

A New Model of Resolving Labour Disputes in Ukraine: National Experience and International Standards

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Summary: The article is devoted to Ukrainian reform in the field of labour rights protection taking into account international standards. The draft Law No. 12034 “On Collective Labour Disputes” defines the principles, legal and organizational foundations of a new model to resolving collective labour disputes in Ukraine. In the introductory part of the article, the authors focus on the analysis of the prerequisites for the reform of labour rights protection. The second part of the article highlights the advantages of the new model of resolving collective labour disputes and the role of the National Mediation and Conciliation Service in resolving such disputes. The article outlines the problematic aspects of the existing system of resolving labour disputes in Ukraine, and presents a comparative analysis of international standards in this area is carried out.

Key words: collective labour disputes, labour mediation, legal responsibility, social responsibility, advocacy in labour disputes in Ukraine, National Mediation and Conciliation Service

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1. Introduction

The full-scale Russian-Ukrainian war has affected the labour market in Ukraine. New challenges and threats lead to the need to review the functionality of labour

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institutions and to find a suitable system of advocacy for the parties in labour relations and effective mechanisms for resolving labour disputes.

According to statistics, labour disputes are among the most common types of disputes in Ukraine. Moreover, in the context of martial law and the need for sometimes significant changes in business organization, which result in the reduction or dismissal of employees, suspension of employment contracts, announcement of dismissal, inability to pay wages, etc., the parties to labour relations need adequate opportunities to protect their rights and legitimate interests. Therefore, the problem of resolving labour disputes arising between the employer, on the one hand, and a particular employee or labour collective, on the other, is highly relevant.

On September 16, 2024, the Chair of the Committee on Social Policy and Protection of Veterans' Rights of the Verkhovna Rada of Ukraine H. Tretyakova and a group of MPs registered Draft Law No. 12034 «On Collective Labour Disputes»¹. The draft law defines the principles, legal and organizational framework for a new model for resolving collective labour disputes in Ukraine. This draft law was developed in pursuance of the National Human Rights Strategy for 2021–2023, for the implementation of which the Government approved the relevant Action Plan for 2021–2023.

In addition, on January 15, 2024, the Ministry of Economy of Ukraine submitted a draft of the new Labour Code to the social partners for discussion, which should replace the current Labour Code of Ukraine² (hereinafter – the Labour Code) and a number of other laws. Book Four of the draft Labour Code is devoted to the legal regulation of labour disputes in Ukraine and includes individual and collective procedures for resolving such disputes. As of now, the draft Labour Code of Ukraine is being developed taking into account the previous positions of the parties to the social dialogue and experts.

2. Prerequisites for reform in the field of labour regulation and labour rights protection

The main prerequisites for the reform of labour rights protection arise from several factors.

¹ Verkhovna Rada of Ukraine. On collective labour disputes: Draft Law, no. 12034, 2024 [online]. Available at: <https://itd.rada.gov.ua/billinfo/Bills/Card/44879>. Accessed: 10.12.2024.

² Verkhovna Rada of Ukraine. Draft Labour Code. 2024 [online]. Available at: <https://spo.fpsu.org.ua/laws/proekt-trudovogo-kodeksu-ukrayiny-78/>. Accessed: 10.12.2024.

First, the current Labour Code was adopted in 1971 in a different social formation and, despite numerous amendments, does not meet modern challenges and requirements of legal regulation of labour relations.

Second, since Ukraine is currently a candidate for EU membership, it is important that the relevant international standards are implemented in the legislation, primarily the provisions of Article 6 of the European Social Charter (Revised)³, Conventions (Nos. 87⁴, 98⁵, 135⁶, 154⁷) and Recommendations (92⁸, 94⁹, 129¹⁰, 130¹¹, 143¹², 163¹³, 198¹⁴ and others) of the International Labour

³ Council of Europe. European Social Charter (revised). 1996 [online]. Available at: <http://conventions.coe.int/Treaty/EN/Treaties/PDF/Ukrainian/163-Ukrainian.pdf>. Accessed: 10.12.2024.

⁴ International Labour Organization. On freedom of association and protection of the right to organize: Convention of International Labour Organization, no. 87. 1950 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_125. Accessed: 10.12.2024.

⁵ International Labour Organization. On the application of the principles of the right to organization and conduct of collective negotiations : Convention of International Labour Organization, no. 98. 1949 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_004#Text. Accessed: 10.12.2024.

⁶ International Labour Organization. On the protection of the rights of employee representatives at the enterprise and the opportunities provided to them. Convention of International Labour Organization, no. 135. 1971 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_186#Text. Accessed: 10.12.2024.

⁷ International Labour Organization. On promoting collective bargaining: Convention of International Labour Organization, no. 154. 1981 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_006#Text. Accessed: 10.12.2024.

⁸ International Labour Organization. Regarding voluntary conciliation and arbitration: Recommendation of International Labour Organization, no. 92. 1951 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_232#Text. Accessed: 10.12.2024.

⁹ International Labour Organization. Regarding consultations and cooperation between employers and employees at the enterprise level: Recommendation of International Labour Organization, no. 94. 1952 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_235#Text. Accessed: 10.12.2024.

¹⁰ International Labour Organization. Regarding the relations between the administration and workers at the enterprise: Recommendation of International Labour Organization, no. 129. 1967 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_074#Text. Accessed: 10.12.2024.

¹¹ International Labour Organization. Regarding consideration of complaints at enterprises in order to solve them: Recommendation of International Labour Organization, no. 130. 1967 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_250#Text. Accessed: 10.12.2024.

¹² International Labour Organization. Regarding the protection of the rights of employee representatives on the enterprise and the opportunities provided to them: Recommendation of International Labour Organization, no. 143. 1971 [online]. Available at: https://zakon.rada.gov.ua/laws/show/993_257#Text. Accessed: 10.12.2024.

¹³ International Labour Organization. Regarding the promotion of collective bargaining: Recommendation of International Labour Organization, no. 163. 1981. Available at: https://zakon.rada.gov.ua/laws/show/993_274#Text [online]. Accessed: 10.12.2024.

¹⁴ International Labour Organization. Regarding labour relations: Recommendation of International Labour Organization, no. 198. 2006 [online]. Available at: <https://www.ilo.org/wcmsp5/groups>

Organization. In view of current approaches to the study of international standards¹⁵, Ukraine is on the path of their introduction into national practice. Should agree with Biffl G., Isaac J., that «in the wake of globalisation, certain ILO Conventions have assumed greater prominence in recent years»¹⁶.

Third, there is a need to improve the procedure for resolving collective labour disputes. At present, the sequence of consideration and resolution of collective labour disputes and the legality of strikes in Ukraine is determined by the provisions of the Law of Ukraine «On the procedure for settlement of collective labour disputes (conflicts)»¹⁷ adopted in 1998, which contains a number of irrelevant provisions and requires systematic updating in view of current trends in the development of collective bargaining regulation, changes in labour legislation, introduction of the institute of labour mediation in Ukraine, and expansion of mechanisms for alternative dispute resolution.

At the same time, one of the current trends in the development of the legal institution of collective labour disputes in Ukraine is the transition to new progressive ways of civilized interaction during the emergence and development of conflicts, decision-making within the established legal and organizational mechanisms based on the parties' mutual desire for reconciliation.

The practice of resolving collective labour disputes also demonstrates the need to expand the powers and role of labour arbitration at the legislative level, in particular in terms of the binding nature of its decision, the procedure for appealing and enforcing such a decision.

The main shortcomings and unresolved problems in the field of legal regulation of collective labour disputes include:

- differences in approaches to understanding the concept of a collective labour dispute caused by the lack of regulatory consolidation of all essential features that characterize the phenomenon of a collective labour dispute
- complicated and bureaucratized procedures for registering a collective labour dispute;

/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_748379.pdf. Accessed: 10.12.2024.

¹⁵ TEKLE, T. Labour Rights and the Case Law of the European Court of Justice: What Role for International Labour Standards? *European Labour Law Journal*. 2018, vol. 9, no. 3. pp. 1–27. DOI:10.1177/2031952518791831.

¹⁶ BIFFL, G., ISAAC, J. Globalisation and Core Labour Standards: Compliance Problems with ILO Conventions 87 and 98. Comparing Australia and other English-Speaking Countries with EU Member States. *International Journal of Comparative Labour Law and Industrial Relations*. 2005, vol. 21, Issue 3, p. 405. DOI:10.54648/ijcl2005020.

¹⁷ Verkhovna Rada of Ukraine. On the procedure for resolving collective labour disputes (conflicts): Law of Ukraine, no. 137/98-VR. 1998.

- lack of a clear systematic and consistent mechanism for resolving such disputes;
- imperfect mechanisms for exercising the right to strike due to the unclear definition of the procedure for declaring a strike and its conduct; and unsystematic consolidation of rules on restrictions and prohibitions on strikes in various legislative acts;
- insufficient legislative definition of the parties' liability for violation of the legislation on the procedure for resolving collective labour disputes, for evading conciliation procedures and for failure to comply with decisions of conciliation bodies.

These factors became prerequisites for updating labour legislation.

3. General characteristics of labour dispute resolution in Ukraine

Labour disputes in Ukraine may be resolved both in court and out of court and, according to the most common classification, are divided into individual and collective disputes. As in many countries of the world¹⁸, a significant part of labour disputes in Ukraine is individual. The parties to individual labour disputes are the employee and the employer (or its authorized body). The parties to collective disputes are employees (certain categories of employees), trade unions, their associations or other bodies authorized by these employees, on the one hand, and employers and employers' associations, on the other hand.

Depending on the type of labour dispute, the procedure for its resolution is also determined. Individual labour disputes include:

1. The general procedure, according to which the dispute is considered sequentially in the labour dispute commission and in court. Moreover, the consideration of some disputes may end in the commission if the parties do not appeal its decision and the dispute is not transferred to court. Otherwise, each party has the right to go to court.
2. Judicial procedure, in which a labour dispute is directly considered in court.
3. Special procedure, which provides for specifics of labour disputes for certain categories of employees, such as judges, prosecutors, civil servants, etc.

Undoubtedly, judicial protection is the main and most widespread among the jurisdictional forms of labour rights protection. However, in the context of

¹⁸ KRIALOV, J., ZYLBERSTAJN, H. Collective Labour Disputes in São Paulo: Will the Parties Continue to Utilise the Labour Court? *International Journal of Comparative Labour Law and Industrial Relations*. 1991, vol. 7, issue 1, pp. 94–107. DOI:10.54648/ijel1991008.

the war, when many employees have become internally displaced or have been forced to leave the country and accessing the courts has become quite problematic, there is a need to find alternative ways to resolve disputes. In this context, labour mediation is a promising mechanism for out-of-court dispute resolution.

On December 15, 2021, the amendments to the Labour Code of Ukraine¹⁹, provided for by the Law of Ukraine «On Mediation» dated November 16, 2021 No. 1875-IX, came into force²⁰. The Code was supplemented by Article 222-1 «Settlement of Labour Disputes through Mediation». According to this article, a labour dispute between an employee and an employer, regardless of the form of the employment contract, may be settled through mediation in accordance with the Law of Ukraine «On Mediation», taking into account the specifics provided for by this Code. The mediation agreement and the agreement based on the results of mediation in labour disputes shall be concluded in writing.

In the event of non-fulfilment or improper fulfilment of the agreement based on the results of mediation, the parties to the mediation shall have the right to apply to the bodies provided for in Article 221 of this Code to consider the labour dispute. The meaning of the term «mediation» is disclosed in the Law of Ukraine «On Mediation», in particular, Article 1(4) states that mediation is an out-of-court voluntary, confidential, structured procedure during which the parties, with the help of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations.

It is important to note that collective labour disputes in Ukraine also have the prospect of being resolved through labour mediation. This issue will be discussed below.

4. The role of the National Mediation and Conciliation Service in resolving collective labour disputes

The settlement of collective labour disputes is facilitated by the National Mediation and Conciliation Service, which is a permanent state body established by the Decree of the President of Ukraine of 17.11.1998²¹ in accordance with

¹⁹ Verkhovna Rada of Ukraine. On making changes to some legislative acts of Ukraine regarding the optimization of labour relations: Law of Ukraine, no. 2352-IX. 2022 [online]. Available at: <https://zakon.rada.gov.ua/laws/show/2352-20#Text>. Accessed: 10.12.2024.

²⁰ Verkhovna Rada of Ukraine. On mediation: Law of Ukraine, no. 1875-IX. 2021 [online]. Available at: <https://zakon.rada.gov.ua/laws/show/1875-20#Text>. Accessed: 10.12.2024.

²¹ President of Ukraine. On the formation of the National Mediation and Conciliation Service: Decree of the President of Ukraine, no. 1258/98. 1998.

the Law of Ukraine «On the procedure for settlement of collective disputes (conflicts)» of 1998²².

The role of the NMCS as a state body is realized through the purpose of its activities – improvement of labour relations, prevention of occurrence and facilitation of settlement of collective labour disputes.

The NMCS mediates in conflict situations, helps to reach a compromise between employees, trade unions and employers, and ensures convergence of positions, reaching joint agreements and making coordinated decisions by the parties to social dialogue.

At the request of the parties to a collective labour dispute (conflict), the NMCS proposes candidates for independent mediators and members of labour arbitration, coordinates the work of labour arbitration, and assigns its specialists and experts to participate in the work of conciliation bodies. Representatives of the NMCS may participate in resolving collective labour disputes (conflicts) at all stages.

5. Draft Law on Collective Labour Disputes (hereinafter – draft Law)

The NMCS, as the responsible executor of the task of preparing the draft law on collective labour disputes, created a working group consisting of NMCS experts, delegated representatives of joint representative bodies of trade unions and employers at the national level, the secretariat of the National Tripartite Social and Economic Council, independent experts, NGOs, and leading labour law scholars. The work lasted about a year and a half. During this period, the working group held 56 meetings and developed the Draft Law.

This draft law is an important step towards updating labour legislation aimed at ensuring the effective resolution of collective labour disputes, strengthening social dialogue and implementing Ukraine's international obligations in this area.

The main goal of the draft law is to create a modern, transparent and effective mechanism for resolving collective labour disputes that meets European and international standards.

According to the proposed structure, the draft law consists of eight chapters, which, according to the subject matter of regulation, provide for:

- establishing general provisions on the scope of the Law, defining basic concepts and terms, basic principles of collective labour dispute resolution, rights and obligations of the parties to collective labour disputes;

²² Verkhovna Rada of Ukraine. On the procedure for resolving collective labour disputes (conflicts): Law of Ukraine, no. 137/98-VR. 1998.

- establishing the legal framework for the National Mediation and Conciliation Service, its legal status and structure;
- introducing the division of collective labour disputes into «disputes about rights» and «disputes about interests», fixing the methods and sequence of their resolution, including the procedure for formulating requirements, registering disputes, peculiarities of negotiations, and the procedure for labour mediation in collective labour disputes, taking into account the provisions of the Law of Ukraine «On Mediation»;
- establishing the procedure for resolving collective labour disputes over rights by labour arbitration, establishing the binding nature of labour arbitration decisions, the procedure for appealing such decisions, and the enforcement of labour arbitration decisions on a voluntary and compulsory basis;
- simplifying the procedure for resolving collective labour disputes, allowing the parties to choose the method of their resolution, including by stipulating in collective agreements, contracts, as well as the possibility of out-of-court methods of their resolution, except in cases where collective labour disputes may be considered by the court in accordance with the law;
- introduction of clear and unified legal regulation of the right to strike, in particular, the procedure for declaring a strike, its conduct, rights and guarantees, obligations of employees and employers during a strike, recognition of a strike as illegal and its prohibition, special conditions for participation in a strike by certain employees who are subject to restrictions and prohibitions on striking, etc.);
- introducing the employer's right to lockout to protect its rights and interests, the procedure for exercising the right to lockout, and cases of its prohibition or restriction;
- improvement of the regulatory framework for mutual liability of the parties to a collective labour dispute and their representatives for the implementation of labour arbitration decisions, obligations under agreements reached, as well as the procedure for compensation for damages caused by a strike or lockout.

6. Advantages of the Draft Law

The Draft Law implements provisions based on international labour standards and takes into account the experience of the best international practices of the European Union countries in the field of collective labour disputes. Indeed, the Draft Law was developed due to the need to bring legislation in this area in line with international standards, primarily the provisions of the European Social Charter (Article 6), which proposes to encourage the formation and application

of an appropriate mechanism of conciliation and voluntary arbitration to resolve labour disputes and enshrines the rights of employees and employers to collective action in cases of conflicts of interest, as well as the International Labour Organization's Freedom of Association and Protection of the Right to Organize Convention No. 87 of 09.07.

The law also considers the experience of individual foreign countries close to legal regulation to the Ukrainian legal system. For example, it takes into account the experience of developing the negotiation process in Poland.²³

The Draft Law provides for simplification of the procedure for resolving collective labour disputes, introducing the possibility for the parties to choose the method of their resolution. Adoption of the Draft Law will make it possible to introduce an effective procedure for resolving collective labour disputes in Ukraine, expand the possibilities of out-of-court settlement of such disputes by developing the institution of labour mediation and labour arbitration, and ensure the development of social dialogue by increasing the role of negotiations and provisions of collective agreements (contracts). At the same time, the role of the Law of Ukraine «On Mediation» as a basic law is preserved. Thus, the draft law develops the labour specialization of mediation.

The draft Law also establishes the procedure for resolving collective labour disputes over rights by labour arbitration, establishes the binding nature of labour arbitration decisions, the procedure for appealing such decisions, and the enforcement of labour arbitration decisions on a voluntary and compulsory basis.

One of the important issues of the draft law is the introduction of clear and unified legal regulation of the right to strike, in particular, the procedure for declaring a strike, its conduct, rights and guarantees, obligations of employees and employers during a strike, recognition of a strike as illegal and its prohibition, special conditions for participation in a strike by certain employees who are subject to restrictions and prohibitions on strikes, etc. It is known that strikes can have devastating consequences for both the economy of the country and the parties to the dispute.²⁴

The experience of recent decades shows that even in economically developed countries²⁵, the issue of strike as a phenomenon has become relevant. In

²³ PISARCZYK, L. The Crisis of the Collective Bargaining System in Poland. *International Journal of Comparative Labour Law and Industrial Relations*. 2019, vol. 35, issue 1, pp. 57–77. DOI:10.54648/ijcl2019003.

²⁴ RYCROFT, A. What Can Be Done about Strike-Related Violence? *International Journal of Comparative Labour Law and Industrial Relations*. 2014. vol. 30, issue 2, pp. 199–216. DOI:10.54648/ijcl2014012; CARD, D. Strikes and Bargaining: A Survey of the Recent Empirical Literature. *The American Economic Review*. 1990, vol. 80, no. 2, pp. 410–415.

²⁵ DESILVER, D., 2023 saw some of the biggest, hardest-fought labour disputes in recent decades. 2023 [online]. Available at: <https://www.pewresearch.org>. Accessed: 10.12.2024;

Ukraine, especially in the postwar times, there is an increase in protest infusions, including strikes.

It is important that the authors of the draft law, following the example of Lithuania, Poland and Slovakia, have chosen the approach of presenting the positions of employees when resolving a collective labour dispute and a strike mainly by trade unions²⁶.

Along with this, an approach that exists in the vast majority of countries in the world²⁷ as an extreme event preceded by broad negotiations is spreading in Ukraine.

The advantages of the draft law for employers include the development of social dialogue at various levels, the possibility of quick and effective out-of-court dispute resolution, and, in general, the transition to a model of civilized conflict resolution through the development of labour mediation and negotiation.

For employees, it will be important to increase the importance of trade unions as a party to a collective labour dispute that can represent the interests of employees, simplify the procedure for registering a collective labour dispute, increase the importance of labour arbitration, and give them the freedom to choose the procedure for resolving a collective labour dispute and involve trusted individuals in conflict resolution.

For the state, it is primarily about relieving the workload of the courts by encouraging (in particular, through the institution of a court fee) the parties to resort to conciliation procedures and labour arbitration.

POSTELWAIT, C. Labour Strikes 2023–2024: What's Behind the Global Resurgence in Workers' Rights? 2024 [online]. Available at: <https://workforcewise.org>. Accessed: 10.12.2024.

²⁶ UNTERSCHÜTZ, J. Strike and Remedies for Unlawful Strikes in the Legal Systems of Poland, Hungary, and Slovakia. *International Journal of Comparative Labour Law and Industrial Relations*. 2014, vol. 30, issue 3, pp. 319–338. DOI:10.54648/IJCL2014018; PETRYLAITÉ, D. The Right to Strike in EU Member States: A Comparative Overview with Particular Reference to Lithuania. *International Journal of Comparative Labour Law and Industrial Relations*. 2010, vol. 26, issue 4, pp. 421–434. DOI:10.54648/ijcl2010026.

²⁷ WOOLFSOHN, C., SOMMERS, J. Labour Mobility in Construction: European Implications of the Laval un Partneri Dispute with Swedish Labour. *European Journal of Industrial Relations*. 2006, issue 1, pp. 49–68. DOI: 10.1177/0959680106061371; MCCRYSTAL, S., NOVITZ, T. Democratic Pre-conditions for Strike Action: A Comparative Study of Australian and UK Labour Legislation. *International Journal of Comparative Labour Law and Industrial Relations*. 2012, vol. 28, issue 2, pp. 115–146; LYHNE IBSEN, C. Conciliation, mediation and arbitration in collective bargaining in Western Europe: In search of control. *European Journal of Industrial Relations*. 2021, vol. 27, issue 1, pp. 23–39. DOI: 10.1177/0959680119853; ADDISON, J. T., TEIXEIRA, P. Strike incidence and outcomes: New evidence from the 2019 ECS. *European Journal of Industrial Relations*. 2023, vol. 30, Issue 2, pp. 123–149. DOI: 10.1177/09596801231206; SHONK, K. Collective Bargaining Negotiations and the Risk of Strikes. 2024 [online]. Available at: www.pon.harvard.edu. Accessed: 10.12.2024.

The draft law improves the regulatory framework for mutual liability of the parties to a collective labour dispute and their representatives for the implementation of labour arbitration decisions, obligations under agreements reached, as well as the procedure for compensation for damages caused by a strike or lockout.

7. Discussion questions. International standards and foreign experience

The most controversial issue was the introduction of a lockout into the legal framework. A lockout serves as a last resort in resolving a collective labour dispute during a strike to protect the rights and interests of the employer, which involves the temporary full or partial suspension of the operation of an enterprise, institution, organization and/or restriction of access to the workplace for all or part of the employees. This does not imply termination of employment.

The Draft Law provides for the employer's right to collective action (lockout) to protect its rights and interests, defines the procedure for exercising the right to lockout, and cases of its prohibition or restriction.

Lockouts are practiced in countries like the United States, France, Japan, Lithuania and a number of other countries as a means of limiting the number of unjustified strikes. It is a kind of counterbalance to the abuse of strikes, a tactic of the employer's actions against the opposite party to a collective labour dispute. Of course, it is important to provide for the possibility of using both strikes and lockouts only in exceptional cases. This is what the draft law stipulates.

Equally important is the issue of the right to initiate a lockout at the appropriate level of dispute. The draft law stipulates that a lockout may be applied by the employer exclusively at the local level in case of a reasonable impossibility of satisfying the demands of the employees who are the subject of the strike. This was the insistence of the members of the working group from the trade unions. This position was also supported by employers. At the same time, the issue of lockouts at the sectoral or national level, as opposed to the local level, remains a subject of discussion.

Another controversial issue was raised by the Swedish experts who, at the request of the social partners in Ukraine, had participated in the Ukrainian Expert group regarding "The New Model of Labour Dispute Resolution for Ukraine" 2011–2013. The work was based on Swedish and European experience brought about by Göran Trogen, Gunilla Runnquist and Kurt Eriksson²⁸, for this reason,

²⁸ Gunilla Runnquist och Göran Trogen, former Leaders of major National trade union and employer organisations respectively, and Kurt Eriksson, former General Counsel of the Swedish Mediation

they were given the opportunity to comment on the Draft law²⁹. The experts reiterated that while strikes and lockouts should be allowed in “disputes of interest”, they should be unlawful when it comes to “disputes of rights”. The experts expressed concerns that the Draft Law in its current form opens up the possibility of using strikes and lockouts also in disputes of rights.

The Swedish Experts would like to emphasize that the classification of disputes and the assessment of its legality in Sweden became of great importance when it was introduced into the Collective Agreements Act in 1928, since during the time before that, Sweden had been one of the most conflict-ridden countries in Europe in the labour market. The following arguments were made in support of their position:

- First, in the Nordic countries, as well as Germany and Austria, which mainly belong to the continental (civil) system of law, there is a clear distinction between the two types of disputes. Accordingly, strikes and lockouts are prohibited when it comes to try to enforcing the own opinion on the implementation and interpretation of existing collective bargaining agreements (contracts) as well as on legislation. Further, in several other Western European countries, strikes and lockouts are evaluated on other grounds based on more of a case law system. Thus, countries as the Netherlands, Belgium, Spain, Italy and France do not have the same basic approach to the division of labour disputes. However, with interpretation of existing agreements and legislation as a starting point, it is generally prohibited in these countries to use industrial actions regarding the content of existing agreements and legislation, all in line with the predominant rule of law principle that contract/agreements should be kept, and interpretation of legislation shall be left with courts/arbitration.
- Second, the right to use strikes and lockouts to resolve labour disputes of rights at various levels could negatively impact the legal system and the level of enforcement in Ukraine in ways that are unforeseen by the parties and the lawmakers. The possibility of industrial action in disputes of rights will lead to different “interpretations” of collective agreements and laws across Ukraine, all depending on the strength of the conflicting parties, not only on the union side but also on the employer side. Especially for sector agreements, such differences will create problems for the contracting parties, not to mention for the legislators and courts if the conflict regards legislation. If the concluded agreements do not provide for an absolute labour peace during the term of the agreement, employers will lack motivation to enter into collective

Office; all also members of the Swedish Labour Court and Mediators.

²⁹ ERIKSSON, K., RUNNQVIST, G., TROGEN, G. *Letter regarding the Draft law on Collective labour disputes' resolution*. Stockholm, 2024.

agreements. And it will be more difficult for trade unions to offer the content of collective agreements as additional benefits for gaining membership.

- Third, Article 6(4) of the European Social Charter regulates only “disputes of interest” and not “disputes of rights”. This is confirmed by the European Committee of Social Rights in its Case Law Digest 2022 (pp. 90–91), which states that Article 6(4) of the European Social Charter recognizes the right to collective action only in cases of conflict of interest and does not apply to conflicts of rights that should be resolved by courts or arbitration bodies. However, it’s important to add that the major policy document “Recommendations on the Settlement of Individual and Collective Labour Disputes” (2020) deals only with disputes about interests in connection with collective bargaining.

It is important to note that the draft Law considers strikes to be legitimate in disputes over rights if the dispute concern wage arrears, i. e. when the employer refuses to pay the earned wages to employees. This provision has received positive feedback from Swedish experts as being a part of the Swedish system for a long time. The possibility of collective action in other rights disputes, according to Swedish experts, may create asymmetry in the mutual rights and obligations of the parties to social dialogue and reduce the motivation to conclude collective agreements and contracts. It should be added that the proposal of the Swedish colleagues was not supported by the Ukrainian colleagues, members of the working group from the trade unions, which worked on the development of the draft law. Trade union representatives considered the offer of Swedish colleagues as risky, which significantly limits the right to strike.

8. Conclusions

Thus, a large-scale reform in the field of regulation of social and labour relations is underway in Ukraine. The draft Law “On Collective Labour Disputes” aims to modernize and simplify the procedure for resolving collective labour disputes, and to expand the possibilities of negotiations as a way to resolve such disputes. An important novelty of the draft law is the possibility for the parties to choose the method of resolving a collective labour dispute and the right to enshrine their choice in collective agreements and contracts. Among the advantages of the draft law is the transition to a model of civilized conflict resolution through the development of labour mediation and negotiation, and effective labour arbitration.

There is no single approach or universal criteria for developing a uniform approach to resolving labour disputes in EU countries. Models for resolving both

individual and collective disputes differ from country to country. Each country uses a mechanism of conciliation, voluntary arbitration or labour courts to resolve labour disputes, taking into account national traditions.

The working group that developed the draft law chose a form of broad discussions and cooperation, studying foreign experience and taking into account the provisions of international standards, primarily ILO recommendations and conventions, and the provisions of the European Social Charter (Article 6), which proposes to encourage the formation and application of an appropriate mechanism of conciliation and voluntary arbitration to resolve labour disputes and enshrines the rights of employees and employers to collective action.

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