THE PRACTICE OF A NOTARY AS A MEDIATOR IN MODERN CONDITIONS (ADMINISTRATIVE AND LEGAL ASPECT)

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DOI: https://doi.org/10.71404/NP.2025.1.56

The scientific article is devoted to the disclosure of the law enforcement activities of a notary as a mediator in modern conditions (administrative and legal aspect). Despite the existing difficulties, broad prospects open up for a notary as a mediator: a) expanding horizons: Over time, as trust and understanding of the benefits of mediation grow, the scope of application of the role of notaries may expand to new types of disputes; b) creating specialized mediation centers at notary chambers: This can help consolidate efforts, improve the quality of services and promote the popularization of mediation; c) improving legislation: Further improvement of legislation in the field of mediation is possible, which will contribute to its integration into the legal system and the recognition of notaries as important participants in mediation. For example, the introduction of mandatory mediation for certain types of disputes can significantly increase the demand for the services of notary mediators; d) international experience: Studying and implementing the best international experience in the field of mediation by notaries can contribute to the further development of this practice in Ukraine; g) increasing the efficiency of justice: Widespread use of mediation by notaries will make it possible to relieve the judicial system, reduce the burden on the courts and increase the overall efficiency of justice.

It was concluded that the activities of a notary as a mediator in modern realities are an extremely promising direction for the development of the notarial profession in Ukraine. Notaries, having deep knowledge of law, independence, a high level of trust and experience in working with documents, have unique advantages for successfully fulfilling the role of a mediator. Their participation in conflict resolution will contribute not only to relieving the judicial system, but also to the formation of a culture of peaceful dispute resolution in society.

Despite certain challenges associated with the need for special training, changing professional consciousness and popularizing the new function, the potential of a notary as a mediator is significant. Further improvement of legislation, the creation of specialized training programs and an active information campaign will contribute to the full realization of this potential. The integration of mediation into the activities of the notary public is an important step towards creating a more efficient, accessible and citizen-friendly legal system of Ukraine.

Keywords: administrative procedures, principles, notarial activities, dispute resolution, alternative methods, notary, mediation, practice.

In today's dynamically developing world, there is a growing need for effective and accessible dispute resolution mechanisms. The traditional judicial system, despite its importance, is often characterized by duration, high cost and formalism, which does not always meet the needs of the parties. In this regard, alternative dispute resolution (ADR), in particular mediation, is gaining increasing popularity. Ukraine, like many other countries, is actively implementing mediation into the legal system, seeking to provide more flexible and peaceful ways of resolving conflicts. In this context, the potential and practical aspects of the notary's activities as a mediator deserve special attention.

A notary, as an independent and disinterested person with deep knowledge of the law and a high level of trust in society, can become a key figure in the mediation process. His activities are traditionally associated with certifying facts, establishing indisputable rights and performing other notarial actions that contribute to legal stability. However, given his professional skills and authority, the role of a notary can be significantly expanded, including facilitating negotiations between the parties to the conflict in order to reach a mutually acceptable solution. This scientific article is devoted to a comprehensive analysis of the practice of a notary as a mediator in modern conditions, revealing the regulatory and legal foundations, advantages and challenges of such integration, as well as development prospects.

Mediation is a structured negotiation process in which a neutral third party (mediator) helps the parties to the conflict reach a mutually acceptable and voluntary solution. The main principles of mediation include voluntariness, confidentiality, neutrality of the mediator, and equality of the parties [1]. Mediation differs from other ADR methods, such as arbitration, in that the mediator does not make a decision, but only facilitates the process of reaching it by the parties themselves.

In Ukraine, the legal principles of mediation were established with the adoption of the Law of Ukraine «On Mediation» of November 16, 2021 [2]. This law defined the concept of mediation, its principles, scope, requirements for mediators, the procedure for conducting mediation, and the legal consequences of mediation agreements. Prior to the adoption of this law, mediation existed mainly at the level of pilot projects and public initiatives, and its legal status was uncertain.

According to the Law of Ukraine «On Mediation», a mediator may be an individual who has undergone basic mediator training in Ukraine or abroad and received a certificate. It is important to note that the law does not establish restrictions on the professional affiliation of a mediator, which opens up opportunities for involving representatives of various legal professions, including notaries, in this activity. The law also provides for the possibility of conducting mediation in various areas, including civil, family, labor, economic, and administrative disputes [2].

The Law of Ukraine «On Notaries» defines a notary as a person authorized by the state who performs notarial actions in the interests of individuals and legal entities in order to certify rights, as well as facts that have legal significance, and perform other notarial actions provided for by law, in order to provide them with legal certainty [3]. The main function of a notary is to ensure the indisputability and stability of civil proceedings.

Although the Law of Ukraine «On Mediation» does not directly name notaries among the list of persons who can be mediators, it does not prohibit them from engaging in this activity, provided that the requirements for the training of a mediator are met. Thus, a notary, having undergone appropriate training, can act as a mediator on general grounds.

Moreover, European experience demonstrates the active integration of notaries into the mediation process. For example, in France, Germany, Italy and other countries, notaries are actively involved in mediation, especially in family and inheritance disputes, as well as in real estate issues [4]. This underlines the global trend towards expanding the functions of notaries and adapting them to the modern needs of society.

Professional advantages of a notary as a mediator

Notaries have a number of unique professional advantages that make them potentially effective mediators:

In-depth knowledge of the law: Notaries have extensive knowledge of civil, family, inheritance, land and other areas of law. This allows them to understand the legal aspects of the conflict, assess the legal consequences of the agreements reached and contribute to the formulation of a legitimate mediation decision [5].

Independence and impartiality: A notary is an independent and impartial person who acts in the interests of the law and all parties to the agreement. This feature is fundamental to mediation, as it ensures trust in the mediator by all parties to the conflict.

Experience with documents and drafting legal texts: Notaries work with a variety of legal documents on a daily basis, have experience in

drafting agreements, contracts, wills, etc. This skill is extremely valuable when drafting a mediation agreement, as it allows for its clarity, completeness, and legal correctness, as well as its subsequent notarization [6].

High level of trust in society: The notary public in Ukraine, as in other European countries, is an institution of high public trust. This creates a favorable environment for mediation, as the parties to the conflict, as a rule, feel more trust in the notary than in other entities.

Availability of an office and organizational resources: Notaries have equipped offices, which provides a convenient and confidential place for conducting mediation sessions.

Given the professional competences of notaries, the most promising areas of their activity as mediators are:

Family disputes: Division of marital property: Notaries often certify agreements on the division of marital property. Mediation in this case can help the parties reach a compromise on the division of movable and immovable property, debts, etc., which will avoid lengthy legal proceedings and maintain relatively friendly relations [7].

Determination of the place of residence of the child and participation in his upbringing: Although these issues are sensitive, mediation can help parents find a common solution for raising the child, taking into account his interests. A notary can certify the relevant agreement.

Alimony obligations: Mediation can be effective in reaching agreements on the amount and procedure for paying alimony, both for the maintenance of children and for the maintenance of one of the spouses.

Inheritance disputes: Distribution of inheritance: Disputes between heirs regarding the distribution of inherited property are common. A notary who deals with inheritance matters can mediate to reach an agreement between heirs regarding shares in the inheritance, compensation payments, etc. [8]. Will disputes: In the event of doubts or conflicts regarding the validity of a will or its interpretation, mediation can help the parties reach a mutual understanding.

Real estate disputes: Disputes between co-owners: Mediation can be effective in resolving conflicts between co-owners of real estate regarding the procedure for the use, maintenance or disposal of joint property. Boundary disputes: Neighbors often have disputes over the boundaries of land plots. A notary, with experience in land matters, can help them find common ground and record the agreements reached.

Corporate and commercial disputes (to a lesser extent)

Notaries may act as mediators in certain corporate disputes related to changes in authorized capital, exit of participants, distribution of profits, as well as in some commercial contracts, especially those related to real estate or securities. However, more complex commercial disputes may require a mediator with highly specialized knowledge in the relevant field [13].

Practical aspects of conducting mediation by a notary.

The mediation process conducted by a notary includes the following stages:

Preliminary consultation: The notary meets with the parties to the conflict separately or together to clarify the essence of the dispute, explain the principles and procedures of mediation, and assess the possibility of its application.

Signing the mediation agreement: The parties conclude a written agreement on conducting the mediation, which determines the terms of its conduct, confidentiality issues, the mediator's remuneration, etc.

Conducting mediation sessions: The notary, as a mediator, facilitates negotiations between the parties, helping them identify interests, generate solutions, and find compromises. He can conduct joint and individual (caucus) meetings.

Formulation of the mediation agreement: If an agreement is reached, the notary helps the parties formulate the mediation agreement, ensuring its legal correctness and compliance with the requirements of the law. An important advantage is the possibility of subsequent notarization of such an agreement, which gives it special legal force and creates an enforceable document in the event of its non-performance. [9]

End of mediation: Mediation ends with the signing of the mediation agreement or its termination in the event of failure to reach an agreement.

Despite significant advantages, the integration of notaries into mediation practice faces certain challenges:

Need for special training: Although notaries have in-depth knowledge of the law, to effectively perform the role of a mediator they need special training in facilitation skills, conflictology, and negotiation psychology. The Law of Ukraine «On Mediation» already establishes requirements for such training, but specific programs can be developed for notaries that take into account their professional specifics [2].

Changes in professional consciousness: The traditional role of a notary involves making decisions and certifying facts, while the role of a mediator requires neutrality and refusal to make decisions for the parties. This requires a certain change in professional consciousness and approach to work [12].

Popularization and information: A broad information campaign is needed to popularize mediation conducted by notaries among the population and business entities. Many people are still unaware of the possibility of resolving disputes through mediation and that a notary can act as a mediator.

Conflict of interest: Although a notary is neutral in the mediation process, situations may arise where he has previously performed notarial acts for one of the parties. It is important to clearly define the rules for avoiding conflicts of interest and transparently inform the parties about this [14].

Lack of mandatory mediation: Unlike some European countries, where mediation is mandatory for certain categories of disputes, in Ukraine it remains voluntary. This may limit the number of applications to notary mediators.

Despite the challenges, the prospects for the development of the notary's activities as a mediator are significant:

Expanding the scope of application: Over time, as trust grows and awareness of the benefits of mediation increases, the role of notaries may expand to new areas of disputes [11].

Creation of specialized mediation centers at notary chambers: This can help consolidate efforts, improve the quality of services, and popularize mediation.

Improving legislation: Further improvements to the legislation on mediation are possible, which will facilitate its integration into the legal system and the recognition of notaries as important mediation actors. For example, introducing elements of mandatory mediation for certain categories of disputes can significantly increase the demand for the services of notary mediators [10].

International experience: Studying and implementing the best international experience in the field of mediation by notaries can contribute to the further development of this practice [15].

Conclusion

The practice of a notary as a mediator in modern conditions is an extremely promising direction for the development of the notarial profession in Ukraine. Notaries, due to their deep knowledge of law, independence, high level of trust and experience in working with documents, have unique advantages for successfully fulfilling the role of a mediator. Their participation in conflict resolution will contribute not only to relieving the burden on the judicial system, but also to the formation of a culture of peaceful dispute resolution in society.

Despite certain challenges associated with the need for special training, changing professional consciousness and popularizing the new function, the potential of a notary as a mediator is enormous. Further improvement of legislation, the creation of specialized training programs and an active information campaign will contribute to the full realization of this potential. The integration of mediation into the activities of the notary public is an important step towards creating a more effective, accessible and citizen-friendly legal system of Ukraine.

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ПРАКТИКА ДІЯЛЬНОСТІ НОТАРІУСА ЯК МЕДІАТОРА В СУЧАСНИХ УМОВАХ (АДМІНІСТАРИТВНО-ПРАВОВИЙ АСПЕКТ)

Наукова стаття присвячена розкриттю правозастосовчої діяльності нотаріуса як медіатора в сучасних умовах (адміністаритвно-правовий аспект). Попри наявні труднощі, перед нотаріусом як медіатором відкриваються широкі перспективи: а) розширення горизонтів: З часом, у міру зростання довіри та розуміння переваг медіації, сфера застосування ролі нотаріусів може розширитись на нові види спорів; б) створення спеціалізованих центрів медіації при нотаріальних палатах: Це може допомогти консолідувати зусилля, покращити якість послуг та сприяти популяризації медіації; в) вдосконалення законодавства: Можливе подальше покращення законодавства у сфері медіації, що сприятиме її інтеграції в правову систему та визнанню нотаріусів важливими учасниками медіації. Наприклад, запровадження обов'язкової медіації для певних видів спорів може значно збільшити попит на послуги нотаріусів-медіаторів; г) міжнародний досвід: Вивчення та впровадження найкращого міжнародного досвіду у сфері медіації нотаріусами може сприяти подальшому розвитку цієї практики в Україні; ж) підвищення ефективності правосуддя: Широке застосування медіації нотаріусами дасть змогу розвантажити судову систему, зменшити навантаження на суди та підвищити загальну ефективність правосуддя.

Зроблено висновок, що діяльність нотаріуса як медіатора в сучасних реаліях – надзвичайно перспективний напрямок розвитку нотаріальної професії в Україні. Нотаріуси, маючи глибокі знання права, незалежність, високий рівень довіри та досвід роботи з документами, мають унікальні переваги для успішного виконання ролі медіатора. Їхня участь у врегулюванні конфліктів сприятиме не лише розвантаженню судової системи, а й формуванню культури мирного розв'язання спорів у суспільстві.

Незважаючи на певні виклики, пов'язані з необхідністю спеціальної підготовки, зміною професійної свідомості та популяризацією нової функції, потенціал нотаріуса як медіатора є значним. Подальше вдосконалення законодавства, створення спеціалізованих навчальних програм та активна інформаційна кампанія сприятимуть повній реалізації цього потенціалу. Інтеграція медіації в діяльність нотаріату є важливим кроком на шляху до створення ефективнішої, доступнішої та дружньої до громадян правової системи України.

Ключові слова: *адміністративні процедури, засади, нотаріальна діяльність, вирішення спорів, альтернативні методи, нотаріус, медіація, практика.*