



OPORTUNIDADES DE USAR MÉTODOS ALTERNATIVOS DE PROTEÇÃO DOS DIREITOS CIVIS PARA MELHORAR A EFICIÊNCIA DA RESOLUÇÃO DE DISPUTAS E O FUNCIONAMENTO DOS PROCESSOS JUDICIAIS

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RESUMO

Objetivo: O artigo tem como objetivo explorar as oportunidades de utilização de métodos alternativos de proteção dos direitos civis para melhorar a eficiência da resolução de disputas e o funcionamento dos processos judiciais. A pesquisa busca identificar como esses métodos podem complementar o sistema jurídico tradicional e oferecer formas mais eficazes de resolução de conflitos civis.

Métodos: Foram utilizados métodos qualitativos de coleta de informações, incluindo a análise de documentos legislativos e legais, artigos de periódicos indexados e resultados de pesquisas secundárias. O estudo também analisou dados obtidos de grupos focais dedicados ao uso de métodos alternativos de proteção dos direitos civis.

Resultados: Os resultados indicam que, embora o sistema de justiça atual ofereça uma proteção adequada dos direitos civis, a introdução de métodos alternativos, como a mediação e a arbitragem, pode melhorar significativamente a eficiência da resolução de disputas. No entanto, a falta de popularização e confiança nesses métodos entre a população ainda é um obstáculo importante.





Conclusões: O estudo conclui que os métodos alternativos de resolução de disputas têm o potencial de reduzir a carga dos tribunais e melhorar o acesso à justiça. A implementação eficaz desses mecanismos depende do aumento da conscientização e da confiança da sociedade em relação a esses métodos.

Palavras-chave: Eficácia e funcionamento da lei. Alternativa. Acesso. Justiça.

OPPORTUNITIES FOR USING ALTERNATIVE METHODS OF PROTECTING CIVIL RIGHTS TO IMPROVE THE EFFICIENCY OF DISPUTE RESOLUTION AND THE FUNCTIONING OF LEGAL PROCEEDINGS

ABSTRACT

Objective: The article aims to explore the opportunities for using alternative methods of protecting civil rights to improve the efficiency of dispute resolution and the functioning of legal proceedings. The research seeks to identify how these methods can complement the traditional legal system and provide more effective ways to resolve civil disputes.

Methods: Qualitative methods of information collection were used, including the analysis of legislative and legal documents, indexed journal articles, and results from secondary research. The study also analyzed data obtained from focus groups dedicated to the use of alternative methods of civil rights protection.

Results: The findings indicate that, although the current justice system provides adequate protection of civil rights, the introduction of alternative methods, such as mediation and arbitration, can significantly improve the efficiency of dispute resolution. However, the lack of popularization and trust in these methods among the population remains a major obstacle.

Conclusions: The study concludes that alternative dispute resolution methods have the potential to reduce the burden on courts and improve access to justice. The effective implementation of these mechanisms depends on increasing public awareness and trust in these methods.

Keywords: Effectiveness and functioning of the law. Alternative. Access. Justice.





1 INTRODUCTION

Legal regulation on the part of the state is its characteristic and reflects its ability to streamline existing relations at will (Kirillova et al., 2021). The system of legal norms acts as an instrument of state power.

The development of society is determined through legal regulators in governing interactions (Akhmet et al., 2023; Ydyrys et al., 2023). The high legal culture of the population indicates a paradigm shift: law is not a mechanism of coercion but only a social instrument that ensures a balance between public power and the individual, i.e., achieving functional subordination to the corresponding legal regime. In addition, a person who understands conscientiousness does not violate the established rules of conduct and does not abuse their powers. Such social relations in a specific territory can be designated as a state governed by the rule of law (Mayboroda et al., 2023). The legal development of society is the goal of the evolution of any state. Currently, legal regulators mean the existence of rules to prevent complete lawlessness since a full-fledged legal order has not been achieved yet (Zhatkanbayeva et al., 2017).

Based on historical premises, the purpose of the state can be defined as the creation of a functioning society within a legal field. The existing system of legal regulation is not perfect (Gurinovich & Petrykina, 2021; Polovchenko, 2022) but it corresponds to a specific government entity. The security of civil rights and their protection can be determined through the judiciary. Trust in the courts and their independence from other branches of government indicate the development of statehood (Afanasev, 2020). The foundation of any democratic state is the respect and guarantee of natural rights, as well as a strong, fair and independent justice system (Klyukovskaya et al., 2023).

One of the directions of legal progress is the creation of mechanisms that promote self-regulation in conflict resolution by public authorities, i.e., alternatives to the existing judicial forms of protection. The self-regulation of certain legal relations is a manifestation of a high level of legal culture and one's willingness to find solutions to controversial issues (Kenzhin et al., 2021).

There are various studies on conflicts in society and the term "dispute".

From the semantic viewpoint, the definitions of dispute and conflict are different. According to D.L. Davydenko (2009), a dispute is an external manifestation of a conflict, whose parties mutually express dissatisfaction and make demands.



In turn, a conflict acts as a destructive element for social relations or a sign of abnormal behavior (Sudorgina, 2019).

In our opinion, a dispute is an external manifestation of a conflict and can be resolved in the legal field. However, a conflict as an internal component remains unresolved after a dispute is resolved. In this regard, a dispute considered in the court does not result in mutual satisfaction among the parties since their conflict has not been resolved.

These legal opportunities to resolve a conflict without the participation of government structures are not being fully implemented. In the world practice, there are dozens of different procedures aimed at solving emerging situations. The most common procedures are as follows: negotiation, mediation, arbitration, mediation-arbitration, conciliation, mini-trial, neutral expert fact-finding, ombudsman, and private court system (Nosyreva, 1999; Rudakova, 2000). Some of them are normatively enshrined and used in Russia (Mukhachev et al., 2023).

Currently, there are all the necessary legal prerequisites for seeking an alternative means of dispute resolution. However, the tendency to resolve conflicts out of court has not become widespread yet. Thus, there is a need for a systematic analysis of legal norms regulating the procedures for resolving disputes without a trial and emphasizing the significance of these mechanisms to increase the level of understanding and trust in them on the part of the parties to the conflict.

A legal novelty is an attempt to analyze the development of the judiciary and out-of-court methods of resolving disputes. The identification of directions for the development of these forms of protection of civil rights and their possible impacts on each other is a necessary condition for establishing the development trajectory for each of them.

The research conducted will identify favorable conditions for creating a mechanism for respecting individual rights in the process of their protection, including when resorting to alternative resolution methods.

The study aims to determine the possibilities of using alternative methods of protecting civil rights to improve the efficiency of dispute resolution and the functioning of legal proceedings.

2 METHODS

We conducted a study based on qualitative methods of collecting information. The main method was document analysis. All the documents used can be divided into several groups.





The first group included legislative and legal acts. The second group consisted of articles from periodicals indexed by citation databases (Scopus, Web of Science, RSCI). The third group embraced the results of secondary research, i.e., focus group surveys dedicated to the use of alternative methods of protecting civil rights.

Sources were selected from specialized legal databases and basic citation websites such as scopus.com, webofscience.com, and eliberry.ru. At the first stage, we used keywords and checked whether the abstracts of the selected articles complied with the research topic. The articles selected at the second stage were used in collecting information.

3 RESULTS

A state governed by the rule-of-law state cannot be built without achieving the high legal consciousness of its citizens (Klyukovskaya et al., 2023). The ability to effectively resolve conflicts based on the need to respect the interests of all parties to the dispute is a manifestation of developing legal consciousness.

Resolving disputes out of court is a striking example of developed legal consciousness. However, the existing opinion that judicial protection is a perfect alternative leads to distrust of the latter. Cynicism in society leads to the denial of proper behavior and, as a result, non-compliance with legal rules. The belief that laws cannot be enforced is one of the conditions for the rejection of alternative dispute resolution mechanisms or their use for the abuse of rights.

In the theory of law, the formation of various legal systems is determined by the creation of a specific society and the corresponding state mechanism. However, differences in their structure do not affect the desire to optimize and improve the regulation of civil rights and their subsequent protection.

Individual rights are regarded as protected if there are two components:

1. Accessible and fair justice;
2. Out-of-court procedures for resolving disputes.

Each state creates conditions for the development of legal proceedings. The availability of such protection has been elevated to the rank of a principle for constructing the entire system of ensuring individual rights.

The judiciary is called upon to resolve controversial issues. Trust in the consideration of conflicts by the court did not develop immediately but this is the procedure preferred by the parties to the dispute (Togaibayeva et al., 2021).





The system of judicial proceedings is under development and the emergence of new procedures implies the need to choose the right one, which requires the knowledge of law (Afanasev, 2017). Accordingly, the number of issues requiring deep legal comprehension increases. The services of a qualified lawyer in most countries are quite expensive (Gordon, 2019). In some cases, such services are unavailable to most of the population (Perlman, 2019).

As a result, the judiciary in such legal systems acts as a mechanism accessible only to those who have an appropriate level of income. This approach deprives part of the population of this type of protection. The creation of such barriers ultimately leads to the need to find a solution to the current situation. Many scientific works explore the phenomenon of inaccessibility of the legal system in such states but there are no clear criteria for achieving the desired result (Caplan, 2019).

This is a consequence of a long-term transformation of the judicial system. The goal is to protect against unfounded appeals of citizens to the judiciary. Excessive efforts in this direction resulted in the violation of the equality of civil rights.

The professionalism of representatives guarantees the protection of persons whose rights have been violated. The mandatory participation of a representative with legal knowledge also affects the accessibility of judicial proceedings (Gordon, 2019).

Considering the low income of the population, legal services become a benefit that not everyone can afford (Herrera, 2019).

The monopoly of such participation is ensured by strict prohibitions on unauthorized legal practice, which leads to the search for options that partially do not comply with current standards and cause offenses (Rhode, 2016).

The introduction of such conditions results in the inaccessibility of judicial power for certain categories of citizens. However, this form of protection is preferred by most people wishing to protect their interests. The existing legal order indicates the importance of courts in legal systems. It is impossible to exclude judicial protection as a type of state provision and guarantee of human rights and civil freedoms.

The relationship between judicial procedures and alternative methods is universal. The population's faith in their capabilities will depend on their accurate distinction between themselves and judicial procedures. The mixing of such procedures complicates the process of determining the legal consequences of their application, which affects confidence in them and their popularization.

Overcoming these obstacles is being studied by many scholars from different countries



(Gavrilov et al., 2022; Iskakov et al., 2023; Svirin et al., 2021) but effective mechanisms have not been developed yet (Ryssaldiyeva et al., 2019). Indeed, universal ways to overcome obstacles cannot be created since they reflect the formation of the entire judicial system of the relevant state, as well as ongoing internal political processes (Baikhanov, 2022).

Extrajudicial forms of protection and their implementation identify the readiness of society for self-regulation and resolving controversial situations based on voluntariness and good faith (Bagratuni et al., 2023; Zhunussova, 2022). The right to justice will depend on the legal awareness of the participants in the relevant procedure.

In this connection, it seems promising to develop alternative mechanisms for resolving controversial situations which are simpler models for protecting violated interests than the judicial system.

4 DISCUSSION

The current state of legal proceedings can be characterized as a complex and ambiguous structure that is not always well-balanced. Thus, the judicial system has several issues (Adygezalova et al., 2022) that affect its effectiveness. Despite the existing differences, we consider it possible to identify general system-forming criteria for improving the legal protection of the population of any state.

On the one hand, scholars see an objective need to introduce reconciliation procedures into legal systems for the development of the judicial system. The implementation of legal systems is complicated by the high level of conflicts among persons disputing in the court. On the other hand, the reluctance to reach a compromise and recognize one's contribution to the current situation gives rise to lengthy litigation and increased hostility towards each other, which makes scholars seek alternative methods for resolving controversial issues. This contradiction is somehow conditioned by the lack of trust between opponents.

Going to the court involves a quick and timely resolution of a dispute based on existing legal requirements without considering the conflicts and interests of the parties. Having bad intentions, the parties to the conflict can initiate several lawsuits that last quite a long time. All this leads to difficulties since people find themselves in a stressful situation instead of resolving a legal dispute, which complicates the conduct of legal proceedings. The study results prove (Tumashbay et al., 2023) that mediation techniques help understand the cause of a conflict and satisfy the needs of each participant in the dispute.



A conflict as a component of many legal disputes is not resolved in court. It seems that it can only be resolved through alternative means. The role of alternatives in resolving controversial situations is actively being discussed (O'Neil, 2019).

The need to develop a system of alternative conflict resolution techniques has been studied and proven from both theoretical and practical perspectives (Hamulakova & Petrov Křiváčková, 2016). Many scientific works confirm the effectiveness of the mechanisms under consideration as social regulators that ensure a balance of interests (Alimova et al., 2023; Wang & Chen, 2020).

Many authors have established the relationship between the process of developing alternatives for resolving disputes and realizing access to justice (Ojelabi & Noone, 2020).

Scholars claim that increasing the number and diversity of relevant institutions and processes for resolving disputes has only a positive effect (Noone & Ojelabi, 2020). However, the legislative consolidation of these procedures cannot serve as the sole basis for their popularization. Some legal authors conducted surveys of various social groups. These showed that only 30% of respondents heard about alternative methods of resolving disputes but did not know their content. No more than 5% of the surveyed from certain social strata (for example, heads of enterprises) knew about its existence and some of its features. There were also respondents directly related to law enforcement in the field of labor legislation and having a degree in law sciences who did not know anything about alternative methods of resolving legal disputes with the help of an intermediary (mediation procedure) (Darovskikh, 2015). Studies keep claiming that the judicial process is less effective than alternative methods in resolving conflicts when considering a dispute (Shenoy, 1998).

Justice is an integral part of any society, and alternative means of dispute resolution should harmonize existing civil jurisdiction. Justice is often accused of injustice (Svirin et al., 2022), therefore the search for alternative methods of resolving disputes should consider a particular situation and the interests of the disputants, which contributes to the achievement of justice. The autonomy or self-determination of the participants is the main principle of this procedure.

It is worth mentioning the professionalism of people using alternative methods since the maximum positive effect of the procedure depends on them (Irvine, 2020; Ojelabi & Gutman, 2020; Quek Anderson, 2020). Improving the quality of such services should be associated with an increase in the number of intermediaries (Branting et al., 2023).





Maintaining a balance between the accessibility and minimum cost of any service while achieving the desired result is a complex process, which means there might be consequences for their inaccessibility for some people.

5 CONCLUSIONS

The justice system emerged quite a long time ago and has been developing in every state. Its existence is undeniable and irrefutable. The prevailing legal consciousness in society reflects the importance of government regulation and necessitates qualified intervention in conflicts. Without denying these facts, the existing system of protecting civil rights is as effective as possible in relation to the corresponding historical stage but is not ideal. In addition, it is based on the specific historical and cultural development of a particular society. Judicial protection should act as a guaranteed foundation ensuring respect for civil rights in the event of controversial situations.

The need to introduce alternative procedures is stipulated by an increase in the number of appeals to the courts. The demand for judicial procedures is high, and attempts to redistribute appeals across courts, other bodies, and alternative technologies under consideration have not brought any results.

The development of alternative judicial proceedings will help maintain law and order without existing punitive measures since an increase in the number of disputes resolved outside courts will be evidence of increased legal awareness and the desire to bear responsibility for the actions committed.

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