

**RECOMMENDATION
of the International council under
the Supreme Court of the Republic of Kazakhstan
on the development of alternative dispute resolution methods**

The International council under the Supreme Court of the Republic of Kazakhstan, in accordance with paragraph 6 of Article 18 of the Constitutional Law of the Republic of Kazakhstan “*On Judicial System and Status of Judges in the Republic of Kazakhstan*”, paragraph 4 of the Bylaw of the International Council under the Supreme Court of the Republic of Kazakhstan, by

recognizing the important role of alternative dispute resolution (ADR) in facilitating the implementation of respect for the rule of law,

noting the advantages of these methods in the judicial process of disputes resolution,

paying attention to the fact that the development of conciliation procedures meets the objectives of the establishment of constitutional state, formation and strengthening the civil society, and development of a legal culture,

given the high standards of the Committee of Ministers of the Council of Europe, specified in Recommendation No. R(98) 1 on family mediation, Recommendation (2001)9 on alternatives to litigation between administrative authorities and private parties, Recommendation (2002)10 on mediation in civil matters,

recognizing the relevance and timeliness of the measures taken for the development of the Republic of Kazakhstan and improvement of the ADR institutes in the national legal system and judicial practice, **recommends to:**

Provide a comprehensive, interagency approach to the development of the ADR, by developing on a regular basis of different approaches.

1 . Effective use of various types of ADR in Kazakhstan requires systemic measures. It requires research and study of well-known models, practices, forms ADR. It should be noted that the successful development of the ADR in national law can be implemented on the basis of interagency approach, which provides broad involvement and participation of various government institutions, agencies and branches of power (legislative, executive and judicial).

2 . One of the conditions for the effective development of ADR is a diversified approach in the development of various alternative dispute resolution procedures. It is useful to introduce and develop the types and forms of judicial and extrajudicial ADR in the national system as much as possible. Different measures that promote the development of ADR, play crucial role and importance.

In particular, it can be suggested to introduce the procedure for judicial conciliation subject to the following specifics:

- applicability of the procedure based on the application of the party under a separate proceeding before claiming;

- conditions on the imposition of commencement application with small-size state duty, are valid when the amount of duty may be considered as payment for the statement of claim in the event of failure to achieve conciliation between the parties;

- possibility of taking interim measures upon the applicant’s request as part of the conciliation procedure;

- easy and informal negotiations with the participation of judges and/or public associate judges;

- right of a judge to approve the agreement reached by the parties or to make a court order, to determine the termination of the proceedings and recognize of the applicant’s right to claim in general terms.

3 . Special attention should be paid to the development of ADR in public disputes. The International Council advises to consider the issue on the development of a separate program (policy) for out-of-court settlement of public disputes.

It should be noted that government authorities have sufficient qualification and staff and for independent dispute resolution, redress for a violated right. Out-of-court settlement of public disputes has a number of advantages:

- it eliminates the need for applicants to initiate the legal action;
- it reduces the duration of the procedure for the violations elimination and restoration of legal rights, excluding movement of the cases through the courts;
- it contributes to the strengthening of civil accord, public trust in government institutions, facilitates to implementation of respect for the rule of law.

For this purpose, the International Council draws attention to the need to move away from the legal restrictions and the prohibition for settlement of public disputes through conciliation.

The International Council notes that the use of ADR in public disputes entirely meets modern international standards of law. The justification can be the Recommendations Rec (2001)9 of the Committee of Ministers of the Council of Europe to the Member States on alternatives to litigation between administrative authorities and private parties dated September 5, 2001, providing for the use in public law disputes the following means of ADR: internal reviews, conciliation, mediation, negotiated settlement and arbitration. Possibility of public dispute resolution as part of the conciliation procedure is provided for in administrative procedural codes of a number of states (Azerbaijan, Bulgaria, Germany and Estonia).

4 . Given the contemporary increasing tendency of the number of divorces, the facts of family abuse, the International Council recommends to pay special attention to the development of conciliation procedures in family matters.

In this area the organizational and legal support of family mediation by the state, including through the creation of family conciliation centers by local authorities is of particular importance. In their activities, such centers can interact with expert mediators, lawyers, police, local agencies, educational organizations, as well as prosecutors and courts.

5 . The International Council recommends to pay attention to the development of provisions for the support and organization of professional mediators. For that, it would be possible to establish a centralized national system for training expert mediators, joining mediators in a single association, the national self-regulatory organization with the support of judicial authorities.

6 . The International Council notes the particular role of arbitration in out-of-court settlement of disputes and recommends achieving full compliance of the national arbitration system with applicable international standards at the legislative level. First of all, it concerns the following provisions:

- facilitating access to arbitration for companies with participation share of the government;
- ensuring the full autonomy of the arbitrators and the arbitration from the state institutions;
- simplifying the approach to the conclusion of the arbitration agreement, ensuring the binding nature of the actions;
- full unification of the national legal system with international law on arbitration, including the recognition, limitation of the opportunities to revise arbitral awards in national courts.

It recommended in the legal practice of national courts to take into account and apply the principles and rules on arbitration accepted in international law, including the review of applications (petitions) on measures for the security of claim, assistance in taking evidence. It is important to ensure prompt consideration of these issues, taking into account the common, standardized approach under the applicable procedural law in respect of legal proceedings in civil matters.