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HISTORICAL AND LEGAL GENESIS AND CURRENT DISCOURSE OF LAW TO A FAIR TRIAL AT A NEW STAGE OF THE COURTS DEVELOPMENT IN UKRAINE

Annotation. *The article studies the historical and legal genesis and current discourse of law to a fair trial at a new stage of the courts development in Ukraine. The conclusions are formulated and recommendations of a theoretical and practical nature are proposed on the topic of a scientific article.*

Key words: *court, judicial authority, legal and judicial reform, the right to a fair trial.*

Introduction. Effective protection of human and civil rights and freedoms is one of the universally recognized scientific and practical problems nowadays. This problem has become a priority in the legal paradigm of a united Europe. There is a direct correlation between the dynamics of Ukraine's European integration and our state's desire to continuously improve the standards of respect for all human rights, which is namely confirmed according to provisions of the Association agreements.

The problem of implementing the right to a fair trial was especially relevant in the context of Ukraine's European integration. The objectification of the right to a fair trial is one of the most important topics within European integration processes. It is about affirming democratic principles, the rules of Law, Human Rights and Fundamental Freedoms, enhancing the authority of the judiciary in Ukraine. These considerations

determine the expediency of a retrospective study regarding the formation and evolution of the "fair trial" category and the definition of its modern determinants in order to develop.

Research results.

1.1. Fair Trial in the Philosophical and Legal Doctrine

In ancient times, the problem of a fair trial was first voiced in the philosophical doctrine of Socrates, who believed that one cannot remain a strong state if their judgments are unfair and have no power. When the judges condemned Socrates to death, he said: "You didn't tell me one word of truth, and I am telling you: the court must be fair, because only in this case it cannot lose people's trust. His disciple Plato declared that the state would cease to be a state if its courts were no longer properly administered. In a state with unfair courts or where the courts themselves undermine their authority, he warned, stormy times would come. Judges, Plato emphasized, should be fair, impartial, wise and educated, improving their knowledge in order to ensure justice for the people, and for the state development. [1, p. 366 – 377].

Aristotle, continuing Plato's point of view, noted that justice is what is legal and fair and that injustice is an unfair court with illegal judgments. Aristotle considered the issue of justice in the context of impartial justice, which formed the basis of his theory of restorative justice. He interprets the latter one as follows: it makes no difference who stole from whom and who committed adultery, noble or vicious person; the law treats people as equals, considering the difference only in terms of harm: who commits injustice and who feels injustice; who caused the damage and to whom it was caused. [2, p. 139].

In the Middle Ages, the idea of a fair trial was closely associated with the specifics of the days. On this occasion, I. Franko wrote that “although the Middle Ages were a smaller moral period that humanity beared and showed more crimes and iniquities against the known and recognized morality then, they never spoke in the world, did NOT preach as much about morality as then. In imbalance, the souls of the inhabitants of that time made wild leaps between heaven and hell, between murderous crimes and flagrant adulation of extraordinary merit. The categories - guilt, sin, punishment, grace of God - were the basic principles of human thought and sentiments that were reflected also in the worldview of the time, in understanding the structure of the world and its purpose." [3, p. 36]. At that time, the understanding of a fair trial was closely related to theocentrism.

Certain elements of the right to a fair trial were enshrined in the Judge Ordinance, which stated that judges should enforce the law and the rights of all subjects, both rich and poor, regardless of personality, and were not allowed to accept cash, gifts, bribes etc. [4].

During the Renaissance, the notion of a fair trial became one of the most important. As it was noted in N. Melnichuk's work, “The Renaissance period can hardly be interpreted unequivocally. This epoch was characterized not only by the effort to restore ancient humanism, but also the spirit "to condemn by anathema", an inherent desire not only to eradicate the spirit of the Middle Ages, but also to revive it. It was a moment when a new scientific point of view and the old world view, a secularized mind and revived dogmas, an absolute law and a desacralized law, a freedom of will and limitation of action, a new idea and a "new inquisition" clashed. Extremely contradictory days - grandiose events and hopeless disappointments, desperate acts and

sincere repentance; an era of powerful inner freedom and not always the conscious need for its civilized expression [5, p. 68].

However, Montaigne called for "forget the ugly and devious law and to preserve the human models of justice" [6, p. 21]. Andrzej Modziewski argued that the court must become impartial providing justice, regardless of the status of the defendant. The law, he proclaimed, must be spoken in the same language, because being lenient about the "elect" provokes them to commit new crimes, and unnecessarily harsh punishments given to ordinary people destroy them. [7, p. 89].

At the age of Enlightenment, a fair trial was linked with the public interests. The fair court associated with respect for the citizen as being part of a political organism. "How many unfortunate people, Voltaire wrote, were betrayed and given to the executioners by dishonest and unfair judges, who calmly, without any reproach, sentenced them to death." [8, p. 205]. The right to a fair trial was proclaimed by the Virginia Declaration of 1776, which laid the foundation for the US Constitution. The Fifth Amendment states that no person shall be deprived of his life, liberty or property without due process of law. The the right to a fair trial of a person has been set in French Declaration of Human Rights and the Citizen (1789). Jean-Paul Marat, who intellectually and spiritually contributed to the creation of this Declaration, stated in his "Draft Declaration of the Rights of Man and of the Citizen, followed by a Plan of Constitution that is fair, wise and free" that "no citizen should be caught in the nets of an ignorant judge or a briber " [9].

Montesquieu, supported by the ideology of humanism, noted that judges are called to ensure public calm. Montesquieu emphasized that an unjust sentence is testimony not only to contempt of court, but also to the lack of moral virtues of judge. [10, p. 318 – 320, 363]. Helvetius esteemed the right to a fair trial with prevailing public interest. In this context, a fair trial was conceived as a means of ensuring personal and shared happiness. His interpretation of justice was associated with virtues considered as essential in human life. The philosopher believed that the interests of judges should be subordinated to the public needs, and the degree of the integrity of society depends on the judges [11]. Hegel emphasized that a fair trial cannot be without publicity. To his mind the administration of justice, must be public and affordable, only then citizens will have respect for the court. [12].

Summarizing the key points of the historical and legal genesis of the right to a fair trial, we made the following table (Table.1).

1.2. Understanding the right to a fair trial in XX - early XXI centuries. Radbruch believed that the right was inherently aimed to achieve justice, and justice requires equality under the law - if the judges are honest and their decisions are fair. In fair trial, he called justice under the law and making fair sentences .[13, p. 32 – 43]. H.Kelsen, trying to comprehend the problems of justice, argued that if an administrative body, in carrying out its function, must follow the instructions issued to it "from above" from a higher authority, the judge in his function should be independent of any higher authority, bound only by that general legal norm, which should apply [14, p. 289].

H. Hart wrote that the relation between justice and the concept of legal proceedings is very close. He believed that to apply the law fairly in different cases, meant to take seriously the assertion that, in different cases, the same general rule should apply, without prejudice, personal interest or moodiness. Making a decision, Hart emphasized, requires from judge to make a moral decision. In order to avoid disturbances of society, a judge is required to strike a balance between the demands of

society, the requirement of law, and moral verdict. [15, p. 159].

Table 1

Features of the interpretation of the right to a fair trial in some stages of the development of philosophical doctrine

Ancient times	
Socrates	The court must be fair, because only in this case it cannot lose people's trust.
Plato	The state would cease to be a state if its courts were no longer properly administered; In a state with unfair courts or where the courts themselves undermine their authority, stormy times would come.
Aristotle	No difference who stole from whom and who committed adultery, noble or vicious person; the law treats people as equals, considering the difference only in terms of harm: who commits injustice and who feels injustice; who caused the damage and to whom it was caused; the beginning of concept of equality before the law.
Cicero	Fair trial must be correlated with the concepts of loyalty and justice.
Middle Ages	
Judge Ordinance	Judges should enforce the law and the rights of all subjects, both rich and poor, regardless of personality, and were not allowed to accept cash, gifts, bribes etc
Judge's duties and functions	Oath: "to perform everything honestly, to judge fairly cases, to allow the parties to appeal, not to be engaged in abuses, not to be biased, not to make concessions to the rich and nor to offend the poor"
Renaissance	
Montaigne	Forget the ugly and devious law and to preserve the human models of justice.
A. Modziewski	Court must become impartial providing justice, regardless of the status of the defendant.
Enlightenment	
Virginia Declaration of 1776	No person shall be deprived of his life, liberty or property without due process of law
French Declaration of Human Rights and the Citizen	Human has the right to a fair trial
Jean-Paul Marat	No citizen should be caught in the nets of an ignorant judge or a briber
Ch. Montesquieu	Judges are called to ensure public calm; an unjust sentence is testimony not only to contempt of court, but also to the lack of moral virtues of judge.
C. Helvetius	Fair trial as a means of ensuring personal and shared happiness.
C.Beccaria	Fair justice is able to protect human.

In the second half of the XX-th century a particular relevance has the issue of a fair trial in the context of the requirements of the European Court of Human Rights and the Convention requirements. Regulatory Law documents to a fair trial have become an important source of information..

I. Marochkin studied the accessibility of justice and guarantees of its implementation, identifying its elements of accessibility, such as organizational law, which include the judiciary (territorial approximation of courts to the population,

creating conditions facilitating to occupy judicial posts by highly qualified specialists), and proper material security; and court proceeding (initiation proceeding, the order of trial, which provides an opportunity to use freely procedural rights; reasonable terms of trial, etc.), and also material (moderation of legal costs, partial or complete exemption from payment; court activities financing, providing legal assistance to vulnerable groups of the population). [17]. L.Moskvych, exploring the concept of accessibility of courts, highlighted such components as institutional, economic and procedural accessibility. Institutional accessibility concerns to the convenient location of courts, instances aspect, the accessibility to court information.. Economic accessibility means that legal costs must not become an obstacle to accessing justice. The interpretation of court procedural accessibility is due to the right of accessibility to court proceedings and consists of three components, namely: the court must be based on law; be independent from the executive power or parties and impartial [18].

A. Luzhansky researched the concept of an impartial tribunal in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms, and considered an access to justice as a way to ensure real implementation of the right on applying to court [16]. O. Ovcharenko, in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms, studied the concept of accessibility of justice as a principle of the judiciary organization and activity, examined the International Standards of Access to Justice, as well as institutional guarantees of accessibility and achievable mechanisms to appelate judicial decisions. The author proposed a theoretical generalization and a new solution to the scientific problem, which consisted in revealing the essence and content of the concept of "accessibility of justice". [19].

In I. Zharovska's work "Access to justice: theoretical and legal issues" the right to accessibility to justice is considered in the context of theoretical and legal problems regarding the accessibility of law to public, which is interpreted as guaranteed by a number of factors such as the constitutional right to knowing the rights and obligations the principles of openness and transparency of parliamentary procedures; publicity of the activity by public authorities; improvement of legal techniques as a means easing to comprehend the text of legal and regulatory acts etc. [20].

In the monograph "Justice: philosophical and theoretical understanding" of justice is viewed through the lens of philosophy of justice as a direction of law philosophy, the specificity of justice as a impartial judiciary, the fundamental ontology of justice is investigated, the issues of justice and judicial law-making are raised, and the implementation of the Case Law of the European Court of Human Rights. One of the important directions of studying European integration processes in the legal system of Ukraine is their explanation with the help of the categorical-methodological means of socio-normative ethnography. In this context, the implementation of the European Court of Human Rights judgments in domestic law enforcement, in particular, case law, is considered [21].

V.Uvarov, based on the researches of the case law of the European Court of Human Rights, the current state of the criminal procedure legislation, examined the main hypotheses and analyzed the scientific concepts of ensuring the rule of law in the field of justice [22]. V. Tatsij investigated criminal proceedings in the context of European standards, in particular, judicial review on the stage of inquiry and pre-trial investigation, appealing to the problem of criminal proceedings at the trial of courts of first instance [23]. V. Gorodovenko considered the content of the principles of the

courts self-reliance and the independence of judges using the evaluation of normative novelties from the point of view of law enforcement practice [24]. L. Luts raised the problem of ensuring the principle of judges independence. Among the facts contributing to the implementation of the principle of court independence and impartiality of judges is the stability of the judicial policy, which should accompany the processes of formation and functioning of the judiciary. [25].

V. Tatarenko, while studying the issues of the independence of the judicial system in the context of European integration processes, especially drew attention to the status and prospects of human rights protection in Ukraine, taking into account the concept of human rights, which is embodied in the practice of the European Court of Human Rights [26]. V. Buga, examining the issue of a reasonable time for hearing a case in court, came to the conclusion that a reasonable time must be understood as the length of time when a certain procedural action must be committed. The reasonable term is interpreted by him as being in line with the concept of procedural term, however, unlike the procedural term, it is applied to each individual case, from the judge's objective point of view. [27].

According to the study results of the current law discourse to a fair trial in the context of a new stage of development of the judiciary in Ukraine, the following table is formed (table 2).

Table 2

Comprehension of the right to a fair trial in the XX - early XXI centuries

Scholar	Main directions of research
D. Yagunov	A study of the right to a fair trial as a case study of the European Court of Human Rights
I. Marochkin	Studying the accessibility of justice and guarantees of its implementation
L.Moskvych	Reaserch of the components of accessibility at court
A. Luzhansky	Analysis of the concept of impartial court in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms; comprehension of access to justice as a way to really ensure the implementation the right to appeal to court.
O. Ovcharenko	The study of the concept of accessibility of justice as a principle of organization and activities of the judiciary; reaserch of the International Standards of Access to Justice, as well as institutional guarantees of the accessibility and achievable mechanisms for judicial appeal.
M. Smokovych	Study of the problem of juridical accessibility in administrative proceedings
V.Semenov	Highlighting the provisions of the principle on judicial protection
I. Zharovska	Consideration of the right on judicial access in the context of theoretical and legal issues regarding the accessibility of justice
V. Andrusenko	The requirement of fair trial is interpreted as being applicable to the whole trial which is not limited by hearing the case involving the parties.
V.Uvarov	Studies of the main hypotheses and scientific concepts on the rule of law in the field of justice based on an analysis of the case law of the European Court of Human Rights.
V. Tatsij	Research of criminal proceedings in the context of European standards of justice.
V.Gorodo-venko	Comprehending the content of the principles of the courts independence and the self-reliance of judges

L. Luts	Study of the principle of judges independence
V. Kachan	Studies of issue of the judicial independence and the right to a trial within a reasonable time.
S.Prilutskiy	Research on problems of judicial self-government in the context of the issue of judges independence
N. Sacara	Justice Accessibility Studies
I.Koliushko, R. Kuibida	Research of the problem of court independence and improving the Ukrainian justice system under European standards.
D. Suprun	Research on the organizational and legal foundations in the functioning of the European Court of Human Rights
T. Dudash	Comprehension the right to a fair trial in the application by the European Court of Human Rights of conventional rights.
E. Tregubova	The content's study of certain elements of the right to a fair trial.
O. Golovko	Studying the specificity of the international legal status of the defendant in the international criminal process.
V.Gorodovenko	Analysis of the principles of judicial self-reliance judicial independence
M. Микієвич	Studying of certain aspects on implementation of European standards for reforming the judicial system of Ukraine.
A.Olijnyk	Studies of Ukraine's compliance with European standards in the field of ensuring the independence and impartiality of the court.
V. Tatarenko	Research regarding the independence of the judiciary in the context of European integration processes
V. Buga	Study of the issue on a reasonable time for consideration of a case in court

The right to a fair trial is crucial in a democratic society. Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that «Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which decides a dispute on civil rights and obligations or establish the validity of any criminal charge. The judgment is publicly announced, but the media and the public persons may not be admitted to the courtroom throughout all or part of the proceedings in the interests of morality, public order or national security in a democratic society, if required by the interests of minors or the protection of the privacy of the parties, or when the court has found it strictly necessary - at special circumstances, when the publicity of the proceedings would harm the interests of justice.» The jurisprudence of the European Court of Human Rights has shown that national courts do often violate Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. That's why, further exploration of the right to a fair trial and enforcement in this way is particularly relevant.

Conclusions. Thus, the issue of the right to a fair trial embedded in deep historical roots. It originated in antiquity and evolved according to the features of a particular historical period. In the Antiquity, a fair court was associated with the power of the policy. At the time of the Renaissance, the emphasis was made on the personal qualities of judges and the equality of defendants before the court. During the age of Enlightenment, a fair trial was associated with the public interests. In the XX - early XXI centuries. the right to a fair trial has been considered in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Further research on the right to a fair trial would promote justice in Ukraine, aimed at upholding the rule of law by ensuring access to justice, fair trial, independence,

impartiality and professionalism of judges, legal certainty, openness of judgments and the effectiveness of judicial protection.

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