

**LEGAL REGULATION OF ACCESS TO JUSTICE DURING  
WARTIME IN CASES RELATED TO THE PROTECTION OF  
THE RIGHTS, FREEDOMS AND INTERESTS OF MILITARY  
PERSONNEL AND CONSCRIPTS**

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**Abstrak:** Tujuan dari penelitian ini adalah untuk mengungkapkan akses terhadap keadilan selama masa perang dalam kasus-kasus yang berkaitan dengan perlindungan hak, kebebasan dan kepentingan personil militer dan wajib militer. Permusuhan aktif terjadi di sebagian besar wilayah Ukraina, dan hal ini membuat mustahil untuk memberikan keadilan di pengadilan administratif. Namun, Dewan Tinggi Kehakiman telah menyelesaikan masalah ini dengan baik, sehingga akses terhadap keadilan di Ukraina selama masa perang dalam kasus-kasus yang berkaitan dengan perlindungan hak, kebebasan dan kepentingan personil militer dan wajib militer saat ini dimungkinkan sesuai dengan Konstitusi Ukraina. Dasar metodologis dari penelitian ini disajikan sebagai perbandingan hukum dan analisis sistematis, metode hukum formal, metode interpretasi, metode hermeneutik serta metode analisis dan sintesis. Kesimpulan. Artikel ini menganalisa putusan ECtHR, dan berdasarkan hal ini, penulis sampai pada kesimpulan bahwa biaya keuangan dianggap oleh ECtHR sebagai hambatan untuk mengakses keadilan. Akses ke pengadilan hanya efektif jika seseorang memiliki kesempatan yang nyata untuk menggugat tindakan yang salah dalam praktiknya.

**Kata kunci:** akses terhadap keadilan, pengadilan, peradilan elektronik, subjek otoritas publik, perang, perlindungan hak, kebebasan dan kepentingan personil militer dan wajib militer.

**Abstract:** The purpose of the article consists in revealing access to justice during wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts. Active hostilities are taking place in most regions of Ukraine, and this makes it impossible to delivery justice in administrative courts. However, the High Council of Justice has resolved this issue properly, so access to justice in Ukraine during the wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts is currently possible in accordance with the Constitution of Ukraine. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. The article analyzes the decision of the ECtHR, and based on this, the author comes to the conclusion that financial costs are considered



by the ECtHR as an obstacle to access justice. Access to court is effective only when a person will have a real opportunity to challenge wrongful actions in practice.

**Keywords:** access to justice, court, electronic justice, subject of public authorities, the war, protection of rights, freedoms and interests of military personnel and conscripts.

## INTRODUCTION

An important issue of today in the conditions of martial law consists in ensuring effective access to justice, guaranteed by Articles 55, 124, 129 of the Constitution of Ukraine, Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. In accordance with Article 124 of the Constitution of Ukraine, justice in Ukraine is administered exclusively by the courts. The delegation of the functions of the courts, and also the appropriation of these functions by other bodies or officials, shall not be permitted. Courts are obliged to administer justice even under martial law. It should be noted that two days before the start of the war, the activities of the High Council of Justice were suspended, but despite this, the judicial branch of government managed to find a way out of the situation and took all measures so that the constitutional right to judicial protection were not limited during the war.

Access to justice is an integral element of the right to a fair trial. This is the position of the ECtHR. According to P.D. Huivan, "...the Convention is aimed at guaranteeing not theoretical or illusory rights, but rights realized in practice and effective rights. This particularly refers to access to justice in light of the importance of the right to a fair trial in a democratic society. So the Convention actually protects the right to have cases heard at all, so the right to justice includes the possibility of access to the court as its element. At the same time, access is postulated as an unimpeded opportunity to appeal to court without special permits, burdensome pre-trial means of dispute settlement, special procedures, etc. For example, a direct violation of the authority to access the court consists in the need to obtain special permits to apply to the court or the obligation of a person (before applying to the court with a claim) to exhaust the methods of pre-trial settlement of the dispute provided for by the law or the internal system of filing complaints".<sup>1</sup>

A.V. Zavidnyak notes: "Unlike various types of epidemics or pandemics being the basis for the introduction of a state of emergency, the administration of justice in conditions of martial law is complicated by potential threats to the life and health of judges on the part of the aggressor country as well as by threats of occupation of the territory. In particular, such a complication can be caused not only by considerations concerning loss of effective control executed by the government over certain territories of Ukraine, but also by the gradual loss of the concept of the rear area which is associated with the intensified use of missiles and aviation to bombard the country's territory along its entire perimeter. Under such conditions, new forms and means required for delivery of justice should be determined; the main form of this justice is the concept of a court session and

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<sup>1</sup> Huivan, Petro. "The right to a fair trial: essence and temporal dimensions according to international standards" monograph. Kharkiv: Pravo. . (2019). p.584.

the adoption of a decision on the merits”.<sup>2</sup>

In addition to that, separate issues related to the problems of implementing the right to education are covered in the scientific works by such present-day Ukrainian scientists as Halaburda *et al.*<sup>3</sup> These works constitute a scientific basis for further research of the specified instruments and actually initiate a scientific discussion regarding prospects for their legislative improvement.

At the same time, it is worth noting that at the current stage electronic judicial procedure is quite relevant as an element of access to justice regarding protection of rights of individuals.

The purpose of the article consists in revealing access to justice during wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts.

To solve the set goal, the author set the following tasks:

1. Find out the possibility of access to justice in Ukraine under martial law;
2. To reveal the effectiveness of access to justice in Ukraine under martial law in cases related to protection of rights, freedoms and interests of military personnel and conscripts

## METHOD

The research is based on the works by foreign and Ukrainian researchers on access to justice during the wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts.

Epistemological method was used to clarify peculiarities of access to justice during the wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts, etc.; thanks to the logical-semantic method, the conceptual apparatus was deepened, the peculiarities of access to justice during the wartime were determined in cases related to protection of rights, freedoms and interests of military personnel and conscripts, etc. Thanks to the existing methods of law, we managed to analyze the peculiarities of access to justice during the wartime in cases related to protection of rights, freedoms and interests of military personnel and conscripts, etc.

The methodological basis of the research is a comprehensive approach that involves the use of general, general scientific, interdisciplinary and special legal methods of learning access to justice in legal doctrine, international law, national legislation and legal practice.

The work is based on the value-normative legal understanding that means the study of the right to access to justice through the prism of values rights, in particular, human rights.

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<sup>2</sup> Zavydniak, Alina. “Access to administrative justice under martial law. Electronic scientific publication”. *Analytical and comparative jurisprudence*. 2023. 218-222.

<sup>3</sup>Halaburda, Nadiia. Leheza, Yevhen, Chalavan, Viktor. Yefimov, Volodymyr. Yefimova, Inna. “Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine”. *Journal of law and political sciences*. Vol. 29, Issue 4, (2021). 100-121.

The dialectical approach made it possible to determine peculiarities and conditions ensuring access to justice by modern transitive processes and to identify the connections of ensuring access to justice with other legal ones phenomena. A significant role in understanding access to justice and its forms provision in transitive conditions played an appeal to methods branch of legal sciences, taking into account the fact that the subject of research is covered by both legal theory and branch legal sciences.

The use of these methods in combination with scientific ones principles of historicism, comprehensiveness of research, objectivity, pluralism, scientific and soundness provided a comprehensive analysis various forms of realization of the right to access to justice and alternative means of ensuring such access in the conditions transitivity.

The right of access to court must not only exist, but also be practical and effective. The mere existence of a right in the access law is not sufficient. For example, it can be affected by the following factors: the high cost of the proceedings in view of the financial capabilities of the person, for example, due to a large court fee (*“Krenz v. Poland”* (No1), No 28249/95, decision dated 19 June, 2001), although in general the requirement for a court fee or association of the court fee to the amount of the claim in civil cases is not a violation of access to court (*“Urbanek v. Austria”*); lack of legal assistance. Thus, in the above-mentioned *“Airey v. Ireland”* the claimant could not pay legal fees and therefore she was essentially deprived of access to court, since, according to the national order, she could not herself appeal to a higher court in her civil case. Existence of procedural obstacles that prevent or reduce the possibility of going to court (too strict interpretation by national courts of the procedural norm (excessive formalism) which can deprive claimants of the right to access to the court (*“Perez de Rada Cavanilles v. Spain”*, No 2809095, decision dated 28 October, 1998) etc.

## RESULTS AND DISCUSSIONS

The Constitutional Court of Ukraine notes: “The part 1 of Article 55 of the Constitution of Ukraine should be understood in such a way that everyone shall be guaranteed protection of his/her rights and freedoms in court. The court cannot deny justice if a citizen of Ukraine, a foreigner, or a stateless person believes that their rights and freedoms have been violated or are being violated, that obstacles have been (or are being) created for implementation of these rights, or other violations of rights and freedoms have occurred<sup>4</sup>.”

Court’s refusal to accept claims and other statements and complaints filed in accordance with the current legislation is a violation of the right to judicial protection, which (according to Article 64 of the Constitution of Ukraine) cannot be limited (clauses of the substantive part of the Decision made by the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens Raisa Mykolayivna Protsenko, Polina Petrivna Yaroshenko and other citizens regarding the official interpretation of Articles 55,

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<sup>4</sup> Bonyak, V., Minka, T., & Mysliiva, O. “Origins of the institution of corruption in post-socialist states: economic, legal and institutional aspects.” *Economic Annals-XXI*, 177(5-6), 22-33. (2019). doi: <https://doi.org/10.21003/ea.V177-02>

64, 124 of the Constitution of Ukraine (the case based on the appeal of residents of the city of Zhovti Vody) dated December 25, 1997 No. 9- zp/1997).<sup>5</sup>

In accordance with international and European human rights law, the concept of access to justice obliges states to guarantee the right of any person to apply to court (or to an alternative dispute resolution body, under certain circumstances) in order to obtain legal protection, in the event that a person's rights have been violated. Thus, it is also a law that helps a person to realize his/her rights.<sup>6</sup>

At the moment, only the courts operate in the territory controlled by Ukraine, since in accordance with Article 10 of the Law of Ukraine “On the Legal Regime of Martial Law”, the powers of the courts shall not be suspended during the period of martial law. According to Article 12-2 of this Law, in the conditions of the legal regime of martial law, courts act exclusively on the basis of and within the limits of their powers and in the manner determined by the Constitution of Ukraine and the laws of Ukraine, and their powers provided for by the Constitution of Ukraine can not be limited in conditions of the legal regime of martial law<sup>7</sup>.

The right of access to court must not only exist, but also be practical and effective. The mere existence of a right in the access law is not sufficient. For example, it can be affected by the following factors:

— the high cost of the proceedings in view of the financial capabilities of the person, for example, due to a large court fee (*“Kreuz v. Poland”* (No1), No 28249/95, decision dated 19 June, 2001), although in general the requirement for a court fee or association of the court fee to the amount of the claim in civil cases is not a violation of access to court (*“Urbanek v. Austria”*);

— lack of legal assistance. Thus, in the above-mentioned *“Airrey v. Ireland”* the claimant could not pay legal fees and therefore she was essentially deprived of access to court, since, according to the national order, she could not herself appeal to a higher court in her civil case. The ECtHR recognized that participation of a legal representative was necessary for an effective consideration and the indigent person could not pay for that. At the same time, the ECtHR emphasized that provision of legal aid in a civil process is not absolutely mandatory, as it is in a criminal process. However, in the opinion of the Court, the provision of such assistance is necessary in cases where the person cannot represent his/her interests himself/herself or in cases when the national law recognizes legal representation to be mandatory;

— existence of procedural obstacles that prevent or reduce the possibility of going to court (too strict interpretation by national courts of the procedural norm

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<sup>5</sup> Decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens Raisa Mykolaivna Protsenko, Polina Petrivna Yaroshenko and other citizens regarding the official interpretation of Articles 55, 64, 124 of the Constitution of Ukraine (case for appeals by residents of the city of Zhovti Vody) dated 25 December 1997 No. 9-zp/1997. URL: Retrieved from <https://ccu.gov.ua/storinka-knygy/4391-dostup-dosudu>

<sup>6</sup> Drozdov, Oleksandr. “European foundations of access to justice”. (2022). URL: <https://unba.org.ua/publications/print/6654-evropejs-kiosnovi-dostupu-do-pravosuddya.html>.

<sup>7</sup> Korneyev, M., Zolotukhina, L., Hryhorash, T., Leheza Ye., Hryhorash O., “The development of small business as a source of formation of local budget revenues in Ukraine.” *Investment, Management and Financial Innovations*. 15 (1). (2018). 132-140. DOI:10.21511/imfi.15(1).2018.12

(excessive formalism) which can deprive claimants of the right to access to the court (*“Perez de Rada Cavanilles v. Spain”*, No 2809095, decision dated 28 October, 1998) etc.

The COVID-19 pandemic has changed the lives of Ukrainians, it has made adjustments to activities performed by the judicial branch of government, but the war has forced us to look at the world differently and courts are obliged to protect human rights even during the war. For the administrative courts, the case of the application of the Security Service of Ukraine regarding inclusion of natural persons, legal entities and organizations in the list of persons connected with the conduct of terrorist activities or in relation to which international sanctions have been applied, the exclusion of natural persons, legal entities and organizations from such a list and provision of access to assets related to terrorism and its financing, proliferation of mass destruction weapons and its financing (Article 284 of the Code of Administrative Procedure (CAP)). In addition, a significant importance is being gained by matters regarding guaranteed provision of defense needs (Article 282 of the CAP), cases on the removal of obstacles and the prohibition of interference into exercising the right to freedom of peaceful assembly (Article 281 of the CAP), cases on establishing restrictions concerning execution of the right to freedom of peaceful assembly (Article 280 of the CAP), cases of administrative lawsuits regarding the forced return or forced deportation of foreigners or stateless persons outside the territory of Ukraine (Article 288 of the CAP), cases of administrative lawsuits regarding detention of foreigners or stateless persons (Article 289 of the CAP).

In order to ensure access to justice in cases related to the protection of rights, freedoms and interests of military personnel and conscripts the Supreme Court has changed the territorial jurisdiction of those courts that cannot carry out their activities due to occupation or hostilities. Thus, by its orders, the Supreme Court has changed the territorial jurisdiction of approximately 100 courts. Consideration of cases cannot be stopped in connection with the war, and all procedural terms must be renewed. The claim alongside with all attachments should be sent by e-mail and signed using the electronic digital signature or the “Electronic court” subsystem.<sup>8</sup>

Natalia Mysnyk notes: “Therefore, based on the normative acts that have been adopted today, the mode of operation of each specific court shall be determined separately. The work of the court depends on the situation in the region where this court is located. Therefore, it is necessary to carefully follow the updates that are published on the websites of the courts. In case of impossibility to arrive at the court session, a person shall have the right to submit a request to postpone the court session or to hold a video conference. Courts must treat such requests with respect and, if possible, they should grant them. In the same way, courts should be careful about missing procedural deadlines, avoiding excessive formalism.”<sup>9</sup>

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<sup>8</sup> Horbalinskiy, Volodymyr, Leshchenko, Oleksandr. Mashchenko, Olha. Leheza, Yevhen. Prymakov, Kamil. “Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience international experience: Vías de protección de los derechos de las personas en los procesos administrativos: regulación jurídica y experiencia internacional”. *Cuestiones Políticas*, 41(77), (2023). 324-334 DOI: <https://doi.org/10.46398/cuestpol.4177.22>

<sup>9</sup> Mysnyk, Natalia. “Work of Ukrainian courts under martial law.. (2022). Retrieved from <https://sudpraktika.wordpress.com/конвенція-про-захист-прав-людини/право-на-доступ->

At present, distance justice has been introduced in Ukraine, and although there are many skeptics about such an innovation, we believe that human life itself should be the main priority in wartime. The main thing is that justice should be done, and not delayed, because the Roman maxim engraved on the door of the Supreme Court of Great Britain says: "Justice delayed is justice denied." Therefore, in our opinion, the priority should be the safety of both court employees and participants in the court process, and daily shelling of the entire territory of Ukraine does not allow the court process to take place in full. Therefore, despite the negative position of the skeptics, the Supreme Council of Justice receives complaints about the remote consideration of cases.<sup>10</sup>

The State Judicial Administration has developed a procedure for video conferencing during a court session with the participation of the parties outside the court room. During the quarantine, such online participation in court sessions was a good thing for participants in legal processes in cases related to protection of rights, freedoms and interests of military personnel and conscripts, because justice was carried out, and participants in cases were able to remotely participate in the legal process without being exposed at risk. However, the war has shown us a different reality, because currently there is no safe place in Ukraine. Frequent air alerts lead to multiple interruptions during announcements of air alerts as far as all personnel shall take shelter. We believe that remote work of all court employees is the best option during the war time as far as it gives an opportunity to save their lives, and remote justice should only improve in accordance with the conditions of our life.<sup>11</sup>

While administering justice, courts should not violate the requirements of Article 6 of the Fair Trial Convention and neither should they forget that shortening or speeding up any form of judicial proceedings in martial law is prohibited. In the case "Bellet v. France" The Court noted that "Article 6 §1 of the Convention contains guarantees of a fair trial with access to court being one of the aspects of these guarantees. The level of access provided by national legislation should be sufficient to ensure a person's right to a court, taking into account the principle of the rule of law in a democratic society. In order for access to be effective, a person must have a clear practical opportunity to challenge actions that constitute an interference with his/her rights" (ECtHR, 1995).<sup>12</sup>

The decision made by the ECtHR in the case "Zustović v. Croatia" is an interesting decision". In connection with the loss of working capacity, Nysveta Zustović applied to the pension fund to award her a disability pension, but she was refused, and by filing a lawsuit in the Administrative Court of Rijeka to cancel the pension fund's refusal, she won

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<sup>10</sup> Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence." *Revista Jurídica Portucalense*, December, (2022). 342-363. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)

<sup>11</sup> Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. (2023). "Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine." *Revista Jurídica Portucalense*, 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

<sup>12</sup> Decision of the ECtHR of December 4, 1995 in the case "Bellet v. France" (application No. 23805/94).

the dispute. Her lawyer son represented her interests. An expert examination was conducted, but while the trial was taking place, amendments were made to the law “On Administrative Procedures”. “The rule on placing all legal costs, including services of a lawyer, on the losing party was abolished. Now the costs were to be shared equally. At the same time, a new scale of payment for lawyer's services came into effect.<sup>13</sup>

So, even after winning the dispute with the state body, the woman still had to pay a considerable amount as a court fee, for the services of a lawyer and the expert examination. Attempts to appeal the decision regarding the distribution of court costs did not yield results.” Filing of a constitutional complaint regarding the violation of the right to a fair trial did not yield any results, as the court found the complaint inadmissible. In her appeal to the ECtHR, “the applicant insisted that the rule on the distribution of court costs, which was in effect at the time of filing the lawsuit, should have been applied to her case. Therefore, the applicant believed that the refusal to collect from the defendant the costs of the applicant's services and expert opinions that played an important role in her case indicated a violation of the right to a fair trial. After all, she was denied access to the court and she was put in a disadvantageous position”.<sup>14</sup>

The ECtHR ruled in favor of the applicant and ordered to compensate her for 3,500 euros in material damages, 3,000 euros in moral damages and 2,500 euros in court costs. The court noted that the applicant's dispute concerned a dispute with the Pension Fund, that is, it was a dispute against the state. And the problem is that the national courts recognized the applicant's right to a pension, but they refused to reimburse her for court costs. The ECtHR also recognized that the amendments to the Law "On Administrative Disputes" did not pursue any legitimate goal, as the Constitutional Court of Croatia “recognized that the provision regulating the distribution of court costs was unconstitutional and that it limited the right of access to the court”.<sup>15</sup>

“Monetary barrier”, i.e. financial expenses, is considered by the ECtHR in its practice as an interference with the right of access to the court. Therefore, “the European Court once again emphasized that the refusal to reimburse the court costs to the party *ex post facto* may indicate a restriction of access to the court or interference with the property right. Especially when it comes to a lawsuit against the state, whose authorized bodies committed violations of human rights and caused material or moral losses”.<sup>16</sup>

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<sup>13</sup> Matviichuk, Anatolii. Shcherbak, Viktor. Sirko, Viktoria. Malieieva, Hanna. Leheza, Yevhen.. “Human principles of law as a universal normative framework: Principios humanos del derecho como marco normativo universal.” *Cuestiones Políticas*, 40(75), (2022). 221-231. <https://doi.org/10.46398/cuestpol.4075.14>

<sup>14</sup> Zhukova, Yevheniia. Bryl, Kostyantyn. Svystun, Larysa. Kobrusieva, Yevheniia. Leheza, Yevhen. “Legal regulation of public administration of education and science: Regulación legal de la administración pública de educación y ciencia.” *Cuestiones Políticas*, 41(76), (2023). 336-346. <https://doi.org/10.46398/cuestpol.4176.18>

<sup>15</sup> Leheza, Ye. O., Filatov, V., Varava, V., Halunko, V., Kartsyhin, D. (2019). “Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine.” *Journal of Legal, Ethical and Regulatory Issues*. Vol. 22, Issue 5. 2019. P. 1-8. Retrieved from :<https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html>

<sup>16</sup> Volobueva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. “Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from



In general, the Court considers the payment of money as an obstacle to access justice. Thus, in the Decision dated 15 February, 2000, "Garcia Manibar v. Spain", it is noted that in practice, the need to deposit large sums of money into the court deposit hinders the applicant's access to justice.<sup>17</sup> We also agree with this and propose to generally exempt internally displaced persons, relocated enterprises from paying court fees in order to ensure access to justice and protection of their rights. High court fee rates are an obstacle to access to court.<sup>18</sup>

In the decision "Holder v. Great Britain" the ECtHR drew attention to the fact that the very construction of Article 6 of the Convention guaranteeing the right to a fair trial would be meaningless and ineffective if it did not protect the right to have the case heard at all.<sup>19</sup> But if the court assesses the filing of a lawsuit as an abuse of the procedural right and leaves the lawsuit without consideration or returns it, then it will thereby deprive the applicant of the right to a fair trial with the right of access to the court being its component (The decision of the ECtHR of February 21, 1975 in the case "Holder (Soigieg) v. the United Kingdom" (application No. 4451/70, 1975).<sup>20</sup>

Judge of the Administrative Cassation Court within the Supreme Court, Jan Bernaziuk, views the right to access to legal protection in the context of compliance with the deadlines for appeals to the court. He comes to the conclusion that when making a decision to extend the term of appeal to the court, it is necessary to determine the criteria "according to which the court can recognize the reasons for missing the term as valid, and the grounds for its renewal as justified in order to achieve a fair balance between the general interests of society and the requirements for protection of individual's fundamental rights."<sup>21</sup>

In particular, the analysis of ECtHR practice allows us to single out the following fundamental justifications in favor of making a decision to renew the missed period of appeal to the court: 1) the level of access provided by the national legislation must be

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Ukraine. " *Yustisia*. Vol 12, No 3. (2023). 262-277. DOI: <https://doi.org/10.20961/yustisia.v12i3.79443>

<sup>17</sup> Darahan, Valerii. Shynkevych, Andrii. "Theoretical and methodological fundamentals in formation of economic security in the field of public procurement". *Philosophy, Economics and Law Review*. 2(1), (2022). 161-176. DOI: 10.31733/2786-491X-2022-1-161-176

<sup>18</sup> Leheza, Ye. Shablysty, V. Aristova, I. V. Kravchenko, I. A. Korniakova, T. (2023). "Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect. " *Journal of Drug and Alcohol Research*. Vol. 12 . No. 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

<sup>19</sup> The decision of the ECtHR of February 21, 1975 in the case "Holder (Soigieg) v. the United Kingdom" (application No. 4451/70). Retrieved from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57496&filename=001-57496.pdf>

<sup>20</sup> Zadyraka, Nataliia. Leheza, Yevhen. Bykovskiy, Mykola. Zheliezniak, Yevhenii. Leheza, Yulia. "Correlation of Legal Concepts of Administrative Procedure and Administrative Liability in the Sphere of Urban Planning." *Jurnal cita hukum indonesian law journal*. Vol. 11 No. 1, (2023). 33-44, DOI: <https://doi.org/10.15408/jch.v11i1.31784>

<sup>21</sup> Kobrusieva, Yevheniia. Leheza, Yevhen. Rudoi, Kateryna. Shamara, Oleksandr. Chalavan, Viktor. "International standards of social protection of internally displaced persons: administrative and criminal aspects". *Jurnal cita hukum indonesian law journal*. Vol 9, No 3, (2021). 461-484. DOI: <https://doi.org/10.15408/jch.v9i3.23752>

sufficient to ensure a person's right to a court, taking into account the principle of the rule of law in a democratic society; for access to be effective the individual must have a clear practical opportunity to challenge actions that constitute an interference with his/her rights (*Belle v. France*); 2) restrictions on the exercise of the right to judicial protection cannot be established in such a way or to such an extent that the very essence of the right is violated; these restrictions must pursue a legitimate goal, and there must be a reasonable degree of proportionality between the means used and the goals set ("*Mushta v. Ukraine*" case); 3) a strict application of the time limit without taking into account the circumstances of the case may be disproportionate to the goal of ensuring legal certainty and the proper administration of justice, and it can also hinder the use of available legal remedies (*Staño v. Belgium*").<sup>22</sup>

It should be noted that in case No. 500/1912/22 dated 29 September, 2022, the Supreme Court of Justice noted that if during the war between the Russian Federation and Ukraine, the administrative courts strictly apply the procedural terms regarding addressing the court (filing claims, appeals and cassation complaints) then this can be considered as an unjustified restriction of access to the court.<sup>23</sup>

## CONCLUSION

1. In order to ensure access to justice in cases related to the protection of rights, freedoms and interests of military personnel and conscripts the Supreme Court has changed the territorial jurisdiction of those courts that cannot carry out their activities due to occupation or hostilities. Thus, by its orders, the Supreme Court has changed the territorial jurisdiction of approximately 100 courts. Consideration of cases cannot be stopped in connection with the war, and all procedural terms must be renewed. The claim alongside with all attachments should be sent by e-mail and signed using the electronic digital signature or the "Electronic court" subsystem. At present, distance justice has been introduced in Ukraine, and although there are many skeptics about such an innovation, we believe that human life itself should be the main priority in wartime. The main thing is that justice should be done, and not delayed, because the Roman maxim engraved on the door of the Supreme Court of Great Britain says: "Justice delayed is justice denied."

2. In connection with the armed aggression of the Russian Federation against Ukraine, electronic justice has become relevant; it ensures full access to justice in cases related to protection of rights, freedoms and interests of military personnel and conscripts. The war has created an even greater demand for remote justice, as it is possible to remain safe, reduce financial and time costs, and improve access to court in cases related to the protection of rights, freedoms and interests of military personnel and conscripts, since

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<sup>22</sup> Bernaziuk, Yan. The right to access to judicial protection in the context of compliance with the terms of appeal to the court, ECtHR practice. 2023. Retrieved from <https://radako.com.ua/news/pravo-na-dostup-do-sudovogo-zahistu-v-kontekstidotrimannya-strokiv-zvernennya-do-sudupraktika>

<sup>23</sup> Dymko, I., Muradian, A., Manzhula, A., Rudkovskiy, O., Leheza, Ye. "Integrated approach to the development of the effectiveness function of quality control of metal products".. *Eastern European Journal of Enterprise Technologies*. 6/3 (90). (2017). 26-34. doi: 10.15587/1729-4061.2017.119500.

there is an opportunity to participate in a court hearing on outside the court.

We believe that in the martial law conditions, the missed deadlines should be renewed by administrative courts, also in view of the fact that disputes arise with subjects of authority. Therefore, protection of rights of individuals and legal entities should be effective if these rights were violated due to illegal decisions, actions or inaction of officials.

The State Judicial Administration has developed a procedure for video conferencing during a court session with the participation of the parties outside the court room. During the quarantine, such online participation in court sessions was a good thing for participants in legal processes in cases related to protection of rights, freedoms and interests of military personnel and conscripts, because justice was carried out, and participants in cases were able to remotely participate in the legal process without being exposed at risk. However, the war has shown us a different reality, because currently there is no safe place in Ukraine. Frequent air alerts lead to multiple interruptions during announcements of air alerts as far as all personnel shall take shelter. We believe that remote work of all court employees is the best option during the war time as far as it gives an opportunity to save their lives, and remote justice should only improve in accordance with the conditions of our life.

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