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THE USE OF MEDIATION IN ADMINISTRATIVE PROCEEDINGS: THE EXPERIENCE OF EUROPEAN UNION MEMBER STATES

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ABSTRACT
Appealing to public authorities about any legal conflict leads to an overload of courts and administrative bodies. An alternative to improving access to justice and reducing the burden on the courts is to use other alternative means of resolving legal disputes, such as mediation. The article is devoted to the peculiarities of the application of the mediation procedure in administrative proceedings. Highlights the signs of administrative and legal dispute, as well as the peculiarities of the mediation procedure. The purpose of the study is to study domestic and foreign experience in the use of mediation in administrative proceedings, as well as to formulate proposals and recommendations for improving the current legislation in this area, based on the analysis of scientific papers, current legislation and law enforcement practice. The methodological basis of the study is a set of general scientific, philosophical, special methods of scientific knowledge, the use of which allowed to ensure the achievement of the stated goals and objectives of the study and comprehensive coverage of the research problem.

Keywords: administrative proceedings; mediation; administrative justice; mediator; alternative dispute resolution; conciliation procedures.

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1 INTRODUCTION

Support and development of freedom and security, guarantee of human rights and freedoms, ensuring the administration of fair justice are the priority tasks of a modern democratic society. In complex, but natural and extremely necessary processes of integration, international cooperation, there is a problem of effective interaction, the problem of overcoming various conflicts and disputes that arise at different levels. The universal and fundamental need of modern society within different legal systems is to ensure justice and consent. One of such practical areas of achieving reconciliation and agreement in resolving various conflicts (disputes) is the mediation procedure.

In the European Union, mediation is seen not only as a way of alternative dispute resolution where a conflict has already arisen, but also as a way to prevent a dispute (conflict) in the future, which certainly expands the scope of mediation. The parties to the dispute, as well as mediators have the right to choose the most effective ways to resolve disputes in each case, setting precedents. Therefore, it is obvious that the normative implementation of this institution is necessary and currently relevant (Lutsenko, 2017).

World practice shows that today mediation is one of the most popular forms of conflict resolution, as almost 90% of all mediation procedures are successfully completed for the conflicting parties (Gnatenko et al., 2020). Development and analysis of scientific works on the introduction of mediation, consistent adoption of a special law about mediation - an urgent need due to the significant benefits of mediation, including significant savings of time and money, achieving a mutually acceptable solution, voluntariness and impartiality of the procedure, flexibility disputes, which will allow to form in our state a legal basis for the effective settlement of conflicts (disputes). That is why the settlement of various disputes and conflicts on the basis of agreement - with the participation of a neutral and impartial, professional mediator, which should be a mediator - is an essential feature of mediation and an unconditional reason for growing interest in this procedure in resolving various legal conflicts (Drozdov et al., 2021).

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In many cases, if people can solve a problem through discussion and negotiation, they will achieve a faster and better result than in a confrontation or trial. However, for the most part, they cannot do this without the help of a third party. Strong emotions, hostility, confrontation tactics and inequality of social status can become obstacles on the way to constructive negotiations. In today's conditions, the issue of studying domestic and foreign experience in the use of mediation in administrative proceedings becomes especially relevant in this context (Yaroshenko et al., 2019).

One of the requirements of full membership of Ukraine in the European Community is a radical overhaul of the justice system on the principles of democracy, justice, recognition of the highest social value, compliance with European and international legal standards. Today we have to state that a rather high level of conflict tension in modern Ukrainian society is generally inherent in legal disputes. Traditional adversarial dispute resolution through justice often contributes to the escalation of legal conflicts and the termination of common relations between the parties (Yaroshenko et al., 2021). Existing problems of the judicial system often lead to significant losses of forces, time and money, and the workload of courts with a significant number of cases, and the final court decision usually does not suit at least one of the parties, which causes difficulties in its implementation. In this regard, it seems valuable to resort to an alternative (non-jurisdictional) form of termination of legal disputes and the use of conciliation procedures, among which a special place is occupied by mediation.

Many scientific works, including such scholars as L. Marchuk (2014), O. Karmaza (2017), N.V. Bozhenko (2017a; 2017b), Z. V. Krasilovska (2015) are devoted to the issues of mediation in administrative proceedings: the experience of EU member states. The purpose of the study is to study domestic and foreign experience in the use of mediation in administrative proceedings, as well as to formulate proposals and recommendations for improving the current legislation in this area, based on the analysis of scientific papers, current legislation and law enforcement practice.

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2 MATERIALS AND METHODS

In accordance with the purpose and objectives of the study, the article uses a system of methods of scientific knowledge. Among them are general scientific methods, methods of management science, sociology, jurisprudence, as well as special methodological principles of studying domestic and foreign experience in the use of mediation in administrative proceedings. The main in this system is the general scientific dialectical method, which contributed to the consideration and study of the problem in the unity of its social content and legal form and the implementation of a systematic analysis of domestic and foreign experience in mediation in administrative proceedings.

With the help of the logical-semantic method the conceptual apparatus is deepened, the scientific basis of research of domestic and foreign experience of application of mediation in administrative proceedings and the place of mediation in the system of administrative proceedings is determined. System-structural and comparative law methods allowed to explore the essence of conciliation procedures in the system of alternative resolution of legal conflicts (disputes), to reveal the content of mediation, the advantages of application in resolving conflicts and disputes. The use of sociological and statistical methods contributed to the generalization of legal practice, analysis of empirical information related to the topic of dissertation research. The historical-legal method was used to study the formation and further development of the institution of alternative resolution of legal conflict and legal dispute as a socio-legal phenomenon.

Using the formal legal method, the content of legal norms that serve as a legal basis for mediation was studied, and proposals for their improvement were formulated. Comparative analysis of the experience of mediation as an effective way of resolving disputes in some foreign countries, their synthesis allowed to study the evolution of regulation of this area abroad, to identify the main modern approaches, the possibility of their application in Ukraine. Program-targeted methods became the basis for the development of the proposed scientific and practical recommendations for the introduction of mediation in the system of administrative proceedings.

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A number of articles related to the research topic were also analysed, such as "Institute of mediation: basic concepts of development" (Karmaza, 2017), "Mediation as one of the means of settling administrative disputes: theoretical and historical aspect" (Bozhenko, 2017b), "Alternative ways of resolving disputes in the field of public administration: concept and essence" (Krasilovska, 2015), "Mediations in administrative proceeding: myth or reality nowadays" (Rostovska, & Hryshyna, 2020), "Improvement of administrative and legal support of mediation in administrative and legal support of mediation in administrative judiciary" (Bozhenko, 2017a), "Mediation: international legal standards" (Podkovenko, 2017), "Opportunities and perspectives on the application of Mediation in the activity of public administration" (Zubco, 2019), "Evaluating the determinants of EU funds absorption across old and new member states–The role of administrative capacity and political governance" (Incaltarau et al., 2020), "Consumer online dispute resolution (ODR)-a mechanism for innovative e-governance in EU" (Jeretina, 2018), "Outsourcing Hotspot Governance within the EU: Cultural Mediators as Humanitarian–Border Workers in Greece" (Spathopoulou et al., 2021), "Perceptions of EU mediation and mediation effectiveness: Comparing perspectives from Ukraine and the EU" (Chaban et. al., 2019).

3 RESULTS

At present, a large number of legal scholars are interested in the search for an effective settlement of the dispute in order to further develop legitimate public relations of citizens within the legal system of Ukraine. Most conflicts are characterized by growing tensions between the parties to the dispute. Further escalation of the conflict may lead to the occurrence of illegal and radical actions on both sides of the conflict in one case, or further resolution of the conflict in court proceedings. It should be noted that in this case we see an additional burden on the judicial system, due to which the conflict cannot be resolved due to the length of court proceedings. In addition, various forms of litigation

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involve the adversarial nature of the case. The parties defend their own positions, reflecting their reluctance to the point of view of the other party. To date, international practice offers a universal dispute resolution procedure - mediation.

Mediation refers to the so-called alternative dispute resolution, abbreviated as ADR (Alternative Dispute Resolution). The concept of ADR was introduced into practice in the 70s of the twentieth century in the United States and ten years later became widely used. Without mediators in the field of economy, politics, business in this country there is no serious negotiation process. There is a National Institute for Dispute Resolution, which develops new methods of mediation, and private and public mediation services. Great influence is the American Arbitration Association, which has approved its Rules of Arbitration and Mediation, which are used, including in the consideration of internal disputes. In the 90's the English term ADR practically became an international concept. In some countries, attempts have been made to replace it with certain counterparts, such as MARC (les modes alternatives de resolution des conflicts) or RAD (reglement alternatif des differends) in France and Canadian Quebec, or AKR (aussergerichtlichen Konfliktregelung) in Germany. However, such attempts have not been widely used in practice (Marchuk, 2014).

The use of the term “alternative” immediately raises the logical question: alternative to what? You can define at least four concepts of the answer to it. According to the first, an alternative way of resolving conflicts means any approach to resolving conflicts other than the classical litigation. According to the second approach, these are actions within the civil process and the exercise of judicial power, which allow non-antagonistic end of the conflict, above all, involve the actions of the judges themselves, which facilitate the conclusion of the agreement. The third approach to understanding ADR involves a system of different methods that constitute an alternative to litigation, including arbitration. The fourth concept provides for the exclusion from the scope of ADR not only of litigation, but also of out-of-court arbitration (and mechanisms close to it), which consists in making a decision that binds both parties to the conflict. ADR can be defined as a group of

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processes through which disputes and conflicts are resolved without recourse to the formal judicial system.

As a rule, ADR is carried out by a non-governmental body or an individual, based on the principles of voluntariness, neutrality, confidentiality, dispositiveness, equality. ADR, in addition to mediation, also includes such methods as: med-arb, arb-med, mini-trial, fact-finding, earlyneutralevaluation, summary jury trial, dispute review boards. Their names indicate their origin from the Anglo-Saxon legal system. Common features of different ADR methods are: the participation of an impartial third party who is deprived of competence to resolve the conflict, lack of formalism, the primacy of the real interests of the parties to the conflict over the legal dogma of law, and direct participation and constructive cooperation between the conflicting parties. The fundamental principle of ADR is to abandon the confrontational course of action and focus on solving the problem, rather than confronting the enemy. Such advantages determine the recourse to alternative ways of resolving conflicts in reaching an agreement and reconciling the parties.

The formal definition of mediation (or amicable settlement) is given in Article 1 of the Model Law of the United Nations Commission on International Trade Law of 2002 on International Commercial Arbitration Procedures, according to which mediation is “a process where parties involve a third party or persons". in order to assist them in the peaceful settlement of disputes arising out of or in connection with a contractual or other legal relationship. The mediator has no right to impose on the parties ways to settle the dispute.” (The Committee of Organizational Organizations of the United Nations on International Trade Law, 2002).

The purpose of mediation is to discuss, understand and process a complex conflict situation in order to get out of it optimally. In this discussion there is a place for views, opinions, often incompatible, about the events themselves or options for overcoming a difficult situation. As a result of successful mediation, an agreement was reached during the discussion. Decisions made in mediation can be enshrined in the agreement when each of the parties to the conflict recognizes them. The main preconditions of the mediation procedure are: the desire of the parties for a peaceful settlement of the conflict

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or dispute and the voluntary participation in the procedure. By joining forces to resolve the issue, the parties, instead of perceiving the opponent as an enemy, can reach agreements that provide for mutual agreement, namely consensus, after which the parties make a decision that allows to build further relationships and joint activities (Karmaza, 2017).

The area of administrative disputes is the most difficult to apply to the mediation procedure. This is due to the characteristics of such disputes, as well as the very legal nature of the subjects of administrative relations. Because of this, some domestic researchers point to the partial non-mediatability of such disputes, as one of the parties is always a public administration body. At the same time, reaching a compromise between public administration bodies and the citizen is a priority of the state and local self-government bodies. The mediation procedure can only be used in some administrative disputes. The advantages of the mediation procedure in resolving administrative and legal disputes are: efficiency, cost savings, time savings, speed, confidentiality, unloading of administrative courts, implementation of the principle of the service concept of the state, the rule of law and good governance (Dei et al., 2020).

Legislative regulation of the institution of mediation began in 1999. When deciding on the standards of the Council of Europe (CoE) and the European Union (EU) in the field of independence and efficiency of the judiciary, the first document that immediately comes to mind is the European Convention on Human Rights. , in particular, Art. 6 of the Convention, which protects the right to a fair trial (Council of Europe, 1950). The Tampere European Council called on EU member states to introduce alternative out-of-court procedures, among which mediation has become one of the main methods. To this end, in 2008 the European Union adopted Directive 2008/52 / EU of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, and a number of recommendations and guidelines. This Directive applies to international disputes, however, according to paragraph 8 of the Preamble, “nothing should prevent the application of these provisions also in internal mediation processes” (European Parliament, 2008).

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The UNCITRAL Model Law on International Conciliation Procedure of 2002, which was the basis for national legislation on mediation by 26 countries. Also, in 2004 the European Commission supported the "European Code of Conduct for Mediators" developed by a specially created initiative group of professional mediators, which comprehensively and comprehensively defines the legal status of a mediator, the requirements for this person and the basic principles on which the mediation process is based. Legislation that directly regulates the introduction of mediation in most countries, and international legal documents, which enshrine the basic rules of the mediation procedure, aims to clearly record in the texts of regulations all methodological and procedural features of this form of mediation to resolve existing disputes . The main provisions, principles, procedural aspects of mediation are enshrined in special legislation, which is binding on all participants in private relations (Bozhenko, 2017).

In the legal space of European countries, mediation is increasingly used in resolving administrative and legal conflicts. The argument in favor of the use of mediation in administrative relations is expressed in Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternatives to litigation between administrative authorities and parties of 5 September 2001, which emphasizes that court proceedings practices are not always suitable for the settlement of administrative disputes, and that the use of alternative means of settling administrative disputes makes it possible to resolve these problems and bring the administrative body closer to the public. In particular, attention is drawn to the fact that the main advantages of alternative means of resolving administrative disputes can be simple and flexible procedures, which, in turn, allows you to resolve disputes faster and more economically (Committee of Ministers of the Council of Europe, 2001).

This Recommendation stipulates the conditions for the application of the mediation procedure for the resolution of administrative disputes: it should be possible to settle administrative disputes by means other than judicial (in some cases); alternative means are not a way to evade the obligations or the rule of law by the parties to the dispute; alternative means of resolving administrative conflicts should in all cases involve judicial

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review, as it is a guarantee of protection of rights for the parties; alternative means of resolving a legal conflict must ensure respect for the principles of equality and impartiality, as well as respect for the rights of the parties.

World practice shows many examples of legislative regulation of the mediation procedure. Examples of states that have regulated the mediation procedure and the powers of a mediator in detail are Austria and Germany. It was in Austria that the Mediation Act was drafted in 2001, and the Mediation in Civil Disputes Directive came into force three years later. In Germany, on July 26, 2012, the Mediation Act came into force, which regulates mediation in all types of litigation, as well as defines the principles of obtaining the status of mediator, their responsibilities and mechanisms to ensure their neutrality and objectivity (Matvieieva et al., 2020).

Mediation in Europe is enshrined in juvenile justice laws. A similar phenomenon exists in Catalonia (Spain), England and Wales, Finland, Germany, Ireland and Poland. Mediation can be regulated by an autonomous "law on mediation", which sets out in detail the organization and process of mediation. In Norway (1991) Law on Municipal Mediation Committees; applies to both minors and adults, and covers criminal and civil offenses. In Sweden (2002), a law on mediation must also be implemented in cooperation with municipal services. This category also includes the Law on Probation and Mediation Services of the Czech Republic (2001), which provides a basis for the operation of probation and mediation services throughout the country. Mediation in administrative matters is widely used and enshrined in law in countries such as the United States, Poland, Germany, Great Britain, Norway and others. Belarus, Moldova, Latvia, Lithuania, Russia, Georgia, Armenia, and Kazakhstan have specialized laws that introduce the institution of mediation and define the legal framework for the provision of mediation services (Krasilovska, 2015).

An interesting approach is in Portugal, where the legal provisions on the use of mediation differ depending on the field of law (some legal rules on civil, commercial, and others on family and labor law). There is some opposition to the detailed legal regulation of the mediation procedure in the legislation of states that do not have such provisions for

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both mediation and mediators. As an example, the United Kingdom and the Netherlands, where the law only defines the cost of the mediation process, and the issue of mediation procedures and professional requirements for mediators are subject to regulation of local legal acts of individual institutions represented in the market of alternative dispute resolution services.

Romania adopted the Law on Mediation and the Organization of the Mediation Profession, Lithuania the Law on Mediation in Civil Disputes, Germany the Law on Support to Mediation and Other Forms of Out-of-Court Settlement of Conflicts, and Bulgaria, Belarus and Kazakhstan the Laws on mediation, in Australia - the Mediation Act, Section VI of the French Code of Civil Procedure contains, aimed at settling mediation relations. The idea of mediation as an alternative way of resolving conflicts was introduced into Polish law by the 1991 Law on the Settlement of Collective Disputes. mediation in administrative proceedings since 2004, and since 2005 the mediation procedure has been used in civil cases.

European law, in particular the European Convention on Human Rights, guarantees everyone the right of access to a court. And this right cannot be changed by transferring the case to mediation. It is also important to remember that mediation is not a panacea. It can only be an aid when the parties are ready and able to take part in mediation. In most cases, the courts will continue to resolve conflicts and make decisions. However, the judge usually looks to the past and decides what happened wrong in it, the mediator, on the contrary, encourages the participants to focus on the real future.

The advantage of mediation is that instead of a solution from the outside, the parties find their own mutually beneficial solution. Instead of fighting for justice, there is constructive work to resolve the conflict. At the same time, mediation is not limited to the existing subject matter of the dispute, it must also take into account the hidden causes of the conflict situation, the negotiation process may involve third parties who have not yet participated in the proceedings - experts, advisers. One of the central problems in the formation of mediation in Ukraine is the lack of a clear understanding of how mediation should be introduced into the Ukrainian legal system. It is widely believed that mediation

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should be considered as part of the proceedings and should be conducted by a judge who has been instructed to do so. Proponents of this model of development believe that judicial mediation aims to improve the functioning of the legal system and offer an alternative way to resolve the dispute, which avoids factors such as the length and high cost of litigation, its possible involvement, overburdening of courts and more. On the other hand, many experts categorically deny the expediency of absorbing mediation procedures by the existing justice system. They insist that the provision of mediation services is a perfectly normal commercial activity (Rostovska & Hryshyna, 2020).

The disadvantage of this model of mediation is its extensive development. One of the priorities of the Council of Europe and the European Union is to assist Member States in the fair and expeditious administration of justice and in the development of alternative dispute resolution methods. Such assistance consists primarily in the development of standards according to which Member States must bring their legislation into line with certain legal obligations. After conducting a comparative study of the best practices of some countries in the field of mediation, the Council of Europe prepared recommendations on the next steps to be taken by Ukraine and offered its conclusions on the relevant legal framework. The results of the study are of a recommendatory nature and aim not to promote the “import” of a particular model of mediation, but to disseminate information about the successes and failures of various initiatives in this area.

It should be noted that in the European Union, mediation is seen not only as a way to resolve disputes where conflicts have already arisen, but also as a way to prevent disputes (conflicts) in the future, which certainly expands the scope of mediation. Due to the fact that the procedural flexibility of the mediation procedure allows the use of mediation in different situations, there is no clear regulation of mediation methods. Legislation in almost all EU countries has deliberately abandoned attempts to regulate methods as such. The parties to the dispute, as well as mediators have the right to choose the most effective ways to resolve disputes in each case, setting precedents. Moreover, depending on the scope, different instruments (methods) of reconciliation can be used (Bobrovnyk et al., 2020).

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Foreign experience shows that the resolution and settlement of legal disputes belongs to one of these areas. Thus, when analyzing the results of judicial reforms carried out in the second half of the twentieth century in continental Europe, attention was drawn to the need for a general rejection of "state paternalism" (when legal disputes are resolved exclusively in law enforcement, by adopting appropriate enforcement decision) and the transition to a "pluralistic approach", ie the recognition of the need to provide conflicting parties with the right to choose how to resolve their differences by allowing the use of conciliation procedures. Attention is paid to this issue at the level of the United Nations, the European Union, the International Bank for Reconstruction and Development, and the International Chamber of Commerce (Bozhenko, 2017).

The transition of our country to market economic relations, the legal regulation of which is carried out on the basis of qualitatively new legislation to a greater extent opens wide opportunities for the use of non-state forms of conflict resolution, which will significantly relieve the state judicial system. These methods are considered as an alternative to state justice and are therefore called alternative forms of dispute resolution. In international practice, conciliation procedures have been used to resolve legal conflicts, such as: settlement of a dispute by the parties themselves through negotiations (negotiation); settlement of the dispute with the help of an independent mediator, which facilitates the parties to reach an agreement (mediation, conciliation); settlement of the dispute with the help of an intermediary-arbitrator, who in case of failure to reach an agreement is authorized to resolve the dispute by arbitration (med-art); dispute resolution with the participation of business leaders, their lawyers and a third independent person who presides over the hearing (mini-trial).

As the experience of European states shows, in the conditions of developed economic freedom and business cooperation, the subjects of legal relations are increasingly interested in flexible, prompt forms of dispute resolution, rather than in lengthy, expensive court proceedings. That is why the institution of mediation is able to become an effective and efficient means of resolving legal disputes and will become a fully functioning mechanism in a holistic system of alternative dispute resolution. World

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practice shows that today mediation is one of the most popular forms of alternative dispute resolution, as almost 90% of all mediation procedures are completed successfully for the conflicting parties. Foreign lawyers and attorneys can no longer imagine day-to-day conflict management without the use of mediation (Kortukova et al., 2020).

Alternative dispute resolution is a set of various conciliation procedures aimed at comprehensive, complete and impartial settlement of legal conflicts through non-governmental mechanisms and methods that provide rapid and effective dispute resolution based on reconciling the positions and interests of the parties, with minimal time and money. persons. Reconciling the positions of the conflicting parties, finding a compromise in a legal dispute, readiness for understanding and certain concessions are important principles of alternative dispute resolution. Such approaches create real and wider opportunities for reconciliation of the parties and the development of their further cooperation. The study of international law enforcement practice allows us to conclude about the progressiveness and effectiveness of the institution of mediation in relation to other existing alternative forms of dispute resolution and the need for its implementation in Ukraine. The meaning of mediation as a special conciliation procedure is to move away from the conflict, bring society to a qualitatively new level of cooperation and democracy, the formation of the rule of law and the effectiveness of civil society (Podkovenko, 2017).

First of all, the parties conclude a so-called “agreement on the use of mediation”, in which they agree to settle the dispute within the framework of mediation. The agreement on the use of mediation can be concluded by the parties based on the existing models of standard mediation agreements, both before and after the conflict between them. Next, the parties choose a mediator. In Germany, the concept of “mediator”, like “mediation”, is not regulated by law, and therefore the parties themselves determine who, in their opinion, has the appropriate qualifications and enough experience to help resolve the dispute between them. To make it easier for the parties to choose, the profile organizations post lists of mediators on their websites with information about their experience and specialization. The main task of a mediator is to support the parties in resolving the conflict in such a way that they (the parties) can independently develop and choose a mutually

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acceptable and mutually beneficial solution that would meet their interests and meet their needs.

Self-determination of the parties is one of the principles of mediation, so the parties may terminate the mediation at any time. In the case of successful mediation, the agreements reached by the parties are usually enshrined in a written agreement. The mediator does not make any decisions, he, above all, supports the parties in developing their own solution. There are different approaches to defining the role and function of a mediator. For example, the role of the mediator may be limited to the facilitation function, ie it helps the parties to communicate with each other and negotiate. At that time, during the so-called “evaluation” mediation, the mediator is authorized to provide the parties with his assessment on the basis of the analysis of the dispute (Zubco, 2019).

However, the mediator's conclusion in the dispute does not oblige the parties to take appropriate steps. Personality of the mediator Personal and professional qualities of the mediator do not necessarily have to be innate traits, they can be learned, acquired in the process of preparation, although, of course, they are related to the natural, psychological qualities of the individual. According to the Spanish authors, the most important qualities are: empathy, ie the ability to put yourself in the place of the conflicting parties to better understand their positions in a given situation; impartiality, as the mediator is an independent third party, he should not show any sympathy or affection, should not express his views, but only lead the process of conflict resolution; professionalism, which is manifested in perfect knowledge of their business, ie the system of labor relations, labor law, regulations, etc.; confidentiality; if the mediator wants to resolve the misunderstanding between the parties, he must guarantee the confidentiality of the information he receives separately from each party. He undertakes not to divulge secrets even after the trial has been completed (Chaban et al., 2019).

The mediator is considered a professional if he: thoroughly prepares for the procedure and does not rely on his ability to improvise. It is necessary to gather all possible information about the case in advance; equally distanced from the conflicting parties, this helps to demonstrate their neutrality and impartiality; appoints the same number of

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individual meetings, provides the same period of time for speeches; actively listens to the speaker, observes the reaction of others, pays attention to the tone and intonation of what is said, seeks confirmation of the truth of what is said, etc.; notes the most important, interrogates, clarifies; intervenes when there are pauses in communication or when the parties to the conflict begin to insult each other; adheres to confidentiality, etc (Incaltarau et al., 2020).

The mediator has no right: to speak excessively and abuse his position in a given situation; constantly writing, the parties must feel and see that they are being listened to and concerned about their problems. Not looking at the speaker is unprofessional on the part of the mediator; not to fix the most important issues; to speak quietly and incomprehensibly; demonstrate their commitment to one of the parties to the conflict; try to end the meeting as soon as possible; express their own opinions and options for resolving the dispute; deceive, etc. Communicative communication skills are one of the key professional competencies of a public servant and are tools of dialogue and mediation for effective team interaction within public authorities and local self-government, for interaction of these bodies with the public. And it is public officials who must be competent and able to: identify and deal with conflicts through dialogue and mediation at various stages of their deployment; use dialogue for team interaction and interaction with the public; apply dialogic approaches in organizing and conducting meetings, conferences, consultations, public discussions, etc (Spathopoulou et al., 2021).

In Ukraine, for the past five years, the OSCE Project Co-ordinator has promoted the widespread use of dialogue as a policy tool, supported dialogue between central authorities and regional partners, and promoted the development of a local expert community of mediators and facilitators of dialogue. Dialogue is to hear, understand and accept. A well-organized and professionally facilitated dialogue can help civil servants engage all stakeholders in the planning and implementation of reforms and policies, even those who strongly disagree with the proposed measures (Jeretina, 2018).

Thus, alternative dispute resolution in EU law means out-of-court dispute resolution through the involvement of an independent third party who proposes or makes a decision

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or brings the parties to a mutually beneficial dispute resolution. The development of legal regulation of this institution is actively carried out at both regional and universal levels. As world practice shows, any democratic country that is looking for ways to meet the growing demand of society for an efficient and impartial justice system must create a full-fledged set of various effective dispute settlement procedures. In this regard, the mediation movement has become very popular in Europe, as evidenced by the large number of international instruments of the European Community and the Council of Europe. Mediation is a reality recognized by the world community, an effective way of resolving conflicts, an alternative form of dispute resolution that allows you to find a viable solution that best meets the needs of the parties involved in the dispute. In our opinion, Ukraine should take into account the positive experience of European countries in terms of ample opportunities for alternative dispute resolution, especially mediation. This is a way to reduce social tension, understanding and consensus in various spheres of public life.

4 DISCUSSION

Despite the lack of special legislation, Ukraine has its own experience in the application of the mediation procedure (conciliation), which confirms the high effectiveness of this institution in resolving conflicts. I would like to dwell in more detail on the possibility of introducing mediation in the administrative courts of Ukraine without amending the current legislation, as it is mediation in the administrative courts that causes the most controversy in society. The Code of Administrative Procedure of Ukraine (hereinafter - CAP of Ukraine) does not clearly state the institution of mediation as part of judicial practice, and there are no references to other codes that would allow such an interpretation, so there is probably only one option - to offer mediation as part of the administrative activities of courts (Verkhovna Rada of Ukraine, 2005).

Once a case has been referred to the court in accordance with the case plan, the judge or panel of judges must first determine whether the judge or participants in the

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proceedings believe that the case can be resolved through mediation. After discussing, for example, in the framework of the preparatory proceedings at a preliminary hearing (Article 111 of the Criminal Procedure Code of Ukraine) the expediency of mediation with the parties and with their consent by the panel or judge adjourns the proceedings (Article 113 of the Criminal Procedure Code of Ukraine) and transfers the dispute for consideration by a judge-mediator of the administrative court for the purpose of mediation. The mediator conducts the mediation procedure (in the courtroom) under his own responsibility. Organizational support in the preparation of case materials is provided by the court office. If the mediation is successful, a final agreement is concluded between its participants, which creates a precondition for closing the lawsuit in the case. How exactly this is done depends on the legal regulation of the status of a mediator. If the participants in the process or the mediator believe that the mediation did not yield results, ie is unsuccessful, the materials are returned to the relevant judicial board, which continues the claim proceedings in the case. The introduction of judicial mediation in the administrative courts of Ukraine, as part of their administrative activities, does not conflict with the norms of the CAP of Ukraine: namely, on the basis of waiver of an administrative claim, recognition of claims or conciliation of the parties (Karmaza, 2017).

Discharged in Art. 11 CAP of Ukraine, the principle of dispositiveness is reflected at all stages of administrative proceedings: within the preparatory proceedings of Art. 110 CAP of Ukraine, in Article 112 CAP of Ukraine (waiver of the claim, recognition of the claim) and Art. 113 CAP of Ukraine (conciliation), in court (Article 122 CAP Ukraine and further: Article 136 part one - waiver of the claim and recognition of claims, and Article 136 part two - conciliation), in the appellate (Article 193- 194 CAP of Ukraine) and cassation proceedings (Articles 218-219 CAP of Ukraine); given the principle of dispositiveness, enshrined in Art. 11 CAP of Ukraine, and its manifestations at different stages of administrative proceedings, the norm of Art. 122 CAP of Ukraine on the acceleration of court proceedings is also not an obstacle to the implementation of the mediation procedure. According to Art. 122 CAP of Ukraine administrative case must be considered and resolved within a reasonable time.

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As a rule, at the stage of preparatory proceedings it is possible to establish whether it is expedient to conduct mediation in the case. If the legal dispute with the consent of the participants in the process is transferred to mediation, the conflict with the norm of Art. 122 CAP of Ukraine does not arise. The possibility of mutual agreement of the parties to stay the proceedings is provided by Art. 11 CAP of Ukraine, according to which each person who has applied for judicial protection has the right to dispose of their claims at its discretion. As we can see, the norms of the CAP of Ukraine do not create obstacles to the temporary suspension of proceedings by mutual consent of the participants in the process. If we interpret Art. 122 CAP of Ukraine, focusing on its legal purpose and objectives, the monthly limitation of the trial is primarily intended to protect the parties from delaying the proceedings, as well as to ensure in their own interests as soon as possible legal protection.

If, in the interests of achieving a mutually beneficial settlement of the dispute, the parties agree to suspend the proceedings for the purpose of conducting the mediation procedure, they shall exercise their dispositive rights under Art. 11 CAP of Ukraine, without coming into conflict with the provisions of Art. 122 CAP of Ukraine on reasonable terms of consideration of administrative case (1 month). The fact that such an interpretation in favor of mediation is in line with the intentions of the legislator is evidenced by the similarity of the procedure for closing the proceedings by concluding an amicable agreement in court. According to Art. 113 CAP of Ukraine, the court in the preparatory stage of consideration at the request of the parties suspends the proceedings for the time necessary for them to reconcile. And according to Art. 136 CAP of Ukraine, the parties at their request are given time for conciliation; however, the rules of Art. 112 CAP of Ukraine on the waiver of the claim or its recognition and Art. 113 CAP of Ukraine on conciliation, according to which the waiver of the claim, its recognition or conditions of conciliation of the parties must not contradict the law or violate anyone's rights, freedoms or interests, do not interfere with the procedure - judicial mediation in administrative proceedings (Krasilovska, 2015).

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Logically, this norm, together with the relevant current provisions for the preparatory stage and trial (Article 136 of the Criminal Procedure Code of Ukraine), appellate (Article 193 of the Criminal Procedure Code of Ukraine) and cassation proceedings (Article 219 of the Criminal Procedure Code of Ukraine) does not mean that the court proceedings in the case as a result of successful mediation on the basis of either the rejection of the claim, or its recognition, or by concluding by mutual agreement of the parties to the settlement agreement must once again conduct a full legal review of the claim. After all, recognition of a claim, refusal and conciliation are those forms of ending a legal dispute which, on the one hand, speed up the proceedings and, on the other hand, contribute to procedural economy and relief of courts. The opposite understanding of the provisions of Articles 112, 113, 136, 193 and 219 of the Criminal Procedure Code of Ukraine, namely that the court must once again conduct a full legal review of the claim, would make it impossible to implement such tasks; the activity of a judge as a mediator does not contradict the norms of Art. 5 of the Law of Ukraine on the Status of Judges. According to this article, a judge may not combine his work with any other paid activity, except for scientific, teaching and creative activities. In the case of judicial mediation, there are no problems in complying with this requirement of the law, as the judge performs the duties of a mediator during his working hours without additional payment (Bozhenko, 2017).

If necessary, the workload for a judge working as a mediator can be balanced by appropriate changes in the distribution of cases; the issue of court fees and costs for the mediation procedure in case of its successful completion is decided depending on the chosen form of judicial closure of the proceedings (waiver of claim, recognition of the claim or conciliation of the parties) and relevant law on payment of court fees. The parties have the right to resolve this issue independently and to fix it as one of the clauses of the agreement on the results of mediation, which is then recorded by the appropriate judge as an amicable settlement; if the parties have not agreed on the distribution of court costs, then each of the parties in the case bears half of the court costs (Article 96 of the CAP of Ukraine). Thus, we believe that the Code of Administrative Procedure of Ukraine provides

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an opportunity to introduce mediation as part of the administrative activities of the court, without making changes to existing legislation.

In our opinion, the need to introduce the institution of mediation in the domestic legal system is based on the positive results of the practice of applying the institution of reconciliation in many countries, which indicates its effectiveness. In addition, it will be in line with Ukraine's general position on the harmonization of national legislation with the legislation of the European Union, as a number of recommendations and decisions of the Council of Europe are devoted to the issue of conciliation procedures. The issue of creating a legal basis for the formation of the institution of mediation and ensuring effective mechanisms for its implementation remains relevant today. The introduction of alternative dispute resolution programs at the state level, the development of procedures for dispute settlement through negotiations, the creation of mediation centers will create quality conditions not only for promoting mediation in our society, but also cause some changes in public awareness of mediation and its practical application. That is why the introduction of effective mechanisms for alternative dispute resolution is appropriate at the present stage of development of the national legal system. This will not only reduce the burden on the judiciary, but also speed up the resolution of disputes. Of course, mediation is not a panacea for resolving all problematic aspects of national justice, but at the same time it opens up new, more effective opportunities for alternative dispute resolution.

5 CONCLUSIONS

The basic idea of the development of justice (in particular, administrative) is the search for new methods and ways of resolving legal disputes, which includes the development of conciliation procedures as part of a more general process of optimizing the consideration and resolution of the case. The legal nature of conciliation procedures originates from the notion of judicial activity as a purely conciliation procedure, the purpose

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of which is to maintain balance and stability in society, the possibility of concluding an amicable agreement as a dispute settlement procedure.

Mediation can be seen as an additional and effective mechanism for protecting human rights and ensuring the rule of law and consent in society. Mediation can provide a speedy resolution of disputes at the lowest cost through processes tailored to the needs of the parties. In addition, the agreements reached in the mediation process are more likely to be voluntarily adhered to, and friendly and lasting partnerships will be maintained between the parties. Such benefits are becoming increasingly apparent and effective in situations that are, inter alia, international in nature between entities.

Various approaches to the regulation of conciliation procedures in administrative proceedings have been created by world practice. However, the list of such procedures and the degree of formal and actual coercive measures may vary from country to country. There are countries with mandatory application of conciliation procedures before filing a lawsuit, countries whose legislation provides for voluntary parties to conciliation proceedings, as well as states that prefer indirect incentives for the parties to undergo pre-trial conciliation proceedings. However, all these approaches are united by one common pattern - the activity of the parties in the field of conciliation is approved and often regulated.

Despite some contradictions, the gradual introduction of the institution of mediation is not just possible, but a necessary measure that will promote the legal culture of the population, help unload the system of administrative courts of Ukraine and promote the peaceful settlement of public disputes. After all, mediation is one of the most common alternative ways of resolving disputes in foreign countries, which helps to relieve the judiciary from a significant number of cases that can be successfully considered by civilized methods, without recourse to the judiciary. The introduction of the institution of mediation in Ukraine at the legislative level is long overdue and necessary. The use of such means will only contribute to the full and comprehensive protection of the rights and interests of individuals and legal entities, including in relations of power and management. At the same time, the prospects for the introduction of such an alternative dispute

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resolution will help, first of all, to reduce the workload of administrative courts, as well as open the way for applicants to find the most favorable satisfaction of their claims.

The purpose of mediation is to reach an agreement, ie such agreements that will be acceptable to all parties to the dispute. Of course, the ideal is to find a solution that reflects and optimally reconciles their interests in the sense that each party gains something and loses nothing significantly. However, mediation does not always have to involve a detailed reconciliation of all the factual and legal circumstances of the case. The mediator does not conduct a formalized process, does not call witnesses and experts, and his goal is not to establish the truth - neither objective nor procedural. In fact, through mediation, people learn to talk to each other in a new way, listen and understand the other side. Mediation forms a sense of responsibility for one's own behavior and develops dialogue and activity. Thus forms the foundations of public communication and civil society.

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