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## REGISTERS OF MEDIATORS IN EUROPE: COMPARATIVE AND LEGAL ANALYSIS

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**Abstract.** The article considers the approaches to maintaining registers of professional mediators in different European countries, in order to apply this experience in Ukraine. General and special methods were used for the research, in particular the method of analysis, synthesis, deduction, and induction, as well as the method of comparison. Three groups of registration systems were analyzed: the first – which is carried out by public authorities, the second – by one organization, the third – by bodies and organizations. The advantages and disadvantages of these approaches were highlighted. The purpose and functions of the registers of mediators were determined. The article draws attention to the requirements for mediators in order to be included in the list (register). It was found out that the registration is a confirmation of the mediator's qualifications.

**Key words:** mediation, list of mediators, mediation providers, administration, qualification, mediation system, a state body, non-governmental organization.

**Introduction.** The profession of mediator requires a person to have the professional skills and knowledge necessary to provide mediation services. Confirmation of a person's compliance with this criterion takes place through the system of accreditation, certification, or registration. The most popular way is to register professional mediators in special lists – registers. The register of mediators, first of all, serves as a tool for public access to the database on the mediator, his/her area of competence, experience, and skills. Another purpose of the registers is to supervise the activities of mediators.

In most European countries, the conditions for including mediators in the register are defined by law, as well as the subject of registration. Analyzing the practice of maintaining registers of mediators in different countries, we can identify three subjects that maintain such registers – the state body, the monopoly of non-governmental organization, and organizations that are unlimited in number. Ukraine as a European country is at the stage of active development of the institution of mediation. On November 16, 2021, the Verkhovna Rada of Ukraine (Parliament) adopted the Law on Mediation. The study of the experience of other countries can be used to build the institution of mediation in Ukraine, which also includes a system of registration of mediators.

### **State-run registry**

In many countries, the management of the register of mediators by public authorities is a common trend. Such a body may be the Ministry of Justice (Austria, Hungary, Croatia, Italy, Portugal, etc.), a judicial body (Poland), or another specially authorized body (Belgium, Sweden). In some countries, the function of administering the register is performed by both a state body and a non-governmental

organization (Romania, Latvia, Slovenia, etc.). Usually, in this case, the organization is subordinated to a public authority, or such a body exercises control over its activities.

The advantages of this option of keeping a register are a single approach and the level of requirements for evaluation, objectivity (if there is a transparent process of inclusion in the register), convenience for the courts. Also, the procedure is usually free or much cheaper for mediators. On the other hand, there are the shortcomings of the state-run registry, such as the need for public expenditures on the registry, excessive bureaucratization and centralization of the registry process, which can lead to the closure of the mediation profession in Ukraine and a high level of public distrust due to corruption risks (Lysko, Korshivskyi, 2021).

The Ministry of Justice is the central body of Austria which is responsible for organizing and maintaining the register of professional mediators. According to the Federal Law on Mediation in Civil Matters № 29/2003, the main data included in the register are the name and surname of the mediator, education, date of birth, profession, and work address. In order to be a registered mediator must meet the following requirements: minimum age of 28 years; availability of professional qualifications, including relevant training; no criminal record (confirmed by a certificate); and registration of intermediary liability insurance (Civil Law Mediation Act, 2003).

In Hungary, the Ministry of Public Administration and Justice registers mediators and legal entities that employ mediators. Registration is carried out on the basis of the National Mediation Act, which contains requirements for individuals and legal entities wishing to provide mediation services. An individual is obliged to prove in the manner prescribed by law that he/she has obtained the theoretical and practical knowledge necessary for mediation activities. In case of exclusion of a person or organization from the register, in cases specified by law, re-entry is possible not earlier than 5 years (Act on Mediation, 2002). Among the non-governmental organizations that provide mediation services and maintain lists of their mediators are the National Mediation Association and the Mediation and Legal Coordination Department of the Budapest Chamber of Commerce.

In Croatia, the Ministry of Justice monitors the activities of mediatory organizations and mediators, including the maintenance of the Register of Accredited Mediators. The peculiarity of the institution of mediation in this country lies in the presence of its two forms – judicial and extrajudicial mediation. In the first case, mediation can be conducted in courts at all stages of the proceedings (including appellate proceedings). Within the framework of this mediation, a mediator may only be a court judge who has been trained in mediation and is included in the list of judicial mediators determined by the President of the Court. Out-of-court mediation services are provided by specialized centers, for example, the Mediation Center at the Croatian Chamber of Commerce, the Chamber of Commerce and Industry, as well as associations such as the Croatian Employers' Association, the Croatian Association of Mediators, and the Croatian Bar Association.

In Italy, there is a national register of accredited mediatory organizations (Registro degli organismi di mediazione). This register includes lists of accredited organizations and lists of professional mediators. In accordance with Article 16 of Legislative Decree № 28/2010, mediation and conciliation services can be provided only by bodies accredited by the Ministry of Justice and included in the Register of Mediation Bodies (Legislative Decree, 2010). Maintaining the register is the task of the Department of Justice of the Ministry of Justice.

In Poland, courts play an important role in the development and promotion of mediation. Professional mediators should be included in the registers of district courts maintained by the Presidents of these courts. The official website of the Ministry of Justice contains a document listing links to the websites of various district courts, which contain lists of permanent mediators and requirements for gaining such status (for example, the district court in Gdańsk, Kraków, Kalisz, etc.). Issues related to inclusion in the list of permanent mediators are regulated by the Law on the System of General Courts of July 27, 2001. According to the provisions of this Law, a permanent mediator may be a person who: has knowl-

edge and skills in the field of mediation; over 26 years of age; speaks Polish; has no criminal record for an intentional crime or intentional financial crime; was included in the list of permanent mediators maintained by the Chairman of the District Court (Law on the System of Common Courts, 2001).

Since 2010, Poland has had a system of mediation coordinators, created on the initiative of the Ministry of Justice. Mediation coordinators act and perform their tasks in the district courts. Such tasks include implementation of mediation development activities; ensuring effective communication between judges, mediators, and permanent mediators; cooperation in organizing information meetings; cooperation with schools and educational institutions in the field of dissemination of methods of conflict management.

Information on the lists of mediators and permanent mediators is also provided by a number of non-governmental organizations and professional associations, including the Polish Mediation Center, the Association of Family Mediators, the Polish Mediation Association, the Higher Mediation Center of the Bar Council, and the National Bar Association.

The Ministry of Social Affairs is responsible for managing and supervising the mediation system in Finland. The competence of the Advisory Council on Mediation in Criminal Matters includes issues related to mediation in criminal and civil matters. The Council monitors, guides, and promotes the national and international development of mediation. The National Institute of Health and Welfare (THL) is responsible for arranging mediation across the country. All mediation offices in Finland are divided by region and posted on the official THL website (7 regions: Lapland, Northern Finland, Eastern Finland, Western Finland, South-West Finland, Southern Finland, and Åland).

Within the framework of judicial mediation, the activities of mediators and the provision of mediation services are managed by district courts. A judge of the district court is appointed as a mediator to consider disputes. In the private sector, mediation services are provided by non-governmental organizations that maintain their own registers of mediators, such as the Finnish Bar Association.

In Sweden, the register of mediators who provide their services through judicial mediation is managed by the National Court Administration (Domstolsverket). In order to be included in the list of mediators, a person must apply through the official website of the district court. The candidate must prove that he/she meets the requirements and criteria of the court, such as the required level of education and professional experience. For example, the requirements for family mediators are set out in the Parents' Code (Föräldrabalken). The district court reviews the applications received and adds the approved persons to the lists once a month.

The register of licensed mediators in Belgium is maintained by a special body, the Federal Mediation Commission. The mediator can be found on the official website of this body based on the following criteria: name, location, specialty, the field of activity, the language of communication.

In Portugal, the centralized government body responsible for the development of mediation is the Directorate-General for Justice (Direção-Geral da Política de Justiça), which acts under the Ministry of Justice. The official website of this body contains a list of normative documents regulating the procedure of selection and approval of mediators (for example, the Regulation of procedures for selection of mediators for mediation services in the family mediation system, approved by the State Secretary of Justice № 13/2018) and a list of mediators who provide mediation services.

In Portugal, there is a system of family mediation, which operates on the basis of an electronic platform designed to process mediation and lists of family mediators registered in the territorial district. This system is controlled by the Directorate-General. Its tasks include organization and support of the electronic platform, registration and sorting of applications, appointment of a mediator responsible for each case, informing about the places available for mediation sessions.

In Romania, the National Register of Professional Mediators' Associations is maintained and updated by the Mediation Council, whose members are elected by mediators and approved by the Ministry of Justice. The National Register includes a list of non-governmental organizations that

promote mediation and represent the interests of mediators. These organizations are divided by territory, one in 41 counties and one in the separate national municipality of Bucharest. Thus, there are currently 42 associations in Romania, for example, the Professional Organization of Mediators in Bucharest, the Turda Mediation Center, and the Professional Organization of Mediators in Vâlcea.

The official website of the Mediation Council has a panel of mediators, which is a list of mediators who provide their services in the organization (Mediation Council, n.d.). Such lists contain basic information about mediators, which includes surname and name, location of the office, data on training, year of completion, year of commencement of practical activities, date of issuance of permission for mediation activities, language of communication in which the mediator can provide intermediary services, field of specialization, list of organizations of which the mediator is a member, contact details (telephone, e-mail, etc.).

According to Latvian national legislation, a certified mediator is one who meets the qualification requirements established by the legal framework and has received a certificate that entitles him to be included in the list of certified mediators. The organization of the Register of Certified Mediators in Latvia is the responsibility of the Mediation Council (Mediācijas padome), which was formed by four associations – Mediation and ADR, Integrated Mediation in Latvia, Integration for Society (Victim Support Center), and the Association of Commercial Mediators.

In Slovenia, the Ministry of Justice maintains a central register of mediators providing court mediation services. The registers of professional mediators working in non-governmental organizations are controlled by such organizations as the Slovenian Mediators' Association, the Mediation Center at the Legal Information Center, and the Slovenian Association of Mediation Organizations.

#### **Monopoly of a non-governmental organization**

In some countries, the central national registry is managed by one specialized organization (e.g. Netherlands, Scotland). Typically, the association consists of experienced mediators who select candidates for registration in accordance with established standards. These standards contain requirements for the qualifications of mediators, which include relevant training, professional experience, and competence in the field of mediation.

Giving one organization a monopoly on the registration of mediators has both advantages and disadvantages. On the plus side, there is a less bureaucratic process of registration compared to the process in a public body, and the convenience of applying to one entity, which means that the consumer is not confused in the system of bodies. Disadvantages of this type of registry administration include the risks associated with the organization's abuse of its monopoly position (for example, the spread of corruption). In our opinion, in order to minimize such risks, it is effective to supervise the activities of a monopoly organization by a state body or a special body and to create an appeal system (for example, a mediator denied registration will be able to file a complaint).

In the Netherlands, the Dutch Mediation Federation (Mediatorsfederatie Nederland (MfN)) (formerly the Dutch Mediation Institute) is responsible for managing the national register of qualified mediators. MfN is an union of mediators' associations and professional organizations. MfN maintains the high-quality standards of the national registry, which includes only qualified mediators, recognition and accreditation of educational institutions and training courses, continuing education system, implementation of complaints procedures, disciplinary proceedings, and reviewing (expert evaluation) of mediation services.

According to MfN standards, a qualified mediator is a person who has undergone basic training in mediation, passed a qualifying examination, and is constantly updating his/her knowledge and skills. MfN pays a lot of attention to the training of mediators. In order to check the level of training of mediators, the organization conducts testing every five years during the audit. Mediators must undergo training every three years, which includes the minimum number of mediations set by the organization's standards (MfN-register, 2021).

In Scotland, accredited mediators are members of the Scottish Mediation Register. The Registry is administered by the Scottish Mediation Network, a professional body supported by the Scottish Government. This body has two committees, which are designed to help achieve the strategic goals of the Network – the Committee on Excellence in Mediation and the Committee for Promotion of Mediation. Mediators who meet the minimum standards set by an independent standards committee (Mediation Excellence Committee) may be included in the register.

The minimum practice standards for admission of a mediator to the register cover: adequate training from a trainer or team of trainers with appropriate experience, a requirement for sufficient experience: number of mediations, number of mediation hours, post-training Continuing Practice Development (CPD), and practice support, establishing and maintaining a portfolio of evidence, adherence to an appropriate code of conduct, an appropriate system for addressing concerns and handling complaints, appropriate indemnity insurance, verification process (Scottish Mediation, n.d.).

### **State bodies and mediatory organizations**

One of the options for managing the registration system is to maintain various registers with an unlimited number of mediatory organizations acting in the country. At the same time, the state supervises the activities of these associations. This method is used in Ukraine, the Czech Republic, and France. This is due to the fact that in the country the profession of a mediator is not limited by regulations of the legislator, and more detailed requirements are set by professional organizations, within which mediators provide their services. Mediatory organizations may maintain their own register, to which they include member-mediators based on selection criteria. Such requirements may be set out in codes, rules, or other documents setting standards for mediators.

A characteristic feature of this option is that belonging to the register of a mediatory organization is not a mandatory requirement for all mediators in the country. Such registers serve as an information guide for the consumer, who seeks a solution to the dispute, as well as guarantee the quality of services provided by the necessary qualifications of the mediator. An important advantage of this method of keeping registers is the provision of control over the activities of mediators. Typically, such organizations have an effective system for filing and reviewing complaints, which increases public confidence in mediation. The lack of registry management in many organizations is due to different standards for the qualifications of mediators.

The Law of Ukraine on Mediation of November 16, 2021, includes the provisions on the establishment of a system of registration of mediators. The obligation to maintain the register rests with the association of mediators and the organizations that provide mediation. The register must contain the following information: name and surname of the mediator; education; a language of mediation; the number of hours of basic training of a mediator, indicating the name of the subject of educational activity that carried out the training; specialization of the mediator with the indication of the number of hours of specialized training (if any); information on raising the professional level of a mediator (Law of Ukraine on Mediation, 2021).

There are several registers of mediators in the Czech Republic, which are maintained by various bodies and organizations. Lists of professional mediators providing their services in civil matters can be found on the websites of specialized organizations such as the Czech Mediators' Association, the Czech Bar Association, and the Association of Arbitration and Mediation Procedures of the Czech Republic.

The Ministry of Justice maintains a register of professional mediators, in accordance with Law № 202/2012 on mediation, which was adopted in order to implement Directive 2008/52 /EC on mediation in civil and commercial matters (Mediation Act, 2012).

The Probation and Mediation Service of the Czech Republic is the centralized body responsible for mediation in criminal matters and therefore approves mediators who have the right to mediate in this area. This body is subordinated to the Ministry of Justice. A list of mediators acting within the jurisdiction of the district courts can be found on the website of this body.

France is one of the countries where there is no central body responsible for regulating the activities of mediators and mediatory organizations. There are a number of specialized non-governmental organizations in the country that have their own lists of mediators. Such organizations include the Association for Family Mediation, the Paris Mediation and Arbitration Centre, the Federation of Mediators and Professional Project Coordinators, the National Federation of Mediation Centers, the National Association of Mediators.

**Conclusions.** Summing up the results of the comparative analysis of the achievements of European countries in the systematization of data on professional mediators, we consider it appropriate to note the following. The registration of a mediator is a confirmation that he/she is a qualified specialist in the field of mediation and has the legitimacy to provide mediation services. Those who want to resolve their dispute can quickly and easily read through the basic information about the mediator and contact him/her to start cooperation. We can say that the register performs an informative and confirmatory function.

Based on the analysis of the practice of registration of mediators in European countries, we concluded that the most convenient for the user of services is the availability of a single national register in the country. At the same time, we propose to divide mediators into different groups, depending on the field of mediation (e.g., family, criminal, medical mediation, etc.). The results of the study prove that the register is an important component of the mediation system. With the recent adoption of the law, Ukraine is a «young» state in the field of mediation. Taking into account the European experience of keeping registers of professional mediators, Ukraine will be able to create its own standards of regulation of the mediation community.

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