

MEDIATION IN ADMINISTRATIVE AND CRIMINAL PROCEEDINGS: THE EXPERIENCE OF POLAND

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DOI: <https://doi.org/10.61345/1339-7915.2025.2.6>

Annotation. A successfully constructed system of legal mediation is an additional effective tool for protecting rights, which contributes to the development of the rule of law. The domestic legislator provides for the possibility of using mediation in both administrative and criminal proceedings. However, a systematic analysis of the Code of Administrative Procedure of Ukraine and the Criminal Procedure Code of Ukraine indicates the lack of proper legal regulation of the mediation process in the relevant proceedings. In this context, the experience of Poland, where mediation is the subject of separate regulation in procedural codes, deserves attention. After all, the traditional model of alternative dispute resolution, developed for civil and commercial disputes, cannot be simply transferred to administrative or criminal justice, but requires systematic improvement: amendments to procedural legislation, adoption of additional by-laws, establishment of organizational and financial prerequisites, as well as information and educational initiatives. According to Polish legislation, mediation cannot be conducted before the initiation of administrative proceedings in a particular case. Actions aimed at conducting mediation may be initiated by submitting a request for this case, included in the party's application to initiate administrative proceedings. The decision to refer the case to mediation will then constitute the first procedural action in the administrative proceedings. Moreover, there are no obstacles to conducting mediation before the decision is made in the case, in order to try to persuade the parties to accept the decision to be made. Equally important is the possibility of starting mediation after the party has filed an appeal. As regards criminal proceedings, in accordance with the criminal procedural legislation of the Republic of Poland, the court or a court officer during the trial, and the prosecutor or another body conducting these criminal proceedings at the stage of pre-trial investigation, may, on the initiative or with the consent of the defendant and the victim, refer the case to an institution or an authorized person for the purpose of conducting mediation proceedings between the defendant (accused) and the victim. Mediation within the framework of criminal proceedings may not last longer than a month, although this period may be extended on the basis of a substantiated request by the mediator for the time necessary to fully complete the mediation procedure.

Key words: mediation, administrative proceedings, criminal proceedings, European Union, Polish experience.

1. Introduction.

The practice of implementing mediation in the administrative and criminal justice systems of European Union countries demonstrates that a well-structured system of legal mediation serves as an effective supplementary tool for the protection of individual rights and contributes to the development of the rule of law. At the same time, Ukraine's aspirations for European integration significantly increase the relevance of studying foreign experience in this area, particularly that of EU member states. One such country is Poland. The experience of Poland is especially valuable, as this Eastern European state joined the European Union relatively recently and initiated a legal reform aimed at enhancing the democratization of justice — a goal that closely aligns with Ukraine's own aspirations for EU membership.

Research Objective – the main objective of this study is to analyze the experience of Poland in the implementation of mediation within administrative and criminal proceedings. The research aims to identify the key legal frameworks, institutional mechanisms, and practical outcomes of mediation in these areas, as

well as to evaluate the potential for adapting this experience to the Ukrainian legal system in the context of ongoing judicial reforms and European integration.

2. Analysis of scientific publications.

The issue of mediation under Polish legislation has repeatedly attracted the attention of both Ukrainian and Polish scholars. In particular, administrative mediation has been studied by R. Kalandowski, M. Karpiuk, T. Moll, among others, while mediation in criminal proceedings has been addressed by O. Boiko, E. Silecka-Marek, N. Turman, and others. However, comprehensive academic studies on this subject remain scarce.

3. The aim of this research is to analyze the legal framework and practical implementation of mediation in administrative and criminal proceedings in the Republic of Poland, in order to determine the prospects and directions for adapting this experience within the Ukrainian legal system. Given Ukraine's ongoing legal reforms and its European integration aspirations, the study seeks to identify the potential of mediation as a tool for improving access to justice, strengthening public trust in state institutions, and humanizing judicial procedures.

The research also aims to assess the effectiveness of the Polish model of legal mediation under strictly regulated conditions and to justify the need for introducing detailed procedural provisions on mediation into the Code of Administrative Procedure of Ukraine and the Criminal Procedure Code of Ukraine. The ultimate goal is to propose legislative improvements that would allow mediation to function as a viable and institutionalized mechanism in both administrative and criminal justice in Ukraine.

4. Review and discussion.

The national legislator provides for the possibility of applying mediation in both administrative and criminal proceedings. These conclusions can be drawn based on the provisions of the current procedural legislation. At the same time, a systematic analysis of the Code of Administrative Procedure of Ukraine [2] and the Criminal Procedure Code of Ukraine [4] indicates the absence of adequate legal regulation of the mediation process in these types of proceedings.

In particular, in Ukraine, the issue of mediation is detailed only in the Law of Ukraine "On Mediation" [6], which appears to be insufficient given the specific nature of administrative and criminal proceedings. As rightly noted in the scholarly literature [3], the traditional model of alternative dispute resolution (ADR), originally developed for civil and commercial disputes, cannot be simply transferred to administrative justice without significant adaptation. It requires systematic improvement, including amendments to procedural legislation, the adoption of additional by-laws, the establishment of organizational and financial prerequisites, as well as the implementation of informational and educational initiatives. The same applies to criminal proceedings.

In this context, the experience of Poland deserves particular attention, as mediation is subject to separate regulation within the country's procedural codes.

It is worth starting with the fact that the development of mediation in Polish law followed an unusual path. Initially, it was introduced in the field of collective labor law (1991), followed by its incorporation into criminal procedure law (1997) and juvenile justice cases (2001). Later, it was extended to judicial review of administrative decisions (2002), and finally to civil law, including commercial, family, and other private law matters (2005). In July 2011, the European Commission confirmed that Poland was among the group of 17 Member States that had implemented Directive 2008/52/EC [13].

From the perspective of administrative proceedings, Polish scholars view mediation (administrative mediation) as an alternative method of peaceful dispute resolution (also known as ADR – alternative dispute resolution), which may arise during the course of administrative proceedings. It consists in creating an opportunity for the participants (the parties as well as the administrative authority conducting the proceedings) to present their own arguments and statements, to become familiar with the arguments

and statements of other participants, to discuss the presented circumstances, and to attempt to reach a resolution of the dispute (within the limits of mandatory law) that is acceptable to the conflicting parties before the mediation process begins [12, p. 276].

It should be noted that mediation was introduced into Polish administrative law, in particular pursuant to Article 1(20) of the Act of 7 April 2017 amending the Code of Administrative Procedure and certain other acts. This Act amended the Code of Administrative Procedure by adding, among other things, Chapter 5a titled «Mediation.» By introducing mediation into the Code of Administrative Procedure, the legislator also intervened in the catalogue of general principles governing administrative proceedings. In particular, Article 13 of the Code was amended and expanded. According to the revised provision, in appropriate cases, public administration authorities are required to seek amicable resolution of disputes and clarification of the rights and obligations that are the subject of the proceedings within their competence [12, p. 280]. Interestingly, prior to the entry into force of these amendments, mediation was not applied to administrative proceedings, except in matters for which the provisions of substantive administrative law explicitly provided for such a form.

If the participants in the mediation express their consent, the public administration authority issues an order referring the case to mediation. The order is delivered to the parties and to the authority obliged to cooperate (if the relevant legal provision requires the issuance of the order to be conditioned upon the position of another authority—such as an opinion, consent, or other form of expression). The order referring the case to mediation must indicate the name of the mediator chosen by the participants. If the parties have not selected a mediator, the name of the mediator appointed by the public administration authority is included. The mediator must possess the necessary knowledge and skills to conduct mediation in matters of the specific type concerned. During the mediation process, the public administration authority may issue orders addressing specific issues that arise in the course of the proceedings; however, it does not issue a decision on the merits of the case [9, p. 52].

It is worth noting that the scope of application of administrative mediation may include cases related to property matters (for example, neighborhood disputes; land consolidation; disputes concerning development conditions or permits for construction and investment in infrastructure lines), which can be accommodated within this type of mediation. Reconciliation of interests may also take place in areas such as concessions, permits or business licenses; environmental protection; agriculture and forestry; industrial property; taxation or customs obligations. The use of mediation may also be considered in disputes involving social security or other complex or long-term conflicts between the parties [8, pp. 133–134].

Under Polish legislation, if the nature of the case allows, mediation may be conducted only during administrative proceedings (Article 96a § 1). This means that mediation cannot take place prior to the initiation of administrative proceedings concerning a specific matter. Actions aimed at initiating mediation may be commenced by submitting a request related to the case, included in a party's application to initiate administrative proceedings. In such instances, the decision to refer the case to mediation constitutes the first procedural act within the proceedings. Moreover, there are no obstacles to conducting mediation before a decision is issued in the case, with the aim of encouraging the parties to reach an agreement regarding the outcome. Equally important is the possibility of initiating mediation after an appeal has been filed by one of the parties. The conduct of mediation affects the actual time needed to resolve the case; however, its duration is not included in the statutory time limits for resolving administrative cases (Article 35 § 5 of the Code of Administrative Procedure). Once the case is referred to mediation, the public administration authority suspends the proceedings for a period of two months (Article 96e § 1 of the Code). Upon joint request of the mediation participants or for other valid reasons, this period may be extended, but not by more than one additional month. When the mediation period ends, the public authority is obliged to issue a decision terminating the mediation and to resume resolution of the case. If the participants reach an agreement during the mediation, its content may be reflected either in the administrative decision issued in the case, or in a settlement agreement concluded between the parties (subject to the authority's approval), or by withdrawal of the application submitted by the relevant party [12, pp. 276, 288].

According to the Polish Code of Criminal Procedure (hereinafter – the Polish CCP), the following provisions are established:

– the right of the court, and at the preparatory stage — the prosecutor or another authority conducting the proceedings, to refer the case to an entity authorized to conduct mediation proceedings, either on their

own initiative or with the consent of both the accused and the victim (Article 23a § 1 of the Polish Code of Criminal Procedure);

- a clearly defined procedural time limit for conducting the mediation procedure, which must not exceed one month (Article 23a § 2 of the Polish Code of Criminal Procedure);

- a list of persons who are not permitted to conduct mediation is defined, namely: an active professional judge, prosecutor, prosecutor's assistant, as well as a trainee in any of the aforementioned professions, a lay judge, a judicial assistant, an assistant to a public prosecutor, and an official of an institution authorized to initiate criminal proceedings (Article 23a § 3 of the Polish Code of Criminal Procedure);

- the mediator's right to access case materials to the extent necessary for conducting the mediation procedure (Article 23a § 5 of the Polish Code of Criminal Procedure);

- as a result of the mediation procedure, the mediator prepares a report and a settlement agreement is concluded, signed by the accused, the victim, and the mediator, which is then attached to the case file (Article 23a § 6 of the Polish Code of Criminal Procedure);

- the detailed procedure for conducting mediation is determined by a regulation of the Minister of Justice (Article 23a § 8 of the Polish Code of Criminal Procedure) [11].

The Polish Code of Criminal Procedure provides for the right of the court, and at the preparatory stage – the prosecutor or another authority conducting the case – to refer the case on their own initiative to a person authorized to conduct the mediation procedure. It also establishes a clearly defined procedural time limit for mediation and outlines a list of individuals who are not permitted to act as mediators [1, p. 268]. According to Article 23a of the Polish CCP, the court or judicial officer during trial, and the prosecutor or other authority conducting the criminal proceedings at the pre-trial stage, may – either on their own initiative or with the consent of the accused and the victim – refer the case to an institution or authorized person for the purpose of conducting mediation proceedings between the accused and the victim. The accused and the victim must be informed of the purpose and principles of mediation. Once the case is referred for mediation, the police, prosecutor, or court issues a decision indicating the duration of the mediation procedure. Mediation proceedings may not last longer than one month; however, this period may be extended upon the mediator's reasoned request for the time necessary to complete the procedure. The duration of the mediation is not included in the timeframe for pre-trial investigation. It is appropriate to agree with N. Turman's view that this provision of the Polish CCP, which clearly defines the duration of mediation, is beneficial for ensuring the proper and timely conduct of the mediation process and may be considered for implementation in Ukraine. In this regard, it would be appropriate to establish that the duration of mediation is to be defined by the parties in the mediation agreement. At the same time, the mediator and the parties should take all reasonable measures to ensure that the procedure is completed within thirty days from the moment the mediator receives the case file [7, p. 287].

According to Polish legislation, mediation may not be conducted by a judge, advocate, legal advisor, or any other person employed by the court, prosecutor's office, or another authority responsible for initiating proceedings against a specific individual. In other words, Polish law establishes clear incompatibility requirements for mediators with respect to other criminal procedural functions. Additionally, it has been established that the Minister of Justice of Poland determines the conditions applicable to institutions and individuals authorized to conduct mediation, the methods of their appointment, the scope and conditions of their access to case materials, as well as the procedures and main stages of conducting such mediation, taking into account the need for its effective implementation [5, p. 92].

Mediation proceedings in criminal cases allow for the possibility of concluding an agreement between the parties to the conflict, which may subsequently be incorporated by the court into its judgment. A mediation agreement in criminal matters represents the restoration of relations between the conflicting parties and outlines the means of compensating the victim – for example, an apology, financial compensation, or other forms of redress. However, mediation in criminal cases does not necessarily result in the signing of a settlement agreement, and the parties do not bear any legal consequences for choosing not to reach one [14, p. 134].

It should be noted that under Polish law, in criminal cases involving juveniles, the parties are not required to pay the costs of mediation – these are covered by the resources of the State Treasury. In other types of

cases, the mediator's remuneration is generally determined by an agreement between the mediator and the parties. However, the mediator may also agree to conduct the mediation pro bono. It is important to emphasize that in criminal cases and cases involving juveniles, an agreement reached during mediation does not replace a court judgment and is not binding on the court. Nevertheless, the court is expected to take the content of the agreement into consideration when rendering its decision after the proceedings have concluded. The terms of settlement may include, among other things: a formal apology, compensation for material and non-material damages, community service, obligations toward the injured party, or obligations toward society as a whole.

As we can see, the experience of Poland demonstrates that even within the framework of strictly regulated powers, it is possible to create a functioning model of «judicial mediation.» For Ukraine, the implementation of such a model would represent a further step toward European standards of transparency, efficiency, and democratic governance [10, p. 881].

5. Conclusions.

In conclusion, it should be emphasized that mediation is an innovative legal mechanism that can not only significantly simplify the resolution of public law disputes and the reconciliation process between the victim and the suspect or accused, but also enhance public trust in state authorities. However, its effective implementation requires the adaptation of negotiation methods to the specific nature of administrative and criminal proceedings, respectively. This highlights the need to amend the Code of Administrative Procedure of Ukraine and the Criminal Procedure Code of Ukraine, following the example of Poland, by introducing provisions that would detail the specific features of mediation in each type of proceeding. In particular, it would be appropriate to supplement the Code of Administrative Procedure with a chapter entitled "Mediation in Administrative Proceedings," and the Criminal Procedure Code with a chapter entitled "Mediation in Criminal Proceedings." In our view, such legislative amendments would contribute to ensuring that mediation becomes a fully functional and practical instrument in the Ukrainian legal system.

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