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CURRENT ISSUES OF MEDIATION AS AN ALTERNATIVE METHOD OF SETTLEMENT OF CONFLICTS

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АКТУАЛЬНІ ПИТАННЯ МЕДІАЦІЇ ЯК АЛЬТЕРНАТИВНОГО МЕТОДУ ВРЕГУЛЮВАННЯ КОНФЛІКТІВ

Abstract. The article analyzes the theoretical and practical aspects of mediation as an alternative solution for conflict situations and provision for the participants of the relationship cooperation in solving of the existing problem and the joint search for solutions that would take into account the interests and wishes of the conflicting parties. The essence of mediation has been clarified in a sense of peaceful coexistence, to which the direction should be sought in informal interpersonal relations; and mediation as a kind of system-forming reference point in ordering connections for balancing various social interests with the help of reconciliation procedures and as a way of maintaining intra-communal peace and means of civilized constructive development and multiplication of material and spiritual values.

Key words: mediation; resolution conflict situations; cooperation; conflicting parties; social interest; mediator.

Анотація. У статті проаналізовано теоретичні та практичні аспекти медіації як альтернативного способу вирішення конфліктних ситуацій і забезпечення для учасників відносин співпраці у розв'язанні існуючої проблеми та спільний пошук рішень, які би враховували інтереси і бажання конфлікуючих сторін. З'ясовано сутність медіаторства у сенсі мирного співіснування, до якого слід прагнути у неформальних міжособистісних відносинах, і медіацію як своєрідний системоутворюючий орієнтир в упорядкуванні зв'язків задля збалансування різноманітних соціальних інтересів за допомогою примирних процедур та як спосіб збереження внутрішньообщинного миру і засіб цивілізованого конструктивного розвитку та примноження матеріальних і духовних цінностей.

Ключові слова: медіація; вирішення конфліктних ситуацій; співпраця; конфлікуючі сторони; соціальний інтерес; медіатор.

Introduction. The growth of personality social roles, humanization and democratization of society, dynamics of socio-economic and socio-cultural processes, their integration and globalization indicate the importance of formation of specialists with social direction and special professional preparations for building constructive conflict-free relationship.

Separate theoretical and practical aspects of mediation as an alternative solution for conflicting situations were highlighted in the works of L. Morska,

E. Sorokina, M. Vdovina, M. Kuzmyna, O. Belinska, H. Yeromenko, L. Dolynska, and L. Matyash-Zayats.

Everyone has the right to choose their own way of protecting their own interests! Mediation is one of them. This is an alternative tool that is important to get to know and try to apply at least once in that area of your life or professional activity that is related to people and disputes, conflicts between them. And if we are talking about a dispute between people, then it is necessary to understand that behind the interests of any person are his/her interests and those close to him/her.

Because of this, mediation is developing in the political sphere, in resolving conflicts and misunderstandings between the authorities and communities, and even in the sphere of consumer rights protection, mediation is gaining momentum. Person – person, person – business, business – business, person (public) – authority, authority – authority (may be in the form of various political forces) – and this is not yet an exhaustive list of those relationships in which conflicts of interest arise and where it has its own effective use of mediation.

The aim – to analyze the theoretical and practical aspects of mediation as an alternative way of resolving conflict situations and maintaining cooperation between conflict participants in solving problems.

Theoretical framework. The profession is becoming relevant in the world; the mediator is a certified specialist in management conflicts, able to organize effective communication between the parties to the conflict, to ensure relations between them and cooperation in solving of the existing problem and the joint search for a solution that would take into account the interests and wishes of the parties as much as possible.

Mediation competence is a necessary component for professional activities of social employees, therefore with a professional system preparations of the students to the role of the mediator is based on the scientific and methodological justification of the necessary provision of the educational process in higher education school, taking into account the needs of social and professional practice competence of the future specialist [12, p. 89].

Only in recent years, mediation began to be used properly in Ukraine, therefore, the process of its consolidation at the legislative level is currently underway, which is confirmed by registration bills on mediation in the Verkhovna Rada Council of Ukraine. So, the latest bill “On mediation” No. 2480 was registered on March 27, 2015, the purpose of which is to introduce a legal institute at the legislative level mediation and creation of legal conditions for the application of the mediation procedure in Ukraine [9].

This draft law lays down and outlines the legal basis for conducting an extrajudicial conflict resolution procedure (mediation) by mutual agreement of the parties of the conflict and the participation of a mediator (mediator), as well as defines the principles of mediation, regulates the procedure and order of its conduct, determines the legal status of the mediator, his/her rights and obligations, and responsibility.

It is also worth noting that today, despite the lack of special legislation, Ukraine can boast of its own ex-

perience in applying the mediation procedure, which confirms the high effectiveness of this institution in resolving conflicts.

A number of regional mediation groups operate on the territory of Ukraine, which have merged into the National association of mediators of Ukraine. The country has a Ukrainian Mediation Center (hereinafter referred to as the Ukrainian Mediation Center), established under the Kyiv-Mohyla Business Schools, Lviv, Podil and Kyiv mediation centers – all of them carry out their activities and report their results online through the Internet.

Factors of scientific interest in mediation as a social phenomenon is its obvious multidisciplinary, about what was specified above, complexity and permanent evolution, therefore, identifying and understanding individual characteristics of mediation maybe only in multidisciplinary aspects.

Nowadays, mediation should be considered as a new subject region, because of its general trend to professionalization of different fields, where available expert knowledge, arranged that, what mediation in a conflict situation is separated and marked as a new professional direction, despite on that, what formed as an interdisciplinary region on limits of certain disciplines and acquired from other disciplines, many of which are from scientific instrumentation, theoretical instructions and general scientific approaches [8].

Considering the interdisciplinary context, it is interesting to investigate the meaning of the concept of “mediation” in various aspects, in particular, legal, conflict-related, sociological, political and, above all, philosophical perspectives [7].

As for the characterization of mediation with positions of mediation-philosophical interpretation, then concept “mediation” traces to connect above all with category reconciliation. In this aspect, the peaceful coexistence is not only somehow moral ideal, to which should be sought in informal interpersonal relations, but also a kind of system-forming reference point in ordering different connections, what has to balance various (often conflicting) social interests with the help of conciliation procedures, which arise from one side, as a way of self-preservation of intra-community peace and security, and on the other hand, as a mean of civilized constructive development and multiplication of material and spiritual values [4, p. 123].

The study of the phenomenon of mediation is multifaceted, in context of its historical development, from theoretical justification of the components of the concept of “mediation”. Such a point of view is fair

in its own way and, essentially represents by itself the narrow and wide understanding of mediation with positions of mediational and philosophical treatment.

Among alternative methods of solution of disputes, the prominent place belongs to the mediation, within the framework of which the dispute parties are able to achieve a solution to the conflict on the basis of fundamental principles of rights and mediation, implementing function of unloading state judicial systems, improvement of citizens, also capable to raise state ensuring the right to justice, and has a paradigm at its core partnership, since the state, in fact, delegates certain part of their own powers in sphere of implementation of justice for non-state subjects, namely parties, to the dispute and the mediator.

A mediator is a person who meets the requirements established by this law and the mediation clause (agreement on mediation), who has the status of a mediator in accordance with this law and whom the parties to the dispute have chosen to conduct mediation [9].

M. Ya. Polishchuk and V. M. Scrap propose to consider mediation as an “alternative method of resolution, while mediation has two positive aspects of influence on the process of conflict resolution” [8, 10]. First, the presence of a third party at the negotiations itself has a positive effect, as it reduces the destructiveness in any relationships. Secondly, mediation aimed at organizing effective communication and dialogue between parties conflict, makes them active participants of the process of the conflict resolution [2, p. 176].

Accordingly, preparing the social worker for the role mediators on the basis of mediation tasks, the key task is the formation of their skills and novices to carry out social and legal protection based on knowledge and practical skills in conflictology, law, psychology, jurisprudence, public speaking, foreign languages, as well as personal characteristics [6].

It should be noted that in the code of ethics of mediators, it is indicated that the mediator has the right to conduct the mediation procedure if he/she has sufficient qualifications to do so in order to satisfy justified expectations. This presupposes proper training, continuous updating of knowledge and practice of mediation in accordance with standards and principles of accreditation of social sphere mediators [3].

Based on the above, we can distinguish the roles of a mediator:

- catalyst;
- manager;
- arbitrator;
- facilitator;

- translator;
- informant;
- “bridge” to the new structure;
- “checker” of the reality of agreements reached;
- conductor;
- synthesizer [5].

It should be mentioned that the mediator’s competence is characterized by a set of knowledge, abilities and skills, as well as personal characteristics, first of all, intellectual and emotional-motivational [3].

According to the aspects outlined above and based on the role of the mediator, the competence of the social worker and the method of formation of the mediator competence of future lawyers according to L. Morska, we can distinguish the criteria of the mediator competence of future social workers:

- professional focus and motivation;
- the ability to easily adapt to the situation and establish contact;
- erudition in the field of politics, law, conflict studies, psychology;
- communication;
- stress resistance;
- objectivity [7].

The most difficult is the process of cognition own capabilities in the situation of uncertainty in the conflict. A person involved in a conflict loses the ability to understand it and his/her role in it [1, 11]. It is important not to lose this ability, especially since the conflict is the subject of professional application of the skills of a mediator and to reconstruct the conflict reality, he/she needs certain knowledge, methods, theoretical constructions, stereotypes of behavior.

The educational process can be considered as the first stage in the process of development and further formation of the mediation competence, in a situation, if its core is a conflict situation or a real conflict between subjects of interaction.

However, there are rare cases when a real conflict becomes the subject of professional diagnostics using methods that can be mastered in the educational process. Let’s consider five specific blocks of mediation competences:

- 1) theoretical knowledge in the field conflictology (pedagogical, legal, psychological, sociological, etc.);
- 2) possession of social technologies prevention, management, minimization of destructive forms of conflict;
- 3) formation of a professional type of thinking, which includes reflexivity, methodology, comprehensiveness, creativity;

4) mastery of psychohygiene and stress resistance technologies in conflicts;

5) implementation of the ethical code of the mediator-practitioner [5].

Characteristics of mediator competence include:

- high degree of intellectual and emotional and psychological stability;

- flexibility of forms of conducting classes in the experimental mode;

- aggravation of real contradictions and conflicts in the learning process;

- the appearance of unforeseen results, under which new ideas, relations, views, methods, theoretical schemes, etc. are meant;

- the possibility of transition to a qualitatively new level of development of management decision-making technologies in conflict situations, etc. [5].

The conflict can be considered as a method and used for the formation of mediation competence.

“Conflict method” is a way of knowing and a way of building a rational activity, as well as development of conflict effectiveness with the aim of minimizing destructive elements in the conflict and turning it into a socially positive direction. It allows:

- to diagnose the situation at the micro level;

- to provide the necessary means and methods of working with the conflict participants themselves;

- to develop reflective thinking;

- to minimize destructive consequences;

- to produce stress-resistant qualities in conflict;

- to promote the development of conflict-related competence [13].

Conflict and conflict interactions are considered necessary prerequisites and conditions for the development and implementation of new ideas, innovations, as well as for the intellectual, communicative, emotional, psychological and professional development of the individual.

Practice shows that typical strategies regarding the behavior in conflict situations may include a departure from communication or a compromise agreement accompanied by pseudo-communication.

Acquisition of mediation commercialism contributes to the development of adequate situations, psychological attitudes, as well as the development of skills and abilities that will help:

- to organize one's behavior in difficult situations of social interaction optimally;

- to resolve problems in relationships with other people without conflict;

- to control one's own emotions, motivations and assessments in a conflict situation situations;

- to promote the development of psychological attitudes.

The choice of methodological tools for the development of mediation competence is determined by the development of attitudes, skills and abilities that ensure the ability of the future employee in a real conflict; carry out activity aimed at minimization destructive forms of conflict and transfer of socially negative ones conflicts in a socially positive direction, i.e.:

- a) development of awareness of the range of possible strategies of conflicting parties;

- b) the ability to contribute to the implementation of constructive interaction in concrete conflict situation, which is actualized in skills and abilities that provide:

- collection of information about the conflict;

- clarification of information about the conflict;

- analysis of the conflict situation;

- choosing the right model, tactics of mediation;

- choosing a conflict resolution strategy adequate to the circumstances conflict;

- tension relief after conflict;

- analysis of performed actions from the solution of the conflict [6].

As already mentioned, mediator competence is a complex of professional knowledge, abilities and skills, as well as the experience of one's own activity, which allow to make objective judgments and make accurate decisions for conflict resolution.

Conclusions and Prospects for Research.

Therefore, summarizing the above, it can be stated that the professional training of a social worker for the role of a mediator is based not only on communication skills and knowledge in the field of conflictology, but also on systemic ideas about the regularities of microsocioal dynamics in problematic conditions, knowledge of psychology, jurisprudence, and law. We see prospects for further research in the development and approval of a training program for the development of mediation competence in the future social workers.

List of literature

1. Ващенко І. В. Конфліктологія та теорія переговорів : навч. посіб. / І. В. Ващенко. – К. : Знання, 2013. – 407 с.
2. Долинська Л. В. Психологія конфлікту : навч. посіб. / Л. В. Долинська, Л. П. Матяш-Заяц. – К. : Каравела, 2013. – 304 с.
3. Кодекс етики медіатора [Електронний ресурс]. – Режим доступу : http://ukrmediation.com.ua/ua/about_center/mediator_code_of_ethics/.
4. Козирева В. Медіація як альтернативний спосіб вирішення господарських спорів / В. Козирева, А. Гаврилішин // Малий і середній бізнес (право, держава, економіка). – 2011. – № 1/2. – С. 122–128.
5. Конфлікт як об'єкт вивчення теорії соціальної роботи. – Режим доступу : <http://www.enu.kz/repository/repository2014/konflikt-kak-obekt>.
6. Малигіна К. Позасудове врегулювання спорів: огляд існуючих альтернатив / К. Малигіна // Юридична газета. – 2013. – 14 трав. (№ 19/20). – С. 40–41.
7. Морська Л. Модель системи формування медіаторської компетентності майбутніх юристів / Л. Морська // Наукові записки. Серія «Педагогіка». – 2015. – № 2. – С. 20–27.
8. Поліщук М. Я. Поняття медіації як альтернативного методу вирішення спорів / М. Я. Поліщук // Держава і право. Юридичні і політичні науки. – 2014. – Вип. 65. – С. 134–139.
9. Проект Закону України «Про медіацію» (реєстр від 27.03.2015 р. № 2480), внесений на розгляд Верховної Ради України народним депутатом А. І. Шкрум [Електронний ресурс]. – Режим доступу : <http://w1.c1.rada.gov.ua>.
10. Слома В. Медіація як спосіб вирішення цивільно-правових спорів / В. Слома // Актуальні проблеми правознавства. – 2023. – № 4 (36). – С. 89–93. DOI 10.35774/app2023.04.089.
11. Bundesgesetz über Mediation in Zivilrechtssachen. – Access mode : <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002753>.
12. Hnatyshyn Yu. Informative component of mediator competence of future social workers / Yu. Hnatyshyn, H. Klishch, S. Hnatyshyn // Медична освіта. – 2022. – № 4. – С. 88–93. DOI 10.11603/m.2414-5998.2022.4.13638.
13. Hnatyshyn Yu. Mediation as a conflict resolution Technology / Yu. Hnatyshyn, H. Klishch, L. Sas // Медична освіта. – 2023. – № 4. – С. 70–75. DOI 10.11603/m.2414-5998.2023.4.144.78.

References

1. Vashchenko, I.V. (2013). *Konfliktolohiia sheta teoriia perehovoriv [Conflictology and negotiation theory]*. Kyiv: Znannia [in Ukrainian].
2. Dolynska, L.V., & Matiash-Zaiats, L.P. (2013). *Psycholohiia conflictu [Conflict Psychology]*. Kyiv: Karavela [in Ukrainian].
3. Codex etykiy mediatora [Ethic Code of Mediators]. Retrieved from: http://ukrmediation.com.ua/ua/about_center/mediator_code_of_ethics/ [in Ukrainian].
4. Kozyrieva, V., & Havrylishyn, A. (2011). *Mediatsiia yak alternativnyi sposib vyrishennia hospodarskykh sporiv [Mediation as an alternative means of solving business disputes]. Malyi and serednii biznes (pravo, derzhava, ekonomika) – Small and medium business (law, state, economics), 1/2, 122-128 [in Ukrainian]*.
5. Konflikt yak object vyvchenia theoryy sotsyalnoi roboty [Conflict as an object for social work studying]. Retrieved from: <http://www.enu.kz/repository/repository2014/konflikt-kak-obekt> [in Ukrainian].
6. Malyhina, K. (2013). *Pozasudove vrehuliuvannia sporiv: ohliad isnuuychkh alternatives [Solving conflicts out of courts: review of the existing alternatives]. Yurydychna hazeta – Legal Newspaper, 19/20, 40-41 [in Ukrainian]*.
7. Morska, L. (2015). *Model system formuvannia mediatorov kompetencia u maibutnikh yurystiv [The model of the system for forming mediation competence in future lawyers]. Naukovi zapysky. Seriya «Pedagogika» – Scientific Issues. Series “Pedagogics”, 2, 20-27 [in Ukrainian]*.
8. Polishchuk, M.Ya. (2014). *Poniattia mediatsii yak alternative method vyrishennia dispute [The concept of mediation as an alternative method of dispute resolution]. Derzhava i pravo. Yurydychni and politychni nauky – State and law. Legal and political sciences, 65, 134-139 [in Ukrainian]*.
9. Proekt Law Ukrainy Pro mediatsiiu (reiestr vid 27.03.2015 r. № 2480) [Draft of the Law On Mediation (register dated 27.03.2015 r. No. 2480)]. Retrieved from: <http://w1.c1.rada.gov.ua> [in Ukrainian].
10. Sloma, V. (2023). *Mediatsiia yak sposib vyrishennia tsyvilno-pravovykh sporiv [Mediation as a means of solving civil legal disputes]. Aktualni problemy pravoznavstva – Current Law Problems, 4(36), 89-93. DOI 10.35774/app2023.04.089 [in Ukrainian]*.
11. Bundesgesetz über Mediation in Zivilrechtssachen. Retrieved from: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002753>.
12. Hnatyshyn, Yu., Klishch, H., & Hnatyshyn, S. (2022). *Informative component of mediator competence of future social workers. Medychna osvita – Medical Education, 4, 88-93. DOI 10.11603/m.2414-5998.2022.4.13638.*
13. Hnatyshyn, Yu.A., Klishch, H.I., & Sas, L.M. (2023). *Mediation as a conflict resolution technology. Medychna osvita – Medical Education, 4, 70-75. DOI 10.11603/m.2414-5998.2023.4.144.78.*

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