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INTERPRETATION OF MEDIATION AS THE METHOD OF EXPRESSING THE WILL OF THE PARTIES

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In the world's changing conditions, alternative conflict resolution methods are becoming more critical. Such procedures usually include mediation, conciliation, negotiations, facilitation, restorative justice, arbitration, etc. But it is mediation that is gaining more and more popularity. A large number of international development programs and grants stimulate mediation development. Today, we should pay more attention to understanding the nature of mediation, its concepts and principles. Mediation has become a widespread method of conflict resolution. The parties choose this procedure as an efficient and quick dispute-resolution mechanism. The term "mediation" only indirectly confirms that it is a way of expressing the parties' will and is based on the autonomy of will. This situation determines the practicality of analysing the term "mediation" to define it as a mechanism of manifestation of will by the parties.

Mediation arose as a response to distrust of courts and legal nihilism and as a way to reduce the burden on the judicial system. Its prototype was the usual negotiations of the parties with the involvement of a mediator. Mediation took on its modern form and has evolved from ancient times when it was not yet professional and took a simple form. So, mediation became a descendant of "negotiations". The main difference between mediation and negotiations is the obligatory third party, which directs the dialogue process [1].

National and international legislation enshrined the determination concept of mediation. Also, scientific doctrine detail studied this issue. The content of the term "mediation" does not cause active discussion today. This way is because the understanding of mediation is already fixed and declared.

C. Menkel-Meadow defines mediation as a process in which a third party (usually neutral and impartial) facilitates the negotiation of an agreement between the parties without making a formal decision [2, p. 70].

O. Mozhaikina understands mediation as a structured voluntary, confidential procedure for out-of-court dispute settlement (conflict), in which a

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mediator helps the parties understand their interests and find effective ways to reach a mutually acceptable solution [3, p. 55].

The UK Government defines mediation as a flexible and confidential process to settle a dispute between two or more people, businesses or other organisations. It involves appointing a mediator, who is an independent and impartial third person, to help the parties talk through the issues, negotiate, and come to a mutually agreeable solution [4].

In Directive 2008/52/EC of the European Parliament and the Council, mediation is defined as a structured process, regardless of its name or reference, by which two or more parties to a conflict try independently, voluntarily, to reach an agreement on the settlement of their dispute with the help of a mediator. The parties may initiate this process, proposed or ordered by a court, or provided for by the law of an EU member state [5, ст. 3].

The Ukrainian Law on Mediation stipulates that mediation is an out-of-court voluntary, confidential, structured procedure during which the parties, with the help of a mediator(s), try to prevent the occurrence or settle a conflict (dispute) through negotiations [6, ст. 1].

As we can see, the meaning of the concept of "mediation" boils down to understanding it as a voluntary procedure for settling or preventing a conflict between the parties, with the participation of a mediator.

Mediation is a voluntary procedure. Therefore, the parties voluntarily choose this way of resolving the conflict. Consent to mediation is a way of expressing the parties' will to the competition.

Mediation is a structured procedure. The expression of the parties' will is aimed at the desire to resolve the conflict according to the structure provided for by mediation. Therefore, having agreed to mediation, the parties accept its rules and policy.

The parties independently choose a mediator. This principle means they must agree on the mediator's person and the procedure's place and time. Also, the parties select the range of issues to consider, the subject of mediation and the content. All this is a manifestation of their free will.

And most importantly, mediation assumes that the parties are willing to reach an agreement on the settlement of their dispute. By contacting a mediator, the parties will prove their intention to resolve the conflict in this way. The very initiation and participation in mediation is a way of expressing the purpose of the parties, an active form of free will. The parties' free will demonstrates their desire to resolve the dispute through mediation.

In addition to the above, by agreeing to mediation, the parties adhere to all its principles. It is essential that in the future, the parties will not have the opportunity to declare that they did not know about the conditions of the procedure. Such a possibility is lost at the beginning of the mediation, and the

mediator must announce its principles, purpose, content and requirements. If a party withdraws from mediation after it has begun, this will also be an expression of will.

The analysis of the term "mediation" confirms the thesis that the normative and doctrinal concept of mediation indirectly defines it as a way of expressing the party's will. This conclusion enables us to gain a deeper understanding of the legal nature of mediation. This knowledge will allow mediators to understand the parties' motives and interests.

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