

ABSTRACT

Roskoshna N. G. Mediation in the concept of restorative justice. – Qualification scholarly paper: a manuscript.

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The dissertation is devoted to the study of mediation in the concept of restorative justice, which is increasingly used to resolve criminal conflicts, due to the high level of recidivism, low confidence in law enforcement, as well as the overload of national courts.

It was found that mediation is one of the most common forms of restorative justice, which has proven its effectiveness in resolving criminal conflicts in other countries, beginning from the 70s of last century, continuing to spread and expand its application, which allows to assume that the implementation of this procedure for alternative dispute resolution can help to overcome mentioned problems in Ukraine.

In the dissertation the author considers the possibility of including mediation in the existing institution of reconciliation of the victim with the suspect or accused, by making appropriate amendments to the Criminal Procedure Code. In this regard, the dissertation examines the rules of law governing the institution and extrapolates the effect of these rules on the mediation process.

To develop an understanding of the essence and significance of mediation for the criminal process, a historical review of the emergence and spread of mediation as a way to resolve criminal conflicts, analyzed the concepts and elements of mediation, the state of Ukrainian legislation for this procedure, identified some imperfections in the legislation. and procedural possibilities of the parties to mediation.

Some international legal acts related to restorative justice, and in particular, aspects of the use of mediation in criminal proceedings, and their impact on the

current state of Ukrainian legislation, regarding the possibility of using alternative ways of resolving criminal disputes are analyzed.

The key elements of mediation have been studied and analyzed, as well as the existing doctrinal approaches to its definition in criminal proceedings, which led to the emergence of the author's interpretation of the concept of "mediation", which is given in the dissertation and its conclusions. Also, attention is paid to the importance of elements of mediation, in the context of its effectiveness and compliance with the restorative approach in resolving criminal conflict.

The author analyzes the theoretical and practical aspects of the use of mediation as a form of restorative justice, study the process of emergence and development of mediation, as well as the experience of including the procedure in the criminal process of other countries, namely the United States, England, Italy, Poland, Germany and Belgium. Common features of the application of this procedure for alternative dispute resolution were also found, and conclusions were drawn on the application of such experience to Ukrainian realities.

The dissertation pays special attention to the role of both public organizations and government agencies in the formation and development of mediation in the concept of restorative justice, as well as the gradual expansion of boundaries in determining the mediaability of conflicts. The case law of application of conciliation agreements is given, which is investigated in the context of the possibility of applying the mediation procedure in such cases.

Attention is paid to the possibility of applying mediation to crimes related to domestic violence, as well as disappointing practices that show the possible consequences for victims of this type of crime as a result of reconciliation.

An important aspect of the dissertation is to determine the structure of mediation, as a procedure that has its own specific tasks at each stage, as well as the need to establish a standard of mediation services in criminal proceedings. Given the novelty and ignorance of Ukrainian society with the mediation process, the standard should be developed for informational and explanatory purposes, and to form an idea of the content and significance of this method of resolving the dispute.

In this research, the author analyzes the role of the mediator in the mediation process, as well as provides his own definition of the term "mediator", and explores different points of view regarding the requirements for this profession and the possibility of providing such mediation services to other participants, such as investigators or the prosecutor, based on the code of ethics of the mediator and the responsibilities imposed on the neutral mediator by professional requirements for him.

The dissertation also focuses on the role of the investigator and prosecutor in the context of their duty to explain to the parties their right to conciliation, because in most cases, the frequency applying of such rights depends on the quality of such work.

The procedural possibilities of the parties in the process of mediation, which are inextricably linked with the value of this process, are studied. Emphasis is placed on the fact that mediation is another way to respond to a crime, which allows the parties of the conflict to become active participants in its resolution, and with the assistance of a mediator, to reach a conciliation agreement, independently determining the offender's punishment, compensation, what to deal with aspects damaged by the crime.

Also, some aspects of the participation of minors in the mediation process were analyzed, in particular, with the help of legal representatives, and some imperfections were found in the context of using the mediation process to conclude a conciliation agreement in such cases.

Based on the analysis of various scientific sources, it has been established that reconciling the victim and suspect or accused in the mediation process is aimed not only at humanizing and simplifying the criminal process, but also at empowering the parties to the criminal conflict to actively resolve it. Crimes harm not only the state and society but the destructive effects of the crime are directed against certain people who suffer from losses, so they should be given the right to be a part of deciding how the damage will be compensated and what punishment should be imposed on the offender.

It is envisaged that this will speed up the proceedings and save budget funds, in the case of, for example, the release of a person from criminal liability in connection with the conclusion of a conciliation agreement. The dissertation concludes that mediation in the concept of restorative justice is an indicator of a high level of development of consciousness and legal culture of society, which cares not only about the interests of the victim, but also tries to help the offender realize the negativity of criminal behavior and help to reintegrate him into society.

Emphasis is placed on the fact that restorative justice can complement the criminal model with those qualities that can change the paradigm of perception of crime and response to it, put the interests and needs of people first, with all their experiences, interests and needs. In turn, the criminal model of justice balanced, because of the mechanism of protecting public interests and the using of state coercion, in the event that restorative justice in the form of mediation did not give the expected results.

The role of the court in approving reconciliation agreements between the victim and the suspect or accused as a guarantor of compliance of the approved agreement with the law, which excludes the possibility of abuse of this right by the parties, is analyzed.

The peculiarities of the balance of private and public interests in the introduction of mediation in the criminal process, which is beginning to play an important role, in the resolution of which criminal conflicts can be applied to mediation. Therefore, the effectiveness of mediation is due not only to the successful combination of key characteristics of this procedure, but also to the correct definition of the type of conflicts to which it should be applied.

It was found that mediation in criminal proceedings acts not only as a way to resolve disputes and overcome the negative consequences of conflict, but as additional access to justice and fairness, owing to a successful combination of criminal-repressive and restorative approach to crime response.

The author argues the need for mediation in the criminal process of Ukraine not only to address existing problems in the criminal procedure law, but also, a

natural requirement of society, formed as a result of the development of legal awareness and social responsibility of citizens, through the influence of more developed countries that has a practice of such application.

The above topics are researched and analyzed in scientific work, leading to conclusions that, in the author's opinion, will contribute to the successful introduction of such a form of restorative justice as mediation - in the criminal process of Ukraine.

Based on the results of the study, it is proposed to introduce the mediation process in the criminal process of Ukraine with the amendments that were found and outlined in the analysis of current legislation.

Key words: mediation in criminal proceedings, restorative justice, reconciliation of the victim with the suspect or accused, the institution of conciliation agreements, conciliation process, criminal conflict, interests and needs of the parties.