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JUDICIAL REFORM IN UKRAINE AS AN IMPORTANT STEP ON THE WAY TO THE STATE'S MEMBERSHIP IN THE EUROPEAN UNION

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Summary

The purpose of the article is to analyze the current state of the judicial reform in Ukraine, to elicit problematic aspects in this area, and to identify trends in the further development of judicial reform.

The methodological basis of the research article is a set of cognition methods, the application of which allowed to reveal the essence of the proposed problem.

Since gaining independence, Ukraine has chosen to pursue European integration. Since then, the process of adapting national legislation to that of the European Union has begun. Therewith, the Visa Liberalization Action Plan should be recognized as one of the most effective incentives in terms of judicial reform. However, despite the numerous achievements in the field of judicial reform, the judicial reform in our country is still incomplete, which is a significant obstacle to Ukraine's full membership in the European Union, in view of the violation of the Convention's right to a fair trial. The level of access provided by national legislation must be sufficient to ensure the right to a trial in view of the rule of law in a democratic society. In order for access to be effective, a person must have a clear, practical opportunity to challenge actions that interfere with his or her rights. Effective access to justice for any individual and the proper administration of that justice indicate the success of judicial reform and the restoration of its confidence in national courts. The supremacy of law will not be possible without proper access to justice. Therefore, the judicial reform needs to be further implemented.

To continue the judicial reform is one of the steps Ukraine must take to become a full member of the European Union. Priority areas for further reform of the judiciary should include strengthening the supremacy of law; combating corruption; eliminating shortcomings of the information and telecommunication system of electronic justice; raising the level of professional competence of judges by creating a professional development system that will include training, advanced training and exchange of experience with colleagues from other countries; introducing initiatives for such vulnerable groups of court users as victims and witnesses of war crimes, combatants and members of their families.

Key words: visa liberalization; right to a trial; judicial reform; European integration; Ukraine's membership in the European Union.

1. Introduction

On June 23, 2022, EU member states voted to grant Ukraine candidate status (Grant EU candidate status to Ukraine and Moldova without delay, MEPs demand, 2022). However, granting our country candidate status is just another step on the road to full membership. After all, we still need to complete a number of reforms and adapt our national legislation to European criteria. The EU has clearly outlined seven tasks that must be completed before accession negotiations begin (Michael Emerson et al., EU Accession Prospects of

Ukraine, Moldova and Georgia, Center for European Policy Studies, March 2023, 5-16). In particular, the continuation of judicial reform in Ukraine is among a number of requirements to be fulfilled on the path to European integration.

It is well known that the development of a law-based society and state is impossible without independent and impartial justice, which is a guarantee of respect for rights and freedoms, and legitimate interests (Bandurka, Teremetskyi, Boiko, Zubov, & Patlachuk, 2023). In turn, the concept of

access to justice imposes on the state the obligation to guarantee the right of every person to appeal to the court, to obtain legal protection if the person's rights have been violated (Drozdov, 2021).

Given the above, our state should continue implementing reforms in this area. This, in turn, necessitates a systematic analysis and evaluation of the changes already made in order to determine the trends in the further development of judicial reform.

The purpose of the article is to analyze of judicial reform in Ukraine, identify problematic aspects in this area, and determine the trends of further development of judicial reform. The use of appropriate methods of scientific cognition ensures the achievement of the research objective and its main tasks. Applying the dialectical method made it possible to identify the problems reforming the judicial system of Ukraine in their dynamics. The main trends in the development of the judicial reform were determined using the complex application of methods of analysis and synthesis.

The problem of judicial reform in Ukraine has been repeatedly studied in the works of Ukrainian scholars, including the following: V. Berch (Berch, 2022), A. Zavydniak (Zavydniak, 2022), O. Zubrytskyi (Zubrytskyi, 2023), I. Korzh (Korzh, 2023), A. Remezok (Remezok, 2023), and others. However, the existing works are fragmentary.

2. Ensuring the Right to a Trial as a Guarantee of European Integration

The right to a trial is fundamental in a country governed by the rule of law and democracy. Its realization is a guaranteed opportunity for everyone to go to Court to protect their rights and interests. It is the effective access to justice for any person and the proper administration of justice that is an indicator of the success of the judicial reform. It will be impossible to ensure the rule of law without proper access to justice.

It is about the opportunity guaranteed by law for a person to exercise their rights (Drozdov, 2021). Thus, in *Bellet v. France*, the court stated: «Article 6 § 1 of the Convention contains guarantees of a fair trial, one of the aspects of which is access to a court. The level of access provided by national law must be sufficient to ensure a person's right to a trial in view of the rule of law in a democratic society. In order for access to be effective, an individual must have a clear and practical opportunity to challenge the actions that constitute an interference with his or her rights» (*Bellet v. France*, 1995).

However, there are currently certain problems in the area of access to justice in Ukraine, as evidenced by the relevant case law of the European Court of Human Rights (hereinafter – ECHR, the Court). That

the right to judicial protection includes: 1) the right to a trial; 2) fairness of the trial; 3) publicity of the trial and announcement of the decision; 4) reasonable time for the trial; 5) trial by a court established by law; 6) independence and impartiality of the court. Thus, in the case of *Strannikov v. Ukraine* (*Strannikov v. Ukraine*, 2005), the Court concluded that the duration of the contested process was excessive and did not meet the requirement of «reasonable time for the trial». In another case, the Court found a violation of the applicant's right of access to court, noting that it is impossible to assume that Article 6 § 1 of the Convention describes in detail the procedural guarantees of a fair, public, and speedy hearing, and at the same time does not guarantee the parties that the dispute concerning their rights and obligations of a civil nature will be finally resolved» (*Balatsky v. Ukraine*, 2007).

In the context of European integration aspirations, compliance with certain criteria of the right to access to justice (the right to a fair trial) by our state must be ensured at the level of legislative, executive, and judicial authorities.

3. Ukraine's Achievements in Judicial Reform

For many years, our country has been steadily, albeit slowly and with some difficulties, moving towards the adaptation of Ukrainian justice to international standards. An analysis of the current legislative framework of Ukraine shows that the process of adapting national legislation to EU law began as early as the declaration of Ukraine's independence in 1991. Subsequently, in 1995, our country became a member of the Council of Europe and committed itself to constitutional and judicial reform. However, the most significant changes in Ukrainian legislation were made in the context of implementing the Visa Liberalization Action Plan (*Visa Liberalization Action Plan*, 2010).

Thus, in 2010, the introduction of an automated court document management system in courts of general jurisdiction began (*On the Judiciary and the Status of Judges*, 2010). In 2016, a new stage of judicial reform began with amendments to the Constitution of Ukraine (*Constitution of Ukraine*, 1996) in the part of justice (*Law of Ukraine «On Amendments to the Constitution of Ukraine (regarding Justice)»*, 2016) and the adoption of a qualitatively new *Law of Ukraine «On the Judicial System and Status of Judges»* in the same year (*Law of Ukraine «On the Judicial System and Status of Judges»*, 2016). The purpose of the amendments was to ensure the independence of judges and courts in accordance with international and European standards. At the same time, some aspects of the construction of judicial systems and the work of judges, as well as the experience of judicial reforms in European

countries, were implemented in Ukrainian legislation (Korzh, 2023, p. 164).

In 2018, the EU Pravo-Justice Project launched an initiative to establish court-based Support Services for Vulnerable Users of Court Services, which aimed to provide comprehensive services to vulnerable categories of users of the judicial system. It is worth noting that a number of courts in Ukraine have already implemented the relevant innovations. For example, the Ternopil District Court in the Ternopil region was one of the first to launch a volunteer service. Since then, the volunteers of the court have been helping to find courtrooms, providing practical information, explaining rights and obligations, providing emotional support, and monitoring all social projects in which the court may be involved in order to establish interagency cooperation in implementing services for victims, informing about the work of the court, the possibility of receiving legal aid from the state, being responsible for referring citizens to free legal assistance, promoting the use of electronic services for remote court proceedings, etc.

Ukraine is successfully fulfilling the requirements for the start of EU accession negotiations in terms of appointing new members of the High Council of Justice and the High Qualification Commission of Judges (hereinafter – HQCJ) of Ukraine, changes in the selection procedure for the Constitutional Court of Ukraine, etc. In particular, in July 2021, the Verkhovna Rada of Ukraine amended the Law «On the High Council of Justice» to create a new independent body, the Ethics Council, which is to assess the integrity of all candidates to the High Council of Justice (HCJ). The adoption of legislation in December 2022 regulating the procedure for selecting candidates for the position of a judge of the Constitutional Court of Ukraine (hereinafter referred to as the CCU) on a competitive basis should also be considered obvious progress in implementing modern judicial reform. The document contains a number of progressive provisions (Ukraine on the way to the EU: Realities and Prospects, 2022, p. 47). As scholars rightly point out, Ukraine's successful fulfillment of the formal requirements of an EU candidate is an external indicator of positive judicial reform processes (Bandurka, Teremetskyi, Boiko, Zubov, & Patlachuk, 2023).

And the above changes are not exhaustive. In addition, it is worth noting that in June 2023, the Committee on Legal Policy considered the draft Law on Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, and other legislative acts on the implementation of legal proceedings during martial law or a state of emergency and the settlement of disputes with the participation of a judge (Draft Law No. 8358, 2023).

The legislative draft proposes: to provide for the possibility of granting the powers of the secretary to other court staff and the possibility of remote work of the secretary; to establish that the court shall summon or notify the parties to the trial of the date, time and place of the court hearing in the case by any possible means, to all known means of communication, as well as through announcements on the official web portal of the judiciary of Ukraine; to provide that preparatory proceedings and/or court hearings should be conducted within a reasonable time, taking into account the ability of the parties to the case to participate in the proceedings; to expand the scope of written proceedings in courts of all jurisdictions; to extend the peculiarities of court proceedings that were applied in connection with the introduction of quarantine to prevent the spread of coronavirus disease (COVID-19) to the period of the martial law or the state of emergency; to provide for the possibility of remote access to the automated court document management system using a judge's own qualified electronic signature.

In settlements where court buildings have been destroyed or where military operations are still ongoing, justice cannot be administered. This problem was partially solved by changing the territorial jurisdiction. The Unified Register of Court Decisions is functioning properly, thanks to which court case files are stored electronically. «Backups» of such materials have also (Berch, 2022, p. 55).

In its turn, the Council of Judges of Ukraine, in order to regulate the operation of courts under martial law, developed recommendations on the work of courts, stipulating that the specifics of court operation should be determined taking into account the current situation in the region, and each court should have a responsible person who should ensure up-to-date accounting of staff and judges, taking into account the specific form of court operation (remote, etc.), etc. (To all courts of Ukraine. Recommendations of the Council of Judges of Ukraine).

4. Prospects for Further Judicial Reform in Ukraine

Of June 2022 recommending that Ukraine be granted candidate status, the European Commission noted, among other things, the following main shortcomings: weak rule of law and widespread corruption, which hinder investment and growth; incomplete implementation of EU legislation (Opinion on Ukraine's Application for Membership of the European Union, European Commission, 5-19). Therefore, it is quite obvious that further reform of the judiciary in Ukraine should take into account these shortcomings.

In particular, a powerful component of judicial reform is the fight against corruption and, thus, the

development of an independent judiciary. Judicial and anti-corruption reforms are separate institutional processes that go hand in hand. The need to develop and implement effective mechanisms to overcome corruption in the justice system is long overdue. This includes: improvement of the rules for selection and access to the judicial profession; strengthening public oversight of judges through the newly established Public Integrity Council, etc. (Bandurka, Teremetskyi, Boiko, Zubov, & Patlachuk, 2023, p. 63). At the same time, anti-corruption measures should be implemented in symbiosis with other transformational steps (Reznik, Bondarenko, Utkina, Klypa, & Bobrishova, 2023, p. 2).

At the same time, it should be noted that although the importance of fighting corruption to ensure an independent and objective judiciary is undoubtedly enormous, anti-corruption measures should be implemented in symbiosis with other transformational steps. After all, fighting corruption in the courts is only one aspect of judicial reform. It is a separate, though important, step. While anti-corruption reform touches on many aspects and has many forms and manifestations, the reform of the judicial system is aimed at transforming judicial institutions. These transformations concern the process of selection and appointment of judges, distribution of court cases, material support of courts and court staff, the procedure for making and appealing decisions, bringing judges to disciplinary responsibility, judicial self-government, etc. (Reznik, Bondarenko, Utkina, Klypa, Bobrishova, 2023, p. 2).

An equally pressing problem is the insufficient level of digitalization in the administration of justice. Ukrainian courts actively use electronic case management documents and the possibility of participating in court hearings via video conferencing. However, it is known that the Unified Judicial Information and Telecommunication System (hereinafter - UJITS), which, according to the provisions of the Procedural Code of Ukraine of 2017, was supposed to digitize all processes, from filing a lawsuit to the execution of a court decision, is still not working properly (Bandurka, Teremetskyi, Boiko, Zubov, & Patlachuk, 2023, p. 65). Successful e-court proceedings are possible provided that: the legislation regulating the functioning of the judicial system and the judicial process is improved; technical and information support of courts; development of measures to ensure information security; training seminars for court staff and other users of the system; systematic monitoring of the system's performance and its continuous modernization, and a broad awareness campaign on e-courts (Remezok, p. 199).

In addition, global practices of using artificial intelligence in judicial proceedings deserve attention. This will help to ease the burden on the

judicial system and judges. (Krupchan, Oleksandr; Salmanova, Olena; Makarenko, Nataliia; Paskar, Aurika; Yatskovyna, Vitalii, 2023, p. 104).

It should also be borne in mind that during the legal regime of martial law and the state of emergency, which often lead to the lack of minimum acceptable conditions for the usual and safe work of a large number of judges, the remote form of justice is the most justified and acceptable, since material and technical obstacles cannot prevent the state from performing its exclusive activities in the field of justice (Smokovych, 2022, pp. 33-34).

At the same time, the reform should be aimed at ensuring a high level of professional competence of judges. To this end, the proposal in the literature to create a professional development system that will include training, advanced training, and exchange of experience with colleagues from other countries, which will allow judges to improve their professional competence, is worthy of attention (Zubrytskyi, p. 44).

It is worth agreeing with the Council of Europe's European Commission on the Efficiency of Justice that judicial systems should prioritize cases involving vulnerable groups of persons. Vulnerabilities resulting from the crisis must also be taken into account (CEPEJ Declaration, June 10, 2020). The problem of ensuring access to court for vulnerable groups of court service users is even more urgent. The ongoing war in Ukraine is increasing the number of victims and witnesses of war crimes, combatants, and their families every day. All of them need special attention, information assistance, advice, and support to reduce psychological stress while in court. Therefore, one of the priorities of further judicial reform should be to introduce initiatives for the relevant vulnerable groups of court users.

5. Conclusions

Despite Ukraine's significant achievements in reforming the judiciary, judicial reform in our country is still incomplete. A number of issues remain unresolved, which impedes the proper implementation of the Convention's right of access to court and, consequently, the establishment of the rule of law. As a result, the European integration aspirations of Ukrainians remain under threat. Continuing judicial reform is one of the steps that Ukraine must take to become a full member of the European Union. This is due to the need to ensure irreversibility of establishing fair and impartial judicial proceedings. In particular, the priority areas for further reform of the judiciary should include, first of all, a set of measures aimed at: strengthening the rule of law; combating corruption; eliminating the shortcomings of the information and telecommunication system of electronic justice; raising the level of professional

competence of judges by creating a professional development system that will include training; introducing initiatives for such vulnerable groups of court users as victims and witnesses of war crimes, combatants and their families; promoting and improving remote proceedings; implementing the best international practices of using artificial intelligence to reduce the workload of courts and judges, etc.

Finally, it should be noted that the issue of judicial reform in Ukraine requires further research. In particular, in the direction of finding ways to improve the judicial system based on the example of foreign experience.

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СУДОВА РЕФОРМА В УКРАЇНІ ЯК ВАЖЛИВИЙ КРОК НА ШЛЯХУ ДО НАБУТТЯ ДЕРЖАВОЮ ЧЛЕНСТВА В ЄВРОПЕЙСЬКОМУ СОЮЗІ

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Анотація

Метою статті є аналіз поточного стану судової реформи в Україні, виявлення проблемних аспектів у цій сфері та визначення тенденцій подальшого розвитку судової реформи.

Методологічною основою наукової статті є комплекс методів пізнання, застосування яких дозволило розкрити сутність запропонованої проблеми.

З набуттям незалежності Україна обрала курс на європейську інтеграцію. Відтоді розпочався процес адаптації національного законодавства до законодавства Європейського Союзу. Разом з тим, одним із найефективніших стимулів в аспекті судової реформи варто визнати План дій з лібералізації візового режиму. Проте, попри числення досягнення у сфері реформування судової влади, судова реформа у нашій державі все ще залишається незавершеною, що є значною перешкодою на шляху до набуття повноправного членства України у Європейському Союзі, зважаючи на обумовлення порушення конвенційного права на справедливий суд. Рівень доступу, наданий національним законодавством, має бути достатнім для забезпечення права особи на суд з огляду на принцип верховенства права в демократичному суспільстві. Для того, щоб доступ був ефективним, особа повинна мати чітку практичну можливість оскаржити дії, які становлять втручання у її права. Ефективний доступ будь-якої особи до правосуддя та належне здійснення цього правосуддя є показником успішності судової реформи та відновлення його довіри до національних судів. Без належного забезпечення доступу до правосуддя неможливим буде і забезпечення верховенства права. Тому судова реформа потребує подальшого впровадження.

Продовження судової реформи є одним із кроків, які Україна повинна виконати задля набуття повноправного членства Європейського Союзу. До пріоритетних напрямків подальшого реформування судової влади варто віднести, зокрема: посилення верховенства права; протидію корупції; усунення недоліків інформаційно-телекомунікаційної системи електронного судочинства; підвищення рівня професійної компетентності суддів, шляхом створення системи професійного розвитку, яка буде включати навчання, підвищення кваліфікації та обмін досвідом з колегами з інших країн; запровадження ініціатив для таких вразливих груп користувачів суду як жертви та свідки воєнних злочинів, учасники бойових дій та члени їх сімей; популяризації та удосконалення дистанційного судочинства; реалізації найкращих світових практик використання штучного інтелекту, з метою зменшення навантаження на судову систему та суддів.

Ключові слова: лібералізація візового режиму, право на суд, судова реформа, європейська інтеграція, членство України в Європейському Союзі.