

Mediation as a conflict resolution tool in criminal proceedings in the context of martial law

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Abstract. The research relevance is determined by the need to develop alternative dispute resolution methods to improve the mechanism of protection of citizens' rights in the context of a full-scale invasion. Therefore, the study aims to analyse the institution of mediation in criminal proceedings with due regard to the peculiarities of martial law. A range of methods were used for this purpose, namely, formal legal analysis logical analysis, legal hermeneutics, dogmatic method, logic and functional analyses. The study revealed that mediation is used in criminal proceedings only to reconcile the victim with the suspect. This procedure can solve the problem of overloading the courts and potentially delaying the resolution of disputes. As noted, under current legislation, a reconciliation agreement in criminal proceedings for domestic violence can only be concluded at the initiative of the victim; it was determined that it is necessary to provide that the relevant initiative for mediation in cases of such offences should also come from the victim. As suggested, legislative provisions should include mandatory participation of the victim's representative in criminal proceedings in case the court decides to release the victim from serving a sentence with probation, substitute the remaining part of the sentence with a lesser one, or grant early release from serving a sentence. The ways to improve human rights guarantees in the mediation procedure under martial law

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were considered. The practical significance of the results obtained is to provide recommendations for improving the modern mechanism of this institution in criminal proceedings

Keywords: restorative justice; alternative method; full-scale invasion; human rights; citizens' appeals

Introduction

The number of appeals to the courts is growing in Ukraine, which indicates an increase in the legal culture of the population and access to justice. However, due to the full-scale invasion, the heavy workload on judges makes their work difficult, and the duration of court proceedings is unreasonably long. Often, court decisions are not satisfactory to either party, leading to appeals to the courts of appeal and cassation, and sometimes even to international judicial institutions. As a result, the effectiveness of the judicial system is criticised by the public. The system continues to function under martial law but to improve it, it is necessary to improve legislation, increase the authority of the court and ensure proper logistical support for the courts. It should be noted that alternative dispute resolution under martial law plays a special role in solving the above problems. In this regard, it is important to analyse them as a tool for conflict resolution in criminal proceedings, considering the peculiarities of a full-scale invasion.

As noted by A. Dmytrenko and M.R. Mazur (2021), restorative justice, which is actively used in many countries, aims not only to ease the burden on the judicial system but also to prevent future crimes. However, the authors do not emphasise that it involves conflict resolution with the direct participation of the parties, which makes it possible to find a solution that will satisfy both parties. One of the forms of restorative justice is mediation (Horislavska, 2023). According to T.H. Fomina (2021), mediation is a form of conflict resolution between persons with the participation of a mediator, an alternative to court proceedings. The author does not mention that the purpose of this process is to help the parties to the conflict reconcile and find a solution that will satisfy both parties. For this purpose, mediators must be well-trained and adhere to professional standards. R. Chip and R. Gatanyuk (2023) believe that alternative dispute resolution schemes should be linked to the judicial system. This is necessary to ensure that mediators have the necessary professional skills and qualifications, as well as impartiality and independence.

For mediation in Ukraine to be effective, legal provisions should be developed to regulate its implementation and the status of mediators. As O.V. Kovaleva (2022) notes, mediators should undergo initial training to provide them with the necessary knowledge and skills to resolve conflicts. The author does not mention that mediators should possess certain traits, such as interpersonal skills, the ability to assess the situation and an understanding of the vulnerability of the parties. Following T.D. Lysko and N.P. Zakharchuk (2022), in countries where mediation is being implemented, an important aspect is to develop common standards for the training of mediators and to implement appropriate educational programmes for the training of specialists in this field. According to N. Roskoshna (2020), when developing a curriculum for the training of mediators, it is necessary to cover the following key topics: basic principles and purpose of the process; ethical principles and value orientations of activity; sequence of stages; criteria for the feasibility of applying the procedure in specific cases. The author does not mention

that the mediator training programme should include the study of the specifics of mediation in various areas, such as criminal proceedings, family cases and civil disputes.

As I.V. Ozerskyi (2023) notes, when considering the specifics of mediation in criminal proceedings, it is necessary to consider the basic principles of the criminal justice system; the relationship and interaction of criminal justice and mediation; the development of communication skills and work with participants in criminal proceedings and other aspects. J.K. Martinez (2020) suggests that a reconciliation pact embodies an understanding between the harmed party and the alleged perpetrator, outlining the conditions under which the accused acknowledges responsibility for actions aimed at restitution for the harm resulting from the offense. In turn, the C. Rule (2020) notes that a reconciliation agreement is not a unilateral statement by the victim, but a mutual agreement to peacefully resolve the conflict between the victim and the suspect or accused. Therefore, one could posit that the primary foundation for entering into a reconciliation agreement is the occurrence of reconciliation between the victim and the suspect or accused. As for the features inherent in a reconciliation agreement, they can be divided into two groups: procedural and socio psychological (Rima *et al.*, 2019). The former characterises the agreement as an institution of criminal procedure law and a procedural document. The latter relates to the internal psychological attitude of the parties to the agreement.

As such, the study aims to analyse the mediation procedure in criminal proceedings under martial law. The study goal requires a definition of the basic concepts, a description of the current legislation, and an identification of the scope of challenges and ways to prevent them.

Materials and methods

In the course of the study, a variety of specially legal methods were used to cover all key aspects of the issue. The formal legal approach became the basis of the study and was used to analyse the legal acts regulating the activities of the institution of mediation in criminal proceedings. This approach made it possible to consider the wording of legal provisions, their legal mechanics and terminology. This helped to reveal the essence of the legislative regulation of mediation, and also contributed to the identification of gaps, conflicts and discrepancies between international and national legislation in force in Ukraine. Based on this approach, conclusions were drawn as to how comprehensive the legislator's regulation of this area is, as well as the consistency and interaction of legal regulation of mediation in criminal proceedings, which allowed for a comprehensive analysis of the existing legislation in this area. The analysis of legislation would not be complete without the use of the method of legal hermeneutics, which was used to conduct a detailed philological analysis of the texts of legal acts regulating the mediation procedure in criminal proceedings. This method was used to study the systemic links between different terms of the legislation.

The dogmatic approach was used for a thorough study of the main terms and concepts used in the field of legal

regulation, such as “restorative justice” and “mediation”. This method made it possible to establish the content, interrelationships, and correlations of key legal constructs and models used to regulate the mediation institute and to assess the compliance of legal acts with the basic principles of law in this area. This made it possible to make theoretical generalizations regarding the legal nature and content of mediation regulation. The method of functional analysis was used to determine the role of mediation in criminal proceedings, its impact, and importance in relieving the judicial system of its workload. This approach was also used to consider the role of mediation in ensuring the rights of the parties to the conflict, including the victim and the offender.

The study analysed a number of legal, regulatory and advisory sources. The analysis of presidential decrees, current legislation, criminal codes, as well as recommendations of the Committee of Ministers of the Council of Europe, Council of Europe decisions and guidelines on mediation provided a broad overview of the legal framework governing the mediation process in criminal justice. In addition, the reports of the Commissioner for Human Rights of the European Court of Human Rights provided important information on the protection of human rights in wartime and the role of mediation in conflict resolution in these circumstances. A general review of these sources allowed for an in-depth analysis of the role of mediation in the context of criminal justice during martial law, identification of its advantages and limitations, and recommendations for further development of the mediation system in such circumstances.

Results

On 24 February 2022, the Verkhovna Rada of Ukraine declared martial law due to the Russian full-scale invasion of Ukraine (Decree of the President..., 2022). This caused several problems with the functioning of Ukraine’s judicial system. Before the outbreak of the full-scale war, Ukraine already had systemic problems with the judicial system, including overloaded courts, a shortage of judges and underfunding, which were exacerbated by the war; some judges were forced to relocate or suspend their activities; court buildings and infrastructure were destroyed or damaged, making access to justice more difficult; and new problems arose as a result of the full-scale invasion (Chyzhyk, 2022). In particular, part of Ukraine’s population was forced to flee their homes, moving both within and outside the country. Others have remained in the temporarily occupied territories, where they cannot access justice due to increased

security risks, destruction of infrastructure and other reasons. The law enforcement system in wartime is focused on national security and countering armed aggression. This also complicates access to justice, as law enforcement agencies are unable to fully fulfil their responsibilities to protect the rights and freedoms of citizens.

Hostilities have also affected the judicial system of Ukraine. In this regard, amendments were made to the legislation. In particular, on 3 March 2022, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2112-IX “On Amendments to the Seventh Part of Article 147 of the Law of Ukraine “On the Judiciary and the Status of Judges” Regarding the Determination of Territorial Jurisdiction of Court Cases” (2022). During martial law or an emergency caused by a natural disaster, hostilities, anti-terrorist operations or other force majeure circumstances, the administration of justice acquires certain peculiarities. In particular, the law provides for a procedure for changing the territorial jurisdiction of court cases that are considered in a particular court. According to the Supreme Court, due to the impossibility of ensuring the functioning of the judicial system in the temporarily occupied territories during the hostilities, the territorial jurisdiction of 195 courts was changed (The list of courts..., 2023). Some of them have already resumed their operation, but most of the courts located in temporarily occupied territories or in areas where hostilities are ongoing have not resumed their activities. It should be noted that 13 courts are currently destroyed, 587 administer justice, 87 do not administer justice due to active hostilities or location in the temporarily occupied territory, 84 have not administered justice since 2014, and 86 have varying degrees of destruction (The Chairman of the Council..., 2023). This has led to a significant increase in the workload of other courts, which in turn can lead to delays in the consideration of criminal proceedings. One of the ways to overcome this problem is to spread alternative forms of justice, including mediation.

Mediation is a process in which an impartial third party, a mediator, helps conflict parties reach a mutually acceptable solution. Historically, mediation originated in English-speaking countries in the second half of the 20th century and then spread to continental Europe and Asia (Baranyanan, 2021). In Ukraine, mediation was enshrined in the Law of Ukraine No. 1875-IX “On Mediation” (2021). In criminal proceedings, mediation is used only to reconcile the victim with the suspect (accused). An outline of this process is shown in Table 1.

Table 1. Scheme of the mediation process

Stage	Description
Preparation	The mediator meets separately with each party and explains the rules and principles of mediation
Initiation	Each side describes the conflict situation from its point of view. The mediator clarifies the facts
Opinion evaluation	The mediator asks clarifying questions to understand the interests and needs of the parties
Option determination	The mediator encourages the parties to propose possible solutions that would be acceptable to both parties
Discussions	The parties discuss the proposed options and analyse the advantages and disadvantages
Conclusion of a deal	Based on the results of the discussion, the parties agree, all the details of which are specified

Source: J.K. Martinez (2020)

It is worth noting that these are the main stages of the mediation process, in which a third party coordinates the process, helps to establish communication, and facilitates

constructive solution finding. Mediation can be an effective tool for addressing the problems of the justice system during martial law. However, it is necessary to consider the practice

in some countries. Differences in approaches to understanding the basic principles and the development of restorative justice have led to the growing popularity of mediation in tort relations. The United Nations (UN), the Council of Europe and the countries of the Anglo-Saxon legal system emphasise the important role of restorative justice. It is worth noting that the task of restorative justice is reconciliation, which is aimed at restoration. International documents, in particular Recommendation No. R(99)19 (1999), Decision of the Council of the European Union (2001/220/JHA) (2001), Guidelines for a implementation of the Recommendation concerning mediation (2007) oblige EU countries to promote mediation in criminal cases.

According to the German experience in the field of juvenile justice, mediation is an alternative route to criminal prosecution and punishment of minors (Kiesewetter and Paul, 2023). This practice is effectively used for most criminal offences and can serve as a basis for mitigating penalties or exempting a minor from liability. Kazakhstan is actively developing the institution of mediation in criminal law (Criminal Code of the Republic of Kazakhstan, 2014). Although mediation does not replace the court, it allows the conflicting parties to reach a consensual decision based on which the court may release the accused from liability. Amid the imposition of martial law in Ukraine, mediation emerges as a potential solution to various challenges within the realm of justice administration, especially concerning criminal proceedings. Despite differences in the approaches of different countries, the active use of mediation shows its effectiveness in achieving the goals of restorative justice. When considering the possibility of using mediation in criminal proceedings, the question arises as to the nature of the dispute to be settled. The first aspect is the resolution of property issues in a civil action. However, an analysis of the Criminal Code of Ukraine (2001) and the Criminal Procedure Code of Ukraine (2013) shows that the purpose of mediation is to reach reconciliation between the victim and the suspect/accused on the issues of guilt and responsibility of the latter. In other words, in this case, it is not a property dispute that is being settled, but a conflict between the parties to criminal proceedings regarding the circumstances of the crime.

Martial law creates additional difficulties for the resolution of criminal law conflicts in the traditional judicial procedure. Mediation (online mediation) is an alternative way to resolve such conflicts, which has several advantages, including alleviating the workload of the judicial system, resolving a dispute in a shorter time than a trial, considering changes in security and territorial jurisdiction, and providing access to justice for participants in criminal proceedings who have changed their place of residence or have been forced to travel abroad. Preparatory activities carried out by the mediator include meetings of the parties and, the exchange of information and documents necessary for decision-making. Mediation in criminal proceedings may result in an agreement that will serve as a basis for further conclusion of a reconciliation agreement between the victim and the suspect/accused or the victim's written consent to a plea agreement. As a reconciliation agreement in cases of domestic violence is possible only at the initiative of the victim, it should be provided that the initiative to conduct the mediation in such criminal proceedings should also belong exclusively to the victim (Yara *et al.*, 2021).

The experience of Singapore is an example of the effective use of online mediation. In 2020, the Singapore International Mediation Centre launched the JIMC-SIMC COVID-19 Protocol (2020) to provide companies with a fast, cost-effective, and efficient way to resolve any international commercial disputes during the COVID-19 pandemic. This protocol has certain key features and is implemented in a prescribed manner. First, the parties can submit their disputes by submitting a form on the SIMC website and paying USD 250; then SIMC will arrange mediation within 10 business days, the parties benefit from reduced fees, and SIMC is flexible in appropriate cases; importantly, the mediation is conducted online. In terms of the European Union's practice, the first steps towards the gradual introduction of alternative dispute resolution were taken even before the pandemic; the European legal system aims to encourage parties to use due process to resolve a dispute, not just access the court system (Baranyanan, 2021). According to Law of Ukraine No. 3460-VI "On Free Legal Aid" (2011), free primary legal aid includes assistance in facilitating a person's access to mediation. At the same time, the victim needs free secondary legal aid when the court considers the mediation agreement. Therefore, it is imperative to stipulate compulsory involvement of a victim's representative in criminal proceedings when the court decides on the release or mitigation of punishment, as the victim may not be able to defend his or her interests in court. The victim should also be given the right to apply to the court to consider the mediation agreement during the execution of the sentence, which will allow them to receive compensation for damage more quickly.

The Annual report on the activities of the European Court of Human Rights Commissioner (2021) states that one of the key problems that led to the establishment of violations of the European Convention on Human Rights (1950) by Ukraine is the protracted consideration of civil, administrative, and criminal cases. Legislative regulation of mediation and the use of online methods of alternative dispute resolution could significantly relieve the judicial system and ensure access to justice for all segments of the population in the new environment. However, online mediation has several problems that need to be considered when conducting it. First, the quality of communication in online mediation depends on many factors, including the digital literacy of the participants, the quality of the connection, the technical means of communication and the lighting. This can lead to problems with understanding each other and slow down the negotiation process. Secondly, it may be difficult for the mediator to adequately interpret the emotional state of the parties and support them in sensitive communication. In addition, if one of the parties is in a state of effect, the mediator cannot influence their behaviour in real-time. Furthermore, it may be difficult for the mediator to adequately interpret the content of the negotiations if they take place in asynchronous communication. Fourth, online communication can be more tiring for participants than traditional face-to-face mediation. This is because participants need to make greater use of their psychological, intellectual, and physical resources. Fifthly, there is an increased risk of violation of the principle of confidentiality in online mediation. This may occur through the negligence of the participants, as a result of intentional actions or due to the misconduct of third parties. In addition, there is an increased risk of misinterpretation of the parties' actions and/or events related to technical aspects of communication.

In conflict situations, the parties often experience strong emotions that can impede constructive dialogue. In times of war, these emotions are amplified, making conflict resolution more difficult. Mediation allows the parties to express their feelings and needs, and to find a mutually acceptable solution that considers the interests of all parties. Ukraine is already applying some aspects of restorative justice, but more needs to be done to implement a comprehensive system of restorative justice in the country. To ensure human rights and enhance restorative justice amidst the war in Ukraine, various measures can be recommended. These include:

- ▶ enhancing the competency of law enforcement officers and judges through specialized training courses and workshops to elevate their understanding and skills;
- ▶ broadening the application of alternative dispute resolution mechanisms like mediation and negotiated agreements to alleviate the burden on the judicial system while facilitating swift and efficient conflict resolution;
- ▶ securing international support to aid Ukraine in justice system reform and the implementation of global human rights standards, leveraging the expertise and resources offered by international organizations and experts;
- ▶ advancing information technologies to bolster the effectiveness of criminal and restorative justice, including the automation of administrative processes and the facilitation of data accessibility;
- ▶ prioritizing victim protection by ensuring their rights and interests are safeguarded throughout legal proceedings, while also providing access to legal assistance and comprehensive information about their entitlements;
- ▶ offering rehabilitation and support services to all parties involved in the conflict, including psychological counseling, social welfare assistance, and other initiatives aimed at aiding their recovery and reintegration into society following the turmoil.

Given the aforementioned, the following provisions are proposed to be added to the current legislation: concerning judges-mediators, it is proposed to supplement the Law of Ukraine “On the Judicial System and Status of Judges” (2016) with a new article that would provide for the possibility of a judge (with proper consent) to act as a mediator in certain categories of criminal, civil, commercial, and administrative cases; the appointment of a judge-mediator should be made by the relevant court chamber. It is also important to enshrine information about mediation in the courts at the legislative level – in particular, to supplement Article 314 of the Criminal Procedure Code of Ukraine (2013), which deals with the preparatory hearing, with the following provision: “During the preparatory hearing, the presiding officer shall explain to the parties the possibility of resolving the dispute through conciliation, including mediation”. It is also important to enshrine a provision on mediation in criminal proceedings that would provide for the possibility of mediation at the pre-trial investigation stage – to supplement Article 214 of the Criminal Procedure Code of Ukraine (2013) with a provision on reconciliation between the accused and the victim.

Considering the advantages and disadvantages of mediation, the procedure can be successfully applied in the context of martial law in Ukraine. In particular, mediation can help resolve conflicts arising from military operations and provide access to justice for participants in criminal proceedings who cannot participate in court proceedings in person.

Discussion

The current criminal justice system mainly aims to punish criminals and protect the interests of the state. It neglects the needs of the victims and the offender. A punitive approach to justice often makes it difficult or even impossible to reform and re-socialise offenders. According to S.B. Goldberg *et al.* (2020), in criminal justice, where the main goal is to protect the public interest, the implementation of restorative justice is quite difficult. The authors also note that despite these difficulties, restorative justice, which focuses on the needs of all parties to the conflict, is gaining popularity in the world. It is used as a form of response to criminal offences of an alternative or complementary nature. It should be added to the authors’ opinion that despite the difficulties inherent in criminal justice, there are opportunities to apply restorative justice practices to meet the needs of victims, offenders, and communities. Given this, improving the institution of mediation in Ukraine is not only a way to resolve conflicts but also a requirement under martial law.

As noted by C. Menkel-Meadow (2020), the concept of “restorative justice” should be defined as a process that enables victims of crime and offenders to actively participate in resolving issues related to the crime with the mediation of an impartial third party. It is worth mentioning that one of the most common forms of restorative justice is mediation, which emerged in the late twentieth century as an alternative to the traditional judicial system of conflict resolution. According to L. Charkoudian *et al.* (2022), unlike traditional criminal proceedings, where the main participants are the state and the offender, mediation focuses on the victim and the offender. The purpose of mediation is to enable the parties to find a mutually beneficial way to resolve the conflict. Unlike the traditional process, in mediation, the victim and the offender play an active role and make decisions by mutual agreement. When considering the effectiveness of judicial systems, the prevailing view in scientific doctrine is that none of them can satisfactorily address all types of criminal offences (Holtzworth-Munroe *et al.*, 2021). The stated opinion is valid, as Ukraine is no exception; the main incentive for the development of alternative methods of resolving criminal disputes is the lack of productivity of courts in considering certain categories of cases. This may be due to their overload, delayed consideration, incompetence in resolving issues, as well as other shortcomings specific to the judicial system of a particular country.

As K. Tokarz *et al.* (2020) note, mediation is a special type of negotiation that necessarily involves a mediator; the mediator does not represent either party but only facilitates the negotiations. Additionally, the authors underscore that, in contrast to court proceedings where a judge renders decisions, a mediator solely facilitates communication between disputing parties, guiding them towards independently reaching an agreement. Consequently, the conflicting parties assume responsibility for both making and executing decisions. It’s worth noting, in alignment with the authors’ stance, that the mediator refrains from imposing binding decisions on the parties; instead, the parties themselves play an active role in finding possible solutions during the negotiations. The use of mediation in different areas has its peculiarities. As for mediation in criminal proceedings, the conflict here is not just a lack of agreement between the parties, but a criminal law conflict, the subject of which is a criminal offence (Hribov & Chervinskyi, 2023).

According to J. Rijnhart *et al.* (2021), the peculiarity of mediation in criminal proceedings is a specific range of subjects: on the one hand, the suspect/accused who committed the criminal offence, and on the other, the victim against whom it was committed. According to the authors, unlike traditional justice, which focuses on punishing the perpetrator, mediation focuses on compensating the victim and reintegrating the offender into society. This way, both parties can voice their concerns and receive compensation. The main condition for mediation is the presence of a person recognised as a victim of a crime. Accordingly, as noted by J.J. Igartua and A.F. Hayes (2021), mediation cannot be used for crimes against the environment, drug trafficking, national security. According to the authors, in such cases, there is no direct victim, and the harm is caused to society as a whole, but despite this limitation, mediation can be used for a wide range of other crimes where there is a specific victim. It should be borne in mind that not all criminal conflicts can or should be resolved through mediation. There are criteria for its implementation as a form of restorative justice related to the specifics of the object and subject of the crime, its social danger, and the position of the parties. In particular, mediation is not possible if one of the parties refuses, as well as in cases of serious or especially serious crimes related to domestic violence, or if one of the parties has mental disorders or substance abuse (Ali & Anwar, 2021).

Since Ukrainian legislation provides for opportunities for reconciliation between the victim and the offender, there is a discussion in the scientific literature about the feasibility of introducing mediation into criminal proceedings if the institution of a reconciliation agreement already exists. K. Bansak (2020) identifies these legal institutions. He notes that mediation has a broader restorative potential and can satisfy the interests of the parties much more fully than simple reconciliation. It should be added to the author's opinion that an agreement in criminal proceedings is not mediation in the classical sense. Firstly, an obligatory element of mediation is the participation of an independent intermediary (mediator) who helps the parties reach an agreement. However, the current legislation does not provide for the mandatory participation of a mediator to resolve a criminal law conflict but allows the parties to seek the assistance of another person, including a mediator, to reach a reconciliation agreement (Ladychenko *et al.*, 2022). However, this is a discretionary provision – the parties can either exercise this right or conclude an agreement without involving a mediator.

In their works on determining the status of a mediator in criminal proceedings, D. Febrianto *et al.* (2023) emphasise that only the criminal procedural aspects of the mediator's activities should be outlined. They should not relate directly to the mediation procedure. When defining the rights and obligations of a mediator as a participant in criminal proceedings, the principle of autonomy of mediation in criminal justice should also be considered. Considering the rights and obligations defined in the Law of Ukraine No. 1875-IX "On Mediation" (2021) as the basis of the legal status of a mediator, it is advisable to outline only the powers of a mediator specific to criminal proceedings in the Criminal Procedure Code of Ukraine (2013). It is worth noting certain specifics of criminal legal relations. Mediation is possible only in the presence of an injured party, where the suspect/accused is on the one hand and the victim is on the other. Thus, mediation cannot be conducted, for example, in cases

of crimes against the environment or drug trafficking, against the foundations of national security (Yuzheka, 2023).

The scientific literature often equates mediation and a conciliation agreement, raising the question of the expediency of mediation in the presence of such an agreement (Tio, 2023). In this regard, it should be noted that the current Criminal Procedure Code of Ukraine (2013) does not provide for the mandatory presence of a mediator when concluding a conciliation agreement. It may be concluded with the help of a person agreed upon by the parties to the criminal proceedings, except for the investigator, prosecutor or judge. The mediation procedure is impossible without the involvement of an impartial and independent person (mediator) agreed upon by the parties to the proceedings. However, this is not an obstacle for the parties to engage a mediator to agree. Second, the content of the mediation agreement does not contain structured components provided for in the conciliation agreement. It is worth noting that such an agreement must be approved by the court in a guilty verdict, which approves it and determines the punishment agreed by the parties. Mediation, on the other hand, is based on the provisions of the Criminal Code of Ukraine (2001) and the Criminal Procedure Code of Ukraine (2013) on exemption from liability or punishment.

Settlement of disputes through negotiations is in line with the principle of peaceful settlement of disputes, which is a fundamental principle of international law. Despite some shortcomings, the institution of mediation should be a complement to the existing criminal justice system, which will also reduce the workload of the courts. Mediation has not been sufficiently studied in Ukraine, but it has significant potential for wider implementation. At the same time, mediation programmes cannot completely replace the justice system but should operate in close connection with it. For the active implementation of mediation, it is important not only to legislate for it but also to scientifically substantiate its positive and negative effects and possible risks. Therefore, it is advisable to use international experience and cooperate with foreign partners in this area.

Conclusions

This study was conducted to determine the peculiarities of the mediation process in criminal proceedings under martial law in Ukraine. It was determined that the need to improve the institution is associated with the overload of the judicial system due to the partial or complete destruction of instances and the change in the territorial jurisdiction of 195 courts. This makes it important to expand the use of alternative dispute resolution methods at all stages of proceedings.

According to the study results, mediation in criminal cases in Ukraine is currently limited to reconciliation between the suspect and the victim, but international documents oblige to expand the use of mediation. In other countries, this institution is successfully used as an alternative to punishment or to mitigate it. Since the judicial system in Ukraine is overloaded in the context of the war, mediation can help solve this problem, as evidenced by the experience of other countries. The question of what kind of conflict is resolved by mediation in criminal cases in Ukraine was addressed. In this regard, it was noted that, since this is not a property dispute in a civil lawsuit, the goal is to resolve the conflict between the victim and the suspect regarding the latter's guilt. The following advantages of mediation

under martial law were identified: reducing the burden on the courts, speeding up the resolution, and allowing for changes in the location of the participants. The results of mediation may be the basis for agreements between the parties. The importance of providing the victim with free legal aid to represent interests in court during the consideration of such agreements was emphasised.

To guarantee human rights and restorative justice in the context of the war in Ukraine, international assistance is needed to reform the justice system and implement international standards. It is also necessary to develop information technology, in particular process automation, to increase the

efficiency of justice. Concerning restorative justice, it is important to ensure adequate protection for victims, including access to legal aid, as well as rehabilitation and support for those involved in the conflict. Further research will be aimed at conducting a detailed analysis of the functioning of the mediation institution in different countries.

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Conflict of interest

None.

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Медіація як інструмент вирішення конфліктів у кримінальному провадженні з урахуванням особливостей воєнного стану

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Анотація. Актуальність дослідження обумовлена тим, що для покращення механізму захисту прав громадян в умовах повномасштабного вторгнення необхідним є розвиток альтернативних способів вирішення спорів. Виходячи з цього, мета роботи полягає у проведенні аналізу інституту медіації у кримінальному провадженні з урахуванням особливостей воєнного стану. Для цього було використано низку методів, а саме формально-юридичний та герменевтичний, догматичний метод, логічний аналіз та функціональний. У результаті проведення дослідження було виокремлено, що у кримінальних провадженнях медіація застосовується лише для примирення потерпілого з підозрюваним. Дана процедура може стати шляхом вирішення проблеми, пов'язаної з перенавантаженням судових інстанцій та потенційного затягування вирішення спорів. Було виокремлено, що згідно з чинним законодавством, угода про примирення у справах про домашнє насильство може бути укладена лише за бажанням потерпілого. Далі було встановлено, що потерпілий також має мати можливість ініціювати медіацію у випадках, пов'язаних із скоєнням таких порушень. Було запропоновано внести до законодавчих норм обов'язкову участь представника потерпілого у кримінальному провадженні, особливо у разі прийняття рішень щодо звільнення під випробуванням, заміни невідбутої частини покарання менш суворим, або умовно-дострокового звільнення від відбування покарання. Було розглянуто шляхи підвищення гарантій прав людини в медіативній процедурі в умовах воєнного стану. Практична значущість отриманих результатів полягає у наданні рекомендацій щодо вдосконалення сучасного механізму даного інституту в кримінальному провадженні

Ключові слова: відновне правосуддя; альтернативний спосіб; повномасштабне вторгнення; права людини; звернення громадян