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Mediation: Training and
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MEDIATION AS A VALUE AND CHANCE FOR UKRAINE

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Abstract. *In the article mediation as a qualitatively isolated self-sufficient value (culture) of a developed civil society is investigated from the standpoint of anthroposociocultural approach. It is substantiated that the quintessence of mediation is the preservation and protection of human dignity in resolving conflicts by their participants with the assistance of professional mediators, as well as revealed the basic principles of mediation – human-centrism, denial of violent orders in society and paternalism. It is proved that mediation has a complex nature – it is dialogical, it exists as both a public good and a social service, it is a form of freedom, justice and social partnership, and the attributes of mediation are the trust of the conflicting parties to each other and social optimism. It is substantiated conclusions that: a) the assertion of mediation as a value (culture of mediation) in society is a real Copernican revolution in public views on methods of conflict resolution and one of the most important manifestations of the subjectivity of the individual; b) mediation belongs to paradigmatically opposite values in comparison with the values of state judiciary; c) mediation embodies the postmodern way of being and thinking, and therefore can be adequately perceived through the corresponding categorical-conceptual apparatus of non-classical standards of science, from the worldview and methodological approaches of postmodernism.*

Keywords: *mediation; judiciary; value; value matrix of mediation; value matrix of judiciary; anthroposociocultural code of mediation; sociocultural code of judiciary.*

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Introduction

One of the most fundamental consequences of qualitative transformations in Ukraine in the post-Soviet era of its development were: overcoming the administrative-command system, inherited from the past, as the core of social development; emergence and strengthening of civil society; paradigmatic change of the purpose of social progress and means of its achievement. The quintessence of these changes is most adequately and capaciously captured in Article 3 of the Constitution of Ukraine: «An individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.

Human rights and freedoms and their guarantees determine the essence and the direction of the activity of the State. The state is responsible to the person for its activity. The establishment and maintaining of human rights and freedoms is the main duty of the State» [1, art.3].

All of the above, taken together, symbolizes the emergence in Ukraine of a new type of sociality – on the forefront of history instead of the faceless masses, embodied by the state, came individuals as its creators, who seek self-realization. Human-centrism has become not only the goal, but also the principle of social life. This sharply complicated it, multiplied in a geometric progression the traditional ones and gave rise to new contradictions and conflicts, which are growing like an avalanche. The latter is a normal phenomenon, because there are attributively contradictory by their nature both human himself [2] and the existential structure of the human world [3].

The emergence of new types of sociality, a new type of society as a whole, as historical experience shows, inevitably requires adequate changes in the fundamental principles of people's life pattern. They include among other the way of resolving conflicts and disputes. Paradigmatically in Ukraine it remained the previous one. Thus, according to Article 124 of the Constitution of Ukraine «justice in Ukraine is administered exclusively by the courts». Moreover «the jurisdiction of the courts extends to any legal dispute» [1]. In democratic societies around the world this model has long been supplemented by a number of other, including alternative, models of conflict resolution.

In Ukraine at the turn of the XX century – the beginning of the XXI century in the field of judiciary there was a situation similar to the situation in the USA in the 60's – 70's of the XX century,

when it ceased to satisfy both the nation-state due to its inability to cope successfully and with acceptable time and material costs with the growing avalanche of conflicts, and the relevant civil society due to its incapacity to establish and maintain a peaceful social environment. After all, resolving a legal dispute (judging the parties to the conflict) in accordance with its inherent matrix of justice, the judiciary ultimately divides them into winners and losers in the relevant conflict. As a result, the confrontation of the various subjects of social relations between them is only preserved and intensified over time.

The United States found a way out of this situation in the creation during the last quarter of the XX century an effective system of mediation as an alternative to judicial proceedings way of resolving conflicts by their participants directly with the assistance of professional mediators and consistently implemented it in everyday practice [4;5;6;7;8;9;10].

For the time being, Ukraine seeks to solve the above-mentioned problem in a paradigmatically different way – by reforming and improving the judiciary. However, the latter has not changed cardinally for two decades and continues to be primarily in a value-based conflict with the new Ukrainian society. Persistent attempts to integrate the institution of mediation into the national legal system as part of the judiciary since 2005 have not helped. So where should we look for the reasons for the latter – in the wrongly chosen strategy of applying new ways of resolving conflicts, that are qualitatively different from their previous state, or in the shortcomings of implementing the chosen strategy of resolving conflicts in society?

Literature Review

One of the methodological keys to the scientific explanation of the above dilemma can be found in comparing the value matrices of judiciary and mediation. In foreign philosophical and scientific literature this problem has long been the subject of research by representatives of various cognitive traditions. In particular, the following works of European scholars are devoted to the philosophical and ideological principles of judiciary [11;12;13;14;15]. What they all have in common is the direct paradigmatic dependence of their concepts from the constitutional constructions of justice as an institution. At the same time, a slightly smaller part of the constitutions of European countries continues to straightforwardly and directly refer the court to one of the branches of state power. This is directly stated, in particular, in the Constitution of the Republic of Ireland, the Constitution of Spain, the Constitution of the Republic of Lithuania, the Constitution of the Principality of Liechtenstein and in the constitutions of a number of other European states. Naturally, their scholars more insistent and open advocate the assignment of the court to one of the branches of state power with all the consequences that follow.

Nevertheless, most European researchers of the court and judiciary, following the paradigm of constitutions of their own states, which attempt to avoid direct assigning the court to one of the branches of the state power, support the same paradigm of interpretation for the institution of court and judiciary. The position of this group of authors was strongly influenced by the direct linking of branches of state power, as well as the state as a whole, with human rights, which became the dominant trend in European constitutionalism since the mid-twentieth century. Nevertheless, these authors do not cease to understand and interpret the judiciary de facto as the institution of state power, which is not deprived of any of the properties for hierarchically (in a publicly authoritative manner) constructed phenomena. Among this cohort, first of all, it is necessary to name such scholars as Karen Alter, Anthony Arnull, Matey Dogan, Francis Jacobs, Ulrich Everling, Piet Eeckhout, Mauro Cappelletti, Paul Craig, Adam Lazowski, Koen Lenaerts, Nanette Neuwahl, Hjalte Rasmussen, Anne-Marie Slaughter, Alec Stone-Sweet, Takis Tridimas, Christopher Harding, Martin Shapiro, Jo Shaw etc.

The public authoritative principle of construction and functioning has been preserved in the European Court of Justice. Its main purpose, similarly to the national courts, as noted by European researchers on this issue, was to determine the winner and loser in a conflict or legal dispute [16]. This directly contradicts the fundamental principles of mediation.

Mediation as a value is also studied in many works of European scientists [17;18;19;20;21;22;23;24]. Apart from the fact that they are united by the phenomenon of mediation, they are very different in terms of worldview, meth-

odological tools used by them, in terms of specific goals and achieved results. In this sea of mediation explorations there are quite common diametrically opposed views on mediation as a value. For example, the classic of modern English family mediation Lisa Parkinson in her preface to the Russian translation of the second edition of «Family Mediation» explicitly states that «family mediation is a part of family justice that is constantly evolving» [25,p.3]. However, such value-based assessments of mediation in the works of European scientists are not as common as it used to be earlier.

Most European scholars who study conflicts in society and methods of resolving them are inclined to believe that «conflict is resolved rarely by acknowledging of someone's rightness. It is achieved through respect and recognition of differences» [26, p.49] of its parties. And this is no longer the judiciary, but a field of mediation. For example, Liz Trinder and other representatives of this cohort of researchers of conflicts and ways to resolve them note that «existing legal (judicial) methods of intervening in the conflict do not allow to organize communication between its parties, and in some cases only worsen their relationship...» [27,p.4]. It is true that there are much more tolerant assessments of the ability of justice to resolve conflicts in the scientific literature, but they are less common. In particular, Joan Hunt argues that a court decision on a conflict «allows to renew the interaction between the conflicting parties, but, obviously, it is not able to improve relations between former partners...» [28, p.122].

The vast majority of European scholars in the field of mediation consider the latter as a clear alternative to judicial proceedings. «The experience of participating in a judicial process... - in their opinion, -... teaches ex-partners to argue and despair of each other, and to do so too actively... mediation gives them a chance... to build new, more constructive relationships...» [29, p.9]. This is possible because, according to John Haynes, in the process of mediation «positions are changed, options are clarified and mutual concessions are made» [30, p.4]. The latter allows the parties to the conflict to overcome their own prejudices and change themselves. After all, as Jane Robbie writes, people who are in a state of conflict believe that «they do not need therapy. Each of them is sure that the problem would not have arisen, if the other side had behaved more intelligently and accepted his point of view» [31].

The modern scientific European literature on mediation is permeated by an idea that mediation is transformative in its nature. At its centre is «the moral development of human, which is carried out simultaneously in two directions – gaining inner strength and improving relationships with others» [32, p.230]. And the first direction is dominant, because it allows the individual who is most often a party to the conflict, to maintain his own subjectivity in resolving the conflict, rather than becoming the object of state judicial proceedings, and ultimately to preserve his own dignity.

In the modern scientific European literature on mediation works devoted to the research, presentation and popularization of mediation techniques and technologies significantly predominate. This is the conscious position of these authors. Kenneth Klock helps the reader to better understand it. Describing various mediation techniques, he notes that «for a deeper transformative approach, it is necessary to have special methods, that include not only mediation techniques, that allow us to better focus on the problem, become more compassionate to people, better understand ourselves and others, but also those that help us to hear others better, be open in communication, establish a constructive dialogue, be creative in solving problems, learn to work and achieve reconciliation» [33].

It is noteworthy, that among European researchers of mediation there is also a clear position that the mechanical transfer of mediation values to another cultural environment will not give the expected results, but can only cast a shadow on mediation as a phenomenon. After all, the «Western individualistic model of mediation, aimed at solving specific problems, was developed taking into account the needs of Western culture and is not entirely suitable for application in the context» [34, p.19] of another culture. We fully support this position.

Some ideological and methodological principles of judiciary were studied by domestic authors. However, in any of them, as well as in the works of other domestic scholars, a comparative analysis of the value matrices of judiciary and mediation was not carried out. Moreover, mediation as a value in the domestic scientific and philosophical literature still remains terra incognito. That is

why its quintessence is usually reduced to a set of techniques and technologies for conflict resolution, which is an one-sided and erroneous approach [35;36;37].

Aims

The purpose of the article is to clarify the value matrix of mediation and compare it with a similar matrix of judiciary. It is specified in its following tasks: revealing the value-based opposition of judiciary and mediation; clarifying the anthroposociocultural code of mediation as a value; substantiation of incompatibility of methodological tools for knowledge of judiciary and mediation.

Methods

The subject of research, its purpose and specific tasks determined its methodological principles, namely the anthroposociocultural approach.

Results

1. Tree-likeness (hierarchical nature) of judiciary.

Judiciary is one of the most difficult cognitive problems of jurisprudence. This is crucially due to the fact that it is attributively one of the aspects of state power as an extremely complex and contradictory phenomenon, and therefore has absorbed many of its essential properties, including the hierarchy of structural construction and functional order. In particular, in accordance with Article 125 of the Constitution of Ukraine «in Ukraine the system of courts is formed in accordance with the principles of territoriality and specialization and is determined by law» [1]. And in Article 17 of the Law of Ukraine «On the Judiciary and the Status of Judges» the constitutional principles of the judicial system of territoriality and specialization is supplemented by another principle of the judicial system – the principle of instance hierarchy [38]. Part 3 of the same article states: «The system of the judiciary shall include: 1) local courts; 2) courts of appeal; 3) Supreme Court. To consider some categories of cases in line with this Law high specialized courts shall operate in the system of the judiciary» [38].

Such a hierarchical structure of the judicial system of the state is familiar to all modern civilizations. Even in the classical cognitive tradition, which reached the apogee of its development in Modern times, it was called tree-like. This cognitive tradition is an inevitable consequence of a similar to it tree-like worldview of the same and a number of previous historical epochs. The most important property and feature of all these historical epochs at the same time was the hierarchy of values. Their origins go back to the early antique – ancient Greek – era, whose worldview discourse was completely captivated by the mythological consciousness with its ideas about the universum (cosmos), created on the principle of «tree of the world».

According to the above mythological consciousness the tree has an attributive root, which symbolizes the depth of ingrowth of this phenomenon into being, and in this depth, in turn, hidden substance, quintessence, basis – the determinant of the whole visible and invisible world. The tree –is a symbol of hierarchical, vertically authoritative organization of existence. It contains the patterns of the centre (trunk) and periphery (side branches). The pattern of the centre in this mythological worldview grows even more in its meaning on the other hand – from the rings of the tree trunk, which multiply and increase every year. The tree with its vector of sap movement and growth from root to top represents a linear-through, genetic and core-type vision and perception of the world. It with its continuous and unrestrained dichotomous growth up and around the centre – the trunk in the imagination of the supporters of this worldview constitutes binarism, the logic of binary oppositions: top – bottom, main – subordinate, winner – defeated, etc.

Even the change of historical epochs of modernism to postmodernism, which began in the world in the middle of the XX century and continues today, still leaves the huge layers of social being in the captivity of classical hierarchical values, models of its organization and principles of activity. Article 18 «Specialization of Courts» of the Law of Ukraine «On the Judiciary and the Status of Judges» is expressive in this aspect. In particular, it states that courts is specialized on the consideration of civil, criminal, commercial and administrative cases, as well as cases of administrative offenses. In cases stipulated by law and upon decision of a meeting of judges of a relevant court, under the above Law of Ukraine, specialization of judges for consideration of specific categories of cases may be introduced. Local general courts and appellate courts apply specialization of judges for criminal proceedings in regard of juveniles [38].

Article 26 «Types and composition of ap-

pellate courts» of the Law of Ukraine «On the Judiciary and the Status of Judges» gives an even fuller and more convincing idea of the hierarchy (tree-likeness) of the judiciary. It states that appellate courts shall operate as courts of appeals and in cases determined by procedural law – as courts of first instance for consideration of civil, criminal, commercial, administrative cases and cases of administrative offenses. In turn, the appellate courts formed in the appellate circuits shall be the appellate courts for consideration of civil and criminal cases and cases of administrative offenses. The appellate courts for consideration of commercial cases, and the appellate courts for consideration of administrative cases shall be, respectively, the appellate commercial courts and the appellate administrative courts formed in relevant appellate districts. Besides that, an appellate court may establish, according to national legislation, judicial chambers for consideration of different categories of cases. Isn't all this taken together a magnificent judicial tree? [38]

Higher specialized courts continue and supplement the hierarchical row of judiciary in Ukraine. Their types and composition are prescribed in Article 31 of the Law of Ukraine «On the Judiciary and the Status of Judges». In particular, it states that within the system of the judiciary, high specialized courts shall function as courts of first instance for consideration of some categories of cases. Thus, the high specialized courts are as follows: the High Court on Intellectual Issues; the High Anti-Corruption Court. High specialized courts shall consider cases which are under their jurisdiction according to procedural law of the state. Court chambers may be established within a high specialized court. The decision on establishment of the judicial chamber, its composition and on election of the Secretary of the Chamber shall be adopted by the meeting of judges of the relevant high specialized court, upon the proposal of the highest official in the hierarchical system of the highest specialized court – the Chief Judge [38].

The tree-like structure of the judiciary in Ukraine is crowned by the Supreme Court, which according to Article 36 of the Law of Ukraine «On the Judiciary and the Status of Judges» administer justice as a court of cassation instance and in cases stipulated by procedural law – as a court of first or appellate instance within the procedure established by procedural law. This court also: analyze judicial statistics and generalize case law; issue conclusions on draft laws concerning the judicial system, legal proceedings, the status of judges, enforcement of judgments and other issues related to the functioning of the system of the judiciary; issue an opinion on presence or absence in actions charged against the President of Ukraine of signs of treason or other crimes; upon request of the Verkhovna Rada of Ukraine present a written motion on incapability of the President of Ukraine to exercise their powers for health reasons; address the Constitutional Court of Ukraine regarding constitutionality of laws and other legal acts, as well as regarding the official interpretation of the Constitution of Ukraine; ensure uniform application of the law provisions by courts of different specializations following the procedure and in the manner stipulated by the procedural law; exercise other powers envisaged by the law [38].

Within the Supreme Court there shall be: 1) Grand Chamber of the Supreme Court; 2) Administrative Cassation Court; 3) Commercial Cassation Court; 4) Criminal Cassation Court; and 5) Civil Cassation Court. In each cassation court chambers on the adjudication of certain case categories shall be established taking into account specialization of judges. The number and specialization of court chambers shall be determined by decision of the meeting of judges of a cassation court taking into account requirements of paragraphs five – six of Article 36 of the Law of Ukraine «On the Judiciary and the Status of Judges» and judicial workload. In the Administrative Cassation Court separate court chambers must be established. These chambers shall adjudicate cases on: 1) taxes, fees and other mandatory payments; 2) protection of social rights; and 3) election process and referendum and protection of political rights of citizens. In the Commercial Cassation Court separate court chambers must be established. These chambers shall adjudicate cases on: 1) bankruptcy; 2) protection of intellectual property rights and rights related to anticorruption and competition law; and 3) corporate disputes, corporate rights and securities. Other chambers shall be established in cassation courts upon a decision of the meeting of judges of a cassation court. The Supreme Court shall have the Plenum of the Supreme Court to address issues, stipulated by the Constitution of Ukraine and the Law of Ukraine «On the Judiciary and the Status

of Judges» [38].

According to the Constitution of Ukraine and the Law of Ukraine «On the Judiciary and the Status of Judges» a judgment that ends consideration of a case in a court shall be approved in the name of Ukraine and judgments that have become effective shall be binding on all state authorities, bodies of local self-government and their officials and employees, private individuals and legal entities and associations throughout Ukraine, including lower courts in the hierarchical structure of judiciary. In the official language the latter phenomenon is called prejudiciality (praejudicialis) and is governed by the laws of Ukraine [38].

From the above, it is obvious that the judiciary inevitably acquires and maintains a tree-like configuration as a natural way of its existence. It is based on the values and mentality of the respective societies. As the French postmodernists of the last century Gilles Deleuze and Felix Guattari aptly remarked by «the whole Western culture is permeated by the tree», which considerably limits the spontaneity of its development, creativity and freedom and that generally «in many of people the tree sprouted in the brains». They set out this observation in their joint work «Rhizome», first published in 1976 [39].

2. Rhizomaticity of mediation.

Gilles Deleuze and Felix Guattari the term rhizome borrowed from botany. In the latter, it specifies the way of life of perennial herbaceous plants such as iris. Rhizome – is a crop that spreads on the ground, sprouting through certain branches of the stem into the ground and in the same places with new stems up. According to the observations of scientist-botanists there is such a stable correlation between the branching of stems, their germination in the ground and in the same places the leaves on top, that their graphical topology can be considered interdependent. As the rhizome plant spreads in all directions, its previous groundings and stems gradually die off, but the rhizome plant itself continues its life in the new rooted vertical stems.

Thus, the rhizome, in contrast with the tree, develops horizontally, without any predetermined order, but spontaneously in space and time, it does not have a single predetermined grounding place for all its stems. On this basis botanists call rhizome a non-classical evolution of self-sufficient formations. This evolution occurs not at the expense of other species of the plant world and not due to differentiation of the rhizome itself, but contrary to them, due to the amazing ability of the rhizome to move from one line of development to another such lines to endlessness due to internal conditionality.

Gilles Deleuze and Felix Guattari considered in the way of being of rhizome a lot of common features with the existence of civil society. According to them, rhizome can teach us to move through the endless "territory with obstacles", which is our existence. Rhizome – is a philosophy of coordination, coexistence, apology for avoiding extremes, not opposing oneself to the Other. The quintessence of rhizomatic values and worldview is that they are paradigmatically opposite to tree-like (hierarchical) values and worldview.

Paradigm matrices of rhizome and mediation are of the same type. Like rhizome, mediation is also a way of life for the whole biological species of nature, namely humans. Like rhizome, mediation is conditioned by the own nature of appropriate species and by the properties of its environment for existence. With regard to the latter (mediation) – it is the attributively contradictory nature of the individual, which constantly requires from him both self-affirmation, autonomy, and at the same time coexistence with the Other, as well as the attributively contradictory nature of the beingness construction of the human world. As in the rhizome, the quintessence of its existence is the spontaneity, so in the mediation matrix the spontaneity plays a key role.

The rhizome – is a symbol of heterogeneity, actually heterogeneity by itself, it is always in the process of formation. It has no orientation on the culmination point or a certain vital finish. Mediation is also a symbol and an instrument for reconciliation of society by its creators – individuals directly through the coordination of their needs with each other. In order to understand and master mediation as a way of life of individuals in society, it is necessary above all to understand the quintessence of the rhizomatic way of life of perennial herbaceous plants such as iris. After all, the nature and ways of life of both just mentioned species of nature are paradigmatically opposite to the tree and unexceptionally to all other tree-like structures of society as part of nature.

That is why any projects to integrate the institution of mediation into the national legal system as a component of the judiciary are unrealizable in principle. These are opposite values by their nature, despite the fact that the individual functional properties of judiciary and mediation are close or even coincide. For example, both judiciary and mediation belong to the category of public goods, and therefore access to each of them should be provided by the state. But not through the deformation of the true nature of one or another of the above institutions, in particular, mediation, but in accordance with their internal nature. In mediation, it is dual, and therefore it can be fulfilled (provided) as a social service. Judiciary as a social service, that is paid court proceedings for the parties to the conflict, is impossible in principle.

There is a similarity or even coincidence of some other functional properties of judiciary and mediation, primarily their purpose as the reconciliation of society. However, from the above they do not cease to be value antipodes. The fundamental value difference between the judiciary and mediation is that the system-forming subject in the judiciary is the state, and the individual is assigned the role of the object for state influence, an instrument for achieving state goals. Conversely, in mediation, the system-forming subject is the individual, and the state – is one of the tools, means of achieving the life goals of the individual, meeting his interests and needs.

Only in the second case it is not violated the most fundamental value of civilization – human dignity. Almost a quarter of a millennium ago Immanuel Kant in his second formula of the categorical imperative – the formula of personality – substantiated the need to prohibit the utilization of human by human: «... human is not a thing, that is, something that can only be used as a means; – he wrote; – they must be seen in all their actions simultaneously as an end in itself» [40, p.169]. In the middle of the XX century another German humanist Günther Dürig, based on the cognitive matrix of Immanuel Kant, formulated the so-called object formula, which almost immediately became famous and acquired remarkable criterial importance in determining the state of presence or absence of human utilization by anyone: «Human dignity is affected when a person becomes an object, that is a simple means, variable and expendable value», he wrote. In such a case he meant that «humiliation of a person to the status of a thing, that is completely catalogued, destroyed, registered, liquidated, brainwashed, which can be replaced, used and disposed of» [41, p.41]. As the quintessence of the value matrix of his object formula, Günther Dürig states: «A violation, which is contrary to human dignity as such, is the transformation of a particular person into an object of state procedure» [41, p.121]. That is what judiciary does to a person.

Discussion. Mediation as an alternative to state judiciary way of resolving conflicts enables the preservation and protection of human dignity, which are in fact an anthroposociocultural code of mediation. That is why at the turn of the XX-XXI centuries it became a typical phenomenon for the developed countries of Europe and other countries not only in the West, but also in other civilizations. In these societies it has become, as a social practice, for each and every one at the same time a universally recognized norm of social being, has acquired the status of a qualitatively separated social culture. In all the above countries mediation the most effectively among all other instruments of this type allows to reconcile societies, to increase the synergy of their individuals.

In Ukraine, on the contrary, mediation has not yet become a common, typical phenomenon. Here it only declares itself, exists in a state of prenatal development, is invisible to the naked eye, and therefore for the vast majority of the Ukrainian community, which does not belong to a narrow circle of mediation specialists, mediation is perceived at the level of everyday consciousness as a UFO-type phenomenon, or, in the terminology of the classics of Ukrainian literature, as fata morgana. One of the most important reasons for this state of mediation in Ukraine is the acute deficit of public trust, which, in turn, is the fundamental paradigm of mediation, its basic setting, the basis of social partnership.

It is also perceived and described by most national mediation specialists in terms of modern (classical) scientific worldview, which are inadequate for mediation. This happens, because this worldview and its categorical-conceptual apparatus for most theoretically thinking individuals of national society is a common tool of cognition and fixation of the received scientific information. But let's try, for example, to clearly explore, record and

explain in the generally accepted in the scientific world forms of scientific information the geometric parameters of the flame or its mass by means of the above categorical-conceptual apparatus. No one will be able to do this, because the type of object for cognition and the type of cognition tools mentioned above are different and moreover – they are incompatible with each other. The true nature of mediation can be adequately explored, described and explained only through the use of the corresponding categorical-conceptual apparatus of non-classical standards of scholarship, from the worldview and methodological approaches of postmodernism.

Conclusions

Mediation is a qualitatively isolated self-sufficient value (culture) of a developed civil society. Its quintessence is the preservation and protection of human dignity in resolving conflicts by their participants with the assistance of professional mediators. The basic principles of mediation are anthropocentrism, denial of violent order in society and paternalism. Mediation has a complex nature – it is dialogical, acts both as a public good and a social service, it is a form of freedom, justice and social partnership. The trust of the parties to the conflict and social optimism are attributes of mediation. The assertion of mediation as a value (culture of mediation) in society is a real Copernican revolution in public views on methods of conflict resolution and is one of the most important manifestations of the subjectivity of the individual. Mediation embodies the postmodern way of being and thinking, and therefore can be adequately known through the corresponding categorical-conceptual apparatus of non-classical standards of science, from the worldview and methodological approaches of postmodernism.

The paradigmatic opposite value is judiciary. It and mediation are two total differences, because the principle of existence of judiciary is its hierarchy (tree-likeness). The hierarchical structure of the judicial system of the state and its functioning is familiar to all modern civilizations. It was called tree-like even in the classical cognitive tradition. This cognitive tradition is an inevitable consequence of the worldview of the same and a number of previous historical epochs, the worldview discourse of which was completely captivated by the mythological consciousness with its ideas about the universum (cosmos), created on the principle of «tree of the world». The tree with its vector of sap movement and growth from root to top represents a linear-through, genetic and core-type vision and perception of the world, constitutes the logic of binary oppositions: top - bottom, main - subordinate, winner - defeated, etc. The judiciary exactly is built and functions on this matrix. Mediation for it – is not an organic component, but an extraneous substance.

Acknowledgements

Provisions, assessments and conclusions, practical recommendations contained in the article can be used in the process of developing a domestic concept of mediation, the need for which is becoming increasingly apparent. They can also be useful to the legislator of Ukraine in resolving the basic principles of the Law of Ukraine «On Mediation». This article to some extent fills the vacuum on worldview and methodological aspects of mediation, which are the most controversial among Ukrainian mediators. Finally, this article can be the basis for the development of a special course «Mediation as a value», which should become a system-forming discipline for the training of future mediators in higher education institutions within the educational program «Mediation».

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