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JUDICIAL, LEGAL AND CONSTITUTIONAL REFORMS AS MANIFESTATIONS OF INSTITUTIONAL ALTERATION OF THE PUBLIC ADMINISTRATION SYSTEM

The article highlights the essence, concept and structure of judicial and legal reform. At the same time, among the components of such a reform, objects, subjects and legal relations are singled out. We believe that the constitutional reform, which also provides for the implementation of alteration processes, has a similar structure. Taking into account the provisions of fundamental science, it is recommended to consider alteration in the public administration system as a set of processes related to the implementation of structural, functional and other institutional changes. It was revealed that in Ukraine judicial, legal and constitutional reforms are still ongoing, accordingly, the processes of alteration within the framework of these reforms are not completed and the achievement of the set goal is not ensured. In this context, measures are proposed for the completion of such reforms, which involve the institutional modernization of the public administration system, taking into account external and internal factors influencing the reform process, preserving the cornerstone constitutional principles, observing global trends in prioritizing the provision of public, political, economic and social human rights. It is emphasized that today the completion of judicial, legal and constitutional reforms is hindered by external aggression against Ukraine. However, such a negative external influence is recognized as a potential incentive for a complex

institutional transformation of the public administration system, taking into account Ukraine's Euro integration aspirations.

Keywords: *judicial reform, legal reform, constitutional reform, Ukraine, institutions, institutions, transformational changes in the public administration system.*

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 [2-3; 9].

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. "*Judicial and legal reform in Ukraine*" as a socio-legal institution of the judiciary is considered by legal scholars as a group of interrelated legal norms regarding the functioning of the judiciary in Ukraine, which regulate a separate type of social relations. Characteristic of judicial and legal reform as a legal institution is its functioning on the basis of its inherent principles [9, p. 701].

As a legal science, "*Judicial and legal reform in Ukraine*" is a system of scientific philosophical, social and legal concepts of concepts, ideas, views and ideas that reveal the essence of the court, the judiciary, the legal system, justice, legal proceedings, the status of a judge, as well as the rules of law and legal acts aimed at reforming them in order to improve them. The subject of the science under consideration determines the specifics of the application of general scientific, individual scientific and special methods of cognition in it, considering all phenomena and processes of a reformist nature in their development and contradictions. The purpose of this science is to develop scientifically based recommendations for improving the judicial system, its legislation and judicial practice.

"*Judicial and legal reform in Ukraine*" as an academic discipline taught in higher legal educational institutions is a complex of knowledge about the transformation and improvement of the judicial system, taking into account international and national historical and legal experience, its state and development prospects. This is also a set of concepts, categories, classifications and statements aimed at introducing, developing, highlighting and analyzing legal relations that arise during the implementation of judicial and legal reform.

From the above characteristics of "*Judicial and legal reform in Ukraine*" in its narrow and broad senses, its content follows. These are, first of all, domestic, legal, social, economic, financial, material, household, technical methods and methods of a reformist nature; methods that are in the nature of radical transformations, the qualitative state of the judiciary and its judicial system; these transformations are systemic, scientifically based, socially determined, organizational and legal in nature; they are aimed primarily at transforming a wide range of problems in the judicial system; such reform approaches involve all branches of government and broad sections of the country's population in this process; these measures are aimed at the further, consistent implementation of constitutional democratic principles in the administration of justice; such transformations are implemented on the basis of the requirements of international law and historical and legal national experience; this is a set of legal norms and regulations that regulate social

relations emerging in the process of innovation of the judiciary, the implementation of justice in various forms; This is a system of scientific, philosophical and legal concepts, advanced ideas, concepts, views aimed at improving the judiciary and its judicial system [ibid.].

To complete the content of judicial and legal reform, its *objects, subjects and legal relations* should be considered [ibid.].

The "*object*" of judicial and legal reform in Ukraine is social relations as an objective reality, which includes all, without exception, phenomena of a legal nature related to the legal reform of the judiciary, its legal system, legal proceedings, justice, courts, judges.

Regarding our situation, such "objects" of judicial and legal reform are: 1) the basic principles, principles of organization of the judiciary, and more specifically the judicial system and its implementation of justice in Ukraine by courts of general and constitutional jurisdiction; 2) forms of implementation of civil, economic, administrative and constitutional proceedings; 3) the procedure (procedure, process) for applying national legal methods of protecting subjects of legal relations, as well as the procedure for them applying for protection of their rights and freedoms to international judicial institutions or international organizations; 4) basic requirements for professional judges; 5) disciplinary liability of judges; 6) the grounds and procedure for the dismissal of judges or termination of their activities; 7) judicial self-government; 8) logistical support for judges; 9) Status of retired judges; 10) organizational support for the activities of judges.

The "*subjects*" of legal reform in Ukraine are primarily individuals and legal entities, courts and judges of general and constitutional jurisdiction, state authorities and local governments.

"*Legal relations*" in Judicial and Legal Reform in Ukraine are those social relations that are regulated by the Constitution of Ukraine by the Law "On Legal Proceedings and the Status of Judges" and other laws in their development that develop between the subjects listed above.

Thus, *judicial and legal reform* in Ukraine is not just a transformation of the

judiciary and all its attributes, but also a very complex, significant, multifaceted phenomenon that regulates the most important aspects of the life of our society and state, including the organization and improvement of local governments, covering and representing the rights and legitimate interests of the broadest strata of Ukrainian society.

On the website of electronic petitions of the Official Internet Representation of the President of Ukraine, relevant petitions on the need for judicial and legal reforms have been posted more than once. One of the most remarkable petitions, in our opinion, is No. 22/003306-ep. Let's look at its more detailed analysis [4].

Judicial reform will be called such when there is a clear change in the system, trust in justice arises, and judges are held accountable for illegal decisions. To achieve the above objectives, you must do the following:

The Constitution and relevant laws on the judicial system clearly establish the following principles of legal proceedings:

1. Election of judges for 5 years. The lifetime election term should be canceled and never used again, because this relaxes the judges and makes them irresponsible and unprofessional (practice has shown what such absurdity can lead to);

2. Introduction of full personal material and disciplinary liability of judges for illegally made decisions in connection with violation of substantive law. If a judge has 3 overturned decisions on these grounds in a year - dismissal for inconsistency. A judge, like a doctor, has no right to make a mistake, especially an intentional one. Violation of substantive law is ignorance of the law or its incorrect application, and therefore the judge cannot continue his professional activities. Only personal responsibility for illegal decisions will stop the court from making illegal decisions. We are all responsible for defects in production, and the same should be true for judges.

3. Specialize the courts, starting with the courts of first instance, i.e. civil courts. criminal administrative courts, economic courts. Such specialization of the courts of first instance will allow judges not to be scattered across all branches of law, to consider cases of the relevant category in a timely manner and to be more professional in resolving issues than now the courts work according to the principle: “We were all taught a little

something and somehow."

Such proposals are not taken out of thin air. These proposals are dictated by long-term legal practice and the demands of time.

If we start with real actions, and these actions are obvious and justified, we can really move forward. Those projects that are now being discussed are just another brainwashing of our brains, which will not really lead to anything.

Going by the principle of prosecutorial reform is unjustified, since judges need to be fired and new ones elected. Only elections can weed out dishonest and unprofessional judges. Since the people are the source of power, it is up to them to decide who is worthy of the position of judge, in order to entrust them with justice and the solution of violated rights and interests. Only with this principle of reform will the people's confidence in the judicial system increase.

Undoubtedly, it is necessary to point out other problems in the functioning of the judiciary. Guarantees of judicial independence and judicial independence in Ukraine are not properly ensured. As the Supreme Court of Ukraine noted in 2007, in practice the legislative body, executive bodies, and their officials ignore the constitutional principle of the separation of powers into legislative, executive and judicial powers. Take place:

1) attempts to interfere in the organization of court activities, the resolution of specific court cases,

2) obstructing the administration of justice by courts on the basis defined by law,

3) pressure on judges through threats, blackmail and other illegal influence, including in the form of adopting illegal normative legal acts and legal acts of individual action,

4) improper use by the authorities of the powers granted to them,illegal endowment of certain state bodies with relevant powers, which increases the dependence of courts and judges on them [4].

Recently, the facts of pressure on judges and interference in the activities of courts have acquired a systematic and overt nature, in particular, during the consideration of cases by the courts, the formation of the judicial corps, the appointment of judges to

administrative positions, and the resolution of questions about the responsibility of judges.

These negative phenomena have become widespread and pose a threat to the establishment of the principle of the rule of law in the state [5].

Thus, we currently have the following structure of the judicial system after the reforms started (Fig. 1) [8].

As can be seen from fig. 1, there is a significant alteration of the judicial system. Alteration (lat. alteratio change, from altero, alteratum to change, make different) is the general name for structural changes in cells, tissues and organs [1]. Alteration occurs either as a result of direct exposure or indirectly. At the first stages, the manifestations of alteration are reversed. In addition to the alteration of judicial and legal reforms, it is also necessary to consider the specific aspects of organizational, functional and structural changes within the framework of constitutional reform.

It is worth noting that today one can see certain unforeseeable signs of alteration of the judicial system of Ukraine. This is due to external aggression against it, which (aggression) has a negative impact on the functioning of the domestic judicial system.

Taking this into account, we can talk about various manifestations of alteration within the institutional system of public administration: 1) planned, expected and predicted transformational changes of such a system; 2) unforecasted, non-systemic transformational changes of such a system; 3) transformational changes aimed at modernizing a certain part of the institutional system of public administration; 4) transformational changes aimed at modernizing the entire institutional system of public administration. The war against Ukraine intensified the alteration of the institutional system of public administration, leading to the emergence of new transformational changes within it (relocation of courts from Donetsk and Luhansk regions, forced relocation of employees of these courts, etc. (Fig. 2)). Such changes are forced, but necessary, because the task of Ukraine continues to be guaranteeing every person the right to judicial protection.

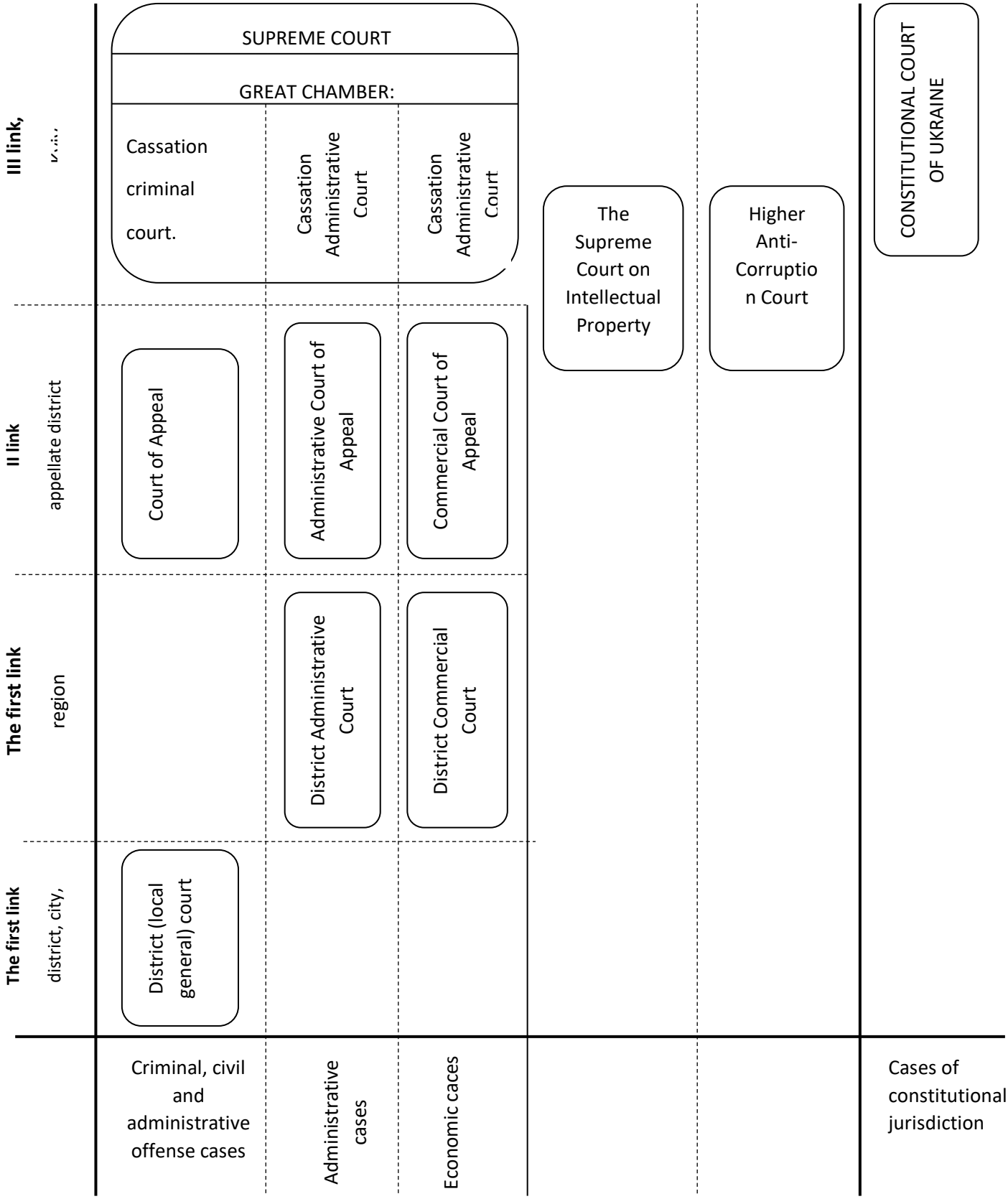

Fig. 1. Judicial system of Ukraine. *Source*: Compiled on the basis of [8]

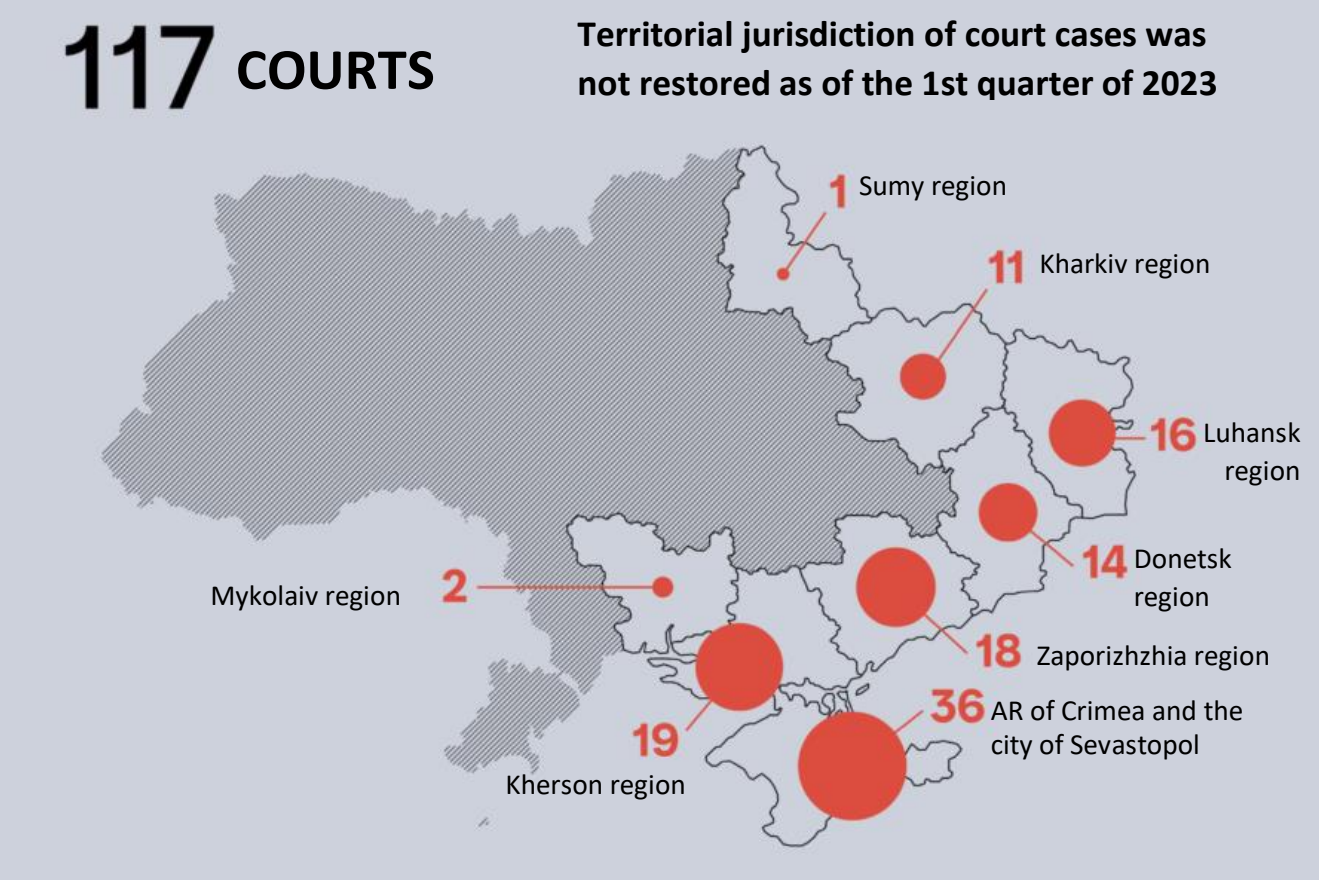

Fig. 2. The number of courts that changed the territorial jurisdiction of court cases. *Source*: Compiled on the basis of [10]

As of May 2023, there are 587 courts operating in Ukraine. In 1st quarter of 2023, 171 courts changed the territorial jurisdiction of court cases. Of them, 117 courts were unable to return as of March 1 of this year: AR Crimea and the city of Sevastopol – 36 courts; Donetsk region – 14 courts; Zaporizhzhia region – 18 courts; Luhansk region – 16 courts; Mykolayiv region – 2 courts; Kharkiv region – 11 courts; Kherson region – 19 courts; Sumy region – 1 court [10]. The most damaged and destroyed premises of judicial institutions were in the Kharkiv, Donetsk, Luhansk, Kherson and Mykolaiv regions.

54 courts resumed work: Zhytomyr region – 3 courts; Kyiv region – 4 courts; Mykolayiv region – 1 court; Kharkiv region – 13 courts; Kherson region – 4 courts (postponed until April 1, 2023); Chernihiv region – 26 courts; Sumy region – 3 courts (Fig. 3) [ibid.].

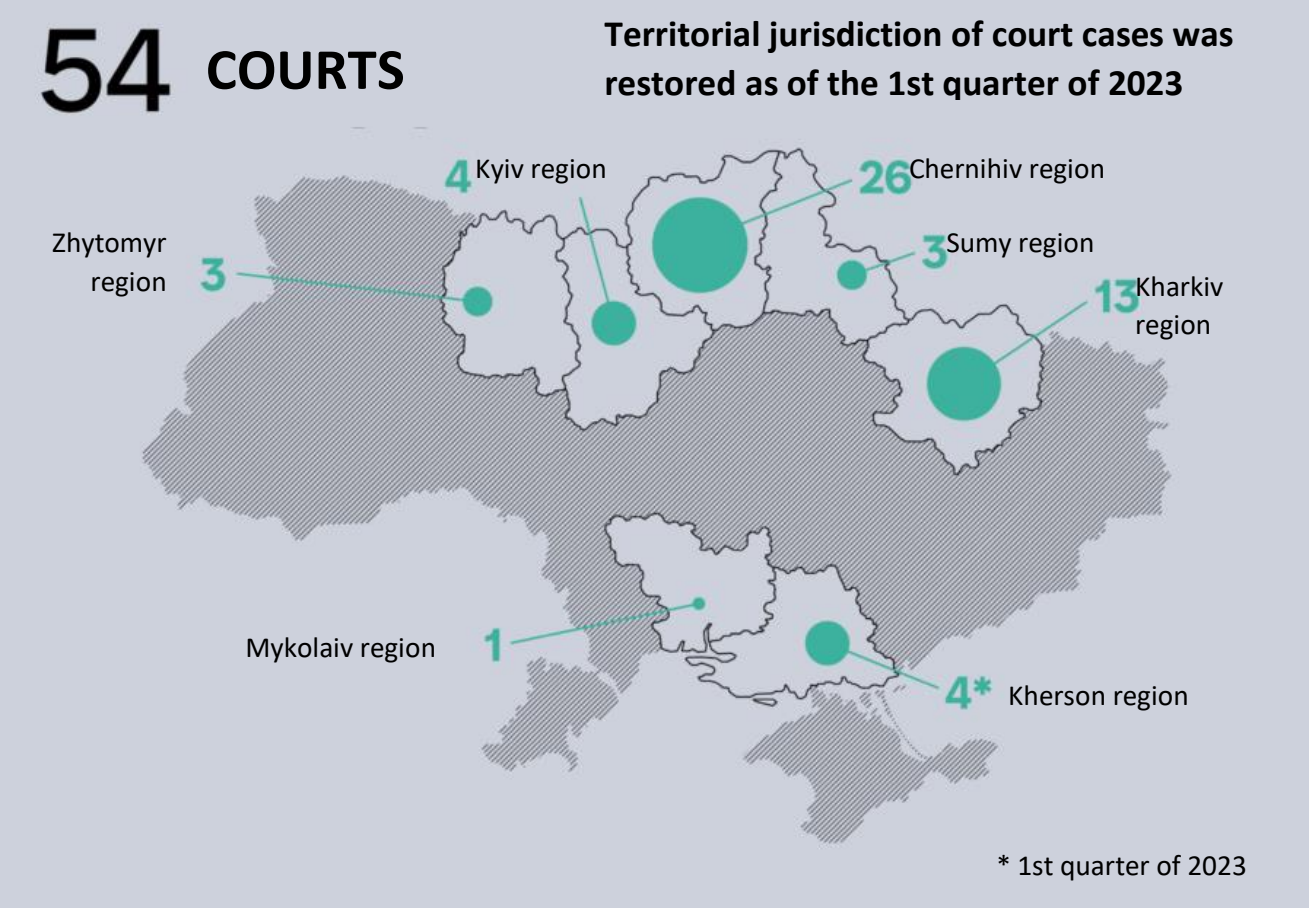

Fig. 3. The number of vessels that have resumed operation. *Source*: Compiled on the basis of [10]

As for the consequences of such changes for judicial proceedings in courts with territorial jurisdiction, there are different opinions [10]. The Dnipro Court of Appeals, which has jurisdiction over the cases of the Donetsk Court of Appeals, reported that the number of appeals received by the court has increased. However, the workload on judges did not increase compared to 2021, as the staff was expanded by transferring judges from Donetsk and Luhansk regions [ibid.].

Therefore, in addition to the alteration of judicial and legal reforms, it is also necessary to consider the specific aspects of organizational, functional and structural changes within the framework of constitutional reform.

As K. Gavrylenko, I. Yuhno, V. Bashtanyk notes, the general algorithm of constitutional changes requires a strategic understanding of the consequences of

constitutional reform, taking into account external factors influencing the reform process, preserving the cornerstone constitutional principles, observing global trends on the priority of ensuring public, political, economic and social human rights [2-3].

The basic principles of constitutional changes are defined as improvement of national legislation, ensuring public and political approval of constitutional reforms. The rational content of the constitutional reform requires appropriate legal content, transformation of the system of state authorities and local self-government, rationalization of the public-private partnership mechanism, as well as political and ideological content of the reform [ibid.].

The public-legal context of modern institutional changes forms the requirements and conditions of public management transformation at the level of the national communication field, solving the tasks of state reforms, strengthening the role of the state at all levels of the vertically integrated model of public management activity. At the same time, the institutional foundations of such activity are dependent on the structure of the reform of the state administration system [6; 8].

Adopted in 2016, the State Administration Reform Strategy until 2021 did not ensure the transition to a fundamentally new model of public administration, because the institutional foundations of the reform were not created. Partial changes to the legislation on civil service did not resolve the issues of the formation of the public service institute, and the issue of patronage service and service in political positions will remain practically unresolved. The transition to a complex system of categories of civil service employees did not integrate, but rather differentiated [7].

That is why it is worth proposing a conceptual scheme of relationships between the main categories of neo-institutional theory and revealing their content in relation to the problems of public administration. After all, nowadays management institutions act as a system of functional restrictions, the effect of which is felt by all management subjects participating in the process of transformational transition. At the same time, the efficiency and volume of management actions in the public sector are key determinants of the distribution of management resources; processes taking place in the field of public administration, namely: the exchange of a set of transactions by subsystems of public

administration, while the effectiveness with which the legal and political system copes with the task of incorporating gains, effects and risks has a direct impact on public administration in general [2-3].

At the same time, such processes, as a rule, do not have administrative and legal content, and are characterized by complex economic and social dimensions. In general, a characteristic feature of complex administrative systems is the vertical delegation of powers, when the state delegates part of its powers to a lower level, removing from itself the powers to regulate the spheres of regional life. Scientists regard this phenomenon as a weakening of the functions of the state, but such a connection is not obvious, since the decentralization of power allows to increase the efficiency of its local bodies and enables central bodies to solve issues of a strategic nature.

Conclusions. In modern conditions of discrete characteristics rationality of public management activity rather, we are talking about institutional alterna- tives formalized at each level of public of management and are implemented at the level of each subject of public management activity. It is impossible to take into account all possible structural alterations of each interest group in the public administration system. However, it is possible to evaluate them from the standpoint of the state of implementation of judicial, legal and constitutional reforms. Therefore, the criterion maximization of the management effect should be replaced - based on the principle of satisfaction with the result public management activity, which allows to ensure freedom of choice for the main users of public services, even at the expense of changing creation of the public legal space. Most important for understanding the meaning of the process of institutional reforms in the judicial, legal and constitutional spheres is the fact that rational the national constructed reform strategy changes decision-making system of judicial, legislative, executive bodies and communities institutes, bringing to the fore the princely type of subsidiarity (according to which issue are resolved at the level that provides the most their more qualified and effective implementation).

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