

## To the Problem of Higher Education in the Field of Mediation: Ukrainian Realities and Foreign Experience

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**Abstract:** The article analyzes the current state and trends in education for people who want to carry out activities in the field of mediation. It has been established that today Ukrainian mediators are trained mainly by private institutions or public organizations involved in the introduction of mediation in Ukraine. It was found that only some law and psychology faculties of national higher education institutions include in the educational process elective courses on the basics of mediation, while a separate educational and professional program at the master's level "Mediator" is implemented by only one higher education institution. The experience of foreign countries, which established a mandatory requirement for higher professional education for mediators, is analyzed. It is stated that most states prefer training and accreditation of mediators by private organizations. The author highlights the problems and proposals for improving the educational process in the field of mediation. In particular, it was determined that the concept of "mediator-lawyer and psychologist" has the most support in the scientific community. The importance of creating the culture of the mediation and a favorable environment for reducing conflict in society is emphasized. It is proposed to train potential mediation specialists on the basis of higher education institutions that have the necessary resources for training and final certification of specialists. Emphasis is placed on the need to create a separate educational and professional program in the specialty "Mediation", which would include knowledge of law, psychology and other interdisciplinary fields.

**Key words:** mediation, higher education, mediator training, education in the field of mediation.

### INTRODUCTION

In recent years, there has been a great demand for mediators in resolving both domestic family and collective labor disputes. Mediation is widespread and is becoming a culture of peaceful dispute resolution in society. In many countries around the world, mediation is included in the official list of professions, so the training of specialists in this field requires special attention. The need for highly qualified professional mediators is growing in the post-Soviet space, including in Ukraine, although the prestige of this profession is not yet clear to everyone. The spread of mediation as a traditional way of resolving disputes depends on the quality of services provided to each consumer. Therefore, it is important to investigate how professional mediators are trained in Ukraine today and to

determine the most effective concept for the development of education in this area. Many NGOs and private agencies provide training, lectures and seminars for those who wish to engage in mediation practice. However, neither the training program nor the accreditation procedure for such a mediator meets any uniform standards for such education. Moreover, obtaining a permit to engage in mediation and professional activities is not regulated or controlled by the state. Instead, some Ukrainian higher education institutions understand the importance of training the professionals of the future and are introducing disciplines on the basics of mediation. It is worth analyzing the experience of foreign countries, where mediation is perceived as part of the legal culture of society and a separate profession that requires higher education. The research is aimed at analyzing the problems related to the training of mediators and ways to solve them.

## **METHODOLOGY**

The methodological basis of the study is a set of general scientific and special legal methods of cognition. The method of materialist dialectics allows to identify current problems related to the training of future mediators in Ukraine. Formal-logical and social methods were used to study existing domestic educational and professional programs and educational institutions in the field of mediation. The comparative legal method of research was used in the study of statutory requirements for intermediaries, their profession and level of education in different countries. Comparative-critical analysis revealed what knowledge and skills a professional mediator should have. The method of synthesis and analysis, the deductive method allowed to form own vision of higher education in the field of mediation.

## **PRESENTATION OF THE MAIN MATERIAL**

### **The current state of professional training of mediators in Ukraine.**

Most mediators have switched to Ukrainian mediation from other professions, although this type of activity is still at the "lesson" level (Yasynovskyi I., 2015). Among the main problems that hinder the formation of the mediator profession are the lack of training standards, insufficient qualification requirements and generally accepted professional norms for the mediation community.

Scientists classify the professional activity of a mediator as "heuristic" (Belinska O., 2012), ie those related to analytical, research, planning, management, control and other processes between people, construction and design of productive ways out of conflict situations. Thus, it requires critical thinking, high erudition, originality, the desire for continuous development and self-improvement. Any profession includes the requirements of certain professional skills that will allow a person to carry out their activities effectively. Regarding mediation, such professional skills highlight a professional position (for example, a neutral attitude towards the parties to the conflict; understanding the nature of the conflict in general); procedural component (knowledge of the procedure); psychological component (personal qualities of a mediator as an effective communicator and mediator); communicative component (skills of active listening, work with human emotions, etc.) (Husiev A., 2015).

A lot of research is devoted to the psychological, personal component of a professional mediator. Among the important qualities that ensure the success of the future mediator during the procedure are resistance to stress, the ability to understand the essence of

the main relationships in the conflict, the ability to maintain neutrality, observation, balance, self-control, dialogue and negotiation, communication, empathy, responsibility, democracy, independence, concreteness, openness and friendliness (Kirilova M. & Aminova A., 2016; Kornieieva Ya. & Rudakova Yu., 2019).

A professional mediator in a broad sense is a person who is open to accepting the ideas of the absence of violence, the ability to be a peacemaker. This is a person who always remembers the main task of mediation, its values and the goals of the unity of society (Romanova N., 2019). The mediator must transmit to society the values of goodness, understanding, repentance. However, the presence of the necessary psychological qualities in a person to perform mediatory functions is not enough. In particular, there are problems related to educational technologies - lack of time for basic training of mediators; lack of guarantee of quality of such professional training; a relatively small number of teachers who have practical methods and techniques of mediation, which leads to the study of future mediators only theoretical foundations.

In this situation, the university, as a provider of educational services, must balance the demand of the consumer (entrants, students, and their parents) with the offers of the customer (state, entrepreneurs, labor market) (Gryshova I., Demchuk N., Koshkalda I., Stebliuk N., Volosova N., 2019).

Article 10 of the draft Law of Ukraine "On Mediation" № 3504 of May 19th, 2020 sets minimum standards for training in the field of mediation. Basic training in the field of mediation should be at least 90 hours of training, of which 45 hours of practical training and 45 hours of studying the principles, procedures, methods, ethics, legal regulation of mediation and dispute resolution. The providers of educational services in the project are educational institutions, organizations that provide mediation, business entities that have the right to provide services in the field of mediation or organize their provision in accordance with the law.

In our opinion, such requirements for the education of a mediator are too liberal. The issue of certification (accreditation, licensing or registration) of a mediator in Ukraine, obtaining a special permit to conduct mediation activities and inclusion in public registers, is incomplete, although this aspect is crucial in the dissemination of mediation. Mediation remains a new and unknown phenomenon for a large part of Ukrainian society, so it is very important to ensure maximum competence and professionalism of mediation service providers to establish general confidence in the procedure. A large number of institutions and organizations train mediators in various educational programs at various levels, which in turn carries the risk of discrediting the profession of mediator. Today it is impossible to control the quality of educational training of mediators, as anyone can get a certificate to engage in mediation activities.

More than ten national higher education institutions have included disciplines such as "Fundamentals of Mediation", "Conflict Resolution and Mediation", "Basic Dispute Resolution Skills", "Psychology and Technology of Conflict Mediation" in the bachelor's and master's programs. It is worth emphasizing that the study of disciplines on mediation takes place not only in law, but also in psychology, economics, sociology and others. However, when receiving higher education in such institutions, the future mediator usually needs to

undergo additional training in the self-governing bodies of mediators, as the study of several disciplines in the field of mediation is insufficient preparation for practical activities.

The status of a mediator since 2011 can be obtained by improving the skills of a lawyer as a new specialization or qualification in the School of Mediation of the Academy of Advocacy of Ukraine (the Academy of Advocacy of Ukraine, 2020). The Ukrainian Academy of Mediation demonstrates a fairly complete course of mediator training, which offers separate mediation training programs for specialists in the field of law and business. The curriculum is developed on the basis of European standards and lasts 90 hours of theoretical and practical classes, and as a result of training a certificate with the qualification of a mediator is issued (The Ukrainian Academy of Mediation, 2020). The private educational institution KROK Business School is also an ambassador of mediation in Ukraine and provides professional training in mediation on the basis of a person's higher education. Two-year training includes internships abroad, learning from the best experiences of European specialists and writing a thesis that corresponds to the traditional form of higher education (KROK Business School, 2019).

The most interesting for our study is the experience of Chernivtsi National University of Yuri Fedkovych, who introduced the master's educational and professional program "Professional Mediator" in the framework of the grant project "Mediation: Learning and Transformation of Society / MEDIATS" of the EU ERASMUS + KA2: Development of Higher Education Capacity (CBHE). The curriculum includes such disciplines as the rule of law, restorative justice, alternative dispute resolution tools, mediation as a value, the legal nature of mediation, negotiation, business mediation, mediation tactics, international mediation standards and more. Teachers have received a professional qualification abroad, and a diploma of legal education in this area will contain the qualification "mediation". This model of obtaining a future professional mediator of higher education seems to us the most acceptable, because it does not require additional training in many organizations. An accredited educational institution has the appropriate resources to conduct a proper student assessment, which ensures the competence of a qualified mediator.

### **Education of future professional mediators in foreign countries.**

The opinion of D. Korovyakovskiy (2018) is quite correct, who determined that Anglo-Saxon mediation as a social institution is characterized by democratic access to this type of activity, liberal requirements for the level of education of a potential mediator, universality of application in various categories of disputes. Instead, mediation in the Romano-Germanic legal system is characterized by corporate isolation and the desire of the legal community to monopolize and control this area. This trend leads to a high age requirement for mediators and the establishment of clear requirements for higher education for future professionals. In our opinion, the availability of higher professional education for a specialist in any field of public relations is a traditional phenomenon for Ukraine and will have a high level of perception.

Most countries in the world have delegated the competence of training and licensing of mediators to individual administrative bodies or self-governing organizations. For example, in France there is a tradition to recognize diplomas of mediators issued by universities or large-scale intermediary organizations. While in Australia there are no

mandatory requirements for accreditation for mediation service providers and training in the field of mediation, it is carried out by many diverse and independent organizations (Korovyakovskiy D., 2018).

Regarding the general European practice of training mediators, T. Bilyk and others (2019) determine that, since representatives of different professions are professional intermediaries, the legislation of different countries sets requirements for the level of education required, not the profession. The legislation includes requirements for the number of hours of training, for which there is a tendency to increase and include a mandatory element. The average number of hours of training for potential mediators in Europe is 81 hours, and in the world - 27 hours. Although, there are countries that have quite high training requirements - in Austria the accreditation of a mediator requires up to 500 hours of training.

In Russia, the realities of the educational issue in the field of mediation, despite a clear legal definition, are close to the Ukrainian ones. Several law and psychological faculties of higher education institutions (Moscow University for the Humanities, Russian New University, etc.) have included the discipline of mediation in their educational programs. For several years in a row, the University of Russian Innovative Education has been recruiting for a separate master's program in Mediation in the Social Sphere. Given that mediation has been a clear legal institution in Russia for about 10 years, this number of training programs is unsatisfactory. This is due to the fact that the law does not establish mandatory certification and accreditation of a mediator, there is no single register of specialists (Shauro I., 2018). The consequence of such a system is a constant increase in certified mediators, including a small number of competent intermediaries.

Higher mediation education is developing much more actively in Belarus. For example, since 2016 at the Belarusian State University, the curriculum of the specialty "Jurisprudence" contains the disciplines of negotiation and mediation. The purpose of this discipline is to obtain and master students complete, systematic and in-depth knowledge of negotiation and mediation as alternative ways of resolving legal disputes, as well as mastering the skills of resolving legal disputes through negotiations, including with a mediator (mediator) (Zdrok O., 2016). The curriculum provides for the study of the basic techniques of conciliatory (consensual) procedure for settling legal disputes at any stage of the trial. The discipline is complex, it includes the study of the basics of communication theory, negotiation theory, conflict studies.

An interesting experience for borrowing is the presence of bylaws in the field of mediation training. In particular, in Belarus there is a Resolution of the Ministry of Justice "On some issues of training in the field of mediation" of January 17, 2014 № 12 (National Legal Internet Portal of the Republic of Belarus, 2014). The decree distinguishes between persons with higher legal education and persons with other higher education. For the first, mediation training in additional education institutions is at least 140 teaching hours, while for the others - 170 teaching hours. At the same time, the right to train mediation specialists have persons who have practical experience as a mediator and have received a mediator's certificate. Upon completion of training, the person is issued a certificate of training in the prescribed manner to master the content of the educational program of training courses in the field of mediation. Thus, a mediator in Belarus must have a higher education in law or another field and receive additional training in accredited mediator training organizations.

Similar requirements are set by Spanish Law De5 / 2012 (The Spanish Real Decreto-Ley (Royal Decree-Law) 5/2012) (Boletín oficial de estado, 2012). Persons wishing to engage in mediation practice must have higher or postgraduate experience and receive additional education in mediation.

Germany is known for its perfect model of judicial mediation. Because mediation is integrated with justice, the necessary level of higher education for each mediator is ensured. Every graduate of the law faculty of law schools undergoes a permanent mediation course. The general training course of the Mediation and Counseling Agency includes the study of the basics of mediation, the interests and needs of mediation, methods and techniques of mediation, difficult conflict situations and the use of mediation procedures. The average duration of courses is 140 teaching hours of seminars, supervision and intervention (Kommunikationsvisionäre, 2020).

Because of cultural differences and country traits, some of the empirical evidence based on a particular country might not generalize to other economies. (Azer D., Gryshova I., Rogach S., Diachenko O., Batrakova T., Shabatura T., 2020).

Higher education of a potential mediator is also a prerequisite in Greece, Italy, Hungary, Romania (Bilyk T., 2019). In Greece, there are training programs on mediation for lawyers at the master's and advanced training levels, as initially only representatives of the legal profession had the right to engage in mediation activities. Today, accreditation requires training in a public mediation training center. Any providers of mediator training services exist in the form of public organizations based on the Bar Association or the Chamber of Commerce and Industry. There is no private training of mediators in the country. Having a bachelor's degree, a person wishing to mediate must complete a 40-hour training course at a state-accredited institution and obtain a certificate (Federal Institute of Mediation, 2016).

Thus, there are no uniform mandatory standards for mediator training in the world. To a greater extent, the establishment of requirements for mediators depends on the national legal system, the level of development and quality of private education, liberalism and customs in a particular society.

### **Prospects for higher education in the field of mediation in the educational space of Ukraine.**

Problems that are most common in the field of training of professionals in mediation, says A. Miroshnikov (2019): partial lack of educational and methodological materials; lack of uniform standards for training and activities of mediators; unresolved issue of the future mediator's profession; uncertain issue of the need for seniority and age requirements; lack of professional development standards for a professional mediator; public distrust in the dispute resolution procedure.

In general, the lack of any legal regulation of mediation practice raises doubts about the competence of persons conducting conciliation procedures on the basis of mediation self-government bodies. Historically, society has a tradition of resolving any dispute by a third authoritative person, who instead of the parties determines the winner and the loser in the conflict. Negotiations with the participation of a third neutral person on the basis of self-determination and voluntariness are a new socio-legal phenomenon, the existence of which most people do not even know. Therefore, an unambiguous solution to the issue of education

and standards of mediation at the legislative level will contribute to the formation of a new culture of peaceful out-of-court dispute resolution and reduce conflict in society.

Among the alternatives for solving problems related to the training of persons seeking mediation, E. Skibitsky and N. Fadeikina (2019) rightly identify the following: determining the specifics of the mediator in resolving the conflict; formation of an integrated mediation culture, including knowledge of social sciences and humanities; forecasting, modulation, design, testing and implementation of a methodological system that would ensure the formation of future specialists in the culture of dispute resolution; creation of a universal apparatus for comprehensive assessment of the readiness of specialists to carry out professional activities.

Today, there are several hypotheses about the profession of potential mediator: mediator-lawyer; mediator-psychologist or mediator-conflictologist, sociologist; a mediator who has both legal and psychological educational training; a mediator who may not have any legal or psychological competencies. The psychologist begins the conflict resolution process by analyzing psychological problems, the lawyer by analyzing the legal framework and collecting legal facts that violate the rights of conflict participants, the sociologist by conducting a sociological study to identify the real cause of the conflict, and the conflictologist by primary diagnosis and conflict mapping (Tsoy. L. & Ivanov O., 2016).

In our opinion, it is expedient to discuss the training of mediators in the context of higher legal and/or psychological education. For example, A. Dutko (2018) proposes to introduce a requirement of full higher legal education for a future mediation specialist and work experience in the field of justice or advocacy of at least 3 years, so that the mediator has the skills and ability to communicate with people. Instead, S. Zhelepa (2017) believes that a person with a vocational education can't acquire the status of a mediator, due to the study of other disciplines. That is, even after receiving additional training in mediation, such knowledge will not be enough to mediate. Therefore, the education of a mediator should be both legal and psychological, as conflicts are a psychological category in the field of law.

The combination of psychological and legal competencies is an indicator of the most effective mediator (Kurganskaia M., 2019). This is due to the fact that any dispute has an emotional component, so the mediator must see the manifestation of emotions, correctly interpret and influence them; work with self-esteem and personal values. Today, lawyers increasingly understand the relevance of psychology for resolving both public and private disputes.

Taking into account the detailed legal regulation of the basics of legal training of mediators and the constant practice of foreign countries, we can identify areas for improving the training of domestic personnel in the field of mediation. First of all, it is necessary to ensure state regulation, which is to establish by law uniform state standards for the training of mediators: the required level of education, profession, minimum number of hours of study, a list of institutions providing educational services for mediation. Educational and professional training programs for mediators in Ukraine must meet international and European standards, which can be implemented under conditions of constant international cooperation and exchange of experience with leading foreign experts. It is extremely important to detail the conditions of mandatory accreditation of educational institutions that can provide training in

the field of mediation, which will contribute to the high quality of the educational process and the establishment of normal conditions of free competition among graduate mediators.

K. Narovska and others (2019) based on world practice and Ukrainian experience of mediation training centers have formed their own vision of minimum standards for training of mediators, which deserves attention. The curriculum should comply with the principle of complexity and provide for a balanced inclusion of different competencies. The desired duration of training for mediators is 90 astronomical hours (for higher education institutions - at least 120 classroom hours) of theoretical and practical training. It is recommended to study the skills of a mediator as elective subjects of educational and scientific programs in such specialties as law, international law, law enforcement, psychology, pedagogy, etc., or within the framework of certificate programs and advanced training programs.

The regulation of certification (accreditation, licensing, registration) of persons who meet the requirements of the law, have passed the relevant professional training and wish to carry out activities in the field of mediation requires legal regulation. The issue of the register of mediators, which will contain basic information about persons entitled to engage in mediation practice, remains open. It is considered necessary to introduce both a national register of mediators and local registers on the ground in accordance with the need to expand access to justice.

The updated conditions of communication of business groups and state bodies will give the merged agricultural associations of small / medium-sized economic entities (producers) the opportunity to influence the legislative process in a legal way. (Tielkiniena T., Gryshova I., Shabatura T., Nehodenko V., Didur H., Shevchenko A., 2020).

A promising direction for the creation and further improvement of standards for the training of mediators is to determine the basic requirements for teachers of mediation and forms of such training. The general rule of training mediators is to shift the emphasis from the theory of the basics of mediation to practical methods, techniques and techniques. In the educational process it is necessary to work out educational simulations with the formed problem cases, to organize group discussions and to provide feedback to students. Individuals trained in mediation should analyze their own mistakes, evaluate the actions of other participants, summarize the instrumental achievements of mediation (Urusova O., 2017).

## CONCLUSIONS

For Ukraine, resolving disputes through mediation still remains a new, progressive idea. However, given the great interest of scientists in the training of highly qualified personnel in the field of mediation and the long process of discussing the law on mediation, we can conclude that "mediator" is the profession of the future in Ukraine. This is evidenced by the activities of a large number of professional NGOs in the field of mediation, which began to gain international experience long before widespread recognition. In foreign countries, for more than half a century of development of mediation procedures in various spheres of public relations, a certain mediative culture has been formed. For the formation of such a culture in modern conditions, it is necessary to coordinate efforts to ensure quality educational training.

First of all, it is important to form in Ukraine a competent pedagogical community of teachers (trainers) of the theory and practice of the basics of mediation with practical experience in dispute resolution (participants in international internships). The next step in



the introduction of mediation is the creation and continuous improvement of the educational and professional program "Mediation". In our opinion, it would be expedient to create a platform for professional training of competent intermediaries on the basis of higher education institutions that have the resources and traditional methods of teaching and certification/accreditation of students (as opposed to private training centers). In addition, we propose to equate the document of higher education (bachelor's or master's degree) with a special permit to engage in mediation activities based on the results of the final assessment at the end of training in the specialty "Mediation".

The educational program on mediation should include both theoretical and practical knowledge in this field. Theoretical classes should include basic knowledge about the nature of conflicts and disputes, the socio-legal nature of mediation, the principles, features and functions of mediation; basics of jurisprudence; basics of psychology. While practical seminars should include the use of role-playing games, simulations, active discussion, learning techniques and techniques of mediation, features of mediation in various fields of law.

Regarding the professional issue, an alternative to obtaining education in the new direction "Mediation", we consider it necessary to establish a requirement for both legal and psychological education of the future mediator. Because the mediator must work with emotion and help resolve the dispute within the law, such knowledge and skills are equally essential for the professional. Legal knowledge should be used in drawing up a mediation agreement, taking into account the legality and the real possibility of fulfilling its provisions (especially in tax and corporate disputes). Instead, psychological knowledge will help to understand the real needs and interests of the parties, avoid escalation of the conflict and help the parties to the conflict to remain in a normal business or friendly relationship.

In general, mediation culture includes not only the training of mediation specialists, but also the active informing of the population about this possibility of resolving disputes. There is a well-known foreign experience of agitation to use alternative ways of settling public disputes in courts and state bodies by distributing information leaflets. In addition, it is necessary to involve the media, and the higher education, in turn, to inform applicants about a fundamentally new and promising profession (open days, career guidance, etc.).

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