UDC 346.9
DOI 10.31733/2078-3566-2021-5-112-115

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PRESIDENTIAL SETTLEMENT OF ECONOMIC DISPUTES

Abstract. The article examines the general principles and legal nature of pre-trial settlement of commercial disputes. The current state of pre-trial settlement of commercial disputes is considered. The importance of preserving this institute is substantiated and the ways of its improvement are suggested. The importance of the institution of claims for the settlement of disputes between business entities without interference in this dispute by the courts is also highlighted.

Keywords: *pre-trial settlement of commercial disputes, claim, business entity, commercial litigation.*

Relevance of the study. In the course of economic activity disputes between the parties are inevitable. Given that each dispute has significant advantages, the speed of resolution is particularly important. Due to the fact that filing a lawsuit or appeal against the opposing party will not actually have legal consequences and will not have a significant impact on the further resolution of disputes in the commercial court, the parties usually do not apply to the commercial court for pre-trial settlement.

Pre-trial settlement of commercial disputes plays an important role for business entities and the entire judicial organization. This remedy is used by the parties at their own discretion to resolve commercial disputes directly and expeditiously, but it helps to "relieve" the court of a large number of lawsuits. However, the current Ukrainian legislation still has certain shortcomings and inconsistencies that need to be resolved.

In modern science there is no single approach to defining the concept and essence of pre-trial settlement of economic disputes. In addition, the concept of "pre-trial settlement of a commercial dispute" is not enshrined in the Commercial Code of Ukraine or in the Commercial Procedure Code of Ukraine, but only indicates the duty of economic relations violated the property rights or legitimate interests of other entities, to restore them.

Recent publications review. The issue of pre-trial settlement of commercial disputes has been studied by prominent scientists, in particular such as: V. Sherbyna, B. Reznikova, O. Belyanevych, however, the dynamics of development of public relations and the practice of judicial protection of the rights of economic entities have prompted the popularization of an alternative way of resolving economic disputes through pre-trial settlement.

The article's objective is to clarify the essence of the pre-trial procedure of commercial disputes, to identify the strengths and weaknesses of the institution of pre-trial settlement of commercial disputes.

Discussion. In the legal literature, pre-trial settlement of commercial disputes is also understood as oral negotiations, communications, lawsuits and other measures aimed at resolving disputes and conflicts between business entities, without referring the dispute to the commercial court. Analysis of this definition of pre-trial settlement of commercial disputes allows to determine the characteristics of specific institutions:

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– presence of conflict;

– active actions to protect and restore violated rights;

– special tools to restore violated rights;

– resolution of the conflict directly by the participants of specific legal relations without the involvement of other persons or bodies.

An important factor in the pre-trial settlement of commercial disputes is that procedures can only be applied at this stage at the request of the entity. At the same time, even the enshrinement in the contract of a mandatory pre-trial procedure for settling a dispute does not deprive either party of the right to go to court immediately, without first settling its legal relationship in a pre-trial procedure. It should be noted that according to Art. 6 of the Commercial Procedural Code of Ukraine pre-trial settlement of disputes is carried out by filing a written claim, which is sent by registered or valuable letter or delivered against a receipt. Part 2 of this article stipulates that enterprises and organizations whose rights and legitimate interests have been violated, in order to directly resolve the dispute with the violator of these rights and interests, apply to him with a written claim.

We believe that a claim here should be understood as a legal means of ensuring that the parties to the contract protect their rights and legitimate interests. Therefore, V. Chernadchuk specifically pointed out that, as a material claim of one party in a disputed legal relationship against the other party, the parties themselves can resolve conflicts without the intervention of the commercial court [1, p. 54]. Thus, the pre-trial settlement of commercial disputes is that the parties independently apply measures aimed at resolving the existing dispute between them before entering into a legal relationship with the court, by filing a claim against the counterparty who violated the terms of the contract.

It should be noted that until 2002, pre-trial settlement of commercial disputes was a mandatory stage of the economic process. So in. 63 of the Commercial Procedure Code of Ukraine stipulates that if no evidence of pre-trial settlement of the dispute is provided, the statement of claim will be returned [6]. The first step towards solving this problem was the decision of the Plenum of the Supreme Court of Ukraine "On the application of the Constitution of Ukraine in the administration of justice" from 1.11.1996 № 9, in paragraph 8 of which with reference to Art. 124 of the Constitution of Ukraine states: "The court has no right to deny a person a statement of claim or complaint only on the grounds that his claims may be considered in the pre-trial procedure provided by law" [2].

Subsequently, in the decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Limited Liability Company "Trading House" Campus Cotton Club "on the official interpretation of the provisions of Part 2 of Art. 124 of the Constitution of Ukraine (case on pre-trial settlement of disputes) "dated 09.07.2002 № 15-rp / 2002 it was determined that the establishment by law or contract of pre-trial settlement of a dispute on the will of the parties is not a restriction of jurisdiction . Thus, the Constitutional Court of Ukraine has established that the existence of contractual rules for pre-trial settlement of disputes is not an obstacle to filing a lawsuit [3].

Given the position of the Constitutional Court of Ukraine, the following conclusions can be drawn about the importance of pre-trial settlement of commercial disputes: pre-trial settlement is not the responsibility of the party; pre-trial settlement of a commercial dispute does not contradict the constitutional principle of administration of justice exclusively by a court; pre-trial settlement of a commercial dispute is an additional method of legal protection; the established right of a person to use out-of-court alternative methods of protection of rights and legitimate interests cannot be challenged; during the application of pre-trial settlement of a commercial dispute, the parties are not deprived of the right to go to court to resolve the conflict [4, p. 185]. According to Art. 6 of the Commercial Procedural Code of Ukraine, the claim must be stated only in writing in compliance with the requirements for the content and its main details. It is necessary to clearly and exhaustively state information about the parties to the dispute, give their full name, postal and bank details with reference to current legislation and the terms of the agreement. The claim must be meaningful, outlining the essence of the dispute, defining the subject of the claim, justifying its factual circumstances with reference to legal norms [6].

Filing a claim is a subjective right of legal entities, while responding to a claim in the prescribed manner and within the prescribed period is their legal obligation. The claim received from the applicant must be considered, as a general rule, no later than one month from the date of its receipt. In the event that the rules or contract binding on both parties provide for the right

to re-inspect defective products by the manufacturer, claims related to the quality and completeness of products must be considered no later than two months.

At the same time, the greatest difficulties in practice arise when deciding on the method of sending a claim by the applicant to the other party. Probably the most effective way of those listed in the article of Art. 6 of the Commercial Procedure Code of Ukraine is the delivery of a claim against a receipt, while sending a letter of recommendation or a valuable letter may have negative consequences. Thus, there are common cases of abuse by creditors, who instead of the claim send the party to the contract advertising materials, various brochures, prices or even blank envelopes, receiving as proof of sending a fiscal check.

After consideration of the claim, the debtor must provide an answer to the applicant in due time, in which he informs about its recognition (full or partial) or about the refusal to satisfy it. The answer is made in writing, and its content must contain the full name and postal details of the company or organization to which the answer is sent: the date and number of the answer, the date and number of the claim to which the answer is given.

The essence of the claim is to persuade the debtor to fulfill his obligations voluntarily, thus avoiding further recourse to the courts. Therefore, the text of the claim should set out both the requirements for repayment of the debt and the possible negative consequences for the debtor in case of late satisfaction of the requirements. Such consequences may be the imposition of court costs on the debtor in case the applicant goes to court, the cost of services of a lawyer, expert, the amount of accrued interest, 3% per annum, inflation index for overdue, fine, seizure of bank accounts to secure the claim. The negative consequences for the debtor will be that in any case he will repay the amount of the debt or fulfill other obligations to the applicant, but in the case of going to court and subject to penalties, such payment of the debt will be much higher.

There is an opinion that the preparation of claim materials does not require special technical knowledge (they have employees of departments-executors, who at any time provide the necessary data and explanations), and legal, because the legal validity of the requirements is a successful pre-trial settlement [4, p.214]. In the literature, claims work is defined as a set of organizational and legal actions of the legal service and structural units of the enterprise for the preparation, consideration of claims and lawsuits, substantiation of their necessary documents to protect the rights and interests of the enterprise [5, p. 158].

When organizing claims work, the legal service should be guided by the General Regulation on the Legal Service of the Ministry, other executive body, state enterprise, institution and organization approved by the Resolution of the Cabinet of Ministers of Ukraine dated 27.11.2008 № 1040 [3], which states that the main task legal service is the organization of legal work aimed at the correct application, strict compliance and prevention of non-compliance with legislation, other regulations by the executive body, enterprise, their managers and employees in the performance of their tasks and responsibilities, as well as representation of interests executive body, enterprise in the courts.

The benefits of pre-trial dispute resolution are quite large, as they save time and money for the applicant and the debtor. If the claim is not upheld, the person who filed it can always apply to the commercial court, and the existing claim will already serve as a statement of claim. The advantage of pre-trial settlement of the dispute is also that such a procedure will allow the party to maintain a normal relationship with the counterparty and the business reputation of the company.

Also, the reality of such an order of settlement of economic disputes that arise is ensured by the presence of legal advisers in the vast majority of enterprises and organizations, as well as the growing legal literacy of managers of enterprises and organizations. The success of such a dispute resolution procedure depends, first of all, on the seriousness of the attitude to the claims work both on the part of the claimants and on the part of those to whom they are addressed. If the claim is made thoughtfully, thoroughly, convincingly, with reference to legal norms and it is considered seriously, it is a guarantee of settlement of the conflict by the parties without bringing it to the commercial court [1, p. 96].

Conclusions. Based on the study, it is possible to conclude that the legal nature of pre-trial settlement of commercial disputes is to obtain an additional means of protecting the rights and interests of participants in economic relations. The application or refusal to apply this legal institution is an exclusive right and not an obligation of the parties (except as provided by law). The practice of out-of-court settlement of a dispute through the filing of a claim and its actual consideration needs to be improved and used, which will certainly help to resolve a specific

dispute quickly and reduce the workload of the courts.

The need to preserve the institution of pre-trial settlement of commercial disputes is obvious, however, with further improvement of the procedure in the areas identified in the study. We believe that the development of an effective legal mechanism for the implementation of the recognized claim and the establishment of sanctions for violation of the terms of consideration of the claim may be the subject of further research.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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Submitted: 01.12.2021

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ПРЕЗИДЕНТСЬКЕ ВИРІШЕННЯ ЕКОНОМІЧНИХ СПОРІВ

Анотація. Стаття присвячена розгляду інституту досудового врегулювання господарських спорів в Україні. Проаналізовано положення чинного Господарсько-процесуального законодавства на предмет ефективності механізму досудового врегулювання господарських спорів. Визначено ключові аспекти досудового врегулювання господарських спорів, а саме, поняття, мету та завдання досудового врегулювання господарських спорів, також окреслено основні вимоги для вирішення господарських спорів без звернення до суду. Досліджено інститут претензії, який слугує основним офіційним документом для можливості вирішення господарських спорів у досудовому порядку. Окрім цього, охарактеризовано основні вимоги до форми та змісту претензії, визначено строки розгляду претензії, зміст та строки відповіді на претензії. Окреслено основні проблемні питання, пов'язані з розглядом та відповідями на претензії. Проаналізовано значення інституту досудового врегулювання господарських спорів для учасників господарських правовідносин, адже можливість вирішення господарських спорів без звернення до суду є досить поширеною практикою закордоном.

Крім вищевказаних аспектів було досліджено медіацію, як одну з реальних можливостей вирішення спірних питань між учасниками господарських відносин. Зазначено, що медіація полягає в залученні третьої сторони (медіатора) за допомогою якого вирішуються спірні питання, що полягають в порушенні прав чи обов'язків однієї сторони господарських відносин по відношенню до іншої. Також, зазначено історію розвитку інститут медіації закордоном, яка почалась в 60-х роках в США. Позначено, що медіація може використовуватися в будь яких правовідносинах, не лише в господарських, адже медіація полягає в тому, що коли двоє та більше учасників спільно вирішують залучити третю сторону для вирішення конфлікту без звернення до суду. Розглянувши вищевказані питання зроблено відповідні висновки щодо значення можливості вирішення господарських спорів без звернення до суду, а саме, в досудовому порядку, також зазначено, що медіація є основним методом вирішення господарських спорів без звернення до суду.

Ключові слова: *досудове врегулювання господарських спорів, претензія, медіація, медіатор,третя сторона.*