

SECTION 3
**CONSTITUTIONAL AND LEGAL PRINCIPLES
OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES
AND LOCAL GOVERNMENT**

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**UKRAINE – A CANDIDATE FOR JOINING THE EU:
CURRENT CHALLENGES OF THE COURT SYSTEM**

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Summary

Purpose. The scientific article is devoted to the study of the current state of the judicial system in the conditions of martial law, as well as the analysis of the challenges of the judicial system in connection with Ukraine's acquisition of the status of a candidate for EU accession.

Research methods. The methodological basis of the scientific article is a complex of general scientific and special scientific methods of cognition, the application of which made it possible to reveal the essence of the proposed problem. The method of analysis and synthesis, modeling, axiomatic and systematic methods of scientific knowledge was used.

Results and conclusions. Today, in the conditions of the military invasion of Russia, the judicial system of Ukraine has the following features. Among them are the following: in settlements where court buildings have already been destroyed or hostilities are still ongoing, the implementation of judicial proceedings has become impossible (this problem was partially solved by changing territorial jurisdiction, creating «back-up copies» of documents in court cases, holding court sessions in a remote format); the judicial system still receives funding, and 50% of the judges' salaries are given to the needs of the Armed Forces, however, there are no special funds with capital investments for construction/repair/restoration; there is a problem with the evacuation of judges from temporarily occupied territories; there are isolated cases of collaborators among the representatives of the judicial corps. Among other things, with regard to the judicial system as a whole: there is a problem of excessive workload of judges, which results in rather long proceedings; and the considerable length of tender procedures is also a problem.

Most recently, Ukraine received the status of a candidate for EU membership. However, it should be understood that in order to obtain full membership, maximum efforts should be made to meet European standards. The judicial system should also be properly modernized, first of all, in the aspect of strengthening the independence of judges, eliminating corruption, as well as strengthening the trust of Ukrainian society and the international community in the judicial system of Ukraine as a whole. Ukraine must become attractive for investors, and this is impossible if there are concerns about the existence of conditions for the proper implementation of the right of business to judicial protection, as well as consideration of the case by a competent court in a reasonable time.

Key words: judicial system, martial law, Ukraine, EU, Supreme Council of Justice, Ethics Council, Constitutional Court of Ukraine.

1. Introduction

Our latest judicial reform began in 2016 in connection with the introduction of amendments to the Constitution of Ukraine in the area of justice and the adoption of the qualitatively new Law of Ukraine «On the Judicial System and the Status of Judges» in the same year. Today, in the conditions of the military invasion of Russia, the judicial system of Ukraine has the following features. Among them are:

1) In settlements where court buildings have already been destroyed, or hostilities are still ongoing, the administration of justice is impossible. This problem was partially solved by changing the territorial jurisdiction. Therefore, despite the war, the judicial system today works and is actually located in those settlements where there are no hostilities. The Unified Register of Court Decisions functions properly, thanks to which the materials of court cases are stored in electronic form. Also, «backup copies» of such materials were created, and, in fact, according to the authorities, the server is safe. Again, there are no difficulties with conducting court hearings in a remote format.

2) Despite the consequences of the military invasion, the judicial system still receives funding, and 50% of the judges' salaries are given to the needs of the Armed Forces. However, again, there are no special funds with capital investment for construction/repair/restoration.

3) There is a problem with the evacuation of judges from temporarily occupied territories. Now this issue is being actively resolved, along with other, no less important problems. Of course, many judges and their families still managed to evacuate.

4) Unfortunately, among the representatives of the judicial corps there are isolated cases of collaborators. Relevant bodies are working to bring them to justice – counterintelligence, SBU, prosecutor's office.

5) Judges are subject to mobilization, they do not have armor. As of today, more than 150 judges and employees of the court apparatus have been mobilized to the Armed Forces, and more than 70 people are in the ranks of the territorial defense (Smyrnov A., 2022).

Among other things, with regard to the judicial system as a whole: there is a problem of excessive workload of judges, which results in rather long proceedings; and also the problem is the considerable length of tender procedures.

We would also like to separately note that «The State Judicial Administration of Ukraine together with the EU Project «Law-Justice» launched a joint special project «Courts in conditions of war» (2022). Information about courts under occupation, memories of judges and court staff, information about assistance, volunteering, stories of resistance, losses and achievements will be

published on the website of the State Security Service of Ukraine in the section «Work of courts in wartime». Such an idea is supported in society, we must remember our difficult and thorny path to victory.

2. Requirements of the European Commission to Ukraine

Most recently, Ukraine received the status of a candidate for EU membership. However, it should be understood that in order to obtain full membership, one should do a lot of work, make maximum efforts in order to meet European standards. Of course, the judicial system should also be properly modernized, first of all, in the aspect of strengthening the independence of judges, eliminating corruption, as well as strengthening the trust of Ukrainian society and the international community in the judicial system of Ukraine as a whole.

A number of important requirements are demanded from Ukraine: reform of the KSU; judicial reform; anti-corruption reform; implementation of the anti-oligarchic law; amendments to the legislation on national minorities; fight against money laundering, etc.

Ukraine is already preparing a so-called «road map» for the implementation of such requirements. We have every chance to implement the recommendations given to us quickly and efficiently. For example, such countries as Slovakia and Finland, which had similar problems as ours, were able to fulfill similar requirements in 3 years. At the end of 2022, the European Commission must provide a conclusion on whether we have coped with all the tasks set before us.

The restart of the High Qualification Commission of Judges, the High Council of Justice, and eventually the Constitutional Court of Ukraine is being prepared. The last challenge, as of today, from the point of view of modern analysts, is the most serious (Kolomiets, 2022).

3. Directions of reforming the Supreme Council of Justice

Regarding the Supreme Council of Justice, it should be noted that in July 2021, the Verkhovna Rada of Ukraine amended the law «On the Supreme Council of Justice», which created a new independent body – the Ethics Council, which should assess the integrity of all candidates for the Supreme Council of Justice, and must also conduct a one-time evaluation of all current members of the VRP for their compliance with the criteria of professional ethics and integrity. Despite the state of war and the unstable situation in the country due to the aggression of the Russian Federation, the Ethics Council has already conducted interviews with current members of the VRP, and also continued conducting interviews with

candidates for additional staffing of the VRP to the authorized composition. Further, the Ethics Council can recommend to the subjects of appointment – the President, the Verkhovna Rada and congresses of judges, lawyers, scientists, prosecutors – to appoint 10 or more members of the 33 candidates to the VRP. The appointment of exactly 10 candidates for the positions of members of the VRP will make the body authoritative and unblock the procedures for dismissal, removal of judges and consideration of disciplinary complaints. For this, the law should be amended to allow appointing entities to appoint all candidates recommended by the Ethics Council to all available vacant positions during martial law.

Such an order will fully comply with the Constitution of Ukraine and the goal of judicial reform: only honest candidates recommended by the Ethics Council will be included in the Supreme Administrative Court, which will ensure the effectiveness of the initiated judicial reform, which is important for the successful European integration of Ukraine (Danylenko, 2022).

4. Procedure for competitive selection of judges of the Constitutional Court of Ukraine

In accordance with the norms of the current legislation, judges of the Constitutional Court of Ukraine are appointed by the president, the parliament and the congress of judges. Although the Constitution stipulates that the selection of judges of the Constitutional Court takes place on a competitive basis, the procedure currently prescribed in the law does not provide for a real competition. Each subject of appointment formally conducts its own «competitions», which, however, do not ensure verification of candidates for compliance with the requirements of the Constitution and do not guarantee that the best candidate will become a judge of the KSU. The current procedure allows for the appointment of politically dependent persons who, being judges of the Constitutional Court, instead of protecting the Constitution and human rights, protect the interests of their political patrons, therefore the procedure for selecting judges must be changed immediately. The following changes are planned:

1) Delegation of candidates and formation of the composition of the Court by the assembly of retired judges of the first composition of the Court and international organizations is proposed.

2) The list of candidates, in turn, will be formed by the qualification committee on the basis of the competition committee. This list will be updated every year.

3) The President of Ukraine, the Parliament and the Congress of Judges appoint candidates from the list.

4) Judges of the Constitutional Court of Ukraine will be directly elected by two-thirds of the votes of the Unified Qualification Commission, regardless of who appoints the candidate from the list.

Requirements for the qualification commission: 9 members, citizens of Ukraine, compliance with all the requirements of a KSU judge except for age. The first composition is approved by the Meeting of retired judges of the first composition of the KSU (appointed by judges in 1996), except for those who are members of political parties, have a representative mandate or hold a public service position; in the future, the Qualification Commission will appoint its members independently according to the principle of co-optation – «introduction of new members (or candidates) to any elected body without holding additional elections» (Akademichni tлумачnyi slovnyk, 2022).

Competition for the Constitutional Court of Ukraine will take place at least once a year, regardless of the availability of vacancies; the qualification commission will approve the list of candidates whom the president, the parliament and the congress of judges will be able to appoint as judges of the Constitutional Court of Ukraine; a candidate recommended by the Qualification Commission is on the list of candidates for 5 years and can be appointed a judge during this period; after the expiration of the term, he can take part in the competition again (Prozora protsedura pryznachennia suddiv Konstytutsiinoho Sudu, 2022).

5. Conclusions

Finally, we note that Ukraine must meet the key Copenhagen criteria to join the EU. These are three permanent categories – democracy, rule of law and market economy (Kolomiets, 2022). Ukraine must become attractive for investors, and this is impossible if there are concerns about the existence of conditions for the proper implementation of the right of business to judicial protection, as well as consideration of the case by a competent court in a reasonable time.

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УКРАЇНА – КАНДИДАТ НА ВСТУП ДО ЄС: АКТУАЛЬНІ ВИКЛИКИ СУДОВОЇ СИСТЕМИ

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Анотація

Мета. Наукова стаття присвячена дослідженню сучасного стану роботи судової системи в умовах воєнного стану, а також аналізу викликів судової системи у зв'язку із набуттям Україною статусу кандидата на вступ до ЄС.

Методи дослідження. Методологічною основою наукової статті є комплекс загально-наукових та спеціально-наукових методів пізнання, застосування яких дозволило розкрити сутність запропонованої проблематики. Було використано метод аналізу та синтезу, моделювання, аксіоматичний та системний методи наукового пізнання.

Результати та висновки. Сьогодні в умовах військового вторгнення росії судова система України має свої особливості. Серед них такі: у населених пунктах, де судові будівлі уже знищено, або ще тривають бойові дії, унеможливлене здійснення судочинства (цю проблему було частково вирішено шляхом зміни територіальної підсудності, створення «бекап-копій» документів судових справ, проведення судових засідань у дистанційному форматі); судова система все ж отримує фінансування, а з заробітних плат суддів віддають 50% на потреби ЗСУ, однак, жодних спеціальних фондів з капітальними інвестиціями на будівництво/ремонт/відновлення немає; є проблема з евакуацією суддів з тимчасово окупованих територій; серед представників суддівського корпусу є одиничні випадки колаборантів. Серед іншого, щодо судової системи в цілому: є проблема надмірної завантаженості суддів, що має своїм наслідком досить тривалий розгляд справ; також проблемою є значна тривалість конкурсних процедур.

Зовсім нещодавно Україна отримала статус кандидата на вступ до ЄС. Однак, слід розуміти, що для того, аби отримати повноправне членство, слід прикласти максимально зусиль для того, аби відповідати європейським стандартам. Судова система теж повинна бути належним чином модернізована, у першу чергу, в аспекті посилення незалежності суддів, ліквідації корупції, а також зміцнення довіри українського суспільства та міжнародного товариства до судової системи України в цілому. Україна повинна стати привабливою для інвесторів, а це є неможливим, якщо будуть побоювання щодо наявності умов для належної реалізації права бізнесу на судовий захист, а також розгляду справи компетентним судом у розумні строки.

Ключові слова: судова система, воєнний стан, Україна, ЄС, Вища рада правосуддя, Етична рада, Конституційний Суд України.