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Abstract

The article examines the phenomenon of mediation as a value of a developed civil society from the ideological and methodological positions of the anthroposociocultural approach. The general historical conditions of the emergence of mediation and its anthroposociocultural code, paradigmatic types of mediation and the most important properties of each of them are analyzed. The article reveals the value nature of mediation as a Copernican revolution in ideology and methods of constructive resolution of conflicts between individuals and their communities. The conclusions are substantiated that: mediation belongs to the genus of anthroposociocultural values as their qualitatively distinguished type; mediation is functionally related to fundamental universal human values - human rights, the rule of law and pluralistic democracy - as a tool for their protection by human beings themselves in the form of a joint solution of interpersonal conflicts by their own carriers with the help of professional mediators; modern science distinguishes at least two paradigmatically different types of mediation - traditional mediation and narrative mediation; mediation of the first type as a value is applied mainly to the solution of interpersonal conflicts, and mediation of the second type is mainly applied to the solution of conflicts between human communities in polyidentical societies.

Keywords:

Mediation; value; anthroposociocultural mediation code; traditional mediation; narrative mediation.

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Introduction

As historical sources testify, mediation as a way of resolving conflicts by their carriers with the participation of mediators appeared simultaneously with the emergence of human as a social being. After all, as has long been found out by science, human nature is attributively contradictory, the result of which is permanent conflicts of people of all kinds. The inexhaustible series of human conflicts is multiplied even more by the equally attributively contradictory structure of the human world (Havrylyuk, 2018, p. 181). To prevent the above conflicts from destroying human communities, the latter, during their evolution, invented various techniques, methods, and ways for their solution. The analysis of these tools and the practice of their application asserts that the common paradigm significant feature of the above tools was not the achievement of victory by one of the parties to the conflict over the other or its other parties, but a mutually beneficial settlement of the dispute in the interests of all its parties. According to the latest data from historical science, this paradigm for resolving interpersonal conflicts remained dominant for about a hundred thousand years in a row.

With the emergence of five to ten thousand years ago natural (in another terminology - substantial) states, the nature of human communities also underwent significant transformations. In them, instead of domination during the previous historical period of horizontal ties between individuals and their groups, hierarchical ones became dominant, that is, connections and structures were built in a public-power manner. In European civilization, the onset of this period marked the emergence of the ancient Roman imperial state. This, as you know, happened at the turn of time before our era and the new era. One of the most remarkable properties of such societies was the seizure of almost all their living space by the natural state, including the appropriation of human conflicts by this state. In connection with the above, the paradigm for resolving these conflicts has undergone fundamental changes. It began to line up following the winner-loser matrix. In this value paradigm, a person transformed from a subject into an object of conflict relations, and the courts became the main instrument for resolving conflicts.

Another fundamental change in the paradigms of resolving interpersonal conflicts occurred with the emergence of open public orders and the transformation of the natural state into an instrumental state. The above transition took place mainly in the historical framework of modern times and took place completely in the middle of the twentieth century. This transition was triggered by the emergence of modern societies. As Coleman stated almost half a century ago, "the main players in the social structure of modern society are corporate players, that is, organizations that derive their power from individuals and use it to achieve corporate goals" (Havrylyuk, 2018, p. 49).

In modern societies, in comparison with premodern societies, all spheres of social life have undergone fundamental changes, as one of the most prominent representatives of the philosophy of life of F. Nietzsche aphoristically put it in his philosophical bestseller, "a reassessment of all values". As a result of this reappraisal, the phenomena of spontaneous order - human rights, the rule of law and pluralistic democracy - became the fundamental European and universal values (Nietzsche, 2005).

The progressive communities of Europe and the world, based on their previous historical experience, saw the right of everyone to a fair trial as a reliable guarantor of the above values. It was enshrined in Article 6 of the European Convention on Human Rights and Fundamental Freedoms. On this basis, the liberal ideas of legal proceedings underwent a crisis, the phenomenon that M. Cappeletti called "the global movement of access to justice" was born and formed (Cappeletti, 1993). This provoked, unpredictable by anyone before, a kind of "race" for the inclusiveness of justice, a real thirst for more and more individuals to defend their rights, even slightly violated, in court.

The latter, in turn, has turned into an unexpected paradox and crisis of modern justice. The wider access to justice was opened for all, in the same measure, this access became less for everyone. After all, the "throughput" of courts and the capacity of judges, subject to their compliance with the statutory requirements for legal proceedings, could not increase to the same extent as the number of conflicts increased. There were also other fundamental shortcomings in the legal procedure, insurmountable within its paradigm limits, which sharply contrasted with the new fundamental social values. Among these shortcomings, the traditional focus of legal proceedings not at the reconciliation of the parties to the conflict, but at determining the winner and the loser in it, as well as leaving the individual as an officially recognized social value the object of judicial procedures and the actual neglect of his true needs, which caused the conflict on the part judges and the court in general.

In the end, legal proceedings could not become an effective tool for resolving endless conflicts, they grew exponentially and reconciled society.

In a spontaneous search for effective tools to protect new civilizational values - human rights, the rule of law, and pluralistic democracy during the last third of the twentieth century. - the first quarter of the XXI century humanity has rediscovered mediation anew as an axiological phenomenon adequate to the above-mentioned values. The indisputable priority in this belongs to the representatives of the United States.

Literature review

Active scientific research into the phenomenon of mediation began in the mid-1980s. One of their most obvious features is that the intensity of this

research has only grown since then. There are now tens of thousands of scientific developments of American, European, and other scholarly mediators practicing various aspects of mediation. In addition to the fact that these studies are united by the phenomenon of mediation, they are in all other respects quite different from each other, both in worldview directions, specific goals, and in methodological tools, they also use the results obtained.

An in-depth analysis of the literature on mediation makes it possible to single out at least two paradigmatically different approaches to understanding the nature of mediation and its value potential. Earlier in time of its appearance and incomparably more widespread among scientists and practicing mediators, the so-called traditional, in another terminology - a classical approach to understanding the nature of mediation and its values (Glasl, 2004). As an alternative to it, at the end of the 20th and the beginning of the 21st centuries, a postmodern approach to understanding the phenomenon of mediation was formed, which is still better known as the narrative approach (Winslade & Monk, 2000). There is a fundamental worldview difference between them, a difference in cognitive tools, functional purpose, and heuristic capabilities.

It is also striking that there is a significant difference in all essential aspects of cognition of mediation and among representatives of the same methodological approach. For example, as the authors of the traditional approach to the study of mediation note themselves, depending on the subject of research, they also use different cognitive tools for understanding various subject areas of mediation, its different techniques and technologies, application practices, and the like. The views of scientists and practical mediators on the same phenomena are also characterized by significant differences in approaches, assessments, and conclusions.

In modern European and Western literature on mediation in general, there is a truly clear statement, common for many authors, to the point that mediation, by its nature, is transformative and that its quintessence is "the moral development of a person, is carried out simultaneously in two directions - the acquisition of inner strength and improving relations with the surrounding individuals" (Buch & Folder, 1994, p. 230). However, on the question of the relationship between these areas and the content of each of them, permanent discussions of various scientists and even different scientific schools continue (Tappolet, 2017; Dovidio & Van Zomeren, 2018; Elliott, 2016; Harinck & Druckman, 2019; Lee et al., 2017; Sagiv et al., 2016; Lee & Kawachi, 2019; Smits et al., n.d.).

For example, Lisa Parkinson is convinced that "family mediation is part of family justice" (Parkinson, 2016, p. 3). However, the overwhelming majority of European scholars view the latter as an alternative to the legal process. This, in their opinion, is explained by the fact that "the experience of participating in the trial ... [only] disappoints each other ... mediation gives them a chance ... to

build new, more constructive relationships" (Harte & Howard, 2004, p. 9). J. Haynes additionally substantiates the above statement by the fact that during the administration of justice, the previous positions of the parties remain unchanged, and during mediation, "positions change, options are specified, and mutual concessions are made" (Haynes, J. (1993, p. 4) of the parties.

The scientific groundwork for mediation of representatives of the classical cognitive tradition includes an almost inexhaustible number of other convincing demonstrations of the pluralism of positions and approaches of its representatives to highlighting various aspects of the phenomenon of mediation and its values. However, this does not apply to their understanding of the backbone elements of the supporting structure of mediation, in the interpretation of which there is a natural commonality of approaches. Thus, the traditional approach to mediation is characterized by the concentration of the subject of knowledge on a separate individual as a subject of mediation and his immanent needs. Clarification of the needs of a single individual and the obligation to consider his interests is considered within the framework of this cognitive paradigm as a way of existence of the corresponding community and as an essential component of successful mediation. The primacy of the individual in this model of mediation is so significant that even in cases when there is a confrontation between the needs of groups of people, this approach obliges us to perceive, comprehend and analyze this conflict using the categorical-conceptual apparatus of individualist conflictology (Keshavjec, 1985, p. 19).

The second system-forming element of the traditional cognitive approach to understanding and interpreting mediation is the assumption that the actions of separate individuals are motivated and directed by the needs immanent to this individual. In other words, this cognitive approach proceeds from the fact that the source of the aforementioned needs is human nature, and not external influences on the individual and his psyche and culture. According to this concept, which is based on the hypothesis of Abraham Maslow about the inner selfishness of the individual and his orientation towards obtaining pleasure, in order to achieve success in any mediation, it is necessary that the declared needs of the parties to the conflict are satisfied (Rogers, 1962). This is a "classic" of the traditional understanding of mediation.

The third of the obligatory elements of mediation in its understanding from the standpoint of the traditional approach to it is the explanation of the causes of the conflict - this is dissatisfaction with the individual needs of its parties. As supporters of this approach note, the task of mediation is to find a way to satisfy these needs, for each of the parties to the conflict (Chandler, 1990; Davies, 1995; Ellis & Stuckless, 1992; Girdner, 1990).

Finally, the fourth such attribute of the classical tradition of cognition of mediation is the postulate of the mediator's neutrality (Cobb & Rifkin, 1991). Its quintessence is that the parties to mediation have attributive interests, but the

mediator allegedly does not have them. However, as can be seen from the literature on mediation, even proponents of the traditional approach to mediation often question the assertion that the mediator remains neutral. Moreover, this contradicts the modern concept of understanding a person as a cultural being, that is, even contrary to his will, inscribed in a certain cultural context, in a certain social identity. In this regard, for example, Janet Rifkin, John Millen, and Sarah Cobb summarize that "mediator neutrality" is a good intention, not reality (White & Epston, 1991; Monk et al., 1997; Freedman & Combs, 1996; Dickerson & Zimmerman, 1996). Several other scientists have the same opinion (Drewery et al., 2000).

Among scientists, especially representatives of the United States, criticism of the traditional approach to clarifying the nature of mediation and its values has recently become more systematic and reasoned. As John Winslade and Gerald Monk point out, this criticism indicates the need to develop other basic models of mediation and approaches to explain its nature, as well as the fact that mediation is in dire need of innovative theoretical developments (Winslade & Monk, 2009, p. 67). The aforementioned scholars and mediators-practitioners simultaneously represent an alternative to the traditional so-called narrative approach to mediation.

This approach is based on the philosophy of postmodernism and the non-classical tradition of knowledge. It is due to the emergence of a globalizing world and polyidentical societies, which is now more the rule than the exception. Its subject is the plurality and confrontation of various sociocultural discourses, which are usually carried by communities of people. The narrative approach is based on the idea that certain human communities construct conflict based on the narrative description and perception of events. That is, in relation to people and their communities, this conflict is not their internal attribute, but an external phenomenon (Monk & Winslade, 1996).

An analysis of scientific research, which is the product of a narrative approach to mediation, clearly demonstrates that the actual context of mediation is usually filled with powerful anthroposociocultural narratives - gender, economic, ethnic, social, etc., the neglect of which or only partial consideration of them has its inevitable consequence of unresolved the corresponding conflict (Winslade et al., 1998). The solution to the main task of mediation in this paradigm model is not so much to achieve agreement between the parties but to create a new context of relations between the parties to the conflict, which opened the way for constructive changes in the future. Hence, the main way out of a conflict situation, narrative mediation sees as a value in the choice of an appropriate alternative history of the development of relations between the parties (Winslade & Monk, 2009, p. 67).

The purpose of the article is to elucidate the nature of mediation as a value and compare it with the nature of human rights, the rule of law, and

pluralistic democracy as basic universal values. It is concretized in the following tasks: elucidation of the properties of basic human values; disclosing the general and distinctive properties of traditional and narrative mediation and determining the place of each of them in several anthroposociocultural values and the ratio of basic human values and mediation.

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

The nature of fundamental human values

The doctrine now refers to the aforementioned values as human rights, the rule of law, and pluralistic democracy. These values are articulately rooted in human existence. To summarize their nature, we will use special doctrinal developments of these questions.

Thomas Ranch, a representative of practical philosophy, investigating the question "how the human world is possible", substantiated the conclusion that it is made by the "autonomy and communicative solidarity" of individuals, by establishing the purpose of each person. These are the semantic conditions of his life (Rench, 2010, pp. 99, 104).

Lynn Hunt, having investigated the comprehensive semantic conditions of human life, made the following conclusions on the basis of this: 1) all human beings are attributively inherent in non-isolated non-alienation of rights only on the grounds that they are people; 2) these non-isolated and non-alienating rights of human beings are generated by their human nature; 3) since the aforementioned rights are possessed by every human being from birth, they belong exclusively to the person; 4) every person should have the same opportunity to exercise these rights; 5) the legitimacy of any state is based on its ability to guarantee the exercise of these rights by everyone (Hunt, 1996, p. 4).

The above concept of human rights has found its official embodiment, first, in the UN Universal Declaration of Human Rights, as well as in other international and regional documents. As Viktor Osyatinski proved, this concept is fundamentally different from the classical concept of "human rights" of the eighteenth century, since the latter linked such rights not with every human being, but with certain social strata (Osiatynski, 2009).

Based on the above conceptual approaches, Johannes Morsink substantiated the doctrine of inherent human rights, which can be reduced to two basic theses of a universal nature: 1) human rights are immanent to humans due to its human nature and 2) that the availability of these rights to everyone becomes possible thanks to human conscience and human dignity (Morsink, 2010, pp. 25-26).

Arnold Rainer argued that human rights are inherently binding. Once incorporated into the texts of international acts and treaties, they become so in accordance with the principle of international law *pacta sunt servanda*. At the national level, the inclusion of them in the texts of the constitutions of states gives human rights the binding force of the respective constitutions (Rainer, A, 2013, p. 10).

The concepts of the rule of law and pluralistic democracy make them the same attributes of the human personality, their conditionality by the same constituents (semantic conditions) of human existence, they also state human rights - this is human autonomy and communicative solidarity as system-forming being of a person's purpose.

The analysis of the nature of basic universal human values also asserts that they are not simply rooted in human personalities but are attributive for all human beings. That is, these values cannot in any way be considered, much less used as only a means of influencing people. They, like the person himself - the bearer of these values - are at the same time the goal of both the vital activity of the individuals themselves and the public institutions of society, primarily the state.

It is no coincidence that the backbone article 3 of the Constitution of Ukraine says the following: "A person, his 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 content and direction of the state's activities. The state is responsible to the person for its activities. The establishment and maintenance of human rights and freedoms is the main duty of the state" (Sudova vlada Ukrayiny, 2020).

Mediation also belongs to anthroposociocultural values.

This is its nature inherent in the very mediation approach to conflict resolution. After all, the choice of mediation as a way of resolving the conflict is already a definite ideological and value choice. In turn, ideological and value dominants accompany the choice of specific media tools directly within the framework of mediation as a phenomenon. Regarding the latter, Robert Bush and Joseph Folger point out the following: "Choosing any approach to mediation means choosing a certain set of values. And the embodiment of such values in practice means, to a certain extent, "imposing" them on the parties by means of a process to which they are attracted by the mediator" (Robert et al., 2017, p. 208).

Also, the time and circumstances of its emergence as an innovative social phenomenon point to the anthroposociocultural nature of mediation. Formally, the timing of the appearance of the first conceptual construct of mediation is usually taken from a scientific conference dedicated to the memory of Roscoe

Pound, which took place in 1976 in USA. US Supreme Court Chief Justice Warren Burger, during his conference address, justifiably characterized the US judicial system as "ineffective because of the cost and delays that diminish the importance of justice when a party that did not have sufficient funds to litigate was early advantageous position compared to the other party who owned a significant wallet". In this regard, he proposed certain steps to reform American justice by introducing special tribunals with non-lawyers, "who could consider minor claims at certain evening hours" (Burger, 2020) to somewhat relieve the American courts of minor cases.

Frank E. A. Sander, a professor at Harvard University, has developed the proposal into a broader concept of transforming courts into "Dispute Resolution Centers" (Sander, 1976). He proposed to develop and introduce in American courts procedures for "filtering cases" and thus separating cases from them for mediation, arbitration, civil proceedings, and cases for decision with the participation of the Ombudsman. As the New York Times wrote about this a little later, it was about the creation in the United States of "multi-door-courthouse" (Crespo, 2008).

The aforementioned ideas and proposals, unexpectedly for such conceptual innovations, which are expressed every time in scientific conferences in no less quantity, this time received rapid and active support in the American society and began to be implemented according to the algorithm of an avalanche that rapidly takes off from the mountains (Raitt, 1993). Why did it happen that the introduction of mediation practices in the United States turned in the last quarter of the twentieth century into an undeclared revolution?

A general answer to this question can be found in Jurgen Habermas's study of structural changes in the public sphere of democratic states in the postwar period (Habermas, 1990). It says that in these countries, which include the United States, developed civil societies have formed, states have transformed from natural into instrumental ones, because of deep human-centered transformations, the activity of broad segments of the population and their requirements for the quality of services in the public sector of society have sharply increased. primarily the state. In the self-consciousness of individuals as real subjects of social relations, a real Copernican revolution took place. Various segments of societies began to develop at different speeds, further multiplied the number of conflicts and increased disproportions in resolving them with the traditional tools of the state for the preliminary state of societies, primarily the judicial system of the state.

Under these conditions, the civil society of the developed countries of the world, including the United States, found in mediation not just an effective alternative to state legal proceedings, but a value that was incomparably greater than state legal proceedings, which corresponded to the new quality of society. This is what mediation was made by its rhizomatic nature. The term "rhizome"

was introduced into the sciences of society in the same 1976 by the famous French postmodernists of the last century Jean Belloz and François Guatari (Deleuze, 1976, p. 74). They borrowed it from botany. In it, this term denotes the way of life of perennial herbaceous plants such as iris. Unlike trees, rhizome grows horizontally, spontaneously in space and time, and does not have a predetermined rooting site for its stems.

The aforementioned French postmodernists saw in the way of being a rhizome many properties in common with the properties of civil society. According to them, the rhizome teaches movement on terrain with endless obstacles, it is a philosophy of coordination, coexistence, not opposing oneself to another, an apology for avoiding extremes. Rhizomatic worldviews and values are opposite to hierarchical worldviews and values.

The paradigm mediation matrix is the same as the rhizome paradigm matrix. This is primarily manifested in the fact that mediation is becoming more confidently a way of being for such a biological species of nature as people. Mediation, like rhizomes, is also generated by its nature of the human species and the properties of its environment. This refers to the attributively contradictory nature of the human being and the existential structure of the human world. Mediation, like a rhizome, is aimed at ensuring the survival of the corresponding species, at adequately adapting it to the external environment.

So, if we compare the nature of basic universal human values - human rights, the rule of law, and pluralistic democracy with the nature of mediation as a value, it becomes obvious that they both have an anthroposociocultural code as their basis since they relate to people and their communities. At the same time, it is obvious that, in contrast to the substantively related nature of human rights, the rule of law, and pluralistic democracy, mediation as a value has an instrumental nature. Mediation is only functionally associated with individuals and their communities. This is their most significant difference between themselves.

Conclusions

Mediation as a phenomenon is a product of postmodern civil society. It belongs to the genus of anthroposociocultural values as their type is qualitatively highlighted. Mediation is functionally related to fundamental human rights, the rule of law, pluralistic democracy - as a tool for their protection by human beings themselves in the form of a joint solution of interpersonal conflicts by their own carriers with the help of professional mediators. Modern science identifies at least two paradigmatically different types of mediation - traditional (classical) mediation and narrative mediation. Mediation of the first type as a value is applied mainly to the solution of interpersonal conflicts, and mediation of the

second type is mainly applied to the solution of conflicts between human communities (groups) in polyidentical societies.

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