

## MEDIATION IN CRIMINAL PROCESSES IN UKRAINE

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**Abstract:** The article examines the essence and significance of mediation in the criminal process of Ukraine. The peculiarities of using mediation to resolve conflicts between parties involved in a crime are analyzed. The role of the mediator in facilitating the achievement of a compromise and restoration of cooperation between the participants of the process is investigated. Special attention is paid to the advantages of mediation compared to traditional court procedures. The article examines the potential of mediation to reduce the burden on the judicial system and improve the satisfaction of the needs of the participants in the criminal process. It has been proven that in modern Ukrainian criminal justice, mediation is an essential element of alternative conflict resolution. The article considers the role of mediation in criminal cases and investigates its influence on improving the efficiency of justice. Mediation facilitates mutual understanding between parties, reducing court cases and restoring harmony in society. The positive aspects of the use of mediation in comparison with traditional court procedures are identified, such as efficiency, economy and preservation of relationships between participants in the criminal process.

**Keywords:** mediation; criminal process; alternative settlement; justice; effectiveness of justice.

### 1 Introduction

Like many other countries, Ukraine faces several challenges in the criminal law system that require systematic and practical solutions. One of the most urgent issues at the moment is ensuring the functional improvement and effectiveness of criminal justice and the satisfaction of all the participants' needs in the criminal process. In this context, the issue of using mediation in the criminal process has become the subject of particular research and discussion. At the same time, one of the main problems currently stems from the high workload of the judicial system and delays in the consideration of criminal cases, which often lead to overcrowding of court sessions and delays in resolving cases. Traditional methods of conflict resolution, such as court proceedings, can be time and resource-intensive.

On the other hand, a natural obstacle to the effectiveness of the criminal process is the feeling of dissatisfaction and alienation on the part of its participants. At the same time, participants often experience stress and tension during court procedures, which can affect the quality of their participation and perception of justice. Additionally, the objective problem is restoring harmony and mutual relations between the parties to the conflict. Traditional judicial procedures are often focused on punishing the guilty but do not always contribute to resolving disputes that form the basis of the process and the restoration of interaction between participants.

It should also be noted that an additional problem that needs attention is the lack of awareness among the public about the possibilities and benefits of mediation in criminal cases. Participants often lack adequate information about this alternative method of conflict resolution, leading to misconceptions about its effectiveness and procedures. Consequently, this can lead to mistrust of mediation and misuse of judicial resources. This necessitates carrying out informational campaigns to raise public awareness of the benefits and possibilities of mediation in criminal cases.

Therefore, mediation in Ukraine's criminal process can serve as an important mechanism for overcoming these problems.

However, to achieve this, it is necessary to carefully study its effectiveness, advantages, and disadvantages, as well as to establish the necessary legal framework and provide professional training for mediators.

### 2 Literature Review

In recent decades, the issue of using mediation in the criminal process has gained significant development and active discussion at the international and national levels. A wide range of research and publications is devoted to analyzing mediation's role, effectiveness, and benefits in criminal justice.

Thus, one of the significant studies on this topic is J. Blad's work, which examines various aspects of the introduction of mediation in the criminal process, in particular, the interaction of victims, the accused, and the public, as well as the effectiveness of this approach in the practical resolution of conflicts [1].

In addition, R. D. London's work made a significant contribution to the study of this issue. He compared the traditional criminal process with the concept of restorative justice and identified the potential advantages of using mediation in the rehabilitation of criminals and covering the damages from the crime [4].

It should be noted that the issues of mediation in the criminal process, its problems, and prospects of implementation in Ukraine are revealed in depth in Yu. V. Merkulova's study of implementation [7].

In addition, Yu. P. Krysiuk's research on this topic makes a significant contribution. It systematizes and analyzes the experience of developed democratic countries regarding the peculiarities of the practical use of mediation in criminal justice. Based on the conclusions drawn, the author also proposes practical principles for the application of mediation in the Ukrainian context [6].

It is also necessary to note the study of specific aspects of mediation in the system of processes related to economic security, which are considered in the studies of M. Dziamulych [2] and T. Shmatkovska [12].

In general, the existing developments in mediation in the criminal process confirm the importance and relevance. At the same time, various studies point to mediation's potential to ensure justice and restore harmony in society. Still, the key obstacles to its effective implementation need to be investigated.

### 3 Materials and Methods

Various methods of scientific analysis were used to study the problems of mediation in Ukraine's criminal process, which allowed to consider the essence, effectiveness, and prospects of implementing mediation in the context of criminal justice.

In particular, the abstract method was used to summarize and systematize information about mediation in the criminal process. This method helped determine the main principles, concepts, and theoretical foundations of mediation and establish their compliance with the requirements of Ukraine's criminal justice system.

The comparison method was used to analyze different models of mediation implementation in the criminal process, particularly in the context of other countries' experiences, which made it possible to identify the advantages and disadvantages of different approaches to mediation and determine the optimal strategies for implementing this tool in Ukraine.

The analysis and synthesis method were used to examine in detail various aspects of mediation in the context of criminal justice. With its help, the theoretical and practical aspects of

mediation were considered, key problems and prospects for their solution were identified, forming the basis for a proposal for improving the legislation and practice of mediation in Ukraine.

In addition, it is worth noting the importance of reviewing specialized scientific literature. This stage of research allowed for the examination of previous studies and publications on the issue, facilitating the identification of its most relevant aspects, the development of a conceptual approach to problem analysis, and forming the basis for determining the directions of further research.

In general, the utilization of various scientific research methods facilitated a comprehensive analysis of the challenges associated with applying mediation in Ukraine's criminal process. This analysis contributed to the formulation of well-founded conclusions and recommendations for further development.

#### 4 Results and Discussion

The modern world is characterized by processes of globalization, the interpenetration of cultures and economies, the growing influence of information technologies, and, consequently, a significant complication of social relations and the emergence of conflicts. To address and regulate these conflicts effectively, appropriate approaches and solutions are necessary. Restorative justice can be considered a relatively new phenomenon in the criminal process that aligns with contemporary realities, prompting a reevaluation of criminal justice through a fundamentally new paradigm.

As practice shows, mediation is the most common form of restorative justice in criminal proceedings. Mediation in criminal cases is a voluntary and confidential process aimed at resolving legal conflicts between victims and accused individuals (defendants), facilitated by a neutral mediator. It is a relatively independent and optional procedure within the criminal process, available at various stages before the case proceeds to court for sentencing. However, it cannot constitute a separate stage of the criminal process; rather, it is intended to supplement existing procedures.

As M. Kolesnikova notes, mediation is a voluntary process of reconciliation between parties, facilitated by a third party - a mediator, who assists in resolving the dispute. Importantly, the mediator is not responsible for the decisions reached by the parties; their role is solely to organize the process. This stands in contrast to a court setting, where a judge renders a decision. The primary objective of mediation is for all parties to achieve satisfaction with the outcome of reconciliation, ensuring that the resolution of the dispute reflects the desires of the participants [5].

Directive 2008/52/EC of the European Parliament and of the Council of Europe defines mediation as a structured process. Regardless of its name or reference, it involves two or more parties in a dispute attempting independently and voluntarily to reach an agreement with the support of a mediator [3].

As practice shows, no judicial system can adequately resolve all categories of criminal offenses, and Ukraine is no exception. The main driving force behind the development of alternative ways to resolve criminal disputes is the insufficient efficiency of the judicial system, particularly in the consideration of specific categories of cases. These inefficiencies may manifest in various forms, including court overload, prolonged proceedings, inadequate case handling, and other inherent shortcomings. Moreover, in the current stage of the criminal process development, the issue of differentiating criminal procedural forms is being considered through several lenses:

- specific method (global and local)
- method of legal technique
- particular form of specialization (functional and structural)
- principle, among others. [8].

The Institute of Mediation has been incorporated into Ukrainian legislation for several years. However, there remain unresolved issues of organizational and procedural nature regarding the application of mediation procedures within Ukraine's criminal procedural law. Drawing from the experiences of countries with longstanding mediation procedures is of great theoretical and practical significance for its effective implementation. It's important to note that not all provisions effectively applied in the practice of mediation institutions in developed countries can be directly adopted and implemented in Ukraine. The economic, political, and socio-cultural contexts of each state play crucial roles in this regard.

Mediation can be employed to resolve criminal-legal conflicts irrespective of the severity of the crime, although the legal consequences may vary depending on it. When discussing the theoretical and legal regulation of mediation processes in Ukraine, Professor Y. Prytyka's perspective is noteworthy. He proposes the primary condition for systematizing legislative norms regarding mediation regulation is the presence of distinct, institutionalized normative legal acts establishing mediation's legal existence and the extent of its normative and legal support through specialized legislation. Y. Prytyka suggests dividing the legal regulation of mediation in foreign legal systems into several categories: integrated legal support, where regulations occur at the level of unique integrated normative legal acts such as laws; differentiated regulatory and legal provision, where regulations are included in normative and legal acts, primarily procedural in nature; informal legal provision of mediation; and prohibitive legal systems, characterized by the absence of both legal norms regulating mediation and corresponding prohibitions [11].

Nevertheless, the primary barrier to effectively legalizing mediation in Ukraine is the lack of information surrounding this alternative dispute resolution method. Despite numerous publications, most sources provide general information without the necessary specifics. Therefore, the legal community requires a clearer understanding of mediation's essence, its procedures and tools, and, most importantly, its application methods as defined by Ukrainian law on mediation.

It is essential to determine how mediators can assist in resolving disputes. There are various approaches, perspectives, and proposals regarding mediation mechanisms. While mediators should operate within the limits of the Constitution and legislation, it becomes evident that much depends on the mediator when we examine the root causes of the conflict. Qualities such as understanding and respect must be inherent in the mediator. Mediation serves as a resource aimed at facilitating conflict resolution and uncovering answers to questions such as, 'Why did the conflict arise, and what are the interests of each party in a given case? Is a mutually agreeable solution possible?' It is crucial to emphasize that mediation is not the sole tool but an additional one utilized alongside primary legal processes, complementing various judicial means of influence. The tool we are implementing should be deployed in situations characterized by pressure and tension within the case, where mediation can serve as an appropriate means of conflict resolution for both parties [5].

Considering that mediation is a form of restorative justice, defining its principles becomes particularly important. These principles should be based on universally recognized legal values such as humanism, legality, dispositiveness, equality before the law, and respect for human dignity. Additionally, specific principles are crucial, including voluntariness, consensus, restoration of the victim's condition, full compensation for damages, and participation of community representatives.

It's essential to note that the 2019 Recommendation of the Committee of Ministers of the Council of Europe outlines the main principles of restorative justice. These include the active participation of interested parties (Article 13), correction of harm caused to individuals, relationships, and the public (Article 13), equal consideration of the needs and interests of all parties

(Article 14), emphasis on compensation for damages, reintegration, and fostering mutual understanding through dialogue (Article 14), voluntariness (Article 16), confidentiality (Article 17), and independence and impartiality (Article 20) [10].

It is necessary to remember that the final result of the mediation procedure is the conclusion of an agreement between the parties, which is subsequently approved by the court and subject to execution. Therefore, the conclusion of the agreement by the parties is evidence that the mediation process has taken place. Mediation aims to conclude and implement an agreement between the parties to resolve the conflict (dispute). Therefore, it is appropriate to fix the definition of the concept of mediation agreement at the legislative level in Ukraine. A mediation agreement is a written agreement reached by the parties due to a mediation procedure regarding a conflict (dispute) or separate disagreements regarding a conflict (dispute).

In our opinion, mediation offers several advantages compared to court proceedings: accessibility, as it provides a less formal and often less expensive alternative; decisions reached through mediation tend to satisfy both parties; there are guarantees of communication security, with each party having the option to withdraw from the process at any stage, confident that confidentiality will be maintained; mediation saves resources such as time, money, and energy; it upholds the principle of individual freedom, as decisions are made voluntarily rather than imposed; mediation can be adapted to unusual situations and allows for better planning; and finally, it provides an opportunity for personal growth for participants.

The main principle governing the mediation process is voluntariness. Confidentiality is also paramount, as everything that occurs during mediation remains between the parties and the mediator. The mediator cannot represent any party; instead, parties select a mediator from a list provided by the Center for Mediation, ensuring independence and neutrality. Additionally, the mediator refrains from making assumptions or judgments, adhering to the principle of impartiality. Furthermore, mediation is guided by principles such as the activity and self-determination of the parties, ensuring equality and fostering cooperation [5].

We should also note that according to Council of Europe Recommendation No. R(99)19 on organizing mediation in criminal cases, mediation should occur only when all parties voluntarily agree. The parties may also withdraw their consent at any stage of the mediation. Any discussions during the meeting are confidential and may not be used in the future except with the parties' permission. Mediation in criminal cases should be an affordable option and admissible at any stage of justice. It is independent and autonomous within criminal justice [9]. Thus, mediation, which concludes with the resolution of a criminal legal conflict, involves the agreement of reconciliation. This agreement is approved by a court decision and can serve as the basis for making procedural decisions and applying the consequences provided for by the substantive norms of the Criminal Code of Ukraine.

Therefore, the application of mediation in criminal proceedings in Ukraine, based on the Law of Ukraine "On Mediation," must clearly define its scope and indicate the category of criminal proceedings where mediation can be used. In light of the above provisions, it should be noted that the conclusion of an agreement concerning criminal misdemeanors, low or medium gravity crimes, and criminal proceedings conducted under private prosecution between the victim and the suspect or accused is voluntary. Hence, no one can force the victim to agree to reconciliation. Furthermore, one of the primary duties of the court, tasked with approving reconciliation agreements, is to verify whether there are reasonable grounds to suspect that the agreement was not voluntary or if the parties still need reconciliation. If the involuntary nature of the agreement is established, the court refuses to approve it.

In general, mediation is not intended to replace the court; it

operates alongside the court system, providing assistance where needed. Especially in the modern conditions prevailing in Ukraine, mediation can play a vital role in improving the judicial system and, ultimately, in realizing the human right to access the courts. Mediation is not an alternative to the court; rather, it helps resolve simple disputes, thereby alleviating the burden on the court system. It involves creating conditions for the parties to reach a mutually satisfactory solution. Mediation will only become popular and valuable when conducted by professionals with thorough training.

## 5 Conclusion

Thus, we conclude that the institution of reconciliation in Ukraine needs to become more popular, akin to leading countries worldwide. As Ukraine is a young nation where the concept of mediation is gradually emerging, it would be beneficial to draw from foreign experiences and further refine its legislation based on the existing law on mediation. The judicial practices of foreign countries demonstrate that most conflict situations are resolved voluntarily before reaching the courtroom, leading to significant savings in time and financial resources. Additionally, mediation offers numerous advantages, including accessibility compared to court proceedings, satisfaction for all parties involved, resource savings, and respect for individual freedom, as decision is made voluntarily rather than imposed by external entities, etc.

In general, mediation can facilitate conflict resolution by fostering mutual understanding among the parties involved and contribute to restoring societal relations. It is crucial to highlight the potential benefits of integrating mediation into Ukraine's criminal justice system, emphasizing the necessity for developing an appropriate legal framework and providing professional training for mediators. Moreover, it is worth noting that mediation has the potential to alleviate the burden on the judicial system and enhance the satisfaction of participants' needs within the criminal process. Thus, the integration of mediation into the criminal justice system has the potential to enhance the quality of justice and foster a fairer judicial process in Ukraine.

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