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ENFORCING MEDIATION IN LABOUR DISPUTES: A DOCTRINAL CRITIQUE OF ARTICLE 239 OF THE DRAFT LABOUR CODE OF UKRAINE

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ABSTRACT

Background: *This Reform Forum article examines the enforceability of settlement agreements resulting from mediation in individual labour disputes under Article 239 of the 2026 Draft Labour Code of Ukraine (No 14386). While the draft introduces mediation as a progressive and EU-oriented mechanism for dispute resolution, it fails to establish a clear procedural model for granting executive force to settlement agreements resulting from mediation.*

Methods: *Relying on doctrinal and comparative legal analysis, the article evaluates the compatibility of the proposed enforcement framework with Article 6 of Directive 2008/52/EC and the EU principles of effectiveness (effet utile) and legal certainty.*

Results and Conclusions: *It argues that the current wording of Article 239 creates a dual and internally inconsistent protection model: settlement agreements resulting from mediation may either be treated as ordinary contracts subject to separate enforcement proceedings or give rise to renewed judicial proceedings concerning the original labour dispute. Such structural ambiguity undermines procedural economy, weakens finality of dispute resolution, and risks strategic abuse of mediation.*

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Drawing on comparative models from selected EU Member States, the article proposes a legislative amendment to introduce a direct mechanism for approving settlement agreements arising from court-mediated mediation, without reopening the merits of the dispute. The proposed reform would align Ukrainian labour legislation with European standards and strengthen mediation as a credible and effective access-to-justice mechanism in the context of EU integration and post-war legal transformation.

1 INTRODUCTION

Ukrainian labour legislation, which is based on the Labour Code, requires substantial modernisation, as it largely remains influenced by Soviet methods, centralised, formalised, and predominantly oriented towards administrative control mechanisms.[1] The urgency of reform has intensified significantly in light of Ukraine's status as a candidate country for accession to the European Union, as well as systemic disruptions in the functioning of the labour market caused by the war. The military aggression of the Russian Federation has led to profound changes in employment models, guarantees of stability of employment relationships, and working conditions.[2] These processes underscore the necessity of forming a modern, adaptive, and human rights-based system of labour law aligned with EU standards and ILO conventions.

The Cabinet of Ministers of Ukraine's adoption of the draft new Labour Code of Ukraine (Draft No. 14386) in 2026 marked a logical stage in the long-standing attempts to reform the outdated system.[3] One of the most progressive novelties of the draft is the systematic introduction of mediation as a priority mechanism for resolving labour disputes.

In this context, mediation appears not merely as an alternative procedure for dispute resolution, but as a component of a broader transformation of legal culture, from a confrontational and formally procedural model to a dialogue-based and interest-oriented approach.[4] In the Member States of the European Union, mediation has long been integrated into the system of labour dispute resolution as an effective, cost-efficient, and flexible instrument for ensuring social peace.[5]

1 Labor Code of Ukraine No 322-VIII of 10 December 1971 (amended 1 January 2026) <https://zakon.rada.gov.ua/go/322-08> accessed 20 February 2026.

2 Victor Shcherbyna and others, 'From Soviet Legacy to European Integration: Decent Work in Ukrainian Labor Reforms' [2026] Stanovnistvo, doi:10.59954/stnv.726.

3 Draft Labor Code of Ukraine No 14386 of 15 January 2026 <https://itd.rada.gov.ua/billinfo/Bills/Card/69516> accessed 20 February 2026.

4 Naser Sherman and Bashar Talal Momani, 'Alternative Dispute Resolution: Mediation as a Model' (2025) 13 F1000Research 778, doi:10.12688/f1000research.152362.2.

5 Tatiana Koliesnik and Mykola Klemparsky, 'Mechanisms for Out-of-Court Settlement of Labor Conflicts: Experience of EU Countries and Ways for Ukraine' (2025) 2 Law journal of Donbass 37, doi:10.32782/2523-4269-2025-91-37-42.

The dissemination of mediation in Europe was largely stimulated by the adoption of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, which established general procedural standards and the principles of voluntariness, confidentiality, and enforceability of settlement agreements resulting from mediation.[6] In the sphere of labour relations, mediation is actively used both at the individual level (disputes between an employee and an employer) and at the collective level (negotiations with trade unions, settlement of strike-related conflicts). In many European countries, it serves as a mandatory or quasi-mandatory preliminary stage prior to recourse to a court, thereby reducing the burden on the judicial system and preserving employment relationships.[7]

Mediation becomes relevant in the context of crisis transformations when traditional employment guarantees are being revised and labour-related conflict increases. The flexibility of the procedure allows for the specific features of non-standard forms of employment, remote work, business relocation, and other phenomena characteristic of the wartime and post-war period to be taken into account.

For Ukraine, the introduction of mediation in labour legal relations is not only a step towards European integration but also an instrument for the formation of a new model of social dialogue. In view of the adoption of the Law of Ukraine "On Mediation" and the gradual development of a professional community of mediators, institutional preconditions are being created for the effective application of mediation in the sphere of labour. At the same time, the level of legal culture, trust between the parties to employment relationships, and the readiness of employers and employees for out-of-court dispute resolution remain challenges.[8]

An analysis of official statistics published by the Judicial Authority of Ukraine indicates an extremely low level of use of alternative dispute resolution mechanisms in labour disputes. In particular, according to judicial statistics for 2025, local general courts considered 7,961 labour-related claims, of which only 54 were resolved through amicable settlement, while no cases of mediation were recorded.[9] A similar trend is observed at the appellate level: out of 3,212 cases reviewed, only 4 were concluded through settlement

6 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 'On Certain Aspects of Mediation in Civil and Commercial Matters' [2008] OJ L 136/3.

7 Ahmad A Al Dalaien and Mohammed A Aladaseen, 'Judicial Mediation and the Governance of Administrative Contract Disputes: The Legal Possibilities under Jordanian and UAE Legislation' (2025) 7(1) Corporate Law and Governance Review 111, doi:10.22495/clgrv7i1p10; Olga Tymoshenko and Iryna Petrova, 'Features of Mediation as an Alternative Method of Settlement of Family Disputes: Legal Provision and Practice in Ukraine and EU Countries' (2025) 26(2) Revista Eletrônica de Direito Processual, doi:10.12957/redp.2025.90138.

8 Law of Ukraine No 1875-IX 'On Mediation' of 16 November 2021 [2021] Official Gazette of Ukraine 98/6340.

9 'Judicial Statistics' (*Judicial Authority of Ukraine*, 2026) <https://court.gov.ua/inshe/sudova_statystyka/> accessed 20 April 2026.

between the parties, and mediation was not applied at all. Statistical data for 2024 further confirm this tendency: local general courts examined 7,671 labour-related claims; however, publicly available statistics do not provide information on the number of cases resolved through settlement agreements.[10] Overall, these data demonstrate a significant gap between the formal availability of mediation as a legal mechanism and its actual application in practice within the labour dispute resolution system. In the broader post-Soviet context, the prospects for mediation are also linked to overcoming the dominance of judicial models of dispute resolution, which have historically been characterised by formalism and insufficient orientation toward the parties' interests. The gradual introduction of mediation may contribute to the modernisation of labour law in these countries, enhance the predictability of law enforcement, and strengthen the principle of the participants' autonomy of will in employment relationships.

Thus, the institutionalisation of mediation in the draft new Labour Code of Ukraine reflects not only a technical update of dispute-resolution mechanisms but also a broader shift in the paradigm of labour regulation, from a punitive-control model to a partnership-based, consensual one. In this respect, mediation emerges as one of the most promising directions for the development of Ukrainian labour law in the context of European integration and post-war reconstruction.

In the context of European integration and the need to relieve the burden on the judicial system, mediation is proposed not merely as an alternative to court proceedings but as an instrument for restoring social dialogue between the employee and the employer. This commentary analyses the legal nature of mediation clauses in the draft Code, their compliance with EU standards, and their potential impact on the actual accessibility of justice in wartime and the post-war recovery.

A central element of the EU legal framework on mediation is not merely the possibility of reaching an agreement, but the guarantee of its enforceability.[11] The effectiveness of mediation depends on the parties' confidence that the procedure will produce legally binding and practically enforceable outcomes. Without such guarantees, mediation risks being perceived as a preliminary or symbolic stage rather than a comprehensive and effective mechanism for the protection of rights.[12]

Article 6 of Directive 2008/52/EC establishes a clear obligation for Member States to ensure that parties may request the content of a written settlement agreement resulting from mediation to be made enforceable by a court or other competent authority. This

10 ibid

11 Iyllyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14 International Journal of Academic Research in Business and Social Sciences Pages 3225, doi:10.6007/IJARBSS/v14-i12/24295.

12 Serhii Otovchyts, 'Current Issues of Labour Dispute Resolution through Mediation' (2024) 2 Analytical and Comparative Jurisprudence 318, doi:10.24144/2788-6018.2024.02.55.

provision reflects a broader principle of EU law, the principle of effectiveness, according to which procedural mechanisms introduced by national legislation must ensure the practical and effective realisation of rights. Enforceability, therefore, is not a secondary technical element but a structural condition for the legitimacy and functionality of mediation within the justice system.

In labour disputes, the issue of enforceability acquires particular importance. Employment relations are inherently asymmetrical, often involving disparities in economic power and access to legal resources. If a mediation agreement cannot be directly enforced, the weaker party, typically the employee, may be compelled to initiate new judicial proceedings to secure compliance. Such duplication of procedures undermines procedural economy, delays the restoration of rights, and contradicts the objective of reducing judicial workload.

Furthermore, the absence of a clear enforcement mechanism creates legal uncertainty regarding the legal nature of the settlement agreement resulting from mediation. It remains unclear whether such an agreement should be treated as an ordinary contract, enforceable only through separate proceedings, or as a specific labour-law instrument endowed with autonomous procedural status and capable of direct enforcement.[13] The coexistence of these models without explicit legislative coordination risks forum shopping, procedural manipulation, and strategic abuse of mediation to delay dispute resolution.

Thus, in the context of Ukraine's European integration commitments, the enforceability of settlement agreements resulting from mediation must be regarded as a decisive criterion for assessing the Draft Labour Code's compliance with Directive 2008/52/EC. Ensuring a coherent enforcement mechanism is not merely a matter of technical drafting but a prerequisite for safeguarding legal certainty, procedural fairness, and genuine access to justice.

Despite the growing academic discussion on mediation reform in Ukraine, insufficient attention has been paid to the enforceability of settlement agreements resulting from mediation in individual labour disputes, particularly in light of Article 6 of Directive 2008/52/EC.[14] The draft Labour Code introduces mediation as a progressive mechanism, yet the legal consequences of non-performance of settlement agreements resulting from mediation remain doctrinally unclear. This gap necessitates a focused legislative commentary.[15] Although the present article focuses on labour law, the issue of enforceability of settlement agreements resulting from mediation has been the subject of detailed doctrinal analysis. Tetiana Tsuvina and Sabrina Fertz examine comparative models of recognition and enforcement of mediated settlement agreements, demonstrating significant differences between national legal systems, including judicial approval, notarial

13 Llewelyn Gray Curlewis and Ettian Raubenheimer, 'International Commercial Mediation: International Recognition and Enforcement of Mediation Agreements' (2024) 45(1) Obiter 209.

14 Directive 2008/52/EC (n 6).

15 Olha Melnychuk, 'Labor Mediation: Concept, Features and Directions of Development' (2025) 10 Successes and Achievements in Science 174, doi:10.52058/3041-1254-2025-10(20)-174-183.

certification, and contractual enforcement mechanisms. Their research highlights the absence of a uniform European approach and emphasises the importance of clear procedural frameworks for ensuring legal certainty and effectiveness.[16]

Further, Tetiana Tsuvina identifies a plurality of enforcement models across EU Member States and argues that the effectiveness of mediation depends on the availability of accessible and predictable mechanisms for granting enforceability, while excessive procedural fragmentation undermines its practical utility.[17]

Similarly, Nataliia Mazaraki analyses the legal nature of settlement agreements resulting from mediation within Ukrainian law, emphasising their contractual character and the limitations of relying solely on general civil-law remedies in the absence of a specialised enforcement mechanism.[18]

Taken together, these contributions demonstrate that the key challenge lies not in recognising mediated agreements as such, but in establishing coherent and effective procedural pathways for their enforcement, thereby directly supporting the argument advanced in this article.

The central research question addressed in this article is whether Article 239 of the Draft Labour Code establishes an effective and EU-compliant model for the enforcement of settlement agreements resulting from mediation in individual labour disputes.

The article argues that the current wording of Article 239 creates a dual and internally inconsistent protection model, which risks undermining legal certainty, procedural efficiency, and the effectiveness of mediation as a dispute resolution mechanism, as it allows a party to resort to mediation, deliberately refrain from complying with the resulting settlement agreement, and subsequently initiate judicial proceedings on the same dispute. Such a structure risks undermining legal certainty, procedural efficiency, and the effectiveness of mediation as a dispute resolution mechanism.

This article is grounded in doctrinal legal research as the primary methodological framework. The doctrinal method is employed to analyse the normative structure and internal coherence of Articles 237–239 of the 2026 Draft Labour Code of Ukraine.[19] The study focuses on the interpretation of statutory provisions governing mediation in individual labour disputes, examining their legal nature, systemic positioning within labour

16 Tetiana Tsuvina and Sascha Ferz, 'The Recognition and Enforcement of Agreements Resulting from Mediation: Austrian and Ukrainian Perspectives' (2022) 5(4) Access to Justice in Eastern Europe 32, doi:10.33327/AJEE-18-5.4-a000436.

17 Tetiana Tsuvina, 'National Mechanisms of the Enforcement of Agreements Resulting from Mediation: EU Experience and Ukrainian Perspectives' (2022) 158 Problems of legality 110, doi:10.21564/2414-990X.158.264998.

18 Nataliia Mazaraki, 'Enforceability of Mediation Settlement Agreement' (2018) 1 Current Problems of Domestic Jurisprudence 15.

19 Draft Labor Code of Ukraine No 14386 (n 3).

law, and potential procedural consequences. Attention is paid to enforceability as a core condition for the effectiveness of alternative dispute resolution mechanisms.

The research further applies a comparative legal method to assess whether the enforcement model proposed in the Draft Labour Code aligns with European regulatory trends. The comparative analysis is selective and functional rather than descriptive: it examines enforcement mechanisms in selected EU Member States (including Poland, Lithuania, Germany, and Belgium) insofar as they illustrate different procedural models of granting mediation agreements executive force (judicial approval model, notarial model, hybrid model).[20] The purpose of this comparison is not to provide an exhaustive survey, but to identify structural elements that ensure compliance with Article 6 of Directive 2008/52/EC.

In addition, the study relies on EU law interpretative principles, particularly the doctrines of effectiveness and legal certainty. These principles serve as analytical reference points for assessing whether the Ukrainian draft legislation facilitates practical and effective access to justice through mediation. The article therefore adopts a normative-evaluative approach: it not only describes the legislative proposal but also assesses its compliance with EU obligations and proposes a legislative amendment to eliminate structural inconsistencies.

The methodology is limited to normative and doctrinal analysis and includes empirical or socio-legal research. This choice reflects the Reform Forum format of the article, which focuses on legislative critique and normative recommendations rather than quantitative evaluation.

2 MEDIATION IN LABOUR DISPUTES: EUROPEAN LEGAL FRAMEWORK

In the context of enforceability, the Singapore Mediation Convention, which entered into force in 2020, establishes a uniform framework for the recognition and enforcement of mediated settlement agreements in cross-border disputes.[21] While the European Union has not signed this instrument, reflecting a cautious and, to some extent, sceptical approach towards its implications, its existence nevertheless illustrates the growing international emphasis on enforceability mechanisms. In this sense, the Convention highlights broader global trends rather than a model adopted within the EU legal order. It enhances legal certainty by providing predictable enforcement pathways, in functional terms, comparable to those established under the New York Convention for arbitral awards.

The EU legal framework on mediation in civil and commercial matters was systematically established by Directive 2008/52/EC of the European Parliament and of the Council of

20 Tsuvina and Ferz (n 16).

21 United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (adopted 20 December 2018) <https://www.singaporeconvention.org/> accessed 20 February 2026.

21 May 2008 on certain aspects of mediation in civil and commercial matters.[22] Although the Directive is not formally a specific instrument in the field of labour law, its provisions apply to labour disputes insofar as they are of a civil-law nature and are not excluded from its scope by national legislation.[23]

Of key importance to the assessment of the Ukrainian draft law is Article 6 of the Directive, which requires Member States to ensure that parties to a mediated settlement agreement may, under certain conditions, request that the agreement be made enforceable. This does not establish a general obligation to guarantee enforceability in all cases, but rather to provide a procedural mechanism enabling, where appropriate, the transformation of a written agreement resulting from mediation into an instrument capable of enforcement.

Thus, the Directive requires Member States to ensure that parties have the possibility, subject to their consent, to apply to a competent authority for a mediated settlement agreement to be made enforceable, to designate a court or other competent authority empowered to grant such enforceability, and to allow refusal of enforceability where the content of the agreement is contrary to national law or otherwise incompatible with applicable legal requirements.

The concept of "enforceability" in EU law denotes the capacity of a legal act to be implemented by means of State coercion without the need for a re-examination of the dispute on the merits. In other words, a settlement agreement resulting from mediation must be in the form of an enforceable instrument or be equivalent thereto.[24] The absence of such a mechanism negates the functional purpose of mediation as a full-fledged alternative to judicial proceedings.[25]

Recent doctrinal research underscores that enforceability is a core component of legal certainty in mediation frameworks. B Köhler argues that inconsistent enforceability of settlement agreements resulting from mediation at the national level may undermine the practical effectiveness of mediation. In this context, they cite international instruments, particularly the Singapore Convention on Mediation, as examples of efforts to enhance predictability and legal certainty in the cross-border enforcement of mediated settlement

22 Directive 2008/52/EC (n 6).

23 Tetiana Tsuvina and Alina Serhieieva, 'Mediation in Ukraine: Considerations in Terms of the EU Accession Prospects' (2025) 7(14) Revista Brasileira de Alternative Dispute Resolution 283, doi:10.52028/rbadr.v7.i14.ART15.UKR.

24 Jie Jeanne Huang, 'Recognition and Enforcement of Chinese Judicially Confirmed Mediation Decisions Abroad: The Challenges of Finality' in Poomintr Sooksripaisarnkit and Sai Ramani Garimella (eds), *Legal Challenges of China's One Belt One Road Initiative: Private International Law Considerations* (Routledge 2025).

25 Sanaullah Aman, 'Enforcement of Arbitral Awards and Mediation Settlement Agreements: Navigating Legal and Practical Challenges' (2025) 5(3) Pakistan Islamicus: An International Journal of Islamic & Social Sciences 7.

agreements.[26] It should be noted that the possibility of ensuring the enforceability of mediated settlement agreements is provided for within the framework established by Directive 2008/52/EC and is supported by broader considerations of legal certainty and effectiveness under EU law. However, neither the Directive nor the general principles of EU law impose an unconditional obligation on Member States to guarantee the enforceability of all mediated agreements.

The principle of legal certainty presupposes the foreseeability of legal consequences and the stability of legal relations. Parties who have reached an agreement through mediation must be confident that the settlement reached is final and does not require further judicial review. Accordingly, even a formal assumption in legislation that the same dispute can be re-examined in the absence of a clear enforcement procedure creates legal uncertainty and undermines trust in alternative dispute resolution procedures.

The principle of effectiveness, consistently developed in the case-law of the Court of Justice of the European Union, requires that national procedural rules must not render the exercise of rights conferred by EU law practically impossible or excessively difficult. In the context of mediation, this means that States must establish procedural mechanisms to ensure the procedure functions genuinely. If, after successful mediation, a party is compelled to reapply to a court to resolve the same dispute, the procedure's effectiveness is substantially reduced.[27]

In labour disputes, particular importance is attached to the principle of finality of dispute resolution. The European approach presupposes that alternative procedures must ensure a stable outcome that minimises the risk of renewed conflict and reduces the burden on the judicial system. For this reason, the enforceability of a settlement agreement resulting from mediation is regarded as a structural condition of its legitimacy.

As regards labour disputes specifically, the regulation and practical use of mediation vary significantly across EU Member States. In addition, various mechanisms have been developed to confer enforceability on settlement agreements arising from mediation in labour disputes. In addition, various mechanisms have been developed for conferring enforceability on settlement agreements resulting from mediation in labour disputes. Notwithstanding differences in procedural details, a common feature is the existence of a clear and foreseeable mechanism of compulsory enforcement.[28]

26 Ben Köhler, 'Blaming the Middleman? Refusal of Relief for Mediator Misconduct under the Singapore Convention' (2023) 19(1) Journal of Private International Law 42, doi:10.1080/17441048.2023.2189779.

27 Case 33-76 *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland* (CJEU, 16 December 1976) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61976CJ0033> accessed 20 February 2026; Case 45-76 *Comet BV v Produktschap voor Siergewassen* (CJEU, 16 December 1976) <https://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX:61976CJ0045> accessed 20 February 2026.

28 'Mediation in EU Countries' (*European E-Justice Portal*, 9 July 2024) <https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries_en> accessed 20 February 2026.

In several EU Member States, mediated settlement agreements may be granted enforceability through approval by a judicial or other competent authority, depending on the national procedural framework. Where such mechanisms exist, refusal to enforce is generally possible if the agreement's terms are contrary to public policy or mandatory legal provisions, including protections for employee rights. This reflects different national approaches to balancing party autonomy with varying degrees of public or judicial oversight.[29] One of the most widespread models is that whereby the parties submit the concluded mediated agreement to a court for approval. After verifying the agreement's compliance with the law, the court confers upon it the status of an enforceable instrument. Relevant provisions are provided for in the legislation of Cyprus,[30] Lithuania,[31] and the Netherlands.[32]

In Poland, the requirements of Directive 2008/52/EC have been implemented by Articles 116^1–116^3 § 1–2 of the Kodeks postępowania cywilnego, pursuant to which the mediator or one of the parties submits the protocol of the settlement agreement to the court (wydział cywilny sądu rejonowego) together with an appropriate application for its approval.[33]

Such an approach ensures a balance between the parties' autonomy and the State's control over the agreement's legal content.

The notarial model provides for a mediated agreement to acquire the status of an enforceable instrument upon certification by a notary, without mandatory judicial review, thereby significantly simplifying the procedure and enhancing the promptness of enforcement while preserving guarantees of legality. Such provisions are laid down, inter alia, in the German Code of Civil Procedure (paragraphs 796a–796c and 794(1)(5)).[34]

Several countries consider both possibilities for conferring the status of an enforceable instrument on a mediated agreement. Thus, pursuant to Articles 1733 and 1736 of the Belgian Judicial Code, a mediation agreement may be approved by a judge, thereby rendering such agreement authentic and enforceable.[35] In form, the agreement acquires the status of a judicial decision. As an alternative to judicial approval, by the parties' agreement,

29 Tsuvina (n 17).

30 'Mediation' (*Ministry of Justice and Public Order*, 29 March 2024) <https://www.gov.cy/mjpo/en/justice-sector/legal-affairs-unit/mediation/> accessed 20 February 2026.

31 Law of the Republic of Lithuania No X-1702 'On Mediation' (adopted 15 July 2008) <https://e-seimas.lrs.lt/rs/legalact/TAD/a1214b42d40911eb9787d6479a2b2829/?utm_source> accessed 20 February 2026.

32 Code of Civil Procedure of the Netherlands 'Wetboek van Burgerlijke Rechtsvordering' (amended 1 January 2026) <https://wetten.overheid.nl/BWBR0001827/2026-01-01> accessed 20 February 2026.

33 Code of Civil Procedure of the Republic of Poland 'Kodeks postępowania cywilnego' (amended 7 April 2026) <https://przepisy.gofin.pl/przepisy,2,9,9,15,,,ustawa-z-dnia-17-11-1964-r-kodeks-postepowania-cywilnego.html> accessed 10 April 2026.

34 Code of Civil Procedure of Germany 'Zivilprozessordnung' (amended 10 December 2025) <https://www.gesetze-im-internet.de/zpo/BJNR005330950.html> accessed 20 February 2026.

35 'Rules & Belgian Legislation on Mediation' (*CEPANI*, 2026) <https://cepani.be/services/mediation/rules-belgian-legislation-on-mediation> accessed 20 February 2026.

the mediated agreement may be executed as a notarial deed by a notary. In such a case, the agreement likewise becomes authentic and legally binding without recourse to a judge. Similar provisions exist in Spain, where a separate labour court has been established and mediation is mandatory prior to bringing a labour dispute before a court, as well as in Hungary, Romania, Slovakia, Sweden, Estonia, and others.[36] At the same time, Spain's experience is particularly illustrative in the context of the development of alternative labour dispute resolution mechanisms, where a well-developed and institutionalised system of autonomous conflict resolution has been established. At the national level, this system is represented by the Servicio Interconfederal de Mediación y Arbitraje (SIMA), while at the regional level, specialised bodies operate, including the Servicio Extrajudicial de Resolución de Conflictos Laborales de Andalucía (SERCLA). A key feature of the Spanish model is the mandatory nature of pre-trial dispute resolution: recourse to conciliation services, such as the Servicio de Mediación, Arbitraje y Conciliación (SMAC), constitutes a prerequisite for filing most labour claims before a court. This approach ensures a systematic reduction of the judicial caseload and encourages parties to reach a compromise at the pre-trial stage. Empirical data confirm the effectiveness of this model.

According to 2025 statistics, 792 labour disputes were processed under SIMA/IRMA procedures, with a settlement rate of 35.96%.[37] These procedures involved more than 505,000 workers and approximately 20,000 enterprises, and a significant socio-economic outcome was the prevention of strikes, preserving over 167,000 working days.[38] A positive trend is also evident in previous years: in 2024, SIMA handled 511 procedures, representing a 13.3% increase over 2023, with the corresponding processes affecting more than 7 million workers.[39] Thus, the Spanish experience demonstrates that the combination of an institutionalised mediation system with mandatory pre-trial conciliation ensures not only a high rate of labour dispute resolution but also a substantial preventive effect, particularly in reducing the number of strikes and associated economic losses.

36 'The Mediation Agreements' (*Daniel Sererols Villalón*, 26 October 2025) <https://mediadorconflictos.com/en/the-mediation-agreements/> accessed 20 February 2026; 'Mediation Rules' (*CMS*, 30 October 2003) <https://cms-lawnow.com/en/ealerts/2003/10/mediation-rules> accessed 20 February 2026; Law of the Slovak Republic on Mediation 'Zákon o Mediácii a o Doplnení Niektorých Zákonov' (adopted 25 June 2004) <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2004/420/> accessed 20 February 2026; Swedish Act on Mediation in Certain Private Law Disputes 'Om medling i vissa privaträttsliga tvister' (adopted 22 June 2011) <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2011860-om-medling-i-vissa-privatrattsliga_sfs-2011-860/> accessed 20 February 2026; Code of Civil Procedure of the Republic of Estonia 'Tsiviilkohtumenetluse seadustik' (adopted 20 April 2005) <https://www.riigiteataja.ee/en/eli/510012017004/consolide> accessed 20 February 2026.

37 'Estadísticas 2025: Datos estadísticos actividad mediación y arbitraje 2025' (Fundación IRMA, 20 January 2026) <https://www.fundacionirma.org/2026/01/20/estadisticas-2025/> accessed 20 April 2026.

38 ibid

39 ibid

Certain legal systems provide for the possibility of conferring enforceability on a mediated agreement without additional approval, if it complies with statutory requirements. In such cases, the agreement is equated to an enforceable instrument subject to compliance with formal criteria.

For example, such provisions have been introduced in the Republic of Croatia, where mediation was regulated by a special legislative act, the Mediation Act (Zakon o mirenju).[40] That Act entered into full force on the date of Croatia's accession to the European Union (1 July 2013), which was an important condition for the harmonisation of national legislation with Directive 2008/52/EC on mediation.

All the models pursue a common objective: to avoid a re-examination of the dispute on the merits and to ensure the prompt enforcement of the settlements reached. The existence of one such mechanism constitutes the criterion of compliance of national legislation with the requirements of Directive 2008/52/EC.

Accordingly, the European legal approach proceeds from the premise that mediation cannot be effective without appropriate instruments for the compulsory enforcement of its results. The absence of a clearly defined enforcement mechanism poses risks of double examination of the dispute, procedural delays, and a decline in trust in alternative forms of justice.

3 MEDIATION UNDER THE DRAFT LABOUR CODE OF UKRAINE

The Draft Labour Code of Ukraine (No. 14386) establishes a three-tier model for resolving individual labour disputes, which includes direct negotiations between the parties to the employment contract, mediation, and judicial proceedings.[41]

Article 237 of the draft defines these methods as alternative mechanisms for protecting employees' rights. The primary level consists of direct negotiations between the employee and the employer, reflecting the principle of party autonomy and an orientation toward minimising conflict without third-party involvement. Negotiations are intended to ensure the prompt resolution of a dispute while preserving employment relations and reducing procedural costs.

The second way is mediation, a voluntary procedure involving a neutral mediator.[42] Its institutionalisation within labour legislation demonstrates the legislator's intention to integrate modern alternative dispute resolution mechanisms into the sphere of labour. Unlike negotiations, mediation presupposes a structured procedure involving a professional mediator, which increases the likelihood of achieving a balanced solution.

40 Law of the Republic of Croatia on Mediation 'Zakon o mirenju' [2011] Official Gazette 18.
41 Draft Labor Code of Ukraine No 14386 (n 3).
42 Law of Ukraine No 1875-IX (n 8).

The third way consists of judicial proceedings. The court retains the status of the final and universal means of protecting labour rights. The Draft does not restrict the right to judicial protection and does not establish the mandatory completion of prior procedures as a condition for access to justice. The court retains the status of the final and universal means of protecting labour rights, in accordance with Article 55 of the Constitution of Ukraine, which guarantees everyone the right to judicial protection of their rights and freedoms.[43] The Draft does not restrict access to justice and does not establish mandatory pre-trial dispute resolution as a precondition for filing a claim, thereby preserving the voluntary nature of mediation in line with Article 6 of the European Convention on Human Rights.[44]

At the same time, the constitutional and procedural framework of Ukraine does not preclude the introduction of mandatory pre-trial mechanisms for certain categories of disputes. Article 124 of the Constitution of Ukraine provides that the jurisdiction of courts extends to any legal dispute, while procedural modalities may be defined by law, provided that such regulation does not undermine the essence of the right to a court.[45]

Procedural legislation already reflects a differentiated approach to amicable dispute resolution. The Civil Procedure Code of Ukraine provides mechanisms for settlement of disputes, including settlement with the participation of a judge,[46] while the Commercial Procedure Code of Ukraine also promotes amicable settlement and reconciliation between parties[47]. These provisions demonstrate that Ukrainian procedural law already incorporates structured settlement-oriented instruments within judicial proceedings.

In the European Union context, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters establishes a voluntary framework for mediation and encourages Member States to ensure accessibility and effectiveness of mediation procedures, including the possibility of making settlement agreements enforceable.[48]

In a broader reform context, including the EU–Ukraine Association Agreement (Article 14 on cooperation in the field of justice) and ongoing justice sector reform initiatives, future legislative developments may consider whether enhanced pre-trial mechanisms in selected categories of labour disputes could improve procedural

43 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 (amended 1 January 2020) <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> accessed 20 February 2026.

44 Council of Europe, *European Convention on Human Rights*: *as amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013).

45 Constitution of Ukraine (n 43).

46 The Civil Procedure Code of Ukraine No 1618-IV of 18 March 2004 (amended 17 July 2025) <https://zakon.rada.gov.ua/laws/show/1618-15#Text> accessed 20 February 2026.

47 Commercial Procedure Code of Ukraine No 1798-XII of 6 November 1991 (amended 31 October 2025) <https://zakon.rada.gov.ua/laws/show/1798-12#Text> accessed 20 February 2026.

48 Directive 2008/52/EC (n 6).

efficiency.[49] Such mechanisms may include mandatory informational sessions or preliminary settlement meetings, provided that they remain proportionate and do not impair the essence of the right of access to a court. This approach is consistent with the case-law of the European Court of Human Rights, which recognises that procedural limitations are permissible only where they pursue a legitimate aim and maintain a reasonable proportionality between means and aim (see, for example, *Kreuz v. Poland*, no. 28249/95, § 54; *Golder v. the United Kingdom*, no. 4451/70).[50] Thus, the draft law lays down a model of parallel and complementary mechanisms, consistent with the European trend toward developing pluralistic dispute resolution systems.

One of the key characteristics of mediation in the Draft is its voluntary nature. Neither negotiations nor mediation is defined as a mandatory precondition for bringing a claim before a court. If the employer refuses to consider the complaint or the parties fail to reach an agreement, the employee is entitled to apply directly to the court. Such an approach is consistent with the principle of voluntariness of mediation enshrined in Directive 2008/52/EC and, at the same time, guarantees the preservation of the constitutional right to judicial protection. The Draft does not establish any restrictions on access to the court in the event of refusal to engage in mediation or its ineffectiveness.

At the same time, the voluntary nature of the procedure has a dual effect. On the one hand, it prevents excessive procedural formalism and excludes the risk of artificially complicating access to justice. On the other hand, the absence of any incentive or procedural priority for mediation may diminish its practical appeal and render it an optional mechanism with limited application, potentially used to delay consideration of a case.

The most controversial provision is Part Three of Article 239, which provides that, in the event of non-performance or improper performance of an agreement reached through mediation, the parties are entitled to apply to the court for consideration of the individual labour dispute.

A textual interpretation of this provision indicates the absence of a clear mechanism for the compulsory enforcement of a mediated agreement. The Draft does not define its legal nature, does not provide for the possibility of conferring upon it the status of an enforceable instrument, and does not establish a simplified procedure for its compulsory enforcement.

As a result, normative uncertainty arises as to whether such an agreement should be regarded as a civil-law contract, the performance of which is governed by the general rules

49 Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (consolidated version 29 October 2025) <https://eur-lex.europa.eu/eli/agree_internation/2014/295/oj> accessed 20 February 2026.

50 See, *Kreuz v Poland* App no 28249/95 (ECtHR, 19 June 2001) <https://hudoc.echr.coe.int/eng?i=001-59519> accessed 20 February 2026; *Golder v the United Kingdom* App no 4451/70 (ECtHR, 21 February 1975) <https://hudoc.echr.coe.int/eng?i=001-57496> accessed 20 February 2026.

of civil law and contract enforcement mechanisms, and whether a re-examination of the same labour dispute on the merits is permissible.

The absence of an explicit indication of an enforcement mechanism effectively creates a risk of procedural duplication. A party failing to comply with the agreement may provoke a new judicial consideration of the original dispute, thereby nullifying the result achieved through mediation. Such an approach contradicts the very logic of alternative dispute resolution, which presupposes the finality and stability of settlements.

The structural inconsistency of Article 239 becomes particularly visible when the procedural consequences of non-performance are mapped schematically (see Figure 1).

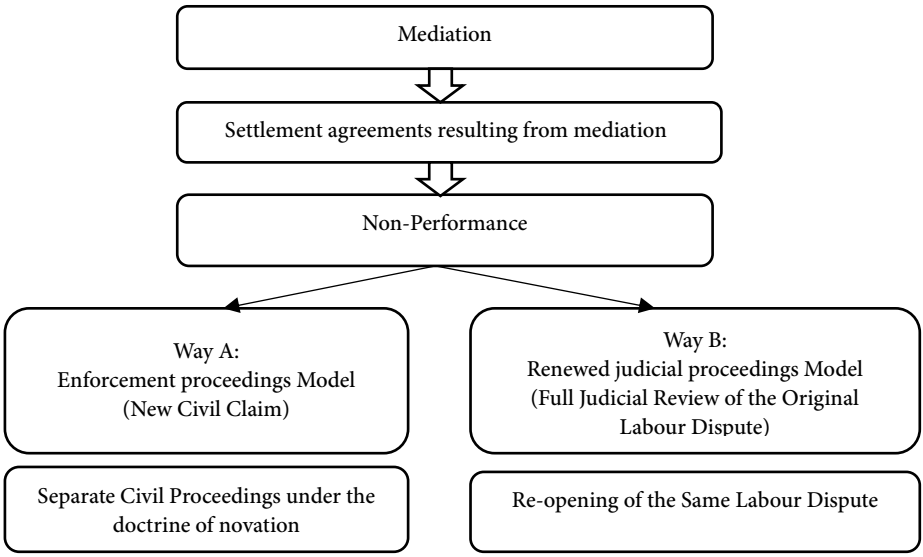

Figure 1. Structural Consequences of Article 239 of the Draft Labour Code of Ukraine

As illustrated above, the current wording creates two parallel and uncoordinated enforcement pathways, neither of which guarantees procedural economy or legal certainty.

Thus, the formal incorporation of a dispute-settlement provision through mediation will not be effective in practice, since both the employee and the employer may lack sufficient incentive to comply with it.

Moreover, given that the conduct of mediation affects the running of procedural time limits, there is a potential risk of abuse of the procedure to delay the resolution of the dispute. In the absence of a clear mechanism for enforcing the agreement, mediation may lose its

effectiveness as an instrument for protecting rights and become merely an additional stage preceding inevitable judicial proceedings.

Accordingly, the current wording of Part Three of Article 239 establishes a model in which a settlement agreement resulting from mediation lacks independent procedural force. This creates a structural inconsistency between the declared objective of institutionalising mediation and the lack of instruments to ensure its outcome. It is precisely this circumstance that requires legislative refinement in light of European standards concerning the enforceability of mediated agreements.

According to the OECD's 2024 Online Dispute Resolution Framework, lack of enforceability remains one of the primary barriers to the uptake of ADR mechanisms, including mediation, as parties often revert to litigation when mediated settlement agreements cannot be effectively enforced.[51]

4 THE DUAL PROTECTION MODEL: DOCTRINAL CRITIQUE

Recent scholarship by Tsuvina and Serhieieva demonstrates that while Ukraine has adopted a mediation law, significant gaps remain in aligning national mechanisms with the EU acquis, particularly regarding the enforceability of mediated agreements and structural compliance with EU procedural effectiveness obligations.[52]

In the absence of a special mechanism to confer enforceability on a mediated agreement, the Law of Ukraine "On Mediation" effectively permits its classification as an ordinary civil-law contract.[53]In such a case, non-performance of the terms of the agreement requires bringing a claim in court for specific performance of the obligation or for damages under the general rules of civil procedure. A qualification of such an agreement as a novation is not presumed and may arise only where the parties have clearly expressed their intention to extinguish the original obligation and replace it with a new one (animus novandi), in accordance with Article 604 of the Civil Code of Ukraine.[54]

Such an approach has several doctrinal consequences. First, it alters the legal nature of the labour dispute by transferring it into the sphere of contractual obligations, which does not always align with the specific nature of labour legal relations, characterised by the mandatory nature of a significant portion of the norms and the social orientation of employee protection. Second, the application of the civil model of enforcement effectively presupposes a new judicial process that does not concern the substance of the original dispute but rather concerns proving the fact of breach of contractual obligations.

51 OECD, *OECD Online Dispute Resolution Framework* (OECD Publishing 2024) doi:10.1787/325e6edc-en.

52 Tsuvina and Serhieieva (n 23).

53 Law of Ukraine No 1875-IX (n 8).

54 Civil Code of Ukraine No 435-IV of the 16 January 2003 (amended 1 February 2026) <https://zakon.rada.gov.ua/laws/show/435-15#Text> accessed 20 February 2026.

As a result, the mediated agreement does not acquire an autonomous procedural status within labour law but is absorbed into the general mechanism of civil-law coercion. This reduces its effectiveness as a specific instrument for the settlement of labour conflicts.

An alternative interpretation of Part Three of Article 239 allows the parties, in the event of non-performance of a mediated agreement, to apply to the court for consideration of the individual labour dispute on the merits. Such an approach effectively entails the possibility of a repeated examination of the same dispute that has already been settled through mediation.

In this case, mediation loses its status as a final method of dispute resolution and becomes an intermediate stage preceding judicial proceedings. The reopening of the dispute nullifies the agreements reached and creates legal uncertainty as to their binding force.[55] A party that has duly performed the terms of the agreement may find itself in a situation where the original dispute is reconsidered without regard to the fact that a settlement has been achieved.

Thus, in its current wording, Ukrainian legislation effectively establishes two alternative, but not mutually coordinated, models of protection: a contractual model and a repeated-procedural model. The absence of clear priorities or coordination between them creates a structural contradiction within the legal regulatory system.

The dual model of protection generates several practical risks. First, given that participation in mediation may affect the running of time limits for bringing a claim before a court, the parties may use it to delay the resolution of the dispute.[56] Initiating mediation without a genuine intention to perform the agreed-upon terms may delay judicial consideration and confer additional procedural advantages.

Second, the absence of a mechanism for direct compulsory enforcement creates incentives for bad-faith conduct. A party that has agreed to the terms of the settlement may deliberately refrain from performing it, relying on the possibility of renewed judicial consideration and revision of the original claims.

Third, in the sphere of labour relations, this may lead to potential unjust enrichment. For example, in disputes concerning reinstatement at work or payment of average earnings for the period of forced absence, a prolonged process may increase the amount recoverable.[57]

55 Umut Yüksel, 'The Law Behind Dispute Onset: How Legal Uncertainty Drives Maritime Boundary Disputes' (2025) 69(7-8) Journal of Conflict Resolution 1172, doi:10.1177/00220027241305076.

56 Usman Asghar, Aurang Zaib Ashraf Shami and Jahangir Ashraf, 'The Role of Mediation in Family Disputes: Exploring the Benefits and Limitations of Mediation as an Alternative Dispute Resolution Method in Family Law Cases' (2025) 3(2) Journal for Current Sign 556.

57 Adam Holesch and Clara Portela, 'Money Talks? The Effectiveness of Sanctions in the "Rule of Law" Conflict in the European Union' (2025) 63 JCMS: Journal of Common Market Studies 1178, doi:10.1111/jcms.13693.

Under such conditions, mediation may be transformed into an instrument of strategic behaviour rather than a mechanism for the good-faith settlement of a conflict.

Accordingly, in the absence of a clear enforcement mechanism for mediation-based settlement agreements, the risk of procedural duplication and abuse increases significantly.

The existence of a dual model of protection calls into question Article 239's compliance with the requirements of Directive 2008/52/EC.[58] As noted above, Article 6 of the Directive imposes on States the obligation to ensure that a settlement agreement resulting from mediation can be made enforceable. At the same time, the Draft Labour Code establishes neither a procedure for judicial approval of the agreement, nor the possibility of certifying it as an enforceable instrument, nor any other special enforcement mechanism.

Such a construction does not comply with the principle of legal certainty, since the parties cannot foresee the legal consequences of non-performance of the agreement. Furthermore, it contradicts the principle of effectiveness, as it renders the implementation of the settlement achieved dependent upon renewed judicial proceedings.

The consequence is a reduction in the functional capacity of mediation as an alternative method of dispute resolution. If the procedure does not ensure finality and guaranteed enforcement of its outcome, it cannot be regarded as a full-fledged instrument of access to justice.

Accordingly, in its current wording, Article 239 creates an internally contradictory model of legal protection that ensures neither procedural economy nor legal certainty nor compliance with European standards governing mediation, thereby substantiating the necessity of its legislative refinement.[59]

At the same time, it should be emphasised that the effective implementation of such a provision requires appropriate procedural regulation. The current legal framework of Ukraine does not provide a specific mechanism for enforcing mediation-based settlement agreements. Therefore, the introduction of corresponding amendments to procedural legislation, particularly the Civil Procedure Code of Ukraine, is necessary to establish a clear and coherent procedure for judicial approval and enforcement of such agreements. Without such alignment, the proposed provision risks remaining declaratory in nature.

To address these shortcomings, it is advisable to introduce amendments that ensure the binding nature of mediated settlement agreements, provide a clear procedural pathway for their enforcement without re-examination of the dispute on the merits, and improve the coherence of national legislation in light of the framework established by Directive 2008/52/EC. It is proposed to amend the Civil Procedure Code of Ukraine by introducing a separate section entitled "Enforcement of Settlement Agreements Resulting from Mediation", providing for a procedural mechanism comparable to that governing court settlements, but applicable independently of ongoing judicial proceedings.

58 Directive 2008/52/EC (n 6).

59 Draft Labor Code of Ukraine No 14386 (n 3).

These amendments are aimed at enhancing the effectiveness of mediation as an instrument of alternative dispute resolution and at creating a predictable and reliable mechanism for protecting the rights of employees and employers.

Proposed wording of Part Three of Article 239:

"3. In the event of non-performance or improper performance of an agreement reached as a result of mediation, the parties shall have the right to apply to the court with a request for compulsory enforcement of such agreement in accordance with the procedure established by the Civil Procedure Code without re-examining the substance of the dispute on the merits."

The implementation of the proposed wording establishes an effective and harmonised system for resolving labour disputes that complies with European standards and contemporary requirements of legal practice.

5 CONCLUSIONS

Mediation, as introduced in the Draft Labour Code of Ukraine No. 14386, represents a progressive innovation that reflects contemporary approaches to resolving labour disputes. It aims to reduce conflict, support social dialogue, decrease the burden on the judicial system, and align national legislation with European standards. The current drafting of Article 239 risks institutionalising procedural inefficiency. Without legislative clarification, mediation in labour disputes may remain formally recognised but practically ineffective.

The absence of a clear mechanism to enforce mediated agreements substantially undermines the effectiveness of this reform. A voluntary and structured mediation procedure loses its practical significance if the parties do not have a guaranteed opportunity to secure the implementation of the agreements reached without renewed judicial proceedings.

To comply with the provisions of Directive 2008/52/EC and the principles of legal certainty and effectiveness, it is necessary to establish a legislative procedure for the compulsory enforcement of settlement agreements resulting from mediation. Such a mechanism must confer on the agreement the status of an enforceable instrument and preclude a repeated examination of the dispute on the merits.

The proposed wording of Part Three of Article 239 restores legal coherence and consistency within the system of labour legislation, ensures the enforceability of mediated agreements, and enhances the effectiveness of alternative dispute resolution. The implementation of these amendments will contribute to the development of a modern, predictable, and Europe-oriented labour law system in Ukraine.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Форум реформ

ЗАБЕЗПЕЧЕННЯ МЕДІАЦІЇ У ТРУДОВИХ СПОРАХ: ДОКТРИНАЛЬНИЙ АНАЛІЗ СТАТТІ 239 ПРОЄКТУ ТРУДОВОГО КОДЕКСУ УКРАЇНИ

Наталія Черевко

АНОТАЦІЯ

Вступ. *У цій статті розглядається можливість виконання мирових угод, укладених в результаті медіації в індивідуальних трудових спорах, відповідно до статті 239 проєкту Трудового кодексу України 2026 року (№ 14386). Хоча проєкт запроваджує медіацію як прогресивний та орієнтований на ЄС механізм врегулювання спорів, він не встановлює чіткої процесуальної моделі надання виконавчої сили мировим угодам, укладеним в результаті медіації.*

Методи. *У статті застосовано доктринальний та порівняльно-правовий аналіз, за допомогою якого було здійснено оцінку сумісності запропонованої системи правозастосування зі статтею 6 Директиви 2008/52/ЄС та принципами ЄС щодо ефективності (effet utile) та правової визначеності.*

Результати та висновки. *У статті стверджується, що чинне формулювання статті 239 створює подвійну та внутрішньо суперечливу модель захисту прав: мирові угоди, укладені у результаті медіації, можуть розглядатися як звичайні договори, що підлягають окремо виконавчому провадженню, або призводити до поновлення судового провадження щодо первісного трудового спору. Така неоднозначність підриває процесуальну економію, послаблює значення остаточності врегулювання спору та створює ризики стратегічного зловживання правом на медіацію.*

З огляду на порівняльні моделі окремих держав-членів ЄС у статті пропонується законодавча поправка для запровадження прямого механізму затвердження мирових угод, що виникають в результаті судової медіації, без повторного розгляду суті спору. Запропонована реформа узгодить українське трудове законодавство з європейськими стандартами та зміцнить медіацію як надійний та ефективний механізм доступу до правосуддя в контексті інтеграції в ЄС та післявоєнної правової трансформації.

Ключові слова: *альтернативне врегулювання спорів; трудові спори; виконання мирової угоди; Директива 2008/52/ЄС; принцип правової визначеності.*