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Mediation and the right to a fair trial: legal heritage or anomaly of the legal sphere

Video Oyunlarında Grafik Tasarım Sanatı: Görselliğin Ötesinde

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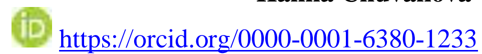
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Abstract

The research explores the relationship between mediation and the right to a fair trial, examining whether mediation is a legal heritage or an anomaly within the legal sphere. The study analyzes the legal framework of mediation in Ukraine and other countries, along with international standards. It investigates the impact of mediation on the right to a fair trial and its role in Ukraine's European integration process. The methodology includes policy analysis, empirical research, and comparative methods. The findings suggest that mediation is a valuable addition to the legal system, promoting efficient dispute resolution and reducing the burden on courts. However, upholding clear standards and principles is crucial to ensure the protection of participants' rights and maintain the right to a fair trial. The research concludes that mediation can coexist harmoniously with traditional judicial

Анотація

Дослідження вивчає зв'язок між медіацією та правом на справедливий суд, досліджуючи, чи є медіація правовою спадщиною чи аномалією в правовій сфері. У дослідженні аналізуються правові рамки медіації в Україні та інших країнах, а також міжнародні стандарти. Воно досліджує вплив медіації на право на справедливий суд та її роль у процесі європейської інтеграції України. Методологія включає аналіз політики, емпіричні дослідження та порівняльні методи. Результати показують, що медіація є цінним доповненням до правової системи, сприяючи ефективному вирішенню спорів та зменшуючи навантаження на суди. Однак дотримання чітких стандартів і принципів має вирішальне значення для забезпечення захисту прав учасників і підтримки права на справедливий суд. Дослідження робить висновок, що медіація може гармонійно співіснувати з

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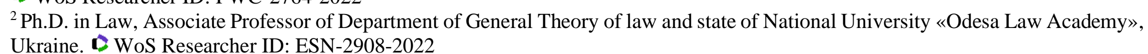
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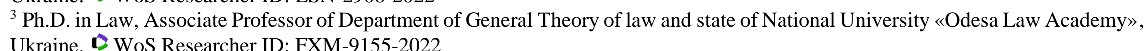
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processes, contributing to a more effective and just legal system.

Keywords: mediation, right to a fair trial, alternative dispute resolution, legal system, legal heritage.

традиційними судовими процесами, сприяючи створенню більш ефективної та справедливої правової системи.

Ключові слова: медіація, право на справедливий суд, альтернативне вирішення спорів, правова система, правова спадщина.

Introduction

Today, the full implementation of mediation in Ukraine is an extremely relevant topic. This is due to the potential for resolving disputes out of court and the need to reduce the burden on courts amidst an excessive volume of cases in their proceedings. The existence of the mediation institution is one of Ukraine's steps towards European integration.

The study of the relationship between mediation and the right to a fair trial raises several important issues and questions, such as:

- Can mediation be considered a legal heritage with deep historical and cultural roots, or is it a novelty that contradicts the traditional legal system?
- How recognized and legitimate is mediation in modern legal systems, particularly in Ukraine?
- Does mediation comply with the guarantees of the right to a fair trial, especially the right to access justice and equality before the law?
- How can it be ensured that participation in mediation is genuinely voluntary and not the result of pressure or manipulation?
- How can it be ensured that the mediation process is fair to all participants, especially in cases where one party has a significant advantage?

These problems require detailed analysis and research to form a clear understanding of the role of mediation in the modern legal system and its impact on ensuring the right to a fair trial.

The purpose of the research is to comprehensively study mediation as an alternative dispute resolution method and its relationship with the right to a fair trial.

Research objectives:

- To study the legislative basis for mediation in Ukraine and other countries, as well as international standards and recommendations on mediation.
- To investigate how mediation affects the realization of the right to a fair trial, particularly assessing the effectiveness of mediation compared to traditional court proceedings.
- To explore the role of mediation in Ukraine's European integration process and determine how mediation contributes to achieving European standards in the field of justice.

The subject of the research is the legal institution of mediation and its impact on ensuring the right to a fair trial, as well as the opportunities and limitations associated with integrating mediation into national legal systems, particularly in Ukraine.

The object of the research is the legal relationships arising from the application of mediation for dispute resolution and their impact on the realization of the right to a fair trial in the context of the modern legal system of Ukraine and international experience.

These objectives, subjects, and objects of research are aimed at a detailed study of mediation as a legal institution, its impact on the judicial system, and the possibilities for harmonious coexistence with traditional judicial processes.

The research consists of the following sections:

Abstract and Relevance

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Introduction

Methodology

Literature Review

Main Text:

Analysis of the legislative basis for mediation in Ukraine and other countries, as well as international standards and recommendations on mediation.

Analysis of the impact of mediation on the realization of the right to a fair trial.

Analysis of the role of mediation in Ukraine's European integration process.

Conclusions

References

Theoretical Framework or Literature Review

Hren (2017) explored the implementation of the right to a fair trial through compulsory mediation. The study analyzed the right to a fair trial as an inherent and crucial element for the protection and restoration of violated rights and freedoms. The author examined its structure, identifying key components such as unobstructed access to court, public hearings, fair judicial procedures, judicial independence, and reasonable trial time. The study also highlighted mediation as a means of achieving justice by facilitating conflict resolution through helping parties identify their real interests and reach a mutually beneficial agreement.

Additionally, Denysova (2018) examined the national-historical aspect of the mediation institute in Ukraine, noting various moral-ethical, psychological, economic, and legislative obstacles. The study agreed with the researcher’s analysis of the Ukrainian society's psychological profile in historical and modern contexts, concluding that mediation has the potential to integrate organically into contemporary life and help overcome remnants of Soviet heritage.

Kivalov (2018) analyzed the resolution of public law disputes involving judges, emphasizing the importance of no restrictions or conditions on the application of mediation to any public law disputes. This approach would help identify difficulties in reaching agreements and assess the negative impact on the level of conflict in public administration.

Besides, Kozakevych (2020) investigated the role of mediation in ensuring access to justice in a modern transitional society. The researcher highlighted that mediation is a technology of alternative dispute resolution where a neutral third party – the mediator – helps conflicting parties reach an agreement. The study underscored the numerous advantages of court-ordered mediation over traditional litigation.

Korolenko (2024) researched the application of mediation during court proceedings, especially regarding the timeliness of civil case resolution. The study concluded that courts indirectly affect the timely resolution of civil cases through ensuring their timely consideration. When suspending proceedings for mediation, courts should ascertain the voluntary expression of both parties for this suspension.

What is more, Kostenko, and Shuvalova (2024) examined the mediation institute in resolving public law disputes. Moreover, Kurakin, and Romanov (2015) explored the relationship between the rule of law and the law itself in the context of the sociological concept of legal understanding.

Mishina (2024) studied the specifics of mediation in disputes involving local government bodies. The researcher suggested that including mediation provisions in the Law of Ukraine "On Local Self-Government in Ukraine" would be a significant step towards improving dispute and conflict resolution at the local government level.

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Reznik, Bondarenko, Utkina, Yanishevska, & Ilchenko (2022) aim to characterize the essence of mediation in case of a minor committing a criminal offense or a felony for the first time. The authors conclude that it is essential and urgent to use the mediation procedure more widely in criminal proceedings as an alternative to litigation.

Teremetskyi, Tokarieva, Myronenko, Mishchuk, & Melnychuk (2023) study the foreign and Ukrainian experience in the development of the institution of mediation in administrative and legal disputes. It has been emphasized that mediation helps to reduce the burden on the judicial system, ensures a faster and more efficient resolution of administrative cases, and helps preserve the relationship between the parties, building trust between the state and the citizen.

Tokaryeva (2021) researched the genesis of scientific approaches to mediation, focusing on its dual socio-legal nature and its significance in resolving legal conflicts. The dissertation included proposals for forming a mediator's ethical code and considered the effectiveness of mediation from the perspective of proper administrative and legal regulation.

Sussman (2018) analyzed the significance and impact of the Singapore Convention on Mediation on international dispute resolution, highlighting the convention's role in increasing confidence in mediation processes and facilitating the recognition and enforcement of international mediation agreements.

Glover and Elliott (2015) discussed the circumstances under which it may be reasonable to decline a request to mediate, noting that refusal to mediate is a right of conflict participants and can be justified in certain situations, such as when parties do not believe a constructive resolution can be achieved through mediation or when the issues are too complex for mediation.

The interplay between mediation and the right to a fair trial is a pressing issue in contemporary legal scholarship, warranting thorough scientific investigation. Key aspects of the research include the right to a fair trial, mediation as an alternative to court proceedings, the interaction between mediation and judicial procedures, and the legal heritage of mediation. Current scholarly discussions focus on the effectiveness of mediation, its impact on reducing judicial overload, increasing access to justice, and facilitating the resolution of complex conflicts. Various models of mediation and their adaptation to different legal systems are examined. Hence, mediation and the right to a fair trial in modern legal science are studied as a complex interaction of alternative and traditional dispute resolution methods, requiring a deep understanding of their legal, ethical, and practical aspects.

Thus in the context of the literature on mediation and its relationship to the right to a fair trial, there are several potential controversies and debates that scholars have explored. One key area of debate concerns the impact of mediation on access to justice, particularly for the most vulnerable parties. Critics argue that while mediation can offer a more efficient and less adversarial alternative to traditional litigation, it may also inadvertently restrict access to justice for some individuals. One of the primary criticisms of mediation is that it may undermine access to justice by favoring parties with more power or resources. This is particularly relevant in cases where there is a significant imbalance of power between the parties, such as disputes involving large corporations versus individuals, or cases where one party has significantly more legal knowledge or financial resources. In such situations, the less powerful party may feel pressured to settle, potentially resulting in outcomes that are not just or equitable. This critique highlights concerns about whether mediation truly serves the needs of all parties or merely expedites the resolution process in favor of the more powerful party. Another controversy revolves around the protection of the rights of vulnerable parties within mediation. Unlike formal court proceedings, which have established rules of evidence and procedure designed to protect participants' rights, mediation is less formal and relies heavily on the skills and neutrality of the mediator. Critics like Glover & Elliott (2015) emphasize that mediation may not be suitable in cases where there is a risk of coercion or where complex legal rights are at stake, as it lacks the procedural safeguards that courts provide. This can be particularly problematic in disputes involving domestic violence, where the safety and psychological well-being of the parties could be compromised by the process of mediation itself. Further debates arise when considering the application of mediation to complex disputes, such as those involving public law or administrative decisions, as noted by Kivalov (2018). The question here is whether mediation is appropriate for all types of disputes, particularly those that involve broader public interests or intricate legal questions. Some argue that certain disputes are too complex for mediation and require the authoritative decision-making power of a judge to ensure that all legal issues are adequately addressed. Additionally, there is an ongoing debate about the role of mediation

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as an alternative to formal legal proceedings. While Kozakevych (2020) and others highlight the benefits of mediation, such as reduced court caseloads and faster dispute resolution, there is concern that an over-reliance on mediation could undermine the right to a fair trial. If mediation becomes a compulsory or overly encouraged step before accessing the courts, it could potentially limit individuals' ability to seek a formal judicial determination of their rights, thus impinging on their right to a fair trial as highlighted by Hren (2017). Lastly, ethical and legal considerations around mediation are also a topic of debate. The development of a mediator's ethical code, as suggested by Tokaryeva (2021), underscores the need for clear guidelines to ensure fairness, impartiality, and the protection of all parties' rights during mediation. However, the creation and enforcement of such guidelines raise questions about how they would be standardized and implemented across different jurisdictions and cultural contexts. Overall, while mediation offers numerous benefits as an alternative dispute resolution method, its implementation raises significant questions about access to justice and the protection of vulnerable parties' rights. These controversies underscore the need for careful consideration and regulation of mediation practices to ensure they complement rather than compromise the right to a fair trial.

Methodology

In the study of mediation and the right to a fair trial, several methods were employed: policy analysis, empirical research, and comparative methods.

Policy Analysis

During the research on mediation and the right to a fair trial, the policy analysis method was instrumental in determining how mediation can influence the realization of the right to a fair trial and what policy changes are necessary for its effective implementation. This method was used to formulate the primary research question: "How does mediation affect the realization of the right to a fair trial?" Additionally, this method was utilized to collect data (legislation, regulatory documents, scientific articles, monographs, reports from international organizations related to mediation and the right to a fair trial) and to assess the national legislation on mediation and its compliance with international standards. The analysis examined how mediation impacts access to justice, equality of parties, and other aspects of a fair trial process, and explored the pros and cons of using mediation compared to traditional litigation. Conclusions were drawn about the need to improve mediation legislation to ensure its alignment with international standards and effective integration into the national legal system. It was summarized that mediation can positively influence the right to a fair trial, provided that voluntary participation, equality of parties, and all constitutional guarantees are upheld.

Empirical Research

Empirical research allowed for the collection and analysis of actual data to study the real impact of mediation on the right to a fair trial. The aim of the research was to determine whether mediation is an effective tool for ensuring the right to a fair trial. A case study method was selected for data collection, and a representative sample was chosen for data gathering, processing, and interpretation of the results. Through these processes, the impact of mediation on the right to a fair trial was evaluated, and the advantages and disadvantages of mediation in the context of Ukraine's legal system were identified. Empirical research provided a comprehensive understanding of mediation as a justice tool, its impact on the legal system, and the opportunities for improving mediation practices in Ukraine.

Comparative Method

The comparative method enabled the examination of mediation and the right to a fair trial by analyzing and comparing different legal systems, practices, and experiences. This helped to understand how mediation affects justice in different jurisdictions and what can be borrowed to improve the system in Ukraine. This method was used to evaluate the effectiveness of mediation in various legal systems, identify best practices that could be applied in Ukraine, and highlight commonalities and differences in the use of mediation in different countries. As a result, it was concluded that successful examples of mediation in developed legal systems show that mediation can significantly reduce the burden on courts and facilitate quick dispute resolution. In most of the countries studied, mediation ensures access to justice and protects the rights of parties while maintaining the fundamental principles of a fair trial. The comparative research method

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allowed for a deeper understanding of how mediation can be integrated into the Ukrainian legal system, ensuring the right to a fair trial and contributing to the efficiency of justice.

Results and Discussion

1. Analysis of the Legislative Framework of Mediation in Ukraine and Other Countries, as well as International Standards and Recommendations Regarding Mediation

Mediation originated during the Great Depression in the United States, which took place in the 1930s. At that time, mediation was used to resolve conflicts in family and labor relations, as well as to help end mass disturbances in society. Subsequently, mediation spread to European countries such as Germany, France, Italy, and others. Etymologically, the term "mediation" is synonymous with acting as an intermediary between certain parties. The effectiveness of mediation is recognized by the European community, and most Council of Europe documents and EU directives recommend the implementation of mediation as a primary method of alternative dispute resolution (LB.UA, 2023).

The current stage of state management development in the judicial system is characterized by a transition from a confrontational to a discursive-adversarial form of justice, with reconciliation as its main goal. Reconciliation is applied in civil, commercial, and administrative disputes before or during court proceedings, as well as at the enforcement stage; in resolving issues of reconciliation between the victim and the suspect (accused) in criminal legal relations; and during the resolution of collective labor disputes.

In Ukraine, the development of mediation began with independence and has continued for over 30 years. However, it was only in the fall of 2021 that the main aspects of mediation, its principles and procedures, and the status of a mediator were officially enshrined in the Law of Ukraine "On Mediation" (Law 1875-IX, 2021). According to the relevant law, mediation is defined as an extrajudicial voluntary process involving confidential and structured negotiations between parties with the participation of one or more mediators. The purpose of mediation is to prevent or resolve conflicts. The voluntary nature of the procedure means that the parties have the right to enter into and terminate the mediation process at their discretion and cannot be forced to participate. Mediation is also a confidential process, unlike judicial proceedings where the principle of publicity is key. Information obtained during mediation is confidential and protected from disclosure. Mediation, like any process, has a specific internal structure consisting of stages characterized by features such as logicality, consistency, procedural unity, orderliness, standardization, autonomy, and purposeful intent.

The normative consolidation of mediation is also present in codified acts such as:

The Civil Procedure Code of Ukraine. During the preparatory meeting, the court clarifies whether the parties wish to conclude a settlement agreement or conduct an extrajudicial dispute resolution through mediation (Art. 197). If the parties express such a desire, the court is obliged to suspend the proceedings at the request of the parties (Law 1618-IV, 2004).

The Economic Procedure Code of Ukraine. During the preparatory proceedings, the court clarifies whether the parties wish to conduct an extrajudicial dispute resolution through mediation (Art. 182) (Law 798-XII, 1991).

The Code of Administrative Procedure of Ukraine. The parties may reach reconciliation, including through mediation, at any stage of the judicial process, which is grounds for closing the proceedings in an administrative case (Art. 47). The court clarifies whether the parties wish to resolve the dispute through reconciliation or conduct an extrajudicial dispute resolution through mediation (Art. 180, 181) (Law 2747-IV, 2005).

Some special laws also regulate issues related to mediation. For example, Article 7 of the Law of Ukraine No. 3674 "On Court Fees" dated 08.07.2011 provides that if an agreement is reached to settle the dispute through mediation, the court considers the issue of refunding 60% of the court fee paid by the plaintiff when filing the lawsuit. This provision creates a financial incentive for the parties to reconcile through mediation (Law 3674-VI, 2011).

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Thus, today in Ukraine, the concept and procedure of mediation are legally enshrined. International standards and legislative acts create a legal basis for the development of mediation, providing parties with the opportunity to choose and effectively resolve disputes through this method.

2. Analysis of the Impact of Mediation on the Implementation of the Right to a Fair Trial

According to statistical data for 2022, almost 3.5 million cases were pending in Ukrainian courts, a significant portion of which remained unresolved for various reasons. Excessive duration of court proceedings violates the fundamental right of individuals to access justice. The implementation of mediation can help reduce the burden on the judicial system and accelerate case resolution (European Court of Human Rights, 2023).

The right to a fair trial is one of the fundamental human rights guaranteed by many international and national legal acts. The main aspects of this right include:

Accessibility and availability of the court: Every person has the right to access the court to protect their rights and interests. The judicial system must be accessible, non-discriminatory, and efficient.

Independence and impartiality of the court: Courts must act independently of the authorities and the influence of any parties or other bodies. Judges must make decisions based solely on facts and law, without any influence or pressure.

Right to a fair process: This includes the right to have one's case heard by an adequate, fair, and public judicial body. Judges must ensure a fair process for participants, exercising control over the provision of procedural guarantees.

Right to defense: All participants in the judicial process have the right to defend their rights and interests, including the right to legal assistance and representation.

Enforcement of court decisions: Court decisions must be executed without delay and unconditionally, ensuring the restoration of violated rights and the resolution of disputes (Verkhovna Rada of Ukraine, 1950).

The European Court of Human Rights has repeatedly ruled against Ukraine in cases related to violations of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right to a fair trial in the context of excessive length of court proceedings (Verkhovna Rada of Ukraine, 1950).

In such circumstances, improving the situation and ensuring access to justice while "unloading" the courts can be achieved through the broad application of alternative dispute resolution practices, particularly mediation (Kostenko, & Shuvalova, 2024).

In general, the mediation procedure is entirely focused on the parties to the dispute. They have the opportunity to choose a convenient format, schedule of meetings, duration, topics for discussion, meeting place, and specific mediator who will assist in the dispute resolution process. The main advantage of mediation is that the parties are directly involved in finding a mutually beneficial solution, increasing the likelihood of its implementation. After mediation, the parties enter into an agreement that records their arrangements. If an agreement is not reached or is improperly implemented, the parties may turn to the court. At the preparatory meeting, the court also determines whether the parties wish to conclude a settlement agreement or conduct an extrajudicial dispute resolution through mediation. If the parties express such a desire, the court suspends the proceedings at their request. According to procedural legislation, the parties can conclude a settlement agreement, including through mediation, at any stage of the judicial process.

The advantages of mediation compared to other methods of conflict resolution can be summarized as follows:

– Voluntariness: Participation in the mediation process is voluntary for both parties.

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- Mediator participation: A mediator, as an independent third party with special skills, organizes the negotiations, directing them towards clarifying and analyzing the parties' interests.
- Conflict resolution from an interest-based perspective: Mediation promotes conflict resolution by finding a mutually acceptable solution between the parties.
- Speed: The mediation process can be significantly faster than court proceedings.
- Flexibility and informality of the procedure: Mediation allows the parties to independently determine the conditions of the process.
- Cost-effectiveness: The costs of mediation are often significantly lower than those of court proceedings.
- Higher likelihood of agreement implementation: An agreement reached through mediation has a higher chance of being implemented by the parties.
- Confidentiality: Information obtained during mediation usually remains confidential.
- Involvement of experts: Mediation may include the involvement of experts to help resolve disputed issues.

In summary, mediation has the following advantages compared to court proceedings:

1. Quick conflict resolution.
2. Preservation of confidentiality.
3. Time and cost savings.
4. Improvement of relationships and prevention of emotional burnout.

Mediation in courts can take various forms, from voluntary to mandatory models. Voluntary models imply that mediation occurs only with the consent of both parties. In such cases, the parties are given the opportunity to suspend court procedures for mediation. Conversely, mandatory models imply that the parties must undergo mediation, regardless of their initial desire, but they retain the right not to reach a final resolution of the dispute.

Regarding the introduction of mediation as a mandatory pre-trial procedure for certain categories of disputes, particularly in cases concerning the place of residence of the child and the establishment of the way of participation in their upbringing.

As Denysova notes, it is appropriate to support measures such as:

- Implementing legal education and training for the population to enhance the level of legal culture.
- Increasing trust in mediation services by informing the public about their advantages and success compared to other dispute resolution methods.
- Active information policy that includes continuous and targeted activities by state authorities and individuals involved in mediation.
- Expanding the objectives of international projects on the implementation of mediation in Ukraine, involving both state and public organizations of mediators who have already demonstrated their effectiveness in practice.
- Introducing state funding for mediation programs.

Disseminating knowledge and practical skills in mediation among lawyers, creating a network of training centers for mediators, adopting relevant legislation regarding the status of professional mediators and the procedure for their formation, and promoting activities and cooperation with public organizations involved in the preparation of mediators.

Adopting a special law on mediation that will define the scope of cases where mediation can be applied, the principles, requirements for mediators, procedures for their selection, the main principles and forms of mediation, providing guarantees to the parties, and resolving other important issues (Denysova, 2018).

Thus, the use of mediation as an alternative to judicial dispute resolution is a worthy choice. Mediation focuses on finding the optimal solution that maximally considers the interests of all parties through a series of negotiations, exchange of views, and proposals. The involvement of a mediator, an independent and impartial person, helps maintain and develop cultural relations between the parties, achieve a positive outcome, and mutual understanding in the arising conflict. Due to the advantages of mediation, such as

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time savings, mutually acceptable solutions, voluntariness, flexibility of the procedure, and others, conflicts in society can be resolved quickly and effectively.

3. Analysis of the Role of Mediation in the Process of Ukraine's European Integration

In Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to member states on mediation in civil matters, adopted by the Committee of Ministers of the Council of Europe at the 808th meeting of the Ministers' Deputies on 18 September 2002, the term "mediation" is equated with a dispute resolution process within which the parties, with the help of one or more mediators, conduct negotiations to reach an agreement on the disputed issues (Committee of Ministers of the Council of Europe, 2002).

Mediation is also reflected in Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters of 21 May 2008. Paragraph 6 of this act states that mediation can provide a rapid resolution of disputes at minimal cost through processes specially tailored to the needs of the parties. Agreements reached as a result of mediation are more likely to be voluntarily executed, and friendly and lasting relationships between the parties are maintained. These benefits become even more apparent in cases of an international nature (European Union, 2008). Furthermore, according to paragraph 13 of this document, mediation should be a voluntary process in which the parties themselves are responsible for its course, have the right to organize it at their discretion, and can terminate it at any time. However, national legislations should provide that courts can set time limits for the mediation process. Additionally, courts should be able to draw the parties' attention to the possibility of mediation whenever appropriate. Considering the provisions of the Mediation Directive, it can be concluded that the mediation process is based on the principles of equality and voluntariness, although courts can influence mediation by setting temporary restrictions (deadlines).

Directive 2013/11/EC of the European Parliament and of the Council, commonly known as the Directive on Alternative Dispute Resolution for Consumer Disputes (ADR), aims to ensure the availability of mechanisms for alternative resolution of consumer disputes throughout the European Union. The Directive applies to disputes between consumers and traders regarding contractual obligations arising from sales or service contracts. It covers both online and offline purchases made by consumers. The main goal of the Directive is to provide consumers with access to effective dispute resolution mechanisms with traders without the need to go to court. The Directive encourages the use of impartial, transparent, effective, and accessible ADR entities (European Union, 2013).

In the context of Ukraine's integration into the European Union, the legislator will be obliged to implement Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters and Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

Limitations of the Study

While this study provides a comprehensive analysis of the legislative framework and impact of mediation in Ukraine, it is important to note several limitations. Firstly, the geographic scope of this study is limited to Ukraine, which may not fully capture the broader applications and variations of mediation practices observed in different international contexts. The findings and recommendations are therefore primarily applicable to Ukraine's specific legal, cultural, and socio-political environment.

Secondly, there is a lack of empirical data on the long-term impact of mediation in Ukraine. As the formal legal framework for mediation in Ukraine was only established in 2021, there is insufficient data to evaluate its effectiveness over a longer period. This limitation restricts the ability to draw comprehensive conclusions about the sustained outcomes of mediation practices in the country. Further empirical research is needed to assess the long-term impacts and potential challenges of mediation in Ukraine, as well as to compare its effectiveness with other forms of dispute resolution used both domestically and internationally.

Conclusion

The research on the legislative basis of mediation in Ukraine and other countries, as well as international standards and recommendations on mediation, has established that in Ukraine, mediation as an institution of out-of-court dispute resolution was legislatively enshrined by the Law of Ukraine dated 16.11.2021 No.

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1875-IX "On Mediation." This law defines the legal principles, principles of mediation, the status of the mediator, requirements for their training, and other aspects of conducting mediation. In the Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe on mediation in civil matters, mediation is defined as a process of dispute resolution with the help of one or more mediators, which facilitates reaching an agreement between the parties. Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters emphasizes the speed, cost-effectiveness, and efficiency of mediation, especially in international disputes. The Directive also emphasizes the principles of voluntariness and the responsibility of the parties for the mediation process, although courts can set time limits. Mediation norms are integrated into the Civil Procedure Code, the Economic Procedure Code, and the Code of Administrative Procedure of Ukraine, allowing the use of mediation as a means of dispute resolution in various branches of law. The legislatively enshrined "financial incentive" for parties choosing mediation is provided in the Law of Ukraine "On Court Fees."

Research on the impact of mediation on the realization of the right to a fair trial has shown that mediation as an alternative method of dispute resolution significantly reduces the number of cases that go to court. This allows judges to focus on more complex and important cases, which in turn contributes to a faster consideration of these cases. Mediation procedures are usually faster and less formal compared to court proceedings. This helps conflict parties reach an agreement in a shorter period, contributing to time and court cost savings. The application of mediation promotes the expansion of access to justice, especially for those who cannot afford long and costly court processes. Mediation provides an opportunity to resolve conflicts with minimal costs. Mediation is a voluntary procedure that gives the parties the opportunity to independently decide how they want to resolve their dispute. This ensures the flexibility of the process and the possibility of taking into account the individual needs and circumstances of each party.

Research on the role of mediation in the process of Ukraine's European integration has led to the following conclusions: the implementation of mediation in Ukraine promotes the harmonization of national legislation with European standards and recommendations, which meets the requirements of the Council of Europe and the European Union directives related to alternative dispute resolution; mediation as an institution contributes to the strengthening of the principles of the rule of law, ensuring more effective and fair conflict resolution; mediation reduces the burden on courts, allowing for faster case consideration and providing more prompt access to justice, which is especially important in the context of judicial reform in Ukraine; the popularization of mediation promotes the development of a culture of peaceful conflict resolution in society. Thus, mediation is an important tool in the process of Ukraine's European integration, contributing to the harmonization of the legal system with European standards, improving access to justice, and developing a culture of peaceful conflict resolution.

Mediation and the right to a fair trial constitute a complex legal and ethical problem that requires careful study and analysis. The main aspects of this topic include not only the issues of interaction between mediation and judicial procedures but also their impact on the guaranteed right to a fair trial. Today, despite the existence of legislation on mediation, there is a need for further development of the regulatory framework, particularly in defining categories of disputes for which mediation may be mandatory, and in creating a system for the training and certification of mediators.

During the research, the following problems and solutions were identified:

Mediation does not always have the same level of transparency and guarantees as judicial procedures. This can raise questions about the insufficient protection of parties' rights and compliance with fairness principles. Therefore, it is important to develop mediation standards that ensure process transparency, adherence to ethical norms, and protection of participants' rights. This may include the development of codes of conduct for mediators and means of control over their implementation.

Mediation may be less accessible to certain population groups due to financial or other constraints. Moreover, its effectiveness may vary depending on cultural, social, and legal conditions. Initiatives to increase the accessibility of mediation should be developed, including funding programs, training mediators, and popularizing its advantages among the public.

Therefore, mediation and the right to a fair trial can and should complement each other to ensure effective dispute resolution and preserve fundamental human rights and freedoms. The development of mediation

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requires a careful approach to addressing its issues through a comprehensive approach and cooperation among different sectors of society. Additionally, mediation offers numerous advantages compared to traditional judicial proceedings. This service is confidential, saves time and costs for the parties, promotes the preservation of their relationships, and does not impose restrictions on the ability to achieve mutually beneficial outcomes, etc.

The development of pre-trial mediation in Ukraine is a logical consequence of the evolution of procedural legislation and the integration of mediation procedures into the country's legal system.

Regarding further academic research, it is necessary to consider conceptual approaches to mediation in different legal systems, as well as analyze legislative acts regulating mediation in various countries in order to identify effective legal models.

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