

THE ROLE OF A LAWYER IN RESOLVING LABOR DISPUTES THROUGH MEDIATION: A COMPARATIVE LEGAL ANALYSIS OF UKRAINE AND THE EUROPEAN UNION

MARCHENKO Olesia Volodyvyrivna - Doctor of Law, Professor, Professor of Civil, Labor and Economic Law Department, Oles` Honchar Dnipro National University, Ukraine

ORCID iD <https://orcid.org/0009-0003-3506-2308>

MARCHENKO Olesia Denysivna - Doctor of Philosophy, Associate Professor of European and International Law Department, Oles` Honchar Dnipro National University, Ukraine

ORCID iD <https://orcid.org/0000-0001-5670-8401>

HRABYLNKOVA Olena - Candidate of Law, Associate Professor, Associate Professor of civil, labor and commercial law Department, Oles` Honchar Dnipro National University, Ukraine

ORCID iD <https://orcid.org/0000-0001-5523-6254>

УДК 342.228+342.7

DOI: <https://doi.org/10.71404/NP.2026.1.77>

The article provides a comprehensive comparative legal analysis of the role of a lawyer in the settlement of labor disputes through mediation in Ukraine and the European Union. The relevance of the study is due to the transformation of modern mechanisms for the protection of labor rights, the gradual transition from a purely jurisdictional model of resolving labor conflicts to alternative out-of-court procedures, among which mediation occupies a leading place.

The paper reveals the regulatory and legal principles of mediation in labor disputes in Ukraine and the EU, taking into account the provisions of Directive 2008/52/EC of the European Parliament and of the Council, as well as the national legislation of individual EU member states. It has been established that in the legal systems of the European Union, mediation is an integrated element of the mechanism for settling labor conflicts, while in Ukraine its institutionalization is in the process of formation after the adoption of the Law of Ukraine «On Mediation» (2021).

Particular attention is paid to the functional role of a lawyer in mediation procedures. It is determined that in Ukraine a lawyer mainly performs representative and advisory functions, providing legal support to the parties to a labor dispute and monitoring compliance with their rights. At the same time, in EU countries (in

particular, Germany, France and Poland), a lawyer can act not only as a representative, but also as a mediator or co-mediator, taking an active part in the formation of a compromise solution between the parties.

The article provides a comparative analysis of models of lawyer participation in mediation, identifying key differences in the degree of his procedural activity, the level of professional integration into alternative dispute resolution and the impact on the effectiveness of mediation procedures. It is proven that the European model is characterized by greater flexibility, institutional support and a high level of trust in mediation as an effective way to resolve labor conflicts.

The need for further development of the mediation institute in Ukraine by expanding the role of a lawyer, his specialization in the field of ADR (Alternative Dispute Resolution), as well as the implementation of best European practices is substantiated. The expediency of legislative improvement of labor mediation mechanisms and strengthening its integration into the labor law system of Ukraine is emphasized.

It is concluded that the effective implementation of mediation procedures in the field of labor disputes is an important factor in increasing the level of protection of labor rights, reducing the judicial burden, and forming a modern model of social

dialogue, in which the lawyer plays a key mediating and legal role.

Keywords: civil procedure, international law, labor law, mediation, advocacy, enforcement proceedings, EU institutions.

The modern development of labor relations is characterized by an increase in the number of conflicts between employees and employers, which is due to the complexity of labor organization, the digitalization of the economy, changes in forms of employment and increased competition in the labor market. In these conditions, the traditional judicial model of resolving labor disputes, although it remains a key guarantee of rights protection, does not always ensure efficiency, flexibility and preservation of social and labor relations between the parties.

In view of this, alternative methods of resolving disputes (Alternative Dispute Resolution, ADR) are becoming increasingly important in modern legal systems, among which mediation occupies a special place. Its advantages are voluntariness, confidentiality, orientation to the interests of the parties, as well as the possibility of reaching a mutually beneficial compromise without a formalized trial. In the field of labor disputes, mediation has additional social value, as it contributes to the preservation of labor relations or their civilized termination without escalating the conflict [1].

In Ukraine, the institution of mediation was legally established with the adoption of the Law of Ukraine "On Mediation" in 2021, which was an important step towards harmonizing national legislation with European standards. At the same time, the labor legislation of Ukraine still remains mainly focused on the judicial procedure for resolving individual labor disputes, which indicates an insufficient level of integration of mediation procedures into the labor law system.

In the countries of the European Union, mediation is a more developed and structured institution. It is regulated both at the level of supranational law (in particular, by Directive 2008/52/EC of the European Parliament and of the Council) and at the level of national legal systems. In EU countries, mediation

is actively used in labor disputes, including both individual conflicts and collective labor disputes, which indicates its institutional maturity and effectiveness [2].

A special place in the mediation procedure is occupied by a lawyer as a professional participant in the legal process. His role is transformed depending on the legal system: from a classic representative of the interests of the party to an active participant in the negotiation process or even a certified mediator. In this context, a lawyer acts not only as a carrier of legal knowledge, but also as a specialist in conflict resolution, who is able to ensure a balance between legal certainty and the interests of the parties [3].

In Ukraine, the role of a lawyer in mediation is mainly reduced to representation and legal support of the parties, while in EU countries his functional load is much broader and includes participation in negotiation processes, facilitation of agreements and assistance in reaching amicable agreements. Such a difference necessitates the need for scientific analysis and comparison of relevant models in order to determine the prospects for improving the national legal system [4].

The relevance of the chosen topic is also enhanced by the processes of European integration of Ukraine, which provide for the implementation of European standards in the field of justice, advocacy and alternative dispute resolution. In this context, the study of the role of a lawyer in the mediation of labor disputes acquires not only theoretical, but also practical significance for the reform of the system of protection of labor rights.

The purpose of the article is to conduct a comparative legal analysis of the role of a lawyer in the settlement of labor disputes through mediation in Ukraine and the European Union countries, as well as to identify areas for improving national legislation and the practice of applying mediation procedures in the field of labor relations [5].

Achieving the goal involves solving the following tasks: research into the regulatory and legal regulation of mediation in Ukraine and the EU; analysis of the functional role of a lawyer in mediation procedures; identification of common and distinctive features of models

of lawyer participation; and the formation of proposals for improving legal regulation in Ukraine.

Thus, the study is aimed at a comprehensive understanding of the transformation of the role of a lawyer in the context of the development of mediation procedures and the formation of a modern model of labor dispute settlement, oriented towards European legal standards [6].

The regulatory and legal regulation of mediation in the field of labor disputes is characterized by a combination of the general principles of alternative dispute resolution with special norms of labor and procedural law that determine the limits of the application of conciliation procedures in conflict labor relations.

The regulatory and legal regulation of mediation in the field of labor disputes is characterized by a combination of the general principles of alternative dispute resolution with special norms of labor and procedural law that determine the limits of the application of conciliation procedures in conflict labor relations.

In Ukraine, the basic regulatory act that establishes the institution of mediation is the Law of Ukraine "On Mediation" (2021). It defines mediation as a voluntary, confidential, structured procedure for out-of-court settlement of a dispute with the help of a neutral intermediary (mediator). The law establishes general principles of mediation, including voluntary participation of the parties, equality of the parties, neutrality and independence of the mediator, confidentiality of the process, as well as self-determination of the parties regarding the outcome of the negotiations [7].

At the same time, the labor legislation of Ukraine (in particular, the Labor Code of Ukraine) does not contain systematic regulation of mediation as a method of resolving individual or collective labor disputes. Traditionally, priority is given to jurisdictional forms of protection of employees' rights, primarily to the judicial procedure and the activities of labor dispute commissions. This indicates an insufficient level of integration of mediation procedures into the labor law system, which limits their practical application in labor disputes.

At the level of the European Union, the regulatory and legal framework for mediation is formed more comprehensively. The key act is Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial disputes, which established pan-European standards for the use of mediation. Although the directive does not directly regulate labor disputes, its provisions are implemented in the national legal systems of the EU Member States and apply to labor relations as part of civil law regulation or through special labor laws [8].

In the EU countries, there is a different level of detail in the legal regulation of mediation in labor disputes. For example, in Germany, mediation is actively used both in individual labor disputes and in collective bargaining between employers and trade unions. In France, mediation procedures are integrated into the system of labor tribunals (*conseils de prud'hommes*), and in Poland, mediation is provided for in both the civil procedural code and labor legislation as a voluntary mechanism for conflict resolution [9].

Thus, in the EU, mediation is systemic in nature and is considered a full-fledged element of the mechanism for protecting labor rights, while in Ukraine it is at the stage of institutional formation. This necessitates the further improvement of national legislation, in particular by integrating mediation procedures into labor law and procedural mechanisms for resolving disputes.

The role of a lawyer in the mediation of labor disputes is multifunctional and depends on the level of development of the institution of mediation in a specific legal system. In the general sense, a lawyer in the mediation process acts as a professional legal advisor who ensures a balance between legal certainty and the interests of the parties to the dispute [10].

In Ukraine, a lawyer in the mediation procedure performs mainly an advisory and representative function. He provides legal support to the client at all stages of the mediation process: from assessing the legal position of the party to preparing and verifying the terms of the settlement agreement. His role in guaranteeing compliance with the labor rights of the employee or the legitimate interests

of the employer, as well as in preventing the conclusion of legally invalid or unprofitable agreements, is of particular importance [10].

At the same time, in Ukraine, a lawyer rarely acts as an active participant in the negotiation process, which is due to both the lack of a stable practice of mediation in labor disputes and the insufficient level of specialization of lawyers in the field of alternative dispute resolution. His participation is mostly of a passive-legal nature, which limits the potential of mediation as an effective tool for conflict resolution.

In the European Union, the role of a lawyer is much broader and more integrated into mediation procedures. In many EU countries, a lawyer can simultaneously act as a representative of a party and as a certified mediator or co-mediator. This is especially characteristic of Germany, where lawyers are actively involved in the pre-trial settlement of labor disputes, as well as France, where they participate in negotiations within labor tribunals [11].

In European practice, a lawyer often performs not only a human rights protection function, but also a communicative and mediating function. He contributes to the formation of a constructive dialogue between the parties, helps to identify their real interests and ensures the legal correctness of the agreements reached. This approach increases the effectiveness of mediation and helps to reduce the number of legal disputes in the field of labor relations.

Thus, the comparative analysis shows that in Ukraine the role of a lawyer in mediation requires further expansion and transformation towards the European model, where he is not only a legal representative, but also an active participant in the dispute resolution process. This involves the development of lawyers' specialization in the field of mediation, improvement of professional standards and strengthening their participation in out-of-court forms of labor rights protection [12].

Conclusions. The role of a lawyer in the mediation of labor disputes is multifunctional and depends on the level of development of the institution of mediation in a specific legal system. In the general sense, a lawyer in the mediation process acts as a professional legal

advisor who ensures a balance between legal certainty and the interests of the parties to the dispute.

In Ukraine, a lawyer in the mediation procedure performs mainly an advisory and representative function. He provides legal support to the client at all stages of the mediation process: from assessing the legal position of the party to preparing and checking the terms of the settlement agreement. His role in guaranteeing compliance with the labor rights of the employee or the legitimate interests of the employer, as well as in preventing the conclusion of legally invalid or unprofitable agreements, is of particular importance.

At the same time, in Ukraine, a lawyer rarely acts as an active participant in the negotiation process, which is due to both the lack of a stable practice of mediation in labor disputes and the insufficient level of specialization of lawyers in the field of alternative dispute resolution. His participation is mostly of a passive-legal nature, which limits the potential of mediation as an effective tool for conflict resolution.

In the European Union, the role of a lawyer is much broader and more integrated into mediation procedures. In many EU countries, a lawyer can simultaneously act as a representative of a party and as a certified mediator or co-mediator. This is especially characteristic of Germany, where lawyers are actively involved in the pre-trial settlement of labor disputes, as well as France, where they participate in negotiations within labor tribunals.

In European practice, a lawyer often performs not only a human rights protection function, but also a communicative and mediating function. He contributes to the formation of a constructive dialogue between the parties, helps to identify their real interests and ensures the legal correctness of the agreements reached. This approach increases the effectiveness of mediation and helps to reduce the number of legal disputes in the field of labor relations.

Thus, the comparative analysis shows that in Ukraine the role of a lawyer in mediation requires further expansion and transformation towards the European model, where he is not only a legal representative, but also an

active participant in the dispute resolution process. This involves the development of lawyers' specialization in the field of mediation, improvement of professional standards and strengthening their participation in out-of-court forms of labor rights protection.

Література

1. Бурак В. Я., Кулачок-Тітова Л. В., Пилипенко П. Д. Альтернативні способи вирішення трудових спорів. Хм.: ХУУП, 2015. 172 с.

2. Кільдюшкіна О. Передумови впровадження медіації в Україні. Все для юриста. 2010. №3. С.130-133.

3. Кодекс адміністративного судочинства України. *Відомості Верховної Ради України*. 2005. № 35-36. № 37. Ст. 446. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (дата звернення 01.12.2025).

4. Конституція України. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (дата звернення 01.12.2025).

5. Легеца Є.О. Адміністративні послуги, що надаються міліцією громадської безпеки: дис. ... канд. юрид. наук : 12.00.07 Дніпропетровськ, 2011. 263 с.

6. Про судовий збір: Закон України від 08.07.2011 року № 3674-VI. Дата останнього оновлення: 13.05.2024. *Відомості Верховної Ради України*. URL: <https://zakon.rada.gov.ua/laws/show/3674-17/ed20110708#Text> (дата звернення 05.12.2025).

7. Серета О.Г. Медіація (посередництво) як альтернативний спосіб вирішення трудового спору. *Право та інновації*. 2017. № 2. С. 38–45.

8. Цивільний процесуальний кодекс України від 18.03.2004 року № 1618-IV. Дата останнього оновлення: 19.10.2024. Верховна Рада України. Офіційний веб-портал парламенту України. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (дата звернення 05.12.2025).

9. Шинкар Т.І. Сутність процедур примирення в системі альтернативного вирішення юридичних конфліктів (спорів). *Вісник Національного університету «Львівська політехніка»*. Серія. Юридичні науки. 2017. № 876. С. 219–226.

10. Leheza Ye., Filipenko T., Sokolenko O., Darahan V., Kucherenko O. (2020). Ensuring Human Rights in Ukraine: Problematic Issues and Ways of their Solution in the Social and Legal Sphere. *Cuestiones Políticas*. Vol. 37 №9 64 (enero-junio 2020). P. 123-136. DOI: <https://doi.org/10.46398/cuestpol.3764.10>

11. Leheza, Y., Dorokhina, Y., Shamara, O., Miroshnychenko, S., & Moroz, V. (2021). Citizens 'participation in the fight against criminal offences: political and legal aspects. *Cuestiones Políticas*, 39(69), 212-224. <https://doi.org/10.46398/cuestpol.3969.12>

12. Matviichuk, Anatolii. Shcherbak, Viktor. Sirko, Viktoria. Malieieva, Hanna. Leheza, Yevhen. 2022. Human principles of law as a universal normative framework: Principios humanos del derecho como marco normativo universal. *Cuestiones Políticas*, 40(75), 221-231. <https://doi.org/10.46398/cuestpol.4075.14>

Марченко Олеся Володимирівна

Доктор юридичних наук, професор, професор кафедри цивільного, трудового та господарського права, Дніпровський національний університет імені Олеся Гончара, Україна.
ORCID iD <https://orcid.org/0009-0003-3506-2308>

Марченко Олеся Денисівна

Доктор філософії у галузі права, доцент кафедри європейського та міжнародного права, Дніпровський національний університет імені Олеся Гончара, Україна.
ORCID iD: <https://orcid.org/0000-0001-5670-8401>

Грабильникова Олена Анатоліївна

кандидат юридичних наук, доцент, доцент кафедри цивільного, трудового та господарського права Дніпровського національного університету ім. Олеся Гончара
ORCID ID: 0000-0001-5523-6254

РОЛЬ АДВОКАТА ЩОДО ВРЕГУЛЮВАННЯ ТРУДОВИХ СПОРІВ ШЛЯХОМ МЕДІАЦІЇ: ПОРІВНЯЛЬНО- ПРАВОВИЙ АНАЛІЗ УКРАЇНИ ТА ЄВРОПЕЙСЬКОГО СОЮЗУ

У статті здійснено комплексний порівняльно-правовий аналіз ролі адвоката у врегулюванні трудових спорів шляхом медіації в Україні та

Дискусії, обговорення, актуально

державх Європейського Союзу. Актуальність дослідження зумовлена трансформацією сучасних механізмів захисту трудових прав, поступовим переходом від суто юрисдикційної моделі вирішення трудових конфліктів до альтернативних позасудових процедур, серед яких медіація займає провідне місце.

У роботі розкрито нормативно-правові засади медіації у трудових спорах в Україні та ЄС, з урахуванням положень Директиви 2008/52/ЄС Європейського Парламенту і Ради, а також національного законодавства окремих держав-членів ЄС. Встановлено, що у правових системах Європейського Союзу медіація є інтегрованим елементом механізму врегулювання трудових конфліктів, тоді як в Україні її інституціоналізація перебуває на етапі становлення після прийняття Закону України «Про медіацію» (2021 р.).

Особливу увагу приділено функціональній ролі адвоката у медіаційних процедурах. Визначено, що в Україні адвокат переважно виконує представницьку та консультативну функції, забезпечуючи правовий супровід сторін трудового спору та контроль за дотриманням їхніх прав. Водночас у країнах ЄС (зокрема Німеччині, Франції та Польщі) адвокат може виступати не лише представником, а й медіатором або співмедіатором, беручи активну участь у формуванні компромісного рішення між сторонами.

У статті здійснено порівняльний аналіз моделей участі адвоката у медіації, виявлено ключові відмінності у ступені його процесуальної активності, рівні професійної інтеграції в альтернативне вирішення спорів та впливі на результативність медіаційних процедур. Доведено, що європейська модель характеризується більшою гнучкістю, інституційною підтримкою та високим рівнем довіри до медіації як ефективного способу врегулювання трудових конфліктів.

Обґрунтовано необхідність подальшого розвитку інституту медіації в Україні шляхом розширення ролі адвоката, його спеціалізації у сфері ADR (*Alternative Dispute Resolution*), а також імплементації кращих європейських практик. Наголошено на доцільності законодавчого вдосконалення механізмів трудової медіації та посилення її інтеграції у систему трудового права України.

Зроблено висновок, що ефективно впровадження медіаційних процедур у сфері трудових спорів є важливим чинником підвищення рівня захисту трудових прав, зменшення судового навантаження та формування сучасної моделі соціального діалогу, в якій адвокат відіграє ключову посередницько-правову роль.

Ключові слова: цивільний процес, міжнародне право, трудове право, медіація, адвокатура, виконавче провадження, інституції ЄС.