

DOI <https://doi.org/10.30525/978-9934-26-669-0-50>

**PUBLIC LAW MEDIATION IN UKRAINE:
LEGAL AND ECONOMIC RATIONAL**

Markova O. O.

*Doctor in Economics,
Research Fellow,
Lincoln Law School, University
of Lincoln
Lincoln, UK,
Associate Professor,
Sumy Branch of Kharkiv National
University of Internal Affairs,
Sumy, Ukraine*

Маркова О. О.

*доктор економічних наук,
дослідник,
Юридична школа Лінкольну,
Університет Лінкольну,
м. Лінкольн, Великобританія,
доцент кафедри юридичних
дисциплін,
Сумська філія ХНУВС
м. Суми, Україна*

Babenko K. Ye.

*Doctor in Economics,
Visiting Researcher,
Newcastle University
Newcastle, UK*

Бабенко К. Є.

*доктор економічних наук,
дослідник,
Університет Ньюкаслу
м. Ньюкасл, Великобританія*

The issue of conflicts and their resolution is particularly relevant in the field of public law, where the parties to conflict relations are, on the one hand, public authorities and, on the other, citizens. In recent years, the number of conflicts arising within public-law relations has steadily increased, largely due to the unequal legal status of the parties involved. Unlike private-law disputes, public-law conflicts are characterised by structural asymmetry of power, since public authorities exercise and act on behalf of the state.

There is a bunch of literature discussing the topic. Kostina (2024) frames mediation in public-law disputes as an innovative approach to safeguarding human rights and discusses the adaptation of core mediation principles, such as voluntariness and confidentiality to public-law conflicts. Goloborodko (2023) conceptualises mediation as a settlement mechanism for administrative-law disputes. Astreyko (2024) considers mediation in administrative cases as an alternative mechanism for regulation conflicts between individuals and administrative authorities.

Beyond general theoretical discussion, Ukrainian scholarship has also advanced sector-specific arguments for ADR in administrative domains characterised by recurring disputes and institutional feasibility of pre-trial settlement. Zaveruha (2023), for example, analyses mediation in tax disputes through comparative reference to the United States and Germany, reflecting a broader Ukrainian tendency to ground reform proposals in external models

while emphasising adaptation to domestic administrative and fiscal constraints.

In this piece we are trying to discuss the identified gap and seeks to consolidate Ukrainian doctrinal insights into an integrated legal–economic concept of public-law mediation. There are three main points around economic and institutional rationale for public-law mediation:

1. Mediation may reduce transaction costs in disputes where adversarial litigation imposes disproportionate administrative and opportunity costs (Coase, 1960; Williamson, 1985; North, 1990).

2. Mediation can contribute to institutional legitimacy by supporting procedural fairness and participatory engagement, which is relevant for compliance and the costs of governance (OECD, 2017; OECD, 2024).

3. Comparative European guidance and administrative justice research emphasise that administrative mediation is institutionally distinctive, requiring clear legal bases, credible safeguards, and careful integration with accountability mechanisms (Council of Europe, 2001; CEPEJ, 2022).

The introduction of mediation procedures into the public law sphere is a task for both the state and citizens. The task of the state is not only to control the ongoing changes in society and in the activities of public administration bodies, but also to monitor conflicts arising between the authorities and citizens and to create a quality mechanism of legal regulation by enshrining norms on the use of mediation in public law conflicts. It is necessary to exclude the process of duplication and copying of the Western concept of mediation in relations between administrative bodies and private persons.

The Law of Ukraine “On Mediation” has established a number of important general guarantees for the mediator, in particular:

1) the mediator cannot be questioned as a witness in the case (proceedings) regarding information that became known to him during the preparation for mediation and the conduct of mediation, clause 5 of Article 6;

2) regarding confidentiality, the mediator and other participants in the mediation, as well as the entity providing the mediation, do not have the right to disclose confidential information, unless otherwise established by law or unless all parties to the mediation have agreed otherwise in writing.

The main reasons for introducing mediation procedures to resolve public law conflicts are:

1) reduction of the burden on courts and judges;

2) developing a mediatory culture of conflict management and dispute resolution;

3) formation of a dialogue in relations between administrative bodies and private individuals in order to develop trust in the bodies;

4) provision of an opportunity for bodies to use alternative means in case of a dispute with citizens;

5) functional change in the vector of relations of administrative bodies – the use of contractual forms in relations with citizens; as well as providing citizens with state, municipal, and municipal services; and 3) the introduction of mediation procedures for the settlement of conflicts (Markova, 2022).

From an economic perspective, public-law disputes can be conceptualised as interactions characterised by high transaction costs. These costs extend beyond direct legal expenses and include delay, administrative resource consumption, opportunity costs for both citizens and public authorities, and the broader social costs of unresolved or escalating conflict. Public-law disputes also tend to arise under conditions of structural asymmetry: public authorities possess formal decision-making powers and informational advantages, while individuals often have limited capacity to influence outcomes through ordinary administrative channels.

For public authorities, litigation diverts personnel from core administrative functions, increases workloads for legal departments and courts, and may generate reputational costs where disputes become protracted or politically salient. For individuals, litigation can entail prolonged uncertainty, delayed access to remedies, and a perception of opacity or distance in administrative decision-making. These dynamics are amplified in recurring or technically complex disputes, where cumulative contestation may impose costs disproportionate to the underlying issue.

The costs of non-mediation are often underestimated. Exclusive reliance on judicial or hierarchical administrative enforcement may result in delayed service delivery, stalled public projects, increased social tension, and cumulative strain on legal and administrative systems. In post-war and transitional contexts such as Ukraine, these costs are particularly salient: unresolved disputes concerning land use, taxation, benefits, or public services can impede reconstruction, discourage local economic activity, and undermine social cohesion. In this sense, mediation operates not merely as an ADR technique. It also functions as a preventive governance mechanism that mitigates the long-term costs of institutional inefficiency and strengthens the foundations for sustainable public administration.

We were trying to argue how combined legal and economic concept can legitimise mediation in Ukrainian public-law disputes between administrative authorities and private parties. At the conceptual level, this model frames public-law mediation as a structured dialogue process that must be capable of managing institutional asymmetry and delivering procedural fairness. At the normative level, it directs legislative refinement toward explicit competence or discretion of powers, confidentiality–accountability

boundaries, and a predictable interface with administrative appeal and judicial review. At the operational level, mediability is translated into a minimum screening test.

References:

1. Astreyko, V. V. (2024) Mediation as an alternative method of dispute resolution in public law relations. *Almanac of Law*15: 481–486 (in Ukrainian). Available at: <http://jnas.nbuv.gov.ua/article/UJRN-0001525941>
2. CEPEJ (European Commission for the Efficiency of Justice) (2022) *State of play of the practice of mediation in administrative disputes* (24 January 2022). Council of Europe.
3. Council of Europe (2001) *Recommendation Rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties*.
4. Doyle, M. (2014) *The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study*. University of Essex / Nuffield Foundation.
5. Goloborodko, D.V. (2023) Mediation procedure of pre-trial settlement of administrative law disputes: concept, legal framework and directions for improvement. *Scientific Legal Journal* 19: 221–227 (in Ukrainian).
6. Kostina, D.A. (2024) Mediation in public-law disputes: an innovative approach to the protection of human rights. *Problems of Legality* 166: 140–158. doi: 10.21564/2414-990X.166.312519
7. Markova, O. (2022) Introduction of mediation into administrative procedure: transformation of relations. *South Ukrainian Law Journal* 4(2): 202–206 (in Ukrainian). doi: 10.32850/sulj.2022.4.2.31
8. OECD (2017) *Trust and public policy: How better governance can help rebuild public trust*. Paris: OECD Publishing.
9. OECD (2024) *OECD survey on drivers of trust in public institutions: 2024 results*. Paris : OECD.