MEDIATION IN THE PROFESSIONAL ACTIVITY OF A LAWYER: LEGAL NATURE, COMPETENCE AND FOREIGN EXPERIENCE

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The article examines the essence and significance of mediation as an alternative method of resolving disputes in the professional activities of a lawyer. The regulatory and legal foundations of mediation in Ukraine are analyzed, the main competencies of a lawyer-mediator and ethical standards of his behavior are determined. The role of mediation as a tool for increasing the efficiency of legal practice, reducing the conflict of social relations and ensuring access to justice is substantiated. The international experience of regulating mediation is summarized and directions for improving Ukrainian legislation in this area are proposed. The work uses the dialectical method of understanding legal processes, a comparative legal analysis of Ukrainian and European legislation in the field of mediation, a systematic approach to determining the structure of the competences of a lawyer-mediator, as well as sociological methods for assessing the readiness of the legal community to implement mediation practices. The article substantiates that mediation is not only a dispute resolution procedure, but also a professional competence of a lawyer, combining legal, communicative and ethical components. It was determined that the main principles of the activity of a lawyer-mediator are impartiality, voluntariness, confidentiality and integrity. International legal standards, in particular Directive 2008/52/EC and the European Code of Conduct for Mediators, as well as the experience of Germany, France and Poland in introducing mediation into the justice system, were analyzed.

The content of mediation as an element of the professional identity of a lawyer, combining legal knowledge with psychological and communication skills, was revealed. The need for institutionalization of mediator training within legal education and practice was substantiated. The results of the study can be used in the process of improving the professional training of lawyers, developing training courses on mediation, as well as in the formation of standards of ethical behavior of a lawyer-mediator. The proposed recommendations will contribute to increasing the effectiveness of law enforcement and developing a culture of peaceful dispute resolution in Ukraine.

Keywords: mediation, lawyer, legal activity, communication, conflict, ethical standards, alternative dispute resolution, justice.

Mediation is an important element of the Alternative Dispute Resolution (ADR) system, which allows avoiding lengthy litigation and contributes to the formation of a culture of peaceful conflict resolution. In the context of reforming the judicial system of Ukraine, the issue of integrating mediation practices into the professional activities of lawyers, advocates, notaries, lawyers of state authorities and businesses is relevant.

Scientists note that mediation is not only a process of communication between the parties to the conflict with the participation of a neutral mediator, but also an effective tool of legal practice, which requires new skills from the lawyer: emotional intelligence, communicative flexibility and ethical responsibility [1; 2].

Thus, Bozhenko N.V. within the framework of a monographic study provides arguments for the selection of mediation as a method of pre-trial resolution of administrative disputes,

as a procedure that should be carried out by an independent mediator - a mediator by means of negotiations and reaching a compromise [3, p. 18]. Moreover, the researcher proposed to provide for mandatory mediation in certain categories of administrative disputes, which include disputes regarding the admission of citizens to public service, its passage, dismissal from public service; labor disputes about reinstatement at work and collection of wages; about eviction; about recognition of the right of ownership of housing due to privatization; about the protection of consumer rights; about the protection of honor, dignity and business reputation; about the collection of taxes and fees; about the collection of debts for utility payments; about compensation for damages from a road accident; related to the upbringing of children" [3, p. 18].

Professor Melnychuk O.F. in her scientific article reveals the mediation of such foreign countries as Great Britain, Ireland, Germany, France, the Netherlands, Norway and other states. In addition, the ability to use mediation in administrative proceedings is substantiated, the effectiveness of which depends on the characteristics of each legal system, the organization of public administration and the existing practice of resolving public-law disputes [4, p. 77].

The study is based on the dialectical method of cognition of legal phenomena, comparative legal analysis of regulatory acts of Ukraine and the EU, as well as a sociological approach, which allows assessing the level of perception of mediation in the professional environment of lawyers.

The method of system analysis was applied to determine the structure of the competences of a lawyer-mediator and the generalization method was used to formulate conclusions and recommendations.

Mediation, according to the Law of Ukraine "On Mediation" dated 11/16/2021, is a voluntary, confidential process of resolving a dispute with the help of a mediator. For a lawyer, it is both a tool and an ethical practice that allows you to combine legal thinking with effective communication skills [5].

In the activities of lawyers, mediation can be used as a preliminary stage to judicial proceedings or as an alternative to judicial procedures, which is consistent with the principles of saving time, resources, and preserving business relations between the parties [6].

The mediator must have special communicative and psychological competencies, including: active listening, the ability to formulate neutral questions, understanding the emotions of the parties.

An important ethical aspect is impartiality, confidentiality and integrity, which form the basis of the Code of Ethics of the Mediator (European Code of Conduct for Mediators, 2004) [7].

For a lawyer who combines the functions of a lawyer and a mediator, the ethical dilemma lies in the balance between legal representation and neutral mediation. Therefore, the training of lawyers in the field of mediation should be aimed at developing soft skills and ethical self-control [8].

The professional activity of a lawyer in the context of the formation of the institution of mediation in Ukraine requires not only a high level of legal culture and knowledge, but also the development of a complex of interdisciplinary competencies that allow for effective mediation communication between the parties to the conflict.

According to international approaches (Directive 2008/52/EC, European Code of Conduct for Mediators, 2004), the competence of a mediator is defined as a combination of legal, communicative, psychological and ethical knowledge and skills necessary for a neutral, confidential and voluntary settlement of the dispute [5; 7].

The main competencies of a lawyer-mediator are: Legal competence - in-depth knowledge of the legislation, judicial practice and legal consequences of the agreements of the parties. A lawyer must be able to assess the legal nature of the conflict, but not impose a legal position on the parties, adhering to the principle of neutrality [3]. Communicative competence is the ability to conduct a dialogue, apply active listening techniques, open-ended questions, paraphrasing, and empathetic reflection of emotions. These skills contribute to creating an atmosphere of trust between the parties, which is a prerequisite for successful mediation [6]. Psychological competence is the

ability to recognize the psychological types of the parties to the dispute, work with emotions, prejudices, and conflict behavior patterns. Such competence is especially important in family, labor, and corporate conflicts, where emotional tension often exceeds the legal component [4]. Ethical competence is adherence to professional standards of behavior, in particular the principles of honesty, impartiality, responsibility, integrity, and confidentiality. It forms the moral foundation of the mediator's profession [1; 5]. Organizational competence is the ability to structure the mediation process, determine stages, agreements, regulate time frames, and document results. Emotional intelligence and self-reflection are the ability to control one's own emotions, manage tension in communication, and objectively perceive the situation. Self-reflection allows the mediator to be aware of the limits of his role and to avoid imposing personal beliefs on the parties [2].

Thus, the competences of a lawyer-mediator form a holistic system of professional qualities that integrate legal and socio-psychological training.

The ethics of a mediator are based on the principles enshrined in the European Code of Conduct for Mediators (2004) and national codes of ethics of professional communities. For a lawyer-mediator, they have a dual nature: on the one hand, as requirements of professional legal ethics, and on the other, as special norms of behavior of a neutral mediator.

The main ethical standards include: Impartiality and independence. A mediator cannot take the side of any party to the dispute or give preference to its arguments. For a lawyer, this means refusing the role of a party representative and adhering to the principle of equidistance [5].

Confidentiality. Information obtained during mediation is not subject to disclosure, even after the end of the process. This guarantees the trust of the parties and the protection of their interests, which is the basic ethical condition of any mediation [3].

Voluntary participation. The participation of the parties in the process is voluntary at all stages. The mediator has no right to force the parties to reach agreements or continue negotiations if they have expressed a desire to terminate the procedure [4].

Competence and professional development. The mediator is obliged to constantly maintain his level of knowledge and practical skills, undergo training and certification, which is a sign of the professional responsibility of a lawyer [6].

Transparency and avoidance of conflict of interest. The lawyer-mediator must disclose to the parties all circumstances that may affect his impartiality (previous relationships, financial interests, etc.).Respect for the dignity of the parties. The mediator is obliged to ensure compliance with ethical norms of communication, prevent discriminatory statements and maintain an atmosphere of mutual respect.

International and foreign experience in the development of mediation in the professional activities of a lawyer. The European Union was one of the first to develop the concept of alternative dispute resolution (ADR) as a component of justice. The key regulatory act is 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.

It defines the basic principles of mediation - voluntariness, confidentiality, impartiality and legal force of agreements reached in the mediation process [7].

According to this Directive, EU Member States must ensure the possibility of resorting to mediation at any stage of the legal process, as well as create mechanisms for the training and accreditation of mediators, a significant part of whom are lawyers.

Thus, mediation is considered not as an alternative to the court, but as a supplement to the justice system, contributing to the humanization of legal practice. In the Federal Republic of Germany, the development of mediation is regulated by the Act on the Promotion of Mediation and Other Procedures for the Settlement of Disputes Out of Court (Gesetz zur Förderung der Mediation, 2012).

The document defines the basic requirements for the professional activities of a mediator, certification procedures and training standards. A feature of the German model is the professional independence of the mediator: a lawyer acting as a mediator must refuse to rep-

resent any party in the same dispute, so as not to violate the principle of neutrality.

Lawyers who receive the qualification of a mediator undergo special training lasting at least 120 hours, which includes the psychology of communication, conflictology and legal aspects of mediation. The practice of judicial mediation (gerichtliche Mediation) is also widespread in Germany, when a judge can act as a mediator in the settlement of such disputes after the case is concluded [1].

French legislation recognizes mediation as an important part of the judicial system. The main provisions are contained in the French Code of Civil Procedure (Code de procédure civile, art. 1530-1546), which establishes the concepts of judicial and extrajudicial mediation.

Any specialist, including a lawyer who has undergone certified training, can be a mediator in France. The courts maintain lists of accredited mediators, to which lawyers can be included after confirming their competence.

The French model is characterized by a combination of state control and professional self-regulation, which ensures a high level of trust in mediation procedures. In the practice of lawyers, mediation is considered as a tool to support the client in finding a compromise, and not as a competition for the result [2; 5].

In the Republic of Poland, mediation is integrated into civil, commercial, labor and criminal proceedings. Its legal principles are defined in the Code of Civil Procedure (Kodeks postępowania cywilnego, Rozdział 1a) and the Act on Mediation in Criminal Proceedings (2003).

The Polish model assumes that the mediator can be a lawyer, a retired judge or a conflict specialist who has undergone professional training. Mediation centers are actively operating in courts, which are supported by bar associations and universities.

Polish experience shows that the effectiveness of mediation increases significantly when lawyers become its active promoters, that is, they explain the advantages of the procedure to clients, provide legal support for agreements and facilitate their implementation [4; 6].

In the UK, mediation is an integral part of the justice system - especially in family and commercial disputes. The Civil Procedure Rules (Part 31.3) provide for a mandatory offer to the parties to try mediation before filing a lawsuit in court.

Lawyer-mediators undergo training under the auspices of the Chartered Institute of Arbitrators or the Centre for Effective Dispute Resolution (CEDR), where much attention is paid to ethics and communication skills.

In the USA, the development of mediation is more practical in nature. Most states have state-run mediator certification programs, and courts have established Alternative Dispute Resolution (ADR) Offices. American lawyers view mediation as an integral part of their legal practice, especially in the areas of corporate, family, and employment law [7].

Thus, mediation is an integral part of modern legal practice, which combines legal competence with a culture of dialogue. It allows to reduce the burden on the courts, contributes to the restoration of social justice and strengthens trust in the legal system.

A lawyer-mediator acts not only as a lawyer, but also as a communicator and facilitator, capable of creating conditions for constructive conflict resolution. Further development of mediation in Ukraine requires legislative improvement, systematic training of personnel and active integration of mediation practices into legal education.

Comparative analysis shows that in most developed legal systems, mediation: is institutionally integrated into the justice system, has legislative support; is actively used by lawyers as a professional tool for preventing and resolving disputes; provides for mandatory professional training and ethical certification of mediators; is supported by state programs of popularization and training.

All successful models are united by a high level of trust in mediation and recognition of its role in strengthening the rule of law. It is important for Ukraine to take these trends into account when forming its own mediation system, in particular in the field of training lawyers, standardization of ethical codes and state support for professional associations of mediators.

Foreign experience shows that effective mediation is possible only under conditions of

interaction between the state, the legal community and the public. For Ukraine, a promising combination is the German model of professional certification, the French system of judicial integration of mediation and the British model of ethical self-regulation.

The implementation of these elements will make mediation not only an alternative to the court, but an integral part of the professional culture of a lawyer.

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МЕДІАЦІЯ У ПРОФЕСІЙНІЙ ДІЯЛЬНОСТІ ЮРИСТА: ПРАВОВА ПРИРОДА, КОМПЕТЕНЦІЯ ТА ЗАРУБІЖНИЙ ДОСВІД

У статті розглянуто сутність та значення медіації як альтернативного способу вирішення спорів у професійній діяльності юриста. Проаналізовано нормативно-правові засади медіації в Україні, визначено основні компетентності юриста-медіатора та етичні стандарти його поведінки. Обґрунтовано роль медіації як інструменту підвищення ефективності юридичної практики, зниження конфліктності суспільних відносин і забезпечення доступу до правосуддя. Узагальнено міжнародний досвід регулювання медіації та запропоновано напрями вдосконалення українського законодавства у цій сфері. У роботі використано діалектичний метод пізнання правових процесів, порівняльно-правовий аналіз українського та європейського законодавства у сфері медіації, системний підхід до визначення структури компетенцій юриста-медіатора, а також соціологічні методи для оцінки готовності правничої спільноти до впровадження медіаційних практик.

У статті обґрунтовано, що медіація є не лише процедурою вирішення спорів, а й професійною компетенцією юриста, що поєднує правову, комунікативну й етичну складові. Визначено, що головними принципами діяльності юриста-медіатора є неупередженість, добровільність, конфіденційність і доброчесність. Проаналізовано міжнародно-правові стандарти, зокрема Директиву 2008/52/ЄС та Європейський кодекс поведінки медіаторів, а також досвід Німеччини, Франції та Польщі у впровадженні медіації в систему правосуддя.

Розкрито зміст медіації як елемента професійної ідентичності юриста, що поєднує правові знання з психологічними й комунікативними навичками. Обґрунтовано потребу інституціоналізації підготовки медіаторів у межах юридичної освіти та практики.Результати дослідження можуть бути використані в процесі вдосконалення професійної підготовки юристів, розроблення навчальних курсів з медіації, а також у формуванні стандартів етичної поведінки юриста-медіатора. Запропоновані рекомендації сприятимуть підвищенню ефективності правозастосування та розвитку культури мирного врегулювання спорів в Україні.

***Ключові слова**: медіація, юрист, правова діяльність, комунікація, конфлікт, етичні стандарти, альтернативне вирішення спорів, правосуддя.*