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«MEDIATION AS A TYPE OF LEGAL SERVICES»

Abstract. *This paper aims to analyse mediation as a type of legal service, offering an examination of its nature and practical implementation. It begins by examining statutory and scholarly definitions of mediation and proposes considering it not only as a method of conflict resolution but also as a type of legal service. The article identifies mediation's core features as a legal service, including legal analysis, drafting agreements, and supporting enforcement. It also highlights key advantages – such as accessibility, affordability, and flexibility – as well as limitations, particularly its inapplicability to serious criminal cases. The study outlines the essential competencies of a mediator, combining legal expertise with ethical and emotional intelligence, and stresses the importance of a supportive physical environment for mediation. Finally, the paper identifies key challenges to the broader adoption of mediation and calls for active support from both the state and legal community.*

Keywords: *Mediation. Legal services. Alternative dispute resolution. Mediator qualifications. Conflict resolution.*

Over past few decades, the legal system has undergone significant transformations, particularly in approaches to dispute resolution. The legal sphere encompasses a wide range of services designed to resolving conflicts. While litigation remains the traditional method for addressing disputes, alternative dispute resolution (ADR) methods – among which mediation plays a prominent role – have been gaining increasing importance. This topic is especially relevant today, as mediation is considered a relatively new mechanism of dispute settlement and restorative justice. This paper aims to analyse mediation as a type of legal services, offering an examination of its nature and practical implementation. With this purpose, the study will first define mediation as a legal service, then discuss its advantages and limitations, and finally describe the competencies required of a mediator.

Mediation as a legal phenomenon has been formally defined both in statutory law and in academic legal literature. For example, under the Law of Ukraine 'On Mediation', 'Mediation is an out-of-court, voluntary, confidential, and structured procedure in which the parties, with the help of a mediator (or mediators), attempt to prevent or resolve a conflict (dispute) through negotiations' [1]. Notably, many scholars interpret mediation in a similar way. According to N. V. Shyshka, 'mediation is an alternative form of dispute resolution, that is, a certain structured negotiation process in which the parties, with the help of a neutral and impartial third party – the mediator (intermediary) – voluntarily and independently seek to reach a peaceful settlement of their dispute' [2, p. 299]. S. S. Gerasimchuk defined mediation as 'negotiations between the parties with the involvement of a third person – the mediator, who, while generally managing the procedure, helps the parties establish communication between themselves and independently reach the most effective agreements on disputed issues, but does not have the authority to resolve the dispute' [3, p. 272].

Building on these definitions, it is important to consider mediation's practical role within the framework of legal services. As a legal service, mediation involves a range of professional tasks, such as legal analysis of the dispute prior to mediation, assistance in drafting the mediation agreement, conducting the mediation process itself, formalizing the final settlement agreement in writing (which may be notarized), and consultation regarding the enforcement of the agreement.

It is important to note that mediation as a legal service should not be conflated with mediation as a method of conflict resolution. Although these two concepts are closely related, they are not

identical. The principal distinctions between them lie in their scope of application, core components, purpose, and legal regulation. Mediation as a legal service refers to a formal legal activity conducted by a qualified specialist (a certified mediator), primarily within the framework of the legal system and in accordance with established legal procedures. In contrast, mediation as a method of dispute resolution is a broader, often informal approach to resolving various types of disputes – from family to commercial conflicts – which may occur outside the boundaries of formal legal institutions and without any mandatory legal status.

Based on this distinction, we propose the following definition of mediation as a form of legal service: it is a comprehensive system of legal procedures carried out by an authorized professional (mediator) aimed at out-of-court conflict resolution, minimizing adverse consequences, and satisfying the interests of all parties involved in the process.

Mediation as a form of legal service offers numerous advantages over other similar legal procedures. First and foremost, it is important to recognize that mediation comprises several legal services. From this fundamental characteristic stem some of its core benefits – namely, accessibility, cost-efficiency, and promptness. Mediation services enable parties to avoid the expenses associated with litigation and facilitate the swift resolution of disputes. In other words, it reduces both time and financial expenditures in comparison to traditional court proceedings. These cost and time savings are, in particular, due to the composite nature of mediation, which encompasses a range of legal services. Therefore, we propose that the integration of legal services be considered a fundamental advantage of mediation as a legal service.

In the contemporary functioning of legal systems, mediation is increasingly recognized as one of the most effective and promising alternatives to traditional judicial dispute resolution. Unlike the strictly regulated nature of litigation – where participants are bound by rigid procedural norms – the mediation process is grounded in the principles of voluntariness, neutrality, confidentiality, and, most notably, flexibility. This capacity to adapt the process to the unique characteristics of each dispute renders mediation uniquely valuable and practically significant. Flexibility allows mediation to take into account emotional, psychological, and cultural aspects of a conflict, which is particularly vital in family and labour disputes. The mediator can adjust the tone, pace, and methods of communication, employing techniques such as active listening and visualization to foster greater mutual understanding between the parties.

Along with that, it is worth mentioning that mediation as a legal service has its limitations. The primary shortcoming lies in the fact that mediation cannot be applied to all categories of disputes. For example, it cannot be applied in cases involving serious criminal offenses, as such matters require the exercise of state judicial authority.

Further, the integration of mediation services can face certain difficulties. Three principal barriers can be identified: (1) low public trust in the procedure, leading to limited demand; (2) an insufficient number of certified professionals; and (3) the absence or weakness of legal regulation. Overcoming these challenges requires active efforts from both mediation advocates and government authorities.

A critical part of addressing these obstacles lies in ensuring that mediators possess the right qualifications and skills. When it comes to the competencies of a mediator, several points are worth highlighting. Mediation is a professional legal service that should be delivered by a qualified specialist. A mediator must be an individual with formal training and the necessary competencies. A mediator should combine theoretical knowledge, practical skills, and ethical training – elements that together constitute the professional identity of the mediator. In addition, a mediator should possess professional skills such as active listening, the ability to conduct a dialogue, and the capacity to analyse a person's emotional state.

Thus, a mediator is a qualified specialist with special education who applies legal knowledge to facilitate the resolution of disputes between parties and to formalize settlement agreements. The effectiveness of mediation largely depends on the mediator's personality, professional experience, ethical standards, and ability to manage complex emotional dynamics. It is a profession that requires not only legal expertise but also a high degree of personal integrity and emotional intelligence.

It is also worth noting that mediation as a service necessitates a specially designated space to ensure an appropriate atmosphere for dispute resolution. The author personally experienced this during an academic mobility programme in Türkiye, working alongside professional lawyer and mediator Ö. Göbel. Mediation services were conducted in a comfortably arranged environment – free from external distractions, equipped with comfortable seating, paper, and pencils to facilitate note-taking and more effective communication. Additionally, the premises included access to restroom and kitchen facilities. Despite the comfort-oriented setup, the space preserved a formal tone, creating a balanced atmosphere that reduced stress and negativity while encouraging productive conflict resolution.

Thus, the atmosphere for mediation requires both physical comfort and psychological safety, enabling the parties to express their positions and emotions, which can be critically important to the success of the process.

In conclusion, it is evident that mediation represents a distinctive type of legal service, offering significant prospects for development and numerous advantages over other forms of dispute resolution. However, the implementation of such services requires addressing various challenges related to legal culture, public awareness, and adequate legal regulation. Addressing these challenges calls for active engagement from both mediation advocates and governmental authorities responsible for shaping legal systems and fostering legal consciousness within society.

References:

1. On Mediation: The Law of Ukraine of November 16, 2021 No. 1875-IX // <https://zakon.rada.gov.ua/laws/show/1875-20> (last accessed: 10.06.2025)
2. Shyshka N.V. The definitions of ‘mediation’ as an alternative form of dispute resolution: to the problem of legal understanding // *Juridical Scientific and Electronic Journal*. – 2021. – № 4. – P. 297–301.
3. Gerasimchuk S.S. Mediation as a type of alternative dispute resolution: definition, advantages and disadvantages // *Uzhhorod National University Herald. Series: Law*. – 2024. – Vol. 82. – Part 1. – P. 270–274.