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Psychological structure of the mediation process in the content of professional activity of lawyers

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Abstract. The relevance of the issue of investigating the psychological features of mediation and the psychological profile of a mediating advocate is stipulated by the need to develop a respective theoretical and methodological framework and to conduct further empirical research. The purpose of this study was to highlight the findings of the theoretical analysis of the mediation issue in the context of modern psychological research, to identify the psychological features of mediation in the professional activities of advocates and to substantiate the psychological profile of an advocate as a mediator. To fulfil this purpose regarding the definition of the psychological essence of mediation as a component of the professional activity of advocates, to clarify the psychological features of mediation in the professional activity of advocates and to develop a job profile of a mediator-advocate, the study employed the methods of analysis of scientific and popular science sources, classification, generalisation, and systematisation of the available theoretical material, and job analysis. The key findings of the study were as follows: substantiation of the personal and professional approach which considers the consistency of the content of the psychological structure of the personality and psychological features of mediation in the context of solving the tasks of professional advocacy and allows investigating the criteria for matching the personality of a mediator with the requirements of professional activity to it; identification of psychological features of mediation, such as compliance with psychological and ethical principles, use of the mediation algorithm in accordance with the psychological structure of this process, psychological profile of advocates. The results of the theoretical analysis can be useful for specialists in the fields of age, pedagogical, legal psychology

Keywords: mediation; mediator-attorney; professional activity; job analysis; job profile; psychogram

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INTRODUCTION

The issue of the relevance of mediation in the professional activities of advocates gains particular significance in the challenging conditions of Ukraine during the war. In modern realities, in which Ukraine is defending the right to democracy and freedom, proclaiming humanistic values, implementing the principles of European integration in education, science and various fields of practice, including law and legal activities, there is a growing demand for legal professionals who have a sufficient level of psychological readiness to use mediation in their work with clients, possess the relevant competencies, and can use mediation in their professional activities to protect the individual rights of the citizens of Ukraine (Myronenko, 2023).

The mediation competence of a person becomes a necessary component of professional legal activity and determines the possibility of involving lawyers in the conflict and dispute resolution processes (Malienko, 2019). Since the European Community has initiated the introduction of mediation in professional legal practice to use alternative methods in pre-trial and court proceedings, mediation has been used in professional legal practice as a method of alternative dispute resolution in countries such as England, France, Germany, the United Kingdom, and the United States. Thus, the European Union has agreed that access to alternative methods of pre-trial and judicial consideration of disputes, including mediation, will provide a better opportunity to implement the rule of law and the principles of openness and accessibility of justice (Kantor, 2020). Therefore, there is an urgent need for psychological research on the use of mediation by Ukrainian lawyers in the performance of their professional tasks.

Psychological studies of mediation, unlike the existing psychological studies of the negotiation process in the scientific arsenal, are more complex and involve a multidimensional consideration of the dispute resolution process. Negotiations are not identical to mediation. Mediation is an independent, neutral mediation between disputants that requires awareness of psychological knowledge of personality, behaviour, communication, and activity (Markovych, 2023). In line with this idea, one can recall the legendary President of the United States of America, Theodor Roosevelt (1858-1919), who considered his knowledge of how to deal with other people to be a leading factor in his success in life (Roosevelt, 2003).

The analysis of the problem of using mediation in the professional activities of advocates showed that various aspects of this problem have been widely researched in the fields of legal, social, and educational psychology and covered in scientific publications. However, researchers have not paid attention to the problems of professional research of mediation activity and psychological study of the mediator's personality

structure. As a result, the issue of psychological description of mediation is relevant and requires purposefulness and systematicity, since in the context of modern psychological research, mediation is described only at the level of multidimensional definitions of it as an interdisciplinary phenomenon (Leko & Chuyko, 2011).

Among the Ukrainian school of thought, it is worth noting a series of studies by researchers that highlight the scientific and practical provisions on professional training of social workers to conduct mediation activities based on examples of mediation implementation in the United States and Canada (Haiduk, 2004); skills and abilities that ensure the success and effectiveness of mediator's professional activities (Zhdaniuk, 2017); professional training of mediators for practical activities in higher education institutions in Spain (Demidovych, 2018).

Foreign researchers also believe that mediation is an interdisciplinary science (Raines *et al.*, 2013). At the same time, many experts have already acknowledged the originality, independence, and scientific nature of the interdisciplinary field of mediation research that emerged at the intersection of conflictology, sociology, legal studies, psychology, and other sciences. However, it should be recognised that the content of modern Ukrainian psychological studies of mediation does not sufficiently address such issues as the psychological profile of a mediator-advocate and the psychological features of mediation. As a result, these issues require theoretical substantiation and further experimental verification, which is why this study is relevant.

The purpose of this study was to present the findings of the theoretical analysis of the mediation problem in the context of modern psychological research. The principal tasks were as follows: 1) to perform a theoretical analysis of the problem of determining the psychological features of mediation in the professional activities of advocates; 2) to substantiate the psychological profile of an advocate's personality as a mediator.

LITERATURE REVIEW

The state of development of the problem of using mediation in the professional activities of advocates, as well as the issue of psychological description of the activities and personality of a mediator-advocate, requires careful scientific substantiation and further empirical research. The theoretical analysis of the subject under study revealed an ambiguity in the interpretation of mediation as a key concept. Interpretations of the meaning of mediation in the context of various scientific fields are marked by a gradual transition from researchers' understanding of this term as a negotiation mediation process to understanding mediation as a process of productive interaction between the subjects of disputed issues. The first and most common

understanding of mediation in psychology was its explanation as a way or means of conflict resolution (Ozerskyi, 2020). This is what distinguishes the concept of mediation in psychology from the concept of mediation in legal science. It is this aspect that H. Ohrenchuk (2014) highlighted, recognising the fact that in the context of a mediation procedure, two plans of such a procedure are revealed – a legal one, in the context of which the disputed issue is resolved, and a psychological one, in which productive, effective interaction is achieved.

In the book by British researchers, the authors presented a mediation model based on the method of existential psychotherapy, considering mediation as a means of conflict resolution (Strasser & Randolph, 2004). This idea of mediation was supported by well-known British family mediators who understood the mediation process as a productive interaction between the parties to a conflict to resolve it, conducted with the assistance of an independent neutral mediator to find the most appropriate solution to the disputed issue for all parties to the conflict (Parkinson & Robinson, 2014).

There are also such definitions of mediation, where the essence of this concept is the idea of the negotiation process involving a mediator. In this aspect, S. Zabarana notes that mediation as a concept has been considered by researchers from two perspectives, namely: 1) mediation as a process of settling a dispute through negotiations with the participation of a neutral mediator; 2) mediation as a productive interaction between two or more persons (Zabarana, 2015).

At the same time, the theoretical analysis of the problem of mediation in the context of modern psychological research showed evidence of strong perceptions of the experts that legal and psychological science at their intersection create the theoretical and methodological basis for the field of scientific research on mediation as a method of conflict resolution that requires specific methodology, theory, and practice. This area combines legal and psychological sciences, develops interdisciplinary links in their scientific structure and practice (Parkinson & Robinson, 2014). As the findings of research on mediation are used in legal and psychological practice, psychologists, advocates, coaches, and trainers become mediators, gaining new experience and influencing the development of further research. Thus, the field of mediation research and mediation practice are new in national science and practice and have prospects for further development (Yasynovskyi, 2015).

Although practical mediation is new to the Ukrainian judiciary, it is actively used in conflict resolution cases that are in pre-trial proceedings (Chasova & Kravets, 2023). Lawyers also apply practical mediation to resolve conflicts that have been unfolding over time. The longer the conflict lasts, the more complex is its resolution. The use of mediation in the professional activities of lawyers will allow relieving the burden on

the law enforcement agencies of Ukraine and reducing the number of lawsuits related to conflict resolution cases. Since mediation as an alternative method of dispute and conflict resolution allows finding an optimal solution for all parties to the conflict within the legal culture, unlike the judicial process, which is guided by the legal norms proper (Podkovenko, 2019).

The use of mediation techniques in the professional activities of an advocate determines their competitiveness, contributes to the improvement of professional skills, and influences the development of the advocate's creativity by working out with clients possible options for resolving disputed issues in a case, and developing an appropriate and realistic action plan for the case. At the same time, there is an urgent need for in-depth investigation and systematisation of psychological knowledge on the use of mediation in the professional activities of advocates, which is caused by the demand from advocates themselves as specialists whose professional activities include negotiation and conflict resolution.

MATERIALS AND METHODS

To accomplish the tasks outlined, the study employed a series of methods, including the analysis of scientific and popular science sources; classification, generalisation, and systematisation of the available theoretical material; and the method of job analysis used to determine the psychological essence of mediation as a component of the professional activities of advocates, to clarify the psychological features of mediation in the professional activities of advocates, and to develop a job profile of a mediator-advocate.

RESULTS AND DISCUSSION

The theoretical analysis of the problem of mediation in the professional activities of advocates showed that in the context of modern psychological research, scientists, based on the generalised notion that the similarities and differences of situations in the mediation process underlie the criteria for finding basic psychological approaches relating to mediation, contribute to improving the negotiation process and resolving conflict issues, specifically in the professional activities of advocates. These approaches include pragmatic, behavioural, structural, and instrumental approaches.

The pragmatic approach has been most developed and widely used by researchers in the United States of America. Representatives of the pragmatic approach apply its underlying principles to verify the factual behaviour of an individual and use a set of empirical tools for negotiations relevant to this purpose. The main disadvantage of the pragmatic approach is that it leaves out the planning components. Among the latest developments based on the pragmatic approach, it is worth noting the findings of studies on identifying

mutual benefits for the parties to negotiations. As for the behavioural approach, it was found to be the most developed and widely used in Germany. The initial provisions of the behavioural approach integrate the ideas of scientists about the behavioural characteristics of the individual in the context of their adaptation to the specifics of the negotiation process.

In the structural approach, negotiations are analysed as an integral structure, a single sequence of stages and actions. In the initial provisions of the instrumental approach, negotiations are highlighted as a useful tool used by the parties to the negotiations to achieve their goals. The above-mentioned approaches are sufficiently developed and have both advantages and disadvantages. The key disadvantage common to the above approaches is that researchers focus on the mediation or negotiation process with the assistance of an independent mediator. Namely, the factors, including gender-age, individual-typological, personal, value-reflective, professional, activity factors, which may directly or indirectly cause a conflict or a disputable situation, are left out of the researchers' attention.

The psychological structure of mediation plays a major role in the professional activities of advocates, as it determines the way they interact with the parties to the conflict and helps to achieve mutually beneficial solutions. Psychological awareness and understanding of the psychological structure of the mediation process allows advocates to better communicate with clients, establish trust, and facilitate positive conflict resolution. Psychological skills include empathy, the ability to manage emotions, and effective communication techniques that help advocates create a favourable atmosphere for reaching constructive solutions. The study of psychological aspects of mediation is significant for the further development of legal practice, as it helps to understand and investigate the impact of psychological factors on the conflict resolution process. Understanding the psychological aspects of mediation allows for the development of more effective methods of interaction with the parties to the conflict, improving the quality of mediation processes and ensuring better results for all parties. Improving the practice of mediation in the legal sector helps to save time and resources and contributes to positive conflict resolution and the building of a peaceful society. The theoretical substantiation of the psychological structure of the mediation process in the content of the professional activities of advocates was based on the initial provisions of the personal and professional approach, which stipulated the use of occupational therapy as a method of studying the psychological structure of mediation, considering the professionally relevant requirements ensuring the success of professional actions of a mediating advocate. The use of the occupational method ensures the implementation of a range of functions: informational, systemic, diagnostic, formative, and corrective. The

informational function implies awareness and general competence of the advocate-mediator regarding the psychological structure of mediation activities. The systemic function ensures the use of an integral system of knowledge, skills, competences, practical, and creative experience of professional activity of a mediator. The diagnostic function is manifested in the identification and assessment of the advocate's personality for mediation based on the diagnosis and monitoring of the professional competence of the advocate-mediator. The formative function is aimed at self-development in the continuous process of professional training and practical activities of mediator-advocates.

The authors of this study believe that when considering the psychological structure of mediation as a type of professional activity of an advocate, it is advisable to use a personal and professional approach that accounts for the consistency of the content of the psychological structure of the advocate's personality, psychological characteristics, and requirements of mediation activity to the advocate's personality. In this context, the specific features of the use of mediation in education, family upbringing, as well as in the field of law and some aspects of the status of a mediator were studied (Shmyndruk, 2023). Specifically, in this study of the psychological features of mediation as a negotiation process where an advocate acts as a mediator – a subject of the mediation process, the personal and professional approach allows exploring the criteria for matching the personality of a mediator with the requirements of professional activity.

A critical review of the psychological and ethical foundations of the mediation procedure, considering European standards, showed that the ethical standards of mediation reflect the psychological and humanistic principles of restorative justice aimed at establishing the rule of law and recognising the individual as a value (Tokarieva, 2020). Psychological and ethical norms are fundamental to effective mediation and are reflected in the content of the Law of Ukraine "On Mediation" (Sheremeta & Havryliuk, 2023). The professional practice of a mediator-advocate is ensured by their awareness of psychological and ethical aspects and their social role in conflict resolution (Melnychuk, 2016). Adherence to ethical standards and guiding principles of professional activity of mediators, which are regulated in the content of the relevant professional codes, allows mediators to perform mediation tasks in a variety of conditions, crises, and challenging professional situations, and allows them to find original solutions that meet the personal needs of all participants in the mediation process (Mozhaikina, 2017).

The authors' analysis of the professional activity of a mediator revealed that such activity belongs to the "person-to-person" professional type, and is aimed at interactive communication, productive interaction of a mediator with other parties to the mediation process,

and conflict resolution between these parties. To implement such a focus of professional activity, a mediator should have developed skills in establishing and maintaining relationships and business contacts, understanding of personality psychology, interpersonal relationships, behaviour, activities, be sociable, active, have developed speech skills and verbal thinking, be able to use non-verbal means of communication, and have developed resilience.

Belonging to the class of heuristic professions, the professional activity of a mediator involves the development of a person's analytical and research abilities, the ability to plan, manage, and implement the assessment and control of interpersonal interaction processes, and to develop appropriate and productive strategies for the parties to the mediation process to resolve conflict situations. In this way, the leading personal and professional qualities of a mediator are high erudition, flexible, original, heuristic, critical thinking, and the individual's desire for self-development throughout life. Notably, the profession of mediator is a relatively new one and is only being introduced to the labour market, being at the stage of active development (Yanovska, 2014).

The use of mediation in the professional activities of an advocate entails a series of requirements, of which the key ones include the following: to have a specially equipped office-type room; to ensure conditions for non-interference of unauthorised persons, overcoming noise and other situational factors that may affect the course and outcome of mediation; to make best use of the psychological space of the mediation parties; to ensure that the mediation parties are at the right distance for each of them; to have an adequate level of education, to possess the competences of a mediator.

The professionally significant functions of a mediator include psychological education of the parties to the mediation on expanding the consciousness of the individual by rethinking values, planning, organising, and conducting mediation at the level of partnership and productive cooperation; understanding the true nature of the conflict between the parties to the mediation process, considering the personal vision of the conflict on the part of each of them; understanding their needs, motives, and values; maintaining an independent and neutral position by the mediator; maintaining confidentiality and responsibility; ensuring the multitude of options and originality of means and solutions to resolve the conflict; guidance of the mediation subjects towards the performance of the agreement reached during the mediation procedure.

According to the functions of a mediator outlined above and based on the analysis of current research on mediator competence (Kuziv, 2019), this study identified general competences that determine the success of a mediator's activities. Among the general competencies of a mediator, the following are essential: identifying, assessing, and monitoring personality traits and

states; creating a favourable psychological atmosphere for productive interpersonal interaction during mediation; using psychological techniques and methods during mediation; working with information, collecting, analysing, and summarising it; and predicting the possible behaviour of the mediation subjects.

An essential result of the job analysis is a psychological profile, which contains a psychological description of the personality of an advocate-mediator. The psychological description of the advocate-mediator's personality profile integrates professionally significant mental functions, processes, personal attributes, states, and qualities, as well as abilities and individual typological features of the advocate's personality that determine the success of mediation activities. Considering the above-mentioned specifics of the professional activities of a mediator-advocate, their functions, according to the ethical standards and principles of professional activities of mediators and based on the findings of the job analysis, the study identified their professionally significant features, and based on this, a job profile was developed.

In the context of this study, the mediator's job profile was presented as a description of the operational side of mediation and a psychological description of the personal profile (psychogram) of a mediator-advocate, which includes professionally important qualities, abilities, and competences necessary for the successful performance of mediation activities. The psychogram of a mediator-advocate developed within the framework of theoretical analysis describes the following features: 1) personal characteristics that determine the success of mediation according to the initial provisions of the personal and professional approach and the key principles of the mediation process; 2) personal characteristics necessary for the implementation of constructive mediation strategies according to the stages of mediation.

The first group of the above-mentioned personal characteristics is related to the need for a mediator-advocate to be guided in their activities by the ethical standards required by the mediator's psychological and ethical code and to possess the skills to create a favourable psychological atmosphere during mediation. The leading personal characteristics that determine the success of mediation in terms of compliance with ethical, professional, and scientific standards are unconditional acceptance, ethical sensitivity, and moral stability. A mediator-advocate's adherence to the principle of neutrality in their work is based on the development of such personal characteristics as deliberate acceptance of others as they are; impartiality; and non-judgemental interaction. The preservation of the client's privilege and its non-disclosure by the mediator-advocate is based on such personal characteristics as responsibility, mindfulness, and stress resistance.

The second group of the above-mentioned personal characteristics is related to the development of the

communicative competence of a mediator-advocate, which determines the success of mediation depending on constructive strategies of mediation, ways of productive interaction of mediation subjects, skills and abilities to use the best strategies for conflict resolution, as well as mastery of such techniques as active listening, persuasive influence, and coordination of actions. Communicative competence is predicted according to emotional stability, emotional lability, leadership ability, ability to apply the best strategies in conflict resolution and use a constructive style of interaction.

A significant criterion that will determine the success of the mediation procedure is the ability to predict the prospects of the mediation process and its completion. A professionally trained mediator-advocate must be able to perform prognostic and modelling activities to determine possible ways of negotiations during mediation and be able to find out the real needs of clients by using questions to make a forecast of the results and methods of achieving them in the mediation process. In this regard, the essential personal characteristics are individual traits of mental processes that actualise the mechanisms of higher mental functions, such as analytical, creative thinking, ability to generalise, logic, creativity, tolerance, and sense of tact.

In terms of obtaining objective information in the course of compiling a picture of the real content of the conflict between the parties to the mediation, it is worth noting that in this aspect, the ability of a mediator-advocate to see the background aspects of the conflict, to identify the true depth of the conflict and assess its significance for each of the parties to the mediation, to analyse the content of clients' information messages, to apply such psychological techniques as active listening, paraphrasing, reframing are crucial. Using psychological methods and techniques, a mediator-advocate transforms the messages of the mediation participants, preserving the content of the message, to highlight other aspects of the conflict, to show the client a different vision of their problem. To use the technique of targeted paraphrasing, a mediator-advocate needs to understand the nuances of each mediator's personal vision of the conflict, considering their self-presentation and psychological defences, and focusing on active listening. Important personal characteristics in relation to the above-mentioned opportunities are attentiveness, flexibility, tact, and responsibility in interaction with the client.

Identification and assessment of clients' key needs, motives, and values are conditioned by the mediator-advocate's ability to conduct a productive negotiation process and mastery of the relevant work techniques, such as asking open-ended questions that reveal the scope of personal needs, interests, and motives; repeating the opinion expressed by the mediation parties in other words; using questions that seek to understand the position of the other mediation participant and help establish mutual understanding; active listening.

It is also advisable for a mediator-advocate to encourage the parties to the mediation to express their feelings and thoughts freely, to help them identify their personal needs, motives, and values, as well as those of other mediation participants. Communication skills and logical thinking are vital components of these abilities. To find and explore as many potential solutions to a conflict situation as possible in the mediation process, a mediator-advocate must have the skills and abilities to develop and model many options for resolving a conflict, to conduct mediation by finding alternative ways, to achieve results during mediation that best satisfy all mediation participants, to focus the attention of mediation participants on the essence of the conflict between them and on choosing the solutions that best satisfy clients. The final stage of mediation involves discussions and selection of the most suitable solutions, agreement of all mediation participants with them, signing an agreement on the implementation of the agreements, in which case the perceptual, cognitive, organisational, and communication skills of the individual are essential. Thus, the identified criteria for the activities of a mediator-advocate at each stage of mediation helped to outline the psychological profile of their personality. Thus, the job profile of a mediator-advocate contains two blocks: 1) a description of the psychological structure of the mediator's activity; 2) a description of the psychological profile of the mediator's personality.

According to the developed job profile, the mediator-advocate shall act to facilitate an effective and efficient mediation process, during which the parties to the mediation can interact constructively and reach mutually agreed decisions as a result of such interaction. The success of the professional activity of a mediator-advocate is achieved subject to their professional suitability, which is an integral feature that reflects the level of individual ability of the mediator-advocate to perform mediation functions at the professional level, to develop skills of active listening, paraphrasing, non-verbal communication, to use stimulating, evaluative, transformational, narrative models of mediation, to be guided by the principles of negotiation, opening statements, ethical and professional standards.

CONCLUSIONS

The theoretical analysis of the problem of using mediation in the professional activities of advocates in the context of modern psychological research showed the feasibility and prospects of the personal and professional approach which considers the consistency of the content of the psychological structure of the personality and psychological features of mediation in the context of solving the tasks of professional advocacy and allows exploring the criteria for matching the mediator's personality with the requirements of professional activity to it.

The psychological features of mediation include compliance with psychological and ethical principles, use of the mediation algorithm according to the psychological structure of this process, psychological profile of the mediator-advocate, interaction of all participants in the mediation process, and recognition of the priority of the moral and psychological components of mediation. A critical review of the psychological and ethical foundations of the mediation procedure regarding European standards showed that the ethical standards of mediation reflect the psychological and humanistic principles of restorative justice aimed at establishing the rule of law and recognising the individual as a value. Psychological and ethical standards are fundamental to

effective mediation. The professional practice of a mediator-advocate is ensured by their awareness of psychological and ethical aspects and their social role in conflict resolution. The occupational profile and psychogram of a mediator-advocate, developed based on the findings of the job analysis, includes psychological and professional qualities necessary for the successful performance of mediation activities.

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CONFLICT OF INTEREST

The authors of this study declare no conflict of interest.

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Психологічна структура медіаційного процесу у змісті професійної діяльності адвокатів

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Анотація. Актуальність проблеми дослідження психологічних особливостей медіації розробки й психологічного профілю адвоката-медіатора зумовлена необхідністю розробки відповідного теоретико-методологічного обґрунтування й проведення подальших емпіричних досліджень. Метою цієї статті було висвітлення результатів теоретичного аналізу проблеми медіації у контексті сучасних психологічних досліджень, визначення психологічних особливостей медіації у професійній діяльності адвокатів й обґрунтування психологічного профілю особистості адвоката як медіатора. Для реалізації окресленої мети стосовно визначення психологічної сутності медіації як складової професійної діяльності адвокатів, з'ясування психологічних особливостей медіації в професійній діяльності адвокатів й розробки професіограми адвоката-медіатора авторами застосовано методи аналізу наукових та науково-популярних джерел, класифікація, узагальнення і систематизація наявного обсягу теоретичного матеріалу, професіографічного аналізу. Основними результатами дослідження стали: обґрунтування особистісно-професіологічного підходу, що враховує узгодженість змісту психологічної структури особистості й психологічних особливостей медіації в умовах вирішення завдань професійної адвокатської діяльності та надає можливість дослідити критерії узгодження особистості медіатора з вимогами професійної діяльності до неї; визначення психологічних особливостей медіації, таких як: дотримання психолого-етичних принципів, використання алгоритму медіації відповідно психологічної структури цього процесу, психологічний профіль адвоката-медіатора, взаємодія усіх учасників медіаційного процесу, визнання пріоритетності моральної та психологічної складових медіації; розроблено професіограму та психограму адвоката-медіатора, що містять у своєму змісті психолого-професіографічний опис профілю особистості адвоката, який виконує функції медіатора. Отримані результати теоретичного аналізу можуть бути корисні фахівцям в галузях вікової, педагогічної, юридичної психології

Ключові слова: медіація; адвокат-медіатор; професійна діяльність; професіографічний аналіз; професіограма; психограма