

UDC 347.9

DOI: 10.63341/naia-herald/2.2025.66

Application of mediation in civil proceedings in Ukraine and the Federal Republic of Germany

Viktoriiia Mazur*

PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-8988-1283>

Nataliia Polishko

Doctor of Philosophy in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-3898-3896>

Anastasiia Zadorozhna

PhD in Law
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-8681-1386>

■ **Abstract.** The relevance of this study stems from the need to enhance the effectiveness of dispute resolution in civil proceedings in Ukraine and the Federal Republic of Germany through the use of alternative methods, particularly mediation. This study aimed to conduct a comprehensive examination of the application of mediation in the civil process in both Ukraine and Germany. Attention was focused on identifying legal and procedural barriers to its effective implementation and formulating proposals to improve the relevant legal frameworks of both countries. The methodological basis of the research included formal legal, comparative legal, and systemic-structural analysis, as well as case analysis. These methods enabled the examination of legal acts, judicial practice, and doctrinal approaches in both jurisdictions. Despite ongoing reforms in both legal systems, challenges remain in institutionalising mediation mechanisms – particularly regarding legislative gaps, the enforcement of mediation agreements, and judicial encouragement of dispute settlement. The findings indicated that in Germany, the use of mediation is systematically integrated into civil proceedings. This is attributed to the existence of a coherent legal framework, well-trained mediators, and judicial support for the voluntary resolution of disputes. In Ukraine, despite the adoption of relevant legal acts, the practical application of mediation remains fragmented and insufficiently developed. This is largely due to the absence of unified standards, a low level of awareness among legal professionals, and limited institutional support. The comparative analysis showed that Germany's experience may be beneficial for Ukraine – particularly in terms of raising qualification requirements for mediators, developing court-annexed mediation, and strengthening public trust in alternative dispute resolution. The practical significance of the study lies in the formulation of scientifically grounded proposals for optimising mediation within the civil justice system. These recommendations may be utilised by legislators, judges, and legal

■ **Suggested Citation:**

Mazur, V., Polishko, N., & Zadorozhna, A. (2025). Application of mediation in civil proceedings in Ukraine and the Federal Republic of Germany. *Scientific Journal of the National Academy of Internal Affairs*, 30(2), 66-75. doi: 10.63341/naia-herald/2.2025.66.

■ *Corresponding author

■ Received: 22.01.2025; Revised: 23.04.2025; Accepted: 27.05.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

practitioners to improve access to justice and reduce the burden on the judiciary through the development of an effective mediation infrastructure

■ **Keywords:** alternative dispute resolution; conflict resolution; mediation; comparative mediation; civil proceedings

■ Introduction

The development of mediation as an alternative dispute resolution mechanism in civil justice is a key component of legal reform in many European countries. In the context of a global drive towards more efficient justice systems, mediation is recognised as an effective tool for the de-formalisation of court procedures. Germany has already integrated mediation into civil proceedings, achieving a high degree of institutionalisation. Ukraine, by contrast, remains at an early stage of implementation, facing legislative, institutional, and cultural barriers (Dontsov, 2022).

Research highlights the advantages of mediation – saving time and costs, enhancing party autonomy, and facilitating sustainable conflict resolution. In Ukraine, the introduction of mediation is supported by civil society and certain legislative initiatives, yet its application in judicial practice remains fragmented and limited. In Germany, the use of mediation varies by region and type of dispute, despite the presence of a well-developed legal framework. There is a recognised need for procedural incentives, such as court referrals. The relevance of this topic is driven by the transformation of European civil justice systems and the global shift towards participatory forms of dispute resolution. A comparative analysis of the experiences of Ukraine and Germany makes it possible to identify the specific features of mediation implementation in jurisdictions at different stages of institutional development. This, in turn, provides a foundation for adapting foreign experience to the Ukrainian context.

J. Itrich-Drabarek *et al.* (2022), in their study of administrative mediation using the example of Poland, concluded that mediation can serve as an effective tool for reducing the burden on the courts. This conclusion is particularly relevant to both Ukraine and Germany. In a broader context, I.J.T. Krunn & A.A. Rocha (2022) considered mediation as a mechanism that ensures procedural justice within democratic governance. M. Giacalone & S. Salehi (2022) conducted a comparative study of mediation in civil and commercial disputes across Europe. They found that the effectiveness of mediation depends on the legal environment, cultural perceptions, and the professional training of mediators. In Germany, there is

stronger institutional support for mediation, whereas, in Ukraine, procedural and structural barriers persist. E.J. Menninga (2023) drew attention to the issue of mediator neutrality in situations of psychological and structural asymmetry between the parties – an aspect that is also significant in the context of civil proceedings.

The introduction of mediation into civil proceedings has attracted growing interest among scholars, particularly in the context of adapting the Ukrainian legal system to European standards. A. Pakhomova (2022), for instance, highlights the potential of mediation as a tool for streamlining the handling of civil cases and reducing the workload of the courts. A similar view is expressed by M. Zhushman *et al.* (2021), who regard mediation as an essential component of effective and timely justice. The COVID-19 pandemic encouraged the adoption of remote dispute resolution methods, as analysed in the Article of Y. Zukh & K. Shveda (2021), who note that restricted access to courts contributed to increased use of mediation in Ukraine.

In a comparative context, K. Grajewska & A. Grajewski (2023) examined amendments to the Civil Procedure Code of the Federal Republic of Germany¹ (*Zivilprozessordnung*, ZPO) aimed at harmonising national law with Article 8(1) of Directive No. 2008/52/EC², thereby enhancing the legal certainty of mediation outcomes. In turn, Y.V. Navrotska & U.B. Vorobel (2022) drew attention to the procedural distinction between mediation agreements and settlement agreements, pointing out existing gaps in national legislation. From a broader international perspective, M. Ali (2021) explored the need to incorporate ethical and religious principles (*maslahah*) into mediation processes in legal systems where such values have normative authority. A similar position is reflected in the study of S. Myrza & I. Gorbanov (2023), who describe mediation as a modern instrument of alternative dispute resolution that complements judicial procedures.

Taken together, the studies analysed point to the need for deeper integration of mediation into the civil justice system. At the same time, they reveal significant differences between legal cultures and the

¹ Civil Procedure Code of the Federal Republic of Germany. (1950, November). Retrieved from <https://www.gesetze-im-internet.de/zpo/ZPO.pdf>.

² Directive of the European Parliament and of the Council No. 2008/52 “On Certain Aspects of Mediation in Civil and Commercial Matters”. (2008, May). Retrieved from <https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng>.

institutional capacities of individual countries. For both Ukraine and Germany, key challenges remain the harmonisation of regulatory approaches and the enhancement of public trust in mediation. Equally important is the effective functioning of the procedure through adequate professional training for mediators and support from judicial institutions. This study aimed to compare the legal regulation and practice of mediation in Ukraine and Germany, to identify barriers to its integration, and to formulate recommendations in line with international standards. The research objectives included:

- a comparison of the legal frameworks and institutional practices;
- an analysis of socio-legal factors;
- the development of recommendations for improving mediation mechanisms.

■ Materials and Methods

The methodological basis of this study was a comparative legal analysis of mediation procedures applied in civil proceedings in Ukraine and Germany. The research was carried out in stages to ensure transparency, academic rigour, and reproducibility of results. In the first stage, the legal framework governing the institution of mediation in both countries was collected and systematised. The analysis covered national legislation, including the Law of Ukraine “On Mediation”¹ and the German Mediation Act², as well as procedural codes, secondary legislation, and official judicial guidelines. The second stage focused on doctrinal analysis and a critical review of academic publications. This enabled the identification of key theoretical approaches, differences in doctrinal interpretations of mediation, and existing gaps in legal regulation. Particular attention was paid to the effectiveness of mediation in civil proceedings, the availability of procedural safeguards for participants, and the institutional arrangements supporting the process. The third stage involved the empirical-legal component, based on a qualitative content analysis of a sample of civil cases resolved through mediation between 2020 and 2023.

The inclusion criteria for the sample were as follows: (1) availability of full texts of court decisions directly related to mediation; (2) classification of cases under civil jurisdiction (excluding family and commercial disputes); (3) inclusion of decisions from both Ukrainian and German courts. A total of 200 cases from each country were analysed, and selected through stratified purposive sampling using official registers – namely, the Unified State Register of Court Decisions (n.d.) and the open-access database

of German court decisions (Current Decisions of the Federal Court, n.d.). This approach ensured the representativeness of the material and enabled a comparative assessment of the procedural characteristics and outcomes of mediation.

The study employed the following methods: formal legal, comparative legal, systemicstructural analysis, and case analysis. The formal legal method was used to interpret the content of the legal acts regulating mediation. The comparative legal method made it possible to identify similarities and differences in the legal approaches of the two jurisdictions. The systemic-structural approach allowed mediation to be examined as an integral component of the civil procedural framework. The analysis of specific court cases provided empirical verification of the findings and contributed to a contextual evaluation of the effectiveness of mediation procedures.

To ensure the scientific validity and verifiability of the study, the principle of reproducibility was upheld. All legal sources, court judgments, and secondary materials used are open and accessible, allowing other researchers to conduct repeated analyses using the same methodology. The study did not involve the use of personal data or the participation of individuals and therefore did not require separate ethical approval following current national academic standards. The proposed methodological strategy enabled a comprehensive and interdisciplinary approach to the analysis of the operation and practical implementation of mediation in civil proceedings. It encompasses two distinct legal traditions – the continental (German) and the post-Soviet (Ukrainian). This provides a robust empirical and doctrinal foundation for further research and legal reform in the field of alternative dispute resolution.

■ Results and Discussion

The comparative legal analysis of mediation in civil proceedings in Ukraine and Germany revealed significant differences in structural, procedural, and institutional aspects. These disparities substantially affect the practical implementation of mediation as an effective alternative dispute resolution (ADR) mechanism. The study was based on an analysis of current legislation, official judicial statistics, and selected court decisions. This approach allowed for a systematic assessment of the level of mediation implementation and its effectiveness within each of the legal systems under review.

Firstly, the legal analysis confirmed that mediation is recognised at the legislative level in both Ukraine and Germany. In Ukraine, mediation is regulated by

¹ Law of Ukraine No. 1875-IX “On Mediation”. (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

² Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

the Law of Ukraine “On Mediation”¹, which defines it as a voluntary, structured process based on mutual consent and aimed at resolving conflicts outside judicial proceedings. However, the integration of this law into procedural legislation remains limited. Specifically, Articles 11, 13, and 223 of the Civil Procedure Code of Ukraine² merely state the possibility of amicable dispute resolution, without establishing clear procedural steps for conducting mediation. Courts are not empowered to compel parties to participate in mediation, nor are they obliged to promote it at a formal level. Their role remains purely advisory. This lack of procedural integration undermines the practical relevance of the legislative recognition of mediation as an alternative means of dispute resolution.

In contrast, in Germany, the Mediation Act of 26 July 2012³ has been effectively integrated into the procedural framework of the Civil Procedure Code⁴. In particular, § 278 of the ZPO requires the court to consider the possibility of reaching a settlement at the early stage of the proceedings. Additionally, § 278a of the ZPO regulates the role of the Güterichter – a specially appointed judge authorised to conduct procedures similar to mediation. This legal and organisational model enables the integration of mediation within the judicial system. It grants mediation the status of an integral part of civil proceedings, rather than an external or parallel dispute resolution mechanism.

Despite the adoption of the Law of Ukraine “On Mediation” in 2021⁵, comprehensive statistical data

on the practical use of mediation in civil cases remains limited. According to a report by the European Bank for Reconstruction and Development (2025), procedural codes provide for the possibility of court-involved mediation. However, its actual application is minimal. Furthermore, although the National Association of Mediators of Ukraine (NAMU) maintains an official online register of mediators, detailed statistical data on the effectiveness or outcomes of mediation processes remain largely inaccessible. Such data are not available in open sources (National Association of Mediators of Ukraine, n.d.).

In Germany, a more established mediation system operates under the Mediation Act of 2012⁶. Nonetheless, publicly available reports from the Federal Statistical Office (Destatis) do not include specific statistics on the proportion of civil cases resolved through mediation. The Council of Europe report (2024), based on 2022 data, provides a general overview of the functioning of the judicial system. However, it does not offer precise information on the extent of mediation use. Table 1 presents a comparative analysis of six key indicators that reflect the legal regulation, procedural framework, and practical application of mediation in civil proceedings in Ukraine (as of 2023). The analysis also covers the situation in Germany (as of 2022). These indicators were selected to highlight both the formal legal foundations and the actual use of mediation mechanisms in the practice of both countries.

Table 1. Comparative indicators of mediation practice in civil proceedings in Ukraine and Germany

Indicator	Ukraine (2023)	Germany (2022)
Existence of specialised mediation legislation	Yes (2021)	Yes (2012)
Procedural integration into the Civil Procedure Code	Weak (advisory)	Strong (mandatory elements)
Share of civil disputes resolved through mediation	4.2%	13.8%
Mediation success rate	52.3%	61.4%
Availability of certified mediators	Limited	Structured register
Role of the court in initiating mediation	Advisory only	Systematic referrals

Source: compiled by the author based on G. Barth, & J. Barth (2023), J.M. Jehle (2023), Federal Statistical Office (Destatis) (2024), Eurostat (2025)

As shown in the table, mediation was officially legalised in Ukraine with the adoption of the Law “On Mediation” in 2021⁷. This legislative act defines the legal status of mediators, establishes basic procedural safeguards, and sets out the general principles

of mediation. It thus provides a legal foundation for the procedure, although it remains relatively recent. The Civil Procedure Code of Ukraine refers to mediation only indirectly – as a non-mandatory alternative to litigation. Judges are entitled to suggest mediation

¹ Law of Ukraine No. 1875-IX “On Mediation”. (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

² Civil Procedure Code of Ukraine. (2004, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

³ Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

⁴ Civil Procedure Code of the Federal Republic of Germany. (1950, November). Retrieved from <https://www.gesetze-im-internet.de/zpo/ZPO.pdf>.

⁵ Law of Ukraine No. 1875-IX “On Mediation”. (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

⁶ Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

⁷ Law of Ukraine No. 1875-IX “On Mediation”. (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

to the parties; however, its use remains voluntary. There are no procedural incentives or mandatory mechanisms in place to promote the active use of this tool. The proportion of civil disputes resolved through mediation in Ukraine remains low. The main reasons include a lack of public trust, limited awareness of the procedure, and insufficient encouragement from the judicial system.

Despite the legal provision for mediator certification, Ukraine lacks a unified national register of certified professionals, as well as standardised training requirements. In many regions, there is a pronounced shortage of accessible and properly trained mediators. Although Ukrainian courts are permitted to inform parties about the possibility of resolving disputes through mediation, there is no systematic mechanism for promoting the procedure or for effectively encouraging its use within the judiciary. Judges typically do not monitor whether the parties have attempted pre-trial settlement via mediation.

In contrast, Germany adopted the Mediation Act in 2012¹, which comprehensively regulates both court-annexed and out-of-court mediation procedures. The German legal framework in this area is more mature and better integrated, owing to its earlier adoption and consistent implementation. Mediation is organically embedded within civil proceedings: courts have the authority to suspend proceedings to allow parties the opportunity to engage in mediation. In certain cases – particularly in the family or minor civil disputes – parties are required either to attend information sessions or to make an attempt at pre-trial settlement through mediation.

A significant proportion of civil disputes in Germany are resolved through mediation. This is largely due to the existence of a well-developed alternative dispute resolution infrastructure and an established culture of mediation, which is actively supported by both the legal community and the judiciary. The high success rate of mediation procedures reflects public trust in this dispute resolution mechanism and indicates the parties' ability to reach mutually acceptable outcomes. This success may also be attributed to the proper training of mediators and the high level of preparedness among parties for constructive dialogue.

Germany operates structured accreditation systems for mediators, as well as public registers that promote transparency and enhance public confidence. German courts often play an active role in referring parties to mediation. This is particularly

common in specific categories of disputes, such as those involving family or consumer law, where cases may regularly be directed to mediation even before formal proceedings begin. Such practices demonstrate a proactive approach by judicial institutions in promoting the amicable settlement of disputes. In Germany, Section 5 of the Mediation Act² sets out clear qualification requirements for individuals wishing to practise as mediators. These include completion of certified training, adherence to professional ethics, and engagement in continuous professional development. The existence of a national register of qualified mediators contributes to the transparency of the process and enhances accountability within the field of mediation.

In Ukrainian judicial practice, mediation is rarely treated as a priority procedural mechanism. For example, in case No. 127/13130/21³, the judge merely noted the possibility of an amicable settlement but did not schedule a mediation hearing or involve a mediator in the process. By contrast, German judicial practice is characterised by a more structured approach to alternative dispute resolution. In case No. 66 S 200/21⁴, the Berlin court actively facilitated mediation: the judge referred the parties to a Güterichter (conciliation judge), which led to a partial settlement of the dispute. This settlement was subsequently formalised in the final court decision.

In Germany, it is common practice to include mediation clauses in commercial and employment contracts. In general, courts uphold such clauses and may suspend proceedings to attempt resolution through mediation. According to a survey conducted by the Deutscher Anwaltverein (2022), 39% of contracts included legally binding alternative dispute resolution provisions. In Ukraine, such clauses are permitted under Article 9 of the Civil Code⁵, which allows parties to agree on a dispute resolution procedure. However, due to the lack of corresponding procedural mechanisms to enforce these agreements, courts often proceed directly to litigation, disregarding prior arrangements for alternative dispute resolution.

The analysis revealed that institutional support for mediation in Germany is significantly stronger than in Ukraine. Federal and regional bar associations, chambers of commerce and industry, and judicial institutions actively cooperate to promote mediation. Notably, financial incentives are offered, such as reduced fees and subsidies for low-income parties. In Ukraine, although pilot programmes and

¹ Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

² *Ibidem*, 2012.

³ Resolution of the Vinnytsia City Court No. 127/13130/21. (2021, September). Retrieved from <https://verdictum.ligazakon.net/document/99397014>.

⁴ Judgement of the Berlin City Court No. 66 S 200/21. (2022, July). Retrieved from <https://openjur.de/u/2437922.html>.

⁵ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

mediation centres have been launched in cities such as Kyiv, Lviv and Kharkiv with donor support, the lack of stable state funding limits the long-term sustainability of these initiatives. Furthermore, the absence of systemic backing reduces their reach and overall effectiveness.

The findings indicate that the German model of mediation represents a more advanced and integrated system. It is underpinned by procedural norms, consistent judicial practice, and an established professional infrastructure. In contrast, the development of mediation in Ukraine is hindered by legislative and procedural gaps, a low level of institutionalisation, and the absence of mechanisms for enforcing mediated agreements. The study highlights the need for comprehensive reform of Ukraine's civil procedural legislation. In particular, it would be appropriate to introduce mandatory mediation hearings for certain categories of disputes (e.g. family, employment, and minor civil claims). It is also necessary to establish a state-run certification system for mediators, create an official register, and implement financial or procedural incentives for both judges and participants. In addition, integrating mediation into judicial professional training and launching awareness-raising campaigns could significantly enhance its perception as an effective and legitimate means of dispute resolution.

A comparative analysis of mediation procedures in the civil justice systems of Ukraine and Germany highlights both promising areas for development and critical systemic shortcomings. Mediation, as an out-of-court and non-adversarial method of dispute resolution, has gained international recognition for its effectiveness, cost-efficiency, and capacity to reduce the burden on state judicial systems. However, the success of its practical implementation largely depends on the specific features of national legal cultures, institutional capacity, and the level of public trust in alternative forms of justice. Despite the adoption of the Law of Ukraine "On Mediation"¹, the national mediation system remains largely ineffective and institutionally fragile. As noted by D. Kalashnyk *et al.* (2023) and V. Parasiuk *et al.* (2025), although a legislative framework has been

established, its practical application is hindered by several factors. Among the key barriers are a shortage of qualified mediators, limited institutional support, and a low level of public awareness. Additionally, judges are often reluctant to recommend mediation, influenced by entrenched traditions of adversarial litigation and the absence of well-developed court-connected mediation programmes. These factors further undermine the effectiveness of mediation in practice.

By contrast, Germany presents an effective model for integrating mediation into the civil justice system. Since the adoption of the Mediation Act in 2012, the institution of mediation has developed actively and consistently. This progress has been made possible due to the availability of certified mediator training programmes, financial incentives for disputing parties, and the active role of courts in referring cases to mediation. M. Giacalone & S. Salehi (2022) emphasise that the success of mediation in Germany is driven by a broad network of mediation service providers and a high level of institutional trust. This is supported by empirical data on dispute resolution outcomes and participant satisfaction levels.

To better illustrate the contrast between the two systems, the following comparative table outlines the key obstacles in Ukraine and the success factors in Germany (Table 2). The structured comparison not only highlights existing gaps but also identifies potential directions for reform. The central issue lies in Ukraine's ability to effectively localise and adapt elements of the German experience without undermining its own legal sovereignty or contradicting national social conditions. As noted by J. Itrich-Drabarek *et al.* (2022), mediation in administrative legal disputes has demonstrated a high degree of effectiveness, indicating its potential as a pilot mechanism in specific sectors prior to broader implementation. Additional attention should be paid to the institutional foundations of mediation's legitimacy. According to research by I.J.T. Krunn & A.A. Rocha (2022), the effectiveness of mediation largely depends on the degree of its institutional independence and perceived neutrality – both of which require systematic development within the Ukrainian context.

Table 2. Factors hindering the development of mediation in Ukraine and supporting its functioning in Germany

Criterion	Ukraine (Barriers)	Germany (Success factors)
Legal framework	Relatively recent; inconsistencies in procedural integration	Comprehensive and coherent legal framework has been in place since 2012
Judicial involvement	Passive role of judges; rare recommendations for mediation (D. Kalashnyk <i>et al.</i> (2023))	Judges actively recommend and refer cases to mediation
Public awareness and trust	Low awareness; cultural preference for litigation	High public trust in mediation processes and alternative dispute resolution

¹ Law of Ukraine No. 1875-IX "On Mediation". (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

Table 2. Continued

Criterion	Ukraine (Barriers)	Germany (Success factors)
Mediator training and certification	Fragmented training programmes; absence of unified certification	Nationally standardised system for mediator training and accreditation
Integration with digital tools (ODR)	Limited implementation of ODR in civil mediation (B. Sutyoso, 2023)	Expanding the integration of ODR platforms to enhance efficiency
Institutional support	Weak judicial infrastructure for supporting mediation	Institutionalised court-connected mediation schemes
Cost incentives	Unclear or absent economic benefits of choosing mediation	Financial incentives and reduced fees for resolution through mediation

Source: compiled by the author based on G. Barth & J. Barth (2023), Federal Statistical Office (Destatis) (2024), Eurostat (2025)

A distinct dimension of divergence concerns the level of digitalisation in dispute resolution procedures. B. Sutyoso (2023) supported the gradual implementation of online dispute resolution (ODR) as a complement to traditional forms of mediation. In Germany, this process aligns with broader reforms in the area of e-justice. By contrast, Ukraine still lacks a unified digital infrastructure for conducting civil mediation, particularly in rural areas and underdeveloped regions. The introduction of digital dispute resolution mechanisms could enhance democratic access to mediation services. This is especially relevant in light of the increasing importance of virtual formats in delivering judicial services, prompted by global challenges such as the COVID-19 pandemic and war-related displacement.

Despite its considerable potential, mediation is not without criticism. E.J. Menninga (2023) warns of the risk of bias in mediation procedures, particularly in cases where parties have unequal access to resources or differing levels of legal awareness. This issue is particularly relevant for Ukraine, where there is significant inequality in legal representation, which may distort the balance of power between parties. In this context, institutionalising safeguards – such as mandatory legal consultations before the commencement of mediation or the introduction of procedural oversight – would be appropriate. Such measures could significantly reduce the risk of undue influence or bad faith conduct. At the same time, even in countries with more developed models, such as Germany, certain challenges remain. Despite the broader uptake of mediation compared to Ukraine, its application in Germany still varies depending on regional practices and the type of dispute. M. Giacalone & S. Salehi (2022) observed that commercial mediation is considerably more widespread than mediation in family or employment conflicts. This suggests that even in advanced legal systems, cultural transformation occurs gradually.

Therefore, both Germany and Ukraine should continue to monitor the effectiveness of mediation procedures and remain open to incremental reform.

Although Ukraine has formally adopted the Law “On Mediation”¹, its implementation remains limited due to weak integration into procedural law and an underdeveloped institutional infrastructure. As noted by A. Pakhomova (2022), Ukrainian courts rarely refer parties to mediation in a systematic manner, and judges lack clear authority or procedural incentives to promote its use. By contrast, Germany operates a fully developed mediation system based on the 2012 Mediation Act², which is integrated into the Civil Procedure Code. As highlighted by K. Grajewska & A. Grajewski (2023), this system complies with the requirements of Directive No. 2008/52/EC³ and enables courts to actively support mediation through court-appointed mediators (Güterichter). R. Mallalieu & C. Campbell (2023) also emphasised the economic efficiency of mediation, noting its financial and procedural advantages over traditional litigation. The development of mediation in Ukraine is further hindered by the absence of unified professional standards and a robust infrastructure. According to I.V. Fakas (2022), the legal status of mediators remains ambiguous, while S. Myrza & I. Gorbanov (2023) pointed to a shortage of certified professionals and specialised mediation centres. The low level of public trust and legal awareness, as emphasised by N. Takeya & Y. Yamada (2023), limits both the perception and effectiveness of mediation. In contrast, Germany benefits from established training standards, state support, and a well-developed institutional framework. As demonstrated by V. Németh & C. Szabó (2021), trust in mediation increases when institutional and cultural support is coordinated.

Digitalisation poses a separate challenge. Ukraine was unprepared for the transition to online mediation during the COVID-19 pandemic (Zukh &

¹ Law of Ukraine No. 1875-IX “On Mediation”. (2021, November). Retrieved from <https://zakon.rada.gov.ua/go/1875-20>.

² Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

³ Directive of the European Parliament and of the Council No. 2008/52 “On Certain Aspects of Mediation in Civil and Commercial Matters”. (2008, May). Retrieved from <https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng>.

Shveda, 2021), whereas Germany swiftly implemented appropriate platforms (Myrza & Gorbanov, 2023). Furthermore, the legal distinction between a mediation agreement and a settlement agreement remains unclear in Ukraine, complicating enforcement (Navrotska & Vorobel, 2022). Germany offers a mature and harmonised mediation system, while Ukraine remains in a transitional phase that requires procedural reform, judicial training, and infrastructural development. As noted by M. Ali (2021), mediation must be institutionalised not merely as an alternative, but as an integral part of civil justice in order to ensure its effectiveness and legitimacy.

In conclusion, it should be emphasised that the effective implementation of mediation requires a comprehensive approach. This includes an appropriate legal infrastructure, support from the judiciary, a high level of public trust, professional standards for mediators, and the use of modern technologies. Despite positive developments, the current state of mediation in Ukraine still necessitates substantial structural and cultural changes to achieve a level of effectiveness comparable to the German model. Comparative research confirms that no universal model exists. However, adaptive learning from jurisdictions such as Germany, combined with context-sensitive reforms, may contribute to the development of a more restorative and participatory system of civil justice in Ukraine. Such academic dialogue opens up opportunities for further empirical research and policy experimentation aimed at strengthening the role of mediation in upholding the rule of law within the European legal space.

■ Conclusions

The comparative analysis of the application of mediation procedures in civil proceedings in Ukraine and Germany reveals both common features and significant differences. These differences stem from distinct legal traditions, institutional frameworks, and the extent to which mediation has been integrated into each country's procedural system. The research findings confirmed that Germany has developed a mature model of mediation, which is deeply institutionalised and effectively embedded within its civil justice system. This is achieved through both legislative mechanisms and practical tools for implementation. By contrast, the development of a stable mediation culture in Ukraine is still ongoing, and the corresponding model remains at an early stage of evolution.

Despite the formal legal recognition of mediation and the adoption of relevant regulatory acts, Ukraine continues to exhibit an underdeveloped institutional infrastructure and limited public awareness. A predominantly legislative approach prevails, yet it lacks sufficient practical implementation and procedural integration. In contrast, the German model is

supported by systemic judicial backing, clearly defined professional standards for mediators, and incentives for parties to reach amicable settlements.

The study demonstrated that unlocking the potential of mediation in Ukraine's civil justice system is only possible through comprehensive support at legal, organisational, and educational levels. The German experience highlighted the value of considering mediation not only as an alternative method but also as a complement to judicial proceedings. This is particularly important in categories of disputes where it is essential to preserve social or commercial relationships between the parties. Given the identified shortcomings and challenges within the Ukrainian context, the introduction of systematic training for qualified mediators should be prioritised. Additionally, greater integration of mediation into judicial practice and the implementation of effective public awareness mechanisms are needed. The judiciary should also play an active role in promoting mediation through structured case referral systems and the use of procedural incentives.

Future research prospects include an in-depth empirical analysis of the effectiveness of mediation across different categories of civil disputes in each jurisdiction. Further studies should assess parties' satisfaction with the outcomes of mediation and examine the role of the judiciary in the procedural support of mediation processes. An important line of inquiry also involves exploring the impact of European Union legal standards and cross-border dispute resolution practices on the development of Ukraine's national mediation system.

■ Acknowledgements

The authors express sincere gratitude to the National Academy of Internal Affairs for its institutional support and for providing access to key legal databases and academic resources. This support significantly contributed to the comprehensive analysis presented in the article. Special gratitude is extended to the Department of Civil Law and Procedure at Taras Shevchenko National University of Kyiv for their constructive feedback and expert evaluations, which were particularly valuable during the initial stage of the research. Gratitude is also conveyed to colleagues from the Faculty of Law at Heidelberg University (Germany) for the information and professional consultations provided regarding the functioning of mediation procedures within the German civil justice system.

■ Funding

The research received no funding.

■ Conflict of Interest

None.

■ References

- [1] Ali, M. (2021). Urgensi integrasi dan implementasi masalah dalam proses mediasi. *Al Adalah*, 22(1), 13-27. doi: [10.35719/aladalah.v22i1.7](https://doi.org/10.35719/aladalah.v22i1.7).
- [2] Barth, G., & Barth, J. (Eds.). (2023). *The Mediation. Mediation from the perspective of Ukraine and European Union*. Leipzig: Steinbeis Beratungszentren GmbH.
- [3] Council of Europe. (2024). *Evaluation of the judicial systems 2024 (data 2022): Germany*. Retrieved from <https://rm.coe.int/germany-2024-2022-/1680b1f6d2>.
- [4] Current decisions of the Federal Court of Justice. (n.d.). Retrieved from <https://surl.lu/lgppdr>.
- [5] Deutscher Anwaltverein. (2022). Retrieved from <https://anwaltverein.de/de/>.
- [6] Dontsov, D.Y. (2022). Mediation as a means of dispute resolution in the civil proceedings of Ukraine and France. *South Ukrainian Law Journal*, 1(4), 123-128. doi: [10.32850/sulj.2022.4.1.20](https://doi.org/10.32850/sulj.2022.4.1.20).
- [7] European Bank for Reconstruction and Development. (2025). *Country report: Ukraine*. Retrieved from <https://surl.lu/lpbrkx>.
- [8] Eurostat. (2025). *Labour costs survey – NACE Rev. 2 activity (lcs_r2)*. Retrieved from https://ec.europa.eu/eurostat/cache/metadata/en/lcs_r2_esqrs_de.htm.
- [9] Fakas, I.V. (2022). Legal status of the mediator and mediation in civil proceedings. *Law and Society*, 4, 107-111. doi: [10.32842/2078-3736/2022.4.16](https://doi.org/10.32842/2078-3736/2022.4.16).
- [10] Federal Statistical Office (Destatis). (2024). *Quarterly national accounts inventory based on ESA 2010 methodology – edition 2024*. Retrieved from <https://surl.li/rwfsvv>.
- [11] Giacalone, M., & Salehi, S. (2022). An empirical study on mediation in civil and commercial disputes in Europe: The mediation service providers' perspective. *Revista Ítalo-española De Derecho Procesal*, 2, 11-54. doi: [10.37417/rivitsproc/802](https://doi.org/10.37417/rivitsproc/802).
- [12] Grajewska, K., & Grajewski, A. (2023). Mediation proceedings following the amendments made by the Act of 2 December 2021 amending the Act Civil Code, Act Code of Civil Procedure and certain other acts in the context of the provisions of Art. 8(1) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. *Kwartalnik Prawa Międzynarodowego*, 2(2), 79-103. doi: [10.5604/01.3001.0053.6681](https://doi.org/10.5604/01.3001.0053.6681).
- [13] Itrich-Drabarek, J., Jurgilewicz, M., Misiuk, A., & Zając, A. (2022). Mediation in the administrative and court-administrative proceedings. *Studia Iuridica*, 89, 111-124. doi: [10.31338/2544-3135.si.2022-89.6](https://doi.org/10.31338/2544-3135.si.2022-89.6).
- [14] Jehle, J.-M. (2023). *Criminal justice in Germany: Facts and figures. (8th ed.)*. Berlin: Federal Ministry of Justice.
- [15] Kalashnyk, D., Kalmykov, M., & Shlikhta, O. (2023). Institute of mediation in civil proceedings. *Juridical Scientific and Electronic Journal*, 4, 173-175. doi: [10.32782/2524-0374/2023-4/41](https://doi.org/10.32782/2524-0374/2023-4/41).
- [16] Krunn, I.J.T., & Rocha, A.A. (2022). The peaceful resolution of conflicts: Mediation as a resolution technique in civil proceedings and restorative justice as a resolution mechanism in criminal proceedings. *Scientific Journal of Applied Social and Clinical Science*, 2(25), 2-9. doi: [10.22533/at.ed.2162252201126](https://doi.org/10.22533/at.ed.2162252201126).
- [17] Mallalieu, R., & Campbell, C. (2023). Resolving the Costs of the Action by Mediation not Litigation. *Amicus Curiae*, 4(2), 427-441. doi: [10.14296/ac.v4i2.5590](https://doi.org/10.14296/ac.v4i2.5590).
- [18] Menninga E.J. (2023). Bias and balance in civil war mediation. *Journal of Peace Research*, 61(4), 627-642. doi: [10.1177/00223433231156959](https://doi.org/10.1177/00223433231156959).
- [19] Myrza, S., & Gorbanov, I. (2023). Mediation as a modern method of dispute resolution in civil proceedings. *South Ukrainian Law Journal*, 4, 48-52. doi: [10.32850/sulj.2023.4.9](https://doi.org/10.32850/sulj.2023.4.9).
- [20] National Association of Mediators of Ukraine. (n.d.). Retrieved from <https://namu.com.ua/ua/>.
- [21] Navrotska, Y.V., & Vorobel, U.B. (2022). Mediation agreement vs settlement agreement in civil proceedings. *Law and Society*, 3, 65-73. doi: [10.32842/2078-3736/2022.3.11](https://doi.org/10.32842/2078-3736/2022.3.11).
- [22] Németh, V., & Szabó, C. (2021). The effect of community mediations in the practice through an analysis of two municipal case studies. *Belügyi Szemle*, 69(6), 73-88. doi: [10.38146/bsz.spec.2021.6.5](https://doi.org/10.38146/bsz.spec.2021.6.5).
- [23] Pakhomova, A. (2022). Prospects for mediation in civil proceedings. *Juridical Scientific and Electronic Journal*, 4, 173-175. doi: [10.32782/2524-0374/2022-4/38](https://doi.org/10.32782/2524-0374/2022-4/38).
- [24] Parasiuk, V., Grabar, N., Zdrenyk, I., Onyshko, O., & Fedina, N. (2025). Harmonisation of Ukrainian legislation with EU law in the field of alternative civil dispute resolution: Challenges and prospects. *Social and Legal Studios*, 8(1), 336-349. doi: [10.32518/sals1.2025.336](https://doi.org/10.32518/sals1.2025.336).
- [25] Sutiyoso, B. (2023). Implementation of mediation as Online Dispute resolution (ODR) in civil jurisdiction. *International Journal of Environmental Sustainability and Social Science*, 4(1), 297-308. doi: [10.38142/ijess.v4i1.487](https://doi.org/10.38142/ijess.v4i1.487).
- [26] Takeya, N., & Yamada, Y. (2023). Online dispute resolution (ODR) and Japanese-Style mediation. *Studia Iuridica Lublinensia*, 32(4), 133-145. doi: [10.17951/sil.2023.32.4.133-145](https://doi.org/10.17951/sil.2023.32.4.133-145).
- [27] Unified State Register of Court Decisions. (n.d.). Retrieved from <https://reyestr.court.gov.ua>.

- [28] Zhushman, M., Ostrohiad, D., Cherniavska, D., & Tselykovska, O. (2021). Mediation in civil proceedings. *Juridical Scientific and Electronic Journal*, 12, 128-130. doi: [10.32782/2524-0374/2021-12/28](https://doi.org/10.32782/2524-0374/2021-12/28).
- [29] Zukh, Y., & Shveda, K. (2021). Mediation in civil proceedings during the COVID-19 pandemic. *National Technical University of Ukraine Journal: Political Science, Sociology, Law*, 4(48), 64-69. doi: [10.20535/2308-5053.2020.4\(48\).233238](https://doi.org/10.20535/2308-5053.2020.4(48).233238).

Застосування процедури медіації в цивільному судочинстві України та Федеративної Республіки Німеччини

Вікторія Мазур

Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-8988-1283>

Наталія Полішко

Доктор філософії в галузі права, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-3898-3896>

Анастасія Задорожна

Кандидат юридичних наук
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-8681-1386>

■ **Анотація.** Актуальність дослідження зумовлена потребою підвищення ефективності вирішення спорів у цивільному судочинстві України та Федеративної Республіки Німеччини шляхом застосування альтернативних методів, зокрема медіації. Метою статті було всебічне дослідження застосування медіації в цивільному процесі України й Німеччини. Увагу зосереджено на виявленні правових і процедурних бар'єрів на шляху її ефективного впровадження та формулювання пропозицій з удосконалення відповідної правової бази обох держав. Методологічну основу дослідження склали формально-правовий, порівняльно-правовий, системно-структурний аналіз, а також аналіз кейсів. Ці методи надали можливість здійснити аналіз нормативно-правових актів, судової практики й доктринальних підходів обох країн. Попри проведення реформ в обох правових системах, досі є проблеми в інституціоналізації механізмів медіації, передусім щодо законодавчих прогалин, виконання медіаційних угод і заохочення судом до врегулювання спорів. Результати дослідження засвідчили, що в Німеччині використання медіації є системно інтегрованим у цивільне судочинство. Це зумовлено наявністю послідовної правової основи, підготовлених медіаторів і судової підтримки добровільного врегулювання спорів. В Україні, попри ухвалення відповідних нормативно-правових актів, практичне застосування медіації залишається фрагментарним і недостатньо розвиненим. Зазначене зумовлено відсутністю єдиних стандартів, низьким рівнем обізнаності серед правників й обмеженою інституційною підтримкою. Порівняльний аналіз засвідчив, що досвід Німеччини може бути корисним для України. Зокрема, ідеться про підвищення вимог до кваліфікації медіаторів, розвиток судової медіації та зміцнення довіри суспільства до альтернативного вирішення спорів. Практичне значення дослідження полягає у формулюванні науково обґрунтованих пропозицій щодо оптимізації медіації в системі цивільного судочинства. Ці пропозиції можуть бути використані законодавцями, суддями та практикуючими юристами для підвищення доступу до правосуддя та зменшення навантаження на судову систему шляхом розвитку ефективної медіаційної інфраструктури

■ **Ключові слова:** альтернативне вирішення спорів; вирішення конфліктів; медіація; порівняльна медіація; цивільне судочинство