LEGAL REGULATION OF MEDIATION: INSIGHTS FOR UKRAINE FROM THE PERSPECTIVE OF EUROPEAN UNION STANDARDS

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Abstract. Mediation as an alternative dispute resolution method has gained considerable popularity worldwide. From the spectrum of legal ways to solve disputes, mediation distinguishes itself as a rational and flexible approach that gains even more traction as a substitute for traditional, court-centred disputes. Currently, the full implementation of mediation in Ukraine is an important topic. For example, it could relieve overloading in the judicial system. Furthermore, implementing mediation will assist in Ukraine's path to European integration.

This article focuses on investigating the extent to which the current Ukrainian mediation legislation aligns with the concepts contained within EU standards and which development does mediation gain due to existing in current challenges. It includes a comparative analysis of Ukrainian mediation legislation with relevant EU legal regulations and examines best practices in EU Member States. Additionally, it identifies gaps and inconsistencies between the Ukrainian and EU frameworks while presenting insights into the current state of Ukrainian mediation law

from the perspective of EU standards.

Keywords: mediation, alternative dispute resolution, EU standards, legislation, online mediation.

Introduction

One of the promising directions in the development of alternative dispute resolution (ADR) mechanisms is mediation – a procedure in which a mediator systematically facilitates communication between the parties to a conflict or dispute, guiding them towards a mutually acceptable resolution of the dispute or a settlement. The mediator operates on the principles of neutrality and confidentiality, ensuring an environment of trust for discussion and resolution. This process contrasts sharply with court proceedings, which are strictly regulated, formalised and centred on adjudicating legal claims. The flexible approach offered by mediation enables the consideration of all facets of a dispute, regardless of their legal standing, fostering outcomes that align more closely with the parties' interests.

The designation of mediation as an ADR method underscores its focus on collaboration over confrontation. In the Ukrainian context, the institutionalisation of mediation has advanced considerably with the adoption of the Law of Ukraine 'On Mediation' (hereinafter referred to as the Law 'On Mediation')[1], which can be considered a cornerstone in integrating ADR practices into the national legal framework.

Evaluating the success of mediation extends beyond quantitative measures, such as the number of cases resolved. Success also depends on qualitative outcomes, including the parties' satisfaction, adherence to agreements and preservation of relationships. This multi-dimensional approach to evaluation aligns with scholarly perspectives on ADR, emphasising its broader societal impact. The

1 "Law of Ukraine "On Mediation", No. 1875-IX", Verkhovna Rada of Ukraine, accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

countries of Europe have different systems of mediation that apply in their national legal systems. For example, in England and Wales[2], at least one mediation session is mandatory before certain civil trials, demonstrating the integration of voluntary and mandatory approaches. Turkey showcases another model, where mediators operate in specialised cases under the auspices of the Ministry of Justice, illustrating varied applications within the court system[3].

It is impossible to replicate a system that is successful abroad and simply transplant it to another national legal system. For Ukraine, creating the conditions for successful implementation involves disseminating information, offering widespread training, and ensuring a comprehensive legislative and procedural framework. Judges and legal professionals also play a pivotal role in embedding mediation into practice, requiring targeted education and support systems to promote its adoption and legitimacy.

While Ukrainian legislation permits the use of mediation, its practical implementation faces challenges, including mistrust in new legal institutions and resistance to change among legal professionals. Building trust and familiarity with mediation as a viable alternative to litigation is essential for its integration into Ukraine's legal culture. For instance, lawyers accustomed to adversarial roles may need to adapt to a more facilitative approach that seeks mutually beneficial outcomes. Bridging this cultural shift requires education and advocacy within the legal profession. However, it is worth moving from purely defensive thinking to a more flexible way of thinking, where mediation can lead to a joint decision of the parties that will satisfy the interests of both.

Therefore, this article aims to explore how the Ukrainian legal framework on

2 "Civil Procedure Rules, Part 1 and Practice Direction – Pre-Action Conduct and Protocols", Ministry of Justice (UK), accessed March 28, 2024, https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct.

3 "Law No. 6325 on Mediation in Civil Disputes", Turkey, adopted June 22, 2012, arts. 13–18, Ministry of Justice guidelines for implementation.

mediation corresponds to the standards and practices established in the European Union (EU). In particular, it focuses on a comparison of legal models and the way they are applied in practice. The object of the study is the legal regulation of mediation in Ukraine and in selected EU countries, while the subject is the analysis of their normative structure and implementation. Methodologically, the article relies on comparative legal analysis, interpretation of legislative provisions, and a functional perspective on how mediation operates within different legal contexts. Although the topic has attracted academic interest in both Ukrainian and international scholarship, many practical dimensions, notably those related to legal culture, institutional support and public trust, remain insufficiently addressed, particularly in light of Ukraine's EU integration process.

According to the results of sociological surveys, approximately 80% of Ukrainian citizens express distrust in the judiciary and believe that corruption is prevalent[4]. This public sentiment underscores the urgency of developing alternative mechanisms, such as mediation, to enhance access to justice and rebuild trust in the legal system. Effective reforms, supported by empirical data and international best practices, can lay the foundation for the success of mediation in Ukraine.

The primary problem analysed in this article concerns the challenges Ukraine faces in aligning its mediation legislation with international standards, such as 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[5], and the UNCITRAL Model Law on International Commercial Mediation[6]. While

4 Razumkov Center, "Assessment by Citizens of the Situation in Ukraine and the State of Reforms (March 6–12, 2015)", accessed March 28, 2024, https://razumkov.org.ua/eng/poll/assessment-by-citizens-of-the-situation-in-ukraine-march-2015.

5 "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", *Official Journal of the European Union* L 136, May 24, 2008, 3–8, accessed April 3, 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0052.

6 United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use*, adopted June 25, 2018, accessed April 3, 2025, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf.

Ukraine's adoption in 2021 of the Law 'On Mediation'[7] marked a significant step forward, gaps remain in its practical implementation and harmonisation with European practices. These gaps include inconsistencies in legislative language, limited public trust in mediation as an ADR method and a lack of innovative approaches tailored to Ukraine's socio-legal environment.

This, together with the international obligations of Ukraine, necessitates the introduction of new methods of resolution. Currently, interest in the issues around the legal regulation of the procedures of ADR methods has increased among academics and law practitioners[8,9,10]. The actual application of mediation in Ukraine has been examined by various researchers[11,12,13], while others have highlighted mediation's benefits over traditional litigation, particularly regarding efficiency, cost reduction and relational preservation[14,15,16]. However, the existing literature often focuses on adapting mediation laws to align with European standards, without adequately exploring innovative approaches tailored to Ukraine's

7 "Law of Ukraine "On Mediation", No. 1875-IX", CIS Legislation, adopted November 16, 2021, accessed April 3, 2024, https://cis-legislation.com/document.fwx?rgn=136707.

8 Larisa O. Makhova and A. O. Vyprytsky, "History of International Development and the Current State of the Institute of Mediation in Ukraine", *Pravo i Suspilstvo* 5, no. 2 (2018): 245, accessed March 28, 2024, http://pravoi-suspilstvo.org.ua/archive/2018/5_2018/part_2/42.pdf.

9 Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome* (Cambridge: Cambridge University Press, 2010).

10 Jay Folberg, "A Mediation Overview: History and Dimensions of Practice", *Mediation Quarterly* 1 (1983): 4.

11 L. O. Andrievskaya and M. V. Zelenina, "On the Question of the Relationship Between the Settlement of a Dispute with the Participation of a Judge and Mediation in Accordance with the Civil Legislation of Ukraine", *Aktualni Problemy Vitchyznianoi Yurysprudentsii* 3 (2019): 55, accessed March 28, 2024, http://www.lsej.org.ua/3_2019/14.pdf.

12 A. V. Gaiduk, "Problems of Legislative Support of Mediation in Ukraine", *Chasopys Akademiï Advokatury Ukrainy* no. 3 (2013): 3.

13 Vladimir Komarov and Tetiana Tsuvina, "The Impact of the ECHR and the Case Law of the ECtHR on Civil Procedure in Ukraine", *Access to Justice in Eastern Europe* 1, no. 9 (2021): 79–101, accessed April 3, 2024, https://ajee-journal.com/the-impact-of-the-echr-and-the-case-law-of-the-ecthr-on-civil-procedure-in-ukraine.

14 S. F. Demchenko, *Theoretical and Methodological Foundations of the Effectiveness of Commercial Litigation: Monograph* (Kyiv: Press of Ukraine, 2009).

15 V. V. Rieznikova, "Mediation (Mediation) as a Way to Resolve Commercial Disputes", *Herald of the Kyiv National University*, no. 90 (2012): 10–15.

16 A. P. Havrylyshyn, "Mediation as an Alternative Way of Dispute Resolution", *Scientific Bulletin of Kherson State University* 5, vol. 1 (2014): 275–278.

unique socio-legal environment. For example, there has been limited focus on integrating digital mediation platforms, which could address accessibility issues in rural areas, or developing specialised mediation for complex disputes such as environmental or cross-border conflicts. Such tailored innovations would greatly enhance the relevance and applicability of mediation in Ukraine.

Future research and policy efforts should prioritise these new methodologies alongside the practical implementation of mediation laws. Emphasis should be placed on training programmes, public awareness campaigns and the integration of mediation into broader justice reform initiatives. By addressing these gaps, the role of mediation can evolve from merely complementary to transformative within Ukraine's legal landscape.

1. Analysis of the legislation in the field of mediation in Ukraine

The development of ADR methods in general and mediation in particular is recognised as being one of the aims of justice sector reform in Ukraine[17]. Ukraine's commitment to international mediation standards was marked in 2019 by the signing of the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention. As a result, on 16 November 2021, the Law 'On Mediation' was adopted[18]. The mediator community has been waiting for this regulation for more than 25 years, since the first mediators were trained with the support of the donor community[19].

Mediation is one of the most widely used methods of ADR worldwide. It is considered to be part of the international standard of access to justice, which is interpreted today not only as access to courts of a classical kind but also as access

17 Larisa and Vyprytska, *supra note*, 8: 241–247.

18 "Law of Ukraine "On Mediation", No. 1875-IX", Verkhovna Rada of Ukraine, accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

19 Collection of Articles: *5 Years of Dialogue and 25 Years of Mediation in Ukraine: From Division to Cohesion* (Kyiv: VAITE, 2019), accessed January 29, 2024, https://www.osce.org/project-coordinator-in-ukraine/448165.

to ADR[20].

The institutionalisation of mediation in Ukraine has come a long way. As a result, the Law 'On mediation' has several distinguishing features. Firstly, the Law was developed based on international mediation standards, including 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 (hereafter referred to as Directive 2008/52/EC)[21], Council of Europe mediation recommendations for various categories of cases[22], guidelines for better implementation of the above-mentioned recommendations developed by the European Commission for the Efficiency of Justice[23], and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation[24]. Secondly, the Law 'On mediation' reflects the best practices of mediation legislative regulation from other countries[25]. Thirdly, its drafting involved extensive consultation with stakeholders, including the mediator community, ensuring that diverse perspectives were incorporated into the final text.

The classical model of mediation operating in Ukraine was founded on core principles such as confidentiality, voluntariness, independence, neutrality, impartiality, and equality of rights for the parties involved. The term 'classical

20 United Nations, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation*, 2018, accessed April 3, 2024, https://uncitral.un.org/en/texts/mediation.

21 "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", *Official Journal of the European Union* L 136 (May 24, 2008): 3–8, accessed April 7, 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0052.

22 "Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters", Council of Europe, September 18, 2002, accessed April 3, 2025, https://rm.coe.int/16807096b3.

23 "Guidelines for a Better Implementation of the Existing Recommendation on Mediation in Civil and Commercial Matters", European Commission for the Efficiency of Justice (CEPEJ), September 21, 2007, accessed April 3, 2024, https://rm.coe.int/16807475b6.

24 "Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation", United Nations Commission on International Trade Law (UNCITRAL), adopted 2018, amending the UNCITRAL Model Law on International Commercial Conciliation (2002), accessed January 1, 2024, https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation.

25 "Comparative Overview of International Mediation Practices", International Mediation Institute (IMI), 2021, accessed January 30, 2024, https://www.imimediation.org.

model' refers to facilitative mediation, where mediators guide discussions without imposing solutions or judgements. This model prioritises party autonomy and collaborative problem-solving, making it particularly suitable for disputes requiring flexibility and mutual agreement.[26] However, some ambiguities exist in the current legislative framework. For example, the principle of voluntariness is fully recognised in the primary text of the Law but is absent in some alternative interpretations. The lack of consensus in interpreting this principle was debated at a 2018 roundtable[27], organised by the National Bar Association of Ukraine[28] and reflected in working documents of the EU Project 'Pravo-Justice' during its 2021 legislative consultations[29]. This discrepancy could lead to misunderstandings about the scope and application of mediation in practice. Reformulating the provisions to ensure consistent terminology and clear definitions would strengthen the legal foundation of mediation and promote broader acceptance among practitioners and the public[30].

Additionally, Ukraine's legislation must address specific implementation challenges, such as creating accessible training programmes for mediators, increasing public awareness about the benefits of mediation, and embedding mediation practices in judicial and administrative procedures. For example, Italy's legislative framework for mandatory mediation in commercial disputes demonstrates the potential of targeted adaptations to alleviate judicial backlogs[31]. Ukraine could explore similar measures while maintaining the flexibility required for its unique

26 Ukraine, *Law on Mediation*, art. 3.

27 "Judiciary and Mediation: Points of Intersection", Supreme Court of Ukraine, December 15, 2023, accessed April 3, 2025, https://court.gov.ua/eng/supreme/pres-centr/news/1512260/.

28 Tatiana Kyselova, *Integration of Mediation into Ukrainian Court System: Policy Paper* (Kyiv: Council of Europe, 2017), https://rm.coe.int/kyselova-t-mediation-integartion-ukr-new-31-07-2017/168075c3c5.

29 "National Mediation and Reconciliation Service Presented Updated Mediation Room", Pravo Justice, accessed April 3, 2024, https://pravojustice.eu/en/post/national-mediation-and-reconciliation-service-presented-updated-mediation-room-en.

30 "Law on Mediation", art. 2 (2021), accessed April 3, 2025, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

31 "Legislative Decree No. 28/2010", introducing mandatory mediation for specific disputes, adopted March 4, 2010, accessed April 3, 2024, http://www.gazzettaufficiale.it.

legal and social landscape.

In the broadest sense, there are two models of mediation, depending on the role and degree of intervention of the mediator: facilitative and evaluative. In the former, the mediator is responsible for managing the procedure but cannot offer proposals for dispute resolution. In the latter, the mediator has broader powers, such as making formal or informal recommendations and offering settlement options. The Law 'On Mediation' enshrines the facilitative model, defining mediation as 'an extrajudicial voluntary, confidential, structured procedure, during which the parties, with the mediator, try to prevent or resolve the conflict (dispute) through negotiations'[32].

This model is further supported by legislative guidelines, emphasising the mediator's role in upholding the integrity of the process. Mediators are prohibited from offering substantive advice or decisions regarding dispute outcomes. However, ambiguities in the interpretation of these principles persist. For example, while the mediator's role is strictly defined in Ukrainian law, alternative views discussed in legal forums propose broader interpretations that could undermine the facilitative framework[33]. These discrepancies highlight the need for clearer legislative language.

The case of mandatory mediation in Italy, regulated by Legislative Decree No. 28/2010[34], exemplifies the delicate balance between guiding the process and avoiding direct influence over outcomes. In this model, mediators are required to act impartially while actively facilitating dialogue between parties[35]. This prac-

32 "Law on Mediation", art. 3 (2021), accessed April 3, 2025, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

33 "Two Years of Mediation in Ukraine: Achievements and Challenges Discussed by Judges, Mediators, and Lawyers", Ukrainian National Bar Association (UNBA), accessed April 3, 2024.https://en.unba.org.ua/activity/news/8542-two-years-of-mediation-in-ukraine-achievements-and-challenges-discussed-by-judges-mediators-and-lawyers.html.

34 "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", *Official Journal of the European Union* L 136/3 (May 21, 2008), accessed April 3, 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0052.

35 "Legislative Decree No. 28/2010, Italian Law on Mediation", adopted March 4, 2010, accessed April 3, 2025, https://www.ejustice.just.fgov.be.

tice demonstrates the importance of maintaining mediator neutrality while ensuring procedural integrity, particularly in disputes requiring mandatory initial mediation sessions. Ukraine's mediation framework must also consider the implications of such practices, aligning its principles with international best practices while addressing practical implementation challenges. This approach would ensure a robust, adaptable mediation system tailored to the country's unique needs.

A mediator is defined as 'a specially prepared neutral, independent, impartial person who conducts the mediation'[36]. Mediators are not restricted by age, but those with limited civil capacity, incapacity, or criminal records are prohibited from serving as mediators. Countries in the region differentiate between professional and non-professional mediators: the former must complete special mediation training and obtain certification, while the latter, who lack a specialised education, may mediate if the parties agree. In Ukraine, mediators must complete a basic mediation course, either domestically or abroad, consisting of at least 90 hours of training, including 45 hours of practical skills[37].

Analysing EU practices, mediation's foundational principle of allowing parties to control their dispute resolution remains integral. The Court of Justice of the European Union, in Case C-75/16 (Judgment of 14 June 2017), confirmed that national laws may include mandatory mediation rules if they do not hinder judicial protection. It emphasised that 'the voluntary nature of mediation lies in the parties' freedom to manage, organise, and exit the process at any time'[38].

The role of mediators extends beyond guiding discussions; they must uphold procedural integrity and avoid influencing substantive outcomes. Legislative frameworks should ensure clarity in defining a mediator's responsibilities,

36 "Law of Ukraine "On Mediation"", art. 2 (2021), accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

37 *Ibid*., art. 6.

38 Court of Justice of the European Union, Judgment of 14 June 2017, Case C-75/16, *Livio Menini and Maria Antonia Rampanelli v Banco Popolare – Società Cooperativa*, accessed April 3, 2024, https://curia.europa.eu.

as ambiguities can undermine trust and effectiveness. By aligning training, certification and practice standards with EU directives, Ukraine can strengthen its mediation system while maintaining flexibility for national adaptations.

Ukraine's Civil Procedure Code lacks explicit provisions regarding the confidentiality of mediation. However, the Law 'On Mediation' explicitly states that mediators cannot be compelled to disclose information learned during mediation without the written consent of the parties involved[39]. For disclosure without written consent of information that has become known to the participants of the mediation, responsibility is provided either by law or through the agreement on mediation. Mediators cannot be interrogated as witnesses concerning such information. This highlights the necessity of harmonising confidentiality rules between the Civil Procedure Code and the Law 'On Mediation' to ensure clarity and avoid conflicting interpretations.

The Civil Procedure Code provides additional confidentiality protections by stipulating that individuals obligated by law to maintain confidentiality, such as those providing professional legal assistance or mediation services during extrajudicial dispute settlements, may not be questioned as witnesses regarding such information[40]. It is critical to clarify whether this applies to all civil procedures or only to preparational stages, as inconsistencies between these provisions and the Law 'On Mediation' may undermine the trust in and the effectiveness of the mediation process.

The Civil Procedure Code further specifies that individuals obligated by law to maintain confidentiality, such as those providing professional legal assistance or mediation services during extrajudicial dispute settlements, may not be

39 "Law of Ukraine "On Mediation"", art. 9 (2021), accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

40 "Civil Procedure Code", No. 1618-XIV, art. 131, adopted November 28, 2004, accessed April 3, 2025, https://zakon.rada.gov.ua/laws/show/1618-15.

questioned as witnesses regarding that information[41]. This provision ensures that mediators operate within a protected framework, safeguarding the confidentiality principle essential to the mediation process. However, it is crucial to clarify whether this applies broadly to civil procedures or exclusively to specific preparational stages of the process.

To fully institutionalise mediation in Ukrainian legislation, procedural updates are necessary. These updates should ensure consistency with international standards, such as the UNCITRAL Model Law on the International Reconciliation Procedure of 2002 and Directive 2008/52/EC[42]. Aligning these frameworks with local practices will enhance the practical application of mediation.

It is advisable to expand the role of mediation beyond pre-trial procedures to include its application during judicial dispute resolution. Judges could be mandated to suggest mediation after accepting a claim, setting clear timelines for resolution efforts. The confirmation of results, such as the settlement agreement, should be well-defined to integrate mediation seamlessly into the judicial process. This approach would harmonise Ukraine's practices with international models while addressing the unique needs of its legal system.

An important task will be to provide the general public with information about mediation as an effective tool for conflict resolution and to demonstrate successful examples of its application. Considering today's realities that have impacted all aspects of legal and legislative development in Ukraine, it is crucial to understand why certain processes have evolved in ways that now diverge from European models. Potentially, this path of mediation development in Ukraine might serve as a commendable example for others in the future.

41 "Civil Procedure Code", *supra note*, 40.

42 United Nations, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation,* adopted June 24, 2002, accessed April 3, 2025, https://uncitral.un.org.

2. Finding gaps and comparing Ukrainian national legislation in the field of mediation with EU law

The Law 'On Mediation' explicitly emphasises the principle of voluntariness, underscoring that engagement in mediation must be entirely consensual. According to this principle, parties are free to initiate mediation by mutual agreement and select their mediator without compulsion. Furthermore, participation in the mediation process cannot be enforced, and any party has the right to withdraw from the procedure at any point, at their discretion[43].

The Law 'On mediation' enshrines in Ukraine a classic voluntary model of mediation. However, nowadays, more and more countries are establishing different types of mandatory mediation for some categories of cases. The first country in Europe to develop such a provision was Italy, where mediation is a mandatory pre-trial procedure, for example, in condominium co-owner disputes, medical negligence disputes, defamation disputes, and disputes arising from banking and insurance contracts[44]. This tendency caused a shift in the interpretation of the voluntariness principle, from the voluntary entering into a mediation procedure to the voluntary ending of such a procedure. Nowadays, the introduction of different types of mandatory mediation has become a global trend in the legal regulation of mediation[45].

Depending on who takes the initiative in deciding on the use of mediation, we can distinguish the following types of mediation. a) Completely voluntary mediation, where the decision to use mediation lies with the parties. b) Mediation initiated by at least one of the parties, which entitles them to oblige the other party

43 "Law of Ukraine "On Mediation"", art. 9 (2021), accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

44 Cornel Hendrik van Rhee, "Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective", *Access to Justice in Eastern Europe* 4, no. 12 (2021): 7–24, https://doi.org/10.33327/AJEE-18-4.4-a000082.

45 Indrė Korsakovienė, Yuliya Branimirova Radanova, and Agnė Tvaronavičienė, "Mandatory Mediation in Family Disputes – An Emerging Trend in the European Union?", *Review of European and Comparative Law* 53, no. 2 (2023): 67–99, https://doi.org/10.31743/recl.15707.

in the mediation to participate in it, without the right of refusal. c) Mediation initiated by a court, which may involve i) mediation at the recommendation of the court, where the judge is only entitled to recommend mediation and in accordance with the norms of their national legislation, without the right to bring to justice was to explain the advantage of mediation and convinced the parties; or ii) mediation by appointment or at the suggestion of the court, which emphasises a greater degree of compulsion on the subject of the procedure, and, accordingly, the obligation here may apply only to an information meeting or mediation[46]. d) Mediation as a statutory pre-trial order where the plaintiff cannot initiate a cognizant trial on the case if the parties do not try to resolve the dispute in the mediation process[47]. According to Tsuvina and Vakhonieva (2022), this classification reflects international trends in mediation regulation and highlights varying degrees of voluntariness and compulsion[48].

Art. 124 of the Constitution of Ukraine provides that the jurisdiction of the courts extends to any legal dispute and any criminal charge[49]. In cases provided by law, courts also consider other cases. The law may provide for a mandatory pre-trial dispute resolution procedure. This constitutional provision opens the door for the legislator to introduce mandatory mediation in certain categories of cases in the future even though the Law 'On mediation' does not regulate any kind of mandatory mediation.

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46 Anna Kalisz and Alina Serhieieva, "The Development of Mediation in Poland and Ukraine: A Comparison and Prospects for Experience Exchange", *Studia Iuridica Lublinensia* 32, no. 3 (2023): 89–109, https://doi.org/10.17951/sil.2023.32.3.89-109.

47 Tetiana Tsuvina and Alina Serhieieva, "Comprehensive Analysis of the Current Situation, Barriers, and Possibilities of Mediation Development: with Recommendations for the Promotion and Implementation of Mediation in Ukraine", *in Achievements and Further Steps of Developing Mediation in Ukraine*, ed. Tetiana Tsuvina (Kharkiv: Pravo, 2019), 38–41.

48 Tetiana Tsuvina and Tetiana Vakhonieva, "Law of Ukraine "On Mediation": Main Achievements and Further Steps of Developing Mediation in Ukraine", *Access to Justice in Eastern Europe* (2022): 24–25, https://ajee-journal.com/law-of-ukraine-on-mediation-main-achievements-and-further-steps-of-developing-mediation-in-ukraine.

49 "Constitution of Ukraine", No. 254к/96-вр, adopted June 28, 1996, accessed March 28, 2024, https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.

Mandatory mediation presents a challenge for Ukraine. When adopting rules on mandatory mediation, the state should extend the principles of Article 6, Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ensuring the state's positive duty to guarantee access to court.[50] Although the European Court of Human Rights (ECtHR) has ruled that mandatory mediation does not inherently restrict access to court, each case must adhere to the principle of proportionality. The proportionality test for evaluating access to court restrictions typically involves several steps, as follows.

1) The goal behind the legal restriction of court access must be legitimate.
2) The means employed to enforce this restriction should be the least burdensome possible for a democratic society[51].
3) There should be a reasonable and balanced correlation between the methods used and the intended outcome[52].
4) The restriction should not undermine the fundamental right of access to court, ensuring that individuals are not denied judicial protection and that there are alternative methods available for safeguarding violated rights, freedoms or interests, particularly if certain cases are removed from court jurisdiction[53].

Having analysed the interpretation of mediation as a required pre-trial device, this approach pursues a legitimate goal that can manifest in two ways. On the one hand, the public interest is supported because the measure promotes access to justice and helps alleviate congestion in the courts. On the other hand, the private interests of the disputing parties are considered because an effectively

50 European Court of Human Rights, "European Convention on Human Rights", Article 6, Paragraph 1: Right to a Fair Trial, adopted November 4, 1950, accessed April 3, 2024, https://www.echr.coe.int/documents/d/echr/convention_ENG.

51 Ashingdane v. the United Kingdom, App No. 8225/78, Judgment (Merits), European Court of Human Rights, May 28, 1985, accessed April 3, 2025, https://opil.ouplaw.com/abstract/10.1093/law:ihrl/53echr85.case.1/law-ihrl-53echr85.

52 Stanev v. Bulgaria, [GC], App No. 36760/06, Judgment (Merits), European Court of Human Rights, January 17, 2012, accessed April 3, 2025, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]}.

53 Golder v. the United Kingdom, App No. 4451/70, Judgment (Merits), European Court of Human Rights, February 21, 1975, para. 34, accessed April 3, 2025, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57475%22]}.

agreed method of dispute resolution is offered to them. Furthermore, since the actors' prerogative remains the voluntary renunciation of mediation, the adopted restrictions are proportionally the least intrusive measure and are tempered to the goals of the restriction.

At the same time, the question arises as to whether such a legislative provision could lead to a situation where a person is deprived of the right to a fair trial, considering the current state of mediation development in Ukraine and the limited number of certified mediators. Introducing mediation as a mandatory pre-trial procedure for resolving disputes, even in specific categories of cases, implies a positive obligation for the state to ensure unimpeded access to mediation nationwide. Furthermore, in cases where parties have the right to legal aid, mediation should be provided free of charge and funded by the state[54].

Currently, achieving this goal appears to be challenging due to various factors, including resource constraints. On one hand, this could lead to additional burdens on the state budget, and on the other, it risks violating the right to a fair trial as outlined in Article 6, paragraph 1 of the European Convention on Human Rights (ECHR). However, this issue has long been resolved in many jurisdictions, with established rules that confirm mandatory mediation does not restrict the right to judicial protection as long as it is easily accessible, affordable and does not close the door to litigation[55].

In Ukraine, several pro-bono projects organised by mediators' associations and legal aid systems already provide free mediation services in large cities. Online mediation projects are also emerging in smaller cities, improving accessibility[56].

54 "Law of Ukraine "On Mediation"", art. 9 (2021), accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/1875-20#Text.

55 Court of Justice of the European Union, Judgment of 14 June 2017, Case C-75/16, accessed April 1, 2024, https://curia.europa.eu/juris/document/document.jsf?text=&docid=191183&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=152163.

56 Ukrainian Mediators' Associations, *Pro-bono Mediation Initiatives: Detailed Reports,* accessed March 3, 2024, https://mediators.org.ua.

Another identified gap is the integration of mediation into Ukraine's criminal procedural legislation. It is essential to clarify that mandatory mediation is not permitted in criminal matters, as this would conflict with foundational principles of justice. Mediation in criminal law supplements existing procedures by addressing restorative aspects and promoting victim–offender reconciliation. According to Ukrainian criminal law[57], offenders and victims cannot generally agree to forego prosecution, as the state's interest in justice takes precedence. Prosecutors decide whether to bring charges, reflecting societal interests beyond the immediate parties involved. Clear legislative provisions allowing for voluntary mediation within criminal cases could provide a framework for restorative justice while maintaining constitutional safeguards.

As an example, Belgium's experience highlights how mediation can be effectively integrated into criminal proceedings without undermining prosecutorial authority. In Belgium, the prosecutor serves as the central figure in mediation, selecting suitable cases and monitoring outcomes. Specialised positions, such as mediation advisers and criminologist assistants, support this process by preparing reports, facilitating reconciliation and ensuring compliance with mediation agreements[58]. These measures demonstrate how mediation can coexist with traditional criminal procedures, enhancing restorative justice practices.

However, introducing mediation in Ukraine's criminal proceedings would require amending the Criminal Procedure Code to define the role, rights and duties of mediators. This would ensure that mediation complements rather than replaces existing processes, maintaining a balanced approach to justice.

At present, in the Criminal Procedure Code of Ukraine, there is only a reference to 'a person agreed by the parties to criminal proceedings'; such a person

57 "Criminal Procedure Code", No. 4651-VI, art. 46, addressing victim-offender reconciliation, adopted April 13, 2012, accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/4651-17.

58 "Law on Mediation", Law No. 21/2005, adopted February 21, 2005, accessed April 3, 2025, https://www.ejustice.just.fgov.be.

should not be either an investigator or a prosecutor (art. 1st. 469)[59]. However, the criminal procedural legislation lacks the concept of such a person, as well as the definition of their rights and duties.

The legislative consolidation of mediation should ensure that the legislation in force in Ukraine for alternative dispute resolution is brought into line with EU standards and implement the provisions of Article 5 of Directive 2008/52/EC into the national legislation of Ukraine, which would create conditions for the work of mediators in the single European legal area and promote the development of mediation as an institution in Ukraine[60]. However, it should be noted that not all inter-family and European standards are considered in the current Law of Ukraine. "First of all, those relating to the mechanism of the quality assurance of the provision of legal services, including mediation for the resolution of legal disputes, is a guarantor of the rule of law. The legislation does not define simple and effective mechanisms of quality control, the possibility of attracting a mediator to civil, administrative, and criminal proceedings is defined. However, there are no grounds for such accountability in the sectoral legislation[61]. In addition, in the case of non-compliance with the norms of professional ethics, the mediator may bear the responsibility defined by the statute or the regulations of the association of mediators. At the same time, there are no real effective guarantees of the effective impact of such associations in case of permission by the mediator ethical standards.

Conclusions

In conclusion, by analysing the current state and potential developments of

59 "Criminal Code of Ukraine", Law No. 2341-III, art. 469, adopted April 5, 2001, updated May 5, 2021, accessed April 3, 2024, https://zakon.rada.gov.ua/laws/show/2341-14#Text.

60 L. Logush, "International Practice of Applying Mediation in the Activities of Legal Clinics in Ukraine", *Enterprise, Economy, and Law*, no. 6 (2021): 221–227.

61 Larysa Nalyvaiko and Olha Chepik-Trehubenko, "Application of the Principle of the Rule of Law in International and National Courts", *Knowledge, Education, Law, Management*, no. 4 (48) (2022): 413–419.

mediation legislation in Ukraine, this article highlights its alignment with EU standards and its important role within the judicial reform process. The adoption of the Law 'On Mediation' marks a foundational step in establishing ADR practices in Ukraine, reflecting its commitment to European legal standards. Ukraine has actively engaged with international frameworks, such as Directive 2008/52/EC and the Singapore Convention, paving the way for harmonising its practices with those of EU Member States. Additionally, initiatives such as pro-bono mediation projects and the development of online mediation platforms underscore practical advancements aimed at enhancing accessibility and fostering public trust in mediation.

Despite these efforts, several gaps continue to hinder the full integration of mediation. The legislation lacks comprehensive provisions for embedding mediation into criminal, administrative and civil procedures, and mechanisms ensuring mediator accountability and adherence to ethical standards remain underdeveloped. Furthermore, the public's limited awareness of the benefits of mediation poses challenges to its acceptance and effectiveness.

To overcome these obstacles, it is essential to amend procedural legislation to ensure mediation aligns both with constitutional principles and international norms. Implementing robust training and certification systems for mediators will guarantee professionalism and adherence to high ethical standards. Equally important is the execution of widespread information campaigns aimed at educating legal professionals and the public about the advantages of mediation.

By addressing these challenges and building on existing initiatives, Ukraine can transform mediation into a central component of its justice system. Drawing on European best practices, while tailoring approaches to its unique socio-legal landscape, Ukraine can solidify mediation as a key mechanism for ensuring accessible, efficient and equitable conflict resolution.

TEISINIS TARPININKAVIMO REGLAMENTAS: UKRAINOS ĮŽVALGOS IŠ EUROPOS SĄJUNGOS STANDARTŲ PERSPEKTYVOS

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Santrauka. Mediacija, kaip alternatyvaus ginčų sprendimo būdo forma, įgijo didelį populiarumą visame pasaulyje. Iš visų teisinių ginčų sprendimo būdų spektro mediacija išsiskiria kaip racionalus ir lankstus metodas, kuris įgauna dar didesnį populiarumą kaip tradicinių, į teismą orientuotų ginčų pakaitalas. Šiuo metu visapusiškas tarpininkavimo įgyvendinimas Ukrainoje išlieka aktuali ir esminė tema. To priežastis gali būti teismų sistemos perkrova ir būtinybė ją sumažinti. Mediacijos instituto egzistavimas yra teisingas kelias į eurointegracijos kursą.

Šiame straipsnyje pagrindinis dėmesys skiriamas tyrimui, kokiu mastu dabartiniai Ukrainos tarpininkavimo teisės aktai atitinka ES standartų koncepcijas ir kokią plėtrą tarpininkavimas įgyja dėl esamų iššūkių. Ji atlieka lyginamąją Ukrainos mediacijos teisės aktų analizę su atitinkamais ES teisės aktais, nagrinėja gerąją patirtį ES šalyse narėse. Be to, joje nustatomos spragos ir neatitikimai tarp Ukrainos ir ES sistemų ir pateikiamos įžvalgos apie dabartinę Ukrainos tarpininkavimo teisės padėtį ES standartų požiūriu.

Reikšminiai žodžiai: mediacija, alternatyvus ginčų sprendimas, ES standartai, teisės aktai, mediacija internetu