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Foreign experience in implementing alternative dispute resolution methods: comparative analysis

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Abstract: The article is aimed at disclosing the implementation of alternative ways of resolving legal disputes and conflicts. It is substantiated that the search for alternatives to state courts for resolving disputes is due to the following factors as the legal awareness of society, the state, legal culture, clear legislation, the adoption of valid court decisions, the structure of the judicial system, the effectiveness of its work, the level of development and complexity of economic and other public-legal relations.

Alternative dispute resolution procedures include extrajudicial and conciliatory dispute resolution measures. European law distinguishes between five types of out-of-court dispute resolution procedures: arbitration, the involvement of a labor inspector or ombudsman, reconciliation, mediation and out-of-court ADR (alternative dispute resolution instruments involving social partners). The authors conclude that ADR is used in many European countries, but there are country-specific nuances in its application. Alternative dispute resolution procedures can take place at any stage of litigation, but it is important to choose one that meets the interests of both parties in order to ensure the fastest, most effective and inexpensive dispute resolution.

Keywords: alternative procedures; dispute settlement; European legislation; dispute resolution; conciliation procedures; compromise; mediation; understand.

Experiência estrangeira na implementação de métodos alternativos de resolução de litígios: análise comparativa

Resumo: O artigo tem como objetivo divulgar a implementação de formas alternativas de resolução de disputas e conflitos jurídicos. Está fundamentado que a busca por alternativas aos tribunais estaduais para resolução de litígios se deve aos seguintes fatores como a consciência jurídica da sociedade, o estado, a cultura jurídica, legislação clara, a adoção de decisões judiciais válidas, a estrutura do sistema judicial, a eficácia do seu trabalho, o nível de desenvolvimento e complexidade das relações económicas e outras relações público-jurídicas. Os procedimentos alternativos de resolução de litígios incluem medidas extrajudiciais e conciliatórias de resolução de litígios. O direito europeu distingue cinco tipos de procedimentos extrajudiciais de resolução de litígios: arbitragem, intervenção de um inspetor do trabalho ou mediador, conciliação, mediação e ADR (instrumentos alternativos de resolução de litígios que envolvem os parceiros sociais). Os autores concluem que a ADR é utilizada em muitos países europeus, mas há nuances específicas de cada país na sua aplicação. Os procedimentos alternativos de resolução de litígios podem ocorrer em qualquer fase do litígio, mas é importante escolher um que atenda aos interesses de ambas as partes a fim de garantir a resolução mais rápida, eficaz e barata dos litígios.

Palavras-chave: procedimentos alternativos; resolução de litígios; legislação europeia; procedimentos de conciliação; compromisso; mediação; compreender.

Introduction

Traditionally, the resolution of any legal conflict is associated with the participation of a state body, with observance of a clearly established procedure and a binding decision of the judicial body. The specificity of the legal settlement of disputes and conflicts lies in its clear regulation of legal norms. According to O. Sereda, modern justice with many obvious advantages has a number of shortcomings: high workload of courts, duration and complexity of legal proceedings, significant legal costs, the unworked mechanism for achieving adversarial and equal parties in the process, the publicity of the trial in some cases leads to the disclosure of confidential information, criteria for the fairness of the dispute are in the legal plane and often do not coincide with the ideas about the justice of people, who do not have legal training, so very often court decisions leave a negative reaction from the parties, as a result, the conflict is terminated by force, but is not resolved, and therefore acts of justice are not always properly executed (translation from Ukrainian to English) ¹.

In many cases, the excessive formalization of the actions and relations of the conflicting parties, which is characteristic of legal procedures, begins to impede agreements and further cooperation between the parties. It is in such cases that the appeal to alternative ways of resolving disputes, which are informal and non-state in nature, is more effective and beneficial for the parties to the dispute and creates real opportunities for their further constructive cooperation on the basis of understanding. In modern conditions,

¹ SEREDA, Olena. Mediation (mediation) as an alternative way to resolve an employment dispute. **Law and innovation**. v. 2, p. 38-45, 2017. Available online. In: <https://ndipzir.org.ua/wp-content/uploads/2017/06/Sereda18.pdf>

more and more emphasis is placed on combining approaches from the position of interests and from the position of law, which helps to resolve the legal conflict most effectively, professionally and with the least losses (both in monetary and time terms).

Alternative resolution of legal disputes and conflicts refers to such elements of the legal system that are least dependent on the specific characteristics of national law. Alternative procedures themselves are quite versatile and flexible. After all, disputes and conflicts arise between people, regardless of which legal system their state belongs to. And a person's desire to resolve conflicts through legitimate, accessible and simple procedures should be encouraged by any legal state. Such an approach will only testify to the maturity of civil society, its ability to self-regulate and effectively and effectively resolve various conflict situations without the use of state coercion.

Methodology

It is necessary to use the method of analysis and systematic research of legal norms, as well as generalization and synthesis of requirements for compliance with legislation in foreign countries regarding the implementation of alternative dispute resolution methods. The article will highlight foreign experience in the implementation of alternative dispute resolution methods. In Italy, the appeal to the judiciary to resolve the labor dispute should be preceded by a mandatory attempt at reconciliation - the so-called "administrative reconciliation." This happens with the participation of a special commission created by the relevant regional labor department. If at the beginning of the trial the judge finds that there were no attempts to apply the conciliation procedure, the proceedings may be stopped, and the parties are obliged to apply it.

In addition, the employee can provide written permission to the union to attempt "union reconciliation" in the workplace. If the result of such a procedure is registered in the labor department, it is considered valid. In organizations where there are no trade unions, there is a similar process called "transaction," which ends with the signing of a written agreement or decision. Issues related to the payment of wages can be resolved by "monocratic reconciliation" in the Provincial Labor Administration before the official intervention of the labor inspector at the request of the employee².

In the United Kingdom, each individual employee's application to the Employment Tribunal is referred to the conciliation officer of the Advice, Conciliation and Arbitration Service (Acas). Mediators hold hearings for the purpose of pre-trial settlement of the conflict only in certain cases; instead, they usually prefer to communicate remotely with the employer (or legal representative) and the employee (or the employee's representative, for example, a trade union member or lawyer) via telephone or email. As a rule, the mediator tries to reach an agreement between the parties regarding the amount of compensation, and not to resolve the issue of reinstatement, given that most applicants leave their post before applying to the Tribunal.

In addition, the United Kingdom has a "preliminary reconciliation" procedure; in the event that the Asa8 becomes aware of the dispute (usually by the victim's appeal to the trust line of this body), the parties

² KORNIIENKO, Maksym. DESYATNIK, Anatolii. DIDKIVSKA, Galina. LEHEZA, Yevhen. TITARENKO, Oleksiy. Peculiarities of investigating criminal offenses related to illegal turnover of narcotic drugs, psychotropic substances, their analogues or precursors: criminal law aspect. *Khazanah Hukum*. v. 5, n. 3, p. 205-215, 2023. DOI: <https://doi.org/10.15575/kh.v5i3.31742>.

are invited to consider the possibility of resolving the problem before submitting an application to the Tribunal. Such mediation is increasingly used to solve problems related to intimidation, harassment and breakdown of relationships while the injured employee is still working.

Results and discussion

Theoretical foundations of alternative methods of dispute resolution

The term "Alternative Dispute Resolution" (ADR) was first used in the United States in the 60-70s. XX century to designate flexible and informal procedures for resolving conflicts that arose in contrast to the complex and cumbersome procedure of official justice and became its own alternative. their introduction was the result of a noticeable crisis in the efficiency of the courts, rising costs, a significant length of consideration of cases, excessive formalization of judicial procedures.

The development of forms of alternative dispute resolution that originated in the United States in the common law system (Sottop Iate) had two peculiar sources, in particular: public initiatives not related to justice and forms of AEC controlled by the official justice system, and therefore by the state. They proposed speed of resolution of the dispute, reduction of production costs, prudence, simple rules of interaction, flexibility and protection of business relations and preservation of further partnerships between the parties.

Many of the researchers call 1976. the year of the beginning of the introduction of alternative methods of dispute resolution, since it was then that the relationship of these methods with the US judicial system was revealed. In 1976 a conference was held at which some judges said: "A better way of resolving disputes must be found than the court." Then Harvard professor Frank Zander introduced the concept of a "court with many doors," that is, when the court can offer conflicting parties not only a court hearing, but also other approaches, such as mediation or arbitration.

Today in American courts there is a question about what means and ways are most suitable for reconciliation of the parties or for resolving the dispute before the trial. Pre-trial conciliation procedures are part of the legislative or judicial regulation.

The widespread use of alternative dispute resolution methods in the United States is explained by the following reasons:

First, Americans traditionally value good relationships and public opinion over personal grievances. It is not always possible to restrain oneself during negotiations face to face, and a neutral mediator helps to make amends for sharp corners, better understand the situation and quickly find the right solution that suits both sides. It is established that mediation ends in success in 85% of cases. Secondly, in some cases, judges send parties immediately to the mediator for mandatory mediation, for example, in cases of divorce or division of property. Thirdly, if the mediation was successful, and an agreement was reached, then such an agreement is executed in 90-95% of cases. For comparison: in the United States in civil cases, only one third of court decisions are executed. The remaining two thirds remain on paper.

In the American legal system today, informal alternative ways of resolving disputes that do not require judicial proceedings, the participation of a judge and a jury play a significant legal role. According to an analysis of cases in the United States in which the cost of damage exceeded \$1,000, only one out of

ten of them was sent to court, and about two subsequent out of ten were resolved by a court decision without the need for a hearing (for example, extrajudicial decision, dismissal of the claim, expedited procedure). Two-thirds were settled by pre-concluded agreements. In the same studies, it is noted that only one claim for damages out of ten is filed in court³.

In the 90s, the English-language abbreviation ADR made a truly international career. Today, this term is official and is widely used not only in legal theory, but also in the legislation of many states. Some countries have attempted to replace it with national equivalents, such as MARC (les modes alternatifs de résolution des conflits), or RAD (règlement alternatif des différends) in France and in Quebec, Canada, or ACR (aussergerichtlichen Kichen onfliktregelung) in Germany, but these attempts did not receive such recognition and perception by the world community⁴.

ADR can be seen not only as a set of ways to resolve disputes, but also as part of the justice system. ADR forms cannot violate the right to trial and are not aimed at humiliating the role of justice, they are designed to complement the mechanisms of justice. In general, alternative approaches can be defined as peaceful ways of resolving conflicts and disputes based on the idea of reaching agreement and finding a compromise in resolving a specific conflict situation. It is important to explain that the "alternative" is what gives greater freedom to the parties and flexibility in forming their own position in a conflict situation.

It is worth noting that it is possible to consider the possibility of developing alternative methods of dispute resolution in three models: an advantage due to culture; the evolution of the legal system; implementation of ADR methods from other legal systems⁵.

Particular attention should be paid to the positive experience of applying different ADR models, taking into account the decisions and trends of the European Union. The development of ADR in European states has certainly been facilitated by the growing awareness that alternative dispute settlement mechanisms are the instruction – volume that improves access to justice in various areas of daily life.

Many EU member states have begun to pay increasing attention to such methods and, moreover, to introduce appropriate legal standards that will allow them to be developed and strengthened. This process can be – seen even now in the countries that joined the EU not so long ago, where work is underway to prepare appropriate legal mechanisms, for example, in the Czech Republic and Slovakia, as well as relevant decisions, for example, in the Baltic States, based on the Scandinavian model.

Moreover, ADR mechanisms have become a political priority announced by EU institutions in order to promote alternative technologies and ensure appropriate development conditions. This political priority is especially emphasized in connection with the need to strengthen the role of new dispute resolution mechanisms based on technological solutions of the so-called online dispute resolution (op-1ipe giikriie gecoiiiop).

³ BENTKOWSKA, Magdalena. Procedury alternatywnego rozwiązywania sporów sądowych w Stanach Zjednoczonych. **Krytyka Prawa**, v. 6, p. 149–163, 2016. Available online. In: <http://www.krytykaprawa.pl/api/files/view/21011.pdf>.

⁴ GMURZYŃSKA, Ewa, MOREK, Rafał. **Mediacje**: Teoria i praktyka. Warszawa : Oficyna a Wolters Kluwer business, 2014. 492.

⁵ LEHEZA, Yevhen. FILATOV, Viktor. VARAVA, Volodymyr. HALUNKO, Vira. KARTSYHIN, Dmytro. Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine. **Journal of Legal, Ethical and Regulatory Issues**, v. 22, n. 5, p. 1-8, 2019. Available online. In: <https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html>.

The introduction of alternative dispute resolution methods in our legal system is actualized mainly in the context of the need to harmonize domestic legislation with European standards. The need to develop alternative methods of resolving disputes also testifies to the search for a new legal model that will correspond to the dynamic changes taking place in the social and economic life of our society.

The search for alternatives to state courts for resolving disputes is due to a number of factors that differ depending on the characteristics of a particular society, state, culture, legislation, the structure of the judicial system, the effectiveness of its work, the level of development and complexity of economic and other relations. One of the main factors in the development of ADR is the insufficient effectiveness of the judicial system in considering certain categories of cases, which may consist in overloading the courts, the duration of the trial, unqualified consideration of cases, as well as other shortcomings inherent in the judicial system of a state. It should be recognized that at the moment there is practically no state in the world whose judicial system could ensure effective resolution of all disputes regarding mutual satisfaction of the parties.

However, the lack of efficiency of state courts is not the only driving factor in the development of ADR. Other reasons for the development of ADR include the desire of the parties to maintain business and partnership relations in the future, to avoid publicity of the conflict and to resolve the dispute from the standpoint of mutual satisfaction of each of the conflicting parties. It should be noted that most ADR methods are based on the principles of satisfying the mutual interests of the parties, confidentiality, voluntariness and differ in the speed and relatively low cost of their use.

In the world practice, a sufficient number of alternative ways of resolving disputes are used, among which are such procedures as: expert determination, negotiations, negotiations involving an intermediary (institution negotiation or institution), conciliation, mediation, mediation-arbitration (med-arb), independent solution (adjudication), mini-trial, establishing the circumstances (fact finding), dispute resolution commissions (dispute review boards), private judging, preliminary independent evaluation (early neutral evaluation), "multi-door courthouse," pre-trial meeting on dispute settlement (settlement conference), summary jury trial (summary jury trial) and others.

Classification of these methods is possible according to various criteria. In particular, regarding the mandatory nature of the decision, there are mandatory (arbitration, expert evaluation) and optional (negotiations, mediation). By the nature of the procedures distinguish adversarial (arbitration, private court) and consensual (mediation); in relation to the obligations of their application - voluntary and compulsory (the application of ADR is carried out in accordance with a direct indication in the law or a mandatory decision of a court or other body); on purposefulness - legal (when the dispute is resolved on the basis of formal rules of law and the actual circumstances of the case (arbitration) and aimed at satisfying the interests of the parties (mediation); complexity - simple (using a single ADR procedure) and combined (when combining elements of two or more ADR procedures (mediation-arbitration (med-arb))⁶.

Regarding the characteristics of combined forms, the following can be cited:

- mediation - arbitration court, means the settlement of the dispute with the help of the mediator-arbitrator, who in case of failure of the parties to resolve the dispute by arbitration;

⁶ Yurovska, Viktoriia. Leheza, Yevhen. Zamryha, Artur. Ulozhenko, Vadym, BOHDAN. Bohdana 2024. Administrative and legal regulation of the status of internally displaced persons in Ukraine during the war. *University of western Australia law review*. 51 (2). 297-313. <https://www.uwa.edu.au/schools/-/media/documents/uwa-law-review/volume-51-issue-2/leheza-et-al-formatted.pdf>

- "mini-court" or "mini-process," this method is widely used to resolve commercial disputes and derives its name from the external similarity with the judicial procedure and represents the settlement of a dispute involving corporate executives, lawyers and third independent persons leading the hearing;
- independent examination to establish the actual circumstances of the cases - the procedure for the parties to reach an agreement on the basis of the conclusion of a qualified specialist who studied the case from the point of view of the actual composition;
- Ombudsman - settlement of disputes related to shortcomings in the activities of state agencies and private organizations, officially authorized person investigating the circumstances of the case on the basis of complaints from interested persons;
- a private judicial system or a judge "for hire," providing dispute resolution with the help of judges who have resigned for a sufficiently high fee, who have non-rear powers;
- a private judicial system or a judge "for rent," which ensures the resolution of disputes with the help of judges who have resigned for a sufficiently high fee, who have the authority not only to reconcile the parties, but also to make a decision binding on them⁷.

When solving the problem of classification of ADR methods, it should be noted that they are conditional in nature and are based on the opinions presented in the scientific doctrine. These methods can also be divided into the following: methods based on elements of consensual-conciliation procedures aimed at achieving agreements between the parties (mediation, facilitation, mini-trial); methods that combine elements of judicial review (med-arb, arb-med, private judging, ombudsman); methods related to impartial opinion on a dispute (summary jury trial, expert determination, fact-finding); methods aimed at preventing possible disagreements and misunderstandings (partnering, dispute review boards).

All these methods (mechanisms) are united by the fact that they are based on the agreement of the parties (both on the procedure, structure of their conduct, and on the expected legal force of the result) concluded by the parties voluntarily and confidentially. It can be agreed that each of these mechanisms has a certain structure, built in such a way that the parties can arrive at the result in the most efficient and least costly (both in terms of finances and time, and in terms of rational use of human resources) way.

In scientific sources, alternative solutions are often called self-regulating institutions of civil society. Self-regulation in this case is characterized by the following main factors: private (non-state); the contractual nature of the legal relationship in the field of ADR (application on the basis of voluntary ripe – his choice - the procedural agreement of the parties); self-aligned, as a general rule, the election of persons who contribute to the resolution of the dispute or the settlement of a legal conflict (arbitrators, arbitrators, intermediaries, mediators, etc.); almost unlimited procedural dispositivity - the parties are the "masters" of the process (independent determination by the parties of the procedural rules of the selected ADR method within the framework of the general and special principles of ADR, imperatives established by law and the generally permissible direction of regulation of relations in the field of ADR); acts of application of ADR methods (decisions, dispute settlement agreements, etc.) extend their effect (i.e. mandatory) only to the

⁷ LEHEZA, Yevhen. YEROFIEIENKO, Larysa. KOMASHKO, Volodymyr. Peculiarities of legal regulation of intellectual property protection in Ukraine under martial law: administrative and civil aspects. *Law of Justice Journal*, v. 37, n. 3, p. 157-172, 2023. <https://doi.org/10.5335/rjd.v37i3.15233>

parties, except as required by law⁸.

Alternative ways of resolving disputes, presenting in their diversity a whole system of methods, means, methods of private settlement of relations between the parties, should serve the purposes of justice, provide procedural guarantees for the protection of the rights and interests of the parties and increase the effectiveness of resolving complex legal situations in court. The urgent task of the modern justice system is effective and rapid conflict resolution.

European legal experience of alternative dispute resolution methods

All countries of the European Union (except France) allow the use of conflict resolution tools (alternative dispute resolution procedures (ADR - alternative dispute resolution) before considering the merits of the case. In a narrow sense, ADR is the involvement of third parties in reconciliation, mediation and arbitration in a court hearing. These may be the actions of a legal authority, often a judge, immediately before the meeting for the purpose of pre-trial settlement of the issue. Alternatively, the appointment of public specialists or private experts is allowed - either after filing an application, but before the appointment of a court session, or before filing a lawsuit. Such alternative dispute resolution procedures related to litigation are called "litigation ADRs."

Some countries emphasize the importance of the role of social partners in the workplace, which provides an opportunity for employees to resolve a dispute at the level of the enterprise council or a similar body provided for by a collective agreement. Such measures are called "extrajudicial ADRs."⁹

In general, there are five types of alternative dispute resolution procedures:

Reconciliation. Under this type, the third party acts only as a mediator, supporting the exchange of information between the conflicting parties and encouraging reconciliation between them. The mediator hears each of the parties (usually in person, but sometimes communication can be done by telephone) and tries to find a solution that will satisfy them. Such decisions may involve reimbursement or, alternatively, measures taken directly at the workplace¹⁰.

The mediator does not make his own judgments and does not offer his solution, but works with the applicant and the employer in order to achieve the desired result for all, which is fixed accordingly. The legislation of some countries requires that before considering the case in an employment court or tribunal, the applicant use the services of an intermediary. If an agreement is reached, the case is withdrawn and registered as "resolved."

Mediation. In this case, the third party - the honey - ator - helps two or more persons to try to reach

⁸ LEHEZA, Yevhen. SHABLYSTYI, Volodymyr. ARISTOVA, Irina. KRAVCHENKO, Ivan. KORNIKOVA, Tatiana. Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect. *Journal of Drug and Alcohol Research*. Vol. 12. No. 4, 2023. 1-8. Available online. In: <https://doi.org/10.4303/JDAR/236240>.

⁹ VOLOSHANIVSKA, Tetiana, Inna POZIHUN, Serhii LOSYCH, Olha MERDOVA and Yevhen LEHEZA. 'Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors'. *Journal of Drug and Alcohol Research*, v. 12, n. 10, 2023. <https://doi.org/10.4303/JDAR/236269>.

¹⁰ YANKOVYI, Mykola LEHEZA, Yevhen., MEDVEDENKO, Nadiia. VAIDA, Taras. KOVAL, Marat. Application of artificial intelligence in motivating court decisions: legal basis and foreign experience. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, v. 24, n. 1, p. 58-69, 2024. <https://doi.org/10.30631/alrisalah.v24i1.1531>.

an agreement when resolving the dispute. There are two types of mediation. One type is similar to a reconciliation procedure where the mediator meets with the parties or reviews their written statements and then makes a non-binding decision or recommendation (often in writing). This process is similar to the established principles of mediation in collective labor disputes.

The second type of mediation is called "relational mediation," based on the principles of jointly solving problems with the goal of restoring relations in the future, and not on the distribution of guilt. The mediator directs the parties to find their own solution, urging them to consider various options for the development of events. This approach originates from family mediation. Relational mediation is usually carried out without the presence of representatives or lawyers; no written decision is issued.

Arbitration. In this case, the third party considers the applications submitted from each person and makes a binding decision.

Labour inspectors or ombudsmen. In some countries there is an institute of expert specialists known as labour inspectors and/or ombudsmen (Hungary, the Netherlands, Norway and Romania). Private companies sometimes appoint ombudsmen to deal with individual disputes directly in the workplace (Ireland). In some countries, the ombudsman is appointed by the state to deal with specific types of disputes, such as cases of discrimination.

Out-of-court ADRs. These alternative means of resolving disputes involve the participation of social partners in resolving disputes through negotiations, solving existing problems and/or using complaints and disciplinary offenses. In this case, a case is considered, a decision is made and often the opportunity to appeal is provided - all at the workplace or at the sector and/or region level¹¹.

Some countries use both forms of alternative dispute resolution (Ireland, Italy, Luxembourg, United Kingdom). Other countries have a long tradition of relying on social partners through collective agreements and/or production boards for out-of-court dispute resolution; the use of judicial ASKs is very limited (Austria, Denmark, Germany, Sweden). In some states, a special form of extrajudicial AOC in the workplace are bilateral conciliation commissions, sometimes called labor dispute commissions. Such commissions exist in Estonia, Latvia, Lithuania and Poland¹².

In no country does one method exclude the use of others. This is due to the complexity of using a variety of ASA methods at the workplace, sector or region level. It is often difficult to draw a clear line between reconciliation and traditional forms of mediation. The type of alternative means of resolving disputes used depends to a large extent on the mechanisms of concurrent - disturbing labor relations in each country. It also reflects the historical development of industrial and labor relations institutions over many decades.

Declining union membership and the emergence of non-union sectors without collective bargaining traditions have led to new approaches to alternative means of dispute resolution in some countries. An

¹¹ EurWORK. **Individual Disputes At The Workplace:** Alternative Disputes Resolution. 2010. Available online. In: <https://www.eurofound.europa.eu/publications/report/2010/individual-disputes-at-the-workplace-alternative-disputes-resolution>.

¹² LEHEZA, Yevhen. SHCHERBYNA, Bogdan. LEHEZA, Yulia. PUSHKINA, Olena. MARCHENKO, Olesia. Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfillment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine. **Revista Jurídica Portucalense**.p. 340–359, 2023. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

interesting example is Ireland, where multinational companies owned by foreign owners have introduced extrajudicial forms of ADRs in their institutions, wanting to downplay the importance of their types, which are more union-oriented, and have been operating in this country for many years. In addition, certain types of disputes in Ireland are resolved by procedures other than those provided for "ordinary" conflicts. For such cases, there are special legislative acts that fix alternative means of resolving disputes. For example, discrimination cases involve the creation of specialized institutions such as the Commissioner for Human Rights.

Since 2000, about 15 countries have adopted relevant laws or regulations in order to introduce an alternative to litigation at the legislative level, namely Belgium, Bulgaria, the Czech Republic, Finland, Hungary, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia and the United Kingdom. In four countries - Finland, Portugal, Romania and the UK - these measures involved the creation of specialized bodies or mediation processes. In seven countries, these innovations were explained both by the need to reduce the cost of considering court cases and to speed up this process, because months may pass from the moment of filing an application to the court until the date of its consideration¹³.

Romania was one of the countries that introduced a procedure for alternative means of resolving labor disputes since 2000. It should be noted that the innovation has not yet resulted in impressive results in this area. However, among the unambiguous advantages of this procedure (compared to litigation) is the speed and the presence of consensus.

In Romania, labor relations are based on mutual trust between the employer and the employee, but with regard to the implementation of a number of rights of workers, the parties cannot come to mutual agreement. At the same time, access to the court is a fundamental right guaranteed by the Constitution of Romania, which allows a person to file a claim in court in the event of a time when his interests are –. Thus, two obstacles to the use of ADR mechanisms in this country can be identified: the existence of an effective, constitutionally guaranteed right of access to the court and the unconditional rights of the employee¹⁴.

According to the most common definition, alternative mechanisms for resolving labor disputes are extrajudicial procedures for resolving them, which are carried out by a neutral third party. An important criterion of any ADR is whether the selected measure is mandatory or voluntary. In other words, whether such mechanisms should be spelled out as requirements for going to court, or enshrined in the provisions of collective agreements¹⁵. There are several types of ADR in Romania, but the most common are judicial and extrajudicial. In this country, judges have the right to invite the parties to independently resolve the dispute before its trial or seek help from a certified mediator. Extrajudicial ADRs are used by the parties to a dispute as part of an extrajudicial procedure that involves the appointment of a private certified mediator. The new Civil Procedure Code provides the parties with the opportunity to resolve their conflict through the application of the mediation mechanism. In Romania, the parties have the right to resort to extrajudicial

¹³ VOLOBUIEVA, Olena. LEHEZA, Yevhen. PERVII, Vita. PLOKHUTA, Yevhenii. PICHKO, Roman Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine. *Yustisia*. v. 12, n. 3, p. 262-277, 2023. DOI: <https://doi.org/10.20961/yustisia.v12i3.79443>

¹⁴ FELICIA, Roşioru. Labour dispute mediation in Romania: an alternative way? *HUNGARIAN LABOUR LAW E-Journal* 2017/1. Available online. In: https://hlj.hu/letolt/2017_1_a/A_02_Rosioru_HLLJ_2017_1.pdf.

¹⁵ RODRÍGUEZ, Ricardo. Study on out-of-court settlement mechanisms in transnational labour disputes. *Final Study Report, DG Employment, Social Affairs and Inclusion*. 2024. Available online. In: https://webcache.googleusercontent.com/search?q=cache:Bio-Rq_yNgkJ:https://ec.europa.eu/social/BlobServlet%3FdocId%3D7011%26langId%3Den&cd=1&hl=uk&ct=clnk&gl=ua.

alternative means of resolving disputes until the filing of a claim; before the appointment of the date of the court session or during the court session, but before the court decision. The main normative act establishing alternative mechanisms for resolving labor disputes is Law No. 62 "On Social Dialogue," adopted on May 10, 2011¹⁶. However, it provides only alternative mechanisms for resolving collective disputes.

It is also worth emphasizing the role of social partners in regulating this issue. Thus, on the basis of sectoral collective agreements or collective agreements at the company level, permanent conciliation committees are created, to which disputes regarding the execution, modification, suspension or termination of collective agreements are transferred.

Summing up, we note that Romanian legislation establishes several alternative mechanisms for resolving labor conflicts: reconciliation (a prerequisite and mandatory mechanism in collective labor disputes), mediation and arbitration (mainly as voluntary mechanisms for considering collective labor disputes); mediation in individual labor disputes. Note that in labor law in Romania there are two types of labor disputes: individual (disputes over labor rights, interpretation and application of contractual or regulatory provisions) and collective, directly related to the collective bargaining process (regarding the adoption, interpretation, modification or execution of a collective agreement)¹⁷.

In cases of discrimination, mediation is carried out according to the usual procedure, which is carried out in accordance with the general provisions of contract law, and provides for by the parties in the relevant collective agreement or by the employer in the internal regulations of the company¹⁸.

In Germany, unlike some other countries, not only trade unions, but also individual workers can be a party to labor disputes in cases that are considered in labor courts. In other words, trade unions cannot prevent an employee from going to court on his own. Therefore, most lawsuits are filed by individual workers' nicknames, trade unions or production councils.

The process of considering labor disputes is simple, fast and costly. Each case referred to the court of first instance begins with a conciliation hearing (Gütetermin), which is held solely by the chairman of the meeting. The purpose of this procedure is to reach a settlement agreement - a compromise between the parties - without holding a formal hearing. At this point, both parties can also agree on a voluntary mediation basis. If the settlement agreement is concluded, the court usually does not charge a court fee, except for the initial registration fee¹⁹.

If we talk about solving individual moats out court, then production councils play an important role in this process. The Law "On the Charter of the Enterprise" (Betriebsverfassungsgesetz, BetrVG) presupposes peculiar arbitration in disputes of certain categories between the production councils and the employer (BetrVG § 76). Employees have the right to file a complaint against the employer if they have

¹⁶ ACT NO. 62 OF 10 MAY 2011 CONCERNING SOCIAL DIALOGUE. **Official Gazette (Monitorul Oficial)**, 2011-05-10, n. 322, 2011. Available online. In: <https://www.globalregulation.com/translation/romania/3755624/law-no.-62-of-10-may-2011-social-dialogue.html>.

¹⁷ DELEANU, Irina. Arbitrajul intern și internațional. București: Editura Rosetti, București. 519 p. Available online. 2005. In: <https://www.amazon.de/ARBITRAJUL-INTERN-INTERNATIONAL-TUDOR-CHIUARIU/dp/9731276696>.

¹⁸ GHEORGHE, Mureșan. Mediarea conflictelor de drepturi. **Revista română de dreptul muncii**, n. 6, 2010. Available online. In: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/rrlabostard2010&div=57&id=&page=>.

¹⁹ EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS. **Germany: Individual disputes at the workplace** – alternative disputes resolution. 2010. Available online. In: <https://www.eurofound.europa.eu/publications/report/2010/germany-individual-disputes-at-the-workplacealternative-disputes-resolution>.

reason to believe that they have been subjected to non-compliance → ill-treatment, discrimination or otherwise put at a disadvantage by the owner or other employees of the enterprise (BetrVG § 84). All employees have the right to have their complaints considered by the Council (BetrVG § 85). If the employer and the production board do not agree with the justification of the application, or the agreement between the owner and this body is not reached, he has the right to appeal to the arbitration committee at the institution level (Einigungsstelle). The latter consists of a certain number of members appointed by the employer, and the same number of participants determined by the production council, with an independent chairman. The number of members is established on the basis of an agreement between the employer and the production council. If interested parties cannot reach agreement on a dispute, either party may request that the case be referred to an employment tribunal²⁰.

In Norway, most cases of this category → referred to the Conciliation Board, which helps the parties to achieve a simple and quick result on its resolution. In addition, there is a Dispute Resolution Commission that deals with issues related to violations of the Work Environment Act, such as non-compliance with working hours, prohibition of flexible or remote working and non-compliance with the right to leave. According to the Law "On Disputes," which regulates the institution of reconciliation, the parties also have the opportunity to use the mediation procedure. This can be either out-of-court mediation, when the mediator is elected by agreement of the parties, or judicial mediation with the participation of a judge or a person qualified as a lawyer from the list of judicial mediators²¹.

Conclusions

In modern conditions of reforming the judicial system, the introduction of conciliation procedures as one of the priority areas of existing mechanisms for resolving legal disputes and protecting violated subjective rights and freedoms can become innovative and effective for domestic justice. Currently, in Ukraine, following the global trend, there is an increased interest in alternative forms of settlement of legal disputes as a possibility of reducing the burden on the courts and resolving such disputes in which it is not always possible to reach agreement by legal means (ethnic, religious, family and others).

Alternative forms should not be considered as separate mechanisms, but as a set of elements that constitute an alternative system for resolving legal disputes and conflicts in general. This system, although in → ancestral state, has a tendency and broad prospects for further development, because the goal of any alternative procedure is to resolve and resolve the legal conflict. The basis of each of these procedures is their voluntary application and the participation of an independent and neutral person. All alternative forms of resolving legal conflicts must meet the requirements of a relative formality based on the discretion of the parties.

Alternative forms should be based on the following international principles: the principle of cooperation, which involves the identification of common interests of the parties, is based on mutual

²⁰ BETRIEBSVERFASSUNGSGESETZ IN DER FASSUNG DER BEKANNTMACHUNG VOM 25. SEPTEMBER 2001 (BGBl. I S. 2518), das zuletzt durch Artikel 6d des Gesetzes vom 16. September 2022 (BGBl. I S. 1454) geändert worden ist. Available online. In: <https://www.gesetze-im-internet.de/betrvg/BetrVG.pdf>.

²¹ Voloshanivska, T., Nitsevykh, O., Morozov, O., Berezniak, V., Kuznietsov, M. (2023). Legal regulation of release of minors from punishment and from service of punishment: foreign experience, administrative and criminal aspect. *Syariah: Jurnal Hukum dan Pemikiran*, v. 23, n. 2, p. 151–161, 2023. <https://doi.org/10.18592/sjhp.v23i2.12286>.

concessions and the search for understanding; the principle of differentiation, in which participants in a legal conflict can use alternative means both individually and in combinations with each other or in a certain sequence; the principle of confidentiality, which implies the unspoken nature of any alternative procedure. With a wide variety of alternative procedures, the choice of a particular one should be quite balanced and take into account the interests of each side. Alternative resolution of legal disputes and conflicts can be successful only if constant and close cooperation with civil society institutions.

Consequently, in a broad understanding, alternative dispute resolution procedures cover both extrajudicial and judicial forms of ADR.

In foreign countries, the following stages of their application are envisaged:

- measures are taken to avoid conflicts in the workplace by encouraging the use of the most effective complaint procedures and cases of misconduct, which contributes to improving management methods and regulating behavior;
- extrajudicial procedures for resolving labor disputes are implemented at the workplace and/or at the highest level with the participation of management and representatives of trade unions to resolve individual disputes. At this stage, a mediator or mediator may be involved, depending on the country's legislative tradition;
- as part of a pre-trial petition or hearing, the ADR is conducted by an expert on reconciliation and mediation. At this stage, by agreement of the parties, the arbitration procedure may also be applied;
- alternative dispute resolution measures are applied immediately before or during the hearing; the implementation of mediation or reconciliation procedures is usually provided by a judge or lawyer.

ADRs are used in many European countries, but each state has its own nuances of their implementation. Alternative dispute resolution procedures can take place at any stage of the case, but it is important to choose one that will meet the interests of both parties so that the conflict is resolved as quickly, efficiently and cheaply as possible.

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