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FORMATION AND MODERN TRENDS IN MEDIATION DEVELOPMENT

Abstract

This article shows the historical formation of mediation, and the main directions of development. Also, modern works are provided to determine the level of study of mediation, and the main problems of development are identified. Foreign works on the topic of "mediation" were reviewed, and the main types and concepts of «mediation» were defined. In addition, the basic concepts of mediation and principles of work are reflected.

Also, the basic concepts in the law «on mediation» of the Republic of Kazakhstan are provided, and the objectives of the task are shown. The basic requirements for the formation of mediators are derived, and the area of competence of the work is indicated.

The main definitions of the definition of «conflict» on the basis of foreign works of scientists are provided. The mechanisms of conflict resolution through mediation were outlined, and its technologies were demonstrated. On the basis of works of scientists of foreign countries the social and legislative sphere of application of «mediation» is presented.

Key words: mediation, assessment mediation, settlement mediation, political mediation, mediator, law.

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МЕДИТАЦИЯНЫ ДАМУЫНЫҢ ҚАЛЫПТАСУЫ МЕН ҚАЗІРГІ ТЕНДЕНЦИЯЛАРЫ

Аңдатпа

Аталған мақалада медиацияның тарихи қалыптасу үрдісі көрсетіліп, дамуының негізгі бағыт-бағдары анықталған. Заманауи «медиацияның» зерттелу деңгейін, оның негізгі мәселелері көрсетілген. Медиация тақырыбындағы шет елдік ғалымдардың еңбектері қарастырылып, «медиация» ұғымы, оның түрлері анықталды. Сонымен қатар, медиацияның заманауи анықтамалары беріліп, оның негізгі жұмыс істеу принциптері қарастырылған. Сондай-ақ, Қазақстан Республикасындағы «медиация» туралы заңына сәйкес негізгі ұғымдар беріліп, оның мақсат-міндеттері көрсетілген. Қазақстан Республикасындағы медиатор болудың негізгі талаптары анықталып, кәсіби құзыреті белгіленді.

«Конфликт» ғылымына шет елдің ғалымдарының еңбектері негізінде анықтама беріліп, оның даму үрдісі анықталды. Конфликт мәселесінің медиация арқылы шешілу тетіктері белгіленіп, оның технологиялары көрсетілді. Шет елдердің ғалымдарының еңбектері негізінде «медиацияның» әлеуметтік-заңнамалық қоданыс аясы көрсетілген.

Түйін сөздер: медиация, бағалау медиациясы, қатығыстың реттеу медиациясы, саяси медиация, медиатор, құқық.

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СТАНОВЛЕНИЕ И СОВРЕМЕННЫЕ ТЕНДЕНЦИИ РАЗВИТИЯ МЕДИТАЦИИ

Аннотация

В данной статье показана историческое становление медиации, и основные направления развития. Также, предоставлены современные труды для определения уровня изученности медиации,

и определены основные проблемы развития. Просмотрены зарубежные труды по тематике «медиация», и определены основные виды и понятия «медиации». Кроме того, отражены основные понятия медиации и принципы работы. Также, предоставлены основные понятия в законе «о медиации» Республике Казахстан, и показаны цели задачи. Выведены основные требования для становления медиаторов, и указана область компетенции работы. Показаны основные определения дефиниции «Конфликт» на основе зарубежных трудов ученых. Были обозначены механизмы решения проблемы конфликта через медиацию, продемонстрированы его технологии. На основе трудов ученых зарубежных стран представлена социально-законодательная сфера применения «медиации».

Ключевые слова: медиация, медиация оценки, медиация урегулирования, политическая медиация, медиатор, право.

Introduction. It is obvious that the problem of mediation is experiencing unique trends in the international arena. Thus, the first normative names of mediation in 2003 noted that the United Nations General Assembly as an alternative practical peace-making process, different from the court in international and inner States. In addition, in 2012, the main effective mechanisms of the UN mediation activity were reflected, and its significance in regulating public relations was determined.

Having made sure that the history of formation and development of means of regulating public relations of the Republic of Kazakhstan is unique with the solid steps of our country, in recent years we can see the development of public relations, reaching a new level and carrying out numerous political actions on the part of the state.

Having made sure that the history of formation and development of means of regulating public relations of the Republic of Kazakhstan is unique with the solid steps of our country, in recent years we can see the development of public relations, reaching a new level and carrying out numerous political actions on the part of the state.

Results. Determinant of the main activity of the mediation institute in the Republic of Kazakhstan:

1. the law of the Republic of Kazakhstan "on mediation" adopted on January 28, 2011, regulating relations between the company in the field of organization of the mediation process and procedure, as well as determining the competence of mediators;

2. regulatory and supplementary document adopted on January 28, 2011 by the Head of state N.A. Nazarbayev on amendments and additions to certain legislative acts of the Republic of Kazakhstan on mediation;

3. reservations and additions to certain sections of the Civil procedure law of the Republic of Kazakhstan dated July 13, 1999;

One of them is the adoption of the law of the Republic of Kazakhstan "on mediation" dated January 28, 2011. This law sets out the principles and procedures for conducting mediation in the Republic of Kazakhstan, as well as criteria for reflecting the activities of mediators. In this regard, the appearance of the definition of "mediation" in the innovative trend, which began in accordance with the requirements of modern society, is a requirement of time. For example, the concept of "mediation" is a third party that regulates public relations, while in modern times it is a "bridge" that establishes tolerance. In other words, the fact that "mediation" has become a tool for our country to resolve the issues of misunderstanding between the "state and society" determines the right direction of our public policy and is a guide to a democratic society.

To fully clarify the issue of mediation, it is necessary to pay attention to the current situation. Two main areas of mediation are presented in foreign scientific works: it is divided into conceptual and descriptive areas.

In the conceptual direction - on the basic principles, offer through the goals and participation of intermediaries and through the main meaning of dispute resolution. Defining the conceptual direction theoretical and personal behavior allow us to understand the mediation model.

Descriptive direction-helps to determine the specific type and main model of mediation.

Thus, mediation is a confidential procedure for resolving disputes between the parties. Its main goal is to reach an acceptable solution between the parties.

In the address of the head of state N.A. Nazarbayev to the people, mediation was not only a high social assistance, but also proved that mediation is one of the most effective institutions.

The mediator's activity is carried out in the form of "professional" and "non-professional". Its main requirements are: higher education, citizens who have reached the age of 25, who have received a document confirming special training from the Association of mediators of the Republic of Kazakhstan, receive the status of a professional mediator.

In accordance with the law of the Republic of Kazakhstan "on mediation" - an institution that solves conflicts between parties and saves time, for example:

1. Mediation helps and regulates temporary, emotional resources in resolving conflicts between the parties;
2. the organizational process of mediation is determined independently, and a system is formed;
3. Mediation in the event of a conflict resolves the right and wrong sides of the parties on a constructive basis;
4. expenses during the process are made in agreement with the mediator (funds, emotional expenses, etc.);
5. the mediation process is conducted confidentially;
6. promotes a free approach of the parties in the mediation process;
7. processes resolved through mediation become well-reasoned and robust;

According to article 14 of the law of the Republic of Kazakhstan "on mediation", the list of professional mediators and the procedure for their approval: www.mediation.kz is published on the website "mediator khabarshysy" in Kazakh and Russian, and is currently being updated in its own publication "mediator khabarshysy".

According to this list, more than 78 professional mediators have been trained in the Republic. In particular, 10 representatives registered in public associations are registered in the cities of Astana and Semey, as well as in the cities of Almaty, Aktobe, Atyrau, East Kazakhstan, West Kazakhstan, Mangistau, Pavlodar and South Kazakhstan regions.

Currently, several works have been written on the study of the main directions and principles of mediation, but now we have fully determined that the topic is relevant and requires research. The study of this issue in the history of our country's independence is not fully established. In particular, limited himself to the fact that legal scholars revealed the practical aspects of the topic. In this regard, after analyzing the practical and theoretical works of scientists at the present stage, we can say with full confidence that the time has come to conduct a comparative political analysis based on the chronological nature of the level under study. It is obvious that the dynamic development of society has caused new problems in relations. For example, the current requirement is to name the top type of disagreement between public relations - "conflict" and become a regulatory institution "mediation".

In the work of Akhmetova N. M. named "Mediation as an alternative method of dispute resolution" introduction of the concept lat. "mediation" - in modern society intermediary is an innovative approach to the problem of "conflict" [1, p. 237].

In this book highlights the main principles and shows the main approaches of "mediation". This work fully reflects the periodic characteristics of the consequences of "pre-conflict", "expressive conflict", "state after conflict". The issue of "Conflict" was defined as a peculiar concept in the development of society, and the emergence of the institution of "mediation", regulating it.

On the issue of "conflict", you can refer to the works of A.I.Shipilova and A. Antsupova, who defined the mechanism of solution from the "theoretical" and "practical" sides:

1. pre-revolutionary situation-the emergence of a conflict and the process of its peaceful resolution;
2. incident, tolerant action, end of conflict;
3. making a decision acceptable between the parties after the end of the conflict [2, art. 154-155].

We can say that in the practical implementation of mediation and the adoption of legislative acts, the role of the periodical is significant. The laws were published in the press and submitted for public discussion.

In particular "Law on mediation", published on January 28, 2011 (as amended on 01.01.2016) // the information system defines mediators as follows: a mediator is an independent individual engaged by the parties to conduct "professional" and "professional" mediation.

The law of the Republic of Kazakhstan "on mediation" defines the principles and procedures for conducting mediation, defines the status and main activities of the mediator and organizations. Mediation is a confidential procedure for resolving a dispute (conflict) between the parties with the assistance of a mediator, carried out by voluntary consent of the parties in order to reach a mutually acceptable solution.

It is also possible to consider the educational and methodical work of T. Dronzina, published in 2015, which contributes to the rapid development of the domestic concept of "mediation". In this work, T. Dronzina divided "mediation" into three parts: "conflict analysis", "general issues of mediation", "special mediation". The main references in the writing of this work were the comparison of domestic and foreign mediation [3, p. 6].

To analyze the concept of "mediation", which has become an innovative trend, M. V. Labutina's research on "mediation models" is of great importance. It defines the theoretical and legal basis of mediation, ways to resolve disputes or conflicts. To consolidate the main theoretical aspects of this work, the experience of mediators in regulating civil, family, and interethnic relations is presented. In addition, Labutina M.V. identified forms that correspond to the goals of mediation:

1. evaluation mediation-its purpose is to determine the essence of the dispute of mediation (scoping mediation), determine the boundaries of the conflict;
2. dispute settlement mediation - settlement of a dispute and reaching a mutually beneficial agreement;
3. mediation of conflict termination - development of rules of conduct (conflict containment mediation), conflict resolution;
4. transactional mediation agreed to resolve the conflict;
5. political mediation (policy making mediation) resolution of political conflicts in society [4, p.62-64];

Conclusion. In the modern understanding of mediation, an alternative (out-of-court) way to resolve these disputes consists in negotiations between the parties to the dispute under the guidance of a neutral intermediary (mediator). Mediation is used to resolve commercial, political, social, labor, family, criminal, and other disputes. The mediator contributes to the peaceful (pre-trial) resolution of conflicts as a mediator, not a lawyer, not a Prosecutor, but a mediator. This indicates that the work highlights innovative trends in the development of the concept of mediation [5].

Summing up, mediation is now recognized as a regulatory tool of public relations and has gained its significance. Mediation as an innovative science is a necessity of modern society. Therefore, the introduction of this industry into the science of Kazakhstan is a modern necessity.

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ӘЛЕУМЕТТІК-ТІЛДІК ҰСТАНЫМДАРДЫ ЗЕРТТЕУДЕГІ ӘЛЕУМЕТТАНУЛЫҚ ТЕОРИЯЛАР

Аңдатпа

Мақалада әлеуметтік-тілдік ұстанымдарды зерттеуге бағытталған әлеуметтану және әлеуметтік психология ғылымдарының классикалық теорияларға шолу жасалған. Әлеуметтік ұстаным түсінігінің қалыптасуы, даму тарихы мен қалыптасу эволюциясы туралы айтылады. Әлеуметтік ұстанымдарының қалыптасу процесі У.Томас пен Ф.Знанецкий, олардың әдіснамалық өлшеу әдістері Г.Олпорт, Р.Лапьер, Л.Терстоун, В.А.Ядов, И.Ф.Девятко, қалыптасу мәселесі М.Вебер, Э.Дюркгейм, Ю.Хабермас, Э.Гидденс, М.Рокич, П.Бурдьё және басқа ғалымдардың әлеуметтік парадигма негізінде қарастырылады. Жұмыстың мақсаты – әлеуметтік ұстанымдардың қоғамдағы әлеуметтік-тілдік