

Negotiation as A Key Stage in Mediation: Specific Features. Characteristics and Practical Aspects

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Abstract: The article examines negotiation as a key stage of mediation and the principal mechanism for achieving mutually acceptable agreements between parties to a conflict. It explores the nature and specific features of the negotiation process in mediation, identifies its differences from conventional negotiations, and analyzes the mediator's role in organizing constructive interaction between participants. Particular attention is paid to the transition from positional confrontation to identifying the parties' interests, the influence of emotional factors and communication barriers, and the challenges posed by unequal negotiating power, manipulative behavior, and psychological pressure. The article considers the main stages of the negotiation process: preparation, opening the negotiations, identifying the subject of the conflict, exploring interests, generating alternatives, reaching agreements, and assessing their feasibility. It argues that the effectiveness of negotiations in mediation is determined not only by whether an agreement is reached but also by the voluntariness, informed nature, legality, and practical feasibility of the agreed solutions. The article concludes that negotiation in mediation is an important instrument for constructive conflict resolution and development of a culture of dialogue.

Keywords: mediation, negotiation, conflict, mediator, parties' interests, positional bargaining, communication, self-determination, agreement, alternative dispute resolution.

I. Problem Statement

Contemporary social relations are characterized by increasingly complex communication processes, a growing number of situations in which the interests of interacting parties diverge, and the increasing importance of out-of-court dispute resolution mechanisms. Conflicts arise in family, employment, commercial, professional, and management contexts, involving not only questions of legal rights and obligations but also issues of trust, responsibility, recognition, reputation, and future interaction.

In many cases, traditional dispute resolution mechanisms do not ensure that a conflict is fully resolved. A court decision establishes the legal consequences of a dispute; however, it does not always eliminate the underlying causes of confrontation, restore communication between the parties, or create conditions for future cooperation. This problem is particularly pronounced when the participants must continue interacting after the dispute has been resolved.

One promising approach to resolving such conflicts is mediation – a structured procedure in which the parties, with the assistance of a neutral third party, seek a mutually acceptable solution through negotiation.

At the same time, the effectiveness of mediation largely depends on how well the negotiation process is organized. The mere presence of a mediator does not guarantee that an agreement will be reached. The parties' ability to move from mutual accusations to a substantive discussion of the problem, recognize their own interests, understand the other party's position, and assess possible alternatives is of considerable importance.

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Under these circumstances, negotiation should be regarded not as an auxiliary instrument of mediation but as its central substantive element, through which the procedure's primary objective is pursued: facilitating the voluntary resolution of a conflict.

The relevance of this study stems from the need for a comprehensive analysis of the specific features of negotiation in mediation, the identification of its structural and communicative characteristics, and the clarification of the mediator's practical tasks at different stages of interaction between the parties.

II. Review of Recent Research and Publications

The theoretical foundations of negotiation and mediation have been developed through research in conflict studies, communication theory, alternative dispute resolution, and organizational behavior.

Roger Fisher, William Ury, and Bruce Patton's *Getting to Yes: Negotiating Agreement Without Giving In* is particularly important for understanding the negotiation process. The authors substantiate an approach based on separating the people from the problem, focusing on interests rather than positions alone, generating alternatives, and applying objective criteria [2].

Christopher W. Moore's work addresses procedural models of mediation, conflict management, the sequencing of mediator interventions, and the use of different techniques to facilitate agreements [3].

Robert A. B. Bush and Joseph P. Folger develop the transformative approach to mediation, which places particular emphasis on empowering parties to make their own decisions and transforming the nature of their interaction [4].

The legal framework for mediation in Ukraine is established by the Law of Ukraine "On Mediation" of 16 November 2021, No. 1875-IX [1]. The law sets out the fundamental principles of the procedure, defines the legal status of the mediator, and regulates the conduct of mediation and the documentation of its outcomes.

Despite the substantial body of theoretical research, the practical examination of negotiation as the central stage of mediation remains relevant. In particular, further attention is needed to the relationship between negotiation structure, communication tools, emotional dynamics, and the quality of final agreements.

III. Aim of the Article

The aim of this article is to examine negotiation as a key stage of mediation, identify its specific features and structural characteristics, explain the mediator's role in organizing constructive dialogue, and systematize practical mechanisms that facilitate voluntary and realistic agreements between parties to a conflict.

IV. Main Discussion

4.1. Negotiation as the Central Element of Mediation

Under Article 1 of the Law of Ukraine "On Mediation," mediation is defined as an out-of-court, voluntary, confidential, and structured procedure in which the parties, with the assistance of a mediator, seek to prevent or resolve a conflict through negotiation [1].

This definition provides grounds for regarding negotiation as the principal mechanism through which mediation is implemented. The negotiation process is where information is exchanged, disagreements are clarified, interests are identified, alternatives are assessed, and possible solutions are developed.

At the same time, negotiation and mediation are not identical concepts. Negotiations can take place without the involvement of a third party, whereas mediation involves a specially organized process in which a mediator facilitates constructive interaction between the participants.

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The specific nature of negotiations in mediation lies in the combination of three interrelated components: the parties' autonomy in decision-making, the structured nature of the process, and the mediator's professional assistance in facilitating communication.

The mediator does not resolve the dispute on behalf of the participants and does not determine whose position is correct. The mediator's task is to organize a procedure that enables the parties to assess the situation consciously and independently determine acceptable terms for resolving the conflict.

Thus, negotiations in mediation have both a communicative and a procedural dimension. Their effectiveness depends on whether voluntary participation, equality of opportunity, clear procedural rules, and genuine freedom of choice are ensured.

It is also important to distinguish the effectiveness of negotiations from the mere fact that an agreement has been signed. A formal agreement reached under pressure or without a proper understanding of its consequences cannot be regarded as an adequate implementation of the principles of mediation.

Consequently, the principal criterion of negotiation quality is not the compulsory achievement of consensus but the creation of conditions for constructive, voluntary, and informed conflict resolution.

4.2. The Principles Governing Negotiations in Mediation

The organization of negotiations in mediation is based on the principles established by the Law of Ukraine "On Mediation," including voluntariness, confidentiality, the mediator's neutrality, independence and impartiality, self-determination, and equality of the parties' rights [1].

The principle of voluntariness presupposes the participants' freedom to decide whether to take part in mediation, continue the procedure, and accept particular decisions. A party is not obliged to agree to a proposal merely because it has been put forward by the other party or suggested during negotiations.

Confidentiality helps create conditions for an open discussion of the circumstances surrounding a conflict. Its application, however, must take into account statutory exceptions and the rules agreed upon by the parties.

The mediator's neutrality, independence, and impartiality help establish trust in the procedure. The mediator should not use their authority to promote a particular solution or create an advantage for one of the participants.

The principle of self-determination means that the parties retain control over the content of their agreement. They determine the issues to be discussed, assess possible options, make decisions, and agree on their respective obligations.

The principle of equality of the parties' rights is particularly important. In real-life conflicts, participants often differ in their financial resources, negotiating experience, access to information, and social status. Therefore, formally identical conditions do not always ensure genuine equality of participation.

The mediator's task is to maintain procedural conditions under which each party can express its position, receive the necessary explanations, consider proposals, and make decisions without undue pressure.

Thus, the principles of mediation directly affect the substance and methods of the negotiation process. They determine not only the general rules of the procedure but also the practical limits of permissible mediator intervention.

4.3. The Parties' Positions and Interests as the Basis of Negotiation

One of the key characteristics of negotiations in mediation is the need to move from positional confrontation to an exploration of the parties' interests.

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A position reflects what a participant in a conflict demands or insists upon. An interest explains why that demand matters to the participant, which needs it is intended to satisfy, and which outcomes the party seeks to avoid.

During conflict, participants often focus on their own positions, perceiving concessions as a sign of weakness. This narrows the scope for negotiation and intensifies confrontation.

For example, in a commercial dispute, a client may demand that all defects be remedied before payment is made, while the contractor insists on immediate settlement of the outstanding debt.

At the level of positions, the demands are opposed. However, the parties' interests may be partly compatible: the client seeks a satisfactory result within a specified period, while the contractor needs to receive payment and meet its own financial obligations.

During mediation, exploring these interests may open the way to discussing phased remediation of defects, agreed deadlines, criteria for accepting the work, or other mechanisms that take the circumstances of both parties into account.

The theoretical basis for this approach is the principle of interest-based negotiation developed within the framework of principled negotiation [2].

At the same time, exploring interests does not mean that every conflict necessarily has a mutually beneficial solution. Interests may be incompatible, resources may be limited, and certain options may be legally impermissible.

The mediator's task is not to manufacture a compromise but to help the parties explore the actual possibilities, identify their priorities, and consciously choose their next steps.

An important tool in this process is the use of open-ended questions designed to clarify needs and criteria for an acceptable solution. Examples include: "What matters most to you in this situation?", "What outcome are you seeking to achieve?", and "Which conditions are essential, and which allow for discussion of alternatives?"

This approach enables negotiations to move gradually from the mutual defense of demands toward a joint examination of the problem.

4.4. The Structure of Negotiations in Mediation

The negotiation process in mediation is structured, although the specific sequence of its stages depends on the nature of the conflict, the number of participants, their readiness to interact, and the methodology selected by the mediator.

For practical analysis, the following main stages can be identified: preparation, opening the negotiations, presenting positions, identifying interests, generating alternatives, reaching agreements, and assessing their feasibility.

Preparation for negotiations. At this stage, the circumstances of the conflict, the participants' expectations, the composition of their representatives, their authority, and their willingness to participate voluntarily are clarified. It is important to establish procedural rules in advance and assess any circumstances that may affect the parties' safety and freedom of choice.

Opening the negotiations. The mediator explains their role, establishes the procedure for interaction, reminds the parties of the principles governing mediation, and helps them formulate working rules. These may include the order in which participants speak, how interruptions should be handled, and whether breaks may be called.

Presenting positions. Each party is given an opportunity to explain its understanding of the conflict, identify the issues in dispute, and describe its expectations. The mediator helps participants clarify the circumstances and distinguish facts from evaluations and assumptions.

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Identifying interests. The parties explore the reasons behind their demands, their priorities, concerns, and criteria for an acceptable outcome. This stage is particularly important because it creates a basis for expanding the range of possible solutions.

Generating alternatives. The participants identify possible ways of resolving the problem and then assess their consistency with their interests, legal requirements, available resources, and time constraints. At this stage, it is advisable to avoid prematurely rejecting proposals simply because they differ from the parties' initial positions.

Reaching agreements. After evaluating the alternatives, the parties determine acceptable terms, identify responsible persons, establish deadlines, specify implementation procedures, and agree on ways to confirm that obligations have been fulfilled.

Concluding the negotiations. The agreed terms are reviewed to ensure that they are clear, voluntary, lawful, and realistic. If full agreement has not been reached, the parties may identify issues for further discussion or terminate the procedure.

This structure is not a rigid algorithm. In actual mediation, it may be necessary to return to earlier stages, clarify interests that have already been identified, or reconsider options in light of new information.

An important feature of professional mediation is the ability to preserve the logical progression of negotiations while taking their dynamic nature into account.

4.5. The Mediator's Role in Organizing Constructive Negotiations

The mediator's role is to manage the procedure without replacing the parties' independent decision-making.

The mediator organizes interaction, determines the sequence of discussion, helps the parties clarify their positions and interests, supports constructive communication, and facilitates the development of alternatives.

One of the mediator's principal functions is communicative. It is performed through active listening, paraphrasing, clarifying questions, and summarizing the participants' positions. These tools make it possible to verify whether statements have been understood correctly and reduce the risk of renewed escalation caused by misunderstandings.

The structural function is equally important. It involves organizing the process in accordance with defined objectives and a logical sequence. The mediator helps the parties stay focused on the subject of the negotiations, identify priority issues, and move from general complaints to specific tasks.

The function of managing communication dynamics involves responding promptly to rising tension, interruptions, personal accusations, and other forms of unproductive interaction.

For example, if one party repeatedly interrupts the other, the mediator may invite the first party to allow the other participant to finish speaking before responding. This intervention is intended not to support a particular position but to ensure procedural equality.

At the same time, the mediator must recognize the limits of their role. The mediator is neither a judge nor an advocate for one of the parties, nor a person authorized to impose a decision on the participants.

Where necessary, the mediator may draw the parties' attention to the need for legal or other professional advice if an issue falls outside their competence.

Consequently, the mediator's professional effectiveness is determined by the ability to organize a constructive process, maintain its structure, and ensure conditions that allow the parties to make their own decisions.

4.6. Emotional Factors and Communication Barriers

Negotiations in mediation take place in circumstances where messages are often interpreted through the lens of previous experiences, mistrust, disappointment, or fear of negative consequences.

In such situations, parties may attribute negative intentions to each other, generalize from isolated instances of behavior, and perceive any disagreement as an expression of hostility.

For example, the statement “You are deliberately delaying the process” may reflect an interpretation of the other party’s motives, whereas the actual factual basis may simply be the absence of a response to certain requests.

The mediator’s task is to help participants clarify the circumstances, test their assumptions, and redirect the conversation toward questions that can be discussed substantively.

Active listening plays a particularly important role. It involves attentive reception of the message, clarification of unclear points, paraphrasing, and checking whether the message has been understood correctly.

Recognizing a person’s emotional state does not mean automatically confirming that the person is right. The mediator may acknowledge a participant’s disappointment or concern without agreeing with their assessment of the other party’s behavior.

For example, the statement “I can see that this situation has caused you considerable disappointment” differs from the assertion “The other party was unquestionably wrong.”

This distinction helps the mediator maintain neutrality while demonstrating attentiveness to the participants’ experiences.

When emotional tension is high, the mediator may slow the pace of the conversation, suggest a break, clarify the order of discussion, or temporarily move to another issue.

At the same time, emotions should not be regarded solely as an obstacle. The opportunity to express dissatisfaction safely, to be heard, and to receive a response can sometimes create the conditions for constructive dialogue.

However, when threats, intimidation, or other circumstances undermine a party’s genuine freedom of choice are present, the mediator must assess whether it is safe and appropriate to continue the procedure.

Thus, working with emotions in mediation does not mean eliminating them. Rather, it involves creating conditions in which emotional reactions do not deprive the parties of their ability to negotiate and make informed decisions.

4.7. Manipulative Behavior and Unequal Negotiating Power

Negotiations become particularly challenging when one party uses psychological pressure, ultimatums, threats, devaluation of the other party’s position, or other forms of influence that may restrict the other party’s freedom of choice.

It is important, however, to distinguish a firm negotiating position from manipulative behavior. A party has the right to make categorical demands, reject proposals, and communicate lawful alternatives, including the possibility of taking the matter to court.

A problem arises when influence takes the form of intimidation, the use of false information, or the creation of conditions in which the other party is effectively unable to assess a proposal freely.

In such cases, the mediator should re-establish procedural boundaries, stop unacceptable communication, and assess whether the conditions for voluntary participation remain in place.

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Another important factor is inequality in negotiating resources. The parties may differ substantially in their financial capacity, access to information, level of legal support, or dependence on the outcome of the conflict.

Under such circumstances, formal agreement does not necessarily mean that the decision was made freely and with an adequate understanding of its consequences.

The mediator should pay attention to whether the parties understand the proposed terms, have sufficient time to assess them, and can obtain independent advice.

Where necessary, additional time for consideration may be provided, a separate meeting may be arranged, or an alternative format of interaction may be proposed.

If voluntariness, safety, and a genuine opportunity for independent decision-making cannot be ensured, continuing mediation merely to obtain a formal agreement is inappropriate.

Consequently, effective negotiations require not only active communication but also compliance with ethical and procedural boundaries that protect the parties' freedom of choice.

4.8. Practical Mechanisms for Formulating and Implementing Agreements

A possible substantive outcome of negotiations in mediation is an agreement that reflects the terms accepted by the parties for resolving their conflict.

However, reaching agreement is not, in itself, a sufficient indicator of quality. An agreement should be clear, lawful, realistic, and capable of implementation.

Article 21 of the Law of Ukraine "On Mediation" sets out key provisions concerning an agreement resulting from mediation, including the need to specify the agreed obligations, the methods and time limits for their performance, and the consequences of non-performance or improper performance [1].

This is directly relevant to the organization of negotiations because it requires the parties to move from general intentions to specific commitments.

For example, the statement "The parties will cooperate constructively in the future" does not establish a specific procedure for interaction. By contrast, agreeing on responsible persons, communication channels, deadlines for providing information, and methods for resolving ongoing disagreements creates a more definite basis for future cooperation.

When formulating agreements, it is advisable to assess several criteria:

1. **Voluntariness:** the parties accept the terms without coercion.
2. **Informed consent:** the participants understand the content of the agreement and its possible consequences.
3. **Specificity:** the required actions, responsible persons, and deadlines are identified.
4. **Realism:** the terms correspond to the parties' actual capabilities.
5. **Legality:** the agreement does not contravene the law and takes into account the rights and legitimate interests of other persons.
6. **Feasibility:** a practical mechanism for implementing the obligations has been established.

It is also important to anticipate possible difficulties. The parties may agree on how to report delays, how to clarify particular terms, and whether to revisit an issue if circumstances change significantly.

Such provisions cannot guarantee that an agreement will be fulfilled, but they can reduce uncertainty and the risk of renewed conflict.

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The legal consequences of an agreement resulting from mediation depend on its content, form, and the applicable law. Accordingly, where necessary, the parties should obtain an appropriate legal assessment of the agreed terms.

Thus, the quality of an agreement is determined not only by its formal documentation but also by its ability to provide a clear and realistic mechanism for resolving the conflict.

4.9. The Importance of Negotiations in Mediation for Developing a Culture of Dialogue

The importance of negotiations in mediation extends beyond the resolution of a specific dispute. They can contribute to the development of a culture of constructive interaction in which disagreements are viewed not merely as grounds for confrontation but also as problems requiring joint examination.

This is particularly important in professional environments, businesses, and organizations where the parties continue to interact after a particular dispute has been resolved.

For example, a conflict between business partners may reveal the absence of clear decision-making rules, while an employment dispute may expose insufficiently defined responsibilities or performance assessment criteria.

If, during negotiations, the parties not only agree on how to resolve the immediate problem but also establish rules for future interaction, the outcome of mediation may have a preventive effect.

At the same time, mediation does not guarantee that trust will be restored or that the relationship will be preserved. In some cases, the outcome may be an agreed termination of cooperation or the establishment of procedures for fulfilling mutual obligations.

Even in such circumstances, negotiations can help reduce confrontation, make the parties' actions more predictable, and encourage a more responsible approach to conflict resolution.

Therefore, negotiations in mediation can be regarded as a practical mechanism for developing a culture of dialogue based on a combination of firmness, respect for the other party, and accountability for decisions made.

V. Conclusions

The analysis provides grounds for concluding that negotiation is the key substantive stage of mediation through which the procedure's primary objective is pursued: facilitating the voluntary resolution of a conflict.

The specific nature of negotiations in mediation lies in their structured format, the involvement of a neutral mediator, adherence to procedural principles, and preservation of the parties' right to determine the content of their agreement independently.

An important condition for a constructive negotiation process is the transition from positional confrontation to exploring the parties' interests. This approach makes it possible to expand the range of potential solutions, identify partially compatible interests, and avoid reducing negotiations to a mechanical exchange of concessions.

The effectiveness of negotiations depends on the consistent organization of the process, effective communication, appropriate management of emotional dynamics, and the mediator's ability to maintain procedural equality between participants. Timely responses to manipulative behavior, psychological pressure, and unequal negotiating power are particularly important.

At the same time, reaching an agreement should not be treated as an end in itself. A proper outcome requires voluntariness, informed consent, legality, specificity, and realistic terms, as well as a clear mechanism for implementation.

Thus, negotiations in mediation are not merely a way to exchange arguments or seek compromise. They constitute a structured process of examining a conflict, identifying interests, assessing alternatives, and making responsible decisions.

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Their value lies not only in the possibility of resolving a particular dispute but also in creating conditions for more constructive interaction between the parties in the future.

Further research could focus on negotiation strategies in different types of mediation, the influence of the mediator's communication competence on conflict dynamics, and criteria for assessing the quality of agreements resulting from mediation.

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