualified workers and educates future mediators. Certified mediators have tested certain mediation models that have shown their effectiveness in resolving civil and economic disputes, a promising direction for developing is the direction of resolving disputes arising from housing, family, obligations, inheritance and other legal relations. Procedural legislation focused on conciliation procedures will shape the need for the development of new substantive laws. In this sense, mediation will have a positive impact on the development of new regulatory legal acts, which in their content will be focused on the conflict-free process of law-realization. This means that a reduction in the level of conflict potential in relations emerging in civilian circulation will result in a decrease in the number of court disputes. In the classic version, the court resolves the dispute on the principle of which of the parties are supported by legal norms. However, not always even the most reasonable and motivated decisions have real prospects for execution. The available statistics on the execution of court decisions only confirms this conclusion. To put it bluntly, failure to execute a decision means failure to achieve the goals of justice. If one of the options for resolving a dispute is to make a decision on the merits of a dispute, and the other is to resolve a dispute through mediation, the following advantages are in favor of the second option: — timely resolution of the dispute is ensured, since both parties to the conflict are interested in this; do not pursue the goal of delaying the process; — The parties are not looking for illegal ways and there are non-procedural contacts with the judge; — gaps in substantive law, which impede the application of its provisions in complex legal cases, are neutralized; — a base of positive (conflict-free) law-realization is being created, which can serve as a basis for the development of effective regulatory legal acts; — The number of judicial acts requiring enforcement will be reduced; — Stable civil relations will be formed that do not require jurisdictional (judicial) intervention; — Business, personal, family, business and other relationships will remain, which, before the outbreak of conflict, had real prospects for positive development; — Conflicting parties can avoid costly representative services.

CONCLUSION

The diversity of life conflicts requires the development of effective models of relationships, among which, in the foreseeable future, mediation can show the aforementioned advantages. The legislative process will also have to focus on the results of the use of mediation procedures in Kazakhstan’s legal proceedings. In general, mediation as a phenomenon in law and as a procedural format of relations between various subjects in the procedural field can be viewed as a promising model of a conflict-free society, when judicial intervention in legal disputes will gradually give way to contractual ways to resolve conflicts.
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РАЗРЕШЕНИЕ ЖИЛИЩНЫХ СПОРОВ В ГРАЖДАНСКОМ ПРОЦЕССЕ

Аннотация. На сегодняшний день приняты новые нормы, которые закладывают основы для внедрения в жизнь нового Гражданского процессуального кодекса. Целью статьи авторы обозначили описание медиации как основного вида разрешения жилищных споров и выявление ее практического процессуального ресурса. Переговоры между сторонами в период нахождения дела в производстве суда велись всегда, но по различным причинам они не всегда достигали желаемого результата. В сфере медиации новые подходы, новые методы, новые технологии, новые достижения. Определение специфики правового языка, его место в ряду иных судебных процедур (разрешение спора судом по существу, заключение мирового соглашения, исполнение решений), можно обозначить как важный шаг в укреплении доверия к судебным процессам и правосудию. Ключевые слова: споры, процесс, материальное имущество, жилье, судопроизводство, переговоры, правовое языческое

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АЗАМАТЫҚ ХАСИЕЛЕСІҢ ШЕШУ

Аннотация. Как и в любой области, в юриспруденции, законодательстве и т.д. разрешение жилищных споров, в том числе через медиацию, приобретает особую актуальность. В статье авторы обозначили необходимость внедрения медиации в процесс разрешения жилищных споров, а также привели примеры ее применения в различных областях. Ключевые слова: споры, процесс, материальное имущество, жилье, судопроизводство, переговоры, правовое

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