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DEVELOPMENT OF THE JUSTICE SYSTEM AND CONSTITUTIONAL JUDICIARY IN THE CONDITIONS OF MODERNIZATION OF PUBLIC ADMINISTRATION

The articles consider the provisions of the Strategy for the Development of the Justice System and Constitutional Court Proceedings for 2021-2023. The problems that exist in this area are identified, namely related to the implementation of the principles and directions of the development of the justice system, strengthening the functional and procedural capacity of the Supreme Court, conducting an audit of the activities of local and appellate courts, simplifying access to justice, etc. Information regarding changes in the dynamics of the number of considered court cases in the appellate instance (between 2018 and 2021) was analyzed. It has been established that there is a 6.5-fold increase in the number of court cases considered by the appellate courts of Ukraine. In this regard, a solution to these problems is proposed as part of the modernization of the public administration system and the decentralization of power. A special role is assigned to the solution of organizational and personnel measures.

***Key words:** justice system, constitutional judiciary, modernization of public administration, decentralization of power, strategy for the development of the justice system and constitutional proceedings, judge.*

In essence, the method and form of government of the state do not matter at all, if there is justice in it and everyone is equal before the law.

(attributed to Napoleon)

Problem setting. In continuation of this statement regarding the importance of justice, we note that its development determines the modernization of the public administration system and decentralization of power, which operates taking into account the principle of division of power. The constitution and laws of the country are dead without an independent judiciary. The experience of building the statehood of modern Ukraine shows what a huge place in the life of society is occupied by an independent court, acting on the principles of the rule of law, protecting the rights and freedoms of man and citizen, the rights and legitimate interests of legal entities, the interests of society and the state. The current state of affairs shows that judicial reform has not created an independent justice system in Ukraine capable of protecting democracy and justice. The main reason is that the people who hold economic power in the country do not want to have a court where everyone is equal before the law and the court. All of the above indicates the relevance of the study and the importance of its implementation.

Recent research and publications analysis. In their scientific works, the issues of development of the justice system and constitutional judiciary in the conditions of modernization of public administration were considered by the following domestic scientists as Bashtannyk A., Battannik V., Koliushko I., Kuybida R., Lobodenko K., Sviatotskyi O. and others [1; 4; 6; 8].

Paper objective. The purpose of the article is to define the problems of the development of the judicial system and constitutional judiciary in the conditions of modernization of public administration in Ukraine.

Paper main body. President of Ukraine Vladimir Zelensky signed Decree No. 231/2021 “On the Strategy for the Development of the Justice System and Constitutional Proceedings for 2021 – 2023” [7]. The strategy defines the basic

principles and directions for the development of the justice system, taking into account the best international practices. The document outlines the priorities for improving legislation on the judicial system, the status of judges, legal proceedings and other justice institutions, as well as the introduction of urgent measures to improve the activities of legal institutions [9].

The *document also identifies problems* that need to be solved to further improve the functioning of the judiciary and the administration of justice [7].

One of the directions of the Strategy is to improve access to justice. It is planned to conduct an audit of the local court system in order to identify problems and shortcomings in its functioning. The document also aims to strengthen the functional and procedural capacity of the Supreme Court [ibid.].

In addition, the necessary resources should be provided for the effective organization of the work of the High Anti-Corruption Court. Specifically, these are permanent premises that meet building codes and safety standards. The strategy also provides for improving the methodology for determining court fee rates for certain categories of cases to simplify access to justice.

It is planned to establish a mandatory pre-trial procedure for resolving disputes using *mediation* and other practices for certain categories of cases, as well as to work on the issue of introducing the institution of a *magistrate judge* [ibid.].

One of the goals of the Strategy is to strengthen the independence of the judiciary and its accountability to *society*. In particular, the formation of the High Qualification Commission of Judges and the High Council of Justice should take place based on the results of an open competition held with the participation of international experts [9].

The document also talks about the *development of the prosecutor's office* and the *improvement of the institution* of the legal profession – *lawyers* [ibid.].

In addition, the Strategy provides for improving the *mechanisms for verifying the integrity of judges* of the Constitutional Court of Ukraine and *their compliance with professional ethics standards*. It is proposed to change the procedures for the competitive selection of candidates for the position of judge of the Constitutional

Court, their verification for integrity and compliance with the level of professional competence, with the possible involvement of international experts. It is envisaged to introduce a mechanism to protect judges of the Constitutional Court from political and other pressure when making decisions and conclusions. [7]

According to the decree of the President of Ukraine, the Commission on Legal Reform, together with representatives of central and local authorities, the public and experts, must develop an Action Plan for the implementation of the Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023.

Also, the Legal Reform Commission must inform the President about the implementation of the provisions of this Strategy [7].

Thus, the *main problems* that determine the need to further improve the organization of the functioning of the judiciary and the administration of justice are:

- failure of the High Qualifications Commission of Judges of Ukraine to carry out its activities and the impossibility of restoring its work without improving legislation;

- dishonesty of individual judges, employees of bodies and institutions of the judiciary, cases of tolerance of corruption;

- imperfection of the existing system of local courts;

- ineffectiveness of the system of financial, logistical and social security guarantees of the independence of the judiciary;

- imperfection of the system of judicial authorities, the organization of their activities, including regarding financial, logistical and other support for courts of all levels;

- functional imperfection of the system of judicial management and self-government bodies;

- shortage of judges in local and appellate courts, excessive workload on judges in courts at all levels;

- ineffectiveness of procedural mechanisms for cassation appeal and the formation of a unified judicial practice in the application of the law by the courts of Ukraine;

- overly complex procedures for conducting a competition for the vacant position of a judge, as well as the procedure for passing the qualification exam and the methodology for assessing judges and candidates for the position of judge;
- ineffective mechanisms for bringing judges to disciplinary liability;
- improper execution of court decisions, ineffectiveness of mechanisms of judicial control over the execution of court decisions;
- lack of effective mechanisms for alternative (out-of-court) and pre-trial dispute resolution;
- barriers to access to justice;
- insufficient level of implementation of digital technologies in the administration of justice;
- excessive duration of consideration of cases in courts, over-regulation of the judicial process, unjustifiably wide use of collegiality in the courts of first and appellate instances;
- lack of proper communication policy in the courts;
- incompleteness of the reform of the prosecutor's office, inadequate legislative regulation of the mechanisms for the implementation by prosecutors of their constitutional powers;
- low level of public trust in the judiciary and the prosecutor's office;
- functional imperfection of the legal profession system, complexity of the procedure for access to legal practice, insufficient effectiveness of mechanisms for protecting the rights of lawyers [7].

Thus, an analysis of the state of implementation of the Justice Development Strategy shows that judicial reform has not created an independent justice system in Ukraine.

The judicial and legal reform carried out by politicians destroys the best that was in the previous judicial system and makes declarative the basic principles of justice written in the Constitution of Ukraine [5]. During this reform, judges themselves do not have the right to vote - appeals from judicial self-government bodies and the Chairman of the Supreme Court of Ukraine are ignored by the Cabinet

of Ministers of Ukraine, the Supreme Council of Ukraine, and the President of Ukraine.

Reforming the judiciary requires knowledge of its underlying problems, which are better known to judges than to other people. Therefore, without taking into account the opinion of judges, reforming the judicial system is tantamount to improving cardiology by livestock specialists or vice versa [8].

Sharing this opinion, practicing judges observe with bitterness how, during the judicial reform, common sense disappears from the judicial system, experience that has been accumulated over the years and conscientiously served the people is discarded [4].

There are no trifles or minor details in creating an independent justice system and establishing the principle of legality in it. Everything is important here, starting from the system of training students in universities and the selection of judicial personnel, the order of building the court system, improving substantive and procedural legislation, uniformity of judicial practice, organizational management of the courts, financing of the courts, the workload of judges, the level of pre-trial investigation, the possibilities of prosecution and defense and until there is a mechanism for judicial control over the legality of this entire system.

In an address to the Supreme Council of the country, the President of Ukraine noted that *the judicial system poses a deep threat to the national security of Ukraine*. One should undoubtedly agree with this thesis. Evidence of this is the fairly high percentage of decisions made by courts that are appealed through appeal or cassation procedures, as well as in the European Court. More detailed statistical data regarding the number of appeals filed can be viewed on the website of the Judicial Power of Ukraine (tabl. 1, tabl. 2) [2].

Table 1

The number of cases and materials that were pending in appeal courts and considered at the end of the reporting period (2020-2021)

№	Oblast (region)	Total court cases and materials		
		2020	2021	dynamics, %
1.	Autonomous Republic of Crimea			
2.	Vinnytsia region	11 992	10 762	-10,26
3.	Volyn region	8 138	8 087	-0,63
4.	Dnipropetrovsk region	26 730	27 367	2,38
5.	Donetsk region	18 200	17 791	-2,25
6.	Zhytomyr region	10 291	10 791	4,86
7.	Transcarpathian region	11 213	13 254	18,20
8.	Zaporizhzhia region	16 298	18 035	10,66
9.	Ivano-Frankivsk region	6 664	7 843	17,69
10.	Kyiv region	82 362	87 527	6,27
11.	Kirovohrad region	6 538	5 978	-8,57
12.	Luhansk region	4 931	5 870	19,04
13.	Lviv region	19 539	19 536	-0,02
14.	Mykolaiv region	14 596	14 451	-0,99
15.	Odesa region	26 379	27 182	3,04
16.	Poltava region	12 104	10 733	-11,33
17.	Rivne region	6 075	6 613	8,86
18.	Sumy region	10 221	8 427	-17,55
19.	Ternopil region	7 804	7 592	-2,72
20.	Kharkiv region	30 392	29 954	-1,44
21.	Kherson region	9 610	10 759	11,96
22.	Khmelnyskyi region	9 949	9 119	-8,34
23.	Cherkasy region	9 668	10 005	3,49
24.	Chernivtsi region	6 646	6 694	0,72
25.	Chernihiv region	9 043	9 181	1,53
26.	Sevastopol city			
27.	Total, quantity	375 383	383 551	2,18

* data without the Autonomous Republic of Crimea, the city of Sevastopol.

Source: compiled on the basis of data [2]

Table 2

The number of cases and materials that were pending in appeal courts and considered at the end of the reporting period (2018-2019)

№	Oblast (region)	Total court cases and materials			
		2018	2019	specific weight, %	
				2018	2019
1.	Autonomous Republic of Crimea				
2.	Vinnitsia region	1 337	1 927	9,01	13,19
3.	Volyn region	383	737	5,76	9,49
4.	Dnipropetrovsk region	6 068	8 681	12,13	15,60
5.	Donetsk region	1 479	2 537	6,35	9,16
6.	Zhytomyr region	2 406	2 621	14,91	15,67
7.	Transcarpathian region	1 984	2 497	17,24	19,60
8.	Zaporizhzhia region	1 670	2 389	7,85	10,77
9.	Ivano-Frankivsk region	1 642	1 542	15,14	15,06
10.	Kyiv region	2 599	4 255	11,18	16,84
11.	Kirovohrad region	1 155	1 335	10,44	11,80
12.	Luhansk region	767	1 284	5,75	10,82
13.	Lviv region	4 605	5 837	16,84	20,18
14.	Mykolaiv region	1 899	2 430	11,57	14,22
15.	Odesa region	5 645	6 808	14,57	17,19
16.	Poltava region	732	1 226	4,95	8,43
17.	Rivne region	1 145	1 440	10,80	12,18
18.	Sumy region	947	1 049	8,00	10,99
19.	Ternopil region	728	699	11,00	10,35
20.	Kharkiv region	3 533	5 284	10,66	17,29
21.	Kherson region	2 471	3 518	14,46	19,29
22.	Khmelnitskyi region	468	1 008	4,21	9,06
23.	Cherkasy region	1 519	2 221	11,42	16,70
24.	Chernivtsi region	478	914	9,73	18,16
25.	Chernihiv region	233	326	3,12	4,45
26.	Sevastopol city				
27.	Total, quantity	57 826	76 464	11,97	15,22

* data without the Autonomous Republic of Crimea, the city of Sevastopol.

Source: compiled on the basis of data [2]

As can be seen from the information given in Tables 1 and 2, the number of considered court cases in 2021 grew by 6.5 times, compared to 2018.

The complexity of the situation is compounded by the change in the territorial jurisdiction of the courts of Donetsk and Luhansk regions. Such a change of jurisdiction is caused by Russia's external aggression against Ukraine. Experiments with the judicial system have already led to such ugly manifestations as the impossibility of protecting the constitutional rights of citizens in the Supreme Court of Ukraine, where cases have not been reviewed for years, where more than 35 thousand cases have accumulated today. And although the Constitution of Ukraine prohibits the creation of extraordinary or special courts, today the cassation functions of the highest judicial instance have been transferred to the appellate courts of a number of regions, for example, in court cases of residents of the Crimean Autonomous Republic, the functions of the Supreme Court are performed by the Zaporozhye Court of Appeal [5].

The average monthly workload of judges in the Zaporozhye region, and in many regions of Ukraine, exceeds 200 or more cases per judge [2]. Considering that for various reasons cases are postponed several times, this figure increases by 2-4 times, that is, the judge can allocate several minutes to study and consider the case.

The law does not protect judges from overload, nor does it establish a limit to the professional and physical capabilities of a judge. There is no provision of law according to which a judge could refuse to accept new cases that he is not able to properly consider due to a high workload. What can the judge do? Can't you explain to anyone why the case submitted to him is not being heard? Therefore, judicial work begins after work, judicial work at home, redistribution of judicial work to assistants, secretaries, their preparation of all kinds of draft court decisions, use of the capabilities of copying equipment, simplification, in the end everyone suffers from this. Who needs this kind of justice? The law does not allow a local court judge not to accept unnecessary cases by recusing himself or transferring them to a neighboring region, following the example of the Supreme Court. In this negative way, at the expense of the health of judges, the problem of citizens' access to justice was solved.

The clumsiness of procedural legislation does not contribute to the speed of consideration of cases (obligatory conduct of the preliminary hearing stage, the need to write motivated texts of decisions in undisputed cases, etc.).

Conclusions. Therefore, a judge is the main bearer of judicial power, and the fairness and legality of decisions made on behalf of Ukraine largely depends on which person wears the mantle of a judge. The profession of a judge is one of such rare professions that it should coincide as much as possible with a person's calling, because a judicial error can affect more than one generation of victims of injustice. The judicial system must maintain its professional core. An honest and professional judge is not only a joy for parents, but also an invaluable asset to society. Due to the revolutionary reform of legislation and the language barrier, the judicial system devalued the experience of many judges, forcing them to leave their favorite work. Today there is no state system for training judges and judicial personnel. Paid education in higher education, the requirement to study in some additional courses not provided for by the Constitutional requirements for candidates for judges, participation in the assessment of their professional suitability by people far from justice, all this has led to the fact that the judge's chair is often occupied by people with insufficient professional qualifications, and most importantly moral qualities. But judicial work and people's destinies are not a field for experiments by half-educated people or a place for those who want to improve their material well-being at the expense of people's grief. Someone will think that judges, like all people, are different in character, professional knowledge, and working conditions in a particular court. This is true, but the position of a judge is already the status of a professional. And citizens who go to court should not suffer from the implied individuality. It is unacceptable that, due to the individuality of a judge, punishments of different severity are assigned for similar crimes. The legality of a judge's decisions should be the same, regardless of which judge your case was submitted to, no matter in which court of Ukraine it was located.

One of the proven ways to train judicial personnel is to select these personnel from among assistant judges who have successfully proven themselves in court teams and have mandatory references from experienced judges. The second way is the

transfer from rural areas of judges who have proven their positive work to urban courts, transfer to appellate and Higher courts, as well as to administrative positions of judges according to the same criteria. Perhaps in the future, with the existence of the institution of justices of the peace, another source for recruiting personnel for general courts will appear.

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