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THE CURRENT LEVEL OF RESEARCH ON THE POSSIBILITIES OF ENSURING ACCESS TO JUSTICE

The article explores the contemporary state of research concerning the potential methods for ensuring access to justice. It delves into the multifaceted aspects of this subject, including the procedural elements of court systems, the appointment and support of qualified individuals in judicial positions, and the various procedures associated with initiating and resolving cases. The research emphasizes the importance of legal codification in guaranteeing not only access to the court but also ensuring fair and impartial judicial reviews, ultimately serving the primary goal of safeguarding the rights and legitimate interests of individuals. Furthermore, the article highlights a specific focus on criminal justice, with scholars, particularly V. Shybiko, positing that access to justice is an autonomous principle within criminal procedures, rooted in the broader human right to judicial protection. Overall, the research underscores the significance of ongoing scholarly investigations into the diverse dimensions of access to justice, acknowledging its foundational role in effective procedural legislation and its intrinsic connection to broader human rights principles.

Keywords: justice, access to justice, human rights, concept, judicial protection.

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Сучасний рівень досліджень можливостей забезпечення доступу до правосуддя

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Стаття розглядає сучасний стан досліджень щодо потенційних методів забезпечення доступу до правосуддя, включаючи процедурні елементи судових систем, призначення та підтримку кваліфікованих осіб на посадах суддів, а також різноманітні процедури, пов'язані із порушенням та вирішенням справ. Дослідження підкреслює важливість правової кодифікації як гарантії не лише доступу до суду, але й забезпечення справедливих та безпристрасних судових розглядів, що в кінцевому підсумку служить основною метою захисту прав та законних інтересів осіб. Крім того, у статті наголошується на конкретному акценті на кримінальне правосуддя, зокрема на дослідженнях вчених, які стверджують, що доступ до правосуддя є автономним принципом в кримінальних процедурах, вкоріненим у ширше розуміння права людини на судовий захист. Загалом, дослідження підкреслює важливість продовження наукових досліджень в різноманітних аспектах доступу до правосуддя, визнаючи його фундаментальну роль у впровадженні ефективного процесуального законодавства та його внутрішній зв'язок із загальнолюдськими принципами прав людини.

Ключові слова: правосуддя, доступ до правосуддя, права людини, концепція, судовий захист

Introduction. Securing access to justice is marked not just by an ongoing reform of the judicial system but, more significantly, by the challenges of our era, revealing new facets and forms. This underscores the need for an examination of access to justice in contemporary conditions, shifting towards ensuring the complete spectrum of human rights and addressing risks. The evolution of the information society, processes of globalization, and individualization are influencing the emergence of modern trends of a comprehensive nature. This interdependence is crucial for societies to safeguard against contemporary threats and make strategic decisions to ensure not only justice but also peace and security. This rationale is further supported by the repercussions of large-scale armed aggression and numerous crimes of aggression committed on the territory of Ukraine.

The analysis of recent research and publications indicates that the issue of access to justice is quite relevant, especially in conditions of a state of war. Various aspects of this problem are discussed in the works of scholars such as Luzhanskyi A. V., Savchyn M., Stepanova S. V., Kaidash O. Yu., Hrokholskyi V. P., Shybiko V. P. and others. Legislative and other regulatory acts of Ukraine, as well as international treaties, were used during the writing of the article.

The purpose of the article is a systematic analysis of the current state of research on the possibilities of ensuring access to justice. Identification of key trends, issues, and solutions in this context is a crucial aspect of the study. The article aims to highlight and analyze theoretical concepts presented in contemporary research, taking into account practical aspects of ensuring access to justice in the conditions of the modern socio-legal environment.

Presentation of the main research material. The evolution of a contemporary perspective on the right to access justice commenced in the latter part of the 20th century. The crystallization of the notion of «access to justice» as a fundamental concept reflecting the provision of a genuine opportunity to seek protection of one's rights is associated with research conducted by scholars of the Italian school of law regarding the provision and legal regulation of access to justice. In the 1970s, the Florentine Project, conducted under the auspices of UNESCO, aimed to substantiate and shape a qualitatively new, modern philosophy of justice. Within this project, a comprehensive theoretical concept of accessibility to justice was formulated based on reports from representatives of European countries. These reports delineated general trends in the global development of justice, underscored existing challenges, and proposed solutions.

It is noteworthy that the scope of the reports extended beyond procedural law alone. An effort was made to scrutinize the conceptual features of justice by using specific countries as examples and comparing these features with the overarching trends in the development of justice worldwide. The ideological inspiration behind the project was Mauro Cappelletti, an Italian professor and the author of the work «Access to Justice», who underscored the imperative to change the theoretical approach to justice and law as a whole.

Cappelletti aimed to construct a fundamentally novel concept of justice wherein rights would possess tangible, substantive expression rather than merely formal acknowledgment. Rooted in practical concerns, his theoretical considerations sought to uncover tangible barriers and hindrances to accessing courts and justice. Cappelletti's noteworthy contribution lay in scrutinizing the nature of these barriers. On one hand, he acknowledged the necessity of certain barriers in court access, recognizing that a regulated procedure is essential to prevent chaotic access to the courts. On the other hand, he emphasized that these barriers should not infringe upon human rights, rendering the protection of these rights impossible [1].

Among the identified barriers, Cappelletti highlighted organizational, financial (including the high cost of legal proceedings, especially when it exceeds the plaintiff's potential recovery for small claims), temporal (long waiting periods for case resolution), economic, and administrative obstacles. Additionally, he gave considerable

attention to party inequality, pointing out that individuals or entities with substantial financial resources enjoy distinct advantages in initiating or defending legal claims.

They can afford the costs associated with legal proceedings and tolerate the delays inherent in such processes. This inequality is manifest in differing levels of awareness about one's rights and the right to judicial review, primarily impacting economically disadvantaged populations but not exclusively confined to them.

Furthermore, the accessibility of justice varies for individuals who only sporadically engage with the judicial system compared to those who could be considered professional litigants. A challenging aspect is also the judicial safeguarding of community interests. For example, if a government-led dam construction project poses a threat to a community, expecting someone with the financial means to sue the government to intervene may be futile.

In summary, Mauro Cappelletti and the Florentine Project aimed to formulate a comprehensive and pragmatic approach to the concept of access to justice. This approach addresses both the imperative of regulating court procedures and ensuring that barriers do not violate individuals' rights. Cappelletti's work laid the foundation for a novel understanding of justice, emphasizing its tangible expression over mere formality and concentrating on tackling practical barriers to access to justice.

Cappelletti's notable achievement lies in his examination of the nature of barriers to access to justice. On one hand, he recognized the necessity of certain barriers in approaching the court; chaotic access to the court must be avoided, necessitating the regulation of the procedure. On the other hand, he stressed that these barriers should not infringe upon human rights, hindering their protection. Among such barriers, Cappelletti identified organizational, financial (including high procedural costs for the parties, which could surpass the plaintiff's expenses for small claims), temporal (lengthy waiting times for case resolution), economic, and administrative obstacles. The scholar also gave considerable attention to party inequality. Individuals or organizations with substantial financial resources, usable for legal proceedings, enjoy clear advantages in initiating or defending lawsuits. Primarily, they can afford the legal process and withstand the delays associated with it.

A pertinent example is the dispute between an individual and a large-scale enterprise or the government, where disparities in financial resources, legal preparedness, and experience between the parties are evident. Inequality manifests in varying levels of awareness about their rights and the right to judicial review, primarily impacting financially disadvantaged populations but not exclusively limited to them. Additionally, the accessibility of justice appears distinct for those who only sporadically encounter the judicial system compared to professional litigants. The judicial protection of community interests is also problematic. For instance, if a government-led project, such as dam construction, threatens a community, expecting someone with the financial means to sue the government to intervene may be futile.

The Florentine Project yielded the «access to justice movement», a series of measures designed to ensure genuine access to justice. Consequently, since the 1970s, the definition of «access to justice» has undergone expansive interpretation due to the widespread adoption of alternative dispute resolution practices and the acknowledgment of the necessity to provide legal assistance to vulnerable population groups. The legal science, influenced by the «access to justice movement», has reevaluated categories such as class actions and the right to free legal aid. This movement, characterized by its interdisciplinary nature, allowed its proponents to argue that opportunities for judicial protection are shaped not only by legal but also by social, economic, and, to some extent, political factors.

By the close of the 20th century, the concept of accessibility to justice had definitively shifted from the theoretical domain to practical implementation. A notable example of this transition was the judicial reforms in the United Kingdom. In the last third of the 20th century, an outdated judicial system underwent reform, culminating in the establishment of the Supreme Court in 2009. Concurrently, procedural law underwent revision. In 1994, Lord Harry Woolf, then a member of the House of Lords, was appointed Lord Chancellor to review the existing rules and procedures of the civil courts of England and Wales. In June 1995, Lord Woolf published an interim report outlining the problems of civil procedure in England and Wales, and he presented a reform program in July 1996 as the final report titled «Access to Justice» [2]. Within two years, a comprehensive judicial reform was implemented, transforming the culture of judicial activities and enhancing access to justice, particularly through the establishment of reasonable timeframes for case resolution.

In summary, it is noteworthy that for a significant duration, the ideas of access to justice lacked clear theoretical expression, intricately intertwined with other concepts and theoretical perspectives. The concept of the right to access to justice serves a specific goal in legal regulation – to afford every interested party the opportunity to participate in the dispute resolution process, defending their rights and interests, regardless of economic or other

potential obstacles. The key characteristic of this concept is the notion of «access», which finds codification at the international level in treaties, conventions, recommendatory acts, and in the practices of international human rights bodies.

The evolution of the right to access to justice, as seen through history, reveals its formulation following the adoption of universal and regional human rights conventions. This concept was partly shaped by the European Court of Human Rights (ECtHR) and partially developed by foreign scholars influenced by the ECtHR's practices.

The «access to justice» movement in the latter half of the 20th century played a significant role in societal transformation, contributing to legislative improvements and the establishment of unified procedural standards across European countries during a period of general judicial crisis.

In Soviet legal literature, access to justice was examined within the framework of procedural law as a principle defined by V. Semenov (the term's author). This principle represented the state-guaranteed opportunity for any individual to address the court, following the procedures established by law, for the protection and defense of their rights and interests in the judicial process. The democratization of the state and social order in independent Ukraine stimulated domestic scientific research on this matter [3].

Contemporary judicial system reforms, primarily focused on bringing the court closer to the population and facilitating citizens' access to justice, underscore the critical importance of this issue at all stages of judicial system reform. While the study of the essence and content of accessibility to justice is not entirely new in the domestic legal environment, various aspects of research are explored by representatives of general legal theory, philosophy of law, international law, and different branches of law.

Under contemporary conditions, «access to justice» is categorized as both substantive and procedural law, showcasing its interdisciplinary nature. Furthermore, it is defined as an inter-branch constitutional principle - a legal category ensuring the provision of the right to judicial protection for human rights and citizens.

Dr. M. Savchyin addresses issues related to the formation of the domestic mechanism for legal protection of constitutional rights and freedoms, as well as various aspects of the right to a fair trial in the activities of the Constitutional Court of Ukraine. The author approaches the problem of the right to a fair trial by extrapolating empirical experience in securing this right onto the doctrine of constitutionalism and the dynamics of legal protection institutions, determining the interconnection of social values and human rights, analyzing the hierarchy of constitutional values, and defining the normative nature of human rights and fundamental freedoms within the constitutional structure [4].

A series of scholarly works by A. Luzhansky focuses on exploring the constitutional nature of the right to access to justice and characterizing the features of the constitutional-legal mechanism guaranteeing such a right. The author examines the right to access to justice as a subjective constitutional right, highlighting that the terms «right to access to justice» and «access to justice» are essentially synonymous in the author's perspective. Luzhansky underscores the absence of a specific definition for the concept of «access to justice» in the Constitution, Ukrainian legislation, and international treaties to which Ukraine is a party. Instead, various components of this concept are elucidated in the decisions of the European Court of Human Rights (ECtHR), emphasizing the need for legislative clarification of this fundamental legal category. The author emphasizes that ensuring access to justice by the state requires a transition from mere declarations to the actual provision of the right to appeal to the court [5].

S. Stepanova's constitutional and legal research delves into the peculiarities of implementing and realizing regional standards of the right to a fair trial within the Ukrainian legal system. Stepanova suggests that, for the purpose of improving the mechanism for implementing the constitutional right of an individual to access the court, several measures are necessary.

These include simplifying procedures for less complex cases, expanding the category of civil cases that can be considered through simplified procedures, changing conditions hindering the initiation of court proceedings, introducing court fees only at the stage of initiating court proceedings, not delaying the resolution of staffing issues related to the appointment of judges, increasing funding for judicial activities, introducing judicial oversight of the quality of legal services provided by defenders in criminal proceedings, increasing state control over the enforcement of judicial decisions, and preventing judges from excessively formalizing the requirements established by law [6].

O. Kaidash and V. Groholsky draw attention to recent legislative acts related to the institution of judicial protection of human rights. These acts aim to expand the competence of courts in resolving disputes over violations or unlawful restrictions of personal rights, overcoming artificially created obstacles to effectively carry out this activity in recent years [7].

From a legal regulation standpoint, the matter of access to justice is primarily centered on its procedural aspect, involving well-developed procedural legislation and its practical application by courts, making this domain the subject of extensive research. According to Y. Bityak, the exploration and resolution of the access to justice issue are directly linked to the quest for the optimal model of justice in Ukraine [8].

During the groundwork for the establishment of administrative justice in Ukraine, he identified several factors that could effectively impact the accessibility of administrative justice within the framework of the Ukrainian judicial system formation. These factors include the effective restoration of human rights and legal protection against public authorities, adherence to international legal standards, provision of free legal aid when necessary, establishment of a clear procedure for the consideration of administrative disputes, territorial proximity of administrative courts to the population, training of highly qualified professionals for administrative courts, ensuring the enforcement of decisions, implementation of Council of Europe recommendations, broadening the involvement of non-governmental and civil organizations in providing legal assistance in quasi-judicial forms of dispute resolution, simplification of legal procedures, and adequate financing of administrative courts to ensure their independence. The practical implementation of a significant portion of these recommendations underscores the tangible importance of doctrinal research on the issue of access to justice [9].

Researchers have addressed the issue of access to criminal justice, with V. Shybiko making an attempt to establish that access to justice constitutes an independent principle within the criminal procedure in Ukraine, originating from the overarching human right to judicial protection. The scholar contends that ensuring the right to access justice aligns with the criteria used to determine the principles of criminal procedure [10].

Conclusions. The first category encompasses the establishment of an accessible court system, considering their geographical distribution, the appointment of qualified individuals for judicial roles, and providing organizational support for the functioning of courts, among other aspects. The second category involves the procedures for initiating a case in court, adhering to procedural timelines, challenging actions or inaction of officials, ensuring compliance with the case hearing procedure, and enforcing decisions. Research in these areas remains pertinent for further academic investigations. It is important to note that the legal codification of these elements serves as a state guarantee not only for access to the court but also as an assurance of a fair and impartial judicial review, with the primary objective of safeguarding the rights and legitimate interests of individuals.

Therefore, it can be asserted that enhancing access to justice is a fundamental aspect for the effective reform of procedural legislation. An examination of current research reveals that the majority of domestic scholars approach the right to access to justice from the perspective of human rights guarantees. Consequently, it can be argued that the right to access to justice inherently acts as a general legal guarantee for the protection of the rights of individuals and citizens in the judicial process.

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