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SOME ISSUES OF DEFINING THE PRINCIPLES OF MEDIATION AS AN OUT-OF-JUDICIAL PROCEDURE FOR RESOLVING LABOR DISPUTES

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Abstract. In the article, the authors conducted a complex theoretical and legal study of mediation as an alternative procedure for resolving individual labor disputes. The importance of the introduction of mediation is determined by the unsatisfactory level of consideration of labor cases by the courts. Because of the formal approach to dispute resolution, conflicts between employees and employers not only continue, but even tend to escalate. It is emphasized that in the context of the implementation of the provisions of European legislation, the priority task for the theory of labor law should be the development of appropriate out-of-court procedures for the resolution of individual labor disputes.

Mediation is a convenient and affordable procedure that: 1) ensures the establishment of relations between the employee and the employer; 2) avoids potential reputational loss (family, commercial, labor); 3) guarantees the search for mutually acceptable solutions; 4) reduces the burden on the judicial system of the state. The mediation procedure demonstrates that even those situations which, for any reason or reason, cannot be resolved by means of a court decision, it is quite possible to settle them with the help of a mediator in negotiations. Mediation is not intended to replace, but to supplement existing mechanisms for judicial resolution of individual labor disputes. During the analysis of the Law of Ukraine "On Mediation" dated November 16, 2021 No. 1875-IX, an opinion is expressed according to which the presence of stable legislation on mediation will contribute to the formation of public trust in alternative out-of-court dispute resolution procedures.

Keywords: alternative procedures for resolving labor disputes, labor law, mediation procedure, principles of mediation, problems of mediation implementation, reforming labor legislation, unloading the judicial system.

Author's contribution

The authors made an equal contribution to the article. Together they selected literature, analyzed it and drew common conclusions.

Disclosure statement

The authors have not any competing financial, professional, or personal interests from other parties.

INTRODUCTION

Integration of our country into the European legal area involves the introduction of relevant provisions and concepts into national labor legislation. In the course of reforming the organization and functioning of the legal system, it is important to introduce adequate and attractive procedures for the out-of-court settlement of labor disputes. As an alternative dispute resolution process, mediation has been developing in Ukraine for over 20 years. Mediation is useful for resolving many conflicts, especially those that are sensitive to the preservation of relationships and the risks of reputational losses (family, commercial, labor, etc.). Mediation can be applied regardless of whether the case is in court (pre-trial, post-trial, out-of-court mediation and mediation during the trial of a dispute). At the

same time, despite the existence of a certain history of the establishment of the mediation institution in Ukraine, it is fair to say that a number of aspects remain unexplored, in particular those related to the mediation procedure for resolving labor disputes in Ukraine.

The development of a system of principles and problematic issues of mediation (mediation) is increasingly attracting the attention of scholars, due to its effectiveness in reducing the burden on the judicial system. Nevertheless, the mediation procedure is only at the stage of its formation and requires further theoretical research.

The purpose of the article is to carry out a theoretical and legal study of the concept of mediation (mediation) as an alternative procedure for resolving individual labor disputes. Based on the current legislation and published scientific works, the author plans to identify a set of mediation principles as the initial provisions for its implementation. In addition, the author aims at systematizing the problems which may act as obstacles to further popularization of the mediation procedure.

THEORETICAL FRAMEWORK

Certain issues related to the introduction of mediation in labor law have been the subject of scientific research by V. Andriyiv, N. Bolotina, S. Vavzhenchuk, V. Venediktov, S. Venediktova, S. Vyshnovetska, Yu. Hryshyna, O. Drozd, T. Zanfirova, S. Zapara, M. Inshyn, D. Kutomanov, K. Melnyk, N. Melnychuk, P. Pylypenko, S. Prylypko, A. Slyusar, G. Chanysheva, O. Yaroshenko etc. It is worth noting that in their scientific works, scholars only partially considered the problematic issues of implementation of this institute.

METHODOLOGY

To achieve the goal of the scientific paper and solve the tasks used general and special-scientific methods of cognition: dialectical, system-structural and comparative-legal. With application of the dialectical method, an objective and comprehensive cognition of legal reality, determination of the essence of the phenomenon under study (in particular, we consider mediation as an out-of-court procedure for resolving labor disputes) in the unity of of its material content and legal form.

The systemic-structural method made it possible to characterize the legal phenomenon being researched as a whole, and to identify those elements that are important for its implementation. The comparative legal method allowed the author to analyze the legal grounds and existing procedures for resolving labor disputes provided for by various acts of the national labor legislation of Ukraine.

RESULTS

Reforming labor legislation should be aimed at bringing it into compliance with the Constitution of Ukraine, taking into account the generally recognized principles and norms of international law, as well as the new socio-economic realities in which the modern labor market operates (Yaroshenko, p. 42). In this aspect, an important issue for the science of labor law should be the development of modern procedures for resolving individual labor disputes. At present, the legal basis for consideration of labor disputes is Chapter XV "Individual Labor Disputes" of the Labor Code (hereinafter referred to as the Labor Code), as well as the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)". It should be borne in mind that the Labor Code, which was adopted back in the days of the socialist economic model, has undergone numerous changes and lost its consistency and effectiveness. A number of norms of the current labor legislation are not adapted to modern social relations, which leads to certain theoretical and practical problems.

The analysis of practice shows that the number of labor disputes considered by the courts is not decreasing, and the timeframe for consideration is increasing. Almost every case becomes the subject of consideration in the appellate instance, and some cases reach the higher specialized courts (Sereda, 2017, p. 40). Unlawful dismissals, late payment of wages, and sending employees on forced unpaid

leave are caused, among other things, by the unpreparedness of the existing system of law enforcement agencies to consider the ever-growing number of applications for the protection of labor rights (Labor law: textbook..., 2021, p. 471–473).

Modern labor legislation provides for two ways to resolve labor disputes: out-of-court and in court. The out-of-court way of consideration of an individual labor dispute involves the activities of the LC (hereinafter referred to as the labor dispute commission) regulated by law. It seems that the legislator, by establishing the mandatory stage of consideration of labor disputes by the LDC, primarily intended to relieve the courts by reducing the number of cases considered by them. Article 224 of the Labor Code stipulates that the labor dispute commission is a mandatory primary body for consideration of labor disputes. However, in accordance with paragraph 8 of the Resolution of the Plenum of the Supreme Court of Ukraine No. 9 of November 1, 1996 "On the Application of the Constitution of Ukraine in the Administration of Justice", the court may not refuse to accept a person's claim or complaint only on the grounds that his or her claims can be considered in the pre-trial procedure provided by law (Collection of Resolutions..., 2004, p. 24).

DISCUSSION

Scholars have repeatedly emphasized that the LDC does not always fulfill the function of an effective body for out-of-court consideration of individual labor disputes, which is due to the following. First of all, a significant number of labor disputes are subject to consideration only in courts. In addition, many enterprises, institutions, and organizations have not established LDCs at all, both due to the lack of initiative on the part of employees and/or employers and due to the small number of employees. The obligation on the owner or his authorized body to provide organizational and technical support to the LDC (provision of equipped premises, printing and other equipment, necessary literature, organization of office work, recording and storage of employee applications and files, preparation and issuance of copies of decisions, etc.), as provided for in Article 223 of the Labor Code, hardly encourages the owner to establish a LDC at his enterprise. Finally, the decisions made by the LDC are often not voluntarily implemented by the employer, since the LDC is not a truly authoritative body for the employer (Daraganova, 2011, p. 80).

In addition, Professor A.M. Slyusar points out: "the law does not require special legal education for the members of the LDC, thus, individual labor disputes are resolved not by experts in the field of labor legislation, but by citizens who have their legal awareness at the household level. This kind of "resolution" of an individual labor dispute has nothing to do with protecting the rights and legitimate interests of both employees and employers" (Slyusar). In our opinion, another disadvantage of the LDC is its dependence on the employer in material and technical matters.

A.M. Berniukov writes, "...any theoretical position that is proved by a formal logical method must ultimately be verified by practice... And this indicates that the criterion of truth, even in an indirect form, is still practice" (Berniukov, 2016, p. 159). Based on this conceptual approach, we believe that the idea of establishing the LDC as an extrajudicial mechanism for resolving individual labor disputes is ineffective due to significant flaws in the structure of its functioning.

Naturally, the shortcomings of the procedure for resolving individual labor disputes are most pronounced during periods of economic crises, during which the number of violations of employees' rights by employers seeking to maintain their profit margins by reducing the level of legal guarantees for employees increases dramatically. It is at this stage of society's life that the number of labor disputes increases. The lack of adequate means for their pre-trial resolution leads to a massive number of employees applying to courts of general jurisdiction. The increase in applications for judicial protection has become one of the reasons for the unsatisfactory level of consideration of labor cases by the courts, the low quality of court decisions, including judicial errors. Judgments rendered in labor cases are insufficiently reasoned and substantiated. Considering the reasoning of a court decision as the most important expression of its legitimacy, it can be concluded that the lack of reasoning of a particular decision encroaches on the rule of law as a fundamental principle of the legal mechanism for the protection of human rights in the field of labor (Sereda, 2018, p. 223-225). It seems that due to the

formal approach to dispute resolution, conflicts between employees and employers not only continue, but also in some cases intensify.

In connection with the above, it is important to pay attention to such procedures for resolving individual labor conflicts that, on the one hand, would be accessible and convenient, and, on the other hand, would ensure the exercise of the right to protect the legitimate interests of both the employee and the employer. In our opinion, such a procedure is mediation, which aims to reconcile the parties, find mutually acceptable solutions, and identify the causes of conflict situations and the conditions that contribute to the emergence of disagreements. Mediation, as a procedure that reduces the workload of judges and, as a result, saves budgetary resources and improves the overall quality of justice, is based on the paradigm of "public-private partnership."

In order to avoid ambiguity of concepts, the operation of defining concepts is used to clarify their content. The essential features that determine the qualitative specificity of the subject matter, i.e., features related to the nature of the object under study, play a decisive role in the formation of concepts. Each of these features is individually necessary, and all together they are sufficient to distinguish this particular subject from the set of similar things (Logic: a textbook..., 2022, p. 58-59). In our opinion, the concepts of labor law should be characterized by special precision, formal certainty and balance, which makes it possible to clarify their content and scope. The consequence of such a requirement for the formation of the conceptual framework of labor law will be compliance with such an element of the rule of law as legal certainty.

It should be noted that science has not formed a more or less unified approach to defining the content (essential features) of this concept. For example, V. Belinska believes that mediation is a voluntary and confidential way to resolve a conflict situation, where a mediator, in the course of a structured procedure, helps the parties to the conflict to enter into direct negotiations in order to develop a common solution to the problem (Belinskaya, 2011, p. 163). According to A. Rowe, I. Sherman, and S. Peppitt, mediation is a process in which the parties, with the help of an independent third party, systematically make efforts to clarify their common and different views, explore the possibilities of alternative dispute resolution, and seek compromises to conclude an agreement to resolve their dispute (Zapara, 2015, p. 84). O. Voynarovska understands mediation as a flexible process conducted confidentially, in which a neutral party (mediator) helps the parties to the conflict to reach an agreement on dispute resolution through negotiations. A professional mediator performs a number of important tasks throughout the mediation process, including being a process manager who ensures control, confidentiality, and creates a sense of progress and the possibility of achieving a positive result. The mediator is called upon to be a so-called catalyst for solving the problem, which, thanks to personal qualities and professional skills, helps the parties to determine the best outcome for them (Voynarovska....).

The basis of the modern mediation model, which has been spreading in many developed countries in recent decades, is the American mediation model. Mediation in the United States emerged as an institution for resolving labor disputes after World War II. At that time, the American society was struggling between labor unions and employers over labor conditions and wages. Without a prompt resolution of labor disputes, there was a threat of strikes, mass layoffs and temporary closure of enterprises, so the US Government proposed to involve the Department of Labor as a neutral mediator to resolve the parties' differences. In parallel with the United States, the mediation model was spreading in the United Kingdom and Australia.

While mediation as an alternative to litigation began to develop actively in the United States after World War II and reached its peak in the 1970s, it came to continental Europe in the 1980s. However, this process proved to be difficult, as the level of mediation spread varied significantly from country to country. For example, Germany and France have different perceptions of mediation. In France, the resistance to the American model was significant. Even today, mediation in this country has a very weak position. The reason for the lack of spread of mediation in France may include, among other things, a historical tradition of opposition to Anglo-Saxon culture in general and legal culture in particular. In contrast, in Germany, where the Federal Union for Mediation in the Economic and Labor Sphere operates, mediation is a popular tool.

Mediation demonstrates that even those situations that, for whatever reason or consideration, are inappropriate to resolve through a court decision, can be resolved with the help of a mediator (intermediary) in negotiations between the parties. In this regard, mediation in labor disputes is increasingly in demand in Ukraine. We believe that the mediation procedure is not only a social necessity, a kind of objective regularity, but also an optimal and adequate way to solve the tasks on the agenda in modern society.

It is rightly noted in the literature that a mediator should not be responsible for the decisions that the parties will come to, but only organizes the process. This is the difference between mediation and court, where a judge makes the decision. The main goal of mediation is to satisfy both parties with the outcome of the truce, a specific resolution of the dispute at the request of the participants (Kolesnikova, Shapovalova...).

Mediators must be competent and have the necessary knowledge in the field of mediation. Important factors are proper training and continuous improvement of their theoretical and practical skills in the field of mediation, taking into account all the requirements of standards or requirements related to their accreditation (Sereda, 2017, p. 41).

In order to achieve a successful outcome of negotiations between the parties to a labor dispute, a mediator must first establish the cause and subject matter of the conflict situation. In order to clarify the circumstances of the misunderstanding between the employer and the employee, the mediator must realize that in the process of constructing a fair agreement, the parties may agree to change the order or hierarchy of satisfaction of their interests. The mediator should study the regulations governing the labor relations in dispute. Finally, based on the results of the preparatory work, the mediator should provide the parties with options and proposals for an effective resolution of the dispute, which contain specific actions required by both the employer and the employee. The mediator (association of mediators) should take care of proper logistical and telecommunication support for the negotiations.

The provisions of international legal acts demonstrate the important role assigned to the institution of mediation. Directive 2008/52/EC of the European Parliament and of the Council of Europe states that mediation is a structured process, regardless of its name or reference, by which two or more parties to a dispute attempt to reach an agreement on a voluntary basis to resolve the dispute with the support of a mediator (On some aspects of mediation..., 2008). A number of international acts are devoted to the issue of conciliation procedures: The fundamental decision of the Council of the European Union of March 15, 2001 "On the place of victims of crime in criminal proceedings" (2001/220/JHA); Recommendation No. R (99) 19 "On Mediation in Criminal Matters" of September 15, 1999; UN Economic and Social Council Resolution "Basic Principles on the Application of Restorative Justice Programs in Criminal Matters" (UN Economic and Social Council, July 24, 2002); Recommendation 20 (2003) of the Committee of Ministers of the Council of Europe to member states on new ways of dealing with juvenile delinquency and the role of juvenile justice; Council of Europe Recommendation on Mediation in Civil Matters No. R (2002) 10; Council of Europe Recommendation on Family Mediation No. R (98) 1; Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial legal relations (Daraganova, 2011, p. 79). The introduction of mediation in Ukraine is included in the action plan to improve Ukraine's position in the World Bank's Doing Business ranking (paragraph 23), approved by the Order of the Cabinet of Ministers of Ukraine No. 1413-p of December 4, 2019 (On Approval of the Action ..., 2019). Unfortunately, among the listed documents there are no provisions relating to mediation in labor relations (Sereda, 2017, p. 42).

The mediation procedure cannot replace an effective, fair and accessible judicial system, and therefore mediation is a complement to the existing mechanisms for the judicial resolution of individual labor disputes. However, the general international experience is that the content of guarantees and the variety of mediation procedures contribute to the further popularization of this tool and provide significant impetus for the development of national mediation laws.

On November 16, 2021, the national legislator adopted the Law of Ukraine "On Mediation" No. 1875-IX, which applies to the prevention and settlement of labor disputes, among other things.

It should be emphasized that the absence of an appropriate legal framework regulating the mediation procedure has long been one of the factors that hindered the development of this procedure. This could lead, for example, to the fact that even when a conflict situation involved mediation as the best way to resolve it, such a gap influenced the parties' choice to use traditional litigation. Stable legislation will definitely contribute to building public trust in alternative out-of-court dispute resolution procedures and, as a result, to the development of mediation in general.

There are two models of legislative regulation of mediation in European countries. The first model provides for broad and detailed legal support (regulation) of mediation. This approach represents a certain interest in comprehensive legal certainty in this area, protection of consumer rights, and promotion of the development of the mediation institution. This approach is inherent in Austrian law. The second model is based on the principles of regulatory and legal restraint in the regulation of mediation (for example, the laws of the United Kingdom and the Netherlands). This model is characterized by a limited scope of legal rules governing the mediation procedure, which is due to the interests of avoiding restrictions on the mobility and flexibility of mediation. Legal regulation under this model is limited to the consolidation of mediation principles, requirements for mediators, and mechanisms for preventing abuse. At the same time, the determination of algorithmization of mediation procedures is attributed to the independent competence of mediator organizations.

It appears that the Ukrainian legislator has chosen the second approach. The Law of Ukraine "On Mediation" is not cumbersome, its content is limited to the principles of mediation (Articles 4-8), Section II establishes the legal status of a mediator (requirements, rights and obligations, rules of professional ethics, liability, etc.), and Section III is already devoted to the mediation procedure itself. In addition, the Labor Code was supplemented with the following provision: "A labor dispute between an employee and an employer, regardless of the form of the employment contract, may be settled through mediation in accordance with the Law of Ukraine "On Mediation", taking into account the specifics provided for by this Code. A mediation agreement and an agreement based on the results of mediation in labor disputes shall be concluded in writing. In the event of non-fulfillment or improper fulfillment of the agreement based on the results of mediation, the parties to the mediation shall have the right to apply to the bodies provided for in Article 221 of this Code to consider the labor dispute. Participation in the mediation procedure may be recognized as a good reason within the meaning of Articles 225 and 234 of this Code."

We believe that the aforementioned legal act is not without its drawbacks, which is natural, since it was the first attempt by the legislator to regulate such an insufficiently researched issue. First of all, we agree with the observation of the Main Scientific and Expert Department, according to which the absence of a deadline for mediation may lead to the fact that mediation will be used to artificially delay the resolution of a dispute. In particular, it is possible that one of the parties will deliberately delay the mediation time, which in fact, having no desire to negotiate, will use mediation to delay the consideration of the dispute on the merits in court (Opinion of the Main Scientific ...).

The introduction and further functioning of the mediation institute is a complex phenomenon that should be built based on and by observing certain starting points, fundamental ideas, which are called principles in the scientific literature. Article 4 of the Law of Ukraine "On Mediation" states that mediation is conducted by mutual agreement of the parties to mediation, taking into account the principles of voluntariness, confidentiality, neutrality, independence and impartiality of the mediator, self-determination and equality of rights of the parties to mediation. It should be emphasized that the essence and social purpose of mediation are revealed and specified in its principles. On the one hand, the principles of mediation reflect its specific characteristics, determined by the laws of social development. On the other hand, they embody the subjective perception of mediation by members of society: their moral and legal views, requirements, and beliefs.

The term "principle" is interpreted as something that underlies a certain theory, doctrine, science, worldview, etc.; the primary basis (Modern Explanatory Dictionary ..., 2006). Mediation principles are the foundations, initial provisions, general requirements, and ideas of a constructive mediation procedure, compliance with which guarantees conflict resolution and reconciliation to its participants. In our opinion, the nature, organization, functioning and effectiveness of the mediation procedure

requires a systematic rethinking of its principles. The system of mediation principles should be considered as one of the criteria for the effective implementation of mediation.

All the principles of mediation as an alternative way of resolving labor disputes can be divided into legal and non-legal principles. The legal principles include:

voluntariness of the mediation procedure;

equality of the parties in the mediation process;

discretion (independence of the parties) in the mediation process;

cooperation of the parties; confidentiality;

limitation of the mediator's powers (inability to impose a certain way of resolving their dispute on the parties);

professional multidisciplinary nature of the mediator (the mediator must have a certain set of professional competencies in law, psychology, conflictology, economics, etc.).

Non-legal principles include: good faith of the parties to the conflict; impartiality and neutrality of the mediator; personalization of the mediation procedure (the parties and the mediator are present in person); the principle of direct interaction between the parties; trust of the parties; and tolerance of mediation activities. An important principle of mediation is the principle of voluntariness. According to Article 5 of the Law of Ukraine «On Mediation», no one can be forced to settle a conflict (dispute) through mediation.

Voluntariness reflects the very idea of reconciliation, the main difference and advantage of an alternative procedure involving a mediator compared to jurisdictional mechanisms. On the one hand, mandatory mediation cannot bring positive results, as it will lead to a delay in dispute resolution, artificial increase in the number of conciliation procedures, while the number of settled disputes will remain constant. At the same time, on the other hand, at the initial stages of mediation development, the parties to the conflict should be informed about the possibilities and benefits of mediation, and the use of mediation should be encouraged. We believe that some restriction of the voluntariness principle is permissible, which may be manifested, for example, in mandatory informational meetings of the parties with the mediator. It is important to set up information stands in courts that would contain information on what disputes can be settled with the help of a mediator, and on the location of organizations that provide mediation. Judges themselves can also directly inform the parties about the benefits of mediation.

In view of the above, however, we do not believe that it is correct to raise the issue of legislative introduction of mandatory mediation in cases of «minor complexity». This approach is not acceptable for the following reasons.

Firstly, in this case, mediation will lose its essential feature that distinguishes it from other dispute resolution procedures - its alternative nature.

Secondly, judicial protection of labor rights is extremely important based on the rule of law. Its realization is impossible without ensuring that a person has access to an independent, impartial court, the proceedings in which meet the requirements of a fair trial (Trichlib, 2013, 159). The Constitutional Court expressed the following legal position, according to which everyone is guaranteed protection of rights and freedoms in court. The court may not deny justice if a citizen of Ukraine, a foreigner, or a stateless person believes that their rights and freedoms have been or are being violated, obstacles to their realization have been or are being created, or other infringements of rights and freedoms have occurred (Decision of the Constitutional Court ..., 1997).

The principle of confidentiality of mediation determines a special regime for the use of information related to mediation in the interaction of the parties to the procedure with third parties, according to which the very fact of mediation, as well as all information disclosed by the parties in the course of negotiations, must be kept secret. It is the mediator's responsibility to maintain the confidentiality of mediation. Pursuant to Article 6(2) of the Law of Ukraine «On Mediation», if a mediator receives confidential information from one of the parties, he or she may disclose such information to the other party(ies) only with the consent of the party that provided such information.

The principle of cooperation and equality means that the parties do not compete, but assist each other in finding options for resolving the dispute. The parties to mediation should be provided with

equal opportunities during mediation. The mediator's obligations should be the same for all parties to the mediation. In the substantive aspect, the principle of independence of the parties means that the parties to the dispute may, at their own discretion, determine the range of issues to be discussed during the conciliation procedure, and the parties may independently establish certain rules for conducting mediation.

Despite the rather promising nature of mediation as an alternative procedure for resolving labor disputes, there are a considerable number of obstacles in Ukraine related to the full implementation of this institution in practice. R.O. Denysova rightly notes that mediation in Ukraine has faced a number of obstacles of various kinds, the resolution and settlement of which requires certain efforts on the part of both society and the state. But, the scholar continues, analyzing the psychological portrait of Ukrainian society in the historical context, as well as modern realities, it is appropriate to conclude that the method of mediating disputes has the basis to organically fit into modern life. It is the subjective influence of the mediation institution, with all its various specific tools, that can help to negate the above-mentioned vestiges of Soviet existence, perhaps even slightly adjust the national mentality, familiarize Ukrainians with the world-famous and developed methods of alternative dispute resolution and generally help them to realize their importance in their own and social life. Objectively, today there is an intensive formation of a regulatory framework (both at the state and local levels) based on a decade-long practice of mediation in many conflicts (disputes) (Denysova, 2018, p. 3-4).

It should also be emphasized that there is no market for professional mediators, which entails the absence of widespread practice of using mediation as such. There is low activity of educational work at the level of the state and local governments to inform the population about alternative procedures for resolving labor disputes. The unstable economic situation in our country is inextricably linked to the growing tension, nervousness and conflict in society. Critical property stratification makes it much more difficult to maintain an open dialogue between parties with different social statuses.

It is necessary to popularize mediation as such not only in the scientific field or within the framework of training and educational centers, mediators should reach out to the general public to familiarize them with the concept and mechanisms of mediation. That is why it is necessary to create a culture of mediation in society so that parties to a conflict make a choice in favor of mediation on their own, realizing all its benefits.

CONCLUSIONS

Thus, mediation can be considered as an alternative procedure for resolving disputes between an employee and an employer. The purpose of mediation is to reconcile the parties, find mutually acceptable solutions, identify the causes of conflict situations and the conditions that contribute to the emergence of disagreements.

Mediation is a procedure that reduces the workload of judges, saves budgetary resources and improves the overall quality of justice. The mediation procedure is not only a social necessity, a kind of objective regularity, but also an optimal and adequate way to solve the tasks on the agenda in modern society. However, mediation cannot replace an effective, fair and accessible judicial system, and therefore it acts as a supplement to the existing mechanisms for the judicial resolution of individual labor disputes.

By adopting the Law of Ukraine «On Mediation» No. 1875-IX on November 16, 2021, the Ukrainian legislator chose a model of regulatory and legal restraint in the regulation of mediation. The nature, organization, functioning and effectiveness of the mediation procedure requires a systematic rethinking of its principles. The system of mediation principles should be considered as one of the criteria for the effective implementation of the reconciliation procedure. All principles of mediation as an alternative way of resolving labor disputes can be divided into legal and non-legal. The lack of popularity of mediation in Ukraine is associated with factors of socio-economic, political, organizational and psychological nature.

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ДЕЯКІ ПИТАННЯ ВИЗНАЧЕННЯ ПРИНЦИПІВ МЕДІАЦІЇ ЯК ПОЗАСУДОВОЇ ПРОЦЕДУРИ ВИРІШЕННЯ ТРУДОВИХ СПОРІВ

Анотація. У статті автори провели комплексне теоретико-правове дослідження медіації (посередництва) як альтернативної процедури вирішення індивідуальних трудових спорів. Важливість впровадження медіації зумовлена незадовільним рівнем розгляду трудових справ судами. Через формальний підхід до вирішення спору, конфлікти між працівниками та роботодавцями не лише продовжуються, а навіть мають тенденцію до загострення. Наголошується, що у контексті імплементації положень європейського законодавства, пріоритетним завданням для теорії трудового права має стати розробка відповідних позасудових процедур вирішення індивідуальних трудових спорів.

Медіація є зручною та доступною процедурою яка: 1) забезпечує налагодження стосунків між працівником та роботодавцем; 2) уникає потенційні репутаційні втрати (сімейного, комерційного, трудового характеру); 3) гарантує пошук взаємоприйнятних рішень; 4) знижує навантаження на судову систему держави. Процедура медіації демонструє, що навіть ті ситуації, які з будь-яких причин або міркувань недоцільно розв'язувати за допомогою судового рішення, цілком можливо урегулювати за допомогою медіатора (посередника) у переговорах. Медіація має на меті не заміну, а доповнення існуючих механізмів судового вирішення індивідуальних трудових спорів. Під час аналізу Закону України «Про медіацію» від 16.11.2021 р. № 1875-IX, висловлюється думка, відповідно до якої, наявність стабільного законодавства про медіацію буде сприяти формуванню довіри суспільства до альтернативних позасудових процедур врегулювання спорів.

Залежно від обсягу правового регулювання, виокремлюються дві моделі законодавчого регламентування медіації: перша модель передбачає широке та деталізоване нормативно-правове забезпечення, а друга - стоїть на засадах нормативно-правової стриманості. Вітчизняний законодавець, закріпивши у Законі України «Про медіацію» лише принципи медіації, правовий статус медіатора та загальні питання самої процедури, обрав другий варіант нормативного регламентування медіації. Запропонована класифікація принципів медіації на: правові та неправові. Незважаючи на досить перспективний характер медіації, як альтернативної процедури вирішення трудових спорів, в Україні існує чимала кількість факторів соціально-економічного, історико-політичного, психологічного та організаційного характеру, які перешкоджають впровадженню вказаного інституту в практичну діяльність.

Ключові слова: альтернативні процедури вирішення трудових спорів, процедура медіації, принципи медіації, проблеми впровадження медіації, розвантаження судової системи, реформування трудового законодавства, трудове право.

SOME ISSUES OF DEFINING THE PRINCIPLES OF MEDIATION AS AN OUT-OF-JUDICIAL PROCEDURE FOR RESOLVING LABOR DISPUTES

Abstract. In the article, the authors conducted a complex theoretical and legal study of mediation as an alternative procedure for resolving individual labor disputes. The importance of the introduction of mediation is determined by the unsatisfactory level of consideration of labor cases by the courts. Because of the formal approach to dispute resolution, conflicts between employees and employers not only continue, but even tend to escalate. It is emphasized that in the context of the implementation of the provisions of European legislation, the priority task for the theory of labor law should be the development of appropriate out-of-court procedures for the resolution of individual labor disputes.

Mediation is a convenient and affordable procedure that: 1) ensures the establishment of relations between the employee and the employer; 2) avoids potential reputational loss (family, commercial, labor); 3) guarantees the search for mutually acceptable solutions; 4) reduces the burden on the judicial system of the state. The mediation procedure demonstrates that even those situations which, for any reason or reason, cannot be resolved by means of a court decision, it is quite possible to settle them with the help of a mediator in negotiations. Mediation is not intended to replace, but to supplement existing mechanisms for judicial resolution of individual labor disputes. During the analysis of the Law of Ukraine «On Mediation» dated November 16, 2021 No. 1875-IX, an opinion is expressed according to which the presence of stable legislation on mediation will contribute to the formation of public trust in alternative out-of-court dispute resolution procedures.

Depending on the scope of legal regulation, two models of legislative regulation of mediation are distinguished: the first model provides for a broad and detailed legal provision, and the second one is based on regulatory restraint. The domestic legislator, having enshrined in the Law of Ukraine «On Mediation» only the principles of mediation, the legal status of the mediator and the general issues of the procedure itself, chose the second variant of the normative regulation of mediation. In addition, the classification of mediation principles into legal and non-legal ones is proposed. Despite the rather promising nature of mediation as an alternative procedure for resolving labor disputes, in Ukraine there is a considerable number of socio-economic, historical-political, psychological and organizational factors that prevent the implementation of the specified institute in practical activity.

Key words: alternative procedures for resolving labor disputes, labor law, mediation procedure, principles of mediation, problems of mediation implementation, unloading the judicial system, reforming labor legislation.

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