

## GENESIS AND THE DEVELOPMENT OF MEDIATION IN A CROSS-CULTURAL ENVIRONMENT

**Purpose of the research.** To investigate the genesis and main trends of the development of mediation in the cross-cultural environment and possible ways of its introduction in Ukraine. Methodology. The **methodological** basis of the research is the application of the method of historical analysis in elucidating the evolution of the mediation development in different historical periods in the world and Ukraine. The **scientific novelty** consists in the theoretical substantiation of the introduction of mediation as an alternative procedure for resolving conflicts in the cross-cultural environment and the way of its implementation in Ukraine's activity. **Conclusions.** Mediation is a voluntary, particular, coercive, flexible and close mechanism for reducing the level of uncertainty and risks between the parties to the dispute and, if possible, resolving the conflict. Realizing the evolutionary path, mediation was formed as a way of overcoming contradictions, giving the parties the influence of the relationship and the opportunity to understand their own needs, not at the expense of the opponent, but giving the parties to the conflict the same chances for the realization of the personal interests and rights. Mediation works well in the modern conditions; it can be successfully applied in solving contradictions and conflicts in various spheres, including socio-cultural activity.

**Key words:** mediation, conciliation procedures, alternative dispute resolution.

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### Генезис і розвиток медіації у крос-культурному середовищі

**Мета роботи** – дослідити генезис і основні тенденції розвитку медіації у крос-культурному середовищі та можливі шляхи її запровадження в Україні. **Методологічною основою** дослідження є застосування методу історичного аналізу в з'ясуванні еволюційного розвитку медіації у різні історичні періоди у світі та Україні. **Наукова новизна** полягає у теоретичному обґрунтуванні запровадження медіації як альтернативної процедури врегулювання конфліктів у крос-культурному середовищі та способу її імплементації в діяльність України. **Висновки.** Медіація є добровільним, спеціальним, непримусовим, гнучким і замкнутим механізмом зменшення рівня невизначеності та ризиків між сторонами спору та, по можливості, вирішення конфлікту. Здійснивши еволюційний шлях, медіація сформувалася способом подолання протиріч, наділивши сторони взаємовідносин впливом і можливістю реалізувати власні потреби не за рахунок опонента, а надавши учасникам конфлікту однакові шанси щодо реалізації власних інтересів та прав. Медіація добре працює в сучасних умовах, може успішно застосовуватися у вирішенні суперечностей і конфліктів у різних сферах, у т.ч. в соціокультурній діяльності.

**Ключові слова:** медіація, примирні процедури, альтернативне врегулювання спорів.

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### Генезис и развитие медиации в кросс-культурной среде

**Цель работы** – исследовать генезис и основные тенденции развития медиации в кросс-культурной среде и возможные пути ее внедрения в Украине. **Методологической основой** исследования является применение метода исторического анализа при выяснении эволюционного развития медиации в разные исторические периоды в мире и Украине. **Научная новизна** заключается в теоретическом обосновании внедрения медиации как альтернативной процедуры урегулирования конфликтов в кросс-культурной среде и способа ее реализации в деятельность Украины. **Выводы.** Медиация является добровольным, специальным, принудительным, гибким и замкнутым механизмом снижения уровня неопределенности и рисков между сторонами спора и, по возможности, решения конфликта. Совершив эволюционный путь, медиация сформировалась способом преодоления противоречий, наделив стороны взаимоотношений влиянием и возможностью реализовать собственные потребности не за счет оппонента, а предоставив участникам конфликта одинаковые шансы по реализации собственных интересов и прав. Медиация хорошо работает в современных условиях, может успешно применяться в решении противоречий и конфликтов в различных сферах, в т.ч. социокультурной деятельности.

**Ключевые слова:** медиация, примирительные процедуры, альтернативное урегулирование споров.

The Relevance of work. The significant changes in the state, political and socio-cultural system of Ukraine, the activation of the processes of the European integration, strengthening of the influence of market mechanisms in the economy and the activity of participants in civil law circulation, along with the expansion

of the geography of their activities through the entry into the European and international markets, need to be effective, fast and convenient mechanisms for resolving conflicts. Problems and prospects of the formation and development of mediation are an actual topic of the research of scientists and practitioners.

The Analysis of the researches and publications. Today there is a tendency to increase the number of scientific works in the field of mediation. The increase of the scientific interest in the mediation procedure is due to the fact that both in the foreign countries and in Ukraine the procedure for mediation began to be widely used. The issues of mediation were researched by domestic and foreign scientists from different fields of knowledge: R. Bezpalka, D. Davydenko, Iu. Zazuliak, T. Kiseleva, N. Lennuar, R. Nelson, I. Iasynovskiy and others.

The aim of the research. To investigate the genesis and main trends of the development of mediation in the cross-cultural environment and possible ways of its implementation in Ukraine.

The Presentation of the main material. The definition of the term "mediation" (from the Latin "media" – to be a mediator) is significantly different in different texts and publications and very often reflects only certain minimum requirements for the mediation process, defining it as a voluntary, structured process within which the mediator facilitates communication between the parties, allowing them to assume responsibility for finding a solution to the conflict. [8, 6].

In general, the conciliatory procedures, which include mediation, have undergone a long evolution and have been used differently in different historical conditions, as well as different nations. However, they have always played a significant stabilizing role in the society, since they have been subject to the significant private and public controversy.

Trying to find out a mention of the first using of the mediation in history, many authors cite the Bible, and also indicate that the settlement of disputes with tribal leaders in Africa, mediation in China, or the system of resolving disputes by rabbis in Jewish culture have existed for thousands of years [5, 226].

Historically, there are three main approaches to resolving disputes and conflicts: from the standpoint of force, from the standpoint of law and from the standpoint of interests. Resolving conflicts from the standpoint of strength is that one or more sides are suppressed at the expense of the other side's strengths. It can be physical strength, quantitative advantages, etc. The second approach – from the standpoint of law, provides for the application of the law in the court, regulatory regulations, instructions, norms, rules. The third approach to resolving conflicts from the standpoint of interests implies that the parties try to find out and determine what caused the conflict and, if possible, ensure the interests that were violated [6, 40].

Consequently the history of conflict resolution is a history of changing its three main forms: forcible (anti-legal), judicial (through the forced restoration of violated law in court) and reconciliation.

In the ancient period a violent form prevailed. At the pre-state and legal stages of the development of human society conflicts were generally resolved in the favor of the stronger. At the same time, the situation that every controversy in the tribe caused violence, mutilation, murder and discord became unacceptable, as undermining viability and threatening the very existence of the tribe. Therefore, the leaders and elders took on the role of reconciliators, settling disputes between members of the tribe by their power, based on authority and personal qualities. At this stage, intermediaries and arbitrators were the same persons. The leader, the elder of the tribe, was both a mediator and arbiter [2, 165]. In this case, unlike the modern mediation institution, a neutral third party could impose a decision on the parties. It can be assumed that due to the use of coercion, the dispute often managed to finish peacefully, but not necessarily on the basis of the full satisfaction of the interests of the sides.

In Ancient Greece there was such an important socio-legal institution as proxenia, derived from the word "hospitality". It meant an appeal to an intermediary in order to establish and maintain contacts, negotiate and interact with individuals, families, tribes and even city-states. Such mediator was called proxenetas. He was a capable of constructive communication person who was considered to be a prudent person to establish or maintain friendly relations in the clan, the family, the state, enjoyed hospitality, privileges, honor and respect. Such a mediator, by virtue of custom, carried duties both to the principal and to the host party. He must take care of the interests of both sides and promote their implementation in every possible way. It was possible for proxenetas to achieve this, only by facilitating the coordination of interests and the achievement of agreements between the sides [3, 167]. Exactly procsen can be considered as a kind of "precursor" of the mediator.

In the pre-Christian community of the early Middle Ages, the disputes between private individuals, as before, were resolved mostly by the right of the strong and the personal power of the leader. The insult caused to one member of the family, was seen as an insult to the whole family and dragged along a blood feud. Consequently, the participants to the dispute were, first of all, families who, on their own willing, started negotiations for settlement of disputes between themselves.

An important step in the development of reconciliatory procedures was the introduction of monetary sanctions for offenses. Since such sanctions were applied not only in order to punish the offender and take revenge, but also to facilitate the possibility of effective negotiations aimed to peaceful settlement of the dispute [2, 167].

In medieval France, conciliation procedures were the main way of settling disputes. In the cities and especially in the villages, mediation was widely used. The procedure was completely oral. As intermediaries could be representatives of the clergy, nobles or butlers. As the importance of the state in the public life intensified and the "legal cultivation" of the population was exercised, the practice of mediation changed. In the XVII century, mediation became a preliminary procedure before going to court, had the widest scope. In particular, an amicable agreement with the participation of third parties was used in disputes because of the damage, violent offenses (one third of cases of serious crimes were settled in cities by an amicable agreement).

It is worth noting that throughout the history of development, reconciliatory procedures have been closely connected to the development of an arbitration court and in the early stages they were a single process.

In the history of Ukraine, it is possible to identify trends associated with extrajudicial methods of resolving disputes. So in the Zaporozhye Sich the important meetings, in particular military councils, were held in the form of a circle. The discussion of issues in the circle continued until the community came to a consensus acceptable to all its members [1, 45].

In the XV-XVI centuries the procedures of "amicable reconciliation" with the participation of a super-arbiter were applied in the territory of the Russian Voivodship, which were used to resolve conflicts between noblemen [4, 45].

Therefore, the institution of mediation for Ukraine is acceptable and long being used as evidenced by historical facts.

In its modern sense, mediation began to develop in the second half of the XX century especially in the countries of the Anglo-Saxon system of law – the United States, Australia, the United Kingdom, and later it gradually began to spread to other countries.

The alternative dispute resolution movement has a specific place of birth – the United States of America, and perhaps even the birth date, in 1976, when the R. Pound National Conference "Causes of Dissatisfaction with Administration of the US Justice System" was led, known as the Pound Conference. Two documents from the Pound Conference materials constitute the political platform for alternative dispute resolution in the United States and other countries. In his report, Supreme Judge W. Berger warned that the American society "reached the point where our system of justice – both at the state and federal level – could literally break apart before the end of this century, despite a significant increase in the number of judges and administrators and huge financial infusions." He highlighted the most serious problems of the judicial system: very high court costs, lengthy proceedings, excessive legalization and formalization of procedures that require high costs for legal servicing citizens – and proposed to turn to non-formal alternatives [10, 32].

The second major document was the report by Professor F. Sander, who presented the idea of "the house of justice with many doors," for which he subsequently received a special award in the United States for his outstanding contribution to alternative dispute resolution. According to this concept, the US court is seen as an institution that provides an opportunity to resolve disputes by opening various "doors". The person appealing to the court first sets out all the circumstances before the court counselor, who conducts a thorough analysis of the case and recommends the most appropriate way of resolving the dispute ("the next door"), one of which may be the conclusion of an agreement for reconciliation [5, 228].

The next 30 years were marked by the unceasing increase of the numbers of mediations, arbitration procedures, mini-courts of expert assessment procedures and other alternative dispute resolution schemes in virtually all areas of the law in the United States, including in the field of socio-cultural activities. In 2001, the Unified Law of the USA "On Mediation" was developed and adopted. At the beginning of the XXI century in the United States there was already a serious legal base for mediation, hundreds of organizations provided the alternative dispute resolution services, thousands of professional mediators practiced. All states, without exception, had mediation programs based on a set of mediation models – from voluntary to strictly binding.

As a rule, the first attempts to use mediation took place only in the settlement of the disputes that appeared in the field of family, home relationships. Subsequently, mediation was also recognized in a broader range of disputes, from family conflicts to complex multilateral conflicts in the commercial and public spheres [7].

Since the end of the XX century mediation and other alternative dispute resolution procedures have begun to be actively disseminated around the world. Case law countries, such as Canada, the United Kingdom, Australia and New Zealand, quickly picked up the movement and set up institutes for the alternative dispute resolution, similar to those existing in the United States.

According to statistics, the United States and the countries of the Anglo-Saxon legal system are ahead of other states in the number of the disputes that can be resolved out of court [9].

Moreover, in contemporary African, Islamic, Chinese or Japanese societies, unlike western culture, conciliatory non-judicial methods for settling disputes are fundamental, while courts are perceived as an alternative to them.

The present stage of the development of conciliation procedures is characterized by a number of features associated with the scientific and technological revolution, the growth of the population and, as a consequence, the complication of social relations. Therefore, the following main trends of mediation development can be distinguished:

Mediation has become an independent profession. If in the past in the role of mediators were persons who primarily possessed high social status and as a result of this authority, usually endowed with authority to make binding decisions for the sides, then at the present stage, the mediators become neutral persons whose task aimed to the sides voluntarily take part in the mediation procedure, find a mutually acceptable solution that reflects their interests and needs.

There are new effective mediation models. Now the conditions for settling the dispute are based on the interests of the parties. The pragmatic approach prevails: most researchers and practitioners believe that the purpose of conciliation procedures is not justice or material truth, but expediency, benefit for the parties to the dispute.

The modern mediation is a highly structured process that has certain rules. Mediation is a procedure where a mediator who does not have the authority of the judiciary facilitates interaction between the sides to the conflict in order to create conditions for the parties to resolve their conflict. Additional characteristics of mediation are the confidentiality and neutrality of the mediator. Mediation provides a flexible approach where all aspects of the conflict can be considered independently of their legal significance.

The scope of mediation has considerably expanded. In particular, it is not limited to a certain type of conflict, its implementation in fact is possible in all fields. Mediation is also often used in the field of socio-cultural activities.

Many countries have legislation regulating conciliation procedures. Currently mediation laws are accepted in countries such as The USA, Austria, Great Britain, Germany, France and Bulgaria. In the general sectoral legislation, mediation is regulated for example in Poland, Italy, Slovenia and others.

The first steps towards consolidation in Ukraine at the legislative level of the institution of mediation are related to the adoption in 2016 by the Verkhovna Rada of Ukraine the decision to take as a basis the bill "Of Mediation" No. 3665 dated 17.12.2015, taking into account the relevant provisions of the bill "On Mediation" No. 3665-1 dated 29.12.2015, as well as taking into account the comments and suggestions of the subjects of the right of legislative initiative and submit it for consideration by the Verkhovna Rada of Ukraine in the second reading. Subsequently, the adoption of this project as a law will lead to the formation in Ukraine of a European balanced system of conflict resolution (disputes) that will take into account the wishes and interests of the citizens of the society.

Scientific novelty. The implementation of mediation as an alternative procedure for resolving conflicts in a cross-cultural environment and the way of its implementation in Ukraine's activity is theoretically grounded.

Conclusions. Mediation is a voluntary, special, coercive, flexible and closed mechanism for reducing the level of uncertainty and risks between the sides to the dispute and if possible, resolving the conflict. Carrying out the evolutionary path, mediation has been formed as a way of overcoming contradictions, giving the sides the influence of the relationship and the opportunity to realize their own needs not at the expense of the opponent, but giving the parties to the conflict the same chances for the realization of their own interests and rights. Mediation works well in modern conditions, can be successfully applied in solving contradictions and conflicts in different spheres, including socio-cultural activity.

Therefore, the using of the procedure of mediation as a way of alternative dispute resolution in many areas of social relations (including socio-cultural activities) will contribute to the effective dissemination of peaceful settlement of disputes in society. However, in order for this institute to function properly in Ukraine, it is necessary to train qualified professionals who possess not only professional knowledge but also psychological skills to resolve the dispute.

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*Стаття надійшла до редакції 21.03.2018 р.*

UDC 78.071.1(092) (477.83)

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### VOCAL FRANKIANA OF BOHDAN-YURIY YANIVSKYI

**The purpose of the article** is to highlight the musical language of the vocal Frankiana by Bohdan-Yuriy Yanivskiy. **Methodology** of the research consists in application of musicology approach for implementation of musical and theoretical analysis of vocal works by B.-Yu. Yanivskiy based on the poems by I. Franko. **Scientific novelty** lies in the fact that musicological analysis of the vocal Frankiana by B.-Yu. Yanivskiy, presented in printed sheet music publications and materials of archival funds, was done for the first time. **Conclusions.** Vocal Frankiana of B.-Yu. Yanivskiy includes three songs for solo performance: "Chervona kalyno, chogo v loozi gneshsia?" ("Guilder rose, why do you bend in the meadow?"), "Oi zhalyu miy, zhalyu" ("My sorrow, my sorrow") and "Sobachyi vals" ("Dog waltz"). It is characterized by the deep penetration of the composer into the poetry by Kameniar and subtle "transmission" of all its nuances, which are