

# Electronic Administrative Judicial Procedure of Ukraine and the Right to Judicial Protection: Problems of Legal Regulation and Practical Issues

Professor **Oleksandr SHEVCHUK**<sup>1</sup>

Associate professor **Ihor KOMPANIETS**<sup>2</sup>

Associate professor **Olena VOLIANSKA**<sup>3</sup>

Assistant professor **Oleksandra SHOVKOPLIAS**<sup>4</sup>

Assistant professor **Vasyl BARANCHUK**<sup>5</sup>

## **Abstract**

*The article deals with certain problems of legal regulation of electronic administrative judicial procedure in the context of the realization of the right to judicial protection. The methodological basis of a scientific article is a set of philosophical, general and special scientific methods. It is indicated that electronic administrative judicial procedure should be attributed to the components of electronic governance. It has been established that the right to appeal to an administrative court and ways to protect violated rights cannot be limited when submitting and considering electronic documents, since the lack of such an opportunity leads to a violation of fundamental human rights, court practice in this matter is given. It has been established that it is the application of a specific method of protecting participants in public law relations of a violated or denied right that is the result of the activity and effectiveness of the legal mechanism for protecting rights when using information and communication technologies in administrative courts. Revealed that these rights protection mechanisms should be applied on the basis of the rule of law, accessibility and transparency, impartiality and independence, including the principles of oral hearing and equality of arms. The analysis of the concepts "electronic justice", "electronic court" in the scientific literature, national and international legal documents is carried out. The essence of "electronic administrative judicial procedure", its elements, stages of implementation in practice are disclosed. Separate directions for improving the legal regulation of electronic administrative judicial procedure regarding the implementation of the right to judicial protection are proposed.*

**Keywords:** judiciary, right to judicial protection, e-justice, e-court, administrative judicial procedure, legal regulation.

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<sup>1</sup> Oleksandr Shevchuk - Department of Administrative Law and Administratively Activities, Yaroslav Mudryi National Law University, Kharkiv, Ukraine, oleksandr-shevchuk@ukr.net.

<sup>2</sup> Ihor Kompaniets - Department of Administrative Law and Administratively Activities, Yaroslav Mudryi National Law University, Kharkiv, Ukraine, ihorkompaniets@ukr.net.

<sup>3</sup> Olena Volianska - Department of Sociology and Political Science, Yaroslav Mudryi National Law University, Kharkiv, Ukraine, volyanskaya155@ukr.net.

<sup>4</sup> Oleksandra Shovkoplias - Department of Administrative Law and Administratively Activities, Yaroslav Mudryi National Law University, Kharkiv, Ukraine, shovkoplias.oleksandra@ukr.net.

<sup>5</sup> Vasyl Baranchuk - Department of Criminalistics, Yaroslav Mudryi National Law University, Kharkiv, Ukraine, baranchuk.vasyl@ukr.net.

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## 1. Introduction

The legal systems of the world have been using information technologies for a long time to strengthen the protection of human rights, to create comfortable opportunities for all members of society in order to realize and protect their rights, freedoms and interests<sup>6</sup>. The use of modern technologies is a prerequisite for creating favorable conditions for access to justice<sup>7</sup>. Digital technologies are designed to improve the lives of people and the well-being of communities, as well as contribute to the development of society, they also contain obvious and hidden risks and threats, creating challenges for all of humanity. At the same time, human rights must be recognized and protected in all areas and protected both online and offline<sup>8</sup>. The main innovations both in Ukraine and in the countries of the European Union in modern conditions are associated with the active use of information and communication technologies<sup>9</sup> including such a management innovation as the introduction of electronic management of administrative cases in administrative courts in Ukraine. Article 14 of the Association Agreement between Ukraine and the European Union clearly states that both Parties to the Agreement "attach special importance to the establishment of the rule of law and the strengthening of institutions at all levels in the field of governance in general and law enforcement and judicial bodies in particular"<sup>10</sup>. The system of electronic justice has acquired a legal status in which the absence of such a system leads to the violation of basic human rights, since electronic justice is now identical to the system of

<sup>6</sup> Hliborob N. *Introduction of Electronic Administrative Judicial Procedure in Ukraine: Innovations and Prospects Authors*. "Law of Ukraine", 2018. Iss. 2, p. 104.

<sup>7</sup> Recommendation R (84) 5 of the Committee of Ministers to the member states on the principles of civil procedure aimed at improving the judiciary of 28 February 1984. Available at: <https://rm.coe.int/09000016804c29d0> [Accessed 01 November 2022].

<sup>8</sup> Razmetaeva Y., Barabash Y., & Lukianov D. *The concept of human rights in the digital era: changes and consequences for judicial practice*. "Access to Justice in Eastern Europe". 2022. Vol. 5, Iss. 3, p. 42.

<sup>9</sup> Shevchuk, O., Zui, V., Maryniv, I., Davydenko, S., Mokhonchuk, S. *Human Right to Internet Access in Healthcare in the "Right to Health Concept"*, "European journal of sustainable development". 2021. Vol. 10 Iss. 2, p. 286-300.

<sup>10</sup> Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part": International document dated June 27, 2014, No. 984\_011. Official Gazette of Ukraine from September 26, 2014. No. 75. Art. 2125.

"electronic justice", therefore "electronic" has an even more important meaning in the context of European cross-border procedures<sup>11</sup>. In addition, important factors for the development of electronic management of administrative cases in administrative courts are, first of all, an increase in the number of administrative cases per year, an excessive workload on administrative court judges, and from 2020 the spread of the COVID-19 pandemic, and from February 24, 2022, the introduction of military the situation in Ukraine in connection with the full-scale invasion of the Russian federation - all this raised the question of increasing the productivity, convenience and safety of the judicial system of considering administrative cases in administrative courts. In the conditions of martial law, threats to the lives and health of participants in judicial administrative cases, judges and employees of the apparatus of administrative courts, the issue of introducing a remote form of work of administrative courts, creating and ensuring secure access to the electronic office of the judge, improving the practices of electronic form of administrative proceedings, expanding the number of cases, considered by the courts. Delays in the resolution of judicial administrative cases and the issuance of judgments in administrative courts also have a number of negative consequences. Thus, the use of information technology in such conditions is one of the key areas for improving the efficiency of the work of judges in administrative courts, the realization of the right of individuals in public law relations to judicial protection in administrative courts. The above indicates the relevance of this study.

## 2. Literature review

Some researchers paid attention to the introduction and development of e-justice. So, Razmetaeva Y., Barabash Y., Lukianov D. studied the development of the concept of human rights in the digital age regarding the consequences for judicial practice<sup>12</sup>, Piatyhora K. drew attention to certain stages of development of legislation on e-administrative legal proceedings in Ukraine<sup>13</sup>, Obrusna S., & Ivanova I. considered the specifics of the e-court as an administrative and legal category<sup>14</sup>, Hliborob N. drew attention to the legislative innovations of the introduction of electronic administrative justice in Ukraine<sup>15</sup>, Brintsev O. V. researched foreign experience and prospects for the introduction of e-court in Ukraine<sup>16</sup>. Reiling D. & Contini F. analyzed in their work the

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<sup>11</sup> Xanthoulis N. *Introducing the concept of 'E-justice' in Europe: How adding an 'E' becomes a modern challenge for Greece and the EU*. Available at: [https://e-justice.europa.eu/176/EN/national\\_courts\\_and\\_other\\_nonjudicial\\_bodies?GREECE&init=true&member=1](https://e-justice.europa.eu/176/EN/national_courts_and_other_nonjudicial_bodies?GREECE&init=true&member=1) [Accessed 11 November 2022], p. 9.

<sup>12</sup> Razmetaeva Y., Barabash Y., & Lukianov D., *The concept of human rights in the digital era: changes and consequences for judicial practice*. "Access to Justice in Eastern Europe". 2022. Vol. 5, Iss. 3, p. 41–56.

<sup>13</sup> Piatyhora, K. *Implementation of electronic administrative judicial procedure in Ukraine: prerequisites, essence and stages of establishment*. "Administrative Law and Process", 2022. 3(38), p. 59-71. <https://doi.org/10.17721/2227-796X.2022.3.05>.

<sup>14</sup> Obrusna, S., & Ivanova, I. *Electronic Court as a legal and administrative category*. "Administrative Law and Process", 2021. (2(29)), p. 5-17. <https://doi.org/10.17721/2227-796X.2020.2.01>.

<sup>15</sup> Hliborob N. *Introduction of Electronic Administrative Judicial Procedure in Ukraine: Innovations and Prospects Authors*. "Law of Ukraine". 2018. 2. p.102–117.

<sup>16</sup> Brintsev O. V. *"Electronic Court" in Ukraine: Experience and prospects: monograph*. Kharkov: Law,

development of an e-justice platform and its implications for judicial management. The authors of the article compare three e-justice platforms: Court of Justice of the European Union, Civil Trial online in Italy, and Kwaliteit en Innovatie Rechtspraak in the Netherlands<sup>17</sup>. Grynchak A. A. et. all. turned their attention to the analysis of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms as a constitutional instrument of the European public order<sup>18</sup>, Xanthoulis N. studied certain legal issues of the implementation of the concept of "e-justice" in Europe in the context of both appendix "E" is becoming a contemporary issue for Greece and the EU<sup>19</sup>, Bilevičienė T. & Bilevičiūtė E. examined the features of legal regulation of the use of e-justice in administrative proceedings in Lithuania<sup>20</sup>, Skóra A. studied the legal aspects of the nature of electronic communication between clients (other participants in the process) and administrative authorities in general administrative proceedings in Poland<sup>21</sup>, etc. However, the issues of legal regulation of electronic management of administrative cases in administrative courts at this stage of development regarding the implementation of the right to judicial protection have not been studied sufficiently in scientific publications.

### 3. Methodology and research methods

The methodological basis of the study is a combination of general and special methods of cognition such as dialectical, historical, descriptive, the method of scientific analysis and generalization; comparative legal, structural-functional and analytical methods were also used. The dialectical method of scientific knowledge is used as the main general scientific method. In the course of the study of legal documents covering the functioning and development of electronic administrative proceedings, formal-legal and system-structural methods were applied. In the course of formulating the legal constructions "electronic justice", "electronic court", "electronic administrative judicial procedure", the logical-semantic method was used. The use of the method of scientific analysis and generalization of methods allowed us to collect reliable information about the current state of the application of electronic administrative judicial procedure, its parameters, as well as about the features of the practical application of legislation,

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2016, p. 52.

<sup>17</sup> Reiling, D., & Contini, F. *E-Justice Platforms: Challenges for Judicial Governance*. "International Journal for Court Administration". 2022.13(1). 6. DOI: <http://doi.org/10.36745/ijca.445>.

<sup>18</sup> Grynchak A. A., Tavolzhanska Y. S., Grynchak S. V., Smorodynskiy V. S., Latysh K. V. *Convention for the Protection of Human Rights and Fundamental Freedoms as a Constitutional Instrument of European Public Order*. "Public Organization Review". 2022. 7. p. 1–14. doi: 10.1007/s11115-021-00583-9.

<sup>19</sup> Xanthoulis N. *Introducing the concept of 'E-justice' in Europe: How adding an 'E' becomes a modern challenge for Greece and the EU*. 2010. Available at: [https://e-justice.europa.eu/176/EN/national\\_courts\\_and\\_other\\_nonjudicial\\_bodies?GREECE&init=true&member=1](https://e-justice.europa.eu/176/EN/national_courts_and_other_nonjudicial_bodies?GREECE&init=true&member=1) [Accessed 11 November 2022].

<sup>20</sup> Bilevičienė, Tatjana & Bilevičiūtė, Eglė. *E-Justice in Administrative Process: Insights from Lithuanian Landscape*. "Human Rights and Ethics: Concepts, Methodologies, Tools, and Applications". 2015. P.1220-1245. IGI Global. <https://doi.org/10.4018/978-1-4666-6433-3.ch066>.

<sup>21</sup> Skóra A. *Selected aspects of electronic administration. Comments on means of communication between parties to general administrative proceedings and public authorities*. "Zeszyty Naukowe Uniwersytetu Rzeszowskiego - Seria Prawnicza". 2019. 27. p.176-189. DOI:10.15584/znrprawo.2019.27.15.

including its problematic aspects.

#### **4. The legal nature of the realization of the right to apply to an administrative court in electronic form in the system of means of ensuring the right to judicial protection**

Law is a complex legal structure in which the substantive and procedural legal essence is determined. In the structure of "the right to judicial protection", the main place is occupied by the right to appeal to the administrative court, including in electronic form. However, such rights as the right to participate in court proceedings, the right to a court decision, the right to enforce a court decision are necessary, but derived from the right to apply to an administrative court. Thus, one of the objectives of the Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023 in Ukraine is to ensure the coordination and balance of the improvement process, taking into account the further harmonization of national legislation with the legislation of the European Union, to increase the efficiency of the organization of the judiciary and justice institutions, to strengthen confidence in them society. In this Strategy, among the main problems in solving the above tasks, the insufficient level of introduction of digital technologies in the administration of justice is indicated<sup>22</sup>.

Ensuring effective information resources of administrative proceedings guarantees compliance with the principles of openness, openness and transparency in the consideration and resolution of public law disputes in administrative courts<sup>23</sup>. According to Article 129 of the Constitution of Ukraine<sup>24</sup> and Articles 5-15 of the Law of Ukraine "On the Judicial System and the Status of Judges"<sup>25</sup>, the main principles of legal proceedings are, in particular: (1) the rule of law; (2) equality of all participants in the trial before the law and the court; (3) publicity of the trial and its complete fixation by technical means; (4) reasonable time for the case to be heard by the court; (5) accessibility of justice for each person and others. The Constitution of Ukraine establishes that the rights and freedoms of a person and a citizen are protected by the court (Part 1, Article 55). Legal regulation of the right to judicial protection has found its further development in the Law of Ukraine "On the judiciary and the status of judges" in part 1 of Art. 2 of this Law, securing the right to judicial protection. Access to such legal proceedings should take place in accordance with the general principles of administrative proceedings, therefore, according to Art. 6 of the Convention for the

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<sup>22</sup> Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023: Decree of the President of Ukraine dated 11.06. 2021 №231/2021. Official Gazette of Ukraine. 2021. No. 48. p. 23. Art. 2963.

<sup>23</sup> Blinova G.A., *Administrative and legal foundations of information support of public administration bodies in Ukraine*: topical issues of theory and practice: Tesis Doctor of Law: Zaporizhzhia: Zaporizkyy Natsionalnyy Universytet, 2019, p. 359 [in Ukrainian].

<sup>24</sup> Constitution of Ukraine: Law of Ukraine No. 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>25</sup> About judicial system and the status of judges: Law of Ukraine № 1402-VIII of 02.06.2016. Information of the Verkhovna Rada of Ukraine. 2016. No. 31. Art. 545.

Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide the dispute regarding his rights and obligations<sup>26</sup>. Note that the Recommendations of the Committee of Ministers of the Council of Europe of June 16, 2021 on online dispute resolution mechanisms in civil and administrative proceedings, which emphasize that the Recommendations are not focused on unifying the national procedural laws of the Member States, but on ensuring the compatibility of such mechanisms with the key principles of a fair trial and effective remedies set out in the case law of the European Court of Human Rights, including the principles of an oral hearing and equality of arms<sup>27</sup>. That is, the implementation of the right to apply for judicial protection when considering administrative cases in administrative courts in electronic form guarantees compliance with the principles of publicity, openness and transparency in administrative courts.

For example, Konstantiy A.V., analyzing the problems of protecting individual rights in administrative proceedings, notes that in the administrative proceedings of Ukraine, the French doctrine of procedural means of judicial protection of the rights of individuals in public law relations is functionally implemented. Thus, there are lawsuits: (1) on illegality (extraordinary) (on the annulment and invalidation of decisions, including legal ones, of subjects of power); (2) full judicial jurisdiction (simple) (renewable, to recover from the defendant the funds to compensate for the damage caused by his unlawful decision, action or inaction), (3) to carry out a stopped or imperfect action. In addition, the author believes that there are lawsuits on the use of repression (when the subjects of power, in cases provided for by law, apply to the administrative court to ensure the imposition of certain sanctions on participants in economic relations, depriving them of the right to carry out one or another activity, to limit certain other freedoms of citizens, foreigners, etc.). According to the author, only administrative claims on the interpretation (interpretation) of legal acts are absent in Ukraine<sup>28</sup>. Therefore, the issue of an effective way to restore violated rights or legitimate interests in an administrative court is closely related to its proper legal regulation.

The Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023 proclaims that the development of e-governance is carried out by: (1) introducing the possibility of online consideration of certain categories of cases, regardless of the location of the parties and the court and other e-justice services; (2) introduction of modern electronic record keeping in court, electronic case management, electronic communications with the court, judge's office and participant's

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<sup>26</sup> Convention on the Protection of Human Rights and Fundamental Freedoms: International document dated 04 November 1950 № 995\_004. Official Gazette of Ukraine official publication. 1998. No. 13. (No. 32 dated 23.08.2006), p. 270.

<sup>27</sup> Online dispute resolution in Civil and Administrative Court proceedings: new guidelines: Committee of Ministers of the Council of Europe. 2021. Available at: [https://search.coe.int/directorate\\_of\\_communications/Pages/result\\_details.aspx?ObjectId=0900001680a2\\_dcff](https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a2_dcff) [Accessed 10 November 2022].

<sup>28</sup> Konstantiy A.V., *Defense of rights of physical and juridical persons in administrative justice: theory and practice problems*. Tesis Doctor of Law. Yaroslav Mudryi National Law University. Kharkov, 2015. 415 p. [in Ukrainian], p. 256.

office; (3) improvement and development of the official web portal of the judiciary of Ukraine for obtaining information about courts and cases (procedures) with regular updates of judicial statistics data<sup>29</sup>. Along with other services of state power and management services, e-justice is one of the elements of e-democracy, which is being implemented to ensure accessibility, accountability, feedback efficiency, and transparency in the activities of public authorities. The judiciary is a key component of democracy. Therefore, it is rightly considered that e-justice is the most important facet of e-democracy<sup>30</sup>. In fact, this method of management allows citizens and legal entities to apply to public authorities remotely and in real time, which greatly simplifies the process of communication between subjects and objects of public administration. Simplification of communication is achieved through the use of global and local information networks, which ensures the relative availability and efficiency of communication with public authorities<sup>31</sup>. That is, e-justice is one of the sectors of e-government. Thus, in the Recommendations Rec. (2001) 2 of the Committee of Ministers of the Council of Europe to member states on the construction and restructuring of judicial systems and legal information in an economic way, it is indicated that modern information technologies have become an indispensable tool in the field of justice, and contribute to the effective governance of the state, which is necessary for normal functioning of democracy<sup>32</sup>. Therefore, electronic administrative judicial procedure is an integral part of e-governance.

The main codified legal act that establishes the procedure for the implementation of electronic consideration of administrative cases in administrative courts in Ukraine and determines the features of its functioning is the Code of Administrative legal proceedings of Ukraine. The concept of "administrative judicial procedure" in scientific sources is understood as the procedure established by law for the activity in the procedural form of administrative courts to consider and resolve administrative cases related to the protection of the rights, freedoms and interests of individuals, the rights and interests of legal entities in the field of public law relations from violations by subjects of power<sup>33</sup>. The Code of Administrative legal proceedings of Ukraine notes the category "administrative proceedings" - as the activity of administrative courts to consider and resolve administrative cases in the manner prescribed by this Code. This Law states that "administrative case" is how a public law dispute is referred to an administrative court, and the term "administrative court" is a

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<sup>29</sup> Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023: Decree of the President of Ukraine dated 11.06. 2021 №231/2021. Official Gazette of Ukraine. 2021. No. 48. p. 23. Art. 2963.

<sup>30</sup> Brintsev O. V. *"Electronic Court" in Ukraine: Experience and prospects*: monograph. Kharkov: Law, 2016, p. 5.

<sup>31</sup> On the approval of the Concept of the development of e-governance in Ukraine: order of the Cabinet of Ministers of Ukraine of September 20, 2017, No. 649. Available at: <https://zakon.rada.gov.ua/laws/show/649-2017-%D1%80#Text> [Accessed 12 November 2022].

<sup>32</sup> European and international standards in the field of justice. 2015. Kyiv. 708 p. European Union. USAID. Available at: [https://newjustice.org.ua/wp-content/uploads/2018/05/EU\\_Standarts\\_book\\_web-1.pdf](https://newjustice.org.ua/wp-content/uploads/2018/05/EU_Standarts_book_web-1.pdf). [in Ukrainian].

<sup>33</sup> Demsky E.F. *Administrative procedural law of Ukraine*: textbook. Kyiv: Yurinkom Inter, 2008. 496 p. [in Ukrainian], p. 250, 251.

court within whose competence the Code of Administrative legal proceedings of Ukraine include the consideration and resolution of administrative cases (Article 1). Also, this legislative act distinguishes between the types of such cases, namely: (1) administrative case of minor complexity, (2) standard administrative cases, (3) exemplary administrative cases, (4) urgent and (5) complex administrative cases<sup>34</sup>. It should be noted that, in accordance with the norms of the Code of Administrative legal proceedings of Ukraine, it is prohibited to refuse to consider and resolve an administrative case on the grounds of incompleteness, ambiguity, inconsistency or lack of legislation governing disputed relations (part four of Article 6). Article 2 of the Code of Administrative legal proceedings of Ukraine states that the task of administrative proceedings is a fair, impartial and timely resolution by the court of disputes in the field of public law relations in order to effectively protect the rights, freedoms and interests of individuals, the rights and interests of legal entities from violations by the authorities' powers of subjects. Consequently, administrative proceedings establish legal grounds for appealing against acts, decisions and actions (inaction) of subjects of power, the procedure for considering administrative cases, including in electronic form, and ensure the implementation of the right to judicial protection guaranteed by the Constitution of Ukraine, ensure the exercise of judicial control.

The right to appeal to an administrative court and ways to protect the violated rights of a person are provided for in Article 5 of the Code of Administrative legal proceedings of Ukraine. In this article of the Code "The right to apply to court and methods of judicial protection" and Art. 6 "Rule of Law" the latter of which includes not only the concept of the rule of law, but also the provisions of the Law of Ukraine "On the execution of decisions and the application of the practice of the European Court of Human Rights". In Art. 2 of this Law stipulates that the decision of the European Court of Human Rights is binding on Ukraine. Article 17 of this Law establishes that, when considering cases, the courts apply as a source of law the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court of Human Rights<sup>35</sup>. Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, entitled "The right to an effective remedy", states: "Everyone whose rights and freedoms recognized in this Convention have been violated shall have the right to an effective remedy before a national authority, even if such violation was committed by persons exercising their official powers"<sup>36</sup>. For example, as of July 2019, 22.6 thousand users were registered in the Electronic Court subsystem in all types of legal proceedings. 19.9 thousand applications were sent to the courts by means of the Electronic Court, of which 17.5 thousand were registered by the courts, including 9.8 thousand cases were distributed among the judges. At the same

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<sup>34</sup> Code of administrative legal proceedings of Ukraine: Law of Ukraine № 2747 – IV, dated 6 August 2005. Information of the Verkhovna Rada of Ukraine. 2005. No. 35-36. No. 37. Art. 446.

<sup>35</sup> About execution of decisions and application of practice of the European Court of Human Rights: Law of Ukraine of February 23, 2006, No. 3477-IV. Information of the Verkhovna Rada of Ukraine, 2006. No. 30. Art. 260.

<sup>36</sup> Convention on the Protection of Human Rights and Fundamental Freedoms: International document dated 04 November 1950, № 995\_004. Official Gazette of Ukraine official publication. 1998. No. 13. (No. 32 dated 23.08.2006), p. 270.



time, regarding the documents received through the "Electronic Court" subsystem, the courts made 3.5 thousand decisions to leave without movement due to the need to submit them in paper form, which is 36% of the total number of applications filed through the "Electronic Court" subsystem<sup>37</sup>.

However, in the process of using the "Electronic Court" system in Ukraine, citizens also faced a number of problems. Thus, in the Decision of the Council of Judges of Ukraine No. 75 dated September 20, 2019, it is indicated that citizens file complaints due to the non-acceptance of procedural documents by the courts on the basis that they are sent electronically<sup>38</sup>. The Council of Judges of Ukraine recommended that administrative courts accept for consideration documents received using the Electronic Court subsystem. This position is provided for in the practice of the Supreme Court of Ukraine. So, according to the decision of the District Administrative Court of the city of Kyiv dated March 18, 2019, and June 13, 2019, appeals were returned. Considering the arguments of the court, the Supreme Court of Ukraine, in its decision of September 10, 2019, noted that the absence of the fact of the start of full-fledged functioning of the Unified Judicial Information and Telecommunication System cannot be an obstacle to the operation of its subsystem "Electronic Court" and, accordingly, the realization of the human right to submit procedural documents in electronic form<sup>39</sup>. Yes, and the practice of the European Court of Human Rights indicates that the court does not have the right to refuse to open, leave without progress or return an administrative claim filed in electronic form. Thus, the realization of the right to judicial protection of participants in public law relations is a constitutional right of the individual and refers to guarantees for ensuring their protection of rights and freedoms. The right to apply for judicial protection to an administrative court with an administrative claim in electronic form is the opportunity to apply using the administrative procedural mechanism to protect their rights and freedoms of individuals in public law relations in an administrative court, which is secured by the procedural obligation of the administrative court to provide such protection for the full and timely consideration of an administrative case and the issuance of a judgment in an administrative court on the requirements of law when providing and full consideration of documents in electronic form. It is the application of a specific method of protecting participants in public law relations of a violated or denied right that is the result of the activity and effectiveness of the rights protection mechanism in the electronic consideration of administrative cases in administrative courts.

The main national legal acts covering the regulation regarding the development of the constituent elements of the electronic administrative judicial procedure should be divided into two levels: (1) legislative, and (2) by-law. In the first version, these are

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<sup>37</sup> Regarding the ambiguous practice of using the "Electronic Court" subsystem by courts: Decision of the Council of Judges of Ukraine dated September 20, 2019, No. 75. Available at: <http://rsu.gov.ua/ua/documents?id=93&page=4&per-page=8> [Accessed 10 November 2022].

<sup>38</sup> Regarding the ambiguous practice of using the "Electronic Court" subsystem by courts: Decision of the Council of Judges of Ukraine dated September 20, 2019, No. 75. Available at: <http://rsu.gov.ua/ua/documents?id=93&page=4&per-page=8> [Accessed 10 November 2022].

<sup>39</sup> Resolution of the Supreme Court of Ukraine dated September 10, 2019, No. 640/1374/19. Available at: <https://verdictum.ligazakon.net/document/84320526> [Accessed 10 November 2022].

Laws, namely: (1) Law of Ukraine "On the Judiciary and the Status of Judges" dated June 2, 2016 No. 1402 VIII, in which Article 152 refers to (1) the powers of the State Judicial Administration of Ukraine on the introduction of electronic court; (2) implementation of measures to organize the exchange of electronic documents between courts and other state bodies and institutions<sup>40</sup> in the Law of Ukraine "On Access to Court Decisions" dated December 22, 2005 No. 3262 VI, Article 2 of which specifies the introduction of mandatory open disclosure in electronic form of all court decisions<sup>41</sup>; (3) in the provisions of the Code of Administrative Procedure of Ukraine (for example, in Article 18), Law of Ukraine "On Amendments to Certain Legislative Acts to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System" No. 1416-IX, which entered into force on May 26, 2021<sup>42</sup>, etc. So, in fact, from October 5, 2021, there is the beginning of the modern stage of legal regulation of electronic administrative judicial procedure regarding the systemic functioning of the main three subsystems: (1) "Electronic cabinet", (2) "Electronic court", (3) "Videoconference" in administrative proceedings.

### **5. The main categories in administrative electronic legal proceedings: the essence and problems of their relationship, characteristics of their components**

In Ukraine, at the legislative level, the definitions of "electronic court", "electronic justice", "electronic legal proceedings", "electronic administrative judicial procedure" are not defined. It should be noted that separate definitions of such terms as "electronic justice", "electronic court", "videoconference", "electronic cabinet", are provided for in the by-laws, namely in the Decision of the High Council of Justice of Ukraine dated July 17, 2021, No. 1845/021<sup>43</sup>. Thus, the concept of "Electronic Justice" is indicated as a set of various automated information systems of services (modules) that enable the court and other participants in the process to carry out the actions provided for by regulatory legal acts, starting with filing documents in electronic form with the court and/or participating in a court session through a videoconferencing system. And the term "Electronic Court" is a subsystem of the Unified Judicial Information and Telecommunication System, which provides users with the opportunity, in cases provided for by law, in accordance with the existing technical capabilities of such a subsystem, to create and send electronically procedural or other

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<sup>40</sup> About judicial system and the status of judges: Law of Ukraine № 1402-VIII of 02.06.2016. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> [Accessed 10 November 2022].

<sup>41</sup> On access to court decisions: Law of Ukraine dated 12.22.2005 No. 3262-IV. Information of the Verkhovna Rada of Ukraine. 2006. No 15. Art. 128.

<sup>42</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice on August 17, 2021, No. 1845/0/15-2. Available at: <https://zakon.rada.gov.ua/rada/show/v1845910-21#Text> [Accessed 10 November 2022].

<sup>43</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice on August 17, 2021, No. 1845/0/15-2. Available at: <https://zakon.rada.gov.ua/rada/show/v1845910-21#Text> [Accessed 10 November 2022].

documents to the court, other bodies and institutions in the system justice, as well as to receive information about the status and results of the consideration of such documents or other documents. The provisions of the Decision of the High Council of Justice of Ukraine dated July 17, 2021, No. 1845/021 also indicate that "videoconferencing" is a telecommunications technology for interactive interaction between two or more distant participants in court proceedings with the ability to exchange audio and video information in real time, and the category "electronic cabinet", is a document, the information in which is recorded in the form of electronic data, containing the mandatory details of the document, the legal status of which is certified by a qualified electronic signature of the author.

International documents also define the concept of "electronic justice" and indicate its elements. Thus, in Recommendation Rec. (2001) 2 of the Committee of Ministers of the Council of Europe to member states on building and restructuring judicial systems and legal information in an economic way, the term "electronic justice" means the use of information and communication technologies in the administration of justice by all interested parties in the legal field in order to increase efficiency and quality of public services, in particular for individuals and businesses. This concept includes electronic communication and data exchange, as well as access to information of a judicial nature. Its main goal is to improve the efficiency of the judiciary and the quality of justice, since access to justice is one of the aspects of access to democratic institutions and processes<sup>44</sup>. So, e-justice is a means of administering justice based on the use of modern information and communication technologies, the purpose of which is to ensure publicity, openness and accessibility of legal proceedings. In addition, Recommendation Rec. (2001) 3 CM CE defines the elements of e-justice, namely: (1) opening proceedings by electronic means; (2) implementation of further procedural actions within the framework of proceedings in the electronic document management environment; (3) obtaining information about the progress of the case by gaining access to the judicial information system; (4) receiving information about the results of production in electronic form<sup>45</sup>. Scientific sources also do not define a unified approach regarding the constituent elements of e-justice. In particular, O. M. Ovcharenko refers to the components of e-justice in Ukraine: (1) the development and implementation of electronic document management systems in courts, (2) videoconferencing technologies and SMS-informing participants in the trial, (3) access to the texts of court decisions through the unified state register of court decisions, it - online broadcast of individual court sessions<sup>46</sup>. Other scholars propose to single out other elements in its structure that allow automating some internal and external management functions (judicial statistics, personnel management, etc.)<sup>47</sup>.

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<sup>44</sup> *European and international standards in the field of justice*. 2015. Kyiv. European Union. USAID. p. 59. Available at: [https://new.justice.org.ua/wp-content/uploads/2018/05/EU\\_Standarts\\_book\\_web-1.pdf](https://new.justice.org.ua/wp-content/uploads/2018/05/EU_Standarts_book_web-1.pdf). [in Ukrainian].

<sup>45</sup> *Ibid*, p. 76.

<sup>46</sup> Ovcharenko O.M. *Problems of ensuring the right to a fair trial*. "Ukrainian Helsinki Human Rights Union". 2017. Available at: <https://helsinki.org.ua/problemy-zabezpechennyaprava-na-spravedlyvyj-sud-o-ovcharenko> [Accessed 10 November 2022].

<sup>47</sup> Bernaziuk O.O. *The concepts and features of electronic justice in Ukraine*. "Law and society". 2019. No.

There is no single approach to define the content of the terms "electronic court"<sup>48</sup>, "electronic justice"<sup>49</sup>, "electronic judiciary"<sup>50</sup> in scientific sources. The legal construction "electronic administrative judicial procedure"<sup>51</sup> is also used. Also in legal science, the term "informatization of the activities of the court" and the concept of "administrative and legal support for the introduction of an electronic court" are used. Regarding the term "electronic justice", some researchers suggest considering it as a normatively established procedure for the activities of courts in considering and resolving cases, based on the use of information and communication technologies in the process of preparing and implementing legal proceedings, aimed at speeding up judicial procedures, increasing their openness, and also ensuring, through special information means, equal and full access of all citizens to information about the activities of the courts and justice<sup>52</sup>, other scientists understand - as ways and forms of implementation by participants in legal proceedings of procedural actions using information technologies<sup>53</sup>. So, electronic (digital) justice involves the digitalization of the administration of justice from a content point of view. Regarding the term "electronic justice", some scientists understand it as a complex concept, meaning a special form of organization of the judiciary, based on the use of digital technologies and aimed at improving efficiency, achieving efficiency, ensuring accessibility of justice, as well as automating some internal and external management processes with the purpose of ensuring the implementation of its main function - the administration of justice based on the rule of law, fairness, openness and transparency, accessibility<sup>54</sup>.

Regarding the content of the category "electronic court" in scientific sources. First, we note that "administrative and legal support for the introduction of an electronic court" is defined as the theoretical, law-making, law-realization activities of the judicial administration to streamline, consolidate and develop the provision of administrative services through an electronic resource and the implementation of executive and administrative activities in this system in order to qualitatively improve the functioning of the judicial system. branch of government systems for the restoration of violated

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3, part. 2, p. 17.

<sup>48</sup> Brintsev O. V. *"Electronic Court" in Ukraine: Experience and prospects*: monograph. Kharkov: Law, 2016. p. 43 [in Ukrainian].

<sup>49</sup> Bondarenko V. A., Pustova N. O., *Theoretical and legal issues of electronic justice in the information society*. "Scientific Bulletin of Lviv State University of Internal Affairs. Legal series". 2017. № 2, p. 154-162.

<sup>50</sup> Smokovych M. I., *Administrative justice and electronic justice in Ukraine*. "Subcarpathian Law Herald". 2020. 4(33). p. 77-81. DOI <https://doi.org/10.32837/pyuv.v0i4.627>; Bernaziuk O. O., *op. cit.*, p. 18.

<sup>51</sup> Piatyhora, K. *Implementation of electronic administrative judicial procedure in Ukraine: prerequisites, essence and stages of establishment*. "Administrative Law and Process". 2022. 3(38), 59-71. <https://doi.org/10.17721/2227-796X.2022.3.05>.

<sup>52</sup> Kozakevych O.M. *Ensuring access to justice in transitive conditions*. Thesis PhD of Law. National University "Odessa Law Academy. Odessa, 2021, p. 39 [in Ukrainian].

<sup>53</sup> Bondarenko V. A., Pustova N. O., *Theoretical and legal issues of electronic justice in the information society*. "Scientific Bulletin of Lviv State University of Internal Affairs. Legal series". 2017. 2, p. 160.

<sup>54</sup> Bernaziuk O. O., *The concepts and features of electronic justice in Ukraine*. "Law and society". 2019. No. 3, part 2, p. 18.

rights and freedoms and legitimate interests of individuals and legal entities<sup>55</sup>. Also, the category "Electronic Court" is understood both in a narrow sense and in a broad one. In the first case, it is a subsystem in the system of the Unified Judicial Information System of Ukraine, designed to ensure the timely receipt by the participants of the trial of subpoenas and messages on the consideration of court cases and procedural documents adopted during the consideration of cases. In a broad sense, "electronic court" as an element of the information society as an independent unique form of litigation based on the latest information technologies that provide a full cycle of consideration of a court case in electronic format<sup>56</sup>. Also, this term in scientific sources is understood as a system that must correspond to the signs of unity and integrity, that is, to ensure that the judicial authorities perform their functions through the use of digital technologies, but at the same time, this system consists of separate elements (including one of them there is an electronic court), which can function both independently and in a system with others. Thus, the electronic court in administrative proceedings is its element. However, in order to formulate a single concept of "electronic court" in the legal doctrine, there is a need to consolidate it at the legislative level, namely in Article 15 of the Law of Ukraine "On the judiciary and the status of judges". In our opinion, electronic administrative legal proceedings are a procedure established by law in a procedural form in administrative courts using information and communication technologies regarding the preparation, consideration and resolution of administrative cases related to the protection of the rights, freedoms and interests of individuals, the rights and interests of legal entities in the field of public law relations from violations by subjects of power, and is aimed at increasing efficiency, achieving efficiency, ensuring the accessibility of administrative proceedings. It is advisable to provide this definition with the above content in Article 4 of the Code of Administrative legal proceedings of Ukraine. It should be noted that, in the context of improving the administrative and legal regulation of the use of electronic administrative proceedings, consideration of administrative cases in administrative courts in paper form should be used only in cases where there is no technical possibility of access to electronic means of communication in administrative courts, subject to the voluntary consent of the participants in a public law dispute to electronic ways of interaction. This approach is intended only to modernize the form of administrative proceedings with new opportunities for the implementation of the same actions without changing its legal characteristics.

## **6. Stages, procedure and problems of the implementation of electronic administrative proceedings in the context of the right to judicial protection**

Based on the analysis of the legal framework governing electronic administrative proceedings, the following stages of its implementation in practice can be conventionally distinguished. The first stage is the registration of participants, the

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<sup>55</sup> Kutsenko V. D., *The concept and content of the administrative and legal support of the electronic court*. "Scientific bulletin of public and private law", 2017, Vol. 2, p. 8.

<sup>56</sup> Brintsev O. V. *"Electronic Court" in Ukraine: Experience and prospects*: monograph. Kharkov: Law, 2016, p. 5 [in Ukrainian].

consideration of an electronic court case in an administrative court. First, participants in the consideration of a court case in an administrative court must register and log in to their own electronic account. It should be noted that before the start of functioning of all subsystems (modules) of the information and telecommunication system, the registration of documents received by the administrative court took place in the Automated Court Records Management System (decision of the Rada of Judges of Ukraine dated November 26, 2010, No. 30)<sup>57</sup> and registration of participants in the administrative process through the official web portal "Judicial Power of Ukraine". The registration of the participants is completed by the consideration of the court case in the administrative court by entering the relevant personal data, and it is also necessary to confirm the e-mail address for this purpose, enter the activation code received at the specified e-mail address. At the same time, the official e-mail address includes: (1) e-cabinet service; (2) the email address specified by the user in the electronic account; (3) an e-mail address specified in one of the state registries<sup>58</sup>. Also, the administrative procedural order obliges lawyers, notaries, private executors, forensic experts, state bodies and local governments, subjects of the state and municipal sectors of the economy to register official e-mail addresses in the Unified Judicial Information and Telecommunication System without fail. The rest register their official email addresses in this judicial system on a voluntary basis<sup>59</sup>. Thus, the administrative court must register not only electronic documents due to their receipt from the "Electronic Court" subsystem, but also when they arrive at any e-mail address not prohibited in Ukraine. Provided that these documents are signed with a qualified electronic signature. At the same time, access to electronic documents that are received by the administrative court is received by those judges of the administrative court who are in charge of certain judicial administrative cases. In addition, a person registered in the Unified Judicial Information and Telecommunication System also has the right to submit documents to the administrative court not only in electronic form, but also in paper form.

The second stage is the procedure for submitting procedural and other documents in electronic form to the administrative court. According to Article 18 of the Code of Administrative Procedure of Ukraine, statements of claim and other statements, complaints and other procedural documents specified by law that are filed with the court and may be the subject of legal proceedings, in the order they are received, are subject to mandatory registration in the Unified Judicial Information and Telecommunication System on the day the documents are received.

The third stage is the consideration of the electronic court case in the administrative court. The subsystem "Electronic Court" ensures the exchange of

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<sup>57</sup> Provisions on the automated court document management system: Decision of the Council of Judges of Ukraine 11/26/2010 No. 30. Available at: <https://zakon.rada.gov.ua/rada/show/vr030414-10#Text> [accessed 12 November 2022].

<sup>58</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice on August 17, 2021, No. 1845/0/15-21. Available at: <https://zakon.rada.gov.ua/rada/show/v1845910-21#Text> [Accessed 10 November 2022].

<sup>59</sup> Code of administrative legal proceedings of Ukraine: Law of Ukraine № 2747 – IV. dated 6 August 2005. Information of the Verkhovna Rada of Ukraine. 2005. No. 35-36. No. 37. Art. 446.

procedural documents in electronic form between all participants in the trial<sup>60</sup>. The norms of the Code of Administrative legal proceedings of Ukraine indicate that the court conducts the consideration of the case based on the materials of the court case in electronic form. Procedural and other documents and evidence in paper form no later than three days from the date of their receipt by the court must be converted into electronic form and attached to the materials of the electronic court case<sup>61</sup>. However, according to Article 160 of the Code of Administrative legal proceedings of Ukraine, it is noted that a written form of filing a claim with an administrative court. Thus, electronic documents that have been received by the administrative court are printed out and attached to the case materials on paper so that they can be considered in paper form. Also, when this is possible, the court scans documents in paper form and attaches them to the materials of the electronic court case<sup>62</sup>. During the court session, it is possible to conduct videoconferencing with the participation of the parties to the consideration of a public law dispute outside the court premises and also possible using the EasyCon system or other means available to the administrative court and participants in the trial that ensure the conduct of court sessions in the videoconferencing mode. This possibility is provided for by Article 195 of the Code of Administrative legal proceedings of Ukraine. It should be noted that on the day of the court session, its participants must, 10 minutes before the start of the court session in the administrative court, log in to the system, activate technical means (for example, a microphone, camera), wait for the invitation of the court session secretary of the administrative court to participate in it, be sure to the beginning of the videoconference, they must show their passport or other identification document. Further judicial review of administrative cases in administrative courts is carried out on the basis of the rules of the Code of Administrative legal proceedings of Ukraine with the possibility of submitting written and electronic evidence in electronic form. The fourth stage is the decision of the court case in the administrative court in electronic form. In cases of an appeal or cassation complaint in electronic form, the following stages of consideration of an electronic court case in administrative courts are possible. Thus, the current state of implementation of electronic administrative proceedings in Ukraine is implemented through the provision of the following opportunities to participants in the administrative process: (1) create and send electronically procedural or other documents to the court, other bodies and institutions in the justice system; (2) receive information about the status and results of consideration of procedural documents or other documents; (3) submit written and electronic evidence in electronic form; (4) receive subpoenas via electronic communications; (5) pay the court fee online when forming an electronic statement of claim (appeal or cassation complaint).

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<sup>60</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice on August 17, 2021, No. 1845/0/15-21.

<sup>61</sup> Code of administrative legal proceedings of Ukraine: Law of Ukraine № 2747 – IV. dated 6 August 2005.

<sup>62</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice on August 17, 2021, No. 1845/0/15-21.

However, in practice there are a number of problems in the implementation and development of electronic consideration of administrative cases in administrative courts, namely: (1) lack of knowledge on digital literacy (there is not enough knowledge in computer technology), this is a common problem in creating and using an electronic signature; (2) inequality of access to the Internet, (3) imperfect software, technical and material capabilities of administrative courts in Ukraine<sup>63</sup>; (4) insufficient protection of the data of litigants in administrative courts and cyber defense; (5) lack of awareness of the participants in the trial in administrative courts about the benefits and possibilities of using remote hearings in administrative proceedings in administrative courts, and others<sup>64</sup>. Thus, one of the ways to solve problems in the development of electronic administrative legal proceedings is to introduce at the legislative level the possibility of a person wishing to obtain judicial protection in an administrative court, to have the right to apply with the relevant procedural documents to the "Centers for the provision of administrative services" of the respective territorial communities, where such the person resides or is located. Employees of such a "Center for the provision of administrative services", after digitizing the documents of such a person and signing them with an electronic digital signature, will be able to send these documents to the administrative court through the "Electronic Court" subsystem using the technical equipment available in the local self-government body. Similarly, the reverse order of communication of the administrative court with such a person may be applied<sup>65</sup>. The above proposals will improve the organization of document flow in administrative courts and create additional conditions for a more effective level of ensuring the exercise of the right of persons to access an administrative court.

## 7. Conclusion

The guarantee of a fair and effective mechanism for exercising the right to judicial protection is the use of consideration and resolution of administrative cases in administrative courts, in addition to writing, also in electronic form, the perfect organization of the system of administrative courts and the bodies that ensure its functioning. Equally important is effective judicial administration, which provides for the solution of theoretical and practical problems, the development of new methodological approaches to the practical implementation of legal mechanisms for digital judicial administration, the production of new innovative forms and methods of electronic governance in administrative courts.

Electronic administrative judicial procedure is a form of legal administrative

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<sup>63</sup> Kravtsov, S., Pravnyk, S., & Moshura L., *Electronic Judiciality as a modern trend*. "Juridical scientific and electronic journal". 2021. 4. Available at: [http://www.lsej.org.ua/4\\_2021/55.pdf](http://www.lsej.org.ua/4_2021/55.pdf). DOI <https://doi.org/10.32782/2524-0374/2021-4/53>.

<sup>64</sup> Obrusna, S., Ivanova, I., & Chuban V., *Problems of administrative and legal support of the electronic court in Ukraine in the conditions of the COVID-19 pandemic*. "Juridical scientific and electronic journal". 2020. 4. 196-198. Available at: [http://lsej.org.ua/4\\_2020/48.pdf](http://lsej.org.ua/4_2020/48.pdf). DOI <https://doi.org/10.32782/2524-0374/2020-4/46>, p. 198.

<sup>65</sup> Svoiyak D. & Potapenko A., *Why "Electronic Court" will never become a reality in Ukraine*. "Constitutional process in Ukraine: political and legal aspects". 2022. No. 4 (95), p. 19-22.



process based on information technology that provides all stages of the movement of procedural documents, consideration and resolution of an administrative case in administrative courts in electronic form, based on legitimate legal grounds. In modern conditions of the development of administrative proceedings, it is possible to present evidence in electronic form, use an electronic digital signature, submit procedural documents in electronic form, including written and electronic evidence, etc., as well as perform procedural actions, receive court summonses by means of electronic communication, pay a court fee online when forming an electronic statement of claim (appeal or cassation), etc. The condition for the implementation of these opportunities for participants in the trial in administrative courts is registration in the Unified Judicial Information and Telecommunication System. For the further development of the "electronic administrative judicial procedure", it is necessary to improve the legal mechanisms of measures and systems for ensuring cyber protection, increase the efficiency of taking measures to prevent cybercrime, protect personal data, provide for legal norms in legislative acts to strengthen the legal liability of persons for violations in this area, fixing the category of the concept "electronic court" at the legislative level in Article 15 of the Law of Ukraine "On the judiciary and the status of judges". A separate area for improving the legal regulation of the issues under study is the development and adoption of a separate law on the organizational and legal foundations of e-justice in Ukraine, a separate section of which also included the legal foundations for organizing the use of e-administrative justice based on the rule of law, fairness, openness and transparency, accessibility.

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