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## ПРИКАЗНОЕ ПРОИЗВОДСТВО КАК САМОСТОЯТЕЛЬНЫЙ ВИД ГРАЖДАНСКОГО СУДОПРОИЗВОДСТВА

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*В данной статье рассматривается один из актуальных аспектов приказного производства: признание приказного производства как самостоятельного вида гражданского судопроизводства. Автор проводит анализ процессуального законодательства, исследует мнения ряда ученых-процессуалистов и излагает свою точку зрения относительно данной проблемы.*

**Ключевые слова:** судебная защита, судебная власть, судопроизводство, приказное производство, упрощенное судопроизводство, бесспорное требование, взыскатель, должник, судебный приказ.

## THE LEGAL BASIS FOR THE USE OF MEDIATION IN THE SETTLEMENT OF FAMILY LAW DISPUTES

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*The article discusses the concept of family conflicts and family disputes, ways to resolve them. The scope of family mediation is disputes related to the dissolution of marriage, property disputes, disputes about children, disputes related to the fulfillment of alimony obligations. Family conflicts are distinguished by a special theme, the specificity of which is due to the uniqueness of family relations. Conflicts in the family are considered the most common types of conflicts. The peculiarity of family disputes is that all family members are involved in it voluntarily or involuntarily.*

**Keywords:** labor dispute, conciliation procedures, mediation, family, family conflicts, family relations, family disputes, marriage, divorce.

A family is a small group based on marriage or blood kinship, whose members are associated with the commonality of everyday life, mutual assistance, moral and legal responsibility. Family relations are the relationship between family members, community, regulation of traditions. Family relations:

- have an interpersonal character;
- the basis of value increases (love, kinship);
- related to the implementation of family functions (reproductive, economic, educational, communicative, household, socio-status, emotional, spiritual sphere of communication, etc.).

Family conflict is a confrontation between family members based on the conflict of oppositely directed motives and views. Conflicts in the family are represented by the schemes «husband» – «wife», «husband – relatives», «parents-children». The peculiarity of family conflicts is due to the uniqueness of family relationships. Conflicts in the family are considered the most common types of conflicts. The peculiarity of family disputes is that all family members are involved in it voluntarily or involuntarily. Conflicts between spouses and other family members are characterized by different intensities and characteristics of feelings, such as:

- high degree of emotionality;
- rapid development of conflict stages;
- various forms of confrontation, which can begin with a typical quarrel and end with a serious quarrel;
- the solutions are also different: reconciliation, agreement, coming to the compromise or final divorce;
- the appearance of serious consequences: injuries from beatings, sometimes death (on the basis of jealousy or intoxication).

Family disputes – «a conflict arising between participants in family legal relations in connection with subjective rights and legal obligations, aimed at resolving issues related to their occurrence, change or termination, as well as confirming the existence of a right or ensuring its implementation» [1, p. 31].

Family life is associated not only with personal relationships of spouses, but also with property relations.

In addition to things intended for personal use, private property includes property that belonged to each of the spouses before marriage, as well as property acquired by one of the spouses during marriage as a gift, inheritance, or other gratuitous

transactions. But the gift or legacy must be personalized. Such property is considered common if the gift is presented to both spouses.

The property acquired by the spouses during the marriage is their common (common) property. These include income from labour, entrepreneurship, intellectual activity, pensions, allowances, and other payments that do not have a special purpose, as well as items, securities purchased at the expense of gross income.

Spouses have equal rights to own, use and dispose of property earned during the marriage. This means that one of the spouses does not need the consent of the other to dispose of the property. It is assumed that it exists. At the same time, there are types of property for disposal of which the written, notarized consent of the spouse is required. This applies to the alienation of real estate and the completion of a transaction that requires notarization and (or) registration.

When the family breaks up and the dispute between the spouses cannot be resolved, the division of property becomes a burden, since each defends their right, and proves their priority right to own this or that property.

The end of the disagreements and conflicts of the spouses in solving family problems is divorce.

When analysing family conflicts, especially disputes between spouses, it is necessary to consider crisis periods in the development of the family. There are different aspects to breaking up a marriage.

Katrin Stoner warns that there are not one, but four different divorces:

- Emotional;
- Social;
- Financial;
- Legal.

Emotional divorce begins with the decision to divorce and ends when both spouses realize their feelings and desires to live in marriage have disappeared.

Social divorce occurs when a couple recovers their relationship with a circle of acquaintances, not as a couple, but as individuals.

Financial divorce begins with the division of movable and immovable property and debts accumulated during the marriage.

Legal divorce is the legal fact of the absence of families [3, p. 202-204].

Mediation is the most flexible form of Alternative Dispute Resolution. During the mediation

procedure, the parties to the dispute independently come to a mutually beneficial solution, based on the experience, knowledge, and qualifications of the mediator. The dispute resolution will depend on the will of the disputants themselves.

Mediation (mediare in Latin and mediation – mediation in English) is a conciliation procedure, based on which negotiations are held with the participation of a mediator (intermediary) by the disputing parties to reach a mutually beneficial agreement between the parties on disputed issues [2].

Article 2 of the law of the Republic of Kazakhstan «on mediation» States: mediation is a procedure for resolving a dispute (dispute) between the parties with the assistance of a mediator (mediators) to achieve a mutually acceptable solution, carried out by voluntary agreement of the parties [4].

Mediation is a widely distributed system in the world, and the method of mediation is the most common in Western countries. In addition, in the United States, China, and Korea, most disputes are resolved by mediation, that is, out of court, peacefully. Mediation is an alternative method of resolving disputes with the participation of a party that adheres to a third neutral point of view, that is, a mediator. It opens the way for the parties to conclude a mutually beneficial truce while maintaining voluntary, confidential, and equal rights from both sides.

The family mediation procedure is private. The parties may not distribute or use in one place information that has become known to them during the mediation procedure unless they have agreed on what they can use and distribute this information.

The scope of family mediation is disputes related to the dissolution of marriage, property disputes, disputes about children, and disputes related to the fulfilment of alimony obligations.

The mediation procedure requires the presence of all parties to the dispute. Of course, in family conflicts, the interests of all family members are touched upon. The mediation procedure is aimed at resolving a dispute between specific parties. But the resolution of one conflict requires the solution of other disputes that have arisen between family members. For example, a dispute between parents leads to the fact that one of the spouses disagrees with the people of the spouse.

Resolving a dispute between spouses is one of the mediation procedures.

The mediation procedure can be carried out only when the parties are voluntarily when no one is pushing them and does not force them. The voluntary nature of the mediation procedure contributes to the adoption by the parties of a decision that they adhere to.

The mediation procedure aims to develop a solution that suits both one party and the other. In family conflicts, the parties are often in the same «fighting» state as the opponents – they speak different languages, and only the mediator sees and hears what they say about something.

Of course, conflicts in the family always affect children – they suffer most of all and often do not notice the heat of an argument by arguing parents. Resolved conflicts between parents also do not always lead to the resolution of a dispute between the parents or one of the parents and the child. Often, a mediation procedure is required to resolve a dispute between a child and a parent. As practice shows, for parents, everything that the child says will come as a surprise – about their experiences, about their attitude to what is happening in the family.

The resolution of such a conflict becomes the starting point for an actual change in the relationship in the family.

The peculiarity of the procedure for settling family disputes is that the direct participants in the dispute when developing options for its resolution, must consider the interests of all interested parties, primarily children. Mediation as a future-oriented process allows the family to develop subsequent development strategies. The active participation of family members in resolving a dispute allows them to take responsibility for the decision made and lets them find the internal resources of the family.

In the UK, mediation is a procedure recommended by the state to resolve family disputes. Civil funding for family mediation has been in place since March 1997 in England and Wales. Funding is managed by the Legal Services Commission (LSC). Low-income families can use mediation for free.

In Scotland, mediation services for low-income families are paid for by another executive body – the Scottish Executive. The English Ministry of Justice has launched an active campaign to encourage the use of mediation in di-

voice cases, stating that mediation is an alternative to lengthy and expensive legal proceedings related to family rights. Mediation is a faster, cheaper, and softer alternative to litigation, especially in the case of children, because it allows parents to think independently about the interests of the child not only in the short term but also in the distant future.

In the Netherlands, the introduction of mediation procedures is successful, affordable, cheap or complimentary for a portion of the population and aims to provide immediate protection for the rights of individuals, consumer protection, public sector services, juvenile rights and other vulnerable social groups [5, p. 456-457].

In short, mediation is an extrajudicial way of resolving a dispute, which is chosen by the parties voluntarily to achieve an indisputable goal. The current legislation provides a wide range of

conciliation procedures and mediation methods to resolve any conflicts and disputes in society within the framework of a civil agreement. After all, judicial practice shows that the usage of conciliation and conciliation procedures is efficient.

Thus, family disputes are disagreements between participants in family relations regarding property and personal non-property rights and obligations. Mediation in family legal relations is a specialized direction that requires the professional training of a mediator who promotes the settlement of disputes of this category. The problems of ensuring the protection of the rights and legitimate interests of the children, the participation of guardianship and guardianship authorities in the settlement of disputes about children, and the involvement of third parties to participate in family mediation are of great importance.

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## ПРАВОВЫЕ ОСНОВЫ ПРИМЕНЕНИЯ МЕДИАЦИИ ПРИ УРЕГУЛИРОВАНИИ СЕМЕЙНО-ПРАВОВЫХ СПОРОВ

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*В статье рассматривается понятие семейных конфликтов и семейных споров, пути их разрешения. Сферой применения семейной медиации являются споры, связанные с расторжением брака, имущественные споры, споры о детях, споры, связанные с исполнением алиментных обязательств. Семейные конфликты отличаются особой тематикой, специфика которой обусловлена уникальностью семейных отношений. Конфликты в семье считаются наиболее распространенными типами конфликтов. Особенностью семейных споров является то, что к нему добровольно или невольно привлекаются все члены семьи.*

**Ключевые слова:** трудовой спор, примирительные процедуры, медиация, семья, семейные конфликты, семейные отношения, семейные споры, брак, развод.