

6. Про затвердження Порядку надання роботодавцю компенсації витрат на оплату праці за працевлаштування внутрішньо переміщених осіб внаслідок проведення бойових дій під час воєнного стану в Україні: Постанова Кабінету Міністрів України № 331 від 20 березня 2022 р. URL : <https://zakon.rada.gov.ua/laws/show/331-2022-%D0%BF#Text>

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SETTLEMENT OF THE DISPUTE WITH THE PARTICIPATION OF THE JUDGE IN THE ECONOMIC LITIGATION

The beginning of a full-scale invasion and aggression of the Russian Federation against Ukraine has caused certain changes in the procedure of conducting of justice in Ukraine. Today the priority is given to the necessity of maintenance of a balance between the safety of judges, staff of the apparatus of the court, participants of the case and observance of the procedural rights of the participants of the case and the principles of the court proceedings. As a result, in many cases economic litigation is conducted in video-conference mode. As well as that the possibility of amicable settlement of disputes is considered by the parties as an effective way of dispute resolution. The search for ways to resolve economic disputes in pre-trial and amicable way can be preferable due to several main aspects, in particular, the absence of a long formalized trial procedure, the opportunity to save money and time, the win-win situation for the disputing parties. According to O. P. Podtserkovnyi, the issue of amicable (without the involvement of state coercion), resolution of economic disputes and the problems of the economic (arbitration) procedure are closely related in the sense that such a solution not only prevents litigation, but also contributes to a better settlement of economic conflicts [2].

One of the alternative ways to settle a dispute in the economic procedure is the institution of the dispute settlement with the participation of a judge. Special attention should be paid to the role of a judge as a negotiator.

Thus, according to Article 129 of the Constitution of Ukraine, a judge, while administering justice, is independent and guided by the rule of law. [1] One of the legally defined duties of a judge is to fairly, impartially and timely consider and resolve court cases in accordance with the law in compliance with the principles and rules of legal proceedings. However, the peculiarity of this procedure is that the negotiations take place without the usual judicial formalism, and the judge is an intermediary between the parties who helps them to resolve the dispute. The main task is to create an atmosphere of trust at this stage of the litigation and to amicably (if possible) resolve the conflict.

While considering the institution of dispute settlement with the participation of a judge, certain basic principles can be distinguished. Firstly, it is confidentiality – any information received by any of the parties, as well as by the judge during the dispute settlement cannot be disclosed. It is also prohibited to take photographs, film, video or sound recordings. Secondly, we can highlight the equality of the parties during this procedure. Each party has the opportunity to express its position, evaluate options for resolving the dispute, and ultimately reach an agreement and make the most beneficial decision for both parties. Another principle is the neutrality of the judge during the dispute settlement. The judge cannot provide the parties with legal advice or recommendations, as well as provide an assessment of the evidence in the case. Thus, compliance with these principles will allow the judge to conduct the procedure effectively, and for the parties – to understand each other and reach an agreement.

It is necessary to highlight that if the parties express their desire to use the procedure of settlement of a dispute with participation of a judge, the court cannot refuse to apply this procedure. [3] It can be carried out only before the consideration of the dispute on the merits in the court of first instance. In the court of appeal or cassation, such a procedure is not allowed. When the court decides on the application of such procedure, the court issues a ruling and simultaneously suspends the proceedings in the economic case.

Within this procedure, the judge has the right to hold joint and (or) closed meetings with the parties. Joint meetings are held with the participation of all parties, their representatives and the judge, and closed meetings – with each of the parties separately. Also, the Economic Procedural Code of Ukraine contains a list of cases in which dispute settlement with the participation of a judge is not allowed. These include: cases on restoring

the debtor's solvency or declaring it bankrupt, cases on applications for approval of the debtor's rehabilitation plans before the opening of bankruptcy proceedings and cases in the case of a third party entering the case, which states independent claims regarding the subject matter of the dispute. [4] Thus, it can be concluded that the possibility of the parties to settle the dispute with the participation of a judge is limited according to the stages of the procedure (only during preparatory proceeding) and types of cases mentioned above.

However, it is not always possible for the parties to reach an amicable agreement during the procedure of settlement of a dispute with participation of a judge. In this case the repeated dispute settlement procedure with the participation of a judge is not allowed, the proceedings will be resumed and the case will be transferred to another judge.

Summarizing all of the mentioned above, it can be concluded that martial law in Ukraine has made its own adjustments to the process of consideration of court cases. However, even under conditions of martial law, the constitutional right to judicial protection cannot be restricted. The procedure of settlement of a dispute with the participation of a judge allows the parties to come to an agreement and settle their dispute in amicable way, taking into consideration interests of both sides of the conflict. Therefore, such a procedure could be quite effective for time and money saving. Moreover, it creates condition for cooperation between disputing parties.

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