

Genesis and legal regulation of Mediation institute in Ukraine

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Mediation Institute is a modern tool for resolving the parties' conflict, has both deep historical roots and novelty for contemporary Ukrainian society. Mediation Institute is used in many countries around the world, despite the different legal systems and legal traditions. In Ukraine, mediation procedure is not regulated at the legislative level, which greatly complicates its application in practice. Mediation institution, – as an independent way of resolving disputes, – is of interest among practicing and academic lawyers in Ukrainian society. The full implementation of Mediation institute in Ukraine will accelerate the implementation of the conflicts' consideration, reduce the burden on judicial and law-enforcement system, and will reduce the cost of state budget funds for their maintenance.

Keywords: alternative dispute resolution methods, mediation procedure, mediation model, reconciliation program, restorative justice.

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INTRODUCTION

Mediation in Ukraine is now spreading in various spheres of social relations. If only a few years ago, the existence of mediation as an alternative way of resolving conflicts was known only by those who were directly at the root of the formation and implementation of mediation practices in Ukraine, today the awareness of both professional psychological and legal community and public has increased.

One of the most important constitutional guarantees of ensuring and protecting the rights and freedoms of persons is the consolidation of the right to judicial protection. Article 55 of the Constitution of Ukraine stipulates that human rights and freedoms of citizens are protected by court (Constitution of Ukraine... 1996). At the same time, everyone has the right, by any means not prohibited by law, to protect their rights and freedoms from violations and unlawful encroachments. Introducing alternative dispute resolution methods along with the justice system is a more effective prerequisite for solving legal disputes.

The European Court of Human Rights in its decisions has repeatedly pointed to the imperfection of judicial protection in Ukraine, paying attention to such problems of Ukrainian judicial system as insufficient legal certainty, non-observance of reasonable time for cases' review, limitation of access to court, insufficient adherence to the principles of independence and impartiality of court etc. In addition, it should be noted that the current system of justice in Ukraine has some disadvantages: excessive workload of judges, length and complexity of trial, significant judicial costs, insufficient development of the mechanisms of competition and equality of parties in the process, transparency of judicial review, leading to cases of divulgence of confidential information, etc. (Analytical report 2018)

An integral part of the national mechanism for the protection of human rights and freedoms should be introduction and application of new alternative means of resolving legal disputes in Ukraine. World practice has traditionally referred mediation to alternative dispute resolution and is considered as a process in which the parties involve a third party or persons in order to assist them in the peaceful settlement of disputes arising out of related to contractual or other legal relationships (Collective Dispute... 2007). Unlike litigation that is clearly regulated and formalized, mediation provides an opportunity for a flexible approach to resolve a dispute, taking into account all aspects of the controversy.

Mediation Institute, as an alternative way of settling disputes, began to develop in the second half of the 20th century. First of all, in the countries of the Anglo-Saxon system of law – USA, Australia, Great Britain, later in other countries. The move to develop and implement alternative ways to resolve legal disputes began in the United States and Britain was associated with dissatisfaction with the work of the judicial system. "Long-running and high-priced", these two factors of national judicial systems' work caused the emergence and development of this phenomenon as an alternative solution to legal disputes. The very term "mediation" appears for the first time in 1947 in the title of the American Federal Center for Conflict Resolution between employers and trade unions, the Federal Mediation and Consultation Service (Federal Mediation... 2018). The basic scientific basis for the development of the concept of alternative dispute resolution was first voiced at the Paul J. Pound National conference in the USA in 1976 (Pound conference 1976). Frank Zander (1994), Professor, Harvard University, made a presentation on "Different Ways to Deal with Disputes" and proposed the original concept of "court with a lot of doors" the possibility of applying for mediation or arbitration in addition to traditional court hearing.

The point needs to be stressed: the mediation programs for the reconciliation of victims and offenders (restorative justice) should be singled out. For the first time such programs appeared in the late 70's of the 20th century in the USA and in the early 80's already in Europe. The first of the European countries, this program was initiated by the United Kingdom. Today, such reconciliation programs are legally established and successfully used in Austria, Germany, Norway, Poland, Finland, France and the Czech Republic. In other European countries - in Denmark, Spain, Italy, the Netherlands, Sweden - pilot projects were developed in this direction. The process of reconciliation consists in organizing a victim and offender meeting for cases transmitted from law enforcement and

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judicial authorities in the event that the perpetrator has recognized the fact that he committed a crime (Lightfoot et al. 2005). The process of reconciliation is an attempt to achieve voluntary agreement (reconciliation) between the victim and the offender in order to reimburse the material and moral damage done. In this way, criminals are given a chance to re-justice with concrete actions, and, if they are ready to do so, show repentance and ask for forgiveness.

Determination of mediation is given in Art. 1 of the Model Law of the United Nations Commission on International Commercial Law (UNCITRAL) in 2002 concerning international commercial conciliation procedures, according to which mediation is a procedure that may be called conciliatory or denoted by a term of similar content within which the parties are requested by a third person or person ("Mediator") to assist them in an attempt to reach a peaceful settlement of their dispute arising out of or in connection with contractual or other legal relationships (Model Law... 2002). An intermediary has no authority to instruct or agree upon the parties in the process of resolving a dispute.

It is possible to find different approaches to the definition of mediation but, referring to its normative consolidation, it should be noted that in Recommendation of the Committee of Ministers of the Council of Europe on mediation in civil matters of October 18, 2002, mediation is defined as the process of resolving a dispute in which the parties negotiate for controversial issues with the aim of reaching an agreement with one or more mediators (International standards...2010).

Mediation in the current sense has been consolidated in the Directive 2008/52/ EC of the European Parliament and of the European Council on certain aspects of mediation in civil and commercial relations, which entered into force in May, 2008. Article 3 of this Directive states that mediation is a procedure of the established form, regardless of name and direction in which two or more parties to dispute on a voluntary basis independently try to reach an agreement in resolving and resolving their dispute with the help of a mediator (Directive EC... 2008). This procedure may be initiated by the parties, on the recommendation or court order or in accordance with the laws of any state.

Today, the Mediation institution at the legislative level is established in many countries of the world, the relevant legal acts exist in the USA, Canada, Austria, Germany, the UK, the Netherlands, France, Poland, New Zealand, etc. (EU-EEA and Switzerland... 2019) In addition, in most countries, there are associations of mediators that have long been regulated by internal acts. The institution of mediation has found its consolidation in the post-Soviet countries' legislation. The Republic of Belarus, the Russian Federation, the Republic of Kazakhstan, and the Republic of Moldova already have a special law introducing Mediation institution and defining the legal framework for the provision of mediation services, and peaceful settlement of disputes through extrajudicial methods, ensuring relations' balance between the judicial system and the mediation institution. The lack of proper legal regulation of mediation in Ukraine raises a number of issues that the scientific elite is trying to answer. Some Ukrainian scholars, including V. Andrieienkova (Andrieienkova et al. 2018), L. Bartashchuk (2017), N. Krestovskaya, L. Romanadze and T. Barabash (Krestovskaya et al. 2017), T. Kyselova (2017), N. Mazaraki (2016), I. Tereshtenko and Gusev (2013) and others, devoted their scientific researches to various aspects of mediation and problems of the media method of dispute solving.

An analysis of mediation extension in developed nations allows us to conclude that there are two models of mediation: the Anglo-Saxon model, in which mediation does not find clear legislative regulation, and there are no uniform requirements for the training of mediators, and the Continental model in which mediation is a procedural institution enshrined in legislation, along with requirements for mediation training, accreditation and certification. Successful implementation of mediation in Ukrainian legal proceedings depends on whether scientists and legislators can solve a number of theoretical and practical problems.

METHODOLOGY

The research methodological basis is a system of general scientific and special scientific methods and approaches that provide objective analysis of the subject. It was based on previously

developed theoretical positions, which are refined or complemented by new arguments and arguments. The study and study of the concept, essence and content of mediation, restorative justice, conceptual foundations of the institution of mediation in the legislation of foreign countries, genesis of the mediation institute in the legislation of Ukraine. During the study of the mediation institute in Ukraine, ways of implementing of the mediation institution in the legislation of Ukraine were identified in order to improve it. Resolving legal disputes and conflicts with alternative forms can significantly reduce the social tensions of the parties to the conflict resolution process, significantly reduce the burden on the judiciary and other state bodies and promote harmonization of social relations on the basis of consensus. This will be a confirmation of the maturity of civil society, its high legal culture and the ability to self-organization and self-governance.

The purpose of the paper is to study the establishment of mediation institute in Ukraine, scientific and practical analysis of mediation conceptual provisions as an out-of-court dispute resolution procedure through the prism of world and European experience, formation of modern approaches to understanding and significance of alternative methods in resolving legal disputes in Ukrainian legal proceedings. Implementation of the positive experience of the European Union countries in reforming of justice and judiciary institutions. Development of measures for the real use and effectiveness of mediation in legal system of Ukraine and in proving the expediency of popularizing the mediation institute and substantiation of relevance of legal framework regulation for the mediators' activity in resolving disputes.

The practice of introducing mediation in Ukraine is based on foreign experience that enables it to be analyzed, studied and used in mediation skills, adapting them to the realities of our state and the conditions of Ukrainian legislation. The mediation concept definition is particularly relevant at the present stage and is an important task for both theory and practice. An analysis of foreign experience in the application of the mediation procedure suggests that borrowing from the full practice of normative consolidation and implementation of the mediation institute is unlikely to be useful, but many positive approaches deserve attention and partial integration into the national legal system.

RESULTS AND DISCUSSION

Mediation becomes an independent phenomenon of legal reality. The introduction of the mediation institution will bring the domestic legal proceedings closer to European standards. Legislative consolidation of the mediation institution will provide fast and cost-effective extra-judicial dispute resolution, as well as an opportunity to improve and simplify access to justice (Shmalenko 2019).

Analyzing the prospects for the establishment of mediation institute in Ukraine, one can conclude that there are two main directions of its development: 1) as an independent mechanism for conciliation existing along with traditional ways of protecting civil rights; 2) as a mechanism that ensures the implementation of the core competences of civil jurisdiction bodies.

Introduction of mediation procedures in the legal system of Ukraine is a matter of time. Despite the unsuccessful attempt to pass the Law of Ukraine "On Mediation", new attempts to resolve this promising and overwhelming activity are undeniable. A working group has been set up to work on a new bill on mediation (National Conference... 2019).

The law on mediation should solve many issues. Including:

- consolidation of mediator training standards;
- appearance of possibility of suspending trial, if parties decide to apply to a mediator;
- determination of mediator's status, his/her rights and duties;
- Determining the issue of mediator's registers and a person who can carry them out, etc.

The population readiness to apply this procedure is important, because if citizens are not ready for such a conciliation, this consolidation will not play a significant role in resolving disputes between the parties.

The introduction of alternative dispute resolution mechanisms is appropriate at the current stage of development of legal system. Mediation in the civil process will help to unload judicial

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system, as fewer cases will enter the court, which will increase the efficiency of judicial proceedings. That is why the adoption of normative legal act that ensures the proper settlement of the mediation procedure, binding nature of decisions taken as a result of it, is a prerequisite for the application of this alternative dispute resolution method.

An equally effective factor in the implementation of the mediation institute in Ukraine is that it will reduce the state budget expenditure, unload the state executive service, and promote the development and enhancement of citizens' legal culture, and will be an important step towards the formation of a significantly higher level of development of society.

By its nature, mediation is an alternative (out-of-court) method for resolving disputes and conflicts through which two or more parties to a dispute try within a structured process, independently, on voluntary basis to reach an agreement to resolve their dispute with the help of a mediator (intermediary) (Kurvuaz'e & Mirimanoff 2014). Mediation is conducted by mutual consent of the parties to the dispute on the basis of the principles of voluntary participation, equality, activity and self-determination of the parties of mediation, independence, neutrality and confidentiality of mediation information. Parties engage in mediation on the basis of mutual voluntary expression of will.

Specialists determine the significant benefits of mediation over other methods of resolving conflicts and disputes. First, it's time saving. Secondly, a significant reduction in the dispute settlement process cost (for example, in comparison with the trial). Thirdly, the full confidentiality of mediation process. Fourth, the possibility of maintaining relationships or restoring business relationships and relationships with partners and colleagues. Fifth, the opportunity to prevent such conflicts in the future. Sixth, the guarantee of the implementation of the decision in case of successful mediation (Draft Law... 2015c).

The active development of mediation in the world over the past decades is accompanied by its specialization. In addition to commercial (mediation in business), the following areas are most actively developed: labor mediation (corporate), family, school (teenage). Mediation is increasingly used to resolve a number of disputes not only in the private law sphere (commercial, family, labor, inheritance disputes, etc.), but even in the public legal field (restorative justice in criminal cases, administrative, information, financial disputes).

The European integration direction of Ukraine prompts the implementation of the "acquis communautaire" (a set of legislative acts, policy documents and practices of their application currently existing in the European Union) into the legal system of Ukraine.

Beginning in 1995, Ukraine is a full member of the Council of Europe. Such membership implies open and effective co-operation in achieving the common goal set out in section 1 of the Council of Europe Statute, and in the topics' context under consideration, provides for joint, effective legal action (Law of Ukraine...1995).

Recommendations and guidelines, using of mediation institute were set out in the following documents: Recommendation on family mediation Rec (98) 1 (1998); Recommendations on Mediation in Criminal Matters Rec (99) 19 (2017); Recommendations on Mediation in Civil Matters Rec (2002) 10 (2002); Recommendations on Alternative Dispute Resolution Between Administrative Authorities and Parties-Private Individuals (Administrative Cases) Rec (2001) 9 (2001).

In 2014, Ukraine signed the Association Agreement with the European Union (2014). The provisions of the agreement determine the harmonization of Ukrainian legislation with the European Union's legislation by actively reforming domestic legislation in the area of the judicial system. According to Article 1 of the Agreement, Ukraine and the EU should step up cooperation in the area of justice, freedom and security in order to ensure the rule of law and respect for human rights and fundamental freedoms. The countries of the European Union have agreed that ensuring the rule of law and better access to justice should include access to both pre-trial and extra-judicial methods of settling disputes.

An important element of the implementation of mediation in Ukraine is its consolidation at the legislative level. In Ukraine, there is no special regulatory act in which the concepts, the procedure for mediation, as well as the categories of controversial relationships in which it can be used are

defined.

The first riddle about mediation in the current legislation appeared in the Law of Ukraine "On Free Legal Aid" (2011), Art. 7 stipulates that one of the types of primary legal aid services in Ukraine is to assist in providing access to secondary legal aid and mediation.

In Ukraine, there has been an attempt to create a legislative base for mediation since 2010. Several draft laws on mediation were registered in the Verkhovna Rada of Ukraine, but none of them was adopted. In 2013 Draft Law No. 2425a-1 "On Mediation" was registered in the Verkhovna Rada, but in 2014 the bill was withdrawn (Draft Law... 2013).

Subsequently, two other bills on mediation (No. 3665 and No. 3665-1) were drafted, submitted by people's deputies of Ukraine for consideration by the Verkhovna Rada (Draft Law... 2015a; Draft Law... 2015b). Both bills have a small set of flaws. At present, work is underway to develop a new bill on mediation. Moreover, the newly elected President of Ukraine in his election program emphasized that a person should have the choice: to go to court or use an alternative way of dispute resolving and promised to propose to pass the law on mediation to the Verkhovna Rada.

Despite the lack of clear legislative consolidation of mediation procedure, the current Ukrainian legislation contains the rules that are the implementation basis for mediation procedure in practice, in particular, party's ability to reach a world-wide settlement of dispute at any stage of judicial process, Article 49 of Civil Procedural Code; content and requirements for settlement in civil proceedings are enshrined in Article 207 of Civil Procedural Code; institution of reconciliation in procedural law and settlement of dispute with the court participation – st.201-208 of Civil Procedural Code (2004); Article.212 of Commercial Code of Ukraine (2003) provides for the possibility of concluding an agreement between parties; Code of Administrative Justice of Ukraine (2005).

In addition to Art. 45, 46 and 66 of the Criminal Code of Ukraine (2001) it is determined the grounds for exemption from criminal liability in connection with effective repentance and reconciliation of a guilty with a victim, as well as mitigation of punishment. Articles 468-407 of Criminal Procedural Code of Ukraine (2012) provide for criminal proceedings on the basis of agreements.

The participation of lawyers in the process of mediation is explicitly mentioned in Article 21 of Lawyer's Ethics Rules (Rules of Law Ethics 2019), according to which lawyer's actions must be in line with the internationally recognized ethical principles of mediation, as well as the basic principles of advocacy ethics.

In Ukraine, the urgent need is the introduction of institution of mediation in civil and criminal cases. This need for unloading of the Ukrainian judicial system is due to the fact that too many cases that are being handled by judges do not allow the proper preparation and consideration of such cases. The recommendations of the European institutions unanimously call on States that are members of the Council of Europe not to increase but to reduce the judicial burden. Such provisions are contained, among others, in the recommendations of the Committee of Ministers of the Council of Europe: Rec (81) 7 on measures facilitating access to justice (International standards... 2010).

The first step towards convergence of domestic legislation with the European was the adoption of Decree of the President of Ukraine No 276/2015 dated May 20, 2015, on Strategy for the Reform of the Judiciary, Judiciary and Related Legal Institutions for 2015-2020 (Decree of the President... 2015). In accordance with its provisions, improving justice efficiency and optimizing the courts' authorities of different jurisdictions will be implemented, in particular, by expanding the ways of alternative (out-of-court) settlement of disputes, in particular through the practical implementation of the mediation and mediation institution. This is referred to in paragraph 5A of the aforementioned strategy, which provides for the expansion of alternative dispute resolution mechanisms for out-of-court settlements.

The program document "Integration of Mediation in the Judicial System of Ukraine" (Kyselova 2017), developed within the framework of the Council of Europe's "Support for the Implementation of Judicial Reform in Ukraine" (Support for the implementation...2017), defines the following types of judicial mediation: voluntary mediation involving a mediator and a dispute resolution procedure involving a judge.

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The first type of mediation involves judges training for facilitation mediation, which enables them to act as mediators, dividing judge's functions and mediator's ones. At this rate, a case must be transferred from one court to another, acting as a mediator and mediating in a special mediation room. The second type of conciliation procedures - with the participation of a judge, provides that it is held by a judge in whose proceedings is the case. Such a procedure was introduced within the framework of Ukrainian-Canadian judicial reform project, entitled "Conducting negotiations on pre-trial settlement of a dispute with the help of a judge" (Canadian-Ukrainian Project...2016). Law of Ukraine "On Amendments to Commercial Procedural Code of Ukraine, Civil Procedural Code of Ukraine, Code of Administrative Procedure of Ukraine and other legislative acts" (2017) provides for a new procedure "settlement of a dispute involving a judge", which is not in the classical sense of mediation, however, which is a progressive institution that gives the judge the right to participate actively in the reconciliation of the parties, the provision of proposals for the settlement of a dispute with his participation or with the participation of an independent professional mediator (Law of Ukraine... 2017).

Within the framework of the program "Transparency and Efficiency of the Judicial System" (EU-CoE Joint Programme ...2008), the Council of Europe concluded an agreement on the voluntary application of the mediation procedure of these courts with the Chairs of Kyiv Economic Court, Vinnitsa Appellate Administrative Court, Donetsk Appellate Administrative Court, and Bilotserkovskij Interregional Court (Bartashchuk 2017). In addition, a mediation cabinet operates in Odessa at Economic Court of the Odessa region, to which the parties are recommended to contact. At Kiev District Court in Odessa, the Public Center for Justice operates under the support of USAID. Within the framework of "Transparency and Efficiency of the Judicial System of Ukraine" project, free seminars are held for professional lawyers.

The introduction of mediation in Ukraine is included in the Plan of Action for the implementation of best practices of high-quality and effective regulation as reflected by the World Bank Group in the Doing Business rating methodology approved by the Cabinet of Ministers Decree of December 16, 2015. No. 1406 (as amended by Decree of the Cabinet of Ministers of Ukraine dated December 20, 2017 No. 939-p (2017)), which stipulates the introduction of mediation in Ukraine with the possibility of partial payment of court fees in the event of failure to reach a compromise before a court application to resolve the dispute, as well as expanding opportunities for alternative dispute resolution (Order of the Cabinet... 2015).

Thanks to the joint initiative of state and non-governmental organizations, Ministry of Social Policy of Ukraine has consolidated the content, scope, terms and procedure for provision of social mediation services. A conciliation specialist in social, labor and social sphere is included in the list of state codification of professions (Order of the Cabinet... 2015). Thus, mediation was defined as a social service, although the current Law "On Social Services" does not make reference about it right now. But even before the new Law of Ukraine "On Social Services" (2019), which will come into force in 2020, mediation is included as a basic social service. According to the standard, mediation is a conflict /dispute resolution method through which two or more parties to a conflict/dispute attempt within a structured process with the assistance of an intermediary/mediator to reach an agreement to resolve it. According to the authors' plan, a mediator helps the parties to establish communication, to explain each other their vision of a conflict/dispute, to identify the ways of its solution, to analyze and, if necessary, to correct possible solutions, agreements, and also to reach agreement on the conflict resolution/dispute and/or removal/reimbursement of the damage caused.

The social service in the area of mediation is not applied between a victim and a person who committed the offense or crime in cases of domestic violence, trafficking in persons, or cruelty to children.

The introduction of the mediation institute in the Ukrainian criminal procedure legislation is conditioned not only by Ukraine's commitments to bring national legislation into line with European Union law, but also law enforcement practice. This will be in line with the general position of Ukraine regarding the harmonization of national legislation and legislation of the European Union, since the issue of conciliation procedures is devoted to a number of recommendations and decisions of the

Council of Europe.

The introduction of the mediation institute in the criminal proceedings of Ukraine is conditioned by the international legal obligations and cooperation of Ukraine, as defined in the Council of Europe Recommendation No.R19 "On Mediation in Criminal Matters" (2017), Recommendation No. R (85) 11 of the Committee of Ministers to the States members of the Council of Europe "On Victim's Provision in Criminal Law and Criminal Procedure" (1985), Recommendation No. 6 R (87) 18 of the Committee of Ministers to member states of the Council of Europe "On Simplifying the Structure of Criminal Justice System" (1987).

Framework Decision of the European Union "On Victims' Statute in Criminal Proceedings" (2001); provisions of domestic strategic regulatory acts specified in Decree of the President of Ukraine "On the Concept of Judiciary for Establishment of Fair Trial in Ukraine in Accordance with European Standards" of May 10, 2006 (Decree of the President... 2006), Presidential Decree of 08.04.2008 "On the Process of Reforming the Criminal Justice System and Law Enforcement Bodies" provides for creation of alternative out-of-court methods for conciliation, and mediation is determined as a method conciliation (Decree of the President... 2008).

By the Decree of the President of Ukraine No.597/2011 "On the Concept of Development of Criminal Justice in Minors in Ukraine" (2011), a new institute for criminal law of Ukraine – the institute of restorative justice (concerning minors) – is being implemented and attention is drawn to the need to promote the recovery development of justice programs for minors, who committed the offense by introducing a mediation procedure as an effective means of voluntary reconciliation between victim and offender. Victims and Offenders Mediation Institute is a form of restorative justice that seeks to realize legitimate rights and interests, which is applied in parallel with traditional criminal proceedings, and makes searching for or during criminal proceedings a mutually acceptable solution between victim and offender with mediator's brocage.

Ukrainian Criminal Procedure Law has the potential for the development of reconciliatory forms of resolution of criminal-legal conflicts. However, this potential is being implemented in part. In 2019, the Ministry of Justice of Ukraine and the General Prosecutor's Office of Ukraine introduced a pilot project "Recovery Program for Minors who are Suspected of Crime Committing" (Order of the Ministry... 2019). Six pilot regions have been identified for implementation of the pilot project: Donetsk, Luhansk, Lviv, Mykolayiv, Odesa and Kharkiv. The project purpose is to bring juvenile out of criminal proceedings at an early stage, to take measures to re-socialize it and prevent re-offending. The pilot project is based on restorative approaches in criminal proceedings for small and medium-sized crimes committed by minors and includes a coordinated organization for effective communication between minors and victims of their crimes in order to provide compensation for the harm done, as early as possible removal of juvenile offenders from the criminal a process involving the obligatory use of agreed measures for their re-socialization and the prevention of repeated crimes.

The Recovery Program is implemented within the framework of a multilateral memorandum of understanding between the Ministry of Justice of Ukraine, the Legal Aid Coordination Center, the UN Children's Fund (UNICEF) Office in Ukraine and the USAID New Justice Program.

In addition to the public sector aimed at conciliation by legal means, non-governmental public organizations (Odessa, Lugansk, Donetsk, Crimea, Kyiv) have institutional approval, bringing together scientists and practitioners involved in innovative approaches to conflict resolution. The potential for the implementation of alternative conflict management systems and the emergence of mediation technology in the regions of Ukraine was laid through the fruitful cooperation of state-owned organizations of scientific and practical orientation and non-governmental sector in the form of joint projects.

The effectiveness of mediation in Ukraine is confirmed by numerous pilot projects conducted in Ukraine with the European Commission and the Council of Europe assistance, with the support of the Canadian National Judicial Institute and other institutions, which carried out a number of measures in the state on the implementation of mediation in Ukrainian judicial system, as well as through the involvement of mediators at the beginning of joint projects in various spheres of business life. Since 2015 with the support of international projects "Building mediation bureaus and training

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mediators" (Project Passport... 2017) and "Development of information formats for the dissemination of mediation" funded by the German Academic Exchange Service (Deutscher Akademischer Austauschdienst, DAAD), Mediation Bureau started operating in Ukraine in the cities of Vinnytsia, Kyiv and Odessa. With the support of the European Union Consultative Mission in Odessa, dialogues were held on the 2nd anniversary of the May 2, 2014 events and an equality march to ensure peaceful flow of these events (Meeting of dialogue... 2018).

School mediation has been used as a restorative practice for about 20 years by civic organizations' initiative in Ukraine. This practice is supported by "Institute for Peace and Understanding", one of which is the establishment of school mutual services' work, in which senior students help their peers to resolve conflicts peacefully and establish a safe atmosphere by training and using restorative practices, in particular mediation (School Services... 2019).

Even more powerful organization, which cares for school mediation, is "LaStrada – Ukraine". It was the representatives of this civic organization that developed a set of educational programs "Resolving conflicts by peaceful means. Basic Mediation Skills", which includes three programs: the program "Conflict Resolution Peaceful Way. Basic skills of mediation"; the elective program "I solve conflicts and build the world around myself"; The educational training programme "Basic skills of mediator/mediator of educational services mutual understanding". These programs are designed to work with applicants for general secondary education, vocational education, and extracurricular education aged of juvenile of 11-18 years old (Andrieienkova et al. 2018). The main goal of these educational programs – with the help of mediation techniques to develop children's ability to resolve conflicts peacefully.

There are a number of centers and mediation associations in Ukraine: National Association of Mediators of Ukraine, NGO "Mediator League of Ukraine", and Ukrainian Mediation Center, which provide dispute resolution services. It is opened the mediation centers in Kyiv, Lviv, Odessa, Kharkiv, training centers and laboratories at universities, schools, etc. Mediator tools are successfully used by lawyers, psychologists and managers, as well as consultants and other professionals.

CONCLUSIONS

Turning to international experience, it should be noted that there are several approaches to regulate mediation at the state level:

1. Mediation is regulated by a separate special law, for example, the law "On Mediation", as in Belarus or Kazakhstan, this version is also planned in Ukraine.
2. The mediation procedure is embedded in the state procedural laws and is used as an additional means of dispute resolution. For example, the Civil Procedure Code of Poland is supplemented by appropriate supplementary mediation regulations.
3. National legislation on mediation has not been adopted. However, mediation is widely used to resolve various disputes, as well as state courts.

A model for detailed mediation in Ukraine could be a model for detailed regulatory support that would help popularize this institution among the population. The state should have a strong interest in the development of the mediation institute in Ukraine in the context of a fundamentally new culture for disputes resolution and resolving legal conflicts. It is the state that should initiate the implementation of mediation. Legislation requires the adoption of legal act on regulation of mediation processes, oblige public authorities at all levels and local governments to implement mediation in dispute resolution process, and this requires motivation of state authorities to promote conciliation procedures.

In Ukraine, there is no special legislative regulation for the use of the mediation institution as an alternative way of resolving conflict situations, but our country is already taking the first steps towards the implementation and application of this method.

The problem with the introduction of the mediation institute in Ukraine is the lack of a thorough regulatory and regulatory framework for its regulation; consequently, the legal possibility of using it as an alternative method of resolving disputes is complicated. At present, work on regulating of mediation procedure continues at the legislative level.

RECOMMENDATIONS

Today, in Ukraine, the culture of mediation is emerging as a possible way of resolving the dispute. Some courts carry out pilot projects, the first experiments conducted with the involvement of scholars and experienced lawyers, lawyers. The issue of how the mediation institute can be directly consolidated in one or another Code of Practice is actively discussed.

Mediation requires a legal settlement, namely, a framework law that can effectively regulate mediation. The first step towards harmonization of national legislation is to amend the relevant laws, including procedural ones, by adding their articles, which will allow the increasingly frequent use of mediation procedures between the parties to the dispute. Such are the laws of Ukraine:

- Criminal Code of Ukraine - in relation to the definition of types of criminal offenses in which the use of mediation is possible;
- Criminal Procedural Code of Ukraine - in terms of determining the grounds and procedure for mediation in criminal proceedings;
- Code of Ukraine on Administrative Offenses - in relation to the definition of administrative offenses in which the application of mediation is possible;
- On prevention and counteraction to domestic violence - in terms of determining the grounds and procedure for the implementation of mediation;
- About the National Police - in order to secure the right of the National Police to carry out mediation procedure, etc.

The need for the implementation of the mediation institution in the national legislation of Ukraine is beyond doubt. Without a proper legislative framework, mediation, which has a broad base for addressing internal social conflicts in Ukraine, will remain "in the shadow" for a long time, providing an occasion for the development of corruption and other asocial manifestations.

Mediation is not well integrated into the Ukrainian legal culture due to the low awareness of the society about mediation and its benefits. Promotion of mediation in Ukraine should be multifaceted, starting with informing through mass media (Internet resources, television, radio, newspapers) to holding different levels of conference, round tables, lectures, workshops on mediation procedures with the involvement of representatives of the legal community and all interested parties.

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