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Mediation in Ukraine: considerations in terms of the EU accession prospects

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Abstract: This article explores the development of mediation in Ukraine through the EU accession process and the alignment of the Ukrainian legislation with Directive 2008/52/EC on specific aspects of mediation in civil and commercial matters. Although the Law of Ukraine 'On Mediation', adopted in 2021, reflects the general principles of mediation, substantial gaps remain in ensuring full compliance with the EU acquis. Structurally, the article consists of two parts: the first part analyzes national legislation on mediation in light 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 (hereinafter – Directive 2008/52/EC); the second part focuses on the issue of statistical data within the further reforms of the mediation in Ukraine in terms of the European Commission Enlargement Report on Ukraine 2024. The article concludes that the successful integration of mediation into the Ukrainian legal system can serve as both a driver of internal legal reform and a tangible step toward fulfilling the values and requirements of EU membership.

Keywords: Mediation. Alternative Dispute Resolution. EU accession. Ukrainian law.

Summary: **1** Introduction – **2** Compliance of Ukrainian mediation legislation with the requirements of Directive 2008/52/EC – **3** Statistical data on mediation and the accession process – References

1 Introduction

Mediation is one of the most popular forms of alternative dispute resolution worldwide and is developing actively in Ukraine. Although the Law of Ukraine 'On Mediation' (hereinafter – Law 'On Mediation') was adopted only on 16 November 2021, the practice of mediation has followed a relatively long path within the Ukrainian national legal system.[1] The Law 'On Mediation' established the general

[1] See: Romanadze L. 'Mediation in Post-War Restoration in Ukraine' 2022 4-2 (17) Special Issue Access to Justice in Eastern Europe 202-217. https://doi.org/10.33327/AJEE-18-5.4-n000432; Prytyka Yu., Izarova I., Kravtsov S., 'Towards Effective Dispute Resolution: A Long Way of Mediation Development in Ukraine' (2020) 29(1) ALS 389-399; Tsuvina T., Vakhonieva T., 'Law of Ukraine "On Mediation": Main

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framework for the functioning of mediation, defined its principles, scope of application, the status of the mediator, his rights and obligations, the main rules of conducting the mediation procedure, as well as the legal status, rights, and obligations of the participants of mediation. Simultaneously with adopting the Law of Ukraine 'On Mediation' several amendments were also introduced into the procedural codes, generally aimed at promoting the use of mediation during the judicial proceedings.

Nowadays, one of the most pressing issues in developing the mediation framework in Ukraine is the compliance of Ukrainian legislation with EU standards in this area, considering the ongoing accession negotiation process between Ukraine and the European Union. The issue of improving mediation procedures addresses within the framework of negotiating Chapter 23 'Judiciary and Fundamental Rights' and Chapter 24 'Justice, Freedom, and Security' in the context of the opening of the first negotiating cluster 'Fundamentals', which is the first to open and the last to close during the negotiation process. One of the benchmarks for opening this cluster is the submission of a Rule of Law Roadmap – a strategic document encompassing gradual and systematic reforms in the areas covered by Chapters 23 and 24. Although this document is currently in the final stage of preparation, it is already possible to outline the main directions for improving legislation in the field of mediation, taking into account the need to bring it in line with the *EU acquis*.

Various aspects of the implementation of the Directive at the national legal systems have been addressed by many scholars, such as N. Alexander, S. Walsh, M. Svatos,[2] S. Ferz,[3] K. J. Hopt, F. Steffek,[4] C. Lenz,[5] C. Esplugues,[6] R. van Rhee,[7] A.-K. Grill, E. Martin[8] and others. The development of mediation as an alternative dispute resolution method in Ukraine was discussed by many scholars, including

Achievements and Further Steps of Developing Mediation in Ukraine' 2022 1(13) Access to Justice in Eastern Europe 142-153 doi:10.33327/AJEE-18-5.1- n000104.

2 Alexander N., Walsh S., Svatos M. (eds) *EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes*. Walters Kluwer, 2017.

3 Ferz S., Matti Ch.., 'Implementation of Directive 2008/52/EC ("Mediation Directive")' in Mediation in Cross-Border Succession Conflicts and the Effect of the EU Succession Regulation – Research Report. Stuttgart Steinbeis-Edition, 2019. 13-34.

4 Hopt K. J., Steffek F. (eds) *Mediation: Principles and Regulation in Comparative Perspective*. Oxford University Press, 2016.

5 Lenz C.,'The EU Directive on Mediation – The Implementation in Austria and the Preparations in Germany' 2010 2 Yearbook on International Arbitration 389-390; Lenz C., Risak M., 'Austria' in N Alexander, S Walsh, M Svatos (eds), EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes. Walters Kluwer, 2017, 33-58.

6 Esplugues C., 'Access to Justice or Access to States Courts' Justice in Europe? The Directive 2008/52/EC on Civil and Commercial Mediation'. *Revista de Processo (RePro)*, Ano 38, 221, Julho. 2013, 303-333.

7 Van Rhee C.H., 'Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective' 2021 *Access to Justice in Eastern Europe* 7-24.

8 Grill A.-K., Martin E., 'The impact of EU law on international commercial mediation' in Lavranos M. and Castagna S. (eds.) International Arbitration and EU Law. Second Edition. 2024. 433-461.

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notably L. Romanadze,[9] N. Mazaraki,[10] Yu. Prytyka, I. Izarova, S. Kravtsov,[11] T. Kyseliova,[12] and others. At the same time, the issue of the necessary reforms to national legislation and the practice of mediation in the context of Ukrainian EU accession negotiations – particularly concerning the development of the Rule of Law Roadmap under negotiating Chapters 23 and 24 – has not yet been the subject of scholarly research.

This article is devoted to the analyzing of Ukrainian legislation for compliance with the requirements of the *EU acquis* in the field of mediation in the context of the EU accession process. Structurally, the article consists of three parts: the first part analyzes national legislation on mediation in light 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 (hereinafter – Directive 2008/52/EC); the second part focuses on the issue of statistical data within the further reforms of the mediation in Ukraine in terms of the European Commissions Enlargement Report on Ukraine 2024.

This article employs a doctrinal legal research methodology that focuses on systematically identifying, interpreting, and evaluating legal rules within their normative frameworks. The approach involves analysing the text of relevant legal instruments, primarily the Law of Ukraine 'On Mediation' and related procedural amendments, to determine their content, structure, and internal coherence. The article uses Directive 2008/52/EC as a normative benchmark to conduct a compliance-based assessment, identifying the extent to which Ukrainian legislation fulfils the Directive's legal requirements, particularly regarding confidentiality, voluntary participation, enforceability of agreements, and mediator standards. This doctrinal analysis is complemented by contextual legal interpretation, drawing on policy instruments such as the European Commission's 2024 Enlargement Report on Ukraine and the draft Rule of Law Roadmap to situate the reforms within the EU accession process.

[9] Romanadze L., 'Mediation in Post-War Restoration in Ukraine' 2022 4-2 (17) Special Issue Access to Justice in Eastern Europe 202-217. https://doi.org/10.33327/AJEE-18-5.4-n000432.

[10] Mazaraki N., Tsuvina T. 'Creating an Effective Mediation Scheme for Business-Related Human Rights Abuses: The Case of Ukraine' 2024 9(1) Business and Human Rights Journal, Cambridge University Press, 129-149.

[11] Prytyka Yu., Izarova I., Kravtsov S. 'Towards Effective Dispute Resolution: A Long Way of Mediation Development in Ukraine' (2020) 29(1) ALS 389-399.

[12] Kyselova T. 'Pretenziia Dispute Resolution in Ukraine: Formal and Informal Transformation' (2015) 40(1) Review of Central and East European Law 57-95 doi: https://doi. orLg/10.1163/15730352-40012000.

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2 Compliance of Ukrainian mediation legislation with the requirements of Directive 2008/52/EC

2.1 General remarks

The general EU requirements for mediation are defined in 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 (hereinafter – Directive 2008/52/EC), which establishes a general framework for the development of mediation in civil and commercial matters in EU Member States. Although the Preamble to Directive 2008/52/EC explicitly states that its provisions primarily intend for mediation in cross-border disputes, it also notes that 'nothing should prevent Member States from applying such provisions also to internal mediation processes' (para 8 of the Preamble of the Directive 2008/52/EC).

Considering this the Working Group under the Ministry of Justice of Ukraine, when drafting the Law of Ukraine 'On Mediation', referred to the provisions of Directive 2008/52/EC.

For example, the Ukrainian legislation generally adopted the approach reflected in Directive 2008/52/EC by defining the facilitative model of mediation. This is in contrast to the practice of some countries, where alongside facilitative mediation, an evaluative model has developed, granting the mediator broader powers during the procedure. Thus, according to Article 1 of the Law 'On Mediation', mediation is defined as an out-of-court voluntary, confidential, structured procedure during which the parties, with the help of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations.

Under Ukrainian law, a mediator is defined as a specially trained, neutral, independent and impartial person who conducts mediation. The requirements imposed on the mediator include completing of basic mediation training of at least 90 hours, including at least 45 hours of practical training (Part 1 of Article 10 of the Law of Ukraine "On Mediation"). Therefore, Ukrainian legislation reflects the approach of Directive 2008/52/EC in that the mediator must be a professional who has undergone specialized training and acquired the necessary competencies.

Directive 2008/52/EC emphasizes the role of the judiciary in promoting mediation, in particular through the possibility for courts to invite the parties to use mediation or to attend an information session, where appropriate (Part 1 Article 5 of the Directive 2008/52/EC). Ukrainian procedural law reflects this approach to some extent: the procedural codes stipulate that during the preparatory hearing, the court shall clarify, among other things, whether the parties are willing to resolve the dispute through out-of-court mediation (Clause 2, Part 2, Article 197 of the Civil Procedure Code of Ukraine).

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Besides the abovementioned, Article 7 of Directive 2008/52/EC enshrines the principle of confidentiality, which is of importance in mediation. A similar principle is enshrined in Article 6 of the Law of Ukraine 'On Mediation'. An essential component of this principle is also the so-called 'mediator's immunity', which means that a mediator may not be questioned as a witness in proceedings regarding information obtained during the preparation for or conduct of mediation (Part 5 of Article 6 of the Law of Ukraine 'On Mediation').

At the same time, despite the similarity of the approaches used in the Ukrainian legislation and in the Directive 2008/52/EC, some provisions of the Law 'On Mediation' do not fully comply with the requirements of the Directive 2008/52/EC.

2.2 Enforcement of agreements resulting from mediation

A weak point of the national legislation on mediation remains the enforcement of settlement agreements resulting from mediation. The Directive 2008/52/EC devotes significant attention to this issue since the enforceability of settlement agreements resulting from mediation largely determines the attractiveness of this procedure for the parties and ensures the efficiency of the judiciary by avoiding new proceedings in disputes that have already been resolved through mediation. In this regard, the Preamble to Directive 2008/52/EC emphasizes that 'mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties' (paragraph 19 of the Directive 2008/52/EC).

According to the Part 7 of Article 49 of the Civil Procedure Code of Ukraine the parties may reconcile, including through mediation, at any stage of the judicial proceedings. The result of the parties' agreement may be formalized as a settlement agreement. Accordingly, the possibility of enforcement of agreements resulting from mediation currently exists only in the context of mediation, integrated into formal judicial proceedings, when the settlement agreement is approved by the court. Another possible mechanism is the approval of a settlement agreement resulting from mediation within the framework of arbitration proceedings, as provided by Article 33 of the Law of Ukraine 'On Arbitration Courts' and Article 30 of the Law of Ukraine 'On International Commercial Arbitration'. In this situation, national law allows the scope of the original claim to be extended if the mediation takes place during a pre-trial investigation, judicial, arbitration or enforcement procedure (Part 2, Article 21 of the Law 'On Mediation').

At the same time, it is evident that the effectiveness of mediation in national legal systems also depends on the possibility of enforcement of settlement agreements resulting from external (out-of-court) mediation, i.e., when no court or

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arbitral proceedings were initiated either before or in parallel with the mediation. Such examples may be seen in the legal systems of many EU Member States, such as Austria, Germany, Belgium, Slovenia and others.[13]

Moreover, this issue has not only a national but also a cross-border dimension. Since Directive 2008/52/EC is designed primarily for cross-border disputes, the question arises about how agreements reached through mediation in cross-border disputes should be enforced.

Ukrainian legislation does not provide for the possibility of enforcing even national mediation agreements unless they are approved by a court. Before accession to the EU, enforcement of mediation agreements is possible only if they have been approved as settlement agreements during court or arbitration proceedings, under the procedures for recognition and enforcement of foreign court judgments or arbitral awards (Chapter IX of the Civil Procedure Code of Ukraine).

Looking at the mechanisms available within the EU, particular attention should be paid to Regulation (EU) N. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Brussels Ia Regulation). This Regulation provides for the enforcement of settlement agreements resulting from mediation that are integrated into judicial proceedings, where such agreements are approved by a court as settlement agreements. It also allows enforcement where such an agreement qualifies as an authentic instrument in the case of external mediation. However, Ukrainian legislation does not contain the concept of an 'authentic instrument', nor does it provide for circumstances in which an agreement resulting from external mediation could be subject to enforcement.[14]

2.3 Exceptions to the principle of confidentiality

Even though the Law 'On Mediation' generally adopts the approach to the principle of confidentiality as enshrined in Article 7 of Directive 2008/52/EC and establishes certain guarantees of confidentiality, Ukrainian legislation does not contain explicit exceptions to the confidentiality principle, which directly provided for in the Directive.

[13] Tsuvina T, 'National Mechanisms of the Enforcement of Agreements Resulting from Mediation: EU Experience and Ukrainian Perspectives'. 2022. *Problems of legality*, 158, 110-123. https://doi.org/10.21564/2414-990X.158.264998; T Tsuvina, S Ferz 'The recognition and enforcement of agreements resulting from mediation: Austrian and Ukrainian perspectives' 2022 4(16) Access to Justice in Eastern Europe 32-54. https://doi.org/10.33327/AJEE-18-5.4-a000436.

[14] See more: T Tsuvina, S Ferz 'The recognition and enforcement of agreements resulting from mediation: Austrian and Ukrainian perspectives' 2022 4(16) Access to Justice in Eastern Europe 44-47. https://doi.org/10.33327/AJEE-18-5.4-a000436.

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According to para 1 of Article 7 of the Directive 2008/52/EC, confidential information disclosed during mediation may not be used or disclosed in subsequent proceedings, except: a) where it is necessary for overriding considerations of public policy in the Member State concerned, particularly when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

Meanwhile, the Law 'On Mediation' provides that the mediator and other participants in mediation, as well as the entity providing mediation services, shall not disclose confidential information, unless otherwise provided by law or unless all parties to the mediation have agreed in writing to disclose. This raises the question of the legislator's intention behind the phrase 'unless otherwise provided by law': it remains unclear whether this refers to general legal exceptions allowing disclosure of confidential information (e.g., in criminal or civil proceedings), or whether it refers to specific exceptions to the principle of confidentiality established by specific legislation on mediation.

One specific exception is indeed provided in Part 4 of Article 6 of the Law 'On Mediation', in the event of a dispute between the mediator and the parties to mediation regarding the provision of services. In such a case, where a party to the mediation makes a claim against the mediator for failure to fulfill or improper fulfillment of the mediation agreement, the mediator is released from the obligation to preserve confidentiality — but only to the extent necessary to protect their rights and interests. Moreover, any court, authority, or official considering such a claim must take measures to prevent access to confidential information by third parties and to avoid its disclosure.

However, this exception is not equivalent to the exceptions provided in Directive 2008/52/EC. Therefore, such exceptions should be explicitly reflected in the national legislation to ensure transparent, predictable, and EU-compliant standards of confidentiality in mediation.

2.4 Effect of mediation on limitation and prescription periods

Article 8 of Directive 2008/52/EC contains a specific provision on limitation and prescription periods, stating that the parties shall not be prevented from instituting court or arbitration proceedings by the expiry of such periods during the mediation process.

Meanwhile, according to Part 2 of Article 3 of the Law of Ukraine 'On Mediation', the procedure may be conducted before referring a dispute to a court,

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arbitration, or international commercial arbitration, as well as during pre-trial investigation, trial, arbitral proceedings, or enforcement of a judgment or arbitral award. However, the mediation does not affect the calculation of limitation periods.

The provisions of Ukrainian national legislation do not fully comply with Article 8 of Directive 2008/52/EC. On the one hand, mediation in Ukraine remains entirely voluntary and does not prevent access to the courts; on the other hand, national law does not provide for suspension of limitation periods during mediation. This legislative choice seems to be related to procedural abuse — in particular, the risk that a party might initiate mediation solely to suspend limitation periods and gain more time to prepare for litigation.

Nonetheless, paragraph 12 of the Preamble to Directive 2008/52/EC explicitly states: 'Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods'.

The Civil Code of Ukraine sets a general limitation period of three years (Article 257 of the Civil Code of Ukraine). Special limitation periods, which may be shorter or longer than the general period, are established for specific claims (Article 258 of the Civil Code of Ukraine). Additionally, Part 1 of Article 259 of the Civil Code of Ukraine allows for the extension of the statutory limitation period by agreement of the parties. The grounds for suspension of the limitation period are defined by law, but do not include the commencement of mediation.

Given the above, amendments should be made to Ukrainian legislation to allow the parties, in the event of failure to reach a mediation agreement, to apply to court without missing the limitation period. After the termination of the mediation procedure — which should serve as the basis for suspension — the limitation period would resume, considering the time that had passed before it was suspended, in accordance with the general rules of civil law.

With regard to the suspension of the proceedings during the mediation process, this possibility is already provided for in the current procedural legislation (Clause 4-1 of Part 1, Article 251 of the Civil Procedure Code of Ukraine).

3 Statistical data on mediation and the accession process

3.1 General remarks

In its 2024 Enlargement Report on Ukraine, the European Commission (EC) emphasized that Ukraine should expand the use of alternative dispute resolution mechanisms, including mediation. The EC also noted that no national data

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collection system exists for ADR in general and mediation in particular.[15] This provides a foundation for the discussion surrounding statistical data on mediation at the national level within the framework of the negotiation process.

Why is statistical data important in the context of the accession process? Statistical data on mediation can help answer many key questions: How does the dispute resolution system function in the country? Does mediation help reduce the caseload of courts? How many disputes are settled without going to court, and what types of disputes are they? What is the success rate of mediation? Is mediation in demand in the legal aid system, restorative justice, or as a social service? What are the areas of application of mediation? Is the mediators and the mediation system able to put court-connected mediation or mandatory mediation in place for specific types of disputes? Are there any visible shifts in dispute resolution culture?

Complete, objective, and reliable data on mediation is necessary to justify legislative changes, to design and evaluate access-to-justice strategies, and to support analytical and academic work. At the same time, in Ukraine, such data is not systematically collected – neither by state bodies (even the State Judicial Administration, at least until 2025[16]) nor by the private sector engaged in mediation. There are many reasons for this. For state and courts, mediation is still a secondary issue, and making statistical reports is seen as an extra administrative task. On the other hand, mediators and mediation providers lack market incentives for such data collection.

This situation is common in many countries, particularly where there is no court-connected mediation or national register of mediators. For instance, the CEPEJ Report on the functioning of judicial systems in Council of Europe member states notes that only 25% of countries submit relevant mediation statistics.[17]

It is important to note that compliance with the principle of confidentiality in mediation does not preclude the collection of primary data. This is because statistical information does not include personal data of the parties or participants, or information about the substance of the dispute.

Theoretically, the state could organize the collection and aggregation of mediation-related data by adopting appropriate regulatory decisions, provided that

[15] Ukraine 2024 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 2024 Communication on EU enlargement policy. https://enlargement.ec.europa.eu/document/download/1924a044-b30f-48a2-99c1-50edeac14da1_en?filename=Ukraine%20Report%202024.pdf.

[16] Starting with the report for 2025, the statistical reporting of the State Judicial Administration will include data on the refund of court fees in case of a settlement agreement following mediation. Order of the State Judicial Administration dated 29.11.2024 No. 526.

[17] European judicial systems. CEPEJ Evaluation Report 2024 Evaluation cycle (2022 data). https://rm.coe.int/cepej-evaluation-report-2024-general-analyses/1680b1e91d, P.117.

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the principles of data reliability, objectivity, and cost-effectiveness in statistical reporting are respected.

Upholding these principles requires well-reasoned answers to several questions: a) What kind of data on mediation does the state need? b) Which bodies are responsible for this, and how can they organize the generation of statistical reports? c) How can data from different bodies be aggregated and made comparable?

3.2 Purpose of data collection

Data on mediation is primarily needed to ensure effective implementation and planning of state policy in access to justice, the provision of public (social) services, and related areas. Such data can help the state and society answer two questions: 1) how mediation is developing over time, and 2) how legislation could be improved to foster its further development.

In assessing the state of development of mediation in a given period, it is appropriate to assess the availability, accessibility and demand for mediation, as well as public awareness of mediation - all of which are in line with the CEPEJ approach.

Although mediation currently constitutes only a microscopic part of the system of public services and the judiciary, it still has the potential to generate meaningful positive change: it can reduce the burden on courts, support constructive resolution of public and private disputes, and strengthen a culture of peaceful dispute resolution in society. At the same time, international experience convincingly shows that without a state-driven impulse, there is little chance of a significant increase in the use of mediation. Such impulses may include the introduction of mediation in disputes between individuals and public authorities, court-connected mediation, some degree of mandatory mediation in specific categories of cases.

In order to justify such legislative initiatives, it is important to understand what types of disputes might warrant some degree of mandatory mediation, how many mediators will be needed, what costs will be involved in ensuring access to mediation for vulnerable groups, and what technical and institutional support will be required.

Mediation data may be both quantitative and qualitative. This study focuses primarily on quantitative primary data as the basis for forming statistical data. However, this does not diminish the importance of qualitative data, which helps to assess trends in mediation development, user satisfaction, as well as the limiting and enabling factors that affect mediation uptake.

Looking at the objectives of collecting data makes it possible to identify the specific types of data on mediation which are needed.

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3.3 Categories of mediation data

A) Number of mediators

When forming statistical data, the key legislative criterion for being a mediator (completion of basic training) is insufficient. It is necessary to consider other indicators which, in combination, allow to assess the real capacity of the community of mediators. That is, it is important to understand not only how many people have completed basic mediation training, but also how many of them are actively providing services, what types of mediation services they are providing and in which regions.

Accordingly, data on the number of mediators should be collected based on the following criteria:

i) Mediator specialization

The quality of mediation services is directly linked to whether mediators develop and adhere to a specific specialization – for example, in family, labor, or commercial disputes. Therefore, to objectively assess the potential of the mediator community, it is necessary to know the number of mediators by area of specialization. It would also allow the feasibility of introducing mandatory mediation in specific categories (e.g., family disputes) to be assessed.

It is particularly crucial to define these specialisations in a way that is consistent with the classification of case types in judicial statistics, in order to allow a comparison between the workload of the courts and the approximate availability of mediators.

For example, in its recommendations on collecting mediation statistics,[18] CEPEJ proposes distinguishing the following areas of mediator specialization: civil and commercial disputes, family disputes, administrative disputes, labor disputes, consumer disputes, criminal proceedings (further subdivided into juvenile and adult cases).[19] It also recommends applying the same classification to mediation cases data.

ii) Language proficiency, including the languages of Ukrainian indigenous peoples

Knowledge of sign language is also important, especially in the context of providing free legal aid or mediation as a social service. In the event of the introduction of mandatory mediation, it is essential to ensure universal access to this process, inclusive of individuals with special communication requirements.

[18] Baseline Grid for Mediation Key Performance Indicators https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52.

[19] https://rm.coe.int/explanatory-note-2024-cycle-cepej-2023-2-en/1680aae30a.

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iii) Format of service delivery (in-person or online mediation)

Together with information about the region where services are provided, this will help assess the territorial availability of mediators across the country. Of course, some of this information (to varying degrees) is available in existing mediator registers maintained by mediator associations or service providers. However, the multiplicity of such registers in Ukraine, combined with the absence of legal or self-regulatory restrictions requiring a mediator to be listed in only one register (and no obligation to be registered at all registers), prevents a reliable estimation of the mediators' community. It is not uncommon, for example, for a single mediator to be listed in several registers simultaneously.

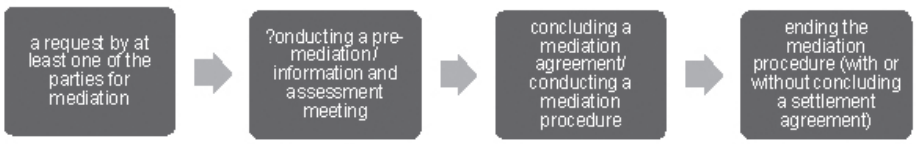
Therefore, a mediator register can only provide reliable and objective information about the mediator community if legislation requires a single national register and grants access to the profession only to those included. For instance, this approach has been adopted in the Republic of Bulgaria.[20]

At the same time, CEPEJ statistical approach is based primarily on court-connected mediation, where the number of mediators is typically determined based on the registers of court mediators, which are maintained and kept up to date by relevant authorities.

B) Number of mediation cases

This indicator demonstrates the demand for mediation, but to reflect the objective reality accurately, the following considerations must be taken into account:

1. The classification of statistical data according to the case type classification employed in judicial statistics is imperative in order to evaluate the impact of mediation on the reduction of court caseload, both in the context of pre-trial resolution of disputes and for cases that are already under judicial consideration.
2. A "mediation case" should be defined by the key moments in the mediation continuum, which can be summarized as follows:



[20] https://public.tableau.com/app/profile/cepej/viz/QuantitativeDataEN/Tables?publish=yes.

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Each of these stages should be recorded separately. Only in this case the statistical data offer a comprehensive picture of how mediation is being applied. This approach can be further refined, including the basis for initiating mediation (contractual mediation clause, third-party recommendation, parties' initiative); the number and duration of mediation sessions (helpful, for example, in forecasting state expenses for mediator compensation for vulnerable groups[21]); the reasons for terminating mediation (e.g., number of mediated settlement agreements, refusals, acknowledgments of claims).

Another informative indicator would be calculating the rate of dispute resolution via mediation. For instance, the court-connected mediation statistics in Hong Kong use this method: the number of disputes resolved through mediation is added to the number of unresolved mediation cases closed within six months of mediation ending. This total is divided by the overall number of mediation cases conducted.[22]

3. In addition, it is recommended that primary data be collected on the question of whether mediation was conducted on an individual basis or in a co-mediation format.

C) Infrastructure for mediation, which includes

i) Entities providing mediation services by their territorial location and specialization. Such information, combined with data on mediator specializations, allows for a comprehensive view of the capacity of the mediation community to implement reforms, market development trends in mediation services, the priorities of the professional community.

In its recommendations on mediation statistics,[23] CEPEJ proposes distinguishing mediation providers by specialization (in line with mediator specialization and case types resolved through mediation) and categorizing them separately as private entities, court-connected providers, chambers of commerce, bar associations, government and local authorities.

ii) Mediation rooms in courts, government or local authorities, educational institutions, free legal aid centers, social services, etc.

The establishment of dedicated premises has been shown to be conducive to the development of mediation. The provision of a physical space for conducting

[21] There are different approaches to determining the duration of mediation, for example, in court-ordered mediation - from the date of appointment of the mediator to the termination of mediation, which allows for the mediator's time spent preparing for mediation, and the duration of mediation meetings is calculated separately. See, for example, https://mediation.judiciary.hk/en/doc/2023_IMO_EN.pdf.

[22] https://mediation.judiciary.hk/en/doc/2023_CFI_EN.pdf.

[23] Baseline Grid for Mediation Key Performance Indicators https://rm.coe.int/mediation-development-tool kit-ensuring-implementation-of-the-cepej-gui/16808c3f52.

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mediations, the demonstration of support from the 'host institution', and the facilitation of online mediations are all factors that contribute to this process. The tracking of the availability and geographical distribution of such premises is an essential component of the assessment of mediation infrastructure.

The indicators listed above should be considered the minimum required for data collection. Only when such data is available and updated annually can the state and society obtain a comprehensive picture of the development of mediation, and a clear understanding of the tools and methods needed to provide further momentum for its expansion.

As for the bodies that could potentially collect primary mediation data, these may include the State Judicial Administration of Ukraine, the Ministry of Social Policy of Ukraine and the National Social Service of Ukraine, the Ministry of Justice of Ukraine, the Coordination Center for Legal Aid Provision, the Ukrainian National Office of Intellectual Property and Innovation, the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry, the Permanent Court of Arbitration at the Chamber of Commerce, the State Service for Children Affairs, the National Service for Mediation and Conciliation, various mediator associations, among others.

Conclusion

The development and institutionalization of mediation in Ukraine have reached a pivotal moment. While significant legislative progress has been made since the adoption of the Law of Ukraine 'On Mediation' in 2021, aligning national norms and practices with the EU acquis, particularly Directive 2008/52/EC, remains both a legal obligation and a strategic opportunity in the context of Ukraine's EU accession.

This study has revealed that Ukrainian mediation law reflects several core principles of Directive 2008/52/EC, which lay a necessary foundation for integration with European legal standards. At the same time, important gaps persist and must be addressed systematically. Among the most pressing areas requiring reform are: 1) the absence of a legal mechanism for the enforcement of out-of-court mediation agreements, which undermines legal certainty and discourages use of mediation in cross-border and domestic contexts alike; 2) the lack of apparent legislative exceptions to the confidentiality principle, which raises concerns regarding the balance between confidentiality and public interest in sensitive categories of disputes; 3) the failure to suspend limitation periods during mediation, which may jeopardize access to justice for parties genuinely attempting out-of-court resolution and contradicts the spirit of Directive 2008/52/EC.

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Moreover, the absence of a national statistical data collection system on mediation represents a structural weakness in evidence-based policy-making and international reporting. As highlighted by the European Commission and CEPEJ, reliable data is vital for measuring the effectiveness, accessibility, and institutional capacity of mediation services. The introduction of a centralized data collection mechanism must be accompanied by the classification of mediation cases, the profiling of mediators, the mapping of infrastructure, and the identification of providers. Additionally, statistical tools should be harmonized with CEPEJ's methodology to ensure international comparability. The initiative will serve to advance Ukrainian reform objectives, whilst concurrently empowering national institutions to make informed decisions regarding the allocation of resources, the provision of support to vulnerable populations, and the integration of mediation into public legal services.

Finally, it is vital not to underestimate the broader goal of integrating mediation into Ukraine's legal culture. Legislation alone cannot foster a culture of peaceful dispute resolution. It requires long-term investment in public awareness, professional training, judicial engagement, and the creation of supportive institutional ecosystems. In conclusion, mediation offers Ukraine a dual opportunity: to enhance its domestic legal order and to advance meaningfully on the path to EU membership. Seizing this opportunity will depend not only on legal amendments but also on political will, institutional coordination, and societal trust. If implemented successfully, the potential exists for mediation to evolve from a marginal practice to a fundamental component of a contemporary, inclusive, and European justice system in Ukraine.

Mediação na Ucrânia: considerações em termos das perspectivas de adesão à UE

Resumo: Este artigo analisa o desenvolvimento da mediação na Ucrânia no contexto do processo de adesão à União Europeia e da harmonização da legislação ucraniana com a Diretiva 2008/52/CE, que trata de determinados aspectos da mediação em matérias civis e comerciais. Embora a Lei da Ucrânia "Sobre Mediação", adotada em 2021, reflita os princípios gerais da mediação, ainda existem lacunas significativas para garantir a plena conformidade com o acervo comunitário da UE. Estruturalmente, o artigo divide-se em duas partes: a primeira analisa a legislação nacional sobre mediação à luz da Diretiva 2008/52/CE do Parlamento Europeu e do Conselho, de 21 de maio de 2008, relativa a determinados aspetos da mediação em matérias civis e comerciais (doravante – Diretiva 2008/52/CE); a segunda parte concentra-se na questão dos dados estatísticos no âmbito das reformas futuras da mediação na Ucrânia, em conformidade com o Relatório de Alargamento da Comissão Europeia sobre a Ucrânia de 2024. O artigo conclui que a integração bem-sucedida da mediação no sistema jurídico ucraniano pode servir tanto como motor de reformas jurídicas internas quanto como um passo concreto rumo ao cumprimento dos valores e requisitos para a adesão à União Europeia.

Palavras-chave: Mediação. Resolução alternativa de disputas. Adesão à EU. Direito ucraniano.

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