

# РОЗДІЛ 1

## ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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### ETHICAL AND LEGAL STANDARDS OF MEDIATION AND THEIR IMPLEMENTATION IN UKRAINIAN LEGISLATION: INTERNATIONAL EXPERIENCE AND NATIONAL PERSPECTIVES

#### ЕТИЧНО-ПРАВОВІ СТАНДАРТИ МЕДІАЦІЇ ТА ЇХ ІМПЛЕМЕНТАЦІЯ В ЗАКОНОДАВСТВІ УКРАЇНИ: МІЖНАРОДНИЙ ДОСВІД ТА НАЦІОНАЛЬНІ ПЕРСПЕКТИВИ

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The article is devoted to the study of modern Ukrainian and international ethical and legal standards of mediation, which is important in the context of implementation of Ukrainian legislation in line with European norms. Mediation is seen as an effective tool for alternative dispute resolution that can reduce the burden on the judicial system and increase the efficiency of justice. The author analyses national and international standards, in particular the European Code of Conduct for Mediators, EU Directive 2008/52/EC and the UNCITRAL Model Law, which define the basic ethical principles of mediation. The article examines the Law of Ukraine 'On Mediation' (2021) and the Code of Professional Ethics for Mediators (2022), identifies key ethical requirements for mediators and problems that need to be addressed, including training and certification of mediators, and financial accessibility of procedures for different social groups.

The relevance of the study is due to the growing importance of mediation as a tool for peaceful conflict resolution in the global legal environment. Mediation helps to relieve the workload of the courts, reduce the cost of litigation and maintain positive relationships between the parties. In Ukraine, its implementation is an important step in the context of European integration, but there are challenges related to the need to improve the regulatory framework and create infrastructure for the effective functioning of this instrument.

The purpose of the study is to analyse the ethical and legal standards of mediation, assess their integration into Ukrainian legislation and identify areas for improving the legal framework.

The study revealed gaps in the legislation, including the absence of a unified Code of Ethics for mediators, which complicates the training and certification of specialists. Another important problem is the lack of financial accessibility of mediation for the population. However, Ukraine has already implemented key ethical principles, such as confidentiality and voluntariness, which are in line with international standards. Prospects for further research include the development of a national training programme for mediators, improving ethical standards and adopting the Code of Ethics for Mediators at the legislative level. This will facilitate the development of mediation in Ukraine and its effective implementation in the legal system.

**Key words:** ethics, mediation, dispute, conflict, human rights.

Стаття присвячена дослідженню сучасних українських та міжнародних етично-правових стандартів медіації, що є важливим у контексті імплементації українського законодавства до європейських норм. Медіація розглядається як ефективний інструмент альтернативного вирішення спорів, який може зменшити навантаження на судову систему та підвищити ефективність правосуддя. Проаналізовано національні та міжнародні стандарти, зокрема Європейський кодекс поведінки медіаторів, Директиву ЄС 2008/52/ЄС та Типовий закон ЮНСІТРАЛ, які визначають основні етичні принципи медіації. Досліджено Закон України «Про медіацію» (2021) та Кодекс професійної етики медіатора (2022), виявлено ключові етичні вимоги до медіаторів та проблеми, що потребують вирішення, зокрема підготовка та сертифікація медіаторів, фінансова доступність процедур для різних соціальних груп.

Актуальність дослідження зумовлена зростанням значення медіації як інструменту мирного вирішення конфліктів у глобальному правовому середовищі. Медіація сприяє розвантаженню судів, зменшенню витрат на судові процеси та збереженню позитивних взаємин між сторонами. В Україні її впровадження є важливим кроком у контексті євроінтеграції, однак існують виклики, пов'язані з необхідністю вдосконалення нормативно-правової бази та створення інфраструктури для ефективного функціонування цього інструменту.

Метою дослідження є аналіз етично-правових стандартів медіації, оцінка їх інтеграції в українське законодавство та визначення напрямків удосконалення правової бази.

Результати дослідження виявили прогалини в законодавстві, зокрема відсутність єдиного Етичного Кодексу медіаторів, що ускладнює підготовку та сертифікацію фахівців. Також важливою проблемою є недостатня фінансова доступність медіації для населення. Проте в Україні вже впроваджено ключові етичні принципи, такі як конфіденційність та добровільність, що відповідають міжнародним стандартам. Перспективи подальших досліджень включають розробку національної програми підготовки медіаторів, вдосконалення етичних стандартів та прийняття Кодексу етики медіатора на законодавчому рівні. Це сприятиме розвитку медіації в Україні та її ефективному впровадженню у правову систему.

**Ключові слова:** етика, медіація, спір, конфлікт, права людини.

**Problem statement.** The relevance of the study of mediation lies in its ability to significantly reduce the burden on the judicial system and ensure prompt, efficient and fair resolution of conflicts. This issue becomes particularly important in the context of the current socio-political realities, when a significant number of citizens face violations of their rights and need access to alternative dispute resolution mechanisms.

In such circumstances, mediation can be an effective tool for restoring violated rights, reducing social tension and maintaining law and order. However, despite the adoption of the progressive Law of Ukraine 'On Mediation' [1], its ethical and legal norms often remain declarative, as the lack of clear mechanisms for introducing mediation into the practical activities of legal institutions limits its real effective-

Table 1

**Basic ethical principles of mediation**

<b>Principle.</b>	<b>Description.</b>
<b>Neutrality</b>	The mediator does not take sides in the dispute and has no personal interest in the outcome of the procedure, which guarantees the objectivity of the process and promotes trust between the parties.
<b>Voluntariness</b>	The parties participate in the mediation solely of their own free will and may terminate the process at any time without giving any reason.
<b>Privacy.</b>	The content of the negotiations and any information disclosed during the mediation is not subject to disclosure, creating a safe environment for open dialogue between the parties.
<b>Flexibility</b>	The mediation process does not have a strictly regulated procedure, which allows the parties to adapt it to their needs.
<b>Equality</b>	All parties have equal opportunities to express their views and participate in decision-making.
<b>Focus on the interests of the parties.</b>	Unlike litigation, which is based on legal arguments, mediation takes into account the needs, interests and expectations of the parties to the conflict.

ness. A problem arises of insufficient understanding and use of mediation procedures as an alternative to litigation, which requires further research to address the problems of adapting mediation to the specific conditions of the national legal system, as well as its introduction in other areas where it can become a reliable and fair way to resolve conflicts.

**Analysis of recent research.** At different times, such domestic scholars as O. Antoniuk, H. Yeryomenko, Y. Ivchuk, Y. Prymak, N. Mazaraki, Y. Mykolaenko, and O. Moiseienko have devoted their works to certain issues of mediation. The study by Kharytonova (2023) [2] emphasises that the Ukrainian mediation system is mainly focused on resolving commercial disputes, while European practice is much broader, covering such areas as family, labour conflicts and even criminal cases. At the same time, V. Kutas [3] points out the importance of creating state programmes of financial support for mediation for the poor population.

**Presentation of the main material.** International mediation standards have a significant impact on the development of legal frameworks for alternative dispute resolution in many countries, including Ukraine. One of the most important documents is the European Union Directive 2008/52/EC [4] and the UNCITRAL Model Law [5], which establish the basis for the ethical and legal regulation of mediation at the international level. For example, EU Directive 2008/52/EC [4] defines mediation as a tool aimed at reducing court costs and relieving the workload of judicial institutions. This regulation emphasises the importance of confidentiality in mediation procedures, which is a key element that ensures openness and trust between the parties to a conflict. In addition, the Directive emphasises the right of the parties to implement mediation agreements, which should ensure the effectiveness of this process and facilitate the resolution of disputes without the need to go to court. This concept of mediation as an alternative to litigation meets the modern requirements of the legal system, focusing on speed, efficiency and cost reduction for participants in the legal process.

The UNCITRAL Model Law [5], adopted by the United Nations, defines 'international mediation' and regulates the recognition of mediation agreements abroad. This regulatory act creates a legal framework for the use of mediation in international commercial matters, which is important for ensuring the stability of international economic relations. The model clauses pay particular attention to issues related to the recognition and enforcement of mediation agreements in different jurisdictions, which contributes to the development of international mediation practice and its integration into the global legal system.

The analysis of the European Union's experience makes it possible to determine the prospects for further development of mediation in Ukraine, which will facilitate its effective use in the system of national law. The latter contributes to the harmonisation of legal approaches to mediation in international commercial disputes. Thus, international law considers mediation to be a universal mechanism used both for the peaceful resolution of interstate disputes and for the resolution of private law conflicts. Thus, the legal regulation of mediation is based on key ethical principles that ensure its effectiveness and trust on the part of the parties (Table 1).

Table 1. Developed by the author on the basis of international mediation standards, in particular, EU Directive 2008/52/EC [4], UNCITRAL Model Law [5], and the Singapore Mediation Convention (2018) [6].

The principles set out in Table 1 reflect generally accepted ethical requirements that ensure the effectiveness and fairness of mediation as a tool for peaceful conflict resolution, as well as strengthen the credibility of this mechanism as an alternative to litigation. In particular, the ethical principles of mediation, such as neutrality, voluntariness, confidentiality, flexibility, equality and focus on the interests of the parties, are universal across legal systems and are widely used in interna-

tional practice to ensure effective and fair dispute resolution and form the basis for the development of national laws regulating mediation in Ukraine and other countries.

In Ukraine, mediation was enshrined in law only in 2021 with the adoption of the Law of Ukraine 'On Mediation' [1], which was an important step towards integration into the European and international legal framework. Although the Law does not specifically highlight the ethical principles of mediation, the criteria specified in it, such as voluntary participation, equality of parties and neutrality of the mediator, are defined as ethical principles in international standards. At the same time, the Law still lacks flexible regulation of the issue of payment for mediators' services for the poor, which limits the accessibility of mediation "for all".

The issues that fall within the ethical and legal spectrum of mediation also include the issue of proper training and certification of mediators, which is an important aspect of ensuring the quality of mediation services, as well as ensuring the financial accessibility of mediation procedures for different social groups. In addition, special attention should be paid to the issue of ethical behaviour of mediators, which requires special approaches and the development of mechanisms that would take into account the specifics of unethical situations. In this regard, it is necessary to consider amending the current legislation to increase the credibility of this profession and ensure greater efficiency of mediation procedures in Ukraine.

The issue of sufficient qualification of mediators also remains undefined. Only about 15% of mediators in Ukraine have international certification, which indicates a low level of professionalism in this area. This is a significant obstacle to the development of mediation as an alternative to litigation, as the effectiveness of mediation procedures directly depends on the qualifications of mediators. The lack of international certification also hampers Ukraine's integration into the international legal community and limits the scope for using mediation in international cases. This limits the possibilities of using mediation as a tool for resolving a wide range of legal problems, and reduces its effectiveness in ensuring justice and the rule of law in the context of social and political change.

Based on the analysis of international experience and Ukrainian legal practice, several key areas for improving mediation in Ukraine can be formulated. One example that may be useful for Ukraine is the practice of Germany, where the state provides financial support for mediation processes in social conflicts. This makes mediation accessible to different segments of the population, including low-income groups

and promotes the development of the mediation institution in the country. Taking into account the German experience, it is worth proposing the introduction of a similar system of subsidies for mediation in Ukraine, which will ensure equal access to this tool for all citizens.

An important step is the creation of the National Association of Mediators of Ukraine, which promotes the development of mediation practice, certifies mediators and whose general meeting approved the Code of Professional Ethics for Mediators (2022), but the provisions of the Code apply only to the activities of mediators who are members of the association [7]. It should be noted that this document contains almost similar ethical aspects to the standards contained in the European Code of Conduct for Mediators (2004) (Table 2).

Table 2. Developed by the author based on the analysis of the European Code of Conduct for Mediators (2004) and the Code of Professional Ethics for Mediators of Ukraine.

This comparative analysis of the European and Ukrainian Mediation Codes allows us to identify the key differences and common features that determine the legal status, detailed regulation, social role and accountability mechanisms in this area. The legal force of the European Mediation Code is advisory in nature, just like the Ukrainian Mediation Code. The European Mediation Code serves as a general guideline for EU Member States to adapt its provisions to their own legislation. Accordingly, it seems correct to properly enshrine ethical requirements for the profession of mediator so that ethical provisions are legally binding and provide for specific legal consequences. Instead, both the Ukrainian and European codes offer general recommendations, leaving the possibility to determine the level of detail of national regulation.

A comparative analysis of the European and Ukrainian Codes of Ethics for Mediation also points to the social role of mediation in the Ukrainian context, which focuses on its function as a tool for shaping a culture of peaceful conflict resolution. This aspect is part of the state's overall policy of promoting alternative dispute resolution. The European Code also recognises the social significance of mediation, but the level of its practical implementation depends on the policy of a particular state. The system of sanctions in the national regula-

tion provides for clear consequences for violations of ethics and professional standards, while the Ukrainian code of ethics defines accountability mechanisms that include disciplinary measures and legal sanctions. In the European context, such aspects are regulated by the national legislation of each individual country, which leads to a variety of approaches. It seems important that both codes share the fundamental principles of mediation: voluntariness, confidentiality, neutrality and professionalism, which form the basis of mediation practice, ensuring its compliance with international standards. Thus, the Ukrainian Mediation Code adapts the European experience to the national context, providing clearer legal guidelines, increased attention to the social function of mediation and effective mechanisms for monitoring compliance with professional standards.

One of the important steps to improve the ethics of mediation in Ukraine is the possibility of including this mechanism in the system of free legal aid. This will help ensure access to mediation for those who cannot afford to pay for mediators' services and make mediation a real tool for dispute resolution for the general public. The inclusion of mediation in the free legal aid system will also help reduce the burden on the courts and increase the efficiency of the legal system as a whole. In general, improving the ethical and legal mechanism of mediation in Ukraine requires a comprehensive approach, including improving legislation, improving the qualifications of mediators, ensuring accessibility of procedures and integrating mediation into various areas of social activity.

**Conclusions and prospects.** Given the above, it can be argued that one of the main ethical problems of mediation is the fragmentation of national legislation, which does not allow for effective regulation of all aspects of mediation. Despite the existence of the Law of Ukraine 'On Mediation', many provisions of this regulatory act remain unclear and need to be clarified. This complicates the process of applying mediation, especially in the context of its integration into the existing legal system of the country. The legal force of the Ukrainian Code of Ethics for Mediation is advisory in nature, i.e. it serves as a general guideline, which allows for ambiguous interpretation of its provisions. In addition, the Code of Ethics for Media-

Table 2

**Comparative Table of Ethical Standards of the European Code of Conduct for Mediators (2004) and the Code of Professional Ethics for Mediators of Ukraine**

Aspect	European Code of Conduct for Mediators (2004)	Code of Professional Ethics for Mediators of Ukraine
<b>Voluntariness</b>	Mediation should be based on the voluntary consent of the parties. The mediator should ensure that the parties understand the process.	Likewise, mediation is conducted only with the consent of the parties. The mediator is obliged to ensure that the parties are informed.
<b>Neutrality</b>	The mediator must be impartial and not favour any party. If neutrality is not possible, he or she must withdraw.	The duty of impartiality is emphasised. A mediator may not represent the interests of one party outside the mediation.
<b>Privacy</b>	All information from the process is confidential (except as provided by law). The mediator cannot testify in court.	Confidentiality is a key principle. Information may only be disclosed with the consent of the parties or by court order.
<b>Competence</b>	The mediator must have sufficient qualifications, experience and constantly improve their professional level.	Detailed requirements: certification, training, compliance with the standards of the Law of Ukraine 'On Mediation'.
<b>Transparency of the procedure</b>	The mediator should clearly explain the rules, cost of services and possible outcomes to the parties.	Similarly, the mediator is obliged to inform the parties about the procedure, rights, obligations and financial terms.
<b>Conflict of interest</b>	The mediator must avoid any conflicts of interest. If they arise, they should inform the parties and stop the process.	Additionally, it is stressed that a mediator cannot participate in a case where he or she has a personal interest or relationship with a party.
<b>Self-determination of the parties</b>	A mediator facilitates an agreement but does not impose a solution. The outcome depends on the will of the parties.	It is emphasised that the mediator has no right to influence the content of the agreement or put pressure on the parties.
<b>Social responsibility</b>	Not explicitly stated.	The mediator should promote the development of a culture of mediation in society and adhere to the principles of fairness.
<b>Sanctions for violations</b>	There are no specific sanctions mechanisms, as the Code is advisory for EU countries.	Disciplinary liability is provided for (warning, expulsion from professional associations, revocation of the certificate).

tion in Ukraine applies only to members of the Association. Promising areas for the ethical development of mediation in Ukraine include improving training programmes for media-

tors and raising the level of mediators' qualifications, which will improve the quality of mediation procedures and ensure greater trust in this tool among citizens.

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