

ACCESS TO JUSTICE DUE TO THE COVID-19 PANDEMIC

ACCESO A LA JUSTICIA DEBIDO A LA PANDEMIA DE COVID-19

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Abstract: The coronavirus pandemic (Covid-19) has caused many challenges to democracy around the world. Under the new conditions, states must implement effective quarantine measures, as well as take decisions that justifiably and least restrict human rights. In this pandemic context of many restrictions, it is important to pay attention to ensuring access to justice and to investigate its level of security. The article aims to analyze the right of access to justice in the context of the Covid-19 pandemic, both in Ukraine and other countries. The subject of the study is the public relations that arise during the exercise of the right of access to justice in the pandemic context. The research methodology includes a scope of methods, the most important of which are the dialectical method, the analysis method, the synthesis method, the comparative method, the induction method, and the deduction method. As a result of the study, an analysis of the right of access to justice in the context of Covid-19 has been made. The main conclusion of this study is that the Covid-19 pandemic has clearly shown that the transition to online technology and other innovations in the judiciary has so far been too slow.

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On the other hand, in the context of ensuring access to justice the pandemic has become a kind of trigger for the rapid development and implementation of the latest innovative technologies in the field of access to justice.

Keywords: Access to Justice, Rights and Freedoms, Quarantine Restrictions, Covid-19, Judicial Protection

Resumen: *La pandemia de coronavirus (Covid-19) ha causado muchos desafíos a la democracia en todo el mundo. Bajo las nuevas condiciones los estados deben implementar medidas de cuarentena efectivas, así como también tomar decisiones razonables que restrinjan lo menos posible los derechos humanos. En el contexto de la pandemia conviene analizar cómo garantizar el acceso a la justicia con las seguridades del caso. El artículo tiene como objetivo analizar el acceso a la justicia en el contexto de la pandemia, tanto en Ucrania como en otros países del mundo. El tema del estudio son las relaciones públicas que surgen durante el ejercicio del derecho de acceso a la justicia en este contexto de la pandemia. La metodología de investigación incluye una gama de métodos, los más importantes de los cuales son el método dialéctico, el método de análisis, el método de síntesis, el método comparativo, el método inductivo y deductivo. Como resultado del estudio, se realizó un análisis del derecho de acceso a la justicia en el contexto del Covid-19. La principal conclusión de este estudio es que la pandemia ha demostrado que la transición a la tecnología en línea y otras innovaciones en el poder judicial hasta ahora ha sido demasiado lenta. Respecto al acceso a la justicia, la pandemia se ha convertido en una especie de detonante para el rápido desarrollo e implementación de las últimas tecnologías innovadoras en el campo del acceso a la justicia.*

Palabras clave: *Acceso a la justicia, derechos y libertades, restricciones de cuarentena, Covid-19, Protección Judicial*

Summary. *I. Introduction. II. Methodology. III. Analysis of recent research. IV. Results and discussion. IV.1. General Provisions on Access to Justice. IV.2. Case-Law of the European Court of Human Rights in Ensuring the Right of Access to Justice. IV.3. Features of Ensuring the Right to Access to Justice in Ukraine. IV.4. Foreign Experience in Providing Access to Justice in the Conditions of Covid-2019. V. Conclusions. References.*

I. INTRODUCTION

The right of a person and a citizen to access to justice is one of the fundamental rights, which is not limited even in conditions of martial law and/or state of emergency. The right to judicial protection is guaranteed both at the level of the constitutions and follows from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter “the Convention”), namely the right to a fair trial and the right to an effective remedy.

According to Art. 55 of the Constitution of Ukraine (1996), human and civil rights and freedoms are protected by the court and everyone is guaranteed the right to appeal in court against decisions, actions, or omissions of public authorities, local governments, and officials.

The Constitution of Ukraine (1996) stipulates that when adopting new or amending existing laws, the content and scope of existing rights and freedoms may not be narrowed and this norm is absolute, and some exceptions to the general rule may take place only in case of martial law or state of emergency.

Besides, article 92 of the Constitution of Ukraine (1996) stipulates that only the laws of Ukraine determine the rights and freedoms of man and citizen, guarantees of these rights and freedoms, the basic responsibilities of citizens, legal principles and guarantees of entrepreneurship.

According to Art. 64 of the Constitution of Ukraine (1996) provides that the constitutional rights and freedoms of man and citizen may not be restricted, except in cases provided by the Constitution of Ukraine. In conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions.

Modern conditions, the introduction of quarantine, and a number of restrictions have made the adjustments and create challenges for the realization of human rights, including access to justice. The spread of coronavirus infection has been the starting point for changes and effective solutions to ensure that quarantine measures have minimal risks, at least in the context of fundamental human rights.

Justice has experienced considerable problems in the context of global quarantine, as the judiciary is exercised according to rules clearly defined by procedural norms. And the resolution of disputes or bringing a person to legal responsibility usually takes place with the direct participation in the court hearing: the person, his/her representative, and other participants in the court hearing, depending on the case. Besides, the work of the courts is also ensured by the court staff, which consists of a significant number of employees.

In addition, the challenges of the scale of future problems already raise the issue of alternative ways of administering justice (for example, online court), which, on the one hand, will not depend on such emergencies and, on the other hand, simplify formal litigation procedures.

Thus, an important condition for ensuring human and civil rights and freedoms is the use of all opportunities to ensure the appropriate level of constitutional human rights and access to justice in quarantine.

II. METHODOLOGY

Various methods have been used in the study of access to justice in the context of the Covid-19 pandemic, in particular the dialectical method, the analysis method, the synthesis method, the comparative method, the induction method, and the deduction method.

In particular, in order to study the essence of access to justice and its development in quarantine, a dialectical method is used.

The method of analysis helped to research the issues of access to justice regarding the right of access to justice, the right to protection of the violated rights, the right to appeal against illegal decisions of public authorities.

The method of synthesis made it possible to study access to justice as a whole, which is ensured by proper legal regulation, the actual actions of persons—judges and court staff, as well as the proper functioning of technical means.

The comparative method was used to compare national and foreign legislation governing access to justice in the context of the pandemic.

The induction method was used to study the general provisions on access to justice through a study of the specifics of access to justice in a pandemic and an analysis of the work of some local courts, based on which access to justice in Covid-19 is analyzed.

The deduction is used to study partial phenomena. The deductive method made it possible to verify the assertion that the effectiveness of access to justice depends on a clear legal framework, technical conditions of implementation and the human factor of the assertion.

III. ANALYSIS OF RECENT RESEARCH

Currently, the problem of access to justice has been studied by many scientists and scholars, but the issue of access to justice in the context of the

Covid-19 pandemic is extremely relevant at the present stage and remains insufficiently studied.

For a comprehensive study of this issue, the works of such scientists and legal practitioners as Bernazyuk (2018), Matat (2019), Myronenko-Shulgan (2020), Gong (2020), Ovcharenko (2008), Loggerenberg (2016), Yasinok (2013), Osna (2019), Allende Pérez de Arce (2019), Arruda Alvim Wambier and Scarpinella Bueno (2016) were analyzed.

Bernazyuk (2018) considered the right of access to judicial protection in the context of meeting the deadlines for applying to the court and made a detailed analysis of the case-law of the European Court of Human Rights. The scholar believes that the right to access to justice in Ukraine, as well as in foreign countries, is not absolute and is limited primarily by the established deadline for appeal a court. However, the renewal of the missed term for appellate or cassation appeal of a court decision is a mechanism to ensure a certain flexibility and proportionality in resolving the issue of admission of the appellant to the appellate or cassation courts.

In times of pandemic, ensuring the right to justice from the point of view of meeting the deadlines for recourse to the court, in particular, the right to reinstatement of deadlines violated for objective reasons, is of particular importance. After all, under the condition of quarantine, a significant part of the participants in the process sometimes do not have the physical ability to go to court in person. In this context, the mechanisms of remote recourse to the court and remote trial are of great importance.

Matat (2019) devoted his work to the study of electronic court in Ukraine. The researcher analyzed the possibilities for the full-scale introduction of e-court in Ukraine, the legal regulation of this issue, as well as how such introduction will affect the right to access to court in Ukraine.

The author makes a reasonable conclusion that e-court can influence the solution of a number of global problems in the judiciary. Among them are access and accessibility of justice in general, optimization of document circulation in courts, issues of communication of courts with state bodies and participants of judicial process, economy of resources (budgetary, administrative, time), acceleration of consideration of cases, improvement of quality of judicial services, simplification of administration of justice.

Myronenko-Shulgan (2020) analyzed in detail the digitalization in the conditions of the Covid-19 pandemic. In particular, the author considered the history of the introduction of the rules governing the use of a digital signature into the legislation of Ukraine. The Unified Digital Signature (UDS) has its own history and is related to the harmonization of Ukraine's legislation with the European one. Thus, on December 13, 1999, Directive 1999/93/EC of the European Parliament and of the Council on a system of

electronic signatures applicable within the Community (1999) appeared, which enabled the participating countries to develop their own electronic document management policies.

In 2003, the Law of Ukraine “On Electronic Digital Signature” (2003) was adopted, which introduced the concept of electronic digital signature into the national legal field. After some time, it became clear that the EDS should become an important element in business document management, and its implementation was more than appropriate.

In 2016, the European Directive was repealed and replaced by Eidas, the 2014 E.U. Regulation on electronic identification, verification and trust services. Therefore, on November 7, 2018, a new Law of Ukraine “On Electronic Trust Services” (2018) came into force.

The adoption of the new law paved the way for mutual recognition of Ukrainian and foreign public keys certificates and electronic (qualified digital) signatures.

The creation of the Ministry of Digital Transformation (Ministry of Digital Affairs) in 2019 is also of great importance in the process of digitalization. Despite numerous discussions in the Cabinet of Ministers of Ukraine and the media about its feasibility, the Ministry of Digital Transformation has acquired the status of a full-fledged government structure and pursues state policy in the field of digitalization, digital economy and e-democracy.

The timely harmonization of Ukrainian legislation on the use of digital signatures with European legislation has helped to address a number of issues related to access to justice during a pandemic.

In particular, a large number of people who issued digital signatures were able to fully participate in the trial remotely.

Nan Gong (2020) explored new trends and features of the development of China’s civil procedural law system. Thus, the paper describes the fact that the judicial system in China is generally based on the traditions of Chinese culture (attention to judicial mediation, the principle of good faith, etc.). In borrowing the basic principles of the Western judicial system and amending it, the Chinese legislator was based on the experience of domestic Chinese jurisprudence and took into account the realities of domestic civil justice. Also, the author drew attention to the fact that amendments to the Code must correspond not only to the objective reality but also to the laws and basic principles of judicial review. Only with the support of the basic principles of civil justice and guided by them, it is possible to achieve comprehensive coordination of work on the design of the judiciary, avoiding distractions from solving each problem separately and making the judiciary truly effective. According to the author, the judiciary plays an increasingly

important role in resolving disputes, so it must take into account the interests of all participants in the simultaneous protection of the rights of the parties in the lawsuit, thus maintaining the overall justice and stability of society. In this context, the author believes that it is important to ensure the key right, access to justice.

Ovcharenko (2008) considered the availability of justice and guarantees of its realization. Thus, the researcher analyzed the scientific works and works on the philosophy of law, sociology, general theory of state and law, constitutional law, the theory of procedural branches of law, and the theoretical foundations of the judiciary. In her work, the author came to the following conclusions: access to justice is interpreted as a state of organization of the judiciary and jurisdictional activity of the court in a democratic society that meets the needs of society in resolving legally significant cases and meets the requirements of international law; this principle is considered comprehensively in the system of principles of organization and activity of the judiciary; the content of access to justice is revealed through a set of its elements, among which legal, social and economic; the system of organizational and legal guarantees of access to justice of the authorities is investigated and the ways of their improvement are suggested; studied the legal nature of the availability of mechanisms for appealing court decisions, emphasized the relationship between the right to appeal and review court decisions, and named the legal restrictions on this right; the right of access to a court as a component of the right to a fair trial is considered as a procedural right-guarantee provided by the norms of international law and enshrined at the constitutional level, the provision of which is a direct duty of the state.

Sagaidak, Tuz and Holovatska (2020) also analyzed the issue of access to justice. Thus, lawyers emphasized that judicial reform has created significant problems in ensuring access to justice, due to the introduction of valuation concepts (knowingly unfounded and artificial lawsuits), the unwillingness of the state and society to introduce a lawyer's monopoly, the establishment of unjustified financial barriers to the court decision, etc. These problems can be overcome by amending the procedural codes developed based on the case-law of the European Court of Human Rights and the positive experience of other states, taking into account the peculiarities of the legal and economic systems of Ukraine. Their work helps to understand that in the conditions of quarantine, in addition to the above-mentioned obstacles, the provision of access to justice is significantly influenced by the human factor.

Loggerenberg (2016) researched the civil proceedings of South Africa. The author notes that the South African adversarial system of civil litigation

in the High Court owes its origin to England, where the main sources—Acts of Parliament and court rules, are constantly changing, trying to meet the changing needs of society. The High Court performs its inherent function to regulate the process and does so to strengthen access to justice. The advantage of South Africa’s justice system, according to the author, is that the fundamental rights of the public enshrined in the Constitution are protected, in particular the right to a trial and alternative mechanisms for resolving civil disputes. The author also emphasizes that the introduction of modern technologies in civil proceedings is inevitable. In particular, it is about online litigation.

Allende Pérez de Arce (2019) considered the peculiarities of the functioning of Internet courts. One of the main fears of the author is the lack of Internet access for some segments of citizens. In his work, the scientist proposes to introduce this mechanism for resolving disputes, without restricting the right to judicial protection for those people who do not have access to the Internet. In addition, the author proposes to accelerate the use of modern technologies in litigation, such as filing documents online (electronic application), the use of video conferencing, digitization of documents, etc.

In general, agreeing with the author’s opinion on the need for comprehensive introduction of modern technologies in the field of litigation, it should be noted that some aspects of such introduction require additional scientific consideration. In particular, it is hardly possible to transfer to online the entire document flow that accompanies any lawsuit. After all, for example, the evidence by which the parties substantiate their position may not always be subject to digitalization. For example, physical evidence that may exist in any objective form sometimes cannot be examined by a judge other than in person. Accordingly, it makes sense to digitalize certain, clearly defined processes that can be unambiguously verified by competent persons.

Teresa Alvim Wambier & Scarpinella Bueno (2016) considered the Brazilian model of civil procedural law. The text of the article analyzes the novelties of the Civil Procedure Code of Brazil, according to which a judge has the right to deviate from the law and make decisions that establish the rule of law; evaluate the evidence at its discretion, classify it and make decisions based on it; to set “precedents”, although formally Brazilian legislation is not a precedent. The authors paid a lot of attention to the issues of case law in the context of novelties of civil procedural law. Thus, over the last twenty years, the Brazilian civil process has changed dramatically. These changes led to the creation of a new Code of Civil Procedure, which included several novelties not inherent in Brazilian law. The authors point

out that all disputes that become the subject of a judicial appeal cannot be settled by regulations, but court decisions under the new civil procedural law may contain legal norms. On the other hand, this means that in Brazil everyone has access to justice, which is a positive factor.

Thus, the scientific study of access to justice in the context of the Covid-19 pandemic, despite the relatively short quarantine period, is urgent and relevant.

IV. RESULTS AND DISCUSSION

IV.1. General Provisions on Access to Justice

The Law of Ukraine “On Protection of the Population from Infectious Diseases” (2020) regulates the issue of quarantine. According to this law, quarantine is established and abolished by the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine establishes temporary restrictions on the rights of individuals and legal entities and additional responsibilities imposed on them.

Under the Resolution of the Cabinet of Ministers of Ukraine No 211 of March 11, 2020 “On prevention of the spread of coronavirus Covid-19” (with further changes) quarantine was established on the territory of Ukraine.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) guarantees everyone the right to a fair trial, including the right to a hearing. The same provisions of the Convention, as already noted, are also embodied in Art. 55 of the Constitution of Ukraine (1996).

According to the Decision of the Constitutional Court of Ukraine in the case of official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine “On Information” and Article 12 of the Law of Ukraine “On the Prosecutor’s Office” (case of KG Ustymenko, 1997), the provisions of Article 55 of the Constitution of Ukraine must be understood as meaning that everyone (a citizen of Ukraine, a foreigner, and a stateless person) have a state-guaranteed right to appeal in a court of general jurisdiction decisions, actions or omissions of any public authority, local government, officials, if a citizen of Ukraine, a foreigner, a stateless person believe that their decisions, actions or omissions violate or infringe on the rights and freedoms of a citizen of Ukraine, a foreigner, a stateless person or impede their implementation, and therefore require legal protection in court.

In general, scholars believe that the right to a trial means the right of a person to seek redress and the right to have his or her case heard and decided

by a court. To uphold this right, a person must be able to handle these rights without any restrictions, obstacles, or complications. The ability of a person to obtain judicial protection without hindrance is the main substantive aspect of the concept of access to justice.

To this end, several measures have been taken by the highest courts to prevent the spread of coronavirus infection and to ensure access to justice.

Thus, on March 11, the Chairman of the Council of Judges of Ukraine requested citizens to refrain from participating in court hearings if the hearings do not require attendance, as well as to refrain from visiting the court if there are signs of any viral disease. In March, the Chairman of the Council of Judges of Ukraine marked the courts with a recommendation to establish a special regime for the work of courts (Chairman of the Council of Judges, 2020). Among the recommendations are the following:

- to submit documents to the court remotely (in electronic form);
- to apply to the court for consideration in their absence on the available materials in the case; and,
- to refrain from visiting the court premises, when deciding on the possibility of videoconferencing it should be borne in mind that such consideration does not completely prevent the spread of the disease, as it still presupposes the need for citizens to come to the premises of the nearest court (according to the Ukrainian legislation).

After receiving such recommendations, some courts ceased to hear cases in court, except for “urgent”.

The High Council of Justice provided recommendations to the courts on the administration of justice on March 26, 2020, namely:

- continuous administration of urgent cases, which are determined by procedural codes and judges;
- to organize a flexible schedule of judges and court staff, the meeting of judges to establish the rotation of judges to resolve urgent procedural issues and urgent cases in special proceedings during the quarantine;
- to restrict access to court hearings of persons who are not participants in the proceedings; to hold court hearings with the use of personal protective equipment by judges and parties;
- to move to the processing of electronic correspondence; and,
- to inform the participants of court proceedings of the possibility of postponing the consideration of cases in connection with quarantine measures.

On March 30, 2020, the Verkhovna Rada of Ukraine amended the Civil Procedure Code of Ukraine (2004), the Commercial Procedural Code of Ukraine (1991), the Code of Administrative Procedure of Ukraine (2005), and the Criminal Procedure Code of Ukraine (2012). Thus, for the period of quarantine, the terms of appeal to the court and procedural terms in civil, commercial and administrative cases were extended and to the participants of civil, commercial and administrative cases were given the right to engage in the trial by videoconference, using technical means, being outside the court (in this case, the participant's identity is confirmed by electronic digital signature, in its absence - in the manner prescribed by law). At the same time, the court has the right to restrict access to the hearing of persons who are not participants in the process, if participation in the hearing will endanger the life or health of the person.

These innovations are progressive, but in some cases will prevent the court from conducting proceedings, as some cases are effectively suspended if at least one of the parties is not active. How such recommendations and innovations are implemented will be considered below.

IV.2. Case-Law of the European Court of Human Rights in Ensuring the Right of Access to Justice

To perform the study of the issue of access to justice in the context of the Covid-19 pandemic, it is important to analyze the case-law of the European Court of Human Rights on this issue.

Ukrainian courts use the Convention and the case-law of the European Court of Human Rights as a source of law when considering cases (On the implementation of decisions and application of the case law of the European Court of Human Rights, 2006).

The Convention for the Protection of Human Rights and Fundamental Freedoms is part of the national legislation of Ukraine. Article 19 of the Convention stipulates that the Parties undertake to comply with the final judgments of the European Court of Human Rights in all cases to which they are parties.

The provisions of the above-mentioned Convention also provide for a derogation from certain rights, but only to the extent required by the provisions, and provided that such measures do not conflict with its other obligations under international law.

Therefore, in the context of restricting rights on the territory of Ukraine and justifying the limits of interference with such rights, it is necessary to establish whether there was indeed a public danger, whether

measures were taken concerning the threat and whether national legislation was sufficient.

It is necessary to understand the importance of maintaining an optimal balance between ensuring the realization of a person's right of access to justice and the principle of legal certainty.

From the analysis of the decisions of the European Court of Human Rights, it is possible to single out such fundamental justifications for ensuring access to justice as:

- the restrictions on the use of the right to judicial protection cannot be imposed in such a way or to such an extent that the very essence of the right is violated;
- these restrictions must pursue a legitimate aim and there must be a reasonable degree of proportionality between the means employed and the objectives pursued (*Mushta v. Ukraine*, 2010); and,
- the strict application of the time limit without regard to the circumstances of the case may be disproportionate to the purpose of ensuring legal certainty and the proper administration of justice, as well as hindering the use of available remedies (*Stanio v. Belgium*, 2009).

The European Court of Human Rights also considers that it is necessary to examine whether the restriction of a person's right of access to a court is proportionate (*Melnik v. Ukraine*, 2006).

Therefore, in ensuring access to justice in Ukraine under Covid-19, it is essential to take into account the provisions of the Convention and the case-law of the European Court of Human Rights.

IV.3. Features of Ensuring the Right to Access to Justice in Ukraine

Let's consider the features of providing access to justice in the conditions of Covid-19 in more detail.

In general, going to court is an important means of involving the parties in the case and ensuring civil rights. The right to sue is one of the basic constitutional rights of the people. Ensuring and respect for the right to sue—the purpose of the law and one of the main requirements for the people's courts.

In a pandemic, the Ukrainian legislature and courts have had to take on the challenges of the times and make changes that should ensure real access to justice.

Thus, during the quarantine a full-fledged electronic court appeared in Ukraine. According to the Law of Ukraine “On the Judiciary and the Status of Judges” (2016), the issue of e-justice has relay on the State Judicial

Administration of Ukraine. According to the order of the State Judicial Administration (2018) of Ukraine on testing the subsystem Electronic Court in local and appellate courts, the subsystem Electronic Court operates in test mode.

However, in the conditions of quarantine, remote justice in the conditions of national quarantine is not limited exclusively to the issue of the introduction of full-fledged work of the Electronic Court.

In addition, the problem of access to justice is solved by providing the possibility of holding a court hearing by videoconference. Thus, with regard to participation in the hearing by videoconference, during the quarantine, amendments to the procedural codes came into force, which provide for the possibility for the duration of the quarantine to participate in the hearing by videoconference outside the court using their own technical means. This means that lawyers and representatives of the parties and other participants in the trial will be able to participate in the hearing from their own computer or telephone. We consider it necessary to maintain and continue this experience after the end of quarantine.

An important problem is a real possibility of getting acquainted with the case materials remotely. Currently, only a few courts provide access to case materials remotely, which is not enough.

It is also important to ensure the openness of the trial and the right of any person to be present at the hearing, as this is an important component of the constitutional principle of publicity of the trial. The provision on the right of the court to restrict access to hearings of persons who are not participants in the proceedings will contribute to abuse by the court. Therefore, it is correct to provide that in case the court restricts access to the court hearing of the visitors, it is necessary to provide a mandatory video broadcast of this hearing on the Internet.

Thus, during quarantine, the use of electronic services is timely, justified, and minimizes the risks of infection with the Covid-19 virus, while exercising the right of citizens to a fair trial is guaranteed by both the Constitution of Ukraine and the European Convention on Human Rights.

IV.4. Foreign Experience in Providing Access to Justice in the Conditions of Covid-2019

In order to comprehensively analyze the provision of access to justice in Ukraine in the context of Covid-19 and make suggestions and comments, it is important to at least briefly analyze the foreign experience in regulating the issue of access to justice during the quarantine.

Thus, for example, in the United Kingdom, for example, the Grand Court of England has announced that testing has begun on the possibility of holding all hearings by videoconference. In the face of the Covid-19 pandemic, UK courts are providing court hearings using the MeetMe app, Skype for Business video conferencing.

In the Republic of Lithuania, there is a service with which you can submit procedural documents online. Also, since 2015 in the Republic of Lithuania there is an opportunity to participate in the case by videoconference. E-Court systems operate in Australia and Switzerland in a way that ensures that litigation models work that allows litigation without unnecessary physical transactions. Australia's e-litigation system provides the videoconference via Skype, etc.

In Singapore, a large number of court hearings are held by teleconference, videoconference, in written form, and even by e-mail using the Zoom application.

In the United States, there is an electronic court system with free access, through which it is possible to obtain information about the court document, read the register of applications, study the progress of the case and the history of decisions, as well as view the calendar of scheduled hearings.

Thus, despite the many issues that courts had to deal with in the context of quarantine, many foreign countries were able to deal with the Covid-19 pandemic.

V. CONCLUSIONS

As a result of the study, the relations related to ensuring access to justice both in Ukraine and in other countries of the world in the context of the Covid-19 pandemic were analyzed.

1. The right of a person and a citizen to access to justice as an opportunity for a person to obtain judicial protection without hindrance is one of the fundamental rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms and which cannot be limited even in a state of emergency. However, the proper level of this right is not always ensured due to various reasons (for example, shortcomings in public policy, lack of material, and technical base in countries with low GDP). In particular, in the conditions of force majeure, which is the Covid-19 pandemic, entire sections of the population were left without the opportunity to defend their rights in court.

2. An example of positive steps taken by the government to ensure citizens' access to justice in a pandemic is the amendment to the Procedural Codes of Ukraine of March 30, 2020, by which the Verkhovna Rada of Ukraine provided for the possibility of citizens to participate in the trial by videoconference, using their technical means, being outside the courtroom. Nevertheless, the legislator did not foresee the consequences of passive behavior of one of the parties to the proceedings, as a result of which the case may be effectively terminated.

3. Proposing practical steps that should be taken by Ukraine and the governments of the other world's countries to ensure access to justice in a pandemic or other cases of force majeure, legislators should focus on the following:

(i) At the legislative level, an effective mechanism for access to justice should be established. One of the elements of such access is the organization of court proceedings by videoconference. Although the relevant norm is present in the legislation of some countries of the world, in particular, in Ukraine, the practical implementation of this norm often faces problems. Such problems may include the lack of appropriate technical means by the parties to the process or the complexity of the process of remote identification of process participants. Over time, it is necessary to ensure the functioning of a full-fledged electronic court.

(ii) To establish an exhaustive list of categories of cases that must be considered by the court unconditionally, notwithstanding any extraordinary circumstances. For example, such a list should include cases related to the protection of personal non-property rights of citizens, such as the right to life, health, honor, dignity, business reputation. Such categories of cases should be dealt with quickly and in a simplified manner.

(iii) To add the mechanisms of accountability and protection against abuse of constitutional rights and freedoms of man and citizen. Such a mechanism could be a website or a telephone hotline through which individuals can obtain all information on access to justice in a pandemic.

4. It should also be noted that citizens whose legitimate rights and interests are violated by restrictive measures related to the need to counter the pandemic should be able to challenge such measures in court. That is, even under quarantine restrictions, the right to judicial protection must remain inviolable.

5. Further research in the study of access to justice in the context of the Covid-19 pandemic concerns the study of developments in the automation of applications and petitions to the court, the possibility of developing a single portal with a list of applications to fill and send an electronic digital signature, participation in meetings video conferencing via

Zoom or other communication channels. The problem of the functioning of the e-court needs additional scientific understanding, given the possible misunderstandings with the provision of appropriate and admissible evidence and the possibility of their thorough study, the problem of identifying persons involved in the case, especially when their number is large.

REFERENCES

- Allende Pérez de Arce, P. (2019). Doctrina Tribunales civiles en línea: Una propuesta para introducirlos sin afectar el derecho a acceder a la justicia de quienes no están conectados a internet. *Revista chilena de derecho y tecnología*, 8(1), 185-206. DOI 10.5354/0719-2584.2019.51991.
- Arruda Alvim Wambier, T., & Scarpinella Bueno, C. (2016). Civil Justice in Brazil. *BRICS Law Journal*, 3(4), 6-40. DOI 10.21684/2412-2343-2016-3-4-6-40.
- Bernazyuk, J. (2018). The right to access to judicial protection in the context of compliance with the terms of recourse to the court, the case law of the European Court of Human Rights. *Judicial and legal newspaper*. In <https://sud.ua/ru/news/blog/123832-pravo-na-dostup-do-sudovogo-zakhistu-v-konteksti-dotrimannya-strokov-zvernennya-do-sudu-praktika-yespl>.
- Constitutional Court of Ukraine. (1997, October 30). Case n° 5-zp/1997 of official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine “On Information” and Article 12 of the Law of Ukraine “On the Prosecutor’s Office”: Judgment. In <http://ccu.gov.ua/storinka-knygy/4391-dostup-do-sudu>
- Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols n° 11 and 14 (1950).
- Ensuring access to justice in a pandemic: GRP appeals to the authorities. (2020). *Legal newspaper online*. In <https://yur-gazeta.com/golovna/zabezpechennya-dostupu-do-pravosudnya-v-umovah-pandemiyi-vrp-zvernulasya-do-vladi.html>.
- European Court of Human Rights. (2006). *Case of Melnik v Ukraine: Judgment*. In <https://www.hr-dp.org/contents/444>.
- European Court of Human Rights. (2009). *Case Stagno v. Belgium: Judgment*. In <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-2794524-3059566%22%7D>
- European Court of Human Rights. (2010). *Case of Mushta v. Ukraine: Judgment*. In <https://lovdata.no/static/EMDN/emd-2006-008863.pdf>
- European Union. (1999). Directive 1999/93/EC of the European Parliament and of the Council on a system of electronic signatures applicable within the Community. In <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0093>.

- Gong, N. (2020). New trends and features of the development of the system of civil procedural law in China. *Bulletin of St. Petersburg University. Law 1*, 192-206. <https://doi.org/10.21638/spbu14.2020.114>
- Loggerenberg, D. v. (2016). Civil Justice in South Africa. *BRICS Law Journal*, 3(4), 125-147.
- Matat, A. (2019). Electronic court in Ukraine: ready, study, go. *Website of the Center for Democracy and the Rule of Law*. In <https://cedem.org.ua/articles/elektronnyj-sud-v-ukrayini-ready-steady-go/>.
- Myronenko-Shulgan, O. (2020). Digitalization in the conditions of the Covid-19 pandemic. Electronic digital signature as a tool for access to justice. *Website of the National Bar Association of Ukraine*. In <https://unba.org.ua/publications/5478-didzhitalizaciya-v-umovah-pandemii-Covid-19-elektronnij-cifrovij-pidpis-yak-instrument-dostupu-do-pravosuddya.html>
- Osna, G. (2019). Acceso a la justicia, cultura y online dispute resolution. *Derecho PUCP*, 83, 9-27. DOI 10.18800/derechopucp.201902.001.
- Ovcharenko, O.M. (2008). *Access to justice and guarantees of its implementation*. Kharkiv: Law. In http://library.nlu.edu.ua/POLN_TEXT/KNIGI/MonoOvcharenko.pdf.
- Sagaidak I., Tuz A., & Holovatska A. (2020). Access to court: to provide or to deprive? *Jurimex*. In <http://jurblog.com.ua/2018/12/dostup-do-sudu-zabezpechiti-chi-pozbaviti>.
- Ukraine. (1991). Commercial Procedural Code of Ukraine: Law 1798-XII. In <https://zakon.rada.gov.ua/laws/show/1798-12>.
- Ukraine. (1992). On information: Law 2657-XII. In <https://zakon.rada.gov.ua/laws/show/2657-12>.
- Ukraine. (1996). Constitution of Ukraine. In <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.
- Ukraine. (2003). On Electronic Digital Signature. In <https://zakon.rada.gov.ua/laws/show/852-15#Text>.
- Ukraine. (2004). Civil Procedure Code of Ukraine: Law 1618-IV. In <https://zakon.rada.gov.ua/laws/show/1618-15>.
- Ukraine. (2005). Code of Administrative Procedure of Ukraine: Law 2747-IV. In <https://zakon2.rada.gov.ua/laws/show/2747-15>.
- Ukraine. (2006). On the implementation of decisions and application of the case law of the European Court of Human Rights: Law 3477-IV. In <https://zakon.rada.gov.ua/laws/show/3477-15>.
- Ukraine. (2012). Criminal Procedure Code of Ukraine: Law 4651-VI. In <https://zakon.rada.gov.ua/laws/card/4651-17>.
- Ukraine. (2015). On ensuring the right to a fair trial: Law 192-VIII. In <https://zakon.rada.gov.ua/laws/show/192-19>.

- Ukraine. (2016). On the judiciary and the status of judges: Law 1402-VIII. In <https://zakon.rada.gov.ua/laws/show/1402-19>.
- Ukraine. (2018). On Electronic Trust Services. In <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.
- Ukraine. (2020). On Amendments to the Law of Ukraine “On Protection of the Population from Infectious Diseases” on Prevention of the Spread of Coronavirus Disease (Covid-19): Law 555-IX. In <https://zakon.rada.gov.ua/laws/show/555-20>.
- Ukraine. (2020). On protection of the population from infectious diseases: Law 1645-III. In <https://zakon.rada.gov.ua/laws/show/1645-14>.
- Ukraine. Cabinet of Ministers. (2020). On prevention of the spread of coronavirus Covid-19 on the territory of Ukraine: Resolution 211. In <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrm020420ayini-vid-11-bereznya-2020-r-211>.
- Ukraine. Chairman of the Council of Judges. (2020). Letter 9 rs-186/20. In <http://rsu.gov.ua/uploads/news/no9rs-18620-vid-16032020-verhovn-92b86c6546.pdf>.
- Ukraine. High Council of Justice. (2020). On access to justice in the context of the SARS-CoV-2 coronary virus pandemic of acute respiratory disease Covid-19: Decision. In <https://court.gov.ua/press/news/916824/>.
- Ukraine. State Judicial Administration. (2018). On testing the subsystem “Electronic Court” in local and appellate courts began operation of the subsystem “Electronic Court” in test mode: Order. In https://dsa.court.gov.ua/userfiles/media/628_18.pdf.
- Yasinok, M.M. (2013). Access to justice as an important guarantee of a democratic society. *University Scientific Notes*, 45(1), 79-85. In file:///C:/Users/irenm/Downloads/Unzap_2013_1_13.pdf.