



## MEDIATION IN CONFLICT MANAGEMENT: GENERAL APPROACHES AND PRACTICES IN UKRAINE AND EU

*Andreieva Kateryna<sup>1</sup>, Parkhomenko Olena<sup>2</sup>*

<sup>1</sup>V.N. Karazin Kharkiv National University, Kharkiv, Ukraine, member of Erasmus + project MEDI-ATS,  
andreeva@karazin.ua, ORCID: 0000-0001-9198-1315

<sup>2</sup>V.N. Karazin Kharkiv National University, Kharkiv, Ukraine, member of Erasmus + project MEDI-ATS,  
elena.parkhomenko@karazin.ua, ORCID: 0000-0002-6492-68369

**Abstract.** *In the context of global changes and the intensification of conflict situations in society, the problem of their effective resolution becomes especially relevant. The experience of leading countries confirms the high effectiveness of mediation in this area. The purpose of this paper is to study the general approaches in mediation, its role in conflict management based on the analysis of best EU practices. Using a set of general scientific cognition methods (analysis, synthesis, comparison, etc.), the main approaches to defining the concept and components of the mediation process in Ukraine and European countries are analyzed. The key principles and stages of the mediation procedure are summarized too. Quantitative and qualitative indicators of mediation implementation for a number of countries have been identified on the basis of comparative analysis. The peculiarities of the spread of mediation in Ukraine are considered, the main obstacles to the active spread of alternative conflict resolution in the state are identified. With the method of generalization, the results of the implementation of a number of projects in the field of law and mediation in Ukraine are presented, which made it possible to determine the further trajectory of dissemination of mediation practices in the Ukrainian reality. As a result of the study, the proposals to increase public awareness and trust in the mediation procedure are provided too. The results of the study may have the practical interest to scientists in the field of mediation, conflict, law and management, as well as to NGOs, universities and other stakeholders.*

**Keywords:** *mediation, dispute, conflict, dispute resolution, alternative dispute resolution, conflict management.*

**JEL Classification:** *J29, J39, J59, K49*

**Formulas:** *Fig.: 1; tabl.: 1; bibl.: 16.*

### Introduction

In the conditions of transformation of all spheres of life, people's ability to effectively communicate and resolve conflicts becomes important. The consequences of conflicts are always different and quite contradictory. They, on the one hand, destroy social structures and create a lot of problems and not rational expenses, and on the other - conflicts have creative, integrative character. The second means that the resolution of the conflict triggers a mechanism that is the impetus for solving many problems and ultimately for achieving social justice.

Only such society can consider itself democratic, when it sees in each person a unique personality, seeks to harmonize social relations. Such an emphasis is made in Ukrainian legislation, in particular, the Constitution of Ukraine enshrines the provision that human, its rights and freedoms are recognized as the highest social value [3]. At the same time, the realities of modern life show that Ukrainian society is full of various, large-scale conflicts at different levels, which necessitates the search for effective ways to resolve and prevent them, to avoid sharp confrontation between the parties.

Congestion of courts, duration and high

cost, inflexibility and over-regulation of the judicial method of resolving conflicts in the field of civil, family, labour and other areas of law necessitates looking for alternative approaches to dispute resolution (ADR). Particular importance has the possibility of using mediation procedures - an informal and flexible dispute resolution process.

In Ukraine, the use of mediation as a tool for conflict resolution has not yet become widespread among the country's population due to a number of certain obstacles and lack of awareness. That is why it will be expedient to pay additional attention to the study of the essence and role of mediation in conflict management, as well as to consider the prospects of using the best European mediation practices in Ukraine.

### Literature Review

Many works of modern scientists and practitioners in the field of mediation, conflict management, jurisprudence, organization management, etc. are devoted to the study of alternative conflict resolution methods. It is proved that the implementation of mediation takes the interaction between the parties of the conflict to a new level and can significantly reduce the cost of resources to resolve them.

Scientists Julian Bergmann, Toni Hastrup,



Arne Niemann and Richard Whitman (2018) "Introduction: The EU as International Mediator – Theoretical and Empirical Perspectives" represent key achievements of European Union mediation practice and identify different conceptual and empirical perspectives from which it can be analyzed, including conceptual clarification of EU mediation practice and institutional architecture for EU mediation activities. Their research devoted to examining the drivers of EU mediation, EU mediation roles and strategies, and EU mediation effectiveness [1]. Researcher Natalie C. Brandenburg (2017) "EU Mediation as an Assemblage of Practices: Introducing a New Approach to the Study of EU Conflict Resolution" introduces a new approach to the study of EU mediation and conflict resolution. The study advocates a practice turn and develops a framework for studying EU mediation as an assemblage of practices [2]. Yu.V. Prykhodko (2018) "Mediation as an alternative method of resolution of conflicts and its perspectives in Ukraine" paid additional attention on the issue of mediation, its role in resolving disputes, principles and stage, and also whether it needs to be consolidated at the legislative level [15]. Researcher and mediator Nataliia Mazaraki (2016) "Mediation in Ukraine: problems of theory and practice" investigates Ukrainian and international experience of mediation. She believes that the introduction of alternative ways of dispute resolution along with the justice system is the most effective pre-requisite for resolving legal conflicts and disputes [7]. T.O. Podovenko (2016) "Mediation Institute: international experience and Ukrainian prospects" describes the legal nature and main point of mediation as an institute of alternative resolution of the private-legal disputes based on the worldwide experience of developed countries [13].

Despite the research available in the field mediation and conflict resolution, it remains a problem to adapt of the experience of leading countries for implementation in Ukraine. The direction of the increasing public awareness of the mediation procedure and the implementation of the necessary legislative changes in the field of conflict resolution also needs further consideration.

### **Aims**

The purpose of this study is to consider and analyze the mediation procedure as one of the alternative ways to resolve conflicts and identify areas for implementation of the experience of Eu-

ropean countries in Ukrainian practice of conflict management.

### **Methods**

To study the quantitative and qualitative indicators of mediation development in some European countries, we used the data provided in the report of the Chairman of the European Center for Dispute Resolution for 2018. The following methods were used: a comparative analysis method to compare dissemination of mediation in different countries and evaluation of its success; general scientific methods of comparison, analysis and synthesis of information to determine the features of mediation in Ukraine and EU countries; abstract logical method - for analytical generalization and formulation of conclusions.

### **Results**

The crisis of the stereotyped understanding of the essence of the conflicts, their role and ways of resolving them has affected the public consciousness. In recent years, the intensification of conflicts between different social groups and the crisis in the economy have led to a significant overload of the judicial system (particularly in Ukraine), the dissatisfaction of the parties with the cost, complexity and timing of the dispute resolution process. That is, the need for a new, more effective tool for resolving the conflict was gradually formed.

In European practice, the tools of mediation have been used for this purpose for many years as a method ADR. Mediation is a type of alternative dispute resolution, a method of resolving disputes with the involvement of a mediator, which helps the parties of the conflict to resolve the situation. So that they can choose the solution that would meet the interests and needs of all parties to the conflict.

The term "mediation" comes from the Latin "mediatio". Analysis of the legal literature suggests that there is no single approach to the definition of mediation. Regarding the legislative definition of mediation, the draft law of Ukraine "On Mediation" (adopted in the first reading by the Verkhovna Rada of Ukraine on 15.07.2020) proposes to define mediation as a voluntary, extrajudicial, confidential, structured procedure, during which the parties with the help of a mediator (mediators) try to resolve the conflict (dispute) through negotiations [6]. The legal definition of this term is given in the UNCITRAL Model Law on International



Commercial Conciliation with Guidelines for Its Implementation and Application [11], according to which mediation is a process where the parties involve a third party or persons to assist in peaceful settlement disputes arising in connection with a contract or other legal relationship, or related to them [5].

It is believed that mediation can resolve any conflict in which the parties really want to resolve the issue because mediation poses minimal risk. At worst, it's just a waste of time. If no agreement is reached in the mediation process, the parties may apply or return to court or other proceedings.

In most countries of the world, mediation is a recognized and widely used method of resolving conflicts between people. In the United States, only 5% of cases filed in court are not sent for a peaceful settlement [13]. Logically, that an agreement reached in the process of resolving the conflict, and not a solution - in accordance with the will of, for example, an arbitrator or a judge, is accepted and recognized by the parties. It is difficult to disagree and disrespect the decision in which they personally took an active part, it is much easier not to recognize and appeal the judge's decision. Indeed, as defined by Martin Wright, the Council of Europe's expert on mediation and restorative justice, mediation is a human process, not a judicial one, which modernizes the criminal process and creates respect for justice [14].

In order to properly understand the process of mediation, it is necessary to focus on its principles, which are based on this whole method, and which reveal all the benefits of mediation:

1. **Voluntariness or Willingness.** All parties of the conflict voluntarily choose the decision to participate in the negotiations and realize that a compromise can only be reached through cooperation. It also makes it possible to stop the settlement process at any stage, which does not entail negative consequences. This is the first advantage of mediation over a court decision.

2. **Confidentiality.** The clearness of the mediation procedure is ensured by the obligation of the mediator and the parties not to disclose to third parties information that became known in the conciliation process. A mediator may not disclose the course and results of mediation if there is a direct prohibition of the parties or it is against the law.

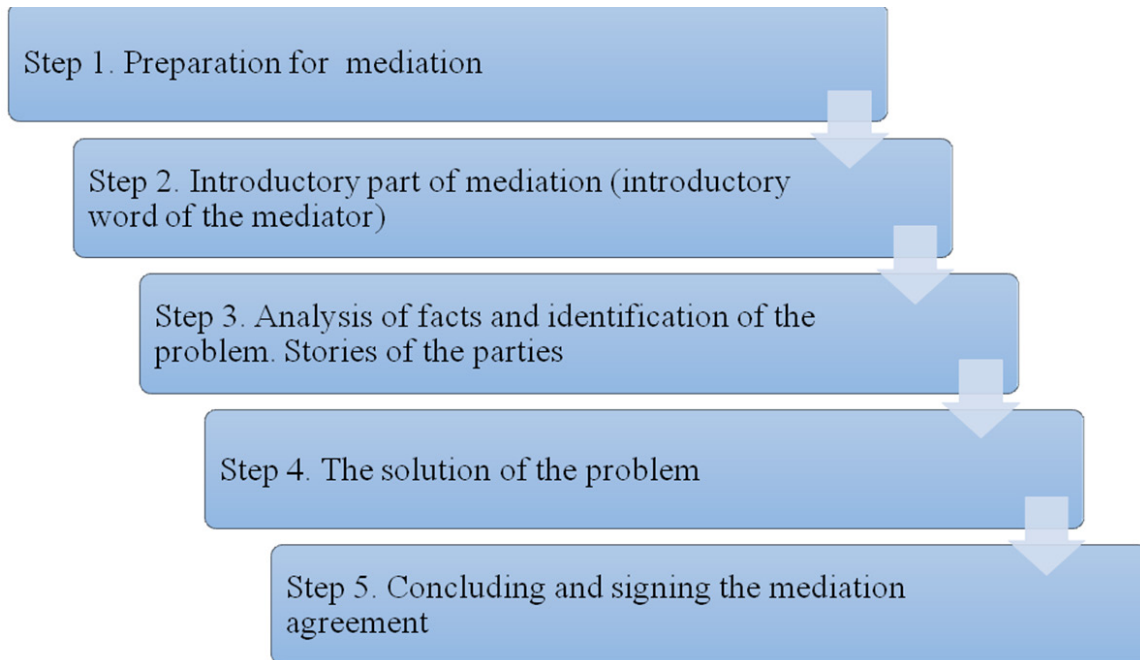
3. **Impartiality and neutrality.** One of the

most important principles of mediation is that a mediator is an independent party that has nothing to do with any party of the conflict. The mediator must possess itself so as not to take anyone's side of the dispute. After all, the mediator only helps the parties to reach a consensus, not to find the culprits and the right. Mediator has to avoid conduct that would give rise bias against one of the parties.

Mediation is also characterized by such principles as the sincerity of intentions to resolve conflicts, division of responsibilities, the competence of the parties, informality and flexibility of the procedure. The principles and features of mediation make it possible to feel that, along with the ease and transparency of the procedure, it is a rather difficult and serious process, which has its own specific requirements, especially those related to clarity and consistency. In order for mediation to be successful, it is necessary to clearly follow its stages, it has five of them (Fig. 1).

Noteworthy to mention, that in recent decades, mediation has been successfully developed in many countries. The United States, Canada, Austria, Great Britain, the Netherlands, Spain, Germany, Norway, Finland, France, Poland, Latvia and other European countries have adopted special laws that protect the mediator's right not to disclose information obtained from parties in mediation [13]. Some countries have adopted special legal norms, according to which the parties must try to resolve their dispute through mediation before participating in the trial. The practice of mediation is spreading in the countries of Eastern Europe and the former republics of the Soviet Union. Significant experience is already available in Poland, Albania, Russia and other countries.

The effectiveness of mediation, proven in practice, is becoming more widespread in the world. For example, EU Member States are required to comply with and report on the application of 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. Ukraine, as a member of the Council of Europe, also has obligations to use mediation. In general, countries that use mediation use it to resolve family, administrative, criminal, labor, commercial, and other disputes. There may be some differences in the number of appeals to mediation procedures depending on the specifics of individu-



**Figure 1. Key steps of successful mediation\***

\* Compiled by the authors based on the source [15].

al countries (Table 1).

From table 1 we see that, for example, Turkey has significant indicators of conducted and successful mediations compared to other countries in the field of civil and criminal mediation, and the number of family mediations is very small, although all of them were successful. Poland, having a significant number of appeals to mediation procedures, has average indicators of their success. Against this background, Ukraine middle indicators, although given the population of our country and the low prevalence of mediation practices, it has great potential for a significant increase in the popularity of mediation practices. Thus, mediation as an essential component of conflict management in organizations is becoming increasingly popular due to its effectiveness.

If we consider specific examples, according to the CPP Global Human Capital Report-2008 [4], the cost of conflict is primarily affected by the following factors: more than 50% of HR managers spend more than eight hours a week dealing with conflicts; more than 50% of top managers - more than four hours a week; the working capacity of people involved in the conflict is reduced by more than 40%; up to 30% of working time is spent on resolving the conflict; every fourth employee admits that he or she avoids participating in the con-

flict using a sick leave; the work of project groups in 70% of cases is not completed due to team conflicts; the cost of replacing and adapting a new employee is 150% of his annual salary.

Note that the spread of the practice of mediation in Ukraine is complicated by the presence in our culture of the attitude to solve the problem from the standpoint of force or power and avoid personal responsibility for what is happening, the tendency to look for the culprit from the outside.

At the same time, mediation came to modern Ukraine in the mid-1990s, as an established technology. Since 1997 (in Odessa) first mediation centers began to work [10].

The largest public associations currently operating in Ukraine, which provide training for mediators and provide mediation services, are:

- National Association of Mediators of Ukraine (established in 2014);
- Ukrainian Academy of Mediation in Odessa (established in 2014);
- Center for Law and Mediation in Kharkiv (established in 2016);
- Podolsk Mediation Center in Vinnytsia (established in 2016);
- League of Mediators of Ukraine (established in 2017).

Also in 2020, within the framework of the





Table 1

**Quantity and quality of mediations in some European countries and associate members of the European Union**

County	Civil Mediation		Family Mediation		Criminal Mediation		Administrative Mediation	
	Amount of conducted mediations	% of successful mediations	Amount of conducted mediations	% of successful mediations	Amount of conducted mediations	% of successful mediations	Amount of conducted mediations	% of successful mediations
Finland	1870	64,7	807	89,2	n/d	n/d	n/d	n/d
Norway	2037	63,9	2100	82,9	n/d	n/d	n/d	n/d
Italy	183977	42,2	n/d	n/d	n/d	n/d	n/d	n/d
Latvia	135	80,0	135	80,0	1265	47,8	n/d	n/d
Slovenia	970	11,9	130	11,5	722	65,8	n/d	n/d
Poland	6638	6,6	4316	44,4	4176	55,9	54	55,5
Turkey	4097	94,6	36	100	12261	63,7	n/d	n/d
Georgia	24	45,8	7	57,1	720	39,9	n/d	n/d
Republic of Moldova	149	62,4	33	33,3	16	68,8	6	66,7
Ukraine	600	66,7	2000	95,0	175	42,9	240	83,3

Erasmus + project "Mediation: Training and Society Transformation / MEDIATS", the Federation of Mediation of Ukraine [9] (KROK University, Kyiv) was established too.

According to the Ministry of Justice of Ukraine, experiments in courts have been actively conducted in Ukraine for the last 10 years. In 2011-2014, within the framework of the Council of Europe's program "Transparency and Efficiency of the Judiciary" in four pilot courts of the country (Bila Tserkva City Court of Kyiv Region, Vinnytsia District Administrative Court, Administrative Court of Appeal of Donetsk Region and Ivano-Frankivsk City Court) an experiment was performed [16].

A similar initiative was implemented in 2014-2016 by the NGO Legal Aid Center with the support of the USAID New Justice Program and in cooperation with eight local courts in Volyn Oblast and the Volyn Oblast Appeal Court. [8].

In 2018, a large-scale project "Erasmus +" "Mediation: Learning and Society Transformation (MEDIATS)" was launched, aimed at enabling Universities to be one of the key players in facilitating the processes of mediation in Azerbaijan, Georgia and Ukraine to enhance democracy and objective problem resolution by acquiring best European practices [9]. Within the project, with the support of leading mediators from the Netherlands, Spain and Latvia, representatives of Ukrainian universities underwent a comprehensive training on

the preparation of mediators. An active promotion campaign is also planned to spread the values of mediation among the population of the country, to raise awareness of the possibilities and benefits of using mediation as an alternative method of conflict resolution.

It should be noted that the study of the results of previous projects, as well as communication with stakeholders within the existing MEDIATS project, revealed that many people are willing to try the procedure of alternative conflict resolution. But there is a significant share of those who refuse further participation at the stage of entering the mediation because they do not want or are not ready to seek a solution of their dispute with the help of a mediator. Voluntary execution of the decision without outside control is also questioned. Accordingly, in Ukraine, mediation is recognized as quite effective in resolving conflicts, but citizens are not ready to use this method of resolving the dispute, due to its lack of settlement and ignorance of the population about the benefits of mediation.

**Discussion**

Of course, out-of-court dispute resolution cannot completely replace the judiciary, but it can help them and partially relieve them of the burden. For example, in many countries, any case (commercial, civil, family) must be referred to mediation before being tried in court. Only when the parties do not agree, the judge will consider the



case in court. But even if the case is heard in court, the parties will be less emotional and will allow the judge to focus on the case rather than working with their emotions.

Thus, our society, various organizations, institutions and all levels of government must develop, study and use new, more advanced systems for conflict prevention, management and resolution. That is why it is time to turn to alternative ways of resolving disputes, which will be able to partially relieve the courts and restore public confidence in them. In addition, alternative methods allow the parties to use the methods that are most appropriate for resolving a particular dispute and meet the interests and requirements of the parties.

High efficiency of mediation is determined, first of all, by its basic principles as neutrality, voluntariness, confidentiality, competence, privacy, speed and efficiency. The legislative definition is required by the following issues: consolidation of the range of cases in which the appointment of mediation is possible; settlement of requirements for mediators and procedures for their election; determination of the basic principles and forms of mediation, conditions for mediators to receive information on the case and other important procedural issues. In our opinion, it is expedient to use the experience of the Netherlands, Latvia, Poland, Bulgaria and other European countries.

### Conclusions

Based on the results of the study of European countries experience, we can conclude that Ukraine should focus on addressing the following issues for the effective implementation of mediation procedures: increase confidence in forms of alternative dispute resolution, including mediation, and public awareness of the opportunities provided in the process of alternative dispute resolution; ensure the availability of alternative dispute resolu-

tion services, for example, through the introduction of the practice of free legal aid to participation in free mediation; ensure the availability of qualified providers of these services. The first step in this direction could be the creation of accessible training programs and their scaling (master programs in mediation; the second step - the formation of a sustainable quality assurance system (creation of registers of mediators, development of standards for licensing, accreditation, certification, monitoring of the activities of service providers for alternative dispute resolution). It is also important to provide appropriate incentives for stakeholders to apply alternative dispute resolution practices: lawyers still perceive mediators as competitors; judges, in general, do not understand the importance of integrating mediation into litigation and their balanced ratio and do not see the benefits for themselves in implementing such a system; the parties of the conflict are limited by the lack of information on the possibility of using alternative dispute resolution procedures instead of the court, weak quality guarantees and low awareness of available specialists.

The implementation of mediation methods to resolve disputes and master mediation techniques will help to resolve conflicts more effectively, starting with small disputes, which very often cause more serious conflicts and lead to significant losses for both citizens and organizations.

### Acknowledgements

These studies will be relevant for scientists in the field of conflict management and dispute resolution, if they have interests in the study of state alternative dispute resolution and mediation, as well as implementation of international practices of mediation. In addition to this research, they will help to find new directions for the implementation of mediation in Ukraine and increasing awareness about mediation in the society.

### References:

1. Bergmann, J., Haastrup, T., Niemann, A., & Whitman, R. (2018). *Introduction: The EU as International Mediator – Theoretical and Empirical Perspectives*. Retrieved from [https://brill.com/view/journals/iner/23/2/article-p157\\_1.xml](https://brill.com/view/journals/iner/23/2/article-p157_1.xml)
2. Brandenburg, N. (2017). *EU Mediation as an Assemblage of Practices: Introducing a New Approach to the Study of EU Conflict Resolution*. Retrieved from <https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12532>
3. *Constitution of Ukraine (1996)*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (in Ukrainian).
4. *CPP Global Human Capital Report: Workplace Conflict And How Businesses Can Harness It To Thrive (2018)*. Retrieved from: <https://www.themyersbriggs.com/download/item/f39a8b7fb4fe4daface552d9f485c825>
5. Kanaryk, Yu.S. (2015). *Mediation as an alternative way of resolving civil disputes*. *Young Scientist*, 11, 138-141.
6. *Law of Ukraine On Mediation (2020)*. Draft from 15.07.2020. Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68877](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68877)



7. Mazaraki, N. (2016). *Mediation in Ukraine: problems of theory and practice*. Foreign trade: economics, finance, law, 1. 92-100.
8. *Mediation in the courts: myth or reality?* (2019). Manual. Retrieved from: <http://legalspace.org/ua/biblioteka/item/7832-posibnyk-mediatsiia-v-sudakh-mif-chy-realnist/>
9. MEDIATS Project (2020). Erasmus + project "Mediation: Training and Society Transformation / MEDIATS". Retrieved from: <https://mediatsproject.wixsite.com/mediats>
10. Mishina, Zh.V. (2012). *Mediation as an alternative form of dispute resolution*. Almanac of law, 3. 234-238/
11. *On the International Commercial Conciliation Procedure with Guidelines for Its Implementation and Application: The Unsitral Model Law* (2002). Retrieved from: [http://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/0390953\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/0390953_Ebook.pdf).
12. Parkhomenko, O.S., Neskorodieva, I.I., Kvitka, Yu.M., & Babenko, K.Ye. (2019). *Mediation as a component of conflict management: experience of European Union countries and its implementation in Ukraine*. Adaptive Management: Theory and Practice. Economics Series, 7. Retrieved from: <https://amtp.org.ua/index.php/journal2/article/download/180/206>
13. Podovenko, T.O. (2016). *Mediation Institute: international experience and Ukrainian prospects*. Actual problems of jurisprudence, 1. 26-31.
14. Polskie Centrum Mediacji (2020). Retrieved from : [http://mediator.org.pl/aktualnosci/36/1,,84,Tydzien\\_Mediacji\\_\\_Miedzynarodowy\\_Dzien\\_Mediacji](http://mediator.org.pl/aktualnosci/36/1,,84,Tydzien_Mediacji__Miedzynarodowy_Dzien_Mediacji)
15. Prykhodko, Yu.V. (2018). *Mediation as an alternative method of resolution of conflicts and its perspectives in Ukraine*. Young Scientist, 4 (56), 743-746.
16. Voitiuk, D.V. (2020). *The current state of mediation implementation in Ukraine*. Retrieved from: <http://baltijapublishing.lv/omp/index.php/bp/catalog/view/71/1726/3901-1>