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JUSTICE IN UKRAINE: ISSUES OF ACCESSIBILITY, EQUALITY AND COUNTERING DISCRIMINATION

JUSTIÇA NA UCRÂNIA: QUESTÕES DE ACESSIBILIDADE, IGUALDADE E CONTRA A DISCRIMINAÇÃO

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Abstract: The article presents the evolution of the concept of justice accessibility, including its correlation with other theoretical doctrines. It explores the main theoretical approaches to understanding justice accessibility and equality, conducting a systematic and interdisciplinary analysis of the trends in the professionalization of the legal process and its relationship with justice accessibility, disputes, and the prevention of discrimination. The paper also formulates proposals for further development of procedural legislation. It provides forecasts on the evolution of procedural and legal science as a whole, considering both the trends of professionalization and the need to ensure justice accessibility and equality within the framework of the Constitution of Ukraine. The research is based on a procedural-legal approach, a comprehensive approach to justice accessibility and equality, and an interdisciplinary methodology for identifying intersections of law, philosophy, and sociology in the research area. It is determined that justice accessibility should be understood in two aspects. Firstly, justice accessibility is an element of the right to judicial protection, ensuring the possibility of achieving the goals of a fair trial. Secondly, justice accessibility refers to the general theoretical concept encompassing organizational, institutional, procedural, and other guarantees that can effectively implement the right to judicial protection without discrimination and violation of equality. The research substantiates that professionalizing judicial procedures is a trend in developing procedural law. It involves optimizing the court, parties, and representatives' professional resources. In Ukraine, the most apparent manifestations of professionalization are: the expansion of procedural obligations of the parties; increased qualification requirements for representatives; specialization of courts. The accessibility of justice implies the existence of real, not formally illusory, opportunities for legal defense. The real nature of judicial protection is ensured by the need for rational legislative regulation of issues related to obtaining judicial protection and the absence of disproportionate, unnecessary restrictions on procedural rights and discrimination; the need for persons interested in obtaining judicial protection to comply with procedural law requirements. Ensuring access to justice and the legal process have the same goal: to

realize the right to judicial protection by an optimal set of legal means without unnecessary social and economic expenses.

Keywords: Justice system. Accessibility of law. Legal process. Procedural law. Judicial system. Protection of rights. Branches of law. Constitution of Ukraine.

Resumo: O artigo apresenta a evolução do conceito de acessibilidade à justiça, incluindo sua correlação com outras doutrinas teóricas. Explora as principais abordagens teóricas para a compreensão do acesso à justiça e da igualdade, realizando uma análise sistemática e interdisciplinar das tendências da profissionalização do processo judicial e sua relação com o acesso à justiça, os litígios e a prevenção da discriminação. O documento também formula propostas para um maior desenvolvimento da legislação processual. Ele fornece previsões sobre a evolução da ciência processual e jurídica como um todo, considerando tanto as tendências de profissionalização quanto a necessidade de garantir acessibilidade e igualdade à justiça no âmbito da Constituição da Ucrânia. A pesquisa é baseada em uma abordagem processual-legal, uma abordagem abrangente para acessibilidade e igualdade de justiça e uma metodologia interdisciplinar para identificar interseções de direito, filosofia e sociologia na área de pesquisa. Determina-se que a acessibilidade à justiça deve ser entendida em dois aspectos. Em primeiro lugar, a acessibilidade à justiça é um elemento do direito à proteção judicial, garantindo a possibilidade de alcançar os objetivos de um julgamento justo. Em segundo lugar, a acessibilidade à justiça refere-se ao conceito teórico geral que abrange garantias organizacionais, institucionais, processuais e outras que possam efetivamente implementar o direito à proteção judicial sem discriminação e violação da igualdade. A pesquisa comprova que a profissionalização dos processos judiciais é uma tendência no desenvolvimento do direito processual. Trata-se de otimizar os recursos profissionais do tribunal, das partes e dos representantes. Na Ucrânia, as manifestações mais aparentes da profissionalização são: a ampliação das obrigações processuais das partes; maiores requisitos de qualificação para representantes; especialização dos tribunais. A acessibilidade da justiça implica a existência de oportunidades reais, não formalmente ilusórias, de defesa legal. A real natureza da tutela jurisdicional é assegurada pela necessidade de regulamentação legislativa racional das questões relacionadas com a obtenção da tutela jurisdicional e pela ausência de restrições desproporcionadas e desnecessárias aos direitos processuais e de discriminação; a necessidade de os interessados em obter proteção judicial cumprirem os requisitos da lei processual. Assegurar o acesso à justiça e o processo legal têm o mesmo objetivo: realizar o direito à proteção judicial por um conjunto ideal de meios legais sem gastos sociais e econômicos desnecessários.

Palavras-chave: Sistema de justiça. Acessibilidade da lei. Processo legal. Direito processual. Sistema judicial. Proteção de direitos. Ramos do direito. Constituição da Ucrânia.

1. Introduction

The accessibility of justice is one of the fundamental principles of a country's legal system, which defines conditions of equality and non-discrimination. The ideas of justice accessibility are equally relevant to all types of national legal systems. However, the Ukrainian legal process, like the national procedural law in general, is currently undergoing significant reform. Upon considering the ongoing transformations as a whole, it becomes evident that justice in economic disputes is currently seeking a conceptually new way of development (Kliuiev, 2020). On the one hand, the idea of professional equality and non-discrimination has long been relevant to the legal process. According to Article 124, Part 1 of the Constitution of Ukraine, "only courts have the right to administer justice in Ukraine" (The Constitution of

Ukraine). However, upon detailed analysis of this section of the Constitution, it is apparent that it encompasses the regulation of judicial bodies, the High Council of Justice, prosecution authorities, and the institution of advocates (Article 131).

In addition, the decisive postulate of the Constitution of Ukraine on the full authority of the people (Part 2 of Article 5 of the Constitution of Ukraine), which also participates directly in the administration of justice through the institute of juries, is crucial, according to the Part 5 of Article 124 (The Constitution of Ukraine). This idea implied an orientation of justice in economic disputes towards the business sphere and participants with deep professional (including legal) knowledge. As a result of such orientation, provisions on early disclosure of evidence, recognition of unchallenged circumstances by parties, the respondent's duty to submit a withdrawal, and others have appeared in the Ukrainian procedural code. These provisions have proven to be in high demand in legal practice. The emergence of new norms, provisions, and institutions allows scholars to cautiously conclude on the "stricter" (compared to civil proceedings) approaches of procedural legislation and the tendency of professionalization within economic disputes in the legal process. It is precisely this tendency that gives the legal process significant specificity, which requires scientific comprehension. It should also be noted that the accessibility of justice in economic disputes is a factor in a state's investment attractiveness and economic development. The readiness of foreign investors to cooperate with national partners directly depends on whether the national jurisdiction provides effective means of legal (including judicial) protection, allowing for the prompt resolution of legal conflicts in compliance with the requirements of equality and the absence of any discrimination (Savchyn, 2018). Accessibility of justice and professionalization, thus, are the ideas that will determine the paths of procedural law evolution. The presented information allows us to assert that the study of the interaction between professionalization and accessibility of justice in the legal process (including the evolution of legislative decisions and judicial approaches) can be of interest to the development of procedural law. Understanding the relationship between professionalization and accessibility of justice in the legal process, considering the accumulated court practice, is relevant not only on the scale of justice in economic disputes but also in the broader context of civil proceedings.

This study aims at forming a theoretical and applied model of the optimal balance between the accessibility of justice and the professionalization of the legal process within the framework of equality and countering discrimination. This model is intended to solve specific challenges in the development of legal procedure legislation and the practice of its application.

The research aims at setting the following goals:

a) to summarize the experience of understanding the legal procedure legislation and practice of its application;

b) to generalize the experience of understanding the problems of justice accessibility;

c) to identify the main approaches to defining the concepts of "justice accessibility" and "professionalization of the legal process;"

d) to identify the prerequisites and conceptual content of the professionalization of the legal process, including employing interdisciplinary analysis;

e) to formulate specific ideas about the correlation between accessible justice and professionalization of the legal process;

f) to identify possible ways to further develop doctrinal concepts of accessible justice based on professionalization trends.

2. Literature Review

The evolution of ideas regarding the accessibility of justice in Ukrainian procedural and legal science has repeatedly been the subject of attention by domestic scholars. In this regard, Nalyvayko & Verba (2018) and Prons′kyy & Kolesnikova (2016) have addressed this issue. During the stage of increased global scholarly interest in the problems of accessibility of justice, the attention to this issue has not weakened but rather intensified. For example, Yarema (2023) conducted a large-scale sociological study in numerous countries to explore people's current attitudes toward the accessibility of justice and equality. Korshun (2022) and Sharma (2021) provided a specification of research methods regarding the issues of accessibility of justice and equality, proposing four theses that should form the basis of the study:

Distinction of actual capabilities of the parties to the dispute;

Reliance on interdisciplinary approaches;

Utilization of methods from various legal schools, not just the Western ones;

Consideration of differences between the law in theory and law in practice.

Agapova (2020) and Huyvan (2019) have made the most significant contributions to the scientific comprehension of ideas related to the accessibility of justice and combating legal discrimination. They highlighted the principles of accessibility and absence of discrimination in judicial protection as the cornerstones of justice. Bernazyuk (2020) and Huralenko (2016) have considered the accessibility of judicial protection as a unique opportunity, which has become the basis for further developing perceptions of accessibility of justice, including in modern-day

Ukraine. As mentioned by Khanova and Khokhulyak (2020), access to justice is not provided optionally but following the procedure established by procedural law.

In their studies, Marochkin (2002) and Ovcharuk (2015) focused on procedural guarantees to ensure the accessibility of justice and equality of rights. At the same time, they recognize that achieving accessibility and equality of justice in civil proceedings should be ensured by various political, economic, and legal (not only procedural) guarantees. This fact of recognition is quite progressive nowadays.

Most often, the concept of justice is formulated with an emphasis on the court's activities related to hearing and resolving cases within the court's competence. For example, Onishchuk and Savchyn (2019) define justice as the hearing and resolving of cases by a court based on the law in the prescribed procedural form to protect the rights and interests of citizens, enterprises, organizations, institutions, and the state.

Thus, Nazarov (2009) defines justice as a particular type of state activity to resolve civil, criminal, and other cases. This approach is also observed in the works by Malykhina (2016) and Svitlychnyy (2017), where justice is seen as a particular type of state activity that involves examining and resolving cases by courts under international and national law. Its purpose is to protect violated and contested rights, freedoms, or legal interests of the parties involved.

Savranchuk (2019), in turn, defines justice (in civil cases) as the activity of courts of general and arbitration jurisdiction to consider and resolve civil cases referred to them. This activity is carried out under the procedure established by the rules of civil and legal procedural law and ensures the protection of the rights, freedoms, and legitimate interests of participants in civil relations.

Let us also pay attention to the opinion of Nana and Ablamskyi (2020) regarding justice, which is understood as "not only the correct resolution of any legal conflict but also the right of everyone to fair procedures by an independent, unbiased, legitimate and competent court to address their rights and obligations or any criminal or administrative charges brought against them, ensuring that the trial is conducted in open court sessions within a reasonable time frame, providing equal conditions for each participant to defend their rights, including by appealing to higher courts to rectify possible judicial errors or ensure timely execution of a court decisions through the use of state coercive measures."

3. Methods

1) Procedural and legal approach to the accessibility of justice. In the current stage of jurisprudence development, we can formulate the most optimal methodology for researching the procedural-legal aspects of justice accessibility. By examining the implementation of accessibility at different stages of the process, we can achieve a systemic analysis and substantive conclusions regarding the interplay of justice accessibility and procedural legislation. We proceed from the understanding that issues of justice accessibility can be addressed "through a system of interconnected measures aimed at reforming civil and legal proceedings." Viewing justice accessibility through a procedural and legal approach entails identifying problems in various institutions of procedural law concerning the realization of the right to judicial protection and seeking ways to address them.

2) Comprehensive approach to justice accessibility and equality. Recognizing the significant importance of procedural-legal and organizational approaches to justice accessibility, we should note that they require further clarification, particularly in terms of understanding justice accessibility as an element of the right to judicial protection. Through this approach, justice accessibility can be seen as a research concept. These concepts are more than relevant for accessible justice and equality. Thus, the basic idea of the concept of accessible justice is reduced to the need to make the right to defense real, not illusory. It is necessary to find out what exactly makes the right to judicial protection real by using "interrelated views" embodied in both legal science and the related fields of academic knowledge. Thus, the subject of accessible justice and equality as a theoretical concept is legal, social, economic, and other factors that jointly make the judicial procedure an instrument for obtaining absolute protection of violated rights and legitimate interests rather than a goal itself.

3) Interdisciplinary methodology. Procedural and legal issues are analyzed from the perspectives of psychology, sociology, and economic analysis of law. The issues of justice accessibility and equality extend far beyond organizational and technical aspects or specific aspects of procedural law. Accessibility of justice is influenced by many factors: social, economic, political, and, above all, the actual capabilities of the parties. Examining the realization of the right to judicial protection through the prism of organizational and procedural aspects significantly narrows the understanding of justice accessibility, limiting it to essential but not exclusive aspects. The problems surrounding justice accessibility and equality are much broader in scope.

4. Results

Historical origins of justice and its accessibility

The concept of "accessible justice" has recently entered foreign and Ukrainian legal science terminology. This concept's terminological formulation and specification occurred only in the later stages of scientific thought development - in the second half of the XX century. However, with the establishment of judicial institutions and the emergence of legal defense means (one way or another), a particular question arose regarding the possibilities, conditions, and procedures for obtaining such defense. The notion of "justice" plays a significant role in legal discourse and the scientific and philosophical reflection of the legal and political sphere of societal existence as a whole. Therefore, searching for an adequate definition is an important task not only for legal science.

The Comprehensive Legal Dictionary proposes the following definition: "Justice - a form of state activity that involves the hearing and resolution of cases by a court within its competence." This definition includes four elements:

1) the generic concept of "state activity" and three attributes conceived by authors as specific characteristics of justice within the genus;

2) "hearing and resolution of cases" as the content of this activity;

3) the "court" as its subject;

4) "belonging to its competence" as a characteristic of cases that may be subject to a hearing.

It is possible to agree with only the second of them fully. Indeed, the content of justice as a type of activity is "hearing and resolution of cases." Other elements raise serious objections. First, presenting justice exclusively as a form of "state activity" is incorrect from a practical angle. Both history and modernity provide numerous examples of other forms of justice (communal, ecclesiastical, etc.) being the exception rather than the rule. Secondly, even in cases where justice is actually a form of state activity, the question arises as to how important this feature is for clarifying its essence. The authors' choice of this kind of definition seems to be purely formal.

The third element of the definition raises many objections similar in many ways - the court as the exclusive subject of justice. Once again, historically, justice in different periods and countries has been administered by various bodies, far from just the courts. If we strictly adhere to this definition, it would have to be stated that most of humanity throughout history did not

know justice at all. It is unlikely that the authors of the dictionary article intended this. Additionally, this part of the definition contains a logical fallacy known as "idem per idem" or circular definition: it defines justice through the court, which, in turn, is defined as the body that administers justice.

Equal rights and justice

Further development of scientific thought in this direction logically leads to the concept of "national justice and equality," as defined by the authors of the latest fundamental work on the issue as "court hearings of disputes according to the international and national laws of the respective state." While acknowledging the necessity of this concept for legal science, it is essential to note that it is far from being equivalent to the concept of justice itself and cannot serve as its replacement. However, it is easy to see how this definition differs in content from the one discussed above. It does not consider justice exclusively as a form of state activity but also attributes to it the quality of "adherence to the law in decision-making." Legally, this is much more significant than the purely formal "referral of cases to the court's competence" (On the ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to Convention No. 475/97-VR, 1998).

The definitions of justice, undoubtedly, have the right to exist and are entirely applicable in practical legal activity (for example, when it is necessary to determine whether a specific act constitutes an act of justice from a legal perspective). However, their cognitive value is limited within the framework of this narrow specialized field. Their applicability in a broader socio-scientific context and even in theoretical legal research raises significant doubts (Consultative Council of European Judges (CCEJ) opinion, 2014).

Following the line of legalistic positivism, which does not allow for the existence of any other type of justice than state justice, and recognizing only the court as the subject of the latter, they narrow the scope of the concept under study. They exclude many historical forms and manifestations that do not fall under the definition of "state activity" or were carried out by bodies other than courts (Charter of Fundamental Rights of the European Union).

On the other hand, the formal and positivist nature of these definitions allows us to include in the concept of "justice" such phenomena as, for example, the judgments of the Soviet Courts during the political trials of the 1930s and 1950s, which were clearly illegal and against

common sense. Would the authors of the judgments themselves agree with the statement that these verdicts have really been acts of justice? (Convention for the Protection of Human Rights and Fundamental Freedoms).

Thus, it is necessary to state that the definitions of justice used in modern scientific and educational legal literature mostly have a purely technical nature. They are entirely relevant only in certain specific contexts, primarily in legal practice, social sciences, and specialized legal disciplines. They are unsuitable for solving research tasks requiring a higher abstraction level. Since "justice" is a concept actively used not only in jurisprudence but also in other social sciences, it is essential to find a definition that would work in the broadest scientific context (Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States).

Such a definition should meet the following criteria:

1) It should be real.
2) It should encompass all historical and cultural-civilizational diversity of judicial forms.
3) Its content should accurately reflect the essence of justice as a phenomenon.
4) It should allow distinguishing justice from the phenomena that "disguise" themselves as justice, i.e., its formal imitations that do not meet the essential criteria.

People do not perceive justice and equality neutrally as simply one of the spheres of state activity. Throughout the history of humanity, in all cultures, it has been the focus of public attention, remaining the subject of acute political struggle, one of the most important goals of state-building. It occupied a very significant place in political programs coming from both the authorities and the forces opposing them. All this indicates the high positive value of justice and equality for society and individuals. The historical practice provides ample evidence that effective justice enhances the social system's cohesion, coordinating people's efforts and communities, enabling society to develop, achieve its goals, and improve the quality of citizens' lives (Bihun, 2009).

Conversely, its inefficiency leads to the failure of socially important goals or requires significantly more effort and resources to achieve them. Therefore, justice is undoubtedly a specific good, not a private one, but a social one (Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine on compliance with the Constitution of Ukraine, 2003). Thus, the closest generic term would be "social good." It should be noted that this does not imply the rejection of the possibility of defining justice through some other genus (e.g., "judicial activity"). After all, any concept is

multifaceted and, therefore, by necessity, is included in the scope of more than one generic concept.

For example, Article 8(3) of the Constitution of Ukraine provides the right to appeal to the court to protect personal constitutional rights and freedoms. Moreover, Article 55 of the Constitution of Ukraine guarantees the right to appeal against decisions, actions, or failures to act of state authorities and local self-government bodies in court (The Constitution of Ukraine).

Justice involves resolving disputes and conflicts between the subjects, and these disputes may not be any kind of disputes but only legal ones. Despite cultural and historical differences in defining what constitutes "legal," judicial bodies in every society only consider claims that meet this criterion.

Despite all the cultural and historical differences in defining what is considered "legal," each society's justice system accepts only those claims that meet this criterion. A decision they make must have certain qualities to be truly an act of justice. The most significant thing in all of the above substantive definitions of justice is that their authors consider justice or conformity to the law (sometimes both) to be its most important attribute. It is not a coincidence since the meaning of justice is "the right court" or "the court of law." Justice is the basic principle of law, its very essence (The Verkhovna Rada of Ukraine, 2015). It can be fairly stated that law is a formalized justice.

Therefore, the term "justice" is more fundamental than "law" in this case. If a court decision formally complies with (a positive) law but is unfair, then it is illegal. According to Alivizatos (2020), "justice and fairness are synonyms" (which is not entirely true, but close to the truth). In addition, Kaplya (2017) also suggests that justice is "an activity of establishing justice."

However, some authors question the universality of justice as an attribute of justice. In particular, Tkachuk O. (2016) notes that the aim of justice is understood differently in all cultures. For example, in ancient China, "justice was likely understood as a means to achieve harmony and balance in existing social relations rather than a means to achieve justice" (Bihun, 2009).

Another aspect of the decision made due to each particular act of justice is its mandatory force. If the enforcement of a court decision is not guaranteed, violated rights may not be restored, thus failing to achieve the goal of justice. Therefore, legal authorities should have the power to force the implementation of their decisions if necessary. Above, we have defined "state activities" as one of the possible attributes of justice. The feature of mandatory force of decisions is an implicit indication of the authoritarian nature of justice. The same feature indirectly

contains the indication specified by some authors that specially authorized bodies provide justice. The presence of a "binding force of decisions" is equivalent to "special authorities."

The following definition appears when summarizing the above features:

Justice is a social good involving resolving legal disputes following the principle of fairness through the issuance of legally binding judgments. Earlier, we discussed the possibility of defining justice through the generic concept of "legal application activity." When substituting it into the definition, it takes the following form:

Justice is a type of legal application activity that deals with resolving legal disputes under the principle of fairness through the adoption of legally binding judgments.

The first definition is more fundamental. It can be applied in the philosophy of law and other social sciences beyond a specific legal context. The second option is only a reduction of the former one. It lowers the level of abstraction and is suitable for use in the most general legal disciplines, such as the theory and history of state and law.

Accessibility and procedural clarity of justice

As mentioned earlier, according to one of the perspectives in procedural doctrine, the accessibility of justice (access to judicial protection) is one of the principles of justice. The general significance and fundamental nature of the accessibility of justice can explain this approach. In its scope, this can be compared to the significance and nature of procedural principles (Council Conclusions on the Vision for European Forensic Science, 2020).

There is no doubt that there is a close relationship between the accessibility of justice, professionalization, and independence of the judiciary. It is evident that corrupt and biased justice is not true justice by its very nature, so there is no need to talk about the accessibility of justice. Among the numerous studies on the independence of the judiciary, attention is drawn to the analytical documents of the European Commission for Democracy through Law (Venice Commission). The Commission consistently emphasizes that the independence of judges is ensured, among other things, through proper procedures for their selection and specific requirements for judicial candidates. These requirements include, on the one hand, a high level of professional competence, knowledge, and analytical skills, and on the other hand, personal qualities. The Commission also highlights that crucial skills for judges include interaction with representatives of the parties, as well as a "sense of justice and fairness" (Universal Declaration of Human Rights, 2008). Thus, this approach to selecting judges as a guarantee of their further

independence emphasizes the attention to two aspects of professionalization: the ability to interact correctly with the parties and the presence of a high level of professional qualities. These same aspects can be considered relevant in ensuring the accessibility of justice.

The effectiveness of legal protection is one of the principles of administrative procedure, as stated in the draft Law of Ukraine "On Administrative Procedure" of May 14, 2020, registration number 3475 (On Administrative Procedure: draft Law of Ukraine, 2020).

A new interpretation through the prism of accessibility of justice and professionalization of the legal process can be given to the principle of justice provided only by a court. Thus, the same trend can be observed in various Ukrainian legislation areas: reconsidering the relevance of the court mechanism for resolving legal conflicts.

The reasoning for such changes lies in the fact that such claims are usually undisputed and, therefore, are often considered in the absence of representatives of the parties involved in a separate dispute. Additionally, the economic and legal consequences of including the requirement in the Register by a judicial decision or a lawyer's decision are practically identical (The Verkhovna Rada of Ukraine, 2016). The use of labor, time, financial and other resources by the arbitration court in such cases does not always seem rational, especially since the function of handling the inquiry regarding the inclusion of a claim in the register can be performed by arbitration officers equally effectively.

It is easy to notice that conceptually and structurally, the proposed changes to the law on bankruptcy and administrative offenses are very similar. These changes re-evaluate the necessity of justice, equality, and the absence of discrimination as a method of resolving legal conflicts and expand the possibilities of resolving conflicts by other subjects (administrative authorities, arbitration officers). Thus, the general trend of reforming various areas of legislation can be characterized as a re-evaluation of the appropriateness of using the judicial mechanism to resolve legal conflicts in specific cases. Is it possible to argue that in the aforementioned examples, implementing the justice principle by courts only and ensuring access to justice face significant problems? There is still no solid basis for a positive answer to this question.

However, it should be noted that concerning expanding the powers of the lawyer and redistributing competencies between the court and administrative bodies, there is no complete exclusion of the possibility of seeking judicial protection. The judicial mechanism remains accessible, but its appeal is shifted to a later stage of legal relations. In fact, there is a substitution of prior judicial control with subsequent control.

As noted in the scientific literature, preserving the right to challenge and further judicial review of any legal act of a particular body does not contradict the principle of justice being implemented only by the court. In addition, this principle is served by the impossibility of imperatively excluding issues of legal application from the judicial domain.

It should be noted that these theses are also relevant to the issues of ensuring the accessibility of justice, equality, and the absence of discrimination. The possibility of further judicial control over certain legal acts serves as a means of ensuring such protection. At the same time, the legislative elimination of the possibility of further challenging certain legal acts would make justice inaccessible and, thereby, violate the constitutionally guaranteed right for judicial protection.

In the Decree of the President of Ukraine No. 231/2021, "On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023," an independent and impartial justice is the cornerstone of sustainable development of society and the state. It guarantees compliance with the following rights:

- human rights and freedoms;
- the rights and lawful interests of individuals and legal entities;
- the interests of the state;
- the growth of well-being and quality of life;
- the creation of an attractive investment climate;
- timely, efficient, and fair resolution of legal disputes based on the rule of law (On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023, 2021).

At the same time, the possibility of replacing the previous control with the subsequent one cannot be unlimited. The question of the admissibility of the subsequent judicial control in certain legal relations has often been the subject of proceedings before the Constitutional Court of Ukraine. For instance, the Constitutional Court of Ukraine has repeatedly stated that regarding the forced deprivation of property rights, subsequent judicial control cannot be considered compatible with the Constitution of Ukraine. The existence of prior judicial control contributes to the implementation of guarantees of property inviolability, as well as the guarantee of not being deprived of property except by a court decision. Nevertheless, it can be concluded that the substitution of prior judicial control with subsequent control does not affect the accessibility of justice if the guarantees for the realization of other constitutional rights are preserved.

In other words, the principle of adversarial proceedings in the context of professionalization and the need to ensure accessibility of justice requires the interaction between the parties and the court. In turn, the court's and the parties' joint responsibility for the case's outcome allows for re-evaluating the practical aspects of implementing the adversarial principle (Code of Administrative Procedure of Ukraine, 2005). Specifically, the understanding of this principle as "increased activity of the parties - reduced activity of the court" is less clear-cut. Within the framework of competitive judicial procedure, there are blocks of issues remaining which are the responsibility of the court (in this regard, specific activity is required). However, there are blocks of issues remaining, which are the responsibility of the parties (Press service of the RSU). The combination of these two groups of issues illustrates the shared responsibility of the court and the parties for the case outcome.

An example of the reconsideration of the adversarial principle under the influence of the ideas of the accessibility of justice and professionalization of the legal process is the discussion about the possibility of strengthening the contracts in the evidential activities of the parties (and thus in the implementation of the competition principle) (Shelukhin et al., 2021). For example, it was suggested that it would be advisable to strengthen the legal regulation of procedural agreements, particularly the agreements on the actual case circumstances. It is unlikely that such agreements contradict the adversarial principle. Instead, these contractual principles represent a qualitatively new interpretation of adversarial proceedings, influenced by the professionalization of the judicial process and the circumstances that representatives of the parties do not always require the court's participation for the effective and result-oriented implementation of procedural rights (Nana, Ablamskyi, 2020). The trial cannot be a goal by itself, and the point of ensuring access to justice is to ensure that legal conflicts can be resolved at the optimal price (labor and other costs) for the court and the parties. In this regard, the parties' agreements on the case circumstances as a feature of professionalization and as a new interpretation of the adversarial principle are entirely consistent with the idea of the accessibility of justice. In the Constitutional Court of Ukraine case law, the competitiveness principle is often revealed by providing the parties with equal opportunities to defend their stances, which is often considered in the doctrine as the right to be heard.

5. Discussion

Summarizing the above, within the framework of this dissertation research, it is advisable to further explore and elaborate on the points of intersection between the accessibility of justice and the professionalization of the legal process. As previously demonstrated, professionalization manifests itself in several ways:

1) raising the requirements for the representatives of the parties in terms of their specialized skills and knowledge;

2) expanding the procedural obligations of the parties;

3) professionalization of the court system, including the establishment of specialized courts and specialized units within the courts.

At the same time, the most important practical aspect of professionalization is substantive interaction between the court and the parties on issues related to the trial - a joint responsibility of the court and the parties for the outcome of the case. The discussed aspects fit into the logic of another trend in the development of the legal process - the optimization of legal proceedings, which has been repeatedly highlighted by national scholars lately. The optimization concept finds broad applicability in procedural law and other areas of national law, such as taxation, administrative, budgetary, labor law, etc.

Nevertheless, the concept of legal regulation optimization has remained beyond the scope of doctrinal studies to date. In other words, optimization entails reassessing approaches to legal regulation through the lens of rationality, appropriateness, and effectiveness. We can substantiate the temporary and qualitative aspects of optimization. By its nature, the temporary aspect enables the achievement of civil litigation objectives in a shorter time frame. At the same time, the qualitative aspect ensures the preservation of the possibility of delivering a legitimate and reasonable judicial act.

6. Conclusion

The accessibility of justice, equality, and the absence of discrimination are elements of the right to legal protection, which ensures a real opportunity to achieve the goals of the judicial process. The right to access justice has received significant and noticeable consideration in the legal practice of the country. It is essentially based on the impossibility of absolute exclusion of

this right. In this regard, the Constitutional Court of Ukraine has also consistently indicated that the accessibility of justice requires substantial and comprehensive legal regulation. It creates the basis for developing procedural law institutions and the justification and development of relevant theoretical concepts.

By summarizing these dimensions, it can be concluded that the accessibility of justice is experiencing trends of internationalization and constitutionalization. These trends are illustrated, in particular, by the practice of international justice and national constitutional courts.

The organizational dimension has been substantiated as a part of ensuring the accessibility of justice, equality, and non-discrimination. The paper substantiates that the judicial (organizational) dimension, the accessibility of justice, and the ensuring of equality and the absence of discrimination are ensured, for example, by the organizational aspects of building a judicial system where each specific case should clearly fall within the competence of a judicial authority. From this perspective, it should be recognized that Ukrainian court system legislation and procedural and legal regulation of competence assignment between the courts have undergone a significant evolution. The problems of legislation ambiguity, which led to the refusal to consider a case (based on lack of jurisdiction), first by general jurisdiction courts and later (on the same grounds) by arbitration courts, are no longer relevant at the current stage.

The procedural dimension is the most noticeable in practical terms. It is the procedural mechanisms, their thoughtfulness, and deliberateness that allow the applicant to "feel" that justice is accessible to obtain complete judicial protection, and its result in the form of the restoration of specific violated rights and interests. The theoretical aspect is essentially a connecting link between other aspects and provides the conceptual basis for the accessibility of justice. It synthesizes both practical approaches and scientific views that have emerged.

It is proven that professionalization does not imply an automatic reassignment of procedural duties in the Procedural Code. This also does not include the automatic addition of new requirements for the parties' representatives but rather an optimization of using the professional, economic, and other resources available to the parties and their representatives. At least, such optimization is necessary due to the current realities faced by the court system, as well as the parties' ability to influence the trial and help to resolve a legal conflict.

References

Agapova, O. V. (2020). In regard to the need for working out the concept of development of expert ensuring of justice in Ukraine. The Journal of V. N. Karazin Kharkiv National University. Series "Law," (29), 162-168. https://doi.org/10.26565/2075-1834-2020-29-21

Alivizatos, N. (2020). Dotrymannya pryntsypiv demokratiyi, prav lyudyny ta verkhovenstva prava v umovakh nadzvychaynoho stanu – mirkuvannya: dopovidʹ [Compliance with the principles of democracy, human rights and the rule of law in the state of emergency - considerations: report.]. 2020. 25 p. Retrieved from URL: https://www.venice. coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e. (in Ukrainian).

Bernazyuk, Ya. O. (2020). Protsesualʹni zasoby zabezpechennya realizatsiyi konstytutsiynoyi harantiyi obov″yazkovosti sudovoho rishennya v administratyvnomu sudochynstvi [Procedural means of ensuring the implementation of the constitutional guarantee of the binding nature of a court decision in administrative proceedings]. Retrieved from URL:https://sud.ua/ru/news/blog/166108-protsesualni-zasobizabezpechennyarealizatsiyi-konstitutsiynoyi-garantiyi-obovyazkovosti-sudovogo-rishennyavadministrativnomu-sudochinstvi. (in Ukrainian).

Bihun, V. S. (2009). Filosofiia pravosuddia yak napriam filosofii prava [Philosophy of justice as a direction of philosophy of law]. Chasopys Kyivskoho universytetu prava, № 4, 19–26.19. (in Ukrainian).

Council conclusions on the vision for European Forensic Science 2020 including the creation of a European Forensic Science Area and the development of forensic science infrastructure in Europe. Retrieved from URL: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126875.pdf

Consultative Council of European Judges (CCEJ) opinion, No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence Retrieved from URL: https://wcd.coe.int/ViewDoc. jsp? p=&Ref=CCJE(2014)2&Language=lanEnglish &Ver=original&BackColorInternet=DBDCF2&Ba ckColorIntranet=FDC864&BackColorLogged=FD C864&direct=true.

Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe‘s Member States. Retrieved from URL: https://vkksu.gov.ua/userfiles/doc/cepej/24-kerivni%20princupu%20roli%20priznachenih.pdf

Huyvan, P. D. (2019). Pravo na spravedlyvyy sud: sutnist' ta temporal'ni vymiry za mizhnarodnymy standartamy [The right to a fair trial: essence and temporal dimensions according to international standards]. Kharkiv: Pravo (in Ukrainian).

Huralenko, N. A. (2016). Tsinnisnosmyslovi konstanty suddivskoho piznannia [Value-semantic constants of judicial cognition]: dysert. na zdob. nauk. stupenia doktr. yuryd. n. Chernivtsi, 393 p. (in Ukrainian).

Kaplya, O. M. (2017). Realizatsiya pryntsypu efektyvnoho zakhystu prav i svobod osoby v administratyvnomu sudochynstvi krayin Yevropeysʹkoho Soyuzu [Implementation of the principle of effective protection of individual rights and freedoms in the administrative proceedings of the countries of the European Union]. Naukovyy visnyk mizhnarodnoho humanitarnoho universytetu. Ser.: Yurysprudentsiya, № 26, 27–30. (in Ukrainian).

Khanova, R. F., Khokhulyak, V. V. (2020). Kryteriyi efektyvnosti sudovoho zakhystu sotsialʹnykh prav. Sotsialʹni prava ta yikh zakhyst administratyvnym sudom : zb. materialiv III Mizhnarodnoyi naukovo-prakt. konf. Kyiv, pp. 364–367. (in Ukrainian).

Khartiya osnovnykh prav Yevropeyskoho Soyuzu [Charter of Fundamental Rights of the European Union]. Retrieved from URL: https://zakon.rada.gov.ua/laws/show/994_524#Text. (in Ukrainian).

Kliuiev, O. M. (2020). Reformuvannia bazovoho zakonodavstva Ukrainy z pytan ekspertnoho zabezpechennia pravosuddia – nahalna potreba chasu. Problemy reformuvannia bazovoho zakonodavstva Ukrainy z pytan ekspertnoho zabezpechennia pravosuddia: materialy kruhloho stolu (m. Kharkiv, 6–7 liutoho 2020 roku). Kharkiv: KhNDISE, 132 p. (in Ukrainian).

Kodeks administratyvnoho sudochynstva Ukrayiny [Code of Administrative Procedure of Ukraine] vid 06.07.2005. Vidomosti Verkhovnoi Rady Ukrayiny. 2005. № 35–36. № 37, art. 446. (in Ukrainian).

Konstytutsiia Ukrainy [The Constitution of Ukraine]. Baza danykh "Zakonodavstvo Ukrainy" / VR Ukrainy. Retrieved from URL: https://zakon.rada.gov.ua/laws/show/254 %D0 %BA/96-%D0 %B2 %D1 %80. (in Ukrainian).

Korshun, A. O. (2022). Pryntsyp hlasnosti i vidkrytosti diyalʹnosti orhaniv sudovoyi vlady [The principle of transparency and openness of the activities of judicial authorities]: monohr. Kyiv: Khay-Tek Pres, 192 p. (in Ukrainian).

Malykhina, V. V. (2016). Problemy dostupnosti pravosuddya v administratyvnomu sudochynstvi u period reformuvannya sudovoyi systemy Ukrayiny [Problems of access to justice in administrative proceedings during the reformation of the judicial system of Ukraine]. Naukovyy

visnyk Dnipropetrovsʹkoho derzhavnoho universytetu vnutrishnikh sprav, № 4, 157-162. (in Ukrainian).

Marochkin, I. Ye. (2002). Dostupnistʹ pravosuddya ta harantiyi yoho realizatsiyi [Availability of justice and guarantees of its implementation]. Sudova reforma v Ukrayini: problemy i perspektyvy. Kyiv; Kharkiv: Yurinkom Inter, 31–34. (in Ukrainian).

Nalyvayko, L. R., Verba, I. O. (2018). Mizhnarodni standarty zabezpechennya prava na dostup do pravosuddya [International standards for ensuring the right to access to justice]. Naukovyy visnyk Dnipropetrovsʹkoho derzhavnoho universytetu vnutrishnikh sprav. Spets. vyp., № 3 "Prava lyudyny: metodolohichnyy, hnoseolohichnyy ta ontolohichnyy aspekty", 13-17. (in Ukrainian).

Nana, Ch. N., Ablamskyi, S. Ye. (2020). Ensuring the right to liberty and security of person in Ukraine and Cameroon: a comparative analysis in the area of criminal justice. Commonwealth Law Review Journal, Annual Volume 6, 281-304.

Nazarov, I. V. (2009). Pryntsypy pobudovy sudovoyi systemy [Principles of building the judicial system]: a monograph. Kharkiv: FISh, 144 p. (in Ukrainian).

Onishchuk, M., Savchyn, M. (2019). Prosecutor's office of Ukraine in the system of justice: new approaches observing the principle of constitutional fidelity 2(26) Knowledge, Education, Law, Management, 148-159.

Ovcharuk, S.S. (2015). Administratyvni protsedury v umovakh formuvannia pravovoi derzhavy [Administrative procedures in the conditions of formation of the rule of law]. Extended abstract of Doctor's thesis. Kyiv. (in Ukrainian).

Pressluzhba RSU [Press service of the RSU]. Retrieved from URL: http://rsu.gov.ua/ua/news/usim-sudamukraini-rsu-opublikuvala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu. (in Ukrainian).

Pro administratyvnu protseduru: proyekt Zakonu Ukrayiny, [On administrative procedure: draft Law of Ukraine]. reyestr. № 3475 vid 14 travnya 2020 roku. Retrieved from URL:http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68834. (in Ukrainian).

Pro Stratehiyu rozvytku systemy pravosuddya ta konstytutsiynoho sudochynstva na 2021–2023 roky [On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023]. Ukaz Prezydenta Ukrayiny vid 11 chervnya 2021 roku № 231/2021. Retrieved from URL: https://zakon.rada.gov.ua/laws/show/231/2021#Text. (in Ukrainian).

Pro ratyfikatsiyu Konventsiyi pro zakhyst prav i osnovnykh svobod lyudyny 1950 roku, Pershoho protokolu ta protokoliv № 2, 4, 7 ta 11 do Konventsiyi № 475/97-VR [On the

ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to Convention No. 475/97-VR]. Ofitsiynyy visnyk Ukrayiny. 1998. № 13, art. 270. (in Ukrainian).

Pronsʹkyy, E., Kolesnikova, M. (2016). Orhanizatsiyno-pravovi zasady zdiysnennya sudovoho kontrolyu v Ukrayini [Organizational and legal framework for judicial control in Ukraine]. Visegrad Journal on Human Rights, № 2. Vol. 2, 130–135. (in Ukrainian).

Rada Yevropy. Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod. [Convention for the Protection of Human Rights and Fundamental Freedoms]. Retrieved from URL: https://zakon.rada.gov.ua/laws/ card/995_004. (in Ukrainian).

Rishennya Konstytutsiynoho Sudu Ukrayiny u spravi za konstytutsiynym podannyam Verkhovnoho Sudu Ukrayiny shchodo vidpovidnosti Konstytutsiyi Ukrayiny (konstytutsiynosti) polozhenʹ chastyny tretʹoyi statti 120, chastyny shostoyi statti 234, chastyny tretʹoyi statti 236 Kryminalʹno-protsesualʹnoho kodeksu Ukrayiny (sprava pro roz·hlyad sudom okremykh postanov slidchoho i prokurora) [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine on compliance with the Constitution of Ukraine (Constitutionality) of the provisions of Part 3 of Article 120, Part 6 of Article 234, Part 3 of Article 236 of the Criminal Procedure Code of Ukraine (case on consideration by the court of certain resolutions of the investigator and the prosecutor]: Rishennya vid 30.01.2003 r. № 3-rp/2003. KSU. Ofitsiynyy visnyk Ukrayiny. 2003 r. № 6, art. 245. (in Ukrainian).

Savranchuk, L. L. (2019). Problemy zabezpechennya dostupnosti pravosuddya v administratyvnomu sudochynstvi [Problems of ensuring access to justice in administrative proceedings]. Aktualʹni problemy vitchyznyanoyi yurysprudentsiyi. № 1, 150-153. (in Ukrainian).

Savchyn, M. (2018). Suchasni tendentsiyi konstytutsionalizmu u konteksti hlobalizatsiyi ta pravovoho plyuralizmu: monohrafiya [Contemporary trends of constitutionalism in the context of globalization and legal pluralism: monograph]. Uzhhorod: RIK-U, 440 p. (in Ukrainian).

Sharma, K. (2021). Role of International Law in Ensuring Justice in a Globalized World, October 27. http://dx.doi.org/10.2139/ssrn.3963941

Shelukhin, M., Kupriichuk, V., Kyrylko, N., Makedon, V., Chupryna, N. 2021. Entrepreneurship Education with the Use of a Cloud-Oriented Educational Environment. International Journal of Entrepreneurship, Volume 25, Issue 6. Retrieved from URL: https://www.abacademies.org/articles/entrepreneurship-education-with-the-use-of-a-cloudoriented-educational-environment-11980.html

Svitlychnyy, O. (2017). Service law: origins, modernity and development prospects: a collective monograph / According to general ed. THEN. Kolomoets, V.K. Kolpakova Zaporizhzhia: Helvetica Publishing House. 205-217. (in Ukrainian).

The Verkhovna Rada of Ukraine, 2015. On ensuring the right to a fair trial, Retrieved from URL: https://zakon.rada.gov.ua/laws/show/192-19#Text. (in Ukrainian).

The Verkhovna Rada of Ukraine, 2016. On the judiciary and the status of judges. Retrieved from URL: https://zakon.rada.gov.ua/laws/show/1402-19#Text. (in Ukrainian).

Tkachuk, O. (2016). Funktsii sudovoi vlady ta sfera tsyvilnoho sudochynstva[Functions of the judiciary and the sphere of civil proceedings]. Chasopys tsyvilnoho i kryminalnoho sudochynstva, № 3, 77–96.9. (in Ukrainian).

Yarema, O.G. (2023). Administrative justice as a way of ensuring public order. Analytical and Comparative Jurisprudence, 260-264. 10.24144/2788-6018.2023.02.44.

Zahalʹna deklaratsiya prav lyudyny [Universal Declaration of Human Rights]: pryynyata I proholoshena rezolyutsiyeyu 217 A (III) Heneralʹnoyi Asambleyi OON vid 10.12.1948. Ofitsiynyy visnyk Ukrayiny. 2008. № 93, art. 3103. (in Ukrainian).