

MEDIATION INSTITUTE AS A FORM OF DISPUTE RESOLUTION IN THE SPHERE OF ENVIRONMENTAL AND LAND RELATIONS

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Annotation. The article studies the institution of mediation as an alternative form of resolving environmental conflicts and land disputes in Ukraine. The article states that anthropogenic disturbance of the state of the environment of Ukraine creates environmental problems that cause the emergence of a significant number of environmental conflicts. It is proven that in the process of implementing the right to land ownership, land use rights, and good neighborliness, situations often arise that require pre-trial resolution of land disputes.

The article substantiates the feasibility of using the institution of mediation as one of the most optimal methods of resolving environmental conflicts and land disputes through negotiations. It is established that the institution of mediation as an alternative form of resolving land disputes acquires special significance in the context of the approximation of Ukrainian legislation to the legislation of the European Union.

The article studies the concept of mediation as an alternative method of resolving environmental and land disputes and establishes the main features of the above-mentioned institution. The advantages of mediation as a form of resolving land disputes, which are built on the principles of voluntariness, confidentiality, neutrality, and independence, are established.

It has been proven that in order to improve the legal regulation of mediation in the field of environmental and land relations in Ukraine, it seems appropriate to supplement the provisions of land and environmental legislation with the concepts: "mediation in the field of land relations", "mediation in the field of environmental relations". The feasibility of supplementing the Law of Ukraine "On Environmental Protection" with the provision: "participation of citizens in the process of resolving environmental disputes through mediation" has been established.

Key words: mediation, institution of mediation, environmental conflicts, environmental protection, land disputes, alternative form of land dispute resolution, land ownership, land use rights, good neighborliness.

1. Introduction.

Significant anthropogenic disturbance of the state of the environment of Ukraine, extensive use of natural resources, which significantly worsened in connection with hostilities in the Donetsk-Donbas region since 2014 and intensified with the beginning of the full-scale invasion of the Russian Federation into the territory of Ukraine since February 2022, led to the emergence of significant environmental problems, which as a result caused the emergence of environmental conflicts or disputes.

The formation of an effective system of nature management and the implementation of the principles of sustainable development in the practice of social relations require the improvement of the concept of nature management [1, pp. 56-57].

An equally important component of the environment is the lands of Ukraine, the rational use and protection of which is one of the most important tasks of the state.

Land resources of Ukraine are the most expensive wealth of its people. The value of land as a national wealth lies in its multifunctional purpose. Land is the main means of production in agriculture and the spatial basis for the location and development of all other sectors of the economy [2, p. 24].

The development of the land market and the definition of land as a commodity have created a real need for the development of an effective mechanism for resolving conflicts and disputes that arise between participants in land legal relations [3, p. 139].

Mediation in Ukraine is a fairly new legal institution of alternative dispute resolution with the help of a mediator(s), which is implemented outside the state judicial system. The institution of mediation, as an alternative form of resolving environmental and land disputes, acquires particular importance in the context of the approximation of Ukrainian legislation to the legislation of the European Union.

Today, the institution of mediation, as an alternative method of resolving land disputes and disputes (conflicts) in the field of ecology, is a fairly effective mechanism for resolving conflict situations, which has certain advantages over resolving disputes in court, through negotiations, independent expert opinions and reconciliation.

At the same time, the resolution of environmental and land disputes has certain problems of legal regulation that require improvement.

2. Analysis of scientific publications.

The theoretical and methodological basis of the research of the Institute of Mediation was the works of such domestic and foreign scientists, namely: V. Demchenko, A. Zhdanyuk, S. Zapara, O. Izbash, O. Karamaz, I. Kolomiyets, Z. Krasilovska, N. Kovalska, S. Koroyed, N. Lipovska, N. Tkachenko, K. Tokareva, M. Bobrowicz, M. Brogan, P. J. Carnevale, A. Dumas.

Mediation, as an alternative form of resolving land disputes and environmental conflicts in the field of rational use and protection of natural resources in Ukraine, was the subject of research by such scientists, namely: V. Andreytseva, G. Balyuk, O. Bondar, D. Busuyok, T. Valyanska, A. Getman, V. Gurevsky, A. Dukhnevych, K. Kozmulyak, O. Nastina, I. Machuska, V. Sabodash, V. Fedchyshyna, T. Kharitonova and others.

3. The purpose of the work.

The purpose of the article is to reveal the essence, content, and features of the institution of mediation as an alternative form of resolving land and environmental disputes in Ukraine.

4. Presenting main material.

The constant complication of social relations inevitably leads to the emergence of a large number of new forms of controversial and conflict legal relations [4, p. 65]. Ecological deficit and ecological degradation, reinforced by the action of external factors, are the main cause of ecological conflicts in modern systems of nature management [1, p. 56-57].

Ecological conflicts as a type of social conflicts arise practically throughout the history of mankind. Ecological conflicts are quite diverse in their essence. In terms of their scope of manifestation, they can cover both individual objects and reach regional, national and global scales [5, p. 44]. The subject of an ecological conflict is the problem of ownership and use of natural resources (ecological value),

which due to certain circumstances are at the intersection of the interests of different social or economic groups [1, p. 56-57].

It is generally accepted that judicial protection of environmental rights is the most qualified and universal method of protection [5, p. 44]. At the same time, in most developed countries, parties are increasingly turning to restorative practices, such as mediation [6, p. 20].

The mediation procedure is flexible, unlike the procedures of judicial review, which are clearly regulated by procedural legislation [4, p. 392].

The concept of "mediation" comes from the Latin word "mediare" - "mediation" [7, p. 33]. In academic circles, the interpretation of the term "mediation" has received considerable attention. Thus, according to N. V. Shyshko, mediation is an alternative form of dispute resolution, that is, a certain structured negotiation process in which the parties, with the help of a neutral and impartial party - a mediator (intermediary), voluntarily and independently intend to achieve a peaceful settlement of their dispute [8, p. 300]. S.I. Zapara emphasizes that mediation is an alternative method of resolving a dispute to justice [9, p. 88]. M.Ya. Polishchuk also holds the same opinion [10, p. 32].

The main features of mediation as an alternative dispute resolution procedure include: the presence of a conflict (dispute); voluntary principles of implementation; the initiative nature of the appeal to the mediator; confidentiality of the procedure; equality of the parties; independence of the mediator; focus on the parties reaching a consensus on the conflict (dispute) [4, p. 3].

Legal regulation of mediation in Ukraine is carried out in accordance with the Law of Ukraine "On Mediation" of November 16, 2021. In accordance with Part 4 of Article 1 of the Law of Ukraine "On Mediation", mediation is defined as an extrajudicial voluntary, confidential, structured procedure, during which the parties, with the help of a mediator (mediators), try to prevent the emergence or resolve a conflict (dispute) through negotiations.

It is worth noting that in Ukraine, mediation in general, as well as in the field of environmental and land relations in particular, is at the stage of formation.

At the same time, world experience indicates the high effectiveness and demand for mediation in the settlement of environmental conflicts, starting from the mid-70s of the 20th century, which resulted in the resolution of environmental disputes and conflicts regarding the development of ports, emission permits, oil production permits, waste management in such countries as: Czech Republic, Estonia, Hungary, Poland, Slovenia [5, p. 45].

It is worth noting that environmental disputes are one of the most problematic in resolving, since the consequences of environmental pollution, accidents and environmental emergencies are quite serious, which is associated with a threat to public health and dangerous consequences for the environment.

Thus, the introduction of the institution of mediation in resolving environmental disputes is an extremely urgent issue that will contribute to the settlement of conflicts in the field of environmental protection.

At the same time, the environmental legislation of Ukraine does not contain provisions on the legal regulation of mediation in the field of environmental protection and ensuring public safety. Thus, the main legislative act regulating relations in the field of environmental protection, namely: the Law of Ukraine "On Environmental Protection" does not contain provisions on the resolution of environmental conflicts through mediation.

In our opinion, it seems appropriate to propose to supplement the provisions of the Law of Ukraine "On Environmental Protection" with the concept of "mediation in the field of environmental relations" as an alternative means of resolving a dispute in the field of environmental protection, which is a certain procedure for resolving a dispute with the help of a mediator, aimed at resolving an environmental conflict.

It is also appropriate to note that Section II of the Law of Ukraine "On Environmental Protection" - "environmental rights and obligations of citizens", contains a significant list of citizens' rights in the field of environmental protection. In our opinion, it seems appropriate to supplement the specified section with a provision, namely: "participation of citizens in the process of resolving environmental disputes through mediation".

Despite the constant efforts of the lawmaker to improve land legislation, the number and complexity of land disputes is increasing every year [11, p. 63].

The institution of mediation plays a particularly important role in the context of resolving land disputes related to the exercise of land ownership rights, land use rights, land lease, compliance with the rules of good neighborliness, the establishment of land easements, the delimitation of the territories of villages, settlements, cities, districts and regions, as well as disputes regarding the delimitation of district boundaries in cities that arise: between citizens, legal entities, territorial communities, administrative-territorial units, between citizens and legal entities, disputes involving state and other bodies authorized to resolve land disputes.

A significant number of land disputes regarding compliance with the rules of good neighborliness are related to: direct impact on adjacent land plots (direct interference with the use of other land plots, violation of boundaries, intentional creation of conditions that limit the full use of the land plot by its owner) and disputes that are not accompanied by violation of the boundaries of the land plot, but significantly affect it [12, p. 427].

Legal regulation of the resolution of land disputes through mediation is carried out in accordance with Chapter 25, Article 158.1 of the Land Code of Ukraine - (hereinafter - the LCU).

When considering land disputes through mediation, the parties are given the opportunity to resolve the conflict between the parties through negotiations based on an analysis of the conflict that occurred between the parties, which contributes to the reduction of contradictions, taking into account the principles of voluntariness, confidentiality, neutrality, independence and impartiality of the mediator, self-determination and equality of rights of the parties to the mediation. Resolving land disputes through mediation provides the opportunity for pre-trial resolution of the conflict, avoiding the parties to the dispute from litigation, which will help reduce the psychological burden on the parties to the conflict. Also, resolving land disputes through mediation significantly reduces the time for considering disputes.

In this context, it seems advisable to use facilitation, which can be an effective way to resolve land disputes, especially in situations where the land dispute is accompanied by tense relations between the parties. Facilitation can help facilitate communication, improve mutual understanding and resolve conflict through structured and constructive dialogue, especially in cases where the land dispute is multifaceted and requires coordination of various aspects, and will provide an opportunity to systematically consider all aspects of the conflict and find comprehensive solutions [13, p. 56].

Also, in order to improve the legal regulation of mediation in the field of land relations, it seems appropriate to supplement the provisions of Chapter 25 of the LCU with the concept of "mediation in the field of land relations" as an alternative method of resolving land disputes, which is a confidential and structured process based on the principles of voluntariness, neutrality, independence, and impartiality, which, through negotiations with the help of mediators, achieves a peaceful settlement of a land dispute.

5. Conclusions.

Considering the above, it is advisable to draw the following conclusions.

Conflicts and disputes in the field of environmental protection and in the field of land relations are among the most common, which is associated with anthropogenic disruption of the state of the environment of Ukraine, extensive use of natural resources, including land.

Today, the institution of mediation is one of the effective alternative means of resolving environmental and land disputes. Alternative resolution of environmental and land disputes is a way of resolving conflicts, out of court, carried out with the help of a third-party mediator and based on the principles of confidentiality, voluntariness and consent of the parties.

Resolving environmental and land disputes through mediation will be an effective method for reaching consensus in the event of disputes regarding the provision of environmental rights of citizens, rational use of natural resources and their protection, compliance with the rules of good neighborliness, land ownership, land use rights, land lease, establishment of land easements, and resolution of boundary disputes. In order to improve the institution of mediation in the field of environmental and land relations, it seems appropriate to propose the following amendments to the provisions of the legislation in the specified areas, namely: 1. to supplement the provisions of the Law of Ukraine "On Environmental Protection" with the concept of "mediation in the field of environmental relations"; 2. to supplement Section II of the Law of Ukraine "On Environmental Protection" with the provision "participation of citizens in the process of resolving environmental disputes through mediation" and the concept of "environmental relations"; 3. to supplement the provisions of Chapter 25 of the LKU with the concept of "mediation in the field of land relations" as an alternative method of resolving land disputes, which is a confidential and structured process based on the principles of voluntariness, neutrality, independence, and impartiality, which, through negotiations with the help of mediators, achieves a peaceful settlement of a land dispute.

References:

1. Sabadash V. V. Metodolohichni pidkhody do determinatsii ekolohichnogo konfliktu. Mekhanizm rehuliuvannia ekonomiky, 2006, № 4. S. 49–62. [in Ukrainian].
2. Drozd O.Iu. Zemlia yak obiekt zemelnykh vidnosyn. Advokat № 30 (100). S. 24–26. [in Ukrainian].
3. Knysh S.V., Fidria Yu.O. Intehratsiia mediatsii u praktyku vyrishennia zemelnykh sporiv: dosvid SShA. Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu, 2024. S. 139–144. [in Ukrainian].
4. Tokarieva K.S. Administratyvno-pravove rehuliuvannia mediatsii: suchasnyi stan ta tendentsii rozvytku. 12.00.07. Kyiv. 2021. 468 s. [in Ukrainian].
5. Kozmuliak K. A. Mediatsiia yak sposib vrehuliuvannia ekolohichnykh konfliktiv. Naukovo-praktychnyi zhurnal «Ekolohichne pravo». Vypusk 1-4, 2021. S. 44–48. [in Ukrainian].
6. Rüttinger, L., Janßen, A., Knupp, C., Griestop, L. From conflict to collaboration in natural resource management: a handbook and toolkit for practitioners working in aquatic resource systems. Manual. Collaborating for Resilience. 2014. URL: https://www.adelphi.de/en/system/files/mediathek/bilder/collaborating_for_resilience_handbook.pdf [in England].
7. Yasynovskyi I.H. Istorychnyi aspekt rozvytku instytutu mediatsii ta suchasni tendentsii yoho rozvytku. Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Seria: Yurysprudentsiia. 2014. Vyp. 10-2(1). S. 31-33. [in Ukrainian].
8. Shyshka N.V. Poniattia «mediatsiia» yak alternatyvna forma vyrishennia sporiv: do problemy pravorozuminnia. Yurydychnyi naukovyi elektronnyi zhurnal. № 4. 2021. S. 297–301. [in Ukrainian].
9. Zapara S.I. Poniattia mediatsii ta osoblyvosti yii stanovlennia v Ukraini ta sviti. Porivnialno-analitychnye pravo. 2015. № 3. S. 86–88. [in Ukrainian].
10. Polishchuk M. Ya. Mediatsiia yak sposib vyrishennia tsivilno-pravovykh sporiv: dys. ... kand. yuryd. nauk: 12.00.03. Kyiv. 2017. 225 s. [in Ukrainian].

12. Kharytonova T.Ye., Hryhorieva Kh. A. Mediabelnist zemelnykh sporiv na prykladi vidnovlennia silskohospodarskykh zemel. Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Ser.: Yurysprudentsiia. 2024. № 70. S. 62–66. [in Ukrainian].
13. Shulha M.V., Bahai N.O. Zemelne pravo: pidruchnyk. Kharkiv: Pravo, 2013. 520 s. [in Ukrainian].
14. Valianska T. P. Alternatyvne vyrishennia konfliktiv u sferi zemelnykh vidnosyn: pravovi aspekyt: dys. ... kand. yuryd. nauk: 12.00.06. Odesa, 2024. 199 s. [in Ukrainian].

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