MEDIATS
Mediation: Training and Society Transformation

Co-funded by the Erasmus+ Programme of the European Union

# Mediation in progress

*Collection of articles*
*by participants of the Mediation project:*
*Training and Society*
*Transformation / MEDIATS*
599010-EPP-1-2018-1-NL-EPPKA2-CBHE-JP

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Mediation: Training and Society Transformation/ MEDIATS
599010-EPP-1-2018-1-NL-EPPKA2-CBHE-JP

Project goal:

- enable Universities to be one of the key players in facilitation of the processes of mediation in Azerbaijan, Georgia and Ukraine to enhance democracy and objective problem resolution by acquiring best European practices.

Specific project objectives:

1. To develop and implement Master's degree program «Mediation».
2. To establish sustainable Mediation Federation.
3. To promote mediation values within the society in Azerbaijan, Georgia and Ukraine.

Project Duration:

- November 15, 2018 – November 14, 2022.

Project Coordinator:

- Netherlands Business Academy, the Netherlands.

Project Co-coordinator:

- «KROK» University, Ukraine.

Partners:

- Fundacion Universitaria San Antonio, Spain,
- Turiba University, Latvia,
- «KROK» University, Ukraine,
- V.N. Karazin Kharkiv National University, Ukraine,
- Yuriy Fedkovych Chernivtsi National University, Ukraine,
- Khazar University, Azerbaijan,
- Ganja State University, Azerbaijan,
- Ilia State University, Georgia,
- Batumi Shota Rustaveli State University, Georgia,
- Hultgren Nachhaltigkeitsberatung UG, Germany.

Activities:

- Learning of EU experience,
- Development of MDP in Mediation,

- Launch of Master Degree Program in Mediation,
- Development of the Mediation Federations,
- Quality management,
- Dissemination and sustainability,
- Project Management.

Expected results:

- Master Degree Program in Mediation is implemented at 7 HEIs,
- Qualified staff,
- Mediation Federation is created at each Partner country,
- Methods/ action plan of promotion of mediation values into the society of Ukraine, Georgia and Azerbaijan,
- Qualified specialists-mediators, able to resolve disputes peacefully.

The Project is co-funded by the Erasmus+ Program of the European Union.





# Summary

## Introduction

Mediation is a rapidly growing industry that is transforming government systems, including judicial systems, offering people, companies, structures and communities the opportunity for optimal, cost-effective, human-centered resolution of disputes and conflicts. Transforming society through the development of the institution of mediation is a noble task, which is the main goal of the MEDIATS project, namely, enable Universities to be one of the key players in facilitation of the processes of mediation in Azerbaijan, Georgia and Ukraine to enhance democracy and objective problem resolution by acquiring best European practices. European countries today are known for the wide use of mediation, which is interesting to study, comprehend, adapt and transfer to countries where mediation is just developing – Georgia, Azerbaijan and Ukraine. This collection contains articles of both academic and practice-oriented nature, which represent achievements in the use, teaching and promotion of mediation in the countries participating in the MEDIATS project (Netherlands, Latvia, Spain, Germany, Georgia, Azerbaijan and Ukraine). The value and uniqueness of this collection of articles is the description of the diversity of approaches to the use of mediation – both legal and managerial backgrounds. The publications are the quintessence of the unique experience of the countries participating in the project, which can be studied and comprehended for the further development of mediation, a culture of conflict resolution, and the organization of dialogues. The collection will be useful to practicing mediators, lawyers, attorneys, judges, business owners and managers, as well as students of educational programs in the field of mediation and conflict management.



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**Kristina Babenko, DoS., Associate Prof.**
**Olena Parkhomenko, PhD, Associate Prof.**
**Kateryna Andreieva, lecturer**
**Yuliia Kvitka, PhD, Associate Prof.**
***V.N. Karazin Kharkiv National University***

# THE CONFLICT MANAGEMENT SYSTEM OF HIGHER EDUCATION INSTITUTIONS: NEW OPPORTUNITIES FOR IMPROVING

***Relevance of the research topic.*** Working in a team inevitably leads to a conflict of interests, positions, opinions. It has been known that it is almost impossible to completely avoid conflicts in organizations. But conflict researchers say that almost 90% of people in conflict did not plan to confront. Therefore, working with the conflict, transforming its destructive force into constructive change, is one of the most pressing issues today – especially in the scientific and education organizations, strongly connected with exploration and different opinions in specific fields.

Conflicts often have a negative impact on the organization, reduce employee productivity and profitability of organizations, reduce customer loyalty and contribute to an unhealthy atmosphere. That is why the problem of conflict management is so popular today among managers at all levels. Conflict can lead to unproductive results, but the same conflict can be resolved favorably and even lead to improved relationships.

Including all the above, the relevance of the chosen topic becomes obvious. Conflict management in the organization (esp. HEIs) should be carried out taking into account the complexity of labor relations

in different areas – between management and employees; between the administration and trade unions, the labor council; between individual employees or related groups, etc.

***The aim of this paper*** is to develop recommendations for the use of mediation to improve the conflict management system in higher education institutions on the example of Kharkiv Technological University "STEP" (Kharkov, Ukraine).

***Main part.*** Mediation is one of the world's most common alternative ways of conflicts (disputes) resolution. The adoption of the Law on Mediation [13] in Ukraine at the end of November in 2021 marked the beginning of a new stage in the settlement of disputes in enterprises. The introduction of mediation in Ukraine today is one of the most important areas of reforming the system of public access to fair justice and an effective way to reduce the conflict potential of society as a whole [7, p.101]. So, let's discover what is mediation and how organizations can use it in their day-by-day activity.

Having clear instructions, regulations and policies at the company that regulate the rules of conduct and organization of the work process minimizes the number of conflicts. Also, the organization has employees who specialize in conflict resolution and are familiar with the tools, techniques, and methods of conflict resolution. This way of resolving conflicts is mediation.

Mediation (from the Latin) – a method of resolving conflicts / disputes, by which two or more parties of the conflict / dispute try within a structured process with the mediator to reach an agreement to resolve it; voluntary and confidential process in which a neutral third party (mediator) helps the parties to find a mutually acceptable solution to the dispute. Mediation involves resolving a conflict situation on a win-win basis, as opposed to "victory – defeat", ie the main idea of mediation is to take into account the interests and needs of each conflicting party, when none of the opponents lost, all parties to the conflict were satisfied [3, p. 47].

Mediation as a way of pre-trial dispute resolution originated in the United States during the Great Depression of the 1930s. The



main use of mediation in the beginning was to resolve labor and family disputes, which helped reduce the consequences and curb strikes. Then, during the 1940s in the United States in the structure of the Ministry of Labor was established Federal Service for Mediation and Reconciliation [6, p. 201]. To date, the US experience has been adopted by such countries as Canada, Great Britain, Australia, and New Zealand.

In Ukraine, as the beginning of the introduction of alternative methods of dispute resolution can be considered the late 80's and early 90's of the twentieth century, when there were mass strikes of miners in Donbass area. Then the first Ukrainian-American seminar "Settlement of labor conflicts in the coal industry" was held. Formally, mediation is a method of pre-trial dispute resolution, but the mediation procedure can be used at any stage of the conflict, including as a method of conflict prevention and minimization.

According to the Law of Ukraine "On Mediation", mediation is an extrajudicial voluntary, confidential, structured procedure in which the parties with the help of a mediator (mediators) try to prevent or resolve a conflict (dispute) through negotiations [13]. So, let's study key definitions and areas of mediation procedure.

A mediator is a specially trained neutral, independent, impartial individual who conducts mediation [13].

The Law on Mediation [13] also prescribes the areas of application of mediation. In particular, it is noted that mediation can be used to resolve any conflicts (disputes), including civil, family, labor, economic, administrative, as well as in cases of administrative offenses and criminal proceedings to reconcile the victim with suspects (accused).

Mediation in the organization is part of the conflict management system of the organization. In addition, mediation is a tool to maintain and sometimes improve relationships, as the mediation process offers parties active participation in a process that focuses on the needs, rights and interests of the parties, and the decision is made by the parties and not a third party as it happens in court.

Alyona Fokina, a certified Mediation Adviser, cites research that shows that the vast majority of employees find their relationship with management satisfactory and willing to discuss issues. However, 20% of employees also noted that their manager is the cause of the conflict. The study also found that workers often experience injustice in the workplace, and almost a third of surveyed persons said that their problem was not perceived by a specialist as something serious [11, p.6]. Regarding Ukrainian research, according to study of the International Personnel Portal HeadHunter, almost half of managers believe it is necessary not to notice the conflict and not to intervene when there is a conflict between subordinates, and among the top 3 reasons for dismissal 37% are conflicts with management.

That is, the mediation process helps to establish communication between the parties of the conflict. There is no particular time when mediation should be used. The mediation procedure can be applied to a court, arbitration tribunal, international commercial arbitration or during a pre-trial investigation, trial, arbitration, arbitration proceedings, or during the execution of a court, arbitration, or international commercial arbitration decision [13].

A review of modern scientific thought on conflict management and analysis of practices of the mediation procedures implementation in the activities of organizations in various fields of management provides an opportunity to explore possible areas for improving the conflict management system of higher education institutions.

Before introducing the mediation procedure into the daily work of the university, it would be advisable to determine the purpose of this improvement. The authors conducted an interview with the rector ("STEP" University), it was found that the goal is to reduce the negative effects of conflict and increase the loyalty of students and staff to the University. This will help improve the culture of communication and interaction in the workplace.

Let's consider possible options for implementing the mediation procedure in the work of KhTU "STEP" and try to find the best option. According to the authors, it is advisable to consider the following options:



1. Conflict management without the introduction of an appropriate position, using an external mediator. In this case, the organizational structure remains unchanged, and in case of conflict, it is proposed to involve an external mediator. To quantify the cost of this option, the cost of engaging a conflict management specialist should be determined.

2. Conflict management is the functional responsibility of the specialist of the training department to whom parties turn for counseling on conflict and conducting systematic training on conflict management. Conflict management at this stage is consistent with the company's strategy. Let's try to estimate the cost of training a specialist in the training of mediator skills and find out in which department you can create a reserve of time that can be spent on resolving conflicts.

3. The organization has created the position of "conflict resolution manager (mediator)", whose responsibilities include resolving conflicts, creating relevant documents, regulations, instructions or even programs for resolving conflicts and disputes. Involvement of an external mediator also remains possible, for example, if you need to work in co-mediation.

4. The organization has created its own conflict and dispute management service, which includes both the full cycle of work with internal conflict and the resolution of external conflicts. An alternative to the conflict management service could be to train employees in mediation skills.

Today, when the Law of Ukraine "On Mediation" defines the basic concepts of the mediation process, as well as describes the principles of mediation and requirements for skills and training of mediators, we can choose any option to introduce mediation in the workspace.

To make a decision, it is necessary to evaluate all possible alternatives.

It is proposed to consider in details each of the options and make a choice, taking into account the presence of branches in other cities of Ukraine and abroad. The issue of resource costs is relevant when

choosing the option of implementing the mediation procedure: material and labor. More generally, the problem of improving the conflict management system is the transformation of corporate culture.

Possible areas for improving the conflict management system for KhTU "STEP" are shown in Table 1.

*Table 1*

Areas for improving the conflict management system for KhTU "STEP"

| | | |
|---|---|---|
| 1 | Training of employees in mediation skills | All employees are trained |
| | | Certain employees are trained, including top management and HR specialists, who then organize a series of trainings for staff |
| 2 | Establishment of an internal mediation service | There is a group of employees who are trained in conflict resolution techniques |
| 3 | Addition and expansion of functions of current specialists | Employees whose functional responsibilities include conflict resolution are selected |
| 4 | Involvement of an external mediator | Use of knowledge and skills of an external professional who specializing in conflict management |

*Source: created by the authors*

But first we need to decide whether all employees will be trained in basic mediator skills. Of course, the final decision remains with the management of KhTU "STEP", but in the opinion of the authors it would be appropriate to send for training not all staff, but a certain number of selected persons. In our opinion, the list of those recommended for the course may consist of the following positions: rector, vice-rectors for academic affairs and economic issues, heads of departments of information technology and management, as well as deputy heads of personnel and teaching department. Only 7 people.

As mentioned above, possible options for improving the conflict management system for KhTU "STEP" are training employees in mediation skills, creating an internal mediation service, complementing



and expanding the functions of employees and involving external mediators to resolve specific conflicts.

Including information about conflict management system and financial condition of KhTU "STEP" (from annual reports and an interview with rector), it can be concluded that it is inexpedient at this stage to create an internal mediation service.

This requires a large-scale restructuring of the organizational structure, a significant expansion of staffing and, consequently, an increase in wage costs, job creation and other related costs. Therefore, in the framework of this paper, we will focus on the feasibility and evaluation of the effectiveness of the following options for improving the conflict management system of KhTU "STEP":

- training of university management in basic skills of a mediator;
- supplementing the functions of the current employees of the personnel department and educational and methodological departments with the functions of an internal mediator;
- involvement of an external mediator.

Consider in details each of the proposed options.

Let's start with an assessment of the cost of training staff in the basic skills of a mediator. This option naturally arises as a component in any of the above areas of conflict management, except for the involvement of an external mediator.

In Ukraine, it is possible to study mediation at online courses, certification programs or get a master's degree.

Master's programs last 1.5 or 2 years and are offered by public or private higher education institutions. If we talk about certification programs, these trainings are shorter and often have a narrow specialization or offer training in basic mediation skills.

Certification programs are usually offered by community organizations and mediation activities. Today in Ukraine there are many public organizations that are actively working to improve and promote the institution of mediation in Ukraine. Among the main ones are the National Association of Mediators of Ukraine, the League of Mediators of Ukraine, the Association of Family Mediators of Ukraine, etc.

The paper considered only educational opportunities offered by higher education institutions or public organizations in Kharkiv or Kyiv. Also, the paper did not consider the possibility of teaching mediation by specialization (business mediation, family, labor mediation, etc.). We believe that the study of basic skills of a mediator is more in line with the purpose of this work.

Table 2 lists the opportunities for staff training in mediation skills. The list is not exhaustive and can be supplemented by the management of KhTU "STEP" upon request.

*Table 2*

List of HEI's and NGOs of Kharkiv and Kyiv, where basic mediator skills training is offered.

| № | HEI or NGO | Name of the program | Duration of training, months / number of hours | The cost of the program |
|---|---|---|---|---|
| Master's program | | | | |
| 1 | KROK Business School (Kyiv) | Master in Mediation and Conflict Management | 1 year 4 months | From UAH 90,000 / year |
| 2 | ERI "Karazin Business School" (Kharkiv) | Management (selective block «Mediation») | 1 year 4 months | From UAH 19,900 / year |
| 3 | NTU "KPI" (Kyiv) | Conflict resolution and mediation | 1 year 4 months | From UAH 18,000 / year |
| Certificate program | | | | |
| 1 | Ukrainian Mediation Center at KMBS (Kyiv) | Basic skills of a mediator | 1.5 months / 48 hours | UAH 15,800 |
| 2 | School of Mediation (Kyiv) | Basic skills of a mediator | 2.5 months / 120 hours | From UAH 15,900 |
| 3 | KROK Business School (Kyiv) | Basic skills of a mediator | 4 months / 112 hours | UAH 32 500 |
| 4 | Center for Law and Mediation (Kharkiv) | Mediation. Basic course | 2 months / 120 hours | From UAH 16,000 |
| 5 | Academy of Consulting Business (Kyiv) Academy of Consulting Business (Kyiv) | Mediation 3.0 | 2 months / 90 hours | From UAH 16 900 |
| 6 | NU "KMA" (Kyiv) | Mediation and conflict management | 3 months / 300 hours | From UAH 27 000 |
| 6 | KNTEU (Kyiv) | Mediation. Basic professional competencies | 1 month / 92 hours. | UAH 16 000 |

*Source: compiled by the authors based on data from [4, 5, 10, 12]*

All of these certification programs offer an online or offline learning format.

People can also consider training staff online abroad.

There are not many online mediation courses, but there are free ones, such as the course "Introduction to Mediation" in Ukrainian from VUM [9] or in English "Negotiation, Mediation and Conflict Resolution" from EESEC Business School [2]. Table 3 lists several opportunities for online learning, indicating their duration and cost.

*Table 3*

Online courses on basic mediation skills

| № | HEI or NGO | Country | Cost of the program | Features of the course |
|---|---|---|---|---|
| 1 | Open University of Maidan | Ukraine | Free | No practice |
| 2 | EESEC Business School | USA | Free | Inc. practical tasks |
| 3 | Edwards Mediation Academy | USA | $ 225 | Inc. home tasks No practice |
| 4 | American Institute of Mediation | USA | Від $ 695 | No home tasks |

*Source: compiled by the authors based on [1, 2, 9, 12]*

After analyzing the training programs, studying the experience of speakers, comparing deadlines and costs, to train the management and staff of KhTU "STEP" in this paper we recommend to choose the course "Mediation. Basic Course" from the Center for Law and Mediation (Kharkiv). Training in this program lasts 2 months, during which students obtain the basic skills of a mediator in theory and through practical exercises. The total number of hours is 120 hours. The cost of training for one person is UAH 16,000 for the entire study course.

Thus, we can present the total expected costs of training management skills in mediation of KhTU "STEP" in next form (Table 4).

*Table 4*

Expected costs of training in mediation skills management KhTU "STEP"

| № | Type of costs | Method of calculation | Cost, UAH |
|---|---|---|---|
| 1 | Management training in basic mediation skills | The cost of the selected program is multiplied by the number of people | 80 000,00 |
| 2 | Bonuses for the performance of managers who study mediation | 30% of the average salary of the manager for the period of study (internal practice ща KhTU «STEP») | 22 858,32 |
| | Total: | | 102 858,32 |

*Source: calculated by the authori on the basis of data from [1, 2, 9, 12]*

The advantages of this option include:

- Ability to resolve internal organizational conflicts on their own;
- Increasing the loyalty of employees of KhTU "STEP" by creating an atmosphere of trust in the team.

The disadvantages of this option are:

- High costs of training;
- The loss of working time of managers to resolve conflicts still remains quite high.

The total expected costs of training the deputy heads of the personnel department and the training department in mediation skills are presented in Table 5.



*Table 5*

Expected costs of training in mediation skills of the deputy heads of the personnel department and scientific and methodological department of KhTU "STEP"

| № | Type of costs | Method of calculation | Cost, UAH |
|---|---|---|---|
| 1 | Training of selected employees in basic mediation skills | The cost of the selected program is multiplied by the number of people | 32 000,00 |
| 2 | Bonuses to employees for performing the duties of trainees | 20% of the average salary of the employee for the period of training (internal practice ща KhTU «STEP») | 6 074,66 |
| | Total: | | 38 074,66 |

*Source: calculated by the authors on the basis of data from [4, 5, 10, 12]*

The advantages of this option are:

– The presence of internal mediators in the organization;
– Relatively low cost;
– Ability to train all employees on their own;
– Reducing the working time of managers to resolve conflict situations.
– The disadvantages include:
– Low level of trust of KhTU "STEP" employees to the internal mediator;
– Additional responsibilities can lead to employee burnout;
– Violation of the principle of mediator neutrality is possible too.

To estimate the cost of attracting an external mediator, the paper used information from the website of the Ukrainian Mediation Center [8], which states that the cost of services for internal organizational disputes is 1000 euros (equivalent in national currency) per day (7 hours) or □ 150/h (national currency equivalent) for the first six hours and □ 170 / h starting from the seventh hour of the process.

Assuming that the average resolution of an internal organizational conflict with the help of a mediator will take 1 working day, it can be argued that the cost of resolving the conflict in this case will be approximately UAH 30,000. In an interview with the management of KhTU "STEP", it was found that there are 3-5 conflicts during the month. If we take the average value for the number of conflicts (4 conflicts per month), the cost of resolving conflicts with the help of a mediator will be 4 * 30 000 = 120 000 UAH / month. And in this case it will be too expensive at current level of organization's development.

The advantages of involving an external mediator include:

- absolute neutrality of the mediator;
- high level of trust from the part of employees.

Disadvantages include the following:

- costs are high and depend on the number of conflicts;
- there is still a need to attract their own employees.

It should also be noted that in the case of involving outside experts in resolving the conflict situation, it may still be necessary to involve its own employees who will oversee the work of the external mediator. It would be great if this person also had at least basic knowledge and skills in dealing with conflicts.

Table 6 shows a comparative description of the different options for implementing the mediation procedure in the work process of KhTU "STEP".

As can be seen from Table 6, each of the options for implementing mediation in the workflow of KhTU "STEP" has its advantages and disadvantages.

***Conclusions.*** On the one hand, the involvement of external mediators guarantees neutrality and is trusted by staff and students. On the other hand, the cost of such an option is high and depends on the number of conflicts that arise. Training its own staff and building the structure of internal mediation, supplementing, and expanding the responsibilities of existing specialists, paying them bonuses and losing working time for mediation, for organizations



*Table 6*

Comparative characteristics of options
for implementing the mediation procedure
in the conflict management system of HTU "STEP"

| № | Direction of improvement | Costs, UAH | Estimated time for implementation | Advantages | Disadvantages |
|---|---|---|---|---|---|
| The estimated cost of the conflict for KhTU «STEP» is UAH 79,457.01 | | | | | |
| 1 | Management training in basic mediation skills | 102 858,32 | 2 months | Ability to resolve conflicts on their own<br>Increasing employee loyalty | High cost<br>The loss of working time of managers still remains high |
| 2 | Expansion and addition of functions | 38 074,66 | 2 months | Availability of internal mediators<br>Relatively low cost<br>Ability to train employees on their own<br>Reducing the loss of working time of managers | Low level of trust in internal mediator<br>Additional responsibilities can lead to employee burnout |
| 3 | Involvement of an external mediator | 120 000 / month | Whenever a conflict arises | Neutrality of the mediator<br>High level of trust | High cost<br>Loss of working time |

*Source: compiled by the authors*

can sometimes cost more than involving an external mediator from time to time.

Thus, one of the important factors in deciding on the choice of external or internal mediator is the analysis of the availability of pos-

sible cases and their number, as well as a list of works that the mediator can perform over time. Therefore, considering the relatively small number of conflicts and possible expansion of staff and students in the future, in this paper we can proposed to introduce a combined model in KhTU "STEP", which will include all these options and optimize work with conflict situations.

It is worth noting that in addition to the above benefits, the implementation of the recommendations in the current work of KhTU "STEP" will help gain social impact and help increase loyalty of students and staff and create a transparent and calm atmosphere at the workplace.

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**Mariam Barsehian, Master student (Management in Mediation)**
**Yuliia Kvitka, PhD, Associate Prof.**
***V.N. Karazin Kharkiv National University***

# MEDIATION IN RESOLVING BUSINESS CONFLICTS

Conflicts are a significant part of our lives. Conflict is defined as a clash of opposing motives, judgments, and interests. At the same time, the presence of different positions does not determine the impossibility of finding such a solution that would fully or for the most part satisfy the interests of all parties to the disagreement that has arisen. At the heart of any contradiction lies the potential for development and progress, and everything old is replaced by the new over time. Many entrepreneurs highly value opportunities through which they can make a profit. However, in the practice of any businessman, there are cases that show that they cannot always get what they want in the shortest possible time. At the same time, all businessmen highly value time. In addition to time, everyone values the confidentiality of everything related to their business [2].

So, what is mediation in business? This is the organization of the negotiation process of the conflicting parties with the participation of a neutral mediator — a professional mediator. The question immediately arises: Why do legal entities with staff of lawyers need any intermediaries? Then, that lawyers help businessmen to defend their positions in courts. However, the fundamental points are still decided by the entrepreneurs themselves, and not by lawyers. It is entrepreneurs who negotiate among themselves to solve problems. The entrepreneur himself knows where and in what he can give in, and where he can insist on something. Therefore, intermediaries are also those persons who also help entrepreneurs to start the negotiation process. Sometimes even in a situation where it seems that, apart from the court, there is no more dialogue with them [1].



Solving a conflict in business with the help of mediation has four main advantages: time, confidentiality, money, independence in developing a solution. The time that the parties spend to resolve the dispute through mediation, as a rule, is 1-2 months. In fact, it depends only on the parties themselves how they want to resolve the issue. Compared to litigation, this is at least six months. The second plus is that all negotiations are held confidentially, i. only the parties and the mediator will know about the negotiation process itself, who does not pass this information on to anyone. The third plus is money. Often parties spend significant sums on litigation. Mediation, on the other hand, allows them to significantly reduce these costs, since mediators receive their fee, as a rule, by the hour. Well, the fourth plus is independence in developing a solution. The party itself considers whether the proposal of the other party is beneficial to it or not, to agree with it or not. The decision of the issue is not transferred to the mercy of another body. Mediation does not replace the court and does not overlap with it. The court approves the decision that the parties themselves have developed [1;3].

Often, the parties to the conflict seek to inflict maximum damage on each other, usually this happens if previously the relationship between people was very good and trusting. In this war, the resources of both sides are spent at a tremendous speed. Moreover, if we calculate the material, moral, time costs, not to mention the inability to concentrate on other important matters, then in the vast majority of practical cases, the cost of the conflict is much more than the gain in it. Such conflicts can last for years, while mediation can resolve it in a few sessions. Thus, the refusal to constructively resolve a disputable situation can result in the loss of a good supplier for one, and the loss of a major client for another [4; 5].

The use of mediation in business has its own characteristics. Their essence is that the leader, when formulating a request, does this both through the prism of the interests of the organization itself and his own, which he plans to achieve with the help of this organization. Such dualism largely determines the range of tasks for which it is advisable to involve a mediator. These tasks can be divided into two large blocks. The first is the tasks of the organization itself, aimed at increasing efficiency and productivity:

• Identification of the essential contradictions underlying the chosen organizational structure of the company (each type of organizational structure has its own "favorite" set of conflicts);

• Identification of the main areas of tension arising within and between these contradictions;

• Mediation support for making the most significant strategic decisions regarding the further development of the company;

• Checking the conflict potential of these decisions;

• Prevention and resolution of destructive conflicts [2].

The second block — tasks related to the development of people in the organization and, first of all, the personality of the leader and / or business owner. These are tasks such as:

• Development of mediative competence of managers and employees, which will allow them to independently identify contradictions and conflicts, manage them in accordance with the situation;

• Assistance to managers and employees in mastering constructive forms of behavior in conflicts [2].

Thus, mediation is both a way of fair resolution of conflicts, and a method of preventing them, and a method of obtaining competitive advantages. There is an opinion that to propose a peaceful settlement of the dispute first is to show weakness. But this is just a common myth. In fact, to propose a peaceful settlement means to show farsightedness, broad-mindedness and a modern approach to resolving the conflict. Those who have already used the mediation procedure know that this is exactly the case.



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MEDIATS
Mediation: Training and Society Transformation

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**Davit Maisuradze**
**Ph.D. Associate Professor,**
**Director of the Centre for the Corporate and Commercial Law,**
***Ilia State University***
**Lika Midelauri**
***LLM, Ilia State University***

# ADAPTING THE MEDIATION TO THE ONLINE ENVIRONMENT

In the first half of the 1990s, major changes took place in the online space. Information revolution transformed human needs and requirements. The changes affected all areas of activity, therefore it became necessary that the field of mediation also adapted to the Internet age and dynamically followed rapid changes.

Due to the growing nature of the Internet space, it has become necessary to create an effective mechanism to help users resolve disputes arising on the Internet.

Consequently, in order to resolve online disputes, it became necessary to make a number of changes in mediation and set appropriate standards.

In 1996, articles on online dispute resolution (ODR) tools first appeared in legal reviews.

In the legal science, questions arose how to resolve the online disputes. A court system based on the traditional territorial principle could no longer cover disputes between individuals on different continents that arose in the online space.

The purpose of this paper is to discuss the process of adapting the mediation process in the Internet space and the challenges associated with it. At the same time, the authors will discuss the theoretical and practical features of mediation and will formulate relevant recommendations, which on the one hand will be directed towards the development of the mediation field, and on the other hand, will help practicing mediators to conduct the mediation process electronically.

***The keywords:*** Online Mediation, Disputes.

## Short Summary of the Online Mediation

Today it is difficult to imagine a social and/or business space that has not moved to an online environment. As it is mentioned in the introduction, in the second half of the 20th century there was an active discussion about how to resolve disputes that arose in the online space, however it was important that this process was as effective as in face-to-face communication.

For the purposes of this article, online mediation should be distinguished from online dispute resolution methods. It should be noted that the transition from the traditional method of mediation to the online format is a big challenge. Therefore, it is important to find tools and resources that will work equally effectively regardless of the nature of the dispute.

Traditional mediation is very popular all over the world. In general, classical mediation is an effective way of resolving disputes, helping the parties to avoid court bureaucracy and to be able to resolve conflicts relatively quickly.

In general, it can be said that mediation is an alternative method of dispute resolution in which the independent party (mediator) helps the parties to make an independent decision for dispute resolution.

But what does online mediation offer and is it different from classical mediation? If we think about it, we can say that online mediation is traditional mediation supported by Information and Communications Technology (ICT) such as: email, VoIP, video conferencing, etc. Digital technologies can offer endless possibilities for efficiency of the mediation process.

It is important to note the position of several authors (E.Katsh and J.Rifkin) that technology in online mediation is not only to support the process, but also plays an active role, and to express its special character as a "fourth party".

What disputes can be covered by the online mediation? First, these are disputes arising in online commerce, as well as disputes arising from various activities carried out on the Internet, such as advertising, sales, service delivery. However, this list is not comprehensive. Where classical mediation is conducted through direct face-to-face communication between the parties and all decisions are made on the spot, online mediation is conducted in a virtual environment. The virtual environment gives the parties the opportunity to be in different parts of the world, saving time and money, and get an effective result just as it would be in the case of a direct meeting.

Having a distance between the parties during internet disputes creates a barrier for an open conversation to take place between them. There is no personal connection between the parties, they are not connected with the long-time relationship and the dispute is related to one-time transactions. The parties do not have much information about each other and there is no need for a future relationship. The mentioned issues only increase the challenges of online mediation. Therefore, it is important to highlight the pros and cons of online mediation.

## Positive and Negative Aspects of the Online Mediation

Today, many mediators around the world operate in cyberspace, through Zoom and other video conferencing platforms. Online mediation has many positive features, but at the same time carries different risks from classical mediation.

*Positive Aspects of Online Mediation*

Flexibility and convenience: Online mediation is convenient. The parties can stay in their place of residence, and resolve the dispute without leaving home. The parties can save time, energy and concentrate as much as possible on resolving disputes. At the same time, there are no territorial restrictions in choosing a mediator.



Technological capabilities: Online mediation platforms allow parties to share online files, information stored in their folder and share the screen when needed.

Physical security of the parties: Online technologies and remote relationships protect the parties from physical altercation, thus making the process safer.

*Negative Aspects of Online Mediation*

Privacy breaches: the mediator has less control over the peripheral space screen where the party is speaking. Notwithstanding the confidentiality rules and the obligations of the parties, it is possible that different individuals whose attendance is not allowed apart from the parties can be present during the process in the room.

Weaknesses of the Internet space: there may be a risk of violating the privacy of both the process and the parties. Personal and financial information may be leaked.

Involvement of parties: It is difficult for a mediator to increase the involvement of a party that is trying to be passive in the process. Consequently the productivity of the process decreases.

Delays: it is possible for a session to be disrupted due to a technological or internet delay, and it may be necessary to move and extend the process in time.

## Challenges of the Internet Age in the Legal Context for the Mediation Process

Technologies solve challenges. Technologies create challenges. Redirecting the parties to use the online form of mediation creates difficulties which requires active work, raising the awareness of the parties and trust to themselves.

*Building Trust in the Online Mediation*

Trust is important in both classical and online mediation. Both verbal and non-verbal communication are important aspects of building trust. Online mediation differs from the classic one in the

form of communication used in the process. At the same time it is difficult but vital to create an atmosphere in which the parties trust the mediator. Negotiation is more effective when the parties have the opportunity to communicate freely, to control each other's emotions and feelings. In online mediation, the parties communicate only through technology in a virtual environment, thus increasing the risk that the parties may not understand each other and their needs just as they would do in the classical mediation process. Therefore, this has a negative effect on the parties' trust to each other and to the mediator. The parties should share personal information and trust the mediator, parties and the mediation process, otherwise it would be impossible to conduct effective mediation.

*Lack of Emotions*

An important challenge for online mediation is the lack of direct communication, the backbone of classical mediation is direct, face-to-face communication between the parties. However, this is reversed during online mediation. The parties can not detect each other's emotions, tone of voice, body language and facial expressions. Opposing parties may have different stages of emotions. Express negative emotions in the relationship such as: anger, pain, mistrust, despair, fear, etc. The mediator should be able to see strong negative emotions. Help the parties reduce or manage them. The easiest way to capture emotions is through visual perception. In the process of online mediation, the mediator must read the emotions through the text, which is difficult in comparison to direct communication. Video conferencing can partially cover the needs mentioned above, though it may not fully cover it.

*Confidentiality*

Confidentiality is the most important principle of mediation that can be violated by making records. It is important to make a reference to the contract regarding keeping the confidentiality that will support building the trust between the parties and maintain the right balance between confidentiality and transparency. However it is not enough. The privacy of the parties due to the vulnerabilities



of the internet space may be violated by hacker attacks or unscrupulous actions of the parties. In addition to the above challenges, the geographical location and cultural differences of the parties should be taken into account, which in turn increases the possibility of miscommunication during online communication.

## The legal meaning of online dispute resolution for the purposes of the mediation process

Experience has shown that online mediation has the ability to use all types of web technologies: from simple email communications and messengers to video conferencing and algorithm procedures. It is important to note that online mediation allows us to resolve disputes using both textual and audio, both synchronous and asynchronous communication methods. However, the technologies used by online mediation should be easy to use.

*Video Conference*

With the development of web platforms, it has become possible to see audio and visual images of people regardless how far apart the parties were. This is enabled by such dynamic methods as video conferencing (skype, Zoom, Google meets). Video conferencing allows mediation parties to conduct the mediation process virtually through direct communication. It is important to note the advantages of these platforms. The mediator is perfectly able to conduct the main session with the participation of both parties, as well as, if necessary, "caucuses" during the process, to create a separate conference room and establish individual communication with the parties. However, as we have mentioned the weaknesses of online mediation, the mediator has less ability to protect privacy of the process. There is a risk that a third party may be behind the screen.

*Communication with using the Email*

From the online platforms used to conduct online mediation, it is assumed that the easiest and most convenient way is email for communication between the parties and the mediator.

In the process of using e-mail, each letter must be sent through a mediator to ensure that all parties have received and read the information. In an asynchronous relationship, the parties have the opportunity to think, use the response timeline, and return the sorted response to the other party. However, on the other hand, the parties are unable to share their emotions with each other when communicating via email.

*ONLINE CHAT*

Online chats allow the mediator to conduct the mediation process in text form. The use of these platforms is relevant if only two parties are involved in the process because it is difficult not to miss the position of either side. However, means of communication such as video conferencing and e-mail may be more trustworthy. Associations in some countries set limits for the upper value of disputes that can be resolved through the online chat, above such limits another platform should be used.

*VR (VIRTUAL REALITY) in Mediation*

With the development of technology, the number of visualization tools in the online space is slowly increasing. VR could become one of the most promising and widely used spaces. Which allows the parties to create a 360-degree view of each other's visual side in remote virtual reality. Although VR can never replace face-to-face communication, it does have the potential to be usable and effective in resolving online disputes.

## The Acceleration of Implementation of Methods of Online Mediation during the Pandemic

The Covid-19 pandemic has fundamentally changed our reality. Online dispute resolution was the future of alternative dispute resolution, however this changed during pandemic and the online dispute resolution is already a reality. The positive features of the online mediation are fully corresponding to the needs which occurred during the pandemic. Restrictions on free movement and assembly have been imposed in many countries which adversely affected the possibilities to hold the classical mediation processes. Consequently, the transition to online mediation platforms has accelerated. Disputes could not be postponed indefinitely. Countries where online mediation was slowly gaining ground were forced to make rapid progress due to pandemic.



The pandemic turned out to be the right time to move online mediation to a new stage of development. Given the available resources and technological capabilities, online mediation has the potential to become, after the end of the pandemic, an effective alternative to alternative dispute resolution that covers a major part of the dispute resolution process through mediation.

## Conclusion

Internet space continues to evolve. Consequently, the mediation process faces new challenges at all stages of development. At this stage, it is important to adhere to the basic principles of the mediation process and promote its successful adaptation to the online environment. The element of privacy and trust in online mediation requires special attention. It would be good to develop effective control mechanisms to ensure the maximum protection of the parties' privacy.

Each method of online mediation requires individual legal regulation. The use of different technologies in the mediation process requires a specific procedure and appropriate approach. The parties should be able to choose the preferred method and therefore go through the process of building trust in the process that will be relevant to the particular method.

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**Ketevan Beridze, Doctor in Psychology,**
**Associate professor,**
***Batumi Shota Rustaveli State University***

**Davit Katamadze, Ph.D. student,**
**Master's degree in Clinical Psychology,**
***Batumi Shota Rustaveli State University***

**Nino Rusieshvili, Master of Clinical Psychology,**
***Batumi Shota Rustaveli State University***

# ADOLESCENT CONFLICT MANAGEMENT USING MEDIATION

Mediation can be considered one of the effective means of resolving conflict situations. In the mediation process, the conflicting parties meet together and reach an agreement with the help of a mediator. The process is led by a mediator who takes a neutral position between the parties. It considers and protects the interests of both parties.

The purpose of this article is to understand how we can use mediation in the process of resolving conflicts that arise in adolescence. The mediator can use specific methods to manage conflict situations in adults.

We can assume that mediation can resolve adolescent conflicts using effective methods. The mediator can listen to the parties, identify their interests and needs, and then help them resolve the conflict. The mediator can also teach the parties to listen and respect each other, which adults often do not. This even exacerbates the conflict. In addition, the mediation process can take place in both formal and informal settings.

***Keywords:*** mediation, mediator, adolescent, conflict, conflict management.

## Conflict

Conflict may be – a serious disagreement, division, or clash between opposing parties. Conflict can be internal or external. Internal conflict is when two opposite feelings or views in a person fight each other, and external conflict occurs between two individuals or individuals and groups of individuals.

Types of Conflict:

Goal conflict is a situation in which desired end states or desired outcomes appear to be incompatible.

Cognitive conflict is a situation in which ideas or thoughts are inconsistent.

Affective conflict is a situation in which feelings or emotions are incompatible; That is, people get angry with each other. Conflict resolution often leads to a constructive solution to the problem.

In the article, we will talk about the external conflict in which a teenager may find himself as a result of sudden irritation or anger.

## Emotional variability during conflict interactions

Some conflicts with parents can be considered a normal part of family relationships during adolescence, and these conflicts are believed to influence the development of autonomy and individuality in adolescents. However, too much conflict is risky for adolescents' psychosocial adjustment and well-being.

Adolescents who have more conflict with their parents have more externalizing and internalizing problems; a low level of self-esteem and problems of adaptation to school; and higher rates of substance use.

This may reflect reciprocal processes: Adolescents' conflict with their parents may lead to lower psychosocial adjustment, and their adjustment problems may lead to more conflict with their parents.

The conditions under which parent-adolescent conflict is positively and negatively related to parent-adolescent relationship development are less clearly understood.



## Adolescent Period

This is a period from 10-11 years to 15-16 years and includes grades IV-VIII. This period is named the transition age. This period stems from childhood, a period of transition when an adolescent is still half child and a half growing up. Childhood has already passed, and maturity has not yet arrived. No time in life has as many names as a transition. In addition to the transition, it is also called the transition, crisis, difficult and critical age. In this period, there is a transition from one era to another (from childhood to maturity).

From a biological point of view, the beginning of adolescence is marked by the onset of puberty. The physical changes of puberty are caused by an increase in the sensitivity of the pituitary gland to the gonadotropin-releasing hormone, which causes an increase in gonadal androgens and estrogens. Hormonal changes cause rapid physical changes in height, weight, body shape, and genital development.

Adolescence is a crossroads from childhood to adulthood. Childhood experiences and biological characteristics are transformed into interests, competencies, and self-beliefs, and take on an increasingly important role as the adolescent begins to move toward adulthood. This development is carried out in the adolescent's social and institutional environment with various possibilities and limitations: not everything is possible, but many things are possible3. As we have already discussed, adolescence is associated with several changes experienced by the adolescent and the family as a system. Adolescence can bring new challenges to the home.

A parent and an adolescent may disagree on various issues. For example, protecting personal boundaries, establishing communication, religious affiliation, or relationship issues.

At the same time, the teenager has important issues to resolve. At this age, the psycho-emotional state of the teenager also changes. Physiological changes lead to psychological changes as well. This is manifested in the following areas: changes in body shapes can lead to feelings of inferiority and self-esteem problems, and the release of

excessive amounts of hormones can cause difficulties in managing emotions and character changes.

Because the teenager has difficulty understanding and managing his emotions, often gets angry, and has "outbursts", he may find himself in conflict situations, both with parents and peers. A sharp change in a teenager's character can lead to difficulties in communicating with parents or the emergence of conflict situations.

At this age, a close emotional bond with parents is most important. The concept of parental emotional connection refers to concepts such as love, closeness, care, and sensitivity to the needs of adolescents, while the concept of parental control refers to the proactive role of parents in regulating behavior, developing interpersonal abilities and competencies of their adolescents. It is necessary for their social adaptation.

Conflict occurs as a teenager becomes an independent and responsible young person with his perspective and preferences. It can be expected that a parent and a teenager will not agree on such things as dress code, the management of the teenager's free time, or whether the teenager shares the family's cultural traditions and values.

Conflict in adolescence may be considered normal, but a lot of conflicts are not good, so conflict management is important

**Mediation**

Mediation is a voluntary process in which the parties to a dispute, with the assistance of a neutral mediator (see below), identify issues, consider alternatives, develop options and endeavor to reach an agreement. Mediation is usually conducted in private, and the outcomes are confidential to the parties to the mediation5. Mediation creates a completely new possibility to resolve the dispute between the parties. Since each party participates equally in this process, the interests of both are taken into account when conducting the dialogue and drawing up the terms of the final agreement.

Therefore, the final fate of the dispute is predictable for the parties, unlike court and arbitration proceedings, the content of decisions of



which necessarily fall within the legal framework, and the parties are bound to take the reins of managing the process themselves.

Mediator – a natural person registered in the unified register of mediators, who meets the requirements stipulated by this law and agrees to conduct mediation, regardless of his status and the manner of election/appointment; Private mediation – mediation, which is carried out at the initiative of the parties, based on an agreement on mediation, without the court handing over the case to a mediator8; Facilitative mediation focuses on organizing and facilitating communication between the parties in a non-directive manner, eliciting the underlying interests and needs behind the stated demands and positions. In order not to jeopardize multi-partiality, the mediator refrains from making substantial recommendations or suggestions.

**Mediation Agreement:** A contract between the parties setting out how the process of mediation will be conducted and the key provisions underpinning their engagement, including, but not limited to, confidentiality, that the discussions and negotiations will be conducted without prejudice, and that any outcome will only be binding upon the parties if agreed by all.

We think that a mediation agreement is essential for the successful implementation of the mediation process with the adolescent. It is difficult to involve a teenager in any activity without prior negotiation. If we explain the mediation process and the mediator's role to the teenager in advance, it will help us gain his trust.

Benefits of mediation

Mediation is confidential – mediation is a closed process and the obligation of complete confidentiality applies both during and after the mediation process. Neither the mediator nor any of the parties involved in the dispute (including third parties) have the right to disclose the information that became known to them during the mediation process.

Mediation should remain a safe and comfortable platform for the parties, which will protect the information they have disclosed from improper use;

Mediation is comfortable – mediation offers the parties a friendly environment tailored to their interests and needs. It is not a stressful and emotionally draining process unlike other dispute resolution mechanisms such as court or arbitration. Here the parties are comfortable because they have the opportunity to freely express their emotions, opinions, and attitudes; At the same time, they also feel safe, since any information disclosed by them is protected under the condition of confidentiality. As for the immediate environment, the mediation meetings will take place in a comfortable and completely different environment from the courtroom. Parties have access to water, tea/coffee, sweets, and an outdoor space where they can use their break time;

The mediation process is controlled by the parties – decision-making is only the prerogative of the parties. They select a list of issues to be discussed in mediation and make their own decisions at each step, whether the content of offers and settlement terms or the final result. Also, only the parties are responsible for the results of the mediation process.

We strongly believe that it is especially important to take into account the advantages listed above during mediation with a teenager because this is exactly what a teenager does not need. A safe environment, confidentiality, mutual respect, and the ability to manage the process.

**Role of Mediator**

A mediator is a third neutral person who helps the disputing parties for reasonable negotiation. A mediator should be independent and impartial in their activities.

The mediator does not have a personal interest in the outcome of the mediation. Such interest is, of course, the basis of his self-avoidance. The mediator has no right to have any influence on the final results of the mediation since its function is not to make decisions and clarify which side is justice besides a judge and an arbitrator. It provides legal or other advice to the parties and does not give advice.



The role of the mediator is to help the parties conflicting with the following matters:

- Constructively conduct communication between the parties;
- Deepen their real interests and needs;
- Risk assessment;
- The parties should seek and discover different alternatives for a solution;
- According to the principle of honesty parties have reached a common agreement;
- Voluntarily, according to their wishes, the parties decide on any issue and resolve
- the conflict.

**The role of the mediator in dispute resolution**

A mediator can work with disputing parties. A mediator needs to maintain a neutral position. To conduct mediation with adolescents, it is necessary to take into account the peculiarities of communication. It is more difficult to get the confidence of an adolescent than an adult. At the same time, it becomes difficult to manage the process, because as we mentioned above, it is difficult for them to manage their emotional state, they often have anger attacks.

Below there are some tips to help a mediator to conduct the mediation process successfully.

- Try to think about your feelings and experiences as a youth. This will help you in your relationship with the adolescents;
- Remember that the development of an adolescent's brain means that he may not determine the risks and consequences of a situation. It is difficult for them to see things from someone else's perspective.
- You have to keep calm in the relationship with adolescents, if you overreact or get nervous, just apologize and start over when you can. (This will help them to learn that it's normal to express their emotions. It can set a positive example for them.)
- "Early caucus" can be successfully used when working with adolescents. This means meeting parties separately for a few minutes.

This will help the mediator to understand better the emotional state of the parties. A mediator can help adolescents to understand their own emotions. Emotional feedback is a leading skill in the mediation process. Misunderstood or shared emotions during the mediation process can arise conflict between the parties. Therefore, the role of the mediator is to identify emotional reactions and manage them.

- Prepare what you are going to say and think about the words you want to use because choosing the right words while communicating with adolescence is of particular importance.
- Allow adolescence to express their thoughts in words. Be open-minded to hearing their opinion. Equal opportunity should be given to both sides to do so. This will help to gain their trust, and this may lead to the initiative of the adolescence to talk about the conflict.

## Problem-solving techniques

Problem-solving technique means how to turn a negotiation distributor into a win-loss approach into an integrative, win approach using principled negotiation method.

- Always focus on the problem and stop the parties from attacking or blaming each other.
- Be creative in expressing your opinion to allow the parties to discuss and help them to analyse their strengths and weaknesses.
- Using techniques such as brainstorming, group problem solving, and diagramming of ideas and options.
- Encouraging parties to find objective criteria for evaluating their options, rather than relying on personal or other subjective views.
- Using positive speech and encouraging positive thinking.
- Reframing the problem from an adversarial view to a common view.
- Turning the parties from seeing themselves as adversaries, those who have problems with each other and perceive themselves as partners who solve a common problem.
- Orienting the negotiation towards the future, the right to cling to the past.



## Conclusion

As it is known, mediation has been popular in Georgia for years. In particular, in 2019, the Law of Georgia "On Mediation" was enacted, based on which a unified register of mediators was created, and the mediator certification program was approved. Based on these developments, the issues discussed in the article may be of interest to professionals and those interested in mediation. Adolescent conflict management using mediation is discussed in the article. How we can make mediation a powerful tool for dealing with problems during relationship problems with adolescents. The role of the mediator is important in this process. The article also reviews the peculiarities of adolescence and what resistance may face as a mediator when working with adolescence. How mediator can manage the process and conduct the mediation process successfully. At the end of the article, there are some recommendations for the mediator to help them to manage the process better.

Since mediation is not well known in our society, we think that the issues discussed in the article will be interesting for both professionals and persons interested in mediation.

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**Ketevan Devadze,**
***Batumi Shota Rustaveli State University***
**Giorgi Dolidze,**
***Batumi Shota Rustaveli State University***

# USING OF IMITATION METHOD DURING THE TEACHING OF MEDIATION IN HIGHER EDUCATION INSTITUTIONS WITHIN THE PROJECT MEDIATS

Imitation is actively used in the teaching process of human of different ages. People observes the environment from the first minutes of life and tries to imitate. Children actively cognize through this process, they play a role-playing game, imitating parents, doctors, teachers, favorite characters. Along with growth and development imitation becomes more structured, it is often introduced to the adolescent in the school system. Imitation is also actively used while teaching at the university, where the student imitates a role in a particular profession.

Imitation requires complex cognitive abilities and plays an important role in the human learning process. Imitation is a very important aspect of development of skills, because it allows us to obtain news by using trial and error method with the help of those around us and by observing others.

In recent decades, imitation has been broadly studied from a variety of perspectives, including neuroscience, biology, social sciences and other related fields (Billard, 2001; Byrne & Russon, 1998; Kuhn, 1973; Whiten, 2000).

Imitation is actively used in teaching of mediation. In the process of learning of mediator skills, it is very important for the student to learn and practice skills such as active listening, paraphrasing, questioning, summarizing, empathy, and other (Hussein, 2017).

Imitation of mediation requires participants to test specific skills in behavior, to understand the goal of a behavior and, more importantly, to understand that the goal can be achieved by other behaviors. Thus, participants can use a different means to achieve the same goal of the observed behavior, and it is this ability that distinguishes imitation from other forms of academic learning (Zhou & Guo, 2016).

Batumi Shota Rustaveli State University has launched a short-term mediation training program within the framework of the EU-funded project MEDIATS in 2021, where students receive postgraduate education. The aim of the educational course is to assist the trainee in the practical use of mediation, in understanding its forms, methods, best practices, importance and functions; To develop the necessary skills for mediation, communication skills with interested parties, introduce the main features, rules, methods and principles of dispute mediation proceedings. To achieve these goals, the curriculum includes a practical course of imitation mediation, where students have the opportunity of complete imitation of the mediation process from the planning until its end. Students have the opportunity to practice specific skills and imitate the following processes:

- Planning of Mediation;
- Invitation of participants;
- Organizing a mediation meeting place;
- Introduction;
- Time management among participants;
- Active listening skills;
- Ability to ask open-ended questions;
- Expressing empathy;
- Reframing the problem;
- Using of caucus;



- Management of violence during the mediation process;
- Termination of mediation;
- Completion of mediation;
- Organizing of documentation (Cheng, 2015).

During the mediation program, students also had the opportunity to do a training internship under the EU-funded project MEDIATS at Catholic University of Murcia, Spain. During the internship students participated in imitated sessions. The process was more interesting because of special rooms and equipment, imitated mediation process took place in isolated rooms, while students observed the process through video-broadcasting. At the end of the session, students in the united group could return feedback, to discuss and share impressions. Such kind of method allows the student to develop the skills in the learning process that will be useful in the future to conduct a real mediation process, to make an individual decision and then accept the views of colleagues about these decisions.

The teaching methods used in the short-term program of BSU and during the training at Catholic University of Murcia under the project of MEDIATS have shown that students can successfully observe the skills, learn, and test their skills while imitation method is used in teaching.

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MEDIATS
Mediation: Training and Society Transformation

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**Tariel Sikharulidze**
**Ph.D. Associate professor at Ilia State University,**
**Mediator**

# GEORGIAN PERSPECTIVE ON ONLINE MEDIATION EXPERIENCE

*In guise of introduction*

According to Krivis the most noticeable invention of the past century was the invention of the microchip and it revolutionized our communication systems, the way how we work, how we research and analyze the information, how we communicate with our clients, and manage teams. Despite these technological advancements in communications human offline contact was a preferred interactional model for ADR professionals, followed by telephone, voice conferencing and by e-mail. Nothing lasts forever! Our communicational model got revolutionized under some external circumstances that pushed us from offline to online space when pandemic knocked at our doors.

"Let's do it via ZOOM"- one calmly proposes this option to the clients, and it seems so normal nowadays. With appearance of the pandemic the online mediation became a "new challenge" for Georgian ADR community. The COVID 19 changed the "normal way of doing business" for judges, attorneys, consultants, arbiters and equally mediators. Restrictions on face-to-face meetings changed our approach towards the use of technology and opened the room to new opportunities and equally to new challenges of a cyber world. As far as justice could not wait, professionals of the ADR industry in Georgia found themselves obliged to carry out their activity online by us-

ing new platforms as Zoom and switched their business from offline to online meeting spaces.

The switch from offline to online occurred in almost all professional domains: education, management, business, financial services etc. At first remote working generated certain resistance, discomfort, distrust, especially in the professions that require a human contact. Mediation was not an exception. One may speculate that at the start of the pandemic's mediators were skeptical of the new reality, however with the time going on, they adapted themselves and showed a lot of flexibility by embracing online mediation with quiet a success.

The goal of this article is to understand the challenges that Georgian mediators faced in online mediation. To respond to that question author has carried out some non-structured interviews with Georgian mediators and equally added some of his experience form his own mediations.

*A brief history of online mediation*

As Ebner points out some online mediation programs were started in 1996 in US like Online Ombuds project or Family mediation project (Ebner). The field opened itself to a wider audience to deal with different conflicts in different fields. There was equally a surge in online ADR services that Paula Young divides in two fields: blind bidding and discussion processing of disputes. Ebner equally writes that since 2003 the online mediation services started to cover different countries in different languages. According to Raines Despite of the rapid growth of online mediation many mediators were keeping their skeptical views because mediation is something that is done face-to-face. Anyway, nowadays with the development of mediation and different online mediation platforms and after the COVID 19 pandemics the online mediation is not neither or, but mostly a choice of mediator in his mediation process.



*Online Mediation pros and cons*

According to Eisen as mediation is a profession where listening skills are key and is oriented to process oral information mediators will hardly translate those skills into online environment. Some have argued that mediation should not move online, because the online is a not a fruitful ground for mediation and because it can generate a lot of miscommunications and there will be a high risk of failures in comparison to face-to-face mediation processes (Eisen). In comparison to critics there are researchers and practitioners who think that there are two sides of the coin when we talk about online mediation. For example, Raines clearly states that the online environment can be reach at some points and be poor in other points and that online mediation can be carried out under some circumstances. In reach points one can understand the advantages that the online mediation can bring to the parties and the process and in poor once – the disadvantages both for the process and for the parties (Ebner). In advantages we can clearly put the low cost of the process, the time savings, separate environment for meetings, the asynchronicity of the process, availability of the parties, participation from a comfortable environment, ease of sharing of documents, etc. In the disadvantages, both processual and for parties, the following could be noted: less interest in the process, detachment from the process, less commitment, lack of empathy, lack of body reading, discomfort with the communication via ZOOM, bad connection etc. …

*Georgian mediators experience*

As it was stated above the surge of COVID 19 obliged ADR and other industries to transfer almost all the processes online. For some the online environment was no new, especially for remotely managed teams, albeit a minority in Georgian reality, for other profession as teachers, judges, managers, mediators, attorneys, or at least for majority of them, the transfer to online was full of skepticism. This skepticism was generated by either "will not work like that" or by lack of computer literacy and acquaintance with the platforms like ZOOM.

Georgian mediators agree that one of the advantages of online process is the ease, speed, and flexibility of the meeting arrangements. Parties, or their representative like attorneys, are frequently busy during the day due to their professional activities, it is easier to convey an online meeting at the end of the working day, or even organize an asynchronous process. the online mediation is borderless, mediator can work with the parties situated in different cities, or even with the parties who are not in the country. The distance is no more an issue for the mediation with the help of online platforms. Colleagues have reported that they had parties from Greece, Russia, Poland taking part in the court annexed online mediation and this was the only why for them to take part in the process.

*Process*

Mediators equally report the advantage of asynchronicity of the process, especially during the pre-mediation phase and caucuses. The authors and colleagues experience is positive concerning the asynchronicity of meetings with the parties. While organizing the asynchronous meetings their timing and frequency can be adapted to the mediators and equally party's needs. However, the interviewed mediators do agree that online process is longer and takes more time to deal with. Dealing with online plenary meeting can be equally and issue, especially in multiparty mediation. Some parties are turning off their cameras, some of them are less participative, or they several people are taking part in mediation with only one device, like in one example of collective dispute trade union representatives were taking part in mediation sitting in the car and using one mobile phone. In physical setting it can be easier to encourage parties to observe the rules of the dialogue, in online setting meditator is sometimes obliged to cut the microphone of the participant and that is considered as a rude action with which the mediators are not at ease.

As noted above the online mediation can be viewed as comfortable for parties, because they can participate from the places where they do feel themselves comfortable, however Georgian mediators



equally have observed, that when parties are participating from their home that can generate a detachment or other discomforts. For example, a party sitting in the kitchen and having coffee while participating may feel less engaged and distant from the process. Party participating in the mediation from home, especially if she/he does not have an opportunity to isolate herself from family members may be resentful to talk or make some concessions. In authors experience participation in mediation from office equally can present a challenge, because of the presence of colleagues or third parties. As we can see from those examples some "comfortable" environments may prove themselves problematic for online mediation.

*Emotions and communication*

Mediation is about listening and empathy. As we have already mentioned some researchers and practitioners note that in online format quality of empathy may suffer. Georgian mediators equally state in their interviews that empathy is not the same as during face-to-face mediation. The reading of body language and micro expressions is very difficult, and sometimes impossible du to cameras that are turned off. Participants equally do not fully grasp the body language of mediators, when in face-to-face meetings mediators use body language and their micro expression to convey empathy to the parties. Parties tend to shut down their cameras when they are emotional. As one of the interviewees noted during the caucus a party at the brink of crying turned off the camera and the microphone. Some of the mediators, when taking notes explain to the parties, that if they do not look in the computer camera it is not because they are messaging on the Facebook or reading e-mails, but because they are taking notes. They think that this explanation is necessary, so the parties are reassured that mediator is not disinterested in their story.

*Population*

The online format is not an easy one to work with some populations. The author, as well as his colleagues had several experiences

with people who were not comfortable with the IT technologies. For instance, a simple operation of downloading and installing ZOOM may prove difficult for people of certain age, or even younger persons who are not fully acquainted with computer literacy. For some populations the crocuses or online mediation is more acceptable via Viber, WhatsApp or Messenger, applications that they use daily. A certain distrust to the technology is noted in elderly people, and equally people living in the periphery, where the access to IT technology is limited. This distrust generates a closed mindset towards the process and the mediator himself and they become less amenable to open during the discovery phase. Mediators reported that they needed more time online to work through these difficulties with those populations.

*Confidentiality*

Confidentiality is one of the most important pillars of mediation and this pillar may become shaky during online mediation. Some practical examples demonstrate that observing confidentiality may prove difficult in some circumstances. Parties during online mediation may not be alone in their rooms or offices and may not inform mediator about the presence of other parties. That happened during collective labor disputes as well as court annexed mediations, when mediators were discovering the presence of other parties, because parties themselves were turning the cameras towards people present in the room or were tacitly seeking for their advice or approval. In those circumstances mediators had to involve those present in the room and explain that they equally were subjects to the process and all mediations rules, included confidentiality, were applicable to them.

Mediators do not have guarantee that parties are not using third party tools, mobile phones or apps to record the cession. There are equally issues related to mastering application like ZOOM. It is not in the interest of mediator if parties can chat in private during the session and short circuit the mediator. In case mediator does know



how to switch off the chat or forgets that that can complicate the process. Mediator should equally take precautions when they are organizing the online plenary meetings and they decide to take parties to caucus, to secure that the parties can move from breakout rooms by themselves.

*In guise of conclusion*

Nowadays practicians of mediation in Georgia are using the online mediation even despite the return to the face-to-face meetings. As Melamed puts it in his article, it is not the meter or either/or, it is a matter of a processual decision by the mediator of when, where how and with whom. In some cases, it can be a tactical choice due to the complications of the case. In cases where there is a frequent need of shuttle diplomacy and caucusing, the online format can be a great tool because the meeting can be organized quickly. In cases where parties may become too emotional or there could be a danger of physical violence during the plenary meeting (as it was reported by one mediator) the online format may be a tool to keep people safe and still organize a common meeting. In conflicts where parties cannot be gathered due to their geographical locations or busy schedules online mediation can equally be used to move the process forward. However, as noted above there are circumstances where online mediation can prove itself challenging. Today mediators have a wonderful opportunity to merge both online and face-to-face formats to organize the process and serve their clients in a better way.

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**Petro Patsurkivskyy**
**LLD, Honored Lawyer of Ukraine, Professor,**
**Professor of Department of Public Law**
**Yuriy Fedkovych Chernivtsi National University,**
ORCID ID https://orcid.org/0000-0001-5081-7842
p.patsurkivskyy@chnu.edu.ua

**Ruslana Havrylyuk**
**LLD, Professor, Head of Department of Public Law**
**Yuriy Fedkovych Chernivtsi National University,**
ORCID ID https://orcid.org/0000-0001-6750-4340
r.havrylyuk@chnu.edu.ua

# MEDIATION AS A WAY OF CONSTRUCTING SOCIAL REALITY

**Abstract.** The article is devoted to the study of some insufficiently studied properties of mediation in both domestic and foreign science. Its purpose is to understand mediation as a way of constructing social reality. This goal is specified through the analysis of the following specific tasks of the article: spontaneity of mediation; mediation as a form of freedom of its participants; justice of mediation. The methodology of the article corresponds to the purpose and subject of the study. As basic cognitive tools in the process of preparing the article, the authors used the paradigm of dialogicity, axiological and anthroposociocultural approaches, in particular, such components of the latter as the social ontology of P. Berger and T. Lukman and the ontology of social facts and social institutions of J. R. Searle, and the method of structural and functional analysis.

The authors of the article obtained the following new scientific results: 1. Mediation as an extrajudicial way of resolving conflicts (disputes) in society has a spontaneous nature. Its necessity and nature are determined by internal factors for the parties to mediation. 2. Mediation is an effective form of freedom for both its parties and all actors in civil society, especially individuals. It is this freedom that plays the role of the eternal engine of both the development of mediation and one of the factors in the humanization of social space. 3. Mediation is fair both in its institutional nature and as a form of social practice. Its quintessence is a steady transformation of individuals from the objects of state procedure to full-fledged subjects and creators of social space. Mediation has proved to be an effective way of constructing a new social reality. The parties to mediation, solving their own private problems on a daily basis, usually on the same private basis, are constantly changing the entire social space, creating a reconciled social environment free from total antagonisms and permanent conflicts (disputes).

***Key words:*** mediation; way of constructing social reality; spontaneity of mediation; fairness of mediation; mediation as freedom.

JEL Classification: K10, K19, K49, D74

Formulas: 0; fig.: 0; tabl.: 0; bibl.: 9.

**Introduction.** Mediation belongs to a number of unique civilizational phenomena. Its origins date back to high antiquity. It has undergone many transformations in its evolution. Modern mediation dates back to the 1960s and 1970s, when it was rethought in the United States as a way to overcome the crisis of national justice. Since then, modern mediation has taken root not only on most continents, including Europe, but has evolved meaningfully, becoming a legal extrajudicial procedure for resolving the vast majority of conflicts (disputes) in societies. However, its potential is not exhausted there. Mediation is increasingly proving itself as an effective way of constructing social reality in general, balancing its public and private



sides. However, for science, this aspect of the phenomenon of mediation is still terra incognito.

**Literature Review.** A notable feature of the development of scientific knowledge about mediation is the growth of their volume and complexity in geometric progression. The defining reason for this is the same explosive development of the phenomenon of mediation in the civilized countries of the world, as well as the number of its researchers. If five to ten years ago in literature on mediation there was a significant predominance of works that studied mainly its techniques and technologies and the authors found an appropriate justification for this, now the picture is changing considerably.

One of the well-known researchers of mediation, Kenneth Cloke, for example, explained the above bias in the scientific knowledge of mediation: "for a deeper transformative approach, it is necessary to have special techniques that include not only such mediation techniques that allow us to focus on the problem better, become more sympathetic to people, better understand ourselves and others, but also those that help us hear others better, be open in communication, establish a constructive dialogue, be creative in solving problems, learn to work and seek reconciliation". This direction in the knowledge of mediation still prevails quantitatively.

However, in the last few years, mediation research has clearly shown a shift towards systematic knowledge of the worldview and value of mediation in general. Some important scientific conclusions have already been reached in this cognitive paradigm. In particular, the warning of danger both for the respective societies and for mediation in case of mechanical transfer of its ready-made models from one social soil to another is substantiated. This is especially true of Western models of mediation, as historical experience shows that Western individualistic mediation, aimed at solving specific problems, was developed taking into account the needs of Western culture and is not entirely suitable for collectivist values. We fully share this view.

J. Robbie even more convincingly reveals the ascendant attitudes of most aspects of mediation in Western societies: "Each of them is

convinced that the problem would not exist if the other side behaved more intelligently and accepted his point of view". However, the dialogical nature of mediation inevitably changes such positions and internal attitudes of its parties towards their self-awareness of the key role of "moral development of man, which is carried out simultaneously in two directions – gaining inner strength and improving relationships with others". This last aspect of mediation, namely its value as a way of constructing a new social reality in science has not yet been studied. Moreover, the first attempts of its analysis by Ukrainian mediation theorists turned out to be methodologically flawed.

The question arises – from which methodological approaches should mediation be studied as a way of constructing a new social reality? To answer it, it is necessary at least in the most general terms to "grasp" the quintessence of the subject of study, in other words, try to find an answer to the question, not what is mediation, but how is mediation?

According to Paul Connerton, mediation is a common platform for "memory-habits" of social behaviour, a certain institutional pattern of behaviour of civil society actors.

Roger Fisher, William Yuri and Bruce Patton consider mediation as balancing the interests of its parties.

Jonah Berger is convinced that mediation invisibly affects from the outside to its parties with practical preliminary results of non-traditional resolution of conflicts (disputes) of its parties. Mediation is a kind of institutional public memory.

What is common to all three of the above approaches to explaining the procedural nature of mediation is transcendental institutionalism. It should, and is also capable, in our opinion, of becoming an adequate paradigm for understanding mediation as a way of constructing a new social reality.

The aim of the research is to understand mediation as a way of constructing social reality. It was concretized through the analysis of the following specific tasks of the article: spontaneity of mediation; mediation as a form of freedom of its parties; justice of mediation.



**Research methodology:** as basic cognitive tools in the process of preparing the article the authors used the paradigm of transcendental institutionalism, the paradigm of dialogic, axiological and anthroposociocultural approaches, in particular, such components of the latter as the social ontology of P. Berger and T. Lukman and the ontology of social facts and social institutions of J.R. Searle, as well as the method of structural and functional analysis.

**Discussions.** The starting point of mediation has always been and continues to be the urgent need of its parties to overcome injustice. As Charles Dickens once wrote in "The Great Hope", "children, whoever raises them, feel nothing more painful than injustice. Acute feelings of injustice remain with most people for life. Parisians would not storm the Bastille, Gandhi would not challenge an empire over which the sun never set, Martin Luther King would not fight the dominance of whites in the "land of freedom and the cradle of courage", as if they were all somehow, they would feel a clear injustice that can be eradicated", Amartya Sam summed up in "The Idea of Justice".

But what is justice and how to achieve it? Adam Smith also pointed out that the term "justice" has "many different meanings". And Paolo Prodi, who specifically studied the evolution of justice, came to the conclusion that throughout history the phenomenon of justice has been considered one-sidedly, absolutizing some of its aspects. In his opinion, only those social practices and cognitive traditions that applied a dialogical approach to cognition and implementation in the practice of justice, found constructive for their time and the relevant performers to solve the problem of justice.

Mediation has become one of the most classic practices in which its parties not only work together to overcome mutual injustice, but also achieve it in reality and establish justice in our relations. The quintessence of mediation is the paradigm of dialogicity, and its real epicenter, according to the authors of the transformative model of mediation Robert Bush and Joseph Folder, is the search for mediation by the parties to common worldviews and values. The same point of view is shared by some domestic theorists of mediation.

The paradigm of dialogicity, according to the most famous philosophers-dialogists of modern times M. Bakhtin, M. Buber, E. Levinas, V. Makhlin, P. P. Ricœur, F. Rosenzweig makes it possible to successfully search for a "third way" to resolve the bulk of conflicts (disputes) that plague modern societies and its actors. In particular, according to M. Bakhtin, the dialogic attitude is such a universal phenomenon that permeates all manifestations of human existence, everything that has meaning and significance. He specifically notes that wherever consciousness manifests itself, a dialogue always takes place visibly or even invisibly. Moreover, "each dialogue" takes place against the background of ... a third person present ". According to M. Bakhtin, this third one testifies to the involvement of the relevant participants in a certain dialogue in the Dialogue as a universal relationship between people. Mediation intuitively "grasped" this dialogical matrix and thus, it implicitly includes the possibility for its parties, as participants in the dialogue, to achieve a more or less complete understanding each other, without yielding to their own worldview and needs. This is the implementation by the parties of mediation of the so-called "third way", which was discussed above.

The well-known Ukrainian philosopher-dialogist L. Ozadovska pertinently notes that this path lies between the unfulfilled ideal of objectivity in research about a person and his needs and "the Cartesian reduction of one's own individuality to a certain I that is completely unrelated to another "I". In Ukraine, this path is still significantly deformed by the same ideas about the mediation procedure of a significant part of both researchers and mediation practitioners, who still inertia continue to see the key person of the mediator in the mediation procedure and refuse to be the parties and their interests in the role of perpetum mobile of the entire mediation procedure. In Ukraine, this path is still significantly deformed by the same ideas about the mediation procedure of a significant part of both researchers and mediation practitioners, who still inertly continue to see the key person of the mediator in the mediation procedure and refuse to be the parties and their interests in the role of perpetum mobile of



the entire mediation. However, this is how their role in this procedure was defined by the domestic legislator in the Law of Ukraine "On Mediation" and it is of fundamental importance. After all, only if the dialogic paradigm of mediation is consistently adhered to and the parties in this conflict resolution procedure play a key role, the latter will be able to successfully cope with its role and become an effective way of constructing a new social reality in the country. The development of mediation in Ukraine is taking place in this direction.

**The Main Results of the Study.** 1. Spontaneity of Mediation. The emergence of the term "spontaneity" of the science of society and its phenomenon is due to the German phenomenologist of the early XXth century Adolf Reinach. Exploring the a priori principles of civil law by means of the phenomenological method he drew attention to their attributive connection with the will and expression of will of the subjects who interact with each other. The latter, in his opinion, is manifested primarily in acts of experiencing. A. Reinach has studied that not all acts of experiencing belong to social ones, but only those of them "in which Ego is manifested to be active, when we have a desire or intention and we carry it in ourselves" These experiences, – he notes, – we will call spontaneous acts: spontaneity will mean in this case the internal act of the subject". The above interpretation of the term "spontaneity" still remains to be the main one in the sciences of society and their phenomenon.

Mediation is also attributively connected with the will and the expression of the will of its parties, with the acts of their experience, in which each of the parties of mediation is effective in the terminology of A. Reinach. Hence, it is obvious that the above experiences of the mediation parties, according to the formal features derived by A. Reinach, also refer to spontaneous acts, since they are their internal actions.

Even more convincing of the spontaneous nature of mediation are the underlying reasons for its necessity. One of the authors of this article has studied these reasons specifically, as a result of which it has been concluded that there are at least two groups of such reasons.

These are the fundamental existential properties of man himself and the existential structure of the human world.

The priority of a profound scientific analysis of spontaneity as a general social phenomenon belongs to Adam Smith. In his main work, "An Inquiry into the Nature and Causes of the Wealth of Nations," he irrefutably proved that the fundamental cause of the wealth of nations is human needs and the satisfaction of these needs by people themselves. For the latter, people are forced to cooperate in their efforts. A. Smith convincingly revealed the nature and factors of such cooperation: "Man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only". He will achieve his goal more quickly when he appeals to their selfishness and knows how to show them that it is in their own interests to do for him what he requires of them. Anyone, offering any agreement to others, offers to do just that: give me what I need, and you will get what you need – this is the meaning of any such proposal".

These own needs and interests of each individual or their groups, as shown by A. Smith, internally determined for them, depends on many factors that can not be rationally taken into account, as far as they are spontaneous. . Contrary to the ideas of supporters of numerous concepts of understanding the nature of society as a certain ontological integrity, A. Smith proved that society arises as a result of elementary natural actions of selfish individuals.

One of the most common such cases is the constant need of many individuals or their groups to resolve conflicts (disputes) that inevitably arise in their joint existence with others. For a visual explanation of this phenomenon, you can use the formula of the invisible hand of the market by A. Smith. The quintessence of this formula, according to A. Smith, is that an individual entrepreneur, pursuing the goal of extracting his own benefit, usually does not think about what society will have from this: "... in this case, like in many others, he rushes with an invisible hand towards a goal that was not at all part of his intentions In pursuing his own interests, he often serves the interests of society more effectively than when he consciously seeks to do so".



Each party to mediation, when resolving a conflict (dispute) with the other party, is consistently guided only by its own needs, pursues only its own interests, seeks to obtain the maximum benefit. At the same time, their own will and expression of will, autonomy of will as a principle, are decisive for them. At each subsequent stage of mediation, its parties with the help of a mediator become able to perceive the conflict (dispute) more panoramically, hear the other side more adequately, and therefore to be more aware of the quintessence of their own needs and interests in the conflict (dispute), and to distinguish from them minor things and layers of emotions, which usually play the role of triggers in the emergence of conflicts (disputes) based on natural contradictions. The decision to refrain from further insisting on these secondary things and emotional layers in the conflict is also autonomously taken by each of the parties to the mediation. Therefore, in reality there are sufficient grounds for the conclusion that mediation meets all the above-mentioned criteria of social spontaneity. The need for mediation and its nature are determined by internal factors for the parties to mediation. Asserting a reconciled social space, it acts as an effective way of constructing a new social reality, is one of the manifestations of social necessity.

2. Mediation as a Form of Freedom of the Subject. Freedom is a fundamental category of philosophy, the humanities in general and the social sciences. Freedom refers to the basic European values and the values of Western civilization as a whole. In a number of universal values, it rightly occupies a place along with human dignity and it is one that by yielding to which man actually renounces his ancestral essence. Each of the cognitive traditions sees the nature and quintessence of freedom differently. From the point of view of the anthroposociocultural approach, freedom means cognized by the subject the need for his actions, reflects his attitude to his own acts of expression of will, in which the latter are considered as their determining cause. That is, according to the above approach, mediation is one of the forms of manifestation of the freedom of the subject. It is not determined by certain social, interpersonal-communicative or other

intersubjective or any other factors, moreover, it is not determined by natural causes.

For example, the Law of Ukraine "On Mediation" in the main article "Definition of Terms" states that "mediation is an extrajudicial voluntary, confidential, structured procedure during which the parties with the help of a mediator (mediators) try to prevent or resolve a conflict (dispute)". The terms "voluntary" and "parties" are highlighted by us. The same article of the above-mentioned Law clarifies that "the parties to mediation are natural, legal persons or groups of persons who applied to a mediator (mediators) or an entity providing mediation in order to prevent the emergence or settlement of a conflict (dispute) between them through mediation and concluded an agreement on mediation". The same article of the above-mentioned Law clarifies that "the parties to mediation are natural, legal persons or groups of persons who applied to a mediator (mediators) or an entity providing mediation in order to prevent the emergence or settlement of a conflict (dispute) between them through mediation and concluded an agreement on mediation". At the same time, it would be ideologically short-sighted and methodologically flawed to reject any link between mediation and determinism. As practical experience shows, such a connection not only takes place, but is also diverse. He actively influences the phenomenon of mediation directly, its content, limits and possibilities. Consider some of the most common cases of interaction between mediation and determinism.

The very first in the functional series of such cases concerns the boundaries of the will and willingness of the subjects while initiating the mediation procedure. As stated in paragraph 4 of Article 5 "Voluntariness" of the Law of Ukraine "On Mediation", "participation in mediation is a voluntary expression of will of the participants in mediation. No one can be forced to resolve a conflict (dispute) through mediation. Moreover, the next paragraph of the same article emphasizes that "the parties to the mediation and the mediator may at any time refuse to participate in mediation. That is, both the initiation and the mediation procedure require the consent of each of the



parties to the mediation. This is the principle of mediation enshrined in law: "Mediation is conducted by mutual consent of the parties to mediation, taking into account the principles of voluntariness, confidentiality, neutrality, independence and impartiality of the mediator, self-determination and equality of rights of mediation parties. The principles of mediation extend to the stage of preparation for mediation. Thus, no subject is endowed with unlimited will and the right to express the will to initiate and unhindered mediation. Mediation attributively implies the joint participation and mutual consent of its parties at all stages.

The next of the above cases concerns the limits of will and expression of the will of the parties to mediation in resolving the conflict (dispute) in this way. On the one hand, as noted above, the principle of autonomy of the will of the party to mediation operates here. This means that its will cannot be limited by any external factor. At the same time, based on the dialogical nature of mediation, the other side of mediation is endowed with a similar autonomy of will. As a result, self-limitation of the will of each of the parties to mediation is necessary: the will and willingness of one such party de facto ends where the will and willingness of the other party to mediation begins. However, the principle of autonomy of freedom of the parties to mediation is preserved.

The need for each side of mediation to take into account the will and the will of its other side, as follows from the second semantic condition of a person's existence in the world in accordance with the postulates of practical philosophy, formulated at the end of the 20th century, is determined by the need for them to observe communicative solidarity, or, in other terminology, reliance of a man on neighbors and their help", that is, on the Other. "I call it (reliance on the Other – P.P. and R.H.), – sums up one of the leaders of practical philosophy T. Rench, – a practical horizon of communicative solidarity".

Somewhat more difficult to understand and explain is the relationship between the will and the expression of will of the party to mediation, on the one hand, and human autonomy, in principle, as

the first of the conditions of human existence. This condition, according to the concept of practical philosophy already mentioned above, is the constituent of the meaning of human existence. It is directly human existential facticity that makes it so, thereby affirming a person as a product of his own spontaneous self-development, and not someone else's project. In its turn, human existence is impossible without the satisfaction of transcendental and acquired human needs for goods. As a modern American phenomenologist of Ukrainian origin Damian Fedorika writes in the section "Human Needs and Human Freedom" of work "Philosophy of the Gift", a person is a slave to his own needs. On the one hand, these needs are inextricably linked with a person, but on the other hand, they are not an attribute of a person, but are the conditions of his existence.

Therefore, in reality there are sufficient grounds for the conclusion that, according to the terminology of practical philosophy, the basic structure of the human world (the existence of a person in society in traditional terminology) is marked by fundamental antinomianism, "which we must comprehend, on the one hand, as natural facticity, and on the other hand like a project in freedom". At the same time, one should not forget that it is the freedom of a person that plays the role of perpetum mobile in all his life projects, including mediation. Mediation has already become in many civilized countries of the world and is also being actively established in Ukraine as one of the most obvious and effective forms of this freedom of social subjects, first of all, individuals.

3. Fairness of Mediation. Even more multifaceted in form of manifestation and richer in content compared to mediation as a form of freedom of the subject is the phenomenon of fairness of mediation. It could become an independent subject even for fundamental research. However, based on the goals and specific objectives of this article, we will limit ourselves to the analysis of only two aspects of the problem: the institutional fairness of mediation and the fairness of mediation as a social practice. At the same time, the general cognitive matrix of the analysis of the above issues will reveal the phenomenon



of fairness of mediation as a way of the attitude of one of its parties to the other party, mediated by their attitude to the benefits that they claim in the dispute (conflict).

From the cognitive standpoint of the anthroposociocultural approach we have chosen to the problem of research, as well as taking into account its subject and general purpose, it is most rational to analyze the institutional justice of mediation within the framework of the concept of justice by John Rawls, namely justice as honesty, which primarily deals with the institutional principles of justice. In particular, in chapter one "Justice as Honesty" of his fundamental research "The Theory of Justice", he defines the subject of justice as follows: "the primary subject of justice is the basic structure of society, or, more precisely, the way in which the dominant social institutions distribute fundamental rights and obligations and determine the distribution of benefits from social cooperation".

So does mediation in Ukraine belong to the leading social institutions and is the distribution of rights and obligations of the parties to mediation within this institution fair? The positive answer to the first of the above questions is obvious – yes, mediation in Ukraine is already one of the leading social institutions. This, in particular, is stated in the preamble to the Law of Ukraine "On Mediation": "This Law defines the legal framework and procedure for conducting mediation as an out-of-court procedure for resolving a conflict (dispute), the principles of mediation, the status of a mediator, requirements for its preparation and other issues related to this procedure". This is stated even more convincingly in Article 3 "Scope of the Law" of the same Law: This Law applies to public relations involving mediation in order to prevent conflicts (disputes) in the future or settlement of any conflicts (disputes), including civil, family, labor, economic, administrative, as well as in cases of administrative offenses and in criminal proceedings in order to reconcile the victim with the suspect (accused)". In other words, we are talking about a truly gigantic layer of social conflicts (disputes) that can be resolved within the framework of the procedures of the institution of mediation.

The question of the fairness of the distribution of rights and obligations of the parties to mediation within this institution does not cause any special ideological and/or methodological problems. First of all, the fairness of the institution of mediation in the understanding of its honesty in relation to each of the parties to mediation is guaranteed by their personal participation in all mediation procedures. This is a fundamental principle of mediation, protected by the legislation of the state.

Secondly, according to the general principle and in accordance with the Law of Ukraine "On Mediation", mediation is possible only on the basis of self-determination and equality of rights of the parties to mediation. With this view domestic legislator provided the following: "1. The parties to mediation independently choose the mediator(s) and/or the entity providing mediation. Secondly, according to the general principle and in accordance with the Law of Ukraine "On Mediation", mediation is possible only on the basis of self-determination and equality of rights of the parties to mediation. With this view domestic legislator provided the following: 1. The parties to mediation independently choose the mediator(s) and/or the entity providing mediation. 2. The parties to the mediation independently determine the list of issues to be discussed, options for resolving the conflict (dispute), the content of the agreement based on the results of mediation, terms and methods of its implementation, other issues related to the conflict (dispute) and mediation. Other participants in the mediation may give advice and recommendations to the parties to the mediation, but the decision is made solely by the parties to the mediation. 3. If a party to mediation is a minor, he makes a decision in compliance with the requirements of the law, taking into account the scope of his legal capacity. 4. If the party to mediation is a person with limited civil capacity, he makes a decision in compliance with the law, taking into account the extent of his capacity. 5. Mediation is conducted on the basis of the equality of the parties. The parties to mediation should be given equal opportunities in mediation. The obligations of the mediator must be the same in relation to all parties to mediation".



Section 3 "Conducting Mediation" of the Law of Ukraine "On Mediation" is specially devoted to the functional provision of the institutional fairness of mediation as its transparency and honesty. It describes in detail the procedures for preparing for mediation, the procedure for its conduct and termination, the content of the mediation agreement, the content of the agreement on the results of mediation, as well as the rights and obligations of the parties to mediation. In particular, in accordance with the above Law, the parties to mediation have the right to: "1) choose by mutual agreement a mediator(s) and/or an entity providing the mediation; 2) determine the terms of the mediation agreement; 3) to involve other participants in mediation by mutual consent; 4) refuse the services of a mediator (mediators) and choose another mediator (mediators); 5) refuse to participate in mediation at any time; 6) in case of non-fulfillment or improper fulfillment of the agreement based on the results of mediation, apply to the court, arbitration court, international commercial arbitration in the manner prescribed by law; 7) involve an expert, translator and other persons designated by agreement of the parties to the mediation. The law, the mediation agreement or the rules for mediation may determine other rights of the parties to mediation".

The parties to mediation are obliged by the legislator: "1) to comply with the requirements of this Law, the mediation agreement and the rules for mediation; 2) execute the transaction based on the results of mediation in the manner and terms established by such an agreement; 3) perform other duties determined by law".

Consequently, the institutional fairness of mediation, as its honesty, is guaranteed in Ukraine by the direct participation of the parties to mediation in all its procedures, the adoption of all decisions within this procedure exclusively by its parties, and the functional provision of the institutional fairness of mediation by the state. These are sufficient organizational and legal prerequisites for the introduction of mediation in Ukraine.

The issue of fairness of mediation as a social practice in Ukraine is much more complicated. In our opinion, before trying to justify a certain answer to it, it is necessary to at least get acquainted with this practice. Mediation began to take shape in Ukraine as a qualitatively distinguished phenomenon since the 90s of the XX century. It developed mainly spontaneously, by trial and error, under the patronage of individual foreign grant projects. On the domestic side, at different stages of its evolution, the interest in it turned out to be dominant either by individual state institutions, or by some institutions of civil society, and sometimes even by the private interest of certain groups of mediator communities. Each of the above-mentioned subjects saw mediation as a way to solve certain problems of their own with "small blood".

After the signing and ratification by Ukraine of the Association Agreement with the EU in 2014, in which one of the tasks set for Ukraine was to actively develop conflict (dispute) resolution alternatives to judicial institutions, primarily mediation, the Ukrainian state made another clumsy attempt to nationalize mediation by joining it as a sub-institution to the institute of state justice». For this purpose, in particular, as well as for the implementation of Article 124 of the Constitution of Ukraine updated in 2016, the Verkhovna Rada of Ukraine adopted in October 2017 the Law of Ukraine "On Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts. By this Law, each of the above-mentioned codes included separate chapters of "Settlement of Disputes with the Participation of a Judge". The practice of applying these innovations turned out to be quite contradictory.

Finally, a completely different – opposite conceptual approach was embodied by the domestic legislator in the Law of Ukraine "On Mediation", adopted in November 2021. It implemented the concept of mediation not only as an out-of-court procedure, but also as a procedure for resolving conflicts (disputes) that competes with legal proceedings. According to the above-mentioned Law, mediation has



a legitimate status of a commercial service in Ukraine and should therefore be provided, as a rule, on a paid basis. That is, mediation has been introduced in Ukraine as a civil society institution.

Is that fair? To answer this question, it is necessary first of all to find out what mediation actually is by its nature – a commercial service or a socially significant, common good? In other words, does an objective need for mediation arise for all members of society or only for a certain, insignificant part of them? Numerical theoretical studies and social practice unequivocally convince that the need for mediation is general, it concerns all members of society. Hence, mediation has the nature of the common good and should be provided free of charge to everyone, be available to all. However, it is beyond the power of the Ukrainian state to ensure the general gratuitousness of mediation. As well as beyond possible to allow paid mediation for the majority of the population of the country.

The analysis of international experience in the field of mediation shows that even in the developed countries of the world, where mediation is widely used, a combined approach to its provision is practiced in the form of public-private partnerships of an institutional type. It was recommended to the EU Member States in 2004 by the European Commission in the "Green Paper on Public-Private Partnerships and the Community Law on Public Contracts and Concessions". With this approach, it remains for the state to ensure the high quality of mediation, and private partners are assigned the role of the driving force of public-private partnership, daily support for it with concrete deeds. In the aforementioned countries, civil society as a whole acts as the institutional customer of mediation, and the corresponding mediation procedures are its individual subjects who find themselves in conflict (controversial) life situations. It is they who usually pay for mediation procedures.

Thus, domestic social practice in the field of mediation should be assessed as a whole as fair. With the official introduction of mediation as an institution of civil society, Ukraine has taken a step of fundamental importance in entering the European civilization space. Its

quintessence is the steady transformation of individuals from objects of state procedure into full-fledged subjects and co-creators of social space. The parties to mediation, daily solving their own private problems with the help of its procedures, mainly on the same private basis, step by step change the entire social space, create a reconciled social environment, devoid of total antagonisms and permanent conflicts (disputes). In view of the foregoing, mediation should be recognized as an effective way of constructing a new social reality and, therefore, a manifestation of social necessity.

**Conclusions.** 1. Mediation as an extrajudicial way of resolving conflicts (disputes) in society has a spontaneous nature. Its necessity and nature are determined by internal factors for the parties to mediation. They are also actively influenced by external factors. 2. Mediation is an effective form of freedom for both its parties and all subjects of civil society, primarily individuals. It is to this freedom that the role of the perpetual motion machine of both the development of mediation and one of the factors of the humanization of social space belongs. 3. Mediation is fair both in its institutional nature and as a form of social practice. Its quintessence is the steady transformation of individuals from objects of state procedure into full-fledged subjects and creators of social space. Mediation has proved to be an effective way of constructing a new social reality. The parties to mediation, daily solving their own private problems by means of its procedures, usually on the same private basis, are steadily changing the entire social space, creating a reconciled social environment, devoid of total antagonisms and permanent conflicts (disputes).

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MEDIATS
Mediation: Training and Society Transformation

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**Iryna Honcharenko, Master student (Management in Mediation)**
**Yuliia Kvitka, PhD, Associate Prof.**
***V.N. Karazin Kharkiv National University***

# DEVELOPMENT AND POPULARIZATION OF MEDIATION AS AN ALTERNATIVE WAY OF RESOLVING CONFLICTS IN UKRAINE

In the modern world, alternative dispute resolution has long and firmly occupied its niche among the ways to resolve disagreements and contradictions along with judicial protection. Due to a number of advantages over its alternatives, the first of which is the achievement of a mutually beneficial result, mediation remains highly effective. Mediation, as a tool for resolving conflicts, is gaining popularity in the US, Europe, China, etc. According to the US Department of Justice, the effectiveness of mediation was 75%; In the UK, associations of mediators have reported mediation success rates of over 70% for family disputes and 86% for business disputes.

Development of alternative procedures for resolving legal disputes contributes to the creation of conditions for ensuring the accessibility of justice and improving its quality, which at the present stage is one of the the most important tasks of the judicial policy of Ukraine, as a state, which is proclaimed legal (Article 1 of the Constitution of Ukraine). The solution to this problem is impossible without the introduction and development of mediation – a relatively new phenomenon of legal reality for the state.

In the history of Ukraine, many traditions associated with out-of-court methods of resolving disputes can be found. Many years ago



in the Zaporozhian Sich, important meetings, in particular military councils, were held in the form of a Circle. The discussion of issues in the Circle continued until the community reached a consensus acceptable to all its participants. And although mediation was used ideologically in Ukraine very often even during the years of independence, it was legally formalized quite recently.

The systematic introduction of mediation in Ukraine began in the 90s as part of the activities of non-profit public organizations, which gave sufficient flexibility in the search for its most effective forms. For the post-Soviet space, this situation was quite favorable. Although the National Mediation and Conciliation Service (NSPP) was established in Ukraine in 1998 to become a central body in the development of mediation, without a legal framework it has not been an incentive for its development. The first organizations (mediation groups) were established in 1994. The years 1995-1997 are associated with the first experience of using mediation. The task of this time was not only to find out in practice how applicable this technology is in Ukraine, but also to develop mechanisms for incorporating mediation into the existing system of conflict resolution.

Mediation has been used in Ukraine for years mainly thanks to international organizations, in particular the International Financial Organization, which finance the relevant programs. "Today, the settlement of disputes with the participation of an independent intermediary (mediator) takes place within the framework of the activities of a number of public, charitable organizations, as well as institutions that provide paid mediation services," says Svetlana Polinkevich, a lawyer at the law firm "Eidicom", "in addition to 2003 in Ukrainian courts, mediators participate in trials experimentally. Training of judges-mediators and lawyers of mediators is being carried out. One of the largest is the Ukrainian Mediation Center (UCM), founded at the Kyiv-Mohyla Business School with the aim of creating an institution that would become a driving force for the development of alternative dispute resolution in Ukraine by providing training and services for truly independent mediators. In January 2010, the Pav-

lenko and Poberezhnyuk Law Group, the Ukrainian Mediation Center, the Ukrainian Consent Center and the Odessa Regional Mediation Group founded the Coalition for the Development of Mediation in Ukraine, the goals of which are: to ensure a proper understanding of mediation in society and among specialists, transparent harmonization of basic standards to ensure an appropriate level of mediation practice in Ukraine, promoting mediation as a service and building its positive reputation

Also in 2010, mediation was tested in four courts in the country (Bila Tserkva City Court of Kyiv Region, Vinnitsa District Administrative Court, Donetsk Regional Administrative Court of Appeal and Ivano-Frankivsk City Court). In 36 cases, mediation was successful, and a mediation agreement was concluded in 33 cases. Referring to this experiment, the President of Ukraine issued a Decree "On the Strategy for reforming the judiciary and related legal institutions for 2015-2020" to develop alternative dispute resolution methods in the country.

In 2008 the European Parliament and Council issued a Directive on Certain Aspects of Mediation in Civil and Commercial Matters. EU Members were required to adopt appropriate national legislation on mediation by 2011. Important, that mediation received an additional impetus for development after the adoption of a number of laws on mediation both in EU and CIS countries: Hungary (2002), Austria (2003), Bulgaria (2004), Romania (2006), Moldova (2007), Slovenia (2008), Russia (2010), Kazakhstan (2012).

With regard to Ukraine, demonstrating peacefulness of humanity, voluntarily refusing from a powerful nuclear potential, a country located in the geographical center of Europe had to consider other benefits as soon as possible because the mediation position has great advantages.

Only on November 16, 2021, the Verkhovna Rada adopted the draft Law on Mediation. The adoption of this Law was supposed to reduce the burden on the national judiciary, since it is obvious that the majority disputes pending in court can potentially be resolved



amicably out of court. According to the adopted law, mediation is "an extrajudicial voluntary, confidential, structured procedure, during which the parties, with the help of an intermediary (mediators), try to prevent the occurrence or resolve a conflict (dispute) through negotiations". The law adopted in 2021 should promote mediation in Ukraine.

USA and Europe, with their experience in mediation, have shown that this method of resolving disputes is popular precisely because of the opportunity to save friendly relations, time, money and confidentiality. Obviously, for the development of mediation as an effective way to resolve disputes and conflicts, it is necessary not only to develop the legislative framework, but also to spread the idea of using mediation among the general public. Mediation should be popularized through public authorities, while people should be aware of the possibility of resolving disputes in this way, about the features of the use of mediation and its results. Taking into account the peculiarities of modernity, creating an online mediation platform can be a big step in popularizing it and making it easier to use.

The main advantage of mediation is saving time, money, and effort. Unlike litigation of disputes, mediation does not last for years, and in some countries, it is generally limited to 15-20 hours. As for money, it will not be much cheaper in Ukraine compared to other countries, since legal red tape in the United States, for example, turns out to be much more expensive than court costs and lawyers in Ukraine. Mediation helps the parties avoid the escalation of the conflict and reach a resolution of the dispute, the result of which will satisfy both parties.

The Law on Mediation has become a new stage in the popularization of mediation in Ukraine in terms of the rule of law and access to justice. Despite the positive impact of this stage, many problems still remain open. The adoption of the law on mediation was one of the strategic goals in promoting mediation and reforming the justice sector. The next thing that can be done to popularize mediation is the development of national standards in the field of mediation, im-

proving the quality of court mediation, as well as the introduction of mediation as the main way to resolve specific types of disputes. Mediation can become one of the main methods of conflict resolution in Ukraine. It is an effective, flexible, efficient, and forward-looking way of resolving disputes and contradictions. An important role is played by the absence of such shortcomings as distrust, lengthy and formalized consideration.

Separately, it should be noted that the unloading of the judicial system is also a positive feature of mediation, since the resolution of conflicts in the pre-trial order will lead to a decrease in the number of cases coming to court. And yet, despite the slow development of mediation, this direction is developing, and it remains only a matter of time until mediation in Ukraine becomes a more popular way to resolve the conflict than litigation.

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**Prof. Levan Jakeli**
***Batumi Shota Rustaveli State University***
**Dean of the Faculty of Law and Social Sciences**

# THE SHORT-TERM MEDIATION PROGRAMME OF BATUMI SHOTA RUSTAVELI STATE UNIVERSITY

Mediation is becoming more and more popular for resolving conflict in different contexts, the mediator profession is developing by the day and its definition and importance are growing too. The personal characteristics and skills required to perform the function of a mediator can a representative of any profession (Memon, 2018), therefore, any person who has reached the age of an adult can become a mediator. Mediation has been taught at Batumi Shota Rustaveli State University since 2021. The short-term Mediation Programme of Batumi Shota Rustaveli State university was launched within the framework of Erasmus+ CBHE "MEDIATS" funded by the EU.

Lecturers have been retrained in leading European universities, that have developed and are leading this program. 8 completely new training courses were developed within the project, and 4 existing courses were upgraded. A cabinet for teaching mediation and imitation processes was organized at BSU, where students have the opportunity to imitate the mediation process in conditions similar to the real environment.

Currently, the short-term mediation program at BSU has 15 trainees. They master the profession of mediator in a hybrid model. They took a 60-volume course, which mainly included training programs in mediation, law, and psychology, as well as internships conducted at the Mediation Imitation Centre at BSU and the Mediation Centre in Ajara.

Students also had the opportunity to complete a two-week internship funded by the EU at the Catholic University of Murcia in Spain. They involved intensive mediation training and participated in simulations and study visits, group activities, and cultural tours. Participants also met with practicing mediators at the Murcia Regional Justice Centre (The Palacio De Justicia).

To evaluate and improve the quality of teaching, BSU constantly receives feedback from students and trainees during or after the implementation of the training course. After the completion of this pilot course at BSU, it is planned to implement a short-term mediation program annually.

MEDIATS
Mediation: Training and Society Transformation

Co-funded by the Erasmus+ Programme of the European Union

**Ketevan Jishkariani**
***Batumi Shota Rustaveli State University***
**Tsiala Katamidze**
***Batumi Shota Rustaveli State University***

# BENEFITS OF MEDIATION

"Walking in a straight line you can't get very far"
*The Little Prince book*

The development of modern society, as well as the growth and diversity of legal relations, have influenced the development and refinement of alternative dispute resolution mechanisms, and the overcrowding of the courts has determined the need to use these mechanisms.

Alternative dispute resolution mechanisms are settlement, negotiation, arbitration, and mediation (Zartman, & Touval, 1985). However, the most flexible and result-oriented is mediation. It is beneficial for all parties to the conflict at any stage of the conflict – the most important is to have goodwill between parties to resolve the dispute peacefully.

What does mean for the parties to end the dispute through mediation? Does this only mean avoiding a long, emotional, stressful, and costly court process?

The mentioned method of resolving disputes includes more positive and useful concepts, which we will try to show clearly. To illustrate, we will use the classic example of mediation of two sisters arguing over one orange.

They both want the whole orange they inherited, and they go to a court to resolve the dispute. When you hear about this case you think



a simple solution – splitting the orange into equal parts will legally resolve the dispute. And the court will make this decision, that will not examine the real interests of the parties. However, what solution would you offer the parties, when you find out their real interests, that one of them wants orange peel to make cedar, and another sister wants orange to make a juice (Berman, 1996). The decision is obvious, fairy and it is perspective too.

This seemingly simple example shows that due to a conflict situation, a lack of communication, and/or an unhealthy relationship, the dispute becomes more and more acute and takes the wrong and unhealthy form. The function of the mediator is revealed in the moderation of the real interests of the parties, after the disclosure of which the possible conditions and prospects for resolving the conflict become clear to both parties.

The real interest of the parties is a key criterion that the mediation settlement must meet. Interests are human needs in a particular place and at a particular moment, which lead them in the direction and actions to meet those needs and wants (Bibiluri 2020).

However, in the process it is possible to express several types of interest, namely, the interest that is directed towards ending the dispute and the parties want to maintain the relationship and interest that has given rise to conflict and therefore push the parties to a conflict situation or exacerbate it.

Ending stress, maintaining a relationship, clarifying the future, saving time and money, and relieving responsibility for resolving conflict are a list of interests that represent the interests of resolving conflict amicably in any type of dispute (Strasser & Randolph, 2004).

Unlike the traditional method, mediation is not conducted on a competitive basis (Wall & Dunne, 2012). The parties to the conflict do not try to obtain evidence against each other or point to a violated legal norm. The mediator, unlike the judge, does not judge, does not evaluate the evidence, and does not determine which circumstances are essential for the case or are not established.

The mediator only supports the parties to express their emotions, feelings, needs, impressions, and frustrations and to express their real interests and intentions as a result of such "emotional emptiness".

It is as a result of this process that a healthier relationship is formed between the parties, which has the prospect of extension. Thus, during mediation, the conflict is transformed and the main thing that is heard by the parties sounds like this – what do they want?

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**Natalia Kalinina**
**KROK Business School, PHD, Associate professor**
**Master of Mediation and Conflict resolution**

# MEDIATION AND ITS ROLE IN BUILDING A HEALTHY CORPORATE CULTURE AND ATTRACTIVE HR BRAND OF A COMPANY

The article is dedicated to the procedure of mediation which is new in Ukrainian practice of conflict resolution in the context of strong corporate culture. Today corporate culture of any organization is not only the marker of its economic success, it also reflects company's image and social responsibility. Company HR brand is the result and a product of corporate culture, and its quality directly depends on the quality and level of corporate culture. Thus, corporate culture and HR brand should be always taken together for analysis. Mediation is treated as one of the important components and effective instruments of a healthy and strong corporate culture which gives an opportunity to effective conflicts resolution in a company as well as teaches nonviolent communication. The article also shows examples of event marketing as a platform for building strong corporate culture and translation of main company values and messages to its employees. The importance of settling conflicts is demonstrated by practical examples.

***Keywords:*** mediation, corporate culture, HR brand, corporate interaction, internal corporate conflicts, interpersonal conflicts, event marketing, work event.

The issue of mediation as a component and tool for the formation and development of a strong and healthy corporate culture and HR brand in Ukrainian companies is almost unexplored, since the phenomenon of corporate culture itself is only gaining importance in domestic companies, and mediation as an alternative way of resolving conflicts in the corporate environment is taking its first steps. Unfortunately, this issue is actively considered mostly by foreign authors. Understanding the importance of corporate culture and HR brand in a company and the search for effective tools for the formation and development of these processes led to an interest in this problem and a desire to highlight some aspects of the issue under consideration.

At the current stage of economic development, the company's main value is its employees, because competencies and competitive advantages are created thanks to the use of people's intellectual capital. That is why for many organizations the quality of corporate culture and, as a result, its HR brand is essential.

By company's corporate culture, the majority of foreign and domestic authors mean not only a set of different elements – values, norms and rules of behavior, philosophy, symbolism, myths, rituals, rites, etc., but first of all – the process of organizing and managing affairs, the way of their implementation, the culture of setting and developing goals, objectives, strategies development and means of achieving them [2].

Under HR brand, researchers propose to understand a unique subjective set of perceptions and expectations of the target group – employees and job candidates, in relation to the company – employer. [6]

Strong corporate culture ensures clear values, which causes respect for the company from employees, a high level of personal responsibility of employees and their personal contribution to the formation of the company's values. This works particularly effectively in the service market, as employees of such companies consciously and voluntarily bear personal responsibility for the quality of services and goods.



Strong HR brand, as a result and product of a healthy corporate culture, provides the company with an attractive image in the external environment, which gives it the right to fight for the best human resources and attract talented people, which are necessary for further successful development. A strong HR brand allows the company not only to form solid reputation as a fair employer in society, but also to gain trust among partners. If a company takes care of its employees, it demonstrates the seriousness of its intentions in relation to the further development of its activities and its market position.

At the same time, corporate culture and, as a result, HR brand are the embodiment of the expectations of employees from their interaction with the company in various areas – both private and business relations. Strong, healthy corporate culture and strong HR brand contribute to the formation of so-called corporate citizenship among employees, which involves commitment to the company's values, which ultimately determines the employee behavior of both in the internal and external environment.

The traditional concept of HR brand is presented with two components: identity and image. According to this concept identity of the HR brand represents the ideal content that its ideologists invest into the brand [9]. This includes:

- corporate culture values shared by employees;
- benefits for employees, which are manifested in the behavior of a company in relation to its employees, and which constitutes the value of working for this company;
- HR brand competence, which represents a set of knowledge, skills, abilities and behavior of the company's management, as well as HR managers to develop and maintain corporate culture at the desired level;
- the origin of HR brand, its relationship with a company, company group, country or region;
- the individuality of HR brand, which is manifested in the corporate style, communication systems, business maps of processes that distinguish it from other brands, etc.

Second part of the concept is HR brand image, which is a set of real perceptions and associations of target groups (potential employees, current employees, company management, HR agencies, etc.) in relation to HR brand for a certain period of time [9]. The HR brand image includes:

• attributes of HR-brand offers — a set of payments and compensations that the employee receives from a company: salary level, working conditions, psychological climate, opportunity for professional growth, etc.;

• the functionality of HR brand offers is the answer to the question to what extent HR brand creates value necessary for target audience. For example, to what extent the work in a company allows employee to realize his expectations and competencies, how powerful is the team spirit and how it helps to realize current and future projects;

• symbolism of HR brand offers is the development of an employee's sense of belonging to the company, pride, as well as a clear understanding of the benefits of working for this company.

The idea of HR brand concept is to form its identity and bring it to the target group as an HR brand image with the help of internal marketing tools, PR, as well as various methods of strengthening corporate culture. Positioning of the corporate culture and, as a result, HR brand in the company in the external environment should be based on already existing corporate values and confirmed by the competencies of HR brand in order to give it realism and truthfulness. The strength of the corporate culture, HR brand and the company's success in managing its employees and attracting new ones depends on how complete the identity and image match will be.

One of the main tasks of management is the division of competencies of personnel. This is a necessary condition for the successful economic activity for any company. Sectors, branches, departments, and other structural subdivisions are created within the organization, each of which ensures the implementation of a certain production process. A well-structured company is a fine-tuned clock, where each individual part actively interacts with others and cannot function effectively in isolation. However, the parts that make company work are people, and they are differ from each other. Each person has his own temperament, character, needs, attitudes, habits, experience, ideas. For some, due to their character, it is quite difficult to get along in a team. As a result of the collision of people with different psychological characteristics, including views and values, interpersonal conflicts arise.



Interpersonal conflicts can arise at different levels of the organization. A frequent case is the conflict between heads of structural divisions with roughly equal statuses, the so-called horizontal conflict. Usually, within its framework, there is a struggle for the following:

• resources, including budget and human resources;

• increasing the functional significance of its department: for example, one of the divisions claims the main role in the development and implementation of a large project, while suppressing the interests of other divisions;

• gaining a good reputation in the eyes of a head of the company in order to advance on the career ladder and receive material bonuses.

Reasons for the emergence of a conflict between the heads of structural units can be:

• difference between the ideal images of two heads of structural units, which is determined by different intra-personal variables and social environment, as well as their ideas about how each of them should be treated by others in a personal and professional plan;

• the difference between the ideal perception of each of the conflicting parties about their competences, character, values, personal qualities and the way things are in reality;

• inconsistency of interests, powers, roles of managers, as well as inconsistency with the reality of expectations and ideas about how the opponent should behave.

Interpersonal horizontal conflict arises as a result of an overestimated or underestimated perception of each other's competences, different interests, powers, provision of resources within the framework of interaction. The conflict can deepen due to the difference in

values that dominate the subcultures of departments and that determine the behavior of managers and the characteristics of their interpersonal communications.

Let's consider the main causes of conflicts on the example of interaction between the heads of the financial service and the legal service. The specified structural divisions are equal in terms of their importance and position in the company. However, in the process of carrying out his work, each employee has and pursues his goals. For example, such as the implementation of production plans, receiving a high salary, promotion, etc. If the organization of labor process for any reason prevents the achievement of its goals, this may cause a conflict.

As an example, we can cite the occurrence of a conflict during the performance of production tasks, which often occurs in domestic companies: signing of a contract by financial service without agreeing its terms with the legal service, or contrary to its recommendations. The position of the head of the financial service in this case will be as follows: the contract is financially beneficial; it gives an opportunity to increase sales and modernize production. The evidence of lawyers is only nit-picking. In this case, the head of a legal department takes the opposite position: the terms of the contract are binding for the organization, as its improper implementation will lead to significant fines.

With the development of the conflict, if leaders have sufficient authority, more and more people are included in it: gradually all employees of these structural divisions enter into confrontation. At the same time, the performance of production tasks recedes into the background, since the participants in the conflict are busy only with trying to harm the opponent. In our case, as a result of the conflict, the financial department may reduce the financing of lawyers' projects, and the latter will " forget " to warn financiers about the next changes in tax legislation.

There are quite a few ways to resolve such conflicts, and each of them has its own advantages and disadvantages. Some recognize the rightness of one side and the defeat of the other. There are ways to



settle conflicts when both parties lose (compromise) or win (cooperation, win-win), or reach a consensus (negotiations, mediation) [8].

If the parties cannot independently resolve their conflict, in this case, a mediator is involved who has authority over the participants in the conflict (for example, senior management, administrative state bodies, the court), or one who does not have such authority.

The resolution of interpersonal conflict through the involvement of the authorities is not always the optimal choice, since in this case the resolution of disagreements is carried out imperatively, without regard to the interests of both conflicting parties, and this can cause the destruction of business relations.

Here it is necessary to pay attention to such a tool for promoting the HR brand as event marketing (event marketing), which can be very effective in developing and maintaining corporate culture of a modern company.

Initially, the role of event marketing tools was played by institutionalized gatherings, within which specialized informational communications (for example, congresses) are carried out, as well as incentives, such as stimulation and motivation of intermediaries and agents in the sale of goods and services.

In recent years, the practice of many companies has included events focused on emotions as a channel for transmitting communicative messages to the company's external and internal target groups. Primarily, such measures were used in industries where there is a legal restriction of competition, such as tobacco smoking and pharmaceuticals. But gradually their organization turned into a special tool of the company's communication policy.

By event marketing, we understand systematic planning, organization, staging and control of events, which are presented as platforms for the presentation of goods, services or companies, focused on human experiences and dialogue, which allow, with the help of emotional and physical stimulation, to cause the process of effective activation of the attention of the target audience group to a product, service or company in order to transfer the necessary link [6,7].

Event marketing involves the staging of events that carry a significant emotional or entertainment load for the target group. It is focused on interaction, which allows engaging the target group at the level of behavior and emotions. The event turns the company's link (advertising, informational, etc.) into an exciting action.

The list of events organized in companies is very long, and it may include, for example, the following: seminars, congresses, conferences, open days, trainings, team building, round tables, brainstorming, shareholder meetings, corporate holidays, public holidays , presentations, branch openings, festivals, concerts, awards, nominations, as well as the mediation procedure.

The purpose of the events that the company arranges for its employees should be primarily the broadcasting of important corporate values and their consolidation in the corporate culture. Understanding and acceptance by employees of the company's development vision, mission, and significant corporate values is a necessary condition for the development of a strong corporate culture and a strong HR brand. The use of work, informative, and entertaining activities to promote and strengthen corporate culture contributes to the strengthening of the involvement of company employees, the development of corporate citizenship among them, increase in the level of job satisfaction, reduction of tension in interpersonal communications, as well as spread in the external environment of negative gossips about the company that spoils her reputation.

Mediation is one of the work activities of event marketing that contribute to the establishment of conflict-free interaction in the company, as well as strengthening the company's corporate culture and HR brand . The main reasons for the popularity of this procedure are rapid development of social relations, the complication of their structure, the emergence of new forms of social interaction.

Today, mediation is one of the most promising technologies for constructive conflict resolution. It involves the participation of a third, neutral party in this dispute – a mediator. Using this method, conflicting parties feel involved in choosing the final solution [8].



Solving the problem in such a way that is suitable for all parties minimizes or eliminates the difficulties of implementing decisions: injustice is excluded, there is no hostility of the participants in the conflict and the imposition of actions on them that contradict their aspirations.

Any company should strive for a quick and complete resolution of conflicts, otherwise they may become permanent. At the same time, it is of great importance to create a favorable working atmosphere, friendly relations in a team, the ability to distinguish interests from position, to choose the most correct ways of resolving conflicts.

Mediation is not focused on the development of a conflict (finding out who is right and who is wrong) or on identifying the side that won, but on a joint and constructive search for a solution. During mediation, employees try to find a solution of the problem together, and as a result, it is likely to be acceptable to everyone. The mediator does everything possible so that the positions and feelings behind it, the interests and needs of the opponents are first expressed, and then heard and understood by the parties [8].

The resolution of the dispute is not necessarily achieved via monetary compensation. It is often enough to apologize or simply express your grievances to each other. The participants of a mediation procedure themselves determine actions or deeds that parties must perform for the purpose of reconciliation. As a result, the agreements reached are carried out voluntarily: if the parties are satisfied with them, they are interested in it themselves.

Mediation in the resolution of internal corporate conflicts is possible in cases when:

- for the parties, not legal claims related to the past are more important, but future interests and the possibility of maintaining normal, business relations in the future (for example, when implementing new projects);

• we are talking about long-term significant relationships (for example, if the conflict concerns the interests of ordinary employees of structural units);

• the situation is influenced by personal relationships and emotions;

• the parties seek to maintain confidentiality.

Mediator must not only help the conflicting parties reach an agreement, but also ensure that their agreements are reliable and long-term. Only in this way will the parties be able to achieve lasting satisfaction from the agreement and negotiation process [8].

Another, quite significant advantage of the method is that mediation can significantly reduce the material and moral losses of all conflict participants, overcome the accompanying negative emotions, and ensure more comfortable coexistence of the conflicting parties. It allows the disputants to think about the future and use their creative abilities. At the same time, private interests participants are fully protected, as the mediation process is confidential.

Professionally conducted mediation procedure that ended successfully has a positive effect on the entire team of the company. The result for employees is that they:

• begin to understand reasons for the emergence and development of the conflict,

• learn to negotiate,

• develop team relationships,

• are working more devotedly , which allows to talk about the achievement of the main goal of peaceful conflict resolution — improving the psychological climate in the team.

In the course of such a work event as mediation, employees learn to the peaceful settlement of conflicts, which contributes to increasing the efficiency of internal communication, and also increases trust in the team and restores the respect of the conflicting parties to each other. In addition, for the company's employees, the mediation procedure is an important signal that broadcasts the company's values, the essence of which is to preserve the team spirit, trust and respect, the importance of each employee for the company.



Thus, the implementation of the mediation procedure in the company as a regular working tool in resolving internal corporate conflicts allows:

• manage human capital more effectively ;

• minimize management risks;

• develop a team style in working on projects;

• develop communication and negotiation skills.

For the company, the advantages are obvious, as all this contributes to the development and strengthening company's strong corporate culture, providing it with the best employees, developing a strong HR brand, which in turn increases the loyalty of employees to the company, reduces their turnover and increases the chances of attracting talented people .

**Conclusions and proposals.** Mediation is effective tool for solving internal problems, corporate conflicts, and disputes. With the help of and in the process of mediation it broadcasts corporate values, employees learn how to negotiate effectively, practice their communicative skills are strengthen team relationship that _ helps development company's corporate culture and promote its HR brand. At the same time, the phenomenon of corporate culture and HR brand in Ukraine has not been sufficiently researched yet, and in practice very few companies are presented that are responsible and systematic about creating strong corporate culture. Mediation procedure is very rarely used in corporate practice. For the most part, company management traditionally addresses judicial institutions, or resolves internal disputes from a position of strength. All this determines the requirements for creating a system and developing an algorithm for introducing corporate culture into the company with a mandatory element of dispute resolution and at the same time broadcasting company's values – the mediation procedure.

Prospects for further research will be able to provide conclusions about the requirements for the mediation procedure in a company, information about it, popularization of training and involvement of professional mediators to work in this field of corporate governance.

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**Guliko Kazhashvili**
**Judge, Assistant Professor**

# COOPERATION BETWEEN THE COURT AND THE UNIVERSITY IN THE PROCESS OF TEACHING MEDIATION

Mediation is an Alternative Dispute Resolution method, is the best way to resolve certain types of disputes. In modern literature we already find the term, mediation – as an appropriate method of resolving a dispute.

The Law of Georgia on Mediation came into force on January 1, 2020, which is an unprecedented reform. With the adoption of this law, it became possible:

- The parties themselves should resolve the ongoing legal dispute in the court
- The parties resolve the dispute without going to court;
- The agreement reached by the parties is subject to binding approval by the court;
- Mediation is effective in time, it is confidential.

On 27 June 2020, LEPL Georgian Association of Mediators approved the Professional Standard for Mediators and determined qualification requirements to become a mediator in accordance with the law.

A mediator, as a neutral third-party administering interest-based negotiations and mediation processes may be any legally competent natural person without a criminal record.

The Association of Mediators determines the qualification stages of a mediator candidate.

It is extremely important for the court to get students interested in mediation. Any process requires action over time. Prior to the enactment of mediation, court and private arbitration were the means of resolving disputes in Georgia. Unlike the court and arbitration hearing, parties themselves make decisions in a mediation process.

Court mediation has been operating in Tbilisi for several years, and court mediation is now taking its first steps in Batumi. Therefore, special care should be taken in the process of handing over the case from the court to the mediator. The court should assess the circumstances of the case as to whether the dispute can be settled by agreement of the parties. The mediator, in his/her turn have to manage the process properly so that public frustration does not occur.

Generally, court hearings are public, unlike the mediation process. In private legal disputes, one of the stages of the hearing is to determine the possibility to settle a dispute. Interested students can attend the process, where they will have the opportunity to see at a glance the attitude of the parties to settle the dispute and to observe their readiness.

Certainly, a mediation process involves completely different stages, such as meetings between the parties, private meetings., examination stage, "trade stage" ... But, I think, the given reality, it will be interesting for students to attend court proceedings.

It is also possible to meet with interested students in a discussion format, where they will discuss questions of interest to both the mediation and the court. As a current judge, I will share my experience on the challenges of settling a dispute.



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**Maryna Fedorchuk**
***Yuriy Fedkovych Chernivtsi National University, Chernivtsi, Ukraine,***
m.fedorchuk@chnu.edu.ua,
ORCID: 0000-0002-5578-2447

# LEGAL STATUS OF MEDIATION PARTICIPANTS IN CRIMINAL CASES IN UKRAINE

**Abstract.** The article is devoted to the analysis of the legal status of mediation participants in criminal cases in Ukraine. The article describes who are the participants in mediation in criminal cases and what functions each participant performs. Detailed attention is paid to the study of the legal status of the main participants in mediation in criminal cases: the mediator, the parties to the mediation – a minor who has committed a criminal offense, and the injured party. Unlike other types of mediation, in mediation in criminal cases, the legal representative of a minor who has committed a criminal offense is a mandatory participant, that is, a representative of one of the parties, and in some cases, a legal representative of the injured party. In addition, the status of other participants in mediation in criminal cases was analyzed. This article also explores the relationships between participants in criminal mediation.

***Keywords:*** mediation, mediation in criminal cases, mediator, restorative justice.

JEL Classification: K10, K19, K49, D74

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**Introduction.** Historical experience shows that the institution of mediation in criminal cases existed in the consciousness and practice of the Ukrainian people even during the times of Kyivan Rus'. The institution of mediation in criminal cases (restorative justice) had its beginnings as non-punitive means of influencing the offender and a means of compensation for the damage caused by the victim as a result of the offense. Thus, mediation in criminal cases is rooted in the legal system of Ukraine, which was a consequence of the further introduction of mediation in criminal cases into modern practice. The development of mediation, in particular in criminal cases, contributes to guarantees of the realization of human rights and freedoms. The idea of reconciliation between the victim and the offender, compensation for the damage caused, awareness of one's behavior and one's interests, and understanding of responsibility for committing the act benefits all parties: the victim, the offender, society, and the state. In Ukraine, at this stage, mediation in criminal cases is introduced as a form of restorative justice within the framework of the Rehabilitation Program for minors who are suspected of committing a criminal offense (further – Program).

**Literature Review.** On November 16, 2021, the Law of Ukraine "On Mediation" (further – the Law) was adopted, thus starting a new stage in the development of the mediation institute in Ukraine. The Law provides legal regulation of such aspects as the principles of mediation, the status of the mediator, and the mediation procedure, but this law is a framework. According to Article 1 of the Law, mediation is an out-of-court voluntary, confidential, structured procedure, during which the parties, with the help of a mediator (mediators), try to prevent the occurrence or settle a conflict (dispute) through negotiations. This definition echoes the theoretical definitions of the concept of mediation in scientific literature [1]. Thus, the authors of the textbook "Mediation in the professional activity of a lawyer" give the following definition of mediation: mediation is a structured voluntary and confidential procedure for the out-of-court settlement of a dispute (conflict), in which a mediator helps the parties understand



their interests and find effective ways to reach a mutually acceptable solution [2, p. 101]. According to N. Mazaraki, mediation is an alternative method of dispute resolution, which, on the one hand, reflects the high level of development of the legal culture of society, and on the other hand, allows the parties to choose the most effective and acceptable option for resolving the dispute based on the fundamental principles of law, which reflect essential values of social development, such as good faith, reasonableness, justice, which is at the same time the basis for the implementation of the principle of the rule of law in Ukraine [3, p. 397].

The literature contains many definitions of mediation, which may differ in the specifics of the field in which mediation is applied. As is known, mediation can be used in civil, family, commercial, labor disputes, criminal cases, etc. A particular type of mediation, both in terms of the subject and the participants, is mediation in criminal cases. Mediation in criminal cases is one of the forms of restorative justice and is realized within Rehabilitation Program for minors who are suspected of committing a criminal offense. According to the Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project "Rehabilitation program for minors who are suspected of committing a criminal offense"", mediation is a voluntary, out-of-court procedure, during which a minor who is suspected of committing a criminal offense and the victim, with the help of a mediator, try to resolve the conflict through concluding an agreement on the application of the Rehabilitation Program for minors who are suspected of committing a criminal offense [4]. Thus, we can trace that in this type of mediation there is a special participant – a minor.

**Aims.** Many works have been devoted to the study of mediation in criminal cases and have been the subject of research by scientists. But some aspects need further research. The aim of the article is to research a legal status of participants in mediation in criminal cases in Ukraine.

**Methods.** To research the legal status of participants in mediation in criminal cases, the following methods were used: a comparative analysis method to determine the features of the legal status of participants in mediation in criminal cases; the method of forecasting, extrapolation is used in the study of ways to legal regulation of mediator in mediation in criminal cases in Ukraine; abstract logical method – for analytical generalization and formulation of conclusions.

**Results.** Mediation procedure should include: the parties to the dispute, i.e. individuals and/or legal entities, their groups, which have opposing material and legal interests; the mediator (mediators), as well as other participants who participate in mediation as agreed by the parties to the dispute (legal representatives, experts, translators, etc.). According to Article 1 of the Law of Ukraine "On Mediation", participants in mediation are the mediator (mediators), parties to the mediation, their representatives, legal representatives, defenders, translators, experts, and other persons determined by the agreement of the parties to the mediation. It should also be noted that mediation is not conducted in conflicts (disputes) that affect or may affect the rights and legitimate interests of third parties who are not participants in this mediation (Article 3 of the Law of Ukraine "On Mediation") [1].

The diversity of mediation participants stems from the principle of self-determination of the parties. After all, according to the principle of self-determination of the parties, the parties independently have the opportunity to choose a mediator or mediators and (or) entities that ensure mediation. In addition, during mediation, the parties make their own decisions, and other participants in some cases can only provide advice and recommendations.

As indicated, the mediator (mediators), mediation parties, their representatives, legal representatives, defenders, translator, expert, and other persons determined by the agreement of the mediation parties are participants in the mediation. However, mediation in criminal cases has its own characteristics, accordingly, these characteristics also apply to the subject composition of mediation participants. From the analysis of the Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project "Rehabilitation program for minors who are suspected of committing a criminal offense"", which implements mediation in criminal cases in Ukraine, a special composition of mediation participants emerges, in contrast to mediation in civil or labor disputes, etc. Thus, participants in mediation in criminal cases are the mediator, the parties to the mediation, the legal representatives of the party (parties), the prosecutor, and the regional center for providing free legal aid.



According to Article 1 of the Law of Ukraine "On Mediation", a mediator is a specially trained neutral, independent, impartial natural person who conducts mediation. The mediator is a decisive figure in the mediation procedure since it is the mediator who organizes the procedure and facilitates the resolution of the conflict situation by the parties themselves. The Law of Ukraine "On Mediation" also defines such elements of the mediator's legal status as the mediator's rights and obligations and responsibility. Article 9 of the Law of Ukraine "On Mediation" establishes the requirements for a mediator, namely: a mediator can be a natural person who has undergone basic mediator training in Ukraine or abroad. A mediator cannot be a person with a criminal record, a person whose civil capacity is limited, or an incapacitated person [1].

In addition, additional requirements may be established for mediators in terms of special training, age, education, practical experience, etc. Associations of mediators and entities providing mediation may establish such additional requirements. It follows from this that the additional requirements for the mediator in criminal cases established in the Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project "Rehabilitation program for minors who are suspected of committing a criminal offense"" are legal because such requirements are determined by the specifics of the parties to the

mediation and the subject of the mediation. Thus, the mediator is a lawyer included in the Register of lawyers who provides free secondary legal assistance and has undergone training in the implementation of the Rehabilitation Program for minors who are suspected of committing a criminal offense. Unlike other types of mediation, mediation in criminal cases in Ukraine is possible only with the participation of a mediator-attorney.

A mediator in criminal cases is not an advocate for one of the parties, as it is in a criminal trial. The mediator acts as an independent, neutral party who helps the injured party and the person who has committed a criminal offense to hear each other, to find interests, find common ground, and to help reach a consensus. Unlike a lawyer in the classical sense, a mediator focuses precisely on the interests of the parties and on ways to satisfy them, rather than on the legal nuances of settling disputed issues and does not offer the parties options for resolving or resolving the dispute. The main task of the mediator is to facilitate communication between the parties, to reach the moment when the parties are able to hear each other.

A mediator can greatly improve communication between the parties, which can lead to fairer and more accurate outcomes. In addition, his presence as a third party can serve as a checking mechanism that counteracts the prosecutor's unfettered discretion [5, pp. 23-24].

The opinion of scientists is valid that the mediator is a full-fledged participant in the criminal process. The presence of special knowledge possessed by the mediator, and his involvement by the parties makes it possible to bring him closer in terms of legal status to such a participant in criminal proceedings as a specialist [6, p. 86]. However, this status is not regulated at the legislative level. Neither the provisions of the Criminal Procedure Code of Ukraine determine the status of a mediator in criminal proceedings, nor the Law of Ukraine "On Mediation". At this stage, the status of a mediator in criminal cases is detailed only in a subordinate legal act – Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project



"Rehabilitation program for minors who are suspected of committing a criminal offense"". Therefore, there is a need for legislative regulation of the mediator's status in criminal procedural relations, i.e. making appropriate changes to the Criminal Procedure Code of Ukraine or detailing the status in the Law of Ukraine "On Mediation". Some scientists suggest that, it is precisely in the Law on Mediation that the provisions on who can be invited as a mediator in criminal proceedings, what professional skills these persons must possess, determine other requirements for these persons, establish the rights and obligations ties of the latter, circumstances that exclude the participation of a person as a mediator in criminal proceedings, the maximum number of mediators that can be involved in the process to reach agreements regarding the conclusion of agreements, and a number of other procedural points related to the effective participation of a mediator in the implementation of criminal proceedings [7, pp. 116-117].

Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project "Rehabilitation program for minors who are suspected of committing a criminal offense"" defines some features of the mediator's work in criminal cases. Thus, the mediator at the meeting with the parties explains to them the procedure of the Rehabilitation Program for minors who are suspected of committing a criminal offense, and its consequences, giving the parties the opportunity to agree on the terms of the agreement, and in case of agreement of the parties to its passage, provides them with a sample form of the agreement for familiarization and determination of the date of the next meeting for its conclusion. In case of impossibility or refusal of the parties to conclude an agreement, the regional center informs about it [4].

The parties are essential participants in mediation. Mediation parties are persons who, in order to resolve the existing conflict (dispute) between them, concluded an agreement with the mediator on the provision of mediation services to the latter. When examining

the legal status of mediation participants who are natural persons, there is civil legal capacity. According to Article 30 of the Civil Code of Ukraine, the civil legal capacity of an individual is his ability to acquire civil rights for himself through his actions and independently exercise them, as well as the ability to create civil obligations for himself through his actions, perform them independently and bear responsibility in case of non-fulfillment [8]. Since in the mediation procedure the parties make their own decisions, accordingly, incapacitated natural persons cannot be participants in the mediation. The Law of Ukraine "On Mediation" regulates the specifics of participation in mediation by minors and persons with limited legal capacity. This applies only to the parties to the mediation. According to Article 8 of the Law of Ukraine "On Mediation", if the party to the mediation is a person whose civil legal capacity is limited, he makes a decision in compliance with the requirements of the law, taking into account the scope of his legal capacity. If the party to the mediation is a minor, he makes a decision in compliance with the requirements of the law, taking into account the extent of his legal capacity.

The peculiarity of mediation in criminal cases, which is implemented in Ukraine, is that such a procedure takes place with the participation of a minor person or persons. And it is the minor who is suspected of committing a criminal offense who is the central party of mediation in criminal cases, despite the fact that the mediation parties are equal. Joint Order of the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine "About the implementation of the Pilot Project "Rehabilitation program for minors who are suspected of committing a criminal offense"" establishes the requirements for involving the parties in mediation in criminal cases, that is, the conditions under which the Program can be applied. Such conditions are the presence of an injured party – a natural person who has suffered moral, physical, or property damage as a result of a criminal offense, as well as a legal entity who has suffered property damage due to a criminal offense; committing a criminal misdemeanor or minor crime by a minor for the first time; recognition of



the fact of committing a criminal offense by a minor; consent of the minor and the victim to participate in the Program.

Mediation between the parties, namely the victim and the juvenile offender, is possible only if a misdemeanor or minor crime has been committed. Such a focus eliminates many procedural shortcomings and greatly increases the benefit of a person's rehabilitation. Mediation between the victim and the offender receives a high rating of satisfaction from all participants [7].

One of the most basic principles of mediation in criminal cases is the principle of voluntariness of the parties. This is detailed in Recommendation N R (99) 19 of the Committee of Ministers of the Council of Europe to member states of the Council that are interested in organizing mediation in criminal cases. Mediation in criminal cases should take place only when all parties have voluntarily agreed to this. The parties may also withdraw their consent at any stage of the mediation. Before agreeing to a meeting, the parties must be informed of their rights, the specifics of the mediation process, and the possible consequences of the decision. Certain circumstances of the case must be recognized by both parties as a basis for the mediation process. Attendance at the meeting should not be taken as an indication of a guilty plea for a subsequent trial. Before submitting the case for a meeting, possible signs of inequality between the parties should be taken into account: age, maturity, and intellectual abilities. After all, if it is a mediation between a minor offender and an adult victim, then, accordingly, techniques are needed that will prevent inequality of the parties due to age or life experience. The parties reach an agreement voluntarily. Agreements must contain reasonable and proportionate obligations of the parties [9].

In the mediation procedure, the parties can use the help of lawyers, translators, as well as experts — specialists in the relevant field (psychologist, teacher, doctor, etc.). However, it should be noted that the role of these persons in the mediation procedure is fundamentally different from the role of the mediation parties. They do not discuss the conflict situation, do not work ways out of it, but only

provide support to the mediation parties and, if necessary, help the parties assess the legality and realism of the solution options developed during the mediation.

As we have already mentioned, despite the fact that only a lawyer can be a mediator in criminal cases in Ukraine, in the mediation procedure he does not act as a lawyer, but only as a mediator. Therefore, it is possible to involve a lawyer in the mediation procedure in criminal cases who have the characteristics of participation in mediation within the framework of criminal proceedings. The lawyer must inform the suspect or the accused, whose defense he is, about the possibility of reconciliation with the victim only when the latter admits the fact that he has committed a criminal offense and wishes to eliminate the damage caused by him. Accordingly, a lawyer who provides legal assistance to a victim should facilitate the organization of a conciliation procedure only if he is confident that it will help his client's psychological healing and/or faster and more complete compensation for the damage caused to him [2, pp. 170-171].

During the application of the mediation procedure, the help of an expert, that is, a specialist in a certain field of public relations may be needed. The expert may not be present during the mediation procedure, but only prepare an opinion at the request of the parties. The opinion of the expert or his conclusion has an evaluative and optional nature for the parties. They should not replace the decision, which in any case the parties to the mediation make independently [2, pp. 172-173].

**Discussion.** A number of participants are required to implement mediation in criminal cases. Mediation in criminal cases is based on restorative approaches in criminal proceedings for criminal misdemeanors and minor crimes committed by minors and includes the coordinated organization of effective communication between such minors and victims of criminal offenses committed by them in order to ensure compensation for the damage caused, the earliest possible removal of minors offenders from the criminal process with mandatory implementation of agreed measures for their resocialization and



prevention of repeated criminal offenses. Provided that all criteria for the use of mediation in criminal cases are met, the burden of initiating this process rests with prosecutors. After all, it is the prosecutor who informs the minor, his legal representative, and the victim, his legal representative about the possibility of implementing the Program by involving a mediator. In addition, the prosecutor should clarify that the results of participation in the Program will be taken into account when deciding whether there are grounds for exemption from criminal liability in accordance with the Criminal Code of Ukraine, or closing criminal proceedings in accordance with the Criminal Procedure Code of Ukraine. If the parties agree to participate in the Program, the prosecutor provides them with applications to fill out and then forwards the application and information about the criminal offense to the regional center for the provision of free legal aid. Further, an essential participant in this procedure is the regional center for the provision of free legal aid, because it instructs the mediator to conduct mediation and organizes a meeting between the parties and the mediator. After that, the most important meetings in the Program take place – the mediator's meeting with the parties. And it is the mediator who explains in detail the essence of the Program and the consequences it will have for the parties. The mediator establishes a conversation with the parties, helps the parties to find consensus solutions, helps the parties to settle the conflict situation, and agree on compensation for damages. If the parties reach an agreement, the mediator transfers this agreement to the regional center for providing free legal aid, after which the center forwards the agreement to the prosecutor. After receiving the agreement, the prosecutor either adds it to the materials of the criminal proceedings (before the end of the pre-trial investigation) or explains to the minor who participated in the Program and his representative the right to provide it independently in the corresponding court session (after the end of the pre-trial investigation). After that, the prosecutor must notify the regional center for providing free legal aid about the decision in criminal proceedings.

It should be noted that other participants may be involved in the implementation of the Program: social workers, teachers, psychologists, employees of the probation center, etc., if their participation is necessary to achieve the goal of mediation in criminal cases.

**Conclusion.** Thus, the status of mediation participants in criminal cases in Ukraine is determined by the Law of Ukraine "On Mediation" and the Order, but only in general terms. We consider it expedient to regulate the legal status of a mediator specifically in criminal cases in the Law of Ukraine "On Mediation" or the Criminal Procedure Code of Ukraine.

According to the Law of Ukraine "On Mediation", participants in mediation are the mediator (mediators), parties to the mediation, their representatives, legal representatives, defenders, translators, experts, and other persons determined by the agreement of the parties to the mediation. From the analysis of the norms of the Order and the practice of mediation in criminal cases, it follows that the participants are the mediator (mediators), the juvenile offender, legal representatives, the victim, and legal representatives (if necessary). In addition, there are participants who promote the introduction of mediation in criminal cases and organize this process: the prosecutor, and the regional center for providing free legal aid. Also, if necessary and to achieve the idea of mediation, other participants may be involved, the list of which is not exhaustive: a lawyer, an expert, a translator, a psychologist, a teacher, a social worker, a probation officer, etc.

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**Oksana Demchenko, MBA,**
**lecturer of KROK Business School**

# HOW TO "TAME" THE CONFLICT WITH MEDIATION

Where there are three people, eventually there will be an inevitable conflict of interests/opinions/approaches to life/values, but imagine in the corporate world, where there are hundreds and even thousands of such threes. It is good if the company's corporate culture provides for a constructive discussion of interpersonal conflicts, but in reality, there are not many such conscious employees. That is why, in our opinion, it is extremely necessary for the manager to have the basic skills of a mediator, if only in order to improve the psychological situation in the team.

Even Henry Ford (junior) after evaluating ways to increase industrial efficiency, noted: "If you learn how to resolve conflicts, it could reduce the cost of a car more than in 25 years of technical innovations." These words only prove the importance of a manager being able to prevent and resolve business conflicts, which are numerous in any company and in any industry.

Across the company, you can often notice that different departments practically do not communicate with each other or even avoid possible communication. And at first glance, there is no particular problem in this, since everyone has their own tasks, and the extra "informational noise" only distracts from work processes. However, communication with suppliers and customers can turn into real hell if the departments speak different languages. Violated deadlines, constant revisions, or complete "rework" of the project/product. The reason for this is poor communication: they didn't agree, they didn't



hear, they didn't understand each other. It is logical that this leads to conflicts. As a rule, conflict arises from the feeling that needs are not being met, and there is no opportunity to express a personal opinion and be heard.

The most common reasons for "corporate fights" (taken from the authors' observations, period 2019-2022) are as follows:

- Incompatible goals (for example, the achievement of KPIs of one department interferes with the achievement of the goals of another);

- lack of/imperfect cross-functional interaction (it is not clear who specifically is responsible for what or the area of responsibility is very blurred), this is proven by the Deloitte 2020 study "Global Human Capital Trends", in which for 25% of respondents it is important that they can freely express their opinions at work thoughts and felt fair treatment

- "murky water" or gossip (the spread of rumors most often creates a nervous atmosphere, reduces work efficiency, undermines "team spirit");

- the lack of goods that are necessary for normal life (low wages) significantly increases the level of conflict, because a deprived person who has not realized his opportunities is more conflicted compared to those whose basic needs are closed;

- Team members with toxic behavior that create a state of psychological discomfort and tension

- "double standards", when the declared corporate values diverge from practice (for example, the value: the team is our all, and an employee has been fired because he left to deliver humanitarian aid during working hours).

-"past the cash register", often happens in the IT field, when an employee has matured to create his own business/product and creates internal competition for the employer

This is also an incomplete list of the causes of conflicts in business, only to prove that all middle and senior managers should definitely learn basic mediation techniques and techniques for resolving

conflicts in the business environment. Of course, you can always turn to an external intermediary and "wash your hands", but all the same, the trail and background will be noticeable and will probably affect the development and profit of the company. The hope that the situation will "fall apart" by itself is the cause of new conflicts.

In this article, we have presented one of the cases (from the practice of the author O. Demchenko, the name of the company has been changed because of the NDA), we suggest analyzing it from the manager's point of view, drawing up a cartography of the conflict.

The company "SHUGER PLANET" is the leader in sugar production from 2015 to 2020. The National Association of Ukraine "Ukrtsukor" regularly confirmed their superiority, as the company produced 159.5 thousand tons of sugar on average during the year, processing 1.09 million tons of sugar beet. In general, this is a modernized production, which includes 7 plants.

By March 01, 2022, the total number of employees was 1,547 employees, of course, along with the improvement of business processes and the launch of technological lines; the company's personnel policies was adjusting all the time. Therefore, for example, HRD managed to implement the "Personnel reserve" project, the goal of which was to identify employees who want and will be able to breathe fresh air into the existing team, expanding the consciousness of colleagues, while using primarily creative energy. Of course, such special people were supported by the training system, where the participants showed themselves as much as it was possible in business simulations. During the 6 months of such preparation, Valentina and Ivan, who became the protagonists of our mediating case, stood out.

## GENERAL SITUATION

The head of the department, Ivan, got a promotion. He is a very humane and effective manager, the team worked well with him. In his place comes a new helmsman – Valentina. Over the course of a month, Ivan introduces the newcomer to the course of the case. At the same time, it is convenient for Ivan territorially to have his



workplace in the same place, on the same floor. While dealing with his new work duties, he continues to help his former subordinates, answer their questions and orders. The Director of the Department (which includes both departments according to the organizational structure) increasingly receives information about tensions in the team due to the appearance of Valentina, that subordinates do not have contact with her and even quietly engage in sabotage. Finally, at the end of the week, the new manager bursts into the director with a request to resolve the conflict with Ivan and give him another office.

Imagine that you are the Director of the Department, who needs to solve this situation as competently as possible.

Of course, you need to look for the root of the problem, and the first step is to collect surface information. Here is what you managed to gather about this industrial conflict.

## SITUATION TROUGH IVAN'S EYES

In his opinion, Valentina is too emotional, came to a ready-made result, and her innovations are not needed at this stage of the team's development. He developed the department into one of the best and he is far from indifferent to its future fate, as well as the fate of his former subordinates. Valentina still does not understand some of the procedures and nuances of the direction's work, so he corrects some of her decisions. He does not like some of her habits, for example, too long meetings, to which she invites someone she needs and someone she does not, just in order to confirm her status as the boss. Ivan made a remark to her, and she began to organize her meetings "in secret", without inviting him. Former subordinates complain to him that Valentina can afford to raise her voice, often sets tasks on the fly, and does not fully understand what she wants from them.

Ivan recently witnessed her giving orders to a subordinate, ignoring an important detail specific to your direction. He once again corrected her – in response to which she rudely asked, "not to meddle in your business and generally get out of her office." Everything hap-

pened in the presence of a subordinate, which is simply unacceptable. Ivan believes that it is necessary to fire Valentina, as she does not correspond to the position and values of the company.

## THE SITUATION TROUGH VALENTINA'S EYES

She moved to this position from a higher position in another company. At first, she really liked the manager, Ivan, in whose place she came. However, already at the first meeting, the purpose of which was to hand over the cases, it was noticeable that Ivan was in no hurry to provide all the necessary information. Introducing Valentina to the team, he said, "I ask you to love and respect Valentina, as a person who is young and not yet very experienced in our specialty."

Strict weekdays began: the former manager decided to arrange a workplace in her office, at his old place, since he lives nearby. Often, when Valentina talks to subordinates, he intervenes, supplements or corrects. Most of the time, his advice is useful, but in such conversations, information emerges that for some reason he did not tell you before. Recently, subordinates, entering the office, have already begun to address him first and do not pay attention to her orders. Valentina feels very uncomfortable; subordinates do not really recognize her as a leader and do not support her as a person, even in everyday matters. For example, Valentina asked a colleague to give you a ride home – he said he was busy, although he immediately offered to give other colleagues a ride with him on the way. Internal tension grows and when Valentina's next order was ignored, because "Ivan Petrovich thinks it is not necessary", she asked him to deal with his new duties, to let her work, to give her peace, including the territorial one.

In response, Ivan said that he has been observing the work for a month and does not see any positive dynamics regarding adaptation in the new position. In general, he sees that you do not cope with the participation of the manager! In addition, the team considers her an obsessive and unbalanced personality.

In order to act as a mediator, it is worth relying on the conflict resolution procedure.



## CONFLICT RESOLUTION PROCEDURE WITH THE HELP OF A MANAGER – MEDIATOR

**1. Analysis of the conflict situation**

• The purpose of the conflict.

What is the purpose of the conflict?

What annoys the parties?

What is the essence of the conflict?

• Parties involved in the conflict.

Who is involved in the conflict (individuals, united groups)?

What are the parties' strengths and weaknesses?

Which side is leading? Why? Difference in strength?

What are the mutual expectations of the assigned role?

Do the interlocutors cooperate or does one depend on the other?

Are there other supporters?

• Type/form of conflict.

What is it: a problem or more of an interpersonal conflict?

Is conflict inevitable?

Is the conflict cold or hot?

• Development of the conflict.

What initiated the conflict?

What factors accelerated its development?

What methods/procedures did the parties use to resolve the conflict?

Is there no benefit in not resolving the conflict for one of the parties?

What can the parties lose?

**2. Discussion of the procedure for exiting the conflict**

Inform participants of the procedure and rules of conduct

Agree on the criteria for making and making a decision (for example, by brainstorming, solutions will be proposed, then analyzed and chosen to satisfy both parties)

It is necessary to bring the conflicting parties to emotional stability, and only this moment may be considered as a starting point for

further constructive work. Before that, everything was just emotions, with or without an objective basis.

**3. Drawing up a list of issues to be discussed (subject of negotiations)**

**4. Generation of contract options**
Alternate hearing of proposals from both parties
Brainstorming method
Development of an action plan

**5. Choosing the best option**

**6. Examination of the best option for reality and feasibility**

**7. Fixation of the agreement.** People who have conflicted will still have to work together. Therefore, it will be better if you start their cooperation in a working atmosphere, and then everything else is going to add.

After you deal with Ivan and Valentina, you should think together with the HR team about what simple steps will help start the process of building such communication in the team, which will contribute to increasing the efficiency of work as a whole.



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**Illia Yuriichuk,**
***Yuriy Fedkovych Chernivtsi National University, Chernivtsi, Ukraine,***
il.yuriychuk@chnu.edu.ua,
ORCID: 0000-0002-1455-4747

**Heorhii Moisei**
***Yuriy Fedkovych Chernivtsi National University, Chernivtsi, Ukraine,***
g.moisei@chnu.edu.ua,
ORCID: 0000-0002-7233-4945

# APPLICATION OF THE ONLINE MEDIATION IN UKRAINE AS THE DEMAND OF TIME

**Abstract.** In the article we analyze the concept of online mediation in Ukraine and determine the main features of that process. The necessity of introducing online mediation as one of the alternative ways of resolving disputes is substantiated, the basis for which is a significant simplification and reduction of the process of resolving conflict situations between the parties. An analysis is made of the technical possibilities of mediation in the Internet space, the influence of technical factors on the successful resolution of the conflict. The order of actions of the mediator in the implementation of online mediation in various ways is determined.

***Key words:*** mediation, online mediation, mediator, online platform, conflict resolution.

JEL Classification: B40, C40, E22, F36, H00

Fig.: 0; tabl.: 1; bibl.: 6

**Introduction.** It is no coincidence that mediation has become so popular; its relevance in the modern world is growing every day. To a greater or lesser extent, we are all in forced isolation. The coronavirus and its consequences, as well as the well-known fact of the full-scale attack of the "russian federation" on Ukraine, the consequences of which are horrendous, certainly affect not only our everyday life and routine but also our work and communication with other people. Many of these events caught us in difficult living conditions: some were in the process of divorce, others had open court proceedings, and others got into conflict with the employer due to changes in working conditions.

Despite nationwide restrictive measures and the efforts of the Armed Forces of Ukraine in resisting "russia", our problems have not disappeared anywhere, except that they have somewhat receded into the background and third plans. Therefore, it is undoubtedly necessary to solve problems and conflicts, and this should be done as quickly as possible, then there is a chance to save the most valuable thing – health and time. However, there is certainly no worse way to deal with a difficult situation than ignoring it or leaving it to chance.

It is interesting how the Internet today can provide us with a comfortable existence in many areas of life. The whole world is rapidly moving online. We order goods and products for home delivery, take online courses, visit virtual museums and galleries, and chat with friends on Skype. And how about using all the advantages of "online" and for conflict resolution, using the services of an online mediator?

**Aims.** The main purpose of this article is to investigate and characterize the essence and features of the use of online mediation in modern realities, to analyze the main advantages and disadvantages of using the latest technology for the purpose of conflict resolution.

**Methods.** To study the application of online mediation, we used a few methods of scientific research. The following methods were used: the dialectical method, with the help of which the specifics of online mediation are analyzed in dynamics and interdependence; a comparative method, for disclosing the essence of online mediation



by comparing its basic categories. However, the basis of our research is the anthropo-sociocultural approach, which allows us to consider online mediation in a new way as a natural human right as a single creator of society and its full-fledged subject with the help of the social code of public needs.

**Results.** Mediation is an out-of-court procedure for settling a dispute through structured negotiations involving one or more independent and neutral mediators (mediators).

Mediation promotes dialogue between the parties to the dispute. As we already know, the main advantages of mediation are the cost-effectiveness of this method of resolving a dispute, speed, confidentiality, and the ability to maintain partnerships. Consent is achieved by organizing a negotiation process between the parties to the dispute by the mediator and searching for a variant of its settlement acceptable to them.

If we compare face-to-face mediation to online mediation, we can note that it mirrors its traditional offline counterpart in many aspects. It also occurs between two parties and an intermediary, the latter not having the right to impose a decision, and it also concentrates on interests instead of rights. The difference lies in the active use of information and communication technology (ICT). Consequently, for many of us, online mediation is the same process empowered and supported by modern technology. The only difference seemingly lies in the device used to connect the participants [1, p.37].

Today, there is a need for information literacy training of mediators or the additional involvement of a specialist in electronic communications, the creation of online courses, or short video presentations to familiarize the parties with essential issues of working with online communication platforms.

The format of online mediation cannot be associated only with the pandemic. It is convenient in cases where both parties cannot be present in the same room, due to the significant difference in distances, the location of the parties in different states, the specifics of the personal schedule, etc. It is precisely one of the advantages of this

type of mediation because the location of the participants in the process ceases to be a problem, even if the parties live in different cities or regions. In addition, you do not have to choose a mediator close to you – just choose any specialist on the Internet.

Another problem is that the current legislation establishes minimum requirements for the training of mediators. Only mediators who meet the minimum qualification requirements will be listed on official mediator registers (public websites) so that the community knows they are choosing a qualified mediator when they consult these registers. In our opinion, the main disadvantage is the presence of potential technical obstacles that can make the process impossible. It is also crucial that everyone involved is familiar with the process and knows how to use the chosen platform before the day of the mediation.

When mediators communicate with parties to a conflict via e-mail rather than face-to-face meetings, there is no way for the dominant party in the negotiation to try to sway the mediator to their side. In addition, in case of disagreement, the less active party will not feel obliged to comply but will be able to communicate its decision to end cooperation quickly.

Dispute resolution through online mediation is very similar to regular mediation. The parties may choose a joint meeting at which introductory statements are made. The mediator then invites the participants to the discussion room. As a rule, in complex commercial disputes, the parties may provide additional evidence or important documents in support of their position. Like the classic type of alternative dispute resolution, online mediation involves both short-term and long-term dispute resolution periods. Also, in some cases, online mediation helps reduce overall tensions and bring the parties closer to solving the problem. If an agreement is reached, the parties can prepare a draft and exchange signatures through "DIIA" (Ukrainian service), or similar programs. Everything can be done online. In the future, this option may replace mediation in its classic form [2, p. 922].



It should be noted that, until recently, online mediation was not typical for Ukraine. They have many years of experience conducting "remote" mediations (by phone or online) and generously share them with Ukrainian colleagues. However, given the specifics of the situation associated with the pandemic, mediators quickly began to master the new experience of holding online meetings with the parties to the conflict. In this regard, tremendous support was provided by mediators from the USA and Australia.

Any remote mediation is an additional challenge and responsibility for the mediator and the mediation parties [3, p.283].

Each mediator faces several issues that need to be resolved before the start of mediation:

First, on which platform or platforms will the mediation procedure take place? Zoom, Skype, Google Hangouts, Microsoft Teams, Webex, FaceTime: what are the features, and are they secure enough.

A secure digital infrastructure should be in place for e-mediation to function correctly, and mediators may need additional training. Especially in the times of Covid-19, it should be noticed that online mediation is an alternative to mediation in the physical presence of the parties. Online mediation is also helpful in those settlements where there are not enough mediators.

For example, if the parties and the mediator have agreed that ZOOM will be used for mediation, then a waiting room should be used. The mediator can control the entry of all "invited" mediation participants. It is also worth knowing that ZOOM has a "mute participants" feature. The mediator may mute that participant if a distracting or unwanted sound is heard during mediation. In addition, the mediator can also turn off the video of a particular participant. If the parties have not agreed on the transfer of files via ZOOM, then the mediator may turn off the transfer of files. Separately, it is essential to agree with the parties on how the screen will be controlled: only the mediator will broadcast their screen, or perhaps the parties will also be involved in this process.

Zoom is not exclusively a legal platform designed to facilitate access to hearings. However, there are ways to ensure security. The mediator can select settings that require a password. Moreover, once all expected parties have joined the mediation, the mediator can "lock down" the meeting so no other parties can join. The Mediator must adapt his interventions to the new context, mainly those aimed at creating a climate of trust and empathy. It requires great flexibility on the part of the Mediator, in addition to extra training since he must know how to handle the hardware and software tools necessary to mediate successfully.

The chat in ZOOM should be used solely to coordinate technical issues. Do not use materials and information in the chat unless it is agreed in advance. You must protect meeting with a password to ensure that confidential information is kept. The same level of protection for the parties must be applied within ZOOM sessions as during offline meetings.

ZOOM, of course, is not an ideal tool but quite a convenient and straightforward mechanism for organizing mediation. At the same time, the parties and the mediator are not limited in choosing only this platform. If there are other well-established options for organizing online mediation, then any of them can be used. The main thing is to discuss each platform's advantages and disadvantages with the parties. For example, suppose the parties choose to mediate Microsoft Teams. In that case, this is a good collaboration tool designed to improve communication within the same company but is less helpful in conducting mediation sessions. Specifically, Microsoft Teams lacks some advanced conferencing features, such as multi-screen sharing.

Secondly, the question arises: how will the parties have access to the user documents that they develop in the mediation procedure? The parties must decide whether the documents will be transmitted by uploading files through the videoconferencing platform or by e-mail; the mediator may show them on his screen. The document flow is also part of the confidentiality of the mediation process, and it is the responsibility of the mediator to decide whether to provide



access to these documents. The exchange of documents can also be discussed when choosing a platform for mediation but can also be an independent subject of discussion.

Thirdly, the parties must be informed that they do not have the right to record the session and broadcast the mediation session. Although, of course, mediation participants can record private sessions on hidden cell phones and record phone calls using various devices. However, it is worth contractually providing for the specifics of responsibility and parties for such actions, as well as the possibility of avoiding liability for the mediator, who has done everything possible to warn the parties not to record the mediation procedure.

In addition, it is necessary to find out from the parties: who can potentially listen or eavesdrop on a session or part of it? That is, the parties must be advised of the confidentiality of the mediation process. It should be noted in the mediation agreement or the non-disclosure agreement of confidential information, as well as discussed during the preparatory session.

Another question that arises before the start of mediation is: how will the parties sign documents and consent to certain actions within the mediation framework? One of the ways out of the situation can be an electronic digital signature [4].

Also, special attention to online mediation needs the issue of maintaining confidentiality. The mediator (as well as the parties) cannot be sure that there are no persons who are not participants in the mediation near the parties. There is no way to verify that participants are not audio-, videorecording, or broadcasting an online meeting. The issue is resolved by focusing additional attention of the parties on the importance of maintaining confidentiality, open discussion of possible risks, and the presence of trust between the parties to each other.

Another challenge for the mediator is that he is almost completely deprived of the opportunity to follow and respond to the non-verbal communication of the parties – hands, feet, postures, and gestures are not visible through the screen. The mediator must carefully monitor

facial expressions, voice, and head and shoulder movements – this is the only thing constant in his field of vision [3, p.284].

In addition to the normal rules of mediation which you are familiar with, such as the provisions set out in the CEDR Model Mediation Code, there are online specific issues which you need to consider, as you will not have full visibility and control of the environment where the mediation is taking place.

1. Confidentiality

Reinforce the confidentiality provisions and the effect of without prejudice privilege. Ensuring the confidentiality of online mediation is essential for creating safe conditions for building dialogue and, as a result, increasing the probability of successful conflict resolution. Today, a problematic issue is the interaction of people with video communication programs, as well as the low level of data security in the Internet space.

2. Privacy

Ensure that the parties agree in the mediation agreement (and remind them on the day) that only individuals listed on the participant form may attend or be present in the rooms where each party member is joining.

3. Recording

Ensure that we have taken steps to prevent recording through the video conferencing software. Agree in writing (and remind the parties on the day) that recording is not permitted. As the Host or Organiser, we will most likely have ultimate control of this.

4. Planned or Possible Interruptions

Know in advance and discuss with the parties. Suppose a participant may have an interruption from another household member. In that case, it is essential to alert the other side to this possibility, as unexpected interruptions can negatively impact the trust between the parties. For instance, if there are small children present in the house who may interrupt.

5. Joint meetings

Keep microphones on mute. It should be the default setting to avoid distraction from multiple background noise.



6. Actively manage communication

Given the virtual setting, the mediator must indicate whose opportunity it is to speak more clearly.

7. Use of Phones/Checking Emails

Parties will receive emails and communications on their device to log in to the mediation. Agree ahead of time if participants should have email and messenger functions closed and off during the mediation.

8. Explain how the mediation will run

From timing and conclusion to how the waiting room and breakout functions work. Provide parties with a guide and discuss it with them and their advisors before the day.

9. Have a Plan B

Give the parties a transparent process to follow if a technical issue arises. In particular, please be clear with parties about what steps to take should they lose connection. It should include instructions on how to reconnect and a backup telephone or chat function to communicate [5].

So, because of our research about using online mediation in Ukraine we propose the following advantages and disadvantages of its application [6, p. 160-161].

**Conclusions**

We believe it is worthwhile to develop online platforms that will meet Ukrainian legislative and mental realities requirements and ensure familiarization and free access of citizens – potential participants in the mediation process. It seems that the transition to the online mediation format is rather difficult, but quite real. The determining factor in this sense is the professionalism of the mediator, careful preparation for each meeting and the conscious entry of the parties into the procedure. One should also remember the advantages of online mediation, which has no territorial restrictions, saves time and money on travel, and is also very flexible.

*Table 1*

| Online mediation | |
|---|---|
| Advantages | Disadvantages |
| Online mediation can effectively overcome such a potential obstacle as the distance between the parties. It is incredibly convenient for cross-border conflicts, where the parties are far from each other, and their presence at mediation is difficult or even impossible. | The most discussed disadvantage of online mediation is the lack of empathy, immediacy, reporting, and other things that mediation does. |
| Online mediation helps save money and time for the parties and the mediator. In particular, mediation participants should not spend time on the road to the place of mediation, choose such a place, each of the mediation participants can be in any place convenient for them, and the mediation itself can be held at any time convenient for everyone, despite the time difference, their work schedule, etc. | The biggest challenge for online mediation is to create conditions for effective communication. |
| Parties can choose any mediator in the world at no additional cost to meet with him (travel, accommodation, etc.), just as the mediator can offer his services worldwide, expanding his competitiveness. | In the case of using online mediation in legal disputes, the question arises of verifying the identity of the parties and the powers of representatives of legal entities so that transactions concluded because of mediation can have legal force. |
| The use of information technology can reduce the state of hostility between the parties and reduces the stress of communicating with each other. | The lack of good Ukrainian-language services that could be trusted that would have good technical support could guarantee the safety of information received during mediation and counteract hacker attacks. |
| The advantage of online mediation may be the absence of simultaneous communication, which is possible with the use of asynchronous text technologies. Asynchronous communication allows the parties in some disputes to feel more comfortable and calmer during mediation, makes mediation generally possible without the opportunity to hold joint sessions, helps to reduce negative emotions, etc. | Now there is a problem with access to technology, which is that in order to use online mediation, a person must have sufficient skills to work with the relevant software and access it, which is not always possible. |
| In the case of using text technologies, the mediator can save time because individual communication (caucus) can take place simultaneously with both parties, which saves time. | One of the biggest challenges for online mediation is to ensure confidentiality, both from third parties, because hacker attacks and interference in communication channels are possible, and from the parties themselves, because they can record mediation on video or duplicate chats, and then try to use them for litigation. |

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|---|---|
| | The challenge to popularizing online mediation in Ukraine is the insufficient level of public awareness about mediation and the field of alternative dispute resolution in general, which also affects the distrust of ODR. |

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MEDIATS Mediation: Training and Society Transformation

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**Tengiz Mghebrishvili**
***Master's degree in Law school at Ilia State University,***
***Junior Lawyer position at the local Law firm (BLB)***

# THE INNOVATIVE EXPERIENCE OF ACQUIRING THE MEDIATION BASIS IN MURCIA

This year, Ilia State University gave me the chance to attend a practical Mediation course conducted by MEDIATS Project Mediation: Training and Society Transformationat at the Catholic University of Murcia (UCAM), Spain. Currently, I am pursuing my studies as a second-year graduate student of private Law, with a concentration in Mediation program, at Ilia State University. Considering my passion for alternative dispute resolution I saw this as a perfect opportunity to explore the world of Mediation and myself as an aspiring Mediator. Before I enumerate and describe the memorable and informative experience, which was offered by the UCAM, I will briefly examine the progressive process of Mediation.

Mediation, unlike other dispute resolution mechanisms, is the future of dispute resolution. The process of dispute mediation moves away from positional bargaining to identifying the needs and interests of each of the parties. The essentiality of the needs and consent of the parties makes Mediation a futuristic and progressive mechanism. Although, the process is far more complex than it seems. Therefore, precisely for the reason to fully understand the means of the process I enrolled and completed a two-week internship program in UCAM.

The real journey began when I reached my house, where along with the students I become a wiser person just in those two weeks. During the first week of the internship, students, and representatives

from Georgia as well as from Ukraine had a unique opportunity to get acquainted with "Mediation as a Goal and Challenge in XXI Century Justice Institutions". We had Spanish experience on Court-Based services, explored the historical Los Jeronimos Monastery building, the University's educational premises, and visited the Mediation Unit of the Court of Murcia.

First days in the university along with the beautiful sunny weather of Spain has introduced me to the fascinating world of Mediation. Despite the studying process, I had a chance to explore the city and observe the cultural behaviors of Spanish people. People outside are walking around sleeveless while enjoying the surroundings of the city.

In addition, the project has offered us the opportunity to explore other cities in Spain. The next days of the project were engrossing. We have visited Cartagena – a port city and naval base in the Murcia region; discovered an ancient Roman Theatre and other fascinating exhibitions of the city. Furthermore, our mentors discussed their experience of international company mediation. We reviewed the issues of mediation in the international and business world.

The most interesting part of this project was the workshop and practical experience of Virtual Reality (VR), as it responds to the new challenges of online (virtual) Mediation proceedings. The pandemic has changed many things about the way we work, study, and operate. In another word, the Coronavirus Disease (COVID-19) crisis has forced mediation out of its comfort zone. Parties and mediators adapted to the new reality of conducting proceedings in the face of travel restrictions and social distancing measures.

This brings challenges, including the need to retain an environment that fosters cooperative activity and the building of company culture. Solutions involving VR are quickly emerging to help tackle these. I believe VR will be one of the most transformative tech trends of the next five years. Moreover, artificial intelligence (AI) will provide us with more personalized virtual worlds to explore, even giving us realistic virtual characters to share our experiences with. Using



the VR headset and technology in Mediation is a new step in dispute resolution. Parties have ample opportunity to avoid the obstacles of online (via videoconference) mediation and to resolve their disputes without leaving home through VR. We had a chance to transfer this innovative experience into practice and had mediation role-play in VR. Role-playing in Virtual Reality was quite an impressive, progressive, and memorable experience, as we, students could see how the development of technology can be useful during the mediation practice.

Even before I knew it, the two weeks of the internship were over, and I had already done much beyond what I thought I could do. I meet lots of interesting people and exchange my experience and knowledge with them. I acquired much more than I had expected myself to in just a few days. I explored the technological world of Mediation, I learned how to make an observation, address parties' emotions, and use new technologies in the process of Mediation.

The fruitful experience emerged me a more confident and independent person. I am currently able to properly use acquired knowledge, experience, and skills in my career as well as in the development process of Mediation.

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Mediation: Training and Society Transformation

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**Eter Tchanidze**
***Batumi Shota Rustaveli State University***
***Member of the MEDIATS project***

# LABOR MEDIATION – THE PATH TO A SUCCESSFUL RELATIONSHIP

**Introduction.**

"Universal and lasting peace can be established only if it is based upon social justice and it is expected that working conditions, where such injustices, difficulties and hardships take place against a large number of people, will create so much excitement that the peace and harmony of the world will be endangered." (Preamble of the Constitution of the International Labour Organisation Article 1, part 2).

Social relationships are incredible without differences of human views. The difference of views, perceptions and opinions raises a conflict which is considered to be a common phenomenon accompanying the development of human society (Tsertsvadze, 2008).

One of the mechanisms for regulating social relations and justice is the settlement of labor disputes through mediation because of the aims to regulate the labor relationship to restore the relationship between employers and employees, which is the main guarantee of the stability of labor law. Tension in the workplace always arises problems not only of individual but also of collective importance, which finally damages the both parties as well as the existing labor relationship and the purpose of that relationship. Regulated labor law, the protected rights of employees and the law-regulated relationship between employer and employee are one of the important characteristics of economically strong and developed countries (Tarasashvili, 2014).



Doherty and Guyler have an interesting definition of labor mediation: "Mediation is a structural process in which an impartial mediator facilitates communication to improve working relationships between disputes," in their work, they make a good balance between the long-term perspective of the business and the quality of work (Doherty & Guyler, 2008).

The discussion subject of mediation related to labor disputes may be differing distribution, discrimination, disputes between employees, abuse of norms provided by internal instructions, etc. of function-duties between employees. Resolving of dispute arising in the company, enterprise by the court is related to the loss of unlimited time and money, which may also affect to the company's reputation, but with the help of mediation, which is a confidential process, the company can reach a compromise in the shortest time (Okropiridze, 2012). while the compromise to improve someone else and one's own future is a greater internal profit than a satisfactory court decision.

**The effect of mediation in the workplace.**

The main advantage of labor mediation may consider that it improves the mood of employees, helps to raise awareness among employees, that there is a procedure which resolves conflicts, consequently, it has the power to improve the reputation and culture of the organization, helps to reduce an expected disorder arisen in the workplace and improves the speed of attracting new employees. ("Perspectives of Legal Regulation of Mediation in Georgia", 2013). A number of studies shown that if organizational decisions are deemed unfair, they experience feelings of anger, outrage, and resentment and moreover unjust treatment can elicit a desire for retribution (Skarlicki & Folger, 1997). As far as companies often use of mediation to resolve disputes increasing the importance of understanding the perception of justice in the workplace, which has a positive effect on the stability of relationships in the company (Nabatchi et al., 2007).

In recent years, a new institution mediation has been actively introduced in Georgia for more access to justice and for the capac-

ity (Tsuladze, 2016). Considerations of many prerequisites are essential for the success of above-mentioned institute. One of them is the awareness of employees about the mediation mechanism, which further determines their trust, attitudes and expectations towards this institution. In Georgia, where the number of court appeals is so high and there is a lack of trust in each other, all members (especially representatives) involved in the mediation process should make an appropriate contribution to the popularization of the institution. (Kandashvili, 2014).

The role of lawyers/representatives (besides the outcome) in the process of court is very important. The litigant goes to the lawyer, which looks for the best ways to win the case, while other outcomes may be more important to the party than the winning of the case. Trustees, lawyers, representatives often try to prove their competence to the other party as much as possible that they exclude any compromise, thereby making the situation more tense and bringing a negative emotion to the process. If the representative does not create the necessary atmosphere for the settlement of the dispute from the beginning of the process as well as in their own self-consciousness implementation of mediation will become significantly more difficult in Georgia. The parties should understand that conceding does not mean losing. There are two ways to be interested in other people's results: a sincere, implying inner interest for the welfare of others and strategic, targeted, which takes into account for promoting the interests of the first by providing services to the second party. It is worth to mention that the role of the mediator is extremely important in the process, because during mediation, the emotional background between the parties is particularly great and the task of the mediator is to give the right direction to these emotions so that an agreement can be reached between the parties and the dispute can be resolved.

**Conclusion.**

The Institute of Labor Mediation is taking its first steps in the Georgian reality, its positive role and effectiveness have already been



proven in a number of cases, and in order for this institute to become even more successful, it is necessary for the state, society and representatives of the legal profession to promote its development with joint efforts (Kandashvili, 2014). It is obvious that there is an inevitable necessity of changes towards mediation in the country, which requires political willingness and a serious approach (Zhorzholiani, 2015).

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Mediation: Training and Society Transformation

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**Savchenko Viktor**
***V.N. Karazin Kharkiv National University,***
***Kharkiv, Ukraine,***
savchenko.viktor@gmail.com,
ORCID: 0000-0001-7104-3559

# THE VALUE OF THE WILL OF THE PARTICIPANTS IN MEDIATION AS A MANIFESTATION OF ITS PRINCIPLES AND PRINCIPLES OF CIVIL LAW

**Abstract.** Mediation is a procedure based on the rules of civil law. The legal nature of mediation is based on the rules of civil law and its specific principles. At the heart of these principles is the will of the participants in the mediation. The article examines the influence of the will of the parties on the observance of the basic principles of mediation. The article considers the issue of voluntary participation of the parties, the importance of their free will, and its limits. It has been established that the will of the parties is a prerequisite for the legitimacy of mediation and is directly reflected in the principles of this procedure. The scientific results obtained in the study could serve as the basis for the development of the conceptual foundations of mediation and the disclosure of the practical potential of this process in conflict resolution.

***Keywords:*** mediation, principles of civil law, principles of mediation, voluntariness, will.

JEL Classification: K49, I23, M19, Z13, K40

**Introduction.**

The will of the participants in mediation (mediator and parties) is a manifestation of the principles of this procedure and the principles of civil law. Any legal institution and mechanism are based on certain principles. Principles are the foundation that outlines the basic ideas.

General principles of law count among the formal sources of law. General principles may take a supportive role in guiding legal interpretation or provide an autonomous source of primary law, but it is not always clear which role is assumed (Ziegler & Jennings & Neuvonen, 2022). However, the principles of law are the vector by which civil services are provided. Including mediation. Mediation itself has its specific principles. This study will establish that the will of mediation participants is a continuation of civil law and procedural principles.

Mediation is the civil service, and therefore it is based on the principles of civil law. The importance of the principles of civil law is confirmed even by the fact that attention is paid to their study as separate law courses in European law schools (Principles of Private Law – LAWS) and leading European studies (Burgerliches Gesetzbuch). The principles of civil law are the basic provisions concretized by legal consciousness, which reflect the objective laws of development and needs of society, which exist in several areas: first, in the form of legal ideas produced by legal science, social practice as the most important, guiding legal ideas the basis of legal views of society; secondly, in the form of general provisions enshrined in Art. 3 of the Civil Code of Ukraine and follow from the content of other norms of the Civil Code of Ukraine and based on which legal regulation of civil relations are carried out (Basay, 2018).

The doctrine of private law sets out the following principles:

1) the principle of autonomy of will – the subjects freely exercise their rights and are not allowed to interfere in their affairs or oppose them;

2) principle of voluntariness – the subject is responsible for the performance of their duties, is responsible for them with their property, money, etc.;



3) the principle of legal equality – is expressed in the free expression of will and its evaluation, which is equal to others;

4) the principle of the legal protection of private interest;

5) the principle of coordination;

6) the principle of general permission (Kolodiy, 1998);

7) the principle of dispositive (Chyboha, 2013);

8) the principle of stability of civil relations, etc. (Shyhka, 2004).

Some of these principles are reflected in the principles of mediation. In particular, the Law on Mediation enshrines the following principles: mediation is conducted by mutual consent of the parties to mediation, taking into account the principles of voluntariness, confidentiality, neutrality, independence and impartiality of the mediator, self-determination, and equality of rights of mediation parties (Law on Mediation). It can already be seen that the principles of mediation are based on the principles of civil law. This study will prove that the will of mediation participants is directly correlated with these principles.

**Literature Review.**

The study of the principles of civil law has received attention in a large number of scientific papers. Representatives of classical legal doctrine have always been interested in the nature and essence of the principles of civil law. Research in this area was conducted by Pokrovsky, Shershenevich, Pobedonostsev, Meyer, Gribanov, Alekseev, Joffe, Krasavchikov, Bratus, Kolodiy, Komissarova, Aslanyan, Sverdlyk, Kuznetsova, Luts, Kharitonov, Shishka and others. However, no one paid in-depth attention to defining the will of the participants in mediation as a manifestation of the principles of civil law and the principles of mediation.

**Aims.**

The main task of this article is to identify the importance of the will of the parties in mediation. The basic principles of mediation and related principles of civil law will be explored.The main problem has been determining the place of mediation in the social sciences is

the lack of a unified approach to highlighting the content elements of mediation.

**Methods.**

Methodological framework: the study used general and special scientific methods of scientific research of legal phenomena, namely: comparative law, formal-logical, system-structural, dialectical and other methods. The dialectical method of cognition allowed to study thoroughly the national civil legislation taking into account the international standards. The comparative legal method was used to determine the common and distinctive features. Formal-logical method contributed to the establishment of the conceptual apparatus and content of current legislation, highlighting the contradictions in current legislation. The above methods were used in their interdependence. The methodology includes information on philosophical aspects, methodological foundations of scientific cognition, study of the structure and main stages of research, etc.

**Results.**

The principles of civil law are based on the natural concept of rights, which explains the fundamental importance of a free will. The relationship between the principles of civil law and freedom of will can be considered through the proposal of the relationship between natural freedom and the principles of law. Human's natural freedom cannot be manifested as a right to freedom, it can only form certain requirements, based on which the corresponding idea of freedom is formed. This idea is a prototype of the legal state of freedom until it is embodied in a specific principle (Zagoryu, 2017).

The doctrinal principles of civil law were mentioned above, but they are not fully reflected in the Civil Code of Ukraine. So in Art. 3 of the Civil Code of Ukraine clearly outlines the general principles of civil law:

1) inadmissibility of arbitrary interference in the sphere of personal life;

2) inadmissibility of deprivation of property rights, except in cases established by the Constitution of Ukraine and the law;



3) freedom of contract;

4) freedom of entrepreneurial activity, which is not prohibited by law;

5) judicial protection of civil rights and interests;

6) justice, good faith, and reasonableness (Civil Code of Ukraine).

The will of mediators is most related to specific principles of civil law, namely: inadmissibility of arbitrary interference in the private life, freedom of contract, freedom of enterprise, justice, good faith and reasonableness, the principle of autonomy of will, the principle of voluntariness, the principle of legal equality, the principle of dispositive and others.

Each of these principles is based on free will, which means that it is directly related to the will of the participants.

In the first connection, there is a clear connection between freedom of will and the principle of the inadmissibility of an arbitrary person in the sphere of private life. The content of this principle of civil law is the subjective right of a person to privacy, which corresponds to the obligation of any other person not to allow its violation, ie their non-interference in private life. In particular, it follows from this principle that public authorities and local governments, and any other persons should not interfere in the private affairs of civil law entities if they carry out their activities by the law (Dzera, Maidanik, Nosik, Pritika). On the one hand, this principle proclaims the protection of free will applied in the sphere of personal life. On the other hand, this principle restricts the freedom of will of other participants in legal relations by prohibiting arbitrary interference.

Mediation is always a procedure of interfering in a person's private life. Therefore, to adhere to this principle, mediation must always be a manifestation of the will of its participants. You cannot force the parties to mediate. This idea continues in the principle of voluntariness.

Adherence to the principle of voluntariness is a prerequisite for all civil law relations. Adherence to this principle is also provided separately for mediation. In particular, the Law on Mediation states

that Participation in mediation is a voluntary expression of the will of mediation participants. No one can be forced to resolve a conflict (dispute) through mediation. The parties to the mediation and the mediator may at any time refuse to participate in the mediation. The participation of a party in mediation cannot be considered as a confession of guilt, claims, or waiver of claims by such a party.

Therefore, mediation can take place only with the consent and desire of the parties and the mediator himself. The principle of freedom of entrepreneurial activity, which is not prohibited by law, should also be applied to a mediator.

A mediator is a business entity. Usually an entrepreneur. In turn, the normative concept of entrepreneurial activity is based on freedom of will. So in Art. 42 of the Economic Code of Ukraine, entrepreneurship is defined as independent, proactive, systematic, their own risk economic activity carried out by business entities (entrepreneurs) to achieve economic and social results and profit (Economic Code of Ukraine). This definition confirms several theses. First, the mediator enters into relations with the parties of his own free will. He may refuse mediation and may establish its procedure and conditions at the same time, a mediator is a specially trained neutral, independent, and impartial individual who conducts mediation. This means that his will is limited by these characteristics. In practice, this means that the mediator cannot give advice to the parties, resolve the conflict for them, or give preference to one of them. His will is binding on mediation but limited by its rules.

The will of the participants in mediation is also manifested through the prism of the principle of freedom of contract and discretion. These principles make it possible to determine the content of the mediation agreement and mediation agreement. Such documents are multilateral and concluded between the mediator (performer) and the parties to the mediation (clients, customers). The essence of freedom of contract is reduced to the following possibilities: 1) to conclude a contract that is not provided by acts of civil law, but meets the general principles of civil law; 2) the right to settle in the contract



provided by acts of the civil legislation, the relations which are not settled by these acts; 3) depart from the provisions of civil law and settle their relations at its discretion. The parties to the contract may not derogate from the provisions of civil law, if these acts explicitly state this, as well as if the parties are bound by the provisions of civil law due to their content or the essence of the relationship between the parties. In fact, at their own will, the participants in mediation determine the content of the essential terms of the contract: subject, cost, time, place, and so on.

Thus, the ability of mediation participants to determine the content of the mediation agreement and the mediation agreement at their own will is a manifestation of the principle of freedom of agreement and discretion.

The principles of fairness, good faith, and reasonableness are important. In European private law, the principle of justice, good faith, and reasonableness are traditionally recognized not as a set of three principles, but as a single principle, which is manifested in the unity of the three interconnected components (Maidanik, 2012). Conditions of good faith are specified in the EU Directive 93/13 / EEC of 05.04.1993 "On unfair terms in consumer contracts". So unfair is the condition of the contract, which was not discussed individually in violation of good faith causes a significant discrepancy in the rights and obligations of the parties to the contract, to the detriment of the consumer, if the contract is unfair, it does not create rights or obligations for the consumer, ie it is invalid and the contract is valid without unfair conditions (EU Directive 93/13 / EEC of 05.04.1993). The principle of good faith is widespread. For example, § 242 of the German Civil Code imposes an obligation to perform contracts in good faith (Deutsches Вьrgerliches Gesetzbuch). Thus, mediators must voluntarily and freely choose honest and fair conduct in the performance of their legal duties and the exercise of their subjective rights.

The will of the participants in mediation must be based on the principle of justice. The Constitutional Court emphasizes that justice

is usually seen as a property of law, expressed on an equal legal scale, and fair application of the rule of law presupposes a non-discriminatory approach, impartiality (Constitutional Court Judgment of 2 November 2004 № 15-RP / 2004). The principle of justice imposes on the participants the duty to be impartial in their actions, and judgments, to honestly acknowledge someone's rightness. Without this, effective mediation is technically impossible. The parties voluntarily turn to a mediator and have an interest in resolving the conflict. Their will and actions must be directed to the satisfaction of their interests by the principle of justice. In turn, the mediator is also guided by the principle of justice. But "justice" for him is the agreement of the parties, not the search for truth (who is right). This is the difference between a mediator and a judge.

The principle of reasonableness is also important. Reason as a principle of civil law is based on the idea that reason should be understood as actions that would be performed by a person with a normal, average level of intelligence, knowledge, and life experience (Aleksashina, 2012). The principle of reasonableness allows us to consider specific legal relationships through the prism of stability and "normality" for similar cases. The principle of reasonableness allows establishing the presence or absence of intent in the actions of mediators. For example, when a party tries to delay a procedure or fails to contact us, we can find out why. If this is done intentionally, it will be a violation of the principles of mediation.

Much attention is paid to the principle of equality. Thus, the Civil Code enshrines the principle of legal equality. This principle is expressed in free will and its evaluation. Art. 5 of the Law "On Mediation" states that mediation is conducted based on the equality of arms. The parties to mediation should be given equal opportunities during mediation. The mediator's responsibilities must be the same for all parties to the mediation. This means that the parties are equal to the extent of their will. They have the same amount of capacity, the ability to make decisions, express their thoughts and views, stop mediation, and so on.



All this is combined in the principle of autonomy of will. This implies that the participants in the mediation exercise their rights independently, and interference in their affairs is not allowed. It is also forbidden to oppose them.

**Discussion and conclusions.**

From all this, we can see that mediation can exist only as a manifestation of the will of its participants. The principles of civil law and mediation are based on freedom of will. The very normative concept of mediation emphasizes this. Mediation is an extrajudicial voluntary, confidential, structured procedure in which the parties, with the help of a mediator (s), try to prevent or resolve a conflict (dispute) through negotiations. The fact that mediation is an extrajudicial tool implies the will of the participants to choose this way of resolving the conflict. This makes the procedure more flexible compared to litigation. Voluntariness implies the will of the participants to take part in mediation. Confidentiality limits the will of participants to disseminate information. At the same time, participants are committed to the confidentiality of their own free will. The structure of the procedure has the advantage of the mediator's will in determining the process of the procedure. The need of the parties to resolve the conflict is the main prerequisite for mediation and also depends entirely on the participants. If one of the parties, or even the mediator himself, does not aim to resolve the conflict, then mediation cannot be successful.

As we can see, the relationship between the will of the participants and the principles of mediation is quite broad. This highlights the need to continue the study.

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## Mediation in progress