

## MEDIATION IN THE NOTARY: HARMONIOUS RESOLUTION OF LEGAL DISPUTES

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### Summary

This article is devoted to the study of the role and importance of mediation methods in the field of notary. The growing number of disputes related to notarial acts and agreements emphasizes the need for effective mechanisms for their settlement. The article highlights the advantages of using mediation as an alternative way to resolve conflicts in notarial matters. The authors examine the main principles and stages of the mediation process, as well as analyze examples of successful application of this approach in the notarial practice of Ukraine and the member states of the European Union. In particular, the article examines the possibilities of settling disputes regarding inheritance, concluding agreements between the parties, as well as other issues that often arise in notarial activities. Highlighting the experience of implementing mediation in notarial practice helps readers understand the advantages of this approach and its potential in resolving conflicts in the notary.

**Key words:** mediation, mediator, jurisdiction, conflict, notarial actions, court.

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### 1. Introduction

The history of mediation dates back thousands of years and is reflected in various cultures and civilizations of the world. The concept of conflict resolution through the mediation of a neutral third party has been present in many aspects of society for a long time. Already in ancient times, people used mediators to resolve conflicts and disputes. In various cultures, this was reflected through tribunals of elders, government officials, or religious leaders who helped resolve disputes.

One example of early mediation is the ancient Greek tradition of «symposions», where public affairs were resolved in the form of discussions and dialogues between the parties during parties. This reflected a desire to reach agreement and resolve issues through an open exchange of views. In the Middle Ages, mediation was usually carried out through the mediation of church figures or government officials who tried to find compromises to resolve various kinds of disputes.

With the spread of modern law and the judicial system, mediation underwent a revolution in the 20th century, when it was recognized as an effective method of dispute resolution

in many countries around the world. This has led to the creation of specialized programs and training for mediators, the development of professional standards and the introduction of mediation into various areas of life, including family law, commercial disputes, criminal cases and many others.

## **2. The role and importance of mediation in the resolution of disputes in the notary of Ukraine: from traditional approaches to innovative solutions**

Today, mediation is recognized as an important element of the legal system of many countries, which contributes to the effective resolution of conflicts, reducing the burden on the courts and increasing the satisfaction of the participants in the process with the decision they make themselves. One of the ways to implement the latest legal approaches was the widespread introduction of the institution of mediation in Ukrainian society. In 2021, the Law of Ukraine "On Mediation" entered into force. According to Art. 2 of this Law, mediation is an alternative (out-of-court) method of dispute resolution, by which two or more parties to a dispute try to reach an agreement within a structured process on their own, on a voluntary basis, to resolve their dispute with the help of a mediator (1).

The possibility of a notary to perform functions related to the main notarial functions (for example, conciliation (mediation), registration, consultation), corresponds to the modern need of notarial practice to increase the warning function of the notary as a body of undisputed jurisdiction. Mediation plays an important role in notary practice, especially when resolving disputes or conflict situations between parties. A notary can act as a mediator who helps the parties to find a mutually beneficial and peaceful solution to issues without litigation (1).

This approach has several advantages. First, it is an effective way to resolve conflicts without court intervention, which can save time and resources for all parties. Secondly, mediation contributes to the preservation of relations between the parties, as they themselves find a compromise and solution. A notary, acting as a mediator, can also help the parties understand the legal aspects of the situation and choose the most acceptable solution from the point of view of the law. Especially in the field of real estate, inheritance and contracts, where conflicts may arise due to differences in the interpretation of legal norms or the desire to gain an advantage, mediation can be an effective tool for reaching an agreement between the parties.

In general, it should be noted that mediation provides many advantages in the activity of a notary. As an example, it allows notaries to more fully fulfill their duties, providing the opportunity to resolve disputes through cooperation and dialogue, rather than through court procedures. This official can act as a neutral mediator in resolving disputes or conflicts between the parties, helping them find a compromise solution. This is especially useful because the notary has a high level of trust and authority, which contributes to the creation of an objective and fair environment for discussing the emerging problem.

In confirmation of the use of mediator functions by notaries during notarial acts, it is possible to cite as an example that this authorized person, unlike other legal professionals, must take into account all legal and socio-economic aspects of the case, the interests of all its participants and society without exception in general. A notary can help in formulating an agreement or documents that record the decision agreed upon by the parties. Explanation by the notary to the parties of the contract during its conclusion and signing of their rights and obligations that will arise after signing the contract, as well as clarification of the legal consequences that will occur to the parties to the contract after its signing, is a direct function of mediation. And the

fact of bilateral signing of the contract by the parties in the presence of a notary is a fact of resolving the legal conflict at the stage of pre-trial settlement. To confirm the use of mediator functions by notaries during the performance of notarial acts, an example can be given of the procedure for certification by a notary of a deed regarding the alienation of immovable property. Thus, when certifying a contract for the sale of an apartment between the parties to the contract, a question may arise regarding the release date of the apartment being sold, or a question regarding the procedure for the transfer of funds by the seller under this contract. There are many such examples. These are inheritance cases, property or alimony relations, distribution of marital property, and others (*Polishchuk M.Ya., 2018: 18*).

In this case, the notary acts as an independent third party (mediator) who helps the parties in resolving the conflict, explaining to them the rights and obligations granted to them by the legislation of Ukraine, as well as facilitating negotiations between the parties. In case of insufficient or untimely submission of documents for the performance of a notarial act, the notary has the right to stop the performance of this proceeding or refuse it.

On December 15, 2021, the Law of Ukraine dated November 16, 2021 No. 1875-IX "On Mediation" entered into force, which defines the legal principles and procedure for conducting mediation, the status of a mediator, requirements for his preparation and other actions. However, the legislation did not stop its reformation and was later supplemented by Article 16-1 of the Law of Ukraine «On Notaries», in which the procedure of mediation in notaries was initiated (1).

It was from the beginning of the entry into force of this law that Ukraine began to actively use the practice of the mediation procedure in the notarial sphere. Ukrainian legislation recognizes mediation in the notary as an effective means of resolving disputes. An important advantage of this approach is the possibility of drafting agreed decisions in the form of a notarial deed, which gives them legal force and recognition in judicial practice. Thanks to mediation in the notary office of Ukraine, the parties can avoid long and costly court processes, ensuring a quick and effective resolution of disputes. This approach helps to build trust between the participants in the conflict and preserve mutually beneficial relations.

The mediation procedure in the notary office in Ukraine corresponds to the general principles of mediation, but has its own peculiarities due to the participation of the notary as a mediator. The main stages of the mediation procedure in the notary of Ukraine include:

1. Start of mediation: The parties, who later turn to a notary to resolve the conflict, indicate their willingness to participate in the mediation process.

2. Mediation agreement: The notary concludes a mediation agreement with the parties, which defines the rules and conditions of the procedure.

3. Conducting sessions: the notary as a mediator facilitates communication between the parties, helps them express their views and interests, directing the process to find a compromise and resolve the conflict.

4. Reconciliation of the decision: If the parties have reached an agreement, the notary can formalize it in the form of a notarial act, which has legal force and recognition before the law.

5. Completion of the procedure: If the mediation did not lead to an agreement, the notary confirms this fact, and the parties can decide whether to continue searching for other ways of resolving the dispute, including the court.

Mediation in the notary office of Ukraine has its advantages, in particular, the possibility of drafting agreed decisions in the form of a notarial deed, which gives them legal force. This approach contributes to the quick and effective resolution of disputes, taking into account the requirements of Ukrainian legislation.

### 3. The potential of the mediation procedure to improve processes in the notarial business of the member states of the European Union

By conducting this research, it was found that mediation in the European Union also plays a rather important role in resolving disputes and conflicts at the interpersonal level between citizens. At the level of interstate relations, mediation is used to resolve conflicts between EU countries, promoting the search for peaceful and diplomatic ways to resolve disputes. This may concern trade disputes, security issues, human rights and other aspects of international relations. At the level of interpersonal relations, mediation in the EU facilitates the resolution of civil disputes, family conflicts, inheritance cases, as well as issues related to business and commerce. The European Commission and many EU member states actively support the development of mediation as a means of alternative dispute resolution.

It is worth noting that EU mediation has certain advantages, which include:

1. Speed and efficiency: Mediation can speed up the resolution of disputes compared to court procedures.
2. Economy: This procedure can be less expensive and less costly than a court process.
3. Privacy: The mediation process can be confidential, allowing the parties to freely discuss their positions, views and interests.
4. More flexible solutions: The mediator helps the parties find a mutually acceptable solution that better takes into account their needs and interests (*Mozhaikina O., 2017: 58*).

The best example of the analysis of the mediation procedure in the notary is resistance to the experience of the member states of the European Union.

The development of mediation in the European Union is due to scientific substantiation and adoption of legislation, support of programs and projects for training mediators and raising public awareness of the advantages of this method of conflict resolution. Examining these actions, one can come to the conclusion that mediation in the practice of the EU is extremely promising and acts as an effective way of resolving conflicts, as it promotes mutual understanding between the parties and helps them find solutions independently, taking into account their interests. In European countries, the use of mediation in notaries may vary, but this approach often contributes to a more flexible and quick resolution of issues between subjects (*Kravchuk M.B., 2021: 119–123*).

Studying mediation in the Latvian notary office, the following comparative conclusions can be drawn. Latvia's mediation process in a notarial case includes negotiation of contract terms, resolution of disputed issues regarding property or other legal relationships. This procedure is based on the active participation of the parties, who themselves seek a solution to the problem with the help of a mediator. As the research shows, notaries in Latvia can perform various functions, including concluding contracts, notarizing signatures, transferring ownership rights, etc., and mediation is used in addition to these services as a way to resolve conflicts, which should be taken into account in the mediation process of notaries in Ukraine.

Studying this direction of activity in the countries of the European Union, you can pay attention to these procedural actions in Bulgaria. Notaries in Bulgaria have the role of mediator in various situations related to real estate, inheritance, agreements between individuals and other legal matters where conflicts arise that can be resolved through mediation. This is an effective way to avoid litigation and resolve issues through discussion and reaching an agreement, which has the important function of satisfying both parties. As for the regulatory basis of this process, in Bulgaria mediation in the notary is regulated by several legislative acts, which are also relevant for Ukraine. For example:

Law on Mediation: This law defines the general principles and procedures of mediation in the country, including the rules of professional conduct of mediators, procedures for conducting this procedure and recognition of agreements concluded through mediation. The following is the Law on Notaries: This law establishes rules and requirements for the activities of notaries in Bulgaria. It contains provisions on the participation of notaries in mediation by this method, as a result of which these laws jointly create the basis for the introduction of mediation processes into the notarial practice of Bulgaria and determine the competence of notaries in this area. Details and specific provisions regarding mediation in notaries are defined in the relevant parts of these laws, which guarantee the quality of mediation services and also require notaries-mediators to have appropriate training and professional ethics. In addition, Bulgarian notaries can act as objective mediators in such processes, which contributes to the resolution of conflicts in a quick and settled manner (*Suprun H., 2019: 34–37*).

Analyzing the mediation process in the German notary, you can make a comparison from which follows: in Germany, notaries play an important role in the field of mediation, acting as neutral and professional mediators in the resolution of various legal conflicts. Notaries in Germany are highly regarded and usually specialize in a variety of matters, including real estate, inheritance, cohabitation agreements and other civil matters. One of the main advantages of using notaries in this country as mediators is their competence and knowledge of the law, which allows them to provide the parties with objective and professional support during the mediation process. In addition, these persons have the right to ensure the legality and legality of concluded agreements. The authors draw attention to the fact that mediation in a notary in Germany is regulated by legislation covering both notary and mediation. The main rules and regulations can be found in the following pieces of legislation: The Notary Act (BeurkG), which defines the functions, duties and powers of notaries in Germany. It may also contain information about the role of notaries in mediation procedures and their rights as mediators. The next legal act is the law on mediation (MediationsG). This law establishes general principles and requirements for conducting mediation in Germany. It may contain provisions on the role of notaries in mediation and their duties in this context. And the final one in this trio is the law on alternative dispute resolution (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG), which provides procedures for alternative dispute resolution, which may include mediation, in family matters and cases voluntary jurisdiction of German law. In conclusion, we can add that the mediation procedure in the German notary helps to resolve disputes quickly and efficiently, reduces the burden on the courts and ensures the confidentiality of the agreement between the parties. It has common features with the mediation practice of Ukraine, because it is also based on the principles of voluntariness, confidentiality and self-regulation. This approach contributes to the preservation of relations between the parties and the resolution of conflicts without the intervention of judicial authorities (*Logvynenko M.I., Kordunyan I.V., 2022*).

#### 4. Conclusions

On the basis of the conducted research, it can be said that mediation in the notary plays an important role in resolving conflicts and contributes to the achievement of agreed solutions between the parties. It is an effective tool for resolving disputed issues without the need for litigation. The notary, as a neutral and objective party, helps the participants find a compromise and reconcile their interests based on legislation and moral principles.

This approach ensures confidentiality, speed and efficiency in dispute resolution, which is an important aspect in today's world. Mediation allows you to save time and resources that are usually spent on lengthy court proceedings. In addition, it helps to maintain mutual understanding between the parties, which may be important in future relations.

Another advantage of notary mediation is that the decisions reached through this process can be legally binding, as the notary can formalize them in the form of a notarial deed. Of course, not all disputes can be resolved through mediation in the field of notarial proceedings, especially if one of the parties is not ready to compromise. From the authors' point of view, mediation in a notary is an effective tool for resolving disputes, which can ensure a quick, confidential and effective reconciliation of the interests of the parties.

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