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Institute of appeal in the mechanism of protection and restoration of rights and legitimate interests

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Abstract

In this research article, based on the analysis of procedural legislation and the practice of its application, with the help of general and special scientific methods, the question of the functioning of the institute of appeal in the mechanism of protection and renewal of rights is addressed and, at the same time, the legitimate interests of the individual in Ukraine are investigated. It is noted that the appeal is an independent interdisciplinary institution, and the realization of the right of appeal in criminal, administrative, civil and economic proceedings has material-legal and procedural-legal expression. Among the contributions of the work, the peculiarities of legal relations during the appeals and cassation appeals are determined. It is concluded that the proposals to the procedural legislation are reasonable in order to make it impossible for the participant in the criminal process to abuse the right to appeal any decision or action of the investigating body.

Keywords: judicial power; individual rights; complaint; institute of appeal; preliminary investigation.

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Instituto de apelación en el mecanismo de protección y restauración de derechos e intereses legítimos

Resumen

En este artículo de investigacion, basado en el análisis de la legislación procesal y en la práctica de su aplicación, con la ayuda de métodos cientificos generales y especiales, se abordo la cuestión del funcionamiento del instituto de apelación en el mecanismo de protección y renovación de los derechos y, al mismo tiempo, se investigan los intereses legítimos de la persona en Ucrania. Se advierte que la apelación es una institución interdisciplinaria independiente, y la realización del derecho de apelación en los procesos penales, administrativos, civiles y económicos, tiene expresión material-jurídica y procesal-jurídica. Entre los aportes del trabajo, se determinan las peculiaridades de las relaciones jurídicas durante los recursos de apelación y casación. Se concluye que son razonable las propuestas a la legislación procesal con el objetivo de imposibilitar que el participante en el proceso penal, abuse del derecho a apelar cualquier decisión o actuación del órgano de instrucción.

Palabras clave: poder judicial; derechos individuales; denuncia; instituto de apelación; instrucción previa.

Introduction

In a modern democratic society, human rights are an important institution that regulates the legal status of a person, determines the ways and means of influencing him, the limits of interference in the sphere of personal life, and establishes legal and other guarantees for the protection and realization of rights and freedoms. Article 3 of the Constitution of Ukraine declares that a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value, and the establishment and provision of his rights and freedoms are the main duties of the state. The state is responsible to the people for its activities. Affirmation and provision of human rights and freedoms is the main duty of the state (Constitution Of Ukraine, 1996). The course to build such a state in Ukraine involves determining the effective mechanisms of this process (Kulyanda, 2021).

The protection of the rights and freedoms of a person and a citizen is a defining constitutional function of the judicial power, and therefore is one of the prerequisites for ensuring the state of compliance with the rule of law and legality. At the same time, according to Article 55 of the Basic Law, the rights and freedoms of a person and a citizen are protected by the court.

Everyone is guaranteed the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officials. At the same time, Article 124 of the Constitution of Ukraine establishes that justice in Ukraine is administered exclusively by courts, and Article 129 enshrines, in particular, provisions on ensuring the right to an appellate review of the case and, in cases specified by law, to a cassation appeal of a court decision (Constitution Of Ukraine, 1996).

Improvement of legislation in the context of Article 55 of the Constitution of Ukraine should be a gradual trend aimed at expanding judicial protection of human rights and freedoms, in particular judicial control over the legality and reasonableness of decisions, actions and inaction of authorized subjects during judicial proceedings. It should be understood that the Constitution of Ukraine enshrines not only the absolute right to appeal, but also establishes the duties of a person not to violate the rights and freedoms of other persons, not to abuse the corresponding rights. The balance between rights and duties must be unshakable, as an increase in the scope of rights requires the legislator to increase the scope of duties to ensure them.

1. Methodology of the study

The methodological basis of the scientific article was made up of the provisions of dialectics as a general scientific method of learning the phenomena of objective reality, other general scientific and special methods. Their application is determined by a systematic approach, which makes it possible to investigate problems in the unity of their social content and legal form, to analyze the institution of appeal in the criminal civil, economic and administrative process.

Thus, the dialectical method of learning the processes that take place during the implementation of an appeal in criminal proceedings, in the resolution of civil and economic disputes, cases of administrative offenses, helped to consider it in its development and interrelationship, to identify established trends and regularities in general. The formal-logical method was used in the analysis of the concepts of «appeal», «complaint», «subject of appeal», determining the content of the constitutional right to appeal, the characteristics of the structural elements of the appeal process, formulating proposals for improving legislation in this area.

2. Analysis of recent research

The effectiveness and quality of judicial proceedings directly depend on the proper regulation of appeal procedures, including decisions, actions or inaction of bodies and officials who conduct judicial proceedings.

The presence of a relevant interdisciplinary institute, on the one hand, is a guarantee of the realization of the rights and legitimate interests of individuals and legal entities, on the other hand, it should not create unnecessary obstacles to the completeness and speed of resolution of disputes on the merits of criminal, civil, economic and administrative proceedings. Therefore, consideration of urgent problems regarding its development and improvement should remain in the field of view of scientists and practitioners.

In the article, based on the analysis of regulatory acts, scientific literature, investigative and judicial practice, we aim to determine the characteristic features of the formation of the appeal institution within the framework of the Ukrainian judiciary, outline the procedural measures that ensure consideration of the complaint, determine directions for optimizing the protection of the rights and legitimate interests of participants in pre-trial criminal proceedings proceedings, as well as court proceedings in the courts of the first, appeal and cassation instances.

3. Results and discussion

In the modern conditions of reforming the judicial system in Ukraine, the problem of judicial control over the observance of the constitutional rights, freedoms and interests of individuals, especially in the field of criminal procedural law, is becoming increasingly important, the implementation of which tasks is impossible without a system of measures and actions that provide for their limitations. The right to appeal is an absolute subjective right, the grounds for its implementation arise in the presence of certain legal facts with which the emergence of legal relations is connected.

The appeals institution acts not only as an important tool for protecting the personal rights of participants in criminal proceedings, observing public, state and private interests, but also as a guarantee of the effective operation of the entire criminal justice system (Klepka, 2019). Guaranteeing judicial protection of rights and freedoms requires the legislator to introduce an effective appeal mechanism into the law.

In the Ukrainian criminal process, Article 24 of the Criminal Procedure Code of Ukraine guarantees everyone the right to appeal the procedural decisions of the court in the manner prescribed by law (Criminal Procedure Code Of Ukraine, 2012). Guided by the principle of ensuring access to justice, the only criterion that makes it possible to determine which court decisions can be appealed to the court and who exactly has the right to such an appeal should be the restriction of the constitutional rights and freedoms of citizens (Yanovskaya, 2013). For example, consideration of relevant complaints at the pre-trial investigation stage is entrusted by the

criminal procedural legislation of Ukraine to the investigating judge as the authorized person to exercise judicial control over the protection of the rights, freedoms and legitimate interests of the participants in criminal proceedings.

The Criminal Procedure Code of Ukraine defines the procedure and conditions for consideration of individual complaints in Chapter 26 «Appeal of decisions, actions or inaction during pre-trial investigation» regulates the powers of the investigating judge, which can be exercised by him based on the results of such a review (Criminal Procedure Code Of Ukraine, 2012). A complaint against the decision, actions or inaction of an investigator or prosecutor during a pre-trial investigation must be in writing, contain all the necessary details and be presented in the sequence in which the complainant considers it necessary, but with a mandatory statement of justification in accordance with the law.

In Part 1 of Art. 303 of the Criminal Procedure Code of Ukraine defines a list of cases in which the decisions, actions or inaction of an investigator or prosecutor may be challenged during pre-trial proceedings – such as the inaction of an investigator or prosecutor, which consists in not entering information about a criminal offense into the Unified Register of Pre-Trial Investigations after receiving a statement or notification of criminal offence, failure to return temporarily seized property in accordance with the requirements of Art. 169 of the Criminal Procedure Code of Ukraine, as well as in failure to perform other procedural actions, which he is obliged to perform within the period specified by the Criminal Procedure Code of Ukraine; the decision of the investigator, the prosecutor to stop the pre-trial investigation; the investigator's decision to close the criminal proceedings; prosecutor's decision to close criminal proceedings and / or proceedings against a legal entity, etc., (Criminal procedure code of Ukraine, 2012).

Also in accordance with Part 2 of Art. 303 of the Criminal Code of Ukraine, complaints about other decisions, actions or inaction of the investigator or prosecutor are not considered during the pre-trial investigation and may be considered during the preparatory proceedings in court (Criminal procedure code of Ukraine, 2012).

Recently, there have been frequent proposals to improve the legislative regulation of criminal proceedings in terms of challenging the decisions and actions of the investigator and prosecutor at the pre-trial investigation stage. To date, the Criminal Procedure Code does not establish a proper and clear procedure for challenging the decisions, actions and inactions of investigators and prosecutors at the pre-trial investigation stage.

The stage of the pre-trial investigation of criminal proceedings consists of several stages, in particular, entering information into the Unified register of pre-trial investigations, notifying the person of suspicion, completion

and termination of the pre-trial investigation. Each of these stages, in turn, requires the pre-trial investigation body to fulfill its tasks by conducting separate procedural actions and making procedural decisions.

Any procedural action or set of actions during criminal proceedings must be performed by the investigator and the prosecutor without undue delay and in any case no later than the time limit determined by the relevant provision of this Code (Part 2 of Article 113 of the Criminal Procedure Code of Ukraine). Article 219 of the Criminal Procedure Code of Ukraine establishes the terms of a pre-trial investigation for making one of the following decisions in a case - an appeal to the court with an indictment, a request for the application of coercive measures of a medical or educational nature, a request for the release of a person from criminal responsibility or a decision to close (Criminal procedural code of Ukraine, 2012).

Due to their legal nature, procedural terms act as temporal conditions for the realization of subjective rights and legal obligations of participants in criminal procedural legal relations. Unjustified appeal by the participants of the criminal proceedings of the decisions and actions of the pre-trial investigation body leads to the prolongation of the process and violation of reasonable terms.

According to the current judicial practice, the defense party usually initiates the filing of complaints of the specified category in order to delay the process, with the aim of avoiding criminal liability for the suspect.

In addition, by groundlessly challenging the decisions and actions of the pre-trial investigation body, the participants in the proceedings create artificial obstacles to make it impossible for the pre-trial investigation body to fulfill the tasks of the criminal proceedings - to properly protect the person, society and the state from criminal offenses, protect the rights, freedoms and legitimate interests of the participants in the criminal proceedings, and to ensure a prompt, full and impartial investigation and trial so that everyone who commits a criminal offense is held accountable to the extent of his guilt, no innocent person is charged or convicted, no person is subjected to unreasonable procedural coercion and that due process of law was applied to each participant in the criminal proceedings.

The European Court of Human Rights in its decisions, in particular in the case of «Union Alimentaria v. Spain» dated July 7, 1989, indicates the inadmissibility of disobeying the key principle – the rule of law in cases where the behavior of the participants in the court session indicates the deliberate nature of their actions, aimed at unjustified delay of the process or abuse of his procedural right» (ECtHR decision in the case «Union Alimentaria Sanders v. Spain», 1989).

Along with this, the Criminal Court of Cassation of the Supreme Court in the ruling dated 09.04.2019 in case No. 306/1602/16-k notes that the

procedural law ensures compliance with the rights of individuals, and not their use for abuse (Decision of the Criminal Court of Cassation of the Supreme Court No. 306/1602/16-k, 2019).

It should be emphasized that to date, the Criminal Code of Ukraine does not provide for a general provision on the prohibition of the abuse of procedural rights of a party and does not define the mechanism of responsibility for the violation of the obligations defined by the criminal procedural law, therefore granting a party the right to an absolute appeal against any decision or action of a pre-trial investigation body will lead to the violation of the rights of other participants in the process (the victim, witnesses, translators, representatives).

In our opinion, when deciding on the list and scope of the right of participants to appeal the decisions and actions of the pre-trial investigation body, one should proceed from the balance of the state's positive obligations to the person and without appeal accept for consideration the statement that the pre-trial investigation body violated conventional and/or constitutional rights and human freedom – torture and inhumane treatment (Article 3 of the Convention, Part 1 of Article 28 of the Constitution of Ukraine), the rights of the suspect, the accused to protection, including professional legal assistance (paragraph «c» of Part 3 of Article 6 of the Convention , Article 59 of the Constitution of Ukraine), to participate in the examination of witnesses (clause «d» part 3 of Article 6 of the Convention) (Convention for the protection of human rights and fundamental freedoms, 1950), human rights to respect for one's private life, inviolability housing (Article 8 of the Convention), on refusal to testify about oneself, one's family members and close relatives (Part 1 of Article 63 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

In view of the above, we consider it necessary to add paragraph 11, part 1 of Article 303 of the Criminal Procedure Code of Ukraine with the following content: «decisions, actions or inaction of the investigator or prosecutor during the pre-trial investigation, which violate the essential rights of the participant in the proceedings, are subject to appeal to the investigating judge.»

The exercise of the right to appeal the decisions, actions or inaction of the specified subjects must meet the requirement of access to justice in the form of an appeal. In this regard, S. Slynko gives enough arguments that the provisions of the Criminal Procedure Code of Ukraine regarding the appeal not only of the decisions, actions or inaction of the investigator and prosecutor, but also of the investigating judge are fully democratic. The peculiarity of this procedure is that it is carried out only on appeal (Slynko, 2014).

In this case, we consider the addition of articles 307 and 309 of the Criminal Procedure Code of Ukraine to be fully justified with the following

content: «the decision of the investigating judge based on the results of the review of complaints against the decision, actions or inaction of the investigator or prosecutor, which violate the essential rights of the participant in the proceedings, may be appealed in the court of appeal».

At the same time, in order to minimize abuse by the participant of the right granted to him to challenge the decisions and actions of the investigator and the prosecutor, it is necessary to establish at the legislative level the obligation for him to bear responsibility for the incurred expenses to the state budget.

It is worth noting that in the practice of the ECtHR, consideration of complaints regarding violations of the rights of individuals during criminal proceedings prevails. In international law, a complaint is generally considered the most common means of legal protection (Korobko, 2016). In particular, the case «Amann v. Switzerland» states that the Convention for the Protection of Human Rights requires that anyone who considers himself aggrieved by a measure which, in his opinion, contravenes the Convention, has the right to a remedy before the appropriate national authority to resolve his grievance. dispute, and in the case of a positive decision – to receive damages (ECtHR decision in the case «Amannv. Switzerland», 2000).

Adoption of legal and substantiated judicial acts is ensured by valid economic procedural legislation, the procedure for organizing the activity of economic courts and a high level of professional training of judges. A special place in the implementation of this right is provided by the economic procedural legislation, the possibility of individuals and legal entities to appeal the decisions made by the courts of the first instance.

Appealing the decisions of the court of first instance ensures the renewal of the violated procedural rights and interests of the participants in the court process. This is one of the conditions for a fair, impartial and timely resolution of a legal dispute.

In accordance with Part 1 of Art. 254 of the Economic Procedural Code of Ukraine, participants in the case, persons who did not take part in the case, if the court decided the issue of their rights, interests and (or) obligations, have the right to file an appeal against the decision of the court of first instance (Economic procedure code of Ukraine, 1991). O. Solovyov notes that the appellate court reviews the case based on the evidence available in it and additionally submitted and checks the legality and reasonableness of the decision of the court of first instance within the limits of the arguments and requirements of the appeal (Soloviev, 2020).

On the basis of the above, it can be argued that the stage of review of economic cases by the appellate court is an important guarantee of compliance with the rights of the participants in the process to an objective,

comprehensive and legal trial. The presence of appellate proceedings indicates the development of economic procedural legislation, which was reflected in the current legislation.

Based on the results of the case review, the appellate court, after listening to the explanations of the participants in the court process, examining the case materials, makes a decision in the form of resolutions in accordance with the requirements established by Art. 34 and Chapter 9 of Chapter III of the Economic Procedural Code of Ukraine (Economic procedural code of Ukraine, 1991).

Summing up, we note that one of the positive features of the interdisciplinary institute of appeal, regardless of the field of judicial proceedings, is its psychological role. The vast majority of decisions of the court of first instance are not final and can be reviewed by experienced and qualified judges within the framework of appeal and cassation proceedings.

The presence of such a legally defined procedure has a calming effect both on the persons involved in the case and on society in general.The right to appeal the decision of the court of first instance by filing an appeal and submitting a submission to it by the prosecutor is an opportunity provided by law to disrupt the functional activity of the court of appeal for a new (re) consideration of a civil case and to check the decisions and resolutions passed on it for compliance with the requirements of legality and validity.

The right to file an appeal is granted to the parties and other persons who participated in the consideration of the case, and the right to file an appeal is granted to the prosecutor who participated in the consideration of the case (Article 290 of the Civil Procedure Code of Ukraine).

According to Art. 292 of the Civil Procedure Code of Ukraine, parties and other persons participating in the case, as well as persons who did not participate in the case, if the court decided the issue of their rights and obligations, have the right to appeal the decision of the first instance court fully or partially (Civil procedure code of Ukraine, 2004).

The issue of renewing the missed deadline for appealing a court decision is problematic in civil proceedings. Parts 3 of Art. 297 of the Civil Procedure Code of Ukraine establishes that an appeal remains inactive if it is filed after the deadline. But the person who submitted it can raise the issue of renewing this term. If the reasons specified by the person in the application are found to be invalid, the appellate court also issues a decision to leave the application without movement. On the basis of Part 3 of Art. 297 of the Civil Procedure Code of Ukraine, it is possible to resolve the issue of the validity of the reasons for missing the deadline for an appeal and the opening of appeal proceedings in the case only when the appeal is filed.

However, the person is given a «second chance», and within 30 days from the date of receipt of the decision, he has the right to apply to the Court of Appeals for an extension of the terms or to indicate other reasons for the extension of the term. If the application is not submitted by the person within the specified period or the reasons given by him for the renewal of the appeal period are deemed invalid, the reporting judge refuses to open the appeal proceedings. At the same time, regardless of the seriousness of the reason for missing the appeal period, the appeal court refuses to open appeal proceedings if the appeal of the prosecutor, state authority or local self-government body is filed after one year has passed since the announcement of the contested court decision (Civil Procedure Code Of Ukraine, 2004).

Cassation proceedings in civil proceedings should be understood as the procedural and procedural activity of the court of cassation, which is carried out in the order and manner prescribed by law, by checking the decisions of lower courts for violations of substantive and procedural law, identifying and eliminating such violations for the purpose of protection and renewal rights of the parties.

The subject of a cassation appeal is a court decision, which is appealed by the plaintiff in connection with the presence in its content, in the opinion of the plaintiff, of signs of incorrect application of the norms of substantive law by the court or violation of the norms of procedural law, which violates his rights and legitimate interests (or rights and legitimate interests the person on whose behalf the cassation appeal is filed), on the basis of which the cassation instance court conducts a cassation review of the relevant cassation appeal (Pomazanov, 2019).

Therefore, taking into account the above classifications of appeal methods in civil proceedings, we can conclude that an appeal is a common (ordinary) reformation method of appeal and review of court decisions that have not entered into legal force, which causes a devolution effect on the court case (transfer of powers to consider the case from a lower to a higher court) and a suspensive effect (stops the execution of contested court decisions) on the contested court decision.

Cassation in a civil process is an extraordinary extraordinary way of appeal and review of court decisions that have entered into legal force, which causes a devolving effect on the court case and, as a general rule, does not cause a suspensive effect on the court decision under appeal. Similar conclusions can be drawn regarding other types of judicial proceedings.

The proper implementation of the right to appeal decisions, actions or inaction in relations between public authorities and private individuals becomes important. It is through the appeal mechanism that private individuals who are or may be in legal relations with state authorities and

local self-government bodies, their officials, other subjects of authority, are able to achieve the cancellation or recognition of illegality of a certain decision, action or inaction.

In turn, the influence exerted by private individuals on the subjects of public authorities through the appeal mechanism has a wider significance. In particular, with its help, there is a «reverse» relationship between society and the state, certain decisions of subjects of public authorities are corrected, their law enforcement practice, which contributes to ensuring the rule of law and democracy in the country.

The right to appeal decisions, actions or inaction of subjects of public authority as an element of the appeal mechanism – is a human right and, at the same time, a subjective right of a participant in the relevant legal relationship. Characteristic features of the right to appeal within the framework of administrative proceedings are naturalness, inalienability and inalienability, the obligation of the state to guarantee such a right within the limits of international standards, etc. The subjective right, the right to appeal, consists of a number of powers. Such a right corresponds to legal obligations, compliance with which enables the exercise of the right and prevents abuse of the latter (Luchenko, 2017).

In our opinion, the state's obligations in the field of guaranteeing the right to appeal decisions, actions or inaction of subjects of public authority include: creation of the necessary legislation, as well as institutions necessary for the exercise of the right to appeal; ensuring timely consideration of complaints and administrative lawsuits; ensuring the implementation of decisions made as a result of the appeal; ensuring, in necessary cases, the prosecution of subjects of public authorities whose decisions, actions or inaction were successfully challenged; informing together with civil society institutions of citizens about the methods and procedure of exercising the right to appeal.

It should also be emphasized that the right to appeal is one of the channels of communication between private individuals and bearers of public authority, the state as a whole. As D. Luchenko rightly points out, thanks to the appeal, not only the rights and legitimate interests of private individuals are protected, but also the rule-making and law-enforcement practice of the subjects of public-authority powers are corrected for the future, the subjective and inconsistent with the content of the legal norms of the interpretation of the latter are eliminated, as well as issuance of individual legal acts that contradict the legislation, attempts at sub-legal rule-making aimed at leveling the meaning of the law or ignoring its provisions are stopped and prevented. As a result, the appeal serves as a factor to ensure the democratic nature of rulemaking, control and accountability of public authorities (Luchenko, 2017).

Analyzing the peculiarities of the implementation and provision of the right to appeal in the relations between subjects of public authority and private persons, we note that the functions of appealing decisions, actions or inaction of subjects of public authority should be connected with three basic European legal values, which determine the essence of European legal systems: human rights, rule of law and democracy. The appeal is a way to ensure the implementation of the mentioned values in real legal (normative, law enforcement, control, etc.) practice. Without an appeal, the rule of law cannot be ensured, and in the absence of the right to appeal, the democratic character of the state itself looks doubtful.

Taking into account the strengthening of Ukraine's position in the international arena, the development of mechanisms for ensuring the realization of the rights of a person involved in the administrative-delict sphere, during the proceedings of which everyone can evaluate the activity of an administrative body (official) and the court in terms of its legality and effectiveness, is of particular relevance. The evolution of the legal system in Ukraine and in foreign countries proves that the consideration and resolution of a jurisdictional case by one body (official) - one instance leaves room for mistakes, which leads to the inefficiency of the judiciary and, as a result, a decrease in trust in state authorities, faith in justice.

It is worth noting that the administrative-delict process in Ukraine remains a complex phenomenon due to its contradictory legal nature and the presence of different scientific views on the understanding of its institutions. However, it is indisputable that the institution of appeal in cases of administrative offenses is an important guarantee of ensuring compliance with the constitutional rights of a person, a manifestation of essential features of a democratic legal state, especially in areas related to the use of coercion.

In general, the institution of an appeal in an administrative-delict process must be considered as a completed process consisting of certain stages that develop over time: drawing up a complaint; its presentation; registration; preliminary examination; verification of the circumstances stated in the complaint; consideration on the merits, decision-making on the complaint; implementation of this decision.

The essence of the appeal can be seen in the dialectical unity of the stages of its implementation and functions. they are characterized by normative-legal consolidation, prevalence in the administrative-legal sphere, being determined by the legal status of the subject of the appeal, limited by the tasks of administrative-delict proceedings. The results of the study of scientific approaches to the classification of appeal functions gave grounds to assert that their varieties in the administrative-tort process are: social, regulatory, rights-restoring, rights-enforcing, control (control-supervisory), preventive (warning).

If we talk about the consequences of appealing a resolution, they depend on the stage of the appeal: the filing of a complaint leads to the suspension of the implementation of the resolution (except for cases specified by law); making a decision on a complaint results in leaving the resolution unchanged, canceling it, closing the case, drawing up a new resolution, sending the case for a new consideration, changing the administrative fine, compensation for property damage; announcing the decision on the complaint and sending its copies to the interested persons ensures the implementation of the complaint.

Conclusions

Based on the results of the study of the functioning of the appeal institute in Ukraine in the mechanism of protection and renewal of the rights and legitimate interests of individuals, we can formulate the following conclusions.

The right to appeal is an absolute subjective right of every person and represents an opportunity given by the state to a participant in the proceedings at his discretion to satisfy the interests provided for by objective law. This approach in Ukrainian legislation reflects world standards in the field of protection of the rights, freedoms and legitimate interests of individuals in a democratic society. Appeal is a multifaceted phenomenon with social and legal content and an independent interdisciplinary institution.

This is a set of legal norms that regulate social relations, which arise due to the subjective right of a person to appeal and are characterized by specific rights and obligations of the parties to such legal relations. The implementation of the right to appeal in criminal, administrative, civil and economic proceedings has material-legal and procedural-legal expression. Thanks to the appeal, the right to protection of the person is realized, the right to access to justice is ensured.

The analysis of the methods of appeal in criminal, civil, economic and administrative proceedings led to the conclusion that the appeal is a common ordinary method of appeal and review of court decisions that have not entered into legal force, which causes a devolving effect on the court case and a suspensive effect on the contested court decision. Cassation in procedural law is an extraordinary way of appeal and review of court decisions that have entered into legal force, which causes a devolving effect on the court case and usually does not cause a suspensive effect on the court decision under appeal.

Currently, the criminal procedural legislation of Ukraine does not contain a general provision on the prohibition of the abuse of procedural

rights of a party and does not define the mechanism of responsibility for the violation of obligations defined by the criminal procedural law, therefore granting a party the right to an absolute appeal against any decision or action of a pre-trial investigation body will lead to a violation of the rights of such participants in the process, such as the victim, witnesses, interpreters, representatives.

When resolving questions regarding the list and scope of the right of participants to appeal the decisions and actions of the pre-trial investigation body, one should proceed from the balance of the state's positive obligations to the person and accept without appeal the application for consideration of the pre-trial investigation body's violation of conventional and/or constitutional human rights and freedoms. In view of the above, it is proposed to make appropriate changes to Part 1 of Art. 303, Articles 307 and 309 of the Criminal Procedure Code of Ukraine.

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