

Legal Principles of Justice Administration: Implementing the European Union's Experience into Ukrainian Legislation

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DOI: 10.32353/khrife.4.2024.09 UDC 005.336.4(4-41):343(477)

Received: 23.08.2024 / Reviewed: 10.09.2024 / Accepted for Print: 25.12.2024 /

Available online: 30.12.2024



The research paper's purpose is to analyze the legal framework for administering justice in the European Union from the standpoint of justice principles enshrined in various legal regulations (and their actual implementation as reflected in the practice of the Court of Justice of the European Union and the European Court of Human Rights) as a component of general law principles, and to compare them with the corresponding provisions of current Ukrainian legislation. To fulfill the goal, a systematic approach was chosen from general scientific and special scientific methods; the ones most widely applied are: historical-legal, formal-legal, systemic-structural, and comparative-legal. The paper presents a systematic analysis of the current legislation and case-law of the European Union and Ukraine, singling out the principles of justice administration and the current legal positions of the courts on their application and protection. The author pinpoints that there is a high correlation between individual principles of justice within their system and suggests that the principles of justice should be viewed comprehensively, according to the most related groups. From the researcher's perspective, current Ukrainian legislation contains a unified system of basic principles of justice, which meets the European standards, and the national judicial practice of ensuring their observance is developed with due consideration of European case law.

This article is translation of the original Ukrainian content, which source is available at the link: <https://khrife-journal.org/index.php/journal> (translated by Daryna Dukhnenko). The author acknowledges translation as corresponding to the original.

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Keywords: principles of justice; principles of law; European Union; trial; case law; European law sources.

Research Problem Formulation

When considering the legal basis for justice administration, we prioritize the principles of its administration, which in turn are inextricably linked to general law principles.

For instance, V. Komarov et al. distinguish between organizational-functional principles and functional principles. Thus, the organizational and functional principles include the principles of justice administration only by a court based on equality of citizens before the law, independence of judges and their subordination to the law, single-person and collegial consideration of civil cases, the state language of court proceedings, open court. The group of functional ones comprises: the principles of legitimacy, optionality, adversariality, publicity and judicial guidance, procedural equality of parties, three-instance nature and ensuring appeal and cassation appeal of court decisions, orality, immediacy, bindingness of court decisions¹.

Let us stress that modern legal literature contains many classifications of the principles of law both at the level of a single state and within the framework of international law. O. Sniherov and N. Filipenko, elaborating on this concept, believe that “the main principles of coordination are: legality; equality of subjects of co-

ordination activity in definition of problematic issues concerning crime and corruption counteraction, development of offers regarding measures directed on their overcoming; independence of each subject during implementation of agreed decisions; responsibility of heads of bodies within their competence for high-quality and timely implementation of agreed measures; publicity of coordination activities, publication of working results in the media within the framework that do not contradict the requirements of the legislation on protection of human and civil rights, freedoms, state and other secrets”².

As stated by V. Baraniak, the principles of interaction between an investigator and a forensic expert (in the context of organizational support principles for law enforcement and law application activities) presuppose:

- the principle of legitimacy. That is, the interaction between an investigator and a forensic expert should stem from clear legal regulation and be carried out according to the competence of each of them;
- the principle of purposefulness. Interaction purposes can be both successful conduct of an individual investigative action (e.g., conducting an interrogation in the presence and with the participation of a forensic expert), and obtaining information (e.g., in the form of new materials required for

1 Комаров В. В., Бігун В. А., Баранкова В. В. та ін. Курс цивільного процесу / за ред. В. В. Комарова. Харків, 2011. С. 124. URL: <https://files.znu.edu.ua/files/Bibliobooks/Inshi44/0033905.pdf> (date accessed: 20.08.2024).

2 Снігерьев О. П., Філіпенко Н. Є. Окремі питання взаємодії та координування роботи судово-експертних установ України з іншими суб'єктами під час здійснення превентивної діяльності *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 21. С. 201–202. DOI: [10.32353/khrife.1.2020.13](https://doi.org/10.32353/khrife.1.2020.13) (date accessed: 20.08.2024).

providing a conclusion), and ultimately: criminal offense investigation;

- *the principle of role differentiation;*
- *the principle of coherence”³.*

We agree with the classification proposed by A. Kolodii. It states that the principle of justice is a component of law enforcement principles, similar to the principle of legal liability⁴.

In our opinion, it is quite appropriate that belonging of the principles of justice to the law enforcement sector reflects their legal nature and principal task: protection of the violated right and legally protected interest of a person who has applied to the court for such protection. Within the European Union's (hereinafter referred to as the EU) justice system, its principles contribute to harmonization of legal rules of its Member States, ensure their uniform interpretation, and fill gaps in legislation.

Therefore, the study of justice administration principles in the EU, their correlation with each other, and their causal relationship in the event of a violation will lead to the development of a single stable system and the revelation of the legal nature of such principles, which consequently will accelerate the integration of European standards into the national judicial system and enhance the efficiency of their application during justice administration.

Article Purpose

Analyze the legal grounds for justice administration in the EU set forth in the current

EU legal regulations and peculiarities of their actual implementation outlined in the practice of the Court of Justice of the European Union (hereinafter referred to as the CJEU) and the European Court of Human Rights (hereinafter referred to as the ECtHR), with the intention of forming their system. Determine correlation between them and conformity of Ukrainian legislation with these European standards.

Research Methods

Given the peculiarities of the purpose, the author chose a systematic approach and applied general scientific and special scientific research methods: *historical and legal* (contributed to the retrospective analysis on the formation and classification of the principles of justice); *systemic and structural* (employed for a systematic consideration of the principles of justice as a component of general law principles); *formal legal* (laid the groundwork for the disclosure of certain legal concepts); *comparative legal* (helped to compare the content and implementation of certain principles of justice in order to establish the fact of their correlation).

Applying these methods helped to validate and clarify the scientific findings and recommendations of this scientific study.

Analysis of Essential Researches and Publications

Legal principles for justice administration in the EU were analyzed by domestic

3 Бараняк В. М. Нормативно-правове регулювання, організація і тактика взаємодії слідчого з експертом. *Вісник Національного університету «Львівська політехніка». Серія : Юридичні науки.* 2015. № 813. С. 218. URL: http://nbuv.gov.ua/UJRN/vnulpurn_2015_813_34 (date accessed: 20.08.2024).

4 Колодій А. М. Принципи права: генеза, поняття, класифікація та реалізація *Альманах права.* 2012. Вип. 3. С. 42—46. URL: <http://dspace.nbuv.gov.ua/handle/123456789/63807> (date accessed: 20.08.2024).

(in particular, V. Bryntsev ⁵, V. Komarov ⁶, I. Nazarov ⁷, V. Opryshko at el. ⁸, O. Salenko ⁹, N. Filipenko) and foreign researchers (A. Jose ¹⁰, L. Pech ¹¹, T. Tridimas ¹²) at el. At the same time, taking into account numerous normative sources and the lack of a unified classification, the study of the EU's justice administration principles is still relevant today in terms of enhancing the efficiency of their application to fulfil goals of the judicial system.

Main Content Presentation

It is essential to point out that the EU's principles of justice are a component of many legal regulations. However, there is still no single, universal, exhaustive list of unified rules. In this connection, for the analysis of the consolidation of justice principles in the system of EU legislation sources, the author of this scientific research applied the following differentiation:

- *primary legislation* (EU treaties): the Treaty Establishing the European Community (Treaty Establishing the

European Economic Community; Treaty of Rome, 1957), the Treaty on European Union (Maastricht Treaty, 1992; hereinafter referred to as *the EU Treaty*), the Treaty of Amsterdam amending the EU Treaty, the Treaties establishing the European Communities (Amsterdam Treaty, 1997), the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities (Nice Treaty, 2001), The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon Treaty, 2007), the Charter of Fundamental Rights of the European Union (2000; hereinafter referred to as *the Charter*), etc.;

- *EU secondary legislation*: regulations, directives, judgments (decisions);
- *international treaties*: the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human

- 5 Бринцев В. Д. Стандарти правової держави: втілення у національну модель організаційного забезпечення судової влади : монографія. Харків, 2010. 464 с. URL: https://library.nlu.edu.ua/POLN_TEXT/MONOGRAFIJ_2011/Brincev_2010.pdf (date accessed: 20.08.2024).
- 6 Комаров В. В., Бігун В. А., Баранкова В. В. та ін. Знач. твір. URL: <https://files.znu.edu.ua/files/Bibliobooks/Inshi44/0033905.pdf> (date accessed: 20.08.2024).
- 7 Назаров І. В. Судові системи країн Європейського Союзу та України: генезис та порівняння : монографія. Харків, 2011. 432 с.
- 8 Опришко В. Ф., Омельченко А. В., Фастовець А. Ф. Право Європейського Союзу. Загальна частина. Київ, 2002. 460 с.
- 9 Саленко О. В. Міжнародні стандарти у сфері судустрою та статусу суддів, їх зміст і класифікація. *Національний юридический журнал: теорія і практика*. 2014. № 3. С. 263–269. URL: <http://surl.li/vfdwtm> (date accessed: 20.08.2024).
- 10 Gutiérrez-Fons J. A., Lenaerts K. The constitutional allocation of powers and general principles of EU law. *Common Market Law Review*. 2010. Vol. 47. Is. 6. Pp. 1629–1669. DOI: [10.54648/cola2010069](https://doi.org/10.54648/cola2010069) (date accessed: 20.08.2024)/
- 11 Pech L. The Rule of Law as a Well-Established and Well-Defined Principle of EU Law. *Hague Journal on the Rule of Law*. 2022. Vol. 14. Pp. 107–138. DOI: [10.1007/s40803-022-00176-8](https://doi.org/10.1007/s40803-022-00176-8) (date accessed: 20.08.2024).
- 12 Tridimas T. Fundamental Rights, General Principles of EU Law, and the Charter. *Cambridge Yearbook of European Legal Studies*. 2014. Vol. 16. Pp. 361–392. DOI: [10.1017/S1528887000002676](https://doi.org/10.1017/S1528887000002676) (date accessed: 20.08.2024).

Rights) (hereinafter referred to as *the Convention*), etc.;

- *case law*: judicial practice of the CJEU.

A systematic analysis of the above sources of law has made it feasible to differentiate between the following fundamental principles for justice administration in the EU: rule of law, legitimacy, right to fair trials, independence and impartiality of the judiciary, the principle of access to justice, effective judicial protection, equality before the law, non-discrimination, transparency of the trial and subsidiarity. The list is not comprehensive: principles not mentioned here will be the subject of further research papers.

The principles are closely linked, which follows from the structure of legal regulations in which these principles are enshrined, namely: several principles are often combined in one article; analysis findings are presented by effectively combining interrelated principles in the part where the meaning requires it.

Rule of law and legitimacy

As regards the principle of the rule of law, let us point out that it is mostly set forth in the Preamble to the Charter (which states that the EU is founded on the principles of democracy and the rule of law)¹³.

As for the EU Treaty, it contains two references to the rule of law: it is viewed as the basis of the EU's activities (Article 2, Section I) and as the principle of the EU's activities in the international arena (Article 21, Part 1, Section V)¹⁴.

The Preamble to the Convention enshrines the principles of freedom and the rule of law and interprets them as the common heritage of European states on a par with political traditions and ideals¹⁵.

It should be highlighted that the Charter does not include a direct reference to the principle of legitimacy, but at the same time upholds the principle of equality before the law, which, in our opinion, underlies the principle of legitimacy (Article 20, Section III)¹⁶.

Referring to case law in the context of the rule of law, it is worth quoting the position of the CJEU in the case of *Parti Ecologiste 'Les Verts' v. European Parliament*: "*The European Economic Community is a community based on the rule of law, in as much as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the treaty*"¹⁷.

Also significant in this regard is the case of *Internationale Handelsgesellschaft mbH v. Einfuhr – und Vorratsstelle für*

13 Хартія основних прав Європейського Союзу / Євросоюз : офіц. сайт. URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024).

14 Консолідована версія Договору про Європейський Союз : учин. в Маастрихті 07.02.1992 р. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/994_b06 (date accessed: 20.08.2024).

15 Конвенція про захист прав людини і основоположних свобод (Європейська конвенція з прав людини) : від 04.11.1950 р. ; ратифік. Законом України від 17.07.1997 р. № 475/97-ВР ; чинна для України з 11.09.1997 р. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 20.08.2024).

16 Хартія основних прав URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024).

17 *Parti écologiste "Les Verts" v European Parliament. Action for annulment – Information campaign for the elections to the European Parliament. Case 294/83 . Judgment of the Court of 23 April 1986.* URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0294> (date accessed: 20.08.2024).

Getreide und Futtermittel, in which *Internationale Handelsgesellschaft* challenged the decision of the German authorities acting in conformity with European Economic Community regulations, regarding the import of grain, claiming that the regulations applied violated its economic rights and principles enshrined in the Basic Law (Constitution) of Germany. The Court stated in its decision that “the law stemming from the treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called in question”¹⁸, thus affirming the principle of the rule of law in EU law over the national law of the Member States. Consequently, EU regulations and other acts have priority even over the constitutional rules of the Member States.

Current domestic legislation enshrines the principle of the rule of law in

Article 8 of the Constitution of Ukraine¹⁹, Articles 2 and 6 of the Law of Ukraine *On the Judiciary and the Status of Judges*²⁰, Articles 2 and 10 of the Civil Procedure Code of Ukraine²¹, Articles 2 and 11 of the Code of Commercial Procedure of Ukraine²², Articles 2 and 6 of the Code of Administrative Proceedings of Ukraine²³, Articles 7–8 of the Criminal Procedure Code of Ukraine²⁴.

The principle of legitimacy is set forth in Articles 5–6 of the Law *On the Judiciary and the Status of Judges* (which states that justice shall be administered in accordance with the judicial procedures established by law and courts shall administer justice on the basis of the Constitution and the laws of Ukraine), as well as P. 2 Art. 10 of the Civil Procedure Code of Ukraine, Part 2 Art. 11 of the Code of Commercial Procedure Of Ukraine, P. 1 Art. 7 of the Code of Administrative Proceedings of Ukraine, Art. 9 of the Criminal Procedure Code of Ukraine²⁵

- 18 *Internationale Handelsgesellschaft mbH v. Einfuhr – und Vorratsstelle für Getreide und Futtermittel*. Case № 11–70. Judgment of the Court of 17 December 1970. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A61970CJ0011> (date accessed: 20.08.2024).
- 19 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.08.2024).
- 20 Про судоустрій і статус суддів : Закон України від 02.06.2016 р. № 1402-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 20.08.2024).
- 21 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024).
- 22 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024).
- 23 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024).
- 24 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).
- 25 Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

and Art. 7 of the Code of Ukraine on Administrative Offenses²⁶.

As to the current national judicial practice, it is worth mentioning the resolution of the Supreme Court of Ukraine (hereinafter referred to as *the SCU*) dated November 20, 2018 in case No. 910/4722/16, in which the legal position of the ECHR was applied in the case of Ukraine-Tyumen vs. Ukraine²⁷: “The principle of legitimacy requires the State to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the judiciary to effectively and fairly resolve property disputes and ensure the right to “peaceful enjoyment of property”²⁸.

Furthermore, in its resolution dated May 23, 2018 in case No. 237/1459/17, the Supreme Court adopted a legal position on the application of Article 9 of the Criminal Procedure Code by courts of appeal when deciding whether to initiate appeal proceedings, reflecting the principle of legitimacy in criminal proceedings²⁹.

Right to fair trials, independence and impartiality of the judiciary

The requirement of independence criterion for the formation of the judiciary is contained in Article 19, Section III of the

EU Treaty, which points out that “judges and advocates general of the Court of Justice and judges of the General Court shall be chosen from among persons whose independence is beyond doubt”.³⁰.

Article 47 of Section VI of the Charter states that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law”³¹.

A similar rule is included in Part 1 of Article 6 of the Convention, under which “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”³². In this way, the human right to a fair trial and the principle of independence and impartiality of judges are guaranteed.

The Universal Declaration of Human Rights also requires “a fair and public hearing by an independent and impartial tribunal” (Article 10)³³, and Part 1 of Article 14 of the International Covenant on Civil and Political Rights stipulates the following: “In the determination of any criminal charge against a person, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by

26 Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 80731-X (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80731-10/ed20240623#Text> (date accessed: 20.08.2024).

27 Справа «Україна-Тюмень» проти України» (заява № 22603/02): ріш. ЄСПЛ від 22.11.2007 р. URL: https://zakon.rada.gov.ua/laws/show/974_595#Text (date accessed: 20.08.2024).

28 Постанова ВС України від 20.11.2018 р. Справа № 910/4722/16. URL: <https://reyestr.court.gov.ua/Review/78378672> (date accessed: 20.08.2024).

29 Постанова ВС України від 23.05.2018 р. Справа № 237/1459/17. URL: <https://reyestr.court.gov.ua/Review/74475877> (date accessed: 20.08.2024).

30 Консолідована редакція URL: http://data.europa.eu/eli/treaty/teu_2016/oj (date accessed: 20.08.2024).

31 Хартія основних прав ... URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024).

32 Конвенція про захист URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 20.08.2024).

33 Загальна декларація прав людини: прийнята і проголошена резолюцією 217 А (ІІІ) Генеральної Асамблеї ООН від 10.12.1948 р. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text (date accessed: 20.08.2024).

a competent, independent and impartial tribunal”³⁴.

Independence as the judiciary principle is also envisaged in Articles 1 and 2 of the Magna Carta of Judges (fundamental principles) — in particular, in Article 2: “Judicial independence and impartiality are essential prerequisites for the operation of justice”³⁵.

In its judgments, the CJEU has repeatedly emphasized the need for justice to be administered by an independent and impartial court (specifically in the case of *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*): “The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions”³⁶.

Ukrainian judges also rely on the ECHR judgment in the case of *Oleksandr Volkov v. Ukraine*. The document stresses

the importance of judicial independence and human rights protection and recognizes the violation of the right to an independent and impartial tribunal³⁷.

In Ukrainian legislation, the principle of the right to a fair trial is envisaged in Articles 2 and 7, Part 7 of Article 56 of the Law On the Judiciary and the Status of Judges, Article 2 of the Civil Procedure Code of Ukraine, the Code Of Commercial Procedure Of Ukraine and the Code of Administrative Proceedings of Ukraine, Part 1 of Article 21 of the Criminal Procedure Code of Ukraine; the independence and impartiality of judges are set forth in Articles 126, 129 of the Constitution, Articles 1, 6, 7 and 48 of the Law On the Judiciary and the Status of Judges, Article 2 and Part 5 of Article 12 of the Civil Procedure Code of Ukraine, Articles 2 and Part 5 of Article 13 of the Code Of Commercial Procedure Of Ukraine, Article 2 of the Code of Administrative Proceedings of Ukraine, Articles 2, 21, Part 6 of Article 22 and Part 2 of Article 23 of Criminal Procedure Code of Ukraine³⁸.

As for judicial practice, we should mention the decision of the Supreme Court’s ruling dated 25.03.2019 in case

34 Міжнародний пакт про громадянські і політичні права : ратифік. Указ. Презид. ВР УРСР від 19.10.1973 р. № 2148-VII (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 20.08.2024).

35 Consultative Council of European Judges. Magna Carta of Judges (Fundamental Principles). Strasbourg, 17 November 2010. CCJE (2010)3 Final. URL: <https://rm.coe.int/16807482c6> (date accessed: 20.08.2024).

36 Associação Sindical dos Juizes Portugueses v Tribunal de Contas. Case № C-64/16. Judgment of the Court (Grand Chamber) of 27 February 2018. URL: <https://curia.europa.eu/juris/liste.jsf?num=C-64/16> (date accessed: 20.08.2024).

37 Справа «Олександр Волков проти України» (заява № 21722/11) : ріш. ЄСПЛ від 09.04.2013 р. URL: https://zakon.rada.gov.ua/laws/show/974_947#Text (date accessed: 20.08.2024).

38 Про судоустрій URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 20.08.2024) ; Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024) ; Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.08.2024).

No. 1806/2–1093/2011, in which the following legal position on the principle of fair trial was specified: *“Fairness of a trial should be ensured, including in the court’s administration of justice, without a formal approach to considering each individual case.*

*Adherence to the principle of fair trial is highly important during consideration of judicial cases, since its implementation serves as a guarantee that a party, regardless of the level of his/her professional training and understanding of certain requirements of civil proceedings, will be able to ensure the protection of his/her interests”*³⁹.

Access to justice and effective judicial protection

From the author’s perspective, ensuring access to justice is intertwined with effective means of protection. This is because access to justice is, by its legal nature, a fundamental right guaranteeing any person the right to apply to court for protection of his or her violated right. However, if proper, effective judicial protection does not ensure such recourse, a person’s rights and freedoms may be left unprotected, and the right to his/her protection will not be exercised.

That is why formulation of the rule of Art. 47, Section VI of the Charter, which establishes not only the principle of access to justice: *“Everyone is entitled to a fair and public hearing”, “everyone shall have the possibility of being advised, defended”,* but also an efficient method of protection: *“Everyone whose rights and freedoms guaranteed by the law of the Union are*

violated has the right to an effective remedy before a tribunal”, as well as the need to provide legal aid to ensure effective access to justice, is considered to be quite expedient⁴⁰.

Similar provisions are contained in Article 9 of the International Covenant on Civil and Political Rights. As set forth in Part 4: *“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”.* This ensures not only the principle of access to justice, but also the principle of effective judicial protection, which consists, in particular, in administering justice expeditiously and protecting human rights⁴¹.

Moreover, Article 13 of the Convention also enshrines the right to efficient judicial protection: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”*⁴².

It is appropriate to mention some directives of the European Parliament and the Council when examining means of adopting the principles of access to justice and effective judicial protection:

- Directive 2004/38/EU of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

39 Постанова ВС України від 25.03.2019 р. Справа № 1806/2-1093/2011. URL: <https://reyestr.court.gov.ua/Review/80715944> (date accessed: 20.08.2024).

40 Хартія основних прав ... URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024).

41 Міжнародний пакт ... URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 20.08.2024).

42 Конвенція про захист ... URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 20.08.2024).

stipulates, particularly, the right to legal protection in the event of refusal to issue, cancel, or extend a residence permit ⁴³;

- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) contains provisions on the right to effective legal protection in asylum procedures ⁴⁴;
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on European arrest warrants stipulates that Member States must provide suspects or accused persons in criminal proceedings, as well as requested persons in proceedings under a European arrest warrant, with effective legal protection under national law in case of a breach of the rights established by this Directive ⁴⁵.

The titles of the above-mentioned documents already indicate that it is essential for the European judicial system to respect not only the independence of the

judiciary, but also the moral and ethical aspects that should ensure an appropriate quality of cooperation, since the lack of mutual respect can lead to conflicts, which in turn can result in disregard for the fundamental principles of legitimacy and respect for the rights and freedoms of a man and citizen ⁴⁶. This opinion is supported by O. Fedkovych, who states that *"in modern conditions the state's responsibility for ensuring access to justice, independence and impartiality of courts, law enforcement and law enforcement agencies, their efficiency and fairness has increased"* and justifies the priority of their approximation to the justice system. As emphasized by the scholar, the Ukrainian legal policy *"should stem from the idea of a holistic approach to the justice system in both functional and organizational aspects, which implies narrowing the gap between the professions of judge, prosecutor, investigator, and forensic expert, while unifying the criteria for selection of staff, their training, retraining and advanced training; developing the basis for the transfer of staff from one legal profession to another, provided that the personnel ideology is unified"* ⁴⁷.

- 43 On the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) : Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004. URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004L0038#d1e409-77-1> (date accessed: 20.08.2024).
- 44 On common procedures for granting and withdrawing international protection : Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013. URL: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032#tit_1 (date accessed: 20.08.2024).
- 45 On the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty : Directive 2013/48/eu of the European Parliament and of the Council of 22 October 2013. № 2013/48/ЄС. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048#tit_1 (date accessed: 20.08.2024).
- 46 Вільгушинський М. Й. Особливості взаємодії судів із правоохоронними органами. *Наукові записки Інституту законодавства Верховної Ради України*. 2012. № 4 (13). С. 67. URL: http://nbuv.gov.ua/UJRN/Nzizvru_2012_4_16 (date accessed: 20.08.2024).
- 47 Федькович О. В. Роль органів юстиції в організації та забезпеченні функціонування системи правосуддя : дис. ... канд. юрид. наук. Київ, 2007. 222 с.

The decisive factor in ensuring the right of access to a tribunal and effective protection is the decision in *the Unión de Pequeños Agricultores v Council of the European Union* case, which states that “individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the European Convention on Human Rights”⁴⁸.

Let us stress that the Constitution of Ukraine guarantees access to justice, in particular: in Article 8 — appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen; in Article 32 — judicial protection of the right to rectify incorrect information; in Article 55 — everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers, etc.⁴⁹.

The principle of access to justice is laid down in Part 1 of Article 8 of the Law On the Judiciary and the Status of Judges (“no one may be deprived of the right to have his/her case heard by a court to whose jurisdiction it is as-

signed by procedural law”) ⁵⁰, Articles 4 of the Civil Procedure Code of Ukraine and the Code of Commercial Procedure of Ukraine, Article 5 of the Code of Administrative Proceedings of Ukraine, and Article 21 of the Criminal Procedure Code of Ukraine ⁵¹.

Effective judicial protection is the goal of civil, commercial, and administrative proceedings (Articles 2 of the Code of Civil Procedure, the Code of Commercial Procedure of Ukraine and the Code of Administrative Proceedings of Ukraine, clause 4 Part 1 Article 34 of the Criminal Procedure Code of Ukraine ⁵²).

It should be pointed out that the Supreme Court develops its own legal positions taking into account the ECHR's judgments: for example, in the Supreme Court resolution dated October 18, 2018 in case No. 910/11965/16 ⁵³, the ECHR's legal position was applied; it secures “the right to have any claim relating to his civil rights and obligations brought before a court or tribunal”, while the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the

48 *Unión de Pequeños Agricultores v Council of the European Union*. Case C-50/00 P : Judgment of the Court of 25 July 2002. URL: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62000CJ0050> (date accessed: 20.08.2024).

49 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.08.2024).

50 Про судоустрій URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (дата звернення: 20.08.2024).

51 Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

52 Там само.

53 Постанова ВС України від 18.10.2018 р. Справа № 910/11965/16. URL: <https://reyestr.court.gov.ua/Review/77749354> (date accessed: 20.08.2024).

detriment of one party"⁵⁴. The ECtHR's judgment concluded that the proclamation of access to a judicial authority and the right to court proceedings, without the need for enforcement of a court decision, contradicts the rule of law, which is a clear example of the interlink between the principles of justice, when failure to comply with one of them results in a violation of the other.

Equality before the law and non-discrimination

The principle of equality before the law is concisely implemented in Article 20, Section III of the Charter, Article 7 of the Universal Declaration of Human Rights, and Part 1 of Article 14 of the International Covenant on Civil and Political Rights⁵⁵.

Many provisions of various legal regulations prohibit discrimination, specifically: Article 21, Section III of the Charter (any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language,

religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation); Art. 18 (based on nationality) and 19 (based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) of the EU Treaty; Art. 14 of the Convention (based on sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status)⁵⁶.

Let us also pinpoint a number of EU Council and European Parliament Directives that directly relate to the principle of non-discrimination (equal treatment): 1) irrespective of racial or ethnic origin⁵⁷ 2) in employment and occupation⁵⁸; for both men and women: access to and supply of goods and services⁵⁹ and non-discrimination in employment and occupation⁶⁰.

Among the resolutions and recommendations of the European Parliament and the Council, the following should be brought

54 Справа «Ромашов проти України» (заява № 67534/01) : ріш. ЄСПЛ від 27.07.2004 р. URL: https://zakon.rada.gov.ua/laws/show/980_227#Text (date accessed: 23.08.2024).

55 Хартія основних прав URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024) ; Загальна декларація URL: https://zakon.rada.gov.ua/laws/show/995_015#Text (date accessed: 23.08.2024) ; Міжнародний пакт URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 23.08.2024).

56 Хартія основних прав URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024) ; Консолідована редакція URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016E/TXT> (date accessed: 20.08.2024) ; Конвенція про захист URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 20.08.2024).

57 Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin : Council Directive 2000/43/EC of 29 June 2000. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043> (дата звернення: 23.08.2024).

58 Establishing a general framework for equal treatment in employment and occupation : Council Directive 2000/78/EC of 27 November 2000. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078> (дата звернення: 23.08.2024).

59 Implementing the principle of equal treatment between men and women in the access to and supply of goods and services: Council Directive 2004/113/EC of 13 December 2004. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113> (date accessed: 23.08.2024).

60 On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) : Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054> (date accessed: 23.08.2024).

into focus: European Parliament Resolution dated 29.05.1990 (90/C 157/01) on the fight against racism and xenophobia⁶¹.

In the judicial practice on equality and non-discrimination, it is appropriate to highlight the judgment in the case of *P v S and Cornwall County Council. Equal treatment for men and women — Dismissal of a transsexual* where it has been explicitly stated that “application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex”⁶².

The principle of equality in rights and before the law is contained in Articles 21, 24, and 52 of the Constitution of Ukraine⁶³. Furthermore, the equality of all trial participants before the law and the court is enshrined as a fundamental principle of proceedings in clause 1, Part 1, Article 129 of the Constitution of Ukraine, clause 2, Part 3, Article 2 and Article 6 of the Civil Procedure Code of Ukraine, clause 2, Part 3, Article 2 and Article 7 the Code of Commercial Procedure of Ukraine, clause 2, Part 3, Article 2 and Part 1, Article 8 the

Code of Administrative Proceedings of Ukraine, clause 3, Part 1, Article 7 of the Criminal Procedure Code of Ukraine⁶⁴.

The Law *On the Judiciary and the Status of Judges* comprises several references to the principle of equality before the law and non-discrimination, namely: Part 2 of Article 7 stipulates the foreigners, stateless persons and foreign legal persons shall enjoy the right to judicial protection in Ukraine on an equal footing with citizens and juridical persons of Ukraine; Article 9 envisages that justice in Ukraine shall be administered on the basis of equality of all trial participants before the law and the court, while simultaneously prohibiting discrimination on any grounds and obliging the court to create such conditions under which each trial participant is guaranteed equality⁶⁵. The principle of non-discrimination is also set forth in the current codes: Art. 6 of the Civil Procedure Code of Ukraine, Art. 7 of the Code of Commercial Procedure of Ukraine, Part 2, Art. 8 of the Code of Administrative Proceedings of Ukraine, Art. 10 of the Criminal Procedure Code of Ukraine⁶⁶. We emphasize that current legislation stipulates

61 Resolution of the Council and the Representatives of the Governments of the Member States, Meeting Within the Council of 29 May 1990 on the fight against racism and xenophobia (90/C 157/01). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41990X0627&from=PT> (date accessed: 23.08.2024).

62 *P v S and Cornwall County Council. Equal treatment for men and women — Dismissal of a transsexual*. Case C-13/94 : Judgment of the Court of 30 April 1996. URL: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:61994CJ0013> (date accessed: 23.08.2024).

63 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.08.2024).

64 Там само ; Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

65 Про судострій URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 20.08.2024).

66 Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024).

equal rights for trial participants based on language: Part 2 of Article 12 of the Law On the Judiciary and the Status of Judges, Part 2 of Article 9 of the Civil Procedure Code of Ukraine, Part 2 of Article 10 of the Code of Commercial Procedure of Ukraine, Part 2 of Article 15 of the Code of Administrative Proceedings of Ukraine, Article 29 of the Criminal Procedure Code of Ukraine ⁶⁷.

We would like to refer to the decision of the Supreme Court dated 04.07.2019 in case No. 905/1861/16 regarding the observance of the principles of equality before the law and non-discrimination in the current judicial practice. It stresses that any decision of the commercial court shall be adopted in conformity with the principle of equality of all trial participants before the law and the court (under Article 129 of the Constitution of Ukraine ⁶⁸), which means *“ensuring equality of subjective procedural rights of all participants in a trial regardless of their personal qualities (legal status, property status), clarifying the procedural status of trial participants only according to procedural legislation and no other, determining the procedural order for considering cases under a specific procedural form. From a substantive*

point of view, the principle of equality should be viewed as meaning that the substantive law should be applied in the same way to all trial participants (law is the application of the same principles to all individuals)” ⁶⁹.

Transparency of the trial

Within the principle of trial transparency, the Convention envisages that the key point is Part 1 of Article 6 (*“everyone has the right to a fair and public hearing [Emphasis added: D. Barb.] of his/her case”*), which also stipulates that the judgement shall be pronounced in public, together with a statement of grounds, when *“the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, when the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”* ⁷⁰.

Part 1 of Article 14 of the International Covenant on Civil and Political Rights contains a similar rule, together with exceptions to these rules ⁷¹: *“All persons shall be equal before the courts and tribunals. In the deter-*

gov.ua/laws/show/1798-12#Text (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

67 Про судоустрій URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 20.08.2024) ; Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

68 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.08.2024)

69 Постанова ВС України від 04.07.2019 р. Справа № 905/1861/16. URL: <https://reyestr.court.gov.ua/Review/82829384> (date accessed: 23.08.2024).

70 Конвенція про захист URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 23.08.2024).

71 Міжнародний пакт URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 23.08.2024).

mination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing <...>. <...> any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children". The public trial requirement is also set forth in Article 10 of the Universal Declaration of Human Rights ⁷².

The Charter does not explicitly stipulate the principle of trial transparency, but Article 42 outlines the right of access to documents: *"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium"* ⁷³. This principle also applies to the justice system since the court is an EU institution.

Let us also mention Article 15 of the EU Treaty which stipulates that the Union's institutions, bodies, offices and agencies *"shall conduct their work as openly as possible"* and have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium; each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in Part 2 of Article 15 ⁷⁴.

The case of *K. H. and others v. Slovakia*, where the importance of access to documents for ensuring a fair trial was

emphasized, is also relevant in this aspect. Thus, the applicants argued that the mere possibility to see the files and make handwritten extracts from them did not provide them with sufficient access to corresponding documents on their health. The Court highlighted that *"the originals of the records contained information which the applicants considered important from the point of view of their moral and physical integrity. In particular, the applicants feared that they had been subjected to an intervention affecting their reproductive status. The records would convey not only information about any such intervention, but also whether the applicants had given consent to it and in what circumstances. A typed or handwritten transcript of the records could not faithfully represent the particular features of the original records bearing, in some cases, the applicants' signatures. With photocopies of the records the applicants would not only be able to establish a basis for civil litigation but also to demonstrate to their families and communities, where appropriate, that their infertility was not a result of any deliberate action on their part"*, and concluded that *"the right of access to a court is an inherent aspect of the safeguards enshrined in Article 6. It secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court. Where the individual's access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and, in particular, whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved"* and accepted the applicants'

72 Загальна декларація URL: https://zakon.rada.gov.ua/laws/show/995_015#Text (date accessed: 23.08.2024).

73 Хартія основних прав URL: http://data.europa.eu/eli/treaty/char_2016/oj (date accessed: 20.08.2024).

74 Консолідована редакція URL: http://data.europa.eu/eli/treaty/tfeu_2016/oj (date accessed: 23.08.2024).

argument that they had been in a state of uncertainty as regards their health and reproductive status following their treatment in the two hospitals concerned and that obtaining the relevant evidence, in particular in the form of photocopies, was essential for an assessment of the position in their cases from the perspective of effectively seeking redress before the courts in respect of any shortcomings in their medical treatment⁷⁵.

Current Ukrainian legislation focuses on ensuring the principle of justice publicity: Article 11 of the Law *On the Judiciary and the Status of Judges* guarantees publicity and openness of the trial (*"court decisions, court hearings and information on cases considered by the court shall be open to the public, except in cases provided by law"*⁷⁶) and includes a link to the Unified State Web Portal of Electronic Services (in particular, the mobile application "Diia") as an alternative method of informing the parties about the case status in court. This is an innovation in current legislation and corresponds to the rapid digitalization of society. What is more, the publicity of a trial is facilitated by the immediate publication of information about the court hearing a case, the parties to the dispute, the subject matter of the claim and the progress of the case in court, open court hearings (except for closed court hear-

ings), permission to record court hearings using technical means, etc., on the official web-portal of the Ukrainian Judiciary.

Publicity and openness of judicial proceedings and their full recording using technical means are enshrined as one of the fundamental principles of judicial proceedings in clauses 3, Parts 3, Articles 2 of the Civil Procedure Code of Ukraine, the Code of Commercial Procedure of Ukraine and the Code of Administrative Proceedings of Ukraine, clause 20, Part 1, Article 7 of the Criminal Procedure Code of Ukraine⁷⁷. Moreover, the publicity of judicial proceedings and the openness of information on a case are outlined in Articles 7 and 8 of the Civil Procedure Code of Ukraine, Articles 8 and 9 of the Code of Commercial Procedure of Ukraine, Articles 10 and 11 of the Code of Administrative Proceedings of Ukraine, Article 27 of the Criminal Procedure Code of Ukraine⁷⁸.

Ukrainian courts of appeal and cassation have repeatedly emphasized the need to observe the principle of transparency and openness of a trial during the proceedings. Thus, in the Supreme Court resolution dated February 22, 2018 in case No. 357/12308/15-k⁷⁹ the court concluded that the rules of current legislation on publicity and recording of a trial using technical means are the fundamental principles of court proceedings, so failure to com-

75 K. H. and others v. Slovakia. Case 32881/04 : Judgment of European Court of Human Rights 28.04.2009. URL: <https://hudoc.echr.coe.int/eng?i=001-92418> (date accessed: 23.08.2024).

76 Про судоустрій URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 20.08.2024).

77 Цивільний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 20.08.2024) ; Господарський процесуальний URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 20.08.2024) ; Кодекс адміністративного URL: <https://zakon.rada.gov.ua/laws/show/2747-15/ed20240719#Text> (date accessed: 20.08.2024) ; Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

78 Там само.

79 Постанова ВС України від 22.02.2018 р. Справа № 357/12308/15-к. URL: <https://reyestr.court.gov.ua/Review/72460326> (date accessed: 20.08.2024).

ply with these provisions is a significant breach of the criminal procedure law requirements and, as set out in clause 1, Part 1, Article 438 of the Criminal Procedure Code of Ukraine⁸⁰, are the grounds for reversing or changing decisions by court of cassation instance.

Subsidiarity

The principle of subsidiarity set out in Article 5 (3) of the EU Treaty concerns the EU's overall activities: *"In areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level"*.

*The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol"*⁸¹. This article also obliges each institution to implement the principle of proportionality in accordance with the Protocol on the application of the principles of subsidiarity and proportionality⁸².

Within the ECHR's jurisdiction, the principle of subsidiarity is clearly traced: as envisaged in Part 1 of Article 35 of the Convention, *"the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and*

*within a period of four months from the date on which the final decision was taken"*⁸³.

Conclusions

To sum up, the principles of justice in a general sense are essential legal requirements that are both objective and subjective in nature, as these principles have been developed in line with objective reality resulting from the thought process of an individual or group of individuals. The principles shape the form and content of justice on both national and global scales; therefore we deem it highly important that their system ensures respect for the rights and legitimate interests of the parties during court proceedings, along with the adoption of a lawful, fair, and reasoned judgment in a case.

The study demonstrates that justice administration principles as part of the principles of EU law are enshrined in various sources and constitute one system. The analysis confirms the fact of interdependence between the principles of justice, when none of them exists isolation. At the same time, the rules of articles often presuppose the existence of several principles at the same time, confirming this inextricable link. What is more, EU case law also confirms correlation between justice principles, where non-compliance with one of them may result in non-observance of the others. Let us point out that despite this interdependence of justice principles within the system, each of them fulfills its purpose, arising in the administration of justice in general.

80 Кримінальний процесуальний URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.08.2024).

81 Консолідована версія Договору URL: https://zakon.rada.gov.ua/laws/card/994_b06 (date accessed: 20.08.2024).

82 Там само.

83 Конвенція про захист URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 20.08.2024).

Stemming from the analysis of current Ukrainian legislation for conformity with the principles of EU justice, which became the subject of this study, it has been shown that they are exhaustively outlined in the Fundamental Law of Ukraine: the Constitution as well as in the Law *On the Judiciary and the Status of Judges* that defines organization of the judiciary and administration of justice in Ukraine. National procedural codes also include a general unified system of basic grounds (principles) for justice. They are more thoroughly discussed in separate articles. The current judicial practice of Ukraine contains detailed legal positions on ensuring conformity with the fundamental principles of court proceedings with regard to both national legislation and the judicial practice of the CJEU and the ECtHR. This in turn promotes the administration of justice in our country on the basis of the rule of law, while respecting European standards to secure everyone's right to a fair trial.

Only through proper adherence to all principles of justice during a trial can the goal of observing the rights and legitimate interests of the parties in the course of proceedings, as well as adopting a lawful, fair, and reasonable decision in a case, be achieved. However, given the strong interdependence within the system, failure to comply with one of the principles may result in a violation of the other. In any case, disregard for at least one of the principles of judicial proceedings may call into question the legitimacy of the entire proceedings and lead to the decision being recognized as not meeting the requirements of the law with its subsequent cancellation.

Let us point out that the topic of justice administration principles retains its significance, given the rapid changes in the judicial system reflecting urgent needs of modern society. Therefore, further study

of the EU's justice administration principles, combined with their appropriate implementation in national legislation, will help accelerate Ukraine's integration into the European community and strengthen the link between the two legal systems in order to protect common social values and achieve goals of their activities.

Наукове забезпечення досудового розслідування втручань у діяльність органів державної влади

Володимир Попов

Мета роботи — визначити стан сучасного наукового забезпечення проблем кримінальної відповідальності й досудового розслідування кримінальних правопорушень, пов'язаних зі втручанням у діяльність представників органів державної влади. Поставлену мету реалізовано завдяки комплексному застосуванню загальнонаукових (аналізу, синтезу й узагальнення), діалектичного, порівняльно-правового, системно-структурного та прогностичного методів. Проаналізовано проблематику наукової розробленості кримінальної відповідальності й розслідування втручання в діяльність представників органів державної влади. Увагу акцентовано на проблемах притягнення особи до кримінальної відповідальності за вчинення кримінальних правопорушень цієї категорії, особливостях їх кримінологічної характеристики, розробленні методів запобігання їм і науково обґрунтованих рекомендацій щодо їх досудового розслідування. Констатовано, що типовим для позначення протиправної діяльності, пов'язаної із будь-яким утручанням у діяльність представників органів державної влади, є такі термінологічні конструкції: «втручання в діяльність» (рідше — «втручання у здійснення повноважень»); «вплив» (або «незаконний вплив»); «перешкодження діяльності». Зважаючи на усталені у правничій літературі підходи запропоновано застосовувати саме термін «втручання в діяльність». З'ясовано, що станом на сьогодні достатньо розроблено лише специфіку притягнення особи до кримінальної відповідальності за вчинення таких правопорушень, а питання криміналістичної характеристики й тактико-організаційних засад їх досудового розслідування

не відповідають належному рівню, особливо зважаючи на актуальні проблеми правозастосовної практики. Окреслено перспективи подальших досліджень у межах порушеної проблематики.

Ключові слова: кримінальне провадження; кримінальна відповідальність; досудове розслідування; втручання в діяльність; орган державної влади; працівник правоохоронного органу; вплив; перешкодження.

Financing

This research did not receive any specific grant from funding institutions in the public, commercial or non-commercial sectors.

Disclaimer

Founders had no role in the research design, data collection and analysis, decision to publish or manuscript preparation.

Participants

The author has contributed solely to intellectual discussion underlying this document, case law research, writing and editing, and assumes responsibility for its content and interpretation.

Declaration of Competing Interest

Author declare no conflict of interest.

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