ALTERNATIVE SOLUTIONS TO LABOR DISPUTES IN PUBLIC ADMINISTRATION: MEDIATION IN THE PRACTICE OF SLOVAKIA AND THE CZECH REPUBLIC[1]

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***Abstract**: The article examines the complexity of labor disputes within the public administration in Slovakia and the Czech Republic, emphasizing the importance of alternative dispute resolution (ADR) methods, especially mediation. In the article, the authors reflect on the current state of use of individual labor disputes and collective labor disputes, especially with the use of mediation. By analyzing the resolution of labor disputes in court, as well as out-of-court, the study underlines the importance of mediation as a consensual and effective approach to resolving conflicts in the workplace, supporting the restoration of professional relationships and reducing the number of lawsuits. The authors also provide comparative insights, including best practices from other European Union countries, with the aim of promoting a wider adoption of mediation in labor disputes in public administration.*

***Keyword** : the mediation; the dispute; Alternative Dispute Resolution; labor law; employment relations*

INTRODUCTION

Labour relations have never been, and never will be, simple. From a psychological, economic, political or legal point of view. Their complexity from a legal and dogmatic point of view can be perceived throughout the history of labor law. In their course, theory and practice have solved various application problems associated with their practical implementation, the optimal arrangement of relations between employer and employee, the boundaries of subordination, the essential features of dependent work in the current form of the labor market, as well as the choice of the method of resolving disputes in labor relations.

We are witnessing a time when the field of labor relations is undergoing significant dynamics associated with new ways of employment, the perspective on working time, teleworking, information and communication technologies, cyberspace, remuneration, obstacles at work, the right to disconnection is changing, and biometrics also plays a significant role. The expansion of the performance of dependent work in new forms through information and digital technologies is evident, which requires a change in approaches in the field of labor law. In the coming decades, in some member states of the European Union, for example in Romania, but also in Slovakia, it is expected that up to 60% of the workforce will lose their jobs due to the introduction of information

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and communication technologies.[2] Already today, we see how the workforce is disappearing from supermarkets and being replaced by self-service checkouts.

These changes in the labor law area are a preview of the problems that the legislator will have to deal with, because conflicts and disputes that arise between employees and employers and we assume that they will arise in the new era. We pay our attention from the point of view of scientific profiling to employers in the public segment.

The resolution of disputes that arise in the field of labor relations does not concern exclusively the working environment of employers in the private sphere, but also labor relations in the public sphere. This is a democratic basis for the organization and management of public affairs in the conditions of modern democracies based on the principles of decentralization and subsidiarity. Territorial self-government is special precisely in that it is a manifestation of the community's interest in self-government, self-regulation, or. interest in self-determination. This is a type of administration where one subject – the inhabitants of a territorial self-government unit – are simultaneously in a dual position. On the one hand, they are the object towards which the administration is directed, and on the other hand, they are in the position of the subject of this administration, they have the opportunity to participate in its performance.[3] One of the powers of municipalities, towns and higher territorial units (for the purposes of this contribution, hereinafter referred to as the "municipality"), which they hold and fully exercise within the framework of their management and competence, is the position of the municipality as an employer.[4]

The public administration is a reflection of the maturity of the modern democratic political system and, like the employer in the private segment, it must reflect the dynamic development of companies, the labour market, the development of technology, digitalization, as well as other application legislative optics of looking at the emerging problems of application practice of employers in resolving conflicting litigation situations in the subordination relationship between the employer and the employee. The existing global trends clearly call for changes in the way the state is governed, which must reflect the need for a new quality of approaches to the resolution of emerging disputes. Not only political elites, but also top (managerial) managers as well as rank and file employees, who are "precious assets" for the exercise of executive power in the state, have a significant role and responsibility to fulfil this objective.

The implementation of subjective rights and legal obligations in employment relations is one of the most important forms of law implementation, a complex process of applying legal norms to social reality, determined by the diversity of the content and nature of social relations. These rights and obligations are of fundamental importance for the balance and stability between employer and employee. Public administration is one of the largest employers in Slovakia, therefore the issues of resolving disputes arising

[2] In: *European Parliament* [online]. [2025-07-07]. Available at: <http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614539/EPRS_STU(2018)614539_EN.pdf>.
[3] ŽOFČINOVÁ, V., ČAJKOVÁ, A., KRÁL, R. Local Leader and the Labour Law Position in the Context of the Smart City Concept through the Optics of the EU. *TalTech Journal of European Studies*. 2022, Vol. 12, No. 1, p. 35.
[4] ŽOFČINOVÁ, V. *Labor relations in public administration (delegated and subsidiary powers of the Labor Code*). Prague: Leges, 2021, p. 142.

in employment relations have a resonant form and are still relevant. Thus, the issue of resolving disputes is also a question of implementing law within the framework of protection, including in the form of an alternative solution. We addressed this topic with Doc. Molitoris, we consider it relevant and desirable to return to the given topic[5].

The resolution of disputes that arise in the field of labor relations does not concern exclusively the working environment of employers in the private sphere, but also labor relations in the public sphere. This is the democratic basis of the organization and management of public affairs in the conditions of modern democracies based on the principles of decentralization and subsidiarity. Territorial self-government is special precisely in that it is a manifestation of the community's interest in self-government, self-regulation, or. interest in self-determination. This is a type of administration where one subject - the inhabitants of a territorial self-government unit - are simultaneously in a dual position. On the one hand, they are the object towards which the administration is directed, and on the other hand, they are in the position of the subject of this administration, they have the opportunity to participate in its performance. One of the powers of municipalities, towns and higher territorial units (for the purposes of this contribution, hereinafter referred to as the "municipality"), which they hold inwardly, within the framework of their management and competence, and fully exercise, is the position of the municipality as an employer.[6]

In labor law regulation, according to Section 7 of Act No. 311/2001 Coll. of the Labor Code, as amended (hereinafter referred to as the "Labor Code"), an employer may be *"a legal entity or a natural person who employs at least one natural person in an employment relationship*, and if so provided for by a special regulation, also in similar employment relationships".In labour law regulation, according to § 7 of Act No. 311/2001 Coll. Labour Code as amended (hereinafter referred to as the "Labour Code"), an employer may be "a *legal entity or a natural person who employs at least one natural person in an employment relationship* and, if provided for by a special regulation, also in similar employment relationships". Act No 40/1964 Coll., the Civil Code, as amended, defines who has the status of a legal person and includes local government units among them. This position is irreplaceable in the sense that human capital constitutes a key resource for the vast majority of activities carried out by municipalities.[7] Given the above-mentioned subsidiary scope of the Labor Code, the key law regulating the status and competences of municipalities in the area of personnel security is Act No. 369/1990 Coll. on general municipal administration as amended. The municipal office was not granted legal personality, therefore only the municipality as a legal entity has the right to act as an employer. Based on Section 9 of the Labor Code, legal acts of an employer who is a legal entity are

[5] ŽOFČINOVÁ, V., MOLITORIS, P. Extrajudicial resolution of disputes arising from labor relations in local self-government - a challenge for the legal order of the Slovak Republic for the next decade of its development. In Publicy 2023. Three decades of statehood in the European space. Trnava, 2024, p. 154. In: *Fakulta sociálnych vied UCM v Trnave* [online]. [2025-07-07]. Available at: <https://fsvucm.sk/wp-content/uploads/2024/06/zbornik_2023_2>.

[6] ŽOFČINOVÁ, V. *Labor relations in public administration (delegated and subsidiary powers of the Labor Code).* p. 142.

[7] ŽOFČINOVÁ, V., KRÁL, R. Municipality in the position of employer in the legislation of the Slovak Republic. *Grant Journal.* 2014, Vol. 3, No. 2, pp. 42–47.

performed by a statutory body or a member of a statutory body. In connection with Section 9 of the Labor Code as well as the Act on General Municipal Administration, Section 13, paragraph 5, it follows that *"the statutory body is the mayor of the municipality"*. The mayor of the municipality, as the statutory body of the municipality, has the status of an employer in labor relations and, in the context of this topic, is also a party to the dispute in the event that a dispute in the labor law area occurs. His duty is to represent the municipality in the resolution of such disputes, either through direct legal proceedings or through alternative methods of dispute resolution, such as mediation. In addition, the mayor of the municipality is responsible for complying with labor regulations and ensuring the protection of employee rights, which includes the obligation to resolve conflicts internally before legal proceedings are initiated.

In this article, we pay attention to the issue of resolving disputes in labour relations not only through judicial protection, but also through the possibility of using alternative dispute resolution (ADR) in public administration, especially mediation, and our aim is to highlight its importance.

I. METHODS

In terms of the use of methods of scientific investigation, in order to fulfill the content line of the paper, we have tried to examine the legal situation de lege lata using a systematic qualitative analysis of legal rules that examine the dynamics of a certain event in terms of its legal regulation. In the paper, general-scientific methods have been applied, generalizing abstraction has been appropriately used to draw conclusions, the method of comparison, the analytical-synthetic method, mostly in the part of penetration into legislative sources, as well as citation content analysis used in the interpretation of related documents. We also applied semantic analysis, which allows to penetrate into the terminology of the issue under study as a basic postulate necessary for interpreting the content of the legal text. In addition to logical procedures, the method of causality and deduction, generalization and the search for analogies were applied. Equally importantly, the method of systems approach was used. To fulfill the stated goal, we depict a discursive understanding of the issue, i.e., in an attempt to proceed rationally with a progressive awareness of all connections by logical-deductive inference. We have drawn on the findings of various studies of scholarly writings across interdisciplinary disciplines drawn from both domestic and international sources.

II. RESOLVING DISPUTES ARISING FROM EMPLOYMENT RELATIONS THROUGH COURT PROCEEDINGS

Since time immemorial, society has tried to resolve conflicts, the resolution process of which has undergone a long-term development. The term dispute is identical to the term conflict, which comes from the Latin "conflictus" and means collision, to collide, denotes a contradiction between two or more subjects. Bělina claims that a dispute can be defined as a clash of opposing opinions of at least two subjects. Not all conflict situations constitute a legal dispute. In this context, it is reasonable to state the features that are typical for legal disputes, or rather for the area of labor relations. He considers a dispute in

the legal sense to be a clash of opinions of holders of rights and obligations from specific legal relations, when at least one party acts in the legal interest of protecting its subjective right. *"A labor dispute then represents a contradiction of opinions of persons who are holders of subjective labor rights and obligations towards each other, regarding the content of their labor relationship or relationship."*[8]

Some authors (Burton, 1990, Dukes, 2004) distinguish between conflict and dispute. They perceive a dispute in the area of property relations and property damage, which can be settled not only through ADR, but also through legal proceedings.[9] Conflicts concern basic human needs and must be resolved with an emphasis on human values and needs. In application practice, the term "dispute" is used synthetically and not "judicial conflict" and therefore in the following text we will use the technical term "dispute". Act No. 160/2015 Coll. Civil Dispute Procedure (hereinafter referred to as "CSP") is based on the concept of "civil process" and the adoption of this law significantly influenced the procedural protection provided to employment relationships. The concept of civil process comes from the Latin word processus (lat.procedere) with the original meaning of procedure, i.e. to proceed in advance.

According to Števček,[10] the basic characteristics of civil proceedings as a social phenomenon under investigation in the context of defining its concepts are the degree of interference of the parties to the proceedings and the court in substantiating the factual basis of the dispute, in the area of procedural evidence, and in the speed and efficiency of the proceedings, while simultaneously respecting, or, conversely, resigning to, the fairest possible judicial decision (in terms of the degree of "approaching" to the actual substantive legal relations of the parties to the dispute). The summary of these features (or the prevalence of their phenomenal side, i.e. the manifestations of these features in normative legal regulation) defines the concept of civil proceedings.

In the Slovak Republic, the fundamental source of law is the Constitution of the Slovak Republic, which guarantees the right to judicial and other legal protection and in Article 46 stipulates that *"everyone may seek their rights in an independent and impartial court, and in cases stipulated by law, in another body of the Slovak Republic"*. The right to judicial and other legal protection is also guaranteed in Article 36, paragraph 1 of the Charter of Fundamental Rights and Freedoms, which states that *"everyone may seek their rights in an independent and impartial court, and in certain cases, in another body"*. According to Article 48, paragraph 2 of the Constitution of the Slovak Republic, *"everyone has the right to have their case heard publicly without unnecessary delay and in their presence and to be able to express their views on all evidence presented"*. Article 48, paragraph 2 of the Constitution of the Slovak Republic ensures the fundamental procedural rights of participants in court proceedings. Its aim is to provide the parties with a fair trial that is public,

[8] BĚLINA, M., PICHRT, J. *Working right. 7th supplemented and substantially revised edition.* Prague: C. H. Beck, 2017, pp. 441.

[9] NEVICKÁ, D. *Labor disputes in the Slovak Republic and selected EU countries.* Bratislava: Wolters Kluwer SR s.r.o. 2020, pp. 104.

[10] ŠTEVČEK, M. *Concept of civil process in the Slovak Republic.* 2016. In: *EPI* [online]. 17. 5. 2016 [2025-07-07]. Available at: <https://www.epi.sk/clanok-z-titulky/koncepcia-civilneho-procesu-v-slovenskej-republike-aktualita.htm>.

efficient, takes place without unnecessary delays, and at the same time guarantees the parties the opportunity to comment on all the evidence and participate in the proceedings. This article is one of the key guarantors of the rule of law and compliance with the principle of equality of parties before the court. No less important is the provision of Art. 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which *"everyone has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal established by law"*. In the Czech Republic, the right to judicial protection is not explicitly stated directly in the text of the Constitution of the Czech Republic (Act No. 1/1993 Coll.), but is enshrined in the Charter of Fundamental Rights and Freedoms , which is an integral part of the Czech constitutional order.

In connection with the issue of resolving disputes arising from employment relations (including in local government), the CSP brought a significant change that emphasized the different nature of employment relations in comparison with other relations arising in the field of civil law, as well as the need for their protection. The provision of Art. 1 of the CSP states that "disputes arising from the threat or violation of subjective rights shall be heard and decided by an independent and impartial court, unless such jurisdiction is entrusted by law to another body". At the same time, according to Art. 3 of the CSP, *"courts shall hear and decide private law disputes and other private law matters, unless they are heard and decided by other bodies according to law"*.

It seems interesting that the CSP introduced a special category of disputes, namely disputes with the protection of the weaker party, which include consumer, anti-discrimination disputes and individual labor disputes. The provision of Section 316 of the CSP defines an individual labor dispute as a dispute between an employee and an employer arising from labor and other similar employment relationships. A dispute arising from the principle of equal treatment is also considered an individual labor dispute if it is related to an individual labor dispute. The establishment of this special legal regulation was based on several assumptions and specificities of labor relations, which we explain further in the article.

We see a parallel in the legal regulation of the Czech Republic. In the Czech Republic, a similar regulation is contained in Section 1 of Act No. 99/1963 Coll. Code of Civil Procedure: *"The Code of Civil Procedure regulates the procedure of the court and the participants in civil court proceedings in such a way as to ensure fair protection of the private rights and legitimate interests of the participants, as well as education to observe contracts and laws, to honorably fulfill obligations and respect the rights of other persons."* This provision emphasizes the role of the courts in protecting the private rights and legitimate interests of the participants in the proceedings. According to § 7 of the Code of Civil Procedure, the authority of the courts is regulated as follows: *"Courts in civil proceedings hear and decide disputes and other legal matters arising from private law, if they are not heard and decided by other authorities according to the law."* This provision is similar to the Slovak § 3 of the Civil Litigation Code, as it defines the authority of courts to hear and decide private law disputes, unless they are entrusted to other authorities.

It follows from the above that the Czech legal regulation in the Civil Procedure Code contains provisions similar to the Slovak Civil Procedure Code with regard to the jurisdiction of courts to hear and decide private law disputes.

The Supreme Court of the Czech Republic, in its decision, file no. 21 Cdo 200/2011 of 9 May 2012, defined that in legal theory, an employment dispute is understood to mean a dispute arising within and on the basis of employment relations. Employment relations themselves are distinguished into individual and collective. Individual employment relations are understood to mean the relationship between an employer and an employee as individuals. Individual employment disputes are therefore disputes arising between an employee and an employer over claims arising from employment relations, namely on the basis of employment contracts, agreements on work performed outside of an employment relationship (agreements on the performance of work or agreements on work activities) or on the basis of law. On the contrary, collective labour relations are relations between bodies that represent or represent collectives of employees and employers' associations or individual employers, with their main goal being to improve the working and wage conditions of employees.[11]

In this context, we point out the basic principle of the Labor Code stated in Art. 2: *"the exercise of rights and obligations arising from employment relationships must be in accordance with good morals; no one may abuse these rights and obligations to the detriment of the other party to the employment relationship or co-employees"*. Nevertheless, in employment relationships, actions often occur in violation of this principle, and therefore also abuse of law. As an example of disputes arising from employment relationships, we cite:

- interpersonal conflicts in the workplace;
- invalid termination of employment;
- non-payment of wages;
- work accidents;
- various forms of discrimination in the workplace, violence and bullying in the workplace (mobbing, bossing, etc.).

Given that legal theory divides employment relationships into individual and collective, we also divide the disputes that arise from these relationships into individual and collective.

Labor law as a separate branch of law within the special regulation of the resolution of labor disputes is based on the application of the provisions of the CSP. The specific regulation of the methods of resolving labor disputes reflects the protective function of labor law, which is also reflected in the regulation of individual labor disputes in the CSP. The above results mainly from the fact that there is a greater abuse of rights to the detriment of the weaker participant in the labor relationship, i.e. the employee. From this point of view, labor law must provide not only methods and possibilities for resolving disputes that have already arisen, but also create an environment so that such disputes do not occur or only minimally.

The introduction of a special category of disputes with protection of the weaker party is an important step towards increasing justice in civil disputes. This step brings the Slovak legal order closer to European standards, which place emphasis on the protection of vulnerable groups of the population. Moreover, this protection contributes to reducing the imbalance between the parties to the dispute and ensures that the weaker party is not

[11] Resolution of the Supreme Court of the Czech Republic dated 05/09/2012 under No. stamp 21 Cdo 200/2011.

disadvantaged solely because of its social or legal position. In this way, the CSP ensures that in cases where one of the parties represents the weaker party, the courts will ensure that fair procedures and rights are observed, thereby strengthening the protection of the legal position of these persons.

The legal framework for resolving labor disputes is set out in Article 9 of the Basic Principles of the Labor Code, according to which "employees and employers who are harmed by a breach of obligations arising from labor relations may exercise their rights in court. Employers may not disadvantage and harm employees because employees exercise their rights arising from labor relations." From a normative point of view, the hearing of labor disputes by independent courts is regulated in Article 14 of the Labor Code. The CSP also includes anti-discrimination disputes that arise in the workplace in the regulation of individual labor disputes. This inclusion is significant, since the Labor Code also defines the principle of prohibition of discrimination in Article 6 of the Basic Principles and considers it one of the basic principles of labor law as such.

The statistics of the Ministry of Justice of the Czech Republic and the Slovak Republic are quite detailed and offer a lot of statistical data on court proceedings, whether it is their number, course or length. Specifically, we have selected data on the number of proposals-ideas of the court of first instance from the statistical sheets for the civil agenda. The statistical file itself processes data on individual labor disputes.

Table 1: Overview of the number of labor law cases in courts of first instance for 2023

	Czech Republic	**Slovakia**
2023	822	1132

Source: own processing based on court agenda statistics (civil agenda) from the Ministry of Justice of the Czech Republic and Slovakia:
https://web.ac-mssr.sk/wp-content/uploads/B.-Vybavovanie-sudnej-agendy-v-roku-2023.pdf
https://web.ac-mssr.sk/wp-content/uploads/B.-Vybavovanie-sudnej-agendy-v-roku-2023.pdf

From Table 1 we can see that the courts of the Slovak Republic at the first instance are more burdened in terms of the number of received motions in labour law disputes compared to the Czech Republic, but this difference is not dramatic.

III. LABOR DISPUTES – ALTERNATIVE METHODS OF THEIR RESOLUTION IN THE SLOVAK REPUBLIC AND THE CZECH REPUBLIC

Alternative dispute resolution (also known as "ADR") is part of several national legal systems in developed Europe. ADR is not only a subject of interest and scientific research in legal disciplines, but also of application practice. In practice, we encounter the use of the abbreviation ADR also translated as – amicable dispute resolution, which logically emphasizes the alternative to the "hostile" resolution of disputes before courts and other

bodies using the authority of public power. We[12] consider the use of ADR to be significant in achieving a faster and more efficient conclusion to the dispute compared to civil proceedings, which often have a longer-term nature of dispute resolution. The use of alternative dispute resolution methods continues to expand.[13]

An alternative dispute resolution method is a case where a certain third party acts on the disputing parties in a certain way, advises them and helps them settle the dispute, and the result of such a process is not the issuance of a binding decision, but the conclusion of a settlement or agreement on the resolution of the dispute. ADR can include in particular:

- negotiation;
- honey-arb;
- preparation of a neutral opinion;
- the institution of the Ombudsman;
- mini-tribunal;
- arb-honey;
- arbitration.

The most commonly used means of ADR include mediation, which we will discuss in more detail.

The term "alternative dispute resolution" was first used by Harvard law professor Frank Sander at a historic meeting of American representatives and representatives of the legal professions, focused on the reform of the American judiciary, held in 1976. In the introduction, we stated that ADRs have an irreplaceable place in the issue of resolving disputed situations that arise, among others, in the field of labor relations. From the perspective of dividing individual methods of alternative dispute resolution, Holá distinguishes these methods into basic and hybrid. As he states, negotiation, mediation and arbitration are considered basic. Hybrid methods are then created by combining basic methods, with one method usually smoothly transitioning into the other.[14]

The effort to find a place for the effective use of ADR also in these decision-making processes, which are often lengthy due to the controversial positions of the parties to the proceedings, is not a new trend in the environment of the Council of Europe states. The Constitution of the Slovak Republic in Art. 46, paragraph 1, as well as the Charter of Fundamental Rights and Freedoms in Art. 36, paragraph 1, allow the right to claim one's violated right also at another body, different from the court. We stated above that the diction of the CSP also allows the decision of the dispute by another body. According to Section 170, paragraph 2 of the CSP, the course of the preliminary hearing of the dispute "if possible and expedient, the court shall attempt to resolve the dispute by conciliation, or shall recommend to the parties that they attempt to resolve the dispute by mediation."

Some authors generally classify two basic methods of resolving legal disputes. The first level consists of the method in which the parties attempt to resolve the dispute inde-

[12] KUTLÍK, F. *Mediation and conflict resolution in the workplace.* Bratislava: SIMARS - Slovak Institute for Mediation and Alternative Dispute Resolution, 2020.

[13] KÁČER, M., CISKO, L. On arbitration proceedings before the court of arbitration at the chamber of commerce of the Czech Republic and the chamber of agriculture of the Czech Republic. *International Economic Relations and World Economy.* 2018, No. 22, Part 1.

[14] HOLÁ, L., HRNČIŘIKOVÁ, M. *Out-of-court dispute resolution methods: university textbook.* Prague: Leges, 2017.

pendently without the involvement of any third party. On the contrary, the second method assumes the involvement of a third party. However, it is also necessary to distinguish whether such a person helps the disputing parties to find a way to settle their dispute, or is authorized to negotiate the dispute between the parties and issue a binding and enforceable decision for the disputing parties.

In the Czech Republic, the Arbitration Court at the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic play a significant role in alternative forms of resolving labor disputes. In the Czech Republic, there are three permanent arbitration courts in accordance with the legal regulations. The general arbitration court is the Arbitration Court at the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic, based in Prague. Two are specialized. They are the Stock Exchange Arbitration Court at the Prague Stock Exchange, as and the International Arbitration Court at the Czech-Moravian Commodity Exchange.[15]

An example of dispute resolution in the field of labor law can also be seen in the case of collective disputes. Collective disputes are defined in Section 10 of Act No. 2/1991 Coll. on Collective Bargaining (hereinafter referred to as the "Collective Bargaining Act"). The Collective Bargaining Act provides for a different procedural procedure for collective disputes on the conclusion of a collective agreement and for disputes on the fulfillment of obligations under a collective agreement, which do not give rise to claims by individual employees. We distinguish two types of collective labor disputes, namely disputes on the conclusion of a collective agreement and the fulfillment of obligations under a collective agreement. Disputes on the conclusion of a collective agreement are resolved in proceedings before a mediator or in proceedings before an arbitrator, according to the Collective Bargaining Act. The first step in resolving a collective dispute is proceedings before a mediator. If a collective dispute arises between the parties that they cannot resolve between themselves, a third impartial entity enters the dispute resolution process, whose task is to present to the disputing parties a proposal, through mediation, logical arguments and with regard to their knowledge of labor regulations, on how to resolve the collective dispute. As for the outcome of the proceedings before the mediator, it is not binding on the contracting parties. If the contracting parties decide to initiate proceedings before an arbitrator, the arbitrator's decision is already binding. According to Section 13(4) of the Collective Bargaining Act, the arbitrator may not be a person who was a mediator in the same dispute. In the case of disputes over the fulfillment of obligations under a collective agreement, the obligation and interference of the state as a holder of public authority is significantly represented not only in the form of an arbitrator in the collective dispute, but also in the very reasons for which the arbitrator's decision can be reviewed. In the case of a dispute over the performance of obligations under a collective agreement, an arbitrator within the meaning of the Collective Bargaining Act also has the status of a public authority sui generis, since he authoritatively decides on the rights and obligations of entities (parties to a collective agreement) that are not in the same position as him and the content of the decision does not depend on the will of the parties. In a dispute over the performance

[15] KÁČER, M., CISKO, L. *On arbitration proceedings before the court of arbitration at the chamber of commerce of the Czech Republic and the chamber of agriculture of the Czech Republic.*

of obligations under a collective agreement, therefore, the decision-making is clearly of a public nature.[16] The difference between collective labor disputes over the performance of obligations under collective agreements and disputes over the conclusion of a collective agreement also lies in the fact that in disputes over the conclusion of a collective agreement, a strike or lockout may be used as a last resort under the conditions set out in the Collective Bargaining Act. However, the declaration of a strike must be preceded by the resolution of the dispute before a mediator. Another difference from disputes over the performance of obligations under a collective agreement is that the arbitrator's decision in a dispute over the conclusion of a collective agreement is final and cannot be appealed. The effects arising from a validly concluded collective agreement in the case of a dispute over the conclusion of a collective agreement occur on the date of delivery of the arbitrator's decision to the contracting parties. The arbitrator's decision in the case of a collective dispute over the conclusion of a collective agreement replaces the signing of the collective agreement by the contracting parties.[17]

VI. MEDIATION AS A CONSENSUAL APPROACH TO RESOLVING LABOR DISPUTES

According to Kutlík, mediation is the highest "developmental stage" of the system of alternative dispute resolution, which is the only one regulated by separate legislation in all European Union countries.[18] The legal order of the Slovak Republic does not know a separate legal regulation that would regulate mediation in individual labor disputes, even in the case of dependent work in the public sector. Disputes arising from labor relations are subject to Act No. 420/2004 Coll. on mediation and on amending certain laws. According to § 2, paragraph 1 of the law in question, *"mediation is an extrajudicial activity in which persons participating in mediation, with the help of a mediator, resolve a dispute that arose from their contractual relationship or other legal relationship."*

In the case of the Czech Republic, mediation was introduced into the legal system by Act No. 202/2012 Coll., on mediation and amending certain acts (hereinafter referred to as the "Mediation Act"), inter alia, on the basis of the obligation of the Czech Republic as a Member State of the European Union to implement Directive 2008/52/EC. The Mediation Act, in its provision of Section 2, states that *"mediation is a procedure for resolving a conflict with the participation of one or more mediators who support communication between persons involved in the conflict (hereinafter referred to as the "party to the conflict") in order to help them achieve an amicable resolution of their conflict by concluding a mediation agreement.*" These definitions do not include the typical specifics of mediation, in particular its basic conceptual features such as voluntariness, confidentiality and impartiality. We believe that it would be desirable for them to be part of the definition of mediation itself. The definition of mediation in the German Mediationsgesetz, adopted

[16] OLŠOVSKÁ, A., TOMAN, J., ŠVEC, M., SCHUSTEKOVÁ, S., BULLA, M. *Collective Labour Law*. Bratislava: Friedrich Ebert Foundation. 2014.
[17] ŠVEC, M., TOMAN, J. et al. *Labor Code. Act on Collective Bargaining. Commentary. Volume II*. Bratislava: Wolters Kluwer SR s.r.o., 2019.
[18] KUTLÍK, F. *Mediation and conflict resolution in the workplace*. p. 248.

on July 21, 2012, is inspiring. Its provision, § 1, states that mediation means *"mediation is a confidential and structured procedure in which the parties voluntarily and independently seek an amicable resolution of their conflict with the help of one or more mediators."*

"The legal framework of the Slovak Republic does not include the institution of judicial mediation as a separate institution for alternative dispute resolution in employment law. Although many EU Member States have adopted specific legislation on mediation and courts fully encourage parties to resolve their disputes out of court, mediation is still not widespread in the EU. This is mainly due to the lack of structured information about mediation and its advantages compared to litigation."[19]

An example of good practice for a functioning system of independence of the judicial mediation institute in resolving labor disputes is the legal system of Finland. Nevická[20] states that, compared to Finnish legislation, mediation proceedings in Slovakia are extrajudicial proceedings conducted by persons other than judges. This makes the alternative form of mediation proceedings appear to be unequal and logically suppresses the trust of the parties to the dispute in the mediation proceedings. Kutlík[21] states that the term mediation is of Latin origin and means middle, impartial or indefinite. Also in view of these translations, it can be said that the term mediation itself has a number of definitions, the common denominator of which is one: the intervention of a third party in dysfunctional, faulty communication. Mediation is the mediation of conflict and problem situations, which facilitates communication and mutual understanding, and above all focuses on creating a favorable atmosphere in which there will be an opportunity for both parties to seek solutions. However, it should be emphasized that conflict as such is not an unnatural thing and definitely belongs to the spectrum of interpersonal communication. This process of conflict resolution should normally result in the parties reaching a mediation agreement, which, unlike court decisions, should mean that after the mediation process is over, the disputed employment relations should be restored. It should also be emphasized that in the event of failure, the participants can go to court and request judicial protection. Mediation proceedings can be initiated on the parties' own initiative. Section 170 of the CSP stipulates that *"if possible and expedient, the court shall attempt to resolve the dispute amicably, or may recommend to the parties that they attempt to resolve the dispute through mediation"*. Mediation in resolving disputes arising from employment relations, one of the pillars of which is voluntariness, may be interrupted or refused to continue by either party at any stage. The advantages of mediation can be seen in its cost-effectiveness compared to litigation, in its speed, i.e. the solution can occur immediately (i.e. without delays, etc.), in confidentiality, in the application of the principle of equality, etc. The mediation agreement must be an agreement between the parties and not the mediator's idea of what the agreement should look like. The mediator does not have to write the agreement himself. The parties may invite their own legal representatives, or other persons, who will also guarantee that the agreement will be in accordance with applicable

[19] STEFAN, A., PRYTYKA, Y. Mediation in the EU: common characteristics and advantages over litigation. *InterEULawEast: Journal for the international and European law, economics and market integrations*. 2021, Vol. 8, No. 2.

[20] NEVICKÁ, D. *Labor disputes in the Slovak Republic and selected EU countries*. pp. 104.

[21] KUTLÍK, F. *Mediation and conflict resolution in the workplace*. p. 248.

legal standards. The mediation agreement is binding on the persons participating in the mediation. On its basis, the authorized entity may file a motion for judicial enforcement of the decision or a motion for execution (so-called execution title), if it is written in the form of a notarial deed, or if it is approved in the form of a settlement before the court.

Radanova et al. in their study Free movement of mediators across the European Union: a new frontier yet to be accomplished? examines the challenges in regulating the profession of mediators at European Union level. It identifies some of the professional and training requirements in this area and analyses their impact on the freedom and quality of mediation services offered from one Member State to another. It further outlines the diversity of regulatory models and accreditation procedures that apply to mediators certified in the Union or third countries, and puts this in the context of the spread of mandatory mediation models. They examine the different procedures that apply to training and accreditation in order to identify similarities and differences in the applicable professional standards and their impact on the mediation settlement agreements reached.[22] Mediation has an important position in the area of employment law, where, under the influence of various objective but also subjective (even explicitly private) problems, the conflict resolution agenda will be constantly up-to-date. This is evidenced, for example, by the significant profiling of topics in workplace mediation. In addition to classic conflicts of various personal animosities, which can grow from an individual's intrapsychic problem through an interpersonal problem of two strong personalities to a group conflict, new topics for mediation are emerging, such as mobbing, bossing or sexual harassment (forms of violence and harassment in the workplace). Since the beginning of this century, modern mediation, especially in the Nordic countries, has begun to divide problematic situations in the workplace according to other criteria, subjects and the subject of the dispute into "cold" and "warm" conflicts. Conflicts in the workplace that are primarily related to the distribution of material resources, such as wages and wage claims, but also the quality of the working environment, for example, are described as "cold" or even structural. They are characteristic primarily of industrial companies with a greater connection to the production process itself. "Cold" disputes are repeated with iron regularity in every workplace and their specificity is that the participants are groups and not individuals. Thanks to this, conflicts are more or less impersonal, based on a collective basis. With the advent of new technologies and the overall organization of work, companies have become more dependent on the interpersonal relationships of employees, but also on the newly emerging non-anonymous relationship between employee and customer or purchaser. Of course, the management style and work of management as a whole have also adapted to this. Conflicts in this new situation are "warming up" and are closer to the individuality of the personality. This is of particular importance especially in workplaces where personal identity grows into a professional identity, where work is also a life mission, for example, the profession of a nurse, environmentalist, journalist, etc. Mediation in interpersonal conflicts requires a more differentiated approach, other tools and competencies than, say, in "cold conflicts". Traditional negotiation schemes

[22] RADANOVÁ, Y., TVARONAVIČIENÉ, A. Free movement of mediators across the European Union: a new frontier yet to be accomplished? *Access to Justice in Eastern Europe (AJEE) journal*. 2024, Vol. 7, No. 1.

(which only slowly evolved from negotiation to mediation) between employees and employers proved to be something ossified, ultimately failing to resolve personal or interpersonal conflicts.

A new phenomenon in resolving conflicts in the workplace, along with mediation, is the institution of the ombudsman. More and more companies are offering the opportunity to contact an ombudsman working at the employer as another employee benefit. He should be the real guarantee that all available options are used when resolving problems in the workplace, in addition to mediation, for example, facilitation, conciliation, reporting or meetings. Simply, so that the internal company conflict is resolved to general satisfaction, so that it does not escalate and, above all, so that it does not start to live its own life and does not interfere with a wider circle of participants.

In the context of examining mediation, we find support in scientific studies. The authors Euwema et al. in their study Mediation and Conciliation in Collective Labor Conflicts in Europe[23] analyze the use of mediation and conciliation in collective labor conflicts in Europe. Research shows that mediation can be an effective tool in resolving labor disputes, especially in the context of collective agreements. The study includes an examination of mediation in countries such as Belgium, Spain and the Netherlands, where mediation is integrated into the resolution of labor disputes. The authors conclude that mediation leads to sustainable solutions and reduces conflict. Maria Zhomartkyzy in her study Comparative study of mediation practices in European countries discusses the results of the use of mediation in various areas. She perceives a positive impact of mediation on social relations, reducing the burden on judges and increasing trust in the justice system.[24] The analysis highlights the positive effects of mediation, such as improving social relations, reducing the burden on the judicial system, and building trust in dispute resolution mechanisms.

Regarding the use of mediation in local government, according to the Association of Slovak Towns and Municipalities, although most mayors agree that mediation is an effective tool for resolving interpersonal problems in municipalities and cities, only 4.5 percent of local governments directly use the services of a mediator.[25] Municipalities and cities often face labor disputes, in which they, as employers, are responsible for resolving conflicts. Mediation has enormous potential in local government, as it can effectively resolve conflicts and restore good working relationships, which is crucial for maintaining a stable and functional environment. Mayors and mayors have the opportunity to use the services of mediators, but according to surveys, only a minority of local governments actually use them. The importance of mediation lies in the fact that it allows for the resolution of disputes faster and more economically compared to the court process, while supporting the preservation and stability of working relationships. In a local government environment, where working relationships are often long-term and connected to

[23] EUWEMA, M. C. et al. Mediation in Collective Labor Conflicts. 2019. In: *SpringerOpen* [online]. [2025-07-07]. Available at: <https://link.springer.com/book/10.1007/978-3-319-92531-8>.

[24] ZHOMARTKYZY, M. Comparative study of mediation practices in European countries. *EUREKA: Social and Humanities*. 2023.

[25] ZMOS. Local governments are not looking for mediators. 2019. In: *Združenie miest a obcí Slovenska* [online]. [2025-07-07]. Available at: <https://npmodmus.zmos.sk/clanok/samospravy-mediatorov-nehladaju.html>.

community relations, this aspect is extremely important. The mayor of a municipality, who is in the position of an employer, is often in close "friendly" relations with employees, which can cause a tense atmosphere when resolving negative labor law issues, e.g. violation of work discipline, failure to respect the instructions of a superior employee, etc. In this context, the participation of a mediator as a third party is beneficial in application, as he can be the "architect of the dispute" without emotions and personal involvement. Successful use of mediation in local government can lead to a reduction in litigation costs, an improvement in the atmosphere at the workplace and the creation of opportunities for constructive cooperation between employees and the employer (mayor of the municipality, mayor of the city).

CONCLUSIONS

At present, it is very difficult to say whether the number of labor conflicts in our society will increase in geometric or arithmetic order. However, we suspect that their structure will change and new ones will be added to the classic ones. Intergenerational conflicts in the workplace, the increasing number of foreign employees, etc. will bring further challenges to mediation. Especially with its clear emphasis on finding a solution in the spirit of ex aequo et bono, i.e. more according to decency and justice and good morals than according to strict paragraph linguistics. As an example of good practice, we have cited the experience of mediation proceedings in resolving labor disputes in Finland. Statistical data from Finland show that if the mediation procedure is conducted directly by judges in court, who are selected experts in the disputed area and their decision is as binding as a court decision in a disputed procedure, while the judicial mediation procedure is conducted much faster and more economically, the parties to the dispute choose the judicial mediation procedure in much greater numbers than the general mediation procedure.

Labor relations are unique in terms of their content and at the same time have the character of hybrid relations on the border between private and public law. We believe that a wider range of their protection would bring more effective, faster, more economical and more satisfactory enforcement of the claims of the parties to the dispute in the area of employment law. Increasing awareness of mediation as an independent alternative method of resolving disputes would also relieve the burden on general courts. In resolving employment disputes, mediation is key, especially in that it ensures a high probability of restoring good relations. Such an outcome, as a prerequisite for possible further cooperation in a healthy working atmosphere, is unlikely in the event of failure to resolve the problem or resolve the dispute through court proceedings. Although mediation and other forms of ADR are becoming more established in Slovakia at a slower pace, we remain hopeful that the best practices of developed European Union countries will contribute to their progress.

On April 16, 2021, experts from several fields met to discuss the application of alternative approaches in justice on the virtual ground of the Faculty of Law of Comenius University in Bratislava. Experts from the Czech Republic shared their knowledge and opinions on the legal regulation of mediation in the Czech Republic, focusing in particular on the institute of the "first ordered meeting with a mediator". Such a form of recommendation of mediation by the court is a very interesting combination of the need,

in appropriate cases even after the commencement of legal proceedings, to divert the participants from legal proceedings to the possibility of trying to reach an agreement on the subject of the dispute with the help of a qualified mediator, on the other hand, it preserves the principle of voluntariness of mediation. Slovak legal order does not yet allow such an order of mediation, with the exception of the order of mediation in legal disputes for the enforcement of decisions in matters of minors.[26]

Despite the general recognition that mediation is an effective tool for resolving various types of disputes, on the European continent this alternative to litigation has been struggling to find its place in most national judicial systems for decades.

Given the complexity of relationships within local governments and the need for effective conflict resolution without long-term adverse consequences, mediation can be an important tool for building trust between local government bodies and municipal employees. Since local governments fulfill diverse tasks and their success depends on the cooperation of various entities, the ability to resolve disputes quickly and effectively is crucial. In conclusion, it can be stated that expanding the use of mediation in labor disputes in local governments would contribute to more effective dispute resolution and strengthening trust in alternative methods of conflict resolution, thereby also relieving the burden on general courts. Mediation as an alternative method of dispute resolution in local governments represents a tool that offers a quick, effective and economical resolution of disputes with minimal negative consequences for relations between the parties. Although its use in Slovak local government is currently limited, it has enormous potential to contribute to improving the functioning of local governments and maintaining good relations in municipalities and cities. However, for its full use, it is necessary to strengthen awareness of the benefits of mediation and create legislative conditions for its wider application in practice. These issue are a challenge.

[26] In: *justice.gov.sk* [online]. [2025-07-07]. Available at: <www.justice.gov.sk/dokumenty/2022/08/Zapis-z-odbornej-rozpravy-I.-mediacia-v-civilnom-prave-16_4_2021_web.pdf?utm_source=chatgpt.com>.