

CONCEPTUAL FOUNDATIONS AND LEGAL REGULATION OF MEDIATION IN THE SPHERE OF ADMINISTRATIVE JUSTICE: UKRAINIAN AND POLISH EXPERIENCE

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INTRODUCTION

Modern transformations in public administration and the judicial system of Ukraine have led to increased interest in alternative (extrajudicial or quasi-judicial) dispute resolution methods. One of the leading international trends in this field is mediation – a procedure in which a neutral third party (a mediator) helps the disputing parties reach a mutually acceptable solution¹. In the context of administrative justice, which typically deals with public-law disputes between a citizen and a public authority, the introduction of mediation appears both promising and complex².

On the one hand, the mediation mechanism can reduce the workload of administrative courts, expedite the resolution of public-law conflicts, increase public trust in the government, democratize «citizen–public institution» relations, and strengthen the state’s legitimacy in the eyes of society³. On the other hand, the specific nature of administrative justice (the inequality of power between the parties, limited competences of public authorities, and the priority of the public interest) complicates the application of standard ADR (Alternative Dispute Resolution) models⁴. A public authority cannot unconditionally «make concessions» or conclude agreements exceeding its legal powers, and citizens sometimes doubt whether the procedure can be fair, given the state’s authoritative resources. Therefore, implementing mediation in administrative proceedings requires well-considered legislative steps and special safeguards for legality and equality of the participants.

Alternative Dispute Resolution (ADR) plays a significant role in the modern legal system, providing a swift, cost-effective, and efficient means of resolving conflicts. ADR serves as an important complement to judicial

¹ Авер’янов В.Б. Адміністративне право України: Академічний курс. Київ: Юрінком Інтер, 2007. 736 с.

² Кодекс адміністративного судочинства України (КАС): Закон України № 2747-IV від 6 липня 2005 року із змінами та доповненнями. URL: <https://zakon.rada.gov.ua/laws/show/2747-15> (дата звернення 20.12.2024 р.)

³ Про медіацію : Закон України № 1875-IX від 16 листопада 2021 року. URL: <https://zakon.rada.gov.ua/laws/show/1875-20> (дата звернення 20.12.2024 р.)

⁴ Мішустін В. Кодекс адміністративного судочинства України: теорія та практика застосування: Монографія. Київ: Alerta, 2020. 412 р.

proceedings, helping to reduce court backlogs and ensure access to justice for citizens. Its key advantages include procedural flexibility, confidentiality, cost-effectiveness, and the ability to preserve relationships between the parties. In the context of the Ukrainian legal system, there is an urgent need to further refine ADR legislation and integrate best international practices⁵.

The relevance of this issue for Ukraine is primarily driven by the need for a swift and effective response by the legal system to the large number of administrative disputes that arise between citizens (or economic entities) and public authorities⁶. Overburdened administrative courts slow down the delivery of final judgments, which reduces public trust in state agencies and delays the realization of citizens' rights and interests. Provided an appropriate legislative framework is created, mediation can play a significant role in relieving the courts' workload and shaping a culture of dialogue between government and society⁷. The involvement of a neutral intermediary can balance the authority's resources with the individual's private interest, without breaching legality or exceeding official competencies.

In a recent publication in the journal *Problems of Legality*, the authors emphasize that, despite the expansion of legislative prerequisites for the use of mediation in Ukraine (particularly following the adoption of the Law «On Mediation» in 2021), practical outcomes remain uneven due to a number of institutional and procedural barriers. In particular, the researchers highlight the importance of specialized training for mediators in administrative disputes, as such cases involve not only adherence to legal norms but also the protection of the public interest. At the same time, in order to integrate mediation into administrative proceedings, close interagency cooperation and clearer guidelines for government bodies are necessary, ensuring their discretionary powers are exercised transparently and within the bounds of current legislation⁸.

For Poland, which implemented a series of reforms in the post-socialist period, the relevance of mediation in administrative proceedings is also high, although the level of ADR implementation there is more advanced than in

⁵ Хребтова А. А. Роль нотариуса в системі альтернативного вирішення спорів: теоретичні основи та практичні аспекти. Науковий вісник Ужгородського національного університету. 2024. Ч. 4. Вип. № 86. С. 124–129.

⁶ Зуй В.А. Медіація у вирішенні публічно-правових спорів: досвід країн ЄС та перспективи впровадження в Україні. Вісник адміністративного судочинства України. 2020. № 3. С. 29–34.

⁷ Про адміністративну процедуру : Закон України № 2073-IX від 17.02.2022 р. URL: <https://zakon.rada.gov.ua/laws/show/2073-20> (дата звернення 20.12.2024 р.)

⁸ Khmelyazh K. S. Mediator in the Polish Civil trial. *Problems of Legality*. 2021. № 152. P. 163-175. URL: <http://plaw.nlu.edu.ua/article/view/226289/226929>

Ukraine⁹. Poland's administrative court system has been restructured over recent decades in line with European standards, contributing to the incorporation of mediation tools into the public-law arena¹⁰. Poland's experience is noteworthy in demonstrating the viability of negotiation-based approaches in situations subject to strict legality and hierarchical competence. Despite a certain institutional conservatism, the Polish example shows that clear procedural rules on mediation (in special laws and regulations), proper training of mediators and judges, and informational support for the procedure can significantly speed up and simplify the resolution of many administrative disputes¹¹.

The theoretical and practical aspects of mediation in administrative justice have attracted the attention of many scholars and experts. In Ukraine, research in this field has been carried out by, among others, V.B. Averyanov, who in his works emphasized the interplay between legality and compromise in «citizen–public authority» relations and justified the importance of alternative conflict resolution tools for reducing the burden on the courts¹². In Polish academic literature, much attention has been paid to the reform of administrative judicial proceedings, including the introduction of ADR mechanisms, by authors affiliated with the National School of Judiciary and Public Prosecution of the Republic of Poland, who have examined procedural changes and the development of a network of mediators in the public-law sphere¹³. Meanwhile, experts from the Council of Europe, relying on Rec(2002)10 recommendations and CEPEJ guidelines, have repeatedly stressed the need to unify mediation mechanisms across various branches of law, including administrative¹⁴. In addition, some Ukrainian scholars who participate in working groups under the Ministry of Justice and relevant parliamentary committees are actively developing legislative proposals to adapt ADR to the Code of Administrative Procedure of Ukraine¹⁵. This broad involvement of specialists confirms the importance of the topic and provides

⁹ Domaradzki S. Alternative Dispute Resolution in Administrative Proceedings: Polish Attempts and Dilemmas. *European Public Law*. 2019. Vol. 25(2). pp. 297–315.

¹⁰ Kolendowski R. Mediation in Administrative Judicial Proceedings–Polish Experience and Development Prospects. *Studia Prawno-Ekonomiczne*. 2018. Vol. 107. pp. 75–91.

¹¹ Bartkowiak A. *Mediations and Balancing the Parties in Disputes with the Administration*. Warsaw: Legal-Administrative Publishing, 2019. 276 p.

¹² Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. URL: <https://rm.coe.int/16804c66f1>

¹³ Krajowa Szkoła Sądownictwa i Prokuratury. *Training Materials on Mediation*. URL: <https://www.kSSIP.gov.pl/mediacje>

¹⁴ CEPEJ Guidelines on Mediation (CEPEJ(2007)14). Council of Europe. URL: <https://rm.coe.int/cepej-2007-14-en/16807476f0>

¹⁵ National School of Judges of Ukraine. *Training Materials and Manuals on Mediation*. URL: <https://nsj.gov.ua/handbook-mediacia/>

a basis for developing concrete proposals to improve the legal framework and implement mediation in administrative proceedings.

Thus, the relevance of this study lies in the fact that Ukraine needs legislative, organizational, and educational improvements to the institution of mediation, taking into account the real nature of public-law conflicts, while Poland offers a case of successful (if not entirely trouble-free) integration of mediation approaches into administrative proceedings¹⁶. For Ukraine, Polish experience is valuable in terms of gradually reforming the system and adapting global ADR standards within a post-socialist legal tradition. This opens up opportunities for adopting best practices, such as enhancing the Code of Administrative Procedure, establishing mediation centers at administrative courts, introducing specialized training programs for mediators and judges, and fostering a sustainable legal culture.

This paper examines the conceptual foundations and legal regulation of mediation in the sphere of administrative justice, taking into account Ukrainian legislation and Poland's experience. Using Poland—another post-socialist state that underwent administrative system reforms—as an example, it explores how mediation can be adapted to public-law relations and how it contributes to improving the efficiency of administrative justice. The goal is to propose well-founded recommendations that can accelerate the integration of mediation into Ukrainian practice and increase the level of access to justice, compliance with European standards, and democratic principles of «citizen–state» interaction.

1. Theoretical and methodological foundations of mediation in the sphere of administrative justice

1.1. Features of Mediation as a Mechanism for Public-Law Dispute Resolution

The theoretical substantiation and effective implementation of mediation in administrative proceedings directly depend on the scholarly and methodological approaches that define its nature, principles, and legal essence. In administrative law and public-law relations, mediation acquires a specific character, determined by combining the discretionary features of negotiation techniques with the imperative nature of public authority¹⁷.

A general definition of mediation as a voluntary, confidential, and impartial procedure in which a neutral third party (mediator) assists the parties

¹⁶ Council of Europe. *Mediation Developments in Member States: A Comparative Overview*. Strasbourg, 2020. URL: <https://rm.coe.int/mediation-developments-comparative-overview/16809efd9b>

¹⁷ Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. p. 210. URL: <https://rm.coe.int/16804c66f1>

in reaching a mutually acceptable solution is well established in civil and commercial proceedings, confirmed by international practice, and based on general ADR principles¹⁸. However, in the context of administrative proceedings, the public-law aspect must be taken into account. Specifically, one of the parties is a body vested with public authority that must adhere to legality and prioritize the public interest, which significantly differs from the equal relationships of parties in civil or commercial disputes¹⁹.

In Ukrainian legislation, the possibilities for applying mediation in administrative justice remain limited. The Code of Administrative Procedure of Ukraine (CAP)²⁰ provides for the possibility of reconciliation (Art. 190), yet it does not regulate the mediation procedure as such. The Law of Ukraine «On Mediation» No. 1875-IX (2021)²¹ sets general provisions and principles of mediation (voluntariness, confidentiality, mediator impartiality), and grants parties the right to invoke this procedure at any time, but it does not elaborate how exactly a public authority can «settle» within the confines of strictly defined competence.

From a methodological standpoint, the study of mediation in administrative proceedings calls for several combined analytical vectors:

1. **Administrative and legal analysis:** determining how the discretionary principles of mediation align with imperative requirements, particularly regarding mandatory legislative rules that cannot be «compromised»²².

2. **Comparative legal approach:** assessing how similar challenges are addressed in other countries (particularly Poland), including the mechanisms used to balance the inequality of authority and ensure the primacy of legality²³.

3. **Socio-legal (sociological) dimension:** understanding the actual readiness of civil servants and citizens to negotiate, the psychological barriers they face, and the levels of trust/distrust in ADR procedures²⁴.

¹⁸ CEPEJ Guidelines on Mediation (CEPEJ(2007)14). Council of Europe. URL: <https://rm.coe.int/cepej-2007-14-en/16807476f0>

¹⁹ Про третейські суди : Закон України № 1701-IV від 11.05.2004 р. URL: <https://zakon.rada.gov.ua/laws/show/1701-15> (дата звернення 20.12.2024 р.)

²⁰ Кодекс адміністративного судочинства України (КАС): Закон України № 2747-IV від 6 липня 2005 року із змінами та доповненнями. URL: <https://zakon.rada.gov.ua/laws/show/2747-15> (дата звернення 20.12.2024 р.)

²¹ Про медіацію : Закон України № 1875-IX від 16 листопада 2021 року. URL: <https://zakon.rada.gov.ua/laws/show/1875-20> (дата звернення 20.12.2024 р.)

²² Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. URL: <https://rm.coe.int/16804c66f1>

²³ Domaradzki S. Alternative Dispute Resolution in Administrative Proceedings: Polish Attempts and Dilemmas. *European Public Law*. 2019. Vol. 25(2). pp. 297–315.

²⁴ Kolondowski R. Mediation in Administrative Judicial Proceedings—Polish Experience and Development Prospects. *Studia Prawno-Ekonomiczne*. 2018. Vol. 107. pp. 75–91.

4. **Casuistic (empirical) method:** analyzing specific legal cases and data on already implemented (though limited) instances of administrative mediation²⁵.

Recognition of the feasibility of extending ADR to the public-law sphere is supported by Council of Europe documents, particularly Recommendation Rec(2002)10 and the CEPEJ Guidelines on Mediation²⁶. Although these documents mainly address private-law disputes, they emphasize that overall development of mediation can enhance judicial efficiency and provide more flexible opportunities for conflict resolution. In this context, it is worth noting Polish legislation (*Prawo o postępowaniu przed sądami administracyjnymi*), which permits «judicial» mediation initiated by either a judge or the parties, while ensuring that the public authority remains within the bounds of its competence²⁷.

1.2. Potential of Digital Tools and «e-ADR» in Public Law

An emerging research trend over recent years is the combination of traditional negotiation techniques with digital technology, enabling mediation sessions to be held remotely (so-called «online dispute resolution»). In the context of administrative disputes, this can be especially important because citizens do not always have the ability to meet with authorized representatives of a public authority in person. Transition to «e-ADR» formats can reduce time and financial costs while promoting greater transparency²⁸. However, in the public-law sphere, online mediation requires additional data security guarantees and clear regulations on electronic identification and authentication of parties to prevent abuses.

Poland's experience in this direction is still limited; however, some voivodeship courts are already experimenting with preliminary remote consultations via videoconference. In Ukraine, e-ADR for administrative disputes is also just beginning to develop, including through pilot projects such as the «Electronic Court» and «Court in a Smartphone» initiatives²⁹. Moving toward online mediation platforms in public law, provided they are properly legislated, could accelerate ADR integration in national practice.

²⁵ Council of Europe. *Online Dispute Resolution (ODR) and E-Justice: Tools and Challenges*. Strasbourg, 2021.

²⁶ CEPEJ Guidelines on Mediation (CEPEJ(2007)14). Council of Europe. URL: <https://rm.coe.int/cepej-2007-14-en/16807476f0>

²⁷ *Prawo o postępowaniu przed sądami administracyjnymi* (Poland). URL: <https://www.prawo.pl/akty/dz-u-2024-935-t-j,16982717.html>

²⁸ Naudé T. Online Mediation for Consumer Disputes in the EU: A Brave New World or Still Sliding Down the Slippery Slope? *Journal of Consumer Policy*. 2021. Vol. 44. pp. 477–508.

²⁹ Council of Europe. *Mediation Developments in Member States: A Comparative Overview*. Strasbourg, 2020. p. 14. URL: <https://rm.coe.int/mediation-developments-comparative-overview/16809efdbb>

In summary, the theoretical and methodological basis of administrative mediation involves harmonizing two inherently opposite models: the imperative authority model (where a body acts on behalf of the state) and the discretionary-negotiation model (seeking mutually acceptable solutions)³⁰. Achieving such harmony requires an interdisciplinary approach, paying attention to legal and socio-psychological factors, as well as modern digital capabilities.

2. Practical aspects and normative foundations for applying mediation in administrative disputes (Ukraine and Poland)

2.1. Normative Framework and Specific Features of Administrative Mediation in Ukraine

Mediation in administrative proceedings occupies a special place compared to its traditional forms in civil and commercial disputes, because in public-law relations, there is always a public authority obliged to maintain legality and the public interest³¹. If there are no clearly developed legal mechanisms to reconcile private and state (societal) interests, the negotiation process can be significantly complicated or even impossible. At the same time, research shows that adequate normative support and adaptation of mediation mechanisms to administrative proceedings can substantially improve conflict resolution efficiency, reduce court backlogs, and strengthen trust between citizens and the state³².

International recommendations serve as the foundation for developing mediation in the public-law sphere, particularly Recommendation Rec(2002)10 from the Committee of Ministers of the Council of Europe and the CEPEJ Guidelines on Mediation³³. In this context, Poland's practice is frequently cited as a valuable example for post-socialist countries, including Ukraine³⁴. Poland began its journey toward implementing administrative mediation in the early 1990s as part of a comprehensive reform of public administration and the judicial system. The main rules are set forth in *Prawo o postępowaniu przed sądami administracyjnymi* and in secondary legislation governing «judicial mediation» at the initiative of either the court or the

³⁰ Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. URL: <https://rm.coe.int/16804c66f1>

³¹ Зуй В.А. Медіація у вирішенні публічно-правових спорів: досвід країн ЄС та перспективи впровадження в Україні. Вісник адміністративного судочинства України. 2020. № 3. С. 29–34.

³² Авер'янов В.Б. Адміністративне право України: Академічний курс. Київ: Юрінком Інтер, 2007. 736 с.

³³ CEPEJ Guidelines on Mediation (CEPEJ(2007)14). Council of Europe. URL: <https://rm.coe.int/cepej-2007-14-en/16807476f0>

³⁴ Bartkowiak A. *Mediations and Balancing the Parties in Disputes with the Administration*. Warsaw: Legal-Administrative Publishing, 2019. 276 p.

parties³⁵. Over time, Poland established registries of professional mediators in public law and developed a system for training judges in directing disputes to ADR³⁶.

Conversely, Ukrainian legislation does not prohibit the use of mediation in administrative disputes, but the absence of explicit provisions on mediator involvement in the Code of Administrative Procedure (CAP)³⁷ hinders its implementation. The CAP only provides general references to the parties' possibility of reconciliation, without detailing procedural steps such as a court-appointed mediator or checking the legality of a negotiated agreement³⁸. The Law «On Mediation» № 1875-IX³⁹ outlines basic principles and sketches the procedure for concluding a mediation agreement, but does not stipulate how public authorities are to conduct negotiations (e.g., how to pay the mediator's fee, how to define the limits of officials' discretionary powers). The Law «On Administrative Procedure» № 2073-IX⁴⁰, adopted in 2022, also lacks specific regulation for extrajudicial mediation models.

Additionally, the institution of arbitration courts in Ukraine warrants attention. According to the Law «On Arbitration Courts»⁴¹, arbitration courts cannot hear public-law disputes because the state cannot delegate its authoritative powers to private arbitrators. Therefore, unlike mediation, which can be introduced by improving procedural provisions while preserving court oversight of the final outcome, arbitration is essentially impossible in «citizen–public authority» relations⁴².

As a result, despite positive developments, Ukrainian legislation still does not provide a systematic framework for using mediation in administrative

³⁵ *Prawo o postępowaniu przed sądami administracyjnymi* (Poland). URL: <https://www.prawo.pl/akty/dz-u-2024-935-t-j,16982717.html>

³⁶ Krajowa Szkoła Sądownictwa i Prokuratury. *Training Materials on Mediation*. URL: <https://www.kSSIP.gov.pl/mediacje>

³⁷ Кодекс адміністративного судочинства України (КАС): Закон України № 2747-IV від 6 липня 2005 року із змінами та доповненнями. URL: <https://zakon.rada.gov.ua/laws/show/2747-15> (дата звернення 20.12.2024 р.)

³⁸ Мішустін В. Кодекс адміністративного судочинства України: теорія та практика застосування: Монографія. Київ: Alerta, 2020. 412 р.

³⁹ Про медіацію : Закон України № 1875-IX від 16 листопада 2021 року. URL: <https://zakon.rada.gov.ua/laws/show/1875-20> (дата звернення 20.12.2024 р.)

⁴⁰ Про адміністративну процедуру : Закон України № 2073-IX від 17.02.2022 р. URL: <https://zakon.rada.gov.ua/laws/show/2073-20> (дата звернення 20.12.2024 р.)

⁴¹ Про третейські суди : Закон України № 1701-IV від 11.05.2004 р. URL: <https://zakon.rada.gov.ua/laws/show/1701-15> (дата звернення 20.12.2024 р.)

⁴² Авер'янов В.Б. Адміністративне право України: Академічний курс. Київ: Юрінком Інтер, 2007. 736 с.

disputes⁴³. Judges and litigants commonly favor the traditional court process. Nevertheless, experts, representatives of the Ministry of Justice, and members of the Verkhovna Rada have been considering the Polish model as an example for strengthening the CAP (introducing separate articles on judicial mediation, a mechanism to stay the proceedings, appointment of a mediator, etc.)⁴⁴. There are already pilot projects focused on tax, land, or licensing administrative disputes, in which authorities have a certain degree of discretion and can settle with citizens.

2.2. The Polish «Judicial Mediation» Model and Its Potential Adaptation in Ukraine

Poland undertook a comprehensive reform of administrative judicial proceedings in line with its EU integration. During this period, the country introduced the possibility of «judicial mediation» (*mediacja sądowa*), either initiated by the court or the parties, if the subject matter of the dispute allows compromise and does not conflict with imperative norms⁴⁵. Poland's *Prawo o postępowaniu przed sądami administracyjnymi* provides for:

- The possibility of staying proceedings at the request of the parties or by the judge's proposal, in order to conduct negotiations.
- The right of the court to appoint a mediator from a registry of professionals skilled in resolving public-law disputes.
- The obligation of the court to verify the concluded «mediation agreement» for legality and to ensure it does not violate the rights of third parties.
- A funding procedure whereby the parties typically share the mediator's fee (within certain limits); however, the law allows for exempting citizens from payment in certain socially significant cases⁴⁶.

Polish practice has demonstrated that this model works well when backed by supporting infrastructure (mediation centers at voivodeship courts) and clear instructions for officials during negotiations. Public authorities must have well-defined guidelines indicating the scope within which they can revise decisions, make modifications, or reach agreements without breaching

⁴³ Зуй В.А. Медіація у вирішенні публічно-правових спорів: досвід країн ЄС та перспективи впровадження в Україні. Вісник адміністративного судочинства України. 2020. № 3. С. 29–34.

⁴⁴ Каталог аналітичних та інформаційних матеріалів. Дослідницької служби Верховної Ради України. Дослідницька служба Верховної Ради України. 2023. URL: <https://research.rada.gov.ua/uploads/documents/32795.pdf>

⁴⁵ Bartkowiak A. *Mediations and Balancing the Parties in Disputes with the Administration*. Warsaw: Legal-Administrative Publishing, 2019. 276 p.

⁴⁶ Kolondowski R. Mediation in Administrative Judicial Proceedings—Polish Experience and Development Prospects. *Studia Prawno-Ekonomiczne*. 2018. Vol. 107. pp. 75–91.

existing legislation. Even in Poland, however, expanding mediation in the administrative domain has been gradual, facing resistance from more conservative segments of the judiciary and bureaucracy⁴⁷.

According to some researchers⁴⁸, adapting the Polish model to Ukraine requires:

1. Direct amendments to the Code of Administrative Procedure (CAP) to include a separate section on judicial mediation for public-law disputes, specifying how mediation is initiated, how proceedings are stayed, and how the court ensures the final «mediation agreement» complies with legal requirements.

2. Adoption of secondary legislation regulating the participation of public authorities in mediation, including officials' scope of competence in negotiations, processes for approving a draft settlement with their supervisors, and rules for financing mediation services.

3. Creation of centers or registries of mediators at district administrative courts, along with specialized training programs focused on administrative disputes (utilizing Polish expertise and materials from the National School of Judiciary and Public Prosecution of the Republic of Poland⁴⁹).

4. Conducting public-awareness campaigns, training sessions, and workshops for judges, lawyers, and civil servants to overcome skepticism and enhance confidence in negotiation procedures involving a public authority.

2.3. Barriers, Risks, and Advantages of Implementing Mediation in Administrative Proceedings

Key barriers to implementing mediation in Ukrainian administrative justice include:

- Lack of a clear legislative mechanism (the CAP merely mentions «reconciliation»);
- Officials' psychological resistance (fear of exceeding their official powers or being accused of an «improper» settlement);
- Citizens' distrust of mediator impartiality (given the inequality of power);

⁴⁷ Council of Europe. *Online Dispute Resolution (ODR) and E-Justice: Tools and Challenges*. Strasbourg, 2021.

⁴⁸ Каталог аналітичних та інформаційних матеріалів. Дослідницької служби Верховної Ради України. Дослідницька служба Верховної Ради України. 2023. URL: <https://research.rada.gov.ua/uploads/documents/32795.pdf>

⁴⁹ Krajowa Szkoła Sądownictwa i Prokuratury. *Training Materials on Mediation*. URL: <https://www.kSSIP.gov.pl/mediacje>

□ Shortage of qualified mediators who specialize in public-law disputes⁵⁰.

Nevertheless, the advantages of administrative mediation are significant:

□ **Reducing court backlog:** Courts can more quickly process cases, focusing on those truly requiring in-depth examination.

□ **Flexibility and time savings:** Parties may reach an agreement sooner than through a full judicial trial.

□ **Increased trust in government:** Developing a dialogue-based culture benefits the public image of government agencies.

□ **Preserving confidential/sensitive information:** In some situations, mediation allows for «defusing» a conflict without undue publicity, protecting the authority's reputation and operational effectiveness⁵¹.

Recognizing these benefits and examining examples of successful cases from Poland and other European countries may prompt Ukrainian lawmakers to create an enabling regulatory environment and activate ADR procedural mechanisms in public-law relations.

3. Practical recommendations for improving legal regulation and prospects for scholarly research in the field of administrative mediation

3.1. Need for Legislative Amendments and Secondary Regulations

Although administrative mediation is considered a promising tool, it remains insufficiently regulated in Ukrainian legislation and is not widely used in practice⁵². Addressing these gaps depends on three pillars: (1) improving the regulatory framework, (2) organizational and financial support for the procedure, and (3) systematic scholarly and educational backing.

From a comparative-law perspective, Poland's experience shows that a well-designed «judicial mediation» procedure can fully comply with the principles of legality and the protection of public interest if supported by the appropriate procedural provisions⁵³. In Ukraine, where the CAP currently lacks specific articles on mediation, a priority step is to supplement it with a section dedicated to mediation in administrative disputes. This section should:

1. Define the legal status of the mediator in a public-law conflict.

⁵⁰ Мішустін В. Кодекс адміністративного судочинства України: теорія та практика застосування: Монографія. Київ: Alerta, 2020. 412 р.

⁵¹ Зуй В.А. Медіація у вирішенні публічно-правових спорів: досвід країн ЄС та перспективи впровадження в Україні. Вісник адміністративного судочинства України. 2020. № 3. С. 29–34.

⁵² Авер'янов В.Б. Адміністративне право України: Академічний курс. Київ: Юрінком Інтер, 2007. 736 с.

⁵³ *Prawo o postępowaniu przed sądami administracyjnymi* (Poland). URL: <https://www.prawo.pl/akty/dz-u-2024-935-t-j,16982717.html>

2. Describe the procedure and timeline for staying proceedings during negotiations.
3. Mandate court oversight of the «mediation agreement» to ensure it does not contradict applicable law or undermine the public interest.
4. Grant judges or the parties the power to initiate the mediation procedure.
5. Identify categories of disputes that cannot be resolved by compromise due to strict imperative rules.

The second essential step is to adopt secondary regulations or official guidelines standardizing the actions of public authorities in mediation, particularly regarding financing (who pays the mediator, and under what conditions) and the procedure for approving results with higher-level leadership.

3.2. Organizational, Staffing, and Informational Support

Organizational and staffing infrastructure is critical for the practical implementation of mediation. Establishing «administrative mediation centers» at district administrative courts or introducing official registries of certified mediators in public law will foster more rapid referral of parties to mediation⁵⁴. These centers could provide technical support to participants, coordinate mediators' activities, and compile statistics on successful cases.

Staff training is a key element. In Ukraine, specialized courses are needed for those intending to serve as mediators in administrative law, addressing both the inequality of power and the demands of legality. Judges and civil servants should likewise receive training on basic negotiation skills, methods of «dialogue» with a citizen, and restrictions stemming from official duties⁵⁵. In Poland, the National School of Judiciary and Public Prosecution (Krajowa Szkoła Sądownictwa i Prokuratury) played a significant role by organizing «judicial mediation» training sessions⁵⁶.

Public-awareness campaigns are another tool for informing citizens about the advantages of negotiation-based dispute resolution with the government. Greater acceptance of ADR in society can reduce the number of complaints over lengthy court battles and protect civil servants from allegations of «improper compromise». In this regard, official websites, brochures in courts

⁵⁴ Bartkowiak A. *Mediations and Balancing the Parties in Disputes with the Administration*. Warsaw: Legal-Administrative Publishing, 2019. 276 p.

⁵⁵ Каталог аналітичних та інформаційних матеріалів. Дослідницької служби Верховної Ради України. Дослідницька служба Верховної Ради України. 2023. URL: <https://research.rada.gov.ua/uploads/documents/32795.pdf>

⁵⁶ Krajowa Szkoła Sądownictwa i Prokuratury. *Training Materials on Mediation*. URL: <https://www.kssip.gov.pl/mediacje>

and government offices, as well as seminars and roundtables, can be highly beneficial.

3.3. Further Scholarly Research and Innovation Prospects

Scholarly research is critical in generating empirical evidence to support the introduction of administrative mediation. Empirical studies are needed to analyze existing «reconciliations» between citizens and public authorities, along with quantitative and qualitative data on such procedures (time, cost, satisfaction of the parties, adherence to legality)⁵⁷. Undertaking comparative studies not only of Poland but also of other European states (Germany, France, the Netherlands), where public-law mediation is under judicial supervision, will help identify the most effective instruments and avoid potential pitfalls⁵⁸.

A distinct area of opportunity lies in developing electronic platforms for «e-ADR.» Ukraine already hosts initiatives such as «Electronic Court» or «Court in a Smartphone»⁵⁹. Integrating a mediation module into these digital services—while ensuring robust participant authentication and data protection—can make the process even more accessible. This is especially relevant for remote regions where physical access to court is limited and the public authority may be located in the capital or a regional center. Nonetheless, implementing online mediation must be accompanied by explicit legislative rules guaranteeing security and the validity of electronic agreements in the public-law arena.

CONCLUSIONS

Mediation in administrative proceedings is an innovative legal mechanism that can streamline public-law dispute resolution and increase trust in public authorities. Its effective implementation requires adapting negotiation methods to the specifics of administrative law, where the rule of law, the priority of the public interest, and the limits of official competence are essential⁶⁰. Consequently, the traditional ADR model, originally designed primarily for civil and commercial disputes, cannot simply be transferred to administrative justice but calls for systematic refinement: amending procedural legislation, adopting additional secondary regulations, establishing

⁵⁷ Council of Europe. *Online Dispute Resolution (ODR) and E-Justice: Tools and Challenges*. Strasbourg, 2021.

⁵⁸ CEPEJ Guidelines on Mediation (CEPEJ(2007)14). Council of Europe. URL: <https://rm.coe.int/cepej-2007-14-en/16807476f0>

⁵⁹ Council of Europe. *Mediation Developments in Member States: A Comparative Overview*. Strasbourg, 2020. URL: <https://rm.coe.int/mediation-developments-comparative-overview/16809efdbb>

⁶⁰ Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. URL: <https://rm.coe.int/16804c66f1>

organizational and financial prerequisites, and conducting awareness-raising initiatives⁶¹.

Ukrainian legislation generally does not prohibit mediation in administrative disputes, but the current Code of Administrative Procedure (CAP)⁶² only mentions the possibility of «reconciliation,» without specifying rules for conducting mediation. The Law «On Mediation»⁶³ provides fundamental principles (voluntariness, confidentiality, impartiality) but does not detail procedure in the public sector. Meanwhile, Poland—as an example of a post-socialist state—shows that with proper regulation and organizational support, mediation can operate successfully in the public-law arena⁶⁴.

For Ukraine, it is advisable to follow Poland’s example by supplementing the CAP with a dedicated section on «judicial mediation» in administrative disputes, adopting secondary regulations that govern the participation of public agencies in negotiation, creating registries of professional mediators, and instituting specialized training for judges and officials⁶⁵. Additionally, funding mechanisms must be devised so officials can officially cover mediator fees (or so that government or grant programs can do so)⁶⁶. Enhancing public awareness of mediation as a dispute resolution option, through seminars and outreach programs, is also essential to promoting a «dialogical» approach.

In conclusion, mediation in administrative proceedings can serve as a modern and effective mechanism for resolving public-law conflicts, enabling quick and fair agreements between citizens and public authorities, while simultaneously safeguarding legality and protecting the public interest⁶⁷. Poland’s experience indicates that even with rigidly regulated authority, a functioning model of «judicial mediation» can be established. For Ukraine, implementing such a model would represent a further step toward European standards of transparency, efficiency, and democratic governance.

⁶¹ Kolendowski R. Mediation in Administrative Judicial Proceedings—Polish Experience and Development Prospects. *Studia Prawno-Ekonomiczne*. 2018. Vol. 107. pp. 75–91.

⁶² Кодекс адміністративного судочинства України (КАС): Закон України № 2747-IV від 6 липня 2005 року із змінами та доповненнями. URL: <https://zakon.rada.gov.ua/laws/show/2747-15> (дата звернення 20.12.2024 р.)

⁶³ Про медіацію : Закон України № 1875-IX від 16 листопада 2021 року. URL: <https://zakon.rada.gov.ua/laws/show/1875-20> (дата звернення 20.12.2024 р.)

⁶⁴ Domaradzki S. Alternative Dispute Resolution in Administrative Proceedings: Polish Attempts and Dilemmas. *European Public Law*. 2019. Vol. 25(2). pp. 297–315.

⁶⁵ Bartkowiak A. *Mediations and Balancing the Parties in Disputes with the Administration*. Warsaw: Legal-Administrative Publishing, 2019. 276 p.

⁶⁶ Каталог аналітичних та інформаційних матеріалів. Дослідницької служби Верховної Ради України. Дослідницька служба Верховної Ради України. 2023. URL: <https://research.rada.gov.ua/uploads/documents/32795.pdf>

⁶⁷ Recommendation Rec(2002)10 of the Committee of Ministers to Member States on Mediation in Civil Matters. Council of Europe. URL: <https://rm.coe.int/16804c66f1>

SUMMARY

This monographic chapter is devoted to a comprehensive study of the theoretical and applied foundations and legal regulation of mediation in the sphere of administrative justice, taking into account Ukrainian realities and Poland's experience. This scholarly work combines an in-depth analysis of hierarchical relationships in administrative proceedings, revealed through the «inequality of power» among parties and the presence of a public interest, with practical recommendations for introducing negotiation-based (ADR) mechanisms in public-law disputes. The theoretical section highlights the specifics of mediation as a voluntary and confidential procedure that must be adapted to the imperative requirements and strict procedural norms of administrative law. Implementing mediation in administrative disputes will facilitate more efficient resolution of conflicts between citizens and public authorities, reduce judicial backlog, establish a dialogue culture in public administration, and foster higher trust in governmental institutions. Considerable attention is given to European guidelines (Recommendation Rec(2002)10, CEPEJ Guidelines on Mediation), comparative legal analysis (including Polish legislation *Prawo o postępowaniu przed sądami administracyjnymi* and the practice of voivodeship courts), and a list of measures necessary for adapting Polish approaches to Ukrainian legislation and administrative practice. Concrete proposals are developed for amending the Code of Administrative Procedure of Ukraine, adopting secondary regulations governing mediation procedures in executive bodies, creating «administrative mediation centers» at district administrative courts, providing government funding for mediation services, and establishing specialized training for professionals capable of balancing state powers and private interests.

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