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ALTERNATIVE RESOLUTION OF PUBLIC LAW DISPUTES IN ADMINISTRATIVE PROCEEDINGS OF EUROPEAN UNION MEMBER STATES

RESOLUÇÃO ALTERNATIVA DE LITÍGIOS DE DIREITO PÚBLICO EM PROCESSOS ADMINISTRATIVOS DOS ESTADOS-MEMBROS DA UNIÃO EUROPEIA

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ABSTRACT
The article analyzes the positive experience of the European Union, which formed a regulatory array of acts on alternative dispute resolution. The purpose of the study is to implement the theoretical and legal characteristics of the procedural features of the institute of alternative resolution of public law disputes in the administrative proceedings of the European Union, as well as to provide proposals for prospects for its improvement. The methodological basis of the study is a set of general scientific, philosophical, special methods of scientific knowledge, the use of which allowed to ensure the achievement of the stated goals and objectives of the study and comprehensive coverage of the research problem. The urgency of the work lies in the scientific and practical need to study the little-studied topic of procedural features of alternative resolution of public disputes in the administrative proceedings of Ukraine.

Keywords: alternative dispute resolution, public law dispute, administrative proceedings, alternative methods, pre-trial dispute resolution, mediation.

RESUMO

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O artigo analisa a experiência positiva da União Europeia, que formou uma matriz regulatória de atos sobre resolução alternativa de litígios. O objetivo do estudo é aplicar as características teóricas e jurídicas das características processuais do instituto de resolução alternativa de litígios de direito público nos processos administrativos da União Europeia, bem como apresentar propostas de perspectivas para a sua melhoria. A base metodológica do estudo é um conjunto de métodos gerais científicos, filosóficos, especiais de conhecimento científico, cuja utilização permitiu garantir a realização dos objetivos declarados e objetivos do estudo e cobertura abrangente do problema de pesquisa. A urgência do trabalho reside na necessidade científica e prática de estudar o tema pouco estudado de características processuais de resolução alternativa de litígios públicos nos procedimentos administrativos da Ucrânia.

Palavras-chave: resolução alternativa de litígios, litígio de direito público, processos administrativos, métodos alternativos, resolução prévia de litígios, mediação.

1 INTRODUCTION

Processes of democratization of all spheres of state activity determine the need to intensify the introduction of various types of methods and procedures for pre-trial dispute resolution, which ultimately will reduce the level of conflict between the state and the citizen, legal entity, ensure efficiency and cost-effectiveness of existing disputes in the form of a statement of claim or to court proceedings. Ensuring fair justice is a priority for a democracy. The study of alternative ways of resolving disputes in the administrative proceedings of the European Union is quite relevant in connection with the amendments to the Procedural Codes of Ukraine. One such novel is the institute of mediation, which is of interest to both theorists and practitioners.

The importance of alternative methods of dispute resolution is that, on the one hand, it will relieve the administrative courts, on the other - this institution will allow you to quickly resolve the case without the participation of the court and thus save time and money (Lutsenko, 2019). In connection with Ukraine's desire to become a full member of the European Union (UN), it is expedient to study the positive experience of leading European states. There is a need to bring the current legislation to the standards of leading

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European countries. Such changes are necessary in the field of justice, in particular administrative (Yaroshenko et al., 2021a).

Currently, the widespread practice of using alternative methods of dispute resolution in public international law allows us to say that the degree of effectiveness of mediation efforts is growing and is beginning to yield significant results. This direction continues to develop within the activities of the UN Peacebuilding Commission, as well as UN special political missions. The introduction of the institution of alternative methods of dispute resolution in the domestic legal system is also based on the positive results of the practice of applying the institution of conciliation in many countries, which also testifies to its effectiveness (Yaroshenko et al., 2021b). In addition, it is in line with Ukraine's general position on harmonizing national legislation with that of the European Union, as a number of Council of Europe recommendations and decisions address conciliation procedures, as well as reducing the burden on the judiciary and speeding up dispute resolution.

The relevance of this study is due to the effectiveness of the mechanism for resolving administrative disputes, which can be considered as one of the features of the rule of law, which is mediated by the effectiveness of administrative law, establishing the mechanism of out-of-court settlement of administrative disputes, -legal norms and legality of such activities. This mechanism is designed to ensure an adequate balance of private and public interest in public administration, feedback from the state to society, the possibility of self-defense of citizens in the field of public administration against actions (decisions) of state and local governments that violate the rights and freedoms of citizens.

Many scientific works, including such scholars as O. Karmaza (2020), E. Baranova (2020), N. Volkovytska (2020), O. Ishchenko (2020), M. Blikhar (2020), V. Pilipenko (2020) are devoted to the issues of alternative resolution of public law disputes in administrative proceedings of European Union member states. The purpose of the study is to reveal the already developed in the international arena ways to resolve disputes out of court, to clarify the benefits of such an alternative, as well as to focus on existing in our and other countries alternative ways of resolving administrative disputes.

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2 MATERIALS AND METHODS

The methodological basis of the study is a set of general and special methods of cognition, the application of which is carried out within a systematic approach. The study is based on the laws, categories and principles of dialectics, according to which the purpose, process, principles, activities and status of the subjects of alternative dispute resolution, the consequences of such a procedure are considered as a holistic phenomenon, all elements of which are investigated themselves and with public life, in their interaction and mutual influence. The specifics of the research topic led to the use of forecasting in its two main forms - modeling and extrapolation, which allowed to construct a future model of alternative dispute resolution, which is derived from the general laws of dispute resolution of public law and specific results of experimental implementation of such procedure.

Achieving certain research objectives led to the use of the following methods: historical-legal method used in considering the evolution of theoretical constructions for resolving legal disputes, including administrative-legal, in ways not related to the judiciary, their legal regulation; comparative-critical analysis of existing concepts of pre-trial dispute resolution, in particular, public law, principles and principles of alternative dispute resolution in the European Union revealed the shortcomings and advantages of each of them and offer their own definitions.

Comparative legal method - when comparing the provisions of current legislation of Ukraine, the provisions of administrative courts involved in experiments on the settlement of administrative disputes using a separate procedure within administrative proceedings, draft laws with the relevant provisions of foreign legislation, as well as clarifying the features rights and obligations of the subjects of the procedure of alternative settlement of administrative-legal disputes and subjects of administrative proceedings. The method of systematic analysis helped to consider an alternative solution to administrative disputes in the European Union as a single system, to identify its impact on administrative justice in general and its individual institutions. The dogmatic method allowed to analyze the

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content of the main categories that form the procedure for alternative resolution of administrative disputes. The statistical method and the method of extrapolation were used to clarify the prospects of introducing the procedure of alternative resolution of administrative disputes in the European Union as a separate procedure from administrative proceedings in certain categories of cases of administrative jurisdiction.

The method of forecasting in the form of modeling is used in formulating proposals and recommendations for regulatory support for alternative dispute resolution, formal-logical method is used to determine the essence of alternative ways of resolving legal disputes, mediation, mediation, negotiation, and to distinguish certain types of alternative procedures. settlement of legal disputes. Methods of analysis and synthesis, structural-functional and other methods were also used, which provided an opportunity to comprehensively investigate the problematic aspects of the modern procedure of alternative resolution of administrative and legal disputes.

A number of articles related to the research topic were also analysed, such as “Mediation and negotiation as alternative ways of resolving disputes” (Karmaza, 2020), “Alternative ways of resolving disputes in international practice” (Baranova, 2020), “Claret The Multi-Door Courthouse Idea: Building the Courthouse of the Future” (Lay & Anne, 2020), “Mediation: alternative or an effective way to resolve disputes” (Volkovytska, 2020), “Mediation: foreign experience and significance” (Ishchenko, 2020), “Mediation as a way of resolving administrative disputes” (Blikhar, 2020), “On the issue of mediation in administrative proceedings” (Pilipenko & Kichko, 2020), “Principles of out-of-court decision of Administrative Disputes” (Bortnyk et al., 2019), “Pre-trial", "alternative", "extrajudicial" settlement/resolution of private disputes: the relationship of concepts” (Hanyk-Pospolitak & Pospolitak 2019), “Concepts and types of forms of out-of-court settlement of administrative disputes” (Bondarenko, 2019), “Out-of-court settlement of administrative disputes” (Shevchuk, 2020), “Reconciliation of the parties in administrative proceedings: domestic and foreign experience of legal regulation and some prospects for improvement” (Zheltobryukh, 2020), “Institute for Dispute Resolution with the participation of a judge needs improvement” (Smokovych, 2019).

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3 RESULTS

In today's world, the mechanisms of self-regulation are especially important, when the subjects of public relations have the opportunity to independently establish rules of conduct and monitor compliance. The growth of activity and responsibility of participants in legal relations allows the state to delegate part of its powers in certain areas to civil society institutions. Foreign experience shows that the resolution and settlement of legal disputes belongs to one of these areas. Thus, when analyzing the results of judicial reforms carried out in the second half of the twentieth century in continental Europe, attention was drawn to the need for a general abandonment of “state paternalism” (when legal disputes are resolved exclusively in law enforcement, by adopting appropriate decision) and the transition to a “pluralistic approach”, the recognition of the need to provide conflicting parties with the right to choose how to resolve their differences by allowing the use of conciliation procedures.

Most often in the laws of Western countries you can find the definition of “alternative” dispute resolution. Although “extrajudicial” also happens. Moreover, these definitions do not actually differ in common law or continental Europe. “Alternative” and “out-of-court” dispute resolution are very often used as identical concepts, or “alternative” is explained through the meaning of “out-of-court” as a dispute resolution procedure that is carried out without seeking help from a court. Out-of-court settlement of disputes usually involves the procedure for applying to an independent third party institution, which does not have to do so, and the parties have the right to choose between going to court and going to a third independent institution. The purpose of pre-trial settlement of disputes is to overcome the dispute, leveling the negative consequences of the existence of disputes between the parties in the most expeditious and acceptable to the parties. In this sense, the category of “pre-trial” includes the procedures used in the implementation of alternative dispute resolution and out-of-court methods, but with one condition - their use is carried out until the moment when the trial should begin (Karmaza, 2020).

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In particular, out-of-court settlement of disputes by state or local self-government bodies is usually carried out when court intervention is not required or when the procedure is required by law to intervene in court. Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternative litigation between administrative authorities and private parties of 05.09.2001 states that "judicial proceedings are not always the most appropriate way of settling administrative disputes, and the widespread use of alternative methods can help resolve administrative disputes and bring administrative bodies closer to the population (Committee of Ministers of the Council of Europe, 2001a).

Based on the provisions of Recommendation Rec (2001) 9 and its Annex, as well as the Guidelines No. 15, pre-trial methods of dispute resolution arising from public law relations include: internal review, conciliation, settlement by negotiation, mediation (Committee of Ministers of the Council of Europe, 2001b). Most of these methods can be used during litigation (except for internal review). Procedures for the application of all these methods of pre-trial settlement of disputes arising from public law relations are carried out in a manner outside the procedural activities of the administrative court. Such procedures should be called administrative, given their sectoral affiliation and public law nature. At the same time, taking into account the requirement of the law to determine the pre-trial procedure for resolving disputes determines the need to limit this list of methods of conciliation. The analysis of each method of pre-trial settlement of disputes arising from public law relations should be carried out by recognizing the place of a certain method in the structure of law and proving, in case of intersectoral nature, the content of its three legal categories: appropriate purposeful procedure, legal form, legal fact (Baranova, 2020).

The focus of administrative proceedings on the effective protection of the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by public authorities in the field of public relations necessitates the consolidation of the parties in administrative proceedings the right to conciliation, as administrative proceedings are most often achieved as a result of the peaceful settlement of public

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disputes and the settlement of disputed legal relations on the basis of voluntary coordination of actions and mutual understanding (Lay & Anne, 2020).

Conciliation procedures are varied and can be carried out both within and outside the judicial process, both voluntarily and on a mandatory basis. All of them provide a reduction in the workload on the courts. In Ukraine, the legislator determines reconciliation in the process of consideration of the case. In accordance with paragraph 5 of Art. 47 of the Code of Administrative Procedure of Ukraine (CAPU), the parties can achieve conciliation at any stage of the administrative process, which is the basis for closing the proceedings in an administrative case (Verkhovna Rada of Ukraine, 2005). At the same time, conciliation is allowed both at the stage of the preparatory hearing (Article 180), and during the trial (Article 190), and during the appeal hearing and appeal (Articles 314, 348), in the process of execution of the decision (Article 377). An important point of conciliation of the parties is that its terms should not violate the requirements of the law, as well as the rights and interests of individuals. This approach is justified, as it provides the parties to an administrative dispute with a wide range of opportunities for settlement and accelerates the process of protection of rights and freedoms that have been violated by the subject of power. We believe that the conciliation procedure should be extended to administrative appeals, as this would expand its capabilities and increase the number of disputes that would be resolved without recourse to the administrative court. This proposal is also supported by Recommendation Rec (2001) 9, which states that “the conciliation procedure may be initiated by interested parties, a judge or be mandatory under the law”. This list of subjects and the possible binding nature of this procedure suggest that it may take place at the pre-trial stage of settlement of an administrative dispute (Volkovytska, 2020).

A review of foreign legal sources shows that in accordance with their provisions there is a largely the same procedure for conciliation of the parties in administrative proceedings to that provided by domestic legislation on administrative proceedings with some insignificant differences (Boiko et al., 2019). For example, a competent single judge or a panel of judges in Germany has the power, after hearing the parties, to refer the case to

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a mediating judge if the probability of agreeing on the rights and obligations of the parties violated appears high. In this case, the judicial mediator is not a judge or a member of the panel of judges authorized to decide the case. Its activities are aimed at finding a solution that will satisfy the parties in the case, balance their interests taking into account the specifics of the case and minimize the risk of avoiding its non-compliance. Restrictions on the possibility of initiating the settlement of a case with a mediating judge are not provided for in German law, but in practice the settlement of a case with a mediating judge is most often used as a procedural tool in administrative cases arising in stable legal relationships, such as related ones. with public service, social security, urban planning and environmental protection. The amicable agreement of the parties is fixed by the court decision which can act as the executive document for direct execution (Ishchenko, 2020).

Almost similar to the above is the procedure for conciliation of the parties in administrative matters, provided by the procedural law of the United Kingdom. Thus, if the parties to the case have reached conciliation and agreed on what should be the final court decision on the merits of the case or other court decision, the plaintiff must submit to the court a document outlining how to resolve the issue and its concise legal and evidentiary justification. The plaintiff must also submit a draft judgment in respect of which the parties have reached a conciliation, which is marked “by agreement of the parties” and signed by the parties to the case concerned or their representatives (Parliament of the United Kingdom of Great Britain and Northern Ireland, 2019).

The court decision agreed by the parties may provide, inter alia, for the suspension or termination of the proceedings in whole or in part on the terms specified by the court decision; distribution of court costs; revocation of the decision of the subject of power, his performance of certain actions or refrain from committing certain actions; compensation for damages caused by the decision, action or inaction of the subject of power; release of a party from the case from liability. Court costs are distributed with the consent of the parties to the case or on the instructions of the court that approves the draft court decision.

At the same time, it is noteworthy that the parties are obliged to inform the court that they have reason to hope for conciliation, so that judges and other court staff have

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sufficient time and opportunity to organize the hearing accordingly. Failure to do so may result in a court order that the parties not be reimbursed in full or in part. However, the introduction of conciliation procedures in French administrative proceedings has not led to their widespread use, primarily due to the lack of attempts to ensure the proper training of judges (Blikhar, 2020).

Therefore, when considering ways to optimize the institutional and legal provision of conciliation in administrative proceedings, it is necessary to determine the appropriateness of the obligation of the parties to submit a draft court decision on which the parties have reached conciliation, inform the court of the grounds for hope for conciliation. a training course on aspects of mediation and reconciliation. Alternative methods of dispute resolution referred to in Recommendation Rec (2001) 9 include out-of-court redress or administrative appeal. Recommendation Rec (2001) 9 highlights the main points of an administrative appeal: “strengthening the possibility of internal review of all administrative acts, both in terms of the timing of the adoption of such an act and its legality; in certain cases, an administrative appeal may be a prerequisite for the transition to jurisdiction; the results of the internal review must be examined by the competent authorities.”

Summarizing the doctrine and norms of law, we conclude that negotiations (negotiation) belong to alternative dispute resolution procedures in which the parties to the disputed legal relationship (or their representatives) without the participation of any mediators agree on the disputed legal relationship. During negotiations, differences between the parties are resolved at their own discretion without the involvement of third parties. Recourse to international instruments allows us to highlight the specifics of the application of the negotiated settlement procedure (Annex to Recommendation Rec (2001) 9). Thus, it is stated that such a procedure needs to be regulated by law and that the officials involved in such a procedure have sufficient authority to reach a compromise. In this case, the relevant powers of officials should be established by law (paragraph 3 of Part III of the Annex to Recommendation Rec (2001) 9). International acts set requirements for the regulation of methods of pre-trial settlement of disputes (although in

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these acts they are listed as means), as well as the peculiarities of the procedures for their application. In this case, special attention is paid to the following two circumstances: the conditions of application, the competence of the subjects of the relevant procedures and the legal consequences (Pilipenko & Kichko, 2020).

Mediation is also an alternative dispute resolution procedure in which the parties resolve a dispute with an impartial, disinterested mediator, reaching consensus on all aspects of the dispute. As a rule, negotiations are the most common form of dispute resolution between the parties, which is based on dialogue (communication) between the conflicting parties to find a solution to the dispute. However, due to lack of knowledge in the field of law of the parties to the dispute or sometimes illegal actions of their representatives, negotiations as an alternative dispute resolution procedure are not widely used in Ukraine.

Mediation is used both as an alternative means of resolving disputes and as an out-of-court method. International legal instruments provide not only mediation, but also procedures for internal review, conciliation, negotiation, arbitration, among the alternative means of dispute settlement, paragraph 1 of Part I of Part I of the Recommendation Rec (2001). The listed alternative means of dispute resolution, in addition to 58 arbitration, can be attributed to the methods of pre-trial dispute resolution. Moreover, Part II of the Annex to Recommendation Rec (2001) 9 proposes that the use of these methods be made a mandatory precondition for legal proceedings, the use of arbitration should exclude legal proceedings, and conciliation, mediation and negotiated settlement may be applied on the recommendation of a judge. during the trial. It should be noted about the doctrinal definition of the essence of the concept of “arbitration”: 1) as a way of resolving disputes by specially authorized bodies - arbitration courts, etc.; 2) as a court in which the dispute is resolved by a mediating judge (arbitrator or panel of arbitrators). An arbitrator is a mediator, an arbitrator, who is elected by mutual agreement of the parties or who is appointed in the manner prescribed by law to resolve a dispute (Bortnyk et al., 2019).

European Union (EU) regulations aimed at regulating mediation procedures include Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects

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of mediation in civil and commercial matters, and a number of recommendations and guidelines (European Parliament and the Council, 2008). According to paragraph 8 of the Preamble to the Directive, “nothing should prevent the application of these 64 provisions also in internal mediation processes”. In addition to the Directive, there is the UNCITRAL Model Law on International Conciliation Procedure of 2002, which was the basis for national legislation on mediation by 26 countries, and the Principles for Mediation Organizations, which were established in 2002 by world leaders in mediation. in the field of mediation and reproduce the best world practice in this field (The Committee of Organizational Organizations of the United Nations on International Trade Law, 2002). The initiators of the draft laws on mediation note that mediation is structured negotiations in which the parties try to reach an agreement on their own, on a voluntary basis, with the help of an independent third party mediator, which uses innovative negotiation technologies to satisfy their real interests and interests. need. Mediation can be introduced in the field of tax and customs relations in: disputes over the facts and circumstances (regarding the reality of the transactions, location of property, etc.); disputes over ambiguous interpretation of certain legal norms; disputes in which the taxpayer refers to procedural violations committed by the tax authority (Hanyk-Pospolitak & Pospolitak, 2019).

Based on international statistics, we can conclude that mediation has gained widespread recognition in many countries around the world, including European countries. Thus, in the European Union, the mediation procedure is understood as the voluntary expression of the will of the parties to the dispute who have decided to involve a third, independent party in order to resolve the existing conflict, during which the mediator maintains personal impartiality and confidentiality. Interestingly, in the EU, mediation, as a way to resolve a dispute (conflict) that has arisen as a result of any legal relationship (family, labor, economic, civil, etc.), is used much more often than other out-of-court alternative methods. settlement of disputes, such as negotiations, conciliation, mini-trial, pre-trial meeting or simplified jury trial.

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It should be noted that the EU mediation procedure is used to resolve conflicts arising from various relationships. In particular, such disputes include: labor disputes, divorce, consumer or trade disputes, bankruptcy, tax disputes, conflicts involving the state (including in the field of public relations), conflicts in the Internet environment, and so on. However, both two or more parties are allowed to settle the dispute. In general, mediation plays a very important role in the EU, as it helps to prevent negative consequences and other adverse aspects for all parties to the conflict at an early stage, as well as to avoid lengthy court proceedings and, consequently, high material costs. To date, European countries have adopted a number of relevant international regulations that directly regulate the mediation procedure (Bondarenko, 2019).

We can talk about the expediency of using mediation to resolve public law disputes, in particular in the field of administrative law. However, it should be borne in mind that the mediation procedure can be used only in certain categories of administrative disputes, such as: disputes arising from appeals against legal acts of individual action, action or inaction of public authorities; disputes that have arisen regarding admission to public service, its passage and dismissal from public service; disputes arising in connection with the conclusion, execution, termination, cancellation or invalidation of administrative agreements; some disputes at the request of public authorities; disputes arising from payments between individuals and public authorities; disputes arising from appeals against decisions of executors; disputes arising from public-private partnerships; some investment disputes involving the state.

It is quite interesting that in the European Union mediation is seen not only as a way of alternative dispute resolution where conflict has already arisen, but also as a way to prevent future disputes, which certainly expands the scope of mediation. Due to the fact that the procedural flexibility of the mediation procedure allows the use of mediation in different situations, there is no clear regulation of mediation methods. Legislation in almost all EU countries has deliberately abandoned attempts to regulate methods as such. The parties to the dispute, as well as mediators (mediators) have the right to choose the most

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effective ways to resolve disputes in each case, setting precedents. Even more, depending on the scope, different instruments (methods) of reconciliation can be used.

A peculiar form of mediation in administrative proceedings is the settlement of a dispute with a judge, which has the following features: conciliation usually concerns only the rights and obligations of the parties, but may go beyond the subject matter if the terms do not conflict with the rights or interests of third parties; the terms of conciliation must not contradict the law and go beyond the competence of the subject of power as a party to the dispute; the consequence of the decision to settle the dispute by conciliation is the suspension of the proceedings for the necessary time, not limited by law; the fact of reconciliation is made out by signing the statement; registration of the entire conciliation process ends with the issuance of a court decision, which closes the proceedings and at the same time is an executive document. It cannot be said that both classical mediation and dispute resolution with the participation of a judge are widely used in our country, because litigation is a more familiar and authoritative way for our compatriots to resolve the conflict. This is primarily due to the banal ignorance of the existence of such a procedure and its benefits, as well as due to the uncertainty of the parties to the dispute in its possible resolution through mediation (Shevchuk, 2020).

The development of alternative forms of resolving legal conflicts, despite the differences in legal systems in different countries, has much in common. In particular, the same methods of dispute settlement are used, although their procedure is partially different. For example, arbitration (arbitration) is common in all EU countries. In particular, the London International Court of Arbitration (LCIA), established in 1892, hears disputes of both national and international character. In Sweden, the Arbitration Court of the Stockholm Chamber of Commerce (ASCC listitute) is active, considering, among other things, foreign economic disputes. There are more than 300 arbitration courts in Germany, which resolve disputes related to banking, medical violations, insurance, construction and labor law issues. At the same time, in the national law of Great Britain, Austria, Germany, and France, such ABCs are actively used. as mediation, conciliation and conciliation procedures, the principles and procedure of which in the late 90's were borrowed by

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Sweden, Finland, Denmark. Tendencies to expand the practice of compromise dispute resolution are also characteristic of other Western countries. For example, in June 1998, the Finnish Bar Association developed the Rules of Mediation (Mediation), which define the limits of the settlement of any commercial dispute through mediation, if the parties to the conflict have agreed to do so.

The concept of a court with many doors (Multi-Door Courthouse) remains quite ancient, but not widely known. This model covers all of the above alternative means of protection and continues to be used abroad. It was first announced by Frank Sander, a professor at Harvard Law School, in April 1976 at a conference addressing the challenges facing justice at the time. Professor Sander envisioned such a house for the future as a dispute resolution center, offering many options for resolving legal disputes. Litigation would be one of many options, including conciliation, mediation, arbitration, the ombudsman, and so on. In the first three years of the “House of Justice with many doors”, seven programs were developed. Peculiar “doors” as a symbol of the possibility of resolving the dispute by any of the proposed alternative methods, which is rational in a particular case, were introduced in stages: Small Claims Mediation; Domestic Relations Mediation; Accelerated Resolution of Civil Disputes; Mandatory Arbitration; Mediation (as a technique seems to hold promise for appropriate and successful use in a wide variety of cases: small claims cases, a wide range of civil disputes involving thousands or millions of dollars, and domestic relations cases). Despite the fact that there are no official statistics, it is safe to say that the “House of Justice with many doors” was used in more than 10,000 different cases, the services of receiving and transmitting cases to several doors were used. Experience has shown that disputes involving either small claims or cases of multimillion-dollar abuses can actually be resolved with the alternatives available to them (Zheltobryukh, 2020).

Therefore, it should be noted that the “House of Justice with two doors” is an innovative institution that directs cases to the most appropriate methods of dispute resolution, which saves time and money for both judges and litigants, it remains effective and relevant today. The advantages of such an alternative way of resolving disputes are

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early assessment of their content and assessment of the case as a whole, accelerated processing and the nature of the emerging processes, which is less formal and more understandable than judicial. For the court, the available alternatives meant a reduction in the number of trials and the lack of ongoing jury trial and, as a result, a reduction in the workload on the courts as a whole. At the same time, the time for resolving cases in court was proportionally divided between those that need deeper concentration and more detailed study (Lay & Anne, 2020).

Thus, the conditions for the use of each of these alternative means of dispute resolution include, first of all, consolidating the competence of authorized persons (courts or officials) to decide on their application, as well as the legal possibility of application to litigation or during its implementation. However, only conciliation, negotiation and mediation procedures can be used during the trial. If we turn to the definition of the specifics of the procedures for the use of alternative means of dispute resolution, it is enshrined in the recommendation addressed to the legislator to establish the internal review procedure as mandatory in all circumstances of the disputed legal relationship. It is also interesting to note that the Annex to Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe on alternatives to litigation between administrative authorities and private parties does not distinguish between conciliation and mediation procedures (Bobrovnyk et al., 2020).

In particular, Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe emphasizes the benefits of alternatives to litigation between administrative authorities and private parties and recommends that Member State governments promote the use of alternative means of settling disputes between administrative authorities and private parties. such as internal review, conciliation and mediation, negotiation and arbitration. The document states that the use of these tools could be made a mandatory precondition for litigation. It is proposed to use such alternative means of dispute resolution, as out of court in general, or before the trial or during it. The main advantages of alternative means of resolving administrative disputes may be, as the case may be, simpler and more flexible procedures that allow for faster

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and cheaper dispute resolution, amicable settlement, expert dispute resolution, fair dispute resolution and not just strict legal norms, and wider limits of discretion.

On 7 December 2007, the European Commission for the Efficiency of Justice adopted Guidelines No. 15 to better implement the existing Recommendation on Alternatives to Litigation between Administrative Bodies and Individual Parties. The European Commission on the Efficiency of Justice noted the following obstacles to the introduction of alternative dispute resolution between administrative bodies and private parties: lack of awareness of the potential usefulness and effectiveness of alternative dispute resolution between administrative bodies and private parties; Insufficient explanation to the administrative authorities of the advantages of alternative models for resolving such disputes, which may lead to unconventional, effective and rational results; distrust of courts in the development of out-of-court alternatives to judicial settlement of disputes in the administrative sphere; lack of awareness of the various alternative dispute resolution methods in this particular area; lack of specially trained neutral intermediaries in this area; a small amount of research into alternatives to resolving administrative disputes in court. The role of courts under the No. 15 guidelines is to recommend to the parties methods alternative to litigation, in particular conciliation, mediation and negotiation procedures for settlement, and to conduct appropriate information activities. In the trial of judges, judges should take into account the agreement reached by the parties, except in cases where it is contrary to the public interest.

5 DISCUSSION

Ensuring accessible and effective justice has been and remains one of the priority areas for improving Ukraine's judicial system. This issue became especially relevant after our country signed the Partnership and Cooperation Agreement between Ukraine and the European Community and adopted a number of other acts that strengthened European

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integration processes, a natural consequence of which was the need to unify and harmonize national legislation with international (especially European) standards.

Despite the obvious advantages of the procedure, its effectiveness and the expediency of applying it to certain categories of administrative cases, this process is hampered by the lack of a relevant law that would regulate mediation in Ukraine. The current Code of Administrative Offenses and the Code of Administrative Procedure also do not explicitly regulate this issue. However, the Code of Administrative Procedure of Ukraine does not clearly state the institution of mediation as part of case law and there are no references to other codes that would allow such an interpretation. one possibility is to offer mediation as part of the administrative activities of the courts. In this case, with the consent of the participants in the process, the formal court proceedings are suspended in order to conduct a mediation procedure. After that, the judge of another judicial panel or - since it is not a case law - a researcher of the court acts as a mediator and conducts mediation (Dei et al., 2020a).

The trial itself is temporarily suspended. In case of successful completion of mediation before the judicial board, which actually considers the case, it must be declared an amicable settlement or other form of termination of the dispute (waiver of claims or their recognition), after which the proper judge officially closes the proceedings under the rules established by CAPU (nop., at the stage of preparatory proceedings - Article 121, at the stage of trial - Article 157 of the CAJ). In practice, this can be resolved as follows: if the mediation is successfully completed, the legal judge is invited to the mediation table with the consent of the parties, where he allegedly continues the formal proceedings without any transition and officially closes the legal dispute.

The situation with arbitration is somewhat more complicated in Ukraine (with an appeal to an arbitration court). In chap. 4 of Recommendation Rec (2001) 9 states: “representatives of the arbitral tribunal should be able to verify the legality of the act as a precondition for examining the possibility of reaching a decision on the merits, even if they are not empowered to decide on the legality of the act.” Therefore, the Recommendation provides for the arbitral tribunal to have the power to annul the impugned act and to

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establish its illegality in the process of resolving the dispute. In Ukraine, the activity of arbitration courts is regulated by the Law of Ukraine “On Arbitration Courts” of May 11, 2004 No. 1701-VI (The Verkhovna Rada of Ukraine, 2004a). In accordance with Part 1 of Art. 5 of this Law “legal and / or natural persons have the right to submit to arbitration any dispute arising from civil or commercial legal relations, except as provided by law.” Therefore, administrative cases do not fall within the jurisdiction of the courts. In addition, in paragraph 6 of Part 1 of Art. 6 of the Law explicitly states that “arbitration courts do not consider cases in which one of the parties is a public authority, local government, their official, another entity in the exercise of its administrative functions on the basis of law, including including for the performance of delegated powers, a state institution or organization, a state-owned enterprise.”

In addition, today there is no legal basis to consider arbitration in Ukraine as a way of out-of-court settlement of administrative disputes. Assessing the peculiarities of the introduction of arbitration in the administrative process of Ukraine, we note that there are a number of obstacles, both social and legal. Among the social reasons is the problem of corruption and the ambiguous experience of the functioning of arbitration courts in Ukraine. Among the legal obstacles is the inconsistency of arbitration with the nature of administrative relations that arise in connection with the realization of the public interest and in which contractual forms are secondary. In addition, in European countries it is often even forbidden to use arbitration in administrative cases (particularly in France) (Smokovych, 2019).

The right of citizens to appeal to the authorities, local governments, officials and officials of these bodies is defined in Art. 40 of the Constitution of Ukraine. Also, according to Art. 1 of the Law of Ukraine “On Citizens' Appeals”: “citizens of Ukraine have the right to apply to public authorities, local governments, associations of citizens, enterprises, institutions, organizations, regardless of ownership, media, officials in accordance with their functional responsibilities with remarks, complaints and suggestions concerning their statutory activities, a statement or petition for the realization of their socio-economic, political and personal rights and legitimate interests and a complaint about their violation”

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(The Verkhovna Rada of Ukraine, 2004b). In addition, a special form of out-of-court appeal is the appeal to the prosecutor's office of a person whose rights, freedoms or interests have been violated by a subject of power. The development of the practice of out-of-court appeals should be linked to the weakening of the role of the prosecutor's office in this area (the latter should focus more on overseeing the rule of law when considering complaints), provided that the institution of administrative appeals is more effective. (Dei et al., 2020b).

Citizens in most foreign countries have the right to go directly to the ombudsman, who, having discovered the abuse, points it out to the relevant body or official and offers to remove them. In Ukraine, a similar institution is called the Verkhovna Rada Commissioner for Human Rights. However, the institution of ombudsman in the legal system of Ukraine does not allow him to be attributed to an effective form of resolving administrative and legal disputes. After all, citizens of Ukraine can apply to the Verkhovna Rada Commissioner for Human Rights only if all administrative and judicial means of protecting their violated rights, freedoms or legitimate interests have been exhausted. The competence of the Commissioner does not include the function of settling administrative disputes. However, it should be noted that proposals to introduce into Ukrainian law alternative ways of resolving administrative disputes, in particular, such as mediation, contractual settlement and arbitration, are not always supported in the scientific community, due to their inconsistency with the legal nature of these disputes. An important aspect of the development of out-of-court settlement is the introduction of conciliation procedures in Ukraine, which can be applied at different stages of the administrative process.

6 CONCLUSIONS

One of the basic principles of public international law is the settlement of disputes peacefully. In this context, it is important to use means that do not violate the rights and legitimate interests of other states and at the same time contribute to the future

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development of diplomatic relations between them. Other states can participate in conflicts not only as parties to the dispute, but also as third parties who become independent arbitrators. Alternative dispute resolution can also be used at the national level. But the use of appropriate methods involves their prior implementation in law and the establishment of a clear procedure for their implementation.

In today's world, disputes are a common phenomenon that needs to be resolved in any case. Currently, a large number of ways have been developed and put into practice that allow to resolve a dispute not only in court, but also outside it, which has a number of advantages, which will be discussed in this article. Arbitration courts, international commercial arbitration, mediation, consultation, participatory proceedings, rental judges, multi-door courts, and more are not exhaustive lists of alternative dispute resolution. One of the most common procedures is mediation.

Out-of-court settlement of administrative disputes means the activities of executive bodies and other authorized entities, based on the rules of administrative procedure law and aimed at overcoming differences that have arisen on the basis of administrative legal relations. This is one of the forms of administrative process that is implemented without the participation of the court. The distinctive features of out-of-court settlement of administrative disputes are the simplification and speed of procedural actions, as well as the large number of entities authorized to make decisions in this dispute.

Since the signing of the Association Agreement between Ukraine and the European Union in the field of interaction of entities endowed with public authority, great changes have taken place. Legislation in this area is developing rapidly, a significant number of regulations in the field of public administration, which affect the rights, freedoms and legitimate interests of individuals and legal entities, there is a complication of administrative procedures involving citizens and organizations. At the same time, the regulatory restructuring of public administration necessitates the consistent consolidation of legal technologies for resolving administrative disputes, developing new forms of social cooperation, in particular, such as reconciliation and mediation. The importance of out-of-court forms of resolving administrative disputes through conciliation and mediation

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procedures in the protection of the rights, freedoms and legitimate interests of individuals and legal entities is obvious. These forms allow to provide high-quality, timely, with the least costs and confidentiality of administrative disputes. This is important because it allows to reduce the workload of the courts, to avoid material costs associated with the implementation of court proceedings, to avoid the bias of court decisions in favor of the state.

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