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MEDIATION AS A TOOL FOR ADDRESSING GAPS IN CIVIL LEGISLATION AMID ECONOMIC TRANSFORMATION

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Abstract. In the contemporary context, the provision of legal support for innovative processes affecting the economic, political and social development of society is becoming increasingly significant. The economy requires legal backing to ensure stability, to minimise conflict-generating factors, and to enable effective mechanisms for achieving consensus with partners. This *article explores* the legal foundations, mechanisms, and practical approaches to applying the institution of mediation in resolving economic disputes in Ukraine. Furthermore, the study explores the potential of blockchain technology to address the existing gaps in civil law. *Methodology.* The study employs a combination of contemporary general scientific and specialised legal research methods, providing a systematic, holistic, and interdisciplinary approach to analysing the phenomenon of mediation as a mechanism for addressing legal gaps in civil law during the resolution of economic disputes. The present study employs the dialectical method to identify patterns in the evolution of legal regulation for alternative dispute resolution in Ukraine, within the framework of market relations and the rule of law. System analysis enables the consideration of mediation as an element of the legal mechanism regulating economic relations, in interaction with judicial practice, law-making, and civil law principles. The formal legal method is employed to analyse legislative acts, with a particular focus on the Law of Ukraine "On Mediation" and the Civil and Commercial Procedural Codes, with the aim of examining the application of mediation to economic disputes. Furthermore, the judicial decisions of the Supreme Court are examined. The legal modelling method is employed to formulate proposals for enhancing the regulatory framework for implementing mediation agreements in Ukraine, as well as for developing conceptual approaches to recognising such agreements as a means of bridging legal gaps in civil law. The *objective of this scientific article* is threefold: firstly, to examine the potential of mediation as a tool for addressing gaps in civil law during the resolution of economic disputes; secondly, to analyse current legislation and judicial practice; and thirdly, to formulate proposals for improving national law enforcement practices. The *findings of the research demonstrate* that mediation holds significant potential as a means of overcoming gaps in civil law, particularly in areas where proper legal regulation of economic relations is lacking, or where the existing legislation is overly formalised. *Conclusion.* Since 2021, Ukraine's national legislation has created proper legal preconditions for the development of mediation in economic disputes, particularly through the adoption of the Law of Ukraine "On Mediation" and corresponding amendments to procedural codes. Judicial practice demonstrates the efficacy of mediation, particularly in cases involving the suspension of proceedings for the purpose of conducting negotiations, thus signifying a gradual integration of alternative dispute resolution into the national legal system. The primary factors impeding the advancement of mediation in Ukraine are as follows: inadequate awareness among participants in economic legal relations; the absence of consistent judicial practice; insufficient institutional support and certification of mediators; and the lack of a regulated mechanism for the enforcement of mediation agreements. In order to ensure the effective implementation of mediation as a means of addressing legal gaps in the economic sector, it is necessary to: ensure proper professional training for mediators; formalise the procedure for recognition and enforcement of mediation agreements; create conditions for promoting mediation among entrepreneurs, lawyers, and judges; and adapt court-assisted mediation tools to the specifics of economic disputes.

Keywords: economy, economic transformation, alternative dispute resolution of economic conflicts, mediation, mediation agreement, civil legislation, gaps in civil legislation, legal system of Ukraine.

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1. Introduction

Against the backdrop of Ukraine's ongoing legal and economic reforms, the effective resolution of economic disputes emerges as a pressing concern. The traditional judicial system is plagued by numerous challenges, including court congestion, drawn-out proceedings, complex procedures, and a limited range of legal tools – particularly in cases where there are legal gaps in the civil law. In such circumstances, mediation emerges as a promising form of alternative dispute resolution (ADR), offering the potential to swiftly and effectively resolve conflicts between parties engaged in economic activities.

Alternative methods of dispute resolution, particularly mediation, are increasingly recognised worldwide as effective tools to complement the traditional judiciary. The Ukrainian justice system is burdened with multiple problems, including court overload, lengthy and costly proceedings, and the risk of confidential information being disclosed due to the principle of judicial publicity. Against this backdrop, the significance of mediation as an alternative mechanism for resolving civil disputes grows, as it can address gaps in current legislation and enhance the efficiency of rights protection.

Mediation technologies are a useful form of dispute resolution when existing legislation does not provide clear guidelines for specific situations or when a judicial decision does not adequately meet the needs of those involved. Mediation gives the parties an opportunity to agree on a solution that is mutually acceptable and often more adaptive and flexible than a standard court ruling.

It is evident that mediation serves as an effective instrument for addressing legal lacunae by promoting the development of solutions that account for the interests of all parties. These solutions are beneficial to each stakeholder, even beyond what the formal judicial process can offer.

2. Legal Framework of Mediation in Ukraine's Legal System

Conflicts and disputes have always accompanied the development of human civilisation, influencing all stages of state formation and the creation of legal norms. The modern era of technological progress and digitalisation is no exception – conflicts arise at all levels of communication, whether between individuals, business partners or organisations. These disputes are often long-term and take various forms.

In its broad sense, mediation or conciliation is an element of the institution of the peaceful settlement of international disputes based on the principle of resolving conflicts without recourse to force. This principle is enshrined in international law, as evidenced by the adoption of the 1907 Hague Convention for the Pacific Settlement of International Disputes, which restricted the use of force to recover contractual debts. The further development of peaceful dispute resolution can be traced back to documents such as the Covenant of the League of Nations (1920) and the Kellogg–Briand Pact (1928), which aimed to renounce war. However, the most significant advancement came with the adoption of the United Nations Charter in 1945.

International economic conflicts play a significant role in the modern world, influencing economic, political and social processes. Mediation, as a process for resolving disputes, is becoming increasingly recognised on the world stage, particularly in the context of international economic relations. Using mediation to resolve international economic disputes enables parties to preserve working relationships, avoid lengthy and costly litigation, and find mutually beneficial, sustainable solutions (Zhomartkyzy, 2023).

It is evident that, over time, the implementation of mediation has become increasingly prevalent not only at the international level but also within individual states, particularly in the context of civil legal relations. The term "mediation" itself originates from the Latin term "intermediation". The institution of alternative dispute resolution (ADR) is now widely regarded as one of the key components of both civil society and the economic domain. The degree of development of this institution is indicative of the overall maturity of a society and its legal system.

For an extended period, the legal regulation of mediation in Ukraine remained at the stage of formation and conceptual comprehension. In the Ukrainian legislative framework, a comprehensive and systemic approach to mediation as an alternative dispute resolution procedure was conspicuously absent. Despite the sporadic appearance of the notion of out-of-court settlement of disputes in various legal acts, the absence of a unified terminology, procedural standards, and a clearly defined legal status for mediators impeded the development of mediation as a fully-fledged element of the legal system. A significant impetus for the institutionalisation of mediation in Ukraine was the intensification of integration processes with the European Union and the obligation of the state to harmonise national legislation with European legal standards, particularly in the area of access to justice and alternative forms of dispute resolution. This assertion is further substantiated by numerous recommendations from international organisations, including the Council of Europe and the European Commission.

Beginning in 2010, ten draft laws on mediation were registered in the Verkhovna Rada of Ukraine. These were initiated by prominent proponents of Ukrainian mediation and received support from parliamentarians. However, due to the prevailing

political instability, frequent government changes, and ongoing parliamentary elections, the law remained unadopted for a considerable period (Matvieieva, Baltadzhy, 2020).

The adoption of the Law of Ukraine "On Mediation" on November 16, 2021 (No. 1875-IX) represented a significant milestone in the development of legal regulation, establishing the legislative foundation for the operation of this institution. For the first time, a national-level legal act comprehensively regulated the procedure for mediation, defining its fundamental concepts and principles, the status of mediators, the rights and obligations of the parties, and areas of application (The Law of Ukraine "On Mediation", 2021). This legislative development can be considered as a reflection of the progressive evolution of approaches to the regulation of mediation, in alignment with the fundamental provisions of Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 concerning specific aspects of mediation in civil and commercial matters.

The law is characterised by its framework nature, insofar as it establishes the general principles that govern the process of mediation. Its remit extends to a wide range of disputes, including civil, family, labour, commercial, administrative, as well as criminal proceedings (in terms of facilitating reconciliation between the victim and the accused) and administrative offences (Prylutska, 2024). Consequently, mediation has been legally recognised as a method for resolving both private and public legal conflicts. It is important to note that mediation can be conducted at any stage of the legal process: prior to court proceedings, during litigation or arbitration, or even during enforcement of a court decision. The conduct of mediation does not interrupt the statute of limitations or procedural deadlines, thereby preserving the parties' right to judicial protection should mediation prove unsuccessful.

The Civil Procedure Code of Ukraine has been supplemented with provisions allowing parties to reconcile, including through mediation, at any stage of the process, with the resulting agreement eligible for approval as a settlement agreement. It has been established that in instances where the parties concerned petition the court in unison to halt proceedings in order to facilitate mediation, the court is obligated to grant a suspension of up to 90 days (The Law of Ukraine "On Mediation", 2021). A financial incentive is also provided: if a dispute is resolved through mediation and a settlement agreement is concluded, 60% of the court fee is refunded to the plaintiff (as compared to 50% for regular settlement without mediation). It is evident that analogous amendments have been introduced to both the Commercial Procedure Code and the Code of Administrative Procedure. For instance, the Commercial Procedure Code now explicitly provides that the parties may settle through mediation at any stage of the proceedings, and the court is required to suspend the case upon a joint request for mediation (for no more than 90 days). These innovations are already being applied in practice: for instance, the Supreme Court's resolution (Commercial Cassation Court) dated November 16, 2023 in case No. 910/18802/21 suspended proceedings based on the parties' request for mediation (Commercial Cassation Court, 2024). The court cited the newly enacted procedural norms requiring it to provide time for out-of-court settlement through mediation.

Amendments have also been made to the Labour Code (Article 222-1 on mediation in labour disputes), the Land Code (Article 158-1 on mediation in land disputes), the Law of Ukraine "On Notaries" (granting certified notaries the right to act as mediators within their competence), and to the following laws: "On International Commercial Arbitration" and "On Arbitral Courts" regarding the possibility of reconciliation through mediation during arbitral procedures (The Law of Ukraine "On Mediation", 2021). Consequently, Ukraine has established legal provisions for the utilisation of mediation in diverse legal sectors.

At present, the legal basis of mediation in Ukraine is clearly defined. Article 124 of the Constitution of Ukraine sanctions the legislative establishment of compulsory pre-trial settlement procedures for specific categories of disputes, in accordance with European standards of access to justice (Constitution). The Law of Ukraine "On Mediation" and the associated legislative amendments have paved the way for the active implementation of the mediation institution. Nevertheless, the practical realisation of these norms still necessitates ongoing attention.

It is evident that the process of establishing legal regulation of mediation in Ukraine reflects a gradual transition from a fragmented approach towards a comprehensive and systematic integration of mediation as an essential element of a modern democratic legal state.

3. Mediation Mechanisms for Overcoming Gaps in the Civil Legislation of Ukraine in the Context of Economic Transformations

In civil legislation, the term "gaps" refers to the absence or inadequacy of legal regulation concerning certain aspects of civil relations, as well as other systemic issues in legal application that hinder the effective protection of individual rights. Mediation is regarded as a tool that can compensate for such deficiencies by offering parties a flexible dispute resolution mechanism, even in cases where the law contains gaps or the prescribed procedures are ineffective.

A key problem in resolving civil disputes in Ukraine is the general lack of public awareness of mediation. In most cases, people turn to the courts by default, often unaware that mediation is an option. This is due to entrenched legal traditions and a general mistrust of out-of-court methods. Consequently, the courts become overburdened and disputes that could have been resolved more quickly and cheaply are unnecessarily prolonged. Mediation can bridge this gap by providing an informed choice: if the parties to a conflict were aware of this option, many disputes might never reach court.

The European Commission for the Efficiency of Justice (CEPEJ) emphasises that judges play a decisive role in fostering a culture of peaceful dispute resolution, and that they should be empowered to recommend alternative methods of dispute resolution, including mediation. Until recently, Ukrainian judges were effectively denied this opportunity, as there was no explicit legal provision enabling courts to refer parties to mediation or even suggest it. However, following legislative reforms, courts now have the necessary tools to promote mediation. This includes the authority to suspend proceedings to allow for negotiations, as well as the duty to facilitate reconciliation between parties (Gap Analysis on the Implementation of Mediation in Ukraine, 2020). Providing judges and lawyers with the knowledge and motivation to apply mediation is a vital step towards overcoming legal unawareness and reshaping practice.

Previously, Ukrainian procedural legislation lacked effective mechanisms for relieving courts through out-of-court settlements. For example, while the Civil Procedure Code of Ukraine stated that courts should encourage reconciliation between parties (Art. 211(5)), it offered few practical instruments aside from adjourning hearings or approving settlement agreements. There was no specific procedure for conducting mediation during litigation, and the court could not officially refer parties to a mediator. Suspension of proceedings was only permitted in very limited cases, such as the reconciliation of spouses in divorce proceedings. This could be considered a procedural gap.

Amendments to the procedural codes relating to mediation now allow for mediation to be applied during litigation. Relevant changes have been introduced to the Civil Procedure Code, the Commercial Procedure Code, the Code of Administrative Procedure and other legal acts by the Law of Ukraine "On Mediation". These legislative amendments have eliminated the procedural gap by explicitly setting out the conditions and procedures relating to mediation, including the possibility of suspending proceedings for mediation, formalising the outcome and partially reimbursing court fees. Consequently, mediation has become a viable procedural instrument, enabling parties to resolve disputes more efficiently without placing an excessive burden on the judiciary. Precedents already exist in practice where parties request a pause for mediation at the cassation stage, and courts grant such motions. For example, in its ruling on the bankruptcy case of LLC "Fuel and Energy Company Energoindustriia", the Commercial Cassation Court of the Supreme Court acknowledged that the parties could reach a settlement, including through mediation, at any stage of the proceedings (Unified State Register of Court Decisions, 2023). Such reconciliation must result in a formalised settlement agreement. Mediation also addresses the limitations of the legal remedies available under civil law.

In many civil disputes, the law provides only a limited range of legal tools, which may prevent the parties from reaching a fair and satisfactory resolution. For instance, in disputes between neighbours, family conflicts or inheritance cases, the court is bound by rigid legal frameworks that may fail to reflect the full complexity of the parties' relationships. Mediation enables the parties to move beyond their formal legal positions and develop creative solutions that address their specific needs. The flexibility of mediation is its key advantage. Parties are not restricted by the subject matter of the lawsuit or the initial claim for relief – they can discuss any aspect of the conflict and reach non-standard agreements. This is particularly valuable where legislation is silent or offers only binary options. Mediation can help to bridge such gaps by including terms in the agreement that go beyond statutory norms, while still being legally sound. Examples include visitation arrangements in family disputes, supplemental payment terms in debt cases and alternative methods of fulfilling contractual obligations. International practice shows that mediation is most effective in family disputes, as it enables the interests of all parties to be considered while preserving family relationships. In Ukraine, family mediation is already in high demand. Family conflicts are widespread, and parties are often willing to reconcile for the sake of their children or to avoid reputational harm. Experts recommend introducing a mandatory mediation information session before initiating litigation in family matters, once the necessary infrastructure is in place. Thus, mediation offers a way to overcome legal limitations by giving parties the freedom to create solutions that benefit everyone, compensating for legislative shortcomings.

Another significant issue in Ukraine's legal system is the low rate at which court judgements are actually enforced. Even after winning a case, a party may not obtain prompt enforcement due to flaws in the execution system or intentional delays. Mediation can help to improve the rate of voluntary compliance with obligations because the resulting decision stems from mutual consent and voluntary agreement. Statistics

show that parties comply with mediation agreements in around 80% of cases, with only around 20% of such agreements going unfulfilled (Makarenko, 2018). By contrast, the success rate of enforcing court decisions is often lower. Thus, mediation bridges the gap between obtaining a formal ruling and achieving its practical implementation – the voluntary nature of the resolution makes it more likely to be executed.

Ukraine is also taking steps towards the international recognition of mediation agreements. On August 7, 2019, Ukraine signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation (2019). Ratification of this convention and the incorporation of its provisions into national legislation will make settlement agreements more enforceable, especially in cross-border commercial disputes.

In summary, mediation has the potential to address many shortcomings in Ukrainian civil legislation and its implementation. Mediation improves access to justice by resolving disputes where laws are silent or procedures are ineffective. Furthermore, it reduces the burden on the judiciary by offering efficient, out-of-court solutions. Although mediation cannot replace quality legislation, combining legal reforms with the development of mediation creates a comprehensive framework for the improved protection of rights. Implementing mediation as a fully-fledged alternative dispute resolution method creates significant opportunities for the Ukrainian legal system.

Although only a small percentage of civil cases are resolved through mediation, this reduces court overload and enables judges to focus on matters that truly require judicial intervention. For citizens, this means disputes are resolved more quickly and at lower cost. Experience from other countries shows that, with proper organisation, mediation can resolve most small and medium-sized disputes (in the US, for example, up to 75% of alternative dispute resolution (ADR) cases are resolved without trial). This is especially relevant for Ukraine, where court queues are measured in months or years.

Mediation enables parties to find solutions that best reflect their interests and the circumstances of the case. This is particularly valuable in the context of legislative gaps: where laws are rigid or ambiguous, mediation allows parties to develop fair solutions. This increases the perception of justice and satisfaction with outcomes compared to court-imposed decisions. Furthermore, voluntary settlements are more likely to be honoured, thereby strengthening the rule of law.

Implementing mediation brings Ukraine closer to European standards of alternative justice. Adherence to EU directives and best practices, such as the Singapore Convention, supports the country's integration into the EU. Furthermore, a well-developed mediation framework attracts investors and businesses by offering additional guarantees for the swift resolution of commercial disputes. Ukrainian businesses are already showing a growing interest in mediation. More companies are including mediation clauses in their contracts, and the success rate for commercial mediations is high, both abroad (for example, 87% for financial disputes in the US) and in Ukraine (with settlement rates of up to 60–70% for certain projects).

At the same time, significant challenges remain in developing mediation in Ukraine. The vast majority of ordinary citizens – and even many lawyers – know little about mediation or view it with suspicion, preferring to "go to court according to the law". Overcoming this psychological barrier requires legislative and educational efforts. Information campaigns are needed to explain the advantages of mediation, as well as efforts to include relevant topics in legal education curricula. Successful examples can have a positive impact – for example, when parties see their dispute resolved within a month instead of enduring a year-long court proceeding. Currently, the low level of public awareness of mediation is one of the main factors hindering its rapid development.

The Law of Ukraine "On Mediation" stipulates the fundamental prerequisites for mediators (a fully legal adult individual who has successfully completed a minimum of 48 hours of specialised training), yet the question of mediators' professional competence remains unresolved. It is imperative to implement a framework of certification, ethical standards, and a system of continuous professional development for mediators. Despite the existence of public mediator organisations and registries maintained by the Ministry of Justice, the profession of mediator is still in the formative stage. The quality of mediation services is of critical importance for the establishment of trust. A single failed or unprofessionally conducted mediation process has the potential to engender prejudice among entire groups of people. Consequently, it is incumbent upon the state and the professional community to collaborate in order to establish an institute of highly competent mediators. The analysis of the experience of foreign countries can be instrumental in this regard.

Another significant aspect pertains to institutional support and encouragement for the development of mediation in Ukraine. It is imperative that effective mechanisms for referring cases to mediation are put in place. Despite the existence of formal legal provisions, the question remains as to whether judges will indeed apply them in practice. Empirical evidence demonstrates that, in the absence of adequate incentives, judges may exhibit a lack of proactivity. The appointment of individuals responsible for coordinating mediation programmes (e.g., a judge

coordinator for reconciliation matters) would be advantageous for courts. It is also advisable to develop judicial guidelines on the types of disputes that are best suited for mediation, such as cases involving property division, small debt claims, or co-owner conflicts. Economic incentives may include reducing court fees by 60% in the event of a successful mediation. Other measures could include reimbursing the mediation costs of low-income individuals through the free legal aid system, and taking into account attempts at mediation when allocating court costs. These measures would make mediation a more attractive option for those involved.

Although the Law on Mediation has been adopted, some issues still require further regulation, particularly with regard to the enforcement of mediation-based agreements. Currently, if mediation takes place entirely outside of court and the parties reach an agreement, they must either notarise the agreement or apply to the court for approval of the settlement by initiating proceedings. The issue of mediator liability also requires attention: the Law does not introduce licensing, so what mechanisms exist for addressing unethical or dishonest conduct by mediators? At present, this falls within the remit of self-regulatory organisations (Maryna, 2023). Consequently, regulatory work must continue, taking into account the practical experience gained during the initial phase of the Law's implementation.

4. Conclusions

At the current stage of legal development, the importance of mechanisms that enable parties to independently resolve conflicts through self-regulatory tools is increasing considerably. Despite judicial protection remaining the dominant means of enforcing rights, these aspects are drawing increasing attention. The increase in proactive legal behaviour and initiative among those involved in legal matters has allowed the state to delegate certain functions to new civil society institutions. Based on international experience and domestic trends, one such area is resolving legal disputes through mediation.

For a considerable duration, the practice of mediation in Ukraine operated in a state of legal ambiguity, devoid of any explicit regulatory framework. This circumstance considerably impeded the evolution of alternative modes of dispute resolution. The adoption of the Law of Ukraine "On Mediation" addressed this legislative gap, thus marking a new phase in the evolution of alternative justice in Ukraine.

Mediation is a method of resolving conflicts and disputes wherein the parties independently find a solution to their problem with the assistance of a neutral intermediary, the mediator. In the context of legal practice, mediation is employed as a mechanism for the out-of-court resolution of disputes. During the process, the mediator facilitates constructive dialogue between the parties, clarifies the core issues, and assists in identifying both their own and the opposing party's interests and needs. This structured interaction makes it more likely that the parties will reach mutually acceptable agreements that are sustainable, realistic and enforceable in practice. It is important to note that the mediator does not have the authority to make decisions for the parties, but instead assists them in finding a joint resolution.

Following the adoption of the special mediation law in 2021, Ukraine has made a significant leap forward and now possesses all the prerequisites for the successful development of this institution. Mediation can effectively address gaps in civil legislation, whether normative (e.g., the absence of reconciliation procedures or mechanisms in codes) or practical (e.g., court overload, inflexible judicial decisions and challenges in enforcement).

If there is sufficient political will and support from the legal community, mediation could become an integral part of Ukraine's legal system. The country's future lies in transitioning from formally introducing mediation to fully implementing it. This includes raising public awareness and trust, establishing a professional community of mediators, adapting court practices to a new reconciliation-focused justice paradigm, and ensuring that legislation continues to align with international obligations and best practices.

Ultimately, mediation has the potential to make the justice system more humane, timely and equitable. Whether this potential is realised in the coming years depends on the efforts of the state and society.

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