

УДК: 347.91

ORCID: 0000-0003-0780-2957\_

E-mail: zub.aleksey.nlu@gmail.com

**Oleksii Y. Zub,**

Assistant professor at the Department  
Civil, Commercial and Financial Law  
(Poltava Law Institute of the Yaroslav  
Mudryi National Law University)

**Зуб Олексій Юрійович,**

асистент кафедри цивільного,  
господарського і фінансового права  
(Полтавський юридичний інститут  
Національного юридичного  
університету імені Ярослава Мудрого)

## ВІДНОВЛЕННЯ ДОСТУПНОСТІ ДО ПРАВОСУДДЯ В ГАМБІЇ

### RE-ENGAGING ON ACCESS TO JUSTICE IN THE GAMBIA

**Анотація.** Стаття присвячена оцінці доступності до правосуддя у Гамбії у світлі забезпечення кожного, хто цього потребує, правовою допомогою такого обсягу та якості, що дозволить захистити порушені права не тільки пересічного громадянина, але й найбільш вразливих групи населення (зокрема, жінок та дітей). Керуючись поставленими завданнями, автор визначив рамки здійснення оцінки, достовірні джерела інформації, теоретичні, географічні та емпіричні обмеження дослідження. Проаналізовано історичні, соціальні та економічні передумови, політичне становище Гамбії, відповідні норми міжнародного та національного права. За результатами оцінки автор ідентифікував численні системні недоліки, які серйозно ускладнюють доступність жителів Гамбії до правосуддя, що особливо стосується вразливих груп населення (загальність законодавства порушує доступ жінок і дітей до правосуддя; правове регулювання в країні залежить від влади; у Гамбії створено спеціальний орган, який займається наданням правової допомоги, але він більш активний у столиці Гамбії (Банджула), і не надає належної правової допомоги в центральній та східній частині країни за браком фінансування тощо), а також запропонував список комплексних та системних рекомендацій, розроблених з метою

покращення існуючої ситуації. Зокрема автором пропонується вирішення встановлених вад Гамбіцької системи доступу до правосуддя шляхом: розвитку інституту правової допомоги в Гамбії шляхом реформування Національного агентства правової допомоги в Гамбії, прийняттям державної стратегії, спрямованої на зміцнення правової культури та обізнаності населення щодо своїх прав, механізмів їх реалізації та захисту; реформування системи правоохоронних органів; розширенням обміну студентами для збагачення знань і досвіду в розвинених країнах; перерозподілу системи фінансування на надання правової допомоги; покращення доступності до судів шляхом поширення брошур, які поясняють, як можна звернутися до суду за захистом своїх прав тощо.

**Ключові слова:** доступність до правосуддя, право на судовий захист, захист прав жінок та дітей, правова допомога в Гамбії, оцінка верховенства права.

**Summary.** This paper reflects the situation with access to justice in The Gambia, in the light of providing everyone with legal assistance in volume and quality, which allows to protect the violated right not only by average citizens, but also by the most vulnerable groups of people (in particular, women and children). Guided by the range of the assessment goals, the author determined the framework of the research, viable sources of information and theoretical, geographical and empirical limitations of the study. The Gambia`s background including (but not limited to) its history, social and economic conditions, political environment, international and national legal frameworks were analyzed in detail. As a result of the assessment, the author indicated the number of systemic flaws that seriously complicate access to justice, especially for vulnerable groups of Gambians (in The Gambia, there is a quite general legislative regulation of access to justice for women and children which makes it possible to violate the rights of women and children without the possibility of their protection legal regulation in the country is highly dependent on the current government the Gambia has established a special body that deals with the provision of legal aid, but it is more

active around the capital of the Gambia (Banjul) and does not provide adequate legal aid in the central and eastern part of the country because this body is not adequately funded). For the purpose of ensuring the effectiveness of access to justice through the development of legal aid in the Gambia, relevant conclusions and recommendations were formulated. In order to improve the situation with ensuring access to justice through the development of legal aid, it is recommended: reform the National Legal Aid Agency in The Gambia; adopt a state strategy aimed at strengthening the legal culture and awareness of the population about their rights, mechanisms for their implementation and protection; reform the system of law enforcement agencies.

**Keywords:** access to justice, right to judicial protection, protection of women's and children's rights, legal aid in the Gambia, the rule of law assessment.

**An overview of the research issue.** The importance of access to justice assessments stems from the need for universal respect for human rights, as well as the establishment and development of the rule of law, which, in turn, is inextricably linked to ensuring everyone's right to judicial protection (through the institutional component and due process). At the same time, the right to judicial protection will be illusory if: all or some group of people will not have access to justice due to the territorial remoteness and the impossibility of filing court documents or getting to court; the court fee is so high that few people can pay it and have access to court procedures; any manifestation of discrimination in access to justice, through gender, skin color, religious preferences, material status; while formalizing the right to judicial protection, legal ignorance is a significant obstacle to access to justice; there is no legal aid in its accessible version for the unprotected population; the procedural mechanism for considering a case in court is of a predetermined nature and is not effective, etc.

On the one hand, the twenty-two-year rule of autocratic and corrupt power in The Gambia has left a deep imprint not only in economic and political processes, but also in limiting access to justice and, possibly, deliberately creating barriers that would lead faster to expanding the fullness of power in the hands of one person, rather than

creating conditions for access to effective legal remedies. On the other hand, The Legal Aid Act of 2008 established a National Agency for Legal Aid that makes possible to move access to justice *via* legal aid tools development. But the systemic problems of legal implementation leave much to be desired in terms of ensuring accessibility to justice with respect to all legal reforms in The Gambia.

**The purpose of this paper** is to conduct an assessment of the institutional, legal, functional provision of access to justice for vulnerable groups of the population, which due to territorial remoteness, financial insecurity, legal ignorance, institutional insecurity do not have the opportunity to obtain protection of their rights in court, and may become victims of political and other persecution, be unreasonably deprived of legal protection and the inability to defend themselves in the courts.

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During the assessment, we aim to assess accessibility to justice in light of the following goals:

1. To make an overview of the access to justice of the poor in The Gambia.
2. To describe the legal framework established in 2008 to improve access to justice in the Country, including any amendments.
3. To describe the success and challenges which the Gambia is facing in implementing the above measures.
4. To describe the legal aid and para legal services available in the country and a preliminary assessment of the effectiveness of such services.
5. To make a review of the investments, including the UNDP project, which have been made in the last 8 years by the international donor community to promote access to justice.
6. Perform and present in chart form a gender and human rights mainstreaming exercise on the issues under consideration in this assessment which illustrates how

issues raised in the mainstreaming exercise have been addressed in the assessment process and recommendations

7. To make recommendations with respect to possible reforms and initiatives which would improve the access to justice situation in the Country and strategies which might be employed to make such improvements.

**Research design.** When performing this research, I would like to choose a complex set of methods (based on the complexity of the object under study) and apply qualitative, quantitative, and multi-method approaches for the selected topic. Each method will be implemented in a specific plane, taking into account the complexity and versatility of the research object. The quantitative method will focus primarily on the number of: (1) judges and courts in the country; (2) administrative, criminal, civil cases; (3) cases in courts in which the defendants were women, children and representatives of vulnerable groups of the population; (4) legal representatives, solicitors in the country who have the right to represent interests in court; (5) institutions that provide free aid in The Gambia; (6) applications from citizens of the Gambia for legal assistance and support of cases in court etc.

The qualitative method will be used to research: (1) normative regulation of access to justice in scope of getting free legal aid, free going to court; (2) research on the effectiveness of the legal aid provided; (3) studies of specific barriers to access to justice; (4) studies of the causal relationship between a specific individual feature and the development of a situation of inaccessibility to justice; (5) development of steps to improve the situation of access to justice in the light of increasing access to justice for vulnerable groups of people, etc.

We use multi-method approaches when: (1) examining the trust of The Gambian citizens to the judiciary; (2) assessing the factors affecting the obstacles for access to justice; (3) studying the mechanisms of counteracting and overcoming obstacles for access to justice for vulnerable groups of people, etc.

To implement the methods, it is necessary to start with a doctrinal study of justice in the country under explore and understand how the judicial system functions as it is

built in accordance with the current legislation. The assessment will use a comparative study at different levels and approaches, which will allow comparing the functioning of the judicial system and its independence not only in The Gambia, but also pay attention to how the access to justice for vulnerable groups of people is ensured in neighboring countries, which will highlight general trends and patterns. Also, a method will be used in the process of which the study of the access to justice will take place in the light of a specific case, which can occur both in the aspect of the development of a specific situation, or in the body of judicial self-government, or in the consideration of another case. The strength of the used methods is the clarification of the objectively existing justice in the country. At the same time, taking into account the political nature of the country, we will not be able to establish or assess the objective influence of hidden factors on the access to justice, which are not caused only by law.

To collect data, a set of measures will be used to form an objective map of the access to justice for vulnerable groups of people, and more specifically: (1) analysis of available documents and materials from the global network; (2) study of normative materials, judicial and disciplinary practice from the global network; (4) research of available materials based on the results of questionnaires, interviews of persons who use the right to judicial protection, especially those who belong to vulnerable groups of persons; (5) monitoring of open court hearings *via* global network; (6) the activity of the established bodies to popularize the possibility of receiving free assistance for vulnerable groups of the population through the global network.

*Data gathering.* The methodology for collecting information sources within the framework of this assessment will be represented by a multi-stage procedure for collecting data that reflect information of assessing access to justice in the Gambia, analysis of categories of Gambian citizens who, for one reason or another, find it more difficult to defend their rights in court, which will consist of searching: (1) primary sources of information (which either fix the legal norm that is related to the object of research, or become a source in which the real situation was displayed on the scale of interest to us); (2) reports compiled by various governmental and non-governmental

organizations and international organizations, which directly or indirectly reflect information about barriers to access to justice for vulnerable groups in The Gambia; (3) a study of scientific and academic sources that reflect theoretical approaches to the analysis of barriers to access to justice, as well as study the political situation in the Gambia and assess the availability of justice for vulnerable groups of the population; and (4) any other material that can complement the picture of access to justice for vulnerable groups in The Gambia.

*Determining viable sources of information.* After determining the entire list of sources and analyzing them, it is necessary to highlight those sources that are not only of particular importance, but the information that most corresponds to reality. In this context, it is necessary to highlight several criteria that should be taken into account when assessing the validity and value of this or that information.

1. The credibility of the organization that is the author of a particular document (for example, documents that were drawn up under the leadership of the United Nations Organization have a high degree of reliability and value; when studying and interpreting them, it is enough to be guided by generally accepted errors in the context of data analysis and information synthesis);

2. The closeness between the immediate facts and the author of the source in which certain facts are being investigated (it is intended the fact that, for example, the information that is obtained by the author of the information source directly in a particular situation that is important for the object will be very valuable for research; and vice versa, the importance and reliability of information decreases if the described information in the source is obtained through secondary or tertiary data analysis).

*Type of assessment.* This is a desktop type of access to justice assessment in The Gambia. Collection of information and selection of sources of information, its analysis, presentation of conclusions are carried out exclusively with the use of a personal computer.

Cost of Assessment: \$50000 (\$20 000 from The New Africa Foundation, \$10 000 from United Nations Development Programme, \$10 000 from United Nations

Children's Fund, and \$10 000 from United Nations Population Fund). The assessment will be carried out within a month.

*Tools.* Based on the above methodological base, in the process of carrying out this assessment, a set of analytical, statistical, search tools was used, which made it possible to display a picture of the accessibility of justice in the Gambia in terms of the availability of the right to judicial protection for vulnerable groups of the population, as well as in especially important cases (in criminal cases related with a political context and ensuring a fair trial and the right to legal protection not only for defendants, but also for persons who are victims).

*Team.* To evaluate the study, a team will be formed, which will include 7 people (program manager, three analysts, three persons who will provide technical support). The program manager performs the overall coordination of the project; three analysts collect data, their primary processing, analysis of the information received, the first two analysts form a general report, the third analyst forms and makes a presentation of the project results; three people provide technical support and support for the project throughout its implementation.

*Limitations.* The limitations of the work are represented by a specific framework, which is not exceeded in the analysis during the assessment. This framework is presented by theoretical, geographical, empirical aspects.

The theoretical limitation is due to the object of the research. Thus, in the process of conducting this study, we will focus on one of the elements of the rule of law manifestation – the right to judicial protection. At the same time, the right to judicial protection will be illusory if it is not ensured by real territorial accessibility to the court, the absence of unreasonable financial barriers (or the creation of favorable conditions for unprotected groups of persons), accessibility to due process with all generally accepted judicial guarantees and procedures (which will provide a comprehensive and fair consideration, without a priori understanding to the convicted – that will be convicted, including groundless, and for the victim – that his rights will not be protected), access to qualified legal protection. And the theoretical limitation is



represented precisely by the study of the accessibility of justice for the unprotected segments of the population (women, children and other persons on any illegally discriminatory basis).

The geographical limitation is due precisely to the Republic of the Gambia. Going beyond this is only allowed to make a comparison between ensuring access to justice for vulnerable groups in The Gambia and other neighboring African countries to find patterns or highlight a trend in this direction.

Empirical limitations arise from the very type of assessment that we conduct and the fact that no sociological or other research is conducted directly in this country, which leads to cognitive limitations. It also makes us dependent on the sources of information from which we took the data, which makes us a second-step assessment.

**The analysis of recent publications and research.** Amnesty International conducted a study in The Gambia (2019), which resulted in a list of priority areas for the protection of the rights of Gambians for the Government of Gambia. In terms of this assessment, other priority areas are recalled: (1) strengthening the judiciary (including reforming and strengthening the National Legal Aid Agency of the Gambia); (2) protection of rights of women and children who are harassed and restricted in The Gambia [1].

This resource provides a Guide to Assessing and Improving Access to Justice for Women in Different Countries. Among other things, attention is focused on the legal characteristics and the situation to ensure access to justice for women in The Gambia. The value of this source is also enhanced by a systematic analysis of access to justice in the context of not only countries, but also the categories of cases in which a woman filed a lawsuit. In addition, this resource provides steps and recommendations for improving access to justice and ways to implement them [2].

This source of information [3] is a manual that aims to achieve goal 16.3 in the UN Sustainable Development Program. In light of our research, the source explores the implementation of ways to ensure accessibility of basic justice in third world

countries, as well as typical problems along the way, funding and costs of ensuring accessibility to justice.

This Survey Report [4] aims to research and evaluate legal aid in Africa in the context of African criminal systems. Interestingly, this source outlines the types of legal aid systems in African countries in the criminal justice systems, examines the legal framework for providing this aid, how and in what quality legal aid is provided at different stages of criminal prosecution.

This source of information [5] is one of the most valuable as it reflects the assessment, functioning, achievements of the National Legal Aid Agency in the Gambia after the 2008 reform, as well as the history of the development of legal aid provision in the Gambia before and after the 2008 reform.

This scientific article [6] deals with a comprehensive study of the management of legal proceedings in the Gambia up to 2010, which analyzes both the structure of the Gambian legal proceedings and analyzes individual strategic cases in which the issues of either systemic institutional and procedural violations, or the need to reform certain sectors of the legal procedure in the Gambia.

This online resource, created by Flora Ogbuitepu Ngo-Martins [7], describes in general the legal basis for the functioning of The Gambia, from which legal family the Gambia belongs to, to the institutional system of that country and the forms of legal proceedings that are used.

Another study on accessibility to justice in the Gambia (2019) [8] is a comprehensive work that reveals an understanding of accessibility to justice in third world countries, what is the level of accessibility to justice in the Gambia in terms of not only general accessibility, but also by category of cases and by categories of vulnerable groups of people [8].

This short article [9] provides information on the typical barriers to access to justice in The Gambia and how to obtain protection in the lower courts and during the review of cases in the higher courts.

This 2006 report [10] provides an analysis of elements of the rule of law in The Gambia from the perspective of the International and Gambian Bar Association. At the same time, first of all, both in the introduction and in the final recommendations, we are talking about a rather difficult situation with the provision of minimum human rights standards. It is also pointed out that judges, who are entrusted with a huge role in ensuring the rule of law, often demonstrate bias and dependence, and are influenced by other authorities.

This extremely interesting book on the Gambia provides insight into the historical and political context of the development of the Gambia. This book describes how democratic movements emerged in this country, how the first and second republics were formed, how the country was governed during the Lieutenant Yahya Jammeh times [11].

This global report is an important basis for this assessment as it presents a global study of legal aid provision around the world through: mapping global, regional and national legal regulations; varieties of legal aid systems; legal aid performance indicators at regional and national levels; forms of providing legal assistance in criminal and civil proceedings; and how to monitor and evaluate the provision of legal aid [12].

This document is the 2012 Gambia reform plan, which, among other things, includes the need to improve access to justice for vulnerable populations [13].

This report [14] from a US government agency reflects the protection of human rights in The Gambia. Among other things, attention is focused on a differentiated approach to ensuring access to justice for women, depending on why they go to court for protection: marriage, domestic violence, the desire to divorce a husband, discrimination in the labor sphere, etc. It also shows how much the rights of children are protected and what legal mechanisms allow to protect them in court.

This resource [15] contains information that is consistent with our research and reflects information on the protection of women in The Gambia. And it reflects the level of discrimination against women in different spheres of life; as well as common

practices in The Gambia that are incompatible with the standards of ensuring women's rights, and also shows how women can defend themselves if necessary, go to court.

This electronic resource [16] provides an example of one form of how the availability of legal aid in The Gambia for vulnerable groups can be enhanced. Thus, the practice of conducting field and free consultations of lawyers for vulnerable groups of the population, or for people who live in rural areas, is displayed.

The last source of information that was used in this work is information from the official Facebook page of the National Legal Aid Agency in The Gambia. The study of this information enables us to assess how the Agency's work is progressing, how its activities are popularized and shown [17].

**Presentation of the material.** *International legal framework.* The Gambia is a member of the UN as well as the African Union. Thus, international documents related to ensuring access to justice for vulnerable groups of people are applicable in the context of our assessment.

The Universal Declaration of Human Rights (1948, UDHR) "was the first international instrument to proclaim that all persons were entitled to "equal protection of the law", as well as the right to a fair trial. By providing the right to be free from discrimination, the "right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or the law," and the right "in full equality to a fair and public hearing by an independent and impartial tribunal...", the Declaration called upon countries to strengthen their justice systems to make these promises a reality for every human being" [12, p. 14-15].

The International Covenant on Civil and Political Rights (1966, ICCPR) "stresses States' obligation to ensure that effective remedies are provided when rights are violated, in particular, through "competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State." Article 14(3)(d) of the ICCPR affirms the right of individuals facing criminal charges to have legal assistance assigned to them and, "where the interests of justice so require," that such assistance be provided "without payment by him [or her] ... if he

[or she] does not have sufficient means to pay for it” The ICCPR additionally emphasizes that “ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The Human Rights Committee further elaborated on the right to legal assistance in its General Recommendation noting that the “availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so. For instance, where a person sentenced to death seeks available constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the costs of legal assistance in order to pursue such remedy, the State is obliged to provide legal assistance in accordance with article 14, paragraph 1, in conjunction with the right to an effective remedy as enshrined in article 2, paragraph 3 of the Covenant" [12, p. 15].

International Covenant on Economic, Social and Cultural Rights (1966, ICESCR) "asserts State parties' obligation to uphold rights without discrimination, and to ensure the equal rights of men and women to the protections arising from the ICESCR" [12, p. 15-16].

The Convention on the Elimination of all forms of Discrimination Against Women (1979, CEDAW), "which is the key international instrument for achieving equality between men and women, includes a reference to the “establish [ment of] legal protection of the rights of women on an equal basis with men ... through competent national tribunals and other public institutions [for] the effective protection of women against any act of discrimination.” In addition, the CEDAW Committee published a General Recommendation: Women’s Access to Justice in 2015, which includes guidelines on strengthening access to legal aid services for women, including promoting gender-sensitive services, improving accountability and legal awareness" [12, p. 16].

"States parties to the United Nations Convention on the Rights of the Child (1989, CRC) undertake to treat accused children "in a manner consistent with the promotion of the child's sense of dignity and worth," including access to "legal or other appropriate assistance" to enable the child to prepare his or her defense. The CRC reiterates the priority established in other international instruments to provide "conditions of equality" and non-discrimination, with a right to an effective remedy as stipulated in the Optional Protocol 3 on the Involvement of Children in Armed Conflict. Although the Convention and its concomitant optional protocols do not specifically address the right to legal aid at no cost to the child (or his parents), the Committee on the Rights of the Child addressed this in General Comment: Children's Rights in Juvenile Justice, which provides that "legal or other appropriate assistance in the preparation and presentation of his/her defense ... should be free of charge". The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990, the Havana Rules) urge that children be entitled to legal assistance "and be enabled to apply for free legal aid, where such aid is available" The Havana Rules further stipulate that the right to legal aid is triggered by arrest or the status of awaiting trial" [12, p. 16].

Additionally, "at the regional level, the African Commission on Human and Peoples' Rights, of which all African States, with the exception of Morocco, are members, has adopted a series of principles and guidelines governing legal aid and penal reform" [4]. It must be mentioned:

- The Kampala Declaration on Prison Conditions in Africa;
- The Kadoma Declaration on Community Service;
- The Resolution on the Right to a Fair Trial and Legal Assistance in Africa (the Dakar Declaration and Recommendations);
- The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa;

– The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa.

*National legal framework.* "The Gambian Legal System, like most West African Countries, is a tripartite system consisting of the English common law principles of equity and statute law, customary law which is applied by Tribunals and Sharia law administered by a *cadi* court system. Customary law and Sharia law apply to indigenous Gambians and/or Muslims. The Gambia accepts, with reservations, the International Criminal Court of Justice's compulsory jurisdiction and includes subsidiary legislative instruments enacted locally" [7].

"Before 2008, legal aid in The Gambia was provided for first in the Constitution. The 1997 Constitution of The Gambia (Section 24) guarantees that all persons have a right to a fair hearing. In fact, the Constitution specifically gives the right to all persons charged with offences that carry the death penalty or imprisonment for life before a court to receive legal aid. This means that the Constitution requires the state to ensure that any person accused of an offence whose punishment is death or life imprisonment, has legal assistance. So important is equality before the law that if a poor or vulnerable person were not properly represented and yet convicted by a court, that conviction could be overturned on appeal" [5, p. 14].

"Before 2008, two other laws in The Gambia also provided for legal aid. The Poor Person's Defense (Capital Charges) Act 1993 was enacted to give poor people access to legal aid. However, this law was not comprehensive enough to cater for a fully-fledged legal aid system. In its Section 3 the Act established that poor persons accused of crimes punishable by death must be assigned a lawyer at the expense of the government. This law has since been repealed by the LAA 2008" [5, p. 14-15].

"The second law that made legal aid possible in The Gambia before 2008 is the Children's Act 2005. Recognizing the special needs of children, Section 72(1)2 of the Act gives all children in The Gambia the right to legal aid and legal representation paid for by the state in case they are involved in any type of case, whether civil or criminal" [5, p. 15].

At the same time, the protection of access to justice for children in The Gambia has increased since the 2005 Children's Act 2005, which created special courts for children. Children had no right to represent themselves in court, and it is necessary to involve a representative to consider such a case.

The Legal Aid Act in The Gambia in 2008 radically changed the situation with legal aid. If, before 2008, legal aid was provided only in court, after the adoption of the above-mentioned act, legal aid is provided from the moment of arrest and, in particular, to imprisonment. Moreover, such assistance was provided not only in criminal cases, but also in civil cases, which allowed vulnerable groups of persons (women, children) to receive legal assistance, legal support and consulting. In accordance with this Act it was established National Legal Aid Agency (NALA). Being funded by government, NALA contributes all forms of legal aid for vulnerable groups of people, including consulting, representation in courts, but also ensuring the use of alternative methods of resolving disputes. Further changes in legislation made it possible to provide legal assistance not only during the consideration of cases in the court of first instance, but also to ensure the participation of a representative in the review of court decisions.

Country background. The Republic of the Gambia is located in Western Africa. Its capital, Banjul, is the largest metropolis in the country. The Gambia is narrow and the smallest country in Africa. The only land border is that with Senegal; also, the Gambia has access to the Atlantic Ocean. The Gambia river flows through the whole country, which divides it in half.

“A variety of ethnic groups live in the Gambia. The Mandinka tribe is the largest, followed by the Fula, Wolof, Jola and Serahule. Approximately 3,500 non-Africans live in the Gambia, including Europeans and families of Lebanese origin. With regard to faith, the Gambia is mainly Muslim (95 per cent), with Christian (4 per cent) and other indigenous beliefs (1 per cent). English is the official language but other national languages include Mandinka, Wolof, Fula and other indigenous vernaculars” [10].

*Country identification.* The political, social and economic conditions of the Gambia are largely due to its historical roots. In the Gambia, as in most of Africa, the



slave trade was developed. This was a colony for many centuries, first as part of Portugal, then as part of Great Britain. The Gambia gained independence on February 18, 1965.

The Gambia has a liberal, market-oriented economy. In this country, most of the economy is devoted to agriculture, in particular the cultivation and export of peanuts. Having a seaport and access to the ocean in this country, re-export of products takes place, which makes possible low import duties. The Gambia cooperates economically with the USA, Japan, Senegal in the export of products.

In Art. 25 of the Constitution of the Republic of the Gambia guarantees everyone the freedom to choose their religious preferences. At the same time, 95% of the population is Muslim, 4% of the population is Christian (including the majority of Roman Catholics, as well as Baptists, Jehovah's Witnesses, Seventh-day Adventists), as well as small evangelical denominations.

*Political environment.* The political history of the Gambia begins in 1965, when independence from Great Britain was obtained. From then until 1994, the Gambia flourished politically as a multi-party, liberal country led by Dawda Jawara and his People's Progressive Party.

The situation changed in 1994 when the young General Yahya Jammeh, at the head of The Armed Forces Provisional Ruling Council, came to power. From 1994 to 1996 there was a time when any manifestations of disagreement were oppressed, there was practically no opposition. In 1996, the Gambia adopted a constitution, followed by a referendum in which 70% of the population voted in favor of constitutional changes. And already under the new Constitution of the Gambia, Yahya Jammeh became president. "Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, characterized The Gambia under Jammeh as a repressive State apparatus in the hands of the security forces who "actively repress any sign of discontent, terroriz[e] civil society and instil [l] a climate of fear and mistrust via routine arrests, enforced disappearances and extrajudicial executions carried out against anyone considered to be critical of or threatening to the regime" [8, p. 8]. His

presidency until 2016 was accompanied by massive harassment: dispersal of student rallies in 2000, public threats to kill human rights defenders in 2009, public threats to supporters of same-sex marriage in 2013.

The political situation changed in the 2016 Presidential elections in The Gambia. “The 2016 presidential election marked a turning point in the political history of The Gambia because for the first the country experienced a change of government through the ballot box. This democratic process gives the Gambia a good name in the world. The presidential election was indeed special. Not only was the national television and radio made equal to the three political parties during their campaign but also the way politicians and their supporters behaved themselves in the entire campaign period” [11, p. 4]. In 2016, Yahya Jammeh lost the presidential election and Adama Barrow became the new president. The new president was determined to democratic changes in the country and expansion of international political and economic ties. However, Adama Barrow faced many problems: supporters of the old president began to oppress supporters of Adama Barrow, a very unstable peace between rural and urban farmers.

*Stakeholders analysis.* This assessment will analyze the rights and responsibilities of different authorities to ensure access to justice (especially for vulnerable groups), the degree of accessibility to justice in The Gambia, as well as conclusions and recommendations that in one way or another apply to the citizens of The Gambia, government agencies of the Gambia.

Stakeholders include the following: citizens of the Gambia (every Gambian has the right to access to justice regardless of his age, sex, property status, religious preferences, nationality, skin color, etc.); General Assembly (legislative changes are necessary to ensure the comprehensive right to legal assistance); Ministry of Justice (to build an effective system for ensuring access to justice), Ministry of Internal Affairs (to ensure a legal response to violations of rights in the area of access to justice); National Legal Aid Agency (body with a direct interest in providing an effective legal aid system); Department of Social Welfare (directly responsible for overseeing equality and general wellbeing); The Gambian Police (who have a direct responsibility to

respond to human rights violations, especially in cases of bodily harm, psychological abuse, etc.); The Gambian Prison Service (which is responsible not only for the maintenance of prisoners, but ensures minimum human rights in places of detention and is obliged to provide prisoners with the opportunity to contact the competent authorities in case of violation of their rights); Gambian Women's Bureau (which has a responsibility to promote women's rights in every possible way and to combat any form of discrimination against women); The Gambian Bar Association (a self-governing body of lawyers that ensures access to legal aid); Gambia Alternative Dispute Resolution Secretariat (which promotes and resolves any dispute through the use of alternative dispute resolution); courts (which are obliged to accept and consider complaints or claims from citizens of the Gambia in case of violation of their rights); disciplinary and qualification bodies for courts (which are obliged to ensure that the courts are filled with quality personnel and to respond to violations by judges), Gambian religious leaders (on whom the application of religious norms in the Gambia depends).

Survey. This desktop study reflects the situation with access to justice in The Gambia, in the light of providing everyone with legal assistance in volume and quality, which allows to protect the violated right not only by average citizens, but also by the most vulnerable groups of people (which, in particular, women and children).

*Legal analysis.* Over the past twenty years, the situation with Gambian law has been highly volatile. In the context of international agreements, the country has repeatedly denounced or suspended the operation of certain international acts or stopped the operation of legislative acts in the field of human rights in the country (the Indemnity Act of 2001, the Information and Communication Act of 2013, etc.).

According to the Legal Aid Act adopted in 2008, “legal aid is essentially about providing legal assistance to people who are unable to afford it, or to persons who are facing serious offences in order to ensure equality and fairness in the settlement of legal disputes. For example, in a criminal case, legal aid assists persons suspected or accused of being in conflict with the law to defend themselves adequately in court. This is

consistent with the principle that all suspects are presumed innocent until proven guilty by an impartial court of law. To ensure equality of arms, it is important to help those who may not be able to effectively defend themselves because they do not have the means to hire a lawyer. Legal aid can also be available to assist poor persons involved in civil cases to receive legal support. This can be particularly important in civil matters involving, for instance, a widow seeking to secure her ownership of the family home for her sake and that of her children” [5, p. 13].

According to the Legal Aid Act adopted in 2008, a special body, the National Agency for Legal Aid, functions in the country, which is engaged in providing legal aid in the country together with the National Association of Lawyers and local lawyers. According to the current legislation of the Gambia, everyone (including vulnerable groups of the population - women and children) is provided with legal assistance if the person in need does not have the appropriate knowledge or does not have enough money to hire a lawyer.

In criminal cases, everyone is guaranteed the right to legal assistance from the moment of arrest and presentation of charges until the sentencing. Also, an integral part of this assistance can be considered the right to receive it while in prison or during the review of the case on appeal or other procedures (previously this could not be done).

In civil matters, as well as in family matters, you can get legal assistance. In this way, assistance is also guaranteed for women and children, if they need it.

A positive aspect of the reform of legal aid is the fact that legal aid is provided not only in formal processes, but also during the consideration of a dispute through mediation, negotiations and other forms of alternative dispute resolution.

To finance the activities of the agency, a state-funded fund was created. The Gambia is thus a Judicare-type legal aid country [4 p. 9].

*Human rights mainstreaming.* Ensuring human rights is not systemically ensured. “Several domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Among these were the #Jammeh2Justice campaign to have the Ghanaian

and Gambian governments try former president Jammeh for the 2005 killings of irregular migrants—among them 44 Ghanaians—and the Victims Center that supports the TRRC and assists victims of Jammeh-era human rights abuses. Government officials were usually cooperative and responsive to issues raised by human rights groups during the year. Despite the Barrow administration’s 2017 pledge to create a more conducive environment for NGOs, the law continues to require NGOs to register with the National Advisory Council. It provides the council with the authority to deny, suspend, or cancel the right of any NGO (including international NGOs) to operate in the country. The council did not take actions against any NGO during the year. In 2017 the TRRC was established to address human rights abuses during the 22-year rule (1994-2016) of former president Jammeh. During the year the TRRC conducted hearings at which more than 100 witnesses testified to multiple instances of human rights abuses by the Jammeh government, including killings, torture, arbitrary detention, sexual violence, and forced disappearances. Witnesses included members of the Junglers hit squad who admitted to committing gross human rights abuses” [14].

“Children derive citizenship by birth in the country’s territory or through either parent. Not all parents registered births, but this did not preclude their children from receiving public health services. Birth certificates were easily obtained in most cases. The constitution and law mandate compulsory, tuition-free primary- and lower-secondary-level education. Families often must pay fees for books, uniforms, lunches, school fund contributions, and examination fees. An estimated 75 percent of primary school-age children enrolled in primary schools. Girls constituted approximately one half of primary school students but only one-third of high school students. By law children younger than age 18 may not marry; however, 34.2 percent of girls younger than 18 were married, and 9.5 percent younger than 15 were married. Government sensitization campaigns in several areas of the country, particularly in remote villages, sought to create awareness of the act” [14].

These human rights violations require legal defense. But in spite of the legal framework, in fact, ensuring access to justice in The Gambia is very difficult. Perhaps

the biggest problem is staff shortages. 2 200 000 populations, according to the Gambia Bar Association, only about 200 lawyers work in the country. Moreover, lawyers are territorially concentrated near the capital of the Gambia, while distant regions often have no lawyers at all. The territorial obstacle to the provision of legal aid makes it impossible to ensure access to justice. The development of the legal aid network is also not conducive to the lack of funding, which makes it impossible to provide legal aid.

At the same time, the initiatives of the National Agency for Legal Aid should be welcomed, which relate to the conduct of field receptions and the provision of legal assistance to people at their location [16].

*Gender mainstreaming.* Unfortunately, it is necessary to state numerous violations based on gender. Women constantly fall under discrimination: from everyday life discrimination to lack of representation of women in political and other positions. “Discriminatory gender laws only help reinforce the patriarchal social norms which legitimize the subjugation of women in nearly all sectors of the society. Victim shaming, gender-based violence, and female genital mutilation are some of the leading social issues that contribute to gender inequality. Even though the Constitution prohibits discrimination, it does not afford the same protections when it comes to matters of personal law. Based on the OECD’s 2019 Social Institutions & Gender Index Report, 88 percent of Gambian women experience discrimination in the family: scoring 100 percent in discrimination against women in the legal framework on household responsibilities, inheritance, and divorce. The legal framework on working rights discriminates against women in its entirety while access to justice and legal framework on the freedom of movement is at 75 percent discrimination. Women’s access to reproductive health is also restricted by draconian laws and traditional social norms. Over 75 percent of women have undergone female genital mutilation and over 75 percent of the law discriminates against reproductive rights” [6, p. 56-57].

Massively women suffer from domestic violence, rape, psychological and physical humiliation. This is due to the banal ignorance of the laws by women - that she can refuse to encroach on her physical and psychological integrity. Even in large

cities, women are victims of workplace harassment. Often women do not hold high positions.

To combat the violation of women's rights, free legal aid is provided in legal clinics. “The clinics are run by women and aims to improve women’s access to justice by: providing legal information and advice; referring to sympathetic lawyers and other support services; running community legal education sessions; producing information for women about their rights, the legal system, and the law; doing research, law reform, and lobbying activities that help to remove barriers to women’s access to justice; and publishing a quarterly newsletter about our activities” [6]. The same clinics provide assistance exclusively to women in cases of: “divorce and separation; disputes over children; property settlement; domestic violence; child support; going to court; discrimination; unfair dismissal; other employment rights; and compensation for criminal injuries” [6].

*Statistics.* In 2015 in the Gambia, 2 000 000 the population was 90 lawyers who could provide legal assistance. In 2020, 2 200 000 of the population there are already 200 lawyers.

*Other initiatives.* In order to improve the effect of the provision of legal assistance, realizing that territorially legal assistance is not provided evenly, different organizations (mostly non-governmental organizations) conduct field consultations. This practice was also in 2014. Here is what one of the lawyers who provided legal assistance in several villages thinks about it: “In ten days, two regions, six districts, two police stations, one prison and fourteen villages we advised 312 clients, 133 of whom were women, during this last trip of the Mobile Legal Aid Clinics Team. But this figure doesn't tell the whole story. When Kebbah got his land back, he was able to feed his entire family again. Omar, having returned to his house, could once more provide shelter to his wife and children, while Aminatta can now make sure that her children go to school. The impact of assisting one person is, in reality, much wider” [16]. Obviously, with proper funding, it is these practices that allow people to at least learn about their rights and how it is possible to defend them in court.

Also, the National Agency for Legal Aid conducts explanatory work through social networks that a larger number of citizens found out about their existence and took advantage of their services [17]. But more such measures should be taken to increase their effectiveness.

**Conclusion and proposal.** As a result of the assessment, it is necessary to indicate the revealed facts:

1. In The Gambia, there is a legislative regulation of access to justice for women and children. But, at the same time, the regulation is quite general, which makes it possible to violate the rights of women and children without the possibility of their protection.

2. Legal regulation in the country is highly dependent on the current government.

3. The Gambia has established a special body that deals with the provision of legal aid, but it is more active around the capital of the Gambia, Banjul, and does not provide adequate legal aid in the central and eastern part of the country. Moreover, this body is not adequately funded.

4. Although the Gambian School of Law has been established in the country, the country is sorely lacking personnel who would not only provide legal assistance, but also hold positions related to knowledge and understanding of law.

5. Although the Gambia has a court system that deals not only with general cases, but also special courts that deal with family matters and cases for children, the procedure for addressing and considering cases is so difficult for the average citizen that the effectiveness of protection is lost.

6. In The Gambia, practices are being implemented that have nothing to do with human rights: violence against women, rape, the involvement of women and children in slave labor.

In order to improve the situation with ensuring access to justice through the development of legal aid, it is recommended:



1. Reform the National Legal Aid Agency in The Gambia to create a balanced and efficient body that will be adequately funded, provided with a qualified workforce represented in all regions of the country.

2. Adopt a state strategy aimed at strengthening the legal culture and awareness of the population about their rights, mechanisms for their implementation and protection.

3. Strengthen the fight against discrimination based on gender, age, property, religion, etc.

4. Reform the system of law enforcement agencies that would protect the rights of citizens and ensure an appropriate response to crimes and violations of human rights.

5. Expand student enrollment at the Gambian Law School to increase the number of lawyers in the country.

6. Establish a student exchange program to enrich knowledge and experience in developed countries.

7. To reallocate the financing system towards legal aid provision.

8. Improving accessibility to the courts by providing them with consultants, brochures that will explain how you can go to court to protect your rights.

As a result of assessing access to justice in The Gambia through a study on legal aid provision, we can argue that the effectiveness of legal aid provision is a complex phenomenon that depends on: legal security, the creation of a system of government bodies or non-state funded organizations, the provision of any institutional education with quality personnel, adequate funding, representation of these bodies in all regions of the country, provision of assistance in all cases, provision of assistance in criminal cases from arrest and indictment to sentencing and imprisonment, provision of legal assistance during the application of alternative dispute resolution methods. In order to ensure the effectiveness of such bodies in the Gambia, relevant conclusions and recommendations were formulated.

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