Constitution of Ukraine, along with a whole set of rights and freedoms, provides for a number of important responsibilities that are an integral part of the constitutional and legal status of man and citizen.

It has been found that most scholars consider not only rights in conjunction with responsibilities, but also responsibilities in close connection with rights. Although rights and responsibilities are relatively independent categories, it is nevertheless impossible to fully disclose their essence separately from each other, as they are dialectically interrelated concepts that reflect the relationship between people and people and the state.

It is stated that in the context of the liberal (Western) concept of human rights, most democracies in their constitutions have limited themselves to establishing a minimum of constitutional obligations, which is primarily due to the fact that the main purpose of the constitution is to ensure human rights and freedoms. This approach was taken by the legislators of the post-Soviet and post-socialist states. Thus, the Constitution of Ukraine of 1996 reduced the list of constitutional duties of a person and a citizen and is 14 basic duties of a person and a citizen.

It has been emphasized that according to this indicator Ukraine is ahead of all European states, whose legal system belongs to the Romano-Germanic legal system.

It has been noted that the constitutions of European countries have the following basic general responsibilities: the obligation to receive primary and, in some countries, secondary education; the duty to protect the state; duty to perform military service; the duty of parents to maintain their children until they reach the age of majority; the obligation not to harm nature, as well as the obligation to pay taxes and fees; the duty of everyone to strictly abide by the constitution and laws of the state.

It has been noteworthy that in the texts of some constitutions of European states there are responsibilities that are not present in other constitutions.

It has been substantiated that the state promotes the establishment of the most important links between public authorities and society, the search for and legitimization of effective ways to achieve personal and public interests. At the same time, constitutional obligations must be ensured by appropriate convictions, upbringing and coercion to the extent required by international human rights instruments and in accordance with the country's conditions.

It has been concluded that the provisions of the Constitution of Ukraine, which enshrine the basic responsibilities of man and citizen, mainly correspond in substance and correlate with international legal acts. Nevertheless, these norms need to be improved and, taking into account foreign experience, brought them to the best examples of European constitutionalism.

Keywords*: constitution, duties, constitutional duties of a person and a citizen, constitutional regulation of duties.*

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MEDIATION IN LABOR DISPUTES

Олена Кисельова. МЕДІАЦІЯ В ТРУДОВИХ СПОРАХ. У статті аналізується суть процедури медіації та застосування її до трудових спорів, розкриваються переваги даного способу врегулювання конфліктів у трудовій сфері, а також визначаються деякі проблеми її впровадження. У роботі виділяються основні позитивні риси медіації, що полягають у конфіденційності, добровільності, коротких термінах прийняття рішення по спору, а також можливості прийти до загального рішення, що влаштовує обидві сторони. Вказується, що силами та засобами трудового права та законодавства на сьогоднішній день нічого не зроблено для реалізації Закону «Про медіацію» та сприяння поширенню цієї процедури у сфері праці. Більше того, Закон «Про медіацію» не має на меті врахування специфіки всіх можливих конфліктів (сімейних, трудових, житлових та ін.), це все ж таки завдання галузевого законодавства. Порушується питання про різницю між вирішенням спору в комісії з трудових спорів та процедурою медіації. За підсумками

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проведеного дослідження авторами робиться висновок, що включення медіації до системи врегулювання трудових спорів відповідає меті підвищення стабільності трудових відносин та стимулює працівників та роботодавців до пошуку балансу інтересів. Водночас, наголошено на тому, що нині в немає передумов до того, щоб медіація набула масового поширення у сфері праці як швидкий та зручний спосіб вирішення розбіжностей сторін трудових відносин. Причини цього дуже багато – від недостатньої поінформованості учасників трудових відносин до відсутності ринку професійних медіаторів. Власне, немає і передумов до того, щоб цей ринок склався: немає достатнього корпусу професійних медіаторів, немає чітких процедур доступу до медіації та каналів зв'язку між учасниками, немає зрозумілих факторів, що впливають на ціноутворення (сфера застосування, зайнятість тощо), немає розуміння, хто є цільовою аудиторією та хто визначає попит. В даний час попит на медіацію як юридичну послугу тільки формується і існує тільки там, де для працівника/роботодавця висока ціна конфлікту, високі ризики репутаційних та фінансових втрат, високі юридичні ризики при втраті конфіденційності. Наявність стабільних правових основ, відсутність видимих прогалин у законодавстві, могли б сприяти розвитку медіації в Україні, посиленню її ролі як способу вирішення конфліктів.

Ключові слова: *процедура медіації, врегулювання суперечок, трудове законодавство, трудові конфлікти, індивідуальні та колективні суперечки.*

Relevance of the study. Recent events have highlighted the importance of alternative way of dispute settlements. More and more people are beginning to realize that legal proceedings can be avoided by using alternative conflict resolution methods. Even the smallest lawsuit can ruin a business relationship, a reputation, and require a lot of time and money. Meanwhile, this potential is great as the experience of foreign countries is more than convincing. Currently there is a number of international acts regulating conciliation issues, including the Council of Europe Recommendation on Mediation in Civil Matters R № (2002) 10, Council of Europe Recommendation on Family Mediation R № (98) 1, Directive 2008/52 /EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. To date, considerable experience has been gained in integrating conciliation procedures with the assistance of a mediator into the legal systems of different states. In many countries, mediation exists and is used as a special form of dispute resolution alongside and in conjunction with litigation. Unfortunately, this practice remains insufficiently studied in domestic jurisprudence due to the fact that for many years the issue of legislative consolidation of the concept of mediation has been postponed. The development of the institution of mediation is one of the priority areas for improving the existing in our country ways of resolving legal disputes or interest disputes.

Recent publications review. Issues of mediation were investigated by N. Darahanova, Zh. Mishyna, O. Sereda, I. Yasynovskyi, T. Podkovenko, N. Krestovska, N. Fihun, L. Romanadze, V. Rieznikova and others.

The research paper's objective is an analysis of mediation as an alternative way of resolving labor disputes, given the importance of such a conciliation procedure in today's dynamic and progressive labor relations.

Discussion. On November 16, 2021, the Law on Mediation was adopted, which enshrined at the legislative level the possibility of conducting mediation, which consists in voluntary out-of-court settlement of a conflict (dispute) through negotiations between the parties with the help of a mediator. According to the law, mediation is an extrajudicial voluntary, confidential, structured procedure, during which the parties try to prevent or resolve a conflict (dispute) through negotiations with the help of a mediator (mediators) [1]. As a result of the adoption of this law, a certain understanding of both general and conceptual aspects in the field of mediation appeared, including labor relations. Article 3 of this law stipulates that its effect extends to public relations related to mediation in order to prevent conflicts (disputes) in the future or to resolve any conflicts (disputes), including civil, family, labor, economic, administrative, as well as in cases of administrative offenses and in criminal proceedings to reconcile the victim with the suspect (accused).

The legal basis for labor disputes in Ukraine is Chapter XV «Individual Labor Disputes» of the Labor Code and the Law of Ukraine of March 3, 1998 «On the Procedure for Resolving Collective Labor Disputes (Conflicts)», as well as other regulations. The current legislation of Ukraine on labor does not disclose the concept of «labor disputes». S. Bortnyk, K. Melnyk, L. Mohilevskyi defines labor disputes as disagreements over the application of labor law, collective agreements, local regulations, employment contracts or related to the establishment of new or changes in existing working conditions that have not been resolved through direct negotiations between employees and employers [2]. According to V. Kucher in

the field of labor law the labor disputes are unresolved disputes between the parties to social and labor relations on the application of labor legislation or the establishment or change of working conditions, which are considered in the manner prescribed by law by the competent jurisdiction [3]. Labor disputes are differentiated not only by the subjective composition of the dispute (individual and collective), but also by its subject (nature, content). The greatest interest is the division of labor disputes into disputes over rights (application of norms) and disputes over interests (on the establishment of working conditions). The current labor legislation of Ukraine regulates in detail only individual labor disputes over rights. One more circumstance should be noted. It is about direct negotiations between the employee and the employer as a way to resolve differences that have arisen between them. The procedure for conducting negotiations that precede the occurrence of an individual labor dispute is not detailed in the norms of the Labor Code. Pursuant to ILO Recommendation № 130, 1967, on the consideration of complaints at the enterprise with a view to resolving them, in the event of any disagreement, it is important for the employee to try to resolve them through negotiations with the employer. However, this does not take into account the possibility of the employee to implement other forms of protection of violated labor rights. In order to restore the violated labor rights, the employee may use not only such a form of protection as a direct appeal to the employer, but also some other forms: appeal to the trade union, state bodies for supervision over the observance of labor legislation, self-defense. In connection with the introduction of the institution of mediation, the employee also can use mediation and resolve the existing dispute, taking into account not only the legal regulation of the dispute, but also the psychological aspect of the dispute.

To date, there are no prerequisites for mediation to become widespread in the field of labor as a quick and convenient way to resolve differences between the parties to labor relations. There are many reasons for this – from the lack of awareness of labor relations participants to the lack of a market for professional mediators. In fact, there are no preconditions for this market to develop: there is not enough professional mediators, there are no clear procedures for access to mediation and communication channels between participants, there are no clear factors influencing pricing (field of application, employment, etc.), no understanding who is the target audience and who determines the demand. Currently, the demand for mediation as a legal service is just forming and exists only where the employee / employer has a high cost of conflict, high risks of reputational and financial losses, high legal risks of loss of confidentiality. The average employee who discusses with his / her employer the conditions of the job cuts or leaving the job is unlikely to find a direct and accessible way to a mediator.

At the same time, as noted by S. Zapara, the mediation, even according to the judges who is the strictest but most professional part of the legal profession, has prospects in law enforcement, especially in the extrajudicial dimension and with the possibility of application in family, labor and other categories of disputes [4].

Let us turn to the legal problems and obstacles that currently exist in the way of mediation in the field of labor. One of such important points is a certain ambiguity of the limits of application of the Law on Mediation to labor disputes. The point is, in particular, that the current wording does not specify a list of labor disputes that can be resolved through meditation, as the concept of labor disputes includes both individual and collective labor disputes. Therefore, in our opinion, it is important to clearly define the types of disputes to be resolved through the mediation procedure. Collective labor disputes are resolved through conciliation and arbitration procedures for their resolution, the legal mechanism of which is defined by the Law of Ukraine «On the Procedure for Resolving Collective Labor Disputes (Conflicts)». In this aspect, using the synonym «intermediary», in domestic practice the prototype of mediation is activity of the National Mediation and Conciliation Service is emerging – a permanent state body created to facilitate the settlement of collective labor disputes. In this regard, we should talk not about the ban on mediation to resolve collective labor disputes, but on the relationship associated with the application of conciliation in this category of cases, which is not subject to regulation of the adopted law «On Mediation». In this regard, we believe that it is necessary to determine the limits of the application of the mediation procedure to labor disputes by the forces and means of labor law, primarily by improving the provisions of the Labor Code of Ukraine. In particular, it was possible to determine to which cases of disagreement between the employee and the employer mediation may be applied. In addition, it is necessary to determine the time frame for the possibility of

using the mediation procedure, in particular, indicate that the parties to the disagreement in order to resolve them at any time can conclude an agreement on the mediation procedure, both before applying to the bodies authorized to consider an individual labor dispute, and after it.

Further, a quite reasonable question arises: what is the difference between the resolution of the dispute in the Labor Disputes Commission (LDC) and the mediation procedure? The Labor Dispute Commission considers the dispute, as a rule, publicly, in the presence of the labor collective, requests the necessary supporting documents, which can not always be prepared quickly, hears both parties, calls experts, whose work is not always free. Also, the LDC can make a decision, which, most likely, will not satisfy one of the disputing parties. The legal force of the decisions of the LDC can be enforced with the help of the coercive force of the state – bailiffs, who will certainly execute the decision if it is not carried out voluntarily. The decision of the LDC may not always be objective, since the LDC consists of representatives of the employer and employees who may have a personal interest in the case. Many scholars now insist on weakening the role of LDCs in resolving labor disputes. Thus, B. Stychynskyi, H. Chanysheva, A. Yaresko, A. Fadieienko and others believe that the activity of LDC in today's conditions is inefficient [5–6]. According to these authors, employees for various reasons mostly do not turn to the LDC, in connection with which today there is a question of the expediency of maintaining this institution in the labor legislation of Ukraine. At the same time, a mediator invited from outside will be able to look at the conflict from different points of view and resolve it in such a way that both parties will be satisfied. In addition, mediation provides an opportunity for the disputing parties themselves to choose a neutral mediator based on their mutual trust in him / her, based on his / her authority, business, qualifications and other qualities, but not use the services of a certain person to resolve disputes. For example, the parties can take into account the length of service and experience of the mediator in labor disputes, his / her performance, reviews and recommendations, age, life experience, etc. It should also be noted that the consideration of a labor dispute by a mediator does not always lead to its settlement, which is less likely when the dispute is resolved in the LDC, although the consideration of a labor dispute by the labor dispute commission also does not always lead to its resolution, for example, if the LDC members have not reached agreements on the subject of an individual labor dispute. It is also necessary not to forget that the mediation procedure is paid, while when resolving individual labor disputes in the labor dispute commission, the employee is exempted from court costs.

The problem of applying the mediation procedure can also be determined by the reduced time to go to court to resolve labor disputes. Article 233 of the Labor Code of Ukraine stipulates that an employee may apply for the resolution of a labor dispute directly to the district, city or city district court within three months from the date when he / she learned or should have learned about the violation of his / her right, and in cases of dismissal – within one month from the date of delivery of a copy of the dismissal order or from the date of issuance of the employment record book [7]. Given the special nature of labor relations and the legal deadlines for the consideration of labor disputes, it would be advisable to reduce the maximum period for mediation in labor disputes to one month. This will reduce the negative consequences for the employee in the event of an ineffective mediation procedure.

The next thing worse paying attention to is the requirements that apply to a mediation agreement. Thus, in accordance with Article 21 of the Law «On Mediation», a mediation agreement should not contradict the requirements of the law and violate the rights of third parties. Thus, the parties in the settlement of an individual labor dispute on the application of labor legislation, a collective agreement, disputes about the establishment of new or about changing existing working conditions are limited by the above mentioned norm. Therefore, having reached an agreement on the merits of the dispute and formalized it in the form of a mediation agreement, the parties should understand that the terms of the mediation agreement should not contradict the norms of the current labor legislation.

In general, if we talk about the interaction between mediation and judicial consideration of labor disputes, then today there are gaps that are caused by the discrepancy of procedural norms in some aspects, as well as their absence at all. Even if a conflict situation presupposes mediation as the best way to resolve it, then such gaps can affect the choice of the parties in favour of traditional litigation. The presence of a stable legal framework, the absence of visible gaps in the legislation could contribute to the development of mediation in Ukraine, an increase in its role as a way of resolving conflicts.

Conclusions. Even despite some shortcomings of the legislation, the mediation

procedure as a way of settling labor disputes seems to us very promising, especially in situations not regulated by law. These, for example, are disputes over changes in working conditions, as well as conflicts of a non-legal nature. In the case of mediation, you do not have to think about the risks associated with reputation, because mediation is carried out confidentially. Undoubtedly, this method of resolving disputes needs to be developed, and to be made more accessible and understandable for citizens. Thus, the inclusion of mediation in the system of settlement of labor disputes meets the goal of increasing the stability of labor relations and stimulates workers and employers to find a balance of interests.

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ABSTRACT

The article analyzes the essence of the mediation procedure and its application to labor disputes, reveals the advantages of this method of resolving conflicts in the labor sphere, as well as identifies some problems of its implementation. The work highlights the main positive features of mediation, which are confidentiality, voluntariness, short deadlines for deciding on the dispute, as well as the ability to come to a common decision that suits both parties. The question of the difference between the resolution of the dispute in the commission on labor disputes and the mediation procedure is raised. Based on the results of the study, the authors conclude that the inclusion of mediation in the system of labor dispute settlement meets the goal of increasing the stability of labor relations and encourages employees and employers to seek a balance of interests.

Keywords: *mediation procedure, disputes settlement, labor law, labor disputes, individual and collective disputes.*