ON THE IMPROVEMENT OF PRE-TRIAL DISPUTE SETTLEMENT IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF KAZAKHSTAN

INTRODUCTION

Currently, different countries apply various alternative methods of resolving criminal law disputes, which form the basis of restorative justice. These include a fine by agreement, a police caution, conditional termination of a criminal case, a transaction, and others (APOSTOLOVA, 2010).

The Council of Europe pays considerable attention to the development of the acts regulating the application of the institution of mediation. In Europe, modern mediation programs are largely based on North American models, with some ideas from other countries. The Council of Europe indicated the development of various forms of mediation in some member states and repeatedly emphasized the need for expanding mediation in the EU (DAVLETOV and BRATCHIKOV, 2014).

The advantages of mediation include its underlying principles, which help to protect the interests of the participants: voluntary participation of the parties, a neutral mediator, confidentiality of the process, self-determination of the parties, and the mechanism of mediation. Even in situations where people cannot calmly talk to each other or do not communicate at all when they are at a dead end and do not see the solution to the current situation, even then mediation allows finding a way out (KULAEVA, 2016; THANH et al., 2020).

The research goal was to identify gaps, inaccuracies, and other shortcomings of procedural rules for terminating criminal cases connected with reconciliation procedures based on a comprehensive analysis of punitive and criminal procedural legislation, as well as the practice of investigation and termination of criminal cases; and to develop and substantiate logically interrelated theoretical provisions and recommendations aimed at improving the legislation in this area, as well as the practice of terminating such criminal cases through the use of mediation.

Criminal liability inevitably generates social consequences. They are quite diverse and manifest themselves, for instance, in the negative impact on personality, as well as the deformation of interpersonal (friendship, family, neighbourhood, etc.) relations. One of the ways to compromise between the positive and negative consequences of this process is reconciliation, or rather, the institution of exemption from criminal liability in connection with reconciliation with the victim, which exists in the legislation of the Republic of Kazakhstan.

By determining an act that causes significant harm to the victim’s personality as a crime, the state fulfils its obligation to protect human rights and freedoms. At the same time, considering the negative consequences of such criminalization, in some cases the state
allows the victim of the crime to decide for themselves whether to prosecute the offender or reconcile with them (naturally, in this case, we are talking only about crimes of small public danger, committed in a particular field of public relations). Reconciliation is the best way to resolve a criminal conflict that affects the subjective interests of the victim. Reconciliation as an institution of the criminal procedure takes two forms:

- Reconciliation based on mutual concessions (the victim does not want to hold the guilty person accountable; the guilty person, in turn, compensated the victim for the damage);
- Reconciliation based on the victim absolving the guilty person (in case there are no material claims of the victim against the guilty person).

Reconciliation is a free and mutual decision of the parties to the criminal conflict to terminate the criminal case (the victim has absolved the offender and does not want further criminal prosecution of the person who caused the harm, and the latter agrees to the termination, after realizing and admitting their guilt), declared to a competent person or body at a time permissible for this. Reconciliation, as a type of positive actions of a person after a crime committed by them, has a particular legal bearing, despite some similarities with other non-rehabilitating grounds for terminating a criminal case.

METHODS
The methodological basis of the scientific research included general scientific methods of cognition as well as comparative and legal, historical, system analysis, logical, statistical, technical and legal, descriptive method, the analysis of the materials of criminal cases with conciliating procedures, reconciliation of the parties, and mediation. We analyzed the opinions of leading Russian scientists who have studied various issues connected with the reconciliation of the parties and the mediation procedure. Besides, we studied the norms of the Normative Decree of the Supreme Court of the Republic of Kazakhstan of June 21, 2001 No 4 “On judicial practise on the application of article 68 of the Criminal Code of the Republic of Kazakhstan” with a focus on the compensation for the harm inflicted, which should be sufficient from the point of view of the victim or the applicant. In addition, we analyzed the norms of the Code of Criminal Procedure of the Republic of Kazakhstan concerning the reconciliation of the parties, compensation for the harm, the procedure and conditions for the mediation procedure, as well as the legal norms in Great Britain, Turkey, Romania, and Germany that affect the procedure for conducting mediation in these countries.

RESULTS AND DISCUSSION
In Kazakhstan legal practice, alternative dispute resolution is conventionally divided into pre-trial and out-of-court. However, pre-trial methods of conflict resolution are similar to a plea bargain, especially criminal. The out-of-court defence of rights includes state remedies for protecting rights in the out-of-court procedure, such as filing an administrative complaint, a complaint to the prosecutor’s office, or an appeal to the Ombudsman for Human Rights in the Republic of Kazakhstan. In addition, there are alternative methods of dispute resolution such as negotiations, mediation, arbitration, mini-court, independent expert examination to establish the factual circumstances of the case, ombudsman, and private judicial system (TLEMBAEVA, 2015; SAFRILIANA et al., 2020).

Mediation is an alternative method, that is, out-of-court, for resolving disputes and problems, between conflicting parties based on voluntary constructive negotiations with a neutral mediator. This method presupposes the search for a mutually beneficial, as a rule, compromise solution - a peace agreement (DZHUMABAYEVA and TOLEUBEKOVA, 2017).

In Kazakhstan, the resolution of legal conflicts through mediation implies a preliminary analysis of the international practice of the application of alternative methods of conflict resolution. By introducing mediation into the legal practice of resolving criminal conflicts, Western countries could solve many problems: to reduce state expenditures on the legal proceedings and the number of prisoners, as well as to decrease the need for criminal re-
socialization. As a result, by applying mediation, Western countries could gradually move from the punitive system to restorative justice (MITSKAYA, 2018).

International researchers consider two approaches to the definition of the concept of mediation: conceptual and descriptive. The conceptual approach interprets mediation through the basic principles, goals, and objectives of this procedure. For example, mediation is understood as a voluntary and confidential dispute settlement procedure, in which a neutral person (mediator) assists the parties in negotiating to conclude a mutually acceptable agreement (BOULLE and NESIC, 2001). The descriptive approach defines mediation through its application: mediation is seen as a conflict resolution procedure in which the disputing parties meet with the mediator and discuss the situation, after which they attempt to resolve the contradictions (ROBERTS, 1992).

At this point, we would like to consider several definitions of the very concept of mediation for a more accurate understanding of the purpose and functioning of this institution. For instance, A. D. Karpenko sees mediation as a technology aimed at the peaceful settlement of a particular conflict. This method is based on effective negotiation activities, has unique content, and requires highly intellectual mental work. Moreover, it seems to be the most efficient method possible (KARPENKO, 2016).

Giving a general definition, A. A. Maksurov proposes to consider mediation as the intermediary activities stipulated by the law and carried out by a third person for the parties in a legal conflict. This person does not have the authority to resolve the dispute in essence, while these activities are to encourage the parties’ independent and voluntary reconciliation, which leads to the resolution of the legal conflict. The researcher considers this activity as an institution, a practice, and as a technology (MAKSUROV, 2013).

According to N. Alexander, “mediation is a process in which an impartial third party facilitates easier negotiations between the parties in a dispute regarding their requirements and needs” (ALEXANDER, 2006).

E. Yu. Maksimova believes that mediation is a procedure alternative to the court for resolving disputes with the participation of a third neutral and impartial party not interested in the conflict, which helps to reach an agreement (MAKSIMOVA, 2011). I. V. Reshetnikova perceives mediation as a form of reconciliation of the parties, during which a neutral person, elected by the parties based on their competence and authority, conducts negotiations (RESHETNIKOVA, 2007).

Mediation aims to eliminate contradictions between the parties in the dispute, which are rarely bridged when resolving the dispute in court when one of the parties is not fully satisfied. Mediation helps find a way out of the current conflict situation that is equally acceptable for all parties to the dispute, nips the conflict in the bud, and lets the parties overcome it (SIZOVA, 2015).

Pre-trial settlement of disputes is one of the most efficient ways of resolving conflicts between the parties. Reconciliation between the offender and the victim is a natural and humane way of dealing with the conflict without state intervention. In addition, it minimizes the possibility of a victim committing acts aimed at revenge, causing even more serious harm to the offender. This circumstance is primarily substantiated by the objectives and principles of the criminal procedure (BAIMOLDINA and ZABIKH, 2017).

However, when investigating criminal cases, reconciliation of the parties must not be substituted with mediation, given their different legal nature, goals, purpose, mechanism, conditions, and legal consequences (AKHPANOV, 2012).

The principle of justice implies not only the compliance of punishment with the nature and degree of social danger of the offence, the circumstances of its commission and the personality of the perpetrator, but it also considers the internal attitude of the victim to the decision made by the court (BAIMOLDINA et al., 2015). The latter refers to taking fair measures to compensate for damage and protecting the victim’s rights as a citizen and person. This is also stipulated in paragraph 6 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan of June 21, 2001 No 4 “On judicial practise on the application of Article 68 of the Criminal Code of the Republic of Kazakhstan.” It states that
one should carefully establish the damage caused to the victim, the complainant and whether it was fully repaired by the person committing the criminal offence. The compensation for the damage inflicted must be sufficient from the point of view of the victim, the applicant, and not the person who committed the criminal offence.

Thus, the Codes of Criminal Procedure of both the Russian Federation and the Republic of Kazakhstan allow negotiations for the accused and the victim to resolve the legal conflict in many criminal cases to: 1) terminate the case due to the reconciliation of the parties; 2) mitigate the punishment for the perpetrator after compensating the damage from the crime to the victim. These conditions represent the necessary basis enabling the regulation of mediation in the criminal procedure (ARUTYUNYAN, 2012).

Punitive criminal policy towards the perpetrator of certain categories of cases does not always contribute to achieving the goals of criminal procedure. Sometimes, imposing a severe punishment, the court does not reflect or fully cover the interests of the victim. N. F. Kuznetsova notes that “the court must punish a person who has committed a crime that would be necessary and sufficient for their correction. A more severe type of punishment out of those provided for a committed crime is imposed only if a less severe type of punishment cannot ensure achieving the goals of punishment.” As a rule, the concept of mediation is associated with such notions as “reconciliation” and “intermediary activities” (KRAINOVÁ et al., 2013).

In this regard, we consider it viable to examine the international legal practices of criminal cases and reconciliation of the parties through mediation, for instance, the Private Complaint Mediation Service operating in Hamilton, Ohio. The state judiciary subsidizes and controls this service, which works only with minor offences (misdemeanours). The police send about half of all materials on misdemeanours to this organization for out-of-court resolution. In Cincinnati, a police officer has the right to send the delict parties for mediation immediately after receiving a crime report (VASILENKO, 2012).

The parties conclude a written mediation agreement upon the outcome of negotiations with the participation of a mediator. The mediation agreement reached before transferring the case to the court is defined as a civil law transaction aimed at establishing, changing, or terminating the rights and obligations of the parties. A mediation agreement reached after sending the dispute to the court may be approved by the court as a settlement agreement (SHILOVSKAYA, 2014).

Section 5 of the Criminal Code of the Republic of Kazakhstan regulates the grounds for releasing the subject of an offence from criminal liability and punishment. One of such grounds is an exemption from criminal liability due to reconciliation (Article 68 of the Criminal Code of the Republic of Kazakhstan).

According to Part 1 of Article 68, a person who has committed a criminal offence or a crime of small or medium-scale gravity not related to causing death is subject to release from criminal liability if they have reconciled with the victim (the applicant), including through mediation, and made up for the damage.

The damage to be recovered by a person committing a criminal offence covers any harm caused to the victim (the applicant) by the criminal offence: moral, physical and property. Both direct and indirect losses associated with a criminal offence should be taken into account, including expenses incurred in the course of preliminary investigation and court, as well as attorney fees. To repair the damage, one can restore the damaged property, return the stolen property or provide equivalent property, pay monetary compensation, purchase

1Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan of June 21, 2001, No 4 “On judicial practice on the application of Article 68 of the Criminal Code of the Republic of Kazakhstan”. Available at: http://adilet.zan.kz/rus/docs/P01000004. Access: Nov. 29, 2018.

2Lib.Sale. Website http://lib.sale/ugolovnoe-pravo-rossii/printsip-spravedlivosti-49929.html Access: Nov. 17, 2018.
On the improvement of pre-trial dispute settlement in the criminal procedure of the Republic of Kazakhstan

Laplage em Revista (International), vol. 7, n. 3A, Sept. - Dec. 2021, p. 608-615
ISSN: 2446-6220

medicines, a health resort voucher, apologize to the victim, the applicant, and other actions not prohibited by law.

At the same time, the Code of Criminal Procedure does not regulate the very procedure for negotiating and reaching the reconciliation of the parties at the pre-trial stage of the criminal proceedings. The relevant articles of the Code give only a fragmentary description of the powers of the participants in the criminal case.

For instance, in accordance with Part 9 of Article 23 of the Code, a public prosecutor and a private prosecutor may either prosecute a certain person or, in cases provided for by law, refuse to do this. The suspect, the accused, and the defendant are free to deny their guilt or plead guilty, reconcile with the victim, conclude a procedural agreement or an agreement to achieve reconciliation through mediation. The civil plaintiff has the right to waive the claim or to reach a resolution with the civil defendant. The civil defendant has the right to admit the claim or to reach a resolution with the civil plaintiff. The right of a civil defendant to admit the claim was put into effect on January 1, 2016.

In addition, Part 5 of Article 70 “The Powers of the Defender” of the Code of Criminal Procedure of the Republic of Kazakhstan stipulates that the defender cannot declare the reconciliation of the client with the victim.

However, international practice shows that a lawyer may participate in the reconciliation procedure of the parties. For example, according to Article 35A of the Turkish Attorneyship Law of March 19, 1969, “when resolving a dispute, lawyers, together with their clients, may invite the other party to a conciliation procedure before filing a claim or before the proceedings on the filed claim have already begun, provided that such conciliation procedure deals exclusively with the issues that the parties may voluntarily identify.” If the other party accepts the invitation and agrees, then the subject of reconciliation, its place, date, and action that each party will perform are stated in a memorandum, and lawyers and clients sign it. Such memoranda act as a court decision.

In the UK, Solicitors’ Code of Conduct 2007 allows solicitors to act as a mediator between parties in a dispute, provided they use the Code of Practice issued by the Legal Society, which gives detailed guidance on how to resolve conflicts during mediation. According to Article 16 of Romania’s Law for the Organization and Practice of the Lawyer’s Profession, “lawyer’s profession is compatible only with: ... d) the quality of arbitrator, mediator, conciliator or negotiator, tax adviser, intellectual property counsellor, industrial property counsellor, authorized translator, administrator or liquidator in the reorganization and liquidation procedures under the law.”

Paragraphs 155A and 155B of the German Code of Criminal Procedure are an example of regulating mediation in criminal matters at the national level. According to this document, at each stage of the procedure, the prosecutor and the judge must consider the possibility of achieving reconciliation between the perpetrator and the victim. The procedure includes the following: the prosecutor and the judge can transfer personal data required for reaching reconciliation between the offender and the victim or repairing the damage, based on a formal initiative or request. These documents are used solely for the reconciliation of the parties and compensation for the harm. If the offender reconciled with the injured party, and the compensation for the damage required significant personal participation and humility from them, the court may mitigate the punishment. If the punishment is less than imprisonment for one year or a fine up to 360-day rates, they can be exempt from

---

3 Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan of June 21, 2001, No 4 "On judicial practice on the application of Article 68 of the Criminal Code of the Republic of Kazakhstan". http://adilet.zan.kz/rus/docs/P01000004S_. Access: Nov. 29, 2018.

4 See in: http://eski.barobirlik.org.tr/mevzuat/avukata_ozel/avukatlik_kanunu/attorneyship_law.pdf. Access: Jun. 29, 2021.

5 See in: https://www.bppprofessionaldevelopment.com/documents/brochures/Solicitors%20Code%20of%20Conduct%202007.pdf. Access: Jun. 29, 2021.

6 See in: http://www.unbr.ro/wp-content/uploads/2018/02/Lege-51-1995_actualizata_aprilie-2017-EN-FINAL-3-OK-ACP.pdf. Access: Jun. 29, 2021.
punishment. At the same time, the German Code of Criminal Procedure highlights the fact that the mediation procedure between the offender and the victim takes place at the initiative of the prosecutor or the court only in certain cases when its use is expedient. In addition, the law does not fully cover the list of crimes for which mediation can be applied (FILATOVA et al., 2017).

Mediation at the pre-trial stage does not terminate the criminal procedure. The mediation agreement is submitted to the court, and the judge makes the final decision on the termination of criminal prosecution.

CONCLUSION

Having considered the above, we propose the following. To ensure the regulation of the standard procedure for the reconciliation of the parties at the pre-trial stage, as well as to develop a methodology for enabling voluntary agreement of the victim for reconciliation with the person committing a criminal offence. After clarifying the possibility of reconciliation of the parties and its legal consequences for each participant, one should hold a restitution conference, at which the parties must discuss the incident. They should listen to each other and discuss the procedure for compensating for the damage caused and the payment of this compensation.

To consider the possibility of implementing efficient international practices, according to which a lawyer has the right to participate in resolving issues concerning the possibility of reconciliation of the parties in criminal procedure at the initiative of their client and exclusively in their interests.

REFERENCES

AKHPANOV, A. N. On legislative regulation of mediation in the criminal procedure. In: The Current State and Prospects for the Development of the Institution of Mediation in the Context of Social Modernization of Kazakhstan: Materials of an International Scientific and Practical Conference, October 19, 2012. Astana: Institution of Legislation of the Republic of Kazakhstan, 2012, p. 51-55.

ALEXANDER, N. M. Global trends in mediation. Research Collection School of Law, 2006. Available at: https://link.library.smu.edu.sg/sol_research/1897. Access: May 20, 2021.

APOSTOLOVA, N. N. Mediation in criminal cases. Russian Justitia, 2010, 3, p. 55-58.

ARUTUNYAN, A. A. Mediation in criminal procedure. Dissertation of the Candidate of Legal Sciences. Moscow, 2012.

BAIMOLDINA, S., NURGALIEVA, E., GULOGLU, Y., TOLEUKHANOVA, D., AKCHABAIEV, S. Criminal liability for violations of public employment laws in the Republic of Kazakhstan. Indian Journal of Science and Technology, 2015, 8(27), p. 1-9. Available at: https://doi.org/10.17485/ijst/2015/v8i27/816. Access: May 20, 2021.

BAIMOLDINA, S., ZABIKH, S. Improvement of legal measures to prevent crime with regard to minors in Kazakhstan. Journal of Advanced Research in Law and Economics, 2017, 8(3), p. 738-748. Available at: https://journals.aserspublishing.eu/jarle/article/view/1442. Access: May 20, 2021.

BOULLE, L., NESIC, M. Mediation: principles, process, practice. London, Dublin, Edinburgh: Gardners Books, 2001.

DAVLETOV, A. A., BRATCHIKOV, D. A. On the application of mediation in the criminal procedure in Russia, 2014. Available at: http://отрасли-права.рф/article/871. Access: May 20, 2021.
DZHUMABAYEVA, A., TOLEUBEKOVA, B. Kh. The procedural status of a mediator in criminal procedure, 2017. Available at: https://articlekz.com/article/18675. Access: February 01, 2019.

FILATOVA, U. B., ARKHIPKINA, A. S., NEKRASOV, S. YU., ARKHIPKIN, I. V. Mediation in the criminal procedure: Analysis of legal regulation in the Federal Republic of Germany. Russian Journal of Criminology, 2017, 11(4), p. 824-832. Available at: https://cyberleninka.ru/article/v/mediatsiya-v-ugolovnom-protsesse-analiz-pravovogo-regulirovaniya-v-federativnoy-respublike-germaniya. Access: February 15, 2021.

KARPENKO, A. D. Mediation: A tutorial. St. Petersburg: Statut, 2016.

KRAINova, A. S., GUBIN, A. D., GRIGORAI, A. V. Some aspects of the application of the mediation procedure in the Russian Federation. In: Modern Science: Development Trends: Materials of the 6th International Scientific and Practical Conference, December 24, 2013. Collection of scientific papers in two volumes, Vol. 2. Krasnodar, 2013, p. 156-158.

KULAEVA, K. A. Problems of mediation in family law. In: Scientific Forum: Jurisprudence, History, Sociology, Political Science and Philosophy: Collection of Articles based on the Materials of the 1st International Scientific and Practical Conference, 1(1). Moscow: “MTSNO”, 2016, p. 62-66.

MAKSIMOVA, E. Yu. Mediation in the conditions of modern Russia: Problems and prospects. Juridical World, 2011, 6, p. 56-59.

MAKSOV, A. A. Mediation in law: questions, definitions, concepts. Russian Justitia, 2013, 12, p. 60-63.

MITSKAYA, E. V. Mediation in criminal procedure in Republic of Kazakhstan. Scientific Yearbook of the Institution of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences, 2018, 18(3), p. 103-121. Available at: https://doi.org/10.17506/ryipl.2016.18.3.103121. Access: May 20, 2021.

RESHETNIKOVA, I. V. The law of oncoming traffic. Mediation and Russian arbitration process. Mediation and law. Mediation and Reconciliation, 2007, 2, p. 35.

ROBERTS, M. Systems or selves? Some ethical issues in family mediation. Mediation Quarterly, 1992, 10(1), p. 3-19. Available at: https://doi.org/10.1002/crq.3900100103. Access: May 20, 2021.

SAFRILIANA, R., SUBROTO, B., SUBEKTI, I., RAHMAN, A. F. The voluntary of public accountant firms switching with modified auditor’s opinion as mediation variables. Journal of Southwest Jiaotong University, 2020, 55(6). Available at: https://doi.org/10.35741/issn.0258-2724.55.6.39. Access: May 20, 2021.

SHILOVSKAYA, A. L. Legal aspects of mediation in civil and criminal procedure. State and Law, 2014, 1(2), p. 49-54.

SIZOVA, V. N. Mediation in criminal law: Issues of the concept definition. Legal Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2015, 3(31), p. 156-158. Available at: http://cyberleninka.ru/article/n/mediatsiya-v-ugolovnom-pravo-opredeleniya-ponyatiya. Access: November 27, 2017.

THANH, L. D., THONG, B. Q., CHON, L. V., NGUYEN, N.-T. Job satisfaction as a mediator of the impact of meeting effectiveness on organizational commitment. Journal of Southwest Jiaotong University, 2020, 55(3). Available at: http://jsju.org/index.php/journal/article/view/634. Access: May 20, 2021.

TLEMBBAEVA, Zh. U. Out-of-court settlement of legal disputes arising in administrative and other public law relations in the Republic of Kazakhstan: Current state and development
On the improvement of pre-trial dispute settlement in the criminal procedure of the Republic of Kazakhstan

Sobre a melhoria da resolução de disputa pré-julgamento no processo penal da República do Cazaquistão

Resumo
Este artigo apresenta um estudo teórico e jurídico abrangente da natureza jurídica, das condições jurídicas, dos princípios, das especificidades da mediação, do estatuto jurídico de um mediador na República do Cazaquistão e das especificidades das normas processuais penais que regulam as atividades de um mediador. Conduzindo a pesquisa, os autores aplicaram os seguintes métodos científicos gerais e especiais de cognição: a análise de atos legais que regulam a mediação, a observação, abordagens sistemáticas e lógicas, bem como métodos específicos de pesquisa científica, métodos jurídicos legais e históricos formais, a pesquisa dos principais cientistas internacionais e do Cazaquistão que estudaram essa questão. Os autores propuseram as seguintes melhorias: considerar a possibilidade de regulação normativa da reconciliação das partes na fase pré-julgamento; desenvolver uma metodologia para determinar a voluntariedade do acordo da vítima; explicação do ministério público sobre a aplicação da instituição de reconciliação das partes; e a participação do advogado na reconciliação das partes no processo penal.

Palavras-chave: Mediação. Tribunal. Mediador. Promotor. Advogado.

Abstract
This article presents a comprehensive theoretical and legal study of the legal nature, legal conditions, principles, the specifics of mediation, the legal status of a mediator in the Republic of Kazakhstan, and the specifics of criminal procedural norms regulating the activities of a mediator. Conducting the research, the authors applied the following general and special scientific methods of cognition: the analysis of legal acts regulating mediation, observation, systematic and logical approaches, as well as specific scientific research methods, formal legal and historical legal methods, the research of leading international and Kazakhstan scientists who have studied this issue. The authors proposed the following improvements: to consider the possibility of normative regulation of the reconciliation of the parties at the pre-trial stage; to develop a methodology for determining the voluntariness of the victim’s agreement; the prosecutor’s explanation of the application of the institution of parties’ reconciliation; and the participation of the lawyer in the reconciliation of the parties in the criminal legal proceedings.

Keywords: Mediation. Court. Mediator. Prosecutor. Lawyer.

Resumen
Este artículo presenta un estudio teórico y jurídico exhaustivo de la naturaleza jurídica, las condiciones jurídicas, los principios, los detalles de la mediación, la condición jurídica de un mediador en la República de Kazajstán y los detalles de las normas procesales penales que regulan las actividades de un mediador. Al realizar la investigación, los autores aplicaron los siguientes métodos científicos generales y especiales de cognición: el análisis de los actos jurídicos que regulan la mediación, la observación, los enfoques sistemáticos y lógicos, así como los métodos de investigación científica específicos, los métodos legales e históricos formales, la investigación de los principales científicos internacionales y de Kazajstán que han estudiado este tema. Los autores propusieron las siguientes mejoras: considerar la posibilidad de una regulación normativa de la reconciliación de las partes en la etapa previa al juicio; desarrollar una metodología para determinar la voluntariedad del acuerdo de la víctima; la explicación del fiscal sobre la aplicación de la institución de la reconciliación de las partes; y la participación del abogado en la reconciliación de las partes en el proceso penal.

Palabras-clave: Mediation. Tribunal. Mediador. Fiscal. Abogado.