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## DEVELOPMENT OF MEDIATION AND ITS FOUNDATIONS

**Abstract.** This article shows the historical formation of mediation and the main directions of development. Also, to determine the level of mediation research, the main practice in states with the concept of mediation was proposed and the scope of application was indicated. In the modern world, mediation is determined by the need for scientific understanding as a relatively new experience and increasing interest in it from the scientific community and innovative society. Methods and models of mediation application are described in detail.

**Keyword:** *mediation, assessment mediation, settlement mediation, political mediation, mediator.*

### Еркебұлан Абиев, Бағыш Габдулина МЕДИАЦИЯНЫҢ ДАМУЫ ЖӘНЕ ОНЫҢ НЕГІЗДЕРІ

**Андатпа.** Бұл мақалада медиацияның тарихи қалыптасуы және дамудың негізгі бағыттары көрсетілген. Сондай-ақ, медиацияны зерттеу деңгейін анықтау үшін, медиация ұғымы бар мемлекеттердегі негізгі тәжірибесі ұсынылды және қолдану аясы белгіленді. Қазіргі әлемде медиацияны салыстырмалы түрде жаңа практика ретінде ғылыми тұрғыдан ұғыну қажеттілігімен және оған ғылыми қоғамдастық тарапынан да, жаңашыл қоғам тарапынан да қызығушылықтың артуымен айқындалады. Толығымен медиацияның қолданыс әдіс тәсілдері және қолдану модельдері сипаттамалық түрде көрсетілді.

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*Түйін сөздер:* медиация, бағалау медиациясы, реттеу медиациясы, саяси медиация, медиатор.

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**Еркебулан Абиев, Бағыш Габдулина**  
**РАЗВИТИЕ МЕДИАЦИИ И ЕЕ ОСНОВЫ**

**Аннотация.** В данной статье показано историческое становление медиации и основные направления развития. Также для определения уровня исследования медиации была предложена основная практика в государствах с понятием медиации и обозначена сфера применения. В современном мире медиация определяется необходимостью научного осмысления как относительно нового опыта и возрастающим интересом к нему со стороны научного сообщества и инновационного общества. Подробно описаны методы и модели применения медиации.

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

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**Introduction**

The development of global technology and modern human activity significantly increase the subject values of political science. Systematic constructions and technologies open up new opportunities in the regulation of political processes. One of such technologies can be noted the term «mediation», which is often used in the modern political environment. The degree and level of development of mediation practice shows significant potential in solving crisis situations. The technological directions of mediation are a cross-section of politics, which is formed due to the interactions of policy subjects, socio-political needs.

As many years ago, so now humanity is in a stage of conflict. The conflict is most often provoked by a situation when the participants not only do not want to resolve the dispute, but often do not know and do not know how to do it. And one of the methods of peaceful settlement of disputes is mediation. The Institute of Mediation has an ancient history. The word itself comes from the Latin «mediation - mediation, which is formed from the word «medium», which literally means «average».

The emergence of mediation is also associated with the emergence of socio-political conflicts. It is known that mediation has received the greatest use in countries with developed trade and social ties between society and the state. Thus, the use of mediation was known at one time in Ancient Babylon and the

Phoenician civilization. Also in ancient China, Confucius called for the peaceful settlement of conflicts in a socio-political context. The thinker warned citizens and the state that untimely regulation will only increase the bitterness of the participants in the conflict and prevent the adoption of an effective decision that can affect the socio-political situation in society.

Further development of the institution of mediation took place in Ancient Greece, where intermediaries were called «proxenets», and then in Ancient Rome, starting with the Digest of Justinian, there was a legislative consolidation of the position of intermediaries. In Roman law, they were called differently: «internuncio», «medium», «intercessor», «philanthropist», «interpolator», «conciliator», «interlocutor», «interpres» and, finally, «mediator». In the past, mediation was used in the resolution of international and multilateral disputes, and this procedure had different names, such as: «mediation», «biv court» and «petition». Many centuries ago, people became convinced that when resolving serious disputes, it is easier to achieve recognition of common interests through negotiations for a mutually beneficial solution. From the point of view of the development of civilization, it is clear that the desire for negotiations is always inherent in man, and such methods as mediation were intuitively used both in antiquity and today. It should be noted that the practice of conflict resolution with the help of a third neutral party existed among representatives of all peoples [1]. Today, the number and variety of disputes is increasing so much that the State system is unable to ensure their proper resolution. Mediation practice shows that most of the political disputes, which are based on the social vulnerability of the population, do not reach the court, or are resolved in court thanks to the help of professional mediators. Therefore, mediation has the longest practice of application in the field of international relations, conflict resolution through mediation is one of the previously used tools of the international community. Mediation has become an independent procedure only since the mid-1970s. In 1981, Roger Fisher and William Urie, professors at Harvard Law School, published the results of their study entitled «The Path to Yes». The essence of the Harvard concept, often defined as «joint action», is based on the differentiation of positions and interests. So, in the process of negotiations, the parties indicate their legal positions, which are often diametrically opposed, which leads to the impossibility of reaching a compromise. In 1972, the first professional organization of mediators appeared. Since 1970 in the USA, mediation has become widely used among the population, family and socio-political disputes [2].

Today, the term «mediation» has become more popular and significant in modern society. It is the most mitigating tool in resolving political disputes. Thanks to the world's political experience and the resolution of disputes between

the state and society, a large number of examples of legislative consolidation of mediation can be observed. The relevant acts have been adopted in the USA, Austria, Germany and other countries, the European Commission has approved the Mediation Code, the European Union has issued a number of rules governing the activities of mediators. The reconciliation procedure involving a neutral mediator is very popular in the UK. For example, the British have created a special hotline where you can call from anywhere in the country, tell about your conflict or claim in the social community, and the caller will be offered a list of intermediaries that meet his requirements. In Germany, mediation is included in the system of state administration and settlement of disputes and conflicts in society. Thus, mediators work directly in state bodies, reducing the number of misunderstandings in state and public relations. In many German universities there is a permanent mediation course, each graduate potentially has the right to provide mediation services. Mediation has not spared India either. In this country, agreements reached during mediation have the same force as arbitral awards, regardless of whether this procedure was initiated within the framework of existing proceedings or not [3].

Mediation procedures, in particular mediation as a tool for resolving internal disputes, have traditionally been widely used in Japan. The commitment of the Japanese business community to alternative dispute resolution methods has traditionally been associated with an ethical side - a negative attitude towards the choice of a state court as a way to resolve disputes. In the past, as today, the main goal of mediation is to achieve a mutually beneficial and peaceful agreement that will suit the representatives of the disputing parties. The study of mediation as a new phenomenon in Kazakhstan's political culture should begin with the study of its essence and nature. To do this, it is important to analyze the approaches that have developed in science to the definition of mediation. Also, the development of the mediation institute became popularized in the Kazakh public during the years of independence. This institute is a tool for resolving disputes and conflicts in the public, so in recent years professional and non-professional mediators have begun to appear (Table 1) [4].

**Table 1. The number of non-professional mediators in the Republic of Kazakhstan in the regional context**

City/ region	Administrative center	Population of people	Number of non-professional mediators
Astana	Astana	792775	no information available
Almaty	Almaty	1485496	1

City/ region	Administrative center	Population of people	Number of non-professional mediators
Akmola region	Kokshetau	734145	107
Aktobe region	Aktobe	801273	10
Almaty region	Taldykorgan	1966786	43
Atyrau region	Atyrau	561512	no information available
East Kazakhstan region	Ust-Kamenogorsk	1394015	148
Zhambyl region	Taraz	1077893	12
West Kazakhstan region	Uralsk	620349	no information available
Karaganda region	Karaganda	1365849	219
Kostanay region	Kostanay	880589	36
Kyzylorda region	Kyzylorda	734047	370
Mangystau region	Aktau	577464	109
Pavlodar region	Pavlodar	750871	83
North Kazakhstan region	Petropavlovsk	578089	327
South Kazakhstan region	Shymkent	2707459	444
Note: compiled according to <a href="https://stat.gov.kz">https://stat.gov.kz</a> / Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan			

With the development of the institute of mediation, approaches to conflict resolution and resolution have been formed in society:

So, let's start with an evaluative approach, which assumes the need to convince the parties to resolve the conflict, predict the results of neutral consideration and the consequences of non-settlement of the conflict through mediation. By applying this approach, the mediator helps participants identify their specific needs and areas where the parties agree. The mediator does not question, evaluate or verify the positions of the participants. However, using an evaluative approach, the mediator helps the disputing parties to assess the strengths and weaknesses of their positions, possible results and risks of different conflict resolution options. One of the new approaches to mediation is the narrative approach, developed in the mid-1980s in Australia by Mile White and David Epstein and is still a relatively unexplored phenomenon in the field of conflict resolution. As Toreen Hansen writes, such an approach to the mediation procedure in a certain sense copied the traditions of narrative therapy and represents a therapeutic style of mediation. When conducting mediation using a narrative approach, the conflicting parties go through three stages: interaction, in-depth analysis of the conflict itself and its history, and the construction of an alternative model for further interaction. These stages are not discrete, they do not have to be passed in a strictly defined sequence [5].

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## Methods and sources

**The collective approach** presents mediation as an extensive collective concept that includes all variants of conciliation procedures with the participation of a mediator, including both political conflicts and domestic quarrels. But such an approach does not allow to define the essence of mediation and unreasonably includes in this concept too wide a range of procedures and forms of dispute resolution.

**The framework approach** considers mediation as a concept combining the types of procedures conducted with the participation of a third independent person who does not have the authority to resolve a dispute. This understanding of mediation is based on the system of dividing all alternative forms of dispute resolution into three groups, where the first group includes forms involving direct interaction of conflicting parties (negotiations), the second group includes forms involving a mediator who does not have the authority to resolve a dispute (mediation), the third group includes forms involving a mediator who does not have the authority to resolve a dispute.

**With a pure approach**, meditation is understood as a special procedure similar to other types of meditation, but having a number of features, mainly related to understanding the role of the mediator, the techniques used in the procedure, and the specifics of the implementation of the procedure. The basic principles underlying mediation. The main desire of the proponents of the clean approach is to strengthen the further process of institutionalization of mediation and to separate mediation from other types of conciliation procedures.

**The conceptual approach** presents the mediation procedure through the basic principles, goals and objectives. In turn, the conceptual approach is rather theoretical in nature and represents an ideal model of mediation.

**The descriptive approach**, on the contrary, is closer to practice, so it can be used when revealing the content of the mediation of a particular model. In other cases, they are too abstract in nature and do not allow to identify the essential features of the procedure under study [6].

The concept of modern mediation is based on a scientifically sound and proven method of negotiation. Traditions and customs in most cases act as a favorable basis for the use of mediation. At the same time, the fact that the interaction of the parties in mediation is negotiated is one of the distinctive features of this procedure. Acting within the framework of a single system, mediation interacts with other dispute resolution methods, including socio-political procedures. It should be noted that the forms of such interaction can be different [7]. In foreign countries, one can observe a tendency to include mediation in the activities of courts and notary bodies. Here, the

mediation procedure acts as an additional mechanism that contributes to the more effective performance of their duties by officials. Thus, we can talk about the formation of two main directions of mediation development: 1) as an independent dispute resolution mechanism that exists in parallel with traditional ways of protecting civil interests (outside the jurisdictional system); 2) as a mechanism ensuring the implementation of the basic powers of civil society bodies (within the framework of the jurisdictional system) [8]. At the same time, further research of mediation as a new phenomenon in the Kazakh legislation is carried out in these two directions. There are **two types** of mediation centers in the world practice. The first includes centers operating under the courts and dealing with pre-trial practice of considering cases such as division of property, divorce, custody of children and repayment of loans. The second type of mediation centers takes part in the resolution of significant socio-political conflicts, such as political, social, public, etc., where it is impossible to unambiguously and quickly, in one or two meetings, to reach an agreement satisfying both conflicting parties. Settlement processes can take several years with unpredictable results. Based on this, the second type of mediation centers has an academic orientation and more often operates at classical universities or state institutions[9].

Models and discussion distinguish them in theory and mediation models. The mediation model is understood as the professional practice of mediators, understood as a single concept. These models capture different ideas about the causes of conflict in society and how to work with it. Depending on the role of the mediator in the mediation procedure, researchers distinguish the following mediation models.

**In the mediation model**, the mediator creates a process to help the parties reach a mutually acceptable solution. The mediator asks questions, checks and normalizes the points of view of the parties, helps the parties in finding and analyzing possible ways of settlement. The mediator does not give recommendations to the parties, but only voices an opinion on the outcome of the case. The mediator is responsible for the process, and the participants are responsible for the result.

**The evaluation mediation model** assumes that the evaluation mediator helps the parties reach a solution by pointing out weaknesses. The mediator-evaluator can give formal or informal recommendations to the parties for a positive outcome. Because of the connection between evaluative mediation and most evaluative intermediaries are mediators.

**The transformational mediation model is the latest concept.** Transformational mediation is based on the values of «empowering» each of the participants and «recognizing» the needs, interests, values and points of

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view of each of the parties. The potential of transformational meditation lies in the fact that views on the resolution of a dispute of any or all parties or their relationships can be transformed during mediation.

**The negotiation model of mediation presupposes the achievement of a settlement of the conflict.** The mediator, using this mediation model, seeks to find facts, narrow down the issues of the dispute, and also controls the negotiation process between the parties. The procedure for conducting negotiation mediation is structured, meetings with participants are held quite often, while direct interaction of the parties occurs less frequently than in accordance with other mediation models, even final agreements are drawn up without the presence of both parties.

**The therapeutic model of mediation is characterized by the fact that the goal is to promote mutual understanding between the parties to the dispute,** and the disputes themselves are considered as problems in such mutual understanding. The parties are invited to openly express their feelings, emotions and opinions. According to the problem resolution model, disputes are considered as problems arising from unsatisfied and incompatible needs of the parties that need to be resolved. The mediation procedure in this case is aimed at reaching an agreement.

The goal of the communicative mediation model is to facilitate the understanding of the conflict by the participants, while the settlement of the conflict is secondary to its understanding [10]. The mediator facilitates the process of communication between the conflicting parties, promotes mutual understanding of positions and opinions and seeks a productive solution to the problem, providing an opportunity to come to a common solution together. In the mediation process, it is the participants who are responsible for making a decision, for which they need to clearly state the essence of the case, propose possible solutions and consider the proposals of each of the parties. Thus, the responsibility and responsibility for making a decision lies entirely with the parties. The role of an intermediary in this process is in many ways similar to the role of a manager: knowing certain techniques and techniques, he leads the participants through the decision-making process, and in the end leads them to an agreement that they jointly accept. The primary task of the mediator is to develop a constructive approach to negotiations between the parties. As a rule, people who are in a conflict situation blame the opposite side for the problem that has arisen. The task of the mediator is to set up the participants for a joint search for a solution to the conflict. It is the mediator who sets up the parties and helps them work out a fair and satisfying agreement, instead of looking for the guilty and proving them right.



Considering that all mediation activities are aimed at protecting the interests of citizens, the use of mediation procedure allows specialists to perform their professional duties more effectively. The use of mediation helps to prevent disputes and resolve them at an early stage. The development of mediation practice through the professional activity of mediation representatives will optimize the solution of socio-political conflicts. The use of mediation contributes to the development of a fair solution taking into account the «human factor», the real resolution of the conflict, the restoration of partnership relations in society and in everyday life, the increase of legal awareness of citizens. [11]. The main participants in the mediation process are the mediator, the parties to the dispute, as well as persons whose rights and interests are affected by this process. All participants whose interests are affected by a disputed legal relationship should participate in mediation as parties to a multilateral negotiation process. In this case, the mediator acts as a neutral participant in the conciliation procedure. Mediation can be considered as one of the elements of the system, namely as an independent non-judicial way of settling a dispute through negotiations between the parties with the assistance of a neutral intermediary. As a conciliation procedure, mediation is based on an agreement reached as a result of satisfying the interests and needs of the parties to the dispute. Mediation is a form of mediation that does not involve pressure, assessing the position of one of the participants and making a decision, the procedure is focused on the interests of the participants themselves and reaching consensus.

### **Conclusion**

Based on the above, it can be concluded that among the mediation models at the present stage, the facilitative model is most often used than the others presented. In our country, this model is also more acceptable, due to the fact that in the procedure the mediator is responsible for the process, and the participants are responsible for the result. As for approaches, it is necessary to note the fact that mediators use all the presented approaches in their practice, since there is no single template for using different approaches. Nevertheless, I would like the evaluative approach to become more widespread, as it allows you to predict the results of conflict resolution through mediation. In this scientific work, methods, models and approaches in mediation practice are shown, thereby showing all the need for correct understanding and application in sociological and political processes. Since the incorrect application and understanding of mediation will not be effective in resolving socio-political disputes and conflicts at such a significant time for this term.

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## REFERENCES:

1. Komarova Yu. A. History of the Institute of mediation // Scientific works of the Russian Academy of Advocacy and Notariate. 2011. - No. 1. - pp. 14-19.
2. Kozhevnikov E. A. A brief excursion into the history of the institution of mediation in civil law. Law and Politics 12(156). 2012
3. Official website of the Fifth Arbitration Court of Appeal <https://5aas.arbitr.ru/> Date of request:16.02.2020
4. Official website Agency for Strategic planning and reforms of the Republic of Kazakhstan Bureau of National statistics <https://stat.gov.kz/>
5. Narrative mediation. Review of the works of J.Monk and J.Winslade (a fragment of the material published in No. 3 of the journal «Post-Non-classical Psychology. Social constructionism and narrative approach») January 30, 2009.
6. The Lawyer portal-e-books and free textbooks on law. Mediation. <https://lawbook.online/> Date of request:19.12.2019
7. Molotnikov A. E. Mediation // Joint-stock company: corporate governance issues. 2017. - No. 16.
8. Kalashnikov S. I. Issues of enforcement of a mediation agreement // Corporate lawyer. 2011. - No. 9. - P. 55-58.
9. Mediation: theory, practice, prospects. Sat. materials of scientific-practical conference (April 13-14, 2017, Moscow) / Ed. ed O. P. Party. M.: fgbu «FIM», 2017.
10. The concept and meaning of mediation. Mediation as a form of conflict resolution. <https://articlekz.com/article/5609> Date of request:16.02.2020
11. Kuzbagarov A. N. Reconciliation of the parties - on conflicts of a private legal nature: Dis.. dr. yurid. Nauk. SPb., 2016. P-359.