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Judicial reform in Ukraine: problems of implementation

The article is devoted to the research of judicial reform in Ukraine and problems of its realization. The changes to the Constitution of Ukraine in the part of justice are analyzed. The changes in the construction of the judicial system of Ukraine are researched. Competition to the Supreme Court is described. The reform of procedural legislation in Ukraine is analyzed. The problems arising in practice during the implementation of judicial reform in Ukraine are revealed. The stages of judicial reform in Ukraine are identified and possible ways of its improvement are outlined.

Keywords: *court, judicial reform, judicial system of Ukraine, Supreme Court.*

СУДОВА РЕФОРМА В УКРАЇНІ: ПРОБЛЕМИ РЕАЛІЗАЦІЇ

Стаття присвячена дослідженню судової реформи в Україні проблем її реалізації. Проаналізовано зміни до Конституції України в частині правосуддя. Досліджено зміни у побудові судової системи України. Охарактеризовано конкурс до Верховного Суду. Проаналізовано реформування процесуального законодавства в Україні. Виявлено проблеми, що виникають на практиці під час впровадження судової реформи в Україні. Встановлено етапи судової реформи в Україні та окреслено можливі шляхи її вдосконалення.

Ключові слова: *суд, судова реформа, судова система України, Верховний Суд.*

Currently the judicial system of Ukraine is in the process of reform, which began with the introduction of amendments to the Constitution of Ukraine and the adoption of the new wording of the Law of Ukraine "On the Judiciary and Status of Judges" in 2016. This judicial reform is the most extensive in the history of our state because it includes the elimination of the existing courts and the formation of new ones, the adoption of new procedural codes, the selection of new judges on a competitive basis. There is no unanimity of opinions in the estimations of the mentioned reform which is quite logical in view of its scale.

The analysis of judicial reform was carried out by many scientific and practical workers, namely: O. Selivanov, B. Lviv, O. Belyanevich, V. Reznikova, V. Serdyuk and others.

The purpose of this article is analysis of the stages of judicial reform in Ukraine, identification of problematic issues arising during its implementation, as well as giving practical recommendations for solving such issues.

Each state dreams of an independent judiciary, which is trusted by both its own citizens and others. Recently the level of trust in the judicial system in Ukraine has reached a minimum, indicating the need for radical changes in this area. However, only the reformatting the judicial system will not produce the desired results. As correctly noted by A. Selivanov, the criterion of forming a new understanding of their role in society for judges means to completely exclude the possibility of seeking each participant in legal proceedings means of unlawful influence on judges, which may give him the benefits in obtaining the desired judicial decision[1]. First of all, it concerns those who are trying to influence the judicial power in any way and by any means, forgetting about the need to adhere to the principle of the distribution of power. It is worth agreeing with I. Butyrska who indicates that the judiciary is considered a law-enforcement element in the state-legal mechanism, whose main task is to consider and resolve specific disputes[2]. Ordinary citizens also have a disregard for judges, which manifests itself in continuous not only on the moral but also on the physical pressure. At the same time the state does not react to the cases of such arbitrariness.

Judicial reform in Ukraine began with the adoption of the Law of Ukraine "On Amendments to the Constitution of Ukraine (in part of Justice)" of the 2nd of June, 2016 which in the new wording sets forth Section VIII of the Constitution of Ukraine "Justice". These changes, among other things, substantially expanded the grounds for dismissal of a judge, which are:

1. failure to exercise authority over the state of health;
2. violation by a judge of incompatibility requirements;
3. committing a material disciplinary offense, gross or systematic neglect of duties, which is incompatible with the status of a judge or has revealed his inconsistency with his position;
4. submission of the application for resignation or dismissal from office at his own discretion;
5. disagreement with the transfer to another court in case of liquidation or reorganization of the court where the judge holds a position;
6. violation of the duty to confirm the legality of the source of the property.

The last two grounds are innovations and at the same time they include additional measures of influence on the judge and that's why. On the 29th of December, 2017 the President of Ukraine signed a number of decrees on the liquidation or reorganization of all courts in Ukraine and now, in fact, each judge can be released if he does not agree to transfer to another court. At the same time the judge cannot choose the court to which he wants to be transferred, such a court

[1] Selivanov A.O. Sudova vlada maye proyty reformu ponovlennya svoho avtorytetu i doviry // Suchasni vyklyky ta aktual'ni problemy sudovoyi reformy v Ukrayini : Materialy Mizhnarodnoyi naukovoyi konferentsiyi (Chernivtsi, 26-27 zhovtnya 2017 r.). – Chernivtsi : Tekhnodruk, 2017. – P. 43.

[2] Butyrska I.A. Sudovyi pretsedent yak skladova pryntsypu "zhyvoho prava" // Erlikhivs'kyy zbirnyk. Yurydychnyy fakul'tet Chernivets'koho natsional'noho universytetu imeni Yuriya Fed'kovycha. Vypusk 6. – Chernivtsi: ChNU, 2012. – P. 149.

for him is elected by the High Qualification Commission of Judges of Ukraine, which is a state body of judicial self-governing acting in the system of justice of Ukraine on a permanent basis. However, the High Qualification Commission of Judges of Ukraine may propose such a court for transferring to that nobody will agree to be transferred there – for example, in a place near which the fighting is taking place.

Violation of the obligation of confirming the legality of the source of the property is also a rather subjective criterion and in one case it may be the reason for the dismissal of the judge, and in the other case it will not have any legal consequences. Such situations took place massively during the contest to the Supreme Court, when in the same circumstances diametrically opposed decisions were made.

Also on the 2nd of June, 2016 a new edition of the Law of Ukraine "On the Judiciary and Status of Judges" was adopted, which in Art. 17 stipulates that the judicial system in Ukraine is based on the principles of territoriality, specialization and authority; the Supreme Court is the supreme court in the system of justice; the system of judicial system consists of:

1. local courts;
2. courts of appeal;
3. The Supreme Court which includes: the Grand Chamber of the Supreme Court, the Cassation Administrative Court, the Cassation Economic Court, the Cassation Criminal Court and the Cassation Civic Court.

As a result of the changes, the judiciary turned from four-level to three-level system and the Supreme Court was formed entirely from new judges on the basis of the competition. The list of persons who may be judges of the Supreme Court is also substantially expanded. If earlier to be a judge in this court could only a judge of the lower courts, now a judge of the Supreme Court may be a person who meets the requirements for candidates for a judge, according to the results of the qualification assessment confirmed the ability to administer justice in the Supreme Court, and meets one of the following requirements:

1. has at least ten years of experience as a judge;
2. has a scientific degree in law and experience of scientific research in the field of law for at least ten years;
3. has experience in the professional activities of a lawyer, including representation in court and/or defense against a criminal charge for at least ten years.

In our opinion, the extension of the circle of persons who may be the judge of the Supreme Court is inappropriate, because a person who has never worked in the judicial system cannot consider cases in a court of cassation and to put a final point in the resolution of disputes.

The transition to a three-level judicial system in Ukraine is the result of lengthy discussions about the need for the elimination of higher specialized courts. If we look at the experience

of European countries we can see that the three-level judicial system prevails in Europe. Also relevant is the education of Belarus and Russia, where also are eliminated High Commercial and High Arbitration Courts respectively.

However, it should be noted that the choice of the model of judicial system depends on several factors. One is the number of people in the state. So, for a small country, a three-level judicial system is appropriate because the higher court has a small number of cases in the state, and vice versa, in the states with a large population (Germany) there are higher courts of lands and in fact the four-level judicial system operates. Ukraine is also a country with a large population but it is not a federation and it is impossible to form higher courts of lands, and therefore the problem of a heavy load on the Supreme Court of Ukraine was took off by the expense of the higher specialized courts, which reviewed all cases in cassation, and the Supreme Court of Ukraine independently decided which cases to take for consideration and which not. The current judicial system of Ukraine has identified the Supreme Court as a court of cassation consisting of up to two hundred judges, although only the remainder of cases transferred from higher specialized courts is sixty-five thousand. Such a situation will lead to the Supreme Court being overwhelmed with cases, which will extend over the years, which inevitably will increase the number of complaints to the European Court of Human Rights.

It should be noted that judicial reform does not include any systematic and clear rules of the game. Thus, the selection of judges in the courts of first instance (600 vacancies), selection of judges to the High Specialized Intellectual Property Court and selection of judges in the number of more than two thousand persons are ongoing in parallel. And all this process is carried out by the High Qualification Commission of Judges of Ukraine consisting of sixteen people.

The formation of a new Supreme Court which is the highest court in the system of judicial system and which has the duty to ensure the sustainability and unity of judicial practice in the manner and manner prescribed by the procedural law is an extremely important stage of judicial reform in Ukraine. The Law of Ukraine "On the Judiciary and the Status of Judges" provided that the occupation of positions of judges of the Supreme Court takes place through a competition held by the High Qualification Commission of Judges of Ukraine. In Part 9 of Art. 79 of the Law of Ukraine "On the Judiciary and Status of Judges" established that the High Qualification Commission of Judges of Ukraine conducts a competition for occupying vacant positions of judges of the Supreme Court based on the ranking of participants according to the results of the qualification assessment. In turn, the ratings of qualification evaluation are: competence (professional, personal, social, etc.), professional ethics and integrity.

The qualification assessment is conducted in accordance with the Regulations on the procedure and methodology of qualification assessment, indicators of compliance with the criteria of qualification assessment and the means of their establishment, approved by the decision of the High Qualification Commission of Judges of Ukraine on November 3, 2016. According to this Regulation, professional competence is estimated at 300 points, professional ethics and

integrity – by 250 scores. Thus professional ethics and integrity are estimated at 500 points, and professional competence – only 300 points, which indicates the superiority of moral indicators in the professional ones.

Legislative determination of professional ethics and integrity does not exist. In general professional ethics can be seen as a complex of moral duties that reflect the judge's attitude to his specialty and derivative relationships (with parties, colleagues, representatives of his family and members of society) and also certify moral responsibility and readiness to perform his official duties. In turn integrity is the moral and ethical foundation of the judge's activity, which determines the boundary and way of behavior, which must be based on the principles of good relations with individuals, society and the state, as well as integrity in the way of life, the fulfillment of professional duties and the disposal of material Resources[3]. That is, professional ethics and integrity are purely evaluative concepts due to which there are possible double standards during the qualification evaluation that took place during the contest to the Supreme Court[4].

The next stage of judicial reform in Ukraine is the introduction of new editions of procedural codes, in particular: the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine and the Code of Administrative Justice of Ukraine.

The norms of these codes have been in fact unified which completely does not take into account procedural peculiarities of different processes. A person appealing to the court for protection of her broken or disputed right expects a qualitative and prompt resolution of the dispute. A peculiar feature of the activity of commercial courts has always been the efficiency of the resolution of commercial disputes. In the vast majority of cases the economic dispute, taking into account the appeal and cassation proceedings, were resolved within a period of up to six months. The economic process has always been characterized by the convenience and simplicity of use inherent in the previous edition of the Commercial Procedural Code of Ukraine.

Consequently, the developers of the Commercial Procedural Code of Ukraine unified it with the Civil Procedural Code of Ukraine and the Code of Administrative Justice of Ukraine in such a way that all the positive features that existed in the previous version of the Commercial Procedural Code of Ukraine were lost.

After that the President of Ukraine issued a number of decrees on the elimination of existing courts (local courts, courts of appeal, economic and administrative courts) and the formation of new district courts – also local courts, courts of appeal, administrative and administrative courts, but with the addition that the newly formed courts are district courts.

The further progress of the judicial reform is unknown, the same is unknown what will be with liquidated courts, when new courts will start working, what will be with the existing judges.

[3] Glushenko S. Shcho rozumity pid profesiynoyu etykoyu ta dobrochesnistyu v konteksti kvalifikatsiynoho otsinyuvannya suddiv? [Electronic resource] // Zakon i biznes. – Access mode: https://goo.gl/LLgxao.

[4] Butyrskyi A.A. Konkurs do Verkhovnoho Sudu: problemy teoriyi ta praktyky // Suchasni vyklyky ta aktual'ni problemy sudovoyi reformy v Ukrayini : Materialy Mizhnarodnoyi naukovoyi konferentsiyi (Chernivtsi, 26-27 zhovtnya 2017 r.). – Chernivtsi : Tekhnodruk, 2017. – P. 11.

Summarizing the above, we can conclude that the judicial reform in Ukraine today has passed four stages: 1) the adoption of the Law of Ukraine "On Amendments to the Constitution of Ukraine (in part of Justice)" of the 2nd of June, 2016 which in the new wording has set Section VIII of the Constitution of Ukraine "Justice" and the new wording of the Law of Ukraine "On the Judiciary and Status of Judges"; 2) conducting a competition to the Supreme Court; 3) adoption of new procedural codes; 4) decrees of the President of Ukraine about eliminating the existing courts and the formation of new district courts. Judicial reform is carried out chaotic and without any concept. In order to adhere to the rule of law in Ukraine, it would be advisable to develop a holistic concept for reforming the judiciary with the involvement of leading scholars and practical workers, and only then to adopt reform laws clearly defining the sequence of the reform.

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