

References

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UDC 347.63(043.2)

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DEVELOPMENT OF MEDIATION IN THE WESTERN COUNTRIES

In the modern conditions of state development, the recognition and observance of human rights and interests as the highest social value comes to the fore. In this direction, the appropriate reaction of the state to the committed crime, in particular, its immediate prevention and prevention of new manifestations of criminal behavior in the future, becomes important. One of the initiatives in this field is the introduction of the mediation procedure into the justice system. It is based on the ideas of reconciliation of the parties to the criminal conflict, termination of the conflict itself, taking into account the needs and wishes of the victim, the offender's awareness of moral and legal responsibility for the crime committed, as well as the reintegration of the offender into society.

Mediation, as an alternative method of dispute resolution, is gaining more and more popularity in Western countries. In many countries, mediation procedures have long become an integral part of the judicial system and are used to resolve a wide range of cases.

For example, in the US, each state has its own mediation laws, and many courts require parties to see a mediator before going to court. In the UK, mediation is very common in civil and family matters, as well as in commercial matters.

In Germany, mediation procedures began to be used more often to resolve family and civil cases, as well as in economic cases. In France, mediation is mandatory before court proceedings for some types of cases.

In many countries where mediation is not mandatory, many people still turn

to it because they understand that it can be a faster and less expensive way to resolve disputes than traditional court procedures.

However, it should be noted that the development of mediation in Western countries is not universal. It depends on cultural, economic and political factors. Also, there are differing opinions on the effectiveness of mediation, and some cases may be too complex to resolve through mediation [1].

In Ukraine, mediation is an innovative project and is at the initial stage of its implementation. As evidenced by the practice of Western countries, mediation is increasingly gaining recognition as one of the effective methods of reconciliation between the victim and the offender in criminal proceedings. The mediation procedure can be divided into the following stages: 1) referral of the case to mediation; 2) appointment of a mediator in a case; 3) preparatory stage; 4) direct mediation procedure; 5) reporting on mediation results.

The most important task of mediation is to give the victim and the offender the opportunity to detail their needs and wishes and to develop a plan acceptable to both parties to eliminate the damage caused by the crime.

At this stage, the options that are most acceptable to the parties are developed and evaluated. The role of a mediator is to help parties to find positive features in the proposed option or come to a new option that satisfies both parties.

Very often, the parties reject useful options for solving the situation only because they begin to mentally evaluate them in advance, concluding that this option will turn out to be unacceptable as a result. To avoid this, the mediator should transfer the stage of evaluation of options to a later stage of mediation, which will allow the parties to freely formulate possible option [2, p. 131].

The options worked out between the parties must be evaluated by the mediator from the point of view of their compliance according to the following criteria: specificities; measurability; attainable; realism; certainties in time.

If at this stage the parties have reached an agreement on the resolution of the conflict, which corresponds to the above-mentioned features, then the mediator and the parties are entrusted with the task of drawing up this consensus in writing.

The process of concluding a conciliation agreement consists in writing those agreements between the parties that were reached at the previous stages.

It should be started by summarizing everything expressed at the previous stages and agreeing on the decision, which the parties agreed on in principle.

When preparing a draft agreement, it is important to use words and expressions that are understandable to the parties, and that most clearly reflect their understanding of the purpose of this agreement [3, p. 52].

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UDC 347.63(043.2)

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THE CIVIL CODE OF UKRAINE AS A CIVIL LAW SOURCE

A term “sources of law” came into modern jurisprudence from the Roman law. Sources of law are classically understood as the form of expression of legal norms that have a universally binding meaning. In our opinion, in modern law, a source of law should be understood as a legal act or other external form of the recognized law, which is mandatory for certain subjects of a certain law enforcement activity.

In Soviet times, the normative acts were considered as the only source of civil law, so this concept was exhausted by the category of civil legislation. Civil law is a system of legal norms regulating the proprietary and some personal non-proprietary relations. Civil legislation is a set of normative acts that contain these norms. Therefore, “civil law” and “civil legislation” are the different concepts [1].

A system of civil law sources is determined by the construction of Article 4 of the Civil Code of Ukraine, which states that the basis of civil legislation of Ukraine is the Constitution of Ukraine, and the main act of civil legislation of Ukraine is the Civil Code of Ukraine. This reflects the general system and hierarchy of the Ukrainian legislation, including civil legislation. Therefore, acts of civil legislation are also other laws of Ukraine adopted in accordance with the Constitution of Ukraine and the Civil Code of Ukraine [2].

A system of civil legislation includes:

1. The Constitution of Ukraine dated June 28, 1996, the rules of which lay down the principles of regulation of property relations, personal non-proprietary rights, intellectual property relations, entrepreneurial activity, etc;

2. The main act of civil legislation is the Civil Code of Ukraine, adopted on