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Comparative analysis of mediation in the legislation of Kazakhstan and the People's Republic of China

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Abstract. This study addressed the growing importance of mediation in the legal frameworks of Kazakhstan and the People's Republic of China, focused on the need for more efficient conflict resolution methods in both countries. The aim of this research was to explore the specific features of mediation as defined by the laws of these two nations, highlighting the similarities and differences in their legal systems. A variety of methods were employed in the study, including the comparative legal method, formal-legal analysis, and the method of synthesis and comparison. The analysis revealed that both Kazakhstan and China have developed robust frameworks for mediation, though they differ significantly in their cultural and legal approaches. In Kazakhstan, the mediation process is formalized and heavily regulated, with a strong emphasis on the certification and professionalization of mediators. In contrast, China's system, rooted in Confucian traditions, allows for a more community-based approach with a broader scope, including minor criminal cases. The study found that while both countries value mediation as a non-adversarial means of conflict resolution, there is a need for further legislative development, particularly in Kazakhstan, to enhance public understanding and prevent potential abuses of the mediation system. Additionally, the study highlights the role of public education and the importance of integrating mediation into state-citizen dispute resolution processes. The practical value of this research lies in its potential use by policymakers and legal professionals in Kazakhstan and China, as it provides insights into improving mediation frameworks and ensuring their effectiveness in addressing modern societal conflicts

Keywords: conflict; laws; intermediary; Confucian norms; settlement of disputes

Introduction

The number of disputes is increasing daily, which can be explained by dynamic changes in society, including both economic and political ones. Accordingly, the public relations are only developing and expanding, so there is an increase in the level of the likelihood of conflicts. Thus, a very wide range of relations can be the object of the dispute, which requires their qualitative settlement. At the same time, the high relevance of studying the institution of mediation is

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explained by the fact that the increase in the number of conflicts between citizens is not proportional to the number of courts that can consider and resolve them. In addition, this is also due to other properties of the judicial method for resolving disputes, in particular, their duration and complexity of the procedure.

The problem of this study is revealed in the fact that at the moment there is a quantitative lack of special state institutions that could execute justice in accordance with the dynamics of conflicts. In addition, it should be kept in mind that mediation is a more humanistic approach, since its foundations are somewhat different from the general foundations on which the legal proceedings are based. In this context, it is worth paying attention to the final result of the dispute resolution. In particular, in general jurisdiction, the purpose of resolving a conflict is to identify the perpetrator and the victim, re-educate the perpetrator, as well as apply coercive measures against him (Horislavska, 2023). In turn, mediation involves the reconciliation of the parties in dispute, that is, the formation of a dialogue between them and the achievement of a consensus, and moreover, the perpetrator should also compensate for the damage caused to the victim. The described difference has been repeatedly investigated by scientists (Karipova & Romanova, 2021; Ospanova, 2021; Satriana & Dewi, 2021).

T. Whatling (2021) proves that the institution of mediation cannot replace the classical form of conflict resolution between citizens. In particular, she notes the ineffectiveness and high danger that may result from its use, for example, due to the mediator's preconception. In this case, the author does not give negative examples of dispute resolution with the help of mediation. In addition, she did not reveal the main reasons for the formation of the potential danger of using such an approach. M. Wang *et al.* (2020) came to an unusual conclusion, because they both analysed the legislation of the People's Republic of China (PRC) in the field of out-of-court dispute resolution, and established a connection between the traditions and principles of Chinese society regarding this process. Thus, they managed to substantiate the prospects of using mediation in the PRC, while describing the approaches that characterise the readiness of the population for this. However, in this context, it would also be advisable to study the previous regulatory documents in order to approve the legal nature of the mediation category directly in the PRC.

A. Holtzworth-Munroe *et al.* (2021) managed to consider the main social conditions that are necessary for the use of mediation in the course of conflict resolution. However, they did not substantiate the need to create such conditions, in particular in the context of preparing the consciousness of citizens and their readiness to use such an instrument. J. Feng and P. Xie (2020) and Y. Zhao (2022) share a somewhat similar opinion, since they compare the various approaches that are used in society for resolving disputes and emphasize the need to create favourable conditions for the implementation of mediation in it. Despite this, the obtained conclusions should be finalized, in particular, they should be considered from the point of view of dividing them into those belonging to the legal area, as well as those ones that are resolved by citizens on their own.

Thus, the purpose of this study was to determine the specific features of the implementation of mediation, arising from the current norms of Chinese and Kazakhstan law. For this purpose, a set of tasks has been completed in the work, namely: the concept of mediation has been studied; its signs are considered, regulatory documents of the PRC and Kazakhstan are investigated; the common and distinctive features between it are established; the need to make changes in Kazakhstan to improve the efficiency of using the institution of mediation is substantiated.

Materials and methods

In this study, Kazakhstan and China are compared due to their distinct legal systems and the growing importance of mediation in both countries. Kazakhstan has been actively reforming its legal frameworks, particularly in the context of dispute resolution, while China has a well-established mediation system with a rich history of alternative dispute resolution. The comparison is significant because Kazakhstan seeks to improve its mediation practices, and China's experience offers valuable insights. China's success in implementing mediation, especially in commercial disputes, can provide a relevant model for Kazakhstan as it refines its own legislative framework. Moreover, China's involvement in global trade and mediation practices makes its legislation particularly applicable for Kazakhstan, given their geographical proximity, economic cooperation, and mutual legal influences in areas such as trade, investment, and cross-border disputes.

The work can be conditionally divided into internal and external parts. Accordingly, the method of analysis was taken as the basis for the formation of the internal structure. This methodological tool made it possible to divide the general issue under study into separate parts, which in cooperation form the object of this study. Accordingly, the direct concept of "mediation" was analysed on its basis, and it was conducted a study of the legal acts that regulate it. Among them, it is worth noting the following: Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011), Decree of the Government of the Republic of Kazakhstan No. 770 "On Approval of the Rules for the Passage of Training Under the Training Program for Mediators" (2011), Law of the People's Republic of China "On Mediation and Arbitration of Labor Disputes" (2007), Law of the People's Republic of China "On People's Mediation" (2010), Constitution of the People's Republic of China (1982), Civil Procedure Code of the People's Republic of China (1991). In addition, the comparative legal method allowed identifying the common and distinctive features that are characteristic of approaches to the introduction and implementation of the institution of mediation in Kazakhstan and the People's Republic of China.

Comparison of approaches and methods of using mediation to resolve disputes was carried out using the comparison method. Based on it, it was possible to determine the positive and negative features of each of them and, accordingly, to summarize them in the form of recommendation. In addition, the method of comparison formed the basis for the process of determining the features of the legislation of the People's Republic of China and Kazakhstan. The formal-legal method was used in the article. This method was used for a qualitative and correct interpretation of the content of legislation, in particular, both in Kazakhstan and in the People's Republic of China. In addition, this method was used to form recommendations based on the analysis carried out during the process of conducting the scientific work. The study was carried out in three stages. At the first stage, the main organisational aspects related directly to the work process

were identified, in particular, the goal, objectives and plan. A general theoretical analysis of the main elements underlying this study was also initiated. At the second stage, it was summarized the characteristics of the mediation category and the main legal acts that are regulated both in Kazakhstan and the People's Republic of China were determined. At the third stage, the obtained results were investigated and a conclusion was formed on their basis.

Results

The formation of the modern mediation institution can be traced back to key developments in the 20th century, particularly after the 1976 Pound Conference in the United States. This event marked a pivotal moment in the promotion of alternative dispute resolution (ADR), including mediation, as a response to the increasing burden on court systems. Since then, mediation has become a typical and widely recognized practice in the U.S. legal system (Yasinovskiy, 2014). At the same time, its primary direction was the settlement of family and labour conflicts between citizens. However, it should be kept in mind that today the mediation has significantly expanded its range of influence and application. This is explained by the fact that in most developed countries, in particular the USA, Canada, China, Japan, Germany, the mediation is an effective way to resolve disputes in civil, administrative, criminal proceedings, that is, in all spheres of public life (Sitabuana *et al.*, 2020). Moreover, in some of them it is already a well-established one, in particular in the field of business conflicts and labour disputes, as well as in the field of family, inheritance, land, residential conflicts. Based on the above-mentioned classification, it can be stated that mediation is most often used in the process of resolving civil disputes.

A general theoretical analysis of the category of mediation allows for the identification of its advantages in comparison to other methods of dispute resolution. First of all, attention should be paid to such an indicator as efficiency, which concerns both the time of the participants and their financial assets. This is due to the fact that usually the resolution of a dispute in court is based on the observance of a certain procedure, which in most cases is lengthy, since it includes different stages. In addition, there is a need for the parties to the dispute to pay a court fee, as well as the lawyer services, if necessary. The advantage of mediation is the ability of its participants to influence the final result (Nuryshchenko, 2024). As it was noted above, the goal of mediation is not only to identify the perpetrator and punish him, but also to achieve mutual understanding between the participants. Because of this, they can independently choose the best variant for completing the mediation process, as well as choose the appropriate measures regarding each other. In addition, unlike the judicial method of resolving a conflict, mediation can provide its participants with confidentiality and, accordingly, less stress (Spytska, 2023). This is explained by one of the mediation principles, namely its informality. The confidential data of the participants during the conflict resolution are not disclosed, which helps to narrow the number of people who can monitor this process. Furthermore, attention should be paid to the fact that mediation can provide its participants with the opportunity to maintain business and other relations between them, which is a very important factor. This is because such an approach will allow avoiding the formation of new disputes in the future, for example, in the field of business or labour relations.

It should be understood that mediation has gained legal status as a result of the adoption of the Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes (2007), as well as the Law of the People's Republic of China "On People's Mediation" (2010). At the same time, it is worth noting that the PRC is the only country in which the mediation is provided for by the highest regulatory document, namely the Constitution of the People's Republic of China (1982) in Art. 111. Since the observance of traditions in the PRC is one of the foundations of the existence of society that mediation is intertwined with the foundations of Confucianism and the practices of Taoism. In this context, it referred to the "golden mean", which was developed by Confucius, and which formed the basis of the mediation institution (Berthrong, 2014). This factor also affects the high prevalence and priority of mediation directly among the people, since it appears as a continuation of something natural for the Chinese, which is described by Confucian philosophy. Analysing the provisions of the above-mentioned legal documents, it can be distinguished five characteristic features of Chinese mediation (Berthrong, 2014). First of all, from the standpoint of international law, it is necessary to separate the concept of mediation that is reflected in China. Thus, "people's mediation" is responsible for the settlement of civil law conflicts, some criminal acts. The second interpretation of mediation occurs on the basis of labour conflicts that precede arbitration and court proceedings. In Western legal systems, mediation is often seen as a neutral, voluntary, and non-binding process primarily aimed at resolving civil and commercial disputes. In contrast, Chinese mediation, specifically "people's mediation" is deeply intertwined with cultural traditions and is often seen as a natural extension of Confucian values like harmony and social order (Berthrong, 2014; Ren & Lu, 2020). This form of mediation handles not only civil conflicts but also some criminal matters, which is quite different from the approach in most other legal systems where mediation in criminal cases is far less common. Additionally, in labour disputes, mediation in China serves as a formal step before arbitration or litigation, whereas in many other countries, labour mediation is often a voluntary alternative to court proceedings, not a mandatory pre-litigation process.

The second feature of mediation in China lies in its unique position within the state executive system, while remaining distinct from the judiciary. In comparison to other countries, particularly Western legal systems, mediation is typically part of the judicial system or operates independently through private mediation services. In contrast, Chinese mediation is state-driven, funded by the government, and has a compulsory aspect, which distinguishes it from the voluntary and privately funded nature of mediation in countries like the United States or the UK (Alternative Dispute Resolution Act, 1998; Directive of the European Parliament and of the Council No. 2008/52/EC, 2008; CPR – Rules and Directions, 2023). Regarding the regulation of mediators' activities, the laws of the PRC stipulate that mediation must adhere to a voluntary-compulsory approach, meaning that participation is voluntary, but the process is structured and time-limited by law. In other countries, such as the U.S., mediation is generally more flexible in terms of time, and participation is often completely voluntary,

without a state-imposed time limit for negotiations (Alternative Dispute Resolution Act, 1998). This gives Chinese mediation a more structured and time-efficient framework, which can be seen as an advantage in judicial proceedings where timely resolution is critical. The fifth feature of "popular mediation" refers to its constitutional and legal foundation. The fact that mediation is enshrined in both Art. 111 of the Constitution of the People's Republic of China (1982) and Art. 16 of the Civil Procedure Code (1991) highlights its significance in the legal and societal framework of the PRC. This dual legal recognition ensures that mediation is not just an optional process but a formalised and integral part of China's dispute resolution mechanisms, offering it broader legitimacy and authority than in many other legal systems, where mediation is often supplementary or informal. Finally, the term "mass organisation" in this context refers to the widespread and state-supported nature of mediation in China, where it functions as a public, state-driven service accessible to the general population. Unlike in many countries where mediation services are typically privatized or localized, in China, mediation is organised on a large scale, with significant state involvement, making it widely available as part of the governmental legal framework. This large-scale approach contrasts with the more individualistic and ad hoc mediation practices common in other nations.

Turning to the analysis of the institution of mediation in the context of the public life of Kazakhstan, it can be noted that the turning point in this process was the adoption of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). Accordingly, prior to this, Kazakhstan did not have a clear regulatory legal act regarding the implementation of the mediation process, as well as its further development. Thus, this document consolidates the principles of mediation listed in the work, as well as the features of the procedure for its implementation and the legal status of the mediator. This development not only advanced the social integration of citizens in Kazakhstan by providing a structured legal framework for dispute resolution but also facilitated alignment with international mediation practices, enhancing Kazakhstan's ability to engage effectively in cross-border legal processes.

Both China and Kazakhstan have introduced significant legislation to formalize the practice of mediation. In Kazakhstan, the adoption of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) was a turning point, as it introduced a clear legal framework regulating mediation. This law consolidated key principles such as voluntary participation, neutrality, and confidentiality, all of which are similar to international mediation standards. One notable provision is the establishment of the Register of professional mediators (2020), which includes specialised mediators and outlines their training requirements. Mediators in Kazakhstan are required to undergo training according to the Decree of the Government of the Republic of Kazakhstan No. 770 (2011), after which they are certified as either professional or non-professional mediators. In contrast, China also has a well-established framework for mediation that operates on both state and community levels. According to Article 111 of the Constitution of the People's Republic of China (1982), "people's mediation" is recognized as a means of resolving civil disputes and even some minor criminal acts. This is further elaborated in Article 16 of the Civil Procedure Code of the People's Republic of China (1991), where mediation is a required step in resolving conflicts before resorting to litigation. However, unlike Kazakhstan, where training and certification of mediators are handled by specific government regulations, mediation in China often occurs through community-based committees, which do not always require formal training, though certain high-level mediators do receive specialised training under the supervision of the Ministry of Justice.

In Kazakhstan, mediation is characterised by a formalized and centralised system, where mediators are regulated by the state through specific laws and licensing. By contrast, China's mediation system is deeply rooted in its cultural tradition and largely operates on a decentralised basis, particularly at the grassroots level with people's mediation committees that are more informal. However, the two systems converge in their shared goal of resolving disputes through non-adversarial means, with both countries emphasizing the role of the state in promoting mediation. The definitions of mediation in both countries also show some key differences. In Kazakhstan, mediation is explicitly defined and governed by a distinct legal framework, which regulates every aspect of the process, including the training, licensing, and ethical responsibilities of mediators. In China, the practice of mediation has a broader scope. As stated in the Mediation Law of the People's Republic of China (2011), mediation covers civil and minor criminal cases, and its purpose is to maintain social harmony by resolving disputes without resorting to litigation. While Kazakhstan focuses on professionalizing mediation with specific qualifications, China's approach, especially in people's mediation, relies heavily on the cultural notion of harmony and the informal resolution of disputes by respected community members.

In Kazakhstan, the Government Decree No. 770 (2011) regulates the professionalization of mediators, requiring them to undergo formal training and pass specific courses. After completing these courses, mediators receive either a professional or non-professional license, a system not seen in China. In China, while certain types of mediators receive formal training, especially those dealing with international or commercial disputes, community-based mediators in people's mediation committees often rely more on social reputation and practical experience than formalised education. Thus, while both Kazakhstan and China have implemented legislative frameworks to regulate mediation, Kazakhstan's system is more centralised and professionalised, whereas China's system remains deeply rooted in cultural practices with a decentralised structure for people's mediation. Both approaches, however, aim to promote harmony and prevent litigation, reflecting the importance of mediation as a dispute resolution method in their respective societies.

However, the fundamental difference between these countries is the attitude towards mediation and its use by ordinary citizens. It was stated in the work that the role and effectiveness of mediation is clear to the population. The Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) outlines the legal structure and framework governing the mediation process, clearly defining the role of mediators and the various stages involved. A key component of the law is its emphasis on the voluntary nature of mediation, where parties must agree to the process without coercion, which is in line with international standards. However, the law also includes provisions for cases where mediation may be recommended by the court, reflecting a

more integrated approach to dispute resolution in Kazakhstan's legal system. Article 14 of the law, in particular, details the rights and obligations of mediators, emphasizing their neutrality and impartiality in the resolution process. Mediators are tasked with facilitating dialogue between the parties, ensuring that communication remains respectful and productive. The law also specifies that mediators must remain independent of both parties and must not have any personal or financial interest in the outcome of the dispute. Furthermore, mediators are bound by confidentiality, a principle reinforced throughout the law to ensure that sensitive information shared during mediation cannot be used in subsequent legal proceedings.

The law also defines the stages of mediation, starting with the initiation of the process, where parties agree to mediation either voluntarily or through a court recommendation. This is followed by the preparatory stage, where the mediator gathers information from both parties, ensuring they fully understand the process and the issues at hand. The mediation process itself is a structured dialogue facilitated by the mediator, aimed at helping the parties reach a mutually acceptable resolution. If the parties come to an agreement, the mediator assists in drafting a mediation agreement, which, according to Article 26, holds legal force and is enforceable in court if necessary. The law also regulates the training and certification of mediators. Government Decree No. 770 (2011) sets forth the requirements for mediators to complete a specific training program, after which they may be certified as either professional or non-professional mediators. The distinction between these two categories is based on the level of training and experience, with professional mediators often handling more complex cases. This formalized system of certification ensures that mediators in Kazakhstan meet a standard of competency, which is crucial for the credibility of the mediation process. In comparison, China's mediation system, as outlined in the Mediation Law of the People's Republic of China (2011), similarly stresses the importance of voluntary participation, neutrality, and confidentiality. However, the Chinese system allows for a broader application of mediation in both civil and minor criminal disputes, and mediators often come from community-based organisations, particularly in people's mediation. While China's system is more decentralised and less dependent on formal training than Kazakhstan's, both countries share a commitment to integrating mediation into their legal systems to improve dispute resolution efficiency.

The legal frameworks regulating mediation in Kazakhstan and China offer distinct approaches that reflect the historical, cultural, and judicial contexts of each country. While both nations have adopted mediation as a formal process for conflict resolution, the specifics of their legal systems highlight notable differences in structure, application, and public integration. In Kazakhstan, the introduction of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) marked a significant turning point in formalizing mediation as an alternative dispute resolution mechanism. This law is comprehensive in outlining the principles that guide mediation, such as voluntariness, confidentiality, and the neutrality of mediators. These principles are meant to ensure that all parties enter the mediation process willingly and that the mediator remains impartial throughout the proceedings. Importantly, mediators in Kazakhstan are required to undergo formal training, a process governed by the Government Decree No. 770 (2011). This decree establishes the criteria for becoming a certified mediator, which can be professional or non-professional, depending on the level of training and experience. The certification process ensures that mediators possess the necessary skills to facilitate discussions and help disputing parties reach mutually acceptable agreements. The Article 26 of the law further strengthens mediation by stating that agreements reached through mediation are legally binding and enforceable in court, thereby giving legal weight to the outcomes of mediation sessions.

By contrast, China's approach to mediation is deeply rooted in its Confucian traditions and has a longer historical trajectory. The Constitution of the People's Republic of China (1982) and the Civil Procedure Code (1991) both enshrine mediation as a key element in resolving disputes, especially at the community level. People's mediation, a system formalized by the People's Mediation Law of 2011, emphasizes the resolution of civil disputes within local communities, often involving mediators who are respected community members rather than formally trained professionals. This form of mediation is designed to promote social harmony, a core principle of Confucian philosophy, where collective resolution of conflicts takes precedence over individual litigation. In this way, mediation in China extends beyond civil cases and can also address minor criminal matters, an application that is less common in Kazakhstan's legal framework. One of the most significant differences between the two countries lies in the regulation and certification of mediators. In Kazakhstan, the process is highly formalized, with mediators required to complete specific training programs and acquire a certification to practice. This system professionalizes the role of mediators, ensuring that they are equipped with legal and conflict resolution expertise. China, on the other hand, allows for a more flexible system, particularly with community-based people's mediation. While some mediators dealing with commercial or cross-border disputes may undergo formal training, many community mediators rely on social capital and local trust rather than formal certification. This reflects China's emphasis on the cultural and social aspects of mediation, where resolving conflicts through consensus and preserving relationships is prioritized over formal legal proceedings.

Another key point of comparison is the integration of mediation into the judicial system. In Kazakhstan, mediation remains a largely voluntary process, although courts may recommend it in certain cases. The Law on Mediation provides for voluntary participation, allowing the parties to choose whether to engage in mediation. However, this may limit the extent to which mediation is used in practice, as the legal system does not compel parties to mediate before proceeding to litigation. By contrast, in China, mediation is more fully integrated into the judicial process. Courts in China often require parties to engage in mediation before proceeding with formal litigation, especially in civil and family law cases. This system is designed to reduce the burden on courts and to encourage parties to resolve disputes amicably outside the courtroom. The legal foundation of mediation in China is broader in scope, as seen in its application to both civil and minor criminal disputes. The People's Mediation Law allows for disputes that involve social and family conflicts, as well as minor criminal offenses, to be handled through mediation. In contrast, Kazakhstan focuses more narrowly on civil disputes, with less emphasis

on using mediation for criminal matters. This difference in scope reflects the broader role that mediation plays in Chinese society, where maintaining social order and harmony is a key objective, compared to Kazakhstan's focus on formalizing the process as part of its legal reforms.

The role of the state in both systems also highlights significant differences. In Kazakhstan, mediation is supported by the state but is largely driven by certified professionals who operate within a clearly defined legal framework. The Government Decree No. 770 (2011) ensures that mediators are properly trained and licensed, which reflects the state's commitment to professionalizing mediation. In China, while the state supports mediation, particularly in the context of people's mediation committees, the process is more decentralised. Mediators often operate as volunteers within their communities, without the need for state certification. This decentralization makes mediation more accessible, particularly in rural and less developed regions, where formal legal services may be limited. Despite these differences, both countries share the objective of promoting mediation as a way to reduce the number of cases that go to court, improve access to justice, and provide a more cost-effective and time-efficient means of resolving disputes. The legal enforceability of mediation agreements in both countries ensures that the outcomes of successful mediation sessions are recognized by the courts, giving parties confidence that their agreements will be upheld.

At this stage it is advisable to develop both the legislative framework and the subjective attitude of citizens towards the institution of mediation. To effectively address the public's limited understanding of the mediation process in Kazakhstan, it is crucial to implement concrete educational initiatives such as national webinars and training programs. These initiatives should be held in both educational institutions and workplaces, targeting both the youth and adult population. Empirical evidence from similar programs in other countries, such as the National Mediation Training Program in the United States, has shown that structured educational efforts can significantly enhance public understanding and trust in mediation as a method for dispute resolution. The primary goal of these activities should be to build public confidence in the process of mediation and to shift societal attitudes towards resolving conflicts amicably, especially in civil law cases. As demonstrated in countries like Germany, where public mediation campaigns have reduced the burden on the judicial system, education plays a crucial role in normalizing the use of mediation in society.

Regarding legislative recommendations, it is advisable to amend specific articles of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). For instance, Article 14, which outlines the principles of mediation, should be expanded to better regulate the interactions between state agencies and civil society. This could include provisions ensuring that state-citizen disputes are handled with enhanced transparency and oversight, drawing from the Mediation Act of Singapore (2017), which has successfully integrated mediation into public sector disputes, leading to faster and more amicable resolutions. Additionally, Article 26 of Kazakhstan's mediation law, which addresses the enforceability of mediation agreements, could benefit from clearer guidelines on how these agreements are recognized and enforced in administrative law cases, ensuring that both citizens and state agencies have equal standing in mediation processes. The implementation of these legislative changes could be supported by the development of state-run mediation centres, similar to the Community Mediation Centers (CMC) in Singapore, where mediation between citizens and state agencies is handled efficiently. Research from the European Institute for Conflict Resolution indicates that such centres improve access to justice and build trust between citizens and the state. In Kazakhstan, establishing such centres could enhance the public's engagement with mediation and ensure that the process is accessible to all, particularly in disputes involving government bodies.

Discussion

Having carried out an analysis of the theoretical foundations and features of the Kazakh and Chinese legislation on the mediation procedure, it is worth proceeding to a discussion of the obtained results based on the positions of other scientists. In particular, W. Gu (2021) also researched the mediation approaches in China. Her opinion is correct concerning the fact that the principles and procedure of mediation in China are based not only on the international legal norms, but are also intertwined with the mediation traditions of Kazakhstan. In this context, it is about the presence of criminal mediation, which is not typical for a number of other countries. Consequently, in both Kazakhstan and China, some criminal disputes can be resolved through the mediation, with the exception of corruption issues and those ones related to the regulation of public affairs. C. Menkel-Meadow (2020) also has an interesting opinion, which he preaches in his study, by emphasizing the characteristic features of the mediator. First of all, he managed to prove the necessity of the mediator role in the process of conflict resolution. It is argued that successful mediation is contingent upon the mediator's adherence to all necessary conditions, as outlined in the results of this work. Any deviation from these foundational principles undermines the entire mediation process and renders it ineffective. This view is supported by the findings, which emphasize that compliance with these conditions is crucial to maintaining the integrity and purpose of mediation.

The position of T.A. Dronzina and G.N. Musabaeva (2021) is rather contradictory, as they prove in their work that mediation is not an effective form of conflict resolution in Kazakhstan. According to the authors' opinion, it is possible to partially agree with it. In particular, due to the fact that the institution of mediation in Kazakhstan is not a new one, it has been operating since 2011, but its share of using is not as high as in other countries, such as China, which has been studied as part of this work. Therefore, it is impossible to indicate the inefficiency of mediation, but it is necessary to agree that this institution needs further development, both in terms of the regulatory framework and the subjective attitude of citizens towards it. Raising public awareness about mediation's benefits and enhancing the regulatory framework are crucial for its growth. Thus, while the authors' concerns are valid, it is important to recognize the potential of mediation as a valuable tool for conflict resolution, provided that efforts are made to improve its implementation and public perception. In turn, C.K. Lee *et al.* (2020) state that other participants should also be included in the mediation procedure. Such a position contradicts the principles established in the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011). The legislation

emphasizes the importance of mediation as a viable conflict resolution mechanism, advocating for its use as a means to promote peaceful settlements. A critical examination of the challenges and potential for improvement within the mediation framework is essential to align practices with the law's intent. The legislative framework for mediation in the People's Republic of China also underscores its significance as an effective conflict resolution mechanism. China's approach incorporates mediation as an integral part of its legal system, encouraging the resolution of disputes through informal channels before resorting to litigation. This emphasis on mediation is reflected in various laws and regulations that promote its utilization across different sectors.

O. Melenko's (2020) argument for expanding mediation into a wider range of public relations, justified by the growing complexity of societal interactions, aligns with the broader development trends observed in both Kazakhstan and China. O. Melenko's (2020) highlights the increasing consciousness of citizens, which, in turn, creates opportunities for mediation to resolve conflicts in areas beyond those traditionally regulated by courts. This is particularly relevant in the Kazakhstani context, where the Law of the Republic of Kazakhstan No. 401-IV (2011) defines a limited scope of mediation. However, while the expansion of mediation presents clear benefits, such as relieving court backlogs and promoting faster resolutions, O. Melenko's (2020) point raises valid concerns about potential abuses, especially in sensitive areas like criminal law.

E.P. Ermakova *et al.* (2020) further elaborate on this issue, arguing that mediation, if not properly regulated, could be misused as a tool to evade legal consequences, particularly in criminal cases. Their work underscores the thin line between mediation serving as a constructive conflict resolution mechanism and being exploited to avoid statutory punishments. This concern is particularly pertinent in China, where people's mediation is often used even in minor criminal cases. In Kazakhstan, where mediation is more formalized, the current legislation could benefit from further safeguards to prevent such abuses (Abdrasulov *et al.*, 2024). This includes strengthening oversight of mediation processes and ensuring that mediation agreements reflect the genuine will of both parties, free from coercion or manipulation.

In light of these concerns, L. Adrian (2021) proposes that mediation should maintain its current scope while gradually expanding into new areas. However, L. Adrian (2021) emphasizes that any expansion must be accompanied by public education campaigns and training programs to ensure that citizens fully understand the benefits of mediation. In Kazakhstan, such initiatives could build on the Government Decree No. 770 (2011), which regulates the training of mediators, by integrating mediation awareness into school curriculums and professional development programs. Similarly, in China, where Confucian principles of harmony underlie much of the mediation process, public education could play a vital role in further embedding mediation into everyday conflict resolution practices.

The fact that the mediators are the specialised persons is subject to discussion. Y.M. Abiyev *et al.* (2020) study this statement in their scientific work, they consider the classification of intermediaries in Kazakhstan and abroad. Thus, indeed, in Kazakhstan there are intermediaries who have received special licenses. However, this should not be identified with the professional activities of persons who acquire knowledge in higher educational institutions in the relevant specialty. It is the factor that is an important feature of mediation, which is an informal nature. Thus, if there is a requirement for the mediator to master special professional skills, the process of conciliation or dispute resolution cannot be interpreted as mediation. This is explained by the fact that conditions are put forward to the mediator, which are mostly subjective and relate to his personality. At the same time, it should be understood that a civil servant or other person with an appropriate education can also be a mediator, however, in the process of mediation, they cannot implement the professional powers granted to them, but they must act as impartial third parties (Ryskaliyev *et al.*, 2019).

Based on the discussion, it can be established that the category of mediation still remains a debatable issue in the legal scientific field. This is mainly due to the constant socio-economic changes and the views of scientists on this issue. However, the author believes that the institution of mediation needs to be developed, which should be implemented by both the public and the state. Of course, this form of conflict resolution will ensure the establishment of relations between the potential conflict parties. In addition, the stress will decrease, which is now a characteristic of the courts. Nevertheless, the institution of mediation needs to be developed to increase the level of self-awareness of citizens. It is important to understand that dispute resolution should be aimed at establishing communication, namely dialogue. Such an approach is necessary so that the perpetrator can fully understand the perniciousness of his actions, by communicating with the victim and analysing his psycho-emotional state. In turn, the victim must achieve the reconciliation and mutual understanding, which is equally important in order to avoid further conflicts or violations, for example, on the basis of vengeance.

Conclusions

The article set out to explore both the theoretical and practical aspects of mediation, particularly in the context of the People's Republic of China (PRC) and Kazakhstan. The aim of the research was to analyse the similarities and differences in the legal frameworks of mediation in these two countries and to understand how these frameworks impact the implementation and effectiveness of mediation as a conflict resolution tool. This objective has been successfully achieved by providing a detailed comparative analysis of the legislation governing mediation in both nations. Throughout the study, the key principles of mediation in the PRC and Kazakhstan were examined. The analysis demonstrated that while both countries emphasize impartiality, voluntariness, and confidentiality as core tenets of mediation, the implementation of these principles varies, reflecting cultural and legal differences. In Kazakhstan, the formal certification and training of mediators is strictly regulated by law, which aligns with Western legal practices. In contrast, China's system includes community-based mediators who may not always require formal certification, which emphasizes cultural trust and societal harmony. Additionally, both countries ensure the enforceability of mediation agreements through their legal systems, but China's approach to integrating mediation into criminal disputes, particularly minor offenses, contrasts with Kazakhstan's focus on civil cases.

The study's findings underscore the importance of legal frameworks in shaping the success of mediation. The

comparison reveals that while the PRC and Kazakhstan have made significant strides in establishing mediation, there is still room for development. In Kazakhstan, further work is needed to enhance public understanding and acceptance of mediation, which remains limited despite a well-established legal structure. The results also show that China's mediation system, deeply rooted in cultural practices, is more accessible but may benefit from further formalization in certain areas. In summary, this research contributes to a deeper understanding of how mediation functions within different legal and cultural contexts. It highlights the need for continued efforts to strengthen the mediation process, particularly in Kazakhstan, where public education and legislative amendments could improve its effectiveness. Future research should focus on exploring the role of mediation in criminal disputes, an area where both countries could benefit from further development. Additionally, the integration of mediation into public and state-citizen conflicts remains an area that requires more thorough exploration to enhance the mediation framework's overall impact.

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Conflict of interest

None.

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Порівняльний аналіз медіації в законодавстві Казахстану та Китайської Народної Республіки

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Анотація. У цьому дослідженні розглянуто зростаючу важливість медіації в правових системах Казахстану та Китайської Народної Республіки, зосереджуючись на необхідності більш ефективних методів вирішення конфліктів в обох країнах. Метою цього дослідження було вивчення особливостей медіації, як це визначено законодавством цих двох країн, підкреслюючи схожість і відмінності в їхніх правових системах. У дослідженні використовувалися різноманітні методи, зокрема порівняльно-правовий метод, формально-юридичний аналіз, метод синтезу та порівняння. Аналіз показав, що і Казахстан, і Китай розробили надійні рамки для медіації, хоча вони значно відрізняються своїми культурними та правовими підходами. У Казахстані процес медіації офіційно оформлений і суворо регламентований, з великим наголосом на сертифікації та професіоналізації медіаторів. Навпаки, система Китаю, що ґрунтується на конфуціанських традиціях, дозволяє використовувати підхід, орієнтований на громаду, із ширшим охопленням, включаючи незначні кримінальні справи. Дослідження показало, що хоча обидві країни цінують медіацію як неконфліктний спосіб вирішення конфлікту, існує потреба в подальшому розвитку законодавства, особливо в Казахстані, щоб покращити розуміння громадськістю та запобігти потенційним зловживанням системою медіації. Крім того, дослідження підкреслює роль громадської освіти та важливість інтеграції медіації в процеси вирішення спорів між державою та громадянином. Практична цінність цього дослідження полягає в його потенційному використанні політиками та юридичними фахівцями в Казахстані та Китаї, оскільки воно дає змогу зрозуміти шляхи вдосконалення систем медіації та забезпечення їх ефективності у вирішенні сучасних суспільних конфліктів

Ключові слова: конфлікт; закони; посередник; конфуціанські норми; вирішення спорів