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T. A. TSUVINA
Dr. of Legal Science,
Head of the Department of Civil Procedure,
Arbitration and International Private Law,
Yaroslav Mudryi National Law University,
Ukraine, Kharkiv
e-mail: t.a.tsuvina@nlu.edu.ua
ORCID ID: https://orcid.org/0000-0002-5351-1475

ONLINE COURT AS A PLATFORM FOR SMALL CLAIMS PROCEEDINGS IN TERMS OF THE RIGHT TO A FAIR TRIAL IN CIVIL PROCEDURE[1]

The article is devoted to analyzing the online courts as a platform for small claims proceedings in civil cases. The author describes the concept of "e-justice", which involves e-filing, electronic systems of assignment of cases, e-case-management, eDiscovery, ODR, electronic systems for court practice, and using Artificial Intelligence (AI) in civil proceedings. The article describes two main approaches to the ODR concept – narrow and broad. In terms of the broad approach the author describes different types of online courts for small claims, particularly Online Civil Resolution Tribunal (British Columbia, Canada), Online Solutions Court (Great Britain), etc. The author analyzes current innovations in the structure of online courts, connected with integrating information systems and online ADR

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into online court platforms. Special attention is paid to the guaranties of the right to a fair trial in online courts.

Key words: Online Dispute Resolution (ODR), online court, small claims, fair trial, e-justice, cyberjustice, digital justice.

Problem setting. Online Dispute Resolution (ODR) is a prominent facet in transforming private and public dispute resolution mechanisms. This evolution is inextricably tied to the pervasive integration of information and communication technologies (ICT) into our societal fabric, heralding a paradigm shift commonly acknowledged as the "new normal" (Rule, 2016, p. 8). Resolution №2081 (2015) of the Parliamentary Assembly of the Council of Europe "Access to Justice and the Internet: Opportunities and Challenges" emphasizes the essential role of access to justice for democratic states governed by the rule of law. This access is considered to be a fundamental prerequisite for citizens' effective enjoyment of their human rights. At the same time, ICT usage holds the potential to enhance access to justice, not only by simplifying and expediting procedural aspects but also by augmenting the consistency and predictability of outcomes (Committee on Legal Affairs and Human Rights, 2015). In literature ODR is similarly construed as ensuring access to justice and rectifying financial, temporal, and informational disparities between disputing parties (Rabinovich-Einy, 2006, p. 29). Furthermore, it can significantly enhance the efficiency of civil proceedings. Within the framework of the Strategy for Reforming the Judiciary, Judicial Procedure, and Related Legal Institutions for the 2015–2020 period, the incremental introduction of e-justice tools was recognized as a method to enhance judicial efficiency. These tools empower users to engage in legal proceedings, remit court fees, participate in litigation, and access requisite information and documents electronically (para. 8, clause 5.4).

Analysis of recent research and publications. In the foreign literature, the problems of online courts are only beginning to attract the scholars' attention due to their relatively recent appearance. Among the most significant studies are the works of such authors as Rabinovich-Einy (2006); Rabinovich-Einy and Katsh (2014, 2017), Susskind (1986), Salter (2017); Salter and Thompson (2017), Sourdin (2018), Sourdin et al. (2019), Tan (2019), Thompson (2015); Schmitz (2019) and others.

Currently several terms have been employed to reference the usage of ICT in the administration of justice – "cyber justice" (Aubert, 2014; Kastner, 2017), "electronic justice" (Lupo & Bailey, 2014; Van den Hoogen, 2008; Velicogna & Errera, 2013), "digital justice" (Rabinovich-Einy & Katsh, 2017; Cashman & Ginnivan, 2019), and "Online Dispute Resolution" (ODR) (Rule, 2016). However, no universally accepted interpretation of these concepts exists, neither in international legal documents nor within national legislation or scholarly discourse. This lack of consensus is attributable to the interdisciplinary nature of this evolving field, which is still in its formative stages, albeit progressing swiftly.

In this regard Online Dispute Resolution (ODR) and online courts for small claims have yet to command close scrutiny from academics.

Objective of the paper is to study the phenomenon of ODR in general and online courts for small claims in particular in terms of the right to a fair trial in civil cases, given the rapid development of ICT in the administration of justice.

Main findings. In 2017, the Working Group on Cyber justice and Artificial Intelligence in Judicial Systems (CEPEJ-GT-CYBERJUST) within the European Commission for Effective Justice (CEPEJ) conducted a comprehensive study aimed at analyzing and offering recommendations concerning the incorporation of ICT in civil proceedings. In this study, CEPEJ employed the term "cyber justice", rationalizing this choice as an expansion of the scope of issues stemming from the possibilities of ICT usage in the justice domain. Notably, CEPEJ deliberately eschewed the term "e-justice", which implies using ICT to administer justice within the digital realm (European Commission for the Efficiency of Justice, 2017, p. 6). In this study, the concept of cyber justice was construed broadly, encompassing all instances of ICT use in dispute resolution, both within and outside the courtroom. This approach allowed CEPEJ to identify four principal facets of ICT application in the realm of justice: a) enhancing access to justice; b) facilitating communication between judicial bodies and various stakeholders (public authorities, services, inter-court communication, legal practitioners, attorneys, bailiffs, etc.); c) optimizing court administration; and d) providing direct support to judges and clerks (European Commission for the Efficiency of Justice, 2017, p. 7). CEPEJ's concept of improving access to justice through ICT encompasses both access to legal resources (online information systems, case law databases) and access to dispute resolution procedures (online access to free legal assistance, referrals to court or mediation) (European Commission for the Efficiency of Justice, 2017, p. 10). This comprehensive interpretation of access to justice concerning the use of ICT in civil proceedings is also reflected in scholarly literature, where online mechanisms for enhancing access to justice encompass not only ODR mechanisms but also legal information websites, case law platforms, online legal advisory systems, and platforms enabling the generation of claims and other documents for court submission (Schmitz, 2019, p. 121–125). A prominent example is the French website DemanderJustice.com, which assists individuals in generating and filing lawsuits online, particularly in cases that do not require legal representation.

Nevertheless, despite CEPEJ's delineation of the concepts of cyber justice and e-justice, an analysis of the literature on this subject suggests that the interpretations of the concepts of electronic justice, digital justice, and cyber justice effectively converge (Fredriksen & Strandberg, 2016; Dimitrov, 2013; Boscheinen-Duursma & Khanyk-Pospolitak, 2019). Consequently, these terms appear synonymous in foreign literature, signifying distinct possibilities for ICT utilization in dispute adjudication within the courtroom and in Alternative Dispute Resolution (ADR) contexts.

It is pertinent to consider various categories of ICT and their functions within civil proceedings. For instance, Sourdin (2018) identifies three levels of ICT's influence on the judiciary: a) supportive technologies that provide support and guidance to individuals involved in civil proceedings, offering them advice; b) replacement technologies capable of supplanting functions and tasks previously undertaken by human actors; and c) disruptive technologies capable of altering conventional judicial practices and providing various forms of justice, particularly those reliant on artificial intelligence (AI) for decision-making processes (referred to as Judge AI) (p. 1115; See also: Seda, 2020; Gideon , 2019; Thompson, 2015). It is evident that the concept of cyber justice and its synonymous terms primarily encompass foundational and intermediate technologies, while transformative technologies, characterized by the integration of AI in dispute resolution, are typically addressed separately. These transformative technologies introduce an entirely new dimension to ICT deployment within the domain of civil justice, encompassing questions related to the legitimacy of predictive analytics, machine learning, and the potential for AI to replace human judges in the decision-making process.

Civil procedure doctrine needs a well-established conceptual framework to comprehensively address the multifaceted array of issues of the integration of ICT within the civil justice system. In our opinion, the most reasonable course of action involves the utilization of the term "e-justice", which is already enshrined within Ukrainian legislation, as the overarching concept to encompass the entire spectrum of ICT applications in domestic civil proceedings. However, it is crucial to recognize that the prevailing approach at the national level may be somewhat constrained and thus should be revised in alignment with the latest supranational trends in this evolving domain. In our opinion nowadays e-justice covers the following spectrum of ICT-enabled opportunities within the administration of justice in civil cases: a) e-filing, i.e. electronic filing of documents with the court, which entails the digital submission of legal documents to the court, streamlining the document submission process and enhancing efficiency; b) electronic systems for case allocation among judges, which presuppose the implementation of electronic platforms for equitable case distribution among judges, thereby optimizing caseload management; c) e-case-management, i.e. electronic case management systems, which encompass electronic party notifications, electronic document management, audio and video recording of hearings, and facilitating remote participation in court proceedings through video conferencing and related technologies; e) ODR systems, connected with the inclusion of online mechanisms designed to facilitate dispute resolution, both within and outside the traditional courtroom setting, harnessing ICT platforms to augment accessibility and efficiency; d) AI justice incorporates advanced technologies, including predictive analytics, machine learning, and decision-making automation, ushering in a transformative era in ICT utilization within the civil justice system (Tsuvina, 2020).

In literature, ODR is also denoted by alternative terms, including "electronic dispute resolution (eDR)" (Baumann, 2002), "electronic online dispute resolution (eODR)" (Bordone, 1998), "Internet dispute resolution (iDR)" (Thornburg, 2000; Victorio, 2001), and "online alternative dispute resolution (oADR)" (Haloush & Malkawi, 2008; Haloush, 2008), among others. Nevertheless, the term "ODR" stands as the most prevalent and firmly established nomenclature within contemporary literature (Thompson, 2015; Rabinovich-Einy & Katsh, 2017; Tan, 2019; Sourdin et al., 2019), and accordingly, we shall employ it throughout our study.

Essentially, ODR refers to online ADR. This concept did not entail the invention of new ADR methods but rather represented the migration of classical ADR techniques, such as negotiations, mediation, arbitration, etc., into the online realm. While conventional ADR methods typically involve a third neutral party, ODR introduces a "fourth party" – technology – into the dispute resolution process (Schmitz, 2019, p. 89). However, as online case management technologies integrated into judicial proceedings, a broader interpretation of the ODR concept emerged. Nowadays ODR encompasses all instances of leveraging online technologies to resolve disputes that do not necessitate the physical presence of individuals, encompassing negotiations, mediation, conciliation, arbitration, courts, and more. We agree with Tan (2019) that a proper ODR system should be defined as a system enabling parties to address their disputes entirely within an online forum, from filing a lawsuit or claim to the ultimate resolution. In this regard, ODR should be distinguished from 1) systems enabling electronic document submission to the court (e-filing) or online case management and electronic discovery systems (e-discovery), 2) online information platforms, and 3) online document storage and retrieval platforms on the Internet (p. 104).

As a result, two main approaches to ODR can be distinguished – narrow and broad. The narrow approach primarily encompasses online ADR, while the broad approach encompasses the entire spectrum of ODR, encompassing both online ADR and online courts. This distinction exhibits a certain tendency of prevalence: European literature and international documents from organizations such as the Council of Europe and the European Union tend to adopt a narrow understanding of ODR. Conversely, common law countries typically adopt a broader interpretation of ODR. This divergence can be partly attributed to the fact that the first online courts were established in common law countries, necessitating an expansion of the scope of ODR capabilities. A broad approach to interpreting the concept of ODR aligns better with the overarching direction of civil justice reforms in foreign countries. It reflects the contemporary trend of hybridizing dispute resolution procedures. Online court platforms frequently offer the option of employing consensual online ADR methods, such as negotiations, mediation, conciliation, etc., as part of the resolution process. By its inherent nature, the ODR system is heterogeneous. It amalgamates various methods of dispute resolution, encompassing online negotiation, online mediation, online conciliation, online facilitation, online arbitration, online courts, and more. The literature

conventionally categorizes ODR systems as private or public, contingent upon whether disputes are resolved on private or public platforms (Salter, 2017, p. 114). Given the scope of our study and the considerations outlined above, it appears more appropriate to classify types of ODR into two groups based on their relationship with traditional court proceedings: online ADR, encompassing out-of-court dispute resolution using private or public platforms, and online courts (Tsuvina, 2020).

The contemporary landscape increasingly underscores the relevance of online dispute resolution within traditional courts, signifying a form of "democratization of justice" (Sourdin, 2018, p. 1120). Initial endeavors to implement online courts were observed in Canada, China, the United States, and the United Kingdom. Presently, the literature distinguishes between first- and second-generation online courts.

First-generation online courts primarily addressed straightforward disputes through written, electronic communication, involving minimal data processing and process algorithmization (Rabinovich-Einy & Katsh, 2017, p. 189). This era marked a transition to written proceedings facilitated by electronic systems. Among the first-generation online courts, noteworthy examples include the Australian electronic courtroom (eCourtroom), operational since 2001, which allowed parties to the proceedings to submit documents and evidence over the Internet, exchange emails, and more. Additionally, the Money Claim Online service in the United Kingdom enabled online submission and adjudication of monetary debt claims, except when the defendant filed a counterclaim, which would trigger proceedings under general rules (Rabinovich-Einy & Katsh, 2017, p. 189, 190). However, it's important to note a divergence of opinion regarding the eCourtroom system's classification as a first-generation online court. Some argue that it primarily functioned as an electronic document and case management system for the court rather than an ODR system (Tan, 2019, p. 105). Instead, the first generation of online courts is characterized by the shift of communication into the online realm, with or without online court hearings, primarily reliant on electronic communication.

A new generation of online courts is emerging, characterized not only by the migration of communication into the online space but also by the creation of novel, hybrid dispute resolution systems. Unlike earlier approaches that sought to enhance existing judicial processes using technology, these second-generation online courts are pioneering entirely new procedures informed by the unique capabilities of digital technologies. They employ innovative tools and engage new individuals with fresh responsibilities (Rabinovich-Einy & Katsh, 2017, p. 167).

An exemplary instance of a second-generation online court is the Civil Resolution Tribunal (CRT) in British Columbia, which is fully integrated into the Canadian judicial system. Established in July 2016, this court operates with mandatory jurisdiction over disputes related to personal injury compensation resulting from road accidents, most minor disputes with a small claims value of up to CAD 5,000, and conflicts arising among co-

owners of apartment buildings. The CRT's procedural framework aims to resolve disputes at the earliest possible stage and, if resolution proves unattainable, ensures that cases are heard on their merits, culminating in a final decision. This process unfolds in four stages: 1) the provision of dispute information through the Solution Explorer information platform; 2) online negotiations; 3) online facilitation; and 4) traditional court proceedings (Salter, 2017, p. 120, 121).

The initial stage of the CRT dispute resolution process entails the utilization of the Solution Explorer information platform, which is accessible to all users free of charge. Individuals seeking resolution for their disputes can access information specific to their case at this tool. The nature of the dispute is determined by completing a questionnaire, a diagnosis is conducted, and valuable information is disseminated, including excerpts from legal documents, elucidations on legal issues, sample documents, and more. Additionally, recommendations are generated to guide individuals on subsequent actions they can take to protect their rights. If a person decides to commence proceedings, the second stage starts, completing online forms containing crucial details concerning the dispute, involved parties, the plaintiff's stance, and the primary evidence relevant to the case. The claim is sent to the defendant, and both parties can engage in online negotiations to independently resolve the dispute. In cases where negotiations do not yield a resolution, the third stage ensues – facilitation. Facilitation involves active assistance in dispute resolution provided by a third neutral party, typically a professional mediator. The facilitation process maintains confidentiality and employs a range of ICT systems, offering both synchronous and asynchronous communication channels. The third neutral party may serve as a mediator or be empowered to assess the dispute and develop resolution options, thus functioning as a conciliator. This phase has dual objectives: to settle the dispute or prepare the parties for court proceedings in the event of an unsuccessful resolution. According to CRT, approximately 70 percent of disputes are resolved during this stage (Salter, 2017, p. 121). If the parties successfully reach an agreement, they can request that the facilitator submit it to a judge for binding enforcement. However, if no resolution is reached, the facilitator, serving as an impartial intermediary, aids the parties in preparing for the fourth stage – the trial. During this stage, the facilitator employs active case management techniques. The trial proceedings unfold asynchronously through an online platform, email, and similar communication channels. The judge reviews written arguments, assesses evidence, and renders a binding and enforceable decision. In instances where an oral hearing is deemed necessary, typically when doubts exist regarding the authenticity of evidence, such hearings are conducted via telephone or videoconference. Throughout the trial, parties are afforded procedural safeguards akin to those in conventional courts. Proceedings within this tribunal generally span approximately 60–90 days, with court costs totaling around 200 Canadian dollars. These costs are distributed across various stages of the case and are reduced if the parties reach an agreement during the negotiation or facilitation phase (Salter,

2017, p. 121). The judges presiding over such tribunals are legal professionals with expertise in specific categories of disputes, and while decisions of these tribunals may be subject to appeal, the grounds for such requests are typically limited (See also: Schmitz, 2019, p. 126–130; Tan, 2019, p. 116–118; Salter, 2017, p. 120, 121; Rabinovich-Einy & Katsh, p. 190, 191; Salter & Thompson, 2017). Analogous pilot projects resembling the CRT model have been implemented in several Australian states, including New South Wales and Victoria (Tan, 2019, p. 122–128).

Another initiative to integrate Online Dispute Resolution (ODR) into the judicial system was the proposal to establish Her Majesty's Online Court in the United Kingdom (Online Dispute Resolution Advisory Group, 2015, p. 6, 7). This concept was later transformed by Lord Briggs, a judge of the Supreme Court of Great Britain, into The Online Solutions Court. This court's jurisdiction covers civil disputes with a claim value starting at £10,000, with plans to gradually increase the maximum threshold to £25,000 (Lord Justice Brigs, 2016, p. 118–120). The dispute resolution process within this court is structured into three stages: 1) exploration stage, in which parties input information about their dispute into an online system; based on this data, they receive information regarding the nature of the dispute, their rights and obligations, the validity of their claims, potential dispute resolution options (both judicial and extrajudicial), and a claim submission form; 2) case management stage, during which the case is managed, and online ADR methods are employed; a case officer oversees the process, which may include online or telephone conciliation, mediation, or early neutral evaluation; 3) dispute resolution stage, which may involve a hearing conducted via video or telephone communication or a decision based on written evidence. The decision of this court binding and can be subject to appeal (See: Schmitz, 2019, p. 134–137; Tan, 2019, p. 118, 119; Rabinovich-Einy & Katsh, p. 194–196).

The USA has also initiated several ODR projects in collaboration with private companies like Matterhorn and Tyler Technologies, focusing on online dispute resolution within the judicial context. These pilot projects encompassed various categories of disputes, such as traffic fine non-payment disputes in Michigan (Schmitz, 2019, p. 105–108), minor tax disputes in Ohio (Schmitz, 2019, p. 109–114), debt collection and traffic fine non-payment disputes in New York (Rabinovich-Einy & Katsh, 2017, p. 114, 115). A distinctive feature of these pilot initiatives was incorporating ADR methods, including negotiation, mediation, or conciliation, as early stages of the dispute resolution process. For instance, an online small claims court in Utah was established in 2018, with jurisdiction over claims valued up to $11,000. This court offers a comprehensive dispute resolution cycle, akin to the CRT, involving three stages: 1) educational and informational stage, utilizing an expert system for guidance; 2) facilitating dispute resolution stage, which also includes mediation as an option; 3) adjudication stage, at which parties can choose between online or in-person trials (Tan, 2019, p. 120, 121).

Rabinovich-Einy and Katsh (2017) emphasize that introducing new technologies in courts allows for overcoming barriers to access justice in a way that was not available before. The authors identify three technological changes that have occurred that would enable courts to improve access to justice: 1) new efficiencies; 2) increased conveniences of case processing and the ability to handle more cases; 3) new justice opportunities in terms of consistency, leveling the playing field through the availability of predefined options, language choice, data collection and subsequent proactive learning, improved procedural design (p. 203).

These emerging court practices are reshaping the image of civil courts and justice, significantly impacting the evolution of the international standard for access to justice. Modern online courts adhere to a model comprising three primary phases: 1) dispute avoidance, aligns with the initial informational stage, where efforts are directed at preventing disputes from escalating; 2) dispute containment, the second facilitative stage, where parties endeavor to resolve the dispute through direct negotiations or consensual processes involving a neutral third party, such as mediation or conciliation; 3) dispute resolution in adversarial trial (Online Dispute Resolution Advisory Group, 2015, p. 17, 18). These systems predominantly emphasize the first two stages, while classical courts make an accent to the third one.

Online ADR is beginning to integrate into online platforms of formal justice, becoming a part of them, which indicates the hybridization of formal and informal justice processes. This shows the creation of a new architecture of the civil dispute resolution system, which is based on several fundamental provisions. Firstly, it is dominated by consensual approach, which allows to settle a dispute at the earliest stages because negotiations, mediation and other conciliation procedures are built into the dispute resolution process. Secondly, such a system is centered on the users of the platform – the parties to the dispute, their interests and convenience; in particular, some systems even provide for the possibility of leaving feedback from the parties, which the developers subsequently use to improve them. Thirdly, creating online courts increases the efficiency of judicial proceedings and saves state resources by automating processes. Fourthly, using such systems is less costly for the parties due to lower court fees and the ability to represent their interests independently, without a professional representative, as the system is transparent and designed for a user who is not a legal expert. Fifth, such a system can ensure equal access to justice, as its simplicity and high degree of algorithmization can balance the positions of the parties and eliminate, or at least mitigate, the so-called procedural advantages of one of the parties, such as their more significant financial resources, frequency of court appearances, legal knowledge, etc. Despite the undoubted benefits of online courts, it is also worth paying attention to specific challenges facing their implementation, in particular, ensuring the safe and uninterrupted operation of the system without interference from third parties; enormous financial costs for its creation by the state; the need for limited access to system

management to reduce the risks of interference; confidentiality to protect personal data; enforcement of court decisions (Committee on Legal Affairs and Human Rights, 2015; Consultative Council of European Judges, 2011). It is worth remembering that the transition of dispute resolution to the online area can be both a way to facilitate access to justice and an obstacle to access to court, in particular, in cases where electronic filing of documents or the use of an online court is mandatory and a person does not have access to the Internet. This aspect is emphasized, in particular, in Opinion No. (2011)14 of the Consultative Council of European Judges "Justice and Information Technology", which notes that not all people have access to ICT and therefore more traditional means of access to information should not be abolished at this time. This is a particularly pressing issue about the protection of vulnerable persons. The use of ICTs should uphold procedural safeguards for those who do not have access to new technologies. States should ensure that parties without such access are provided with specific assistance in this area (Consultative Council Of European Judges, 2011). This circumstance must be taken into account when creating online courts. For example, in CRT, online service is available for persons with difficulty submitting documents. For those who cannot use it or do not have access to the Internet, there are telephone or paper services for submitting documents (Salter, 2017, p. 123).

Another issue is connected with the European standards of fair trial within the meaning the European Convention on Human Rights. Thus, the Parliamentary Assembly of the Council of Europe emphasizes the need to protect the rights enshrined in the ECHR, in particular the right to a fair trial (Article 6 of the ECHR) and the right to an effective remedy (Article 13 of the ECHR) when using ICT in civil proceedings (Committee on Legal Affairs and Human Rights, 2015). This is also emphasized by the Consultative Council of European Judges in its Opinion No. (2011)14 "Justice and Information Technology", which states that ICT should be a means of improving court administration, improving access to court and strengthening the guarantees of Article 6 of the ECHR – impartiality, independence of judges, fairness and reasonable time of trial (para. 5). At the same time, judges should determine the advantages and disadvantages of ICT and identify and address any risks to the proper administration of justice. ICT should not diminish the procedural rights of the parties (para. 7). Judges should be aware of such risks as they are responsible for protecting the rights of the parties. ICTs should not interfere with judges' ability to apply the law independently and impartially (para. 8). In addition, the use of ICT should not reduce procedural safeguards (or affect the composition of the court) and in no case should it deprive a person of the right to an adversarial hearing before a judge, the right to produce original evidence, the right to examine witnesses or experts, and the right to present any materials or submissions that the person considers useful. Moreover, the use of ICT should not affect the mandatory hearings and other essential formalities provided for by law (para. 28) (Consultative Council Of European Judges, 2011). The need to comply with

procedural guarantees of fairness of the trial in online courts is also emphasized in the scientific literature (Schmitz, 2019, p. 156).

The absence of oral hearings in online court proceedings, when appropriately justified and balanced with procedural safeguards, can be compatible with the provisions of Article 6(1) of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) recognizes that the right to an oral hearing is not an absolute requirement in all cases, and there are situations where written proceedings may be sufficient. However, certain conditions must be met to ensure the fairness of proceedings conducted primarily in writing. These include (a) right to request an oral hearing: online courts should provide parties with the opportunity to request an oral hearing when they consider it necessary; this ensures that individuals have the option to present their case orally if they believe it would better serve their interests; (b) efficiency and economy: the use of written proceedings should be justified by considerations of efficiency and economy. For simple and straightforward cases that do not require complex evidence or extensive oral presentations, written proceedings may be appropriate; (c) equality of arms: it is essential to maintain the principle of equality of arms, meaning that both parties should have an equal opportunity to present their case and respond to the arguments of the opposing party; (d) procedural safeguards: online court procedures should incorporate procedural safeguards to compensate for the absence of oral hearings; this may include clear rules for written submissions, deadlines, and mechanisms for fact-finding and evidence presentation; (e) transparency: proceedings, whether oral or written, should be transparent and accessible to the parties involved; parties should be informed about the process and their rights throughout the proceedings (*Frobrich v. Germany; Fexler v. Sweden;* Tsuvina, 2020).

Regarding the legitimacy of online justice, there are valid concerns about ensuring that ICT to court does not trivialize the judicial process or devalue judicial resources. It is crucial to strike a balance between leveraging technology for efficiency and accessibility and maintaining the fundamental function and humanistic aspect of justice. Some key considerations in achieving this balance include public perception, access to justice, ethical considerations, human-centered approach, continuous improvement. In summary, online courts have the potential to offer efficient and accessible dispute resolution mechanisms, but it is essential to ensure that they operate in a manner consistent with the principles of fairness, transparency, and access to justice. Striking the right balance between technology and human-centric principles is crucial to the success and legitimacy of online justice systems.

Conclusions of the research. Summarizing the above, one of the most promising areas of reforming the civil procedure sphere worldwide is currently recognized as the implementation of ODR, which includes online ADR and online courts. Modern online courts are characterized by a hybridization of formal and informal justice processes, which creates an image of a new court and justice in civil cases and significantly affects the

evolution of the understanding of the international standard of access to justice. The advantages of online courts include a shift in focus to the user of the online court platform, greater efficiency of court proceedings through process automation, and the system's cost-effectiveness in terms of time and money, as its implementation reduces court costs and enables self-representation through easy navigation, etc. Such a dispute resolution system is also of crucial importance for ensuring equal access to justice, as its simplicity and a high degree of algorithmization can balance the parties' positions and eliminate, or at least mitigate, the so-called procedural advantages of the parties. However, the most important thing, in our opinion, is that online courts can ensure not only access to justice but also a qualitatively different result of such justice, creating a new architecture of the civil dispute resolution system, which reflects the prevalence of consensus by integrating online ADR into the said system at the earliest stages. This allows individuals to settle a dispute before trial, relieving the judicial system and increasing public satisfaction with it and trust in the court as an institution in a democratic society.

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Т. А. ЦУВІНА
докторка юридичних наук, доцентка, завідувачка кафедри цивільного судочинства, арбітражу і міжнародного приватного права Національного юридичного університету імені Ярослава Мудрого, Україна, м. Харків

ОНЛАЙН-СУД ЯК ПЛАТФОРМА ДЛЯ РОЗГЛЯДУ МАЛОЗНАЧНИХ СПРАВ У КОНТЕКСТІ ПРАВА НА СПРАВЕДЛИВИЙ СУД У ЦИВІЛЬНОМУ СУДОЧИНСТВІ

Постановка проблеми. Онлайн-врегулювання спорів (ODR) є важливим аспектом трансформації приватних та публічних механізмів вирішення спорів. Ця еволюція нерозривно пов'язана з повсюдною інтеграцією інформаційно-комунікаційних технологій (ІКТ) у сферу цивільного судочинства. У літературі ODR пов'язується із забезпеченням доступу до правосуддя та усуненням фінансового, часового та інформаційного дисбалансу між сторонами провадження, водночас запровадження ІКТ у цю сферу містить і ряд викликів. Онлайн-суди наразі вважаються однією з найбільш ефективних інновацій у сфері вирішення малозначних справ, проте в Україні зазначений досвід досі залишається невідомим, чим і зумовлена актуальність вказаного дослідження.

Аналіз останніх досліджень і публікацій. Серед найбільш значущих досліджень можна виділити роботи таких авторів, як О. Рабінович-Ейні (O. Rabinovich-Einy), Р. Е. Саскінд (R. E. Susskind), Ш. Солтер (Sh. Salter), Т. Сордін (T. Sourdin), В. Тан (V. Tan), Д. Томпсон (D. Thompson), А. Дж. Шмітц (A. J. Schmitz) та ін.

Виклад основного матеріалу. У статті йдеться про термінологічну неузгодженість, пов'язану з використанням трьох синонімів на позначення ІТ-технологій у сфері цивільного судочинства, зокрема кіберправосуддя, цифрове правосуддя та електронне правосуддя. Авторка пропонує використовувати термін «електронне правосуддя», який включає в себе електронну подачу документів, електронні системи розподілу справ, електронний документообіг, електронне відкриття справ, ODR, електронні системи судової практики, використання штучного інтелекту в цивільному судочинстві. Одним із найбільш перспективних напрямів реформування сфери цивільного судочинства в усьому світі наразі визнано упровадження системи ODR, яка включає в себе альтернативні онлайн-способи вирішення спорів та онлайн-суди. Сучасні онлайн-суди характеризуються гібридизацією формальних і неформальних процесів правосуддя, що створює образ нового суду в цивільних справах і суттєво впливає на еволюцію розуміння міжнародного стандарту доступу до правосуддя. До переваг онлайн-судів можна віднести зміщення фокусу уваги на користувача судової платформи, більшу ефективність судового розгляду завдяки автоматизації процесів, економічність системи з точки зору часу та грошей, оскільки її упровадження зменшує судові витрати, дає можливість самопредставництва завдяки зручній навігації тощо. Така система вирішення спорів також має вирішальне значення для забезпечення рівного доступу до правосуддя, оскільки її простота та високий ступінь алгоритмізації дозволяє збалансувати позиції сторін та усунути або принаймні пом'якшити так звані процесуальні переваги сторін.

Висновки. Онлайн-суди можуть забезпечити не лише доступ до правосуддя у малозначних справах, а й показати якісно інший результат судочинства в цивільних справах, створюючи нову архітектуру системи вирішення цивільних спорів, яка відображає превалювання консенсусу, інтегруючи онлайн-напрямок вирішення спорів у зазначену систему на ранніх стадіях. Це дозволить особам спробувати врегулювати спір до судового розгляду, розвантажуючи судову систему та підвищуючи задоволеність громадськості нею і довіру до суду як інституту демократичного суспільства. Зважаючи на зазначене, у нашій державі доцільно використати досвід зарубіжних країн та запровадити онлайн-суди для вирішення окремих категорій малозначних справ.

Коротка анотація до статті

Анотація. Цю статтю присвячено аналізу онлайн-судів як платформи для розгляду малозначних справ у цивільному судочинстві. У статті описано два основних підходи до концепції онлайн-вирішення спорів (ODR) – вузький і широкий. З точки зору широкого підходу авторка описує різні типи онлайн-судів для розгляду малозначних справ, зокрема: Online Civil Resolution Tribunal (Британська Колумбія, Канада), Online Solutions Court (Велика Британія) тощо. Авторка аналізує сучасні інновації в структурі онлайн-судів, пов'язані з інтеграцією інформаційних систем та аль-

тернативних способів вирішення спорів до платформ онлайн-судів. Окрему увагу приділено гарантіям права на справедливий судовий розгляд в онлайн-судах.

Ключові слова: онлайн-вирішення спорів (ODR), онлайн-суд, малозначні справи, справедливий судовий розгляд, електронне правосуддя, кіберправосуддя, цифрове правосуддя.

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