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THE TYPES OF PROCEDURES AND LABOUR DISPUTES' RESOLUTION SYSTEMS: JAPANESE EXPERIENCE AND UKRAINIAN REALITIES

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SUMMARY

In need of classification within labour procedures, the Japanese legal experience and Ukrainian realities has been thought. From Paper of "Labor Disputes and Resolution Systems" (Labor Situation in Japan and Its Analysis: General Overview 2013/2014), is attested, that the main features of Japanese Labour Situation are Decline in Collective Disputes and Increase in Individual ones. Fixed, that the Japanese Collective Disputes' Resolution systems includes the Unfair labour practice relief system and Labour disputes adjustment system. Last one includes Conciliation, Mediation and Arbitration. The Unfair labour practice relief system is established on constitutional level and provided the principle of reasonable checks and balances between employers' and organisations' interests. Japan has two systems for resolving individual labor disputes: one administrative and one judicial. The procedures are divided on administrative and adjustment (for Collective); guidance, advice and conciliation (for Individual Labour Disputes). At same time, in Ukraine the Individual Disputes' Resolution system is backward from the variety of aboard types greatly, which borns a need of detail classification the procedures in labour law and improvement of native Labour Disputes Resolution System.

Key words: classification, labour procedures, Labour Disputes and Resolution Systems, Collective and Individual Labour Disputes, administrative and adjustment systems, guidance, advice and conciliation.

АННОТАЦИЯ

В связи с необходимостью классификации процедур в трудовом праве был изучен правовой опыт Японии в сравнении с отечественными реалиями. Из статьи «Анализ ситуации на рынке труда Японии: общий обзор 2013/2014» было установлено, что основными особенностями ситуации на рынке труда Японии являются снижение количества коллективных трудовых споров и возрастание индивидуальных. Выявлено, что система разрешения коллективных трудовых споров в Японии включает в себя систему административного противодействия нечестной предпринимательской практике и посредническую систему, включающую в себя примирение, медиацию и арбитраж. Система административного противодействия нечестной предпринимательской практике закреплена в Конституции Японии и воплощает принцип сдержек и противовесов между интересами наемных работников и работодателей. Япония располагает двумя видами систем для разрешения индивидуальных трудовых споров: административной и судебной. Процедуры подразделяются на административные и посреднические (для коллективных); патроната, рекомендательные и примирительные (для индивидуальных трудовых споров). В то же время установлено, что система разрешения индивидуальных трудовых споров значительно отстает от многообразия зарубежных систем, что порождает собой необходимость ее улучшения и детальной классификации процедур в трудовом праве.

Ключевые слова: классификация, процедуры в трудовом праве, трудовые споры и системы их разрешения, коллективные и индивидуальные трудовые споры, административные и посреднические системы, патронат, рекомендация, примирение.

Introduction. "The scientific investigations and summarizing of the practical stuff in sphere of the labour… legal relationships the dialectician's need of its systematization to the separated area of knowledge are brought with it inevitably, which about transition of the phenomena of the public life from the quantity to the new quality is attested" [2, p. 8].

While, it needs to add this opinion by ***classification*** within labour procedures, but not systematization only. In this way the Japanese legal experience and Ukrainian realities has been thought and some results may be gifted by method of law compare. Why Japanese experience used? Indeed, Japan is the state with well – developed economy and high people's life level, so its experience may be useful for nowadays Ukraine [6, p. 17 – 20] and interesting for scientific research.

Works of such authors as: Gernakov V., Kiselev I., Matsko A., Prilipko S., Slusar A., Chanisheva G., and others were devoted for someone aspects of this article, particularly: for questions of existing someone procedures in labour law and its peculiarities in Ukraine and aboard.

At same time, the question about deep classification types of procedures for labour disputes prevention and resolution in depend on its variety has been already unsolved.

Thus, the **purposes of the article** is consist in research of the foreign procedures labour disputes prevention and resolution, make from their features, compare it with Ukrainian realities as well as giving recommendations to improve classification types of procedures for labour disputes prevention and resolution in depend on its variety.

The main part. As seen from sub – heading of paper, called "Labor Disputes and Resolution Systems" (Labor Situation in Japan and Its Analysis: General Overview 2013/2014) [3, p. 121 – 127], the main features of Japanese Labour Situation are **Decline in Collective Disputes and Increase in Individual Disputes.**

The Collective Disputes' Resolution systems includes the Unfair labor practice relief system[1] and Labor disputes adjustment system[2]. Last one includes Conciliation, Mediation and Arbitration[3].

The unfair labor practice relief system in the Labor Union Act prohibits prejudicial treatment, refusal of collective bargaining, and dominance and intervention by employers against labor unions and union members, and provides for corrective measures in the event of such acts in order to normalize future relations between labor and management and ensure the functioning of the right to organize, the right of collective bargaining, and right of collective action as guaranteed in Article 28 of the Constitution of Japan'[4]. So, the Unfair labour practice relief system is established on constitutional level and provided the principle of **reasonable checks and balances between employers' and organisations' interests.**

On this way, the "bodies involved in providing relief are labour relations commissions (both prefectural and central), which are independent tripartite administrative bodies made up of representatives of the public interest, employees, and employers"[5]. **'Labour relations commissions** may recommend settlement to the parties when an opportunity arises for negotiated settlement between the parties during the course of investigation and hearings (TUL Article 27-14 para.1). If a settlement is successfully reached, the case is concluded (para. 2 of the same)'[6].

Thus, the bodies, which represent Japanese Unfair labour practice relief system, are **prefectural and central labour relations commissions**. There are **independent tripartite administrative bodies present itself.** Notwithstanding, **the procedure for examination** in cases of unfair labor practices **equates to the process**[7], which, however, isn't justly in a plenitude.

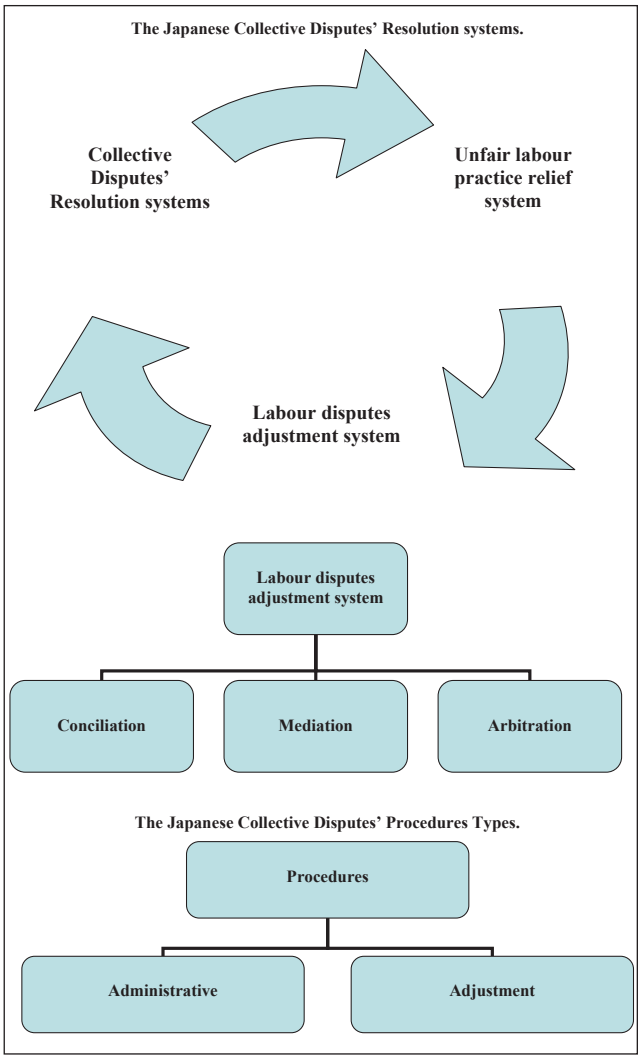
The Japanese **Labor disputes adjustment system**, as has been said above, divided by **Conciliation, Mediation and Arbitration.**

As seen from named Overview above, "**Conciliation** (Article 10 onwards) commences following an application by one or both parties concerned. **Conciliators appointed by the labour relations commission chairperson** from among a register of conciliators (often consisting of a mix of representatives of the public interest, employees, and employers) ascertain the assertions of each party and produce a conciliation proposal. However, the decision on whether to accept this proposal is left up to the parties themselves.

Mediation (Article 17 onwards) commences following either: (1) an application from both parties, (2) an application based on the provisions of a collective agreement by one or both parties, or (3) in cases involving public services, an application from one interested party, the decision of the labour relations commission, and the request of the Minister of Health, Labour and Welfare or the prefectural governor. **Mediation is carried out by a tripartite mediation committee** formed of representatives of the public interest, employees, and employers, which **is appointed by the labour relations commission chairperson** and on which employees and employers are equally represented. Both parties present their opinions, and the mediation committee drafts a mediation proposal that it advises them to accept. Acceptance of this proposal is left up to the parties themselves.

Arbitration (Article 29 onwards) takes place in the event of an application either by both parties, or by one or both parties in accordance with the provisions of a collective agreement. The chairperson of the labour relations commission appoints three people agreed to by the parties concerned from among public interest members to form **an arbitration committee.** This committee meets after hearing about the circumstances from the parties concerned, and determines the details of an award by means of a majority vote of the arbitration members. The arbitration award is prepared in writing (Article 33) and has the same force as a collective agreement (Article 34). However, in the case of dispute tactics being undertaken by parties involved in public services (Article 8: transportation, postal and telecommunications services, water, electricity and gas supply, or medical and public health services), the labour relations commission and the Minister of Health, Labour and Welfare or prefectural governor must be informed at least 10 days in advance (Article 37, paragraph (1)). Moreover, in the event of dispute tactics relating to any kind of business, the parties must immediately notify the labour relations commission or prefectural governor (Article 9)"[8].

Assumed these, the diagrams have built:



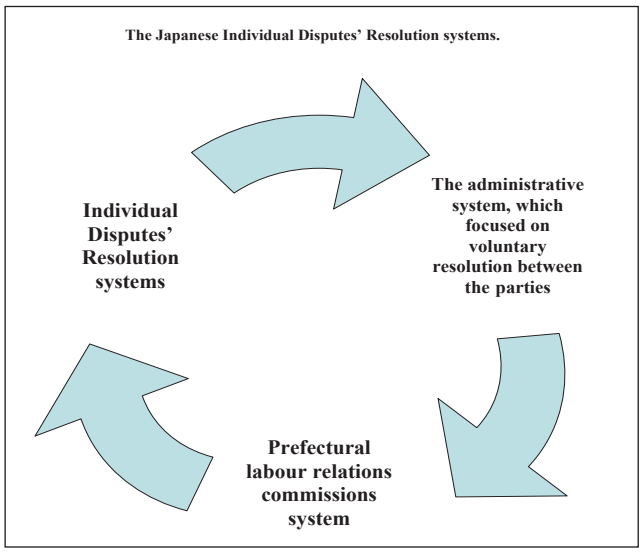
[1] At same resource, that in # 3 of References.
[2] At same resource, that in note #1, page 122.
[3] See previous note.
[4] At same resource, that in note #1, page 121.
[5] See previous note.
[6] At same resource, that in note #1, pages 121 – 122.
[7] See note 6.
[8] At same resource, that in note #1, page 122.
[9] At same resource, that in note #1, page 122.
[10] At same resource, that in note #1, pages 124 – 125.
[11] At same resource, that in note #1, page 126.

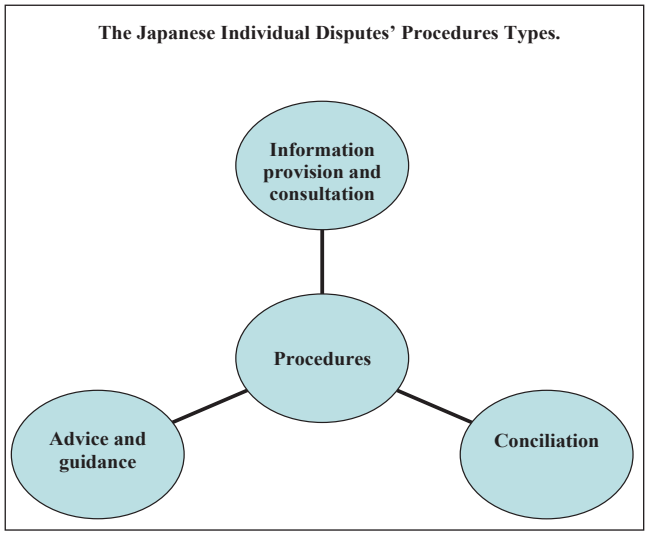
Furthermore, **'Japan has two systems for resolving individual labor disputes: one administrative and one judicial'**[9]. In this paper the **judicial procedure** isn't considered knowingly, since, proposed research provides implication, that the **trial is process**, but not **a procedure.**

Though, "the **administrative system** for the resolution of individual labor disputes is based on the Act on Promoting the Resolution of Individual Labor Disputes. Put simply, the resolution system prescribed by this act **is focused on voluntary resolution between the parties** concerned (Article 2) and consists of the following three steps: **"information provision and consultation"** for the parties concerned at a consultation service (Article 3), followed by "**advice and guidance"** by the head of the labour bureau in question, in the event that a voluntary resolution cannot be achieved between employee and employer (Article 4), and finally **"conciliation"** by the **Dispute Resolution Council** (Article 5) (see Figure IV-15). A wide range of disputes concerning the initiation, conduct, and termination of employment are eligible for resolution by this system, **including problems at the time of hiring, withdrawal of job conditional offers of employment, redeployments, temporary secondments, job transfers, worsened working conditions, discrimination such as sexual harassment in the workplace, and dismissals (including dismissals due to economic reasons and termination of fixed-term contract)** (Article 1 and Concerning the Enforcement of the Act on Promoting the Resolution of Individual Labor-Related Disputes, September 19, 2001, Ministry of Health, Labour and Welfare Notification No.129, (2) Individual Labor-Related Disputes, 1. Purpose.)"[10]

In addition, it needs to say about **resolution of individual labor disputes by prefectural labour relations commissions.** "Since 2003, **prefectural labour relations commissions** have also been providing **consultation or conciliation** in connection with individual labor disputes. According to data published by CLRC on its website, **44 prefectures provided conciliation for 393 individual labor disputes in FY2011**, with a resolution rate of 57.8%. The processing time was "within 1 month" in 52.9% of cases and "between 1 and 2 months" in 37.1%. Thus, in total, 90% of cases were processed within 2 months. Meanwhile, **cases of guidance, advice and conciliation undertaken by 14 prefectural labour relations commissions are in a generally increasing trend year on year**, with 2,287 cases of "guidance and advice", 423 cases of "conciliation" pending and 406 cases concluded in FY2011. On average, 36.0 days were taken to process conciliation"[11]

Assumed these, the diagrams have built:





In Ukraine the Collective Disputes' Resolution system provides by the **Act on Collective Labour Disputes' Procedure [1]** and includes such **types of bodies as: commission of conciliation, independent mediator, Labour Arbitration, National Service of Mediation and Conciliation (Articles 8,10,15)**, which rather similarly to Japanese System.

But, native Individual Disputes' Resolution system is backward from the variety of aboard types greatly. There is only one body, which represents the **extrajudicial procedure** in this ones, – a **commission on labour disputes (CLD)** (Slusar A.N., 2014) [4] There are no resolution systems, which focused on voluntary resolution between the parties, Dispute Resolution Councils and labour relations commissions as administrative bodies in Ukraine. There are no specifies procedures of "information provision and consultation", "advice and guidance" and "conciliation" in Individual Disputes' Resolution system of Ukraine too.

Moreover, there is no exact understanding of definition of **procedure** in Ukrainian scientific doctrine. Several authors (Bezzub B., Golyak L., Kisilevich O., Matsko A., with reference to Kiselev I., 2005 [7, p. 79 – 114]; Zarzhitski O., 2008 [5, p. 65 – 68] i. g.) haven't seen difference between **procedure** and **process of labour disputes resolution**, but these ones **is not equivalence in whole.**

Nevertheless, the difference between procedure and process has existed. In this paper provides implication that, according the native legal, procedure is **not only algorithm** of labor cases examination, but also the **order** of **hiring, withdrawal of job, firing, job transfers etc., which observance is prevent the accrual of labour disputes in majority (or simplify its examination, if it happens).**

Results and conclusions. Thus, it is permissible to make conclusions, that there are such peculiarities of Ukrainian Labour Disputes' Resolution system and procedure:

1) divide procedure on extrajudicial and judicial**,** which incorrect on the viewpoint of procedure as order of hiring, withdrawal of job, firing, job transfers etc.;

2) no Individual Disputes' Resolution systems, which focused on voluntary resolution between the parties, Dispute Resolution Councils and labour relations commissions as administrative bodies;

3) no specifies procedures of "information provision and consultation", "advice and guidance" and "conciliation" in Individual Disputes' Resolution system;

4) only one body, which represents the **extrajudicial procedure** in Individual Disputes' Resolution system, – a **commission on labour disputes (CLD).**

5) acceptance procedure and process of labour disputes resolution, as rather equivalence definitions, which make our Labour Disputes' Resolution system backward in compare on well – developed states as Japan, for instance.

To correct and improve this situation are proposed next ones:

6) provide in Ukraine the **administrative Individual Disputes' Resolution system** (alike Dispute Resolution Councils and labour relations commissions as administrative bodies in Japan); specifies procedures of "information provision and consultation", "advice and guidance" and "conciliation" in Individual Disputes' Resolution system;

7) divide the procedure and process of labour cases examination in separated definitions; provide the opinion, that procedure is **not only algorithm** of labor cases examination, but also the **order of legally significant acts in labour law;**

8) classify procedures as the order of legally significant acts in labour law into: **legally – establishing** (hiring), **legally – changing** (job transfer), and **legally – breaking** (firing);

9) classify procedures as the **algorithm** of labor cases examination into **administrative, conciliation** and **subsidiary** (as "information provision and consultation", "advice and guidance"). Refuse from classification of procedures of labor disputes resolution for extrajudicial and judicial.

This paper may be useful on way of improvement native legal system and continuous scientific searching in area of labour law, for instance, and jurisprudence at whole.

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