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Mediation as an alternative method of dispute resolution: International and national practices in legal regulation

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Abstract

The relevance of the subject under study is conditioned upon the fact that the strengthening of Ukraine's European integration requires the introduction of new, alternative methods of dispute resolution in national legislation and practice, among which mediation occupies a prominent place, the functioning of which has successfully proven itself in developed European countries. The purpose of this study was to figure out the current state of development of legal support for mediation in Ukraine, to outline prospects for improving legal regulation, considering International and European standards of mediation. The study used a system of general scientific methods of cognition (dialectical method, formal logical method, method of analysis and synthesis), as well as special legal methods (comparative legal method, formal legal method). The authors analysed the international and national practices of legal regulation of mediation in the system of alternative dispute resolution methods. Doctrinal and legislative approaches to the interpretation of the mediation were described, its main advantages in the system of alternative dispute resolution methods were found, types of mediation were outlined, and the content of the main international, European, and Ukrainian regulations governing relations in mediation were covered. It was found that mediation occupies a priority position in the international practices of conflict resolution, since it is much more effective than judicial and administrative forms of protection of rights and legitimate interests. It was proved that the attractiveness of mediation lies precisely in the simplicity and convenience of the procedure, a calm atmosphere of dialogue and the obligation to consider the opinions of all involved parties. It was found that this legal institution is based on voluntariness, confidentiality, impartiality, and neutrality, the possibility for participants to make their own decisions, and the presence of independent support of each participant from the mediator. It was noted that, despite the national legal framework for mediation developed in Ukraine, the outlined sphere of public relations requires improvement of the relevant legal mechanism and the institutional basis for its implementation. The results obtained can be used in further studies, as well as in the development of new and changing the existing regulations that determine the legal basis of mediation in the practice of implementing relevant legislation

Keywords: alternative forms of protection, non-jurisdictional forms of protection, mediative forms of protection, mediator, legal dispute, legal conflict

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Introduction

At the current stage of Ukraine's integration into the EU, mechanisms of alternative methods of dispute resolution as the most accessible, time-efficient, and effective procedures aimed at protecting the rights of individuals and legal entities are of particular relevance. At the same time, effective mechanisms for alternative dispute resolution are not widespread in Ukraine, which is due to both the lack of proper regulatory support and the unwillingness of the authorities to support such procedures.

The effectiveness of using alternative forms of protection of relevant rights is confirmed by the practices of several foreign countries, where up to 80% of cases in the field of civil, economic, and administrative relations are considered using such methods (Arseniuk, 2016). The practice of using alternative methods of conflict resolution as effective ways to resolve disputes is typical for many countries of the world. In fact, various types of alternative dispute resolution methods used to resolve conflicts have been developed in the United States, in the civil law systems of continental Europe and the Middle East (Işık, 2016).

Admittedly, previously the parties to dispute resolution preferred filing claims with the judicial authorities, i.e., conventional dispute resolution procedures. However, alternative forms of protection have become popular due to the slow progress of proceedings caused by such judicial problems as a large burden on the courts, increased legal costs, complexity and ambiguity in civil procedure, etc. Thus, alternative dispute resolution methods have become more popular and better and are effectively used in many countries around the world.

There are various types of alternative dispute resolution methods that are used to resolve conflicts between the parties. Methods of alternative forms of protection are implemented according to the specific features of the legislation of the country of application, sociological factors, customs, traditions (Işık, 2016). Therewith, alternative dispute resolution methods can be used either mandatorily or optionally. Some of these methods may be used by the courts, while the use of others is not related to judicial activity at all.

The most common alternative ways to resolve disputes are arbitration, mediation, jury trial, ombudsman, negotiation, reconciliation, etc. (Işık, 2016). Definitions of alternative forms of protection are not limited to the above methods. Furthermore, mixed methods are sometimes used by combining two or more of them, e.g., mediation-arbitration, etc. However, mediation occupies a special place among alternative dispute resolution methods.

In the scientific literature, the issue of alternative methods of dispute resolution and mediation is presented in the studies of scientists from both general theoretical and branch sciences. The problems of mediation as an alternative method of dispute resolution are investigated by S. Işık (2016), who emphasizes the fact that alternative methods of dispute resolution are effective in any conflict situations. According to Işık, the use of mediation in resolving a dispute between the parties always leads to effective communication between them and helps find common ground, the strengths and weaknesses of their relationship, as well as the possible consequences of failure to come to mutual agreement.

F.A.H. Al-Khafaji (2021) raises the issue of international interest in developing the institution of mediation as an alternative way to resolve international disputes. Mediation in an international context is considered as an alternative idea of coercion, force, and violence that occurs between conflicting countries. It is considered an alternative method even in relation to the judiciary, which is aimed at resolving international disputes between subjects of international law. A. Tvaronavičienė *et al.* (2022) thoroughly analyse the development features and problems of implementing the European mediation model in the Baltic States (Latvia, Lithuania, and Estonia). Scientists have identified two general issues: a low level of public awareness about mediation and a lack of relevant statistical data in a particular area.

Ukrainian legal science also pays attention to the investigation of the legal nature of mediation by representatives of various branches of law. Thus, S.T. Iosypenko (2019) carried out a systematic scientific analysis of the possibility of using mediation in the settlement of private legal disputes. The scientist determined the effectiveness of the legal regulation of this method of resolving private legal disputes and provided suggestions and recommendations for further improvement and proper use of mediation legislation. K.S. Tokarieva (2021) investigated the theoretical generalization and solution of the scientific issue, the content of which is to reveal the essence of administrative legal regulation of mediation, conducted a comprehensive theoretical legal characterization of its current state and development trends.

However, the beginning of the development of a new legislative framework in Ukraine, which governs the legal basis of mediation and meets generally recognized standards in alternative dispute resolution methods, determines the relevance of the subject under study.

The purpose of this study was to analyse international, European, and national regulations that define the legal framework of mediation, to investigate scientific approaches to the characterization of this sphere of public relations, as well as to outline the prospects for the development of legal support for mediation as an alternative way to resolve disputes in Ukraine.

Materials and Methods

When drafting this paper, several methods generally accepted by legal science were used. Among the general scientific methods, this study employed the dialectical

method, formal logical, method of analysis and synthesis, and among special legal methods – comparative legal and formal legal methods. Using the dialectical method, the trends in the development of mediation as an alternative method of dispute resolution and its impact on the political, economic, and social factors of society's development were investigated. The formal logical method contributed to the characterization of the terminology used in this study. The method of analysis was used to investigate the papers of scientists on the subject under study, as well as in the characterization of international, European, and national legislation on mediation. The synthesis method allowed determining the place of regulations governing mediation relations in the legislation of Ukraine. The comparative legal method is used in the analysis of national legislation, international legal acts, and EU legislation on the issues under study. The formal legal method contributed to the investigation of the content of legal norms of the relevant legislation and the definition of prospects for its development.

The main provisions and results of the present study were formulated based on the analysis of international, European, and Ukrainian legislation, as well as the legislation of foreign countries. Specifically, the following provisions were used in this study: recommendation Rec (2002) 10 of the Committee of Ministers to member States on mediation in civil matters (2002), Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters (1999), Recommendation No. R (98) 1 of the Committee of Ministers to member States on family mediation (1998), Recommendation No. R (2001) 9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties (2001), Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008), as well as Ukrainian regulations, namely the Law of Ukraine "On Mediation" (2021).

Results and Discussion

The emergence and development of mediation as an alternative method of dispute resolution in the world

Mediation is one of the widely recognized, accepted, and used methods of alternative dispute resolution. The word "mediation" comes from the Latin words "*mediare*" (intervene) and "*medius*" (middle).

Mediation is a social phenomenon that has a long history, has its roots in many cultures and has been known to various civilizations over long successive historical eras. Mediation, before it became a legal means of resolving disputes, was recognized as a social phenomenon. Even in ancient times, mediation was a part of public life and played a vital role in organizing social relations for thousands of years (Işık, 2016). Mediation was used as a means of resolving social conflicts.

Mediation is native to the United States. The first immigrants used public mediation to peacefully resolve their social disputes. It is also worth mentioning the significant role of American legal scholars in the development of mediation as an institution, who focused on the need to use mediation as an alternative to judicial proceedings. The United States also plays a leading role in developing legislation related to mediation. In 1898, the first Erdman Act was passed, which governed the use of mediation to resolve labour disputes in the field of railway transport (Al-Khafaji, 2021). Presently, the development of mediation in the United States is at a prominent level.

In the United States, the entire legal system focuses on ensuring that most disputes are resolved voluntarily before going to the judiciary. Often, the trial may be suspended to ensure that the parties can contact a mediator. Without mediators in the economic, political, and business spheres, no considerable negotiation process takes place in the United States; media outlets are published that cover aspects of mediation; appropriate dispute resolution mediators are created, and private and public mediators exist.

But the level and speed of mediation in the UK is lower than in the US, and the reason for this is due to the differences that exist between American and British society, since the British prefer to go to the judiciary (Al-Khafaji, 2021). Mediation is given less attention in the UK than in the US. Legislatively, mediation in the UK was first applied to family and labour relations in the mid-1970s, while the Civil Justice Reform Act of 1990 introduced judicial mediation (Al-Khafaji, 2021).

However, the issue of mediation as an alternative method of dispute resolution in the UK has become relevant due to the discrepancy between the court costs of considering cases in court and the result of such proceedings. Thus, according to a British organization that specializes in using mediation methods to resolve disputes, legal entities pay over 33 billion pounds a year to resolve conflicts in court (Conflict costs business..., 2006).

Mediation methods of resolving disputes in their modern sense began to develop in the 1960s. First of all, mediation became popular in the countries of the Anglo-Saxon legal system – USA, Great Britain, Australia, and later it began to be implemented in European countries (Fedchyshyn, 2018). In several countries, mediation has become part of the legal system and legal culture. These states have adopted regulations governing this dispute resolution mechanism. Presently, mediation in the world is a recognized and popular mechanism for ensuring the protection of rights.

Scientific approaches to the interpretation of mediation as a non-jurisdictional form of protection

Scientific sources present different opinions on the interpretation of the term "mediation". Thus, M. Kuzmina considers mediation as a certain procedure of a

voluntary and confidential nature, according to which the parties, using a neutral third party, find an agreement on their dispute (Fedchyshyn, 2018). According to A.A. Maksurov, mediation is the activity of a third party prescribed by legal regulations as an intermediary between the parties to a legal conflict, which does not have the authority to consider the dispute on its merits, but creates conditions for reconciliation of the parties to the conflict and resolution of the corresponding dispute between them (Fedchyshyn, 2018). O.V. Belinska (2011) defines mediation as a method of voluntary resolution of a dispute situation, where the mediator, during the established procedure, involves the parties to the conflict in direct negotiations to make a joint decision that would solve the existing problem. D.V. Fedchyshyn (2018) defines mediation as a negotiation process where the mediator is its organizer and accompanies negotiations in such a way that the parties to the conflict reach the most optimal agreement between them, which would satisfy both parties and as a result of which the dispute between the parties would be resolved.

The opinions of foreign scientists on this issue are also interesting. Thus, K.K. Kovach (2004) considers mediation as a process where a neutral third party creates a certain basis for facilitating the resolution of a conflict between the parties to a dispute. The task of the mediator is to create conditions for communication between the parties and help them resolve the main points of the conflict that are essential for resolving the dispute. Some authors (Riskin *et al.*, 2014) recognize that it is during the mediation process that the mediator helps the parties to the conflict to negotiate, thusly to ensure the resolution of the dispute and the execution of the relevant agreement. According to scientists, mediation has the following features: 1) the voluntary nature of the process, during which the mediator, who must be a disinterested person, helps the parties resolve their dispute; 2) various forms of mediation, which are represented by different models; 3) the parties to mediation have the opportunity to directly influence the procedure and result of mediation (Riskin *et al.*, 2014).

Thus, mediation is an alternative method of dispute resolution, which involves a third neutral party – a mediator, through which the parties to the conflict must come to the most favourable and satisfying interests of both parties of the agreement, as a result of which the contradictions between them would be resolved. The purpose of mediation is to help the parties voluntarily, independently, and promptly resolve the dispute among themselves. The mediator is obliged to unite the parties interested and facilitate them to reach a mutual agreement, resolve the dispute between them.

The advantages of mediation as an alternative method of dispute resolution are as follows: flexibility, speed, confidentiality, and maintaining friendly relations between the parties to the procedure (Al-Khafaji, 2021).

Mediation differs from other conflict resolution methods in that it does not involve time-consuming, complex formal procedures, but rather is an easy and flexible method aimed at achieving fair results for the parties to the conflict (Mistelis, 2003).

Mediation procedures are practical procedures that keep up with the times, an element of the speed era (Al-Khafaji, 2021). Speed is one of the advantages of mediation, as opposed to a legal dispute. Mediation ensures that the parties receive quick decisions. In some cases, procedures can even last from two to four hours, and rarely a longer time is needed. This process directly depends on the mediator's skills, their persuasiveness, scientific abilities, and experience in managing the mediation process.

The principles in the judicial system are the transparency of sessions and their public nature. Mediation, however, differs by secrecy and privacy. The secrecy that distinguishes mediation procedures encourages the parties to freely engage in dialogue, make statements and testimonials, and make concessions at the negotiation stage with complete freedom, without the permission of the court or any other party. Mediation is generally confidential and consensual (Nolan-Haley, 2004; Nolan-Haley, 2009). This is considered one of the main advantages of mediation in many countries.

Litigation usually involves escalating disputes between two conflicting parties and widening the gap between them throughout the process. Mediation is a way of combining differing opinions to reach a solution that resolves all conflicting differences between the parties (Pauliat, 2008). Mediation allows turning dead ends into proposals and solutions (Pauliat, 2008) without having a winning party and a losing party, since everyone in mediation wins because the solution satisfies both parties. This means that the two parties to the dispute will stay in their previous relationship without any tension between them.

Scientific literature also describes several types of mediation that take place in practice. These include transaction mediation, judicial mediation, private mediation, and international mediation.

Transaction mediation. In this type of mediation, a transaction is considered as an agreement between the parties to appoint a mediator who will be tasked with reconciling the parties in case of a conflict situation that may further arise (Al-Khafaji, 2021). This type of mediation can be represented by two types: 1) simple agreement mediation, according to which the parties to the dispute agree to resort to mediation on their own initiative or at the conclusion of a contract, or when a dispute arises between them (Rasnic, 2004); 2) mediation/arbitration agreement, which is based on the provision in the contract that in case of a dispute, it shall be referred to a mediator, and if its settlement is impossible through mediation, the mediator becomes an arbitrator (Al-Khafaji, 2021). This type of mediation is a

mixture of mediation and arbitration, where the parties try to resolve a dispute without appealing to a judicial body – if the first method fails, then using the second.

Judicial mediation. Judicial mediation was based on the idea of the American professor Frank Sander (multi-door courthouse), the essence of which was to change the approaches to the judicial process, namely, the use of mediation and other alternative procedures for which the judicial authorities are responsible (Shaw, 1998). This type of mediation is applied directly by the judge, who appoints a third party to help resolve the dispute. A judge may order judicial mediation if they find that it is indeed necessary in the interests of both parties.

In foreign countries, there are several approaches to the use of mediation during court proceedings. According to one of the approaches, the judge invites the parties to appeal to mediation services during the trial. However, this approach was not popular because lawyers or other representatives of the parties involved in the proceedings prevented it. Pilot projects of this nature took place in the Central Land Court of London in 1996-1998, the Court of Appeal of Great Britain, as well as in the courts of Australia, New Zealand, Canada, and various states of the USA. The attempt to introduce a different practice of using mediation, i.e., to introduce mandatory mediation, was also not supported. The case was not accepted for consideration by the judicial authorities until the parties used mediation procedures. In essence, this was another formal procedure to be applied to resolve the dispute (Fedchyshyn, 2018). However, the issue was not the mandatory or optional nature of mediation during court proceedings, but the effectiveness of its application by the judicial authorities.

Private mediation. This type of mediation is provided by a group of private organizations or private mediators in exchange for a certain fee for their services. Many developed countries use this type of mediation, such as the United States, Canada, and the United Kingdom.

International mediation. Mediation is international if all or most of its elements are in contact with more than one country or are distributed among several countries. International mediation is usually political or linked to an international contract for the movement of funds, goods, and services across state borders (Tarman, 2016). The Model Law of the UN Commission on International Trade Law (UNCITRAL) of 2002 lists the cases when mediation is international: if the main offices of the parties to the mediation agreement were located in different countries at the time of its conclusion; if the headquarters of the parties' companies are in different countries (Al-Khafaji, 2021).

Legal consolidation of the mediative form of protection in international and national legislation

Currently, the term "mediation" is widely used in both international and national legislation. The formal definition of the term "mediation" is given in the Model Law of the UN Commission on International Trade Law (UNCITRAL) on international commercial arbitration procedures (UNCITRAL Model Law..., 1985). The Model Law establishes mediation as a procedure by which, at the initiative of the parties, a mediator is involved in the process, whose purpose should be to reconcile the parties to a dispute that has arisen in a contractual or other relationship between the parties. However, the mediator is not entitled to influence the dispute settlement process itself by imposing ways to resolve the conflict.

At the EU level, the normative definition of "mediation" is enshrined in Recommendation Rec (2002)10 of the Committee of Ministers to member States on mediation in civil matters (2002), which is regulated as a procedure for resolving disputes, within which parties to a conflict, through professional mediators, negotiate problematic issues to reach a compromise. Some legal acts of the Council of Europe define the specific features of applying alternative methods of dispute resolution in certain branches of law. This group of acts includes: 1) Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters (1999); 2) Recommendation No. R (98) 1 of the Committee of Ministers to member States on family mediation (1998); 3) Recommendation Rec (2001) 9 of the Committee of Ministers to member States on alternatives to litigation between administrative authorities and private parties.

The term "mediation" is also legally defined in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008), according to Article 3 whereof mediation is considered as a procedure with an appropriate structure, through which the disputants attempt to independently and voluntarily reach an agreement to resolve the conflict with the support of a third neutral party – a mediator. Mediation can be carried out on the initiative of the parties to the dispute themselves, or at the suggestion of a judicial body, or according to the provisions of international legal acts.

In compliance with the requirements of this Directive, most European countries have adopted national regulations on mediation. In Germany, the Law "On Mediation" (Deutsches Mediationsgesetz, 2012) was adopted on July 26, 2012. The provisions of the Law define procedures for the peaceful settlement of disputes through detailed regulation of this process in the German Civil Procedural Code. Thus, according to the Civil Procedural Code of Germany, in the procedural documents that initiate judicial proceedings, the parties to the conflict must necessarily specify the mediation measures that they have taken and the result of considering the dispute through mediation. Based on the results of successful dispute resolution through mediation, an agreement is concluded between the parties, which is certified by an intermediary (lawyer or notary) and has the status of an enforcement document (Pashkova, 2020).

The Civil Procedural Code of Germany also establishes a list of categories of cases that must necessarily begin with the mediation procedure. These are disputes of a property nature, subject to district courts, and the price of which does not exceed 750 euros; land disputes between neighbouring landowners and land users; disputes in cases about the protection of honour and dignity (Fedchyshyn, 2018).

Presently, the idea of developing the institution of mediation in the Ukrainian legal system is supported by most lawyers. This absolutely corresponds to the chosen course of Ukraine towards harmonizing national legislation with the legislation of EU countries, where mediation is given considerable attention. Mediation is promoted as a promising and optimal dispute resolution tool for protecting rights because it is characterized by minimal losses for its parties.

Ukraine's attempts to implement the legal mechanisms of the internationally recognized mediation procedure, as well as to perform its obligations to implement international standards in this regard, found a place in the Decree of the President of Ukraine No. 361/2006 "On the Concept of Improving the Judicial System for Establishing a Fair Trial in Ukraine According to European Standards" (2006). This Decree focuses on the need to introduce alternative methods of dispute resolution into the Ukrainian legal system; popularization of such methods of conflict resolution in society; use of the right to appeal to the judicial authorities for protection of violated rights only in exceptional cases.

Until recently, the legislation of Ukraine did not contain a definition of the term "mediation". Although, several regulatory documents used the term "mediation". This is the Law of Ukraine "On Free Legal Aid" (2011), Art. 1, The Concept of the Development of Criminal Justice for Minors in Ukraine, approved by the Decree of the President of Ukraine No. 597/2011 dated May 24, 2011 (2011), item 3, and some others.

In 2016, the Order of the Ministry of Social Policy of Ukraine No. 892 dated August 17, 2016 approved the State Standard of Mediation Social Service, according to the provisions of which mediation is defined as "a method of resolving conflicts/disputes, through which the parties to the conflict/dispute within the regulated procedure involving a mediator, attempt to reach an agreement to resolve the conflict/dispute" (Order of the Ministry of Social Policy…, 2016). According to the Law of Ukraine "On Social Services" (2019), the procedure for providing a social service – mediation – was defined.

Since 2019, the pilot project "Rehabilitation program for minors suspected of committing a criminal offence" has been implemented in Ukraine, approved by the Order of the Ministry of Justice of Ukraine and the General Prosecutor's Office of Ukraine No. 172/5/10 dated January 21, 2019 (Order of the Ministry of Justice…, 2019). Since then, mediation has been actively used in solving criminal cases involving minors who have committed a criminal misdemeanour or a minor crime.

However, numerous attempts to regulate mediation in the special law were never successful, which meant a clear lack of legally defined principles concerning the legal status of the mediator, the rights and obligations of participants in the mediation procedure and other important parties to the procedure under consideration.

One of the first was the Draft Law of Ukraine "On Mediation" (Draft Law of Ukraine No. 7481…, 2010), according to which mediation was defined as "a pre-trial quick and effective method of resolving disputes through a mediator". However, due to the considerable number of shortcomings that this project contained, on the recommendation of the Verkhovna Rada of Ukraine Committee on Justice, it was withdrawn and removed from consideration in the Verkhovna Rada of Ukraine.

On December 17, 2015, a new Draft Law of Ukraine "On Mediation" (Draft Law of Ukraine No. 3665…, 2015) was submitted. According to the Explanatory Note, the submitted Draft Law is primarily aimed at implementing the provisions of Directive 2008/52/EC of the European Parliament and of the Council in the national legislation of Ukraine. However, the Verkhovna Rada of Ukraine also did not support this project.

Another Draft Law "On Mediation" was submitted for consideration on December 28, 2019 (Draft Law of Ukraine No. 2706…, 2019). It made provision for the establishment of legal grounds and procedures for the implementation of mediation in Ukraine. Specifically, it defined the areas of application of mediation – from proceedings concerning civil, land, family, labour relations to criminal ones; such principles of conducting this procedure as voluntariness, confidentiality, independence, and neutrality, impartiality of the mediator, as well as self-determination and equality of the parties to mediation; the status of the mediator, the procedure, and conditions for its preparation; the procedure for applying mediation before/during/after applying to the court. This Draft Law also proposed to outline the legal status of the mediator and the parties to mediation, the mechanism for conducting it, as well as the terms of the mediation agreement and the agreement on resolving the conflict (dispute) based on the results of this reconciliation procedure. However, this Draft Law was also turned down.

On August 7, 2020, Ukraine adopted the UN Convention on International Agreements on the Settlement of Disputes by Mediation. Pursuant to the provisions of the Convention, the procedure for developing an appropriate regulatory framework has been initiated, which resulted in the submission of the Draft Law "On Mediation" (Draft law of Ukraine No. 3504…, 2020) to the Verkhovna Rada of Ukraine, which was adopted on November 16, 2021 and entered into force on December 15, 2021.

The Law of Ukraine "On Mediation" (2021) consolidates the legal basis and mechanism for the implementation of mediation as an out-of-court method of conflict (dispute) resolution, the principles of mediation, the legal status of a mediator, the principles of their training and other issues regulated by this procedure. The said Law specifically prescribes that mediation is "an out-of-court, voluntary, confidential, structured mechanism in which the parties, through one or more mediators, try to prevent the occurrence or resolve a conflict (dispute) through negotiations". At the same time, a mediator is "a neutral, independent, impartial person who implements mediation and has special skills for this". According to the Law, mediation procedures extend to public relations in "cases arising in civil, family, labour, economic, administrative spheres, as well as in cases of administrative offences and criminal proceedings, for reconciliation of the victim with the suspect (accused)" (Article 3).

Notably, before the adoption of the special law, mediation was actively used primarily by public organizations, institutions, and services in the field of social protection and social security, i.e., it was distributed as a service in social work. While as part of judicial practice, it did not receive an institutional level. The judicial system and mediation in Ukraine followed parallel paths and therefore mediation was not integrated into the judicial system and did not strengthen it (Romanadze, 2022). In addition, the judicial system has not yet fully recognized the significance of this phenomenon, its role in establishing the rule of law and access to justice (Drozdov *et al.*, 2021).

However, Article 3 of the Law of Ukraine "On Mediation" (2021) stipulates that any person can apply to the mediation procedure both before their appeal to the judicial authorities to protect a violated or disputed right or interest, and during the trial, or even at the stage of execution of a court decision. This Law also amended the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, and the Code of Ukraine on Administrative Procedure (Law of Ukraine "On Mediation", 2021). Specifically, it stipulates that if during the preparatory court session, the parties agree to an out-of-court settlement of the dispute through mediation, the court must suspend the proceedings on the case. If an agreement is reached based on the results of the procedure, the court shall reimburse the plaintiff 60% of the court fee paid. These changes should undoubtedly have a positive impact on the judicial system. The main reason for the development of mediation in most countries of the world is the workload of the judicial system. Because even small disputes require a lot of time and resources to resolve them in court, not to mention more important cases that go to court.

Therewith, the Law of Ukraine "On Mediation" focuses only on general issues of mediation development in Ukraine, without providing specifics on the introduction of judicial mediation (Tsuvina & Vakhonieva, 2022). However, the development of this particular type of mediation is one of the strategic tasks of introducing alternative models of dispute resolution in Ukraine and reforming the judicial system. Furthermore, some other provisions of the Law on mediation are subject to improvement and adjustment to international standards. Specifically, the Law defines the categories of disputes where mediation cannot be applied, but among them only those that relate or may relate to the rights and legitimate interests of third parties who are not parties to this mediation are prescribed. The legislators did not consider the provisions of Article 1 of Directive 2008/52/EC (2008), according to which the Directive does not extend its effect to disputes in the tax, customs, and administrative spheres, or the responsibility of the state for actions or inaction in the exercise of state power.

However, the adoption of the Law of Ukraine "On Mediation" (2021) is really an expected moment in the development of Ukrainian society. The only thing that can be an obstacle to the widespread use of the mediation procedure is a lack of awareness of its capabilities, and public distrust in this procedure. Moreover, the main constraint on the development of mediation is the lack of a full-fledged regulatory framework in the subject under study.

Conclusions

According to the results of the present study, mediation is a socio-legal phenomenon, the emergence and development of which as a social institution has been determined by social needs and the ability to influence the development of a new culture of conflict-free relations in society, producing new norms and models of social behaviour, perfecting a system of ethical values and effective public cooperation. It was established that the legal content of mediation is manifested in its main purpose – regulation and ensuring law and order. The analysis of the relevant legislation helped establish that Ukraine has already created conditions for the establishment of mediation as a legal institution in compliance with the provisions of international acts governing the settlement of disputes based on the results of mediation. The introduction of the institution of mediation at the state level is conditioned upon Ukraine's attempt to harmonize its national legislation with EU legislation, where the development of mediation is at a prominent level. The introduction of legislative grounds for the establishment and development of mediation as an alternative dispute resolution in Ukraine is one of the priorities of national strategic documents in the field of justice and human rights, as well as international regulations and EU directives.

During the present study, it was found that the current Ukrainian legislation is more consistent with generally accepted international standards in the field of

mediation. Ukraine has adopted a special law, defined the legal mechanism for conducting mediation as an alternative procedure for dispute resolution, outlined the legal status of a mediator, and other issues related to this procedure. Furthermore, the analysis of Ukrainian regulations indicated two main models of mediation that are appropriate to use in Ukraine: out-of-court (private) and judicial mediation, the harmonious combination of which should demonstrate its effectiveness, which is confirmed by international practices. However, the development of a legislative framework on this issue is not enough, and it is necessary to introduce a corresponding legal mechanism for implementing mediation as an alternative method of dispute resolution. In this regard, further research will be aimed at perfecting the mechanism of legal regulation of mediation in terms of procedural aspects of mediation, as well as institutional support for the functioning of mediation forms of protection. The results of this study can be used in subsequent research of the issues raised, as well as in the law-making to develop new and amend the current regulations of Ukrainian legislation.

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Медіація як альтернативний спосіб вирішення спорів: міжнародний і національний досвід правового регулювання

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Анотація

Актуальність обраної теми дослідження зумовлено тим, що посилення євроінтеграції України вимагає впровадження в національному законодавстві й практиці нових, альтернативних способів вирішення спорів, серед яких важливе місце займає медіація, функціонування якої успішно зарекомендувало себе в розвинених європейських країнах. Метою роботи було з'ясувати сучасний стан розвитку правового забезпечення медіації в Україні, окреслити перспективи удосконалення правового регулювання з урахуванням міжнародних та європейських стандартів у сфері медіації. У дослідженні використано систему загальнонаукових методів пізнання (діалектичний метод, формально-логічний метод, метод аналізу та синтезу), а також спеціально-юридичних методів (порівняльно-правовий метод, формально-юридичний метод). У статті проаналізовано міжнародний і національний досвід правового регулювання медіації в системі альтернативних способів вирішення спорів. Охарактеризовано доктринальні й законодавчі підходи до тлумачення інституту медіації, визначено основні його переваги в системі альтернативних способів вирішення спорів, окреслено типи медіації, а також розкрито зміст основних міжнародних, європейських і національних нормативних актів, що регламентують відносини у сфері медіації. Визначено, що медіація посідає пріоритетні позиції в міжнародній практиці розв'язання конфліктів, оскільки значно ефективніша, ніж судові та адміністративні форми захисту прав і законних інтересів. Обґрунтовано, що привабливість медіації полягає саме в простоті та зручності процедури, спокійній атмосфері діалогу та обов'язковості урахування думок усіх залучених сторін. З'ясовано, що цей правовий інститут засновано на добровільності, конфіденційності, неупередженості та нейтральності, можливості для учасників самостійно ухвалювати рішення, наявності незалежної підтримки кожного з учасників з боку медіатора. Зауважено, що, незважаючи на розроблену в Україні національну правову базу щодо медіації, окреслена сфера суспільних відносин потребує вдосконалення відповідного правового механізму та інституційної основи його реалізації. Отримані результати можуть використовуватися у подальших наукових дослідженнях, а також у розробленні нових і зміні чинних нормативно-правових актів, які визначають правові засади медіації в практиці реалізації відповідного законодавства

Ключові слова: альтернативні форми захисту, неюрисдикційні форми захисту, медіативні форми захисту, медіатор, правовий спір, правовий конфлікт