



DOI: <https://doi.org/10.34069/AI/2024.73.01.8>

How to Cite:

Ustinova-Boichenko, H.M., Skriabin, O.M., Fatah, A.A., Yunatskyi, M.O., & Yamkovyi, V.I. (2024). Alternative forms of resolution of labor disputes. *Amazonia Investiga*, 13(73), 100-113. <https://doi.org/10.34069/AI/2024.73.01.8>

Alternative forms of resolution of labor disputes

АЛЬТЕРНАТИВНІ ФОРМИ ВИРІШЕННЯ ТРУДОВИХ СПОРІВ

Received: September 27, 2023

Accepted: November 21, 2023

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Abstract

The purpose of the article is to identify effective alternative forms of labour dispute resolution based on the analysis of theoretical information and practical experience of their application in the modern world and the possibility of their use in Ukraine. The methodological basis of the work is the methods of analysis and synthesis, comparative law, logical and legal, abstract and logical methods, and the method of generalisation. The author identifies the features and advantages of using the main alternative forms of labour dispute resolution: conciliation, direct negotiations, mediation, arbitration, and mediation. The author examines the international experience of using alternative forms of labour dispute resolution (France, Bulgaria, Poland, and the United Kingdom). The reasons for the low prevalence of the use of alternative forms of labour dispute resolution in Ukraine are: lack of legislative regulation or gaps in it; low level of public awareness; lack of qualified specialists (arbitrators, mediators). The author identifies the appropriate measures for the effective implementation of alternative forms of labour

Анотація

Метою статті є визначення ефективних альтернативних форм регулювання трудових спорів на основі аналізу теоретичних відомостей та практичного досвіду їх застосування в сучасному світі та можливість їх використання в Україні. Методологічно основою роботи є методи аналізу і синтезу, порівняльного права, логіко-правовий, абстрактно-логічний метод та метод узагальнення. Визначені особливості та переваги застосування основних альтернативних форм вирішення трудових спорів: примирення, безпосередні переговори, медіація, арбітраж та мед-арб. Розглянутий міжнародний досвід застосування альтернативних форм вирішення конфліктів в сфері праці (Франція, Болгарія, Польща та Велика Британія). Причинами низької поширеності використання альтернативних форм вирішення трудових спорів в Україні виступають: відсутність законодавчого регулювання або наявність прогалин в ньому; низький рівень поінформованості населення; нестача кваліфікованих спеціалістів (арбітрів, медіаторів). Визначені доцільні заходи для

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dispute resolution in Ukraine, which will reduce the burden on the judicial system, and resolve labour conflicts more quickly, efficiently, and with lower material costs.

Key words: regulation, legislation, labour disputes, mediation, arbitration, conciliation, alternative dispute resolution, forms of labour rights protection, non-jurisdictional forms of labour rights protection.

Introduction

In today's world, the issue of labour dispute resolution is of particular importance. The international community pays special attention to the protection of the human right to work, as labour is the main source of well-being for citizens and the state as a whole.

The dynamism of change, economic crises, changes in labour organisation at the international level related to the COVID-19 pandemic, the impact of sociocultural changes on labour relations - all of this contributes to an increase in the level of pressure employers exert on employees. In addition, there is instability in the labour market, which can also have a negative impact on the exercise of employees' rights.

The protection of labour rights is more often considered in the context of court proceedings, but alternative forms of labour dispute resolution are becoming increasingly important. Scholars study various ways of regulating and resolving labour disputes outside of court, but there is no unified approach in the scientific community on this issue.

Alternative forms of resolving labour disputes allow for a settlement of the situation, thus relieving the country's judicial system. In addition to alternative labour dispute resolution, online labour dispute resolution is gaining popularity. Alternative methods and online labour dispute resolution are characterised by greater flexibility, efficiency, and convenience compared to the court procedure.

The current legislation of European countries emphasises the importance of the human right to work. For example, the European Social Charter states that achieving and maintaining stability and high levels of employment is one of the leading objectives of public policy (Council of Europe, 1996). The Charter also establishes the task of the state to protect the right of every

ефективного впровадження застосування альтернативних форм регулювання трудових спорів в Україні, які дозволять знизити рівень навантаження на судову систему, вирішувати трудові конфлікти більш оперативної, результативно та з меншими матеріальними витратами.

Ключові слова: регулювання, законодавство, трудові спори, медіація, арбітраж, примирення, альтернативні способи вирішення спорів, форми захисту трудових прав, неюрисдикційні форми захисту трудових прав.

worker to earn a living through his or her chosen profession. However, despite the tasks set out in the Charter, the number of labour disputes is not decreasing, so it is important to implement and develop effective ways to resolve labour disputes, taking into account the current dynamic realities.

This is especially true in Ukraine, as the development of labour relations is currently in its infancy. The settlement of labour disputes is the most vulnerable area due to outdated and inefficient labour legislation. It should be noted that Ukrainian legislation is gradually being improved and changes are being implemented, but it is necessary and important to introduce a legislative mechanism for regulating labour disputes through alternative forms.

Therefore, it is advisable to analyse and study the specifics and experience of using alternative forms of labour dispute resolution, which will reduce the burden on the judicial system, speed up the labour dispute resolution process and peacefully resolve conflicts in the field of labour relations.

The paper aims to identify effective alternative forms of labour dispute resolution based on the analysis of theoretical information and practical experience of their application in the modern world and the possibility of their use in Ukraine.

Methodology

The researchers carried out a comprehensive and systematic analysis of alternative forms of labour dispute resolution, which involves the application of general theoretical and special scientific methods and approaches.

Using the method of comparative analysis, the author identifies the advantages and disadvantages of judicial and extrajudicial forms

of labor dispute resolution. The dialectical method is used for the general characterization of alternative forms of labor dispute resolution. It is established that alternative forms of labor dispute resolution are more efficient, cost-effective and effective.

A systematic analysis of the theoretical contributions of modern Ukrainian and foreign authors has made it possible to identify the most common alternative forms of conflict resolution in the labor sphere: mediation, conciliation, direct negotiations, arbitration and med-arb. The author highlights the features and specifics of each type of out-of-court forms of labor dispute resolution.

The methods of analysis and synthesis made it possible to identify the specific features and distinctive characteristics of mediation, arbitration, direct negotiations, and conciliation as the main alternative forms of labour dispute resolution.

To achieve this goal, the author uses the following research methods: analysis of legal, scientific, and methodological literature by foreign scholars and Ukrainian authors to define the categorical and conceptual apparatus of the study; analysis of legislation to determine the features, specifics, and advantages of alternative forms of labor dispute resolution in different countries.

The information and analytical basis of the article is made up of international legal and regulatory documents governing the use of alternative forms of labor dispute resolution in different countries of the world:

- 1) International
 1. Committee of Ministers of the Council of Europe. (1981).
 2. Committee of Ministers of the Council of Europe. (1986).
 3. Committee of Ministers of the Council of Europe. (2002).
 4. Directive on certain aspects of mediation in civil cases and commercial affairs (2008).
 5. Committee of Ministers of the Council of Europe. (1998).
 6. Convention on International Settlement Agreements Resulting from Mediation (United Nations, 2019).
 7. European Social Charter. Council of Europe (1996).
- 2) Ukrainian:

1. Law on Mediation No. 1875-IX. (2021). Law of Ukraine dated November 16, 2021.
2. Law of Ukraine No. 1618-IV. Civil Procedure Code of Ukraine: of March 18, 2004.
3. Labour Code of Ukraine (2019). Consolidated version as of June 1, 2019.

3) Other states:

1. Labor Code of the Republic of Poland (1974).
2. French Labour Code (2019).
3. Bulgarian Law on Mediation (2004).
4. Labour Code of the Republic of Bulgaria (1987).

The method of comparative law helped to determine the specifics of the use of alternative forms of labour dispute resolution in different countries in order to identify the possibilities of implementing such forms of labour dispute resolution in Ukraine. The comparative legal method also helped to formulate general recommendations for the effective use of alternative forms of labour dispute resolution in Ukraine to protect the rights of employees.

The author examines the practice of applying alternative forms of labor dispute resolution in different countries of the world on the example of Poland, Bulgaria, Great Britain and France.

A systematic approach is used to study each element of the system of alternative forms of labor dispute resolution, their interconnection, and differences, with a view to determining the advantages and limitations of each type of issue under study.

Based on a systematic analysis of international experience in the use of alternative forms of labor dispute resolution, the author identifies the specific features of each type of out-of-court labor dispute resolution. The following characteristics are highlighted: participants to the labor dispute resolution procedure; final result; features; advantages and disadvantages. A comparative analysis of alternative forms of labor dispute resolution is carried out based on the following features: duration of the procedure; the need for participation of experts/specialists; and cost of the procedure.

The comparative legal method also helped to formulate general recommendations for the effective use of alternative forms of labour dispute resolution in Ukraine to protect the rights of employees.

The logical and legal method was used to analyse the specifics of labour dispute resolution in Ukraine. Generalisation of theoretical provisions, the establishment of cause and effect relationships, and the formulation of conclusions were carried out using the abstract logical method and the method of generalisation.

The analysis of the specifics of alternative forms of labor dispute resolution made it possible to determine the possibilities of implementing international experience into Ukrainian practice.

The authors conclude that it is advisable to introduce the use of alternative forms of labor dispute resolution in Ukraine at the legislative level. Based on the results of the study, the authors conclude that the most relevant and effective forms of labor dispute resolution in Ukraine will be such alternative forms of labor dispute resolution as conciliation, direct negotiations and mediation. This is due to the advantages of these forms of labor dispute resolution, such as the effectiveness of the final result and lower material costs for the procedure.

The author uses the methods of abstraction and generalization to identify the peculiarities of the implementation of alternative forms of conflict resolution in the labor sphere in Ukraine in modern conditions. The modeling and forecasting methods allowed the author to identify ways to improve the use of alternative forms of labor dispute resolution in Ukraine. By using the method of analysis and generalization, the author draws conclusions based on the study.

Literature review

Consideration of the issue of alternative forms of labour disputes regulation should begin with the definition of the essence of the concept of "labour disputes". Thus, V. Burak understands the concept of labour disputes as "disagreements between the subjects of labour relations that are not settled as a result of mutual negotiations and arise from the application of labour legislation or the establishment or change of working conditions" (Burak, 2003; p. 12).

Yu. Shemchushenko et al., (2004) gives a deeper definition of the term labour relations:

these are unresolved disagreements that arise between an employee and an employer or between employees and employers on the application of laws, other labour regulations and the terms of an employment contract or the

establishment or change of working conditions, conclusion of an agreement. (p. 576).

The peculiarity of this definition is the allocation of types of labour disputes, depending on the subject - individual and collective labour disputes.

It is advisable to identify the limitations and inaccuracies of the above definitions with regard to such a characteristic as "unsettledness". At present, labour relations are sufficiently regulated by both regulations and provisions of employment contracts. Therefore, it is necessary to provide a more precise definition of the concept under study. Ukrainian scholars define labour disputes as "disagreements between labour law subjects on the application of labour law or the establishment of new working conditions submitted to a jurisdictional body for consideration" (Yaroshenko, 2022).

Labour disputes can be resolved in court or out of court (Mishchuk, & Pasichnyk; 2014). Previously, labour rights protection usually took place in court, so labour disputes took a long time to resolve.

(Vavzhenchuk, 2013) notes that

in practice, the protection of labour rights is usually limited to judicial protection, which is far from perfect and does not always provide timely and prompt protection of violated labour rights, as the courts are, firstly, overloaded, and secondly, the current system of consideration and resolution of labour disputes needs to be improved (p. 444).

Therefore, the out-of-court procedure, which involves the use of conciliation procedures - alternative forms of labour dispute resolution - is becoming increasingly common. Scholars define alternative ways of resolving labour disputes as "a set of procedures not prohibited by law aimed at peaceful settlement of disputes between the parties on the basis of coordination of their positions and interests, carried out by the parties to the conflict themselves or with the involvement of other persons, to develop a mutually acceptable solution that satisfies the interests of each of them and aims to resolve the conflict" (Burak, 2015).

Considering the practice of labour dispute resolution in Ukraine, it is worth noting a significant event - the signing of the Association Agreement with the European Union. As a result, "Ukraine has undertaken to carry out certain

reform actions aimed at transforming legal regulation, in particular the labour sphere and the sphere of labour dispute resolution, to European standards” (Terekh, 2020). Accordingly, the practice of resolving labour disputes in Europe is dominated by out-of-court mechanisms, which are characterised by higher efficiency and promptness.

(Rieznikova, 2012; p. 10) notes that “alternative dispute resolution is defined as a group of processes by which disputes, conflicts and cases are resolved without resorting to court proceedings”. In turn, (Izarova, 2015) specifies that “alternative dispute resolution methods provide a real opportunity to resolve a dispute without a trial and overcome the related problems of high cost, excessive duration, complexity, and the need to represent interests in court” (p. 255). In other words, alternative forms of labour dispute resolution provide easy access, efficient dispute resolution, and proportionate costs.

Any mechanism for resolving labour disputes that takes place outside of court proceedings is considered to be an alternative. Typically, alternative forms of labour dispute resolution include neutral assessment, conciliation, mediation, negotiation, and arbitration. An increasing number of countries are adopting alternative forms of labour dispute resolution due to the increased workload of the judicial system, the rising costs of litigation, and time delays. Some such programmes are mandatory, while others are voluntary. The most common “forms of alternative dispute resolution are arbitration and mediation, the parties to the relevant relations almost always try to resolve disputes through negotiations, and the main advantage of this form is that it allows the parties themselves to control the process and resolution” (Legal Information Institute, 2021).

(Barona, 2014) notes that “alternative dispute resolution was initially perceived as an alternative to state courts, but today it is clear that alternative dispute resolution is a complement to the judicial system”.

V. Burak (2017), clarifying the definition of the concept of alternative forms of labour dispute resolution, notes: “only such methods that are consensual in nature and necessarily involve the participation of neutral, independent persons in the dispute resolution are recognised as an alternative”. The advantage and specificity of such methods is that the parties can make their own decisions and settle the dispute or resolve the conflict by engaging an intermediary.

Analysing the world experience of applying alternative mechanisms of labour dispute resolution confirms the feasibility and effectiveness of this form of conflict resolution (Paladii, & Sheveleva, 2007 p. 4-7). This is a very real and viable mechanism of conflict resolution (Hoiko, 2011). Therefore, in European countries, 80 % of labour disputes pending before the courts are referred to mediation and eventually resolved out of court (Volkovytska, 2018).

Most European civil procedure codes provide for the mandatory use of alternative dispute resolution methods. Thus, in Belgium and France, the court must offer the parties to resolve the conflict through ADR mechanisms, and in England, the court has the right to impose financial sanctions on the parties to the dispute if they refuse, for example, mediation (Kossak, 2009).

(Hryn, 2022) notes the important role of the Committee of Ministers of the Council of Europe, which has adopted a number of acts aimed at simplifying access to justice:

1. Committee of Ministers of the Council of Europe (1981). This recommendation recognises that legal proceedings are often complex, lengthy, and expensive. Therefore, governments are encouraged to take measures to simplify, expedite, and reduce the cost of court proceedings. This can be achieved through measures such as conciliation or amicable settlement of disputes.
2. Committee of Ministers of the Council of Europe (1986) This recommendation states that it is advisable to include in the judicial policy the promotion of reconciliation of the parties both outside the judicial system and before and during the trial, in order to reduce the workload of the courts, reduce unnecessary jobs, improve the quality of justice.
3. Committee of Ministers of the Council of Europe. (2002). The purpose of this Recommendation is to clarify the meaning of the term “civil matters”, which refers to cases involving civil rights and obligations, including commercial, consumer, and labour law cases.
4. Directive on certain aspects of mediation in civil cases and commercial affairs (2008). The purpose of this directive is to facilitate access to dispute resolution through mediation and to ensure a balance between court proceedings and mediation.

5. Committee of Ministers of the Council of Europe. (1998).

In accordance with international and European legislation, the most common alternative forms of conflict resolution in the labour sphere are as follows:

- reconciliation through conciliation procedures;
- mediation;
- direct negotiations;
- arbitration procedures (Butynska, 2020).

The specificity of using such forms of labour dispute resolution is that “the use of one of the procedures does not exclude the possibility of using another option for resolving a labour dispute” (Burak, 2017).

1. Reconciliation

Conciliation is an alternative “method of resolving a labour dispute, which consists in finding a solution mutually acceptable to the parties through negotiation, mediation, conciliation, or other procedure. It is an effective means of reaching a compromise between the parties if all possibilities not prohibited by law are properly used” (Burak, 2017). The essence of reconciliation lies in its restorative function aimed at “bringing social relations back to the state in which such relations were before their violation” (Enykeev, 1996).

2. Mediation

Al-Khafaji (2021). notes that mediation before it became a legal means of dispute resolution, was a social phenomenon. Mediation was inherent in societies in ancient and modern history. It has played a very important role in the organisation of social relations for thousands of years.

Mediation in the context of dispute resolution is defined as any process in which the parties ask another person, called a mediator, to assist them in their attempts to resolve a dispute between them regarding contractual or non-contractual legal relations, without the mediator having the power to impose a resolution of the dispute (Şimşek, Bölten; 2017).

The peculiarity of mediation in resolving labour conflicts is voluntary. Labour disputes are resolved through negotiations with the participation of a mediator/mediators between the parties to the conflict in order to resolve the dispute and make a joint decision.

Mediation can resolve labour disputes faster, cheaper, and more efficiently, as negotiated conflict resolution increases the likelihood of continuing the employment relationship between the parties (Colvin, 2004).

The role of a mediator is to create conditions for dialogue, explore the real issues, and help create and evaluate options for a fair outcome accepted by both parties (Vezzulla, & Souza, 2004). The mediator does not have the right to make decisions on the conflict between the parties but helps to find and reach a mutually acceptable and voluntary solution (Zahorka, (s.f)).

Ukrainian scholars note that mediation, according to European Union legislation, is defined as “a structured process in which two or more parties voluntarily try to reach an agreement on a conflict that has arisen between them with the participation of a mediator” (Terekhov, 2019).

The main features of mediation in labour dispute resolution are:

- 1) The existence of three subjects - two parties to a labour dispute and a mediator who acts as a neutral participant offering his/her assistance in resolving the conflict (Lyakh, 2020).
- 2) The mediator's function is to help the parties resolve the conflict on their own, not to act as a judge. The mediator does not evaluate evidence and does not make any decisions (Stratiuk, 2019).
- 3) Flexibility and informal nature of the mediation procedure.
- 4) The use of mediation in most cases of private law disputes.
- 5) Voluntary participation in the process.
- 6) Most often, mediation is conducted in the format of a personal meeting between the parties to the dispute and the mediator.

3. Arbitration

Arbitration, whether binding or non-binding, resembles jurisdictional dispute resolution in its procedure, as the problem is resolved by a third party, an arbitrator (Pedroso et al., 2002; Pedroso et al., 2003). Arbitration or arbitration procedures are one of the alternative ways to resolve labour disputes, the essence of which is to submit the conflict to a specially created body by the parties to the conflict (Komarov et al, 2011). By their legal nature, arbitration bodies are a kind of extrajudicial entities established in accordance with the current legislation to resolve labour

disputes on behalf of the parties to the labour dispute themselves (Burak, 2017). A characteristic feature of arbitration, as well as other alternative forms of labour dispute resolution, is a voluntary process, according to which neither party can be forced to reconcile (Bondarenko, 2018).

4. Direct negotiations

Negotiations are a formalised process that “sets a specific goal, defines a range of issues, and is always implemented in specific conditions, under specific circumstances. Negotiation is the most effective and widespread way to resolve disputes around the world” (Merrills, 2005).

D. Pruitt considers negotiation as “an attempt to resolve a particular conflict of interest through peaceful dialogue and discussion of the problem. It is a specific form of social interaction and decision-making that involves two or more parties with conflicting interests and goals” (1981).

(Bondarenko, 2018) believes that negotiation is almost always present in some other alternative form, and mediation is often used as a preliminary procedure before the start of court proceedings. Negotiations are often used in mediation, arbitration, and even in court itself (settlement of a dispute with the participation of a judge) (Law of Ukraine No. 1618-IV, 2004).

Results and discussion

The analysis of the literature allowed the author to determine the effectiveness and availability of alternative forms of labour dispute resolution. The author identifies the main types of alternative labour dispute resolution methods. At the same time, in practice, the use of each type of alternative forms of labour dispute resolution differs from country to country. Therefore, in order to assess the effectiveness of each form and the possibility of its implementation and widespread use in Ukraine, it is necessary to analyse the international experience.

1. Reconciliation

A study of international experience has shown that most EU member states have enshrined the use of conciliation as a way of resolving labour disputes in legislation.

One example is the Republic of Poland, where the Labour Code (Chapter 12) provides for the

possibility of implementing a conciliation procedure between the parties in the event of a labour dispute (Labor Code of the Republic of Poland, 1974). The reconciliation procedure in Poland involves reconciliation commissions, which begin their work after the employee files a complaint. The statutory deadline for settling a dispute is 14 days after the submission of the relevant application. In some cases, provided for by law, the deadline may be extended by 15 days. The purpose of the conciliation commission is to provide proposals to the parties to the conflict on how to resolve it. The commission may terminate its work if the parties fail to resolve the conflict and refer the case to the court. The Republic of Poland does not have a clear mechanism for enforcing decisions made in the course of the commission's work. If one party fails to comply with the decision, the other party may go to court.

The conciliation procedure is similar in France, where the Labour Law states that a labour dispute may be subject to conciliation. Thus, Articles 2522-1 and 2522-13 (Labor Code, 2019) provide for the possibility of conciliation in the event of a labour dispute by involving special commissions. French law defines the criteria of reasonableness regarding the duration of conciliation, but does not set a time limit for the implementation of conciliation.

2. Mediation

The adoption of legislation by European countries on the use of mediation in the resolution of labour disputes was due to the heavy burden on the judicial system. Therefore, many countries have successfully introduced mediation into the legal system as an alternative way to resolve labour disputes. France was the first country to adopt the relevant legislation. Articles 2523-1 and 2523-10 of the French Labour Code define the provisions on the use of mediation in labour conflicts (Labor Code, 2019).

Another country in which mediation as a means of resolving labour disputes is enshrined in law is Bulgaria. Art. 3 of the Law on Mediation (Bulgarian Law on Mediation, 2004) enshrines the possibility of using mediation in resolving labour disputes. Mediation is possible only with the consent of the two parties to the conflict. The peculiarities of using mediation in Bulgaria in resolving labour disputes are as follows:

- 1) Possibility to engage several mediators.
- 2) Only an impartial person may be a mediator.

- 3) During the mediation, the mediator determines the subject matter of the dispute and informs the parties to the conflict about the consequences of certain actions aimed at resolving the dispute.
- 4) If an agreement is reached, the parties sign an agreement that is binding only on the parties to the dispute.
- 5) The absence of clear ways in the legislation to monitor the fulfilment of the terms of the agreement concluded in case of agreement.
- 6) The mediation procedure may be terminated in several cases: settlement of the dispute, initiative of one or two parties to the conflict, death of a party to the dispute.
- 7) If the parties to the conflict fail to reach an agreement and six months have elapsed since the start of mediation, the procedure may be terminated (Terekhov, 2019).

The advantages of mediation, in comparison with other alternative forms of labour dispute resolution, are that it is the fastest and most inexpensive way to resolve disputes, which can be applied only with the mutual consent of the parties and is conducted through negotiations (Mazaraki, 2016).

(Hryn, 2022) notes that

the main feature of this procedure is its maximum autonomy, confidentiality, and voluntariness, because the decision as a result of conflict resolution comes not from the mediator, but from the parties to the conflict, and is set out in the agreement of the parties to the dispute based on the results of mediation. (p. 18).

3. Arbitration

The experience of France is interesting in terms of applying the arbitration procedure in resolving labour disputes, where the Labour Code provides for the possibility of using arbitration if it is stipulated in the employment contract. The parties may choose an arbitrator by mutual agreement and must provide access to all documents necessary for the investigation in order to resolve the conflict. The specificity of the procedure is that the decisions made by the arbitrator are binding on the parties. Therefore, this procedure is efficient, effective, and prompt. The main drawback of this procedure for resolving a labour dispute is the high cost of arbitration.

O. Terekh (2020) notes that “arbitration can be a good alternative to litigation, which usually

requires significant time and effort on the part of both parties to the dispute”. The scientist believes that it is advisable to introduce such a procedure for resolving labour disputes at the legislative level in Ukraine.

4. Direct negotiations

Direct negotiations as a way to resolve labour disputes have been enshrined in Bulgarian law for quite some time. For example, the Labour Code of the Republic of Bulgaria in 1987 enshrined the possibility of negotiations between an employee and an employer in resolving labour disputes. The fact that the parties have reached an agreement is certified by a protocol, which has the same legal force as the decision of the labour dispute commission. If the management does not make any decisions within seven days of receiving a copy of the employee's application, it is considered that the employee's claim is rejected (Deineka, 2014).

UK legislation provides for direct negotiations as the first mandatory stage of labour dispute resolution. The purpose of direct negotiations is to reach a mutually acceptable agreement between the parties (Venediktov, 2017).

5. “Med-arb”

Considering various forms of labour dispute resolution and the possibility of their application in Ukraine, (Bondarenko, 2018) notes that “of all the methods of alternative dispute resolution, the most relevant for Ukraine are: negotiations, mediation, and arbitration, as well as a number of specific procedures, such as mediation”.

(Vasylyna & Hansetska, 2020) note that med-arb combines two forms, namely mediation and arbitration. This is a form of dispute resolution with the help of an arbitrator, who, if the parties fail to reach an agreement, is authorised to make a binding decision in arbitration (France, Germany, Sweden. (p. 18).

The use of mediation prior to arbitration allows the parties to personally express their comments and opinions on the possibilities of resolving the dispute under the guidance of a mediator - an experienced and qualified mediator. The advantages of mediation are the flexibility of forms and the effectiveness of labour dispute resolution, which allows achieving the best result, depending on the specifics of the conflict, circumstances, and needs of the parties.

Table 1.
Analysis of the specifics of alternative forms of labour dispute resolution.

№	A form of alternative dispute resolution	Participants of the procedure	The end result	Features	Advantages	Disadvantages
1	Reconciliation	a) the employer b) the employee; c) the Conciliation Commission.	a) peaceful resolution of the conflict - acceptance of the proposals of the conciliation commission; b) if one party fails to fulfil its obligations, the case may be referred to court.	Depending on the legislation of a particular country, time limits for reconciliation may be set. If the parties fail to reach an agreement within the specified period, the case is referred to the court.	a) participation of a neutral party - a conciliation commission that objectively assesses the circumstances and specifics of each particular labour dispute; b) an opportunity to save money on resolving labour disputes without going to court.	1) lack of guaranteed effectiveness and resolution of the labour dispute; 2) the possibility of delaying the dispute resolution process if no time limits for reconciliation are set.
2	Mediation	a) the employer b) the employee; c) mediator(s) - professional mediator.	a) settlement of the dispute and signing of the agreement; b) termination of the dispute if one or two parties to the conflict initiate the termination of negotiations or if a party to the dispute dies; c) referral of the case to court.	a) voluntary - mutual agreement of the parties to start negotiations; b) the mediator is necessarily an impartial party; c) the mediator only suggests ways to resolve the conflict and does not pronounce a verdict.	a) effectiveness b) efficiency; c) material profitability; d) flexibility and informality of the negotiation process.	a) there is no control over the fulfilment of the terms of the agreement in the event of a labour dispute; b) can be used only by mutual agreement of the parties.
3	Direct negotiations	a) the employer; b) the employee.	a) reaching an agreement between the parties to resolve the labour dispute; b) in case of failure to reach an agreement, several options are possible: - application of another type of alternative form of labour dispute resolution; - referral of the case to court.	a) can be used as the first stage of labour dispute resolution; b) does not involve third parties.	a) material efficiency; b) the ability to resolve the conflict without involving other persons and to ensure the confidentiality of the case.	a) lack of an objective view of the case by an impartial person; b) lack of guarantees of resolution of the case.
4	Arbitration	a) the employer b) the employee c) arbitrator.	a) the arbitrator makes an award that is binding on the parties.	a) formality of the procedure; b) binding nature of the decisions made by the arbitrator.	a) promptness of case resolution; b) efficiency.	a) high cost of the procedure.
5	Med-arb	a) the employer b) the employee c) an intermediary arbitrator.	a) decision-making by an intermediary arbitrator.	a) combination of two alternative forms of labour dispute resolution; b) mandatory fulfilment of the conditions set by the arbitrator for resolving the dispute.	a) efficiency and effectiveness; b) efficiency c) guarantee of fulfilment of the terms of dispute resolution.	a) high cost of the procedure.

(developed by the authors)

An analysis of international experience in the use of alternative forms of labour dispute resolution has made it possible to determine their effectiveness, financial efficiency, and promptness, as compared to the resolution of labour conflicts in court.

Each of the alternative forms of labor dispute resolution is characterized by advantages and disadvantages that determine the effectiveness and feasibility of using this particular type in a particular situation.

For example, conciliation, arbitration, mediation, and med-arb procedures for resolving labor disputes require the involvement of special commissions/outside (mediators), which may result in a delayed conflict resolution process. At the same time, the objectivity of the result may be increased.

Direct negotiations between the parties in resolving labor disputes do not require the involvement of third parties, but this may negatively affect the objectivity of the conflict resolution and the duration of the negotiations.

The duration of resolving a labor dispute through the use of alternative forms depends on many factors, including the availability of certain time limits, the parties' interest in resolving the dispute, and the availability of established rules and stages of the conflict resolution procedure. The cost of using alternative forms of labor dispute resolution is determined by the need to engage third-party specialists (arbitrators, mediators, conciliation commissions).

However, in Ukraine, the practice of using alternative means of resolving labour disputes is not widespread. This is due to gaps in the legislation, low public awareness of the possibilities of using alternative forms of labour dispute resolution, and unwillingness to use "peaceful" methods of conflict resolution.

With regard to Ukrainian legislation, it should be noted that in 2019 Ukraine signed the UN Convention on International Agreements to Settle Disputes through Mediation. United Nations (2019).. Subsequently, in November 2021, the government adopted the Law on Mediation No. 1875-IX (2021). According to Ukrainian law, mediation is "an out-of-court voluntary, confidential, structured procedure in which the parties, with the help of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations" (Law on Mediation No. 1875-IX, 2021).

At the same time, mediation is currently not a popular form of labour dispute resolution in Ukraine, unlike in European countries. The reasons for this situation are as follows:

- 1) The adoption of a law does not mean its successful functioning. It is still important to comprehensively refine the legislative mechanism of legal regulation and introduce the necessary legislative changes that will take into account the specifics of modern labour relations.
- 2) Low level of public awareness of the possibilities and benefits of using mediation as an alternative form of labour dispute resolution. The lack of awareness of citizens contributes to prejudices and stereotypes about the legal approaches of this form of conflict resolution, which leads to reluctance to use it. Therefore, it is important to raise public awareness of the benefits and effectiveness of mediation as a legal institution through an information policy aimed at shaping a positive attitude towards mediation.
- 3) Currently, there is a lack of qualified mediators in Ukraine, so it is particularly important to promote the training of mediators. In this regard, it is advisable to involve higher education institutions and professional associations of mediators "in the educational process of training mediators, establishing standards for training mediators, creating appropriate centres for training mediators and their accreditation" (Melnyk, 2022).

Therefore, it is important to improve legislation in terms of using alternative forms of labour dispute resolution and introducing mandatory pre-trial settlement of labour disputes. This issue should be addressed comprehensively and systematically. The following measures are advisable to introduce the use of alternative forms of labour dispute resolution:

- 1) Amendments to the Labour Code of Ukraine and laws regulating the labour dispute resolution procedure, taking into account the current reality in Ukrainian society.
- 2) Conducting an information policy to raise public awareness of the possibilities of using such alternative forms of dispute resolution as mediation, conciliation, direct negotiations, and arbitration.
- 3) Promote professional training of arbitrators, mediators, and other specialists. In this regard, it is important to establish standards for training specialists, create special centres

for training and professional development, and involve higher education institutions in the training of such specialists.

- 4) Adopting the experience of countries that actively use alternative forms of labour dispute resolution.

Such a comprehensive approach to the introduction of alternative forms of labor dispute resolution in Ukraine will reduce the material and time costs of labor dispute resolution, reduce the burden on the judicial system, and increase the effectiveness of conflict resolution.

At the legislative level, it is advisable to establish the mandatory application of alternative forms of labor conflict resolution, which will allow to spread the practice of their use. In addition, it is important to set maximum time limits for the procedure to ensure that the labor dispute resolution process is not delayed by one of the parties.

When assessing the feasibility of introducing certain alternative forms of labor dispute resolution, it is important to pay attention to the cost of the procedure. It is determined that the main disadvantage of arbitration and mediation is the high cost of the procedure. Therefore, the possibility of implementing these forms of labor dispute resolution in Ukraine in the current conditions is quite limited.

Currently, Ukraine has introduced legislation on the use of mediation in resolving labor disputes, which may be due to the lower cost of the procedure and the popularity of its use in other countries.

At the same time, conciliation and direct negotiations are not currently used in the practice of resolving labor disputes in Ukraine. It is advisable to pay attention to these alternative forms of resolving labor conflicts and introduce them into Ukrainian practice.

The possibility of using several alternative forms of resolving labor conflicts will allow for choosing the most appropriate type (e.g., mediation, direct negotiations, or conciliation), depending on the situation.

Conclusion

The protection of the human right to work and the peaceful settlement of labour disputes are pressing issues that the international community is focused on. The urgency of these issues is caused by the consequences of the COVID-19

pandemic, economic crises, changes in labour organisation, and the impact of sociocultural changes on labour relations. Previously, labour disputes were most often resolved through court proceedings, but now alternative forms of dispute resolution are gaining popularity globally as an effective tool for resolving conflicts in the field of labour. However, this practice is not widely used in Ukraine today. Therefore, it is advisable to define the specifics of alternative forms of labour conflict resolution and analyse the international practice of their application. The purpose of the article is to determine the effective alternative forms of labour dispute resolution based on the analysis of theoretical information and practical experience of their application in the modern world and the possibility of their use in Ukraine.

The author defines the concept of labour disputes as disagreements between labour law entities on the application of labour legislation or the establishment of new working conditions, submitted to a jurisdictional or non-jurisdictional body for consideration with a view to their settlement. Labour disputes may be resolved in court or out of court. The need to use alternative mechanisms for resolving labour disputes is due to the heavy workload of the judiciary and the lengthy period of time required for a case to be considered in court. Alternative forms of labour dispute resolution are the mechanisms for resolving labour conflicts outside of court proceedings.

The author examines the specifics of the main alternative forms of labour dispute resolution: conciliation, direct negotiations, mediation, arbitration, and mediation. The author analyses the international experience of using alternative forms of labour dispute resolution on the example of France, Bulgaria, Poland, and the United Kingdom. The author identifies the main advantages of using alternative mechanisms for resolving labour disputes in comparison with the judicial procedure: promptness of conflict resolution, efficiency, and economic profitability.

The reasons why alternative forms of labour dispute resolution are not widespread in Ukraine are specified:

- 1) Absence of legislative regulation or failure to finalise legislation on the legal regulation of conflict resolution in the field of labour relations.

- 2) Low level of public awareness of the benefits and possibilities of using alternative forms of labour dispute resolution.
- 3) Lack of qualified specialists (arbitrators, mediators).

Effective implementation and promotion of the use of alternative forms of labour dispute resolution in Ukraine is possible through the implementation of the following measures:

- 1) Reforming the Labour Code of Ukraine and laws aimed at resolving labour disputes.
- 2) Implementation of an information policy on the possibilities of using alternative forms of labour dispute resolution to raise public awareness.
- 3) Professional training of specialists (arbitrators, mediators, and other professionals) by involving higher education institutions, establishing standards for training specialists, creating special training and professional development centres.
- 4) Adopting successful international experience.

The implementation of these measures will allow for the widespread use of alternative forms of labour dispute resolution in Ukraine, which will reduce the burden on the judicial system, speed up the process of resolving labour conflicts and increase the effectiveness of resolving labour conflicts.

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