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Harmonisation of Ukrainian legislation with EU law in the field of alternative civil dispute resolution: Challenges and prospects

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Abstract. The research relevance is determined by the urgent need to harmonise Ukrainian legislation in the process of European integration, as well as by the shortcomings of the Ukrainian judicial system – heavy court workload, lengthy and complex litigation, significant legal costs, and the phenomenon of continuation of the conflict in a latent form after a court decision is made due to the different perception of a fair resolution of the dispute between parties. The study aimed to outline the theoretical foundations of alternative dispute resolution and studying the experience of EU member states in terms of mechanisms and practices of their implementation. The study demonstrated that maintenance of partnership relations between the parties to a dispute is one of the most important factors contributing to the active development of alternative dispute resolution, since while courts use a narrow definition of the problem (only such circumstances that have legal significance), alternative dispute resolution uses a broad approach. As a rule, not only legal factors are covered (although sometimes they are excluded from consideration altogether), but also commercial interests, personal factors, public and even social factors, which substantially improves the balance of the interests among parties. The review of the implementation of alternative dispute resolution in different EU countries, as well as the analysis of the general EU approach in this area, concluded that there are no specific mandatory provisions in European law on the use

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of such practices in civil disputes, and Member States have a great deal of freedom to develop and implement appropriate paradigms and models. In the context of Ukrainian cultural aspects, including strong traditions of institutionalisation, it is recommended that judges be involved in the process of alternative dispute resolution in various roles. This would make the transition period smoother and ensure for the eventual development of perfect, "polished" and efficient national legislative mechanisms for alternative dispute resolution corresponding to European law and traditions

Keywords: alternative dispute resolution; EU law; legislative harmonisation; mediation; out-of-court dispute resolution

Introduction

The focus on integration into the European community has made ensuring compliance of the national legal system with European community standards in general, as well as the establishment of a truly effective mechanism for the protection of human and civil rights and freedoms one of Ukrainian strategic development priorities. As a result, the need for considerable reform of the national system for the protection of civil rights and interests arose, which is presently being developed mostly at the cost of jurisdictional organisations. At the same time, the court process for settling legal conflicts is not without flaws. As modern judicial practice demonstrates, courts are overburdened, and the civil process itself is becoming a rather expensive "red tape", as proceedings in many cases are frequently deliberately delayed for an extended period, and the services of highly qualified lawyers are generally not affordable for most citizens. Moreover, the method of forced execution frequently fails, particularly when the defendant refuses to follow the court orders. Furthermore, courts, especially in the regions, are frequently ill-prepared to handle disputes arising from relatively new legal relations in Ukraine (land disputes, stock market deals, complex stock transactions, leasing, information disputes, consumer protection, disputes in the field of intellectual property rights protection, etc.). This is because the successful application of legal norms is largely dependent on the qualifications and experience of judges.

Within this landscape, a notable rise in social and legal tensions, as well as the formation of numerous legal disputes, many of which go unresolved for years, are characteristics of the implementation of important economic, political, state-legal, and other changes in Ukrainian society. Traditionally, the state organised and funds courts to safeguard legally protected interests and rights that were infringed. Notwithstanding its many clear benefits, modern Ukrainian justice also has several drawbacks, including a high court workload, lengthy and complicated legal proceedings, high legal expenses, lack of a mechanism for ensuring adversarial nature and equality of parties in the process, and the possibility of a decision in absentia. Furthermore, the trial publicity results in the release of private information, and the standards for the fairness of dispute resolution are legal in nature and frequently conflict with the notions of justice of those without legal training. As a result, court rulings frequently elicit a negative response from the parties, ending the dispute with a strong ruling but leaving it unresolved, and thus the judicial decisions are not implemented (Kovach, 2024).

In these conditions, practice demonstrates the need to develop knowledge and skills in the field of conflict management and resolution (Slyvka, 2021). This need is prominent in the context of the process of harmonisation of Ukrainian legislation with EU law, without which the European integration of Ukraine will inevitably face difficulties. Meanwhile, such knowledge cannot be entirely borrowed (since the domestic conflict reality is too specific) and cannot be acquired based only on common sense or experience. This does not allude to a universal and uniform rule, nor is there an ideal model or "gold standard" of harmonisation from which Ukraine could copy its path. However, the arrays of regulatory legal acts and entire legal systems of different states or entities after harmonisation have qualitatively more mutual compatibility and compliance than before or without harmonisation. Therefore, harmonisation can be explained not only as a goal but also as a characteristic of processes and mechanisms in the legal system aimed at reducing discrepancies and resolving contradictions in legal norms.

Among contemporary Ukrainian scientists, R.S. Nuryshchenko (2024a; 2024b) analysed the development of alternative dispute resolution since the independence of Ukraine. The author examines the major steps in the development of mediation, arbitration, negotiations, and other methods, as well as the former Soviet influence on the development of alternative dispute resolution in Ukraine and the factors that impede the development of conciliation procedures. In the perspective, such factors include ideological ideas of citizens and a lack of faith in conciliation mediators. The researcher emphasised that several conciliation organisations were already established in Ukraine, and the first regulatory legal acts dedicated to alternative dispute resolution have been adopted (for example, the Law of Ukraine No. 1875-IX "On Mediation" (2021) and the Law of Ukraine No. 1701-IV "On Arbitration Courts" (2021). One of the most important developments in Ukraine is the freedom to choose how to safeguard the rights. However, Ukrainian legislation lacks precise processes, and more effort needs to be made to update Ukrainian legislation on alternative dispute resolution to reflect current circumstances and EU norms. R.S. Nuryshchenko (2024b) also believes that the development of alternative dispute resolution will further help overcome the above-mentioned problems of court overload and lengthy case processing and will also save time and money for the parties. Another key step, according to the author, is to continue legal education and disseminate information about mediation, arbitration courts, conciliation, negotiations, and other approaches, as well as the benefits and efficacy of each.

V.V. Slyvka (2021) emphasised that the latest judicial and legal reforms taking place in the EU Member States in the implementation of Directive of the European Parliament and of the Council No. 2008/52/EC "On Certain Aspects of Mediation in Civil and Commercial" (2008) (for example, the reform "Modernisation of Justice in the 21st Century", which is still ongoing in France since 2016), have demonstrated a conceptual change in the EU model of the role of the court in resolving public law disputes. These reforms aim to improve the legal regulation of alternative methods of resolving public law disputes, in particular, through conciliation. As for the reform in Ukraine, it does not incorporate the current trends in the transformation of the justice system and the role of the court taking place in the EU

Member States in this area. The researcher emphasised that the modern legal regulation of reconciliation of parties in administrative proceedings in Ukraine is characterised by numerous problems, in particular, fragmented regulation, lack of regulation of the stages of reconciliation of parties, lack of possibility of involving a court conciliator in the reconciliation procedure, etc. Consequently, the parties to a public-law dispute in practice rarely attempt to reconcile, and reconciliation of parties in administrative proceedings is unable to fully reveal its potential, to reveal its socio-legal significance, in particular, in the form of reducing the level of conflict in public-law relations, as well as relieving administrative courts, which has long been a pressing problem in the functioning of these courts.

O.A. Ustymenko *et al.* (2022) compared the key elements of mediation in the relevant Ukrainian legislative acts and Directive of the European Parliament and Council No. 2008/52/EC (2008). After analysing the primary requirements for the mediation process outlined in the Directive, the author compared the Law of Ukraine No. 1875-IX "On Mediation" (2021), a sectoral domestic Ukrainian regulatory law act, with the pertinent standards of codified regulatory law acts. The author concluded that the Law of Ukraine No. 1875-IX (2021) in primary provisions comply with the Directive. At the same time, the author noted that the possibility of resorting to mediation is provided for in Art. 5 of the Directive, which states that the court seized of a case may, where appropriate and with regard to all the circumstances of the case, invite the parties to mediation to resolve the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily accessible. However, a definition of an "information session" or similar has not been implemented in Ukrainian legislation. Appropriate implementation, according to O.A. Ustymenko *et al.* (2022), would improve both the awareness of the parties about the range of possibilities for applying the conciliation procedure in the format of mediation and would contribute to improving the legal culture of society.

According to Sh. Peters (2021), modern Alternative Dispute Resolution (ADR) techniques and processes are more effective and beneficial than conventional schemes for managing conflicts and resolving disagreements. According to the author, the state of the art in collaborative lawyering and the skill of professional negotiators in conflict management are two factors that contribute to a more satisfying ADR procedure. In this context, well-managed conflict should result in positive change, improved relationships, and creativity; poorly managed conflict, on the other hand, may have unfortunate repercussions that jeopardise institutions, systems, and relationships. Development of an ADR culture that is founded on integrative and collaborative procedures and institutions that not only resolve disputes but also strive for the peaceful and amicable resolution of conflicts appears to be essential for society. However, Sh. Peters (2021) asserts that while there has been some progress in the EU's development of an ADR culture led by supranational organisations, Member States' implementation of the extrajudicial system has regressed when tasked with developing it significantly and naturally. The author highlighted that a directive does not address the obstacles to the adoption of ODR (Online Dispute Resolution), and it is irrational to assume that extending the scope of out-of-court dispute resolution beyond national borders will result in a significant, automatic shift in the field. The EU has a wide range of ADR cultures, with certain nations lagging in terms of self-regulation, awareness, and dedication to ADR competencies. According to reports, nations like Romania, Slovenia, Estonia, Lithuania, Latvia, and Slovakia did not benefit as much from merely enacting laws on conciliation, mediation, and the formal development of the legal framework for ADR and ODR programs.

According to B. Kas (2022), the Court of Justice of the European Union has been instrumental in supporting the EU's initiatives to provide access to high-quality alternative dispute resolution (ADR) inside the EU and in granting Member States the right to test obligatory pre-trial ADR procedures. However, a more comprehensive European-level conversation on the appropriate balance between formal and informal justice has yet to be facilitated by the Court's favourable stance towards ADR. B. Kas (2022) emphasised that currently, the EU framework encourages a multi-option system that mostly leaves it up to the parties to decide whether a dispute is settled in court or through alternative dispute resolution (ADR). Although the ELI-ENCJ Statement on Formal and Informal Justice offers a helpful place to start when imagining the role of the judge in promoting private parties' responsible use of ADR procedures, it is still unclear how ADR procedures could support the courts' core function.

Thus, ADR procedures, concepts, and implementation landscape are not homogenous, which makes the task of harmonisation of Ukrainian legislation with EU law in the field of alternative civil dispute resolution even more multi-faceted and complex, in turn, necessitating deeper research within the field and thorough analysing of existing practices of such harmonisation. Given the aforementioned, the study aimed to shape the outline of ADR theoretical foundations and investigate the practice of EU member states in the field of mechanisms and practices of ADR implementation.

Materials and methods

The study is an applied scientific legal research as it implies scientific legal research that is devoted to solving the specific applied problems in the field of jurisprudence – analysing the application of ADR in EU countries and searching the vectors of harmonisation of Ukrainian legislation in the field of ADR with the appropriate EU legislation. The study was conducted using special scientific methods. Following the overall systemic approach, the following methods were used: historical-legal, comparative-legal, formal-legal, and sociological. The systemic method was used to analyse the concept of ADR and its theoretical basis. In particular, the property of emergence was used to discuss different system levels without unnecessary complexity. At the same time, the emergent properties of the system are determined by the manifestation of special effects of interaction between the elements of the system. At the same time, a complex system contains properties that cannot be obtained from the known properties of the system elements. This approach was used to analyse implications of ADR in the EU as a whole and its specifics in individual member-states. The historical-legal method was used to investigate ADR adoption evolution and its tools development in the EU and Ukraine. The comparative-legal and formal-legal methods were used to analyse the ADR mechanisms in the EU member states. The sociological method was used to outline social and sustainable development (SD) implications of ADR programs, as well as

formulate recommendations for establishing ADR conceptual mechanisms in Ukraine within the process of legislation harmonisation.

The main research method was exploratory analysis, which was used to reveal state-of-the-art, trends, and challenges of ADR in the EU law landscape and Ukraine and creates a basis for further outlining the needs and potential vectors of harmonisation. The source base included the Directive of the European Parliament and the Council No. 2013/11/EU (2013) with amendments, the Law of Ukraine No. 1875-IX "On Mediation" (2021) and the Law of Ukraine No. 1701-IV "On Arbitration Courts" (2021), the array of ADR laws, bills, and other legislative documents defining the concept and principles of ADR in the EU member-countries.

Results and discussion

There are many different areas where laws can be harmonised. One of the crucial topics is the paradigms and processes for resolving conflicts, both inside and outside of the legal system. The European Union legal order, which is based on the rule of law and other essential values such as democracy, freedom, equality, respect for human rights, and human dignity, includes alternative dispute resolution. The goal of the Court of Justice of the European Union Court is to defend fundamental rights and ideals. In certain jurisdictions, litigants may or must use alternative or preliminary conflict resolution methods before or in lieu of requesting protection from the court.

Alternative dispute resolution methods have long been used in the practice of many countries. The continuation of the European movement chosen by Ukraine, in particular, manifested in the consolidation of legislation and the introduction of alternative dispute resolution methods. Therefore, the trends in the development of alternative dispute resolution methods can improve the legislation and protect the violated rights and interests of individuals in the court using mediation, dispute resolution with the participation of a judge, arbitration, and other alternative resolution methods (Tsuvina & Vakhonieva, 2022).

In general, the technology of alternative resolution of a legal dispute or conflict can be defined as a specially created and empirically substantiated system of methods and rules of targeted step-by-step resolution and the set of alternative forms of resolving disagreements and confrontation with a certain sequence of their application. The process of alternative conflict resolution can be divided into three stages: 1) the preparatory stage (determination of the conflict, prediction of its development and consequences, study of the positions of the parties, and selection of a method for resolving the confrontation); 2) the stage of applying the form (forms) of alternative resolution; 3) the stage of exiting the conflict and monitoring the agreed decisions.

Resolving a legal conflict, the negotiation process should include the following stages: 1) identification and determination of positions and opinions; 2) adjustment of positions for non-contradiction with legal norms; 3) description of personal characteristics of parties for further behaviour tactic development; 4) discussion, during which the parties strive to implement their positions (discussion, justification of the proposals put forward); 5) combination of interests and goals of the parties based on the law, mutual concessions and promising projects; 6) coordination of positions, development of an agreement; 7) final results (compilation of an agreement in the form of an oral or written contract, a protocol of intent, and, if the parties so desire, in the form of a legal document, validation for compliance with legal norms).

The legal nature of mediation is independence of the mediator, similarly to a judge or arbitrator, although no evidence is analysed, no facts are established, nor a decision that would be subject to compulsory execution is made. The mediator has no right to dictate the terms of the agreement or force the opposing parties to make a particular decision. The issues of the structure and individual procedures for implementing mediation should remain at the discretion of the mediator and the conflicting parties, and in the legislative order (at the regional level) it is necessary to resolve only several problems concerning the requirements imposed on professional mediators (presence of special education, appropriate license, establishment of rules of professional ethics for mediators). It is necessary to create standard provisions of a recommendatory nature that would regulate the conduct of negotiations by the parties or the settlement of a conflict with the participation of a mediator, which will stimulate their wider use.

Lawyers, legal experts, legal entities, and specialists shifted the focus, implementing and applying more informal dispute resolution procedures instead of court proceedings. These procedures are known as "alternative dispute resolution" (ADR). ADR is an umbrella term that applies to many out-of-court dispute resolution procedures. European countries also use the terms "effective dispute resolution" (EDR) and "amicable dispute resolution". Alternative dispute resolution is defined as a group of processes, which are used to resolve conflicts and disputes without resorting to the formal judicial system. ADR is typically implemented by a non-governmental body or private individual, based on the principles of voluntariness, neutrality, confidentiality, discretion, and equality (Magiera & Weib, 2014).

There is a need to change the stereotype of lawyers that provide dispute resolution services. They need to focus not only on the legal positions of the clients but also on the interests of these positions. A lawyer must be able to shift from the usual adversarial strategy to a strategy of consensus or compromise concerning the other party to the dispute, and the use of alternative methods of dispute resolution will significantly reduce the burden on the judicial system, providing positive effect and contribute to the implementation and application in practice of European standards and norms of international law (Kryshtanovych *et al.*, 2024). All these processes will contribute to the effective dissemination of a culture of peaceful dispute resolution in society, which will significantly strengthen integration processes and bring Ukrainian society closer to the European community. It is generally recognised that most ADR methods lead to a compromise, a mutually beneficial agreement between the parties. In this regard, it is noteworthy noting that ADR can provide a resolution to a dispute with no loosing part (Akhtar *et al.*, 2023). Preservation of partnership relations between the parties to the dispute is one of the most important factors contributing to the active development of ADR (Peters, 2021).

Another striking distinctive feature of ADR is the procedure of involving a neutral participant, a third party independent of the dispute, who has special knowledge in the relevant field and will conduct the settlement of the dispute. In comparison with state courts, where a specific judge accepts the dispute for consideration, regardless of the will

of the parties to the dispute, in ADR the parties themselves choose a neutral participant (a mediator, arbitrator, expert in a narrow professional field, etc., depending on the ADR procedure chosen by the parties) by reaching an agreement. This is especially relevant concerning disputes arising from narrow professional, specific areas when the involvement of an expert in the relevant field by the parties provides quick and highly competent consideration of the dispute. Kh. Yahyea (2012) emphasised that on a lateral axis, several dispute resolution techniques can be arranged as follows (Fig. 1).

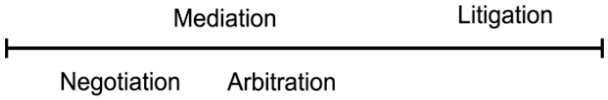

Figure 1. Conceptual forms of conflict (dispute) management

Source: Kh. Yahyea (2012)

The justice system is depicted in the figure farthest to the right. Even if the issue is dispositive, the parties have turned it over to the court, which renders a decision and effectively oversees the proceedings. Due to its prevalence, few consider negotiations to be an alternate conflict resolution approach, although it is at the far left of the axis and is also a type of ADR. The outcome of a negotiation is decided by the parties. They have complete influence over the negotiating process as well. There is no third party that renders judgments. Other ADR methods, different from negotiation, can be positioned on this axis. On the scale, they are all located far to the left. Though a verdict is issued, and the parties do not have complete control over the process, arbitration processes also fall to the left on the axis (Yahyea, 2012). On the scale, criminal and dispositive civil cases are located far to the right, as are dispositive civil cases. In this regard, it is worth noting that the division of procedural rules into obligatory, dispositive, mandatory, and optional categories reflects a power dynamic between the parties and the court. This division can also be represented by a scale that shows the respective authority over the process of the parties. The description and study of a crucial fundamental concept that is used when ADR is utilised is demonstrated in Figure 2.

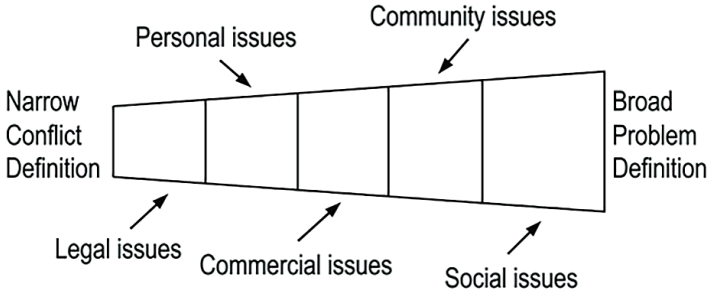

Figure 2. A "funnel" of problem definition within ADR

Source: Kh. Yahyea (2012)

The picture, reminiscent of a funnel, demonstrates how courts define problems narrowly since only situations that are relevant to the law are important. However, it is common for the problem definition to be wide when using ADR. Commercial interests, personal circumstances, the community, and occasionally even societal elements are incorporated in addition to (and sometimes not at all) legal concerns. The relevance of each of these criteria may vary according to the type of conflict (Garvey & Craver, 2021).

In contrast, a judgment is rendered in a court of law. One side prevails while the other loses. Instead of referring to wants and interests, the parties discuss rights and duties. As a result, the problem definition is limited. Except in certain rare circumstances (e.g. set off), claims must be reviewed and decided independently, making an integrated framework often unachievable, especially when the dispute encompasses many issues (Garvey & Craver, 2021). Furthermore, the dispute frequently intensifies and turns sour via the court process (Cortes, 2022). The distinction between the administration of justice and other types of conflict management is caused by the distinctions between legal procedures and alternative dispute resolution. While the administration of justice is a small subset of all that is covered under conflict management, alternative dispute resolution (ADR) denotes, among other things, the determination of parties and the legal description being broad enough for non-legal aspects to be of value. Undoubtedly, a broad problem formulation increases the negotiation zone. The term "bargaining zone" often refers to the space where parties can reach a consensus (Yahyea, 2012). Furthermore, a settlement can be achieved when a judge or mediator is aware that the case in question contains such an area.

ADR improves access to justice by being a litigant-friendly alternative to formal court processes. ADR also encourages accountability, justice, and openness, all of which support democratic government and the rule of law (Bungenberg *et al.*, 2025). Additionally, ADR is viewed as a strategy to preserve social harmony, handle disputes in culturally acceptable ways, and expand access to justice for groups that are unable or unwilling to use the legal system (Zhomartkyzy, 2023). Effective ADR programs improves quality of life and contributes to the society, stimulating sustainable development. In Europe, the adoption of alternative conflict resolution techniques has increased significantly in 50 years (Bungenberg *et al.*, 2025). Figure 3 below also supports this assertion, showing an upward trend.

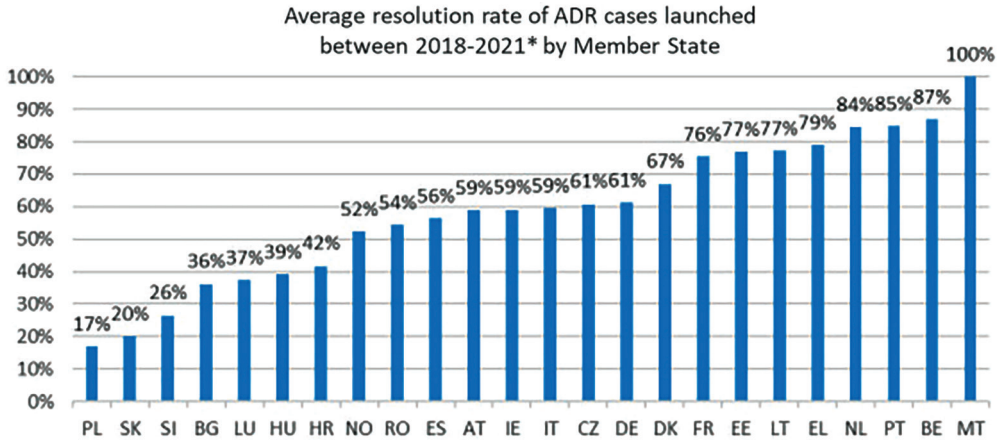

Figure 3. Dynamics of ADR cases in EU, 2018-2021

Source: D. Ashton (2024)

There have been advances at the European level in addition to those at the national level. There are three primary ADR tools in use within the European Union. These include: 1) Directive of the European Parliament and the Council No. 2008/52/EC (2008); 2) Directive of the European Parliament and the Council No. 2013/11/EU (2013); and 3) Regulation of the European Parliament and the Council No. 524/2013 (2013). Their goals are to support the internal operations of the market and guarantee access to quick, easy, affordable, and effective dispute-resolution procedures. They empower Member States with a great deal of discretion and strive for minimal uniformity. Contractual provisions in consumer or business contracts that stipulate that any disputes arising under the contract must be resolved via a relevant form of ADR, such as a mandatory ODR mechanism or arbitration scheme, are one example of how the private sector has increased its promotion of ADR in addition to official efforts (European Law Institute, 2018; de la Rosa, 2018; Biard, 2022).

ADR provisions are temporary solutions from several developments. In certain Member States (such as Italy), it is required to attempt to utilise alternative dispute resolution (ADR) methods such as mediation before pursuing formal legal action (Bartlet, 2024). Although the State in general and courts in particular encourage its use, alternative dispute resolution (ADR) is voluntary in other Member States, including the UK. Many distinct ADR bodies that are unknown to foreigners may result from such uneven development. This might thereby erode faith in these processes and their capacity to provide quick, equitable, and reasonably priced dispute resolution beyond the boundaries of Member States. Additionally, there is an increasing possibility – and in certain situations, the reality – that ADR is being developed in a way that unjustly encroaches on the proper jurisdiction of the state or government judicial branch (Warwas, 2016; European Law Institute, 2018).

According to the Law Report Commission of Ireland (2010), internal inconsistencies in current EU instruments – both those that explicitly address ADR techniques and those that indirectly involve aforementioned mechanisms – exacerbate these two problems. Specifically, they are inconsistent, both inside and within itself; they reveal a lack of awareness of the many forms of alternative dispute resolution. For instance, the most effective and least troublesome method was the Mediation Directive. Although it is restricted to a single type of ADR, it does provide a fundamental framework for disputes involving cross-border parties, including reference to the European Code of Conduct for Mediators.

Thus, for Ukraine, the process of harmonisation of legislation with EU law in the field of ADR is a challenging task, with many "variables and unknowns". In this complex landscape, research on both best practices and challenges of ADR mechanisms of EU Member States is significant. Nevertheless, EU acknowledged that courts and judges should try to include alternative dispute resolution (ADR) procedures into the justice system as complementary systems, to the degree that this is allowed under the law of the Member State (Dragos & Neaumtu, 2014; European Law Institute, 2018). Judges and courts should also try to exercise ADR practitioners, entities, and procedures a suitable level of institutional comity and respect. When referring a matter to alternative dispute resolution (ADR), courts and judges should, when appropriate, incorporate whether fair and transparent procedures are available for the parties to select an ADR provider. Before referring a dispute to an alternative dispute resolution (ADR) process outside of the court system, whether it is a court-connected ADR process or a private ADR process unrelated to the court, judges and courts should consider the process independence, quality, and suitability for the parties and the specific dispute (Knudsen & Balina, 2014). These principles are rational for introduction in Ukrainian ADR legislation since they represent the foundation of harmonisation – the concept, and vision of ADR integration into the judicial system.

Moreover, there is a range of best practices in EU countries concerning ADR, which can be used by Ukrainian legislators in developing mechanisms aimed at legislation harmonisation. Notably, mediation has become widely used in European countries, the possibility of which is enshrined in the Directive of the European Parliament and of Council No. 2008/52/EC "On Certain Aspects of Mediation in Civil and Commercial" (2008). According to the Directive, by using procedures tailored to the interests of parties, mediation can offer a quick and affordable out-of-court resolution of conflicts in civil and business situations. The voluntary agreements that come from mediation will probably keep the relations of parties friendly and stable. These

advantages become more pronounced in situations with cross-border elements. To facilitate mediation and ensure that parties resorting to mediation in resolving conflicts can rely on a predictable legal basis, it is necessary to introduce framework legislation covering key aspects of civil procedure (Tsuvina & Ferz, 2022).

Practice shows the effectiveness of mediation, and the UN General Assembly recommended that all states apply the Model Law on International Commercial Conciliation Procedure, adopted by the UN Commission on International Trade Law, and issue an unification of legislation on dispute settlement procedures in international commercial conciliation practice (Cauffman, 2018). The resolutions adopted by the UN General Assembly No. 65/283 (2011) and No. 66/291 (2012) emphasise the need to use mediatorial procedures, including mediation as an alternative to litigation.

Directive No. 2008/52/EC (2008) significantly affected the national legislation of European countries. In particular, the French Commercial Code used the definition of mediation following the European Directive and the effect of the Directive itself was extended to all commercial and corporate disputes. Italy has transposed a Directive by adopting the Legislative Decree of Italy No. 28 (2010) in the field of mediation aimed at conciliation in civil and commercial disputes. A significant feature of the Decree is the mandatory nature of mediation: in approximately 90% of commercial cases, mediation must be used by the parties as a mandatory precondition for access to justice. In turn, in Belgium, the court must offer the parties to resolve the conflict using alternative dispute resolution mechanisms. Mandatory mediation and other forms of alternative dispute resolution (ADR) are being tested in France under the Law of France No. 2016-1547 "On the Modernisation of Justice for the Twenty-First Century" (2016). For modest claims (i.e., claims of up to 5,000 EUR) or claims on neighbourhood issues, the Code of Civil Procedure of France (1976) in Article 750-1 requires that mediation or another form of alternative dispute resolution be tried before beginning court proceedings.

Even though alternative dispute resolution methods in different European countries share many common aspects, their role in the protection of rights and interaction with jurisdictional protection differ. In Poland, mediation in civil disputes was introduced by the Act of 28 June 2005 on amendments to the Polish Civil Procedure Code, which defines the rules for conducting mediation in civil disputes. Further amendments made by the law concerned both the general characteristics of the mediation procedure and the specifics of such a procedure in family and guardianship cases. Civil Procedure Code of Poland (1964) addresses such important principles for conducting mediation as the principle of voluntariness of mediation; impartiality of the mediator; confidentiality of the mediation procedure; and securing the mediator's right to remuneration. The mediation procedure is regulated in detail. For instance, following Art. 183-1 § 2 of the Code, mediation is conducted based on a mediation agreement or a relevant ruling of the court that is considering the case and may refer the parties to mediation. In the mediation agreement, the parties provide that the existing conflict or a conflict that may arise between them in the future will be resolved through mediation.

According to the Civil Procedure Code of Poland (1964), a mediator has the right to receive remuneration and reimbursement of costs associated with conducting mediation. In the event of a refusal to become a mediator free of charge, the costs are borne by the parties (Article 183). The mediation agreement can take the form of a separate document or a mediation clause in the main contract, as well as oral form in the event that one of the parties has requested to initiate the mediation procedure and the other has given its consent to such a procedure. The mandatory elements of a mediation agreement are the determination of the subject of mediation, as well as the mediator or the method of selecting such a person (Article 183-1 § 3 of the Code). A court order to refer the parties to mediation can be issued only after the commencement of the trial on the initiative of the court or upon the request of the parties (Article 183-8 § 1). In its order, the court must determine the mediator and the time during which the mediation procedure will be implemented (Article 183-10 § 1 of the Code). Therefore, there are two ways to start mediation in civil proceedings under Polish law (Article 183 § 2 and 3): mediation conducted based on an agreement and a court decision inviting the parties to participate in mediation. If one of the parties does not oppose mediation at the other party's request, an agreement may also be achieved (Lipiec, 2023; Shvetzova, 2024).

The Civil Procedure Code of Poland (1964) establishes that if a settlement agreement is concluded before the intervention of a mediator (even in contractual mediation – when mediation is conducted before the initiation of a court proceeding), the court, at the request of one of the parties, must immediately conduct a hearing aimed at approving the settlement agreement reached before the mediator (Article 183 § 1). If the settlement is to be reached through the court, it must approve it with its seal, otherwise, the settlement agreement is approved by a court decision in the courtroom (Article 183 § 2).

Hungarian legislation emphasises the principle of voluntariness and impartiality of the mediator. In turn, in Austria, there are four principles of mediation: professionalism, neutrality, result-orientation, and responsibility of the parties in resolving the dispute (Heider *et al.*, 2015). Federal states (Länder) are given the right to test preliminary ADR, including mediation, under Section 15a of the Introductory Act to the German Civil Procedure Code (2021). Legislation requiring participation in ADR programs before the initiation of court proceedings may be enacted (and has been introduced) by individual federal states. The specifics of each federal state-required ADR program are up to them to determine. This can be used to analyse various strategies (van Rhee, 2021).

Law of Spain No. 5/2012 "On Mediation in Civil and Commercial Matters" (2012) is the outcome of Directive No. 2008/52/EC "On Certain Aspects of Mediation in Civil and Commercial" (2008). However, this law and the subsequent Royal Decree of Spain No. 980/2013 (2013) did not render mediation necessary in Spain. However, there is one exception: as of November 2020, mediation is required for three types of disputes in Catalonia (but not across Spain): issues in which the parties have previously and specifically decided to submit to mediation; issues involving the custody of kids or people with disabilities; cases involving (other) family matters in which the judge directs the parties to try mediation (Palmer & Roberts, 2020). The law also permits judges to encourage parties to attempt mediation if it is deemed to be expedient or appropriate for the case in a variety of civil and business problems. For this reason, the judge has the authority to halt the matter hearing. Hence, some

judges view this encouragement as both an invitation and a (compulsory) order, requiring the parties to take part in the mediation effort. However, in the Spanish judiciary, this is a minority stance. Mediation attempts outside of family situations are often not used by Spanish civil judges (Palmer & Roberts, 2020).

The European literature does not approach mediation's objectives and purposes equally. Notably, they vary depending on the type of mediation. However, it is worth noting that the conclusion of an agreement as a solution to the dispute, as opposed to preventing its resolution, is the main goal of mediation. This thesis confirms the recognition of arguments oriented towards the solution of the problem (settlement-oriented mediation). In the European Union, where the idea of civil society is the foundation, it is believed that mediation changes the people participating in it, their positions and their relationships with other people (Zhomartkyzy, 2023). Mediation strengthens the sense of responsibility for behaviour and promotes dialogue and activism (Bartlet, 2024). The European Commission proposed updated and streamlined alternative dispute resolution regulations on October 17, 2023, to make them more applicable to digital marketplaces. To update the online and alternative dispute settlement system, the European Commission published a set of documents. Two legislative measures that remove the Online Consumer Dispute Resolution (ODR) Regulation and change the present Alternative Dispute Resolution (ADR) Directive are covered (Pinho *et al.*, 2023). The European Commission's assessment of the implementation of existing legislation and its suggestion on quality standards for dispute resolution provided by online marketplaces and trade organisations complement these legislative recommendations.

One of the fields of ADR active involvement is consumer disputes. To cover a wide range of consumer rights that might not be specifically mentioned in the contract or that pertain to pre-contractual stages where consumer rights exist regardless of whether a contract is concluded, the ADR revision aims to adapt the ADR system to digital markets (e.g. misleading advertising, missing, unclear or misleading information). To lessen the administrative burden on business owners and to cover conflicts between EU consumers and merchants from non-EU nations, the ADR Directive's material and geographic scope should be extended to encompass all forms of consumer disputes.

Notably, Dispute Resolution Processes (DRPs) are most relevant in the process of harmonisation, otherwise, legislative provisions will remain merely a conceptual form, without providing clear mechanisms (even "algorithms") for real processes of ADR. It is worth expecting that disputing parties will have access to appropriate alternative dispute resolution (ADR) procedures for every specific type of dispute that fulfils their needs and expectations about time, cost, fairness, and conclusion. Additionally, both the national courts and ADR service providers should make it obvious which ADR procedures are accessible to disputing parties, both online and offline.

As part of the special project "Support to the implementation of judicial reform in Ukraine", the Council of Europe and Ukrainian experts created the Policy Paper "Integration of Mediation into Ukrainian Court System" back in 2017. The paper aimed to further support the implementation of judicial reform in Ukraine within the framework of the European integration process. The Policy Paper states that requiring mediation in specific case categories before the court can begin considering the claim is the ostensibly simplest approach to incorporate mediation into the legal system. For instance, this scenario was first presented in Italy in 2013, and since then, the country has emerged as a leader in the number of mediations, with over 200,000 mediations reported each year (Kyselova, 2017). However, a 2002 ruling by the Constitutional Court outlawed any laws requiring compelled pre-trial conflict resolution. Article 124 of the Constitution of Ukraine (1996) was amended by the Ukrainian Parliament in June 2016 to explicitly say that "the law can establish a mandatory pre-trial dispute resolution mechanism" (Law of Ukraine No. 1401-VIII, 2016). This was part of another round of revisions. As a result, while the Constitution has approved forced mediation in Ukraine, it does not formally create such a program. Legislators can still decide whether to enact laws requiring mediation. However, given its efficacy as demonstrated by the experience of EU Member States, it is possible to determine that mediation should be implemented in Ukrainian legislation.

Mediation is one of the most often used alternative dispute (conflict) resolution techniques in Ukraine. It entails the use of a mediator who assists the disputing parties in establishing a communication process and analysing the conflict situation so that each party may independently select a resolution that will meet their requirements and interests. The current legislation of Ukraine also provides for the possibility of introducing out-of-court dispute resolution (Mazaraki, 2018).

Table 1. The possibility of introducing out-of-court dispute resolution in the current legislation of Ukraine

Out-of-court dispute resolution element	Legislation
The possibility of concluding a settlement agreement	Commercial Procedure Code of Ukraine (1991), the Civil Procedure Code of Ukraine (2004), and the Administrative Court Procedure Code (2005)
Conducting mediation	Law of Ukraine No. 1875-IX "On Mediation" (2021)
Conducting a dispute settlement procedure with the participation of a judge	Commercial Procedure Code of Ukraine (1991), the Civil Procedure Code of Ukraine (2004), and the Administrative Court Procedure Code (2005)
Conducting an arbitration procedure	Law of Ukraine No. 1701-IV "On Arbitration Courts" (2021)
Mediation as a form of restorative justice	Criminal Code of Ukraine (2001) and the Criminal Procedure Code of Ukraine (2012) provide for reconciliation between the victim and the offender in certain categories of cases
The procedure for resolving collective labour disputes	Law of Ukraine No. 137/98-VR "On the Procedure for Resolving Collective Labour Disputes (Conflicts)" (1998)

Source: compiled by the author based on N. Mazaraki (2018)

It is worth mentioning the "Dispute resolution with the participation of a judge" procedure. On 15 December 2017, amendments to the Commercial Procedure Code (2020), Civil Procedure Code (2004), and Administrative Court Procedure Code (2005) came into force, which introduced a new dispute resolution method – participation of a judge. The dispute resolution procedure with the participation of a judge is provided for by the following: chapter 4, Articles 201-205 of the Commercial Procedure Code of Ukraine (1991); Chapter 4, Articles 186-190 of the Civil Procedure Code of Ukraine (2004); Chapter 4, Articles 184-188 of the Administrative Court Procedure Code (2005).

The significance of dispute resolution with the participation of a judge, as a procedural institution, is that it is an effective means of reducing the time for consideration of the case, saves the parties from significant costs associated with the consideration of cases; the decision in the dispute, on which they have reached a peaceful settlement, is implemented voluntarily. The introduction of the institution of dispute resolution with the participation of a judge in the legislation of Ukraine should contribute to trust in the judicial authorities and strengthening the authority of justice (Shvetzova, 2024).

Dispute resolution with the participation of a judge is not mediation by the definition, but has common features and differences. The judge conducting the dispute resolution procedure must possess certain mediation techniques and skills. According to the provisions of the procedural codes, dispute resolution with the participation of a judge is done with the consent of the parties before the start of the consideration of the case on the merits. The aforementioned Policy Paper details experimental court mediation initiatives that Ukraine has implemented. The notion of voluntary mediation by external mediators is noteworthy. Both the Kyiv courts (in 2009) and Volyn courts (in 2015) adopted this paradigm. Mediators collaborate with the court administration and get training outside of the court. When it is appropriate, courts advise litigants to submit their case to an outside mediator and educate them about the mediation process. In the event that both parties consent to mediation, a mediator is selected from a list of outside mediators, available in the court. The parties present their settlement agreement before the same judge after mediation. To complete a settlement within court proceedings, there are several procedural methods available under the existing procedural codes: (1) the claimant may drop the claims; (2) the claimant may request that the court not consider the case; (3) the respondent may accept the claims in whole or in part; (4) the judge may consider the settlement when drafting a judgment; and (5) the parties may sign a settlement agreement and submit it to the judge for confirmation. The court assigned to this case decides if the parties are unable to agree to mediation (Kyselova, 2017).

The model advantages include the independence and extensive training of external mediators, which eliminates any allegations of corruption and the court's stake in certain mediation results. Nonetheless, the approach necessitates a high degree of judicial knowledge on mediation, confidence in outside mediators, and their capacity to persuade parties of the advantages of mediation and allay any worries regarding the procedure. Parties did not pay for mediation services throughout the initiative's implementation phase in pilot courts, and the project provided support to mediators. However, if donor funding is unavailable, it is unclear how mediation fees will be covered (Kyselova, 2017).

Approximately 20 organisations in Kyiv, Odesa, Lviv, Kharkiv, Vinnytsya, and other Ukrainian cities are a part of the professional community of mediators in Ukraine. These organisations have been in operation since 1995 and have significantly contributed to the spread of mediation in Ukraine through research, presentations, round tables, presentations, educational videos, websites, and mediation courses at schools and universities. However, substantial progress is to be made in this area, especially in creating more adaptable ADR formats. In this regard, it is worth analysing the experiences of nations that have previously completed the EU integration process.

The last country which became a member of the EU was Croatia. Thus, it is worth analysing the experience of this country in the harmonisation of ADR legislation. The Republic of Croatia's legal foundation for mediation was established 20 years ago on the day the new Act went into force, replacing the old and outmoded Reconciliation Act (Legal500, 2024). To provide mediators more authority and to relieve Croatian courts of cases when an amicable resolution is conceivable, the new Act introduced relevant revisions. The availability of alternative (amicable) conflict resolution should also be expanded under the new rule. The speed at which the same actions are concluded and the decrease of the costs that such court or out-of-court conflicts invariably demand is both significantly impacted by the parties' willingness to settle their differences peacefully.

A major component of Croatia's National Recovery and Resilience Plan, which was adopted to lessen the economic and social effects of the pandemic, is the new Act, which went into force on June 29, 2023 (Republic of Croatia Ministry of Justice, 2021). It improves the efficiency of judicial system to foster greater public trust. Extension of the concept of alternative dispute resolution is one of the biggest changes. Any out-of-court or judicial action in which the parties attempt to settle the disagreement by agreement, including mediation and structured conversations, is defined as alternative dispute resolution under Article 4 Paragraph 1 of the new Act (Legal500, 2024). For the first time, the terms "structured negotiations" and "mediation" are regulated as follows: (1) mediation is any process – whether conducted in a courtroom, a mediation centre, or another setting – herein the parties attempt to settle their differences amicably with the assistance of one or more mediators who assist without the power to force a final resolution; (2) structured negotiations are a legally mandated or agreed-upon process for resolving a disagreement amicably in which the parties actively attempt to reach a settlement agreement.

The requirement to use an alternate dispute resolution process before filing a lawsuit for damages is another significant change. The new Act lays forth the duty of the parties to try to settle the conflict alternately before filing a lawsuit to recover damages. Proceedings started to recover damages from the employment relationship are exempt from this responsibility. The aforementioned duty would be considered satisfied if (Legal500, 2024): the parties have failed to reach an agreement on the alternative dispute resolution process or if one party invited the other to comply with the request or to take part in the alternative dispute resolution process after informing the other party of its proposal or request along with supporting documentation, but the other party

either rejected the proposal or failed to respond within 15 days of receiving it.

The establishment of an alternate conflict resolution centre was also a significant milestone. To promote alternative dispute resolution as a more advantageous way for the parties to settle disagreements than the formal judicial one, the Alternative Dispute Resolution Centre (hereinafter the Centre) was to be established as a public institution with its registered seat in Zagreb, as required by Article 6 of the Act. Among other things, the Centre trains and develops mediators professionally, either independently or in collaboration with mediation organisations. Additionally, it guarantees efficient collaboration with court authorities and keeps up with the Register of Mediators and the Register of Mediation Institutions. Additionally, the Centre will open branches in Osijek, Rijeka, and Split, three major Croatian cities (Legal500, 2024).

Regardless of which of the functional and institutional models of ADR is adopted by a particular state, it requires substantial efforts to create a legal framework for the use of ADR. The minimum list of issues that should be regulated when creating an ADR system includes external legal framework for fixing the ADR system, including legal regulation of applicable models and the procedure for participation of parties in ADR procedures; internal rules for the implementation of ADR procedures depending on the selected model; the procedure for referring disputes for resolution through ADR procedures; correlation of ADR procedures with current legislation; determination of the conditions for the application of ADR procedures (based on the law, based on mutual contractual obligations of the parties). It is also worth noting the creation of professional standards for the administration and quality management of ADR procedures (quality standards for ADR services, standards for the sustainability of ADR application, determination of the level and nature of mediator intervention in disputes depending on the selected model, determination of the ADR implementation strategy, gender issues, time frames and cost limits for the implementation of ADR procedures concerning formal judicial procedures, etc.). If necessary, it can imply the gradation of various ADR procedures and models by types of disputes. There is also the need for creation of institutions for the management and implementation of ADR, consideration of issues of quality and professionalism of the personnel involved in the application of ADR procedures, creation of mechanisms for monitoring and evaluating ADR procedures, including the definition of performance indicators in terms of the results of applying ADR, as well as the degree of influence on improving the situation in dispute resolution as a whole, mechanisms and sequence of monitoring and evaluation, the procedure for collecting and exchanging data in the area of applying ADR procedures, etc.

There are several things to account for in selection of a dispute resolution procedure in Europe. These variables might include the type of disagreement, the intended result, the need for a quick settlement, and the associated expenses. Parties can select the best approach for their particular requirements by carefully weighing these variables (Peters, 2021). Furthermore, in Europe, the choice of conflict resolution process may be influenced by legislative and cultural factors (Elosegui *et al.*, 2021). Parties can negotiate the difficulties of settling conflicts across borders more easily if they are aware of the legal and cultural standards of other nations. Individuals and organisations may make well-informed decisions that result in successful dispute resolution by considering these elements. The scope of this article does not include the development of detailed legislative recommendations, and it was not set as an initial objective in this current research. But still outlining vectors of further efforts can be formulated.

Judges are crucial to the development of alternative dispute-resolution techniques, according to the European Commission for the Efficiency of Justice (2023). Where possible, judges should be empowered to recommend alternative methods to court proceedings to the parties, including conciliation, mediation, and negotiation. Thus, in the context of judicial dispute resolution, the judge:

- directs the dispute resolution in a way that helps the parties to resolve the dispute amicably;
- helps to resolve the dispute in a short time, without lengthy formal procedures for considering the merits of the case;
- helps the parties to reconcile while remaining neutral;
- helps the parties to jointly find their way to resolve the dispute;
- helps to interact constructively, guiding the procedure and identifying mutually beneficial or mutually acceptable options for resolving the conflict.

In the context of Ukrainian cultural dimensions, in particular, strong traditions of institutionalisation, it is worth including judges in the process of ADR, in various roles. This would make the transition period smoother and provide a perfected, "polished" effective national legislative mechanism for ADR, compliant with European legislation and traditions. It is worth mentioning the possibility of online dispute resolution (ODR). This procedure is gaining increasing popularity, given the general trends of expanding the use of information technologies in all spheres of public life. Currently, the features of ODR are associated with the use of conference calls when applying traditional methods of ADR (online mediation, online arbitration, etc.), as well as with the use of special platforms that allow individuals to conduct online negotiations to resolve their disputes. These mechanisms must also be developed in the legislation of Ukraine.

Notably, the Council of Europe, enshrining the principle of establishing truth and justice in the judicial process, supports the initiatives of member states to develop and adopt pan-European norms concerning the introduction of alternative methods of dispute resolution, namely, reconciliation, mediation, restorative justice, to achieve a balance of interests of conflicting parties. Hence, Ukraine has all chances to become a direct participant in these processes, simultaneously enhancing its ADR legislation and contributing to the EU "database" of legislative initiatives and best practices.

Conclusions

The development of suitable laws in Ukraine can be improved by incorporation of dispute resolution development experience, contrast of alternative dispute resolution (ADR) techniques in European nations. ADR can combine legal traditions and transcend national systems to establish a reliable rule of law.

In addition to lowered cost and duration of conflict resolution and improving disputants' satisfaction with the results, ADR procedures can expand access to justice for socioeconomic groups that the legal system does not properly or sufficiently serve. ADR programs may help not just the

rule of law but also other development goals, such as economic development, the expansion of Ukraine's civil society, and aid for marginalised groups, by enabling the settlement of conflicts that are impeding progress toward these objectives. This helps to build a foundation for sustainable development, which is crucial for Ukrainian European integration process. The presented case of Croatia can be incorporated to balance specifics, advantages, risks, and challenges in development of the optimal model for Ukrainian ADR legislation harmonisation with not only EU standards but, not less importantly, real EU practice.

Alternative dispute resolution programs cannot replace the official legal system. ADR programs cannot be anticipated to create legal precedents or change social and legal norms since they are tools for the application of equity rather than the rule of law. ADR programs, on the other hand, are a crucial area for harmonising Ukrainian law with EU law and can assist and supplement judicial reforms. There is an evident need for further thorough research of EU countries practice in this domain, investigation of precedents and revealing the complex of factors, determining the choice of ADR option and its effectiveness, including within interdisciplinary paradigm, employing provisions of social, cultural, and sustainable development (SD) studies.

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Conflict of interest

None.

References

[1] Administrative Court Procedure Code. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[2] Akhtar, N., Nadeem, S., & Habib, R. (2023). Alternative dispute resolution: Concept, criticism and future of arbitration and mediation. *Global Legal Studies Review*, 8(2). 36-42. doi: 10.31703/glsr.2023(VIII-II).05.
[3] Ashton, D. (2024). *Alternative dispute resolution*. Retrieved from https://surl.li/vncyjn.
[4] Bartlet, M. (2024). *Mediation and other forms of Alternative Dispute Resolution*. London: Routledge.
[5] Biard, A. (2022). Consumer ADR/ODR in Europe. *Journal of European Consumer and Market Law*, 11(5), 181-187.
[6] Bungenberg, M., Koevski, G., Bohme, B., Kocev, L., Frohlich, M., & Zdraveva, N. (2025). *Alternative dispute resolution in the Western Balkans*. New York: Springer.
[7] Cauffman, C. (2018). *Critical remarks on the ADR Directive*. Cambridge: Cambridge University Press.
[8] Civil Procedure Code of Poland. (1964, November). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/22373.
[9] Civil Procedure Code of Ukraine. (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15#Text.
[10] Code of Civil Procedure of France. (1976, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte lc/LEGITEXT000006070716/2025-01-17.
[11] Commercial Procedure Code of Ukraine. (1991, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-12#Text.
[12] Constitution of Ukraine. (1996, June). Retrieved from https://legislationline.org/taxonomy/term/23650#:~:text=Article%2064,by%20the%20Constitution%20of%20Ukraine.
[13] Cortes, P. (2022). Embedding alternative dispute resolution in the civil justice system: A taxonomy for ADR referrals and a digital pathway to increase the uptake of ADR. *Legal Studies*, 43(2), 312-330. doi: 10.1017/lst.2022.42.
[14] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[15] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[16] de la Rosa, F. (2018). ADR-Rooted ODR design in Europe: A bet for the future. *International Journal on Online Dispute Resolution*, 5, 154-162. doi: 10.5553/IJODR/235250022018005102014.
[17] Directive of the European Parliament and of the Council No. 2008/52/EC "On Certain Aspects of Mediation in Civil and Commercial". (2008, May). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng.
[18] Directive of the European Parliament and of the Council No. 2013/11/EU "On Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on Consumer ADR)". (2013, May). Retrieved from https://surl.li/ylkswl.
[19] Dragos, D., & Neaumtu, B. (2014). *Alternative Dispute Resolution in European administrative law*. New York: Springer.
[20] Elosegui, M., Miron, A., & Motoc, I. (2021). *The rule of law in Europe: Recent challenges and judicial responses*. Berlin: Springer.
[21] European Commission for the Efficiency of Justice. (2023). *Guidelines on online alternative dispute resolution*. Retrieved from https://rm.coe.int/dispute-resolution-en/1680b2ca19.
[22] European Law Institute. (2018). *ELI-ENCJ statement on alternative dispute resolution approved*. Retrieved from https://europeanlawinstitute.eu/news-events/news-contd/news/eli-encj-statement-on-alternative-dispute-resolution-approved/.
[23] Garvey, J., & Craver, Ch. (2021). *Skills & values: Alternative dispute resolution: Negotiation, mediation, collaborative law, and arbitration*. Durham: Carolina Academic Press.
[24] German Civil Procedure Code. (2021, October). Retrieved from https://www.gesetze-im-internet.de/englisch zpo/englisch zpo.html.
[25] Heider, M., Nueber, M., & Schumacher, H., Siwy, A., & Zeiler, G. (2015). *Dispute resolution in Austria: An introduction*. Alphen aan den Rijn: Wolters Kluwer.
[26] Kas, B. (2022). The untapped potential of a structured interaction between courts and ADR for the resolution of consumer disputes in the EU. In X. Kramer, J. Hoevenaars, B. Kas & E. Themeli (Eds.), *Frontiers in civil justice* (pp. 22-39). London: Edward Elgar Publishing.
[27] Knudsen, L., & Balina, S. (2014). Alternative dispute resolution systems across the European Union, Iceland and Norway. *Procedia – Social and Behavioral Sciences*, 109, 944-948. doi: 10.1016/j.sbspro.2013.12.569.

[28] Kovach, Y. (2024). Judicial reform in Ukraine: Current state, problems and possible solutions. *Bulletin of Criminological Association of Ukraine*, 32(2), 419-439. doi: 10.32631/vca.2024.2.32.
[29] Kryshtanovych, M., Lapychak, N., Bundz, R., Drymalovska, K., Bohashko, O., & Herzanych, V. (2024). Administrative and legal guidelines for standardisation of financial reporting of enterprises as socio-economic systems. *Financial and Credit Activity Problems of Theory and Practice*, 4(57), 495-504. doi: 10.55643/fcaptp.4.57.2024.4472.
[30] Kyselova, T. (2017). *Policy paper: Integration of mediation into Ukrainian court system*. Kyiv: Council of Europe.
[31] Law of France No. 2016-1547 "On the Modernisation of Justice for the Twenty-First Century" (2016, November). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033418805.
[32] Law of Spain No. 5/2012 "On Mediation In Civil And Commercial Matters". (2012, July). Retrieved from https://surl.li/qfruqn.
[33] Law of Ukraine No. 137/98-VR "On the Procedure for Resolving Collective Labour Disputes (Conflicts)". (1998, March). Retrieved from https://nmcs.gov.ua/areas-of-activities/collective-disputes/disputes-conflicts.
[34] Law of Ukraine No. 1401-VIII "On Amendments to Constitution of Ukraine (Regading to Justice)". (2016, June). Retrieved from http://zakon5.rada.gov.ua/laws/show/1401-19.
[35] Law of Ukraine No. 1701-IV "On Arbitration Courts". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1701-15#Text.
[36] Law of Ukraine No. 1875-IX "On Mediation". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1875-20#Text.
[37] Law of Ukraine No. 1875-IX "On Mediation". (2022, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1875-20#Text.
[38] Law Report Commission of Ireland (2010). *Alternative dispute resolution: Mediation and conciliation*. Dublin: Law Reform Commission.
[39] Legal500. (2024). *New Alternative Dispute Resolution Act – milestone in Croatia's attempts to promote conflict resolution in all areas of social life*. Retrieved from https://www.legal500.com/developments/thought-leadership/new-alternative-dispute-resolution-act-milestone-in-croatias-attempts-to-promote-conflict-resolution-in-all-areas-of-social-life/.
[40] Legislative Decree of Italy No. 28. "On Implementation of Article 60 of Law No 69 of 18 June 2009 on Mediation for the Conciliation of Civil and Commercial Disputes". (2010, March). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2010-03-04;28!vig=.
[41] Lipiec, S. (2023). An alternative resolution of international disputes: A review of the Polish approach. *Studia Europejskie – Studies in European Affairs*, 27(3), 157-178. doi: 10.33067/SE.3.2023.9.
[42] Magiera, S., & Weib, W. (2014). Alternative dispute resolution mechanisms in the European Union law. In D. Dragos & B. Neamtu (Eds.), *Alternative dispute resolution in European administrative law* (pp. 489-536). Berlin, Heidelberg: Springer. doi: 10.1007/978-3-642-34946-1_16.
[43] Mazaraki, N. (2018). Mediation in Ukraine: Theory and practice. *Foreign Trade: Economics, Finance, Law*, 84(1), 92-100.
[44] Nuryshchenko, R. (2024a). Genesis, current status, and prospects for the development of the institution of negotiation in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 14(3), 78-86. doi: 10.56215/naia-chasopis/3.2024.78.
[45] Nuryshchenko, R.S. (2024b). The development of alternative dispute resolution since the independence of Ukraine. *Kyiv Law Journal*, 2, 17-21. doi: 10.32782/klj/2024.2.2.
[46] Palmer, M., & Roberts, S. (2020). *Dispute processes: ADR and the primary forms of decision-making*. Cambridge: Cambridge University Press.
[47] Peters, Sh. (2021). The evolution of alternative dispute resolution and online dispute resolution and online dispute resolution in the European Union. *Revista CES Derecho*, 12(1), 3-17. doi: 10.21615/cesder.12.1.1.
[48] Pinho, J., McLaughlin, S., & Oberschelp de Meneses, A. (2023). *European Commission proposes alternative dispute resolution framework review*. Retrieved from https://www.insideprivacy.com/european-union-2/european-commission-proposes-alternative-dispute-resolution-framework-review/.
[49] Regulation of the European Parliament and of the Council No. 524/2013 "On Online Dispute Resolution for Consumer Disputes and Amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC". (2013, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/524/oj/eng.
[50] Republic of Croatia Ministry of Justice. (2021). *National recovery and resilience plan 2021-2016*. Retrieved from https://mpudt.gov.hr/national-recovery-and-resilience-plan-2021-2026/25470.
[51] Royal Decree of Spain No. 980/2013 "Implementing Certain Elements of Law 5/2012, of July 6, 2012 on Mediation in Civil and Commercial Matters". (2013, December). Retrieved from https://www.garrigues.com/sites/default/files/docs/Litigation-Arbitration-updates-4-2013_1.pdf.
[52] Shvetzova, L. (2024). *Alternative dispute resolution methods*. Retrieved from https://unba.org.ua/publications/8920-alternativni-sposobi-virishennya-sporiv.html.
[53] Slyvka, V.V. (2021). Reconciliation of parties in administrative proceedings in the context of European integration of Ukraine. (PhD dissertation, State Higher Educational Institution "Uzhhorod National University", Uzhhorod, Ukraine).
[54] Tsuvina, N., & Ferz, S. (2022). The recognition and enforcement of agreements resulting from mediation: Austrian and Ukrainian perspectives. *Access to Justice in Eastern Europe*, 4(16), 32-44.
[55] Tsuvina, T., & Vakhonieva, T. (2022). Law of Ukraine "On Mediation": Main achievements and further steps of developing mediation in Ukraine. *Access to Justice in Eastern Europe*, 1(13), 142-153. doi: 10.33327/AJEE-18-5.1- n000104.
[56] UN General Assembly Resolution No. 65/283 "Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution". (2011, July). Retrieved from https://digitallibrary.un.org/record/708512/files/A_RES_65_283-EN.pdf.

[57] UN General Assembly Resolution No. 66/291. (2011, August). Retrieved from https://documents.un.org/access.nsf/get?OpenAgent&DS=A/66/291&Lang=E.

[58] Ustymenko, O.A., Zavalna, Zh.V., Savchenko, V.O., & Voronov, K.M. (2022). Agreements in the mediation procedure: EU Directive and Ukrainian legislation. *Academic Visions*, 13. doi: 10.5281/zenodo.7606326.

[59] Van Rhee, C. (2021). Mandatory mediation before litigation in civil and commercial matters: A European perspective. A*ccess to Justice in Eastern Europe*, 7-24. doi: 10.33327/AJEE-18-4.4-a000082.

[60] Warwas, B. (2016). The state of research on arbitration and EU law: Quo vadis European arbitration? *European University Institute Working Paper Law*, 23.

[61] Yahyea, Kh. (2012). *Alternative dispute resolution (ADR): History, forms, process, mechanism, development, prospects*. Saarbrücken: LAP LAMBERT Academic Publishing.

[62] Zhomartkyzy, M. (2023). Comparative study of mediation practices in European countries. *EUREKA: Social and Humanities*, 5, 66-74. doi: 10.21303/2504-5571.2023.003153.

Гармонізація українського законодавства з правом ЄС у сфері альтернативного вирішення цивільних спорів: виклики та перспективи

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Анотація. Вибір теми для дослідження був зумовлений нагальною необхідністю гармонізації законодавства України в процесі євроінтеграції країни, а також недоліками української судової системи – великою завантаженістю судів, тривалими та складними судовими процесами, значними судовими витратами, – а також явищем продовження конфлікту в латентній формі після винесення судового рішення внаслідок розбіжності в розумінні сторонами справедливого вирішення спору. Дослідження було спрямоване на окреслення теоретичних основ альтернативного вирішення спорів та дослідження досвіду країн-членів ЄС щодо механізмів та практики їх запровадження. Показано, що збереження партнерських стосунків між сторонами спору є одним із найважливіших факторів, що сприяють активному розвитку альтернативного вирішення спорів, оскільки в той час як суди використовують вузьке визначення проблеми (лише такі обставини, які мають юридичне значення), в альтернативному вирішенні спорів застосовується широкий підхід. Як правило, враховуються не лише юридичні чинники (а іноді вони й зовсім виключаються з розгляду), а й комерційні інтереси, особисті чинники, громадські та іноді навіть соціальні фактори, що дозволяє набагато краще досягти балансу інтересів сторін. Розгляд впровадження альтернативного вирішення спорів у різних країнах ЄС, а також аналіз загального підходу ЄС у цій сфері дозволив зробити висновок, що в європейському законодавстві немає спеціальних обов'язкових положень щодо застосування таких практик у цивільних спорах, і держави-члени мають велику свободу у розробці та впровадження відповідних парадигм і моделей. Беручи до уваги українські культурні аспекти, зокрема, сильні традиції інституціоналізації, рекомендується залучати суддів до процесу альтернативного вирішення спорів у різних ролях. Це зробило б перехідний період більш плавним і дозволило б зрештою розробити досконалі, «відшліфовані» ефективні національні законодавчі механізми для альтернативного вирішення спорів, що відповідають європейському законодавству та традиціям

Ключові слова: альтернативне вирішення спорів; законодавство ЄС; узгодження законодавства; медіація; вирішення спорів у позасудовому порядку