Ekaterina Tkach
Assistance lecturer of the Civil Procedure Department,
The National University
"Law Academy of Ukraine
named after Yaroslav the Wise"

MODERN INTERNATIONAL TENDENCIES FOR IMPROVING THE JUDICIAL PROTECTION FORMS

The features of alternative procedures (Non-judicial) proceedings are described. The impact of global trends to extend and improve the non-judicial forms of protection of national legislation as an example of reform of civil procedure in England and Wales. Analyzes the development of alternative procedures internationally, provided basic characteristics.

Keywords: alternative dispute resolution, rules of civil procedure in England and Wales in 1998, non-judicial forms of protection, mediation (mediation) in civil cases.

In today's general globalization significantly depends of cooperation between national and international civil process that causes diffusion of certain legal institutions. Globalization processes are manifested not only in the standardization of legislative activity, but also in increasing the "processuality in legal regulation, resulting in expanding the scope of procedural regulation, increasing the number of procedural and procedural rules of procedure to improve procedural complication forms" [1, p.6]. At the national level, European countries began to be gradual modernization of civil procedural law based on fundamental principles of civil procedural law that improve access to justice, which include: the principle of the independence and impartiality of judges, the principles of transparency, dispositive, competition, pct esualnoyi equality of the parties, the existence of alternative ways of resolving civil cases with subsequent control over the accuracy of the decisions of the judicial institutions [2, c .9] through mechanisms simplify and di differentiation judicial procedures [3], proportionality and access to court costs for citizens, timely resolution of cases, reducing red tape the introduction of alternative dispute

resolution capabilities [4, p.41], fixation in the independent existence of conciliation and possible discretionary use mediatyvnoho hearing the parties. [5, p. 26] and others. Thus, in Recommendation № R (81) 7 of the Committee of Ministers to Member States on ways to facilitate access to justice on May 14, 1981 proposed to take action to facilitate or encourage, where appropriate, conciliation or amicable settlement of the dispute to the decision it to the proceedings or pending [6, p.4]. Consequently, the occurrence of extrajudicial procedures for the consideration and resolution of disputes was a logical response to the growing influence of the dynamics of globalization on civil procedure as transnational, and local levels.

The concept of ADR (Alternative dispute resolution - ADR) emerged in American legal doctrine and viewed as a form of private dispute resolution, some similar to the existing judicial instance. ADR includes both arbitration cases, and independent dispute settlement by the parties involved or by a third person. In the U.S., there are about 2500 regulations governing the activities of ADR at the national level and specifically for each of the states. The federal rules of civil procedure provides that pretrial dispute settlement procedure can be performed either by their peers and by persons appointed by the court for that purpose [7, p.173-174]. In 1998, the U.S. adopted the Law on Alternative Dispute Resolution, which stated that an alternative dispute resolution procedure includes (in addition to hearing the decision by the court), in which a neutral third party engaged to assist in addressing and resolving the dispute. The forms of such participation is independent expertise, mediation mini-trial and arbitration [8].

In England and Wales, increasing the role of alternative dispute resolution procedures in the event of a dispute caused a major reform of civil procedure and rules of action in qi free justice in 1998. Lord Woolf, who is the developer of the Rules, declared that one of the goals of reforming the civil justice system is a new system that would not only allow the parties to resolve their dispute without judicial procedures, and imposed upon them a duty to try to agree on early stage and through mutual cooperation [9, c .6].

In recent years the application of alternative dispute resolution in England and Wales has spread considerably. In its interim report on access to justice Lord Woolf said that the fact that the realization that

resolving disputes in court is not the only means of obtaining the desired result was the main reason for a detailed study of alternative procedures, the limits of its application and forms of existence. It is also important practical implications for court disputes in this way.

Alternative dispute resolution procedure has undoubted advantages over the judiciary, which is manifested not only in significant cost savings and time aspects and the possibility of avoiding, if the parties wish, publicity. Alternative procedure promotes joint efforts of the parties and obtaining a compromise outcome that will satisfy them, unlike the court, which, at least for one of the parties will be unprofitable.

But, despite these as ADR, it should not be required as a preparatory or prerequisite when applying an action in court. Binding of this procedure in the United States are the result of lack of judicial resources in dealing with civil cases [10].

Forms of alternative dispute resolution procedures include both very similar to court and whose decisions are binding on the parties and such, offer a more flexible approach to resolve the dispute. Scope alternative procedures Variable - from small domestic disputes to disputes arising in international commercial activities. Appeal to ADR as possible prior to the trial, and in the process. The main forms of alternative dispute resolution procedures, as noted by Lord Woolf, is arbitration, administrative tribunals, mini-trial, the ombudsman and mediation.

Activity arbitration imposed by law, has a close relationship with judicial activities. Arbitration usually resolves commercial disputes and its decision is binding on the parties.

Administrative tribunals subordinate courts and not a form of alternative dispute resolution procedures in terms of additional opportunities for the parties to resolve the conflict, because, generally, they exclude the jurisdiction of the court. However, administrative tribunals provide a quick and accessible and less formal procedure for resolving disputes.

M ini-courts can be both private and judicial authorities, first emerged in North America. They preside as employees of the judicial system, as well as independent experts. In this process may involve

simplified procedure for providing evidence of the authorized representatives of the parties.

The circle of duties Ombudsman (Parliamentary Commissioner for Administrative Affairs, appointed by Parliament) is investigating complaints of work of state institutions to provide services in both the public and private sectors, providing recommendations. Submitted a complaint to the ombudsman does not preclude the possibility of going to court.

(Mediation) is the procedure of trial by private or voluntary organizations [58]. Since 1980 the issue of mediation fought debate. Supporters mediatyvnoho dispute resolution emphasized its advantages over litigation. However, the characteristics of mediation by the Government and the judiciary have drawn attention only in the 1990s, when the analysis of the practice has proved that through mediation can not only reduce the cost of the parties to accelerate the cases, but also significantly reduce the burden on the courts [11 , c .7]. Unlike other forms of alternative dispute resolution, litigation mediatyvnyy not lead to compulsory adjudication, but rather a means to encourage negotiations, where an independent and impartial arbitrator helps the parties find beneficial for their decision, which sometimes can not be obtained under strict compliance with the law [10]. Mediatyvnyy the cases are ideal disputes between the family and in the family business. Often companies seek resolution of disputes to commercial or commercial court, the Court of Civil Engineering and technology for a just and acceptable solution, not for the purpose of clear and strict adherence to pass each stage of the trial [12, c .41-43]. On the effectiveness of the institute of mediation affects voluntary application level of the parties to mediation, impartiality and independence of most mediators and transparency procedures, professional quality mediators that should not cause doubts in each century Orin [13, c .3]. Mediation is a common way disputes, which leads to a significant reduction in the load on the court and receiving parties mutually beneficial solutions.

According to to Art. 1.4. (2) (e) of the Rules of Civil Procedure for the Court is now incumbent on the parties to encourage recourse to alternative dispute resolution, if the court finds the possibility of such treatment and assistance and help parties using alternative procedures. In addressing the same issue of the allocation of costs the

court must necessarily be taken into account, among other circumstances, and the fact that attempts to address the parties to resolve the dispute in a pre-order (Article 44.5 (3) monitoring station). In the case of Dyson and Field v Leeds City Council (22 November 1999), the Court of Appeal reminded the parties that they incur costs can be significantly lower if the use of alternative procedures óðè consideration [14]. In the case of Dunnett v Railtrack (2002, EWCA Civ 302) [15] The Court of Appeal rejected the recovery of costs in favor of the party that won the case, because she agreed to try to settle the dispute out of court. The court found that the parties and their representatives should be aware that approval of alternative procedures is their duty, especially in cases when the court directly as indicated [16]. These cases demonstrate the role of alternative dispute resolution, and accordingly the possibility of separation in a separate stage of litigation in court.

However, despite the all the benefits of mediation, it is just an additional tool to protect rights, and in any case can not replace trial by force, because sometimes mediation requires substantial unnecessary costs and a barrier to further recourse. Efficient operation procedures of alternative dispute resolution is possible only if the adjusted original trial "safety net" with their m ehanizmamy influence and coercion [12, c .43].

On the role and place of alternative means of dispute resolution also indicates the virtue of existing in the Rules of Civil Procedure other stories - doprotsesualnoho protocol, which recorded the basic actions of the parties to exchange information on a planned process and whose main purpose was to help the parties to ascertain the full circumstances of the case for further dispute settlement in the pre-trial order [17, p.25]. At the same rules doprotsesualnyy protocol is defined as "an agreement between lawyers and others on doprotsesualnoyi operations, which provides guidance in practical." Doprotsesualnyy protocol provides for the parties to discuss the possibility of resolving the dispute out of court. Rules supplemented list doprotsesualnyh protocols for certain types of cases, which are by definition provided at the monitoring station, is a statement of intent lawyers or other persons regarding a dispute and future business. Thus, the monitoring station is a list of cases where the parties are advised to conclude doprotsesualni

protocols. Annex to the Rules are basic and common form of certain procedural documents [18, s.865, s.1029-1114].

In passing, we should pay attention to studies conducted by the Alliance to provide consulting services regarding recourse to alternative forms of dispute resolution. The report highlights the dependence of the efficiency of use and the number of visits to alternative treatments on many factors, which in their aggregate sequences influence the choice of the citizens form their rights. Before you ask a lawyer, a person is determined by the volume of information held by him at this stage. When providing advice important to obtain information on availability, primarily non-judicial mechanisms for conflict resolution. If, however, a person decides to appeal to the court, it should be provided information about the presence doprotsesualnyh protocols, since some of them (eg, protocols concluded in disputes that arise in the medical field) require parties to refer to alternative treatments. Most doprotsesualnyh protocols require parties negotiations for economic dispute without court proceedings. When applying to the court plays an important role in the development initiative of the court and offer mediation procedures for participants. If, however, there is litigation, even at this stage, the court, in assessing the prospects for further proceedings, the parties may independently offer an alternative way to resolve the dispute or encourage the parties to negotiate their own, giving them time for it [September 1, c .10] . thus competence of lawyers in a specified range of issues, initiative judges at all stages of the proceedings, and therefore public awareness about the algorithm use extra-judicial means of protection are the main components of the efficacy of alternative dispute resolution procedures.

Analysis of non-judicial proceedings in order to set the following general rules for procedures for alternative dispute resolution: the parties are obligated to discuss options for non-judicial resolution of the conflict, the parties should really be aware of the possibility of an alternative consideration that should be confirmed by both parties attempt to resolve the dispute before how to go to court, the judge decides whether the rejection of mediation reasonable and justified, which further affected parties an opportunity to avoid the imposition of penalties on them for wanton disregard alternative [11, c .7-9].

To sum up, we can distinguish generalize the characteristics alternativ yvnyh ways of resolving disputes. One of the main features is voluntary, combined with the control of the court for the implementation of legally secured mechanics of ways to pre-reconciliation and further taking into account the behavior of the parties in the decision. Following features are cost-effectiveness and efficiency of such proceedings, against the background of general procedural defects litigation and cost of litigation is the best way to overcome the problem. Alternative procedures are characterized efficacy and absence of conflict.

On strengthening the role of alternative dispute resolution specifies adopted May 21, 2008 of the European Parliament and the Council of the European Union "On some aspects of mediation (mediation) in civil and commercial matters", whose aim, as stated in Article 1, is to facilitate access to alternative tive procedures for resolving disputes and promoting peaceful settlement of disputes by encouraging the use of mediation and by ensuring equilibrium ratio mediation and judicial proceedings. The Directive provided criteria for defined activities that might be considered by mediation, restated basic principles of consideration and resolution of disputes using mediation procedure.

Alternative dispute resolution procedures are becoming more common globally, as evidenced by a number of acts that are permanently accepted in this field at national and international levels, a variety of forms such cases, efficacy and effectiveness of programs to introduce and develop ment non-judicial forms of protection.

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