UDC 349.2

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ACTUAL PROBLEMS OF PARTICULAR PROCEDURE' FORMS USING IN COLLECTIVE LABOUR DISPUTES: ILO'S STANDARDS AND INTERNATIONAL REVIEW[1]

Introduction and Aims. In recent years, researches have become increasingly interested in area of labour disputes, become furthermore social value.

Many contemporary studies focus on features of individual and collective labour disputes resolution. Over the last decade, research on aforesaid field has increasingly demonstrated the need of summarizing essential scientific doctrine and systematization knowledge obtained from variety of world countries labour disputes legislation.

The relationship between procedure, court process and labour disputes' resolution efficiency has been explored by many researches. Particularly, the ADR-methods of labour disputes resolution procedure has been extensively studied in recent years.

In Ukraine for such problems has devoted the papers of such scholars as: V. Gernakov, I. Kiselev, A. Matsko, S. Prilipko, A. Slusar, G. Chanisheva, N. Bolotina, etc. Abroad researches were highlighted by Han Dongfang, Cai Chongguo, D. Esplin, Eric Sautede, Valerie Nichols, Rahul Suresh Sapkal, author's collective of the Institute of Chartered Accountants of Sri Lanka, et cetera. Notwithstanding, the problems of classification labour disputes on individual and collective, summarizing essential scientific doctrine and systematization knowledge obtained from variety of world countries labour disputes legislation have already unsolved.

In this paper, we report on the review of collective labour disputes resolution procedures in China, Sri Lanka and India, from one hand, and Latvia, Finland and USA, from other. Moreover, present study analyzes the ILO's standards in labour disputes prevention and resolution and focuses on their correlation between legal framework of European, North American and Asian countries in aforesaid area. That's presented the **aims** of research as well as compare with Ukrainian legal realities.

Methods. Presented survey has done with help of formal and compares methods as special and deduction, analysis ad synthesis as common [5, p. 270–288], which led to obtain a new data and background for discussion and further investigations from contemporary scientific viewpoint.

Results & Discussion.

§ 1. The ILO's Standards to collective labour disputes prevention and resolution.

Noord (Noord et al. 2011), Benjamin (Benjamin, P. 2013), Teague (Teague, P. 2013) states that "Grievances and conflicts are an inevitable part of the employment relationship. The objective of public policy is to manage conflict and promote sound labour

[1] Acknowledgements: This paper realized with essential support of Supervisor Mr. Slusar A.N. (D.L., Prof.), which my respect for. In addition, especially thanks to Department № 1 of Foreign Languages (Ms. Simonok V.P. (D.F., Prof.), Ms. Moroz T.U. (PhD, Assist. Prof.) and others)) for their selflessly work over the post – graduate students, indeed.

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relations by creating a system for the effective prevention and settlement of labour disputes. Labour administrations typically establish labour dispute procedures in national legislation. A key objective of effective systems is to ensure that wherever possible, the parties to the dispute resolve it through a consensus-based process such as conciliation and mediation, before reverting to arbitration and/or adjudication through a tribunal or labour court.

Conciliation and mediation are procedures whereby a third party provides assistance to the parties in the course of negotiations, or when negotiations have reached an impasse, with a view to helping them to reach an agreement. While in many countries these terms are interchangeable, in some countries a distinction is made between them according to the degree of initiative taken by the third party.

Arbitration is a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision which disposes of the dispute.

Specialised labour adjudication is a procedure whereby ordinary courts on special labour courts settle finally any disputes over rights and obligations" [10].

The authors continue to say[2], that "the ILO supports member States to strengthen machinery for labour disputes settlement, in line with international labour standards and in consultation with the social partners, by:

– **Establishing legal and regulatory frameworks;**

– **Building effective dispute resolution systems** and services within the labour administration and by independent statutory institutions and specialized labour courts;

– **Capacity building** through specialized training focused on negotiation skills and conciliation / mediation skills, as well as on international labour standards;

– **Sharing knowledge** and raising awareness in respect of the advantages of voluntary conciliation, mediation and arbitration mechanisms; and

– **Sharing experiences** of labour court judges on issues of common interest and concern.

The objective of the program is to support the establishment or revitalization of voluntary, free-of-charge and expeditious mechanisms for labour disputes settlement to help employers and workers and their organizations resolve their disputes through conciliation and arbitration and where necessary provide recourse to specialised labour courts. To support these objectives, the ILO provides a range of services to governments, workers' and employers' organizations:

– **Assisting constituents** with the drafting or reform of labour legislation that regulates the mechanisms and procedures of labour dispute settlement; and

– **Supporting the development of voluntary, effective and financially viable systems** for the prevention and settlement of labour disputes through mediation, conciliation and arbitration...

Together with the International Training Centre of the ILO, providing training that can equip social partners and government officials with skills and knowledge of effective methods for preventing and resolving labour disputes.

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[2] See previous note.

– Joint union / management negotiations skills training
– Conciliation / mediation skills training
– Building effective labour dispute resolution systems
– Arbitration skills training
– Training for Labour Court Judges”.

In general, this analysis shows the basic ILO’s principles to collective labour disputes prevention and resolution (see diagrams below).

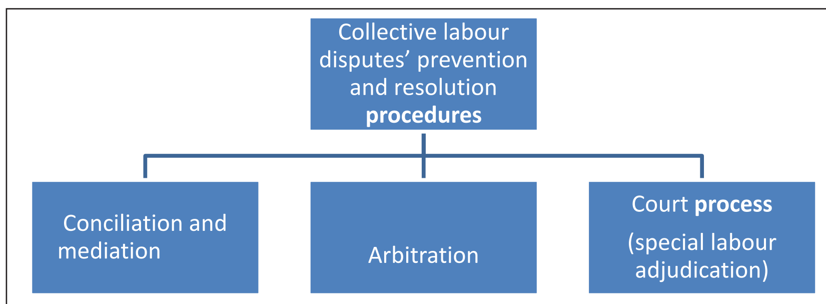

Diagram 1. Collective labour disputes’ prevention and resolution procedures

As we have highlighted earlier, court process is not a procedure; this one is a result of procedure transformation to process once a claim have brought to Court. Aforesaid diagram proofs justify of procedural dualism’ postulates, which states in previous papers [12, p. 154–155].

Diagram 2. ILO’s support services for member States

Hence, ILO's support isn't restricted by legal improvements, but also touched educational and organizational programs for member States and governments.

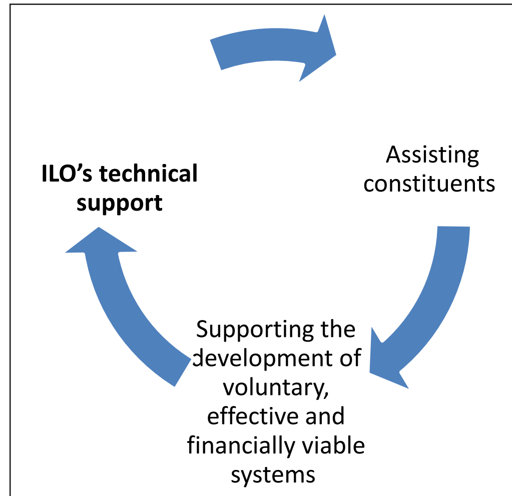

Diagram 3. Additional ILO's services for member States (part 1)

As seen from previous diagram, ILO's standards led to establishing and/or developing the **voluntary, effective and financially viable** systems of collective labour disputes resolution to soften the social intensity in so vulnerable area as labour disputes.

Diagram 4. Additional ILO's services for member States (part 2)

Assumed paragraph 1, it seems following:

– Grievances and conflicts are an inevitable part of the employment relationship. The objective of public policy is to manage conflict and promote sound labour relations by creating a system for the effective prevention and settlement of labour disputes;

– The main procedures of voluntary collective labour disputes resolution are conciliation, mediation and arbitration. Specialised labour adjudication is the process of their resolving;

– ILO's support services consist in establishing legal and regulatory frameworks; building effective dispute resolution systems; capacity building; sharing knowledge and experiences; assisting constituents and supporting the development of voluntary, effective and financially viable systems for the prevention and settlement of labour disputes through mediation, conciliation and arbitration.

However, there is no similar conception, what disputes are defined as **collective.** Moreover, according to ILO's Standards there are ***three*** types of procedure: conciliation, mediation and arbitration, but ***two*** types of labour disputes – collective and individual, which led to furthermore investigation in this area through international review presented in paragraph 2.

§ 2. International review of collective labour disputes prevention and resolution systems.

China. Han Dongfang (Dongfang et al. 2015) reported that "Although the majority of labour disputes in China are collective in nature (grievances or claims by a group of employees against the same employer), labour dispute arbitration committees and the courts are often reluctant to take on collective cases. The current system is really designed for individual labour disputes and as such the authorities try to breakdown collective cases into individual plaintiffs. This practice inevitably increases the cost for and time spent by the workers concerned. Of the 715,163 cases accepted by LDAC's in 2014, only 8,041 were collective cases, which featured 267,165 workers in total, an average of 33 workers per collective case.

Most collective labour disputes in China involve a lot more than 33 workers. Typically, the number of workers involved in strikes and collective protests range from around a few dozen to a few thousand, although numbers sometimes exceed ten thousand. These disputes are hardly ever resolved within the official dispute resolution system. Moreover, because there is no formal system for collective bargaining in China and little or no effective trade union representation at the vast majority of enterprises where strikes occur, workers generally have to take matters into their own hands.

Staging strikes and protests is just about the only way workers can bring their collective grievances to the attention of management, as well as local government and trade union officials. As can be seen from CLB's strike map, strikes are a regular occurrence across the whole of China and across a broad range of industries; manufacturing, transport, construction, retail, education and public services. Workers' collective demands also focus mainly on low pay, wage arrears, overtime, bonuses, social insurance and severance pay. The tactics used by workers vary enormously, from simply withdrawing their labour to large-scale protests on the streets and, increasingly, social media activism.

The success or otherwise of workers' collective action depends on several factors:

– **The nature of the complaint or grievance:** Workers complaining about clear cut violations of their labour rights are more likely to get support from the local government in resolving the dispute. During the massive strike at the Yue Yuen shoe factory, for example, the local government forced the company to address and rectify the under-payment of social insurance contributions but generally ignored workers' long-standing discontent over low pay.

– **The attitude of management:** Some employers are willing to discuss workers' demands and reach an accommodation, while others absolutely refuse to meet with strikers and focus instead on threatening and intimidating workers in a bid to break the strike.

– **The willingness and ability of local government and trade union officials to intervene and resolve the dispute:** In many cases, local government officials will intervene and put pressure on both sides to resolve the dispute. But this approach only provides a band aid solution, and usually fails to address the underlying problems which gave rise to the dispute in the first place.

– **Support from labour rights groups:** There are more than 80 labour rights groups in mainland China that have extensive experience in dealing with collective labour disputes. These organizations can provide workers with tactical support and advice on how to bring the employer to the negotiating table, get support from the public and local officials, and help develop a clear bargaining strategy.

– **Workers solidarity:** By far the most important element in any collective action is the solidarity of the workers. Strikes can dissolve very quickly if the workers have not developed sufficient solidarity to withstand management pressure. However, if the workers are united and determined to pursue their demands, they can achieve notable success. A group of more than 200 sanitation workers in Guangzhou, for example, took on not one but two employers in a determined campaign to protect their livelihoods in August and September 2014" [3].

The authors go on to say[3] that there is "The need for an effective and stable mechanism to resolve collective labour disputes. The current situation in which workers have to resort to strike action just to get anything done is clearly not ideal for the workers, the employer or the local government. China needs to develop a more sustainable and equitable system of labour relations in order to resolve conflicts, but for this to happen, three fundamental changes need to occur:

– **Legislation on collective bargaining:** The Chinese authorities need to draft and enact clear cut policies and legislation that enable workers to engage in face-to-face collective bargaining with management rather than perpetuate the current system of "collective consultations" (集体协商) that largely excludes workers from the process. So far the only legislation that comes close is the *Guangdong Provincial Regulations on Collective Contracts for Enterprises* (广东省企业集体合同条例), which are due to go into effect on 1 January 2015. The Regulations do provide a framework whereby workers can bring the boss to the bargaining table but in many respects the legislation is still

[3] See previous note.

weighted in favour of the employer. For labour relations to improve, additional and more balanced legislation will have to be enacted in other provinces and eventually nationally.

– **Effective trade union representation at the workplace:** Currently the vast majority of enterprise trade unions are empty shells, with union officials installed and controlled by management. For collective bargaining to work, and for meaningful collective contracts to be negotiated, the enterprise trade union needs to be democratically-elected and take a strong stand on behalf of the workers during negotiations. In order to push this process forward, the local trade union federations will need to take a much more proactive role in ensuring that enterprise trade unions become workers' organizations and not simply a puppet of management.

– **Worker participation in the process:** The vast majority of ordinary workers have little faith in the trade union or in its ability to represent them in bargaining with management. However, some workers, particularly in Guangdong, are beginning to *demand that their enterprise union do a much better job of representing their interests.* If this trend continues and more workers start to see the union as an ally in their struggle, the union will be bolstered and empowered and have a much greater chance of getting a better deal for the workers through collective bargaining with management".

Sri Lanka. As reported the researching group from Institute of Chartered Accountants of Sri Lanka "The Industrial Disputes Act is considered as a "piece of social legislation" having as its object the prevention, investigation and settlement of Industrial disputes. It defines an industrial dispute as "any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen, connected with the employment or nonemployment, or the terms of employment or with the conditions of labour, or the termination of the services, or the re-instatement in service of any person...

Sri Lankan dispute settlement mechanism can be ordered in following way:

1. Dispute Settlement by Collective Agreement
2. Dispute Settlement by Conciliation
3. Dispute Settlement by Arbitration
4. Dispute Settlement by Industrial Court
5. Dispute Settlement by Labour Tribunal"

Simply, a Collective agreement is an agreement between employers and employees which regulate the terms and conditions of employees in their workplace, their duties and the duties of the employer. According to the Industrial Disputes Act, a "collective agreement" means an agreement – (a) Which is between, (i) Any employer or employers, and (ii) Any workmen or any trade union or trade unions consisting of workmen, and (b) Which relates to the terms and conditions of employment of any workman, or to the privileges, rights or duties of any employer or employers or any workmen or any trade union or trade unions consisting of workmen, or to the manner of settlement of any industrial dispute. A collective agreement should be written and signed by both the parties of the agreement or by the representative of each party and may transmit the agreement to the Commissioner; and the Commissioner shall forthwith cause the agreement to be published in the Gazette. Every collective agreement which is published in

the Gazette under section 6 shall come into force on the date of such publication or on such date, if any, as may be specified in that behalf in the agreement. When collective agreements come into force, it will be binding on the parties, trade unions, employers and workmen referred to in that agreement in accordance with the provisions of section 5(2); and the terms of the collective agreement shall be considered to be implied terms in the contract of employment between the employers and workmen bound by the agreement. According to provisions of section 3, the Commissioner himself endeavors to settle an industrial dispute by using collective agreement of any organization. Collective bargaining is negotiation about working conditions and terms of employment between an employer, a group of employers and one or more representative workers. Conditions for Collective Bargaining:

- Encouragement by the state;
- Freedom of association;
- Strong and stable trade union movement;
- Sufficient representation of worker and recognition by employers;
- Good faith;
- Compulsory Bargaining. No employer shall refuse to bargain with a trade union which has in its membership not less than 40% of the workmen on whose behalf such trade union seeks to bargain" [6].

As seen, in Sri Lanka there is only one way to resolving collective labour disputes – collective bargaining. However, the range of grounds to define the labour dispute as "collective" is not wide and touches only fundamental principles of labour law. Notwithstanding, this situation is contradictory to ILO's Standards of collective labour disputes resolution through conciliation, mediation and arbitration. However, in Sri Lanka there are some problems of arbitration using to collective labour disputes resolving, which have seen from the aforesaid survey[4]: "1. Arbitration may become highly complex; 2. Arbitration may be subject to pressures from powerful law firms representing the stronger and wealthier party; 3. Arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job; 4. If the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury decide the case; 5. In some arbitration agreements, the parties are required to pay for the arbitrators, which adds an additional layer of legal cost that can be prohibitive, especially in small consumer disputes; 6. In some arbitration agreements and systems, the recovery of attorneys' fees is unavailable, making it difficult or impossible for consumers or employees to get legal representation; however most arbitration codes and agreements provide for the same relief that could be granted in court; 7. If the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee; 8. There are very limited avenues for appeal, which means that

[4] See previous note.

an erroneous decision cannot be easily overturned; 9. Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays; 10. In some legal systems, arbitrary awards have fewer enforcement options than judgments; although in the United States arbitration awards are enforced in the same manner as court judgments and have the same effect; 11. Arbitrators are generally unable to enforce interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of member or a small group of members in arbitration due to increasing legal fees, without explaining to the members the adverse consequences of an unfavorable ruling; 12. Rule of applicable law is not necessarily binding on the arbitrators, although they cannot disregard the law; 13. Discovery may be more limited in arbitration or entirely nonexistent; 14. The potential to generate billings by attorneys may be less than pursuing the dispute through trial; 15. Unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies, called an action to "confirm" an award; 16. Although grounds for attacking an arbitration award in court are limited, efforts to confirm the award can be fiercely fought, thus necessitating huge legal expenses that negate the perceived economic incentive to arbitrate the dispute in the first place."

India. Shapkal (Shapkal, 2015), with reference to other authors, reported that "In Indian industrial relation, the role of conciliator is a pivotal in dispute resolution process and is empower to inquire into the dispute and suggest possible solutions to bring the parties into an agreement (Basu, 2012; Rao, 2001). The conciliator officer is the first point of reference for the dispute resolution, when the bilateral negotiation fails. As per the section 11 of the Industrial Dispute Act, 1947, all the dispute are routed through the jurisdiction of a conciliator officer to various stages of resolution (i.e. an arbitration and adjudication in the labour tribunal).The modus operandi of dispute resolution is to raise a dispute before the conciliation officer who must endeavour to resolve the raised dispute within 14 days from the date of raising the dispute. However, the process of conciliation is invariably time consuming. The conciliation officer normally calls a meeting of the parties, and if his efforts are not successful, he may decide to call another conference at a later date. On occasion, conciliation meetings last a whole day when the subject matter of the dispute involves much discussion. The strategy is to try to ascertain each party's bargaining and actual positions and to suggest suitable compromises in order to settle the dispute. If his conciliation efforts are not successful, the officer may decide to call a meeting at a later date, or may submit a failure report of the meeting with his recommendations to the appropriate government. The appropriate government may make a decision to refer the dispute to labour court or national tribunal for adjudication" [14].

What problems of labour procedure using to collective labour disputes resolution has testified the Asian model? Firstly, the need for an effective and stable mechanism to resolve collective labour disputes (in China). Secondly, the need of expansion of procedures' range to collective labour disputes resolving (in Sri Lanka). At last, the need of separation between the collective and individual disputes (in India). How to do it well, we will make effort to study on European example, but now return to present review of North American model on United States of America example.

United States of America. As we reported earlier, with reference to D. Esplin (Esplin, 2007), "the USA has long history of applying mediation techniques in the resolution of employment disputes principally through the services provided by the ***Federal Mediation and Conciliation Service.*** In more recent times there has been a growing trend towards organisationally based dispute resolution systems through the use of ADR methods and ombudsman structures. Both of these systems were examined in the study.

The FMCS was set up by President Roosevelt in 1935 against a background of Roosevelt's new deal for unions and the subsequent 1935 National Labour Relations Act, which gave employees a federally protected right to organise and bargain collectively. The FMCS has grown from a body charged with assisting parties in conflict to an organisation positioned to provide a range of conflict resolution functions such as mediation, dispute system design and training and development. According to Flax FCMS Commissioners are currently charged with a range of responsibilities including capacity building within organisations combined with the use and application of a wide breadth of differing mediation techniques in what remains of the US organised labour market, mainly in the field of transport, car manufacturing and health care. This currently accounts for about 12% of the US workforce (Flax 2007). In 2005 the FCMS were involved in 6.640 disputes with a success rate of 75%. Only 1.5% of cases resulted in work stoppages (FMCS 2007). Mediators are available to all companies with collective bargaining agreements. The FMCS role is clearly effective and important in many vital areas of the US labour market however the diminution of organised labour in the USA has created a significant workplace transformation including the adoption of new human resource management techniques, which continue to create new challenges within organisational structures. There has also been a significant growth in the introduction of major statutes regulating employment conditions which have generated new areas of litigation. An estimated 30 million civil cases, currently registered in federal, state and local courts, provide a clear indication of the importance of devising effective forms of conflict management. In the year 2000 one in nine cases involving employment discrimination disputes received a median award of $1,000,000 or more (SPIDR 2006). As a consequence many large organisations, institutions and corporations are looking at new and innovative conflict management system methods and design.

The Ombudsman Role. Unlike the UK system of ombudsman, which is mainly external to organisations, the US model is that of an internal ombudsman who is typically a neutral or impartial manager within an organisation, who can provide informal and confidential assistance to managers and employees in resolving work-related concerns. This form of internal ombudsman is able to apply a wide range of skills to achieve problem resolution, including counselling, mediation, facilitation and acts as an informal fact finder, upward feedback and change agent. Over the past thirty years hundreds of North American corporations have established organisational ombudsman offices to help manage and resolve workplace related conflict. One of the most influential and early forms of this type of system stemmed from the Ombudsman function established over thirty years ago at the Massachusetts Institute of Technology (MIT) by Professor Mary Rowe who still remains the MIT Ombudsperson. According to Rowe the effectiveness

of the ombudsman role is drawn from a range of dynamics which, when combined, create the right climate within which an ombudsman can function effectively. The following are some key standards:

– Confidentiality of the office and system;

– Neutrality of the ombudsman Relationships;

– Trust and confidence Ease and safety of accessibility;

– Moral authority Reputation for fairness Delivering respect Listening and counselling Providing and receiving information Creative problem solving Facilitating change (Rowe 2003).

Attempts to measure the cost effectiveness of the organisational ombudsman function was undertaken in the late 1980's using as a basic cost effectiveness equation of: Value added + cost control-ombudsman mistakes costs of ombudsman function. In assessing the value of the ombudsman function five benefits were ascribed to the equation namely productivity, management time, other personnel savings, legal staff salary savings and other agency and law-related savings. Applying this formula to MIT in the late 1980's (adjusted to factor in some research funding) the estimated value was three times the ombudsman's office cost (i.e. US$ 600,000) representing a significant saving in litigation costs, staff time and future conflict avoidance through mediation, training and capacity building within the Institution (Rowe and Perneski, 1990). Further research on the effectiveness of the organisational Ombudsman/Mediator program at the National Naval Medical Centre (200 + bed hospital with 600 physicians) revealed that, between July 2001 and July 2003, 200 cases were directed to the Ombudsman without a single payment or the filing of a legal claim. The national average is 10 to 12 patient complaint episodes in every 100 ends in litigation with the average cost of 12 claims being $4.800.000. This research also revealed an increase in patient and family satisfaction, a reduction in legal costs, a reduction in claims and evidence of improved patient safety (Houk, 2003). The Ombudsman role has continued to develop throughout North America. More contemporaneous concepts use terms such as integrated conflict management design system to offers a more advanced structure which has multiple access points within organisations with fully trained mediators and sophisticated early warning systems focussed on conflict avoidance. This model, known as the "Lynch ICMS Model", appears to be at the cutting edge of the "beyond ADR" debate. It is regarded as simple effective method which has significantly transformed many public sector organizations across North America. These include the Transportation Security Administration of the United States Department of Homeland Security, the World Bank, Department of National Defence and Canadian Forces, Parks Canada, Public Works and Government Services Canada, the RCMP, Canada Customs and Revenue Agency, and the work of the Privy Council of Canada's Task Force on Modernization of Human Resources within the Public Service. Key ingredients of the system include: encourages employees and managers to give early indication of their concerns and constructive dissent. Integrates a collaborative problem-solving approach into the culture of the organisation is flexible and user friendly. Provides options for all types of problems and all people in the workplace including employers, supervisors, professionals, and managers. Creates a culture that welcomes dissent and encourages resolution of conflict at the lowest level through direct negotiation.

Provides multiple access points. Employees can readily identify and access a knowledgeable person whom they can trust for advice about the conflict management system. Crucial to this success is the willingness of organisations to recognise the importance of developing an effective conflict management system that is fit for purpose and an acceptance that this can only be achieved by engaging and securing input from the users and decision makers at all levels of the organisation (Lynch in SPIDR)" [8, p. 94–95].

What features of labour procedure using to collective labour disputes resolution has demonstrated the North American model? Firstly, the mediation procedure using as a statutory service. Secondly, the Ombudsman institute functioning as an internal independent arbitrational manager, which confirms with aforesaid ILO's standards of collective disputes resolution. And now let's return to European model's review.

Latvia. According to the Labour Dispute Law on October, 16, 2002 collective labour disputes divided into **regarding rights** and **regarding interests:** "(1) Collective disputes regarding rights shall be settled in a conciliation commission. Parties to the collective dispute regarding rights shall establish a conciliation commission not later than within a time period of three days following the time period referred to in Section 10, Paragraph two of this Law by authorizing an equal number of representatives. (2) In matter of a collective dispute regarding rights, the parties shall write a report regarding the differences of opinions and submit it to the conciliation commission not later than within a time period of three days after the time period referred to in Section 10, Paragraph two of this Law. The conciliation commission shall examine the referred to report and take a decision within a time period of seven days following receipt of the report. Minutes shall be taken of conciliation commission meetings. If parties to a collective dispute regarding rights so agree, the conciliation commission may settle the collective dispute regarding rights and also take a decision following the expiry of the time period referred to in this Paragraph. (3) The conciliation commission shall take a decision by agreement of the commission members. The decision shall be binding on both parties to the collective dispute regarding rights and it shall have the validity of a collective labour contract.

Collective disputes regarding interests shall be settled in a conciliation commission. Parties to the collective dispute regarding interests shall establish a conciliation commission not later than within a time period of three days after the time period referred to in Section 14, Paragraph two of this Law by authorizing an equal number of representatives. (2) In the matter of a collective dispute regarding interests, the parties shall write a report regarding the differences of opinions and submit it to the conciliation commission not later than within a time period of three days after the time period referred to in Section 14, Paragraph two of this Law. The conciliation commission shall examine the referred to report and take a decision within a time period of seven days following receipt of the report. Minutes shall be taken of conciliation commission meetings. If parties to a collective dispute regarding interests so agree, the conciliation commission may settle the collective dispute regarding interests and also take a decision following the expiry of the time period referred to in this Paragraph. (3) The conciliation commission shall take a decision by agreement of the commission members. The decision shall be binding on both parties to the collective dispute regarding

interests and it shall have the validity of a collective labour contract. (4) If a conciliation commission does not reach agreement, the collective dispute regarding interests shall be settled in accordance with the procedures prescribed by the collective labour contract. If such procedures have not been prescribed, a collective dispute regarding interests shall be settled by a conciliation method or in the arbitration court. (5) If a collective dispute regarding interests is not settled in a conciliation commission and parties thereto do not agree on settlement of the collective dispute regarding interests by a conciliation method, parties have the right to protect their interests by a collective action. Parties to a collective dispute regarding interests have also such rights when they do not agree on transferring the collective dispute regarding interests for settlement to an arbitration court in accordance with Section 20 of this Law. Rights to a collective action shall also arise if within a time period of 10 days from the day of submission of the submission referred to in Section 14, Paragraph one of this Law a conciliation commission is not established or settlement of the collective dispute regarding interests is not commenced in an arbitration court, in a conciliation commission or utilizing a conciliation method.

Within the meaning of this Law, mediation is a settlement of a collective dispute regarding interests by inviting a third person as an independent and impartial mediator who shall help the parties to the collective dispute regarding interests to settle differences of opinions and to reach agreement. (2) Settlement of a collective dispute regarding interests by a mediation method shall be commenced following a mutual agreement of parties to the collective dispute regarding interests. (3) During the time period when a collective dispute regarding interests is settled utilizing a mediation method the parties to the collective dispute regarding interests must refrain from exercising the right to a collective action (including a strike and lockout)" [9].

At the same time, the collective labour disputes regarding ***rights*** define as "differences of opinions between employees (a group of employees) or representatives of employees and an employer, employers (a group of employers), an organization of employers or an association of such organizations, or an administrative authority of the sector that arise in concluding, altering, terminating or fulfilling an employment contract, as well as in applying or ***interpreting provisions of regulatory enactments, provisions of a collective labour contract or working procedure regulations***".

However, the collective labour disputes regarding ***interests*** define as "differences of opinions between employees (a group of employees) or representatives of employees and an employer, employers (a group of employers), an organization of employers or an association of such organizations, or an administrative authority of the sector that arise in relation to ***collective negotiation procedures determining new working conditions or employment provisions***"[5].

Henceforth, has provided implication that in Baltic Legal Framework there is a criterion of ***"rights"*** and ***"interests"*** dividing of collective labour disputes. Notwithstanding, all of these ones in Latvia resolving by procedure of conciliation and the disputes regarding interests – by mediation procedure, in addition.

[5] See aforesaid note.

Finland. As reported the Ministry of the Employment and the Economy of Finland (2012) "A permanent arbitration procedure for labour disputes has been created to deal with interest disputes arising from working life by the Act on Mediation in Labour Disputes (42/1962). Legal disputes ***concerning the contents of collective agreements or breaches thereof*** can be taken to the ***Labour Court***. Legal labour disputes that do not concern collective agreements can be taken to public courts.

The purpose of the **arbitration procedure** is to help labour market organisations reach a collective agreement when the negotiations have stalled. At the moment, there is one ***Public Conciliator*** and six part-time regional conciliators appointed by him or her to arrange the arbitration procedures. By law, the parties have the duty to be present at the arbitration, but they do not have the duty to accept the arbitration proposal the conciliator may present.

If disagreements arise at workplaces regarding the contents of the collective agreement or its interpretation, or if it appears that the agreement may have been breached, attempts are usually made to solve the dispute in workplace ***level negotiations***. If the matter cannot be resolved between the employees and the employer, negotiations will continue between the employer and the shop steward representing the trade union. If the negotiations still do not produce a solution, the matter will be forwarded to be negotiated between the employerr' associations and trade unions. If no solution can be found at this level, either one of the unions may take the matter to the Labour Court" [15].

As seen, the Scandinavian Framework in field of collective labour disputes regarding rights is similar to Baltic, at first glance. However, it is incomprehensible, why the service person provides the ***arbitration*** in Finland calls ***Conciliator***. This situation is contradictory to ILO's Standards, since the conciliation and arbitration procedures are different, indeed.

But there is a conception, which breaches down the division of collective labour disputes from viewpoint of ***"rights"*** and ***"interests"*** criteria. And this conception is Scandinavian too. It is Swedish model of labour disputes definition and dividing.

As provides in previous papers, in Sweden "Two conditions must be met for a labour dispute to be brought directly before the labour court. The claim must be lodged by an employer organisation or employee organisation or by an employer who has entered into a collective agreement on an individual basis. In addition, the case must concern a dispute arising from a collective agreement, a dispute relating to the law concerning the right to participation in decision-making (such as disputes relating to the freedom of association or the right to negotiate), a dispute between parties who are bound by a collective agreement, or a dispute relating to a place of work where a collective agreement is in force. If any of these conditions are not met the claim must be brought in the district court and any subsequent appeal will be heard before the labour court.

A few examples may serve to explain the regulations applicable to this jurisdiction. (1) If a non-union affiliated employee wishes to bring a claim against his employer, that employee must always lodge the claim with the district court. If the employee is union affiliated it is up to the union to bring the claim direct to the labour court if a collective agreement is in force at the place of work. If the organisation is unwilling to pursue a claim on behalf of its member – the organisation may believe that the individual is

in the wrong – the employee can bring a claim himself in the district court. (2) In one particular workplace the employer may have entered into a collective agreement with a trade union representing the employees which is affiliated to the Swedish Trade Union Confederation (LO). One employee belongs to another employee organisation. Any dispute about the employee's rights will be heard and ruled on directly by the labour court if the claim is made by his organisation. (3) An employer belonging to an employers' organisation wishes to claim back excess wages paid out to a non-union affiliated employee. A collective agreement exists between the employers' organisation and a trade union. The wages claim will be heard and ruled on directly by the labour court and should be brought by the employers' organisation against the employee in question" [7, p. 59–60].

From these provisions, there is no difference between collective labour disputes regarding interests in Baltic model and individual labour disputes of union-member employee in Scandinavian, which is nonsense, naturally. Notwithstanding, that Swedish example related to process of labour disputes resolving, mixing of collective and individual labour disputes is non-acceptably, in any case. Independently of legal models, procedures or processes must be objective criteria to definition the labour dispute as collective or individual, undoubtedly.

In this connection reminded the M. Thomas' exploration about contemporary increasing role of globalization and ***unionization*** [11].

Furthermore, talking of collective disputes regarding rights, as seen from Asia and European models, their touches either fundamental labour law principles and guarantees or collective agreements. ILO in their Guide for Business called "The Labour Principles" [13] states 10 fundamental principles of labour, which consists the world standard of fair and legal labour. Among them there are a human rights principles, labour principles itself, environment principles, anti-corruption principles.

Hence, it seems justify to define a ***collective labour disputes as a differences of opinions between employees (a group of employees) or representatives of employees and the unionizing employer, employers (a group of employers) <u>if the union uphold employer/employers,</u> an organization of employers or an association of such organizations, or an administrative authority of the sector that arise of fundamental labour rights, ILO's principles and guarantees, as well as in applying or provisions of a collective agreements or negotiations.***

Proposed definition based on unionization and ***fundamental guarantees*** criteria instead of "rights" & "interests" one. Thus, collective labour dispute itself seems as ***union-uphold*** one arise of ***fundamental labour rights, ILO's principles and guarantees.*** This definition has adjusted the Baltic and Scandinavian models of labour disputes classification and seem as universal.

And what about "collective disputes regarding interests"? These one have characteristics both: collective and individual, since uphold by Union, but may pursue different interests. Moreover, there are disputes without significant value for all labour collective, but uphold by union, as seen from Sweden model.

We states that such ones may call as ***intermediate (involving) labour disputes which defines as differences of opinions between employees (a group of employees)***

or representatives of employees and an employer, employers (a group of employers) if the union uphold employer/employers, an organization of employers or an association of such organizations, or an administrative authority of the sector that arise in relation to new working conditions or employment provisions.

Thus, ***intermediate (involving) labour disputes*** become instead of "collective disputes regarding interests", which allows demarcates difference between "rights" & "interests" disputes more exactly. Rest disputes have been seemed as ***individual***. Consequently, if the labour disputes consider as collective, intermediate and individual, it allows agreed the different legal framework models on universal criteria – unionization and fundamental guarantees. Moreover, such viewpoint makes equal the types of labour disputes and procedures to their resolution (collective – intermediate – individual; conciliation – mediation – arbitration).

What can be ascertained about Ukraine in this context? The Collective Labour Disputes (conflicts) Resolution Act on March, 3, 1998 [2, p. 227] mixes the collective labour disputes regarding rights and interests, as in Latvia and establishes such bodies to their resolving as mediatory commission, Labour Arbitrator and National Service of Conciliation and Mediation. In generally, it confirms with ILO's principles, but aforesaid act is backward from modern content of conciliation, mediation and arbitration greatly. Moreover, there are no possibilities (excluding strikes) to resolving the collective labour disputes by Court process if the meditative procedures become failure (with a few exclusions such as establishing by President an extraordinary situation).

Thus, in Ukraine there are the need of procedure' development as well as ILO's technical and other support for member States using for improvement and modernization of native collective disputes resolution system.

Conclusions and Recommendations. In general, this survey shows, that in majority of countries studied the ILO's Standards of collective labour disputes resolution have been kept. There is some contradiction to these one in Sri Lanka and non-consequence of legal definitions in Finland, which presents the Asian and European problems of collective labour disputes' resolution procedures using.

As reported, ILO's position in collective labour disputes resolution system led to follow:

– Grievances and conflicts are an inevitable part of the employment relationship. The objective of public policy is to manage conflict and promote sound labour relations by creating a system for the effective prevention and settlement of labour disputes;

– The main procedures of voluntary collective labour disputes resolution are conciliation, mediation and arbitration. Specialised labour adjudication is the process of their resolving;

– ILO's support services consist in establishing legal and regulatory frameworks; building effective dispute resolution systems; capacity building; sharing knowledge and experiences; assisting constituents and supporting the development of voluntary, effective and financially viable systems for the prevention and settlement of labour disputes through mediation, conciliation and arbitration.

In Asian region (China, Sri Lanka) there are someone problems of aforesaid Standards keeping. Particularly, in China there are problems with effective and stable mechanism

to resolve collective labour disputes. In Sri Lanka there are a decades problems with arbitration using, which connected with lack of enforceable of arbitration awards and other disadvantages in comparison with court process. In India there is not dividing labour disputes on collective and individual, and, consequently, there is a discussion about establishing of ADR – methods.

European problems consists in mixing of "rights" & "interests" disputes as collective in context of "unionization" criterion existing in Scandinavian Legal Framework.

The Ukraine is backward from modern content of conciliation, mediation and arbitration greatly. Moreover, there are no possibilities (excluding strikes) to resolving the collective labour disputes by Court process if the meditative procedures become failure (with a few exclusions such as establishing by President an extraordinary situation).

Assumed these, has provided implication about dividing labour disputes on **collective, intermediate (involving)** and **individual** with author's definition given to overcome the European model's problem. The ***"unionization"*** and ***"fundamental guarantees"*** criteria to dividing the labour disputes, as universal, instead of existing "rights" & "interests" ones have proposed.

Has stated, that in Ukraine there are the need of procedure' development according to contemporary ILO's requirements as well as ILO's technical and other support for member States using for improvement and modernization of native collective disputes resolution system.

Has emphasized that most problems of collective labour dispute resolution **procedure** using may overcome with equal process improvements help, which argues in previous surveys repeatedly (and proofs by Sri Lanka's arbitration problems example). Consequently, it led to further investigations in field of **simultaneously procedure** & **process improvements** for growth of effectiveness of labour disputes resolving.

Moreover, furthermore surveys have to be devoted on study the collective dispute resolution procedure as form of ***social dialogue*** (and this viewpoint more and more separates between procedure and process of labour disputes resolution, since process is not a dialogical, but enforcement way of this one). On same way the increasingly value of vulnerable social groups' rights protection [1] and feminist method of labour law using [4, p. 93] have to be taken in account with target on social justify advancement.

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Summary

***Kolosov I. V.* Actual problems of particular procedure' forms using in collective labour disputes: ILO's standards and international review.** – Article.

This article devoted to investigation of international standards in field of collective labour disputes' resolution procedures, regional' problems and features of their using and furthermore ways of survey in aforesaid area.

Key words: procedure, collective labour disputes' resolution procedures, ILO, process, labour law.

Анотація

***Колосов І. В.* Актуальні проблеми застосування окремих форм процедури в колективних трудових спорах: стандарти МОП і міжнародний огляд.** – Стаття.

Стаття присвячена дослідженню міжнародних стандартів у сфері процедур вирішення колективних трудових спорів, регіональних проблем та особливостей їх застосування й подальшим напрямам вивчення в указаній сфері.

Ключові слова: процедура, колективні трудові спори, МОП, процес, трудове право.

Аннотация

***Колосов И. В.* Актуальные проблемы применения отдельных форм процедуры в коллективных трудовых спорах: стандарты МОТ и международный обзор.** – Статья.

Статья посвящена исследованию международных стандартов в сфере процедур разрешения коллективных трудовых споров, региональных проблем и особенностей их применения и дальнейшим направлениям исследования в указанной сфере.

Ключевые слова: процедура, коллективные трудовые споры, МОТ, процесс, трудовое право.