Azerbaijan Pharmaceutical and Pharmacotherapy Journal
Received 23 February 2023 Accept 20 March 2024 Publish 21 April 2024

DOI https://doi.org/10.61336/appj/23-2-10

Mediation as an Effective Mechanism for Resolving Disputes Caused by Medical Errors

Teremetskyi V.I.[1,*], Tokarieva K.S.[2], Batryn O.V.[3], Myrza S.S.[4], Mosondz S.O.[5] and Matviichuk A.V.[6]

[1]Doctor in Law, Professor, leading research scientist, Department of International Private Law, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship, National Academy of Legal Sciences of Ukraine, 23-a Pavlo Zahrebelnyi st., Kyiv, 01042, Ukraine.
[2]Doctor in Law, Department of Constitutional and Administrative Law, National Aviation University, 1, Liubomyra Huzara ave., Kyiv, 03058, Ukraine.
[3]PhD in Public Administration, Dozent at the Department of Law, Private Higher Educational Institution «University of Modern Knowledge», Velika Vasilkivska str., 57/3, Kyiv, 03150, Ukraine.
[4]PhD in Law, Associate professor, associate Professor of the Department of Civil Law Disciplines, Odessa State University of Internal Affairs, 1, Uspenska st., Odesa, 65000, Ukraine.
[5]Doctor in Law, Professor, Vice-Rector for Education and Research Private Higher Educational Institution «University of Modern Knowledge», 57/3 Velyka Vassylkivska st., Kyiv, 03150, Ukraine.
[6]Doctor in Law, Associate Professor of the Department of Justice Faculty of Law, Institute of management, technology and law, State University of Infrastructure and Technology, 9 Kyrilivska st., Kyiv, 04071, Ukraine.

Corresponding author: n (e-mail: vladvokat333@ukr.net).

Abstract: **Background:** Medical disputes arising from medical errors or medical negligence are complex and sensitive situations in the field of healthcare. In this regard, there is a need for effective mechanisms for the settlement of such conflicts, which would not only ensure justice but also contribute to the quick and effective resolution of disputes. **Aim & Objectives:** The purpose of this study is to analyze the peculiarities of using mediation in the resolution of medical disputes, as well as to determine the effectiveness of this approach in the framework of medical errors. The main objectives include the analysis of statistics of medical errors, the study of the civil and criminal nature of such errors, the determination of the advantages and disadvantages of the mediation process in this category of disputes, as well as the assessment of the effectiveness of restorative justice and mediation in the resolution of medical disputes. **Methods:** To achieve the set goals, such research methods as analysis of the regulatory and legal framework, comparative legal analysis, system-structural method, logical methods (analysis, synthesis, generalization), dialectical method, and dogmatic method were used. **Results:** The analysis results show that mediation is an effective tool in settling medical disputes. In particular, it contributes to reducing social tension and forming a non-conflict environment even under challenging conditions, such as the legal regime of martial law. **Conclusion:** The conclusion noted that mediation is essential in conflict situations caused by medical (medical) errors. It turns out to be an effective tool in resolving medical disputes, contributing not only to the fair resolution of conflicts but also to creating a favorable environment for all parties.

Key Words: mediation, medical disputes, medical care, medicine, medical malpractice, professional negligence, restorative justice, reconciliation, mediator

I. INTRODUCTION

Due to its extreme complexity and responsibility, medicine is considered to be particularly sensitive to the risk of errors and conflict situations. A medical error, regardless of its causes and consequences, can lead to serious disputes between doctors and patients, often ending in lengthy and exhausting legal proceedings. In such situations, there is an urgent need for conflict resolution mechanisms, which would not only ensure justice but also contribute to faster and more effective settlement of disputes directly between the parties.

In these cases, the need to use alternative conflict resolution mechanisms, which would not only ensure justice but also contribute to quick and effective dispute settlement without the involvement of judicial authorities, becomes especially important. Mediation becomes a tool for restoring physical health and damaged relationships.

Mediation is a key tool for protecting patients' rights, which differs from other conflict resolution methods. Such a dispute resolution mechanism aims to identify the real needs and interests of all parties involved in the conflict. The researcher emphasizes that mediation as a way of reaching a compromise and joint problem-solving allows participants to actively identify their needs and desires [1]. This approach emphasizes the importance of mutual understanding and

respect between all parties to the conflict, which contributes to constructing constructive and lasting solutions.

A number of international documents and recommendations confirm the importance of mediation in the world. For example, Recommendation N R (99) 19 of the Committee of Ministers of the Council of Europe to member states interested in organizing mediation in criminal cases [2], as well as Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to member states regarding mediation in civil cases [3], which consider mediation as an essential tool for conflict resolution. In addition, the European Parliament and the Council adopted Directive 2008/52/EC [4] concerning certain aspects of mediation in civil and commercial legal relations. These international documents establish recommendations for states to use mediation to achieve fair and effective conflict resolution.

II. MATERIALS AND METHODS

A. OVERVIEW OF THE LEGAL FRAMEWORK

The review of the legal framework made it possible to determine that the Constitution of Ukraine guarantees the right of citizens to health care and medical assistance. The Criminal Code of Ukraine establishes criminal offenses for which criminal liability is provided. The Civil Code of Ukraine regulates relations related to harm to health and compensates for moral and material damage caused by poor-quality medical care. The Law of Ukraine, «On Mediation," establishes the procedure and basic principles of mediation as an alternative way of resolving disputes in the field of medicine.

B. ANALYSIS OF INTERNATIONAL RECOMMENDATIONS

The EU Directive and Recommendations analysis was carried out to determine the main principles of mediation established at the international level, determine the areas of application of mediation, and study the experience of different countries in implementing mediation.

C. COMPARATIVE LEGAL METHOD

A comparative legal analysis of the legislation of Ukraine and other countries of the world regarding mediation was carried out to determine the common and distinctive features of the legal regulation of such a mechanism for resolving disputes caused by medical errors and medical negligence. This analysis helped identify the most influential models of legal regulation of mediation that can be applied within the medical field. Based on the results, recommendations were developed for improving the legislation of Ukraine on mediation, in particular, taking into account innovative approaches and best practices of other countries, which can help improve the process of resolving disputes in the medical field and ensure more effective protection of patients' rights.

A system-structural method is used to analyze the mediation system as a whole, study its structure, and examine the functioning of the mediation process.

A system of such logical methods as analysis, synthesis, and generalization was used for a comprehensive study of mediation as an effective mechanism for resolving disputes caused by medical (medical) errors. The analysis made it possible to study the theoretical foundations of mediation, its principles, stages, advantages, and disadvantages, and investigate the practice of using mediation in Ukraine and other countries. The synthesis of the acquired knowledge helped to form a holistic view of mediation as a dispute resolution mechanism. Summarizing the research results made it possible to conclude mediation, its effectiveness, and prospects for development.

The dialectical method complements the system of logical methods and allows for a more thorough and systematic study of mediation.

The dogmatic method was used to analyze legislation and the practice of mediation. He helped systematize laws, study court decisions and statistics, and, therefore, develop recommendations for improving legal regulation and mediation practice.

The analysis of judicial practice was partially applied in the study of mediation as a mechanism for resolving disputes caused by a medical (medical) error. The method was used to carefully study and understand the specifics of the discussed category of cases.

III. RESULTS

In many countries, including Ukraine, there has yet to be official data on medical errors, which makes it difficult to assess the scale of this problem, develop and implement effective measures to prevent it, and research the causes and consequences of such errors.

The Criminal Code of Ukraine carefully regulates the responsibility of medical workers, particularly applying Article 140 as the main tool in 90% of proceedings with a violation of criminal legislation. In January-September 2019, 524 offenses were registered under this article, but only 29 people were convicted. An analysis of the conducted court proceedings shows that the most common charges were against obstetrician-gynecologists (about 30%), surgeons (about 23%), therapists (12%) and anesthesiologists (11%) [5].

In 2017, scientists from the Mayo Clinic conducted a study that found that 21% of patients seeking a second opinion received a completely different diagnosis. At the same time, in 66% of cases, the diagnosis received from the first doctor turned out to be only partially correct and was clarified by a new doctor [6].

In 2016, medical errors became the third leading cause of death in the United States, ahead of diseases of the respiratory system, but second only to cardiovascular diseases and cancer. A research group from the J. Hopkins University School of Medicine found that about 250,000 Americans, or 9.5% of all deaths, die annually in the United States from medical errors. In European countries, every tenth patient faces an incorrect diagnosis or treatment. In Canada, approximately

30% of patients seeking help suffer from medical errors. In Great Britain, more than 30,000 patients die each year due to the negligence of medical staff. In Spain, the average proportion of the risk of error for medical professionals is about 37%, for surgeons - 50%, and for obstetrician-gynecologists - 67%. In Japan, the death rate from medical errors is 7 times higher than from traffic accidents and amounts to more than 40,000 people annually [7].

The current state of affairs in the medical field of Ukraine is reflected in the statistics of court decisions for the period from January 1, 2022, to March 14, 2024.

During this period, 107 court decisions were issued, of which only 11 were sentences. Court decisions were issued under Article 140 of the Criminal Procedure Code, which refers to the improper performance of professional duties by medical workers [8].

Types of errors are incorrect diagnosis (3), improper performance of professional duties (4), inactivity (1), unqualified childbirth (1), and defects in the provision of medical care (1). Specializations of doctors: obstetrician-gynecologist (4); anesthesiologist (2); pediatrician (2); head of the gynecological department (1); surgeon (1); leading researcher (ENT) (1). The victims were 6 adults and 5 children.

Summarizing such data, it is worth noting that out of 11 convictions, the largest share (about 55

Healthcare mediation has shown great success in China. In just three years, from 2013 to 2015, almost 5,000 mediation procedures in doctor-patient disputes were conducted in one province alone. Of these, 41% of cases ended in successful settlement, while only 11% of disputes were referred to court. In other situations, the parties refused their claims [9].

IV. DISCUSSION

According to Art. 7 of the Fundamentals of Ukrainian legislation on health care, the state, in accordance with the Constitution of Ukraine, guarantees all citizens the realization of their rights in the field of health care [10]. The Constitution of Ukraine contains a provision according to which everyone has the right to life and health protection (Article 27), as well as to an environment safe for life and health (Article 50) [11]. However, in practice, the implementation of these rights is often violated, which leads to disputes related to medical (medical) errors. Regardless of the causes and consequences, any medical error can become a source of deep conflict between the patient and the medical professional or other persons, leading to protracted and exhausting legal proceedings. Such disputes, as a rule, have a complex nature because they require knowledge in the fields of medicine, law, and psychology.

Art. 80 Basics of Ukraine's legislation on health protection clearly defines that a person guilty of violating the legislation on health protection bears civil, administrative, or criminal liability in accordance with the legislation [10]. Therefore, the legislator clearly defines responsibility and its types in cases of medical errors. Thus, the occurrence of situations related to medical errors becomes the subject of not only medical but also legal research that requires analysis.

It is worth noting that there is no specific definition and comprehensive content of the concept of "medical error" in the normative legal acts of Ukraine, which leads to the absence of a clear demarcation of circumstances that can be the basis for the dismissal or prosecution of medical institution or medical personnel. The absence of such a clear definition in legal documents complicates the process of resolving disputes and conflicts related to such situations, as it leaves room for interpretation and subjective assessments. As a result, the need for conflict resolution mechanisms such as mediation becomes even more urgent to ensure fairness and effective resolution of disputes in the medical field.

K. Demydchuk and V. Olhovsky maintain that in the scientific literature, medical error is often considered a case of intentional deception by a doctor within the scope of his professional activity, excluding negligence or dishonesty. It is important to emphasize that replacing the term "medical error" with the term "medical crime" is unacceptable, as it can lead to a destructive conflict of interests between patients and medical personnel [12].

In his research, S. Mykhaylov defines a medical error as the actions or inaction of a medical worker, that do not violate the rules established by laws and medical standards, and do not indicate dishonesty or negligence in the performance of medical services, but at the same time lead to harm or death of the patient as a result of objective reasons beyond the control of the provider of medical services (such as an atypical course of the disease, unexpected allergic reaction, unknown pathology, abnormal anatomical features of the patient, deficiencies in diagnosis, etc.) [13].

In our opinion, the complexity of this definition is due to a number of factors. First, subjectivity: assessment of the quality of medical care can differ significantly depending on the experience and qualifications of experts, which complicates the formulation of objective criteria. Secondly, medicine is a dynamic science, where new methods of treatment, drugs and technologies are constantly appearing, which makes it difficult to clearly define the standards of medical care and develop universal criteria. Thirdly, the influence of the human factor is difficult to control: even the most experienced specialists can make mistakes due to various circumstances, which emphasizes the need for constant analysis and improvement of medical safety systems.

At the same time, it is worth distinguishing medical error and medical error as separate concepts, although medical error can be considered as its type. Thus, not every medical error is a medical error.

Researchers define a medical error as an action or inaction by medical staff that leads to incorrect provision or failure to provide medical care, diagnosis of diseases, or treatment of patients, resulting in deterioration of the patient's condition or damage to their health or life. Such errors are characterized as bona fide errors since they occur in the absence of signs of negligence, malicious or careless misconduct, or criminal

ignorance [14].

Given this definition, the importance of differentiating the concepts of "medical error" and "medical error" is determined by a number of factors that influence the understanding and management of risks in the field of medical practice. First, liability: not only doctors but also other medical workers, as well as medical institutions that provide medical services, can be held responsible for a medical error. In case of a medical error, the responsibility rests exclusively with the doctor, which allows to clearly identify the person who is responsible for the event. Second, the possibility of damages: a patient can claim damages caused by a medical error only if the medical professional can be proven to be at fault, which can be a difficult task in the case of an accidental error. Third, preventive measures: comprehensive measures are needed to prevent medical errors, including improving the organization of medical care, implementing quality and safety control systems, as well as continuous training of medical personnel.

The legal nature of medical (medical) error cases is twofold: civil and criminal. It should be noted that medical professionals are not responsible for the error itself but for the damage caused to the patient as a result of this error.

From the point of view of civil law, it is appropriate to consider a medical (medical) error as a legal fact with which the law links the emergence of civil rights and obligations. This type of liability is determined by the violation of the terms of the contract for the payment of medical services and the standards of the provision of medical care. The patient, as a legitimate participant in civil-law relations, has the right to apply to the court for reimbursement of paid funds for services not provided or improperly provided. In addition, he has the right to compensation for material and moral damage that he suffered as a result of such a violation. This approach to civil liability in the medical field is based on the principles of consumer rights protection and ensuring the quality of medical services. Considering that the restoration of health to the previous level is impossible, compensation compensates for the damages and costs incurred by the patient.

According to Art. 1195 of the Civil Code of Ukraine, compensation may include compensation for lost earnings due to loss or reduction of working capacity, as well as additional expenses, such as enhanced nutrition, sanatorium-resort treatment, purchase of drugs, prosthetics, and third-party care. Art. 1200 of the Civil Code of Ukraine also provides for compensation of damages in the event of the patient's death to disabled persons who were dependent on him, had the right to receive maintenance on the day of his death, or were children born after his death. In addition, according to Art. 23 of the Civil Code of Ukraine provides for compensation for moral damage, which can be expressed in physical pain and mental suffering caused by incorrect treatment, failure to provide treatment, or as a result of worries about the patient's health. At the same time, according to Article 1166 of the Civil Code, the person who caused damage is released from compensation if they prove that the damage was not caused by their fault [15].

According to the conclusions of L. Svystun, civil liability in the framework of the provision of medical services is based on general conditions of liability. In accordance with these conditions, the main grounds for the emergence of civil liability are, first, violation of someone else's subjective right, which involves the fact of non-compliance with the terms of the medical service contract, the requirements of the law, and other legal acts regulating medical activity. Such requirements are generally accepted and recognized in medical practice. Second, is the presence of damage, which can have both a moral and property nature, depending on the consequences of the intervention on the patient's health. The specified violations, as a rule, concern both spheres of the victim, causing both property and non-property (moral) damage. Third, establishing a cause-and-effect relationship between the illegal violation of the patient's subjective right and the damage caused to him. Thus, civil liability in cases of medical errors is based on these general principles that determine the duties and responsibilities of medical professionals to patients [16].

From the point of view of criminal law, a medical error is a defect in the work of a medical professional that causes serious consequences for the patient. Such consequences may include the patient's death, loss of an organ, or significant deterioration of health. From the subjective side, a medical (medical) error includes the presence of guilt in the form of intent or negligence. While carrying out their duties in the field of medical care, doctors can make two types of medical errors, which differ in consequences and degree of responsibility. The first, relevant mistakes, lead to criminal liability due to negligence and are considered as the commission of a "professional" crime. The second, irrelevant mistakes do not give rise to criminal liability, since they arise from unintentional harm and do not have elements of intentional violation of law and order [17].

In the criminal law dimension, the guilt of a medical worker for improper performance of his professional duties can be established depending on several conditions. First, he can be prosecuted if he violates the established requirements regarding the provision of medical assistance. Legislation regulating crimes in the medical field is often of a general nature, so in each specific case, it is necessary to determine exactly which duties should have been performed by the medical professional and which of them were violated. Secondly, he can be held liable if he anticipated possible harmful consequences of his actions but hoped for their absence or did not foresee them at all, although, with his qualifications, he should have realized these consequences. Thirdly, if the actions of the medical worker became a necessary cause of death or serious harm to the patient's health, or led to other serious consequences [18].

It is important to note that in the field of medical practice there are both objective and subjective errors that medical professionals may make in their work. Objective errors arise from a number of objective factors and can be a consequence of the imperfection of medical science at a certain stage of

its development, even with compliance with all legal requirements and rules. Also, objective errors may occur due to unfavorable conditions of medical intervention, difficulties in diagnosis, or unforeseen anomalies in the patient's body. On the other hand, subjective errors usually reflect deficiencies in the performance of medical standards due to negligence or carelessness on the part of medical professionals. For example, insufficient examination, incorrect assessment of clinical data, unjustified deviation from treatment standards, or violation of ethical norms in interaction with the patient [19].

In our opinion, the distinction between objective and subjective errors, as well as the distinction between the criminal and civil nature of medical errors, is important from several key perspectives in the context of mediation. Such an understanding affects the purpose of mediation, the process, and the outcome and can also determine the subsequent actions of the victims.

The classification of medical errors presented by K. Skrynnikova defines various types of failures in medical practice [20]. Such errors can occur at every stage of healthcare delivery and involve various elements of the treatment process. The specified types of errors include:

1) Diagnostic errors are characterized by incorrect recognition of diseases or their complications. The specified errors may result from insufficient anamnesis collection or its inept use, as well as incomplete examination of the patient.
2) Medical and tactical errors arise due to incorrect selection of research methods and incorrect assessment of their results. Such errors can lead to incorrect treatment that does not correspond to the patient's true condition.
3) Technical errors are associated with incorrect diagnostic and treatment procedures and incorrect selection of therapy methods. They may also include the wrong prescription of drugs or errors in drug dosage.
4) Organizational errors arise due to deficiencies in the organization of medical care. This may be the result of an improperly organized treatment process or the lack of necessary conditions for medical personnel's work.
5) Deontological errors manifest in violation of ethical and moral principles in interactions with patients and colleagues. Such errors may include neglect of ethical principles or violation of prescriptions provided by ethical codes.
6) Mistakes in filling out medical documentation can lead to incorrect maintenance and complicate further medical practice. This type of error can hinder both high-quality medical diagnosis and further treatment [20].

Statistics of court practice on medical disputes are formed under the influence of many aspects, especially taking into account the war between Russia and Ukraine. The decrease in the number of cases (107 court decisions, 11 verdicts) can be partially explained by the security situation, which caused population migration and serious psychological stress. It should also be noted that the destruction of infrastructure, including medical infrastructure, leads to the loss of documentation, which complicates the process of proving the guilt of medical personnel. As a result, the victims, aware of this fact, may not go to court. Statistics show that the number of court cases has decreased, and sentencing is becoming more difficult.

During the research, an analysis of civil court decisions for the period from 01.01.2022 to 03.14.2024 was also carried out, aimed at studying the problems of medical errors in Ukrainian medical institutions. Searching for the keyword "hospital" in the Unified State Register of Court Decisions found 72 civil court decisions [7].

Decisions were carefully analyzed for characteristics such as litigants (patient, hospital, insurance company, etc.), merits of the claim (e.g., damages, nonpecuniary damage), and court decisions (claim granted, claim dismissed). The analysis of civil decisions shows the prevalence of the problem of medical errors in Ukraine's medical field.

Despite the fact that courts are increasingly accepting claims for damages caused by medical errors, the problem remains relevant. In a significant number of cases, claims are rejected, which indicates the need for further improvement of the system of control and supervision in the medical field in order to prevent similar incidents in the future.

Summarizing the above, disputes that arise in connection with medical errors can have a different legal nature, depending on several key factors.

First, the severity of the consequences determines the emphasis in the case: in cases of minor bodily injuries, the emphasis is usually placed on civil liability types. In case of serious bodily injury or death, criminal liability is mainly emphasized (including filing a civil lawsuit for compensation for moral and/or material damage).

Secondly, the presence of intent determines the nature of legal responsibility: if a medical error is committed intentionally or due to negligence, attention is directed to the criminal-legal nature. In cases of negligence, the emphasis is mainly on civil liability. Third, the appeal's purpose determines the legal process's focus: If the main purpose is to recover damages, the focus is on the civil nature of the dispute. In cases where the main goal is to punish the guilty, the criminal law approach is mainly used.

In situations involving the loss of a loved one or a child due to medical errors, mediation is often not considered an effective method of dispute resolution. Usually, in such cases, the plaintiff seeks to obtain a court judgment so that the defendant is punished for his actions. Psychological stress and the plaintiff's desire to see punishment can make it difficult to reach an agreement through mediation. A mediator, while trying to facilitate a peaceful resolution of a conflict, does not have the authority to make a decision like a judge. In cases where one of the parties seeks judgment and punishment for the defendant, the possibility of reaching an agreement through mediation becomes unlikely.

However, in other situations where a medical (medical) error was made, an agreement can be reached through mediation. In these cases, restorative justice is very effective. Restorative justice is a way of responding to illegal behavior and committing crimes, which takes into account the balance of interests of the victim, the offender, and the community [21]. Within the framework of restorative justice, mediation between the victim and the offender is a program in which they actively participate together in determining the consequences of the offense and ways to correct them with the help of a specially trained and impartial party – a mediator.

Mediation can be used at any stage of criminal proceedings. As a result of mediation, the parties may sign a mediation agreement. As a result of signing the mediation agreement, the injured party has the opportunity to receive real compensation for moral and material damages and to control the process of implementation of the agreement. Under the condition of sincere remorse of the accused and voluntary compensation for the damage caused or elimination of the damage caused, the mediation agreement can be recognized by the court as a mitigating circumstance, be taken into account when determining the degree of punishment or serve as a basis for exemption from criminal liability.

Along with considering the outcomes of mediation and its potential consequences, it is also important to consider the requirements for mediators. Foreign experience shows that the requirements for mediators in different countries may be different and set by different organizations or legislative acts. In the case law countries, which include the USA, Australia, Canada, New Zealand, Singapore and India, the mediation legislation leaves the requirements for mediators at the level of general principles. Such requirements are usually established by government bodies or professional associations through accreditation systems. In continental law countries, which include countries such as Germany, Austria and Italy, the main requirements for mediators are fixed in special mediation legislation. Usually, such requirements boil down to three main aspects: age, education, and professional training in the field of mediation. Additional requirements may be established by government bodies or professional organizations through accreditation systems. For example, in Austria, there are two types of mediators: registered and unregistered. Registered mediators are subject to requirements regarding age, integrity, absence of a criminal record, and professional development. Regarding education, it is necessary to have a certain number of hours of theoretical and practical training in mediation. In Germany, a higher professional education, a certain number of hours of mediation training and professional development are required over a certain period [22].

Ukraine is no exception in this context. Requirements for mediators in our country include higher education and basic training in the field of mediation. In addition, the mediator's basic training should include a certain number of hours of training, including practical experience [23].

However, in cases involving medical errors, it is important to establish special requirements for the mediator. Basic criteria may include a thorough understanding of medical practice, skills in working with emotionally traumatized individuals, the ability to maintain neutrality and objectivity, and experience in dealing with conflicts in the healthcare field. Establishing specific requirements for mediators in such cases can contribute to more successful conflict resolution and facilitate the mediation process.

In many foreign countries, in particular in England, restorative justice is an effective tool for solving criminal cases at various stages of the judicial process. The use of restorative justice programs, such as mediation or family conferences, is possible even after the initiation of a criminal case, but before it goes to trial. The court, in turn, can order these programs to be held after the person has been found guilty, but before the punishment is imposed. An important feature of English practice is the possibility of postponing the sentencing for a certain period, up to six months, in order to check whether the damage caused to the person found guilty has been compensated. This approach helps not only to compensate victims, but also to avoid deprivation of liberty as the most severe form of punishment [24].

In countries such as Germany and Finland, the mediation procedure has a clear legal regulation, which is defined by separate acts in the field of juvenile justice. In these countries, mediation can be initiated by a judge or prosecutor and is considered an alternative to traditional criminal justice. Norms on mediation between the victim and the offender are enshrined in the criminal procedural code of countries such as Belgium, Finland, and Germany [25].

In light of the spread of mediation as a means of restorative justice, Italy's experience in the discussed area deserves special attention. There, the legislator established specific categories of cases for which out-of-court mediation is mandatory. These categories include disputes related to medical negligence and medical errors. This enshrining in the legislation means that before going to court, the parties to a medical dispute must go through a mandatory mediation process in an attempt to reach a peaceful resolution of the conflict [26].

In the American healthcare system, several medical facilities use mediation as an effective tool to avoid potential lawsuits. For example, the University of Michigan implemented mediation procedures in 2002 and incorporated them into its health care agreements. Under these agreements, patients agree to try mediation before going to court with any claims. As a result, the university was able to significantly reduce the number of claims by 60% and reduce the time to process claims from twenty months to nine in just five years [27].

Mediation plays a significant role in the healthcare industry, not only in the resolution of conflicts between treatment facilities/medical staff and patients but also in the area of patent disputes. K. Tokarieva and V. Teremetskyi indicate the significant and promising nature of mediation in patent disputes arising in the field of health care. The application of mediation in such conflicts is relevant, especially in conditions of high levels of competition, rapid development of scientific achievements, and stable growth of medical innova-

tions. The mediation process contributes to the development of mutually beneficial agreements and the resolution of disputes in the field of intellectual property, which contributes to the effective use and protection of medical technologies and innovations [28].

Considering the above, we believe that mediation is an effective way to resolve disputes. Restorative justice has several advantages over a trial.

First, mediation helps to reduce the number of people in prison. Reaching a mutual agreement between the parties to the conflict can lead to the termination of criminal proceedings, which in turn contributes to reducing the burden on the system of places of execution of punishments. Secondly, the confidentiality of the mediation procedure is an important element, as it allows avoiding the disclosure of the details of the conflict. This is especially important to protect the reputation of the medical institution and its employees. Thirdly, mediation contributes to the rehabilitation of guilty persons. By focusing on reparation and healing, it allows the offender to return to a normal life rather than being stigmatized and unsupported by society. In addition, mediation allows the victim not only to receive compensation for the damage caused but also to understand the motives and reasons behind the commission of the crime. Such understanding promotes emotional healing and the possibility of forgiveness, which is an important step in the healing process. From a psychological point of view, understanding that a medical error occurred for objective rather than subjective reasons can significantly reduce emotional pain and help the victim survive the tragedy with fewer negative consequences.

V. CONCLUSION

Mediation in medical malpractice disputes is extremely important, especially in the context of emotional tension and stress experienced by patients and their relatives. The variety of errors, from diagnostic errors to improper medical practice, shows the complexity of situations arising in this field. For example, unfair cases of failure to provide care, improper treatment, or even infection due to unsterile conditions are just a few examples where mediation can be extremely helpful.

Mediation as an effective dispute-resolution mechanism in this area is of particular importance. Due to its focus on building dialogue and finding mutually acceptable solutions, mediation becomes a tool that allows you to reduce conflict and resolve disputes without the need to use court procedures. The conditions of war in Ukraine create even more tension and emotional instability in society. In such a situation, mediation can become not only a tool for conflict resolution, but also a platform for promoting the peaceful resolution of disputes and building trust between the parties.

Mediation has many advantages over litigation. It contributes to the reduction of the number of persons in prisons, confidentially protecting the details of the conflict. It also promotes the rehabilitation of perpetrators and helps victims understand the motives behind the crime, reducing emotional pain and promoting healing.

The experience of using mediation in developed countries shows its effectiveness in resolving disputes related to medical errors. This approach to conflict resolution in the field of medical practice has the potential to be successful in Ukraine as well. However, in order to achieve maximum effectiveness, it is necessary to take into account the peculiarities of Ukrainian realities and adapt mediation procedures to local conditions.

One of the key elements is setting high standards for mediators involved in the resolution of disputes related to medical errors. The mediator must have a deep understanding of medical practice, as this will allow him to effectively communicate with all parties to the conflict and understand the essence of the dispute. In addition, it is necessary to have the skills to work with emotionally traumatized people, as mediation participants can experience significant psychological stress. The ability to maintain neutrality and objectivity is also important, as this will ensure that the parties have confidence in the mediation process and in the mediator as a neutral mediator. In addition, mediation contributes to the preservation of the mental health of the parties to the conflict, helping them to survive and come to terms with tragic circumstances. This is important not only for individuals but also for the formation of a healthy, non-conflict society as a whole.

Therefore, the development and implementation of mediation in Ukraine in the field of medical errors is a step toward ensuring justice, peace, and trust in society. To this end, it is important to spread information about mediation, train qualified mediators, and create the necessary conditions for using this conflict resolution mechanism.

FUNDING

None.

CONFLICTS OF INTEREST

No conflicts of interest have been declared by the authors.

REFERENCES

[1] Rozhon, O, (2015). Mediation in medical disputes. [Problems of modernization of private law in the conditions of European integration: collection of scientific papers]. Y. Bilousova, eds.; Khmelnytskyi: Individual entrepreneur Melnyk A. A. file:///C:/Users/V%20I%20S%20I%20O%20N/Desktop/Introduction_to_Mediation_in_the_European_Union_EU_en.pdf

[2] Recommendation N R (99), (1999) 19 of the Committee of Ministers of the Council of Europe to member states of the Council interested in organizing mediation in criminal cases of 15 Sep 1999. Retrieved from: https://zakon.rada.gov.ua/laws/show/994_828#Text

[3] Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to member states on mediation in civil matters of 18 Sep 2002. Retrieved from: https://supreme.court.gov.ua/userfiles/Rec_2002_10_2002_09_18_1.pdf (Accessed on 10 March 2024)

[4] Directive 2008/52/EC of the European Parliament and of the Council "On some aspects of mediation in civil and commercial legal relations», 21 May 2008. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0052 (Accessed on 10 March 2024)

[5] Medical error or professional negligence? Retrieved from: https://yur-gazeta.com/publications/practice/medichne-pravo-farmacevtika/likarska-pomilka-chi-profesiyna-halatnist.html (Accessed on 10 March 2024)
[6] Second thought: what is it, and why is it so important? Retrieved from: https://medtour.help/uk/vtoroe-mnenie-chto-eto-i-pochemu-ono-imeet-takoe-vazhnoe-znachenie/ (Accessed on 10 March 2024)
[7] Relentless statistics: doctors' mistakes and their consequences. Retrieved from: http://ssmp.health.kiev.ua/index.php/component/content/article/68-my-v-zmi/553-nevblaganna-statistika-pomilki-likariv-i-jikh-naslidki (Accessed on 10 March 2024)
[8] Unified state register of court decisions. Retrieved from: https://reyestr.court.gov.ua/ (Accessed on 10 March 2024)
[9] Wang, M., Liu, G. G., Zhao, H., Butt, T., Yang, M., & Cui, Y. (2020). The role of mediation in solving medical disputes in China. *BMC Health Services Research, 20*, 1-10.
[10] Fundamentals of Ukrainian legislation on health care, Law of Ukraine No. 2801-XII, 1992 Nov 19. Retrieved from: https://zakon.rada.gov.ua/laws/show/2801-12#Text (Accessed in 10 March 2024)
[11] Constitution of Ukraine, No. 254k/96-VR, 1996 Jun 28. Retrieved from: https://zakon.rada.gov.ua/laws/show/254Đž/96-ĐšÑĂ#Text (Accessed on 10 March 2024)
[12] Demydchuk K., & Olhovskyi V. (2015) Medical error. In: Medicine of the third millennium, National Medical University, 236–237.https://pubmed.ncbi.nlm.nih.gov/28613514/
[13] Mykhaylov S. (2008) Qualification of "medical error" as a legal category. *Visn. Kharkiv. National Internal University Affairs, 43*, 283–289.
[14] Radish I, Bedryk I, Radish L, Kuzminsky P. (2008) Medical error: entity, classification and legal dimension. The doctrine of medicine rights, 1, 51–59.https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3211566/
[15] Civil Code of Ukraine, Code of Ukraine No. 435-IV, 2003 Jan 16. Retrieved from: https://zakon.rada.gov.ua/laws/show/435-15#Text (Accessed on 10 March 2024)
[16] Svystun L. (2015) Separation of contractual and tort liability in the field of medical services. Science release publ. and private rights, 1, 28–34.file:///C:/Users/V%20I%20S%20I%20O%20N/Desktop/77713890402.pdf
[17] Stetsenko S. (2006) Medical error and accident in the practice of health care institutions: legal aspects. *Forensic Expert, 2*, 28–31. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4147746/
[18] V. Mareev. (2015) Criminal-legal significance of medical error. Theory and practice, 4, 150–153. https://www.intellectualarchive.com/Journal_Files/IAJ_2019_02.pdf
[19] Antipenko S. (2007) Medical error: legal aspect. Exercise Closing Health Care, 8, 22–28. https://mcs.ajaums.ac.ir/browse.php?a_id=294&sid=1&slc_lang=en
[20] Skrynnikova K. (2023) Qualification of medical (medical) errors. Science release Uzhgorod National Univ. Law series, 80, 246–252. https://www.uzhnu.edu.ua/en/cat/faculty-medical/about
[21] Restorative justice: what is it and how does it work? Retrieved from: https://mediation.lviv.ua/about-mediation/restornoe-pravosuddya-shcho-ce-i-yak-pratyuye/ (Accessed on 10 March 2024)
[22] Krestovska N, & Romanadze L. (2019), editors. Mediation in the professional activity of a lawyer. Odesa: *Ecology;* 181-184. https://ajee-journal.com/mediation-in-post-war-restoration-in-ukraine
[23] On mediation, Law of Ukraine No. 1875-IX, 2021 Nov 16 Retrieved from: https://zakon.rada.gov.ua/laws/show/1875-IX#Text (Accessed on 10 March 2024)
[24] Miers, D. R., & Willemsens, J. (2004). Mapping restorative justice: Developments in 25 European countries. *European Forum for Victim-Offender Mediation and Restorative Justice.*
[25] Pushkar P. The plea agreement in the modern criminal process: a comparative legal study [PhD thesis]. Academy of Advocacy of Ukraine, Kyiv; 2005. https://www.unafei.or.jp/publications/pdf/RS_No92/No92_11PA_Oliynyk.pdf
[26] Silvestri, E. (2017). Too much of a good thing: Alternative Dispute Resolution in Italy. *Nederlands-Vlaams Tijdschrift Voor Mediation en Conflictmanagement,* (21), 79.
[27] Shinkar T. (2016) Foreign experience of legal provision of mediation and the possibility of its use in Ukraine. *Our Right, 2*, 54–58. https://rm.coe.int/kyselova-t-mediation-integartion-ukr-new-31-07-2017/168075c3c5
[28] Vladyslav, T., Kseniia, T., Mariia, R., Nadiia, B. Z., Sergii, P., Khrystyna, M., & Olesia, B. (2024). Mediation in Patent Disputes Arising in The Healthcare Sector. *Revista de Gestão Social e Ambiental, 18*(5), e05406-e05406.