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Вячеслав Васильович Комаров

Національна академія правових наук України
Харків, Україна

Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Тетяна Андріївна Цувіна

Кафедра цивільного процесу
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

МІЖНАРОДНИЙ СТАНДАРТ ДОСТУПНОСТІ ПРАВОСУДДЯ ТА ПРЕДМЕТ ЦИВІЛЬНОГО ПРОЦЕСУАЛЬНОГО ПРАВА

Анотація. *Сучасний стан розвитку національних систем цивільного судочинства характеризується все більшим впливом ідей доступності та ефективності правосуддя у цивільних справах та вимагає гармонізації національних систем із міжнародними стандартами справедливого судочинства. Зазначене зумовлює необхідність переосмислення окремих класичних положень доктрини цивільного процесуального права з метою їх відповідності сучасним реаліям. Метою статті є дослідження еволюції та підходів до сучасного тлумачення міжнародного стандарту доступності правосуддя у цивільних справах, а також його впливу на вчення про предмет цивільного процесуального права на доктринальному рівні. В основу статті покладено діалектичний, історико-правовий, системно-структурний, логіко-правовий, порівняльно-правовий методи дослідження, а також методи аналізу та синтезу, автономного та еволюційного тлумачення Європейської Конвенції з прав людини (ЄКПЛ). У статті авторами обстоюється широкий підхід до поняття доступності правосуддя, що включає доступ до суду, доступ до ефективних засобів правового захисту та доступ до альтернативних способів вирішення спорів. Крізь призму міжнародного стандарту доступності правосуддя розглядаються ідеї процесуального центризму, заснованого на уявленні про судовий захист як основну та найбільш ефективну форму захисту порушених прав, та процесуального плюралізму, що виходить із положення про множинність форм захисту, ефективність яких визначається, виходячи з обставин конкретного спору. Авторами обґрунтовується висновок про доцільність сприйняття на рівні національного правопорядку ідеї процесуального плюралізму. Проводиться паралель між ідеями процесуального центризму та плюралізму, що склалися у зарубіжній літературі, та вузькою і широкою концепцією предмета цивільного процесуального права, що сформувалися у вітчизняній доктрині. З урахуванням автономного тлумачення поняття «суд», закріпленого у п. 1 ст. 6 ЄКПЛ, а також дедалі більшої популяризації альтернативних способів вирішення спорів наводяться аргументи на підтримку широкої концепції предмета цивільного процесуального права, що включає в себе цивільне судочинство та альтернативні способи вирішення спорів, зокрема, третейське судочинство, міжнародний комерційний арбітраж, медіацію тощо*

Ключові слова: *доступність правосуддя, доступ до суду, право на справедливий судовий розгляд, процесуальний плюралізм, альтернативне вирішення спорів*

Vyacheslav V. Komarov

National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine

Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Tetiana A. Tsuvina

Department of Civil Procedure
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

INTERNATIONAL STANDARD OF ACCESS TO JUSTICE AND SUBJECT OF CIVIL PROCEDURAL LAW

Abstract. *The current state of development of national systems of civil justice is described by the growing influence of the ideas of accessibility and efficiency of justice in civil cases and requires the harmonization of national systems with international standards of fair trial. This necessitates a rethinking of some classical provisions of the doctrine of civil procedural law to comply with modern realities. The aim of the article is to study the evolution and approaches to the modern interpretation of the international standard of access to justice in civil cases, as well as its impact on the doctrine of the subject of civil procedural law at the doctrinal level. The article is based on dialectical, historical-legal, system-structural, logical-legal, comparative-legal research methods, as well as methods of analysis and synthesis, autonomous and evolutionary interpretation of the European Convention on Human Rights (ECHR). The authors advocate a broad approach to the concept of access to justice, including access to justice, access to effective remedies and access to alternative dispute resolution. Through the prism of the international standard of access to justice, the ideas of procedural centralism, based on the idea of judicial protection as the main and most effective form of protection of violated rights, and procedural pluralism, based on the provision of multiple forms of protection, the effectiveness of which is determined by the circumstances of a particular dispute. The authors substantiate the conclusion about the expediency of the perception of the idea of procedural pluralism at the level of the national legal order. A parallel is drawn between the ideas of procedural centralism and pluralism that have developed in foreign literature, and the narrow and broad concept of the subject of civil procedural law, formed in the domestic doctrine. Taking into account the autonomous interpretation of the concept of "court", enshrined in paragraph 1 of Art. 6 of the ECHR, as well as the increasing popularization of alternative dispute resolution, provide arguments in support of a broad concept of the subject of civil procedural law, including civil litigation and alternative dispute resolution, in particular, arbitration, international commercial arbitration, mediation, etc.*

Keywords: *access to justice, access to court, right to a fair trial, procedural pluralism, alternative dispute resolution*

INTRODUCTION

Access to justice has become a cornerstone in the doctrine of civil procedural law in recent decades. In essence, it has become existential in the development of the theory of civil procedural law and in the reform of civil justice in European countries, because the real access to justice for persons whose rights are unrecognised, challenged or violated is now recognised as one element of the rule of law in a democratic society. International standards of access to justice have become guidelines for the reforms of domestic civil procedural legislation in recent years. The founders of the movement for access to justice in Europe are well-known proceduralists M. Capelletti and B. Garth [1], who laid the methodological basis for understanding this concept. Scientists proposed the so-called instrumental approach to the problems of studying the access to justice in a comparative perspective, which was based not only on identifying the so-called "waves" of access to justice as the main directions of development of this theory, but also investigated effective mechanisms that could be used to overcome certain negative phenomena in the field of civil procedure. The founders of the movement themselves noted that the idea of access to justice is a response to liberalism, which, admiring the declarative slogans of the proclamation of human rights, did not pay due attention to the mechanisms for their implementation. But the movement for access to justice was designed to overcome the formalistic understanding of law in its exclusively normative aspect as a "system of norms" created by the state, replacing it with the so-called "contextual" concept of law, which shifted the emphasis to ensuring the implementation of certain rights, overcoming obstacles to such implementation [2, p. 282-283].

As a doctrinal concept proposed in the late 1970s, access to justice eventually became the main leitmotif of civil justice reforms in foreign countries. However, such popularity of this concept has not added unity to

the understanding of its content, which is still debated, which has long gone beyond the purely legal issues and doctrine of civil procedural law, also covering economic, sociological, psychological and other dimensions. The modern understanding of access to justice as a certain international standard in the field of administration of justice in civil cases allows addressing the broader issue of access to justice as a problem that should be considered at the supranational level. At the same time, international acts do not define the concept of access to justice, which often leads to its identification within the convention system with access to a court as a guarantee of the right to a fair trial (paragraph 1 of Article 6 of the European Convention on Human Rights (ECHR) [3]) and the right to an effective remedy (Article 13 of the ECHR), and within the European Union (EU) protection system – with the right to an effective remedy and to a fair trial (Article 47 of the EU Charter of fundamental rights [4]). In addition, access to justice is increasingly not limited to judicial protection, but also includes access to alternative dispute resolution (ADR), including arbitration, international commercial arbitration, mediation, conciliation, collaborative proceedings, etc. These circumstances indicate the lack of unity of approaches to determining the structural characteristics of the international standard of access to justice at the supranational level.

The study of certain aspects of access to justice was paid attention to in the pages of scientific literature on civil procedural law. Most often in this context, the issues of substantive characteristics of the concept of access to justice were studied [5; 6], ensuring access to justice for certain groups of persons or in certain categories of disputes [7; 8], as well as the implementation of certain elements of access to justice (free legal aid, court costs, rational jurisdiction, judicial immunity, efficiency of court proceedings, the availability of class actions, simplified procedures, execution of court decisions, etc.) [9-11]. At the same time, insufficient attention has been paid to the institutional characterization of the international standard of access to justice in the literature. In view of the above, the issue of studying the institutional dimension of the international standard of access to justice in civil cases and its impact on the classical provisions of domestic procedural doctrine, in particular in terms of rethinking views on the subject of civil procedural law. For a long time, the doctrine was dominated by a narrow approach to defining the subject of civil procedural law, which meant social relations that arise during the conducting the trial in civil cases. At the same time, the broader approach, which also included non-judicial forms of protection in the field of civil procedural law, in particular, alternative dispute resolution, was less popular. Therefore, there is an urgent need to rethink approaches to defining the subject of civil procedural law, considering international standards of justice and access to justice in civil cases, as well as the increasingly popular concept of procedural pluralism, which involves recognising the multiplicity and effectiveness of various forms of protection of violated and disputed rights and interests of individuals. Therefore, the *purpose of this article* is to investigate the evolution and approaches to the modern interpretation of the international standard of access to justice in civil cases, as well as to trace its impact on the doctrine of the subject of civil procedural law at the doctrinal level.

1. MATERIALS AND METHODS

The research methodology is determined by the peculiarities of its purpose and subject area of civil procedural law. The article uses general philosophical, general scientific and special research methods. The dialectical method forms the methodological basis of the study and is used to clarify the nature and content of the concept of access to justice, its conceptual foundations, intersystem relations and the relationship between international legal and domestic regulation of access to justice as a standard of civil proceedings in the aspect of implementing the requirements of the ECHR and the current civil procedural legislation. The historical-legal method is used in the study of the evolution of understanding the concept of access to justice as an international standard of civil justice and enshrining its elements in regulatory sources at the national and supranational levels. The method of analysis and synthesis allowed the authors to analyse and systematise the main approaches proposed in foreign and domestic scientific literature and international documents to define the concept of access to justice in civil cases. Using this method through the prism of the international standard of access to justice, the ideas of procedural centralism, based on the idea of judicial protection as the main and most effective form of protection of violated rights, and procedural pluralism, based on the provision of multiple forms of protection, the effectiveness of which circumstances of a particular dispute. The authors draw a parallel between the ideas of procedural centralism and pluralism, which have developed in foreign literature, and the narrow and broad concept of the subject of civil procedural law, formed in the domestic science of civil procedural law.

The system-structural method allowed providing a structural description of the access to justice in civil proceedings, highlighting such elements as access to court, access to effective remedies and access to alternative dispute resolution. This method also allowed analysing the content of these components of access to justice. The logical-legal method revealed the inconsistency of the interpretation of the current legislation

of Ukraine with international standards of access to justice, in particular, regarding a narrower understanding of the concept of justice within domestic constitutional provisions compared to foreign doctrine and international documents. The comparative law method was used in the analysis of the regulation of certain elements of access to justice within the two regional systems of protection of rights, in particular, within the framework of the conventional protection of the ECHR and the system of protection of rights within the EU. This method was also used to project the doctrinal provisions that have developed within the European movement for access to justice and the American theory of procedural pluralism, in the field of domestic science of civil procedural law.

The use of an autonomous and evolutionary method of interpretation of the concept of "court", enshrined in paragraph 1 of Article 6 of the ECHR, in the practice of the ECHR allowed substantiating the need to extend guarantees of the right to a fair trial to quasi-judicial methods of alternative dispute resolution, in particular, arbitrations, international commercial arbitrations, labour dispute commissions, etc. This made it possible to further argue the expediency of recognising a broad concept of understanding the subject of civil procedural law. The theoretical basis of the study were the works of leading domestic and foreign scholars in the field of the civil procedural law and theory of law, dealing with international standards of access to justice, the concept of procedural pluralism and the doctrine of the subject of civil procedural law. The legal basis of the study is international documents in the field of human rights protection at the regional level, in particular, the ECHR and the EU Charter of Fundamental Rights, as well as current provisions of domestic constitutional, civil procedural and civil law on access to justice in civil cases. The empirical basis of the study is based on the case law of the European Court of Human Rights on the interpretation and application of the right to a fair trial in civil cases, analytical intelligence of the European Commission on the Efficiency of Justice (CEPEJ).

2. RESULTS AND DISCUSSION

2.1. Access to justice as an element of the fundamental principle of the rule of law

Despite the fact that the principle of the rule of law is a fundamental principle of law, today its content in the literature is still hotly debated. In general, it is a dichotomy between formal (thin) and substantive (thick) conceptions of the rule of law. Formal conceptions make formal demands on the field of legal regulation, requiring that legal prescriptions be adopted in accordance with the procedure established by law, be of a general nature, be non-retrospective, clear, consistent, etc. But substantive conceptions, taking into account formal requirements, also relate to the content of legislative prescriptions, including the content of the rule of law, the guarantee of human rights and freedoms, the need to comply with general principles of law, ensuring material justice by courts when considering cases, etc. [12, p. 91-113; 13; 14]. At the same time, despite differing approaches to the rule of law, there is currently some consensus within the European region on the minimum requirements of this principle, as reflected in the Report on the Rule of Law of the European Commission for Democracy through Law (Venice Commission), where key elements the principle of the rule of law recognises: 1) legality, including a transparent, accountable and democratic process for enacting law; 2) legal certainty; 3) prohibition of arbitrariness; 4) access to justice before independent and impartial courts, including judicial review of administrative acts; 5) respect for human rights; 6) non-discrimination and equality before the law [15].

Evidently, ensuring an accessible, fair and independent system of administration of justice is given one of the central places in the context of the requirements of the rule of law, which allows individual authors to contemplate the need to distinguish, along with the formal and substantive requirements of the rule of law, also a third group of requirements – procedural. Thus, J. Waldron notes that: "the procedural understanding of the rule of law requires not only that officials apply the rules as they are set out; it requires application of the rules with all the care and attention to fairness that is signalled by ideals such as "natural justice" and "due process" [16, p. 7-8]. Thus, one of the key requirements of the rule of law is to ensure access to justice. However, it is worth noting that there is currently no consensus on the concept of access to justice, which is increasingly no longer associated with access exclusively to state courts. T. Bingham believes that one of the elements of the rule of law should be considered the existence of a dispute resolution system in civil cases, which allows considering a dispute without excessive costs and delays [17, p. 85]. Therewith, the author notes that this does not exclusively refer to judicial guarantees of fair proceedings, but also to alternative ways of resolving disputes, which are better to call "appropriate" (additional) ways of resolving disputes, because they allow choosing the most optimal way to resolve a dispute, considering the specifics of the latter. Such methods are considered by the author to be consultation, mediation, arbitration, but the court is considered by him as the last way to apply when the previous ones do not give the desired result [17, p. 85-86]. Such a broad

approach to defining the concept of access to justice in the context of the implementation of the rule of law in a democratic society necessitates the study of the international standard of access to justice in civil cases.

2.2. International standard of access to justice in civil cases: origins and evolution of understanding

The concept of access to justice is associated with the international movement for access to justice, the founders of which were Italian scholars M. Cappelletti and B. Garth, who edited the study "Access to justice: the worldwide movement to make rights effective: a general report" in the late 1970s [1]. This study addressed such alarming tendencies in the field of civil justice that were characteristic of most European legal systems at the time, such as excessive length of court proceedings, excessive court costs and the general inefficiency of court proceedings. As a result, scholars have identified the so-called three waves of access to justice, aimed at overcoming the relevant negative trends: the first - aimed at ensuring the efficiency of court costs and the introduction of free legal aid mechanisms for vulnerable groups; the second was aimed at protecting group and collective interests; the third was aimed at the general simplification of civil proceedings and the unloading of the judicial system through the introduction of alternative dispute resolution [1].

Later the issue of access to justice in foreign countries has gone far beyond the reform of the judiciary, covering a wider range of issues. Thus, the famous Canadian scientist R. MacDonald, using the metaphor with waves of access to justice, highlights among the latter: 1) "access to lawyers and courts", which provides for the provision of free legal assistance for vulnerable segments of the population; 2) "institutional restructuring", aimed at changes in the administration of courts and the reform of civil proceedings (the introduction of simplified proceedings and the institution of class actions, the creation of commissions for the protection of human rights and other out-of-court bodies for unloading courts); 3) "demystification of law", aimed at popularising ADR, increasing legal awareness of the population and legal education; 4) "preventive law", which was aimed at ensuring the existence of effective preventive means of dispute resolution by ensuring access to all institutions where laws are created, increasing legal awareness of the population; 5) "proactive access to justice", which provides for ensuring equal opportunities for individuals to receive legal education, hold positions in public authorities, restore confidence in state bodies, etc. [18, p. 20-23]. As can be seen, the proposed interpretation of the concept of access to justice differs significantly from its original understanding and goes beyond civil justice, affecting a wider range of issues of legal practice and legal culture.

Returning to the problems of implementing the accessibility of justice in civil proceedings, it should be emphasised that the approach proposed by M. Cappelletti and B. Garth not only had a great influence on changing the scientific aspects of research in the field of civil procedure, but also became the leading leitmotif for reforming the civil procedural legislation of foreign countries. Thus, improving access to justice was the motto of the famous reform of civil justice in England, carried out by Lord Wolf. The latter noted, in particular, that to ensure the access to justice, the civil procedural system must: a) be just in the results it delivers; b) be fair in the way it treats litigants; c) offer appropriate procedures at a reasonable cost; d) deal with cases with reasonable speed; e) be understandable to those who use it; f) be responsive to the needs of those who use it; g) provide as much certainty as the nature of the particular case allows; h) be effective, inter alia, adequately resourced and organised [19, p. 4, 7]. The issue of access to justice was also addressed by the European Commission on the Efficiency of Justice (CEPEJ), which prepares a report every two years on the efficiency and accessibility of justice in European countries. According to the CEPEJ approach, access to justice includes all legal and organizational factors that affect the availability and effectiveness of judicial institutions, which allows obtaining the maximum number of decisions at reasonable taxpayer costs, while maintaining the quality of such decisions [20, p. 13]. Consequently, the key element of access to justice is recognised as access to the court, which depends on such indicators as the number of courts and their geographical proximity to court users, the use of electronic court proceedings, information awareness of persons applying to the court regarding their case and civil proceedings, the right to free legal assistance, the availability of simplified procedures, the possibility of applying for mediation [20, p. 31, 152; 21, p. 71, 196, 206, 223-224].

A separate aspect of the issue of access to justice is the relationship between the concepts of "access to justice" and "access to justice", which becomes especially relevant in the context of convention provisions. Interesting in this context is the view of N.Y. Sakara, according to which the concept of "access to justice" should be understood in two meanings: a) as the right of access to justice, arising from paragraph 1 of Article 6 of the ECHR and is one of the guarantees of the right to a fair trial; b) as an international standard of access to justice for fair and effective judicial protection, covering the requirements that must meet not only civil proceedings, but also the entire judicial sphere [9, p. 80]. At the same time, the author identifies two groups of elements of the international standard of access to justice: 1) those that guarantee the unhindered exercise of the right of access to the court of each person ("rational" jurisdiction of the court, the right of public interest, due process, reasonable time of a trial); 2) those that remove obstacles that arise when applying to the court of

a particular person ("the right of poverty", procedural mechanisms for providing legal assistance) [9, p. 91]. At the same time, it is easy to notice that the author refers to the elements of access to justice quite diverse institutions, in particular, some elements of the right to access to court, institutions considered in the context of the movement for access to justice, some elements of the right to a fair trial. This approach leads to a certain identification of access to justice and the right to a fair trial. Undoubtedly, the modern interpretation of the concept of access to justice cannot be imagined without the approaches laid down by the ECHR when interpreting the right of access to a court in the context of paragraph 1 of article 6 of the ECHR, in particular, this refers to developing an approach to assessing the legitimacy of restrictions on the right of access to court, taking into account the principle of proportionality, highlighting obstacles to access to court (jurisdictional, economic, formal, etc.) and effective mechanisms for overcoming them. At the same time, in our opinion, the problem of access to justice today should be considered in a broader plane of the entire procedural scope of guarantees provided within the framework of the convention system, and not just the guarantees of judicial protection provided for in paragraph 1 of Article 6 of the ECHR.

Interesting in this context is the broader approach to determining the structure of access to justice presented in the study of the EU Fundamental Rights Agency (FRA), which proceeds from the fact that the international standard of access to justice obliges states to guarantee everyone not only the right to access the court, but in some cases access to ADR. The accessibility of justice in this study correlates not only with Article 6 (1) of the ECHR, but also with Article 13 of the ECHR, which establishes the right to effective remedies, as well as Article 47 of the EU Charter of Fundamental Rights, which establishes the right to an effective remedy and to a fair trial [22, p. 16]. Apart from the classical judicial protection, this study also draws attention to the so-called "other paths to justice", that is, this refers to other non-judicial administrative bodies that can ensure the consideration of the case and settlement of the dispute, for example, national institutions for the protection of human rights, data protection agencies, ombudsman institutions, specialised tribunals, etc. [22, p. 48]. Such bodies, according to the FRA, can provide faster remedies and collective redress, and can therefore be considered to ensure access to justice, provided that they do not deprive a person of the right of access to a court and their decisions can be objects of judicial review. In addition, the availability of justice can also be provided by ADR, which are an alternative to obtaining justice by "formal judicial routes" [22, p. 48]. The modern broad approach to the accessibility of justice must take into account not only the right of access to a court in the context of paragraph 1 of Article 6 of the ECHR, but also the right of access to effective remedies provided for in Article 13 of the ECHR, according to which everyone whose rights and freedoms recognised in the ECHR have been violated has the right to an effective remedy before a national authority, even if such a violation has been committed by persons exercising their official powers. As can be seen, paragraph 1 of Article 6 of the ECHR establishes special guarantees of judicial protection and is a special norm, but Article 13 of the ECHR provides for broader guarantees, extending to the non-judicial sphere. The application of paragraph 1 of Article 6 of the ECHR excludes the need to apply Article 13 of the ECHR, except for some exceptions, for example, in cases where there are effective remedies for violating the right to a reasonable time of trial and enforcement of a court decision (*Kudla v. Poland*).

In its practice, the ECHR has developed certain established approaches to the interpretation of the right to an effective remedy. Thus, the ECHR proceeds from the fact that such a tool should allow the competent domestic authorities to consider the relevant complaint about the violation of convention rights and provide appropriate compensation (*Halford v. the United Kingdom*). At the same time, several means of protection can also provide effective protection, having a cumulative effect (*Silver and Others v. United Kingdom*). The criteria for the effectiveness of a remedy are reduced to the following provisions: a) a remedy must be effective both in theory and in practice (*Rotaru v. Romania*); b) an effective remedy is considered to be one that can prevent, stop, or allow appropriate redress for a violation that has already occurred (*Ramirez Sanchez v. France*); c) a remedy must be adequate and accessible (*Paulino Tomás v. Portugal*); d) the introduction of a certain type of remedy is not required, but the nature of the right that a person requests to be protected affects the type of remedy that the state must provide in each case (*Budayeva and Others v. Russia*); e) the institution that guarantees the use of a certain remedy does not necessarily have to be judicial (*Kudla v. Poland*); f) the effectiveness of the remedy does not depend on the satisfaction of the claims of the person using the said remedy (*Costello-Roberts v. The United Kingdom*). The ECHR may also establish additional specific requirements for the remedies of certain convention rights, an example of which is the above-mentioned remedies for the right to a reasonable time of trial and execution of a court decision, because the inability to protect this right at the level of the national legal order, in fact, leads to its illusory nature and indicates the lack of access to justice for persons whose rights have been violated.

In view of the above, in our opinion, the content of access to justice should also include the right to effective remedies. At the same time, the inclusion in the content of this concept of all elements of the right to

a fair trial in accordance with paragraph 1 of Article 6 of the ECHR is inappropriate and leads to the actual identification of the right to a fair trial with the access to justice, which eliminates the importance of these categories as self-sufficient. Consequently, the element of the international standard of access to justice is precisely the right to access to a court as an element of the right to a fair trial, and not all the guarantees of paragraph 1 of Article 6 of the ECHR. Thus, the concept of access to justice includes: a) the right of access to court; b) the right to an effective remedy; c) the right of access to the ADR. In our study, we will focus on the study of the right of access to court and the right of access to ADR, because the issue of the right to effective remedies is not covered by the subject of civil procedural law, but concerns extrajudicial administrative remedies, with their defining characteristics be able to judicially review their decisions.

2.3. Access to justice, procedural pluralism and the subject of civil procedural law

The proposed broad understanding of the concept of access to justice allows reaching a broader issue of methodological principles and the modern paradigm of civil procedural law. In the legal literature attention was drawn to the difference in the perception of dispute resolution procedures from the standpoint the ideas of legal centralism and legal pluralism [23], which were the basis of two modern theories of the legal process – procedural centralism and procedural pluralism [24, p. 147]. Proponents of procedural centralism consider judicial protection to be the only and main way to resolve disputes, and the courts are the centre of the world of dispute resolution [25, p. 199], unified bodies that administer justice, and monopoly conductors of law and values in society [24, p. 148]. Under this approach, the access to justice is reduced to ensuring unimpeded access to state courts of the classical type. Instead, procedural pluralism is based on the recognition of the legitimacy of the diversity of dispute resolution procedures, in which judicial protection is seen as only one of the possibilities along with other ways of resolving disputes. It is based on the recognition of a wide range of values [24, p. 149] and the idea that non-judicial methods of dispute resolution sometimes allow achieving better results than classical legal proceedings, due to their flexibility and ability to adapt to the specifics of a particular dispute [24, p. 149]. Therefore, ADR is not interpreted as an alternative to judicial protection, but rather "appropriate" ways of resolving disputes. Currently, the theory of procedural pluralism has become one of the main trends not only in the field of ADR, but also in the doctrine of civil procedural law [24; 26-28].

A broad approach to defining the concept of access to justice, which is actually based on the idea of procedural pluralism, actualises the discussion on the subject of civil procedural law, which is recognised as a classic in domestic legal doctrine. In the last few decades, civil procedural law has been considered as an independent branch of law, the subject of which is the social relations that arise during conducting a trial in civil cases. This approach, admittedly, is extremely important, because part 1 of Article 55 of the Constitution of Ukraine [29] establishes the right to judicial protection, which at the international level is called the "right to a fair trial" or "right to a trial". The right to judicial protection belongs to the basic constitutional rights of a person and citizen, has a general character, cannot be restricted and is implemented in accordance with the principle of the rule of law in appropriate judicial procedures of justice that guarantee the right to a fair trial [30, p. 410]. The idea of the subject of civil procedural law as a system of relations in the field of administration of justice in civil cases in domestic science has become traditional and almost universally accepted. This indicates that nowadays the doctrine of civil procedural law is dominated by the idea of civil litigation as a form of administration of justice in civil cases and the identity of the concepts of civil litigation and civil procedure, which echoes the idea of procedural centralism proposed in foreign literature. In the scientific literature it is customary to distinguish between a broad and a narrow concept of understanding the subject of civil procedural law. A narrow concept is reduced to the identification of civil procedure with civil litigation as an activity for the administration of justice in civil cases [31, p. 7; 32, p. 74], and broad-related to its extended interpretation, according to which this concept covers not only civil litigation, but also related areas of judicial activity, in particular, enforcement proceedings, ADR, etc. [33; 34, p. 106; 35, p. 96].

A broad concept of understanding the subject of civil procedural law in Soviet literature was proposed by N.B. Zaider back in the 1960s. It was based on the view that the subject of civil procedural law, in addition to legal relations arising from the consideration of cases by courts in civil litigation, should also include legal relations formed during the consideration of civil cases and other bodies of civil jurisdiction, because civil procedural law provides for a plurality of procedural forms of protection of civil rights (arbitration, friendly courts, notary, etc.) [33, p. 81]. This concept was supported at that time by some other scientists [36, p. 55-56; 37, p. 4-8], but did not become widespread during the Soviet period. The phenomenon of differentiation of civil jurisdiction still exists today, despite the fundamentally new principles of organization and functioning of the judiciary, enshrined in the Constitution of Ukraine and current legislation. Yes, the Civil Code of Ukraine [38] (hereinafter - the Civil Code) provides that each a person has the right to apply to the court for protection of civil rights and interests (Article 16 of the Civil Code). Such protection may also be carried out

in an administrative manner (Article 17 of the Civil Code) or by a notary by making a writ of execution on a debt document in the cases and in the manner prescribed by law (Article 18 of the Civil Code). Some labour disputes are considered by commissions on labour disputes, except for disputes that are subject to consideration directly in district, district in the city or city courts (Article 232 of the Labour Code of Ukraine [39]). Individuals also have the right to refer a case to arbitration courts (Laws of Ukraine "On Arbitration Courts" [40] and "On International Commercial Arbitration" [41]) or try to resolve the dispute through mediation, which has recently become increasingly popular as a consensual method of ADR, although it is not enshrined in law. Finally, the protection of civil rights and interests can be carried out as self-defense, the methods of which can be chosen by a person or established by contract or acts of civil law (parts 1, 2 of Article 19 of the Civil Code).

Forms of protection are a category of civil procedural law used to denote jurisdictional procedures for civil cases, and therefore the content of the legislative definition of forms of protection of subjective rights and interests is to ensure the implementation of these rights through appropriate enforcement mechanisms, i.e. through appropriate legal procedures. S. Kurylov proposed typological characteristics of forms of protection of civil rights, based on the existence of objective reasons for this in terms of advantages (simplicity, accessibility, etc.) of one form or another and the effectiveness of law enforcement [42]. Depending on the nature of the jurisdiction's relationship with the parties to the dispute, the author singled out such forms of protection of civil rights and legitimate interests as: 1) resolving the case by a jurisdictional act of one of the parties to the dispute: 2) resolving the case by a jurisdictional act of an organ which is not a party of the dispute, but is connected with one or both parties of the dispute by certain legal or organizational ties; 3) resolution of the case by a body that is not a party of the dispute and is not related to them by legal or organizational relations, except of procedural nature [42, p. 162, 170-171]. These scientific observations and generalizations in one way or another really reflect a certain legislative practice. At the same time, modern procedural law, based on the priority of judicial protection, also provide opportunities for the protection of civil rights in other procedural forms, in particular, through ADR methods. At the same time, their use has a dispositive character, does not exclude the possibility of judicial protection and is generally assessed as a positive moment and a factor in the unloading of courts.

The existence of various forms of protection of civil rights is a positive fact in the context of the implementation of the international standard of access to justice. At the same time, in its practice, the ECHR has repeatedly emphasised the need for an autonomous interpretation of the concept of "court" in paragraph 1 of Article 6 of the ECHR, which should not be understood exclusively as a state court, but should be considered in its essential meaning (*Regent Company v.* Ukraine). This approach entails the need to comply with the standards of fair trial not only by courts but also by other bodies of civil jurisdiction, which, in the opinion of the ECHR, meet the characteristics of "court", which are: a) the presence of full jurisdiction to clearly established procedures; b) the existence of the power to make binding judgments, which may not be set aside other than by a court of higher instance; c) incoherence of the court with the conclusions of other bodies used in the case; d) the existence of guarantees of independence and impartiality of the relevant body [35, p. 122-123]. Thus, the ECHR assumes that the term "court" should be interpreted broadly, sometimes including quasi-judicial and non-judicial bodies, in particular, disciplinary commissions of doctors and lawyers, administrative bodies that authorised land sales, the High Council of Justice, the parliamentary committee etc. (*Ringeisen v. Austria*; *Sramek v.* Austria; Oleksandr Volkov v. Ukraine). In addition, the ECHR extended, with some limitations, the guarantees of paragraph 1 of Article 6 of the ECHR for arbitration (*Regent Company v. Ukraine*; Court v. the Czech Republic), which in the sense of the above provisions are considered "courts", despite the fact that by their nature they are a method of ADR. This clearly indicates the existence of common fundamental approaches to court proceedings and through quasi-judicial ADR methods, although with some peculiarities regarding the latter, which should be considered in the context of general standards of the right to a fair trial.

So, the problem of forms of protection, although genetically and institutionally determined by the status of judiciary and the fundamental value of justice, reflects the real state of the procedural sphere of legal regulation (the sphere of civil jurisdiction in general) as a system of civil courts, other bodies that protect civil rights, and the system of relevant civil procedures. This conclusion is of conceptual significance for the theory of civil procedural law from the standpoint the ontological essence of the interaction of the principle of the fundamental principle of the rule of law, the constitutional right to judicial protection and the convention right to a fair trial, which in the practice of the ECHR applies to procedures during which civil rights and obligations are determined. In this respect, it is extremely important that the constitutional right to a judicial protection and the convention right to a fair trial, which has a broader subject of legal regulation, are, so to speak, hybridised. The phenomenon of such hybridization determines the fact not only of the real interaction of the

right to a court at the national and international levels, but also the fact of ontological unity of legal relations arising in connection with the trial to determine civil rights and obligations [34, p. 105].

At the same time, this theoretical approach should not be taken as undermining the basic constitutional values of justice, in particular, recognising that justice in Ukraine is administered exclusively by courts and delegating court functions, as well as assigning these functions to other bodies or officials is impossible (Article 124 of the Constitution of Ukraine). At the constitutional level, the indisputable values of justice are fixed as a form of exercising the judiciary, which must be separated from the legislative and executive, and have specific, unique functions. Interpretation of Art. 124 of the Constitution of Ukraine is found in the practice of the Constitutional Court of Ukraine. Thus, considering the case on the constitutional petition of 51 People's Deputies of Ukraine regarding the compliance of the Constitution of Ukraine (constitutionality) with the provisions of para. 7, 11 st. 2, art. 3, item 9 of Art. 4 and Section VIII "Arbitration Self-Government" of the Law "On Arbitration Courts" (case on the tasks of the arbitration court) [43], The Constitutional Court of Ukraine noted that justice is an independent branch of state activity, which courts carry out by considering and resolving in court in a special, established by law, procedural form of civil, criminal and other cases. Instead, arbitration of disputes between the parties in the field of civil and commercial relations is defined as a type of non-state jurisdictional activity, which arbitration courts carry out based on the laws of Ukraine by applying, in particular, arbitration methods. The exercise by arbitration courts of the function of protection provided for in paragraph 7 of Article 2, Article 3 of the law of Ukraine "on arbitration courts" is not the exercise of justice, but the resolving the disputes between the parties in civil and economic legal relations within the limits of the right defined in Part 5 of Article 55 of the Constitution of Ukraine. It is noted that arbitration is not justice, and the decisions of arbitration courts are only acts of non-state jurisdictional institutions to resolve disputes between the parties in the field of civil and economic relations. Arbitration courts make decisions only on their own behalf, and these decisions themselves, adopted within the current legislation, are binding only on the parties to the dispute. Ensuring the enforcement of decisions of arbitration courts is beyond the scope of arbitration and is the task of the competent courts and the state executive service.

Thus, we can conclude that despite the fact that in accordance with domestic law courts are recognised as the core of the system of civil jurisdiction, the existence of various procedural forms of protection of civil rights does not deny the exclusivity and unity of the judiciary, which together mean formal and effective constitution state of a single and equal court for all. This approach makes it obvious that the concepts of civil litigation and civil procedure do not coincide, as the latter covers not only civil litigation, but also other jurisdictional procedures for consideration and resolution of civil cases [34, p. 106]. The broad concept of understanding the subject of civil procedural law, proposed at one time by N.B. Zaider, has not received wide support in scientific circles, but now it seems extremely relevant, given the recent reforms of civil procedural legislation in Ukraine and foreign countries, the evolution of civil procedure and the further differentiation of various forms of legal proceedings. This approach allows identifying the most common patterns of formation of the procedural sphere and the functioning of the system of civil jurisdiction to optimise procedural law in general.

The expediency of a broad approach to defining the subject of civil procedural law should also be considered in view of the need to build a new value paradigm of civil procedure in the context of the fundamental principle of the rule of law, which focuses on respect for human rights and freedoms. Civil litigation and ADR are related to a single subject matter, which is a dispute over civil rights and obligations. European doctrine of civil procedure recognizes the fact that justice should not necessarily be carried out exclusively in courts, because alternative methods of dispute resolution, for example, mediation, are sometimes more appropriate procedures for resolving a particular dispute, because they allow achieving better results than classical legal proceedings in terms of the possibility of developing solutions that satisfy both parties, eliminating the dispute between them. Thus, the Supreme Court of Canada, in interpreting the principle of proportionality, noted that "a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial. This requires a shift in culture [...]. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure" (*Hryniak v.* Mauldin, SCC 7, [2014] 1 S.C.R. 87). It is in this sense that both the judiciary and the ADR ensure access to justice in civil matters in a democratic society governed by the rule of law. Separately in this context, attention should also be paid to the hybridization of civil proceedings, which is associated with the blurring of the boundaries between "formal" and "informal", "public" and "private" justice [24, p. 335]. A clear example of such hybridization is the integration of mediation into litigation, which results in, on the one hand, a certain degree of formalization and the introduction of some element of publicity, and on the other - strengthening the consensual principle in civil proceedings. Successes in expanding the scope of ADR methods have given grounds to talk even about the "privatization" of the field of civil litigation [2, p. 294]. In fact, this indicates the gradual blurring of the boundaries between public and

private justice in the modern world, based on the idea of procedural pluralism and recognition of the polymorphic structure of dispute resolution, which should be explored in all its diversity, not separately.

CONCLUSIONS

Analysis of modern approaches to defining the concept of access to justice leads to the urgent need to rethink some classic postulates of the theory of civil procedural law, due to Ukraine's desire to integrate into the European legal space and recognition of the rule of law as a fundamental principle of law in a democratic society. Despite the lack of established views in foreign and domestic literature on the interpretation of the concept of access to justice in civil cases, we can trace certain patterns in this area. The study concludes that a broad approach to the interpretation of the international standard of access to justice in civil cases is appropriate, according to which its elements such as access to justice, access to effective remedies and access to ADR can be distinguished. This approach is based on the idea of procedural pluralism, which is based on the provision of coexistence of multiple forms of protection of violated rights of persons, the effectiveness of which is determined based on the specifics of a particular dispute. Under this approach, the court is recognised as only one of the possible appropriate ways of resolving disputes, along with other ways of resolving disputes.

Nowadays, we can say that the idea of procedural centralism corresponds to the domestic narrow concept of the subject of civil procedural law, and the idea of procedural pluralism - with a broad concept of the subject of civil procedural law. Considering the autonomous interpretation of the term “court” in the practice of the ECHR regarding the interpretation of paragraph 1 of Article 6 of the ECHR, as well as the growing popularity of alternative dispute resolution, it is now advisable to adopt a broad approach to defining the subject of civil procedural law, which should cover both the classical form of judicial protection (civil litigation) and various ADR methods, in particular arbitration, international commercial arbitration, mediation, conciliation, etc. In view of the above, the concepts of civil litigation and civil process do not coincide and are not identical. Civil procedure are a more general concept that encompasses both civil litigation and other jurisdictional procedures for the consideration and resolution of civil cases to protect the subjective rights and interests of disputant.

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Vyacheslav V. Komarov

Professor
Full Member (Academician) of the National Academy of Legal Sciences of Ukraine
61024, 70 Pushkinska Str., Kharkiv, Ukraine

Vice-Rector for Academic and Methodological Work
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

Tetiana A. Tsuvina

Candidate of Law
Associate Professor of the Department of Civil Procedure
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

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