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Guarantees for the exercise of the constitutional right of access to justice

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Abstract

Through the dialectical method and the study of the doctrine, the research focuses on the theoretical and practical analysis of such a multifaceted legal category as access to justice. The author's definition of the essence and content of the constitutional guarantee of the right of access to justice is presented. Modern issues of ensuring access to justice in Ukraine are highlighted. The description of typical forms of realization of the right of access to justice such as e-justice; constitutional complaint and right to free legal aid is given. Factors hindering the implementation and protection of the right of access to justice have been identified: instability of the legal system; deficiencies in the judicial practice of law enforcement; shortage of judicial personnel and others. In the conclusions of the case, it highlights the priority of alternative ways of guaranteeing access to justice such as mediation, restorative justice and arbitration tribunals. Finally, the main advantages of the specified interdisciplinary legal institute are identified.

Keywords: access to justice; right to judicial guarantees; martial law; electronic justice; constitutional complaint.

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Garantías para el ejercicio del derecho constitucional de acceso a la justicia

Resumen

Mediante el método dialéctico y el estudio de la doctrina, la investigación se centra en el análisis teórico y práctico de una categoría jurídica tan multifacética, como el acceso a la justicia. Se presenta la definición del autor sobre la esencia y contenido de la garantía constitucional del derecho de acceso a la justicia. Destacan los temas modernos de garantizar el acceso a la justicia en Ucrania. Se da la descripción de formas típicas de realización del derecho de acceso a la justicia como la justicia electrónica; denuncia constitucional y derecho a asistencia jurídica gratuita. Se han identificado factores que obstaculizan la implementación y protección del derecho de acceso a la justicia: inestabilidad del sistema legal; deficiencias en la práctica judicial de aplicación de la ley; escasez de personal judicial y otros. En las conclusiones del caso, destaca la prioridad de formas alternativas de garantizar el acceso a la justicia como la mediación, la justicia restaurativa y los tribunales de arbitraje. Finalmente, se determinan las principales ventajas del instituto jurídico interdisciplinario especificado.

Palabras clave: acceso a la justicia; derecho a las garantías judiciales; ley marcial; justicia electrónica; denuncia constitucional.

Introduction

The state and level of ensuring human rights is one of the biggest problems of modern society, which has complex manifestations of a domestic and international nature. It is the availability of justice that prevents the violation of human rights and at the same time is an effective means of their restoration, creates real conditions for the full realization of rights and freedoms. The judicial procedure is the most effective and civilized guarantee of the protection of the rights and freedoms of a person and a citizen (Kozakevych, 2021, p. 14).

The practical development of the ideas of access to justice took place primarily thanks to the practice of the European Court of Human Rights, which in its decisions defines the following basic elements of the right to access to justice: the right to actual access to the court; the right to a fair trial and timely resolution of disputes; the right to adequate compensation; the right to apply the principles of effectiveness and efficiency in the administration of justice.

Political, economic, social, psychological, and technical factors significantly affect the mechanism of implementation of the right to access

to justice. So, for example, under martial law, access to justice mostly depends on the level of digitalization of the state mechanism, as well as the level of digital literacy of the population, the availability of technical means (uninterrupted and reliable Internet connection, availability of a smartphone, etc.).

Public trust in the court plays an important role in ensuring a person's right to access to justice - a complex phenomenon, the formation of which is influenced by various factors, such as: the activity of the courts; assessment of their availability; convenience of court premises, reforms of the judicial system, professionalism of judges, evaluation of the fairness of court decisions, communication with citizens, citizens' experience related to the court, and stereotypes about it, and many others.

The level of trust and respect for the court can be increased by reforming the judicial system and improving the work of the court. In addition, as O. Kozakevych rightly points out, the evolutionary interpretation of the international standard of access to justice is that under modern conditions it is interpreted not only as access to courts of the traditional type, but also as the availability of alternative methods of dispute resolution (Kozakevych, 2021, p. 38).

In order to increase the level of legal protection, the state creates conditions for the resolution of legal disputes, using alternative and pre-trial procedures. Thus, in 2016, a reform was carried out in the area of justice in Ukraine. For the first time, at the level of the Constitution of Ukraine, the provision that «mandatory pre-trial dispute settlement procedure may be defined by law» (Part 3, Article 124) (CONSTITUTION OF UKRAINE, 1996). An important task should be to convey information to the society about alternative conflict resolution procedures and to demonstrate successful experience of its application. These strategies and their impact on the implementation and protection of the right to access to justice are of interest among academics and practitioners and will be considered in more detail in the specified scientific article.

1. Methodology of the study

The methodological basis of the scientific article is a complex approach, which involves the use of general scientific and special legal methods of learning access to justice in legal doctrine, international law, national legislation and legal practice.

The dialectical approach made it possible to determine the peculiarities and conditionality of ensuring the constitutional principle of access to justice and to identify the connections of ensuring access to justice with

other principles and legal phenomena. A key role in understanding access to justice and the forms of its provision was played by recourse to the methods of branch legal sciences. The formal-legal (dogmatic) method is used to learn the specific content of the right to access to justice and its meaning.

With the help of the comparative legal method, a variety of forms of realization of the right to access to justice was revealed. The method of theoretical generalization made it possible to single out scientific ideas about the content of the right to access to justice available in the legal literature. The descriptive method made it possible to formulate conclusions regarding the features of ensuring access to justice, in particular, in the conditions of such a special legal regime as martial law.

The use of the specified methods provided a comprehensive analysis of various forms of implementation of the right to access to justice and alternative means of ensuring such access.

2. Analysis of recent research

Access to justice is one of the fundamental principles of law, a fundamental guarantee of human rights and freedoms, as well as a generally recognized international standard for the administration of justice. That is why the topic of access to justice is the subject of many scientific studies. But despite the presence of a significant number of scientific works on this topic, the issue of access to justice in the context of the processes of democratization, European integration and globalization, the development of information and communication technologies, which is characteristic of a modern democratic society, remains insufficiently researched. The majority of scientific research is branch-based or fragmentary in nature.

However, in the national legislation, gaps and other technical and legal shortcomings of the legal system, as well as the practice of applying the relevant provisions significantly affect the availability of justice, limiting access to the court in one way or another. The specified circumstances can significantly affect the movement of the entire process, prevent the achievement of its goals. Therefore, in today's conditions, there is a need for a scientific theoretical generalization of access to justice in modern society, a search for promising and effective forms of its implementation and provision.

The purpose of the article is a scientific analysis of the implementation of the constitutional right to a fair trial in Ukraine, the determination of its legal nature and the normative consolidation of the right in international legal and national normative acts, the study of the positive experience of its application in today's conditions, the precedent practice of the European

Court of Human Rights in order to solve the main problems of practical enforcement of the said right in the national judiciary in the conditions of martial law in Ukraine.

3. Results and discussion

3.1. Characteristics of individual forms of realization of the right to access to justice

In the most general sense, access to justice is the ability of a person to freely and unimpededly initiate the procedural activities of the court or enter an already started process and participate in it to ensure effective protection and restoration of their violated rights, as well as to achieve justice (Kuchynska, Shchygol, 2019, p. 22).

According to Art. 7 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the Criminal Procedure Code of Ukraine), access to justice is a general principle of criminal proceedings. At the same time, access to justice can also be considered in other meanings: as a right of participants in criminal proceedings enshrined in the Code of Criminal Procedure of Ukraine and other regulatory legal acts; as a special, unique legal construction (sui generis); as a criminal procedural guarantee (CRIMINAL PROCEDURAL CODE OF UKRAINE, 2012); a system of appropriate procedural means that enables the participants in the process to know about their rights to actively participate in the case, to use these rights for its fair resolution (Shibiko, 2009, p. 168-169).

We believe that considering this category in only one of the proposed meanings is inappropriate, as it may lead to a narrowing of the content of access to justice and will not allow us to properly understand its essence and meaning. Access to justice is a complex and multifaceted legal category that can be considered simultaneously in several meanings: as a principle of justice, the right of participants in justice, a special legal construction, a constitutional guarantee, a certain procedural regime, etc.

The right of access to court must not only exist, but also be practical and effective. The mere existence of a right in access law is not sufficient. For example, it can be violated by the following factors: the high cost of the proceedings in view of the financial capabilities of the person, for example, an excessive court fee, although in general a requirement for a court fee; lack of legal assistance; the existence of procedural obstacles that prevent or reduce the possibility of going to court (Court practice. The right to access to court, 2022). The COVID-19 pandemic, and later the war, made adjustments to the activities of the judicial branch of government, forcing the courts to ensure the protection of human rights even during war.

In such conditions, the application of modern technologies in the electronic justice system should be maximally aimed at facilitating the work of both judges and court apparatuses, as well as citizens, information users in order to reduce court costs, optimize the time spent on sending documents and the direct appearance of participants in the court process. Electronic justice should ensure: opening of proceedings using electronic means; implementation of further procedural actions within the proceedings in the environment of electronic document circulation; obtaining information about the progress of the case by accessing the court information system; receiving information about the results of proceedings in electronic form (RECOMMENDATION REC (2001) 3).

Thus, the development of electronic justice contributes to the expansion of opportunities with the use of the latest technologies, provides the opportunity to perform all procedural actions through electronic means with appropriate identification and security mechanisms, which will create appropriate conditions for the approximation of the Ukrainian judiciary to international standards and speed up document circulation, ensure the openness and transparency of judicial proceedings bodies The effectiveness of the work of the electronic court, which involves the execution of certain procedural actions by the court and the participants of the process with the help of information and telecommunication technologies, depends on compliance with certain conditions: at the legislative level, a clear procedure for applying to the court must be developed and established; the registration procedure should be clear and accessible, and the information should be properly protected; the level of technology must meet international standards and ensure efficient and productive operation of the system.

An important role in ensuring access to court belongs to a person's right to professional legal assistance. The introduction of the institution of free legal aid in accordance with the standards of the Council of Europe and the practice of the European Court of Human Rights is considered by the Parliamentary Assembly of the Council of Europe as an important tool for improving access to justice (Gets, 2011, p. 24). Therefore, the regulatory framework for providing free legal aid is constantly being improved.

The system of free legal aid was created to fulfill Ukraine's obligations to the Council of Europe and contributes to Ukraine's observance of human rights and fundamental freedoms defined by international conventions, including the right to protection, the right to legal aid, the right to appear in court immediately, the prohibition of torture or other inhuman or degrading treatment that has proven to be effective.

Ukraine's legal regulation of the legal aid institute is carried out taking into account European legal doctrines. Thus, the introduction of mechanisms for effective access to justice for the poorest sections of the population, proposed by Recommendations No. R (93) 1 and No. R (78) 8 of the Council

of Ministers of Ukraine, is of great importance for the development of the institution of free legal aid. The Committee of Ministers recommends that the governments of participating states promote the access of the poorest sections of the population to the law («the right to protection by law»), to extrajudicial methods of conflict resolution and access to courts (RESOLUTION (78) 8; RECOMMENDATION No. R (93)).

In 2021, with the support of the UN Program for Reconstruction and Peacebuilding, the free legal aid system launched the Client Cabinet service in test mode, which aims to unify information about services and facilitate access to this information for all users. The advantages of the Client's Office include: the ability to send an online request for consultations and clarification on legal issues; the opportunity to send photos of documents and receive a response prepared by employees of the free legal aid system; availability of the history of all requests and responses to them in one place; the opportunity to write a review about the level of services received; a simple and convenient service interface (The personal account of the client of the system of free legal assistance started working in test mode, 2021).

Positive features include a reduction in the number of paper documents, digitalization, the possibility of obtaining legal assistance by phone, e-mail, in social network messengers, smartphone applications, and the client's electronic offices. This is an opportunity to bring the protection of the rights of the most vulnerable groups to a new level with the help of professional lawyers.

Also worthy of attention in the context of the study of modern means of access to justice is the institution of a constitutional complaint, which provides an opportunity for individual access to constitutional justice, and therefore to full, comprehensive, large-scale, direct realization of the right of a natural or legal person to judicial protection of their rights, freedoms and legitimate interests (Kolodiy, 2016, p. 54). This means of protection of rights and freedoms is more difficult for citizens to use than judicial protection. Its application requires improvement of the complaint submission procedure and legal clarification work on the part of lawyers.

The conditions for admissibility of constitutional complaints in European countries include: use of all other legal options for protection of violated rights and freedoms protected by the Constitution; compliance with established application deadlines; a requirement for legal representation, the purpose of which is to provide legal assistance when filing a constitutional complaint and representation in court; payment of state duty for its submission; requirement of fair use of one's right; requirements for the form of a constitutional complaint (Gultay, 2021, p. 26).

The positive features of the introduction of the institution of individual constitutional complaint in Ukraine include: the possibility of legal protection

of human rights against illegal and unjust decisions of judges; indirect protection against arbitrary intervention of state bodies; abolition of legal norms that contradict and violate human rights; formation of legal culture and legal awareness of society; formation of ideas about the possibilities of legal protection; the need to take into account national characteristics and traditions; the possibility of analyzing the law enforcement practice of the Constitutional Court of Ukraine and further influencing it through its decisions.

In our opinion, in order to achieve the quality of access to justice, it is important to create an effective system of alternative conflict resolution both within the framework of official court proceedings and in conjunction with it, which contributes to the development of civil society institutions and the protection of human rights. Alternative resolution of cases is an interdisciplinary institution, as it is on the border of different branches of law.

Alternative resolution of cases is an interdisciplinary legal institution that provides for the legal possibility of choosing between court proceedings and other non-state procedures for resolving disputes or conflicts based on voluntary agreement by the parties of the procedural order and establishing the corresponding rights and obligations of the conflicting parties.

First of all, we consider it important to clarify the essence of restorative justice, which consists in the reconciliation of the offender and the victim without the intervention of competent state authorities, its comprehensive implementation in the legal system of Ukraine should play a positive role in ensuring the protection of human rights and legitimate interests. Within the framework of restorative justice, the interests of the individual (victim, offender), community and society are satisfied more fully than within the framework of punitive justice. The center of attention is the interests of the victim, the offender is encouraged to evaluate and understand his misconduct.

Recommendation CM/Rec (2018) 8 dated 03.10.2018 on restorative justice in criminal cases draws attention to the need to expand the opportunities for participation of interested parties, including the victim and the offender, other interested parties and the general public, in order to eliminate and compensate damage caused by the crime. And restorative justice is recognized as a method by which the needs and interests of these parties can be identified and met in a balanced, fair and collaborative way (RECOMMENDATION CM/REC(2018)8).

Thus, restorative justice is an innovative approach to responding to an offense and its consequences, a form of justice, the main purpose of which is to create conditions for the reconciliation of the victim and the offender with the help of a mediator, as well as to eliminate the consequences caused

by the offense. It provides equal attention to the needs and feelings of the victim and the offender, promotes more effective compensation for damage and reconciliation of the parties.

One of the most common forms of implementation of restorative justice is mediation, the procedure of which is significantly different from the traditional judicial form of protection of citizens' rights, in which the parties are considered as adversaries; the course of the process is determined by the procedural law, which, as a rule, takes place in public proceedings. In contrast to court proceedings, the participation of both parties to the dispute in the mediation process is voluntary, and the mediator is freely chosen by the parties; each party has the opportunity to withdraw from the process at any time.

It can be stated that the concept of integration of mediation into the judicial system has recently become increasingly relevant. The purpose of implementing mediation is to provide citizens with the opportunity to choose the most appropriate mechanism for settling a legal dispute. This will motivate citizens and contribute to increasing personal responsibility for resolving their disputes.

Another aspect of the need to consider mediation in the context of access to justice should be emphasized. The European integration vector of the legal policy of Ukraine, which provides for the approximation of national legislation to the law of the European Union, determines the appeal to the positions that determine the role of mediation in the justice system. The Directive of the European Parliament and the Council of the European Union «On certain aspects of mediation in civil and commercial matters» dated May 21, 2008 clearly states that alternative out-of-court procedures are aimed at ensuring better access to justice. «Ensuring better access to justice, which forms part of the European Union's policy aimed at establishing an area of freedom, security and justice, should include access to both judicial and extrajudicial dispute resolution methods» (DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE EU COUNCIL «ON CERTAIN ASPECTS OF MEDIATION IN CIVIL AND COMMERCIAL CASES», 2008).

Therefore, mediation is an organic addition to the judicial system and is designed to contribute to the improvement of social relations, increasing public trust in the institution of law. Therefore, an important task is educational activity aimed at widely informing the parties to the conflict about the possibilities of mediation and its advantages, which should be entrusted primarily to judges.

Another independent, special jurisdictional form of conflict resolution, alternative in the field of private law, which is based on the principle of the autonomy of the will of the parties, should be considered arbitration of disputes (Kozakevych, 2021, p. 131).

The advantages of arbitration are that it frees the overburdened judicial system from a large number of legal cases, makes it possible to «reduce» the costs of litigation and is economical for the parties to the dispute. The advantages should also include: simplification of the court proceedings; short terms of the case review process; the possibility of choosing a judge; the possibility of filing a claim in an arbitration court, regardless of the location of the defendant; preservation of confidentiality, voluntary participation in the arbitration process; freedom of choice of arbitration rules; control of the parties by the review procedure and its result; the finality of the decision and the possibility of appealing it only on procedural grounds; immediate entry into force of the decision of the arbitration court and the possibility of its enforcement.

With the adoption of the law «On Arbitration Courts» (ON ARBITRATION COURTS: THE LAW OF UKRAINE, 2004), Ukraine took a step towards joining the states with a developed system of alternative methods of resolving legal conflicts and demonstrated to the whole world its real desire to democratize society and implement legal reform.

This important element of self-regulation of society in various spheres of life is an integral attribute of the effective functioning of the law and order mechanism, it indicates a high level of legal awareness of the population in a legal state, the presence of harmony in society and ensuring justice and democracy.

Despite the existence of a large number of arbitration courts in Ukraine, the number of considered cases is insignificant. To improve the situation, the following measures should be taken: ensuring an adequate level of informing citizens and professional lawyers about arbitration courts as an alternative way of resolving disputes, eliminating legislative shortcomings in the regulation of arbitration proceedings, taking into account modern trends.

3.2. Modern problems of ensuring access to justice in Ukraine

With the beginning of the full-scale military invasion of the aggressor country on the territory of Ukraine, the judicial system of Ukraine faced many organizational, material, technical and procedural problems that require immediate solutions to ensure the proper administration of justice in courts of all jurisdictions.

First of all, it is worth paying attention to the imperfection of the mechanisms of compliance with the right to consider the case within a reasonable time in Ukraine. In particular, the understaffing of courts and inadequate funding of the judicial system remain an unresolved problem.

In particular, the Law of Ukraine No. 193-IX dated 16.10.2019 «On Amendments to the Law of Ukraine «On the Judiciary and the Status of Judges» and some laws of Ukraine on the activities of judicial governance bodies» (ON AMENDMENTS TO THE LAW OF UKRAINE «ON THE JUDICIARY AND STATUS OF JUDGES»: LAW OF UKRAINE, 2019) the powers of all members of the High Qualification Commission of Judges of Ukraine were prematurely terminated. At the same time, in recent years, there has been a shortage of judges in the judicial system who are able to administer justice; as a result, the courts are overburdened, which often leads to violations of reasonable deadlines for the resolution of legal disputes.

The problem of financing the judicial system and providing it with material resources for the administration of justice remains unresolved. Thus, there have been more frequent cases of courts informing about the impossibility of sending court summonses, notices and other information from the court, including procedural documents by post due to underfunding of expenses related to sending postal correspondence; a significant part of court premises was destroyed or damaged by bombing. The level of financing of the wage fund for employees of the courts is inadequate (Lubinets, 2022).

According to the State Judicial Administration of Ukraine, one of the main negative factors that prevents the possibility of expanding and improving the functionality of the implemented subsystems of the Unified Judicial Information and Telecommunication System (hereinafter –UJITS), as well as developing new subsystems, is the lack of budget allocations. The stated circumstances prompted the State Judicial Administration of Ukraine to address the relevant public letter to the Cabinet of Ministers of Ukraine and the Ministry of Finance of Ukraine (ON THE PUBLIC APPEAL OF THE SUPREME COUNCIL OF JUSTICE TO THE CABINET OF MINISTERS OF UKRAINE AND THE MINISTRY OF FINANCE OF UKRAINE: DECISION OF THE SUPREME COUNCIL OF JUSTICE, 2023).

At the time of conducting this research, there was no reaction from the mentioned state bodies to the appeal. An important guarantee of legal, fair and effective justice is the objective and impartial distribution of cases between judges in compliance with the principles of priority and the same number of proceedings for each judge (even workload). At the same time, in the conditions of martial law, situations are possible: network equipment goes out of operation, interruptions with electricity and communication, the Internet, etc., which make access to UJITS impossible and thus can «paralyze» the work of the courts.

Thus, the head of the relevant court, whose powers include monitoring the effectiveness of the court apparatus, organizing the maintenance of court statistics in the court and information and analytical support for the activities of judges in order to improve the quality of the judiciary, etc.

(Articles 24, 29, 34, 39, 42 of the Law of Ukraine «On the Judiciary and the Status of Judges») should ensure the distribution of cases between judges in compliance with the relevant principles (ON THE JUDICIAL SYSTEM AND STATUS OF JUDGES: THE LAW OF UKRAINE, 2016).

Due to the lack of opportunity to administer justice in the temporarily occupied territories of Ukraine, as well as in damaged or completely destroyed courts, the territorial jurisdiction of court cases of 80 courts was changed during the year by order of the Chairman of the Supreme Court. As a result, court cases are reassigned to automatic distribution in the courts that have jurisdiction, and their proceedings are restarted. This negatively affected the observance of the right to a trial within a reasonable time, guaranteed by Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms (Lubinets, 2022). The reason for these violations can be seen in the absence of a normative legal act, which would regulate the procedure for the transfer of court cases in the event of a change in the territorial jurisdiction of their consideration.

The state of war in the country also affected access to court decisions. In accordance with Part 2 of Art. 2 of the Law of Ukraine «On Access to Court Decisions» all court decisions are open and subject to publication in electronic form no later than the next day after their production and signing, except for decisions on seizure of property and temporary access to things and documents in criminal proceedings, which are subject to publication no earlier than the day of their application for execution. Limiting or delaying general access to electronic resources of the USSR for reasons other than those defined by the laws of Ukraine «On access to court decisions», «On state secrets» is not allowed (ON ACCESS TO COURT DECISIONS: LAW OF UKRAINE, 2005).

At the same time, from February 24 to June 20, 2022, full public access to the Unified State Register of Court Decisions was limited, as well as access to such website services as «Judiciary of Ukraine», «List of cases assigned for consideration», «State of consideration of cases», which contained information about the day, time, and place of the court hearing in the case. Cases of limiting general access to court decisions in the Unified State Register of Court Decisions still occur today.

It is necessary to pay attention to other organizational and legal problems of ensuring the right to access court decisions. In particular, the Law of Ukraine «On Access to Court Decisions» currently does not contain such grounds for restricting access to the Unified State Register of Court Decisions as threats of cyberattacks, prevention of threats to the life and health of judges and participants in the judicial process, the introduction on the entire territory of Ukraine or some of its parts of martial law or state of emergency.

In order to comply with the principle of legal certainty of the legislation, the Ministry of Justice was asked to consider the possibility of developing a draft law on supplementing the fourth part of Article 4 of the Law of Ukraine «On Access to Court Decisions» with a rule on the possibility of limiting the right to freely use the official web portal of the judiciary of Ukraine for the period of the legal regime of military or state of emergency (ON ACCESS TO COURT DECISIONS: THE LAW OF UKRAINE, 2005).

Also, the provisions of the Criminal Procedure Code of Ukraine do not provide for the possibility of conducting a court session in the mode of a video conference using its own technical means, as is normalized in civil, economic and administrative types of judicial proceedings. At the same time, the beginning of active military operations on the territory of Ukraine changed the view of the courts to the possibility of conducting criminal proceedings remotely using their own technical means in criminal proceedings.

In particular, the Supreme Court in the letter dated 03.03.2022 No. 2/0/2-22 «Regarding certain issues of conducting criminal proceedings under martial law» recommended that in cases where, due to objective circumstances, a participant in criminal proceedings cannot participate in a hearing in the mode of video conferencing using the technical means specified by the Code of Criminal Procedure of Ukraine; as an exception, it is possible to allow the participation of such a participant in the video conference mode using other means, while attention should be paid to explaining to such a participant his procedural rights and obligations (Regarding certain issues of conducting criminal proceedings under martial law. Letter of the Supreme Court , 2022).

Currently, we consider this approach understandable, because judges are faced with forced long breaks in court proceedings due to the presence of the accused, witnesses, experts in the temporarily occupied territories, the impossibility of questioning witnesses, experts due to the failure to establish their actual location, internal movement of persons, etc.

Conclusions

Access to justice is a multifaceted legal category that can be considered simultaneously in several meanings: as a principle of justice, the right of participants in justice, a special legal construction, a constitutional guarantee, a certain procedural regime, etc.

The right to access to justice as a constitutional guarantee is defined by the norms of substantive and procedural law, a separate human right, which consists in the possibility of unhindered use of judicial and

alternative procedures for the fair and effective protection of one's rights. It is the duty of the state to create appropriate conditions for the realization of every person's right of access to justice, which will be fair and legal, and the objectivity and independence of the court will be the main feature of the rule of law and the justice of the court.

The following typical forms of realization of the right to access to justice are distinguished: electronic justice (automatic distribution of cases; exchange of procedural documents in electronic form; electronic record keeping; implementation of judicial proceedings in the mode of video conference); constitutional complaint; the right to free legal aid.

Factors hindering the implementation and protection of the right to access to justice include: instability of the legal system (unstable and imperfect procedural legislation); shortcomings of law-enforcement court practice; the shortage of judicial personnel, due to the unfilled number of vacancies; complicated procedure for applying to the court, excessive regulation of issues related to requirements for the submission of evidence and claims; high cost of quality legal services; low level of legal culture.

The formation and development of alternative dispute resolution in modern conditions (mediation; restorative justice; arbitration courts) should become a priority direction for ensuring access to justice. The main advantages of the specified interdisciplinary legal institute are defined as: simplicity of procedures; saving time and money; the possibility of choosing an intermediary; confidentiality of dispute resolution, the ability of the parties to personally control the proceedings and its outcome. The introduction and active use of the institute of alternative means of dispute resolution in the national legal system will contribute to improving citizens' access to justice, reducing the burden on the courts, shortening the terms of consideration of cases, reducing court costs, effective resolution of legal disputes, improving the quality of court decisions and achieving reconciliation between the parties, increasing level of legal culture of society.

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