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“Publicity” and “Confidentiality in Arbitral Judiciary: Approaches to Understanding and Application

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Abstract

The growing interest in alternative forms of dispute resolution has prompted attention to the peculiarities of the application of the principles of publicity and confidentiality in the arbitration. It is determined that the observance of the principle of publicity of the legal proceeding is the basis for ensuring justice. However, approaches to the application of this principle in arbitration differ both from the point of view of researchers and within the framework of legal regulation at the national and international levels. Some believe that the application of the principle of publicity will destroy the features of arbitration as such. However, the presented article demonstrates other approaches. The position was supported that the principle of confidentiality should be distinguished from the concepts of “privacy” or “closed trial”. In this context, publicity is often compared to concepts such as “openness”, “clarity” and “transparency” of the proceedings. Of concern is some regulatory restriction on the application of the principle of publicity, which affects the level of awareness of the activities of arbitration courts among the public and lawyers who intend to use alternative forms of dispute resolution. It is hoped that such further research will help solve similar problems.

Key Words: arbitration courts, international arbitration, principles of arbitration proceedings, confidentiality, publicity, transparency



Introduction

Arbitration is one of the leading forms of alternative dispute resolution (ADR). However, according to publicly available data prepared under the USAID “New Justice Program,” as of 2018, the activity of arbitration courts in Ukraine was not very efficient. It is noted that 57 organizations with arbitration courts are represented on the Internet. Only 33 arbitration courts have their own websites or sections on the websites of the organizations where they are formed, where their Rules are published, the list of arbitrators, and the size of the arbitration fee. In total, out of 515 registered arbitration courts, 248 arbitration courts operated, which means the conclusion of arbitration agreements by potential parties, consideration of cases and decision-making.¹

¹ T.P. Shepel. “New Justice. Analytical Report Arbitration Courts in Ukraine.” 2018: 34.

However, according to The International Chamber of Commerce (ICC),² the total number of disputes resolved by the leading International Court of Arbitration in 2012 was 4,521, and in 2019 it reached 7,222.

In the scientific community, given the purpose and practice of arbitration, the main advantages of this form of dispute resolution have long been identified. Several elements play key roles in evaluating any arbitration, namely: accuracy, fairness, cost, speed, and award enforceability.³ Arbitration is a process owned by the parties.⁴ Michael R. Fricke admits that

“The fact that the average arbitration reaches a final decision in about seven months while the average civil lawsuit with court action in federal court takes 25.9 months to be resolved (as of 2016) makes ADR a very attractive alternative to litigation.”⁵

Not the least role is played by the confidentiality of arbitration. As noted in the literature, in the field of entrepreneurship, this is due to the need to maintain trade secrets and / or ensure the business reputation of the entrepreneur. However, not always in the legal literature or even in regulations, “confidentiality” is interpreted in the same way. From this point of view, it is important to understand the meaning of this principle and to distinguish it from related concepts. In this study, I will be helped by the analysis of actual scientific publications, the national legislation and the international acts.

Methodology

The presented research is based on the general scientific method of dialectical cognition. Establishing structural-functional connections allows us to distinguish between possible objects of study and their interaction: such as the principles of dispute resolution, including publicity and confidentiality. The method of analysis and statistics determine the relevance of this research. Among those familiar with arbitration, 82% of the general population and 74% of court visitors know how an arbitration court differs from the ordinary.⁶ But awareness of the location or steps to initiate arbitration is quite low. However, the above data on the scope of resolving international commercial disputes indicates the need to further inform stakeholders about the specifics of the arbitration courts. The historical-legal method allows to compare views on the principle of confidentiality from the standpoint of the development of national legislation. In

2 ICC Dispute Resolution Statistics: 2020

3 William Park, “Arbitration and Fine Dining: Two Faces of Efficiency.” 2017: 1–25

4 Loukas A. Mistelis, “Efficiency. What Else?...” 2020: 349–376.

5 Michael R. Fricke, “HBO for ADR: Using Television’s Silicon Valley to Teach Arbitration.” 2019: 359–360.

6 Shepel, “New Justice.”

combination with the comparative law method, I consider the tendency to unify it in this matter. The comparative law method also allows to analyse and compare the principles of publicity, openness, transparency and confidentiality.

The empirical basis of the study is the results of the study and generalization of scientific works of Ukrainian and foreign researchers (Gary B. Born, Michael R. Fricke, Loukas A. Mistelis, T. P. Shepel and others) who have dealt with the problems of determining the principles of proceedings in general and some of them. Including scientists who have studied the features of arbitration proceeding. Applying the presented methodology, the article analyzes special national legislation, international acts and regulations of some arbitration courts.

The axiological approach reveals the importance of alternative forms of dispute resolution and the role of the principles of publicity and confidentiality as a basis for protecting the interests of the parties to the dispute.

1. Key Aspects of Publicity of Proceedings

The principle of publicity dates back to Ancient Rome, to classical Roman law, which, although not divided into substantive and procedural, but as G. Tymchenko notes, developed with impressive depth and accuracy of application of basic concepts and institutions of procedural law in one form or another within modern legal systems. On the territory of Ukraine, the development of procedural legislation was developed under the sources of the law of Kyivan Rus, in the period of its feudal fragmentation the right of independent principalities, and later—the Commonwealth of Poland, the Austrian Empire, on the one hand, and the Russian Empire on the other. In the Soviet period of development of procedural science, it was traditional to understand “publicity” as a procedure of judicial consideration of cases established by law, which provided free access to the courtroom of all comers.⁷

The principles of publicity and openness of court proceedings are inherent in the national judiciary. The purpose of applying these principles is to establish the fairness of the trial. As noted by The European Court of Human Rights, a public hearing contributes to the achievement of the aim of Article 6 § 1, namely a fair trial.⁸

Exploring the meaning of publicity and openness, the authors emphasize their close relationship with following terms: “transparency,” “publicity,” “clarity,” “accessibility of justice,” etc., which requires additional reference to the etymological origin of these concepts.

Thus, publicity in reference publications means accessibility to the general public, knowledge, controllability of actions, deeds by the authorities; accessible to the general public, open, public; available to the public discussion, control, synonyms: public, open. In turn, the terms “public” and “open” from time to time identified with the concept of “public.” Publicity in dictionaries and other reference publications means: one that

7 G. Tymchenko, “Principle of publicity and a proceeding openness: ...” (2010): 279

8 Malhous v. Czech Republic. 33071/96

takes place in the presence of the public, in front of everyone, overtly, open; such that takes place in the presence of the people, intended for wide attendance and use. Thus, in the vast majority of reference publications, the concepts of “public”, “open” are considered identical. In all international norms concerning the implementation of justice, publicity is a necessary element of his justice. Publicity (openness) of court proceedings is aimed at protecting the parties from secret justice (which does not fall under public control) and is one of the means of preservation trust in courts of all levels. Regarding the ratio of publicity and openness to transparency, some lawyers believe that the publicity of the judiciary is a narrower principle than the transparency of the judiciary and accessibility to justice.⁹

As emphasized in UNCITRAL’s Comments on the Organization of Arbitration Proceedings, the specific characteristics of Investor-State arbitration based on investment treaties may lead to the adoption of a transparency regime in the context of such arbitration.

An international investment treaty that is being arbitrated may contain specific provisions regarding the publication of documents, holding public hearings and confidential or non-public information. In addition, the applicable arbitration Rules specified in such investment treaties may contain specific provisions regarding transparency. In addition, parties to international treaty arbitration may agree to apply certain transparency provisions.¹⁰

The normal regulation and practical application of all these principles by national courts are in line with the case-law of The European Court of Human Rights. To establish whether a trial complies with the requirement of publicity, it is necessary to consider the proceedings as a whole.¹¹

The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny and thus constitutes one of the means whereby confidence in the courts can be maintained, contributing to the achievement of the aim of a fair trial.¹² Article 6 § 1 of The Convention for the Protection of Human Rights and Fundamental Freedoms,¹³ does not, however, prohibit courts from deciding, in the light of the special features of the case, to derogate from this principle.¹⁴ Holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case.¹⁵ The wording of Article 6 § 1 provides for several exceptions.

9 Korshun, A.O. “The Content of the Principle of Publicity and Openness ...” 2018: 55.

10 UNCITRAL’s Comments on the Organization of Arbitration Proceedings. 2016.

11 Axel Springer AG v. Germany. 39954/08.

12 Diennet v. France. 25/1994/472/553; Martinie v. France. 58675/00; Hurter v. Switzerland. 53146/99.

13 Convention for the Protection of Human Rights and its Protocols.1950.

14 Martinie v. France. 58675/00

15 Lorenzetti v. Italy. 32075/09

According to the wording of Article 6 § 1, "[t]he press and public may be excluded from all or part of the trial:" "in the interests of morals, public order or national security in a democratic society;" "where the interests of juveniles or the protection of the private life of the parties so require."¹⁶

As for disciplinary proceedings against a doctor, while the need to protect professional confidentiality and the private lives of patients may justify holding proceedings in private, such an occurrence must be strictly required by the circumstances;¹⁷ "or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice:" it is possible to limit the open and public nature of proceedings in order to protect the safety and privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice.¹⁸

The essence of the principle of publicity and openness is disclosed in Article 11 of the Law of Ukraine "On the Judiciary and the Status of Judges,"¹⁹ as well as in the updated procedural codes, in particular Article 8–9 of the Commercial Procedural Code of Ukraine,²⁰ Article 7–8 of the Civil Procedural Code of Ukraine,²¹ Article 10–11 of the Code of Administrative Legal Proceedings of Ukraine.²² The analysis of the specified legislative changes allows to draw conclusions that the principle of publicity and openness of judicial process and its full fixing by technical means provides:

- consideration of cases in courts is realized openly, except for the cases established by the current legislation;
- any person has the right to be present at the open hearing, and the Codes clearly state that a person wishing to be present at a court hearing is prohibited from requiring any documents other than an identity document. At the same time, in accordance with these changes, there are restrictions on the exercise of this right, namely: persons wishing to be present at the court hearing are allowed in the courtroom only before the court hearing and during the break; persons present in the courtroom, representatives of the media, without obstructing the conduct of the hearing and the exercise by the participants of the trial of their procedural rights, may take video and audio recordings in the courtroom using portable video and audio equipment without obtaining separate permission court, but subject to the restrictions established by law;
- with the permission of the court, the court hearing may be broadcast. If all participants in the case participate in the court session by videoconference,

¹⁶ B v. the United Kingdom and P v United Kingdom. 36337/97 and 35974/97

¹⁷ Diennet v. France. 25/1994/472/553

¹⁸ Osinger v. Austria. 54645/00.

¹⁹ The Law of Ukraine On the Judiciary and the Status of Judges. 2016.

²⁰ Commercial Procedural Code of Ukraine. 1992.

²¹ Civil Procedural Code of Ukraine. 2004.

²² Code of Administrative Legal Proceedings of Ukraine. 2005.

the course of the court hearing must be broadcast on the Internet without obstructing the conduct of the hearing and the exercise by the participants of the trial of their procedural rights;

- the court during the consideration of the case in the court session makes a complete recording of its course with the help of video and / or audio recording equipment, except as provided by applicable law. The procedure for such recording is established by the relevant procedural rules of a particular type of proceedings.²³

Despite the choice of court procedure, the procedural legislation of Ukraine requires that the introductory and operative parts of the decision be publicly announced, if such parts do not contain information to ensure the protection of which the case or certain procedural actions were conducted in closed session.²⁴

2. Confidentiality and “Closed-door” Proceedings

Non-jurisdictional methods of protection of legal rights and interests are not subject to regulation by procedural law. Consideration of cases by arbitration courts of Ukraine is possible under the conditions specified by the Law “On Arbitration Courts.”²⁵ In Ukraine, permanent arbitration courts and arbitration courts may be established and operate to resolve a specific dispute (ad hoc courts). Thus, the principles of dispute resolution by state courts cannot be considered the principles of arbitration, mediation, etc. Although their inherent principles may be similar.

The mentioned Law contains the principle of publicity and defines it as a presumption. If at least one party, objects to the open consideration of the case by the arbitration court on the grounds of observation and preservation of commercial or banking secrecy or ensuring the confidentiality of information, the case is considered in closed session. For example, the Rules of Procedure of the Permanent Arbitration Court at the Association of Ukrainian Banks stipulate: Arbitration of cases in the Arbitration Court is open. A consideration of the case in a closed session is made by a decision.²⁶

Regardless of the type of arbitration court, its activities are characterized by the principle of confidentiality. At the legislative level, this principle is reflected in two aspects. The first—the arbitration court, the arbitrator is not entitled to disclose information and knowledge that became known to him during the arbitration, without the consent of the parties or their successors. Second, it is prohibited to require an

23 Yu. A. Turlova, “The Principle of Transparency in the Updated Procedural Legislation of Ukraine.” (2018): 196.

24 Civil Procedural Code of Ukraine. 2004

25 The Law of Ukraine On Arbitration Courts. 2004

26 Rules of Procedure of the Permanent Arbitration Court at the Association of Ukrainian Banks. 2018

arbitrator to provide documents, information and knowledge in his possession in connection with the arbitration of the case, except as provided by the laws of Ukraine.

It is interesting that the legislation of some states does not make publicity a separate principle of arbitration. For example, in some post-Soviet states (Russia, Kazakhstan, Kyrgyzstan), arbitration laws contain a presumption of closed court proceedings. The dispute is considered "behind closed doors", unless the parties have agreed otherwise.²⁷ This allows some researchers to say that the principle of confidentiality contains two components: internal and external. The internal component is the confidentiality of information that appears during arbitration. The external component is precisely the secrecy of the proceedings by the arbitration court.²⁸

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC) considers international commercial disputes in Ukraine. The Law of Ukraine "On International Commercial Arbitration"²⁹ does not contain norms on confidentiality or publicity. However, if the parties have agreed to refer the dispute to the ICAC, they are ipso facto considered to have agreed in writing to the application of the ICAC Rules.³⁰ The Maritime Arbitration Commission (MAC) resolves disputes arising from contractual and other civil law relations arising from merchant shipping.³¹

It should be noted that confidentiality in accordance with the MAC and ICAC Regulations is considered in the above broad sense.

Unless the parties agree otherwise, the handling of cases and other related activities of the ICAC shall be confidential; unless the parties agree otherwise, the composition of the arbitration court and the parties shall maintain the confidentiality of any document submitted by a party or person who is not a party to the arbitral proceedings and which is not available to the public; arbitrators, rapporteurs appointed by the arbitration court experts, the ICAC and its employees, the Chamber of Commerce of Ukraine and its employees are obliged not to disclose information that became known to them about the cases before the ICAC, which may harm the legitimate interests of the parties or ICAC.

An example is also Article 30.1 Arbitration Rules of the London Court of International Arbitration. The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other

27 The Law On Arbitration Courts of the Republic of Kyrgyzstan. 2002.

28 A.E. Duisenova, *Principles of Arbitration (arbitrage) Proceedings* 2010.

29 The Law of Ukraine On International Commercial Arbitration. 1994.

30 Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry. 2020.

31 Rules of the Ukrainian Maritime Arbitration Commission. 2020.

legal authority. The parties shall seek the same undertaking of confidentiality from all those that it involves in the arbitration, including but not limited to any authorized representative, witness of fact, expert or service provider. Article 30.1 of the Arbitration Rules of the London Court of International Arbitration shall also apply, with necessary changes, to the Arbitral Tribunal, any tribunal secretary and any expert to the Arbitral Tribunal.³²

Nigeria, however, follows the general confidentiality rule under Article 25 (4) of the UNCITRAL Arbitration Rules which provides that “hearings shall be held in camera unless the parties agree otherwise.” This impliedly means that arbitration in practice is held in camera and only the parties, their representative and the counsels can attend. That said, parties may, by agreement, waive confidentiality and allow persons who are not parties to the arbitration proceeding to attend the hearing.³³

In this regard, we should agree with Gary B. Born, that it is important to distinguish between “privacy” and “confidentiality” in arbitration. “Privacy” refers to the fact that, under virtually all national arbitration statutes and institutional rules, only parties to the arbitration agreement—and not third parties—may attend arbitral hearings and participate in the proceedings. In contrast, “confidentiality” is typically used to refer to the obligation of the parties (and arbitrators) not to disclose information concerning the arbitration to third parties.³⁴

If privacy is a concern or becomes a priority issue and if the parties are not satisfied with the settlement of this issue in the provisions of the applicable arbitration law or arbitration rules, then the parties may agree on a preferred confidentiality to the extent permitted by applicable arbitration law. A confidentiality agreement may cover one or more of the following issues:

- a) materials and information that must be confidential (for example, the fact of the arbitration, personal data of the parties and arbitrators, evidence, written and oral presentation, content of the arbitration solutions);
- b) measures to ensure the confidentiality of such information and hearings, as well as the duration of the confidentiality obligation;
- c) the circumstances under which confidential information can be partially or completely disclosed to the extent necessary to protect legal rights; and
- d) other circumstances in which such disclosure of information may be permissible (for example, information related to the public sphere, or disclosure of information as required by law or any regulatory organ). The parties may wish to consider how to extend the obligation of confidentiality to witnesses and experts, as well as to others associated with a party to the arbitration.³⁵

32 Arbitration Rules of the London Court of International Arbitration.2020.

33 S. Osaloni, “Evolution of Commercial Arbitration Law in Nigeria and Practices,” 2020.

34 Born, Gary B. International Arbitration: Law and Practice.2021.

35 UNCITRAL’s Comments on the Organization of Arbitration Proceedings. 2016

In general, the issue of mandatory publicity of arbitration is still controversial. As technological advancements integrated in the global business environment, preserving privacy in ordinary court procedures became more challenging. In contrast, arbitral procedures are most of the time conducted with the exclusion of the public eye, in a private and confidential manner. Parties have the possibility to evade publicity that an ordinary court procedure would most probably evoke, and which, in certain cases, would have negative effects on them. This approach takes into consideration the power and curiosity of the press and the insight and business advantages competitors would get following a leakage of sensitive information in connection with the internal functioning of a company. A prominent example is the *Aitah v. Ojeh* case.³⁶

I need to agree with Juan Fernandez-Armesto, that it is a myth that secrecy must be upheld because users could

“shy away from international arbitration and revert to other forms
of dispute resolution.”³⁷

Statistically, in Energy, neutrality, flexibility, confidentiality and expertise of decisionmaker are the top four perceived benefits. In the Construction sector confidentiality, flexibility and enforceability are apparently less important than they are in the Energy sector.³⁸ Totally, “confidentiality and privacy” are only in fifth place of the most valuable characteristics of international arbitration.³⁹

Moreover, Marlon Meza-Salas says that “absolute confidentiality does not exist.” As one of examples: “one or both parties may be legally bound to disclose information related to the arbitration, for example, at the request of some regulatory authority (in banking, securities, or insurance matters), or by a tax, criminal or judicial authority.”⁴⁰

On the other hand, do not forget that the confidential nature of many ADR agreements leaves teachers lacking good examples to illustrate how mediation and arbitration proceedings function. This dearth of examples may contribute to ADR being given short shrift in business law courses. For those teaching in business schools, their students are highly likely to encounter some form of ADR during their careers. The fact that the average arbitration reaches a final decision in about seven months while the

36 Szalay, Gábor. “Arbitration and Transparency. ...” 2017: 19. (Corporate choices in International Arbitration Industry perspectives 2013)

37 Juan Fernandez-Armesto, “The Time has Come A Plea for Abandoning Secrecy in Arbitration,” *The Paris Journal of International Arbitration* 3 (2012): 587.

38 “Corporate Choices in International Arbitration Industry Perspectives,” *International Arbitration Survey*. (2013): 8.

39 “2018 International Arbitration Survey: The Evolution of International Arbitration,” *International Arbitration survey* (2018): 7.

40 Marlon Meza-Salas, “Confidentiality in International Commercial Arbitration: Truth or Fiction?” *Kluwer Arbitration Blog*. September 23, 2018.

average civil lawsuit with court action in federal court takes 25.9 months to be resolved (as of 2016) makes ADR a very attractive alternative to litigation.⁴¹

That is why, firstly, we should remember about difference between “privacy” and “confidentiality.” Secondly, the parties may choose the “level” of arbitration confidentiality in their agreement, and this possibility must be guaranteed.

For today, the way out of this situation can be considered the provisions of the Arbitration Rules, which allow the publication of materials of arbitration proceedings. It should be noted that even in this case, not everything is so simple. Article 30.3 of the Arbitration Rules of the London Court of International Arbitration states that “The London Court of International Arbitration does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.”⁴² The provisions of the Maritime Arbitration Commission and International Commercial Arbitration Court Regulations of Ukraine are less categorical. For example, the Presidium of Ukrainian Maritime Arbitration Commission may decide to publish arbitral awards and decisions in a form that does not identify the participants in the arbitration, if neither party within 30 days of receipt of the arbitral award or decision does not object to such publication.⁴³

A review of some Internet sites of Permanent Arbitration Courts shows that such requirements of the Regulations do work. For information the arbitral courts provide only comments on the legislation on arbitral courts and the case-law of state courts, which concerns appeals against arbitral awards.

Conclusions

Adherence to generally accepted principles of dispute resolution is the basis for establishing justice. Defining the essence of each of them helps to identify their value to ensure the protection of person’s legitimate rights and interests. Among the most controversial are the principles of “publicity” and “confidentiality.” Features and problems of their application were in their opposite. However, this is what encourages research on the possibility of their simultaneous use. The scientific literature analyzed in the article did not give an unambiguous answer to this question. This was due to the specifics of national legislation.

Complicating the situation is the presence of a large number of terms that are used simultaneously or in exchange for each other, but in fact cannot be considered synonymous. The analysis of publications written in different languages shows the great attention of scientists to this issue. Also taking into account the philological features. In particular, attention was paid on the inexpediency of identifying “publicity” and “transparency” of the trial. Nevertheless, the question of expanding the scope of

41 Michael R. Fricke, “HBO for ADR: Using Television’s Silicon Valley to Teach Arbitration.” (2019): 359.

42 Arbitration Rules of the London Court of International Arbitration. 2020.

43 Rules of the Ukrainian Maritime Arbitration Commission. 2020.

"transparency" in its classical sense may be relevant for further research. Is it possible for transparency to be in line with other principles of civil, commercial, other litigation and arbitration? The growing interest of the scientific community, legal practitioners and public in general in the ADR gives hope that this question will be answered.

Today, the principle of publicity is actively applied in the proceedings of all instances of state courts. Although international instruments do not really highlight the "confidentiality" or "publicity" of arbitration, national acts are more specific.

As it became clear, some researchers, referring to the rules of national law, defend the position that "confidentiality" is a fundamental principle of arbitration. It is the principle, which motivates the parties to the conflict to consider the case in an arbitration court, not in a state court. At first glance, it seems that everything that happens behind closed doors—remains behind those doors. Nevertheless, as we have already determined, this is not about "confidentiality," but about the "privacy" of the arbitration.

Thus, the study proves that there is no reason to limit the simultaneous application of the principles of "publicity" and "confidentiality" in arbitration. Indeed, publicity and openness serve to achieve justice. Confidentiality—protects reputation and achievements.

I believe that the correct application of these principles will also finally solve the problem of inaccessibility of arbitration decisions. Provided that confidential information is properly preserved, researchers, educators and legal practitioners will be free to learn the nuances of alternative dispute resolution and effectively compare it with the work of national courts.

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“Публічність” і “Конфіденційність” в Третейському Судочинстві: Підходи до Розуміння та Застосування

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Анотація

Зростання зацікавленості до альтернативних форм вирішення спорів, спонукало звернути увагу на особливості застосування принципів публічності і конфіденційності при здійсненні третейського судочинства. Визначено, що дотримання принципу публічності судового розгляду є основою для забезпечення справедливості. Однак, підходи для застосування даного принципу у третейському судочинстві різняться як з позиції науковців, так і у межах правового регулювання на національному та міжнародному рівнях. Одні вважають, що застосування принципу публічності знищить особливості третейського судочинства як такого. Тим не менше, у представленій статті наведено й інші підходи. Підтримано позицію, що принцип конфіденційності слід відмежовувати від понять “приватність” чи “закритість судового розгляду”. У наведеному контексті, публічність часто співставляється із такими поняттями як “відкритість”, “гласність” і “транспарентність” судочинства. Викликає занепокоєння деяке нормативне обмеження застосування принципу публічності, що впливає на рівень обізнаності щодо діяльності третейських судів серед громадськості та юристів, які мають намір застосовувати альтернативні форми вирішення спорів. Висловлено сподівання, що подібні подальші дослідження сприятимуть вирішенню схожих проблем.

Ключові слова: третейські суди, міжнародний арбітраж, принципи третейського судочинства, конфіденційність, публічність, транспарентність