

ACCESS TO JUSTICE FOR PEOPLE WITH DISABILITIES: THE EXPERIENCE OF UKRAINE AND GERMANY

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Annotation. The relevance of researching this issue stems from the fact that the right to access justice is guaranteed by the Constitution of Ukraine to every person, including persons with disabilities. However, in practice, the implementation of this right guaranteed by the Basic Law of Ukraine faces a number of significant obstacles. First and foremost, these are physical barriers related to the lack of real opportunities for persons with disabilities to freely access court premises. Communication barriers also pose a significant problem, as judges and court staff often lack the special skills needed to communicate effectively with persons who have hearing or visual impairments or other special needs. Legal barriers are no less important, as a significant proportion of persons with disabilities do not have sufficient knowledge of how to exercise their right to go to court.

All these circumstances demonstrate the urgent need for profound reform of the legal institution of access to justice for persons with disabilities at the level of Ukrainian national legislation. In order to find ways to overcome these barriers, the author examines the positive experience of the Federal Republic of Germany. This country has achieved certain successes in this area. An analysis of the strategy for the digitization of justice, as well as the Federal Law on Equal Opportunities for Persons with Disabilities, makes it possible to formulate a number of proposals, the implementation of which could significantly improve public administration in the field of ensuring access to justice for persons with disabilities in Ukraine. First and foremost, this involves changing the concept of public administration in this area, within which the needs of private individuals who go to court, including the needs of persons with disabilities, should be given priority. In addition, it involves establishing specific measures at the level of state policy strategy and tactics in this area, aimed at overcoming physical, communication and legal barriers that prevent persons with disabilities from accessing justice. It is advisable to borrow from Germany's experience a comprehensive approach to ensuring access to justice for persons with disabilities. This approach covers not only the possibility to file a lawsuit or represent one's interests in court, but also provides primary legal assistance to persons who apply to the court, as well as access to various state registers. This, in turn, makes it possible to obtain the necessary evidence to substantiate the claims that a person with a disability brings before the court.

Key words: justice, persons with disabilities, physical accessibility, communicative accessibility, legal accessibility, state policy, State Judicial Administration of Ukraine, Germany, Ukraine.

1. Introduction.

The right to appeal to the court, guaranteed by the Constitution of Ukraine, belongs to every private individual. After all, access to an independent and impartial court is a guarantee of the protection of the rights, freedoms and legitimate interests of everyone. Of course, this constitutional right also belongs to persons with disabilities. We believe that the exercise of this right by persons with disabilities cannot be limited to the regulatory establishment of mechanisms for its implementation at the level of the Constitution of Ukraine, procedural codes and other legislative acts of Ukraine. In other words, it is not enough to establish at the legislative level only the possibility of exercising this subjective right. It is also necessary to create the necessary conditions for persons with disabilities so that they can actually exercise it. At the same time, it is necessary to take into account that persons



with disabilities are a general category that unites individuals with different needs. In particular, persons with disabilities include individuals with musculoskeletal disorders, visual or hearing impairments, chronic somatic diseases, etc. This means that the state is obliged to create appropriate and sufficient conditions for each of these subgroups so that such persons have a real opportunity to go to court regardless of their special needs.

This issue is particularly relevant in light of the introduction of martial law in Ukraine. Russia's armed aggression against Ukraine has resulted in a huge number of people with disabilities, both among military personnel and civilians. We are convinced that creating conditions for the latter to access justice is a priority task for the state.

Separately, we would like to draw attention to the fact that this is not only about physical accessibility to justice, for example, through the installation of ramps in court buildings. In our opinion, this obligation of the state also includes creating procedural access to justice, which means giving people with disabilities a real chance to go to court in the way the law says, letting them fully take part in court proceedings, and so on. It is in this area that Ukraine has accumulated a huge number of unresolved problems, the solution of which we would like to focus on separately in this study. To find answers to these questions, we would like to refer to the experience of Germany, which has created the necessary conditions for the realization of the right of persons with disabilities to access justice.

2. Analysis of scientific publications.

Research into the issue of access to justice for persons with disabilities has been conducted both within the framework of specific studies devoted directly to this topic and within the framework of general studies concerning the accessibility of justice in general. Among the specialized works, it is worth noting the studies by O. Kuvila [1] and O. Balatska [2], which analyze the legal guarantees and mechanisms for ensuring access to justice for persons with disabilities. At the same time, the issue of access to justice has also been considered in broader contexts, for example in the studies by O. Ovcharenko, O. Yeshchenko [3, 4] and others. However, it cannot be said that these scientific works fully reflect the current state of development of this issue. The issue of access to justice for persons with disabilities is dynamic and constantly influenced by new social, technological and legal changes. That is why there is a need for further comprehensive research on this issue.

3. The purpose of the work.

The purpose of this article is to analyze the issue of access to justice for persons with disabilities based on a study of the experiences of Ukraine and Germany.

4. Review and discussion.

We would like to begin our study by noting that creating conditions for access to justice in Ukraine for private individuals in general and persons with disabilities in particular is a task of the state, which derives from its fundamental constitutional duty to uphold and ensure the rights and freedoms of every person [5]. Undoubtedly, this duty must be fulfilled not formally, but in reality, by creating a real opportunity for everyone to access any court in any part of Ukraine. In our opinion, this duty of the state is fulfilled through the functioning of the State Judicial Administration of Ukraine (hereinafter referred to as the SJA of Ukraine), which is a specialized public administration body responsible for the organizational and financial support of the courts in Ukraine. In this regard, we are primarily interested in the organizational support of the courts. It is this area of the SJA's activities that provides for the physical accessibility of courts to private individuals. This includes the proper maintenance of court buildings, ensuring that they are equipped with ramps, lifts and other facilities that are objectively necessary for persons with disabilities. In addition, the SJA of Ukraine is responsible for the information and technical support of the courts. This responsibility includes both the functioning of the «Electronic Court» subsystem and the provision of computers, office equipment, servers and other technical means necessary for communication with private individuals to the courts.

An analysis of (the Law of Ukraine «On the Judicial System and Status of Judges») [6] and (the Regulations on the State Judicial Administration of Ukraine) [7] leads to the conclusion that the activities of the SJA of Ukraine are court-centric rather than people-centric. In other words, the focus of such activities is on the needs and interests of the court, rather than on private individuals who turn to the judiciary for protection of their violated rights, freedoms and legitimate interests. In our opinion, this is a significant drawback, as the focus is on the needs of judges and court employees in terms of organizational, informational and technical support for the activities of the judiciary, rather than the needs of private individuals who turn to the courts. We are convinced that this is a conceptual flaw in the Law of Ukraine 'On the Judicial System and Status of Judges' and in the Regulations on the State Judicial Administration of Ukraine developed on its basis. It is obvious and understandable that judges and court employees, when talking about the provision of judicial power, will focus primarily on issues that affect their activities. These include maintaining court buildings in proper condition and repairing them, equipping workplaces, providing computer equipment, office equipment, etc. Additional problems have arisen in connection with the legal regime of martial law, in particular, the destruction or damage of court buildings, the transfer of judges from frontline areas to other courts in Ukraine, etc. At the same time, can we assume that by providing for judges and court employees, the State Judicial Administration of Ukraine fully meets all the needs of private individuals who apply to Ukrainian courts? This issue is particularly acute when it comes to meeting the needs of persons with disabilities who apply to the courts. Once again, we emphasize that disability takes many forms. In view of this, there are different needs that must be met in order for such persons to be able to participate not only formally but also in reality in court proceedings and effectively defend their rights, freedoms and legitimate interests. It should be noted that (the Law of Ukraine «On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine») [8] contains Section V, which is devoted to creating conditions for unhindered access of persons with disabilities to social infrastructure. Obviously, this section also concerns ensuring access for persons with disabilities to court premises. Thus, according to (Article 26 of the Law of Ukraine «On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine»), enterprises, institutions and organizations are obliged to create conditions for unhindered access for persons with disabilities, including persons with disabilities who use mobility aids and guide dogs, to physical environments. This article also specifies the obligation of relevant entities to apply and place information on physical objects in embossed alphanumeric or embossed dot font. Such information should, in particular, relate to the numbering of floors, rooms in physical environments, etc. [8]. These general requirements are detailed in (the DBN V.2.2-40:2018 «Inclusiveness of buildings and structures. Basic provisions») [9]. An analysis of this document leads to the conclusion that the premises in which courts are located must be equipped with such accessibility elements as: ramps; handrails; lifts or elevators; specialized toilets; tactile elements; special places in courtrooms; and other means necessary to ensure unhindered access for persons with disabilities [9]. At the same time, it is important not only to enshrine the relevant requirements in legislation, but also to ensure their actual implementation in practice. That is why (the 2024 report of the State Judicial Administration of Ukraine) is interesting in this regard, as it pays special attention to the issue of ensuring equal access to court services for persons with disabilities and other low-mobility groups [10]. An analysis of this report allows us to draw the following conclusions: 1) bringing court premises into compliance with the requirements of current Ukrainian legislation is only possible through new construction, reconstruction, restoration, and major/routine repairs of existing buildings of appellate and local general courts as a whole, which requires significant financial resources; 2) of the total number of premises used by appellate and local courts for the administration of justice, only 66% are under the management of the State Judicial Administration of Ukraine, and, as mentioned earlier, work using state funds is only possible on state-owned properties; 3) 3% of court premises are barrier-free (all physical accessibility criteria are met); 49% are partially barrier-free (meeting critical physical accessibility criteria); 48% are barriered (not meeting physical accessibility criteria) [10]. An analysis of these indicators leads to the conclusion that in the vast majority of cases, persons with disabilities do not have access to the justice system and cannot directly exercise their right to protect their violated rights, freedoms and legitimate interests in court. Undoubtedly, this situation is unacceptable and indicates the existence of a systemic problem that remains unresolved in Ukraine today.

At the same time, we must note that physical accessibility is only one of the parameters of access to justice for persons with disabilities. We must also discuss other components of this accessibility. For example, the skills of judges and court employees in communicating with persons with special needs. For example, proficiency in sign language when communicating with persons with hearing



impairments, the use of Braille for persons with visual impairments, etc. In this context, in our opinion, it is worth talking about communication accessibility to justice. An analysis of (the 2024 report of the State Judicial Administration of Ukraine) gives reason to conclude that this public administration body sees the solution to this problem in the introduction of digital services [10] that are intended to simplify communication between the court and persons with disabilities. At the same time, we believe that the importance of this factor should not be exaggerated, as such services cannot under any circumstances completely replace direct live communication with judges and court staff.

In addition, it is obviously worth discussing legal accessibility to the judicial system, i.e. providing legal assistance to persons with disabilities who wish to go to court to protect their violated rights, freedoms and legitimate interests. Again, such assistance should be provided taking into account the special needs of persons with visual, hearing and other impairments.

It is worth dwelling separately on the strategy and tactics of state policy regarding the creation of a barrier-free environment in Ukraine. The Ukrainian government has now approved and adopted (the National Strategy for Creating a Barrier-Free Environment in Ukraine for the period up to 2030) [11]. An analysis of the provisions of this strategy shows that the issue of access to justice is mentioned several times. In particular, the expected results include: improving access to information during court proceedings; monitoring the accessibility of justice system websites; eliminating unequal access to justice for certain groups of the population, which causes feelings of discrimination and reduces trust in the state. The Strategy also identifies the problem of ensuring accessibility during court proceedings, particularly in the context of creating conditions for access to justice for persons with limitations in their daily functioning [11]. The Strategy is being implemented on the basis of (the 2025-2026 Plan for the implementation of the National Strategy for the creation of a barrier-free environment in Ukraine for the period up to 2030) [12]. It provides for the following measures to create a barrier-free environment in the area of access to justice: 1) ensuring digital accessibility during court proceedings for persons with varying degrees of communication limitations; 2) conducting an information campaign among the population to raise awareness of barrier-free environments in the judicial system, in particular regarding ensuring digital accessibility to justice for persons with disabilities, by posting relevant information on the official website of the State Judicial Administration in accordance with the procedure established by the Regulations on the functioning of individual subsystems of the Unified Judicial Information and Telecommunications System, approved by a decision of the High Council of Justice; 3) monitoring the accessibility of websites of judicial authorities; 4) implementing organizational and technical measures to improve software to ensure that persons with disabilities and other low-mobility groups of the population have access to court hearings and can familiarize themselves with court case materials using online resources; 5) developing and implementing information products to provide high-quality and accessible judicial services for all groups of the population; 6) ensuring access to justice for persons with limitations in their daily functioning [12]. It is noteworthy that the State Administration of Ukraine (by agreement) has been designated as the main implementer of these measures. As for monitoring accessibility and related services, this task has been assigned to the Ministry of Digital Transformation of Ukraine and the state-owned enterprise «Diyta». At the same time, the question arises as to how accessible such services really are for persons with disabilities. Are there any feedback mechanisms in place to ensure that the recipients of these digital services, which are aimed at ensuring access to justice for persons with disabilities, consider them to be effective, convenient and responsive to their real needs? In addition, the question remains as to how realistically persons with special needs, in particular those with hearing and visual impairments, can use these digital services. These questions do not have a clear answer at present. However, an analysis of even general indicators regarding the submission of cases through the «Electronic Court» system [13] and in paper format [14] indicates that the main form of communication between private individuals and the court remains the submission of lawsuits and other procedural documents in paper form. The likely reason for this situation is the low awareness of the population about the services provided by the «Electronic Court».

As for Germany, we can see completely different guidelines in public administration regarding the functioning of the judiciary. First of all, I would like to draw attention to the provisions of (the Strategy for the Digitalization of the Justice System (Strategie für die Digitalisierung der Justiz) [15]. An analysis of this Strategy allows us to conclude that the system for ensuring the functioning of the judiciary in Germany is oriented towards the needs of private individuals who go to court. The document emphasizes that a person who files a lawsuit or other application with a court should not have to become an «obstacle runner»[15]. In other words, the conditions should be as clear, accessible and

comfortable as possible for them in order to protect their rights and interests in court as quickly and effectively as possible. Thus, it is not the institutional needs of the court that come to the fore, but rather the needs of private individuals, including persons with disabilities. In addition, a distinctive feature of the German approach is that it covers not only physical access to the court, but also the real possibility of effectively exercising one's right to judicial protection. This refers, in particular, to the availability of legal aid or advice necessary to bring a case to court, as well as ensuring access to supporting documents, permits and other materials that are also available in digital format. This enables individuals to fully substantiate their claims and protect their rights. The relevant tasks of the state are implemented through mechanisms laid down in (the Law on Equal Rights for Persons with Disabilities (Behindertengleichstellungsgesetz)) [16]. If we compare this federal law with (the Law of Ukraine «On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine») [8], we can conclude that it is based on the principles of equality and non-discrimination; removing barriers (architectural, informational, digital), and emphasizing the independence and participation of persons with disabilities in society. The purpose of the Federal Law on Equal Rights for Persons with Disabilities is to remove barriers that prevent persons with disabilities from accessing all areas of public life, including justice.

5. Conclusions.

The study allows us to draw the following conclusions:

1. In Ukraine, access to justice for persons with disabilities is formally guaranteed at the legislative level and is implemented through the general procedure of any private individual applying to a court to protect their violated rights, freedoms and legitimate interests. In reality, however, persons with disabilities face a number of significant barriers that make it impossible or significantly more difficult to exercise their right to access the courts. These barriers include:

- Physical barriers. Most buildings housing courts are still not equipped with the necessary accessibility features (ramps, lifts, adapted sanitary facilities, tactile elements, etc.), which effectively prevents a significant proportion of persons with disabilities from physically accessing the courts.
- Communication barriers. Lack of skills among judges and court staff to effectively interact with persons who have hearing, visual or other impairments that affect their perception of information.
- Information barriers. Digital services used to access justice (e-courts, official websites, information systems) are not adapted to the needs of persons with disabilities, including persons with visual or hearing impairments, etc.

Thus, despite formal guarantees, persons with disabilities actually face significant barriers to accessing justice.

2. Ensuring access to justice for persons with disabilities is part of public administration in the field of organizational and financial support for the judiciary, which is carried out by the State Judicial Administration of Ukraine. The conceptual problem with the current model of public administration in this area is that it focuses primarily on the internal needs of the judicial system rather than on the needs of individuals who turn to the courts to protect their rights, freedoms and interests. As a result, the effectiveness of public administration is assessed by the subjects of public administration themselves, i.e. the internal bodies of the judiciary, rather than by those citizens, including persons with disabilities, who are the direct users of judicial services. In our opinion, this approach is not effective enough, as it does not allow for the real, objective needs of individuals who turn to the courts, especially persons with disabilities, for whom the removal of physical, information and communication barriers is of critical importance. In this regard, there is a need for a conceptual review of the provisions on the State Judicial Administration of Ukraine, as well as the policy documents that define the directions and tasks of public administration in the field of ensuring the functioning of courts.

3. Reforming public administration in terms of ensuring access to justice for persons with disabilities in Ukraine should be carried out with mandatory consideration of the experience of the Federal Republic of Germany. In our opinion, the German model should be emulated, first and foremost, in terms of orienting public administration in this area towards the needs of private individuals who turn to the



courts, as well as combining direct access to justice with related services that ensure the full realization of the right to appeal to the courts. One such element is the provision of free legal aid to persons with disabilities, which should be provided by the state and include: assistance in formulating and specifying claims to the court; correct preparation of procedural documents; support at the stage of filing applications and complaints. In addition, it is important to ensure that persons with disabilities have access to a full package of necessary documentation when applying to the court, in particular: extracts from state registers; certificates, information materials; other documents and evidence necessary to substantiate their legal position. That is why we propose to make appropriate changes and additions to the policy documents and activity plans of the State Judicial Administration of Ukraine, which determine the directions of organizational and financial support for the judiciary.

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