

КРИМІНАЛЬНИЙ ПРОЦЕС ТА КРИМІНАЛІСТИКА; СУДОВА ЕКСПЕРТИЗА, ОПЕРАТИВНО-РОЗШУКОВА ДІЯЛЬНІСТЬ

DOI: 10.34015/2523-4552.2022.4.12

УДК: 343.13

Minenko Sofiia,

*Doctor of Philosophy in Management,
Head of the Department of Postgraduate
and Doctoral Studies of the State
Biotechnological University
ORCID: 0000-0003-3033-1911*

MEDIATION AS A METHOD OF CONFLICT RESOLUTION IN THE FIELD OF CRIMINAL JUSTICE

The article examines the role and effectiveness of mediation as a method of conflict resolution in the criminal justice system. The author examines the introduction of mediation practices in criminal proceedings, emphasizing the potential for reducing conflict, improving mutual understanding of the parties and ensuring a fairer resolution of cases. The article also analyzes the impact of mediation on improving the efficiency of justice and the role of this method in supporting the principles of humanization of the legal system.

Keywords: *mediation, conflict, criminal procedure, conflict resolution, justice, humanization, judicial reform, mediation practices.*

Problem identified. Ukraine is currently implementing reforms in various areas of legislation, particularly in the area of criminal procedure. This is due to the introduction of the Institute of Restorative Justice, which leads to the active improvement of laws and aims to take greater account of the rights and interests of citizens. This approach aims to humanise legal norms and ensure fairness in the relationship between a person and the justice system.

Analysis of current research and publications. The researchers thoroughly studied the aspects of the implementation and effectiveness of

mediation in Ukraine. Each of the researchers analysed the specifics of the implementation of this institution, focusing on the improvement of the national legislation. Among the scientists who have actively studied this issue are Z.D. Smitienko, I.E. Kurliak, N.A. Turman and others.

Aim and objectives of the research. The article examines the relevance of the introduction of mediation in relation to the processes of European integration. It argues that the introduction of this conciliation mechanism, which has been successfully applied in most European countries, is an important step towards

creating an opportunity for alternative conflict resolution at the pre-trial stage or during court proceedings.

Summary of the main material.

Ukraine, as a relatively young state, is constantly improving its legislation, and one of the innovations is the introduction of the institution of mediation. Most scholars define mediation as an approach to conflict resolution in which a neutral third party provides a structured process to assist the conflicting parties in reaching a mutually acceptable resolution of the dispute [1].

The introduction of mediation in criminal proceedings in Ukraine was based on the inclusion in the new Criminal Procedure Code of Ukraine of provisions on the possibility of concluding a reconciliation agreement between the victim and the suspect or accused. The European Union Decision "The status of the victim in criminal proceedings" of 15 March 2001 provides the following definition "Mediation in criminal cases is the process of finding a mutually acceptable solution between the victim and the offender before or during criminal proceedings with the assistance of a competent person - a mediator". The purpose of mediation is not only to achieve reconciliation between the parties to the conflict, but also to make the offender aware of the consequences of his or her unlawful behaviour and to compensate for the damage caused. For the victim, it is an opportunity to express his or her attitude to the perpetrator's actions, to share experiences and to reduce tensions.

Opponents of the idea of introducing mediation point out that some of its principles contradict judicial

and procedural norms, such as the principle of the inevitability of punishment for a crime, the protection of the rights and interests of the injured party, and the confidentiality and neutrality of the mediator. Mediation is also criticised for the fact that its proponents sometimes too easily ignore the economic, political and symbolic functions of criminalisation and law enforcement practices, which can reduce the level of public control and worsen the crime situation. The criminal procedure of mediation is based on two interrelated elements: confidentiality and impartiality. Confidentiality implies the obligation to protect public information obtained during mediation sessions from disclosure or leakage.

With regard to the principle of impartiality in criminal mediation, it is important to identify and evaluate the measures taken. The role of the mediator is particularly important as he or she has to create the conditions for a mediation process in which the guilt of the person is established and an agreement on conflict resolution is reached. The mediation process has its own peculiarities with regard to the participants and their legal status, including their rights and obligations while participating in the process.

The victim and the offender are compulsory participants in mediation. If mediation is used at the pre-trial stage, the offender is treated as a suspect, and if mediation is used at the trial stage, he or she has the status of an accused person. Despite some positive changes in the legislation, the mediation procedure is currently not clearly regulated in the Criminal Procedure Code of Ukraine (hereinafter - CPC). The status of the mediation body,

the legal status of the mediator, the establishment of quality control of mediation services and similar requirements remain unresolved. In addition, the CPC only defines certain aspects of the procedure for concluding mediation agreements, without specifying the body that will perform these important functions. Article 469 states that the agreement on a reconciliation agreement may be concluded independently by the victim and the suspect or accused, the defence counsel and the representative, or by any other person with the consent of the parties to the criminal proceedings (except the investigator, the prosecutor or the judge).

The conditions for the introduction of mediation in criminal proceedings are set out, for example, in Article 469(1) of the Criminal Procedure Code (CPC). It states that a reconciliation agreement may be concluded on the initiative of the victim, the suspect or the accused. The parties may negotiate the agreement independently, including the victim and the suspect or accused, the defence counsel and the representative, or with the assistance of another person chosen by the parties to the criminal proceedings (except the investigator, prosecutor or judge).

It is interesting that the legislator has defined the right of the parties to choose any person agreed by the parties to conduct the mediation (except the investigator, prosecutor or judge). However, under such conditions there may be problems with violations of mediation procedures or principles. It is therefore important to establish criteria for the persons selected for mediation, as the absence of requirements for a mediator may lead

to false agreements. In addition, those who wish to engage in mediation should be required to undergo special training.

At present, scientists are proposing to adopt a law "On Mediation", to include a mediator among the subjects of criminal proceedings, to define his rights and duties, and to develop organisational and logistical measures to ensure that the activity of mediators remains relevant [3].

It is interesting that the legislator has provided the possibility for the parties to choose any person to conduct the mediation agreed upon by the parties, except for the investigator, prosecutor or judge. However, under such conditions there may be a risk of violation of mediation procedures and principles. It is therefore important to establish specific criteria for persons wishing to engage in mediation activities, as the absence of requirements for a mediator may lead to inadequate agreements. In addition, those who wish to engage in mediation should be required to undergo mandatory training. Today, scientists are actively proposing the adoption of a law on mediation, the introduction of a mediator into the circle of subjects of criminal proceedings with the definition of their rights and obligations. They also point to the need to develop organisational and logistical measures to ensure the effective work of mediators [3].

Conclusions. In order to create an adequate legal framework for effective conflict resolution through mediation in accordance with European standards and international law, it is necessary to establish a legal framework. This framework should include the basic principles of mediation, the scope of its application, the scope of

criminal cases in which mediation may be appointed, the requirements for mediators, the conditions for granting the status of mediator, the legal status of a mediator and the maximum timeframe for mediation in order to avoid undue delay of the proceedings by the participants.

The final outcome of the mediation process is the conclusion of an agreement between the parties, which is subsequently approved and enforceable by the court. Thus, the conclusion of an agreement by the parties serves as evidence that the mediation process has taken place. Establishing the definition of a mediation agreement at the legislative level is an important step, as it facilitates a clear interpretation and understanding of the results of mediation to resolve a conflict or dispute between the parties.

As can be seen, the institution of mediation in Ukraine is a legislative innovation that is still in the process of formation. The Criminal Procedure Code contains the prerequisites for the effective implementation of this institution. The Code should include provisions that will form the basis of the mediator's activity and determine his or her conduct. Clearly establishing general standards of conduct for mediators and defining the norms by which they should be guided is an important element in ensuring the proper conduct of the mediation process and increasing public confidence in mediation as an effective means of conflict resolution. The establishment of this institution will help to avoid additional financial costs for the parties and the state, as well as to reduce the burden on the judicial system.

References

1. Smitienko Z. D. Mediation as a category of criminal proceedings and its application in criminal proceedings against minors / Z.D. Smitienko // *Zovnishna torgovia: ekonomika, finansy, pravo*. 2015. No. 4. P. 130-139.
2. Kurlyak I. E. Use of mediation process in cases of juvenile offenders in Poland / I.E. Kurlyak // *Young Scientist*. 2016. No. 7. P. 427-431.
3. Thurman N. Mediation in criminal proceedings: ways to improve the current legislation / N. Thurman // *Entrepreneurship, economy and law*. 2017 - No. 3 - p. 276-280.
4. Criminal Procedure Code of Ukraine [electronic resource]: Law of Ukraine of 13.04.2012 No. 4651-VI, as amended on 12.04.2018 // Legislation of Ukraine: official web portal of the Verkhovna Rada of Ukraine. Access mode: <http://zakon5.rada.gov.ua/laws/show/4651-17/paran812#n812>.
5. Opinion of the Supreme Court of Ukraine on the Draft Law of Ukraine of Ukraine "On Mediation" No. 2480 of 27 March 2015 [Electronic resource]: [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(print\)/04474D047AB37BA5C2257E3D002636E3](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(print)/04474D047AB37BA5C2257E3D002636E3).
6. Draft Law of Ukraine "On Mediation No. 3665 of 17.12.2015 [Electronic resource]. Access method: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57463.
7. Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters (Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers' Deputies). URL: https://www.coe.int/en/web/prison/home//asset_publisher/ky2olXXXogcx/content/recommendation-cmrec-2018-8?inheritRedirect=false

8. Roskoshna N. G. Mediation in the concept of restorative justice: Doctoral thesis: 081. Kharkiv, 2021. 199 с

Міненко С. І., доктор філософії з менеджменту, завідувачка відділу аспірантури та докторантури Державного біотехнологічного університету
ORCID: 0000-0003-3033-1911

Медіація як метод вирішення конфліктів у сфері кримінального правосуддя

Стаття розглядає роль та ефективність медіації як методу вирішення конфліктів у сфері кримінального правосуддя. Автором досліджено впровадження медіаційних практик у кримінальний процес, наголошуючи на можливостях зменшення конфліктності, покращенні взаєморозуміння сторін та забезпеченні більш справедливого розв'язання справ. Стаття також аналізує вплив медіації на підвищення ефективності правосуддя та роль цього методу у підтримці принципів гуманізації правової системи.

Ключові слова: медіація, конфлікт, кримінальний процес, вирішення конфліктів, правосуддя, гуманізація, судова реформа, медіаційні практики.