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Genesis, current status and prospects for the development of the institution of negotiation in Ukraine

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Abstract
As of 2024, the use of alternative dispute resolution is becoming increasingly relevant caused by the complicated access to justice due to martial law. The purpose of this study was to analyse the historical experience of using negotiations in Ukraine from the Middle Ages to the present day and to identify the vectors for further development of this institution. Both general scientific and special scientific methods were employed: formal legal and comparative legal methods. It was found that the term "negotiation" can be used in several meanings: 1) the process of reaching an agreement; 2) the stage of court proceedings; 3) the stage of mediation, conciliation, or other methods of alternative dispute resolution; 4) a separate method of alternative dispute resolution. As the times of Kyivan Rus, the Ruska Pravda prescribed an analogue of negotiations – the replacement of blood revenge with a payoff; in the 16th-century Lithuanian statutes, the negotiation process was called "unity". The "Rights by which the Little Russian people are judged" of the mid-18th century defined two forms of documents drafted as a result of negotiations: a conciliation agreement (without the participation of mediators) and a conciliation verdict (with the participation of mediators). During the Soviet era, legislation tended to establish the right to judicial protection depending on the previous use of alternative dispute resolution. However, since Ukraine's independence, this trend has changed, and the law now prescribes the right of everyone to choose how to protect their rights. Further vectors for the development of the institution of negotiations in Ukraine may include the introduction of various types of platforms for remote participation in the negotiation process, as well as the development of the legal framework towards detailing negotiation procedures. The findings of this study can be used in teaching disciplines of the historical and legal cycle in higher education institutions of Ukraine, as well as for further forecasting the development of this institution and its improvement

Keywords:
alternative dispute resolution; conciliation; judicial process; private law relations; state-building

Introduction
Under martial law in Ukraine, citizens' access to justice has become substantially more difficult. An increasing number of citizens are outside Ukraine due to the hostilities and forced displacement. Lengthy court proceedings and difficulties in using electronic access to justice contribute to the fact that disputes stay unresolved. Therefore, it is important to reform the methods of alternative dispute resolution. When looking for

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effective solutions, it is important to consider not only international practices but also the specifics of the development of alternative dispute resolution in Ukraine in the past. The oldest method of alternative dispute resolution is negotiation. This is the simplest way of alternative dispute resolution, as it does not require the involvement of third-party intermediaries (arbitration, mediation, etc.).

The studies of legal science researchers are mainly focused on the functioning of certain methods of alternative dispute resolution in modern time, the issue of its reform and efficiency. However, few researchers have devoted their studies to the history of negotiations. Most often, the history of negotiations is considered simply as part of the analysis of the essence of this institution. Or researchers mostly analyse the genesis of the institution of negotiation in world history, not in the context of the history of a particular state. The scholars also make a series of useful and appropriate proposals for improving the institution of negotiations in the future, namely by developing online platforms for the negotiation process and by raising the level of legal awareness of citizens, as well as knowledge about this option of peaceful dispute resolution.

A.V. Prylutska (2023a) partially touches upon the genesis of the institution of negotiation and suggests that it emerged almost at the same time as the emergence of humankind. The researcher says that the emergence of alternative dispute resolution methods is linked to the emergence of conflicts in human history. A.V. Prylutska (2023a) also suggests that conflict is a legal, social, economic, and political category at the same time. And that reconciliation is a natural phenomenon in history. The researcher concludes that it is the human desire to benefit from life in society that motivates people to overcome competition and seek different methods of overcoming conflicts.

M.V. Vainagii (2021) investigated the theoretical issues of the institution of negotiation and the practice of using this method of alternative dispute resolution from the time of primitive society to the present day. The researcher argues that the institution of negotiation and the effectiveness of the negotiation process can be improved by improving the moral, legal, psychological, and ethical consciousness of the participants. And each negotiator is driven by their subjective interest. Dissemination of knowledge and raising the level of legal awareness and legal culture will allow participants to save time and resolve disputes in the most efficient way.

O.V. Verba-Sydor (2021) emphasised the influence of the Romano-Germanic legal tradition on the formation of the institution of negotiations. The researcher concludes that in Ukraine, the negotiation process is perceived mostly as a rivalry (i.e., either a winner or a loser). L.G. Bondar (2016) points out that such perception stems from psycho-emotional processes inherent in all people. Y.P. Liubchenko (2018) paid attention to the terminology and distinguishes between several meanings of the term negotiation: as a way of resolving disputes and as a procedure or process of reaching consensus between participants. V. Bondarenko (2019) studied the out-of-court resolution of administrative disputes.

F. Lavadoux *et al*. (2021), O. Brown & M. Delmeire (2021) investigated the trend of changing the institution of negotiations during the COVID-19 pandemic and noted that negotiations at the level of the European Union institutions are mostly conducted online and are more effective than offline negotiations. Researchers conclude that the pandemic has served as an incentive to develop modern technologies and use the achievements of science and technology to conduct online negotiations. P. Sansone & A. Rudzit (2024) investigated the activities of online platforms for negotiations in the field of consumer protection and concluded that such online platforms save time for the participants in the negotiation process. This is one of the vectors for the development of the negotiation institution for Ukraine and the world as a whole.

The purpose of this study was to analyse the historical experience of using the institution of negotiation in Ukraine and to predict what benefits society may receive from its further development. Objectives of the study: 1) to distinguish between negotiation as a stage of litigation, as a stage of alternative dispute resolution, and a separate type of alternative dispute resolution; 2) to analyse the development of the institution of negotiation from the time of Kyivan Rus to the present day; 3) to draw conclusions as to how the historical experience of the development of the institution of negotiation can be useful today.

Materials and Methods

The study employed both general scientific and specialised methods. Among the general scientific methods, it is worth mentioning the method of system analysis, which helped to trace the development of the institution of negotiations in Ukraine; the historical method is useful in analysing the impact of historical events on the institution of negotiations, and it also helped to identify examples of the institution of negotiations in different historical eras; the prognostic method was used to determine further vectors of development of the institution of negotiations in Ukraine; the inductive method helped to trace the impact of a particular historical event or era on the development of the institution of negotiations in general; the hermeneutic method was useful in distinguishing between the concept of negotiations as part of the judicial process, as part of other types of alternative dispute resolution (mediation, conciliation, etc.), and as a separate method of alternative dispute resolution. Among the specialised scientific methods, the study employed the formal legal method (for analysing the legal acts of various states that included Ukrainian lands) and the comparative

legal method (for comparing examples of the use of negotiations in different historical eras).

The materials used in the study include historical sources, laws of former empires that used to include Ukrainian lands, scientific works of legal scholars, the legal framework of modern independent Ukraine, international treaties, European Union legislation, and analytical materials from the media. Historical sources, such as Ruska Pravda (Yushkov, 1935), "The Rights of the Little Russian People" (Vyslobokov & Shemshuchenko, 1997) and others, help to analyse the development of the negotiation process in Ukraine. The scientific studies of legal scholars strengthen the theoretical framework of the study and help to explore the conceptual framework, the evolution of the institution of negotiations and provide suggestions for improving the institution of negotiations in the future. The regulatory framework of Ukraine[1,2,3,4] helps to understand the current state of the institution of negotiations, what gaps exist in the legislation, and what requires further rulemaking. The regulatory framework of the European Union[5] makes it possible to determine, among other things, further vectors for the development of the institution of negotiations in Ukraine.

The study also analysed the practices of the EU and Brazil in using online platforms for negotiations, as well as changes in the development of the negotiation institution during the COVID-19 pandemic. This information is covered by analytical materials from the media (Krizhniy, 2024). Websites of various online negotiation platforms were used as sources. For instance, the platform consumidor.gov (n.d.) in Brazil, which specialises in consumer protection disputes and helps parties negotiate online.

Results and Discussion

Definition of the term "negotiation" in the scientific literature. N.L. Bondarenko-Zelinska (2016) believes that negotiations are almost always present in some other alternative form, and mediation is often used as a preliminary procedure before the start of litigation. This opinion can be agreed with if one considers the term "negotiation" in a broad sense, namely as a process of reaching consensus. The process of reaching a consensus is present in mediation, conciliation, and other types of alternative dispute resolution.

It can be concluded that the term "negotiation" is used in several ways: as a stage of court proceedings; as part of another alternative dispute resolution method (mediation, conciliation, arbitration); as a separate method of alternative dispute resolution. Y.P. Liubchenko (2018) provides the following definitions of the term "negotiation": 1) a process or procedure of dialogue (polity), the purpose of which is to listen to the claims, needs, or interests of the parties to the negotiations to resolve them or settle a dispute in the presence of a conflict between the parties; 2) a way (method) of resolving a conflict that allows the voluntary and equal participation of participants to eliminate confrontation with the best possible satisfaction of the interests of the parties, to reach a mutually beneficial solution (Liubchenko, 2018). The researcher considers the term "negotiation" in a broad sense in several aspects: as a process and as a result of reaching consensus. On the contrary, M.V. Vainagii (2021) distinguishes between the terms "negotiations" and "negotiation process" and calls negotiations only a method of alternative dispute resolution.

N.L. Bondarenko-Zelinska (2016), Y.P. Liubchenko (2018), and O. Karmaza (2020) highlight a significant feature of the negotiation process – conflict resolution without the participation of any third parties. Y.P. Liubchenko (2018) defines negotiation as an alternative dispute resolution: a process of interaction between the parties to a dispute aimed at reaching certain forms of agreements based on a common interest to resolve a legal dispute. If one considers the negotiation process in a narrow sense (as a separate type of alternative dispute resolution), then one should highlight the absence of any intermediaries. D. Pruitt (1981) describes negotiation as a specific form of social interaction and decision-making that involves two or more parties with conflicting interests and goals. This definition focuses on the number of parties and the nature of their interests.

All the above definitions are valid. Notably, negotiation is a broad term that can be used in several ways: a process of reaching a consensus between the parties; a method of alternative dispute resolution; a part of a court process or other alternative dispute resolution methods. In this study, the term "negotiation" is used mainly in the sense of "a separate method of alternative dispute resolution or a part of a court proceeding or other alternative dispute resolution (mediation, conciliation, etc.)".

Negotiations perform the following functions: joint search for a solution to a problem; informational (conveying the essence of one's interests and needs to the other party); communicative (serving to maintain relations between the parties); regulatory (establishing

[1] Civil Procedural Code of the Ukrainian SSR. (1963, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1501-06#Text.
[2] Law of Ukraine. No. 2705-IV "On Amendments to Certain Legislative Acts of Ukraine Concerning Pre-Trial Settlement of Disputes". (2005, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2705-15#Text.
[3] The Law of Ukraine No. 2937-IX "On Collective Bargaining Agreements and Contracts". (2023, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2937-20#Text.
[4] Law of Ukraine No. 1875-IX "On Mediation". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1875-IX#Text.
[5] Regulation (EU) 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 (Regulation on consumer ODR)". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0524.

certain rules of conduct for participants); propaganda (influencing the opinion of other participants) (Verba-Sydor, 2021). Negotiations can save the parties' time that would otherwise be spent in court, as well as money on court fees and legal aid. In addition, they contribute to the sustainable development of communities (Zhomartkyzy, 2023), confidentiality (Vasiliev & Vasilieva, 2016), and are a way to maintain conflict-free relations between the parties. However, as M. Deineha (2022) notes, although Ukraine has already developed a national legal framework for mediation, the public relations sector still requires further improvement of the legal mechanism and institutional framework for the effective application of this practice.

Examples of the use of negotiations in the history of Ukraine. In the history of Ukrainian law, the term "negotiation" has been used as a separate method of dispute resolution, as part of other alternative dispute resolution methods, and as a stage of court proceedings. The legal acts of various states that included Ukrainian lands contain provisions on the use of the institution of negotiation. A.V. Prylutska (2023b) notes that alternative dispute resolution methods emerged almost simultaneously with the emergence of legal norms and legal relations. The researcher has developed the following classification of the stages of development of alternative dispute resolution:

- by the periods of Ukraine's statehood: Ukraine's independence – the period when alternative dispute resolution emerged and existed on the territory of independent Ukraine (during the primitive system and the end of the 20th century) and the period when alternative dispute resolution existed on the occupied territory of Ukraine (during the Middle Ages and from the 17th century to the end of the 20th century);
- by the nature of the disputes – primitive times and the Middle Ages – alternative dispute resolution was mainly applied to civil disputes, from the mid-17th century – to commercial and financial disputes, and from the mid-20th century – to almost all categories of disputes;
- by form – in the primitive system and the Middle Ages, the oral form (customary law) prevailed, and since the mid-17th century, a written form has emerged and been improved – a normative form for certain types of alternative dispute resolution procedures, including those for commercial disputes.

This classification characterises the evolution of negotiations. According to A.V. Prylutska (2023b), the development of the institution of negotiation in modern Ukraine was influenced by periods of statelessness and the practice of applying negotiation to various types of disputes. Since this was the way private law disputes were resolved in primitive and medieval times, negotiations are still used today mainly in private law relations.

O.V. Verba-Sydor (2021) notes the following specific features of the development of the legal system of Ukraine: it was formed under the influence of the Romano-Germanic legal tradition. The researcher says that the Ukrainian people often perceive the dispute resolution process as having two only options: either win or lose, and no other way. O.V. Verba-Sydor (2021) notes that in the United States, this approach is called a "win-lose strategy". Notably, the perception of the dispute resolution process as a struggle or rivalry is too narrow, as negotiations allow for a compromise for both parties. There are situations where it is difficult to identify winners and losers. For instance, if both parents cannot reach a consensus on the child's place of residence, a compromise option would be to determine the procedure for one parent's visits with the child and any forms of participation in the upbringing.

Ruska Pravda also noted the possibility of replacing blood revenge with a monetary ransom for an insult (Yushkov, 1935). A.M. Yashchenko (2006) suggests that an example of the emergence of a conciliation procedure and reaching a compromise may be the establishment of compensation for the offended and an agreement between the offended and the offender to replace corporal punishment with a certain payment. One can agree with this opinion because even in the times of Kyivan Rus, participants entered into a dialogue to commute punishment and tried to reach a consensus. This is the so-called prototype of the modern institution of negotiations. Such a solution is beneficial for both parties, as the offender avoids corporal punishment and maintains good health, and the offended party also receives money.

The Lithuanian statutes (Kivalov *et al*., 2002; 2003; 2004) also prescribed a procedure comparable to the modern negotiation process called "unity". Property, land, criminal, and other cases could be resolved using the "unity" procedure. Article 12, Section IX prescribed the option of exempting a rapist from death as a punishment as a result of reconciliation if the woman he raped was willing to marry him. The "unity" had to be concluded in writing, signed, and sealed by eyewitnesses (outsiders) (Krasilovska, 2015). "Unity" can also be considered one of the prototypes of the negotiation process.

In the 18th century, the "Rights by which the Little Russian people are judged" defined two variants of the legal procedure of reconciliation: with the involvement of mediators-conciliators chosen by the parties (amicable court), and without mediators (Prushchak, 2019). A conciliation agreement (a document concluded without intermediaries) and a conciliation judgement (drafted with the help of an intermediary) were the legal facts that ended the dispute. An appeal against the decision of the "amicable court" could not be filed (Item 11, Article 25, Chapter VII) (Vyslobokov & Shemshuchenko, 1997). A conciliation agreement without mediation is a prototype of the modern institution of negotiation as a separate method of alternative dispute resolution.

It was only in the second half of the 20th century that negotiations became an object of extensive scientific analysis (Bondar, 2016). The legislation of the USSR contained many provisions according to which the pre-trial dispute resolution procedure was mandatory. For instance, under Article 136 of the Civil Procedural Code of the Ukrainian Soviet Socialist Republic of 1963[1], a judge shall dismiss a statement of claim if the plaintiff has not complied with the mandatory procedure for preliminary out-of-court settlement of a dispute established by law for this category of cases, including claims arising under contracts of carriage. In this type of case, a preliminary out-of-court procedure for resolving conflicts is an objective prerequisite for the right to bring a claim in court (Golubeva, 2021). Negotiations can be either a prerequisite for litigation or a part of it. In this case, negotiations are both a separate stage of the judicial process, as they are factually the basis for going to court, and a separate method of dispute resolution. If the parties reach a compromise, the need to go to court disappears.

The development of the institution of negotiation in the 21st century. The effectiveness of mediation is conditioned by the fact that it has been developed over a long time and has incorporated a considerable number of international practices (Horislavska, 2023). According to A.V. Prylutska (2023b), for the first time, the use of alternative dispute resolution for civil and commercial disputes was regulated in the European Union at the level of soft law: in green books and many recommendations of the European Commission. Between 1998 and 2013, a series of directives were adopted at the EU level on the use of negotiation in various areas (consumer protection, other civil, and commercial matters). The EU legal framework serves as a benchmark for Ukraine, as the country is a candidate for EU membership and is pursuing its European integration.

The practice of denial of justice due to non-application of alternative dispute resolution existed long after Ukraine's independence. However, in its decision dated 9 July 2002 No. 15-рп/2002[2] the Constitutional Court of Ukraine (CCU) clarified the content of Article 124 of the Constitution of Ukraine[3]. This decision speaks to the free choice of ways to protect one's rights. The possibility of seeking judicial protection by law or regulation should not be made contingent on whether a particular pre-trial dispute resolution procedure has been used. The obligation to use a certain method of protecting one's rights is a violation of a person's procedural rights. It can be noted that the concept of free choice of ways to protect one's rights is an embodiment of the principle of respect for human rights and freedoms in a modern state governed by the rule of law.

Until 2002, pre-trial settlement of commercial disputes was mandatory. Later, based on the CCU Decision dated 9 July 2002[4] (case on pre-trial settlement of disputes), the Law of Ukraine No. 2705-IV[5] was adopted, according to which the parties use pre-trial settlement measures of their choice (Spasibo-Fateeva, 2020). This approach allows the parties to the dispute to be free to protect their rights and interests.

As of 2024, one can discuss negotiations as a separate method of dispute resolution in private law relations and not only as part of litigation. O.V. Verba-Sydor notes that the negotiations are being held at the initiative of the parties to the dispute. And that they can be conducted at any stage of dispute resolution: both at the stage of pre-trial settlement of a dispute without filing an application with the court, and at the stage of trial, as well as at the stage of execution of a court decision (Verba-Sydor, 2021). Thus, the Civil Procedural Code of Ukraine contains provisions on the recognition of a claim (Article 206) and a settlement agreement between the parties (Article 207)[6]. Analogous provisions are also found in the Code of Commercial Procedure of Ukraine (Articles 191 and 192)[7]. In terms of content, it is also a negotiation process, as a result of which the parties reach a compromise.

Previously, negotiations in Ukraine were supposed to be conducted only in person, i.e., with a mandatory meeting of the parties. Due to the martial law and the complication of citizens' access to justice, the development of online platforms for organising the negotiation process between the parties and any other opportunities for remote dispute resolution will be relevant. The COVID-19 pandemic has given rise to the development of online negotiations and online platforms for them. During the first peak of the pandemic, only 10% of meetings between EU officials took place in the conventional face-to-face format (Lavadoux *et al*., 2021).

[1] Civil Procedural Code of the Ukrainian SSR. (1963, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1501-06#Text.
[2] Decision of the Constitutional Court of Ukraine in Case No. 15-рп/2002 "On the Constitutional Appeal of the Limited Liability Company "Trading House "Campus Cotton Club" Regarding the Official Interpretation of the Provisions of Part Two of Article 124 of the Constitution of Ukraine (Case on Pre-trial Settlement of Disputes)". (2002, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v015p710-02#Text.
[3] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[4] Decision of the Constitutional Court of Ukraine in Case No. 15-рп/2002 "On the Constitutional appeal of the Limited Liability Company "Trading House "Campus Cotton Club" Regarding the Official Interpretation of the Provisions of Part Two of Article 124 of the Constitution of Ukraine (Case on Pre-trial Settlement of Disputes)". (2002, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v015p710-02#Text.
[5] Law of Ukraine. No. 2705-IV "On Amendments to Certain Legislative Acts of Ukraine Concerning Pre-Trial Settlement of Disputes". (2005, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2705-15#Text.
[6] Civil Procedural Code of Ukraine. (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15#Text.
[7] Commercial Procedural Code of Ukraine. (1991, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-12#Text.

At the EU level, EU Regulation No. 524/2013 on the Online Dispute Resolution for Consumers (The ODR Regulation)[1] was adopted, which is dedicated to creating an effective system for resolving disputes in the field of consumer protection remotely. Consumers can file a complaint online and follow the proceedings.

An example of an online platform for negotiation is "consumidor.gov" (n.d.) in Brazil, which is controlled by the National Secretariat of Consumers under the Ministry of Justice and Public Security. The platform specialises in resolving disputes in the field of consumer protection. 80% of the complaints registered on the platform are resolved without the need for further legal action (Sansone & Rudzit, 2024). A comparable platform was created in Slovakia in 2014. It is a justice application designed to handle consumer complaints about the quality of low-value goods (Prylutska, 2023a).

Ukraine has already had experience of using electronic means of communication in negotiations. An example is the Order of the Ministry of Defence of Ukraine dated 12 June 2015 No. 257 "On Approval of the Procedure for Conducting an Experiment on the Use of Electronic Means in the Course of Negotiated Procurement Procedure"[2]. The Order sets out the rules for using electronic platforms in the procurement process. The advantages of such electronic platforms are the ability to take part in negotiations remotely and to record the results of negotiations. However, cybersecurity is still a problematic issue, namely, how to prevent information leakage and maintain the confidentiality of participant information. Due to these factors, the level of trust in online negotiation platforms can be considerably lower. The use of such platforms would also be useful in the area of family disputes and disputes over contractual obligations (both civil and commercial), as the number of Ukrainian citizens living abroad due to the war is growing (Krizhniy, 2024). Online could be used to resolve such issues as divorce, determining the child's place of residence, concluding agreements on the division of property, replacing contractual obligations, determining the procedure for debt repayment, consumer protection, and many others.

Notably, the issue of negotiation as a separate method of alternative dispute resolution in Ukraine is still insufficiently regulated. There is no separate legal act that would establish a negotiation procedure. In addition, it would be worthwhile to conduct legal education work with citizens and familiarise them with the possibilities of the institution of negotiations. If such a legal act existed, the form of the decision reached by the parties would be clearly established. And this decision could be used as evidence in case of future disputes between the parties.

There are references to the negotiation procedure in some Ukrainian regulations, e.g., in the Law of Ukraine "On Collective Bargaining Agreements and Contracts"[3], which has not yet entered into force. It defines a clear procedure for negotiations, its stages, the composition of participants, the purpose of negotiations (conclusion of a collective agreement), as well as guarantees and compensation for participants in collective bargaining (Articles 9-12). It would be appropriate to create a separate regulation on the negotiation procedure (both offline and online), such as the Law of Ukraine "On Mediation"[4], or to supplement existing legal acts in various areas (civil, family, labour, commercial disputes, etc.) with provisions on the negotiation procedure. There were many prototypes of the institution of negotiation in the history of Ukraine in previous eras, but the current conditions create a need to develop the legal framework in terms of formal certainty of the procedure, defining a clear form for the decision reached by the parties, and ways to conduct negotiations online.

The future of the institution of negotiation and ways to improve it are often the subject of scientific discussions between legal scholars, which require separate consideration. L.V. Logush (2021) argues that the negotiation procedure is regulated not by legal acts, but by the rules of business ethics, and the effectiveness of the negotiation process depends on the psychological skills and communication of the parties. In practice, however, there is an objective need to formalise the rules of negotiation and define specific legal procedures in legislation. Negotiations as a separate type of alternative dispute resolution do not involve any other parties, and therefore there is a risk that the negotiation process may turn into chaos. And with concrete rules in place, this risk is minimised.

In his thesis, M.V. Vainagii (2021) proposes to introduce the Rules of Negotiation and use the Negotiation Form and has developed his Methodological Recommendations on desirable and undesirable tactics during negotiations. Such ideas are reasonable considering that the parties to the negotiation process will be properly familiarised with the rules, and the Negotiation Form can be used later, for instance, as evidence for the court if the parties fail to reach a consensus in the

[1] Regulation (EU) 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 (Regulation on consumer ODR)". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0524.

[2] Order of the Ministry of Defence of Ukraine No. 257 "On Approval of the Procedure for Conducting an Experiment on the Use of Electronic Means in the Course of Negotiated Procurement Procedure". (2015, June). Retrieved from https://zakon.rada.gov.ua/laws/show/z0722-15#Text.

[3] The Law of Ukraine No. 2937-IX "On Collective Bargaining Agreements and Contracts". (2023, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2937-20#Text.

[4] Law of Ukraine No. 1875-IX "On Mediation". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1875-IX#Text.

future. And it will record the results of the negotiations and factually act as a source of law.

There is a need to either regulate the negotiation procedure and specify in the procedural law what exactly is considered evidence of negotiations and how they should be expressed (paper or electronic form). It is also worth addressing the specifics of certain areas of disputes that are resolved through the negotiation process. R. Preston (2023) argues that negotiations are effective when there is strict adherence to the 6 stages:

1. Preparation. This includes the need to learn as much as possible about the other party and its interests, as well as thinking about what options could be a compromise for both sides.

2. Open discussion. Where each party can express its position. But it must express its position with respect for the other side.

3. Setting goals. Participants clearly identify their interests and express their wishes to the other party.

4. Negotiations. This is done in several stages of discussions, proposals, and counter-proposals. Participants find out what options are acceptable to everyone.

5. Reaching an agreement. At this stage, participants come to a concrete decision.

6. Develop an implementation plan. Concrete steps to be taken by the participants in the future are identified. And this step plays a key role in the implementation of the decision in practice and determines whether the negotiations have led to a positive result.

The above steps should form the basis of the regulations on the negotiation procedure. And planning each step will help to structure the negotiations and achieve the goals of each participant. Therefore, these stages should be taken as a basis for drafting the text of rules on the negotiation procedure both in general and in a particular area of law (labour, family, land, consumer protection, public procurement, administrative disputes where one of the parties is a public authority, etc.) The suggestion of R. Preston (2023) on step 6 – development of an implementation plan. Therefore, the form of the decision must necessarily make provision for a concrete step-by-step plan for its implementation with a timeframe and detailed actions of each party in the future.

When developing the legal framework for the negotiation process, it is also worth specifying how the parties will sign decisions online and offline (with a regular signature, electronic digital signature, etc.). Negotiations are effective when the parties clearly follow the stages and take each step in sequence. That is why it is necessary to educate citizens and familiarise them with the negotiation procedure in general. Otherwise, negotiations without rules will be chaotic and will not yield any results for the parties, and the problem of court overload will not be resolved. And if at this stage the negotiation process is not sufficiently regulated at the legislative level, the participants should agree in advance on the rules that they will follow in the process. A clear agreement on who can behave in the negotiation process and how will have a positive result for the resolution of the dispute as a whole. The parties will respect each other, not get personal, speak to the point, and not waste time.

Conclusions

Negotiation is a universally used term that can refer to the process of reaching an agreement between the parties, a part of a court proceeding, a separate type of alternative dispute resolution, a stage of other types of alternative dispute resolution (mediation, conciliation, etc.). There are many examples of procedures similar to the negotiation process in the history of Ukraine: the possibility of ransom instead of blood revenge in Ruska Pravda, "unity" in the Lithuanian Statutes, reconciliation in the "Rights of the Little Russian People", and negotiations in the Civil Procedural Code of the Ukrainian SSR. Initially, the results of negotiations were recorded orally, and then (since the mid-17th century) in writing. Since the beginning of Ukraine's independence, there has been a trend in the development of the regulatory framework towards protecting the right to free choice of dispute resolution. Further vectors for the development of the negotiation institute are the creation of online platforms for negotiations between the parties and the creation of any opportunities for resolving disputes remotely, as well as the improvement of the existing legal framework of Ukraine by prescribing a detailed negotiation procedure, defining the form of the decision reached by the parties and the conditions under which such a decision will be legally binding.

A separate regulation should be created to prescribe the procedure for negotiations in stages, the rules of conduct for the participants, and to consolidate legislatively the form of the decision reached by the participants as a result of the negotiations. This is important, because once a unified form of decision is created, the parties can use it as evidence if disputes arise between them in the future. It is also necessary to specify the details of negotiation procedures in different areas of law and to amend a series of Ukrainian regulations. It would be advisable to create separate online platforms in Ukraine that specialise in organising negotiations in the field of labour law, consumer protection, etc., analogous to those in Brazil and Slovakia.

The key areas for further research include a comparative analysis of the legal frameworks of Ukraine and other countries on negotiation procedures, as well as the development of proposals for amendments to Ukrainian legislation on negotiation procedures and a comparison of various methods of alternative dispute resolution.

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Conflict of Interest

None.

References

[1] Bondar, H.L. (2016). Negotiation process in public administration. *Scientific Works of the Petro Mohyla Black Sea State University of the Kyiv-Mohyla Academy. Series: Political Science,* 273(261), 79-83.

[2] Bondarenko, V. (2019). Essence and types of forms of out-of-court settlement of administrative disputes. *Social and Legal Studios*, 2(3), 104-109. doi: 10.32518/2617-4162-2019-3-104-109.

[3] Bondarenko-Zelinska, N.L. (2016). Implementation of alternative dispute resolution methods. *Private International Law: Development and Harmonization*, 15, 158-162.

[4] consumidor.gov. (n.d.). Retrieved from https://consumidor.gov/.

[5] Deineha, M. (2022). Mediation as an alternative method of dispute resolution: International and national practices in legal regulation. *Law. Human. Environment*, 13(4), 16-25. doi: 10.31548/law2022.04.002.

[6] Golubeva, N. (Ed.). (2021). *Alternative resolution of civil law disputes*. Odesa: Phoenix.

[7] Horislavska, I. (2023). Correlation of mediation as an alternative way to protect civil rights and interests and tort liability. *Law. Human. Environment*, 14(1), 23-36. doi: 10.31548/law/1.2023.23.

[8] Karmaza, O. (2020). Mediation and negotiation as alternative dispute resolution methods. *Civil Law and Procedure*, 5, 13-18. doi: 10.32849/2663-5313/2020.5.02.

[9] Kivalov, S., Muzychenko, A., & Pankov, A. (Eds.). (2002). *Statutes of the Grand Duchy of Lithuania: In 3 volumes. Volume I. Statute of the Grand Duchy of Lithuania of 1529*. Odesa: Yurydychna Literatura.

[10] Kivalov, S., Muzychenko, A., & Pankov, A. (Eds.). (2003). *Statutes of the Grand Duchy of Lithuania: In 3 volumes. Volume II. Statute of the Grand Duchy of Lithuania of 1566*. Odesa: Yurydychna Literatura.

[11] Kivalov, S., Muzychenko, A., & Pankov, A. (Eds.). (2004). *Statutes of the Grand Duchy of Lithuania: In 3 vols. Statute of the Grand Duchy of Lithuania of 1588: In 2 volumes – Volume 2*. Odesa: Legal Literature.

[12] Krasilovska, Z.V. (2015). Historical prerequisites for the emergence and development of the mediation institute. *Young Scientist*, 6(21), 114-118.

[13] Krizhniy, A. (2024). *Almost 5 million Ukrainians are abroad because of the war: A significant part may not return*. Retrieved from https://www.epravda.com.ua/news/2024/03/12/711073/.

[14] Lavadoux, F., Brown, O., & Delmeire, M. (2021). *F2F vs online negotiations: Different venues, same principles*. Retrieved from https://www.eipa.eu/blog/f2f-vs-online-negotiations-different-venues-same-principles-negotiating-online/.

[15] Liubchenko, Y.P. (2018). *Alternative ways of resolving legal disputes: Theoretical and legal aspect*. (Doctoral thesis, National Law University of Ukraine Yaroslav the Wise National Law University, Kharkiv, Ukraine).

[16] Logush, L.V. (2021). The international practice of mediation application in the activity of legal clinics in Ukraine. *Entrepreneurship, Economy, and Law*, 6, 221-227. doi: 10.32849/2663-5313/2021.6.36.

[17] Preston R. (2023). *The 6 stages of the process of negotiation (with tips)*. Retrieved from https://www.indeed.com/career-advice/career-development/process-of-negotiation.

[18] Pruitt, D.G. (1981). *Negotiation behavior*. New York: Academic Press.

[19] Prushchak, V.E. (2019). Historical aspects of the development of alternative dispute resolution methods. *Journal of Civilistics*, 34, 90-95.

[20] Prylutska, A.V. (2023a). *System of alternative ways of resolving commercial disputes*. (Doctoral thesis, National University "Odesa Law Academy", Odesa, Ukraine).

[21] Prylutska, A.V. (2023b). On the genesis and development of alternative dispute resolution in Ukraine. In *Modern problems of science, education, and society: The 2nd International scientific and practical conference* (pp. 1308-1313). Kyiv: SPC "Sci-conf.com.ua".

[22] Sansone, P., & Rudzit, A. (2024). *Online dispute resolution and means of negotiation. Priscila Sansone, Amanda Rudzit. International Bar Association*. Retrieved from https://www.ibanet.org/article/EAD2D0C8-8577-4497-8567-940D31E194C8.

[23] Spasibo-Fateeva, I.V. (2020). *Civil Code of Ukraine: Scientific and practical commentary. Vol. 1: General provisions*. Kyiv: ECUS.

[24] Vainagii, M.V. (2021). *Theoretical and legal problems of the negotiation process*. (Doctoral thesis, University of Economics and Law "Krok", Kyiv, Ukraine).

[25] Vasiliev, S.V., & Vasilieva, I.G. (2016). Negotiations as an alternative way of resolving civil disputes: Issues of theory. *Civil Procedural Thought*, 2, 26-30.

[26] Verba-Sydor, O.B. (Ed.). (2021). *Alternative ways of resolving civil disputes under the legislation of Ukraine*. Lviv: Lviv State University of Internal Affairs.

[27] Vyslobokov, K.A., & Shemshuchenko, Y.S. (Eds.). (1997). *The rights by which the Malorosian people 1743*. Kyiv: AT "Knyga".

[28] Yashchenko, A.M. (2006). *Reconciliation with the victim in the mechanism of criminal law regulation*. (Doctoral thesis, H.S. Skovoroda Kharkiv National Pedagogical University, Kyiv, Ukraine).

[29] Yushkov, S. (Ed.). (1935). *Pravda Ruska. Texts based on 7 lists and 5 editions*. Kyiv: Publishing House of the Ukrainian Academy of Sciences.
[30] Zhomartkyzy, M. (2023). Mediation and indigenous conflict resolution practices: Lessons from global indigenous communities. *Social and Legal Studios*, 6(3), 222-231. doi: 10.32518/sals3.2023.222.

Генеза, сучасний стан і перспективи розвитку інституту переговорів в Україні

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Анотація
Використання альтернативного вирішення спорів станом на 2024 рік набуває дедалі більшої актуальності через ускладнення доступу до правосуддя у зв'язку з воєнним станом. Метою статті був аналіз історичного досвіду використання переговорів в Україні від епохи Середньовіччя до сучасності та визначення векторів подальшого розвитку цього інституту. Було використано як загальнонаукові, так і спеціально-наукові методи: формально-юридичний, порівняльно-правовий. З'ясовано, що поняття «переговори» може бути використано в кількох значеннях: 1) процес досягнення домовленості; 2) етап судового розгляду справи; 3) етап медіації, консиліації чи інших методів альтернативного вирішення спорів; 4) окремий спосіб альтернативного вирішення спорів. За часів Київської Русі в «Руській правді» було передбачено аналог переговорів – заміну кровної помсти на відкуп; у Литовських статутах XVI ст. процес переговорів мав назву «єднання». У «Правах, за якими судиться малоросійський народ» середини XVIII ст. було визначено дві форми документів, складених за результатами переговорів: примирна угода (без участі посередників) і приговор мирительський (за участю посередників). За радянських часів у законодавстві сформувалася тенденція встановлювати право на судовий захист залежно від попереднього використання альтернативного вирішення спорів. Однак за часів незалежності України ця тенденція змінилася, і нині законодавство закріплює право кожного на вибір способу захисту своїх прав. Подальшими векторами розвитку інституту переговорів в Україні можуть бути запровадження різних видів платформ для участі в переговорному процесі дистанційно, а також розвиток нормативно-правової бази в напрямі деталізації переговорних процедур. Результати дослідження може бути використано під час викладання дисциплін історико-правового циклу в закладах вищої освіти України, а також для подальшого прогнозування розвитку цього інституту та його вдосконалення

Ключові слова:
альтернативне вирішення спорів; примирення; судовий процес; приватноправові відносини; державотворення