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CUSTOMS DISPUTES RESOLUTION THROUGH MEDIATION: INTERNATIONAL PRACTICES

Based on the studies of foreign rules and regulations concerning mediation of disputes arising from customs and other administrative activities, the article defines that a significant number of developed foreign countries adhere to the vision that customs disputes should be resolved through a mediator, or allows resolving any public law dispute through a mediation procedure. It is noted that the settlement of a customs dispute via mediation is allowed only in cases where the subject is an administrative act of the customs authority adopted within its discretion, or if there is an issue of compensation for damages by decisions, actions or omissions of customs authorities (China, Macedonia). The article represents the American provisions on mediation in the public sphere, which are stated to be particularly progressive in their part establishing specific circumstances under which the settlement of public disputes through mediation is excluded, including the need for final and authoritative resolution of the issue forming legal precedent, the significant impact of the case on the rights and obligations of individuals or legal entities that are not parties to the case; particular importance of the consistency in approaches to resolving relevant issues, so it is impractical to increase variations in individual cases; importance of publicity of means and procedures of decision-making in the case, etc. The author highlights the legislative provisions detailing the exclusive reasons for exemption from the obligation to respect the confidentiality of mediation, which include, inter alia, the prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or to enforce it or a judgment regulating the dispute settlement, a court decision on disclosure of information to prevent harm to public health and safety of appropriate severity, etc. (USA, Georgia). Moreover, the author argues that some sound legislative measures are of a particular value, for instance those determining the contractual nature of mediation solution, as well as setting out the possibility of resolving the issue of its enforcement within a simplified procedure (Kazakhstan) and establishing special rules for timeframes for addressing a court for protection with claims in disputes in which private mediation has been initiated (Georgia).

Key words: dispute settlement through mediation, foreign practice of mediation in customs disputes, mediation, mediation in the public sphere, customs dispute.

JEL Classification: K23, K33, K34, K41, O23, O53, P48.

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1. Problem Statement and Objectives of the Study

Optimization of state mechanisms for resolving public disputes is often associated with the deployment of appropriate legal coverage and a proper institutional design of alternative ways to resolve disputes. The wholeness of this intention is convincingly confirmed by the comprehensive democratization of public administration and the adoption of dispositive methods of administrative and legal regulation as the ones that are as important as the regulatory and statutory tools of public administration. However, the prospect of a large-scale implementation of alternative means of dispute resolution has been perceived with some caution by the industry experts and scientific community. The most pronounced restraint in supporting the development of a system of alternative means of resolving public disputes is demonstrated in the context of their use in complex areas of public relations, such as, for example, those related to customs administration. At the same time, it should be borne in mind that international practices, which always serve as an abundant and inexhaustible source of legal and organizational solutions for the systematic improvement of customs legislation, indicates the commitment of many developed countries to resolving customs disputes using alternative means, one of which is mediation.

In view of the above, the scientific objective, pursuing which this article is focused on, is to study the provisions of regulatory sources of foreign countries stipulating the rules for settling the disputes arising from customs relations in order to formulate scientific provisions and recommendations on the mediation for this purpose in Ukrainian realities. It should also be noted that the subject of the investigation will be limited to out-of-court mediation, without considering the dispute settlement involving a judge.

2. Review of sources and presentation of the key points of the study

First of all, based on the materials of analytical research of the Organization for Economic Cooperation and Development, we'd like to note that mediation is considered as a process where a mediator helps disputing parties to communicate with each other, understand each other and, if possible, agree on the conditions of the dispute resolution that satisfy both parties. The mediator facilitates discussions between the parties and their efforts to agree on a way out of the situation that suits their interests (Consensus Building Institute, 2012). Similarly, the Guiding Principles on Mediation in Civil Cases, approved by Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to member states on mediation in civil cases, defines mediation as a dispute settlement process in which parties negotiate through one or more mediators regarding the disputes in order to reach an agreement (The Committee of Ministers of the Council of Europe, 2002)

A review of the legislation of foreign countries on mediation reveals that there is no consensus on using this alternative means of resolving disputes in the public sphere. In particular, the regulations of China, Macedonia, Poland, Singapore, and the United States stipulate that public disputes may be settled based on the results of mediation. Moreover, in China and Macedonia, the statutory provisions explicitly allow a mediator involvement in resolving disputes related to customs control and customs clearance. In contrast, the legislation of Georgia, Kazakhstan and Lithuania excludes administrative and legal relations from the scope of mediation, but the approaches to the legal regulation of the organization and implementation of mediation in other categories provided by the legislation of these countries are still of considerable interest.

Thus, having read the provisions of the customs legislation of the People's Republic of China, we've noted that they provide a fundamental possibility of contractual regulation of customs relations based on the results of negotiations with the mediators involved. Moreover, detailed rules for mediation in customs disputes have been established at the level of customs authorities' subordinate legislation.

Thus, when describing the circumstances under which a mediation procedure may be initiated to resolve customs disputes, art. 88 of the Rules of the General Administration of Customs on Administrative Reconsideration approved by the Decree of the General Customs Administration of the People's Republic of China dated September 24, 2007, No. 166 (hereinafter referred to as the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration) stipulate that the customs administrative reconsideration bodies may voluntarily and legally resolve the dispute out-of-court through mediation, if: 1) a natural person, legal entity or other organization has applied for an administrative review in connection with objections to a specific administrative ruling, which the customs authority has adopted to perform its discretionary powers; or 2) the issue of compensation for damage caused by customs officials during customs control, customs clearance or in other circumstances has been raised. It should be noted that the customs administrative reconsideration bodies are responsible for the management of out-of-court mediation in the administrative reconsideration of customs rulings, study and approval of administrative mediation agreements (paragraph "c" of Art. 4 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). In this case, mediation with the guidance of the customs administrative reconsideration bodies must meet the requirements as follows:

– the mediation is conducted based on the established facts of the case;
– the customs administrative reconsideration bodies must fully respect the will of the applicant and the defendant;
– the mediation should be arranged based on the principles of impartiality and reasonableness;
– the result of the mediation must comply with the provisions of general administrative law and customs rules and must not contradict the nature and principles of law;
– the result of mediation should not endanger any national interests, public interests or the rights and legitimate interests of any other persons (art. 89 of the Rules of the on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007)

At the same time, prior to considering the issue of mediation in a particular customs case, a customs administrative reconsideration body must send a request to the customs authority, the administrative ruling of which is appealed, in terms of which this customs authority must give an opinion on the need to

reject the proposal regarding customs settlement or on the expediency of mediation (art. 43 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). If, taking into account the circumstances of the case, the customs administrative reconsideration body concludes that mediation is possible and expedient, it shall take the following successive steps: 1) specify the intention of the applicant and the customs authority as to whether they agree to mediation; 2) initiate mediation with the consent of the applicant and the customs authority; 3) consider the views of the applicant and the customs authority; 4) suggest a way to resolve the dispute; 5) state the possibility of concluding an agreement on the dispute resolution based on the results of mediation. Instead, where, during the mediation, the applicant or the customs authority has clearly stated its intention of not having any mediation, the mediation shall be terminated and at the request of the applicant a standard customs appeal procedure shall be initiated (art. 90 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). If the applicant and the customs authority with the help of a mediator reach agreement after mediation, the customs administrative reconsideration body shall prepare an administrative reconsideration mediation agreement based on the administrative reconsideration results, which shall bear the following data:

– personal data and address of residence of the applicant, or, if the applicant is a legal entity or other organization, its name and address of registration, as well as personal data of the legal representative or manager;
– information about the customs authority and personal data of its legal representative;
– requests, facts and reasons specified in the application for administrative reconsideration;
– requests, facts, evidence and reasons specified in the reply of the customs authority;
– facts established during the administrative reconsideration, as well as relevant evidence;
– an overall introduction on the mediation conducted;
– the outcome of the mediation;
– the obligations of the applicant and the customs authority to execute the mediation agreement based on the results of the administrative reconsideration;
– date of agreement (part 1 of art. 91 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007).
– In this case, the mediation agreement based on the results of the administrative reconsideration must be sealed by the customs administrative reconsideration body and shall become legally binding once signed or sealed by the applicant and the relevant customs authority (part 2 of art. 91 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007).
– In addition to the out-of-court settlement of a customs dispute through a mediator, Chinese customs laws allow for direct reconciliation between an individual or a company and a customs authority. According to the art.83 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration, if an individual, legal entity or other organization has objections to a particular administrative act, which the customs authority has adopted to exercise its discretion, it may offer the customs authority to reconcile on a voluntary and legal basis. Completion of conciliation negotiations with a positive result must be formalized by written deed of conciliation, approved by the customs administrative reconsideration body and shall be binding, unless the provisions of the deed of conciliation do not threaten any national interests, public interests or rights and legitimate interests of any other persons (art. 83-86 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007). In light of the above, it seems clear that conciliation without applying to the customs administrative reconsideration body may be reached with the help of professional mediators outside the public sector. It should also be borne in mind that the common practice in China is to regulate mediation procedures, that is to include the rules on mediation in the terms of the mediation agreement that shall be approved by the professional mediators associations, particularly, the Rules of Mediation of the Hong Kong International Arbitration Centre and the Mediation Code of the Hong Kong Mediation Accreditation Association (World Bank Group, 2016).

Having considered the above, we can state that in customs disputes under Chinese law, both mediation involving an independent and impartial representative of the state and private mediation are allowed. Moreover, the mediation agreement is always subject to approval by the customs administrative reconsideration body, which verifies its compliance with the provisions of administrative laws and checks there are no threats to the rights and legitimate interests of third parties. It is also noteworthy that

the settlement of a customs dispute through mediation is allowed only in cases where the administrative act of the customs authority adopted in the exercise of its discretion is objected, or if the issue of compensation for damages caused by decisions, actions or omissions of the customs authorities is raised.

As a comparison, the Law of the Republic of Macedonia on Amending and Appending the Customs Code of January 4, 2008 No. 07-87/1 introduced a provision that the customs authority must suggest settlement and mediation procedures to the perpetrator of the customs offence before submitting a request for offence procedure in the usual manner. The purpose of the settlement and mediation procedure is defined by the law as reaching an agreement between the customs authority and the perpetrator of the custom offence for the purposes of eliminating the negative consequences of the offence and preventing perpetration of further offences, as well as avoiding conducting offence procedure for the customs authorities (Republic of Macedonia, 2008). Thus, the Macedonian customs authorities should suggest resolving the disputes through the mediation procedure within the offence proceedings.

Unlike the national legislation of the above-mentioned states, the US regulations do not specify the possibility of applying mediation procedures in customs cases. However, federal law provides for the possibility of using alternative means of resolving disputes, including mediation, in administrative and legal relations.

In particular, according to Chapter 5 Administrative Procedure, Part I The Agencies Generally, Title 5 Government Organization and Employees of the US Code, the alternative means of resolving disputes may be any procedures designed to resolve differences and achieve optimal solutions in terms of any disputes, including, but not limited to, conciliation, mediation, fact-finding, prompt and simplified proceedings involving the parties under quasi-judicial rules, arbitration, the agency of government authorised representatives on relevant matters, or any combination of these procedures. The procedures for the out-of-court settlement of public disputes, as a rule, result in a final written agreements (paragraph 5 of Part 1 of Art. 571 of Title 5 of the US Code) (5 U.S.C., 1996).

At the same time, despite the advantages and potential of procedures for public disputes resolution on the basis of mutual concessions documented in an administrative agreement, in some circumstances a public body shall make management decisions under general rules only. In particular, the law does not allow to take measures for the public dispute resolution if:

– a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

– the matter involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

– maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

– the matter significantly affects persons or organizations who are not parties to the proceeding;

– a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record;

– the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement (part "b" of art. 572 of Title 5 of the US Code). (5 U.S.C., 1996).

Moreover, a particular attention should be paid to the detailed regulation of aspects of mediation confidentiality. The point is that according to art. 574 of Title 5 of the US Code, mediators shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the mediator, unless: 1) all parties to the dispute resolution proceeding and the mediator consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing; 2) the information has already been made public; 3) the dispute resolution communication is required by statute to be made public, but a mediator should make such communication public only if no other person is reasonably available to disclose the communication; 4) a court determines that such testimony or disclosure is necessary to: 4-1) prevent a manifest injustice; 4-2) help establish a violation of law; 4-3) prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases

that their communications will remain confidential. Similarly, a party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless: 1) the communication was prepared by the party seeking disclosure; 2) all parties to the dispute resolution proceeding consent in writing; 3) the information has already been made public; 4) the dispute resolution communication is required by statute to be made public; 5) a court determines that such testimony or disclosure is necessary to: 5-1) prevent a manifest injustice; 5-2) help establish a violation of law; 5-3) prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential; 6) the dispute resolution communication is relevant to determining the existence or meaning of a mediation agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award. The information related to the dispute resolution through a mediator, which was disclosed in violation of the above provisions shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made. (5 U.S.C., 1996).

Taking into account the above, we'd like to emphasize that the US practice of legal regulation of mediation in the public sphere is notable for the establishment of specific circumstances that exclude the settlement of public disputes through mediation, including, in particular, the fact that the final and authoritative resolution of the issue is necessary for administrative and legal precedent; the case has a significant impact on the rights and obligations of individuals or legal entities that are not parties to the case; the observance of established approaches to addressing relevant issues is of particular importance, which is why it is impractical to increase variations in individual cases; total publicity of the tools and procedures of decision-making in the case is important, etc. Moreover, a progressive legislative solution is a detailed specification of the exclusive grounds for exemption from the obligation to respect the confidentiality of mediation, which include, in particular, prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or a decision on the dispute resolution, the availability of a court judgement on the disclosure of information to prevent obvious injustice, to promote the establishment of violations of the law, to prevent harm to the public health and safety of sufficient magnitude.

While continuing the studies of international practice of administrative mediation, we'd like to note that the Code of Administrative Procedure of Poland also provides for the use of alternative means of resolving public disputes, one of which is mediation. Mediation is allowed in all cases where the nature of the dispute is not incompatible with the mediation that takes place, for example, when an administrative body has to act in the only possible way. Turning to the scientific works of A. Bartosiak and M. Kilbowski, we've discovered that according to the laws of Poland, at the request of the parties or on its own initiative, an administrative body must provide information on the possibility of mediation. If the party does not agree to mediation within 14 days of notification, mediation will not take place, as there is no presumed consent of the party. If the method of resolving the dispute is within the law, the relevant decisions, actions or omissions will be binding on the administrative body (Bartosiak A., Kiełbowski M., 2017).

The opportunities for conciliation between the parties to administrative legal relations are also enshrined in laws of Lithuania, however they are limited to the procedure for resolving a public dispute with an administrative court judge involved and through an out-of-court conciliation. Thus, under the laws of Lithuania on administrative proceedings, the parties may terminate the proceedings at any stage by concluding a conciliation agreement if the nature of the dispute so permits (unless the official authorities do not have to strictly adhere to explicit legal provisions and have no discretion to join in the transaction). At the same time, it is noteworthy that according to part 1 of art. 80 of the Law on Administrative Procedure of Lithuania, in order to prevent any abuse of administrative proceedings if the parties wish to conclude an out-of-court agreement, the court may adjourn the trial once for the time necessary for negotiations between the parties (Lietuvos Respublikos Seimas, 1999). At the same time, it is noteworthy that the out-of-court method of public disputes conciliation, which is similar to mediation and is widely practiced in Lithuania, is consultation with the parliamentary ombudsman, who gives recommendations to the parties on the best way to resolve it (The Supreme Administrative Court of Lithuania, 2016).

Similar to the above-mentioned mechanism of ombudsman advice is the Singapore network of primary dispute resolution centres in courts, which offer alternative ways of resolving any legal disputes in consultation with the so-called mediation judges. Surveys showed that these judges successfully resolved

85% of the cases submitted to them and a high level of satisfaction with this quasi-judicial mediation. Moreover, under the legislation of this state, conciliation agreements are subject to enforcement similarly to a court decision (World Bank Group, 2016)

Given the above, the mediation implementation by special status mediators, which can be special judges or ombudsmen, is an extremely useful institutional and regulatory mediation-related tool.

At the same time, in contrast to the states where mediation is allowed for settling public law issues, the legislation of Kazakhstan on mediation excludes the mediation procedure application for the resolution of disputes arising from civil, labour, family and other legal relations involving natural and (or) legal persons when one of the parties is a state body (Part 3 of Art. 1 of the Law of the Republic of Kazakhstan "On Mediation"). At the same time, Kazakhstan's legislative model of mediation is of considerable interest in terms of its implemented approaches to regulating some important aspects of mediation. First of all, it is noteworthy that according to part 4 of art. 27 of the Law of the Republic of Kazakhstan "On Mediation", the agreement on the dispute resolution, concluded out-of-court, is defined as a transaction aimed at establishing, changing or terminating the civil rights and obligations of the parties. Moreover, it is noteworthy that the approval of the agreement on the dispute resolution based on the results of mediation by the court in court proceedings allows returning the court fee to the payer in full (paragraph 2, part 5, art.27 of the Law of the Republic of Kazakhstan "On Mediation"). It should be taken into account that according to part 9 of art. 27 of the law, in case of non-performance, the party concerned shall apply to the court regarding the performance of obligations under the agreement within a simplified written procedure (Low of the Republic of Kazahstan, 2021). Thus, the laws of Kazakhstan defines the agreement on the dispute resolution through mediation as a transaction, provides for the repayment of the court fee to the payer in full if this agreement has been approved in court proceedings, and establishes that in the event of non-performance the case is considered according to the simplified written proceedings.

Similar to the legislation of Kazakhstan, the Law of Georgia "On Mediation" does not provide for the possibility of resolving public disputes based on the results of mediation, however to improve the legislation of Ukraine on mediation it might be appropriate to implement some provisions of this foreign law.

In particular, the optimal legislative solution is that at the request of a party to the dispute the mediator shall issue a document certifying the beginning or end of the mediation process (part 3 of art. 7, part 4 of art. 9 of the Law of Georgia "On Mediation"). Moreover, for the purposes of incorporating advanced international practices in the Ukrainian legislation, the most interesting are the provisions of part 4 of art. 7 of the Law of Georgia "On Mediation", according to which with the mediation agreement under which the parties agree not to go to court or arbitration before a particular term or circumstances, the court or arbitration shall not consider the dispute until the mediation agreement provisions are met in full, except for the cases where the applicant can testify that it will suffer irreparable damages without judicial or arbitral proceedings. Highly progressive is the rule according to which the period of limitation of claims shall be suspended from the moment of initiation of private mediation until its completion, but not more than for 2 years from the initiation of mediation. If the private mediation is unsuccessful, the time, during which the period of limitation of a claim has been suspended, shall not be included in that period (art. 12 of the Law of Georgia "On Mediation"). (Low of Georgia, 2019)

In addition to the above, it is noteworthy that the laws of Georgia on mediation regulate its confidentiality in detail. In particular, its provisions separately stipulate that a mediator shall not provide a party with information disclosed by another party during individual communication, unless the mediator has obtained an explicit consent of that party (part 3 of art. 10 of the Law of Georgia "On Mediation"). The list of circumstances that exclude the need to observe the confidentiality of mediation is wide and sufficiently adapted to the variety of circumstances in connection with mediation. These circumstances are as follows: 1) the need to protect life or health of a person, or to ensure the freedom of a person, or to protect the best interests of a minor; 2) the need to provide information to prove the fact of drawing up an agreement resulting from mediation if the other party disputes or denies that fact; 3) the party is obliged to fulfil the legal obligation undertaken before the initiation of mediation, to disclose the information that became known to the other party during the mediation process, considering the fact that the disclosed information shall be limited to the maximum extent; 4) the disclosure of information is specified by a court decision or by other legally binding decision (the disclosed information shall be limited to the maximum extent and the respective party shall be preliminarily notified thereof); 5) the disclosure of information is necessary for the investigation of a particularly serious crime (the disclosed information shall be limited to the

maximum extent and the respective party shall be preliminarily notified thereof); 6) the disclosure of the content of an agreement resulting from mediation is necessary for the voluntary fulfilment of its terms or its enforcement; 7) a legal or disciplinary dispute has been raised against the person disclosing information and it has derived from the mediation process (at the same time, the disclosure of such information is necessary for the protection of the legal interests of that person); 8) the information, disclosed during the mediation process on condition of maintaining confidentiality, had been known to the party before the initiation of mediation, or the party had obtained such information by other means determined by law, or the information had become public otherwise so that the party has not violated, either directly or indirectly, the obligation of confidentiality determined by this article (part 4 of art. 10 of the Law of Georgia "On Mediation"). (Low of Georgia, 2019)

3. Conclusions of the study

Summing up the study of international practices in the legal regulation of mediation in disputes arising from customs and other legal relations, we'd like to note that a significant number of developed foreign countries share a view that allows the customs disputes resolution with a mediator involved, or resolving any public disputes through the mediation procedure. The resolution of a customs dispute through mediation is allowed only in cases where the administrative act of the customs authority adopted in the exercise of its discretion is objected, or if the issue of compensation for damages caused by decisions, actions or omissions of the customs authorities is raised (China, Macedonia). The US practice of legal regulation of mediation in the public sphere is notable for the establishment of specific circumstances that exclude the settlement of public disputes through mediation, including, in particular, the fact that the final and authoritative resolution of the issue is necessary for administrative and legal precedent; the case has a significant impact on the rights and obligations of individuals or legal entities that are not parties to the case; the observance of established approaches to addressing relevant issues is of particular importance, which is why it is impractical to increase variations in individual cases; total publicity of the tools and procedures of decision-making in the case is important, etc. The legislative provisions with a detailed specification of the exclusive grounds for the discharge of obligations to respect the confidentiality of mediation are quite common, which include, in particular, prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or a decision on the dispute resolution, the availability of a court judgement on the disclosure of information to prevent obvious injustice, to promote the establishment of violations of the law, to prevent harm to the public health and safety of sufficient magnitude. Another positive legislative solution is, in particular, the establishment of the contractual nature of the agreement on dispute resolution through mediation, as well as the possibility of resolving the issue of its enforcement according to a simplified procedure (Kazakhstan) and establishing special rules for the terms of applying to the court in terms of disputes, regarding which private mediation has been initiated (Georgia).

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ВРЕГУЛЮВАННЯ МИТНИХ СПОРІВ ЗА ДОПОМОГОЮ МЕДІАТОРА: ЗАРУБІЖНИЙ ДОСВІД

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За підсумками дослідження зарубіжного досвіду правового регулювання спорів, що випливають з митних та інших правовідносин, у статті визначається, що значна кількість розвинених зарубіжних держав дотримується бачення, за яким має допускатись врегулювання митних спорів за допомогою медіатора, або дозволяє вирішення будь-яких публічно-правових спорів із застосуванням процедури медіації. Зауважується, що врегулювання митного спору шляхом медіації допускається лише у випадках, якщо оскаржується адміністративний акт митного органу, прийнятий на виконання його дискреційних повноважень, або якщо порушене питання про відшкодування шкоди рішеннями, діями чи бездіяльністю митних органів (Китай, Македонія). Прогресивним визнається американський досвід нормативно-правового регулювання використання медіації у публічно-правовій сфері є примітний встановленням конкретних обставин, за яких виключається врегулювання публічно-правових спорів шляхом медіації, з-поміж яких, зокрема, те, що остаточне та авторитетне вирішення питання необхідне для адміністративно-правового прецеденту, справа має істотний вплив на права та обов'язки фізичних або юридичних осіб, які не є сторонами у справі, особливе значення має дотримання усталених підходів до вирішення відповідних питань, через що недоцільним є збільшення варіацій у індивідуальних справах, важливою є повна публічність засобів та процедур прийняття рішення у справі тощо. Підтверджується, що широке поширення мають законодавчі положення з детальним викладом виключних підстав звільнення від обов'язку дотримуватись конфіденційності медіації, які включають, зокрема, попереднє оприлюднення інформації, необхідність використання інформації для встановлення факту існування або змісту угоди про медіацію чи для забезпечення виконання цієї угоди або рішення про регулювання спору, наявність судового рішення про розголошення інформації для відвернення шкоди здоров'ю та безпеці суспільства відповідного ступеню серйозності тощо (США, Грузія). Також, автор обґрунтовує, що позитивними законодавчими рішеннями слід визнати, зокрема, визначення договірної природи угоди про врегулювання спору за допомогою медіації, а також можливості вирішення питання про її примусове виконання у спрощеному порядку (Казахстан) та встановлення спеціальних правил перебігу строків звернення до суду за захистом з вимогами у спорах, у яких розпочата приватна медіація (Грузія).

Ключові слова: врегулювання спору за допомогою медіатора, зарубіжний досвід медіації у митних спорах, медіація, медіація у публічно-правовій сфері, митний спір.