

## The Concept and Significance of the Pre-Trial Procedure for Resolving Administrative and Legal Disputes

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### ABSTRACT

*This article analyzes the out-of-court procedure for resolving an administrative-legal dispute both from the point of view of theoretical and practical application. The purpose of the work is to identify the features of public law regulation of alternative methods of resolving administrative and legal disputes. The overall result of the study is the conclusions about the need to increase confidence in alternative methods of resolving administrative and legal disputes, unify their legal regulation in order to uniformly apply the resolution of administrative and legal disputes in court and out of court.*

**KEYWORDS:** *public law regulation, alternative procedures and methods for resolving administrative and legal disputes, administrative and legal disputes, administrative mediation; reducing the court burden.*

Today, priority for consideration of public law disputes is given to the judicial process, through filing an administrative claim in court, however, alternative out-of-court methods of resolving administrative disputes are becoming relevant and increasingly justified, which requires reflection not only at the scientific, but also at the legislative level.

Alternative methods of dispute resolution, such as mediation, negotiation, and administrative tribunals, offer valuable alternatives to formal litigation. These methods can provide more efficient, cost-effective, and tailored solutions for resolving administrative disputes. They often promote collaboration, preserve relationships, and offer opportunities for creative problem-solving. As a result, they are gaining increasing relevance and acceptance in the field of administrative justice.

To ensure the effective integration of alternative dispute resolution methods into the administrative justice system, it is crucial to address this issue not only within the scientific community but also at the legislative level. Legislative reforms can play a significant role in providing a clear legal framework for the use of alternative methods, establishing standards and guidelines, and ensuring the enforceability of mediated settlements or decisions from administrative tribunals.

There is a growing recognition of the need to consider alternative methods of resolving administrative disputes alongside the traditional judicial process. In light of this, the task of providing alternative avenues for resolving such disputes is now considered not only important from a scientific standpoint but also at the legislative level. As a result, many countries have begun separating the mechanism for alternative dispute resolution from direct judicial control.

The advantages of alternative dispute resolution methods, as mentioned earlier, have been widely acknowledged and documented by legal scholars, practitioners, and international bodies. These benefits are applicable not only to disputes between executive authorities and private individuals but also to a wide range of administrative matters involving different parties and contexts.

It is not uncommon for various jurisdictions and international bodies to share similar views on the benefits of alternative dispute resolution in administrative matters. The recommendations you

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mentioned from the Committee of Ministers of the Council of Europe likely reflect a broader consensus and understanding regarding the advantages of alternative dispute resolution methods in the specific context of disputes between executive authorities and private individuals.<sup>1</sup>

The information provided earlier serves as a general overview of the benefits of alternative dispute resolution in complex administrative matters and may align with the principles and recommendations put forth by the Council of Europe. It is always important to consult specific sources and relevant guidelines for more detailed and context-specific information on alternative dispute resolution practices in a particular jurisdiction or under specific international instruments.

Alternative dispute resolution (ADR) methods offer several benefits when it comes to resolving complex administrative matters. Here are some key advantages:

1. **Flexibility:** ADR provides greater flexibility compared to traditional court proceedings. It allows parties to customize the process to suit the specific needs and complexities of the administrative matter at hand. This flexibility can include selecting the neutral third party, determining the procedure, and setting the timeline for resolution.
2. **Expertise:** ADR often involves specialized neutrals who have expertise in the relevant field of law or industry. In complex administrative matters, such as those involving technical regulations, government policies, or industry-specific issues, having an expert mediator, arbitrator, or administrative tribunal can significantly enhance the quality of decision-making. These experts can understand the intricacies of the matter and apply their knowledge to find practical and informed resolutions.
3. **Confidentiality:** ADR processes, such as mediation or arbitration, can be conducted in a confidential setting. This confidentiality can be particularly beneficial in complex administrative matters where sensitive information, trade secrets, or proprietary data may be involved. Parties can freely discuss and explore potential solutions without the fear of public disclosure, preserving confidentiality and protecting their interests.
4. **Time and Cost Efficiency:** Administrative disputes can be time-consuming and costly when resolved through traditional court litigation. ADR methods offer the advantage of faster and more efficient resolutions. Parties can bypass lengthy court procedures, pre-trial motions, and multiple appeals, resulting in significant time savings. Moreover, ADR can often be more cost-effective, as it avoids the expenses associated with court fees, extensive legal representation, and lengthy litigation processes.
5. **Preservation of Relationships:** In complex administrative matters, parties involved often have ongoing relationships. ADR methods emphasize collaboration, communication, and finding mutually acceptable solutions. By focusing on cooperative problem-solving rather than adversarial litigation, ADR helps preserve relationships and allows parties to maintain a more constructive and positive working dynamic, which can be crucial in administrative contexts where ongoing interactions are necessary.
6. **Compliance and Implementation:** ADR offers the advantage of promoting compliance and facilitating the implementation of agreements reached. In administrative matters, where government agencies or regulatory bodies are involved, ADR mechanisms can provide a smoother transition from resolution to implementation. Parties are more likely to comply with

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<sup>1</sup> Омарова Б.А., Понятие и значение альтернативных форм досудебного урегулирования споров, вытекающих из административных правоотношений [https://online.zakon.kz/Document/?doc\\_id=39831690&pos=6;-106#pos=6;-106](https://online.zakon.kz/Document/?doc_id=39831690&pos=6;-106#pos=6;-106)

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agreements they have actively participated in crafting, leading to better outcomes and long-term compliance.<sup>2</sup>

These benefits make alternative dispute resolution methods highly suitable for complex administrative matters, enabling parties to navigate the intricacies of administrative law, technical regulations, and specialized industries more effectively while promoting efficient and collaborative resolution processes.

Thus, these recommendations should pay attention to measures to facilitate access to justice, which were expressed in the form of "...measures to encourage the use of conciliation and mediation", as well as to "measures to prevent and reduce excessive workload on the courts, which is provided for in certain cases." the use of friendly dispute resolution either outside the modern system altogether, either before or during legal proceedings."

The term "alternative methods of dispute resolution" refers to non-judicial approaches for resolving disputes in public legal relations. This concept has gained interest in legal scholarship and legislative processes in recent years. Many countries have legitimized this term in their legislation, reflecting the recognition of the importance of alternative dispute resolution mechanisms. The adoption of this term is a result of the interplay and exchange of ideas between legal systems.

Within domestic legislation, the institution of conciliation procedures has been established as an alternative to the traditional judicial process for resolving disputes. Conciliation procedures aim to facilitate the resolution of conflicts through negotiations, mediation, or other collaborative methods, without the need for formal court proceedings. This alternative approach allows parties to actively participate in finding mutually agreeable solutions, promoting a less adversarial and more cooperative environment.

The introduction of conciliation procedures as an alternative to litigation offers several advantages. It provides parties with more control over the resolution process, encourages open communication, and promotes the preservation of relationships. Additionally, conciliation procedures are often more time-efficient and cost-effective compared to formal court proceedings. They can be particularly useful in public legal relations, where maintaining ongoing relationships, preserving public trust, and finding practical solutions are paramount.<sup>3</sup>

By recognizing alternative methods of dispute resolution, legislation acknowledges the importance of providing diverse and accessible avenues for resolving public legal disputes. It reflects a broader understanding that not all disputes require formal court intervention and that alternative approaches can offer efficient, effective, and tailored solutions. The establishment of conciliation procedures as an alternative mechanism emphasizes the value of collaboration, negotiation, and consensus-building in resolving public legal disputes.

Overall, the inclusion of alternative methods of dispute resolution in legislation demonstrates a progressive approach to addressing disputes in public legal relations. It signifies the recognition of the benefits these mechanisms can offer and their potential to enhance access to justice, promote efficiency, and foster constructive resolutions in the public sphere.

Legislative efforts should also consider the promotion and awareness of conciliation procedures as an alternative to traditional court litigation. This can involve educational initiatives, training programs, and the dissemination of information to relevant stakeholders, including administrative agencies, legal professionals, and the general public. By fostering a culture of alternative dispute resolution,

<sup>2</sup> Зеленцов А.Б. Административно-правовой спор: вопросы теории: Монография. Изд. 2-е, испр. и доп. - М.: РУДН, 2009. - 692 с.

<sup>3</sup> С. Пограничный. Медиация в административных спорах // интернет- ресурс <http://blog.liga.net/user/pogranichnyj/article/5461>

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legislation can encourage the utilization of conciliation procedures and contribute to their effectiveness in administrative matters.

In summary, the lack of adequate legal regulation for conciliation procedures in administrative disputes poses challenges to their implementation. Domestic legislation should address this gap by providing clear and comprehensive rules and guidelines, ensuring consistency, promoting awareness, and enhancing the effectiveness of conciliation procedures as a viable means of resolving administrative disputes.

The mediation procedure, in contrast to judicial proceedings, involves the resolution of a dispute by the parties themselves with the assistance of a trained mediator. The key distinction is that in mediation, the parties retain control over the process and actively participate in finding a mutually agreeable resolution. The mediator facilitates communication and negotiation between the parties, but does not impose a decision or judgment.<sup>4</sup>

During mediation, the parties have the freedom to shape the mediation procedures according to their specific needs and preferences. They have the opportunity to express their viewpoints, discuss their interests, and explore potential solutions. The mediator acts as a neutral and impartial facilitator, guiding the process and helping the parties to identify common ground and reach a mutually beneficial agreement.

Unlike traditional judicial proceedings, where a judge or arbitrator makes a binding decision, the outcome of mediation is determined by the parties themselves. The mediator assists the parties in generating creative options and finding common interests, but the final resolution is reached through the voluntary agreement of the parties. This aspect of self-determination is a fundamental principle of mediation.

By participating actively in the mediation process, the parties can often achieve outcomes that better address their underlying interests and priorities. Mediation can foster open communication, mutual understanding, and the preservation of relationships. It provides a flexible and collaborative environment where the parties can explore various solutions and potentially reach agreements that meet their unique needs.<sup>5</sup>

It is important to note that the mediator does not provide legal advice or advocate for either party. Their role is to facilitate productive dialogue, ensure fairness, and guide the parties toward reaching a resolution. The mediator's expertise lies in communication and negotiation techniques, as well as their understanding of the mediation process.

Overall, the essence of mediation lies in the active involvement of the parties in resolving their dispute with the assistance of a professional mediator. Through self-determination and control over the process, the parties have the opportunity to develop mutually beneficial conditions for reaching an agreement that best suits their interests and needs.

In the administrative process, the court deals with unequal parties, on the one hand, the citizen, on the other, those vested with the powers of the administrative body. Consequently, the most advantageous difference in the administrative process is the presence of the inquisitorial principle in action. The essence of this principle boils down to the fact that the court examines the circumstances of the case; it is not related to the arguments and statements of the party about the admissibility of evidence. Thus, the active role of the court compensates for the double side in administrative

<sup>4</sup> Шевчук П.П. Медиация в административных спорах. Актуальные проблемы гуманитарных и естественных наук. 2011;(4):242–246.

<sup>5</sup> Шевчук П.П. Медиация в административных спорах. Актуальные проблемы гуманитарных и естественных наук. 2011;(4):242–246.

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proceedings.<sup>6</sup>

Many scholars strongly advocate for out-of-court mediation as an effective method for resolving legal disputes. They highlight several advantages, such as alleviating the burden on courts, providing a sustainable solution, and offering cost-effectiveness. However, when it comes to resolving public law disputes, mediation possesses distinctive features that make it particularly advantageous in this context.

1. The development of a model of public administration based on cooperation emphasizes the importance of seeking reconciliation and promoting consensus in public law matters. This approach suggests that not all legal disputes should be automatically directed towards judicial decision-making, but rather, alternative methods such as reconciliation should be explored first. By doing so, the participation of society in the administrative procedure, as well as the rule-making process, becomes a crucial aspect of democracy and reflects the orientation of government bodies towards the common good.
2. In administrative law, in which most decisions deal with the balancing of interests required by law, solutions, of course, cannot always be found outside the law. Therefore, in such cases, the use of mediation in court, where the judge himself acts as a mediator, we believe, would be more appropriate. It should be taken into account that the judicial process itself is focused on the existing binding force of dispute resolution or a settlement agreement based on law.<sup>7</sup>

Indeed, alternative methods of dispute resolution offer a more flexible approach to reconciling interests compared to traditional judicial proceedings. By opting for alternative methods, the dispute becomes less adversarial in nature, the procedure becomes less formalized, and the overall costs are often reduced. Additionally, parties involved in the dispute are motivated to fulfill their obligations promptly.

While alternative methods of dispute resolution, such as mediation or negotiation, present several advantages in resolving administrative disputes, it is important to note that they should complement administrative justice. These methods should be employed in a way that upholds the principles of fairness, impartiality, equality, and the guarantee of the parties' rights.

The extrajudicial methods of resolving administrative and legal disputes, along with the procedures for their application and implementation in everyday practice, are indeed deserving of special attention from domestic administrative scientists.

Extrajudicial procedures, as well as alternative methods of resolving administrative disputes, are successfully used in many countries and receive the necessary legislative regulation.

Indeed, extrajudicial procedures and alternative methods of resolving administrative disputes are widely used in many countries around the world. Recognizing the benefits of these approaches, legislative frameworks have been established to provide the necessary regulation and support for their implementation.<sup>8</sup>

These legislative measures and regulatory frameworks demonstrate the recognition and acceptance of extrajudicial procedures and alternative methods for resolving administrative disputes. They provide a supportive environment for the use of these approaches, ensuring clarity, consistency, and enforceability in the resolution process.

<sup>6</sup> Омарова Б.А., Понятие и значение альтернативных форм досудебного урегулирования споров, вытекающих из административных правоотношений [https://online.zakon.kz/Document/?doc\\_id=39831690&pos=6;-106#pos=6;-106](https://online.zakon.kz/Document/?doc_id=39831690&pos=6;-106#pos=6;-106)

<sup>7</sup> Зеленцов А. Б., Ястребов О. А. Судебное административное право: учеб. для студентов вузов, обучающихся по специальности «Юриспруденция». М.: Статут, 2017. С. 22.

<sup>8</sup> Терновский В.А., Особенности внесудебного порядка разрешения административно-правового спора, Серия: Экономика и Право №8 август 2021 г

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It's important to note that the specific legislative landscape and regulatory framework for extrajudicial procedures may vary across jurisdictions. It is advisable to consult the applicable laws and regulations of the specific country or region of interest to gain a comprehensive understanding of the legislative support for these methods.

In conclusion, alternative methods of dispute resolution offer flexibility, informality, cost-effectiveness, and timeliness in resolving administrative disputes. However, these methods should be used in a manner that complements administrative justice, upholds the principles of fairness and equality, and guarantees the rights of the parties involved. The combination of alternative dispute resolution and administrative justice can provide a comprehensive and balanced approach to resolving administrative disputes.

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