

ADMINISTRATIVE AND LEGAL ASPECTS OF PROVIDING COURT SERVICES IN UKRAINE

ASPECTOS ADMINISTRATIVOS E JURÍDICOS DA PRESTAÇÃO DE SERVIÇOS JUDICIAIS NA UCRÂNIA

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Abstract: Based on the results of the study, it can be argued that the issues of administrative and legal aspects of court services in Ukraine are poorly understood and extremely relevant in the context of the intensification of the country's European integration process and in the context of uncertainty and instability. It has been revealed that in Ukraine the mechanism of normative-legal and legislative regulation of court services is too weak. Moreover, there is no clear and unified definition of their essence, which requires improvement of the current national legislation. It can be achieved by developing and adopting the Law of Ukraine "On Court Services". It has been established that court services are provided in compliance with general and special principles. However, the author notes that there are significant problems in their provision, in particular, there is no clear systematization of their list, the existing scientific, applied, legislative and methodological support for the court services procedure is imperfect, and the quality of court services does not meet international requirements and standards. Thus, it has been proposed to introduce administrative liability for violation of the requirements and procedure for the provision of court services, as well as to strengthen internal and external control over the quality of their provision to address these problems.

Keywords: Court services. Justice. Administrative and legal regulation. Public legal relations. Computerization of court services. Rule of law.

Resumo: Com base nos resultados do estudo, pode argumentar-se que as questões dos aspectos administrativos e jurídicos dos serviços judiciais na Ucrânia são mal compreendidas e extremamente relevantes no contexto da intensificação do processo de integração europeia do país e no contexto da incerteza e instabilidade. Foi revelado que na Ucrânia

o mecanismo de regulação normativa-legal e legislativa dos serviços judiciais é demasiado fraco. Além disso, não existe uma definição clara e unificada da sua essência, o que requer a melhoria da actual legislação nacional. Isto pode ser conseguido através do desenvolvimento e adopção da Lei

da Ucrânia "Sobre Serviços Judiciais". Foi estabelecido que os serviços dos tribunais são prestados em conformidade com princípios gerais e especiais. Contudo, o autor observa que existem problemas significativos na sua prestação, em particular, não existe uma sistematização clara da sua lista, o apoio científico, aplicado, legislativo e metodológico existente para o procedimento dos serviços judiciais é imperfeito, e a qualidade dos serviços judiciais não satisfaz os requisitos e normas internacionais. Assim, foi proposta a introdução de responsabilidade administrativa por violação dos requisitos e procedimento para a prestação de serviços judiciais, bem como o reforço do controlo interno e externo sobre a qualidade da sua prestação para resolver estes problemas.

Palavras-chave: Court serviços. Justiça. Regulamentação administrativa e jurídica. Relações jurídicas públicas. Informatização dos serviços judiciais. Estado de direito.

1. Introduction

The current challenges and dangers that accompany the development of the state and society in Ukraine pose a significant threat to the establishment of democracy and the legal principles of realizing the idea of dignity and freedom in line with European norms and standards. As of today, preserving state sovereignty, and territorial integrity and ensuring the protection of national interests in various spheres of socio-political, financial, and economic life are priority areas of state policy, within which security guarantees for the state, society, citizens, and business structures are of particular importance. The basis for ensuring security at various levels of its manifestation is fair and impartial justice. Therefore, one of the strategic vectors of Ukraine's sustainable development is the need to introduce an effective system of quality judicial services. Given these trends, the need for research and in-depth study of the administrative and legal aspects of court services in Ukraine and identification of the main problems of their provision in the current conditions under the influence of global challenges and dangers is particularly acute.

2. Literature review

The issue of studying the administrative and legal aspects of court services in Ukraine is not new in the modern scientific discourse and is the focus of attention of many scholars, due to the need to find ways to improve the quality of court services and public trust in the judiciary. At the same time, the national administrative and legal science rather indirectly considers court services in the context of the complexity and systematic nature of their study. Ivanchenko O.Yu. (2018) is one of the first to attach great importance to the substantiation of theoretical and applied foundations and systematization of administrative

and legal aspects of the study of the system of court services in Ukraine. The scholar interprets the essence of court services as an activity regulated by public law. Such activities are held by the judicial authorities to satisfy the consideration of applications of individuals and legal entities for the issuance of appropriate administrative actions aimed at ensuring the rights and legitimate interests of these entities and/or fulfillment of their statutory obligations. At the same time, Igonin & Viktorchuk, 2018 insist that ensuring effective administrative and legal regulation of the process of providing judicial services is of great importance since the interaction of legal entities with the judiciary requires the state to streamline and regulate social relations through legal norms, means, and mechanisms.

Junge, 2022 believes that improving the quality of judicial services requires attracting additional resources and prioritizing them. Moreover, the scientist insists on the need to form an effective mechanism for the distribution and priority of judicial services depending on the needs of the population. At the same time, the main emphasis is placed on ensuring the observance of human and civil rights and freedoms, which is especially difficult to achieve in the context of armed conflict and military confrontation with the full-scale invasion of the Russian Federation into the territory of Ukraine. In this context, Makhmurova-Dyshliuk, 2020 argues that the provision of judicial services and their administration in Ukraine is influenced by significant destabilizing factors, and the rights of the population living in the territories occupied by the aggressor country are violated and significantly restricted. Herych, 2022 believes that ensuring access to justice in wartime is too problematic, therefore, the scientist proposes to gradually reformat its implementation into a remote form. This will ensure a higher level of security for the parties to legal relations and enhance the development of e-justice.

Shayzakov, 2021, argues that the definition of the concept of court services in the administrative and legal context is closely related to the emergence of public legal relations and administrative proceedings. Therewith, the scholar notes that the administrative process is characterized by the complexity and variety of powers granted to administrative bodies and related to court services. Abdout, 2022, investigated the close relationship between the judicial and executive branches of the state and argues that the administrative and legal aspect of the provision of judicial services involves the formation of methods for checking the activities of executive bodies.

Meanwhile, Zubov, 2022 sees the democratic development of the state and society in Ukraine in compliance with certain administrative and legal principles, which, in turn,

contributes to ensuring fair and effective justice in the country. The author believes that to achieve the desired results, it is crucial to create new institutions for the provision of administrative services, the most important among which is the institution of judicial services. The author interprets its essence as a system of transparent administrative actions of public administrators regarding the emergence of administrative and legal relations aimed at protecting the subjective rights of individuals and legal entities in court based on legality and guaranteeing rights and legitimate interests. As noted by Robson & Page, 2022, administrative law provides a reliable legal framework within which the process of public administration takes place. In this context, the remark of Thapa, 2020, who studied the administrative and legal aspects of the provision of judicial services and established the focus of administrative law on the regulation of the executive branch and the principles of its functioning within the framework of protecting the rights, freedoms, and interests of the public, is appropriate. At the same time, the scientist attaches particular importance to the administrative and legal regulation of the provision of judicial services, as he is convinced that the judiciary is called upon to ensure high standards of justice in the country and the rule of law.

A significant number of modern scholars consider the introduction of innovative digital technologies into the judicial system to be a separate area for improving the efficiency of court services. Moreover, they argue that the digitalization of the judicial service delivery process will help to optimize the activities of the judiciary. In particular, Cobbe, 2019 considers the use of automated management decision-making systems related to the provision of judicial services to be an innovative direction for the development of the country's judicial system. With the help of modern digital technologies, parity is achieved in improving administrative legislation, legislation on the protection of personal and other data, and speeding up service delivery processes. Rijju & Baghel, 2022 emphasized the introduction of e-courts and the computerization of court services. They consider this process to be one of the challenges of our time and an integral component of international legal integration.

Tereshchenko, 2020, using the example of the United Kingdom, proves the positive practical experience of automating court proceedings, as well as providing court services via the Internet and mobile communications. The researcher argues that the introduction of public administration of e-government of the judiciary is an urgent need and method of modernizing the judicial system. Moreover, Aldrou et al. 2021 argue that

the digitization of the judicial service delivery process will help to increase the level of legal security of the country and the implementation of the rule of law. The main goal of ensuring legal security is to protect legal rights and guarantee human and civil liberties.

Legesa & Ivanchenko, 2017, state that the existing system of court services in Ukraine is characterized by significant problems with the timeliness, objectivity, and fairness of court services. Moreover, the current legislation of the country does not provide for a comprehensive mechanism for regulating legal relations related to court services. This requires the development of conceptual approaches and improvement of the court service delivery system. The development of the court services system goes hand in hand with the development of administrative law. According to Legesa & Ivanchenko, 2017, at the current stage of state-building in Ukraine, there is: (1) no legislation that would fully define the role of court services in the functioning of the system of public authorities; (2) no state policy on the provision of court services, procedural and substantive consistency; (3) there is a problem of informing the subjects of legal relations on the provision of court services by public authorities. Therefore, according to scholars, the need to develop and adopt the Law of Ukraine "On Court Services", which would regulate uncertainties regarding the understanding of the principles of court services, as well as the procedure and mechanisms for their provision, is of great importance in today's environment.

Given the significant problems with the provision of judicial services in Ukraine, there is a need to find ways to address the unresolved issues. Borkowski & Sovgyria, 2019 see the success of this in reforming the existing judicial system and strengthening its independence, which will guarantee the provision of quality and fair judicial services, as well as ensuring the achievement of international standards.

The issue of studying the administrative and legal aspects of court services in Ukraine and identifying its main problems is extremely relevant and insufficiently researched. Therefore, it requires in-depth study and additional research in this area.

The article aims at providing theoretical and applied substantiation of administrative and legal aspects of the study of the court services system in Ukraine and at identifying its main problems.

3. Methods and materials

The methodological basis of the study consists of general scientific and applied methods of economic analysis and scientific cognition. The methods of systematic analysis, synthesis, and scientific abstraction served to determine the essence of court services and their features. The methods of comparison, analogies, and comparative analysis were employed to study the current state and trends in the provision of judicial services in Ukraine, as well as to identify the main problematic aspects. The method of classification and grouping is used to identify the main types of court services provided in Ukraine. The dialectical method was applied to identify the problems of the formation of the institute of court services. The graphical method was used to visualize the results of the study. The conclusions are formulated based on the method of generalization and systematization. The information base of the study includes the scientific works of leading domestic and foreign scholars conducting research in this area.

4. Results

The current state of scientific coverage of the issue of studying the administrative and legal aspects of court services in Ukraine demonstrates its importance. However, it also states that there are some inaccuracies, diversities, and ambiguities in the coverage of both the very essence of the scientific category "court services" and the legislative regulation of the organizational and legal mechanism for their provision. Most scholars believe that the provision of judicial services in Ukraine requires improvement of quality indicators and clarity of the main parameters. Some scholars argue that the issue of classification of court services by type of provision requires in-depth study, while others insist on improving the current legislation and the need to develop and adopt the Law of Ukraine "On Court Services".

Certain developments in the provision of court services in Ukraine have already been made. In particular, the approaches to distinguishing the features and systematization of the main types of court services have been scientifically substantiated, as shown in Figure. 1.

It is worth noting that in today's environment, the most commonly provided judicial services are related to providing advice, drafting claims and representing clients in

court, collecting evidence, developing strategies for the behavior of entities in court, as well as appealing court decisions and enforcing such decisions.

At the same time, it is extremely important to comply with the basic principles, i.e. the fundamental principles that form the basis for the court's activities in providing services to individuals and legal entities. In the current scientific and practical discourse in Ukraine, such principles are divided into two groups: (1) general and (2) special, a detailed description of which is provided in Figure. 2.

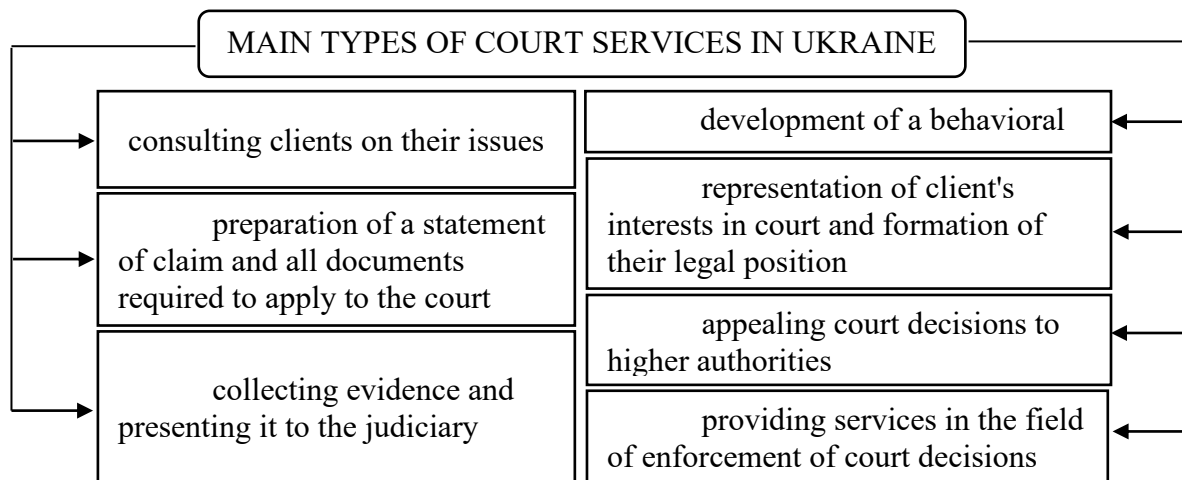


Figure. 1. Main types of court services in Ukraine

Author's development

A characteristic feature of compliance with these principles is their integrity since violation of one of the principles leads to violation of the others and a decrease in the quality of court services. At the same time, it is important to develop a mechanism for assessing the quality of court services, which is still not regulated by the current legislation of Ukraine.

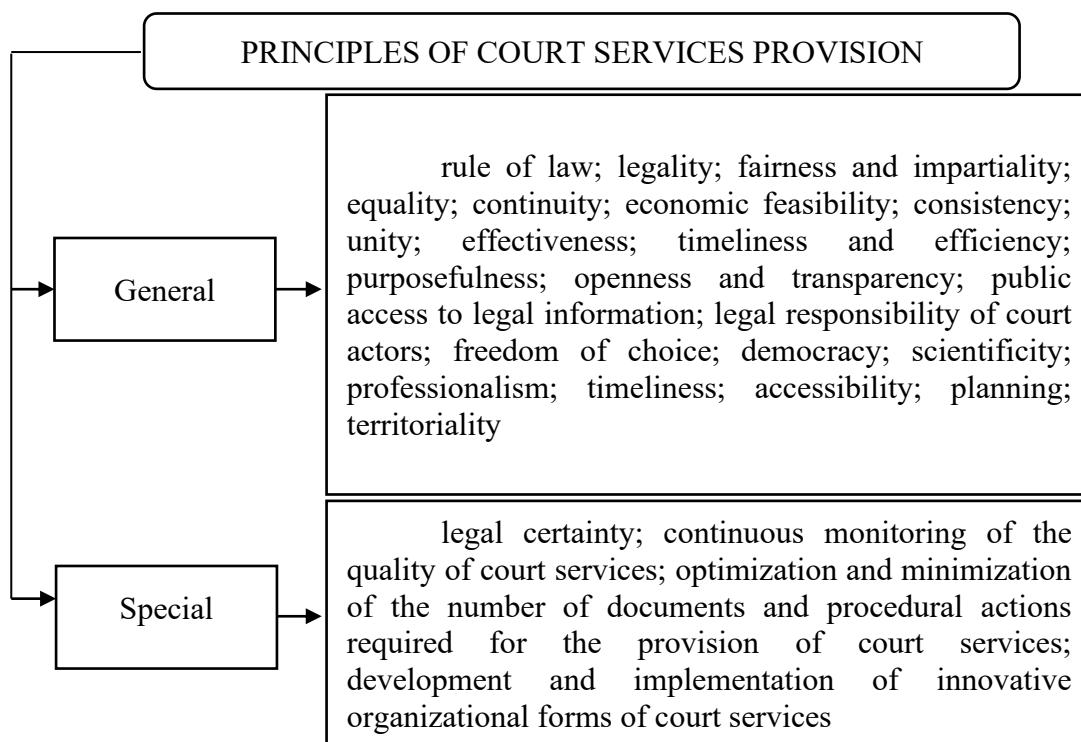


Figure. 2. Basic principles of court services provision in Ukraine

Compiled based on: Ivanchenko, 2018

The analyzed theoretical and applied aspects of research and evaluation of the quality of court services allow us to state that they are carried out by comparing the parameters outlined in the legal acts with the level of satisfaction of consumers of these services. In our opinion, such assessments are quite subjective and cannot reflect the real state of the quality of court services.

The signs of court services must have regulatory and legal certainty and be initiated by an application of individuals or legal entities. An equally important feature is the procedural nature of the activities of judicial bodies and their officials and the presence of the main stages of the provision of such services. The results of the provision of judicial services should be documented, which requires the development of an individual legal act.

The current state of the judicial service delivery system in Ukraine cannot be characterized as well-defined, stable, and efficient. On the contrary, the challenges and dangers of our time cause the deepening of existing problems and the emergence of new ones. The research carried out to identify the main problems of court services in Ukraine has revealed the lack of a clear systematization of the list of types of court services and their legislative regulation, imperfect scientific, applied, and methodological support for the procedure of their provision and low quality (Fig. 3). It requires improvement of their

administrative and legal regulation and the mechanism of control by public administration entities; clear regulation of the procedure for the implementation and delimitation of powers of state and local authorities to control the quality of court services.



Figure. 3. Main issues of providing court services in Ukraine

Compiled based on: *Ivanchenko, 2018*

Among other equally important measures that need to be taken to address these problems, it is worth noting the need to adopt the Law of Ukraine "On Judicial Services" and to strengthen public control over the quality of judicial services, which is currently too low in Ukraine.

The main measures to improve the provision of court services should be systematized, which should be divided depending on the direction of such improvement. Fig. 4 demonstrates the details of the main areas of improvement of court services in Ukraine and their brief description. It should be noted that ensuring public accessibility and openness of information, characterizing the procedure for providing court services, is of great importance. The mechanism of familiarization with the types and features of judicial services is being simplified and the level of corruption risks arising from personal appeals of citizens to judicial officers during personal consultations is being reduced.

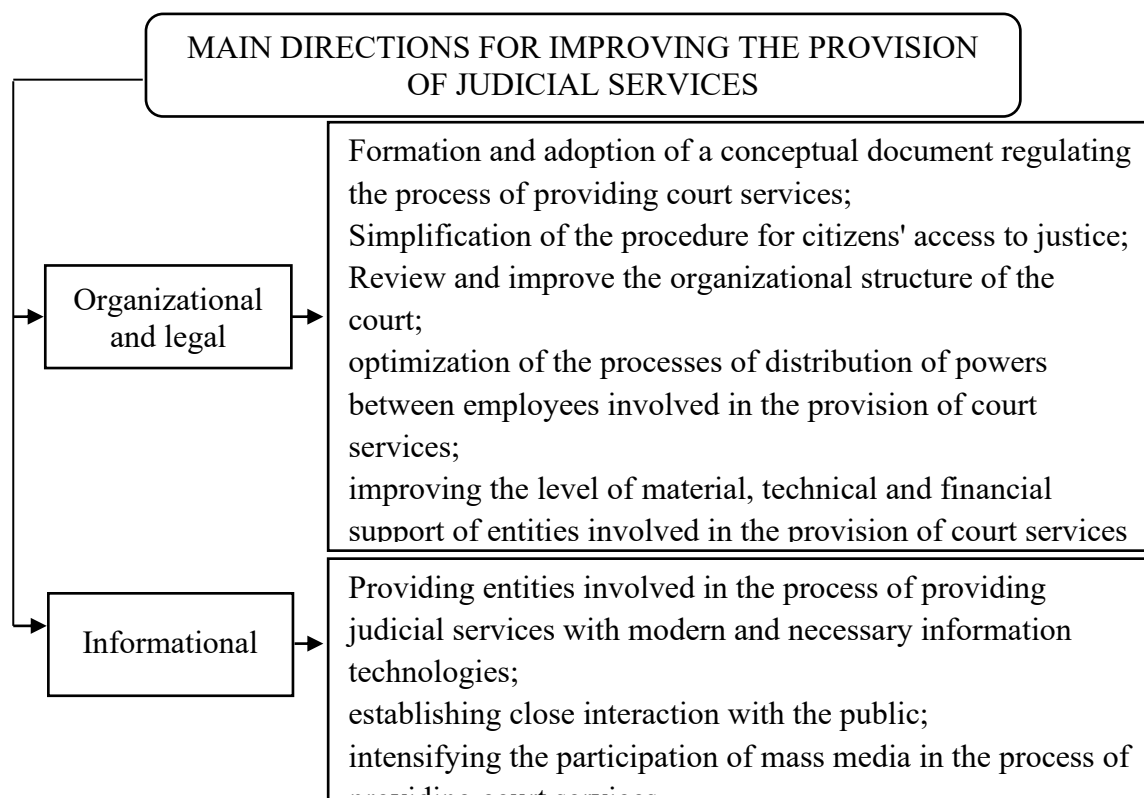


Figure. 4. Main directions for improving the provision of judicial services in Ukraine

Compiled based on: Ivanchenko, 2018

Concerning the information direction of improving the provision of court services in Ukraine, the need to strengthen the digitalization of the judicial system and improve digital tools for the provision of court services is becoming more relevant. It is necessary to create special websites that will provide information on the types and procedures for the provision of court services, indicate the list of documents required to obtain court services, and highlight the responsibilities of officials providing court services. What is more, the events accompanying the development of Ukraine nowadays have actualized the problem of providing judicial services online. Given the challenges and dangers of martial law in the country, it is quite problematic to obtain such services.

Therefore, the provision of such opportunities for individuals and legal entities to apply via the Internet is a significant achievement. This allows not only to obtain a certain judicial service but also to track the timing of its provision.

The administrative and legal mechanism for the provision of court services in Ukraine is imperfect and needs to be reviewed and substantially improved. The problems identified in the course of the study indicate the weakness of the legal and regulatory

framework for the provision of court services. The proposed measures to improve the functioning of the judicial service delivery system and enhance its quality require additional financial as well as material and technical resources.

5. Discussion

The existence of significant problems in the provision of judicial services in Ukraine indicates the imperfection of the judicial system and the need for its reform. At present, there is a need to unify existing approaches to defining the essence of court services and to regulate them in legislation. It has been established that Ukrainian legislation in the field of court services is too weak and ambiguous. At the same time, the existing state policy in the field of court services also needs to be revised and improved. Existing legal conflicts show that there is a wide range of concepts and approaches to the provision of services and uncertainty about the requirements for their classification as paid and free of charge.

Surprisingly, the lack of a holistic perception of the judicial service delivery system leads to their fragmented organization and requires the development of a set of effective measures to regulate them. It should be noted that the identification of the need is of paramount importance in such circumstances:

- 1) introduction of administrative liability for violation of the requirements and procedure for the provision of court services;
- 2) strengthening internal and external control over the quality of court services;
- 3) regulation of the organizational and legal framework for the provision of court services in the Law of Ukraine "On Court Services".

The proposed measures will improve the existing system of judicial services in Ukraine and increase their quality.

6. Conclusions

Thus, the study of theoretical and applied principles and administrative and legal aspects of court services in Ukraine gives grounds to assert that the formation of the institute of court services is under the significant destabilizing influence of external and

internal environmental factors. Among the most significant of these is the desire for successful European integration and the military actions and annexation of large areas of the country as a result of the full-scale invasion of Ukraine by the Russian Federation. Meanwhile, the author has established the imperfection of the mechanism of legal and legislative regulation of court services in Ukraine and the lack of a clear legislative interpretation of the essence of court services, their types, and the procedure for their provision. The results of the study demonstrate the need to develop and adopt the Law of Ukraine "On Court Services", which will strengthen compliance with general and special principles, and eliminate significant problems in the provision of court services. It has been revealed that the quality of judicial services in Ukraine does not meet international requirements and standards, and its observance is poorly monitored by the public. The author sees the solution to these problems in the introduction of administrative liability for violation of the requirements and procedures for the provision of court services, as well as in strengthening internal and external control over the quality of court services.

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