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APPLICATION OF ALTERNATIVE METHODS FOR RESOLVING LABOR DISPUTES AT INDUSTRIAL ENTERPRISES UNDER MARTIAL LAW

Purpose. To analyze the legal grounds for the use of alternative methods for resolving labor disputes, the advantages of each and their effectiveness. If specific methods are chosen, to propose amendments to the current legislation to resolve the problems of enterprises and employees.

Methodology. The study of the problematic issues of alternative forms of labor dispute resolution was carried out through research and evaluation of Ukrainian legal acts; theoretical analyses of experts in the relevant fields; and analysis of international labor law.

Findings. The authors identify the problem of irrational and therefore inefficient use of time by courts to resolve labor disputes. It is proved that these problems are multiplied by the insufficient number of judges. It is argued that employers' ignoring the research problem has deepened the crisis in the settlement of relations with employees. The authors identify alternative forms of labor dispute resolution, including the possibility of increasing the use of mediation as a way to resolve labor disputes.

Originality. For the first time, a comprehensive analysis of the use of alternative methods of labor dispute resolution at industrial enterprises of Ukraine under martial law was carried out. The authors identify the peculiarities of martial law's impact on the personnel policy of large enterprises, the problem of labor shortage, and the need to adapt labor dispute resolution mechanisms to the new socio-economic conditions. The scientific understanding of the possibilities of using mediation procedures for individual and collective labor disputes has been expanded. The authors have further developed the rationale for amending the legislation of Ukraine, in particular the Law "On the Procedure for Resolving Collective Labor Disputes (Conflicts)", by supplementing its provision on the mandatory nature of primary mediation before applying to a conciliation commission or a commission for consideration of individual labor disputes.

Practical value. The introduction of mediation procedures into labor law as an alternative method for dispute resolution may become an effective tool for reconciliation of parties to labor disputes, reducing financial, time and human costs. The authors propose to supplement the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" with a clause on the possibility of conducting a mediation procedure before raising the issue of appointing a conciliation commission.

Keywords: *labor dispute, arbitration, mediation, economic activity, defense, rights, court, justice*

Introduction. Labor disputes are a negative phenomenon of modern society which can actually harm both parties to a conflict. Settlement of disputes and conflicts by jurisdictional bodies in the context of martial law has certain peculiarities, since resource constraints create obstacles for the parties concerned on the way to restoring their violated rights. The resolution of labor disputes at industrial enterprises does not differ from other labor disputes in terms of the procedure established by law, but has certain peculiarities in terms of the implementation of certain alternative ways to restore and protect violated rights.

The definition of "industrial enterprise" includes the following enterprises belonging to specific sectors of economic activity: mining, processing, construction, energy, gas, water supply and sewerage, as well as sanitary services, transport, warehouses and communication services. For the successful operation and development of such enterprises, as a rule, a large number of employees are involved and of course, such enterprises have trade unions to represent and protect the interests of employees.

Currently, Ukraine is in a very difficult period of its existence, with unique legal and social problems that will only increase. The emergence of this situation is, of course, related to the Russian armed aggression. Under the current circumstances, the need to reform the dispute resolution system, in particular labor disputes, in order to harmonize and bring it closer to the system of European standards, is becoming particularly urgent.

And today, the phrase "approximation to European standards" is no longer solely declarative, conditional or advertising. Unfortunately, it is precisely because of the full-scale invasion, high mortality (including due to natural causes), and a significant outflow of female workers from Ukraine that many business areas have already experienced a significant shortage of personnel. If we are talking about highly intellectual, technologically complex enterprises, and these are primarily mining and

metallurgical enterprises, the shortage of personnel is catastrophic. Therefore, professional workers not only deserve and have the right to European conditions and standards, including those related to labor dispute resolution, but they will not come to the company in the absence of the latter, even if they receive decent pay including the availability of conditions for booking individual employees.

Literature review. The analysis of scientific achievements and proposals, current legislation in the field of alternative labor dispute resolution indicates that in the context of martial law and Ukraine's European integration, it is necessary to expand and change the system of alternative methods for labor dispute resolution.

In particular, scientific research on the relevant issues was conducted by: L. V. Apanaskovych, studying the issues of improving labor legislation, including in terms of protecting the labor rights of civil servants [1], V. M. Deyneka, focusing on labor disputes [2], S. I. Zapara, studying the issues of mediation as a relatively new mechanism for resolving disputes in Ukraine [3], M. Kuznetsova, focusing on the specifics of mediation in the resolution of labor disputes [4], A. Stratiuk, studying certain features of labor disputes [5], M. I. Semych, studying the peculiarities of legal liability in the field of labor relations [6], O. A. Terekh, analyzing the practice of Ukraine and the EU in resolving labor disputes [7], N. V. Uvarov, studying the problems of methods for resolving labor disputes [8], O. E. Lutsenko, focusing her scientific interest on the issues of conciliation procedure in resolving labor disputes [9], and other authors whose works we draw attention to in this research, confirming the importance and relevance of the topic.

However, we would like to draw attention to the works of individual authors that confirm the importance and timeliness of the research topic.

Thus, V. Buriak objectively noted in his research that in fact, any way to resolve a conflict between an employer and an employee can and should be built on the foundation of mutual respect and the creation of a mechanism for finding understanding within the team, the enterprise and within the framework of the current labor legislation. Similar information can be found in consulting and reference sources [10, 11]. This approach is important if the owner of the enterprise or management is really interested in long-term and effective work, when the management is interested in eliminating the root cause of the conflict and not just the hot phase of the consequences.

Kuzmenko M. noted that we must recognize that the most common forms of alternative dispute resolution are mediation and arbitration, which allows the parties not only to be parties to the conflict but also to control the outcome and course of the dispute resolution as much as possible [12].

By the way, scholar Buryak V. Y., separately studied the issue of alternative dispute resolution, noting that we should also note that the terms "alternative ways of resolving "labor disputes", "restorative justice" are often used in the scientific literature. In international practice, other, alternative methods are gaining more and more importance in resolving disputes in the field of labor relations. In Ukraine, some of these alternative justice methods have even received legal recognition in the settlement of collective labor conflicts (disputes) [13].

The issue of mediation as an extremely effective regulator in many European countries was studied by Romanov V., noting that alternative or out-of-court dispute resolution methods provide an opportunity to resolve a conflict (dispute) by finding a common solution by the parties. A characteristic feature of the alternative method is the possibility of finding a solution by the parties without the participation of the country (court), with the possible involvement of a third party. The creation of such opportunities, among other things, is explained by the European integration course of Ukraine, within which the European standards of the European Union are being implemented in the legislation of our country, including the protection of workers' rights in the field of labor [14].

And of course, it is impossible not to mention the need not only to state the existence of a problem, it is extremely important to have a vision of ways to solve it. Thus, the issues of improving the current legislation in this area were dealt with by M. I. Semych, who noted that alternative ways of resolving labor disputes can be outlined in the form of a certain number of procedures not prohibited by law aimed at peaceful settlement of disputes between the parties to the conflict by finding a compromise and comparing positions, or by involving third parties to develop such a solution. In other words, both the judicial procedure for resolving a dispute and the out-of-court, alternative procedure are quite real. Methods for conflict resolution are recognized as alternative only if they are consensual in nature and their integral part is the involvement of impartial and independent persons in the dispute resolution [15].

However, the issue of alternative ways of resolving labor disputes during martial law is not sufficiently covered and requires additional extended and comprehensive scientific research.

Unsolved aspects of the problem. The resolution of labor disputes has always been an important issue that required special attention from legislators, scholars and practitioners, and at present this issue is becoming particularly relevant, since the full-scale military invasion of the Russian Federation and the economic and social crisis caused by its actions indicate the need to change the attitude towards the "classical" ways and methods for dispute resolution.

The quarantine restrictions imposed within Ukraine and the military aggression of the Russian Federation in Ukraine have forced a change in the attitude of the Ukrainian people towards all aspects of our lives, including the elimination of conflicts or the search for ways to resolve them. The key body responsible for resolving disputes is the court, but after the introduction of martial law, the judiciary changed the specifics of its work. Some courts have ceased to function or have been relocated due to the destruction or temporary occupation of territories. There have also been changes in the territorial jurisdiction of cases. But the need for alternative ways to resolve labor conflicts has only increased. We must recognize the need to introduce conciliation processes, increase out-of-court and pre-trial options for resolving conflicts, which will reduce the volume of cases in courts and save budget funds while improving the quality of justice. It is in view of the above, and understanding the psychological aspects of deciding to re-

solve a labor conflict or dispute, that we must admit that the relevant processes are significantly complicated. However, it is impossible to deny the fact that labor disputes arise all the time and need to be resolved, as it is crucial for the survival of the economy. We, as the authors, confirm and draw attention to the fact that over the past few years, Ukrainian business, and especially mining companies, have faced challenges that were not previously known to us. But the situation has been significantly aggravated by the fact that, in addition to objective security and technical problems (such as lack of electricity, water, and other resources), we must consider certain psychological problems faced by Ukrainian citizens, which in turn significantly affects the very nature of labor disputes, which may not be so much the occurrence as the resolution of labor disputes.

The purpose of the study is to investigate the legal grounds for the use of elective or alternative options (methods) for resolving labor disputes, the advantages of each and their effectiveness. Based on the results of the study, to provide a detailed analysis of the possibility of applying the methods of resolving labor disputes, and an analysis of the consequences for industrial enterprises, if specific methods are chosen, to propose amendments to the current legislation in order to eliminate the above problems of employers (enterprises) and employees.

Objectives of the study are:

- to make an appropriate, comprehensive analysis of the forms of alternative labor dispute resolution that can be applied at an industrial enterprise during martial law;
- to conduct a systematic analysis of the current regulatory framework that allows for the use of alternative dispute resolution methods:
- based on the analysis, to propose changes to improve the implementation of alternative forms of labor dispute resolution.

Research methods. Research and analysis of the problematic issues of the use of alternative means of remediation, resolution of labor disputes at industrial enterprises under martial law:

- legislative acts (bylaws);
- theoretical studies by relevant authors in specific fields;
- research and analysis of international legal regulations.

Results. Every person has the right to defend his or her violated right in case of an encroachment on it. Such protection may be exercised in a manner not prohibited by law and is accordingly guaranteed by the provisions of the current legislation, namely the Constitution of Ukraine as the legal act with the highest legal force.

It is also advisable to recognize that in Ukraine, pretrial settlement of a conflict (dispute) may be carried out if such a method is provided for by law.

A significant number of labor disputes are resolved annually by state institutions, including the top courts, but the number of people willing to resolve conflicts in an alternative way, both among employees and employers, is constantly increasing. This can be explained, among other things, by insufficient educational activities, access to information about the availability of such an alternative, and the lack of desire of authorized employees of enterprises to apply an effective and safe procedure for the employer.

Mediation is becoming particularly widespread. The system of alternative means of eliminating and resolving labor disputes makes it possible to choose one of the means of ensuring the rule of law in the workplace for almost all employees at minimal financial cost, and also helps to speed up the consideration of cases in courts, which in turn allows for more efficient resolution of conflicts (labor disputes). For a considerable period of time, employers have ignored the grounds for conflicts (labor disputes), or even the conflicts themselves, if they occurred. In fact, in the event of a conflict, the employer used only administrative or judicial mechanisms to resolve it. It is worth noting that sometimes the employer used the method of incentivizing the most loyal trade unions, or simply bought the loyalty of a critical mass of employees, considering it safer for itself in the long run, realizing that the labor market in industrial regions is oversaturated.

However, modern society has changed dramatically, and large enterprises and companies have begun to apply a different, more democratic and, as it turned out, cheaper and more effective method for resolving conflicts that arose in the workplace and among the team as a whole. The parties to the conflict realized that the use of authority is not the only and far from the most effective way to resolve a conflict. Among the specific features of alternative ways of eliminating and resolving labor conflicts (disputes), the following should be noted: 1) assistance in resolving a conflict/dispute on the basis of common sense and professionalism; 2) ensuring the possibility and safety of expressing one's own position during the dialogue; 3) the existence of an incentive to develop a joint solution to resolve the conflict situation and ensure the realization of the rights and freedoms of all parties to the conflict. Each of these areas depends heavily on the human factor, the progressiveness or bias of the leader or leaders, and the turnover of leaders in their respective positions. It is worth noting here that at some enterprises, the vast majority of managerial positions are held by managers who are not connected either with the region where the enterprise operates or with Ukraine in general. This is actually a rotational job. It lasts from one to three years. Therefore, such a manager does not understand his responsibility to the community or to the labor collective or corporation, he operates a project lasting a maximum of three years, sincerely believing that the main thing is to meet economic targets and prevent conflict. Such a manager does not care about the long-term prospects of the enterprise, and he does not eliminate the cause of the conflict but hides the consequences.

And today's realities have already proven that the problems that the employer ignored or deliberately delayed in solving have become critical for him, as the problem of staff shortages has joined the problems with resources, logistics and security. Consequently, the employer also needed an efficient and effective mechanism for quickly resolving labor conflicts.

Alternative conflict (dispute) resolution is achieved by settling conflicts (disputes) by any means out of court. Within the framework of alternative methods, we can distinguish direct and objective assessment of the situation, negotiations, conciliation, mediation and arbitration.

At the same time, it is obvious that the burden on the judicial system is increasing due to the increased costs for the parties to the conflict and the timeframe for court proceedings. That is why, in all jurisdictions many countries, the practice of using alternative means of dispute resolution is increasing. Such alternative methods can be used both compulsorily and on a voluntary basis. At the moment, we should also note that the number of attacks on judicial buildings in Ukraine has increased, such as the damage to the building of the Court of Appeal of the Dnipro Region in Kryvyi Rih in December 2024, which unfortunately resulted in a loss of life among the court staff. These cases, in turn, have led to a more conscientious approach by judges to not ignore air raid alerts. However, the consequence of a correct and conscientious approach will be even longer court hearings. This is because Ukrainian courts do not have sufficiently equipped safe rooms to conduct court proceedings under air raid alerts. In addition, we must realize the shortage of judges. Only now, a competition is underway for more than 500 judicial vacancies in the courts of appeal, and in March 2025, a competition for a significant number of positions in the courts of first instance is to be held.

The practical problem is that large enterprises, including those with unprofessional senior management, perceive the involvement of third parties as a threat to themselves and are afraid to set a precedent, because the alternative for many such managers looks like a failure of the enterprise and a threat to their personal position.

On the practical side, the use of alternative dispute resolution methods is explained by a significant number of objective factors, which in turn correspond to both national and foreign trends, including the following:

- the need to simplify the procedure for considering both labor and interest disputes;
- use of legal means to reconcile the parties in order to settle conflicts and eliminate the root causes of their occurrence;
- reducing pressure on the judiciary from a significant number of labor disputes [16].

All of this can be quite beneficial for the company, provided that it wants to minimize not only the consequences of a problem situation, but also the problem itself, or its root cause.

Legal disputes are a part of life and can arise at any time and in any society, so conflict situations are possible even in efficiently operating enterprises with a high level of management. Moreover, sometimes the emergence of collective labor disputes and the procedure for their resolution can be an opportunity to consider a greater number of alternative solutions to problems.

Awareness of the legal basis, the basis of legal relations for dispute resolution as a prerequisite for the parties to comply with the conflict resolution procedure would enable all parties to the dispute to understand the causes, consequences and opportunities for its resolution, consolidation and improvement of the relevant procedure [17]. In this case, the relevant processes on the part of the employer should be handled by an appropriate number of specialists of different directions or even departments. And although at the beginning of building the relevant processes, it may seem very costly, in the case of a well-established mechanism for resolving labor disputes, in the end, the company will have both reputational and financial benefits without spending time and money on months-long litigation.

It is worth noting that in the scientific literature, labor disputes are referred to as unresolved contradictions between the parties to labor relations that may arise as a result of mutual negotiations and may relate to the application of labor laws or working conditions. Such disputes may be resolved out of court (alternative) or in court. Among the out-of-court procedures, "alternative ways of resolving labor disputes" are becoming increasingly common" [13]. In our opinion, this is the direction of the future and these are the directions that are beneficial for both the employee and the employer. In the vast majority of cases, such alternative methods also allow minimizing the state's involvement in the settlement of legal relations between the employee and the employer.

At the same time, we can also note the division of labor disputes by subject matter or subject of the conflict (dispute) into several types: collective or individual conflicts of interest (respectively, economic) and conflicts of law (respectively, legal). If we talk about possible options for dispute resolution, there are only two: arbitration (it should be noted that arbitration courts also operate in Ukraine) and judicial or classical dispute resolution. Of course, each has its own peculiarities. It is also worth mentioning the rule of collective economic disputes. Since the latter are usually associated with the creation of new legal norms, they are considered within the conciliation and arbitration process [15]. And this process can be successfully developed in the future.

The introduction of a legal mechanism for resolving collective labor disputes in Ukraine began with the adoption of the Constitution of Ukraine, when Article 44 for the first time defined the right of employees to strike to realize their economic and social rights. The Constitution of Ukraine states that the procedure for exercising the right to strike is regulated by law, on issues of national security, protection of rights and freedoms of individuals, including those who are not employees of certain enterprises. Participation or unwillingness to participate in a strike cannot be forced. The prohibition to hold a strike may be established only within the framework of the law. However, it is also worth remembering that in order to eliminate the legal collapse, after the start of the full-scale invasion, many changes were made to the current legislation of Ukraine. These changes affect almost all spheres of life, but they have had a very significant impact on labor relations, significantly simplifying the procedure for dismissing an employee, and thus strengthening the position of the employer in relation to the employee. This, in turn, has increased the human factor in resolving relevant conflict situations and exacerbated the relevant issues.

It is worth noting that the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (conflicts)" adopted on March 3, 1998, outlined the legislative and systemic principles for implementing a system of measures aimed at eliminating labor disputes (conflicts) and implementing cooperation between the parties within social and labor relations, in order to eliminate collective labor disputes (conflicts) that have arisen between the relevant entities. The Law interprets

collective labor disputes as disagreements between participants in social and labor relations regarding the establishment of working conditions or compliance with labor legislation.

The law stipulates that a collective labor dispute (conflict) is a misunderstanding that arises between participants in labor relations regarding the:

a) determining or changing the existing socio-economic norms that establish working and labor conditions;

b) signing (concluding) or amending a collective bargaining agreement or agreement;

c) fulfillment of a collective bargaining agreement, agreement or relevant regulations within their framework;

d) non-compliance with the requirements of regulatory legal acts on working conditions [10].

The parties to such disputes are collectives of employees or their associations, on the one hand, and employers, their associations or representatives, on the other.

Collective labor disputes can be divided into the following types: 1) industrial (production) disputes arising at enterprises, institutions or organizations; 2) territorial (or sectoral) disputes – conflicts (disputes) covering one or more sectors or arising within an administrative unit, if the conflict involves employees of the majority of enterprises in a particular sector or relevant administrative unit; 3) national disputes – which are characteristic of the state. Such disputes involve employees from most regions of Ukraine.

The peculiarity of alternative methods is that the parties can independently make a decision to resolve the conflict or involve a third party, authorizing it to develop an acceptable solution that will be binding on both parties. In the context of its European development course, Ukraine has agreed to implement EU norms in its national legislation, including mechanisms for protecting employees' labor rights.

Current legislation, both national and international, provides for the following alternative approaches to resolving labor disputes:

- negotiations between participants;
- reconciliation through conciliation procedures;
- mediation;
- arbitration procedures.

Some of these methods are reflected in the legislative regulation of collective labor disputes. Among the conciliation procedures, we can distinguish the settlement of a dispute by a conciliation commission and an independent mediator [13]. However, in our opinion, all these methods are underestimated by the employer, which primarily harms the employer's interests. Unfortunately, it is not the alternative method of dispute resolution that remains the most popular, but the classical, judicial one. It is also worth noting here that the employer, as an entity not interested in setting a negative precedent for itself, uses all possible resources, primarily financial, to ensure that the case is heard in court as long as possible. This means at least two instances before the decision comes into force, which, under martial law, will take at least one year on average.

The use of one of the types of alternative dispute resolution does not exclude the possibility of simultaneous use of other methods for resolving a labor dispute. It is worth noting that the possibility of using an independent mediator at any stage of the settlement of a collective labor dispute is already available in the current legislation.

And the availability of such a combination approach does not prevent the parties from spending their own time and money. For the classical, judicial dispute resolution procedure, the top does not deprive them of this method, does not limit their use.

An important place among the alternative dispute resolution procedures to the court procedure is occupied by forms that facilitate the emergence of legal relations that perform mediation functions. According to the procedure provided for in Ukrainian law, these include: a conciliation commission, a mediator (independent), labor arbitration and the National Mediation and Conciliation Service. Relationships arising in the course of these bodies' performance of their respective mediation functions are aimed at conflict resolution and settlement of collective labor disputes. At the same time, outside the circle of persons directly involved in the relevant processes or scholars researching and analyzing the relevant activities, the number of parties to labor disputes who are aware of the relevant possibility, unfortunately, remains extremely low.

However, the respective means of resolving labor disputes provide quite a lot of freedom to the parties to the conflict, thereby not being bound by the legal framework to apply to any state authorities. It is also important that in most cases, the parties are free to make decisions based on their own balance of interests within a short time frame, unlike the resolution of any dispute by jurisdictional authorities.

An attractive and economically interesting way to resolve a labor conflict (dispute) is through negotiations. ILO Convention No. 154 concerning Collective Bargaining (1981) defines the concept of collective bargaining. Article 2 of the said Convention recognizes as "collective bargaining" all negotiations between an employer or their association, or possibly a group (from one to several) of employers' organizations on the one hand, and a group (from one to several) of workers' organizations on the other, with the aim of: a) determining working conditions and workload; b) regulating relations between employers and employees; c) regulating legal relations between employers or their associations and employee organization(s).

According to the ILO definition, all possible types of negotiations, agreements or information exchange between government representatives and social partners on issues of common interest related to the implementation of both economic and social policies constitute the essence of "social dialogue". It can take place at the national, regional, sectoral level or at the level of a single company, enterprise, organization, etc. Social dialogue differs from other ways of regulating labor relations by the types of results it creates and the means of achieving them. Social dialogue produces tangible outcomes, such as collective bargaining agreements and social agreements. It can also include joint policy making or tripartite management of certain policy areas (human resource development, employment policy). The outcomes are usually achieved through negotiation or co-

operation between the government and the social partners (tripartite) or between the social partners (bipartite). This is fundamentally different from, for example, unilateral government decisions on labor issues (e.g., labor legislation on minimum wages), or prohibited or conflictual strategies such as protests, strikes, or lockouts [16].

"Social dialogue" is an important method for establishing and maintaining social cohesion and improving governance. It contributes to the formation of high-quality public services not only for employees but also for citizens. Social dialogue involves the sharing of unlimited information, consultations and negotiations between authorized representatives of governments, employers and employees on issues of significant common interest, both economic and social. Social dialogue can be understood in a broad sense and in other narrower, diverse meanings in many countries: it can take place at all stages of the decision-making process; it should not be overly prescriptive; it should be adaptable to circumstances; it should include, in particular, those affected by changes and decisions.

Social partnership is very important because it is aimed at finding or creating optimal solutions and resolving conflicts peacefully, as well as reconciling personal and collective interests, which is realized through such basic methods as joint consultations, collective bargaining on the settlement of social and labor relations, conclusion of collective agreements and contracts, analysis and resolution of claims (disputes) arising between social partners and in labor disputes.

Under the labor law, negotiations may be used to resolve both collective and individual labor disputes. Pursuant to Article 224 of the Labor Code of Ukraine, an employee, either independently or with the assistance of a trade union organization, must attempt to resolve disputes through direct negotiations before applying to a labor dispute commission [17]. The obligation to use such a form of dispute resolution as negotiations in resolving collective conflicts is regulated by the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (Conflicts)". The relevant law imposes an obligation on the parties to negotiate during conciliation procedures and during a strike to resolve a collective labor dispute.

The ILO notes that definitions of social dialogue change over time and the application of a particular country's legislation. Social dialogue can be informal or specialized, institutional or formal – or even a combination. Informal processes can be just as important as formal ones.

According to the ILO Collective Bargaining Recommendation (No. 163), ILO member states should take appropriate measures to ensure that collective bargaining is possible at any level, including the institutional, enterprise, sectoral, regional or national levels. In countries where collective bargaining is carried out at several levels, the parties to the negotiations should ensure coordination between these levels [18].

The success and effectiveness of negotiations may depend on a number of factors, including the availability of certain skills, including: good interpersonal skills; willingness to prepare for negotiations; ability to use attack and counterattack tactics; knowledge of the opponent's strengths and weaknesses; and knowledge of the needs and interests of the negotiator. In addition, negotiators must determine what the other party really wants and how much they are willing to make concessions in order to convince the other party to reach a specific result.

It is important to choose the style and form of negotiations, which can be divided into two main categories: joint dispute resolution and adversarial negotiations.

In a joint decision, the negotiators try to create a comfortable negotiation environment to reach a mutually beneficial agreement that will satisfy both parties.

In contrast, when using an adversarial style of negotiation, participants will try to obtain optimal results for themselves at any cost. Adversarial negotiators tend to disclose minimal information and try to manipulate the other party.

Each of these negotiation styles can be used by the parties, moreover, adversarial negotiations create more misunderstandings; adversarial negotiations tend to reach extreme agreements; and collaborative dispute resolution achieves more effective combined results for both parties than adversarial negotiations.

Unfortunately, the legislation does not define a unified algorithm of actions during negotiations. The dynamics of the development of legal relations, freedoms and legal regulators differs from country to country; it changes significantly and rather dynamically in accordance with a significant number of circumstances and under the influence of relevant factors. The power of the parties to the relevant legal relations and the development of the trade union movement also play a significant role.

In line with the growing needs of society to apply various conciliation procedures to resolve labor disputes, it is becoming increasingly popular in foreign countries to include such procedures in local acts of organizations, and sometimes even in employment contracts. In practice, we can find examples when, in litigation, a plaintiff may obtain consent to extend a court order to freeze the assets of his former personal assistant and housekeeper who may have misappropriated a certain amount of money. Such cases are possible if the court receives information that the defendant's employment contract contains a clause providing for mediation, and she had the opportunity to file an application for suspension of the court proceedings until mediation is conducted. This and similar cases illustrate that mediation terms are now often included even in employment contracts.

Ukrainian legislation, for example, quite actively uses the possibility of dispute resolution by arbitration courts, which is not a direct embodiment of mediation, but essentially allows disputes to be considered in private courts outside the state judicial system, provided that both parties have voluntarily agreed to such a dispute resolution procedure in an agreement between them. Unfortunately, this procedure is only available for commercial disputes, but it is also a step forward, allowing legal entities to significantly speed up the consideration of relevant cases. It is also worth noting that the state retains control over the legality of the work of arbitration courts, and if a decision is made illegally or in violation of the procedure (even if it is fair in essence), the relevant decision may be canceled and the arbitrators brought to justice.

An important distinction should be made between mandatory attendance at an information session on alternative labor dispute resolution or mediation and mandatory participation in the alternative labor dispute resolution process. If the employment agreement contains conciliation terms, the parties are not obliged to participate in the relevant process and may apply to a designated body or court as provided by law. It may be useful for the employer to include a clause in the contract requiring mandatory attendance at an information session on alternative labor dispute resolution before filing a claim. This will allow the parties to familiarize themselves with possible options for resolving their labor dispute [19].

Disputes may also arise in Ukrainian society regarding conciliatory methods for resolving labor conflicts. For example, on April 5, 2023, a public meeting was held in the form of an oral hearing in a case concerning a constitutional complaint filed by the Primary Trade Union Organization of the All-Ukrainian Trade Union of Workers of Science, Industry and Finance of PJSC ArcelorMittal Kryvyi Rih. The complaint sought to recognize the constitutionality of the first paragraph of part 1 of Article 7 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" of March 3, 1998, No. 137/98-VR.

The applicant filed a request with the CCU to check whether the first paragraph of part 1 of Article 7 of the Law, which regulates the consideration of a collective labor dispute (conflict) by a conciliation commission when it comes to establishing new or changing existing socio-economic conditions of work and working life; concluding or amending a collective agreement or contract (paragraphs a and b of Article 2 of the Law), complies with the Constitution of Ukraine. In case of failure to provide a decision within the timeframe specified in Article 9 of the Law, the case is referred to labor arbitration. The applicant of the constitutional complaint argues that the disputed provisions of Article 7 of the Law regulate exclusively the out-of-court method for resolving a collective labor dispute (conflict). The applicant was convinced that the provisions of the Law, which were subject to compliance review, did not comply with Article 8(3), Article 55(2) and (6), Article 64, Article 124(3) of the Constitution of Ukraine, as they "reduce the scope of rights defined by these articles, in particular the right to judicial protection". Important aspects are that: collective labor disputes should be divided into "disputes of law" and "disputes of interest". Such disputes are subject to the arbitration procedure, the legal mechanism of which is defined by a special legislative act – the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (Conflicts)", which is in line with international legal acts and parts of Ukrainian legislation:

- "interest disputes" should be resolved exclusively through arbitration procedures and should not be subject to the jurisdiction of the courts;
- some collective labor disputes are "rights disputes" that should be subject to the jurisdiction of the courts;
- according to the law, except for cases of direct appeal to the court, all collective labor "rights disputes" require a pre-trial procedure for conflict resolution;
- the ECHR case law indicates that the conciliation and arbitration mechanism for resolving collective labor disputes does not imply a restriction of access to justice and may be regulated by national procedures in order to achieve the effectiveness of justice [20].

The consideration of collective labor disputes is divided into two stages.

The first stage involves the resolution of collective labor disputes through conciliation procedures, which include consideration of disputes by conciliation commissions and labor arbitration. As part of this stage, independent mediators and representatives of the National Mediation and Conciliation Service may be involved in dispute resolution.

The second stage of collective labor dispute resolution is a strike.

Thus, the first stage (stage) of collective labor dispute resolution is the application of conciliation procedures.

Conciliation procedures involve the use of specific methods to resolve a collective labor dispute without terminating operations by finding a solution that is acceptable to all parties to the conflict.

Conciliation is an approach to resolving a labor dispute that involves finding a mutually acceptable solution through negotiations, mediation, agreement or other procedures. This is an effective way to reach a compromise between the parties with the proper use of all opportunities that are not prohibited by law [11].

According to the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (Conflicts)", it is advisable and possible to resolve a dispute by a conciliation commission only if the subject matter of the collective dispute concerns the establishment of new or change of existing socio-economic conditions of work and working life or the conclusion or amendment of a collective agreement or contract. The conciliation commission is a body established by the parties to the conflict and consisting of their representatives to develop a solution that could satisfy all parties to the dispute. The main goal of the conciliation commission is to create a solution that is acceptable to all parties to the conflict. Depending on the level of the dispute, there are different types of conciliation commissions: national, sectoral, territorial and industrial ones. They are formed on the basis of a written request from a party to the conflict: at the production level – within three days; at the sectoral or territorial level – within five days; at the national level – within ten days from the moment a collective labor dispute arises. Any party to the dispute has the right to initiate the establishment of a conciliation commission. The commission shall consist of an equal number of representatives from each party, which shall be determined jointly and recorded in the relevant protocol. The parties independently establish the procedure for delegating their representatives to the commission, as well as determine their personal composition and powers. The decision on the parties' representatives shall be formalized by the relevant documents of each party.

The main purpose of the reconciliation commission is to ensure conditions for negotiations and use of all possible means to resolve a collective labor dispute (conflict) that are not prohibited by law. The commission considers a collective labor dispute (conflict) in the form of a competition between the parties based on the opposition of their substantive legal interests [21].

Organizational and logistical support for the activities of the conciliation commission is provided by agreement between the parties; if there is no such agreement, the costs are shared equally. The conciliation commission is obliged to consider the dispute and decide within the following timeframes: an industrial commission – within five days; a sectoral or territorial commission – within ten days; a national commission – within fifteen days from the date of its formation. These terms may be extended by agreement of the parties to the dispute. The moment the commission is established, representatives of each party are delegated. The conciliation commission considers the dispute at its meetings and, if necessary, may engage independent mediators.

The decision of the reconciliation commission is made after a comprehensive review of all the circumstances of the case by a majority vote of its members from each party. The result is announced at a meeting of the relevant commission and recorded in the minutes [22].

If the commission fails to find an acceptable solution, the collective labor dispute is referred to labor arbitration. The labor arbitration is established within three days with the involvement of specialists, experts and other persons determined by the parties to the dispute and decides on the merits of the conflict.

The members of labor arbitration may be persons who have no direct or indirect interest in the outcome of the case and who have recognized knowledge, experience and the necessary business and moral qualities approved by the parties [22].

The labor arbitration tribunal is obliged to consider the dispute and decide within ten days from the date of its formation. If necessary, a majority of the arbitration members may extend this period up to twenty days. The consideration of a collective labor dispute is carried out with the mandatory participation of representatives of the conflicting parties, and by the decision of the arbitration tribunal, representatives of other interested institutions and organizations may also be involved. The arbitration decision shall be made by a simple majority vote and shall be formalized in a protocol signed by all arbitration members. Each member of the arbitral tribunal shall have the right to express its dissenting opinion in writing if it disagrees with the award. This dissenting opinion shall be attached to the minutes of the meeting.

The conciliation commission and labor arbitration, as forms of alternative labor dispute resolution, have existed for a long time and are effective mechanisms for out-of-court dispute resolution. The adoption of the Law of Ukraine "On Mediation" in 2021 expanded the list of sustainable forms of dispute resolution and opened up the possibility of using new views on conflict resolution.

The Labor Code of Ukraine defines mediation as a method for resolving individual labor disputes, while for collective cases mediation is provided to ensure prompt and efficient dispute resolution, as well as proper protection of labor rights and legitimate interests. Involvement in the mediation process, which is carried out by independent mediators of the National Mediation and Conciliation Service, allows achieving the goals set by this state body. These include:

- promoting cooperation between the parties to social and labor relations in the process of settling collective labor disputes (conflicts);
- forecasting possible collective disputes and ensuring their timely resolution;
- mediation and conciliation in collective labor disputes;
- support for social dialogue, development of agreed proposals for the development of socio-economic and labor relations in Ukraine;
- implementation of measures to prevent collective labor disputes; raising the legal culture of participants in social and labor relations.

However, mediation can serve as an alternative to the work of independent mediators and can be an effective method for stabilizing both individual and collective labor relations due to its significant procedural advantages over mediation.

Alternative methods of conflict resolution are one of the five main pillars of the Joint Program of the European Commission and the Council of Europe aimed at improving the functioning of the judicial system in Ukraine. To ensure fair settlement of the interests of all parties to the conflict, the Council of Europe supports the initiatives of member states to develop and implement pan-European standards in the field of alternative methods such as conciliation, mediation and restorative justice, while considering the importance of "establishing truth and justice through the judicial process".

International norms for the use of mediation were developed within the framework of European organizations – the Council of Europe and the European Union. Among the important international legal acts is 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, which contains recommendations proposing the introduction and consolidation of mediation at the legislative level as one of the main methods of alternative dispute resolution at the pre-trial stage and during court proceedings, the European Council called on states to establish alternative out-of-court procedures to improve access to justice Such procedures should provide for cost-effective and expeditious resolution of disputes through processes adapted to the needs of the parties. This includes Council of Europe Recommendation R No. (2002) 10 on mediation in civil matters and Council of Europe Recommendation No. R (98) 1 on mediation in family matters.

The introduction of mediation procedures in labor law as an alternative dispute resolution method can be an effective tool for reconciliation of the parties in the field of labor law, while ensuring minimal costs in terms of financial, time and human resources. This method is an effective means of protecting the rights of both employees and employers. In addition, mediation can help to find a reasonable and optimal balance of interests between employees and employers, as well as avoid the need to go to court, which reduces the likelihood of negative impact on the reputation of a legal entity. As stated in clause 4, part 1, Article 1 of the Law of Ukraine "On Mediation" dated November 16, 2021 No. 1875-IX, mediation is an alternative, voluntary, confidential and structured process in which the parties, with the help of a mediator (mediators), try to avoid or resolve a conflict (dispute) through negotiations. A mediator is a specially trained, neutral and independent person who conducts the mediation process [20]. According to Ar-

ticle 4 of the Law of Ukraine "On Mediation", this process is carried out by mutual agreement of the parties, in compliance with the principles of voluntariness, confidentiality, neutrality, independence and objectivity of the mediator, as well as the principles of self-determination and equal rights of the mediation participants. These principles also apply at the stage of preparation for mediation [24].

Mediation in labor dispute resolution is a new approach that has been officially enshrined in the law. As a method of resolving labor disputes, mediation is an out-of-court, voluntary and confidential procedure initiated by the parties to the labor relationship (employee or employer) to engage an independent, impartial and qualified mediator to reach a mutually acceptable solution to a labor conflict [25].

The mediation procedure has the following advantages:

- reduced time and cost;
- voluntary participation of the parties;
- maintaining confidentiality;
- the ability to maintain business relations with the counterparty;
- lack of strict formalities;
- freedom from any coercive influence or interference by state authorities [26].

In addition, mediation has advantages over other methods for resolving labor disputes, as it firstly ensures speed; secondly, the absence of strict procedural restrictions contributes to a relaxed atmosphere and the parties' willingness to cooperate. Thirdly, the decision reached by consensus is, in most cases, respected in the future. Finally, mediation facilitates more effective communication between the parties, which in turn strengthens social cohesion.

The main advantage of mediation is that, unlike judicial dispute resolution, it ensures the satisfaction of all parties to the conflict. The use of mediation in labor disputes will help reduce costs, maintain neutral relations between the parties and partially relieve the judicial system by providing the parties to the conflict with a faster, more flexible and confidential method of dispute resolution, while leaving the possibility of using other methods for conflict resolution between the parties.

A characteristic feature of mediation in resolving relevant disputes is that it will take place only when the dispute is related to a direct violation of labor or labor protection legislation. The mediator will act as a neutral party to ensure negotiations, and the choice of a mediator will be the relevant right of the parties to the dispute [27].

Unfortunately, the labor legislation on the procedure for resolving collective labor conflicts does not contain a provision on the possibility of using the mediation procedure to resolve a collective labor dispute, although there are sufficient grounds and prerequisites for this. Unfortunately, at present, the mediation procedure is just beginning to be used to resolve conflict and disputes in certain industries, but unfortunately, it has not been widely used. The problem of training mediators, the approval of a national standard and training program also remains unresolved. In this matter, it should be remembered that even the basic system of legal education is still undergoing reform, which leaves all higher education institutions in Ukraine with a wide enough scope to build their own lawyer training program. This, in turn, does not have a very positive impact on the quality of training of lawyers.

Conclusions and prospects for further development in this area. The authors believe that in the foreseeable future, Ukraine, as an independent and legal country, will continue to experience the consequences of a full-scale invasion. And of course, given the specifics of the study, we are primarily talking about the impact of such consequences on large mining enterprises, the lack of labor resources and the ways of resolving labor disputes.

It is obvious that the number of highly qualified employees, or employees of the appropriate age in whom an employer wants to invest, will decrease. With the end of the armed aggression against Ukraine, which we all hope for in the near future, the problem of staff shortage and therefore finding ways to encourage employees to stay, the availability of real mechanisms for resolving labor disputes, will also increase, including through the removal of restrictions on border crossing by the relevant category of citizens. In our opinion, one of the few factors that can persuade an employee to stay at home, given relative security and conditionally decent wages, is an effective European mechanism for protecting labor rights and resolving labor disputes fairly and legally. But in our opinion, the employee should already feel the effectiveness and existence of such opportunities, otherwise, both the employer and the country may lose precious time and highly qualified employees, or young and promising employees in the future.

Thus, labor disputes are an integral part of the existence of labor relations, albeit an undesirable phenomenon, and of course, the life of any large enterprise is impossible without them. Every year, a large number of labor disputes are resolved by applying to a judicial institution, as the prevailing view that the judicial form is the most effective prevents legal entities from turning to alternative forms of dispute resolution, including labor disputes. It is also hampered by unprofessional or conservative top management, which has been working on a rotational basis for several years in some regions. The problem is exacerbated by the fact that these managers are foreigners. Since the beginning of the full-scale invasion, they have either left Ukraine altogether and are managing their companies remotely, or are located as close to the western border as possible, being effectively cut off from the teams and production facilities located in Kharkiv, Dnipro and some other regions.

In the course of operation of industrial enterprises, labor disputes may arise, which are most often considered using "classical" forms of dispute resolution, without paying attention to the latest proposals of alternative forms of dispute resolution, which are becoming increasingly popular. And given the objective problems with energy interruptions, security issues, staff shortages and problems with the booking process for certain specialists, or the lack of transparency of the latter processes, the number of conflicts is only growing.

In the current context, it is worth paying attention to the fact that alternative methods for resolving labor disputes have positive features, as they help to resolve a dispute without determining the guilty and on the basis of mutual consent through free and constructive discussion. During martial law, the presence of a large part of

the occupied territories, a difficult security situation and, as a result, an increased burden on the judicial system, the expansion of alternative dispute resolution will help relieve the judicial system and popularize local dispute resolution.

Most scholars refer to mediation as a way to resolve individual labor disputes, but the use of this form in resolving collective labor disputes can also have a positive result, especially if a mediator is involved at the initial stage of disagreement over the future subject matter of the dispute.

Modern society is changing, so the legal instruments for resolving labor disputes must meet the needs of Ukrainian society and the objective challenges of today. The system of forms of labor dispute resolution should use only those methods that are based on mutual rights and interests, and the judicial form and the involvement of arbitrators should be used only when the parties to a labor dispute cannot reach an agreement.

Of course, based on our research, we point out the expediency of supplementing the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (Conflicts)" with a clause on the possibility of conducting a mediation procedure before raising the issue of appointing a conciliation commission.

But among other things, we believe that the problem of alternative resolution of labor disputes at industrial enterprises under martial law should be approached comprehensively, taking into account demographic and security factors, strengthening not only the legal regulation of relevant processes, eliminating gaps in legislation, but also performing an educational function, working with public associations, individual opinion leaders and representatives of employers' associations and individual large enterprises and local governments, who already understand the challenges and consequences of both martial law and the post-war state to which we will eventually come.

References.

1. Apanaskovych, L. V. (2020). Ways to improve special labor legislation, which enshrines forms of protection of labor rights of civil servants. *Yurydychna nauka, 6*(108), 256-262. https://doi.org/10.32844/2222-5374-2020-108-6-1.31

2. Deineka, V. M. (2014). Concept and types of individual labor disputes. *Bulletin of Odessa National University. Series: Pravoznavstvo, 19*(3), 73-79.

3. Zapara, S. I. (2015). The concept of mediation and the peculiarities of its formation in Ukraine and the world. *Comparative Analytical Law, 3*, 83-85.

4. Kuznetsova, M. Yu. (2022). On the issue of mediation in resolving collective labor disputes. *Legal Bulletin, 3*, 99-105. https://doi.org/10.32782/yuv.v3.2022.13

5. Stratyuk, A. O. (2019). Features of mediation in resolving labor disputes. *Social Law, 1*, 157-162.

6. Syomych, M. I. (2014). The essence and role of legal responsibility in the field of contractual labor relations. *Scientific Bulletin of Uzhhorod National University. Series: Law, 27*(2), 77-80.

7. Terekh, O. A. (2020). Alternative ways to resolve labor disputes: practice of Ukraine and the EU. *Bulletin of Taras Shevchenko National University of Kyiv (Legal Sciences), 2*(113), 61-66. https://doi.org/10.17721/1728-2195/2020/2.113-13

8. Uvarova, N. V. (2017). On the problem of determining methods for resolving collective labor disputes. *Scientific Bulletin of Uzhhorod National University. Series: Law, 43*(3), 61-66.

9. Lutsenko, O. Ye. (2023). Conciliation procedures in resolving labor disputes. *Analytical Comparative Jurisprudence, 4*, 220-224. https://doi.org/10.24144/2788-6018.2023.04.35

10. Cornell Law School. (n.d.). *Alternative Dispute Resolution*. Retrieved from https://www.law.cornell.edu/wex/alternative_dispute_resolution

11. Buryak, V. Ya. (2017). Legislative support is needed for alternative ways of resolving labor disputes. *Universytetski Naukovi Zapysky, 63*, 184-192.

12. Kuznetsova, M. (2022). On the issue of mediation in resolving collective labor disputes. *Legal Bulletin, 3*, 99-105. https://doi.org/10.32782/yuv.v3.2022.13

13. Buryak, V. Ya. (2017). Introduction of alternative ways of resolving labor disputes – a requirement of the time. *Bulletin of Lviv Trade and Economic University. Legal Sciences, 5*, 235-242.

14. Rozman, Yu. V. (2013). Mediation as an alternative way of resolving private law disputes. *Actual Problems of Politics, 49*, 245-256.

15. Syomych, M. I. (2014). Ways to improve legislation on resolving collective labor disputes (conflicts). *Bulletin of Donetsk National University. Series B. Economics and Law, 1*, 178-183.

16. Hermans, M., Huyse, H., & Van Ongevalle, J. (2017). Social dialogue as a driver and governance instrument for sustainable development. Retrieved from https://www.ituc-csi.org/IMG/pdf/tudcn_issue_paper_-_social_dialogue_development_en.pdf

17. *Labor Code of Ukraine* (n.d.). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text

18. Craver, C. B. (2010). What Makes A Great Legal Negotiator. *Loyola Law Review, 56*, 337, 101-125, 119.

19. Lutsenko, O. E. (2023). Conciliation procedures in the resolution of labour disputes. *Analytical and comparative jurisprudence*, (4), 220-224. https://doi.org/10.24144/2788-6018.2023.04.35

20. Kukhniuk, D. (n.d.). *Extrajudicial resolution of collective labor disputes corresponds to established international practice*. Retrieved from https://yur-gazeta.com/golovna/pozasudoviy-poryadok-virishennya-kolektivnih-trudovih-sporiv-vidpovidae-ustaleniy-mizhnarodniy-prakt.html

21. Verkhovna Rada of Ukraine (2020). *On Approval of the Regulation on the Conciliation Commission: Order No. 67 of December 1, 2020, National Mediation and Conciliation Service*. Retrieved from https://zakon.rada.gov.ua/rada/show/v0067299-20#Text

22. Verkhovna Rada of Ukraine (2020). On Approval of the Regulation on Labor Arbitration: Order No. 68 of December 1, 2020, National Mediation and Conciliation Service. Retrieved from https://zakon.rada.gov.ua/rada/show/v0068299-20#Text

23. Verkhovna Rada of Ukraine (2022). *On Mediation: Law of Ukraine of November 16, 2021, No. 1875-IX*. Retrieved from https://zakon.rada.gov.ua/laws/show/1875-20#Text

24. Yosypenko, S. (2022). *Settlement of disputes during wartime: mediation as an effective method*. Retrieved from https://interfax.com.ua/news/blog/843899.html

25. Meniv, L. (2022). Settlement of labor disputes through mediation. *Scientific Bulletin of Uzhhorod National University. Series: Law, 71*, 181-185. https://doi.org/10.24144/2307-3322.2022.71.30

26. Yakovets, I. (n.d.). Prospects for the introduction of the mediation institute in Ukraine. Retrieved from http://legalweekly.com.ua/index.php?id=16061&show=news&newsid=122935

27. Kravtsov, D. M., Zinovatna, I. V., Burnyagina, Y. M., Orlova, N. G., Solovyov, O. V., & Konopeltseva, O. O. (2022). Mediation as an alternative way of resolving labor disputes. *Naukovi zapysky. Seriia: Pravo, 12*, 73-79. https://doi.org/10.36550/2522-9230-2022-12-73-79

Застосування альтернативних способів вирішення трудових спорів на промислових підприємствах в умовах воєнного стану

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Мета. Аналіз правових підстав застосування альтернативних способів вирішення трудових спорів, переваги кожного й результативність. У разі об-

рання конкретних способів, запропонувати зміни до чинного законодавства задля врегулювання проблем підприємств і працівників.

Методика. Дослідження проблемних питань альтернативних форм вирішення трудових спорів проводилося шляхом дослідження й оцінки нормативно-правових актів України; теоретичних аналізів експертів у відповідних сферах; аналізу міжнародного трудового законодавства.

Результати. Виявлена проблематика нераціонального, а відтак неефективного витрачання часу судами для вирішення трудових спорів. Доведено, що зазначені проблеми примножуються через недостатню кількість суддів. Аргументовано, що ігнорування роботодавцями проблеми дослідження заглибило кризові моменти у врегулюванні відносин із робітниками. Встановлені альтернативні форми вирішення трудових спорів, у тому числі досліджена й аргументована можливість збільшення використання медіації, як способу вирішення трудових спорів.

Наукова новизна. Уперше був проведений комплексний аналіз застосування альтернативних методів вирішення трудових спорів на промислових підприємствах України в умовах воєнного стану. Виявлені особливості впливу воєнного стану на кадрову політику великих підприємств, проблему дефіциту працівників, необхідність адаптації механізмів вирішення трудових конфліктів до нових соціально-економічних умов. Розширені наукові уявлення про можливості використання процедур медіації для індивідуальних і колективних трудових спорів. Набуло подальшого розвитку обґрунтування доцільності внесення змін до законодавства України, зокрема до Закону «Про порядок вирішення колективних трудових спорів (конфліктів)», шляхом доповнення його положення про обов'язковість первинної медіації перед зверненням до примирної комісії, комісії із розгляду індивідуальних трудових спорів.

Практична значимість. Запровадження медіаційних процедур у трудове право в якості альтернативного способу вирішення спорів може стати ефективним інструментом для примирення сторін у трудових спорах, зменшивши фінансові, часові й людські витрати. Запропоноване доповнення Закону України «Про порядок вирішення колективних трудових спорів (конфліктів)» пунктом щодо можливості проведення процедури медіації перш ніж порушувати питання про призначення примирної комісії.

Ключові слова: *трудовий спір, арбітраж, медіація, господарська діяльність, захист, права, суд, правосуддя*

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