JURISPRUDENCE

INTERNATIONAL STANDARDS FOR MEDIATION

Kyrdan B.
Candidate of Law, Associate Professor of the Department of Civil Law Disciplines of the National Academy of Internal Affairs, 1 Solomyanska Square, Kyiv, Ukraine, index 03035,
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Abstract
The adoption of the Law of Ukraine «On Mediation» required analysis of mediation standards in various spheres of public life. Mediation in Ukraine is an alternative way to resolve dispute. However, its application is impossible without studying foreign experience in this area. In our article we have analyzed a number of foreign documents that define the standards of mediation.

It is concluded that international regulations, which define the standards of mediation, are already recognized and used by a number of Member States of the European Union and require more implementation in Ukrainian legislation.

Keywords: mediation, settlement of disputes, conciliation procedures, mediator, mediation standards.

Introduction. Mediation is nowadays one of the effective alternative means of resolving disputes (conflicts), which has a number of advantages over court proceedings (reduced dispute resolution time, simplified dispute resolution procedure, lack of judicial decisions, as the parties decide on their own). Besides, the use of the mediation procedure is a positive development in the State, as its use relieves the judicial system, which is already loaded.

Mediation in Ukraine has existed during the 21st century; however, it became legal on 16 November 2021 with its enshrinement in the Law of Ukraine «On Mediation» (hereinafter – the Law). According to Art. 2 of the Law, the legislation on mediation is based on the Constitution of Ukraine and consists of this Law and other normative and legal acts. If international treaties to which consent to be bound has been given by the Verkhovna Rada of Ukraine, provide for rules other than those established by this Law, the rules of Ukraine' s international treaties apply.

It is important to note that mediation has long been widespread in many countries around the world, and there are relevant standards for mediation, which we will analyze in this article.

In Ukraine, the research on the issues related to the use of alternative dispute resolution methods has been conducted in various aspects. Problems of mediation have also already become the subject of research, in particular, they paid attention to: S. Bychkova, N. Vasilchenko, M. Viktorchuk, G. Goncharova, R. Denisova, V. Dudnik, V. Zaliznyak, O. Karmaza, N. Mazaraki, L. Matveeva, V. Motil, O. Ostrovskaya, T. Podkovenko, S. Fursa, T. Shinkar and other scientists.

Problem statement. Taking into account the need to adapt national legislation to the standards of the European Union, we consider it necessary to analyze international legal standards of mediation.

Research results. The world community tends towards digitalization, namely simplification of business processes, their acceleration and better accessibility. However, such process should be carried out in accordance with the prescribed procedure. Simplifying the process of resolving disputes (conflicts) such as replacing court proceedings with mediation, is also possible.

Analyzing the international legal acts devoted to the settlement of mediation issues, we can identify the following ones: European Convention on the Exercise of Children's Rights, signed on 25 January 1996 (Art. 13), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [1985] UNGA 36; A/RES/40/34 (29 November 1985), United Nations Standard Minimum Rules for the Administration of Juvenile Justice («the Beijing Rules») [1985] UNGA 30; A/RES/40/33 (29 November 1985) and others.

The most important document for the development of the standards of mediation procedures, adopted at the UN level, is the Nations Standard Minimum Rules for the Administration of Juvenile Justice («the Beijing Rules») [1985] UNGA 30; A / RES / 40/33 (29 November 1985). Although the concept of «mediation» is not directly mentioned in these rules, they provide guidance on a number of procedures to be applied to minors, which are mediation in nature: consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority (п. 11.1); The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules (Par. 11.2); a large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include: (a) Care, guidance and supervision orders; (b) Probation; (c) Community service orders; (d) Financial penalties, compensation and restitution; (e) Intermediate treatment and other treatment orders; (f) Orders to participate in group counselling and similar activities; (g) Orders concerning foster care, living communities or other educational settings; (h) Other relevant orders (Par. 18.1) [3].

It should be noted that there are international declarations that define mediation standards developed within multilateral international cooperation during UN Congresses (end with a final declaration, which may subsequently be adopted by the UN General Assembly Resolution). Such declarations often set out the conditions and procedure for implementing mediation procedures.

It should be noted that a number of international instruments defining mediation standards are developed within the Council of Europe and the European Union, but their significance is not limited to the geographical area of Europe or the membership of organizations.

Such standards are typical as they are used in the development of standards in other regions and intergovernmental organizations. That is why we will analyze the European standards of mediation developed within the following international associations: the Council of Europe and the European Union.

Significant body of documents defining mediation standards in European legal space has been developed by the Council of Europe. In particular, as in the case of the United Nations, the Council of Europe has drawn up international instruments whose provisions are binding on ratifying States. The European Convention for the Protection of the Rights of the Child of 25 January 1996, to which Ukraine has been a party since 03 August 2006, is among the treaties, enshrining provisions aimed at guaranteeing mediation procedures. The provisions of Article 13 of the Convention provide: «In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes» [1]. Recommendations prepared and issued by the Committee of Ministers of the Council of Europe pay special attention to mediation standards. However, their analysis requires special research and is a promising area for further research.

The main document of the EU, which defines and establishes the standards of mediation in the Union, is the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The Directive enshrines that, as in the case of Council of Europe, the EU standards the principle of access to justice is fundamental one and, with a view to facilitating better access to justice, called for alternative, extra-judicial procedures to be created by the Member States (Par. 2). Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements (Par. 6) [6].

In general, according to the European Commission, the implementation of Directive 2008/52/EU has played a major role in disseminating mediation procedures in the European legal area. In particular, awareness among national legislators of the benefits of mediation has been increased; the Directive initiated establishing an appropriate national legal framework governing mediation; an important step was taken to promote access to alternative dispute resolution and to achieve balanced relationship between mediation and trial [7, p. 134].

Besides, a number of documents that define the standards of mediation in the area of consumer protection or contain provisions on these issues have been developed within the EU. These include, in particular, the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR). The adoption of the Directive was due to the need to fill gaps in the legal regulation of out-of-court settlement of consumer disputes. The objects of the legal regulation of the Directive are public relations arising between the consumer, the citizen of the European Union and the entrepreneurs at the national and cross-border level. This document aims to create a simple, fast and low-cost procedure for resolving disputes between consumers and entrepreneurs. Non-judicial consumer dispute resolution mechanisms already exist in many countries of the European Union, but they have different status and develop in various ways [4].

In 2003 – 2004, an initiative group of practicing mediators with the support of the European Commission developed the European Code of Conduct for Mediators, adopted at a conference in Brussels on 02 June 2004 and intended for use in all types of mediation in civil and commercial matters. The European Code of Conduct for Mediators contains a set of ethical principles of mediator activity, compliance with which is a criterion of professionalism. In particular, it is emphasized that the mediator is obliged to «monitor the compliance of the results of his work with the interests of society as a whole, seek to professionalize and humanize management relations and raise standards and raising the level of culture in society». According to the Code, mediation is defined as any process, in which two or more parties agree to involve a third party to assist them in resolving their dispute by reaching an agreement without a court decision, whatever the process may be called or characterized in the conventional sense in each of the Member States. References to the Code do not violate national laws or regulations governing certain areas of activity [2].

It is also important to note that mediation standards have not yet been defined in Ukraine, but there is a certain exception to mediation as a social mediation service, for which the State Standard for Social Mediation Service (Mediation) was developed and approved by the Ministry of Social Policy of Ukraine on 17 August 2016. However, we should stress that in this case, mediation is part of the relevant social service and is defined as a method of resolving conflicts / disputes by which two or more parties to a conflict / dispute try to reach agreement through a structured process involving a mediator/mediator.

Conclusions. Thus, the European standards for mediation should be understood as those that exist in the European legal space established by international cooperation among European States within the Council of Europe and the European Union. Notwithstanding the differences in membership between the two intergovernmental organizations, a number of standards documents, which are actively implemented in the legislation and legal practice of European countries have been developed. Given the positive international European experience we consider it appropriate to implement European standards in Ukraine; however, such implementation is possible through Ukraine's accession to the European Union, acceptance and ratification by the Verkhovna Rada of alternative dispute resolution instruments, namely mediation.

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MODERNIZATION OF LEGISLATION AS A FACTOR OF COUNTERACTION TO CORRUPTION IN THE REPUBLIC OF UZBEKISTAN

Mirzaev R.I.
Republic of Uzbekistan, city of Samarkand,
Samarkand State University,
Associate Professor of the Department of Jurisprudence and Legal Education,
Candidate of Legal Sciences
DOI: 10.24412/2701-8369-2022-26-41-46

Abstract

The article is devoted to the analysis of the features of combating corruption in the Republic of Uzbekistan through the prism of its legislation's modernization. The article's author pays attention to the analysis of Uzbekistan's implementation of the OECD recommendations, as well as to the study of the most developed states' experience in order to apply it in the country in the process of further national law development. The author develops recommendations for improving the counteraction to corruption in Uzbekistan.

Keywords: counteraction of corruption, Uzbekistan, modernization of legislation, foreign experience, OECD, recommendations.

In the Report on the results of monitoring corruption in Uzbekistan, prepared by the OECD in 2019 [1], it is pointed out that in recent years the top political leadership of Uzbekistan has initiated reforms in many areas, including a very radical one. These reforms and the measures envisaged by the updated legislation are at the initial stages of development and implementation, so it is too early to evaluate their practical results. However, in general, there is a positive trend in the fight against corruption in various spheres of public life.

The OECD notes that Uzbekistan has carried out a number of key reforms in the field of anti-corruption policy and is successfully modernizing its legislation. The adopted Law "On Combating Corruption" [5] established the legal framework for activities in this area and mechanisms for the implementation of anti-corrup-