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APPLICATION OF JUDICIAL MEDIATION IN CIVIL LAW: THEORY AND PRACTICE

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Abstarct

The relevance of this study. Judicial mediation is a method of organized dispute resolution procedures in civil and administrative cases, to reach a peaceful solution with the agreement of both parties to the dispute. The legalization of judicial mediation provides additional opportunities for the parties to the dispute not only to settle the dispute amicably, but also has more potential benefits for both sides of the dispute, looking for a favorable solution, which can be confirmed by a mutual settlement agreement. Due to these advantages, the use of this alternative method of dispute resolution is growing both in Lithuania and around the world. **The main problems.** 1. Does the legal regulation of judicial mediation meet the goals of the mediation institute and the process participants? 2. What are the conditions for applying judicial mediation in court practice? 3. How is the transfer of a legal dispute to judicial mediation, the conciliation of the parties to the dispute by the mediation institute and the approval of the settlement agreement treated in court practice? 4. What is the relationship between judicial mediation and judicial mediation applied in European Union countries? 5. What features of legal regulation of judicial mediation of foreign countries can be integrated in judicial mediation procedures in Lithuania? The following tasks: 1. To analyze the concept of judicial mediation institute. 2. To discuss the conditions of application of judicial mediation and its procedure. 3. To compare the regulation of judicial mediation in the countries of the European Union. 4. To analyze the application of judicial mediation in Lithuanian court practice. The aim of this work: to perform a comparative analysis of the regulation of judicial mediation in Lithuania and foreign countries. In order to determine possible changes/improvements in the legal regulation of the implementation of the Lithuanian Institute of Judicial Mediation, based on examples of good practice in foreign countries and the practice of domestic courts. The used methodology: the document analysis method was used to analyze the legal acts of the Republic of Lithuania; the method of systematic analysis was used to combine different opinions of authors, legal acts, court practice; the comparative method was used to compare the regulation of judicial mediation in Lithuania and the countries of the European Union.

Keywords: mediation, judicial mediation, judicial mediation model, judicial mediation practice.

Introduction

Statement of the problem. The judicial topic of mediation in Lithuanian legal literature is analyzed incompletely. And it should be noted that there is a particular lack of analysis and evaluation of this procedure, in a comparative aspect in the context of foreign countries. In order to assess whether the existing conditions of judicial mediation and their regulation can be changed, based on examples of good practice in foreign countries, especially knowing the active European Union support for the applicability of judicial mediation practices. On the other hand, it is not necessary to focus only on changes compared to foreign countries – due to the relative novelty of legal mediation, there is a lack of clarification of the conditions of its applicability, interpretation of the transfer of a judicial dispute to judicial mediation in the course of civil and administrative processes. Also, the treatment of matters of conciliation of disputing parties by the institution of mediation and the approval of a peace agreement in court practice is not only unanalyzed, but also the practice of the courts themselves and cases dominated by mediation show the need for analysis and interpretation of this procedure**.**

Relevance of the topic. These questions are relevant primarily in order to assess the conditions

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of applicability of judicial mediation and their treatment in administrative and civil proceedings, based on the practice of courts and foreign countries. Such an analysis is necessary in order to justify the existing legal regulation of judicial mediation in Lithuania and its interpretation. In accordance with the transfer of a legal dispute to judicial mediation, the conciliation of the parties to a dispute by a mediation institute, the conclusion of a contract, etc. must be "reorganized" in order to clarify the interpretation and use of this procedure in practice, as well as the capabilities of the judicial mediation institute. The validity of such answers is explained by the existing procedure for the regulation of judicial mediation and court practice, when solving questions of the application of judicial mediation in administrative and civil proceedings.

The aim of the research. To carry out a comparative analysis of the regulation of judicial mediation in Lithuania and foreign countries in order to determine possible changes/improvements in the legal regulation of the implementation of the Institute of Judicial Mediation in Lithuania, based on examples of good practice in foreign countries and the practice of domestic courts.

Results

In Europe, not all countries have the same experience of judicial mediation. The United Kingdom and the Netherlands have been using mediation much longer than other European countries. In the context of Lithuania, judicial mediation is increasingly practiced as an alternative method of dispute resolution, but its implementation in terms of regulation still requires deeper changes, expansion of functions and setting of new conditions. During the investigation, it was revealed that judicial mediation is directly applied to only 1 percent of all civil and commercial cases in the European Union. From 2020 mandatory mediation comes into force when resolving family disputes in Croatia, Hungary and Lithuania, but the new changes in the resolution of family disputes,

Analysis of the concept of judicial mediation

The term mediation was first used in written sources, more precisely in a French encyclopedia, in 1694, although its origin is identified with the 13th century, to describe the intervention of a person between two parties, or otherwise known today as mediation. The concept of mediation is a process considered one of the oldest methods of dispute resolution, which existed in many cultures and countries of the world even before the emergence of courts. Information on the use of mediation-like forms of dispute resolution can be found in ancient Greek sources, biblical accounts, and traditional communities in Asia and Africa. The resolution of disputes was usually entrusted to persons with authority in the eyes of the parties to the dispute, who acquired it by virtue of their age, experience, profession or status in the community (Juškaitė – Vizbarienė, 2014). When defining the concept of mediation, Banys points out that mediation is mediated and impartial assistance to the disputing parties to reach a mutually beneficial solution to the dispute (Banys, 2014). According to Meškys and Gerdvila, mediation should not be understood only as a discussion of the problem, because in order for mediation to help realize its goal, that is to achieve a peaceful resolution of the dispute. It must take place in a negotiated form, therefore mediation itself can in a certain sense be defined as organized negotiations or structured a process led by a mediator who organizes alternatives to dispute resolution (Meškys, et. al., 2015). According to Vizbarienė (2014), mediation (also called mediation or conciliatory mediation) means negotiations, mediation. This word comes from the Latin language (lat. mediato – mediation, adjective intermediate between two points of view or parties, choosing the middle path, keeping neutral, impartial, verb mediate – to be in the middle). In the middle Ages, on the basis of these Latin words, the derived words mediation and mediacyoun appeared in French and English, which became the connecting link with modern terminology. In Lithuania, the international words mediation and mediator are used parallel to the Lithuanian words "mediation" and "mediator", "conciliation mediation" and "conciliation mediator community" (Juškaitė – Vizbarienė, 2014). Mediation Law of the Republic of Lithuania No. X-1702, defines the term mediation as a procedure, the application of which is necessary for the resolution of disputes, with the participation of a mediator, who helps the disputing parties to reach a joint decision in the course of the dispute. In Chapter I, Article 1, Part 3 of the Law, two types of mediation are distinguished, namely judicial and extrajudicial mediation, the essential difference of which is the case of resolving the dispute. Non-judicial mediation means a process that takes place when the dispute is not resolved in court, while judicial mediation means dispute resolution assistance in a case pending in court. When defining the meaning of judicial mediation, Molė and Sondaitė (2019) indicate not only the participation of the parties to

the dispute and the third party, but also the judicial context. According to the authors, judicial mediation takes place in a civil or administrative process, when participating mediators help to ensure the resolution of the dispute in the pending cases. According to Article 231 of the Civil Code of the Republic of Lithuania, judicial mediation of civil proceedings can be distinguished, which occurs when the court, after examining the dispute, offers the parties to the dispute to reach a mutually acceptable solution through a peace agreement or by resolving the dispute through judicial mediation. "At the request or consent of the parties, in accordance with this Code, the procedure established by the Mediation Law of the Republic of Lithuania and the Judicial Council, judicial mediation can be carried out" (Civil Code of the Republic of Lithuania, 2001).

According to Kaminskienė (2013), judicial mediation in a civil process is a more effective procedure, compared to conciliation, due to its flexibility and the mutual possibility of agreement between the parties to the dispute. In addition, in judicial mediation: 1. It is possible to better control the entire dispute resolution process and its results. 2. The dispute is resolved more efficiently in terms of time and money (Kaminskienė, 2013).

Meanwhile, Trumpulis analyzes the applicability of judicial mediation in the administrative process. According to the author, the practice experience of foreign countries demonstrates effective mediation in administrative disputes, so this practice can be integrated in Lithuania as well (Trumpulis, 2013). Such an assumption was raised eight years ago, which after the entry into force of the new LR Mediation Law No. X-1702, as well as amendments to the Law on Administrative Proceedings were realized by introducing the mediation institute in administrative proceeding proceedings. Law of the Republic of Lithuania on Administrative Cases Law No. VIII-1029, Article 79.1 establishes the transfer of a dispute to be resolved by judicial mediation in an administrative process, which is carried out at the request and consent of the parties to the dispute themselves or upon the initiation of the court hearing the administrative case (LR Administrative Cases Law No. VIII-1029, 1999). According to the National Judicial Administration, such application of judicial mediation in the administrative process is necessary as a condition for expanding the implementation of conciliation mediation in the country beyond the mediation of civil disputes only: 1. Development of mediation. 2. Regulation of workload of administrative courts. 3. Financial and time optimization. Šilvaitė indicated that the expansion of judicial mediation in the administrative process, even before the officially established judicial mediation in resolving administrative disputes. "Would contribute to increasing trust in administrative courts, reduce the confrontation between civil servants and the population, and encourage administrative institutions to get closer to people, thus also providing an impetus to reduce for the workload of courts handling administrative disputes, to save private individuals and state budget funds" (Šilvaitė, 2019).

The extent to which mediation will be successful in administrative and civil proceedings can be assessed after the first few years of its practice. However, as it was already mentioned before, the practice of mediation of administrative disputes in the case of good practices of foreign countries demonstrates benefits both in relation to administrative courts and the parties to the dispute. On the other hand, the term judicial mediation, as stated by Kaminskienė et al. regardless of whether it is only about civil or administrative disputes, it is still too little known as an alternative method of dispute resolution, although the procedure itself has been applicable in Lithuania for more than a decade (Kaminskienė, 2019). This means that the disputing parties, without using the mediation procedure, lose the opportunity to restore mutual relations, which is what mediation as a procedure aims for. While the judicial resolution of disputes is based exclusively on legal acts, substantive and procedural legal norms and the practice formed by the courts, which is contrary to mediation is not at all focused on restoring mutual relations or respecting mutual interests and needs.

Mediation process participants

According to the functionality of the parties in the mediation process, the mediator becomes the party that mediates and helps the disputing parties to find a relevant solution and make it themselves. More precisely, a mediator is not a judge who makes a decision for the parties to the dispute. Sondaitė and Čechavičienė emphasize that the mediator aims to systematically facilitate communication between the parties to the dispute, so that they can openly express to each other the needs arising from the mutual contradiction. According to the authors, the mediator does not have authoritative decision-making power in the mediation process, but he helps the participating parties to independently and voluntarily make a decision (Sondaitė and Čechavičienė, 2008). Howarth and Caruana

indicate similar mediator functions. According to the authors, the mediator initiates communication between the disputing parties and facilitates communication between the disputing parties through communication, also enables the disputing parties to examine the problem from various points of view, helps to define the main issues and interests and looks for mutually acceptable options. It also helps to create a reasonable and realistic agreement, and raises questions and challenges to countries with extreme and unrealistic goals. Controlling and managing the ability to communicate as one of the functions of mediators is significant from the perspective that conflicting parties communicate ineffectively in practice, which increases the risk of an even deeper dispute (Howarth, and Caruana, 2017; Goldberg, et. al., 2017). Kaminskienė (2019) notes, mediators help to create favorable conditions for the resolution of the dispute. "The mediator performs many other different functions during the process, such as: creating a framework for collaborative decision-making, encouraging constructive communication, providing appropriate assessments, empowering the parties, and ensuring minimal process and outcome justice" (Kaminskienė et. al. 2019). Due to such a functional, regulatory, advisory and controlling role of the mediator, he is subject to the requirements of impartiality and neutrality in order to achieve equally active mutual representation. The main requirements for a mediator mediating in the mediation process, as stated by Kelly and Kaminskienė, are neutrality and impartiality – these are the critical qualities of an independent mediator. The impartiality of the mediator, according to the authors, must be comprehensive for all components of the mediation process: to the parties to the dispute; for interests; for proposed solutions (Kaminskienė, et. al., 2019). According to Kelly and Kaminskienė (2016), the mediator must respect and encourage the parties' self-determination and preserve their objectivity and impartiality, while performing their role effectively. According to the authors, the needs and interests of the parties are the key thing that the mediator must be guided by, without using personal mutual interests in the mediation process. In the mediation process itself, communication pragmatics is used as the main tool to change the polarity and therefore the perception of the participant. So the mediator can integrate a functional reframing method to change the language used to describe the dispute, as well as the perception and current behavior, attitude or content of the dispute, through the realized roles of the mediator: the role of a mediator – adaptation of mutual interests. In this role as a mediator, he does not direct the parties to a specific agreement; the role of the mediator – evaluative mediation. In this role, the mediator provides likely solutions to the dispute as recommendations and the mediator's role – mediation is a right. In this role, it means that the mediator seeks to ensure that any agreement or interest is consistent with the regulatory legislation (Kelly, and Kaminskienė, 2016).

Mediation is a sequential process that is carried out in stages until its completion. In the initial stage of mediation, which is called the preliminary stage, a mediator is selected and the details of the mediation are evaluated. In the second stage, which is also called the preparatory stage, the mediation participants are identified, in the third stage, the dispute between the parties begins, in the negotiation stage, the disputing parties negotiate and finally, in the last stage, they decide either to continue the dispute or to reach an agreement (Gordon., 2007).

Comparison of judicial mediation regulation in Lithuania and European Union countries.

The level of development of the countries of the European Union, legal regulatory systems, change the conditions for the development of mediation, which are affected by the countries' own initiatives, as well as the content of legal acts. More precisely, the differences between the member states arise from the strength of the mediation culture in the countries and the level of self-regulation. The European Commission emphasizes that despite the diversity of mediation areas and methods in the European Union, there is increasing interest in these dispute resolution tools as an alternative to court decisions. As indicated by the European Commission, mediation is an encouraged and promoted method of dispute resolution in the European Union. The international mediation institution presents a comparison of the legal regulatory measures of the mediation procedure of the European Union states. In Austria, the main legislation governing mediation is the Mediationsgesetz, the content of which is limited to the main duties and tasks of a mediator, some limitations of the mediator's function and the general obligation to learn and improve. The basis of the law is the regulation of out-of-court mediation by establishing requirements for pure mediation. In Belgium, more attention is paid to the behavior of the mediators themselves in mediation processes; therefore, the country is guided not only

by the mediation law, but also by the code of conduct of the Federal Commission. In addition, the law, unlike in Austria, establishes judicial mediation as a regulatory basis, but mediation is not considered mandatory (European Commision for the Efficiency of Justice, 2019). In Bulgaria, as in Belgium and Austria, mediation is voluntary and optional – in the country, mediators provide public services, representing part of the central registry. Unlike in Belgium, there is no code of ethics for mediators, but ethical standards are included in the Mediation Act, which sets out the conditions and processes for becoming a mediator and the approval of mediation and private sector organizations. In Croatia, according to the Mediation Act No. 18/11 The Ministry of Justice maintains the Register of Mediators, and the Mediation Center at the Croatian Insurance Office compiles a list of mediators from professionals who are properly trained. Mediators can be identified from among forensic experts who have established themselves through their scientific or professional work or public activities. Meanwhile, the Probation and Mediation Service of the Czech Republic is a centralized institution responsible for mediation as a means of dealing with the consequences of a criminal act between the offender and the victim in criminal proceedings. The training of mediators operating in the criminal justice system is provided by the Probation and Mediation Service, while training in the field of non-criminal mediation is offered by various institutions and educational institutions. The essence of mediation in the European Union countries is similar, the regulation of the activities of mediators is different, in some countries the ethical codes of their activities are abandoned. In the Czech Republic, also unlike other countries where mediation is mostly practiced in administrative and civil proceedings, it can also be applied in criminal proceedings, but mediation is not mandatory in all cases.

Analyzing the topic of mediation in the context of the European Union, Steffek points out that mediation and its techniques have been used in Europe for many centuries, but nevertheless, the history of the institutionalization of mediation is shorter and reaches decades. This means that mediation as an alternative method of dispute resolution is still developing today, and legislators are currently in the process of reforming laws in search of norms that best establish mediation. According to the author, not all countries in Europe have the same mediation experience. For example, the United Kingdom and the Netherlands have had mediation for much longer than other European countries, while other Member States have a relatively short history of mediation legislation but have developed their own rules through extensive benchmarking and exchange with interested groups, such as Austria and Germany. A particularly strong reaction of the parties arose after mediation in Europe began to be regulated according to the mediation directive, which determined the reforms of the laws of the countries and the development of national measures to regulate mediation. Nevertheless, if one were to compare the regulation of mediation in Europe and beyond, one could notice significant differences that arise due to:

- What is new in the history of mediation regulation.
- Acceptability and attitude.
- Mediation flexibility (Steffek, B. Mediation in the European Union, 2012).

Kelly and Kaminskienė emphasize that different regulation of mediation arises primarily depending on whether the need to apply state-level regulatory measures is determined. In some European countries, such as Austria, there is a high density of mediation regulation, where the priority is the overall promotion of mediation within the country and the formation of clear boundaries and separation between mediation and legal services. In other countries, such as the Netherlands or the United Kingdom, mediation is much more flexible and dynamic, treating mediation itself as a still developing discipline. This means that most mediation issues are assigned to self-regulatory forces in the absence of legal rules. Another group of parties are those who face opposition to the applicability of mediation. Such antagonism arises from the voluntary nature of mediation and excessive abuse of this possibility of mediation (Kelly, E., Kaminskienė, N. Importance of emotional…, 2016).

When comparing cases of mediation between countries, as emphasized by Steffek, it can be observed that the recognition and situation of mediation in the country is not necessarily related to its regulation. Because as the experiences of the countries show, mediation can achieve favorable results in countries that do not apply strict regulation such as the Netherlands or the United Kingdom. both for example in America, where mediation is based on strict regulatory norms (Steffek, 2012). The United States of America is considered the most important country for the development of mediation. It was in the US legal system that mediation was clearly recognized as an excellent alternative to expensive,

formal and lengthy litigation. In Florida, for example, many civil disputes are mandated to go to mediation, and the vast majority of all disputes are effectively resolved through mediation and do not end up in court. Mediation is also widely used in Australia, Canada, and some European countries (for example, Bulgaria). However, a large part of the states mediates – forms, discovers, publishes information to the public (Juškaitė – Vizbarienė, 2014).

Gotshal points out that at the beginning of this millennium, Europe recognized the need to address some of the problems arising from the resolution of disputes in courts, such as lengthy legal proceedings or litigation costs (Gotshal, 2022). For these reasons, a number of recommendations were issued to encourage states to initiate the mediation process, even before the approval of Directive 2008/52. The strong requirements of the European Union for mediation, which have formed today, influence the member states, which, in order to implement such requirements of the legal regulation of mediation, must regulate mediation in national norms – this is exactly what prompted the European countries to adopt mediation laws. On the other hand, there is no need to misunderstand – the mediation law does not become a guarantor for expanding the scope of mediation.

Application of judicial mediation in EU countries according to cases

The adoption of the EU Directive 2008/52/EB was the first step that directed the independent practice of the countries towards the development of mediation within the countries, combining mediation with the judicial process, but not all requirements and goals of the directive have been fully implemented. For example, one of them is ensuring a balanced relationship between parties' mediation and the judicial process, indicating that the practice of the parties, with the exception of the case of Italy, has not worked, because the volume of disputes resolved by judicial mediation remains extremely low "in almost all member states, mediation is used less than 1 % court cases: 1 in mediation, 100 cases go to court. The only exception is the result of the mandatory initial mediation session model currently used in Italy in a small proportion of civil cases, which is emerging as best practice" (Rafaelli, 2016). However, analyzing the practice of European Union countries, it becomes clear that the countries supporting EU Directive 2008/52/EC have integrated the mediation directive into national law, adapting it to different methods and different types of disputes (see table 1.1).

Table 1.1

Application of mediation in EU countries in civil proceedings

Mediation model	Country
Voluntary	Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, United Kingdom.
Voluntary with incentives and sanctions	Croatia, Estonia, Greece, Hungary, Ireland, Italy (92 % of civil and commercial dispute cases), Malta, Poland, Slovakia, Slovenia.
An initial mediation session is required	Czech Republic, Italy (8 % of civil and commercial disputes).
Mandatory	None.

Source: Rafaelli, 2016

When settling family cases, in Lithuania, as in Croatia and Hungary, mandatory mediation is applied. In Lithuania, until 2020, a mandatory initial mediation session was applied to family cases. However, in the context of all European Union countries, voluntary mediation is used mostly in family law. Mandatory mediation in family law, as indicated in Kaunas district court civil case ruling No. E2-4075-584/2020, applicable to resolve family disputes: "Part 1 of Article 20 of the Mediation Law of the Republic of Lithuania, which entered into force in 2020 January 1 (Law No. XIII-534 of June 29, 2017), stipulates that Mandatory Mediation is applied in the resolution of the following disputes: 1) family disputes, which are dealt with in accordance with the procedure established by the Code of Civil Procedure of the Republic of Lithuania; 2) in other cases established by law. In the Civil Code of the Republic of Lithuania, family disputes are codified in the third book, among which is divorce due to marital fault". (Kaunas district court civil case No. E2-4075-584/2020), (Kaunas District Court's ruling in a civil case, 2020). participation, in this way violating the human rights of the injured party, therefore, possibly, when deciding on the perspective of applying mandatory mediation in family disputes, exceptional cases and circumstances should be provided for, when mediation would not be compulsorily mandatory in family disputes.

Conclusions

1. Today, judicial mediation in the context of Lithuania cannot be called a complete innovation of social society – on the contrary, it is becoming an increasingly practiced alternative method

of dispute resolution, but its fulfillment in the sense of regulation, until now, required deeper changes, expansion of functions and the aspect of setting conditions. Mediation in the European Union is becoming more and more firmly established, it is not only recommended, but also the preferred practice of states. For this reason, national sources of law are combined with European Union directives, rules, communiques and resolutions, enabling them to be transposed into the national law of the countries, fulfilling one of the key goals – that is to balance the relationship between judicial mediation and court proceedings.

2. In Europe, not all countries have the same experience of judicial mediation. For example, the United Kingdom and the Netherlands have been using mediation for much longer than other European countries. While other member states have a relatively short history of mediation legislation, but if one were to compare the regulation of mediation in Europe and beyond, one would notice significant differences that arise because of the novelty of the history of mediation regulation, the acceptability and flexibility of approaches and mediation. Different regulation of mediation arises depending, first of all, on whether the need to apply state-level regulatory measures is determined. In some European countries, for example, Austria, there is a high density of regulation of judicial mediation, where the priority is the overall promotion of mediation within the country and the formation of clear boundaries and separation between mediation and legal services. The recognition of mediation and the situation in the country is not necessarily related to its regulation, because as the experience of the countries shows, mediation can achieve favorable results both in countries that do not apply strict regulation such as the Netherlands or the United Kingdom, and for example in America, where mediation is based on strict regulatory norms.

3. In Europe, dispute resolution is most focused on judicial dispute resolution, but the challenge is to create dispute resolution institutions that would help coordinate arising disputes according to their allocation to targeted mechanisms that could best help in the case of a specific dispute resolution, such as court, mediation, arbitration, etc. Judicial mediation in the European Union still needs more incentives, and the relationship between mediation and court proceedings is not balanced. Although there is a lot of talk about judicial mediation, it is still directly applied to only 1 percent of all civil and commercial cases in the European Union. Such indicators do not meet the goals of development and promotion of sustainable mediation, therefore, the requirements to forcibly apply mediation in some cases are being considered, although on the other hand, this would contradict the principle of voluntary mediation.

4. When settling civil disputes, mediation is not mandatory in any of the countries of the European Union. In Lithuania, as in all the Baltic countries, a voluntary judicial mediation model is applied in civil proceedings, but in the context of the countries of the European Union, the Czech Republic and Italy stand out the most, where the mandatory initial mediation session is applied, helping to resolve even up to 8% of all civil disputes. Mandatory mediation in resolving family disputes in Croatia, Hungary and Lithuania, as the new changes in the resolution of family disputes, which came into force in 2020, receives a lot of criticism. As according to the new procedure, mediation in family disputes is only applied in exceptional cases, which, due to the unreasonableness of its application in the wording of the law, requires exceptional cases. When resolving labor disputes, voluntary mediation is used in the majority of EU countries, and voluntary mediation with incentives is used to resolve labor disputes only in Greece and Lithuania. Meanwhile, not a single EU country practices the necessary initial mediation session.

5. In the practice of Lithuanian courts, the conclusion of a settlement agreement makes up more than half of all judicial mediation processes, which means that more and more judicial mediation helps to reach a peaceful outcome of the dispute. In Lithuania, the number of judicial mediation processes is increasing, as well as during the judicial mediation of dispute resolutions ending with a peace agreement. The majority of all terminated judicial mediation processes are precisely due to the withdrawal of the parties to the dispute, or to be more precise, the inability to reach a joint solution when the dispute is continued in the court process. According to the practice of Lithuanian courts, the withdrawal of the parties to the dispute and the termination of the judicial mediation by the mediator's decision are the main conditions for termination of the mediation process.

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ЗАСТОСУВАННЯ СУДОВОЇ МЕДІАЦІЇ В ЦИВІЛЬНОМУ ПРАВІ: ТЕОРІЯ І ПРАКТИКА

Анотація

Актуальність даного дослідження. Судова медіація – це метод організованої процедури вирішення спорів у цивільних та адміністративних справах для досягнення мирного рішення за згодою обох сторін спору. Легалізація судової медіації надає сторонам спору додаткові можливості не тільки мирно врегулювати спір, але й має більше потенційних переваг для обох сторін спору, які шукають вигідне рішення, що може бути підтверджено мировою угодою. Завдяки цим перевагам використання цього альтернативного методу вирішення суперечок зростає як у Литві, так і в усьому світі. **Основні проблеми.** 1. Чи відповідає правове регулювання судової медіації цілям інституту медіації та учасників процесу? 2. Які умови застосування судової медіації в судовій практиці? 3. Як у судовій практиці трактується передача судового спору до судової медіації, примирення сторін спору інститутом медіації та затвердження мирової угоди? 4. Який зв'язок між судовою медіацією та судовою медіацією, що застосовується в країнах Європейського Союзу? 5. Які особливості правового регулювання судової медіації іноземних держав можуть бути інтегровані в процедури судової медіації в Литві? **Завдання:** 1. Проаналізувати поняття інституту судової медіації. 2. Обговорити умови застосування судової медіації та її порядок. 3. Порівняти регулювання судової медіації в країнах Європейського Союзу. 4. Проаналізувати застосування судової медіації в судовій практиці Литви. **Мета цієї роботи:** провести порівняльний аналіз регулювання судової медіації в Литві та зарубіжних країнах. З метою визначення можливих змін/покращень у правовому регулюванні впровадження Литовського інституту судової медіації на основі прикладів належної практики зарубіжних країн та практики вітчизняних судів. **Використана методологія:** для аналізу правових актів Литовської Республіки використовувався метод аналізу документів; використано метод системного аналізу для поєднання різних думок авторів, нормативно-правових актів, судової практики; порівняльний метод використовувався для порівняння регулювання судової медіації в Литві та країнах Європейського Союзу.

Ключові слова: медіація, судова медіація, модель судової медіації, практика судової медіації.

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