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## **MEDIATION IN ADVOCACY**

This topic is very relevant today, so we propose to consider it, as well as to elaborate on the concepts of "mediation", "advocacy" and their interaction.

The institute of mediation is a new method of resolving legal disputes. Mediation has been developing in Ukraine for about 20 years, but the global development process has begun in recent years. In 2020, the Verkhovna Rada even considered a draft law on mediation. There is a national association of mediators in Ukraine, which emphasizes that the use of mediation is useful for resolving many conflicts, especially those that are sensitive to maintaining relationships and risks of reputational losses (family, commercial, labor, etc.). Mediation can be used regardless of whether the case is in court (pre-trial, post-trial, extrajudicial mediation) and mediation in the process of litigation, that is why this institution is gaining such popularity in the world [1].

There is a free resource on the Internet for states, courts, companies, lawyers, intermediaries, students and NGOs to have up-to-date information on mediation around the world, all of which can be viewed at <http://mediationworld.net/>.

By 2020, mediation has been developing globally in Europe, Australia, and the United States, as well as in the post-Soviet space. In particular, in such countries as Belarus, Russia, Kazakhstan there is already a profile law, which introduces the institution of mediation and defines the legal basis for mediation services, the practice of peaceful settlement of disputes by out-of-court methods, which provides a balance between the judiciary and mediation [2]. A positive factor is that Ukraine has begun striving to achieve the same experience as these countries. I believe that the institution of mediation, which is going to be enshrined

in law, will greatly improve the resolution of legal disputes in the state.

Further, I propose to elaborate on the concept of advocacy in Ukraine. In our state there is the Law of Ukraine «On Advocacy and Advocacy Activities», that gives us the definitions and the interpretation of the following terms:

– Advocacy of Ukraine – a non-governmental self-governing institution that provides protection, representation and other types of legal assistance on a professional basis, as well as independently decides on the organization and activities of the advocacy in the manner prescribed by this Law [3];

– lawyer – a natural person who carries out advocacy activities on the grounds and in the manner prescribed by this Law;

– Advocacy activity – independent professional activity of a lawyer to protect, represent and provide other types of legal assistance to the client;

– Advocacy self-government – the right of lawyers guaranteed by the state to decide on the organization and activity of the advocacy independently in the manner prescribed by this Law;

– protection – a type of advocacy activity that consists of ensuring the protection of the rights, freedoms and legitimate interests of a suspect, accused, defendant, convicted, acquitted person against whom coercive measures of medical or educational nature are envisaged or the issue of their application in criminal proceedings is resolved, a person whom the issue of extradition to a foreign state is being considered about, as well as a person who is being held administratively liable during the consideration of a case on an administrative offense;

– types of legal assistance – types of legal activities to provide legal information, advice and clarifications on legal issues, legal support of the client, preparation of applications, complaints, procedural and other legal documents aimed at ensuring the realization of rights, freedoms and legitimate interests of the client, prevention of their violations, as well as to facilitate their recovery in case of violation;

– conflict of interest – a conflict between the personal interests of a lawyer and his professional rights and responsibilities, the presence of which may affect the objectivity or impartiality in the performance of his professional duties, as well as the commission or failure to act during the practice of law activities;

– representation – a type of advocacy activity, which is to ensure the implementation of the rights and obligations of the client in civil, commercial, administrative and constitutional proceedings, in other government agencies, before individuals and legal entities, the rights and responsibilities of the victim in cases of administrative offenses, as well as the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings [3].

So, we understand that the task of a lawyer is

– consulting the client on his rights and responsibilities, explaining the principles of the legal system, as they relate to the rights and responsibilities of the client;

– providing assistance to the client in any lawful manner and taking legal

action to protect her or his interests;

– providing assistance to the client in courts and administrative bodies.

And the tasks of mediation can be listed from the draft law on mediation, where Article 3 states the following:

The tasks of mediation are:

1) settlement of the conflict (dispute) by reaching a mutually acceptable solution by the parties;

2) elimination of damage caused by the conflict;

3) the fullest possible satisfaction of the needs of the parties involved in the conflict (dispute);

4) reducing the level of conflict between the parties and preventing the resumption of the conflict (dispute);

5) restoration of law and order and harmony in society [4].

Thus, we can define that the ultimate goal in advocacy and the institution of mediation is to achieve one goal – to help a person resolve a legal dispute, so mediation can easily be present in advocacy.

Due to the fact that mediation is becoming very popular in Ukraine, Ukrainian society needs it in almost all types of legal relations, including political ones. In this regard, mediation in recent years has begun to carry out its active development in Ukraine. That is why in recent years many public organizations have been established to develop and improve the institution of mediation, and in Ukraine many internship programs have been created in other countries on the topic of «Mediation».

It should be noted that the establishment of the Committee on Mediation at the National Association of Advocacy of Ukraine indicates the interest of the law firm in the mediation procedure. The successful dissemination of the mediation procedure among the legal community will enable lawyers to acquire new professional skills in out-of-court dispute resolution through the use of the mediation procedure.

Vladyslav Sityuk marks that it is needed to change the stereotype of thought modern advocates during a grant the clients of services in the settlement of disputes. They must attract attention not only on legal positions of client but also on their interests which are hidden after these positions. An advocate must be able to pass from ordinary for him strategy of contentionness to ability to apply strategy of consensus or compromise in mutual relations with other side of dispute.

During a mediacy advocate, as a representative of client, must be instrumental in achievement mediacy agreements subject to conditions, which will satisfy interests of both sides of dispute. The main task of advocate in this process is not finishing telling of validity of position of client other side of dispute, not satisfied of neurohumor of rightness of client, here is a representative office of client in procedure of mediacy, but concordance of interests of client, with other side, that it is necessary for the mutually beneficial decision of dispute between sides. Thus an advocate is not deprived possibility to carry out verification of

possible variants of settlement of disputes for finding out of existence of legal barriers in their realization.

When examining of dispute resolution options is possible, a lawyer has the right to enter into mediation negotiations, adhering to the requirements of conciliatory rather than adversarial nature of mediation. If necessary, the lawyer can provide the client with advice, clarification on legal issues, which is desirable to do openly during the mediation session [5].

We understand that lawyer's mastery of the mediation procedure will one hundred percent increase the lawyer's authority and the role of the advocacy in a whole because in the future, the mediation procedure may be one of the main ways to resolve disputes in society. Therefore, it is necessary for scientists, lawyers and the state as a whole to work every day to improve the institution of mediation in general, as well as mediation in advocacy.

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2. Фахівчині Мережі правового розвитку пройшли базовий курс навчання з опанування навичок медіації. URL: <https://ldn.org.ua/event/fakhivchyni-hromads-koi-spilky-merezha-pravovoho-rozvytku-proyshly-bazovyy-kurs-navchannia-z-opanovuvannia-navychok-mediatsii/>.

3. Про адвокатуру та адвокатську діяльність: Закон України від 05.07.2012 № 5076-VI. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

4. Проект Закону про медіацію. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67831](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67831).

5. Медіація та правові перспективи її розвитку в Україні. URL: <https://radako.com.ua/news/mediaciya-ta-pravovi-perspektivi-yiyi-rozvitku-v-ukrayini>.