

Research Article

ONLINE DISPUTE RESOLUTION IN UKRAINE: EXPECTATIONS AND REALITY

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ABSTRACT

Background: As digital interactions and transactions grow, people are more inclined to participate if they feel secure and assured of fair procedures. However, online dispute resolution is still rarely used in Ukraine due to a lack of regulations. This research article provides a legal analysis of online dispute resolution (ODR) in Ukraine, concentrating on defining the ODR landscape, as well as on considering its potential in e-commerce and traditional court proceedings. Besides, the article presents a vision and proposals for the future adoption of European laws in Ukraine while discussing the current challenges in the online justice system that hinder its successful implementation.

As a result, the article emphasises the need for an adequate legal instrument to regulate ODR in Ukraine, particularly in the context of e-commerce. It highlights the importance of implementing EU legislation, developing ODR platforms and ADR institutions, and ensuring their decisions are binding. It also addresses the challenges related to remote hearings in the judiciary during different circumstances and suggests adopting cloud-based case management to improve efficiency and reduce the risk of document destruction.

Methods: The research methodology for this study on online dispute resolution in Ukraine included a comprehensive literature review, a comparative analysis of ODR systems in European countries, and a systems analysis to forecast the future trajectory of ODR in Ukraine. This approach aimed to assess the current state of ODR in Ukraine, identify areas for improvement, and explore potential achievements and challenges in its implementation.

Results and conclusions: The article concludes that Ukraine is in the process of establishing a legal framework for online dispute resolution, which is expected to progress further after the war. The implementation of EU legislation and the development of ODR platforms and ADR institutions are crucial, along with ensuring accessibility for all, including vulnerable groups without internet access. Related to online courts, it is necessary to address challenges such as judges' absence during remote hearings. It is also recommended that the process be expedited and the risk of document loss internally in the case management system minimised.

1 INTRODUCTION

Every year, Ukraine is increasingly and actively pursuing its chosen path towards integration with the European Union, which necessitates harmonising its national legislation with the international community's standards. The matter of establishing a proficient framework for safeguarding the rights and freedoms of individuals, particularly in the context of access to justice, is currently being brought up.

In developing countries such as Ukraine, access to justice is a fundamental premise that shapes the structure and functioning of the judiciary. This is because ordinary citizens view justice as a distinct process that takes place within an exclusive institution. Nevertheless, the present situation indicates that the exercise of the right to judicial protection is significantly hindered by the excessive burden on courts, limited accessibility for the majority of citizens, and the prolonged duration of the process. It often leads to expensive delays, causing the original issues of the claims to become irrelevant and resulting in both moral and financial losses for the parties involved.

Advancements in technology and shifts in methodologies now enable us to perceive justice not as a privilege but as a service that should be accessible to all. With an increasing number of interactions and transactions occurring in the digital realm, individuals are increasingly inclined to participate, provided they feel secure and assured of fair procedures. Regrettably, this matter has not received adequate scrutiny within Ukrainian nation, resulting in a scarcity of specialists with genuine expertise in this field. Studying online and alternative dispute resolution methods and their potential use in our country is quite relevant, especially given the difficulties encountered by individuals living in Ukraine. The contemporary justice system's effectiveness diminishes significantly when faced with unforeseen factors that can disrupt court proceedings.

In the midst of the pandemic, Ukrainian society witnessed a rise in the duration of court proceedings, as well as delays in court hearings due to technical constraints or excessive workload. Additionally, the ongoing war, with its destruction of court buildings and the loss of thousands of paper-only case records, has demonstrated the urgent need for a comprehensive online dispute resolution system. Such a system, catering to both e-commerce and traditional courts, would ensure efficient access to justice and a prompt and convenient review mechanism for individuals and businesses.

2 METHODOLOGY

The research methodology used in this study integrates several approaches to thoroughly analyse online dispute resolution in Ukraine. First, a comprehensive literature review was conducted to examine existing research on the development and implementation of ODR systems in both Ukraine and the European Union. To this end, a descriptive-analytical

method was used to clarify the concept and current state of ODR, providing a detailed understanding of its characteristics, functionality and approaches in both broad and narrow terms, as well as a historical method to identify key milestones and events, and to trace the evolution of ODR systems in both the European Union and Ukraine. Thus providing a solid basis for understanding the current state of the ODR in the Ukrainian context. Secondly, a comparative analysis was conducted for the ODR systems and practices in Ukraine with similar systems and practices in other European countries, identifying similarities, differences and potential areas for improvement, especially in the context of consumer ODR and ODR as part of a traditional court. Thirdly, a systems analysis approach was applied to forecast the future trajectory of ODR in Ukraine to explore potential achievements, challenges and strategic directions. This multifaceted approach provides an in-depth understanding of the expectations and reality of ODR implementation in Ukraine, offering a detailed view of its current and future landscape.

3 THE CONCEPT OF ODR

Today, multiple alternate definitions of online dispute resolution (ODR) exist, and the specific meaning varies based on numerous circumstances. The contemporary world is complex and rapidly evolving, generating novel ways of life and breaking down traditional ones. Hence, due to the lapse of time, the efficacy of conventional dispute resolution procedures has been undermined by geographical, cultural, or language issues, leading to the emergence of online dispute resolution as an alternative.

ODR originated during the nascent stages of the online environment, which generated a significant number of misunderstandings and disputes but lacked a viable resolution mechanism. Within legal doctrine, the term online dispute resolution encompasses two distinct conceptions. The initial, more specific interpretation concentrates on e-commerce, which includes the resolution of conflicts between businesses and businesses, businesses and consumers, consumers and consumers, and, in certain instances, governments and consumers or governments and businesses.¹ The second, more comprehensive definition of ODR includes all forms of dispute resolution that are predominantly executed through online platforms. This encompasses both digital platforms that are explicitly customised for resolving conflicts and the application of conventional online methods of alternative dispute resolution (ADR), including arbitration, mediation, negotiation, and so forth. A broadened interpretation of the term ODR covers the transition of traditional court settlements to the digital realm as well.²

1 Mohamed S Abdel Wahab, Ethan Katsh and Daniel Rainey (eds), *Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution* (Eleven International Publ 2012) 275.

2 Daniel Rainey, Ethan Katsh and Mohamed S Abdel Wahab (eds), *Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution* (2nd edn, Eleven International Publ 2021) 178.

Nevertheless, it is important to point out that the ODR was not designed to undermine or disturb the existing alternative dispute resolution system. Its purpose was to address the lack of regulations or inadequate regulations regarding online disputes at that time and to offer improved methods for resolving conflicts arising from internet use.³ Furthermore, it is noteworthy that while online courts are controlled and regulated by the government, ODR, in its precise meaning, is under the purview of the private sector.⁴

Beyond that, the distinction between the online and offline realms is gradually becoming less distinct, and the variety and scope of online conflicts have evolved alongside the expanding spectrum of human activities on the Internet. Similarly, the understanding of ODR has shifted from being seen solely as a method for resolving e-commerce or social media conflicts to a system that can be used for a variety of disputes, including those that occur offline. ODR has been increasingly utilised by the judicial system to address minor disputes, including traffic tickets, road accidents, marital cases.⁵ Consequently, these modifications have placed the ODR in the current position of needing to identify tools and resources that are equally effective in resolving disputes, irrespective of their origin.

On the basis of the software's functionality, ODR systems can be categorised.⁶ This categorisation is predicated on the development of specialised dispute resolution software that can be employed to settle conflicts in both digital and physical environments. ODR, in this regard, does not constitute an independent industry; instead, it serves as a support system for arbitrators and mediators tasked with resolving specific disputes and searching for software capable of carrying out particular functions and being seamlessly incorporated into their professional practices.

One crucial component of ODR is the idea of a “fourth party”. First introduced by Ethan Katsh and Janet Rifkin in their book “Online Dispute Resolution: Resolving Conflicts in Cyberspace,” the fourth party refers to another party involved in the dispute resolution process. Alongside the first and second parties (the disputants) and the third-party arbitrator,⁷ the fourth party in both its initial and present forms primarily aids the third neutral party, typically through the provision of convenience and efficiency.

Additionally, scholars concur that the future of ODR is influenced by a growing array of tools that will grant third parties novel opportunities; thus, the future of ODR appears to be contingent upon the ongoing advancement of software that is progressively more potent and applicable in ever more complex circumstances.⁸

3 ibid 10.

4 Richard Susskind, *Online Courts and the Future of Justice* (OUP 2019) 63.

5 Rainey, Katsh and Wahab (n 2) 50.

6 G Peruginelli and G Chiti, ‘Artificial Intelligence in Alternative Dispute Resolution’ in G Sartor (ed), *The Law of Electronic Agents: Selected Revised Papers: Proceedings of the Workshop on the Law of Electronic Agents (LEA 2002)* (CIRSFID, Università di Bologna 2002) 97.

7 Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass 2001).

8 Wahab, Katsh and Rainey (n 1).

An additional way to classify the systems is by generation. First-generation systems are guided by the principle that individuals should continue to occupy a central position in the process of planning and making decisions. While computing tools can be used in these systems, they are considered mere instruments without autonomy or substantial involvement in the action process. First-generation ODR systems typically utilise instant messaging, video and telephone conversations, mailing lists, and, more recently, video presence.

Second-generation ODR systems are characterised by a greater reliance on technological instruments, expanding their function beyond simple information dissemination or communication. In addition to its intended purpose, it helps generate ideas, formulate plans, establish strategies, and reach decisions. By integrating additional intelligent and autonomous components, second-generation systems surpass the functionalities of their initial-generation counterparts.⁹ The growing popularity of these systems can largely be attributed to the incorporation of artificial intelligence components.

In the abovementioned book, Katsh and Rifkin also proposed an optimal framework for effective dispute resolution, conceptualising it as a triangle, with each side representing a crucial aspect of the process: convenience and efficiency, experience and intelligence, and trust.¹⁰

Currently, the Ukrainian legal system does not have an appropriate set of rules and regulations governing online dispute resolution, severely limiting its use. Therefore, in the following sections, the author will focus on understanding the narrow and broad meaning of ODR in Ukraine, consider the potential of its application in e-commerce, present his vision and proposals for the future adoption of European laws in Ukraine, and highlight the current challenges in the online justice system that hinder its successful implementation.

4 THE CONCEPT OF ODR IN THE NARROW SENSE, PRIVATE SECTOR USE

The e-commerce market, both in Ukraine and globally, is growing every year. Despite a sharp decline in 2022-2024, statistics show a recovery and growth in the sector, with growth projected to return to 2021 levels by 2025.¹¹ The share of financial and trade transactions conducted online is also growing. Undoubtedly, this development has both positive economic benefits and drawbacks, especially in terms of consumer protection. This raises the question: how should e-commerce disputes be resolved? It seems only logical that consumers would want to resolve disputes as easily and conveniently as they buy goods or services from the comfort of their homes.

9 Noam Ebner and John Zeleznikow, 'No Sheriff in Town: Governance for the ODR Field' (2016) 32(4) *Negotiation Journal* <<https://dx.doi.org/10.2139/ssrn.2845639>> accessed 22 May 2024.

10 Katsh and Rifkin (n 7) 15.

11 'ECommerce - Ukraine' (*Statista*, 2024) <<https://www.statista.com/outlook/emo/ecommerce/ukraine#revenue>> accessed 15 May 2024.

Currently, however, court proceedings govern the resolution of disputes between purchasers and vendors in Ukraine. As stipulated in the Law of Ukraine “On Electronic Commerce,” conflicts that arise among participants in electronic commerce are adjudicated in compliance with the legally prescribed procedure.¹² Therefore, e-commerce participants in Ukraine currently have no recourse other than the courts in the event of a dispute. However, this is far from the best, or even the most optimal, option for parties intending to resolve an online dispute. Many objective factors discourage parties from going to court in the event of online commercial disputes, with economic impracticality being perhaps the most significant. Since internet purchases in Ukraine are often not substantial, the expenses associated with the legal procedure of evaluation and involvement of lawyers are rather high.

Despite the fact that consumers are exempt from paying court fees under the Law of Ukraine “On Protection of Consumers’ Rights,”¹³ the overall expenses may surpass the average amount of the cheque multiple times. Additionally, the duration of court proceedings in civil cases (which typically last 212 days in Ukraine)¹⁴ generally discourages individuals from investing time and effort in protecting their rights. The general level of public confidence in the judicial system is an additional significant and unfavourable factor, with approximately 68% of citizens expressing mistrust of the system overall.¹⁵ Furthermore, average consumers cannot utilise costly mediation or arbitration processes, even when offered online.

Hence, prior to finalising a transaction, every online consumer in Ukraine is fully aware of the potential for financial losses and the absence of safeguards in the event of infringements. At this time, the State Service of Ukraine for Food Safety and Consumer Protection’s “e-Consumer” chatbot is the only one available on Telegram.¹⁶ This bot enables users to lodge complaints regarding infringements of their rights and attach evidence to their claims. In the event that the inspection uncovers a legitimate breach of consumer protection legislation, the business could potentially incur a monetary penalty. However, the growing

12 Law of Ukraine no 675-VIII of 3 September 2015 ‘On Electronic Commerce’ [2015] Official Gazette of Ukraine 78/2590 <<https://zakon.rada.gov.ua/laws/show/675-19#Text>> accessed 15 May 2024.

13 Law of Ukraine no 1023-XII of 12 May 1991 ‘On Consumer Rights Protection’ (amended 19 November 2022) <<https://zakon.rada.gov.ua/laws/show/1023-12#Text>> accessed 15 May 2024.

14 Supreme Court of Ukraine, *Analytical Review of the State of Civil Proceedings in 2023* (Supreme Court 2024) <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/oglyady/Analiz_KCS_2023.pdf> accessed 18 May 2024.

15 ‘Attitude to foreign Countries, International Organisations and Politicians, and Ukraine’s Accession to the European Union (January, 2024)’ (*Razumkov Centre*, 7 February 2024) <<https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-sytuatsii-v-kraini-ta-dii-vlady-dovira-do-sotsialnykh-institutiv-politykiv-posadovtsiv-ta-gromadskykh-diiachiv-sichen-2024r>> accessed 18 May 2024.

16 ‘The State Service of Ukraine on Food Safety and Consumer Protection’s Chatbot is the Most Frequently Used by Ukrainians to Complain about Violations of Consumer Rights’ (*Southern Interregional Department of the State Service of Ukraine for Food Safety and Consumer Protection at the State Border*, 23 June 2021) <<https://pmgu.dpss.gov.ua/?p=1793>> accessed 18 May 2024.

concerns about the potential ban of Telegram due to its Russian origins, as raised by the National Security and Defence Council¹⁷ and the European Commission,¹⁸ cast doubt on the feasibility of using this bot.

There was also a proposal to develop a Consumer+ project on the Diia portal, with functionality similar to the current chatbot, but the results did not go further than the roundtable discussions.¹⁹

In June 2023, the Ukrainian Parliament approved a new version of the Consumer Protection Law, set to enter into force one year after its official publication – on 7 July 2024 – but no earlier than the day martial law was terminated or cancelled.²⁰ Among its innovations, the Law establishes the E-Buyer web portal,²¹ which is intended to serve as a hub for interaction and communication between e-commerce actors, consumers, and the competent authority (the State Service of Ukraine for Food Safety and Consumer Protection) or other state authorities that protect consumer rights in the relevant areas under their jurisdiction. Through this portal, consumers will be able to file complaints about violations of their rights when purchasing goods, receive commercial notices, and track the status and outcome of their complaints.

In essence, the Law establishes a more civilised version of the Telegram chatbot with additional functionality. The E-Buyer also establishes an automated system of verified sellers: e-commerce entities that have passed electronic identification and authentication and registered on the E-Buyer Portal must put a "verified seller" mark in their online stores.

It is worth noting that the provisions of this law will significantly bring Ukrainian legislation closer to EU law in the relevant area. Thus, taking into account the provisions of Directive 2000/31/EC "Directive on electronic commerce", Art. 17(2) states that "*Member States shall encourage bodies responsible for the out-of-court settlement of, in*

17 Roman Melnyk and Yuliya Lavryshyn, 'MDI of Ukraine Acknowledges that Telegram Contains a Number of threats to Ukraine's Security' (*Detector Media*, 14 February 2024) <<https://detector.media/infospace/article/222955/2024-02-14-u-gur-vyznaly-shcho-telegram-mistyt-nyzku-zagroz-dlya-bezpeky-ukrainy/>> accessed 18 May 2024; Valeriya Shipulya, 'Arguments are there: will Telegram be banned in Ukraine' (Korrespondent.Net, 2 April 2024) <<https://ua.korrespondent.net/articles/4675836-arhumenty-ye-chy-zaboroniat-Telegram-v-ukraini>> accessed 18 May 2024.

18 Věra Jourová, 'Telegram is an Issue' (*Bloomberg Technology: TV Shows*, 31 May 2024) <<https://www.bloomberg.com/news/videos/2024-05-31/telegram-is-an-issue-eu-commissioner-jourova-says-video>> accessed 19 May 2024.

19 Viktoriya Kulykova, Kostyantyn Gamkrelidze and Yevhen Shkola, 'The "Consumer +" application on the Diia portal will help protect consumer rights' (*European Business Association (EBA)*, 13 August 2020) <<https://eba.com.ua/dodatok-spozhyvach-na-portali-diya-spryyatyme-zahystu-prav-spozhyvachiv/>> accessed 19 May 2024.

20 Law of Ukraine no 3153-IX of 10 June 2023 'On Consumer Rights Protection' [2023] Official Gazette of Ukraine 65-1/3648.

21 *ibid*, art 16.

particular, consumer disputes to operate in a manner that provides adequate procedural guarantees for the parties concerned".²²

The new Ukrainian legislation establishes a mechanism for out-of-court dispute resolution as well. According to Arts. 38 - 41, consumer complaints regarding the protection of their rights may be considered by business entities, competent authorities, other state authorities, local self-government bodies, out-of-court dispute resolution bodies or the court.²³ Consumers who believe that their rights have been violated have the right to apply to a business entity, either orally or in writing, to restore their rights, including in cases where the agreement was concluded outside the trading premises or remotely.

If the dispute cannot be resolved immediately, the consumer is required to file a written complaint, attaching any necessary documents confirming the transaction. As noted previously, this complaint can also be filed through the E-Buyer portal. The business entity is then obliged to consider the complaint within the timeframe specified by law and provide a response, which may include satisfaction of the requirements, proposals for resolving the dispute, or a refusal indicating other ways of resolution. If the consumer is unsatisfied with the response, he or she may apply to the competent authorities, local governments, out-of-court dispute resolution bodies or the court. Out-of-court dispute resolution applies to goods worth up to UAH 50,000 (approx. USD 1220), violations of warranty repair, changing goods or delivery of goods purchased under contracts concluded outside of the office or retail premises.

An interesting novelty of the new legislation is that the decisions of out-of-court settlement bodies are binding on business entities but may be appealed in court if one of the parties disagrees. Since the provisions of consumer protection legislation also supplement the Law of Ukraine "On Electronic Commerce," this law is also expected to be amended after the Law of Ukraine "On Protection of Consumers' Rights" comes into force. However, as the law's implementation is contingent upon the end of martial law, the only current option for resolving consumer problems remains the court process. Furthermore, there is no separate platform for resolving disputes between consumers and sellers in Ukraine.

In 2017, in response to the introduction of the European Online Dispute Resolution Platform, Ukrainians attempted to launch its own online platform for consumer dispute resolution and launched the start-up Pinky Solutions.²⁴ However, despite several workshops

22 Regulation (EU) no 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes and Amending Regulation (EC) no 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) [2013] OJ L 165/1.

23 Law of Ukraine no 3153-IX (n 20) arts 38-41.

24 Elizaveta Gogilashvili, 'Ukrainian Startup of the Day: Online Dispute Resolution Platform Pinky Solutions' (*Bit.ua*, 13 November 2017) <<https://bit.ua/2017/11/ukrainskij-startap-dnya-onlajn-platforma-po-razresheniyu-sporov-pinky-solutions/>> accessed 19 May 2024.

and grants being completed, it has never been fully implemented, mainly due to the lack of legislative regulation. Of course, while Ukraine's aspirations for integration into the European single market and full EU membership necessitate legislative harmonisation, this does not oblige Ukraine to blindly follow. Currently, Ukraine is in a fairly favourable position, as it has the opportunity to fill the legal vacuum, considering all European experience and correcting mistakes by creating its own effective system. The author suggests delving deeper into this matter in the following section

The starting point for the regulation of online dispute resolution procedures in the EU was 2013 when Directive No. 2013/11/EU on alternative dispute resolution (hereinafter: Directive),²⁵ and Regulation No. 524/2013 on online consumer dispute resolution (hereinafter: Regulation) were adopted.²⁶ The Directive entered into force in July 2015, and the Regulation in January 2016. The two above-mentioned EU legislative acts are interrelated and complementary and regulate relations on out-of-court settlement of consumer disputes through an online platform. The Regulation mandates the creation of an ODR Platform of this nature. These documents have served as the basis for further developing the concept of online consumer dispute resolution in e-commerce, depending on the national peculiarities of the respective state. The scope of the Regulation covers out-of-court settlement of disputes regarding contractual obligations arising from sales contracts, but it focuses on online transactions and e-commerce.²⁷ The ODR Platform deals with disputes arising from the purchase of goods or services online and is designed to facilitate coordination between consumers, sellers and European-certified online dispute resolution organisations.

The Platform functions as a search engine for European-certified ADR organisations and can be accessed through the "Your Europe" portal.²⁸ The ODR Platform procedure has multiple stages: customers initiate their complaints using an online form, sellers are promptly notified and invited to specify the appropriate ADR body, and subsequently, the parties are given a period of thirty days to mutually determine the competent ADR body.²⁹ If the online seller fails to offer a dispute resolution body or achieve an agreement within the required timeframe, the complaint will be automatically closed. If the parties are able to successfully communicate within ninety days of obtaining the necessary papers, the ADR body is obligated to review the complaint and suggest a resolution.

25 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (EC) no 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) [2013] OJ L 165/63.

26 Regulation (EU) no 524/2013 (n 22).

27 *ibid*, art 2.

28 *ibid*, art 5.

29 *ibid*, art 9.

In 2019, the European Commission released a report evaluating the Platform's performance, revealing its comparatively low effectiveness.³⁰ The European Commission's reports on the European ODR Platform and the ODR process show a substantial volume of consumer complaints and appeals submitted since its launch. Notably, 81% of cases were automatically closed after 30 days without reaching the ADR authority, 20% of respondents stated that their disputes were resolved on or off the Platform, and another 18% were in the process of negotiating with the trader.

Several factors impede the success of online dispute resolution mechanisms, such as low consumer awareness, limited availability of dispute resolution bodies and their inconsistency, lack of trust in the system, language barriers, technical issues and enforcement. The lack of awareness results from the slow implementation of ADR/ODR in various countries, coupled with the disorganised and fragmented information provided to consumers on ODR procedures. Just 28% of traders adhere to the obligation to include a hyperlink to the ODR platform in their informational materials, and 8% of traders are familiar with the system but choose not to use it. In 2020, the ADR body received complaints from approximately 5% of EU consumers on average, with only 8% expressing an intention to approach an ADR body in case of future issues.³¹

The minimal harmonisation approach of the ADR Directive has led to significant differences in the availability of ADR across Europe. Currently, the system of alternative dispute resolution bodies comprises more than 430 certified entities dispersed in a complex network of different systems. The structure of ADR/ODR differs among countries, ranging from sectoral and internal systems to broader ones such as an ombudsman. This fragmentation poses challenges for clients, particularly when the ADR/ODR company lacks broad coverage of a certain sector of the economy. According to the Directive's ideology, the ADR system should provide adequate coverage of all e-commerce segments, but this does not mean that a separate ADR institution should be established for each segment; cross-sector ADR companies that facilitate complaints across all segments suffice. At the same time, it is noted that the Directive does not interfere with the activities of already operating dispute resolution companies. The Directive also does not set out a specific supervisory mechanism to be established by Member States, which leads to gaps in the effectiveness of supervision.

30 European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes and Regulation (EU) no 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes* (COM/2019/425 final, 25 September 2019) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2019:425:FIN>> accessed 20 May 2024.

31 European Commission, *4th Report on the Functioning of the Online Dispute Resolution Platform* (20 December 2021) <https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-reports-and-research_en> accessed 20 May 2024.

Some states have gone beyond the Directive by requiring legal qualifications to provide ODR services, while others have drafted legislation too broadly to cover multiple sectors.³²

Lack of trust plays a crucial role in the ADR/ODR system, as it was created as an alternative to traditional court systems, which typically operate on the fundamental assumption of complete mistrust between the parties involved.

To establish confidence in ODR systems, individuals must possess awareness, which implies having sufficient information, expertise, and comprehension of the conflict resolution procedure. Nevertheless, under the existing framework of ODR, customers continue to have several inquiries regarding the procedure's transparency.

Consumers are increasingly encountering a dispute resolution process that does not meet or exceed their expectations. Researchers from KU Leuven (Katholieke Universiteit Leuven) note that the trust issue is not only a two-way one between buyers and sellers but rather a three-way one, as both consumers and sellers perceive ADR actors as biased against them.³³

Currently, enforcement of decisions is the cornerstone of the ADR procedure for consumers. Typically, consumers enter into an agreement to resolve any future disputes through ADR before the dispute arises. However, they are not obliged to comply with this provision. Art. 9(3) of the Directive states that a final decision may only be binding if the Member State adopts such a mechanism.³⁴ According to Art. 10(2) of the Directive, in the context of ADR proceedings where the goal is to resolve a dispute by making a decision, the decision can only be legally binding on the parties if they have been notified beforehand that it will be binding and they have explicitly agreed to it. If national law stipulates that decisions are legally binding on business entities, specific permission is not necessary.³⁵

In 2023, the European Commission released its second report on the implementation of the Directive.³⁶ The report highlighted a lack of awareness among consumers and traders regarding the options for alternative dispute resolution. Out of the approximately

32 European Consumer Organisation, 'Alternative Dispute Resolution for Consumers: Time To Move Up A Gear' (BEU, 16 June 2022) <<https://www.beuc.eu/position-papers/alternative-dispute-resolution-consumers-time-move-gear>> accessed 20 May 2024.

33 Stefaan Voet and others, 'Recommendations from Academic Research Regarding Future Needs of the EU Framework of the Consumer Alternative Dispute Resolution (ADR) (JUST/2020/CONS/FW/CO03/0196)' (KU Leuven, 2022) <https://kuleuven.limo.libis.be/discovery/search?query=any,contains,LIRIAS4073076&tab=LIRIAS&search_scope=lirias_profile&vid=32KUL_KUL:Lirias&offset=0> accessed 20 May 2024.

34 Directive 2013/11/EU (n 25).

35 *ibid.*

36 European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes and Regulation (EU) no 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes* (COM/2023/648 final, 17 October 2023) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52023DC0648>> accessed 29 September 2024.

430 nationally registered dispute resolution organisations, an estimated 64% provide non-binding outcomes, 20% provide binding decisions on both parties, and the remaining organisations only enforce decisions on traders. Only six EU member states have implemented a mechanism for mandatory trader participation in the alternative dispute resolution process across all sectors of the economy, limiting the effectiveness of the system at the national level.³⁷ Furthermore, only 30% of retailers in the European Union have expressed their willingness to use ADR mechanisms, while 43% have no information about such mechanisms at all.³⁸ It is worth noting that most traders are interested in participating in the ADR process when approached by relevant institutions. However, there have been instances where traders (less than 10% of cases) have refused to engage in the process, contradicting the purpose for which the platform was created. Despite the European Commission's efforts to improve the design and functionality of the ODR platform, consumer engagement remains low. Many market participants perceive the platform as a complex and inefficient tool for conflict resolution. Consequently, a significant number of complaints on the platform are closed automatically without reaching any resolution, further undermining its effectiveness.

The 2023 report revealed that while the ODR platform receives between 2 and 3 million visits each year, the actual number of cases resolved is only around 200 annually.³⁹ This raises questions about the feasibility of its continued existence as a dispute resolution tool, considering the low number of resolved cases in comparison to the costs of its maintenance. In response to these challenges, on 17 October 2023, the European Commission proposed amending Directive 2013/11/EU,⁴⁰ which deals with alternative dispute resolution for consumers. The proposed changes include updating the regulatory framework for alternative dispute resolution, amending Directive 2013/11/EU, and repealing Regulation (EU) 524/2013, which regulates the European Online Dispute Resolution Platform. This repeal would effectively terminate the ODR Platform due to its failure to meet expectations.

The Commission also suggested creating a new digital tool to provide detailed information on dispute resolution organisations and guidance on resolving cross-border disputes. This tool would be integrated with other European and national digital resources, allowing consumers to access dispute resolution authorities. Additionally, the proposal includes establishing contact centres in each EU Member State to help consumers and traders resolve both domestic and cross-border disputes. Member States will have the discretion to determine whether these centres will focus solely on cross-border disputes or also cover

37 *ibid* 4.

38 *ibid*.

39 *ibid* 7.

40 European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828* (COM/2023/649 final, 17 October 2023) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023PC0649>> accessed 29 September 2024.

domestic conflicts, and they will select the bodies responsible for their operation. European Consumer Protection Centres (ECCs) could potentially serve as contact points, especially if they specialise in cross-border issues.

The success of the ODR system in any country is heavily dependent on the state tasked with ensuring the system's efficacy and the integrity of its consumer dispute resolution. Ukraine presently possesses an opportunity to develop an exceptionally good Online Dispute Resolution system by addressing the deficiencies of the current European system. To be more precise, the aim is to create an integrated structure for certified ADR bodies that is not fragmented but instead cross-sectoral, encompassing a wide range of economic sectors. For instance, one ODR institution could oversee the entire transportation industry, while another could manage the financial and insurance sectors, and so forth.

The author believes such institutions ought to be non-governmental in nature, given the ineffectiveness of public administration in Ukraine, as demonstrated by experience. This belief is supported by the existing example of a fairly effective International Commercial Arbitration Court at the Ukrainian CCI (ICAC), which operates as a non-governmental organisation within the walls of which an arbitration court operates.

Particular emphasis should be placed on consumer confidence and awareness, considering the significant level of scepticism about the legal system. Thus, this gap can have both positive and negative implications for a recently implemented online consumer dispute resolution system. If there is a high level of trust and justified efficiency, it can serve as an opportunity for growth. On the other hand, if the customer is unable to perceive any distinction between the traditional court system and the alternative system, it is destined to fail.

In the author's opinion, there are several ways to ensure the enforcement of judgments. Initially, Ukrainian legislators could consider preemptively implementing an anticipated updated Directive from the European Union, which is currently under discussion and expected to address existing inadequacies. However, this approach would be a needless expenditure of time in the pursuit of European integration. An alternative approach would be to create legislation that builds upon the existing provisions of the Directive while also incorporating a compulsory mechanism for recognising judgments within Ukraine's legal framework. Nevertheless, the fundamental question of whether it is obligatory to recognise judgments remains unchanged.

5 THE CONCEPT OF ODR IN ITS BROADEST SENSE, E-COURTS

With regard to the broad understanding of online dispute resolution, namely the use of digital technologies in traditional court proceedings, Ukraine has a so-called hybrid form of dispute resolution, namely a combination of online and offline elements. Over the past few years, external factors such as the pandemic and the declaration of martial law have radically affected Ukrainian justice, highlighting its shortcomings and the need to introduce

a full-fledged online court. During the pandemic, people faced the suspension of proceedings, and now, amidst martial law, there are numerous cases of judges and other participants being unable to attend courtrooms due to air raid sirens, power shortages, and similar disruptions. Furthermore, numerous courts lack the necessary infrastructure to offer even the most basic level of protection against shelling.⁴¹ It is worth mentioning that the idea of creating an electronic court in Ukraine was enshrined in the Concept of the Electronic Court of Ukraine in 2012.⁴² Subsequently, in 2017, the system was implemented with the adoption of amendments to the procedural codes, which introduced the term UJITS - the Unified Judicial Information and Telecommunication System. However, the system was actually launched only in January 2019.⁴³ In fact, the project aims to convert to electronic form and consolidate all pre-existing digital tools into a single structure, organised into separate modules. Accordingly, all paper files and paper decisions would also have to be converted into electronic form.

In general, Ukraine was already quite digitised before the introduction of the UJITS. It had an automated system for distributing cases among judges, audio and video recording of court hearings, and automated access to state registers for judges. Still, the lack of a comprehensive approach to online justice has constantly led to problems with the introduction of new technologies.

The Estonian electronic judicial system, established over two decades ago, serves as a role model. Estonia is a perfect illustration of the efficient application of electronic justice. The nation has successfully constructed and deployed the electronic court system, which functions as a unified information system for all tiers of the judicial system, extending from the primary level to the Supreme Court.⁴⁴ Notable features of this system include the registration of court cases and proceedings, automatic assignment of cases to judges, generation of subpoenas, and publication of court decisions, with access to confidential information restricted to the judge hearing the case and court personnel involved in the case. Consequently, every procedural document is submitted, appealed, and monitored electronically.

However, Ukrainian lawmakers should have taken into account the fact that the environment in which the systems operate in Ukraine and Estonia are significantly different, both in terms of population and the complexity of the judicial system itself. As a result, the

41 Vladyslav Teremetskyi and others, 'Electronic Judiciary in Ukraine: Problems of Implementation and Possible Solutions' (2023) 12(68) *Amazonia Investiga* 33, doi:10.34069/ai/2023.68.08.3.

42 SO Kira, 'History of the Development of Electronic Judiciary in Ukraine' (2024) 5 *The Legal Scientific Electronic Journal* 296, doi:10.32782/2524-0374/2024-5/72.

43 Olexander Svitlychnyy and others, 'Electronic Justice as a Mechanism for Ensuring the Right of Access to Justice in a Pandemic: The Experience of Ukraine and the EU' (2023) 37(2) *International Review of Law Computers & Technology* 325, doi:10.1080/13600869.2023.2221820.

44 'Online Processing of Cases and E-communication with Courts' (*European E-Justice*, 31 January 2023) <https://e-justice.europa.eu/280/EN/online_processing_of_cases_and_ecommunication_with_courts?ESTONIA&member=1> accessed 22 May 2024.

undertaking of simultaneously digitising everything proved to be exceedingly ambitious and financially unviable.

Thus, on 27 April 2021, the Verkhovna Rada adopted the Law of Ukraine “On Amendments to Certain Legislative Acts to Ensure the Phased Implementation of the UJITS”,⁴⁵ which postponed the start of the UJITS and provided for the possibility of commissioning its individual modules. Consequently, only a limited number of the modules are now functioning.

On 5 October 2021, the e-Court module, along with the e-Cabinet and the video conferencing subsystem, achieved complete functionality.⁴⁶ The e-Court module facilitates electronic case management, allocation of cases to judges, storage of court cases as electronic archives, creation of a unified database, and access to the Unified State Register of Court Decisions and other registers, such as the Unified Register of Lawyers. In turn, the Electronic Cabinet allows users to obtain necessary information about the course of the proceedings, submit procedural documents, pay court fees, and create and provide an electronic power of attorney to represent another person in court. To accomplish this, users must possess a certified electronic signature and an authorised email address.

Nevertheless, the modules stated above, namely the “Electronic Court” and “Electronic Cabinet,” which facilitate communication between litigants and the court, are currently flawed, exhibiting numerous questions and logical contradictions during the functioning of UJITS. The primary drawbacks of the system encompass its impractical design, intricacy of utilisation (the software is primarily tailored for legal professionals and is not a user-friendly tool for non-legal individuals), persistent software malfunctions in the form of case disappearance from the database, and temporary access disruptions. A party that decides to participate in such a process without a lawyer – whether online or offline – is at a disadvantage from the outset.⁴⁷

The absence of clearly defined roles and duties for system maintenance has led to technical issues in design and communication. At first, the State Enterprise (SE) “Information Court Systems” was responsible for running the full multifunctional UJITS, offering services to judges, court personnel, and litigants. However, this arrangement created a conflict of interest. In response, the State Judicial Administration has decided to reallocate responsibilities: the SE “Court Services Centre” will now offer services to litigants, legal

45 Law of Ukraine no 1416-IX of 27 April 2021 ‘On Amendments to certain Legislative Acts of Ukraine to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System’ [2021] Official Gazette of Ukrainian 42/2502.

46 Natalya Mamchenko, ‘E-Court is Ready to Go: UJITS Subsystems (Modules) Officially Launched in Ukraine’ *Sudebno-Juridichna Gazeta* (Kyiv, 5 October 2021) <<https://sud.ua/ru/news/publication/215755-elektronniy-sud-na-start-v-ukrayini-pochali-ofitsiyno-funktsionuvati-pidsistemi-moduli-yesits>> accessed 22 May 2024.

47 OV Skochylas-Pavliv, ‘The Current State of Electronic Justice in Ukraine’ (2024) 1 *Kyiv Law Journal* 207, doi:10.32782/klj/2024.1.29.

entities, and individuals, while the SE “Information Court Systems” will be in charge of court maintenance, equipment, engineering services, and other related tasks.⁴⁸

On 21 July 2023, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or its Separate Subsystem (Module) Enabling Document Exchange” dated 29 June 2023 came into force.⁴⁹ This law now mandates legal professionals – including defence lawyers, notaries, public and private bailiffs, insolvency officers, forensic experts, public authorities, and other state bodies – and legal entities to register for and utilise the electronic offices of the UJITS. Before the enactment of this law, litigants had the option to use the Electronic Court at their discretion, resulting in its limited effectiveness.⁵⁰ Nevertheless, even while case files are received through the UJITS system, a specific court may still need to rely on physical case files to review papers and evidence, primarily because of a deficiency in technological resources.⁵¹

It is important to mention that nearly five years have elapsed since the UJITS system was introduced. Several of its modules have become partially obsolete, exhibit poor interoperability, and encounter difficulties with updates. This is largely due to their development at different points in time and by different contractors, which resulted in them not fully meeting current needs.

Moreover, even in the process of developing the UJITS system and facing continuous user problems, efforts to establish an alternate or supplementary system persist. For example, in 2020, USAID, in cooperation with the Kyiv District Court and with the assistance of the High Council of Justice, presented the project of the ODR platform “Search for Solutions”.⁵² This platform was designed to handle simple cases that could be settled without a trial, namely traffic violations (appeals), divorce (in cases where there is no property conflict and subject to the consent of both parties) and alimony.

48 Maksym Maika, ‘The Implementation of E-Justice within the Framework of the Right to a Fair Trial in Ukraine: Problems and Prospects’ (2022) 5(3) *Access to Justice in Eastern Europe* 249, doi:10.33327/ajee-18-5.2-n000320.

49 Law of Ukraine no 3200-IX of 29 June 2023 ‘On Amendments to Certain Legislative Acts of Ukraine Regarding Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or its Separate Subsystem (Module) that Provides for the Exchange of Documents’ [2023] *Official Gazette of Ukrainian* 70/4041.

50 Olena Bakonina, ‘The Law on the Obligation to Register Electronic Accounts for Participation in Court Proceedings has Entered into Force’ (*LIGA ZAKON: Jurlika*, 21 July 2023) <https://jurlika.ligazakon.net/news/221039_zakon-pro-obovyazok-restrats-elektronnikh-kabnetv-dlya-uchast-v-sudovikh-protsesakh-nabuv-chinnost> accessed 23 May 2024.

51 ‘Electronic or Paper? How Courts Will Conduct Cases after October 18’ (*Ukrainian National Bar Association*, 29 September 2023) <<https://unba.org.ua/news/8387-elektronka-chi-papir-yak-sudi-vestimut-spravi-pislya-18-zhovtnya.html>> accessed 23 May 2024.

52 Council of Judges of Ukraine, ‘The Council of Judges of Ukraine Got Acquainted with the Online Dispute Resolution Platform (ODR) “Solution Finder”’ (*Judiciary System of Ukraine*, 1 November 2021) <<https://court.gov.ua/press/news/1203321>> accessed 23 May 2024.

The selection criteria for these types of cases included their high frequency, the possibility of resolving them out of court, and simplicity. Interestingly, the platform was not designed to handle consumer disputes. According to the project developers, the platform was based on the voluntary participation of users, adaptability to current court information systems, and a user-friendly interface that would allow people without legal education to use it by following specific steps on the website. A notable feature of the platform was that it did not collect user data and allowed for the transfer of documents with certain quality standards, hence eliminating the need for courts to make corrections.

The developers had aspirations for the platform to serve as a foundational component of the UJITS and eventually be integrated into the courts.⁵³ However, there is a lack of information regarding its successful functioning and deployment. It likely met the same fate as Pinky Solution, as accessing the platform via the court's official website results in a server error.⁵⁴

In 2021, the Regional Framework Project on Digital Transformation of Courts - Development of Online Courts for Small Cases was launched as a joint project with the European Bank for Reconstruction and Development (EBRD). This project aims to make it easier to access justice and specifically focuses on creating online courts for small claims ranging from €5,000 to €10,000. The EBRD pilot effort aims to collaborate with the British Institute of International and Comparative Law to create and disseminate a system to countries in the Caucasus, Eastern Europe, Western Balkans, and Central Asia.⁵⁵

As per the statements of Olena Kibenko and Oleksandr Oliynyk, the finalisation of the terms of reference is presently underway. Initially scheduled for the second or third quarter of 2023, the project's execution was delayed due to the war.⁵⁶ The project is being implemented in cooperation with the Supreme Court and the Ministry of Digital Transformation of Ukraine; it is designed as a supplement to, not a replacement for, the existing e-court system and will use the Diia portal and a smartphone application for its functions.⁵⁷

53 Anatoliy Hvozdetsky, 'Mobile Justice' *Court Gazette: Legal Practice* (Kyiv, 24 December 2020) 3.

54 Website *Judiciary Power of Ukraine* <<https://ki.od.court.gov.ua/sud1512/>> accessed 23 May 2024.

55 Axel Reiserer, 'EBRD Supports the Creation of Online Courts for Low Value Claims' (*European Bank for Reconstruction and Development (EBRD)*, 24 March 2021) <<https://www.ebrd.com/EBRD-to-support-development-of-online-courts-for-small-claims>> accessed 23 May 2024.

56 Olena Kibenko, 'The Future of Online Courts in Ukraine: Digitization of Existing Processes or Digital Transformation of Justice?' (*Supreme Court*, 20 March 2023) <<https://supreme.court.gov.ua/supreme/pres-centr/zmi/1397565/>> accessed 23 May 2024; 'Oleksandr Oliynyk: The Ministry of Justice proposes to introduce a pilot project on online consideration of cases in civil proceedings' (Ministry of Justice, 5 February 2024) <<https://minjust.gov.ua/news/ministry/oleksandr-oliynyk-minyust-proponue-zaprovaditi-pilotniy-proekt-schodo-onlayn-rozglyadu-sprav-v-tsvilnomu-sudochinstvi>> accessed 23 May 2024.

57 Nadiya Gryshanova, 'Electronic court: The Ministry of Digital Transformation is Working on an Updated Concept' (*LIGA ZAKON: Jurliga*, 28 February 2024) <https://jurliga.ligazakon.net/news/225934_elektronniy-sud-mntsifri-pratsyu-nad-onovlenoyu-kontseptyu> accessed 23 May 2024.

Currently, some e-judiciary development processes are being transferred to the Ministry of Digital Transformation of Ukraine, and the Ministry is working with partners to update the UJITS. Certain services will be accessible through a distinct e-cabinet within the e-court system, while others will be accessible through the Diia platform. At present, citizens have access to an e-cabinet for online video conferencing and document management, while the Diia app allows users to receive notifications of court hearings in which they are parties to the case, pay and refund court fees and bail, submit evidence, and pay fines for administrative offences (with receipts automatically sent to the court for case closure).

In addition, the Ministry has provided support in conducting an IT audit of the entire UJITS system. This audit was important to address the objective difficulties causing the system to perform unsatisfactorily. The implementation of the UJITS revealed the specific components that require updating.⁵⁸ This March, on 1 March 2024, Dmytro Maslov, the Chairman of the Committee on Legal Policy of the Verkhovna Rada of Ukraine, during the roundtable discussion dedicated to the presentation of Consultative Council of European Judges (CCJE) Opinion No. 26, expressed his views on this matter.⁵⁹ According to Maslov, the results of the UJITS audit are discouraging, and significant efforts will be necessary to start anew.⁶⁰ An operational audit is currently in progress, and plans are underway to introduce enhanced services for the public. These services will include 24/7 online filing of court applications and a new service for obtaining electronic court decisions with a qualified electronic signature of judges, giving the digital document the same legal force as its paper counterpart. This service has already been recently launched and is linked to the register of court decisions.⁶¹

However, the participation of judges outside of court remains an open question, as it is not regulated by law. Since the full-scale invasion, the Ukrainian parliament has made multiple attempts to regulate the implementation of remote justice at the legislative level. However, the first draft of Law of Ukraine of 24 May 2022 No. 7404, “On Amendments to the Code of

58 ‘The Ministry of Digital Transformation Conducts an Audit of the UJITS and is Working to Improve E-Court Services’ (*Pravo*, 28 February 2024) <<https://pravo.ua/mintsyfry-provodyt-audyt-iesits-ta-pratsiuie-nad-udoskonalenniam-servisiv-e-sudu/>> accessed 23 May 2024.

59 Opinion no 26 (2023) ‘Moving Forward: The Use of Assistive Technology in the Judiciary’ (CCJE, 1 December 2023) <<https://rm.coe.int/ccje-opinion-no-26-2023-final/1680adade7>> accessed 30 September 2024.

60 ‘Presentation of Opinion of the Consultative Council of European Judges No 26 (2023) “Moving forward: the use of Assistive Technology in the Judiciary”’ (*Council of Europe Office in Ukraine*, 20 February 2024) <<https://www.coe.int/uk/web/kyiv/-/presentation-of-opinion-of-the-consultative-council-of-european-judges-no.-26-2023-moving-forward-the-use-of-assistive-technology-in-the-judiciary->>> accessed 23 May 2024.

61 Ministry of Digital Transformation of Ukraine, ‘Ukrainians are Able to Use E-Court Decisions in Diia Instead of Paper Documents: New Service in Diia’ (*Government Portal*, 6 March 2023) <<https://www.kmu.gov.ua/news/ukrainsi-mozhut-korystuvatysia-elektronnym-sudovym-rishenniam-u-dii-zamist-paperovalho-dokumenta-nova-posluha-v-dii>> accessed 23 May 2024.

Ukraine on Administrative Offences regarding the Conduct of Proceedings under Martial Law,” was rejected on 16 August 2022.⁶²

The second draft, Law No. 7316, “On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine and the Commercial Procedure Code of Ukraine (regarding the conduct of court proceedings under martial law or a state of emergency) introduced on 26 April 2022, was also rejected by the Verkhovna Rada of Ukraine on 1 July 2022.⁶³

The third draft, Law No. 8358, “On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine and Other Legislative Acts on the Conduct of Proceedings during Martial Law or the State of Emergency and the Settlement of Disputes with the Participation of a Judge” dated 13 January 2023 has already been considered by the Committee and has been pending consideration in the Parliament since June last year.⁶⁴

In parallel, the Ministry of Justice has developed two draft laws: No. 9090 “On Amendments to Certain Legislative Acts on Digitalisation of Legal Proceedings and Improvement of the Writ Proceedings in Civil Litigation” dated 10 March 2023,⁶⁵ which has been under consideration by the Verkhovna Rada Committee since 13 March 2023, as well as draft Law No. 9091 “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” on Digitalisation of Legal Proceedings”,⁶⁶ which has also been under consideration by the Committee since 13 March 2023.

According to Yevhen Sobol, the slow progress in resolving the issue of introducing remote justice is associated with concerns about increasing risks in the form of judicial abuse,

62 Draft Law of Ukraine no 7404 of 24 May 2022 ‘On Amendments to the Code of Ukraine on Administrative Offenses regarding the Conduct of Proceedings under Martial Law’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/39662>> accessed 23 May 2024.

63 Draft Law of Ukraine no 7316 of 26 April 2022 ‘On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine and the Commercial and Procedural Code of Ukraine (Regarding the Conduct of Proceedings under Martial Law or a State of Emergency)’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/39489>> accessed 23 May 2024.

64 Draft Law of Ukraine no 8358 of 13 January 2023 ‘On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial and Procedural Code of Ukraine and Other Legislative Acts on the Implementation of Legal Proceedings During Martial Law or a State of Emergency and the Settlement of Disputes Involving a Judge’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/41130>> accessed 25 May 2024.

65 Draft Law of Ukraine no 9090 of 10 March 2023 ‘On Amendments to certain Legislative Acts on Digitalization of Legal Proceedings and Improvement of the Writ Proceedings in Civil Litigation’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/41530>> accessed 25 May 2024.

66 Draft Law of Ukraine no 9091 of 10 March 2023 ‘On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” on Digitalisation of Legal Proceedings’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/41532>> accessed 25 May 2024.

disruption of hearings due to technical reasons and challenges in ensuring transparency in case consideration.⁶⁷

In summary, the development of online court proceedings has faced a turbulent journey. It is now almost rhetorical to ask why Ukraine did not initially follow the British model, where the creation of an online court was not based on existing courts and procedural rules but as a completely new court with a new type of dispute resolution service based on its own procedural rules, rather than a separate judicial institution.⁶⁸ But after years of uncertainty, Ukraine seems to have returned to a similar approach in the form of the Diia application services. The lack of regulation is also a cornerstone of development, and Ukraine must address the absence of judges in physical courtrooms during remote case hearings through legislative measures.

6 CONCLUSIONS

Ukraine is currently in the process of creating an adequate legal mechanism for regulating online dispute resolution and will likely make further progress after the war. There exists a potential for e-dispute resolution to serve as the primary instrument by which Ukraine overcomes judicial corruption and strengthens confidence in the entirety of the system. Therefore, it is now necessary to focus on the development and proper regulation of the ODR environment.

In the field of e-commerce, it is necessary to implement EU legislation and address its shortcomings. Clear guidelines must define the structure of ODR platforms and ADR institutions. Reflecting current trends, platforms are being developed both within and outside the judicial system, often as private initiatives that can be fully automated or include the intervention of third parties in the form of mediators, independent experts, bilateral, trilateral, multilateral, etc. ADR institutions, likewise, should be certified and cross-sectoral rather than overly specialised to encompass the greatest number of economic sectors. Ensuring that these institutions' decisions are binding at the legislative level will further enhance their effectiveness.

A practical solution to address the needs of vulnerable groups without internet access or communication tools like computers or smartphones would be to establish specialised centres equipped with the necessary equipment and communication infrastructure to support their operation. Additionally, consultants could be available to assist with platform usage. If legislators determine that a public service should be established to address consumer disputes and be affiliated with the State Service of Ukraine for Food Safety and

67 Yevhen Sobol, 'The Activity of the Court as a Law Enforcement Body in the Implementation of Electronic Justice' (2023) 1 Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs 8, doi:10.31733/2078-3566-2023-1-8-13.

68 Kibenko (n 56).

Consumer Protection, the appropriate centres could be established using the existing infrastructure of the Centres for Administrative Services.

Significant progress has been made in relation to online dispute resolution in the judiciary. However, Ukraine must now promptly tackle the matter of judges being physically absent from the courtroom during remote hearings. This includes situations where judges could work from home due to blackouts, air raid alerts, or other circumstances preventing them from reaching their workplace. Furthermore, adopting cloud-based case management instead of hybrid systems will speed up the transition and reduce the chances of paper files being destroyed.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ОНЛАЙН ВИРІШЕННЯ СПОРІВ В УКРАЇНІ: ОЧІКУВАННЯ ТА РЕАЛЬНІСТЬ

Павло Рєпін

АНОТАЦІЯ

Вступ. Україна з кожним роком все активніше крокує до інтеграції в Європейський Союз (ЄС), це вимагає гармонізації її законодавства з міжнародними стандартами та створення належного механізму захисту прав і свобод людини, зокрема доступу до

правосуддя. Пересічний громадянин розглядає правосуддя як окремий процес для обраних, що відбувається в «ексклюзивній» установі, проте сучасні технології та методи дозволяють розглядати правосуддя як послугу, що має бути доступною для всіх. Цифрові взаємодії та транзакції зростають, і люди все частіше беруть у них участь. Проте кожен учасник такої взаємодії має почувати себе в безпеці та мати справедливі процедури швидкого вирішення суперечок. Онлайн вирішення спорів (ОВС) рідко використовується в Україні через брак нормативно-правового регулювання. Таким чином, метою цієї статті є визначення ландшафту ОВС в Україні, розгляд його потенціалу в електронній комерції та традиційному судочинстві, представлення бачення та пропозицій щодо майбутнього прийняття європейського законодавства в Україні, а також обговорення наявних викликів у системі онлайн-правосуддя, які перешкоджають його успішному впровадженню.

Методи. Методологія дослідження передбачає застосування аналітично-описового методу, доповненого історичним, порівняльним та методом системного аналізу. Ідея врегулювання конфліктів онлайн була пояснена за допомогою аналітично-описового та історичного методу. За допомогою порівняльного методу зіставлялися системи ОВС в Європейському Союзі та Україні. Метод системного аналізу дав змогу зрозуміти майбутні етапи розвитку та становлення власної системи онлайн вирішення спорів в Україні, а також переваги та недоліки кожної з систем.

Результати та висновки. За результатами проведеного дослідження можна дійти висновків, що в Україні активно розвивається законодавча база для ОВС, яка здатна подолати проблему судової корупції та підвищити довіру до правової системи. Однак таке законодавство не охоплює питання електронної комерції. Таким чином, є потреба у розвитку та регулюванні середовища, імплементації законодавства ЄС у сфері електронної комерції, а також визначення структури платформ врегулювання онлайн вирішення спорів та інститутів альтернативного вирішення спорів для належного функціонування європейської системи ОВС в Україні. Онлайн вирішення спорів у судовій системі демонструє прогрес, але Україні необхідно вирішити проблему фізичної відсутності суддів під час дистанційних засідань, запровадити хмарне управління справами замість гібридних систем тощо. Прогрес України значною мірою залежить від важливого розвитку та контролю екосистеми онлайн вирішення спорів.

Ключові слова: онлайн вирішення спорів (ОВС), електронна комерція, онлайн правосуддя.