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Principles of access to justice and guarantees of its implementation in criminal proceedings

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■ **Abstract**. In the conditions of competition and conflict of criminal proceedings, when the interests of its participants conflict with each other and are directly opposite, the importance of ensuring a real and not a formal mechanism for exercising the right to a fair trial increases. The above indicates the need for an in-depth investigation of the structure and legal guarantees for the proper implementation of the principle of access to justice. The purpose of this study was to establish the content of the principle of access to justice and determine individual guarantees for its implementation in criminal proceedings. According to the set purpose and specifics of the subject of the study, a set of methods was applied, including formal logical, historical legal, methods of comparative and system-structural analysis, formal legal, comparative legal, statistical methods. The principal results and the practical value of this study are as follows. The content of an independent and impartial court was covered and legal guarantees of independence of courts from the executive power, procedural guarantees of independence of courts from parties to the process were defined. The study clarified the legally established conditions for ensuring the independence of the court, which are legally laid down in the provisions of Articles 34, 35, 389-391 of the Criminal Procedural Code of Ukraine. The possibility of supplementing the current criminal procedural legislation with an additional principle – "independence and impartiality of the court" was emphasized. The study justified that the exercise of the right of access to the court should not be limited and should apply equally to any participant in criminal proceedings, regardless of whether they are a victim, witness, suspect, or accused. It was argued that the provisions of Item 10 Part 1 of Article 284 of the Criminal Procedural Code of Ukraine limit the victim's right to access to justice, depriving them of the opportunity already at the stage of pre-trial investigation to restore their rights, freedoms, and legitimate interests violated by the criminal offence

■ **Keywords**: restoration of violated rights; independence; impartiality; judicial protection; binding nature of court decisions

■ Introduction

The fundamental renewal and adaptation of the criminal procedural legislation of Ukraine to the legislation of European countries, the cornerstone of which is fair and effective justice, is a large-scale process that requires, on the one hand, the strengthening of the protection of human rights and freedoms in criminal proceedings, and on the other hand, the presence of an effective mechanism for their implementation and creation of conditions to ensure normal and unhindered activity of judicial institutions. All these aspects determine the urgent need to develop new opinions on determining the content and specifics of implementing the principle of access to justice in criminal proceedings.

The recent summation of scientific research and legal journalism illustrates the rapid increase in attention to problems affiliated with access to justice, including in criminal proceedings, which require solutions. Such interest is explained by the existence

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of several basic approaches to understanding the analysed basis in the doctrine of the criminal procedure. Thus, O. Balatska (2020) considers access to justice as an element of the right to a fair trial, which follows from Item 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms[1] and exists on an equal footing with others that are directly prescribed in the above-mentioned norm and formulated the practice of the European Court of Human Rights. N. Sakara (2010), investigating the implementation of the analysed basis in civil proceedings, calls access to justice a standard that, on the one hand, makes provision for the normative requirements of impartial, objective, and effective judicial protection, and on the other hand – legally consolidated procedural mechanisms, proper deadlines and unhindered appeal of any interested person to judicial institutions. O. Shylo (2006) analyses access to justice through the lens of judicial protection, which is characterized by such features as specific subject (court); an unlimited subject (which extends not only to the rights and legal interests of a person, but also to the interests of society, the state, and law); special forms of implementation (justice and judicial control); the legal procedure for the trial of criminal proceedings, which serves as a guarantee of the realization of the rights and interests of its participants; constancy and immutability of the criminal procedural act of the court.

Investigating the issue of access to court for a victim in criminal proceedings, S. Davydenko (2007), considers access to justice to be a set of conditions regulated by law and guaranteed by the state, favourable for each stakeholder to freely apply directly to the authorized state bodies of inquiry and pre-trial investigation, as well as the prosecutor's office and judicial institutions for the restoration of their rights, freedoms, and legitimate interests violated by a criminal offence, without which a person cannot exercise their right to judicial protection. On the other hand, V. Shybiko (2009) provides a broader interpretation of the category under study, noting that the specified opportunity for the participants of the proceedings to be aware of their rights to active participation in the case, to exercise these rights for a fair resolution of the case, is provided precisely by the normatively established system of relevant rules, which covers certain requirements, prohibitions, and permits and a system of appropriate procedural means the defined in criminal procedural legislation.

In modern science, other Ukrainian scientists have also addressed the question of the content and essence of the investigated basis of criminal proceedings. I. Gloviuk (2011) investigated the concept of access to justice in the criminal procedure by comparing it with the terms "access to court" and "access to judicial control". N. Derkach (2013), considering the practices of the European Court of Human Rights, tried not only to determine the elements of the legal content of the principle of access to justice and the binding nature of court decisions, but also to outline the mechanism of their implementation. V. Zaborovskyi (2018) and N. Sakara (2010) investigated the procedural aspect of access to justice in civil proceedings, including through the lens of procedural costs, while analysing the historical and doctrinal foundations of the problem. O. Kuchynska (2019), I. Mokrytska (2015) investigated the accessibility of justice in relation to other principles of the criminal procedure, singling out its specific features and determining directions for reforming the legislation to strengthen the judicial protection of a person in criminal proceedings. The scientific studies of O. Ovsiannikova (2018) deserve attention, which considers access to justice as a factor influencing the development of a positive attitude of the public towards judicial bodies. The judicial approach to the issue of access to justice was outlined in a monographic study by O. Ovcharenko (2008). R. Stepaniuk (2018), researching the content of the specified principle of criminal proceedings, insists on clarifying its normative definition in relation to those procedural possibilities, the use of which reflects the particular content of the relevant personal right. O. Korovaiko (2016) fairly draws the attention of the scientific community to the specific features of the legal and practical provision of access to justice by the court for the defending party. N. Rohatynska (2021), analysing the consequences of violating the principles of criminal proceedings, justifies that non-compliance with the requirement of accessibility leads to the recognition of evidence as inadmissible, and this, in turn, undermines a fair trial. The most considerable contribution to this issue was made by O. Shylo (2005), who, among other things, raised the issue of access to judicial protection during the pre-trial investigation in case of disagreement with the actions and decisions of the body of inquiry, investigator, and prosecutor regarding the detention of a suspect, closure of criminal proceedings, refusal to apply security measures, suspension of pre-trial investigation, etc. Finally, the research of scientists (Kaplina & Sharenko, 2020), who investigated the specific features of implementing the right to judicial protection in a pandemic, is worthy of attention. However, most of these studies cover the issues of access to justice in civil, administrative, and economic proceedings or in the sense of ensuring the right of a person to a fair trial according to the convention

[1]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

standards for the protection of human rights in criminal proceedings.

Therefore, *the purpose of this study* is a comprehensive investigation of the content of the analysed principle under national criminal procedural legislation and guarantees of its implementation in criminal proceedings.

Materials and Methods

For the investigation of the subject under study, it is important to determine the methodological basis of the worldview on access to justice, which allows further formulating the essence and content of this basis, a system of guarantees for its proper implementation. The combination of both general scientific and special methods of scientific cognition was used to achieve the outlined purpose of this study. The method of dialectics was used to expand the conceptual framework by investigating and covering the discussion of proceduralists who sometimes have differing opinions concerning the subject under study. Given that dialectics does not involve rhetoric, but rather is considered as the skill of conducting a discussion based on logical arguments, the mentioned method highlighted common features of the category of access to justice. The study uses a systematic approach to investigating the basis of access to justice as a monolithic set of its constituent components. Therefore, the system-structural method was used to investigate the internal structure of the principles of access to justice. Organizational elements were distinguished, i.e., those that determine the organization of the delivery of justice (independence and impartiality of the court, creation of a court based on the law) and functional elements, i.e., those that are determined by the implementation of the principal function performed by the court – justice (access to legal aid, interpreter's assistance, access to a court decision). Therewith, a systematic approach helped identify procedural gaps by using the method of systematic analysis of legislation. This refers to the deprivation of the victim of the right to access justice at the stage of pre-trial investigation due to the regulatory consolidation of the need to close criminal proceedings in case of the expiration of the pre-trial investigation period after notifying the person of suspicion. The comparative-historical method was used to establish evolutionary changes and the development of criminal procedural legislation by correlating and comparing individual legal prescriptions of the Criminal Procedural Code of 2012[1] and the Criminal Procedural Code of Ukraine of 1960[2] regarding the regulatory consolidation of the independence of judges and their obedience solely to the law. The comparative legal method was reflected in the comparison of provisions of Ukrainian and international criminal procedural legislation (of the Republic of Azerbaijan[3] and the Republic of Moldova[4]). This method allowed forming an opinion on the need for autonomous consolidation of the principles of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to the implementation of fair justice in criminal proceedings in modern conditions of reform and the development of judicial independence. The normative and dogmatic method outlined procedural guarantees for ensuring the implementation of the principle of access to justice in criminal proceedings. The generalization method was used to formulate conclusions in a scientific article.

The available scientific papers of Ukrainian and international researchers were used and analysed during the study of this issue. The regulatory framework of this study included the criminal procedural legislation of Ukraine, including the laws of Ukraine "On the High Council of Justice"[5] and "On the Judicial System and Status of Judges"[6]. Along with this, the study used empirical methods, which involved the investigation of the legal positions of the European Court of Human Rights[7], the Constitutional Court of Ukraine[8] and the Supreme Court of Ukraine[9], and allowed drawing the most general picture of the

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Law of the Ukrainian SSR. "Criminal Procedural Code of the Ukrainian SSR". (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[3]Law of the Republic of Azerbaijan No. 907-IQ "Criminal Procedural Code of the Republic of Azerbaijan". (2000, July). Retrieved from http://continent-online.com/Document/?doc_id=30420280#pos=1835;-45.
[4]Criminal Procedural Code of the Republic of Moldova No. 122-XV. (2003, March). Retrieved from https://continent-online.com/Document/?doc_id=30397729#pos=340;-52.
[5]Law of Ukraine No. 1798-VIII "On the High Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.
[6]Law of Ukraine No. 1402-VIII "On the judicial system and the status of judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[7]Decision of the European Court of Human Rights No. 65518/01 The case "Salov v. Ukraine". (2005, September). Retrieved from http://zakon3.rada.gov.ua/laws/show/980_428/page.
[8]The decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens against Anton Pavlovych Troian regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine (the case on the equality of parties to the judicial procedure) No. 9-рп/2012. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/v009p710-12#Text.
[9]Decision of the Supreme Court in case No. 185/3493/19. (2021, August). Retrieved from https://reyestr.court.gov.ua/.

definition of the content and guarantees of the implementation of the principle under study. To obtain reliable and real research results, the above methods were used in mutual connection and interdependence.

Results

Independence and impartiality of the court as a component of the principle of access to justice.

The concept of access to justice has evolved considerably in recent decades. In this connection, now, more than ever, this concept needs to be interpreted broadly. Covering the content of the announced principle of criminal proceedings, O. Ovcharenko (2008) believes that the availability of justice covers two equivalent areas – institutional (judicial system) and procedural (judicature). In the Ovcharenko's opinion, the given classification corresponds to, albeit not incontrovertible, but scientifically accepted division of branches of the study of the problems of judicial power into the judicial system aspect, which is focused on the issues of the structure of the judicial system, and the judicature aspect, which reflects the procedural order of solving legally significant cases by the court. O. Shylo (2005) justifies that access to justice covers organizational, procedural, and virtuous (moral) aspects.

Without resorting to a detailed study of the essence of the principles of the criminal procedure under study, the scope of this study will encompass some institutional and procedural components that ensure the proper implementation of access to justice.

First of all, characterizing the organizational (institutional) aspect of the principle under study, it is noteworthy that Item 11 of the Opinion No. 6 (2004) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternatives means of dispute settlement[1] notes that "public access to justice presupposes delivery of suitable information on the functioning of the judicial system".

In Ukrainian legislation, the principle of access to justice is defined in Article 21 of the Criminal Procedural Code of Ukraine[2] (CPCU), the analysis of which suggests that the criteria for the proper implementation of the right to a fair trial are an independent and impartial court established based on the law. Therewith, the European Court of Human Rights interprets the term "independent" as such that covers two components: the independence of the courts from the executive power and the independence of the judges from the litigants[3].

Considering the first element, according to the legal position of the Constitutional Court of Ukraine, set out in the decision[4], the independence of the court from the bodies of the legislative and executive power lies in the specific order of the composition of the judicial corps, namely the internal exclusively judicial bodies from the standpoint of holding judges accountable.

In this regard, the European Court of Human Rights notes in Item 80 of the case of Salov v. Ukraine[5] that the independence of the court is determined by the procedure for appointing its members and the terms of their powers, the presence of guarantees against external pressure and the existence of external signs of independence. The outlined conventional standards of independence of courts from the executive power are primarily implemented in the Constitution of Ukraine[6], Laws of Ukraine "On the Judiciary and the Status of Judges"[7], "On the High Council of Justice"[8], which define special procedures for appointing (dismissing) judges and terminating their powers, bringing the latter to justice, their organizational, financial, social security, as well as personal security measures of representatives of the judicial community, their families, property, etc. Along with this, a special guarantee of protection of judges from interference in their activities is the functioning of judicial self-government bodies. That is, in this way, the state has created a legal and institutional framework that guarantees access to independent

[1]Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternatives means of dispute settlement No. 6. (2004). Retrived from https://court.gov.ua/userfiles/visn6_2004.pdf.

[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[3]Report of the European Commission on Human Rights No. 7360/76 "Case of Tzand v. Austria". (1978, October). Retrieved from https://www.echr.coe.int/Pages/home.aspx?p=applicants/ukr&c.

[4]Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 47 People's Deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On Prevention of Corruption", Criminal Code of Ukraine No. 13-r/2020. (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/v013p710-20#Text.

[5]Decision of the European Court of Human Rights No. 65518/01 The case "Salov v. Ukraine". (2005, September) Retrieved from http://zakon3.rada.gov.ua/laws/show/980_428/page.

[6]Law of Ukraine No. 254к/96-VR "Constitution of Ukraine". (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

[7]Law of Ukraine No. 1402-VIII "On the judicial system and the status of judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.

[8]Law of Ukraine No. 1798-VIII "On the High Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.

and effective judicial mechanisms and ensures a fair outcome, including criminal proceedings.

As for the independence of judges from the parties to the court procedure, then it should be noted that in the literature, procedural guarantees in such a case are considered the provisions of the CPCU[1] regarding the established procedure for the delivery of justice, the secrecy of the adoption of a court decision, the right of recusal or self-recusal of a judge.

Evidently, the norms of Ukrainian legislation contain much more procedural means that can ensure the consideration of criminal proceedings by an independent and impartial court. One of such guarantees is normatively prescribed in Article 35 of the CPCU[2] according to which the composition of the court, including the involvement of jurors to deliver justice from the formed list of jurors, is determined by automated distribution of criminal proceedings materials between judges in compliance with the rules of succession and an equal number of proceedings for each judge, etc. The analysis of the specified article suggests that the parties (prosecution and defence) cannot freely choose judges and jurors who will deliver justice in criminal proceedings. This method of forming a court, in turn, ensures, inter alia, an impartial and biased distribution of materials of criminal proceedings, which certainly contributes to an objective judicial review, considering the impossibility of appointing a judge or court composition favoured by one of the parties to deliver justice.

The guarantee of ensuring an independent and impartial trial is also the procedure established by law for transferring materials to another court, if the accused or victim works or worked in a court whose jurisdiction includes the implementation of criminal proceedings (Item 3 of Part 1 of Article 34 of the CPCU)[3]. This regulatory requirement is justified, because in this case there is a risk that due to their official position, these persons may personally or indirectly influence the objective consideration of the case by such a court.

Therewith, it is worth noting the legislative provisions that contribute to ensuring judicial independence when considering a case by a jury. Therefore, the provisions of Article 389 of the CPCU contain a prohibition for the prosecutor, the accused, the victim, and other participants in the criminal proceedings to contact the jurors from the moment the trial begins until the judgment on the merits of the indictment is rendered, otherwise than according to the procedure prescribed by the criminal procedural legislation. Article 390 of the CPCU formulates the conditions for the release of a juror from the further performance of their duties, including the existence of substantiated reasons for the juror's loss of impartiality caused by the illegal influence, where the former is necessary for resolving issues of criminal proceedings according to the law. A special guarantee of the impartiality of the jury is the procedure for meeting and voting in the jury court established in Article 391, according to which, during the resolution of issues prescribed by Article 368 of the CPCU, during the voting, the presiding juror votes last. The above not only allows the juror to decide by voting independently, proceeding from their personal conviction, but also excludes the possibility of influencing the opinion of the presiding juror.

To implement and more effectively ensure the performance of the requirements of Item 1 of Article 6 of the Convention[4], the special literature (Lyoshenko, 2021) expresses the position of the expediency of supplementing the current CPCU with a principle of "independence and impartiality of the court".

In this regard, the procedural legislation previously did not contain a unified norm that fully reproduced the content of the principle under study under modern statutory regulation. In the 1960 edition of the CPCU[5], the independence of judges and their obedience exclusively to the law was determined by a separate principle, according to which, when delivering justice in criminal proceedings, judges are independent (i.e., those who resolve cases in conditions that exclude outside influence on them) and obey only the law (i.e., those that resolve criminal cases based on the law) (Article 18).

The principle of independence of judges has an autonomous meaning in international criminal procedural law as well. Thus, Article 25 of the Criminal Procedural Code of the Republic of Azerbaijan[6] prescribes an independent basis of criminal proceedings of the independence of judges, the content of which is as follows: the impossibility of identification of judges with the conclusions made by the bodies that carry out the criminal procedure during the preliminary investigation; consideration of criminal cases

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Ibidem, 2012.
[4]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5]Law of the Ukrainian SSR. "Criminal Procedural Code of the Ukrainian SSR". (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[6]Law of the Republic of Azerbaijan No. 907-IQ "Criminal Procedural Code of the Republic of Azerbaijan". (2000, July). Retrieved from http://continent-online.com/Document/?doc_id=30420280#pos=1835;-45.

or other materials related to criminal prosecution by judges, according to their internal conviction and legal awareness, which are based on the investigation of evidence submitted by the parties to the criminal procedure in the court session; delivery of justice by the courts of the Republic of Azerbaijan in conditions that exclude illegal influence on the independence and will of judges; prohibiting interference in the delivery of justice, demanding explanations from judges on the merits of the cases under consideration; inadmissibility of restriction by anyone directly or indirectly for one reason or another of the delivery of justice, illegal pressure on the court, use of threats, interference, disrespect for the court, ignoring it.

As a separate principle, the independence of judges is defined in Article 26 of the Criminal Procedural Code of the Republic of Moldova[1], according to which, among other things, it is determined that a judge is obliged to resist any attempt to put pressure on him or her during the resolution of criminal cases with the purpose of influencing his or her decisions.

Considering the above, the scientific opinion given above is correct because judicial independence in criminal proceedings is not only a criterion for ensuring the restoration of rights violated by a criminal offence, but also guarantees the adoption of an unbiased, lawful and evidence-based court ruling on the application of measures to ensure criminal proceedings, implementation of proper judicial control both during the pre-trial investigation and in the court stages, consideration of issues within the framework of international cooperation, etc. The above indicates the necessity of autonomous consolidation of the principles of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to the delivery of fair justice in criminal proceedings in modern conditions of reform and the development of judicial independence.

Implementation of the right of access to justice in criminal proceedings.

Without diminishing the importance of the above, access to justice cannot be achieved merely through the effective functioning of the judicial system, the proper judicial procedure for the delivery of justice and other aspects of the quality of judicial proceedings (the duration of legal proceedings and the treatment of the parties by the court).

In this context, it is worth paying attention to the term "access", which has several meanings in the Great Dictionary of the Modern Ukrainian Language (Busel, 2005). Among other things, access is understood as the ability to enter anywhere, visit anybody, anything, meet somebody; the possibility to use, to do something; the possibility to obtain data on demand. Therefore, access to justice as a guarantee of ensuring human rights presupposes, first of all, the possibility of applying to court for the restoration of violated rights and obtaining legal protection without obstacles.

Therefore, the main substantive aspect of the principle under study is the right of everyone to take part in the resolution of any level of the case in court, regarding their rights and obligations, according to the procedure prescribed by the CPCU (Part 3 of Article 21 of the CPCU)[2]. Notably, ensuring such a rule in criminal proceedings has its specifics. Here, attention should be paid to the position of the Supreme Court of Ukraine[3], which notes that, as stated in Article 30 of the CPCU[4], in criminal proceedings, refusal to deliver justice is not allowed, and justice itself shall be delivered only by the court according to the rules established by this Code. After all, the criminal procedure differs from other types of judicial proceedings in that it does not make provision for cases in which the accusation brought against a person would not be considered on its merits, and therefore, in criminal proceedings, the court cannot leave the final act of the pre-trial investigation without consideration. In a broad sense, this means that the judicial power, represented by its bodies – courts, has no right to refuse to deliver justice in criminal proceedings. In a narrow sense, this means the impossibility of refusing a trial and passing a corresponding court decision by the court that is responsible for the relevant criminal proceedings. The basis of these provisions is that the jurisdiction of the courts extends to any legal dispute and any criminal charge.

Therewith, the authors of this study note that to exercise the competitiveness and parity of the prosecution and defence parties in terms of creating equal conditions to provide evidence supporting their positions, a real opportunity for victims, witnesses, accused, and other participants in the process to exercise their right to access to justice should be ensured. The court provides such opportunities by properly informing (notifying) the participants of court proceedings about the date, time, place of court hearings (summons, writ of attachment), providing access to competent legal aid, services of an independent translator, etc. Therefore, the exercise of the right to access to justice depends on the adoption of the

[1]Criminal Procedural Code of the Republic of Moldova No. 122-XV. (2003, March). Retrieved from https://continent-online.com/Document/?doc_id=30397729#pos=340;-52.
[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Decision of the Supreme Court in case No. 185/3493/19. (2021, August). Retrieved from https://reyestr.court.gov.ua/.
[4]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

above-mentioned criminal procedural measures by the court during the trial aimed at creating the necessary equal prerequisites for the use of the rights granted by the procedural legislation.

Thus, the implementation of the right to access to court should apply equally to any participant in criminal proceedings, regardless of whether they are a victim, witness, suspect, accused, convicted, or acquitted. After all, as noted in the decision of the Constitutional Court of Ukraine[1], the right of any individual to access to justice, which makes provision for the possibility of an individual to act as the initiator of a judicial proceeding and to take a direct part in the judicial procedure, should not be subject to unreasonable restrictions, and no one can be deprived of such a right.

Therewith, the unjustified narrowing of the implementation of the principle of access to justice is contained in the regulatory provisions of Item 10, Part 1, Article 284 of the CPCU[2], where one of the grounds for closing criminal proceedings is the completion of the pre-trial investigation period after notifying the individual of suspicion, except for cases of bringing an individual to criminal liability for committing a grave or particularly grave crime against a person's life and health. The specified norm stipulates the duty of the investigator, inquirer, and prosecutor to close criminal proceedings in case that the term of the pre-trial investigation has ended, but no person has ever been suspected of committing a criminal offence.

As it appears, these shortcomings in the legal field, which provide for the existence of such a reason for closing the proceedings, factually violate the victim's right to access to justice, depriving them of the opportunity already at the stage of pre-trial investigation to restore their rights, freedoms, and legitimate interests violated by the criminal offence. Consequently, the content of the analysed framework is much broader than access to the court and judicial procedure. It also includes recognizing that everyone is entitled to protection by law, and that rights do not make sense if they cannot be exercised.

The binding nature of court decisions as an integral component of the principle of access to justice.

A. Uzelac & C.H. van Rhee (2009), investigating access to justice and the judicial system according to the new European accessibility standards, noted that over the last decade, the European Court of Human Rights has expanded the concept of access to justice for the effective execution of judicial and extrajudicial documents. Thus, it is currently impossible to discuss access to justice without considering mechanisms aimed at ensuring all the requirements defined by law. Because without the possibility of effective enforcement of court decisions, access to justice is useless.

Thus, in the decision in the case "Yurii Mykolaiovych Ivanov v. Ukraine"[3], the Court reiterates that the right to a trial would only seem real if the state did not take the necessary measures to implement the final court decision, which requires unconditional compliance, including regarding the party in whose favour the issue is resolved. Consequently, the effectiveness of access to justice presupposes the prompt exercise of the right to execute a judgment without undue delay (Item 51).

This broad approach is adhered to by the legislators when constructing the content of the principle of access to justice, which includes in its essence the requirement for the binding nature of court decisions. Thus, according to Part 2 of Article 21 of the CPCU, a verdict and a court ruling that have entered into legal force pursuant to the procedure established by this Code shall be binding and subject to unconditional execution throughout Ukraine. The content of this provision is covered in Chapter VIII, where Articles 532–540[4] of the said legal act define the procedural order and consequences of the entry into force of a court decision, the mechanism of its enforcement, issues decided by the court during the execution of sentences and the procedure for their decision, etc.

Discussion

The author of this study argues the importance of the normative definition of the principle of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to public confidence in judicial activity in the delivery of fair justice in criminal proceedings in modern conditions of judicial reform and the development of judicial independence. In this context, it is worth noting that in general, scientists consider the independence and impartiality of the court regardless of the content of the basis for access to justice or as a component of the right to a fair trial (Venislavsky, 2018; Gren, 2016; Leshenko, 2020). These positions of scientists only confirm the thesis about the autonomy of the investigated categories of judicial independence and impartiality.

[1]The decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens against Anton Pavlovych Troian regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine (the case on the equality of parties to the judicial procedure) No. 9-рп/2012. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/v009p710-12#Text.

[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[3]Decision of the European Court of Human Rights No. 40450/04 Case "Yurii Mykolaiovych Ivanov v. Ukraine" . (2010, January). Retrieved from https://zakon.rada.gov.ua/laws/show/974_479.

[4]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

Therewith, researchers mostly refer to institutional means as guarantees of an independent court in criminal proceedings, as evidenced by numerous publications. Thus, V.O. Hryniuk (2012), investigating the issue of guarantees for ensuring the independence of the court in the criminal procedure, from the approach of closeness in the meaning of organizational and procedural guarantees, mainly focused her attention on the means defined in the regulations governing judicial activity. Among them, the researcher cites the autonomous construction of the judicial system as the main means that ensure the independence of the court; specific competitive procedure for the position of a judge, financial, social, material, organizational, technical, and other support according to their status, the unity of their legal status, the right to resign, etc. The researcher attributed the procedure for the delivery of justice, the secrecy of the consultation room, the procedural possibility of recusal, as well as the established terms of appeal and cassation appeal to the procedural guarantees.

However, according to the author's research, the legislative provisions also contain other procedural means aimed at the full performance of judges' duties. In general, the procedural guarantees defined above in the results of the present study are aimed at strengthening the independence and impartiality of judicial proceedings and are designed to reduce the possible impact on judges. Along with this, the author substantiates that important conditions for the independence of judges are the provisions of the law that determine the administration of justice by a jury. At the same time, according to O. Skriabin (2014), the content of some legal prescriptions of the code causes uncertainty in the aspect of joint decision-making based on the consequences of the trial by a jury, professional judges and jurors. In this case, Skriabin believes, the established decision-making procedure can affect the formation of jurors' own unbiased opinions and affect the ruling of a legal decision in general, which distorts the originality of the institution of jurors as a means of combating the adoption of illegitimate and unjust decisions. This position of the scientist undoubtedly deserves attention and determines the search for a balanced model for making joint decisions by juries together with professional judges.

Legal provisions that establish certain limits of independence of judges do not contribute to ensuring judicial independence. Specifically, this refers to the imperative requirement of the law defined in Item 2 of Part 2 of Article 284 of the CPCU[1], which obliges the court to decide on the closure of criminal proceedings under the simultaneous presence of two conditions, which include the prosecutor's refusal to file a public accusation and the absence of the victim's desire to support it in court. The above limits the sovereignty, impartiality, and objectivity of the court. In this regard, O.Yu. Loshenko (2021) expresses a reasonable scientific approach to the need to clarify the validity of the prosecutor's refusal to charge, and therefore the court cannot be obliged to close criminal proceedings without investigating the circumstances of such refusal.

According to the results of the scientific research, attention is drawn to the existence of legislative gaps in the context of the subject under study. Notably, the right to access to justice in Ukraine, as in many countries of the world, is not absolute and may be limited primarily by the norms of the criminal procedural law, which make provision for exceptions to the general rule. Such exceptions relate to certain restrictions on the right to appeal against certain court decisions. The scientific discussion (Radutny, 2017) reaches its greatest extent in the part of the denial of access to the court as a result of the legislative consolidation of exceptions to the possibility of appealing the decisions of the investigating judge during the pre-trial investigation according to Part 3 of Article 309 of the CPCU[2], which limits the analysed right.

Therewith, the problem of legislative limitation of the right to legal protection of the victim has long needed a suitable solution. The current criminal procedural legislation resolved it in a certain way, introducing the institution of criminal proceedings in the form of private prosecution. But later, certain restrictions were introduced into the provisions of the CPCU[3] regarding the establishment of such grounds for closing criminal proceedings as the end of the period of pre-trial investigation after informing a person of suspicion, except for cases of bringing a person to criminal liability for committing a grave or particularly grave crime against life and health of a person. Thus, a person who has suffered moral, physical, or property damage due to a criminal offence has been deprived of access to justice in such a case.

In this context, the opinion of V. Shybiko (2013) is valid. Analysing the legal provisions on the subject of access to justice for the victim in criminal proceedings with a private form of accusation, Shybiko notes that legislators must ensure the possibility of exercising the right of every participant in criminal proceedings to judicial protection at all stages of the criminal procedure, including the trial stages.

In turn, the adoption of a decision to close criminal proceedings in a pre-trial investigation is one of

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Ibidem, 2012.

the forms of ending the pre-trial investigation and, as a result, stands in the way of further proceedings. Such a procedural decision, pursuant to the requirements of the legislation, may become the subject of consideration by an investigating judge based on the results of filing a corresponding complaint. However, as I. Hloviuk (2011) rightly points out, the judicial review of such complaints by an investigating judge during a pre-trial investigation does not have the features and properties of justice. Among such properties, Hloviuk mentions the resolution of proceedings based on the merits of the accusation, a special form of administration of justice; application of material law norms, including the resolution of the issue of the application of measures of criminal law influence. Considering the above, it is evident that the analysed basis for closing criminal proceedings restricts the victim's access to justice and is subject to exclusion from the provisions of the criminal procedural legislation. The principle of criminal proceedings under study provides not only the normative consolidation of this right, but also the procedural mechanism of its implementation in the judicial stages of the criminal procedure of Ukraine.

In the present paper, the author emphasizes that the execution of court decisions forms an integral part of the principle of criminal proceedings under study. However, this approach does not always find support in the scientific community. O.P. Kuchynska (2019) believes that access to justice, among other things, makes provision for the normative consolidation of real procedures for ensuring the productivity and effectiveness of criminal proceedings in the form of a legal and fair final procedural resolution. However, O. Balatska (2020) argues that access to justice should be separated from the binding nature of court decisions, despite the indissoluble connection between them.

Conclusions

Accumulating the opinions of scientists and the legal opinions of the European Court of Human Rights, the Constitutional Court of Ukraine and the Supreme Court of Ukraine, the authors of the present paper concluded that the structure of the principle of access to justice in the sense of Article 21 of the CPCU is versatile, the main reference point of which is the possibility of a person who believes that their rights, freedoms and legitimate interests have been violated, to apply to the court for their restoration. According to modern legislative regulations, the content of the principle of access to justice has an organizational and functional nature because it includes organizational elements, i.e., those that determine the organization of the delivery of fair justice (legality, independence, and impartiality of the court) and functional elements, i.e., those that are determined by the implementation of the main function, which is carried out by the court, is justice (access to legal aid, assistance of an interpreter, access to a court decision to be able to challenge the actions or inaction of officials, etc.).

It was proved that procedural guarantees for ensuring access to justice are tools that differ in their particular content and, together, provide participants in criminal proceedings with the opportunity to exercise the rights granted to them. Therewith, it was stated that the statutory regulation of procedural guarantees of a fair trial is far from perfect both in terms of ensuring the independence and impartiality of judicial institutions, and in terms of implementing the possibilities of a person applying to the court for the restoration of violated rights. In this regard, the authors of this study propose to exclude such grounds for closing criminal proceedings as the completion of the pre-trial investigation period after notifying a person of suspicion, except for cases of bringing a person to criminal responsibility for committing a grave or particularly grave crime against the life and health of a person, or in the case when the pre-trial investigation period has expired and no person has been informed of suspicion, which restricts the exercise of the victim's right to judicial protection.

The need to establish the principle of independence and impartiality of the court at the legislative level was substantiated. Such a principle will have an independent meaning given the fact that judicial independence in criminal proceedings is not only a guarantee of the restoration of the violated rights of a person in criminal proceedings, but also ensures the adoption of an unbiased, lawful and evidence-based court decision regarding the application of measures to ensure criminal proceedings, implementation of proper judicial control both during the pre-trial investigation and in the judicial stages, consideration of issues within the framework of international cooperation, etc.

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Засада доступу до правосуддя та гарантії її реалізації в кримінальному провадженні

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■ **Анотація**. В умовах змагальності та конфліктності кримінального провадження, коли інтереси його учасників суперечать один одному та є прямо протилежними, зростає значення забезпечення реального, а не формального, механізму реалізації права на справедливий судовий розгляд. Наведене засвідчує потребу в поглибленому вивченні структури та правових гарантій належної реалізації засади доступу до правосуддя. Мета статті – з'ясувати зміст засади доступу до правосуддя та визначити окремі гарантії її реалізації в кримінальному провадженні. Відповідно до поставленої мети і специфіки предмета дослідження застосовано комплекс методів, серед яких: формально-логічний, історико-правовий, методи порівняльного та системно-структурного аналізу, формально-юридичний, порівняльно-правовий, статистичний. Основні результати дослідження та практична цінність роботи зводяться до такого. Розкрито зміст незалежного й неупередженого суду та визначено правові гарантії незалежності судів від виконавчої влади, процесуальні гарантії незалежності судів від сторін процесу. З'ясовано законодавчо закріплені умови забезпечення незалежності суду, які нормативно закладені в положеннях ст. 34, 35, 389-391 Кримінального процесуального кодексу України. Наголошено на можливості доповнення чинного кримінального процесуального законодавства додатковою засадою – «незалежність та неупередженість суду». Обґрунтовано, що реалізація права на доступ до суду не повинна бути обмежена та має діяти нарівні для будь-якого учасника кримінального провадження, безвідносно до того, чи є він потерпілим, свідком, підозрюваним чи обвинуваченим. Аргументовано, що положення п. 10 ч. 1 ст. 284 Кримінального процесуального кодексу України обмежують право потерпілого на доступ до правосуддя, позбавляючи його можливості вже на стадії досудового розслідування відновити свої порушені кримінальним правопорушенням права, свободи й законні інтереси

■ **Ключові слова**: відновлення порушених прав; незалежність; неупередженість; судовий захист; обов'язковість судових рішень