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CONCEPT OF JUDICIAL REFORM IN UKRAINE: ELECTRONIC COURTS AND SIMPLIFIED IMPLEMENTATION OF THE RIGHT TO JUDICIAL PROTECTION

The article defines the concept of judicial reform in Ukraine from the standpoint of the development of electronic courts and the introduction of artificial intelligence technologies in this context. It was revealed that today the tools of artificial intelligence cause discussions in the scientific environment on the subject of their perspective and the necessity of application. It has been proven that developed positive foreign practices (in particular, the USA, China, France) regarding the use of such tools in judicial proceedings contribute to the unhindered and full realization by citizens of their rights to judicial protection. On this basis, it is recommended to take into account such positive foreign practices in Ukraine, which are especially relevant for it due to external military aggression by Russia. It is emphasized that such illegal actions make it impossible to exercise the right to judicial protection, but it is recognized that their effect can be neutralized with the help of the introduction of artificial intelligence tools, the development of electronic courts, etc.

Key words: *court, judge, judicial system, legal proceedings, jurisdiction, justice, reform, public management concept, right to judicial protection, artificial intelligence technologies.*

Problem setting. The relevance of the research topic is to show the place and role of the reform approach to improving the qualitative state of the judiciary in Ukraine and its structural elements in the chain of mass transformation of Ukrainian society and the state. It should be noted that the new elements of this chain are characterized by innovation, namely the emergence of electronic courts and legal proceedings, which facilitates the protection of citizens' rights.

The purpose of this publication is to study the content of the defining scientific and legal categories in the analyzed area and their significance not only in the scientific and educational process, but also in law enforcement practice, taking into account the new requirements of time and society.

Recent research and publications analysis. Such scientists and practicing lawyers as O. Alekseev, S. Arnshtein, I. Bakirov, J. Berman, L. Borisova, L. Velichko, R. Voytovych, Y. Gariacha, E. Glukhachev, T. Hobbs, R. Dai, I. Deveau, M. Kelman, I. Kozlikhin, A. Korobova, G. Leibniz, J. Lok, N. Machiavelli, A. Malko, M. Matuzov, R. Mullerson, O. Rybakov, A. Saidov, B. Spinoza, A. Fateev, K. Shundikov, and others [1-2; 4-6; 11-12; 15].

Paper objective. The purpose of the study is to determine the concept of judicial reform in Ukraine from the perspective of the functioning of electronic courts and, accordingly, simplifying the implementation of the right of citizens to judicial protection.

Paper main body. The peculiarity of the current state of the Ukrainian state and society is that there is now an echeloned period of reforms in various areas, namely: local government bodies and the electoral system; tax reform; reform of social benefits; constitutional reform; labor law reform; pension reform; administrative reform; reform of the housing and communal services complex; investment reform; reform of the agro-industrial complex; trade reform; reform of the coal industry; construction reform; health care reform; reform in the field of education, etc.

The period of reform in the state is painful, accompanied by a conflict of interests of subjects of social relations up to social explosions. The judicial system of the state here should play the role of a stabilizing factor when considering various

types of conflicts, including with the participation of local and administrative bodies, for which it is necessary to make the only correct judicial decision by the Constitutional Court of Ukraine and all types of courts of general jurisdiction. That is why, intended for study in many higher legal educational institutions of Ukraine, the training course "Judicial and legal reform in Ukraine" is important for a correct understanding of the problems when studying very complex issues of a judicial and legal reformation nature.

The success of qualitative reforms in the state, including in local governments, largely depends on the successful judicial and legal reform in Ukraine. The result of reforming the judiciary and the judicial system is directly dependent on the mastery of future legal scholars by the complex of knowledge of the issues under consideration. The material under consideration is aimed primarily at giving in a concise form the concept of judicial and legal reform in general and specifically in our state, revealing the essence of this phenomenon, its subject and method, as well as its interpretation. It is important to correctly perceive and be convinced of the objective need to reform the judicial system and its legal framework in conjunction with the reform of central bodies and local governments. Issues such as the conceptual and legal foundations and sources of judicial and legal reform in Ukraine are of significant importance, since they reveal the socio-legal, scientific basis for reforming the judicial system and its legal basis.

The very name "*judicial and legal reform in Ukraine*" is a very complex philosophical, socio-legal phenomenon, which is inextricably linked with the "essence". In turn, such categories as "reform", "judicial", "legal" are general concepts that reflect the most essential properties and relationships of objects and phenomena of the objective world. The basic category in this complex combination is "reform". Reform, in the literal sense of the word, from French (reforme), and from Latin (reformare) to transform, i.e. transformation, change, reorganization of any aspect of social life. That is, reform is understood as a process of radical, often time-consuming transformations of the relevant aspects of social life, state and legal institutions of individual structures. Reform, as a rule, modernizes and changes the form and content of relevant social relations, without violating their fundamental

foundations [2, p. 303]. From a formal perspective, reform most often means innovation, innovation in specific content.

The category “judicial” represents a more capacious concept that is broader in content. This is primarily the judiciary. Then its structural components: court, judicial system, judicial system, jurisdiction, legal proceedings; justice, judge.

“Court” literally is a state body that considers categories of cases defined by law, and can also be considered as a building, premises for conducting court hearings [7, p. 472].

In scientific encyclopedic legal literature, the word “court” is often understood as a government body for the administration of justice. This term also refers to the legal process [6, p. 686].

As S. Kivalov rightly notes, “Sometimes the term “court” is identified with a judgment about something, an assessment of something, and even to designate an academic discipline at the university “Court in Ukraine.” Naturally, the adjectives “judicial” and “judicial” are derived from the word “court”. It is with him that the phrase “judicial power” is associated [9].

The “judicial system,” in turn, is an integral part of the legal system of the state, which denotes the order of organization and activities of the judiciary and the principles of administration of justice. [11, p. 703-704].

“Justice” is nothing more than the law enforcement activity of judicial bodies to consider and resolve cases in the relevant jurisdiction. Malyarenko V. examines the category of justice more specifically, emphasizing that justice is the law enforcement activity of the court to consider and resolve, in the procedural manner established by law, civil, economic, criminal and administrative cases within its competence in order to protect the rights and freedoms of man and citizen , rights and legitimate interests of legal entities and interests of the state [6].

The categorical apparatus of “judicial and legal reform in Ukraine” contains such a concept as “legal proceedings,” which is understood as a procedural form of administering justice in civil, criminal, economic, administrative, constitutional cases and cases of administrative offenses.

Particular attention should be paid to the analysis of such an official category of the judiciary as “judge”. The essence of the problem is that neither the Constitution of Ukraine, nor the legislation on the judicial system, nor procedural legislation, nor the authors of scientific publications and legal encyclopedic literature provide a definition of the concept of a judge. At best, the discussion is about the legal status of a judge, the requirements and procedure for appointment or election to the position of a judge. In our opinion, the need for scientific the justification and legislative consolidation of the very concept of “judge” will help to understand the essence and content of the category of judge, as the most active and determining subject of the judiciary, and, consequently, the court, the judicial system, legal proceedings and justice. Without pretending to be complete, I think that such a definition could be like this:

“a judge is a bearer of judicial power in the state, an official with a special status, meeting the requirements and acting on the basis of highly moral international and national legal principles, appointed, elected or involved by virtue of procedural legislation to consider and resolve social conflicts of general and constitutional jurisdiction making, individually or collectively, a final, legal, justified, motivated, fair, just decision, bearing the force of law, binding on everyone on the territory of Ukraine.”

Based on the above, it is not difficult to notice that judicial and legal reform in Ukraine can be considered both in a narrow and in a broad sense. In a narrow sense, judicial and legal reform implies a set of legal and organizational measures based on the Constitution of Ukraine, regulated by relevant legal acts, aimed at democratizing and improving the quality of justice in the state [6, p. 717].

In a broad sense, judicial and legal reform in Ukraine, in our opinion, is understood as a complex socio-legal category, one of the most important, defining, large-scale state directions for improving the judiciary, as well as a set of internal state techniques (methods) implemented on the basis of the post-reform legislation, systemic, scientifically based, socially determined, organizational and legal transformations of the legal foundations of the court, the judicial system, its judicial system, jurisdiction, legal proceedings, justice and the status of judges with the

involvement of all branches of government, aimed at further strengthening the constitutional democratic principles with taking into account international and national legal experience in order to improve the judiciary in the name of effective access of citizens to court, real independence of the court and judges, guaranteed rights of humans and citizens, as well as other subjects to fair justice.

Based on such a broad understanding of judicial and legal reform in Ukraine, its interpretation follows, that is, a meaningful interpretation, the meaning of this complex philosophical, social, legal category: 1) judicial law; 2) judicial-legal institute of the judiciary; 3) a set (complex) of techniques (methods) of a legal and organizational nature to improve the judiciary and its judicial system; 4) legal science; 5) academic discipline.

The subject of "judicial law" will expand due to an increase in the number of forms of legal proceedings; *unhindered appeal of subjects of legal relations to judicial authorities*; judicial proceedings and the issuance of a court decision with its entry into legal force [1, p. 32]. Having characterized the subject of "judicial law", it becomes necessary to determine its methods. "Method" is understood as a path of research or knowledge, a method of constructing and justifying knowledge, a set of techniques and operations for the practical and theoretical development of reality. This is a means of influencing specific objects. In our case, these main methods are: 1) dispositive; 2) imperative; 3) equality of the parties in external and internal relations; 4) understanding and interpretation of legal norms; 5) generalization of legal practice. The dispositive method provides, first of all, options for the behavior of participants in social relations as equal parties in one or another type of legal proceedings. The imperative method is, first of all, a state that does not allow the right to choose; it is imperative in nature, the obligation is only for such behavior and nothing else. The method of equality of arms is a method of legal regulation not only of external relations, for example, an individual, a legal entity on the one hand and a court on the other, but also internal relations, that is, intra-organizational ones. For example, courts at different levels are independent, independent of each other in their relationships with each other. The method of understanding and interpreting legal norms, institutions and legal acts consists in the mental activity of assimilation,

correct understanding of the meaning of the above legal categories, and then a convincing internal and external explanation by the subject of the interpretation of legal norms and legal acts of an international and national nature. The method of generalizing legal practice is directly related to the mental-dialectical activity of specialists in the field of law enforcement, in particular judicial activity. Generalization of legal (judicial practice) is associated with the processes of abstraction, analysis, synthesis, comparison with various inductive procedures [9].

It should be noted that today, ensuring the unimpeded access of subjects of legal relations to judicial authorities is determined by the development of innovative technologies. This is evidenced by foreign practice, which should be taken into account in Ukraine during the completion of judicial and legal reform.

The national law of Ukraine details the norm of Art. 6 of the Convention, in particular, in Art. 127 of the Basic Law of Ukraine (1996) stipulates that justice is administered by judges, and it is they who are entrusted with judicial power [8]. By the way, a similar legal position is taken by Germany, which is set out in Art. 92 of the Basic Law of the Federal Republic of Germany (1949) – judicial power is granted directly to judges [13]. The reasons for this may be that the legal systems of both countries originate from the same legal system - Romano-Germanic. In Germany and Ukraine, they hold the opinion that artificial intelligence helps to optimize the work of judges (the court) by involving innovative technologies, but cannot replace their (judges') activity.

It should be noted that at the time of the adoption of the Constitutions of both analyzed countries, the issue of the possibility of involving artificial intelligence in the field of human rights and justice had not yet been considered. However, at present, the idea of involving such intelligence in these areas is gaining relevance, but runs into a number of ethical issues. The European Commission on the Efficiency of Justice of the Council of Europe tried to solve them by adopting an international act in 2018, which has the appropriate name - the European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment) [14]. The main message of this Charter is to increase the effectiveness of legal protection and justice through the use of IT technologies and algorithms during the adoption of judicial

decisions regarding the protection of fundamental rights and freedoms. They are guaranteed, as mentioned above, by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as by the Council of Europe Convention on the Protection of Personal Data.

In continuation, we note that the right to prevent discrimination when using artificial intelligence was discussed during the meeting of representatives of European equality bodies and national human rights institutions with Council of Europe Commissioner for Human Rights Dunia Mijatovych and representatives of European equality bodies (September 26, 2019, Paris). The European Union has published Guidelines on the Ethics of Artificial Intelligence, which include privacy and data management, reliability, safety, and accountability. On the basis of these principles, the Human Rights Commissioner of the Verkhovna Rada of Ukraine develops relevant recommendations on the use of artificial intelligence systems implemented by state authorities in Ukraine [17].

It is worth noting that the Ethical Charter establishes the following basic principles for the use of artificial intelligence in the implementation of human rights and justice [5]:

1) the principle of observing basic human and citizen rights under the conditions of using artificial intelligence;

2) the principle of non-discrimination;

3) the principle of transition of quantity into quality and safety when using artificial intelligence;

4) the principle of publicity and control is aimed at ensuring the most transparent situation of human rights protection, under which it will be under user control and accountable to the public (English under user control [10]);

5) the principle of impartiality and justice.

Abroad, the practice of applying these principles when using artificial intelligence in the field of human rights and justice has developed:

1. The United States is one of the leading countries in the world that actively uses artificial intelligence in law enforcement, in particular, in the field of justice. Artificial intelligence is mostly used in civil and criminal cases in this country.

Scientists from Stanford University [15], who developed a program algorithm that relieves the judge's work, provided significant help for this. It is about a program algorithm that helps the judge with the selection of a preventive measure for this or that defendant (in particular, with the appointment of detention or bail) [ibid.]. The artificial intelligence program makes it possible to impartially and fairly determine all the risks of detention and the imposition of bail for defendants in order to reduce the level of danger to the state and society. The implementation of this program is due to the fact that during the review of court cases and procedural documents related to the selection of a preventive measure (detention and bail), the following was established: US district judges evaluate the cases of application of such measures differently, and, as a result, in half of the cases, citizens are allowed to go out on bail, and in the other half - not [ibid.].

2. China is also one of the countries in the world in which the use of artificial intelligence in the administration of justice has become widespread. It is no coincidence that China is the main competitor of the US in technological breakthroughs, including during the application of the latest technologies in the field of human rights protection. Since 2017, an online court program has been implemented in China, developed as a mobile application to the main Chinese program WeChat, with which you can receive wages, transfer money, carry out sales transactions, etc. By the way, WeChat was founded in 2011 to facilitate the communication of Chinese citizens [16]. However, since the creation of this program, it has developed significantly, and currently, with the help of WeChat, a person can get a divorce and seek legal protection, subject to identity verification. It should be emphasized that the court session does not take place in the courtroom, but in a video chat, which is managed by a bot judge, whose functions are performed by artificial intelligence. According to statistics in China, AI-judges have considered more than 100,000 court cases, deciding on more than 88% of court cases in the field of copyright, economic disputes arising on the Internet, and in the field of electronic commerce [4].

3. In the French judicial system, the use of artificial intelligence algorithms is mostly initiated by the private sector, but is gradually being integrated into public

policy with the help of the Court's Automated Document Management System. At the same time, in France, a person(s) may be held criminally liable for consideration of judicial practice. This is due to the fact that such an analysis, firstly, can make it possible to determine in advance what decision the judge will make in the case. And secondly, it can assess the general pattern of behavior of an individual judge, thereby violating his personal rights [5]. It is clear that the initiators of the introduction of such responsibility were the judicial corps of France.

As for Ukraine, we believe that it has created the prerequisites for the introduction of artificial intelligence. This is evidenced by the launched program – the Unified Judicial Information and Telecommunication System [3], which is similar to the Automated Document Management System of courts in other countries of the world. In general, this system provides for the introduction of paperless record keeping with the help of the following:

– use of electronic digital signature;

– use of electronic document flow;

- creation of a personal office for familiarization with any procedural actions on the case;

- improvement of the unified state register of court decisions;

– creating a system of hyperlinks to legal positions of the Supreme Court, etc. [5].

In contrast to France, the introduction of the Unified Judicial Information and Telecommunication System in Ukraine is intended to provide an opportunity for a person (who has a personal office) to select a decision of the Supreme Court that is relevant to a particular case through the program algorithm, constructing an impersonal (without human participation) resolutive decision. We believe that in the near future it will become possible to resolve minor disputes or related procedural issues with the help of an artificial intelligence system, including in video conference (video chat) mode. In continuation, we note that this will significantly relieve domestic courts. However, it requires the implementation of a "proactive" state human rights policy, which differs from a retroactive one in its focus, action in time, and tools (see the scientific works of Yu. Dreval, G. Chornous, etc. [9; 12]).

"Proactive" management encompasses cause and effect analysis, decision making, plan analysis, and situational review that are time-varying [ibid.].

We believe that, like the "WeChat" software, the domestic mobile application "Diya" can be used in Ukraine [5; 16], introduced at the beginning of 2020. This application may contain ID information about a particular person. Therefore, these data can be used to verify the identity and refer it to law enforcement agencies.

In addition, software in the form of the "Electronic Court" subsystem is currently operating in Ukraine in test mode. With the help of this provision, it is possible online to:

- file a lawsuit yourself (the list is exhaustive);
- monitor the progress of the court case;
- submit other procedural documents;
- pay the court fee;
- monitor the process of receipt of claims against oneself, etc.

At the same time, the full application of the Unified Judicial Information and Telecommunication System [3] is an issue that requires a long period of time to resolve. Unfortunately, some modules of this system operate in certain courts, and e-claim statements must be duplicated by sending them in paper form. This is caused by a number of factors of both an objective and subjective nature. Their regulation requires a proactive government policy in the field of digitization and digitization; from such a transformation, we should expect sustainable socio-economic development of the state and society, as well as timely legal protection and effective and public work of domestic courts. A feature of modern online monitoring and data analysis systems in the field of human rights protection is that these systems do not seek to replace and reproduce the human model of behavior and cognition. These systems create contextual statistics and analytics based on the processed information, but do not provide any guarantees of false autocorrelations. Moreover, there is a real risk that the algorithm of an artificial intelligence program, subject to, for example, external interference, will provide discriminatory or false conclusions. Therefore, it is worth thinking about systems for protecting artificial intelligence from external influences or other malfunctions.

Conclusions. Therefore, the future of human rights protection in general and justice in particular is undoubtedly based on technologies, digitization, automation and digitization, including court proceedings. Because artificial intelligence has a significant potential to accelerate the processes of obtaining, monitoring and analyzing information. This can significantly relieve the work of law enforcement and human rights institutions, making it more effective. Let us emphasize that in this situation it is extremely important to use artificial intelligence in accordance with fundamental and practically oriented principles. These include general and special ones, namely: the principle of the rule of law; the principle of non-discrimination; the principle of impartiality; the principle of justice; the principle of security, etc.

At the same time, we should note that for the time being, for the world community, the issue of using artificial intelligence algorithms in the field of human rights protection and justice remains debatable. They are accompanied by different positions on approaches to the use of artificial intelligence in solving different categories of disputes - from widespread implementation to less active. At the same time, there is a different attitude towards the types of categories of cases in which artificial intelligence can be used (from criminal cases to disputes in the field of copyright). Therefore, the results of its implementation are different: from the establishment of criminal liability using artificial intelligence programs to the prediction of court decisions.

Currently, domestic legislation does not provide for the right to replace judges with artificial intelligence algorithms. However, in fact, the legislation of Ukraine was adopted before the European Convention on the Protection of Human Rights and Fundamental Freedoms, so it could not take into account the principles laid down in this convention. Therefore, the introduction of relevant legislative changes is a promising direction for the development of the human rights state policy of Ukraine in the system of public administration. It requires, in turn, discussions regarding the partial or full involvement of artificial intelligence in the human rights and judicial system.

Positive foreign practices (in particular, the USA, China, France) regarding the use of artificial intelligence tools in judicial proceedings, which contribute to citizens'

unhindered and full realization of their rights to judicial protection, have been analyzed. On this basis, it is recommended to take into account such positive foreign practices in Ukraine, which are especially relevant for it due to external military aggression by Russia. It is emphasized that such illegal actions make it impossible to exercise the right to judicial protection, but it is recognized that their effect can be neutralized with the help of the introduction of artificial intelligence tools, the development of electronic courts, etc.

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