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FEATURES OF MEDIATION AS AN ALTERNATIVE METHOD OF SETTLEMENT OF FAMILY DISPUTES: LEGAL PROVISION AND PRACTICE IN UKRAINE AND EU COUNTRIES.[1104]

CARACTERÍSTICAS DA MEDIAÇÃO COMO MÉTODO ALTERNATIVO DE RESOLUÇÃO DE LITÍGIOS FAMILIARES: DISPOSIÇÃO E PRÁTICA JURÍDICA NA UCRÂNIA E NOS PAÍSES DA EU

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ABSTRACT: Family mediation is an effective alternative dispute resolution method that plays a crucial role in settling family conflicts outside the courtroom. The growing demand for mediation in Ukraine and the EU reflects the need for a more efficient, cost-effective, and confidential approach to resolving family disputes. This study aims to analyze the legal framework and practical implementation of family mediation in Ukraine and selected EU countries, highlighting its advantages and potential for further development. The research employs a comparative legal method, doctrinal analysis, and case study methodology to assess the current regulatory framework and practical applications of family mediation. The findings indicate that while Ukraine has made significant progress in establishing mediation as a legal practice, gaps remain in its legislative framework, enforcement mechanisms, and public awareness. In contrast, EU countries demonstrate a well-developed system of family mediation, often supported by mandatory pre-trial mediation requirements and state-funded mediation services. The study concludes that Ukraine can benefit from adopting best practices from the EU, particularly in integrating mediation into the legal system, ensuring its accessibility, and enhancing mediator training programs. The scientific novelty of the research lies in its comprehensive analysis of family dispute mediation, as well as its recommendations for strengthening Ukraine's mediation infrastructure in alignment with European standards.

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KEYWORDS: Family Mediation, Alternative Dispute Resolution, Legal Regulation, Ukraine, EU Mediation Practices.

RESUMO: A mediação familiar é um método alternativo eficaz que desempenha um papel crucial na resolução de conflitos familiares fora do tribunal. A crescente demanda por mediação na Ucrânia e na UE reflete a necessidade de uma abordagem mais eficiente, econômica e confidencial para resolver disputas familiares. Este estudo tem como objetivo analisar a estrutura legal e a implementação prática da mediação familiar na Ucrânia e em países selecionados da UE, destacando suas vantagens e potencial para desenvolvimento futuro. A pesquisa emprega um método jurídico comparativo, análise doutrinária e metodologia de estudo de caso para avaliar a estrutura regulatória atual e as aplicações práticas da mediação familiar. Os resultados indicam que, embora a Ucrânia tenha feito progressos significativos no estabelecimento da mediação como prática jurídica, permanecem lacunas em sua estrutura legislativa, mecanismos de aplicação e conscientização pública. Em contrapartida, os países da UE demonstram um sistema de mediação familiar bem desenvolvido, muitas vezes apoiado por requisitos obrigatórios de mediação antes do julgamento e serviços de mediação financiados pelo Estado. O estudo conclui que a Ucrânia pode se beneficiar da adoção das melhores práticas da UE, particularmente na integração da mediação no sistema jurídico, garantindo sua acessibilidade e aprimorando os programas de treinamento de mediadores. A novidade científica da pesquisa reside em sua análise abrangente da mediação de disputas familiares, bem como em suas recomendações para fortalecer a infraestrutura de mediação da Ucrânia em alinhamento com os padrões europeus.

PALAVRAS-CHAVE: Mediação Familiar, Resolução Alternativa de Litígios, Regulamentação Legal, Ucrânia, Práticas de Mediação da UE.

INTRODUCTION

The overload of the judicial system, the desire of the conflict parties to take an active part in the process of resolving the dispute between them, the private-law nature of the conflict and the desire for its confidential resolution, as well as a too long and costly judicial process objectively determine the development and active use of alternative methods of conflict resolution. English sociologists defined social conflict as an open struggle between individuals or groups in society or between nation-states (Jary & Jary, 2000). When the key components of a social conflict acquire a legal nature, namely, its parties are participants in legal relations, there is a pronounced conflict of their legal interests, and the consequences of such a conflict will have legal significance, then we are dealing with a legal conflict in the narrow sense of the word, which is the object of consideration and further resolution

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using alternative dispute resolution, including mediation.

On the one hand, the principle of people-centeredness and the state's duty to ensure human rights and freedoms enshrined in Article 3 of the Constitution of Ukraine obliges the state not only to create effective mechanisms for the realization of rights and freedoms, but also to ensure their effective protection (Verkhovna Rada of Ukraine, 1996). As a significant number of domestic scientists claim, the right to protection, along with the right to one's own and others' actions, is an integral part of any subjective right, and therefore the lack of effective protection turns the subjective right into a declarative provision that has no chance of being implemented in the real world. On the other hand, increasing the level of legal culture in society and the development of civil society in the state has the consequence of people realizing that it is not necessary to place all responsibility for the settlement of any legal dispute among themselves on the shoulders of jurisdictional bodies, since the members of society are already able to resolve the conflict among themselves through the self-regulation mechanism through negotiations, conciliation, concluding a legally binding agreement based on the results of the dispute resolution, which will have specific legal consequences for its parties.

Despite the fact that the first part of Article 55 of the Constitution of Ukraine stipulates that the rights and freedoms of a person and a citizen are protected by the court, the sixth part of this article enshrines the right of everyone to protect their rights and freedoms from violations and illegal encroachments by any means not prohibited by law (Verkhovna Rada of Ukraine, 1996). In the legal systems of Ukraine and other European countries, the institution of extrajudicial methods of protecting the rights, freedoms and interests of a person is actively developing, among which it is appropriate to define the institutions of notarial protection, administrative protection, arbitration, negotiations, and mediation. The Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022) is a manifestation of law-making based on the "bottom-up" principle, that is, when practice precedes its legislative regulation, and social needs in the development of mediation dictate its framework legal support in order to increase the effectiveness and popularity of this method of dispute resolution. The first domestic mediators and mediation centers appeared on the territory of Ukraine in the early 2000s. At the same time, the complete lack of both legal support for their activities and informing society about the effectiveness of alternative methods of conflict resolution inhibited the development of mediation and led to a low level of its popularity among Ukrainians.

In the context of the study of the institution of mediation at the level of family law disputes, we draw special attention to the fact that not all alternative methods of dispute resolution are proper and effective procedures in the family law plane. Paragraph 4 of Article 6 of the Law of Ukraine "On Arbitration Courts" excludes from the jurisdiction of

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arbitration courts cases in disputes arising from family legal relations, except for cases in disputes arising from marriage contracts (agreements) (Verkhovna Rada of Ukraine, 2004). Article 18 of the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003) defines the protection of civil rights by a notary public by executing an executive inscription on a debt document in the cases and in the manner established by the Law of Ukraine "On Notaries" and the Order of the Ministry of Justice of Ukraine "On the Procedure for Notarial Acts by Notaries of Ukraine".

Thus, civil legislation limits the scope of application of the institution of notarial protection to debt obligations, and since it is extremely difficult to find cases of the use of a debt document in the field of family legal relations, the issue of notarial protection in resolving family law disputes loses its relevance. In addition, before the introduction of mediation at the legislative level, notaries had no legal grounds to directly participate in the resolution process between the parties to the dispute, therefore, their work was often limited to providing legal advice on specific issues of applying a specific deed or contract to settle relations and their direct notarization (Tymoshenko et al., 2023).

The above shows that family mediation has its own specifics and the general features of mediation in the family-legal plane acquire special importance. The domestic legal literature reveals the objective prerequisites and factors that determine the development of the institution of mediation as an alternative way to resolve any legal disputes (Polishchuk, 2016; Karpenko, 2020). However, domestic legal science still lacks a comprehensive scientific analysis of the factors that determine the effectiveness of mediation settlement of family law disputes. Therefore, the aim od this article is to analyze the legal framework and practical implementation of family mediation in Ukraine and selected EU countries, highlighting its advantages and potential for further development.

1. MATERIALS AND METHODS

This study employs comparative legal analysis, doctrinal analysis, and case study to examine the legal framework and practical application of family mediation in Ukraine and selected EU countries. The methodology ensures a comprehensive assessment of family mediation as an alternative dispute resolution mechanism, its effectiveness, and its potential for further development.

The comparative legal method was used to evaluate the differences and similarities between the legal regulation of family mediation in Ukraine and various EU countries. This approach enabled a critical examination of the legislative framework, regulating mediation in family disputes (laws, regulations, directives). This method helped to analyze the extent of state involvement in family mediation, including mandatory pre-trial mediation and financial support for mediation services. The status of mediators, their professional training, and accreditation requirements across jurisdictions were examined within the context of this method.

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Primary legal sources such as the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022), the EU Mediation Directive (European Parliament & Council, 2008), and the national laws of selected EU countries were analyzed to assess how different legal systems facilitate mediation in family disputes. Secondary sources included academic articles, legal commentaries, and policy reports. A doctrinal legal analysis was conducted to evaluate theoretical perspectives on the applicability and effectiveness of mediation in family disputes. This method involved a systematic review of legal scholarship, judicial decisions, and legislative documents to define key concepts and principles of family mediation and identify legal gaps in Ukraine's mediation framework.

A case study approach was utilized to explore real-world applications of family mediation. This included analyzing court decisions where mediation was attempted as an alternative to litigation. This approach also involved examining successful and unsuccessful mediation cases in Ukraine and the EU to understand practical challenges and best practices. The impact of mediation on conflict resolution was assessed by reviewing empirical data from mediation centers, NGOs, and legal institutions that provided mediation services. For Ukraine, case studies focused on pilot mediation programs introduced after the adoption of the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022).

The research relied on qualitative data analysis, using legislative and regulatory documents as primary sources, academic literature and policy reports to support theoretical analysis, and case law analysis to provide insights into the practical implications of mediation agreements.

2. RESULTS

Against the background of the European integration processes in Ukraine, it will also be relevant to analyze the normative definitions of mediation in the legislation of the EU countries and acts of the bodies of the European Community. Thus, Directive No. 2008/52/EU defines mediation as "an organized process, whatever its name may be, in which two or more parties try to voluntarily reach a solution to their dispute with the help of a mediator" (European Parliament & Council, 2008). This act of EU law does not contain a mandatory norm regarding the definition of mediation, instead, a universal definition of mediation is provided, which, on the one hand, orients EU member states to the nature of this alternative method of dispute resolution and its essence at the same time, leaving the national law-making bodies within reasonable limits the freedom to formulate their own legal definition of this concept, taking into account the specifics of the specific legal system, the degree of development of legal awareness of the population and other objective factors. In particular, it is at the national level that the state can independently decide on the issue of the obligation to conduct mediation settlement of the dispute, the possibility of the parties to the dispute to go to

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mediation after the start of the court process, establishing the categories of disputes in respect of which mediation is prohibited by law or, on the contrary, the conduct of which is mandatory before going to court to resolve such a category of conflict, etc. According to Directive No. 2008/52/EC, mediation is "an organized process, whatever its name may be, in which two or more parties try to voluntarily reach a solution to their dispute with the help of a mediator" (European Parliament & Council, 2008).

Clause 4 of Article 1 of the Law of Ukraine "On Mediation" provides a legal definition of mediation as an out-of-court voluntary, confidential, structured procedure, during which the parties with the help of a mediator(s) try to prevent the occurrence or settle a conflict (dispute) through negotiations (Verkhovna Rada of Ukraine, 2022). Thus, the national legal definition of mediation in the Law of Ukraine "On Mediation" is based on the general principles and essence of mediation stipulated by Directive 2008/52/EC. This approach of the Ukrainian legislator to the definition of the national model of mediation corresponds to Ukraine's obligation to implement measures to harmonize domestic legislation with the EU legal system and to gradually adapt Ukrainian law to the EU acquis. The signs of mediation, reflected in its normative definition, acquire special value in the settlement of family law disputes. For example, the out-of-court nature of mediation means that it can be conducted independently of the court process, i.e., both before the start of court proceedings or in parallel with the ongoing court process regarding a similar dispute, and after the end of the court proceedings. This conclusion has a normative basis at the level of the second part of Article 3 of the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022).

According to the given normative definition, mediation can be used not only to settle an existing dispute, but also to prevent a conflict. In the field of family law, the indicated feature of mediation becomes relevant, since the strong emotional interdependence between family members has the consequence that the prerequisite for conflicts between them is not so much the violation of rights or interests protected by law, but emotional tension in communication, resentment, dissatisfaction with family life in general. The emotional component of the family conflict described by us is often of primary importance, because it is the root of the dispute in the family. However, the specified component is not examined at all during the judicial resolution of the dispute, since the relevant issues do not belong to the competence of the courts, which mostly operate in legal rather than moral categories, and which are called to resolve issues of a purely legal nature, related to the non-recognition, challenge or violation of rights or interests (Babikov et al., 2023). In this regard, the extrajudicial character in combination with the preventive function of family mediation can ensure the restoration and preservation of healthy relationships in the family and prevent the emergence of a dispute that will lead to the most negative consequences, in particular,

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termination of marriage, deprivation of parental rights, etc.

The first feature of mediation to consider is the mediability of a family law dispute. The issue of mediability of legal disputes has already been studied by some Ukrainian legal scholars. In particular, representatives of the Kyiv School of Law define mediability as a property of a legal conflict (legal dispute), thanks to which it can be settled directly by the parties to the conflict (dispute) during the mediation procedure (Yanovska & Bitsai, 2014). In turn, Tokareva (2023) suggests that the criteria for mediability of a dispute should be understood as its characteristics, which determine the probability of effectiveness of applying the mediation procedure to it [11]. In addition, Mazaraki (2018) defines mediability as a set of features that potentially make it possible to start a mediation procedure and achieve a peaceful and mutually beneficial solution to a legal dispute.

The first criterion for the mediability of a family law dispute is the absence of a mandatory ban on family mediation in Ukrainian legislation. Thus, the first part of Article 3 of the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022) directly provides for the possibility of mediation to prevent and settle family disputes. Moreover, domestic family legislation contains norms that provide participants in family legal relations with a certain legal freedom, in particular, contractual freedom, ensure the dispositive nature of legal regulation of family relations, and therefore contribute to the use of alternative methods of resolving family legal disputes without the involvement of courts or other jurisdictional bodies, including family mediation. The second part of Article 7 of the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002) gives the contract the status of a source of family law, and the third part of this article, as a general principle of family law, enshrines the principle of regulating family relations within the limits that are permissible in view of moral principles, the interests of society and the immediate subjects of family legal relations. It can be concluded that a system of self-regulation can be established in the part that remains largely unregulated by legislation and lacks judicial oversight. This mechanism entails the participants of these relations regulating their own conduct, particularly through the process of mediation among themselves. Kononov and Petrovska (2014) single out a relative condition, such as the possibility of concluding a settlement agreement provided for by law in the relevant category of disputes.

The next criterion for the mediability of family law disputes is their private legal nature, which requires the consideration of various aspects of the personal life of individuals when resolving them. In the motivational part of the court decisions, adopted as a result of the consideration of the lawsuits on divorce, determination of the place of residence of the child or the division of joint property of the spouses, it is often possible to find references of the courts to information of a personal or even intimate nature as evidence of the existence of circumstances that justify claims or objections in such cases

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(Nepyipa, 2020). As already indicated above, one of the European standards of mediation, which has received its regulatory consolidation at the national level, is the principle of confidentiality of mediation, according to which the mediator and other participants in the mediation are obliged not to disclose confidential information that has become known during the preparation for mediation and mediation (for example, the fact that the parties turn to a mediator for the resolution of a specific conflict or judgment, the position of the party expressed during the process of mediation settlement of the dispute, the content of the mediation agreement, etc.).

It is the confidential nature of the preparation for mediation, its conduct and the results of the mediation resolution of the dispute, regardless of whether the relevant contract is ultimately concluded or the conflict is left without a final settlement, that makes this form of alternative conflict resolution particularly comfortable and acceptable for resolving family law disputes, which more often than any other category of disputes relate to the private life of a person, and therefore their consideration in the vast majority of cases will be based on the study of personal information. Thus, in case No. 205/7324/21, the Leninsky District Court of Dnipropetrovsk (2022) stated that the parties' life together did not work out, as they have different views on family life, responsibilities and raising a child. The defendant drinks alcoholic beverages, does not pay attention to his daughter. During quarrels, he used profanity, shouted, insulted the plaintiff, threatened physical violence and repeatedly used it against his wife. During such quarrels, the daughter was next to or in her mother's arms, crying.

The information presented in the decision of the Rakhiv District Court of Zakarpattia Oblast (2024) in case No. 308/7171/24 is classified by the European Court of Human Rights as particularly sensitive; its distribution in public can create extremely negative consequences for a person, significantly harm a person's reputation and cause moral damage. In particular, the said decision contains the court's statements regarding the Defendant's presence of chronic diseases, the use of drugs to prevent pregnancy, the abuse of medical drugs, the Defendant's systematic use of oral contraceptive hormonal pills, her infertility, etc. The judicial resolution of a family conflict, which is based on the standard of publicity of the proceedings, openness of the judicial process, cannot absolutely ensure the inviolability of the secrets of personal and family life. This problem is exacerbated in small settlements, where, due to the small number of residents, people are especially worried about the possible dissemination of information about the existence of a family conflict, its nature, causes of its occurrence, and the results of its resolution as a result of the court process. At the same time, mediation helps to eliminate the outlined risks and leave absolutely all information regarding the family law dispute within the framework of the dialogue between its parties.

Among the general principles of the regulation of family legal relations, provided for in Article 7 of the Civil Code

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of Ukraine (Verkhovna Rada of Ukraine, 2003), a rule is established according to which the regulation of family relations is carried out taking into account the right to privacy of the personal life of their participants, their right to personal freedom and the inadmissibility of arbitrary interference in family life. This rule once again proves the expediency of the use of mediation mechanisms by the participants of family legal relations to resolve conflicts among themselves, within which both the mediator and any other participants in this dispute settlement procedure have the obligation not to disclose information either about the very fact of the initiation of mediation, or any information that became known in connection with the conduct of family mediation.

Despite the clearly positive nature of the normative consolidation of the principle of confidentiality of mediation for the resolution of family conflict, it is necessary to consider the shortcomings of the national legal guarantee of this standard. According to Article 6 of the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022), the persons specified in the first part of this article bear the responsibility for disclosing confidential information provided for by law. At the same time, neither the criminal law nor the law on administrative responsibility contains any special rule that would contain the composition of the corresponding offense and the sanction that should be applied to the person guilty of disseminating confidential information about mediation and its participants. The issue of the entity authorized to investigate the circumstances of the illegal dissemination of confidential information that became known during the mediation process remains completely unresolved.

There is no provision for any disciplinary responsibility for the mediator in the event that he violates the confidentiality standard in his work, which may well indicate his professional deformity, negligence or even an insufficient level of professional training, and therefore objectively requires the onset of disciplinary responsibility in such a case. Such a significant violation of the mediator can be considered as an objective basis for his temporary or indefinite removal from the activities of the mediator, depending on the scale and consequences of his unlawful dissemination of confidential information. The relevant circumstances lead to the fact that the parties to the mediation cannot be sure of the non-disclosure of information, and, for example, during the resolution of family disputes, this is extremely important, since the relevant category of disputes mostly contains private information. It is also appropriate to note that the rule, which is quite reasonable, but not fully implemented, is that the mediator cannot be questioned as a witness in the proceedings regarding the information that became known to him during the preparation for the mediation and the conduct of the mediation. Indeed, relevant changes regarding the impossibility of interrogating the mediator were made in the civil procedural legislation. However, there is no mention of the impossibility of interrogating the mediator in criminal proceedings.

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The next sign of the mediability of family disputes is their complex and interconnected nature, since the resolution of one dispute is logically transformed into the need to settle another property or non-property family conflict. In particular, when deciding the issue of establishing a regime of separate residence of spouses, the so-called temporary separation of spouses, there is a simultaneous need to determine the place of residence of the child, establish the regime of participation in the upbringing of the child of the other spouse with whom the child does not live, determine the procedure for using the joint property of the spouses or more clearly regulate the responsibilities of the spouses regarding maintenance. When resolving court cases regarding divorce, one can observe how other disputes arise in the future, namely regarding the division of joint property of the spouses, determination of the child's place of residence, collection of alimony and additional costs for the child, etc. The examples given by us clearly illustrate the complex nature of family disputes, and court practice shows that a full-fledged resolution of a family conflict requires a lot of time and significant financial resources to cover court costs. This substantiates the expediency and effectiveness of mediation, which does not have the same level of formalization and imperative in matters of procedure as a court process, and therefore allows, unlike the latter, flexibility in the resolution of a family dispute, the transition of parties from one aspect of the conflict to another, settlement of a dispute that has appeared on the surface already after the start of mediation.

In this context, the key advantage of mediation is the absence of an imperative rule inherent in the judicial process, that the resolution of the dispute must take place exclusively within the limits of the stated requirements, in connection with which, the mediator has an objective opportunity to contribute to the resolution of any conflict that exists between the parties of family mediation, regardless of what request they primarily addressed to the mediator, which is an advantage of family mediation. This conclusion corresponds to the approach of the Ukrainian legislator, expressed in Article 21 of the Law of Ukraine “On Mediation” (Verkhovna Rada of Ukraine, 2022). According to them, in an agreement based on the results of mediation, the parties to the mediation can go beyond the scope of the claim (statement), if the mediation is conducted after the start of the court process.

In addition, an important feature of mediation in family disputes, which is at the same time its advantage compared to the judicial process, is the absence of a mandatory mediation procedure defined at the level of legislation. This gives the parties the opportunity to independently choose the most optimal model of mediation settlement of a family conflict, taking into account the special factual circumstances of a particular dispute. In this context, “procedural flexibility” of mediation directly follows from its fundamental principle - the voluntary character of mediation settlement of a

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dispute. Paragraph 13 of Directive No. 2008/52/EC (European Parliament & Council, 2008) stipulates that the mediation provided for by this Directive must be a voluntary process in the sense that the parties independently manage the process and can organize it at their own discretion and terminate it at any time. While the definition of the principle of voluntary mediation in Article 5 of the Law of Ukraine "On Mediation" does not include the right of the parties to organize and manage the mediation process, as it is provided as an element of another principle, namely the principles of self-determination and equality of rights of the parties to the mediation, stipulated in Article 8 of this Law (Verkhovna Rada of Ukraine, 2022).

The analysis of the provisions of the Law of Ukraine "On Mediation" gives reason to conclude that Ukrainian legislation does not define a clear and universally binding algorithm for dispute settlement through mediation, since the law only establishes the principles and limits of mediation and generally defines the key stages of this alternative dispute resolution procedure. In accordance with Article 16 of the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022), before the start of mediation, a mediator or an entity providing mediation shall carry out preparatory measures with the parties to an existing or possible conflict (dispute), together or separately, to clarify the possibility of mediation in order to prevent the occurrence or settlement of a conflict (dispute) in particular, meetings, collection and exchange of information, documents necessary for the parties to the conflict (dispute) to make a decision and the mediator's decision to participate in mediation, as well as other measures agreed between the parties to the conflict (dispute) and the mediator or the entity providing mediation.

Although Article 3 of the Law of Ukraine "On Mediation" allows the legislator to regulate the specifics of conducting mediation in certain categories of conflicts (disputes), including family conflicts, at the same time, neither a special law, nor the Family Code of Ukraine, nor any other regulatory legal act defines the specifics of conducting family mediation. This is a clear shortcoming of the national legislation on mediation, given the specific nature of family disputes. At the same time, international standards define certain special requirements for the family mediation procedure. For example, the UN Committee on the Rights of the Child (2009) noted that in cases of mediation, "the child must have the opportunity to give voluntary and free consent and must be given the opportunity to receive legal and other advice and assistance to determine the feasibility and desirability of mediation."

The above criteria for the mediability of family law disputes are objective in nature, as they relate to the nature of the relationship where relevant conflicts arise. At the same time, there are also subjective criteria for the mediability of family law disputes arising from the specifics of the subjects who are conflicting parties and, accordingly, participants in the mediation procedure. The first subjective criterion of the mediability of family law disputes to analyze is the emotional tension that accompanies the settlement of almost

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every dispute in the family law field. Unlike a court process, which, due to its adversarial nature, often intensifies the emotional tension between the parties, the mediator directs significant efforts to reduce the emotional pressure in the communication of the parties and create conditions favorable for finding a compromise (Derevyanko et al., 2023). In this regard, mediation significantly "wins" among other methods of settling family conflicts, in the application of which the emotional component of the conflict is generally ignored.

Secondly, the subjective criteria for the mediability of family law conflicts include the parties' lack of independent negotiation skills and legal education, which leads, on the one hand, to the impossibility of representing their interests in court independently (without the involvement of a lawyer), and on the other hand, to the inability to independently conduct effective negotiations and fully exhaust the existing family legal conflict. Since the participants in family relations are physical persons related to each other by blood, marriage or family ties of another nature, and the relations themselves arise in a private-legal, mainly non-property plane, the parties to a family law dispute do not have a sufficient level of knowledge and skills for a legal, reasonable and effective resolution of the conflict among themselves, in connection with which there is a need to involve a neutral party who has professional skills in the field of out-of-court dispute resolution (Horielova & Vishnevska, 2024).

Thirdly, the need and interest of the participants in disputed legal relations in maintaining relations between themselves should also be considered as a subjective criterion for the mediability of family law disputes. Family legal relations are characterized by the longevity of their existence, a close connection between their participants, which often acquires a personal non-property nature, due to which the presence of a dispute and even the termination of individual family legal relations does not mean the automatic termination of any legal relationship between the parties. For example, the divorce and the termination of family-marital relations do not terminate the family relations between the former spouses regarding the maintenance and upbringing of a common child or the property relations regarding the possession, use and disposal of objects of common shared property. In this context, family mediation is a constructive and inclusive method of resolving family conflicts is correct. It enables families to overcome their differences, build bonds and find long-term solutions by encouraging open conversation, understanding and mutual agreement. Family mediation is an excellent method for establishing harmony and maintaining good family dynamics due to its many advantages and effective results (Petrova, 2024a). Indeed, mediation as an out-of-court voluntary dispute settlement procedure also performs the function of "healing" relations between conflicting persons, since the procedure of joint search for a compromise enables persons to learn to negotiate, agree, communicate and find a "golden mean" that suits both, therefore, the participants of the

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mediation procedure receive both an objective opportunity to maintain partnership relations with each other and the communication skills necessary for this.

The signs of the mediability of family legal disputes outlined by us give grounds to conclude about the autonomy and uniqueness of family mediation. Petrova (2024b) draws attention to the independent nature of family mediation, who gives the following definition of the specified concept: family mediation is a structured, interactive form of alternative dispute resolution, with the help of which a neutral third party, a mediator, helps family members to negotiate a family conflict, often related to divorce, which may concern property division, child custody, alimony agreements, etc. Emphasizing the independent nature and peculiarity of family mediation, Petrova (2024b) also notes that during a typical conflict resolution meeting, the parties are in separate rooms, and their attorneys move between the client's room and a third meeting location to convey each side's position. There is never any direct contact between the parties. During family mediation, the parties meet face-to-face, usually without lawyers, but in the presence of a trained family mediator. A settlement meeting can be effective in reaching an agreement, but mediation resolves the emotional aspects of the conflict, making it possible for the relationship to continue. This is important for all family conflicts, but it is especially important when children of any age are involved.

Therefore, the high degree of mediability of a family law dispute, the compatibility of the features of mediation with the nature of family disputes, as well as the positive foreign experience of using mediation to resolve family law conflicts provide grounds for distinguishing family mediation as an independent form of alternative out-of-court settlement of a dispute, which has specific features compared to other methods of settlement of such conflicts, as well as to other forms of mediation (business mediation, criminal mediation, labor mediation, etc.). The factors outlined above point to the prospect of active and effective use of family mediation in Ukraine, in connection with which, it will be appropriate to form a special legal support for family mediation both at the level of recommendatory acts and normative prescriptions, which will establish the basic principles, principles and imperative rules for conducting the family mediation procedure.

In Ukraine, it is expedient to direct state resources to the creation of an autonomous family mediation platform and support of non-profit organizations whose purpose is alternative, including meditation, resolution of family legal disputes. As state support for the system of free legal aid has facilitated access to professional assistance in a variety of legal matters, a state-supported family mediation institution, founded on principles of quality and accessibility, has the capacity to achieve several significant objectives. Primarily, it can enhance legal awareness among the Ukrainian population, thereby fostering greater trust and confidence in

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alternative dispute resolution methods. Moreover, it has the potential to alleviate the burden on the national justice system by reducing the number of court proceedings related to family disputes.

3. DISCUSSION

In the legislation of EU countries, alternative methods of dispute resolution, including those arising in the field of family relations, began to receive legal support long before the adoption of a special law in Ukraine. Thus, family mediation in EU law has already acquired an independent meaning and received a special legislative regulation. Given the strengthening of European integration processes in Ukraine, it will be useful and relevant to study the legal regulation and practice of mediation in family disputes in the EU countries.

The issue of the independence of family mediation deserves special attention in view of the specifics of providing it with special legal regulation in the legislation of EU countries. The Committee of Ministers of the Council of Europe (1998) noted that mediation can be applied to all disputes arising between members of the same family who are related by blood or marriage and all those who live or have lived in family ties in accordance with how they are defined in national legislation. Family mediation has received its own special legal support in many European countries with a developed system of alternative means of dispute resolution.

In Austria, mediation was first used in the late 1990s as an experimental reform aimed at relieving the burden on the national judicial system. On the basis of individual judicial bodies, mediation centers were created, which offered married couples who applied to the court with a claim for divorce, carry out the divorce procedure with the resolution of all legal and economic aspects with the support of a neutral third party (mediator). The key task of the first Austrian mediation centers in the courts was to ensure a peaceful resolution of a family dispute between spouses for the voluntary conclusion of an agreement that would regulate the relations of already divorced parents regarding the upbringing and maintenance of children. Since the first centers on family mediation showed successful work and significantly relieved the burden on the Austrian courts, legal regulation of family mediation was introduced throughout Austria at the regulatory level. Finally, Bundesgesetz über Mediation in Zivilrechtssachen (hereinafter – Austrian Mediation Act) was adopted by Nationalrat (2003), which provided a legal possibility to use mediation to settle civil disputes of all categories. Family mediation occupies an independent place in German legislation, where, according to the German Social Law Code, the authority to organize mediation in disputes related to the problems of raising children is entrusted to the relevant system of specialized institutions. In Germany, family mediation also includes inheritance cases related to a dispute between heirs who are members of the same family (Yosypenko, 2017).

The Family Law Act (Parliament of the United Kingdom, 1996) regulates the family mediation procedure in detail, in particular, establishes guarantees of

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access to family mediation, regulates the issue of reimbursement of expenses incurred in connection with mediation, and regulates the duty of the mediator to ensure that the interests, needs and feelings of each child are taken into account when settling a family dispute, as well as the duty of the mediator, if there is an objective opportunity to listen to the child during family mediation in a dispute that affects his interests. According to the provisions of the Children and Families Act (Parliament of the United Kingdom, 2014), disputes concerning children (determination of their place of residence after the divorce of parents, distribution of obligations for the financial support of the child between parents, etc.) cannot be resolved in court, until at least one mediation meeting is held for the peaceful settlement of the dispute.

Family mediation also received special legal support in Avioliittolaki (hereinafter – Finnish Marriage Act) adopted by Eduskunta (1929); Chapter IV regulates the principles and basic rules of mediation in family conflicts, which is of primary importance compared to court proceedings. According to Article 21 of the Finnish Marriage Act, the mediator must strive to establish a confidential and open discussion between family members. In addition, this article establishes a special task of the family mediator - ensuring the special status and interests of minor family members. The Finnish Marriage Act also regulates the organization and administration of mediators in detail, in particular, the Ministry of Social Affairs and Health is defined as the body that provides general planning, management and supervision of mediation in family matters and issues more detailed rules and instructions on mediation in family matters (Article 22 of the Act), qualification requirements for professional mediators in the resolution of family disputes and mandatory licensing of mediation activities are also provided for, in particular, permission may also be granted upon application to a person who is familiar with the work of child protection or family counseling or family law and who, based on previous experience and personal characteristics, has sufficient conditions to perform the role of a mediator(Article 23 of the Law) (Eduskunta, 1929).

Compared to other European countries, the model of family mediation in Lithuania is unique, which takes the form of judicial mediation in civil, including family cases. Here, the mediation resolution of family conflicts does not have an autonomous and out-of-court character, based on international standards, because according to Lithuanian law, judicial mediation is conducted free of charge in the premises of the court by a judge or an assistant judge who has special professional training and belongs to the list of court mediators (Pali & Voet, 2009). Such an approach to the regulation of family mediation will have clear obstacles and risks for borrowing in Ukraine, given the heavy workload of the national judicial system, the personnel "crisis" in the judicial authorities, the high degree of mistrust of the Ukrainian population in the domestic justice system, the threat violation of the

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principle of independence and impartiality of the court, as well as considering the occurrence of a conflict between the already existing Ukrainian legislation procedure for the peaceful settlement of a dispute with the participation of a judge and the described model of judicial mediation introduced in Lithuania. Therefore, this model of family mediation can have negative consequences if it is implemented in Ukraine without prior reform of the judicial system as a whole.

The experience of European countries to give family mediation an independent meaning as a legal and social institution in the field of alternative dispute resolution is considered positive. It is expedient to borrow the European experience of special legal regulation of the mediation procedure in family conflicts, regulating its main principles and rules of implementation at the level of a separate section of the Family Code of Ukraine or the Law of Ukraine "On Mediation." Finland's experience in administering the activities of mediators is also worthy of attention; it possible to entrust the Ministry of Justice of Ukraine together with the Ministry of Social Policy of Ukraine to administer the activities of family mediation centers created with the support of the state and at the level of subordinate legal acts to regulate the rules of mediation for the resolution of family law disputes.

Furthermore, positive is the experience of European countries using various state support programs for family mediation centers, within which their activities are financed from public budget funds. In particular, similar programs of state funding of the family mediation institute have been successfully implemented in Ireland, Denmark, and Australia, where free mediation is provided to all married couples to resolve family conflicts between them regarding divorce, child support, etc. The experience of European countries shows that the institution of family mediation in Ukraine is at the stage of formation in view of the ongoing reform of domestic justice, the absence of framework legislation on mediation until 2021, proper special legal support for family mediation at the present time, and the distrust of Ukrainian society in the mechanism of alternative mediation (out-of-court dispute settlement). In this regard, the state must not only create appropriate legal conditions for the development of family mediation but also to direct personnel and financial resources to stimulate the activities of national centers for mediation and mediation in family disputes, encourage Ukrainian families to apply to relevant organizations for out-of-court dispute resolution, and popularize the institution of family mediation in Ukrainian society as an effective, fast and profitable mechanism for overcoming family legal conflicts.

In order to ensure the active use of alternative methods of dispute resolution, including family mediation, the legislation of some European countries at the level of procedural legislation has introduced the principle of mandatory preliminary mediation resolution of certain categories of disputes before going to court. Therefore, in view of the principle of

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voluntary mediation enshrined in the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022) and in EU regulatory acts, and also, given that domestic legislation is at the stage of its formation and active development, in our opinion, it will be useful to analyze the legislative approaches of individual European states to solving the acute problem of the correlation between the principle of voluntary mediation and the state's obligation to stimulate and encourage the population to use alternative methods of dispute resolution.

The main problem with the introduction of the mandatory mediation mechanism is the risk of violation of the right to a fair hearing by an independent court established by law, guaranteed by Article 6 of the European Convention on Human Rights. By the way, it is precisely the content of the right to a fair trial and the duty of states to ensure access to the court that led to the consolidation of voluntary mediation in the legislation of the vast majority of European countries as one of its principles.

When examining the feasibility and admissibility of introducing a mandatory family mediation mechanism, it is necessary to pay attention to the practice of the European Court of Justice on this issue. Key in this matter is the position of the Court of Justice of the European Union (2010) in the case of Alassini v Telecom Italia SpA. The Court noted that limiting the fundamental right to a fair trial (and the right to access to a court as an aspect of it) is possible given the fact that in certain types of cases, alternative dispute resolution methods are "quicker, less expensive and more likely to provide a satisfactory long-term solution."

At the same time, in the practice of European countries, examples of active use of the family mediation mechanism can be found in the absence of any imperative prescriptions regarding its mandatory implementation in the legislation. For example, the legislation of the Netherlands does not contain any provision that would directly or indirectly oblige the parties to enter into mediation for the settlement of a family conflict, while the ratio of dispute settlement methods used during the dissolution of marriage indicates the advantage of mediation: during 2018-2019, only 5% of citizens used the judicial procedure for settling disputes related to divorce, 34% of spouses reached an agreement on their own without the involvement of a mediator, later turning to the court only to formally obtain a decision on dissolution of marriage, 41% of all divorces of spouses took place with a jointly engaged mediator, and in 10% of cases each spouse was additionally assisted by other specialists (as a rule lawyers) (Libralex, 2021).

Analyzing the idea of mandatory mediation, the establishment of a general imperative at the level of legislation on the mandatory conduct of mediation in all categories of disputes before going to court will not correspond to the content of the right to a fair trial and will have risks of prolonging the terms of settlement of the dispute in view of the lack of grounds for stopping the running of the statute of limitations during mediation. The implementation of the concept of mandatory mediation should take place in a balanced way,

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taking into account the nature of the dispute, the sphere of relations where it arose, the duration or repetition of its existence between the parties and other special factual circumstances of a specific case.

In some categories of cases, the essence and nature of the dispute itself determine the effectiveness of a peaceful, rather than adversarial, method of its settlement and conducting negotiations to prevent the re-emergence of the conflict, and the latter generally does not occur during the court process. This article substantiates that the close relationship between the parties to a family conflict, frequent emotional tension between them, and the objective need to preserve relations between family members can be considered as factors determining the expediency of using the mandatory family mediation mechanism. For example, Children and Families Act (Parliament of the United Kingdom, 2014) obliges to hold at least one meeting with a mediator for the purpose of pre-trial settlement of a family dispute concerning children before going to court. This approach of the British legislator has a logical explanation, because when considering this category of cases, it is often necessary to best ensure the interests of the child, to preserve family relations even after the divorce of the spouses, in connection with which it is not enough to formally resolve the conflict according to the letter of the law, and it is necessary to apply knowledge and practical skills in psychology to formulate not just a legal, but an individual and useful for the family formula for solving a specific conflict.

The experience of England regarding the indirect stimulation of family mediation is also interesting: in the event of a person's unjustified refusal of the court's proposal to conduct mediation, the court, regardless of the final court decision, usually imposes on the party that refused the conciliation procedure the burden of reimbursing the other party's legal costs. We are also impressed by the provision of the UK Act regarding the statutory list of exceptions when the requirement for mandatory family mediation does not apply, in particular, in the case of domestic violence in the family, the stay of one of the parties to the dispute in places of deprivation of liberty, etc.

Within the framework of the issue of the obligation of family mediation, it is advisable to study the experience of Italy, where the obligation of the parties to the dispute to mediate before the start of the court process was based not so much on the nature of the dispute and the effectiveness of its peaceful settlement, but on statistical data regarding the workload of the Italian courts with the relevant categories of disputes and, accordingly, the desire of the state to relieve the courts of these cases: disputes regarding co-ownership of land, property rights, division of assets, succession, family contracts, leasing, loans, commercial leases, medical and paramedical liability, defamation, insurance and banking and financial transactions. Such a wide list of disputes identified for mandatory mediation, where the conciliation procedure is not effective and

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appropriate in all cases, resulted in the adoption by the Italian Constitutional Court of a decision to recognize the relevant legal norm on mandatory mediation as unconstitutional. This decision became an impetus for reforming the mechanism of alternative dispute resolution, as a result of which the procedure of mandatory court-ordered mediation was introduced, which can take place not only after the start of the trial, but also during the consideration of cases in the court of appeal. In this case, the obligation to conduct mediation is not based solely on a general regulatory prescription, but on the court's analysis of the actual circumstances of a specific case and the court's conclusion about the effectiveness of the mediation settlement of a specific dispute.

CONCLUSIONS

Summarizing the analysis of the experience of European countries regarding the legal regulation and practice of family mediation, we can draw a general conclusion that the given norms of foreign legislation in combination with specific cases of the application of mediation in family disputes prove its efficiency, effectiveness and the presence of numerous advantages compared to the judicial process of consideration of family cases. Confidentiality, economic efficiency, "flexibility" of the procedure, the absence of excessive formalism, a complex and creative approach to the simultaneous resolution of the entire set of conflicts in the family, both legal and non-legal, in family mediation indicate that it is quite suitable for the field of family relations. An analysis of the current state of legal support for mediation shows that currently there is only a framework general legal regulation of mediation, and therefore there is a need for the development of Ukrainian legislation on family mediation in order to ensure the legal conditions for its development and effective application. In view of the European integration processes in Ukraine, during the formation of special legislation on family mediation, it is advisable to borrow the positive experience of European countries regarding the regulation of certain aspects of family mediation, in particular, to distinguish it as an independent type of alternative dispute resolution, to introduce mechanisms of state, including financial support for the activities of family mediation centers, to regulate the powers of courts regarding the appointment of family mediation, both before the start of the trial and at the stage of appellate review of the case, to establish a list of cases when conducting family mediation is impossible.

At the same time, it is necessary to take a critical attitude to certain provisions of foreign legislation in view of the social and legal peculiarities of Ukraine, in particular, to the norms regarding mandatory mediation, the absence of which eliminates the appeal to court or the procedure of conducting mediation by a judge. "Blind" copying of European legislation without analyzing the prospects of its application in Ukrainian realities can leave a negative impression on the entire further development of the institution of family

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mediation. Therefore, the institution of family mediation should become the subject of numerous domestic interdisciplinary studies by lawyers, psychologists, and sociologists, on the qualitative results of which the concept of special legislation in this area should be built.

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