ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.40 *Nº 72*
Enero
Junio
2022

Cuestiones Políticas Vol. 40, Nº 72 (2022), 474-497
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Justice as a condition for implementing Ukraine's European integration course

DOI: https://doi.org/10.46398/cuestpol.4072.27

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Abstract

Using the dialectical and documentary method, the article analyzes the state of implementation of the strategic priority of reforming Ukraine's judicial system. It demonstrated that, under the current conditions for Ukraine, European integration is a key priority of the state's foreign policy. Issues hindering the successful implementation of Ukraine's strategic course towards European integration were identified, such as: Ukraine requires a comprehensive renewal of three bodies: the bar association, the law enforcement system, and the courts themselves. The conditions for the effective administration of justice have also been determined: updating of the High Council of Justice and the High Qualification Commission with the participation of international experts; creation of a new court to replace the Kiev District Court of Appeal, which will consider key decisions of state bodies; ensure the fair composition of the Constitutional Court; Building public confidence in the judicial and police system. It is concluded that it is important in the process of reform of the Superior Council of Justice to find a compromise between non-interference in the activities of this body, its components, and to guarantee the transparency and effectiveness of its decisions.

Keywords: justice; judicial reform; European integration; independence of judges; Superior Council of Justice.

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Recibido el 10/10/2021 Aceptado el 27/12/2021

La justicia como condición para implementar el curso de integración europea de Ucrania

Resumen

Mediante el método dialectico y documental el artículo analiza el estado de implementación de la prioridad estratégica de reformar el sistema judicial de Ucrania. Demostró que, en las condiciones actuales para Ucrania, la integración europea es una prioridad clave de la política exterior del estado. Se identificaron las problemáticas que obstaculizan la implementación exitosa del curso estratégico de Ucrania hacia la integración europea, tales como: Ucrania requiere una renovación integral de tres órganos: el colegio de abogados, el sistema de aplicación de la ley y los propios tribunales. También se han determinado las condiciones para la administración efectiva de justicia: actualización del Consejo Superior de Justicia y la Comisión de Alta Cualificación con la participación de expertos internacionales; creación de un nuevo tribunal para reemplazar al Tribunal de Apelación de Distrito de Kiev, que considerará las decisiones clave de los órganos estatales; asegurar la composición justa del Tribunal Constitucional; Fomento de la confianza pública en el sistema judicial y policial. Se concluye que es importante en el proceso de reforma del Consejo Superior de Justicia encontrar un compromiso entre la no injerencia en las actividades de este órgano, sus componentes, y garantizar la transparencia y eficacia de sus decisiones.

Palabras clave: justicia; reforma judicial; integración europea; independencia de los jueces; Consejo Superior de Justicia.

Introduction

The democratic development of Ukraine and its political system presupposes the formation of an established and coordinated system of political and legal mechanisms and procedures for the realization of human and civil rights and freedoms. The development of a democratic state governed by the rule of law requires, firstly, the implementation of the rule of law, when the main activity of the state is aimed at ensuring conditions for effective implementation of human, civil rights, and freedoms, including guaranteed access to justice. Slobodyanik, 2015). The proclamation by the Constitution of Ukraine of the principle of separation of state power into legislative, executive, and judicial should promote, inter alia, the strengthening of guarantees of the independence of judges.

Seven years ago, Ukraine and the European Union signed an Association Agreement, which established Ukraine's course of integration with the European Union. Since then, Ukraine has been trying to introduce European standards in almost all spheres of life. Currently, Ukraine is undergoing the most difficult test for unity and territorial integrity, for the implementation of several reforms that will meet European standards (Sereda, 2017). A separate area of improving the constitutional and legal reform in Ukraine based on the experience of the European Union is the improvement of the constitutional principles of justice, or judicial and legal reform.

There is no doubt that judicial reform must have a legal settlement and a scientific basis that would further ensure the rights of the individual to a fair, independent and impartial tribunal. Work has long continued to reform the judiciary, law enforcement and the improvement of criminal justice, working with experts from the Council of Europe, the Venice Commission, the Organization for Security and Cooperation and the European Union.

A number of legislative acts aimed at improving the judicial system and administration of justice were adopted, in particular, the Laws of Ukraine: "On Amendments to Certain Laws of Ukraine (Regarding Certain Issues of the Judiciary and the Status of Judges)" of 2 February 2014 № 769 parliamentary control over the appointment, election, dismissal of judges, bringing them to justice; "On Amendments to the Code of Administrative Procedure of Ukraine regarding the jurisdiction of the Supreme Court of Ukraine" of March 14, 2014. № 887, which determines the legal and organizational basis for review by the Supreme Court of decisions of the Supreme Administrative Court; "On Restoration of Confidence in the Judicial System of Ukraine" of April 8, 2014 №1188, which determines the legal and organizational principles of attestation and lustration inspection of judges of courts of general jurisdiction; "On Amendments to the Constitution of Ukraine (Regarding Justice)" of June 2, 2016 №1401-VIII and "On the Judiciary and the Status of Judges" of June 2, 2016 №1402-VIII.

At the same time, noted that since 2014, the situation, despite certain steps to reform the judiciary, has not changed dramatically. Evidence of this is the results of opinion polls. Thus, the Razumkov Center published "Citizens' assessment of the situation in the country, the level of trust in social institutions and politicians, electoral orientations of citizens" proves that 42.5% do not trust the courts (the judiciary as a whole), but rather do not trust 32.9% of respondents, instead, 12.1% rather trust, and only 2.2% fully trust. The balance of trust / distrust is – 61.1% (Citizens' assessment of the situation in the country, the level of trust in social institutions and politicians, electoral orientations of citizens).

1. Methodology of the study

To obtain the most reliable scientific results, the article uses a number of philosophical, general scientific, special scientific approaches, methods and principles of scientific knowledge, which allowed to cover the chosen subject systematically, to reveal and analyze the main components of the problem. Crucial to the methodology of studying judicial reform as a basis for integration into the European Union is a common dialectical approach, which allowed to comprehensively and comprehensively outline the features of justice in Ukraine, to form a doctrine of judicial reform.

To understand the modern justice system of Ukraine, a historical approach was used, which is a general method of research that proceeds from the historical paradigm and factors (political, economic, social, cultural, etc.) influencing social development, and helps to track such influences in time. and analyze its evolution. This approach is also crucial in studying the genesis of judicial reform. The application of the comparative method contributed to the study of foreign experience in the functioning of analogues of the High Council of Justice of Ukraine.

The prognostic method was used to identify areas for improvement of judicial reform in Ukraine. The method of objectivity allowed to establish the reliability and completeness of the information used in the study. The use of the hermeneutic method contributed to the study of the content of doctrinal sources, which formed the most important theoretical and methodological achievements of scientists on the subject of research. Methods such as induction and deduction made it possible to form an introduction, intermediate and general conclusions.

2. Analysis of recent research

The analysis of scientific research on the constitutional and legal reform and integration of Ukraine into the European Union is carried out in various fields of science, the problem of European integration of Ukraine is and remains the subject of constant research. The problem of legal transformations in the European integration process, as well as international legal aspects of constitutional legislation is reflected in the scientific works of such lawyers as I. Bezzub (Bezzub, 2021), O. Holovatsky (Holovatsky, 2021), I. Mishchak (Mishchak, 2021), V. Pogorilko, V. Fedorenko, (Pogorilko, Fedorenko, 2006), T. Sereda (Sereda, 2017), N. Slobodyanyk (Slobodyanyk, 2015), S. Shelest (Shelest, 2021), A. Yakovlev (Yakovlev, 2009) and others.

Despite significant scientific achievements, the key issues of judicial reform in the implementation of Ukraine's European integration course

are not sufficiently developed in the constitutional and legal thought and are presented in fragmentary studies or aimed at certain aspects of judicial reform. In addition, this problem has been analyzed by scientists mainly through the prism of political, social and humanitarian factors. At the same time, issues often remain outside the scope of research, which are related to the complex, primarily legal, justification of judicial reform as a basis for Ukraine's integration into the European Union. The outlined circumstances determine the relevance of the study, determined the choice of its object and subject.

3. Results and discussion

3.1. General characteristics of the peculiarities of the administration of justice in Ukraine in the implementation of the European integration course

The solution of any scientific problem is impossible without the impossible without the analysis of the corresponding terminology, the substantiated scientific theories, doctrines, concepts. Judicial reform is no exception in this aspect, which is due to the need to develop modern approaches to the development of law and legislation, in particular the formation of a democratic, legal and social state.

Considering the peculiarities of the administration of justice in Ukraine, it is advisable to pay attention to the essence of the term «reform» in general. In the «Modern Legal Encyclopedia» the term «reform» means: 1) transformation, change, restructuring of any aspect of public life (orders, institutions, institutions); 2) formal innovation of any content, but reforms are usually called more or less progressive transformation; 3) changes in the structure of something that are made to improve, transform; 4) transformation, change, restructuring of any sphere of public or state life carried out by the state (Zaychuk, 2009). The reform is characterized by gradual changes, in its program the emphasis is on bringing to the end of the planned transformations, the complexity of the planned changes (Order of the cabinet ministers of ukraine № 847).

We will pay special attention to the definition of «integration – (Latin integratio –restoration, filling, from integer – whole), the concept of systems theory, which means the state of connectivity of individual differentiated parts as a whole, as well as the process leading to such a state» (Order of the Cabinet Ministers of Ukraine № 847). Integration is considered to be the highest stage of regionalization (a process that unites national social formations into a regional system), which is based on the territorial adjacency of states between which various social ties are actively emerging

and developing. The term «integration» is interpreted as a process of mutual adaptation, expansion (Bezzub, 2015) or unification of something into a single whole (Pogorilko, Fedorenko, 2006). It was in 2014 that the process of constitutionalization of Ukraine's European integration began, which initiated a new stage of foreign relations – European integration.

The very concept of «integration» implies the emergence of a new quality of formation of the European social system, going beyond cooperation in order to form a single structure that has supranational (supranational) characteristics. Analysis of the basic principles (principles) of the theory of integration gives grounds to assert that the process of European integration, in particular, is complex, has a complex nature, involves several stages and manifests itself in various forms. The experience of building the European Union convincingly proves the validity of this point of view (Tatsiy, Pogorilko, Todyka, 1999).

It should be noted that the vast majority of concepts of integration were based on the fact that European integration is a qualitatively new phenomenon compared to all previous types of cooperation between nation states – intergovernmental cooperation, confederation and federation (Eu-ukrainian association agreement, the atomic energy community and their member states, on the other side).

Ukraine's European integration will be carried out to the extent that Ukraine shares these values, so Ukraine's European integration documents and international agreements, as well as current legislation, should be guided by them (Tikhomirova, 1997). To achieve the appropriate level of perception of the Western tradition of law requires extensive and systematic use of European standards for the formation and functioning of legal and state institutions, civil society institutions and their relations with the state, implementation of the rule of law in all spheres of life (Tatsiy *et al*., 1999).

In our opinion, integration should be gradual and mutually beneficial, integration involves the integration of legal, economic, political and other subsystems, in particular, the goals of the integrated association should meet the interests and capabilities of the participants. It is worth noting that the European Union adhered to these principles during the formation, the European Community is the most perfect integration association, thanks to the idea of integration is effectively implemented in social practice.

Ukraine's integration into the European Union is legally defined as a priority area of foreign policy; in turn, it is necessary to be aware of the consequences of entering the legal space with the European community and the need to prepare a constitutional and legal mechanism that will allow to take measures for legal integration into the community. The current period of judicial reform in Ukraine is characterized by the search for ways to achieve the goal - the formation of the state as legal and democratic with

high economic and scientific potential, which in the future will become a member of the European community.

Thus, integration into the European political, economic and humanitarian space is determined by the strategic direction and system-forming factor of state and legal development; In the political and legal dimension, cooperation with the European Union means, above all, strengthening the democracy of the political system and its institutions, improving the legal framework and ensuring the transparency of national legislation, deepening the culture of democracy and respect for human rights.

3.2. Activities of the High Council of Justice as a basis for updating the judicial system in Ukraine

One of the basic values of a democratic society is the principle of independence of judges, which is a prerequisite for the rule of law. The establishment of the High Council of Justice is one of the elements of judicial reform in Ukraine. With the introduction of judicial reform, the High Council of Justice has acquired exclusive powers in the field of judicial governance and has become a leading body in matters of judicial career, disciplinary responsibility of judges, ensuring the authority of justice and independence of judges (Shelest, 2021).

The High Council of Justice can be called a unique institution for Europe, as it was established on the basis of the recommendations of the Council of Europe. Nor can the significance of the decision of the European Court of Human Rights in the case «Alexander Volkov v. Ukraine» (Judgment of the european court of human rights in the case «Alexander Volkov v. Ukraine») for the institutional development of domestic legislation), thanks to which the procedures concerning the judge's career and the disciplinary responsibility of a judge were significantly reformed. In particular, the principle of legal certainty in the context of disciplinary proceedings has been introduced, political influence on the issue of a judge's career has been eliminated, mechanisms for the protection of judicial independence have been introduced, and so on (Kuybida, 2018).

According to the Law of Ukraine Art. 1 «On the High Council of Justice» of December 21, 2016 The High Council of Justice is a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning on accountability, accountability, virtuous and highly professional corps of judges, observance of the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors.

The High Council of Justice consists of twenty-one members, ten of whom are elected by the Congress of Judges of Ukraine from among judges or retired judges, two are appointed by the President of Ukraine, two are elected by the Verkhovna Rada of Ukraine, two are elected by the Congress of Advocates of Ukraine, two – elected by the All-Ukrainian Conference of Prosecutors, two –elected by the Congress of Representatives of Legal Higher Educational Institutions and Scientific Institutions. In addition, the President of the Supreme Court is a member of the High Council of Justice ex officio. Its members are elected (appointed) for a term of four years, and one and the same person may not hold the position of a member of the High Council of Justice for two consecutive terms (Law of ukraine «on the high council of justice»).

Compared to its predecessor, the High Council of Justice, the High Council of Justice has been given much broader powers. Thus, the main powers of the High Council of Justice include, but are not limited to: filing a motion to appoint a judge; making a decision regarding the violation of incompatibility requirements by a judge or prosecutor; ensuring that the disciplinary body conducts disciplinary proceedings against the judge; consideration of a complaint against the decision of the relevant bodies to bring a judge or prosecutor to disciplinary responsibility; making a decision on the temporary removal of a judge from the administration of justice and dismissal of a judge; consent to the detention of a judge or his detention or arrest; approval of the number of judges in court; appointment and dismissal of members of the High Qualification Commission of Judges of Ukraine, etc.

Therefore, these powers should make the High Council of Justice an effective mechanism for ensuring judicial reform in Ukraine. The council should become an arbiter in certain disputes that arise between society on the one hand, the government on the other and the judiciary as an independent branch of this government on the third (Ovsienko, 2019).

The High Council of Justice is the main body in the country's judiciary. In his hands is concentrated virtually full control over the appointment and dismissal of judges and bringing them to justice for violations. How professional and honest judges will work in Ukrainian courts and how successful judicial reform will be depends on who is a member of this body. That is why the reform and reformatting of the High Council of Justice is one of the conditions for resuming cooperation with the International Monetary Fund and receiving macro-financial assistance from the EU.

Lawyers note that most of the problems of the previous body were transferred to the newly created one: low level of trust of the population and the legal community, accusations of politically motivated decisions, reproaches in non-transparent selection of members, conflicts and power struggles with other bodies in the system. information (Holovatsky, 2020).

Another unresolved issue, which indirectly concerns the activities of the High Council of Justice, is ensuring the activities of the High Qualifications Commission of Judges of Ukraine. According to the first part of Article 3 of the Law of Ukraine "On the High Council of Justice", the powers of the High Council of Justice include, inter alia, the appointment and dismissal of members of the High Qualifications Commission of Judges of Ukraine.

The bills currently under discussion propose that the High Council of Justice approve all procedures and methods for the evaluation of judges by the High Qualifications Commission of Judges of Ukraine, which will certainly increase the influence of the High Council of Justice. On the other hand, transparent and open selection of its members is not proposed. In addition, the Council is reluctant to involve international experts in the election of members of the High Qualifications Commission of Judges of Ukraine and its cleansing. The members of the council are convinced that they themselves can solve these issues (Holovatsky, 2020).

In particular, the Chairman of the High Council of Justice Andriy Ovsienko expressed his conviction that after the adoption of the relevant law and its entry into force, the High Council of Justice, having worked out an algorithm of actions, is able to quickly form to the Competition Commission on Integrity (Ovsienko, 2021).

The G7 ambassadors stressed that "the most important part of a comprehensive reform, which includes the reform of the High Council of Justice, is to ensure the integrity, ethics and qualifications of the staff appointed to the judiciary. To this end, the ambassadors called on the Congress of Judges to postpone appointments to the High Council of Justice and the Constitutional Court, until transparent and credible selection processes are established" (The G7 ambassadors called on Ukraine to postpone its appointment to the high council of justice and the CCU).

In addition, the views of government officials and the public on the further functions of the High Council of Justice after the completion of judicial reform differ significantly. Therefore, it is important in the process of reforming this body to work out a compromise between non-interference in the activities of the Council and ensuring the transparency and effectiveness of its decisions.

The High Council of Justice also has an Ethics Council, which is responsible for establishing the compliance of a candidate for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity. The creation of the Ethics Council is designed to meticulously select members of the High Council of Justice in order to prevent the manual operation of the body and restart it. The first composition of the Ethics Council is formed of three people from the Council of Judges and three people nominated by international and foreign organizations. The following are by analogy with the Competition Commission at the High Qualification Commission of Judges.

At the same time, on September 13, 2021, the Council of Judges of Ukraine was unable to select candidates for the Ethics Council, which was to clean up the composition of the High Council of Justice. Then the President's Office held a meeting with the ambassadors of the G7 and the EU and stressed that the Ethics Council should be formed no later than early October (Judicial reform in Ukraine: who and how should clean the higher qualification commission of judges and the high council of justice).

The Verkhovna Rada adopted in the second reading the draft law № 5068 on the reform of the High Council of Justice, which takes into account the conclusion of the Venice Commission, giving international experts a predominant vote in the Ethics Council: to make a decision, 2 out of 4 votes are distributed equally – preference is given to those votes where at least 2 international experts are represented. In our opinion, the main advantage of the bill № 5068 is that it provides a «reset» of the High Council of Justice with the participation of international experts, who will have a decisive voice. This is what international partners and the Venice Commission have previously called for. At the same time, it is important in the process of reforming the High Council of Justice to find a compromise between non-interference in the activities of the Council, its components, and ensuring the transparency and effectiveness of its decisions.

The bill also provides for a review of the integrity of members of the High Council of Justice, as well as changes the procedure for bringing judges to disciplinary responsibility. Assessing the draft law № 5068, the Venice Commission made a valuable recommendation to provide candidates for the High Council of Justice and its current members with the right to appeal the decision of the Ethics Council to the Supreme Court. It is equally important whether the recommendations of the Venice Commission were taken into account regarding the formation of the High Qualification. In our opinion, the international experts who will be involved in the selection of members of the High Qualifications Commission of Judges should have a decisive voice in the process in order to prevent the judges of the competition commission from blocking worthy candidates and assisting others.

Taking into account the recommendations of the Venice Commission, the position of the expert community and key international partners, as well as individual proposals expressed and substantiated by us in the article will contribute to quality judicial reform and the administration of fair justice in Ukraine. It is quite obvious that the further support of Ukraine by the world community depends on the quality of the implemented reforms. The role of independent international experts has once been the key to a history of great success in the case of election to the High Anti-Corruption Court. An ambitious «NATO compatibility plan» could be an effective motivator for significant changes in Ukraine.

3.3. Analysis of the Strategy for the Development of Justice and Constitutional Judiciary for 2021-2023

The President of Ukraine V. Zelensky signed a decree approving the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023 (hereinafter – the Strategy), which defines the basic principles and directions of the justice system development taking into account the best international practices. The document outlines the priorities for improving the legislation on the judiciary, the status of judges, the judiciary and other institutions of justice, as well as the implementation of urgent measures to improve the functioning of legal institutions.

Before examining the content of the Strategy, let's make a brief analysis of the state of reform of the justice system of Ukraine, which was launched in 2014. First of all, it should be noted that some progress in the field of justice has been achieved due to the direct participation of the public in the cleansing of the judiciary through the Public Integrity Council. One has not yet introduced a full-fledged jury trial, has not reformed the bar, has not realized the potential of alternative (out-of-court) dispute resolution, and has not been friendly to vulnerable groups - children and people with disabilities. The result has been the maintenance of political control over the courts and the preservation of problems in the judiciary.

The inability of the courts to ensure justice not only hinders the protection of human rights, has a negative impact on trust in the state, but also jeopardizes progress in other reforms. The lack of proper functioning of the justice system scares away investors and hinders Ukraine's economic development.

Should the reform be stopped? By no means. What has been started should be brought to a logical conclusion. The system approach is important. If we are talking about the reform of the judiciary, it is impossible to change the court without changing the prosecutor's office and without establishing interaction between the court, the prosecutor's office and the bar.

It is worth recalling that in early 2021, the ambassadors of the G7 countries announced a common vision of the successive steps that need to be taken to restore the confidence of Ukrainian society in the judiciary. Among the key tips are to «temporarily and minimally» increase the quorum for decisions of the Constitutional Court of Ukraine, postpone ongoing selection procedures for judges – until the introduction of new selection rules, ensure a significant role of international partners in screening all candidates for Constitutional Court of Ukraine judges, strengthen disciplinary responsibility and ethical requirements for judges and oblige them to remain impartial during the consideration of cases, etc. (Ambassadors of g7 countries presented road map of judicial and anti-

corruption reforms in Ukraine). In addition, it was once again necessary to resume the activities of the High Qualifications Commission of Judges and reform the High Council of Justice, which we have already mentioned (Ambassadors of G7 countries presented road map of judicial and anti-corruption reforms in Ukraine).

In order to improve access to justice, the Strategy envisages the development of a network and specialization of judges; development of alternative dispute resolution; interaction of law enforcement and judicial bodies with society; improvement of the institute of advocacy and prosecutor's offices; reorganization of local courts; change in the structure of the Supreme Court; determination of the procedural mechanism for ensuring the unity of judicial practice by the Supreme Court in cases that are not subject to cassation review; ensuring a sufficient level of resources for the effective organization of the work of the Supreme Anti-Corruption Court; higher level of working conditions and safety of judges and court employees; more balanced and fair load distribution; reduction of corruption risks in the administration of justice; adequate funding of the judiciary; development of e-justice; ensuring the system of execution of court decisions within a reasonable time, etc. (Mamchenko, 2021); changing the procedure for competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine, their verification of 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 during the adoption of decisions and conclusions. According to the presidential decree, the Legal Reform Commission, together with representatives of central and local authorities, the public and experts, should develop an Action Plan for the implementation of this document, as well as inform the President about the implementation of the strategy.

If we turn to the analysis of the content of the Strategy itself, it mainly has general formulations that can be interpreted quite broadly (both in the direction of reforms and in the direction of preserving the status quo); does not contain any clear criteria for achieving the goals of the strategy, which could indicate its successful or unsuccessful implementation, but is abundantly dotted with the classical Ukrainian chancellery such as «improvement», «improvement», «expansion», «compliance», «optimization», etc.

The provisions of the strategy for the formation of the High Qualifications Commission of Judges are too general and will not provide a new quality of the body, even if they are formally implemented. The strategy stipulates that «in the future» the High Qualifications Commission of Judges should be subordinated to the High Council of Justice. This contradicts the provision

on the independence of the High Qualifications Commission of Judges. It is also not specified under what conditions such subordination should take place (Barkar, 2021).

The document proposes to improve the procedure for filling vacancies in local courts with «separate» competitive procedures, taking into account the criteria of integrity and professionalism. The introduction of such «separate rules» can be used to increase the influence of a dishonest High Council of Justice on this process. In our opinion, improving the procedure for selecting members of the High Council of Justice with the involvement of international experts and verifying the integrity of current members of this body - formally meet the obligations of the Memorandum of the International Monetary Fund and the European Union, but are too general and need specification.

The power of the High Council of Justice to appoint court chairmen if the judges themselves do not elect them for a long time is a return to the infamous practice that existed before 2014. At that time, the judiciary was governed by the High Council of Justice, through which the «vertical of the judiciary» was formed. The presidents of the courts must have exclusively representative functions, or this position must be abolished altogether. The provision on the establishment of an «autonomous personnel and disciplinary body» at the High Council of Justice is obviously in line with the provision on the subordination of the High Qualifications Commission of Judges to the High Council of Justice. In our opinion, such changes cannot be introduced before the formation of an independent and honest composition of the High Council of Justice.

Powers of the High Council of Justice to recall judges from resignation (who have passed the qualification assessment and are in accordance with integrity) – previously they wanted to return to office all dishonest judges who resigned because they did not want to pass the qualification assessment. We believe that the authority of this body to coordinate budget requests for court funding is another opportunity to control the courts through their subordination to the High Council of Justice, which will be able to reward loyal courts with a generous budget and punish the independent. The budget planning system must preserve the independence of each court.

At the same time, the analysis showed that the Strategy proposes some really necessary steps for changes in the judicial system of Ukraine. In particular, the positive provisions of the strategy are the clauses on the return of criminal liability for an unjust decision; termination of resignation of judges in case of disciplinary misconduct; removal of a judge from an administrative position at the same time as removal from the administration of justice.

We also consider positive the introduction of a mechanism for checking the integrity of current judges of the Constitutional Court, as well as the introduction of a transparent procedure for competitive selection of judges of the Constitutional Court with checking for integrity with the possible involvement of international experts. This approach is fully in line with the concept developed by public experts and the recommendations of the Venice Commission.

The strategy envisages the transfer of part of the exclusive jurisdiction of the Kyiv District Court of Appeal to the Supreme Court, and further the creation of a separate higher court to hear cases against national authorities and the involvement of international experts in the selection of judges. In addition, it is proposed to introduce a mechanism for checking the integrity of current judges of the Constitutional Court, as well as to introduce a transparent procedure for competitive selection of judges of the Constitutional Court of Ukraine with integrity checking with possible involvement of international experts. This approach is fully in line with the concept developed by public experts and the recommendations of the Venice Commission (European commission for democracy through law).

Meanwhile, the conclusions on the legislative initiatives of the President of Ukraine concerning the activities of the Constitutional Court of Ukraine were published by the Venice Commission. The conclusions state that in general, there are many improvements, but also shortcomings that need to be corrected.

It should be noted that the draft law № 4533 on the constitutional procedure takes into account many of the recommendations of the Venice Commission provided in the urgent opinion on the reform of the Constitutional Court. At the same time, the Venice Commission calls the lack of provisions on a new system of competitive selection of judges with the participation of the international component a key shortcoming of this bill, as recommended in the urgent opinion.

One of the main recommendations of the Venice Commission concerns procedural economy: the consideration of constitutional complaints, during which the senate finds an unconstitutional provision of the law, should be referred to the Grand Chamber only if the president or parliament requests such a transfer. With regard to disciplinary proceedings, according to the commission, instead of the executive, the initiative to initiate disciplinary proceedings should be transferred to the National Anti-Corruption Agency within its competence. In order to effectively reform the judicial system of Ukraine, it is necessary to «reset» the Qualification Commission of the High Council of Justice with a decisive vote of international independent experts, liquidate the Kyiv District Administrative Court and create a High Administrative Court by analogy with the High Anti-Corruption Court.

Acquaintance with the provisions of the Strategy causes a lot of remarks – from the specified terms of its completion and up to the vision of the developers of the document of the powers and status of individual bodies. Among the main remarks is the potential expansion of the powers of the High Council of Justice, as well as the generality of many provisions, which in the future may lead to their arbitrary interpretation and increase the President's influence on the judiciary. On the other hand, the implementation of the Strategy, taking into account the key comments, will show the transparency of government actions, communication between the President's Office and the expert community and the public sector, and ultimately increase public confidence not only in the judiciary but also in government.

In general, while positively assessing Ukraine's desire to develop effective mechanisms for ensuring justice as a condition for implementing Ukraine's European integration course, it is necessary to significantly reconsider the processes that make up judicial reform in Ukraine, first of all change approaches to roles of independent public experts. It is also necessary to focus on raising the standards of training of lawyers and privatization of dispute resolution. Other arguments and suggestions aimed at improving the situation in this area will be presented in the next section of the article.

3.4. International standards for the functioning of analogues of the High Council of Justice Abroad

It is obvious that public relations, which determine the peculiarities of the formation and functioning of the judiciary, increasingly require constitutional consolidation, which should become a determining factor in ensuring its independence. Therefore, the creation of a new mechanism for the functioning of the judiciary in Ukraine was initiated in connection with the implementation of judicial reform in 2016 (Constitution of Ukraine).

In the system of the judiciary, the Constitution of Ukraine enshrined the provisions on such a constitutional body as the High Council of Justice. According to the Law of Ukraine "On the High Council of Justice" of December 21, 2016, it is a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its accountability and accountability, formation of a virtuous and highly professional corps of judges, observance of the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activity of judges and prosecutors. So, in fact, the High Council of Justice should become one of the guarantees of the independence of judges as a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary.

The basic elements of the independence of bodies that are designed to ensure the formation and functioning of the judiciary through direct participation in the selection of candidates for judges, their appointment and dismissal are laid down in a number of international acts. Such acts include universal standards for the functioning of the judiciary, including the systems for the selection, appointment and promotion of judges contained in the UN Basic Principles on the Independence of the Judiciary Approved by the UN General Assembly. In particular, the Basic Principles on the Independence of the Judiciary, approved by General Assembly Resolutions 40/32 and 40/146 of 29 November and 13 December 1985, state, inter alia, that the independence of the judiciary is guaranteed by the state and enshrined in the country's constitution or laws.

All state and other institutions are obliged to respect and adhere to the independence of the judiciary (paragraph 1) (Basic principles on the independence of the judiciary). The "Draft Universal Declaration of the Independence of Justice" (the "Singwie Declaration") states that in cases where the law provides for the discretionary appointment of a judge to his or her appointment or election, such appointment should be made by a judicial body or a higher judicial council, if such exists (13) (Draft universal declaration of independence of justice).

At the same time, there are a large number of regional European standards that define general principles and guarantees, which are also subject to implementation under certain conditions. For example, in the framework of the Council of Europe, one of the most fundamental international instruments in the field of justice is Recommendation CM / Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November. 2010. It contains the basic principles of the independence of the judiciary and aims to establish and strengthen the independence of judges as holders of the judiciary. It is noted that councils of judges should demonstrate the highest level of transparency regarding judges and society by improving pre-established procedures and making informed decisions. In the performance of their duties, Councils of Judges should not interfere with the independence of individual judges (CM / rec (2010) 12 recommendation of the committee of ministers of the council of europe to member states on judges).

It is also worth mentioning the European Charter on the Status of Judges of 10 July 1998, which stipulates that the recruitment, appointment, service and termination of judges must be decided by an independent body, half of which is represented by judges. In addition, this body should be formed on a parity basis with a wide range of representatives. A necessary condition for an independent procedure for the formation of the judiciary is its legislative consolidation. This body must become the guarantor of the independence

of justice in the state as a whole and the guarantor of the independence of each individual judge in the administration of justice in particular. The said body must also be directly involved, ie in accordance with its submission, by its decision, or on its recommendation or with its consent, in the promotion of judges, as well as in disciplinary proceedings against prosecuted judges. One of the mandatory guarantees of judges' independence is the mandatory review of all decisions on the resignation of judges, with the exception of two grounds: reaching the age limit for holding office and expiring the term of office of a judge (European charter of judicial status).

Therefore, it is quite clear that the problem of ensuring the independence of the High Council of Justice of Ukraine is relevant for many countries where there are relevant bodies, which led to the emergence of these international acts, which determine the general principles of these bodies. The specificity of international law leaves its mark on the relevant international standards, which are traditionally divided into mandatory and advisory. At the same time, ensuring the independence of the High Council of Justice and relevant bodies of foreign countries by forming a system of legal guarantees will contribute to the implementation of justice as a necessary precondition for proper performance of its constitutional functions by the court. is the main duty of the state.

It is international acts and national legislation of individual European countries that allow us to fully identify the general and specific features of the constitutional regulations and the status of relevant bodies and suggest ways to improve the work of both the High Council of Justice and the judicial system of Ukraine as a whole. Thus, the systematic analysis of the constitutions and relevant legislation of individual European countries provides an opportunity to identify such trends. First, the purpose of establishing these bodies is to maintain the necessary balance between the independence of the judiciary, on the one hand, and the possibility of exercising public control over its activities, on the other.

As a result, the main task of the formation and functioning of judicial councils was the need to adhere to the principle of independence of the judiciary. This principle is a key element of the rule of law of all democracies, which determines the place of the court in the system of state power and is based on the principle of separation of powers. It is under such conditions that the High Council of Justice and relevant bodies in foreign countries are called upon to become the necessary tools to ensure the independence of the judiciary as a whole.

And secondly, the actual consequence of consolidating the principles of separation of powers and independence of the judiciary was the formation of special judicial bodies (judicial councils), which, representing the judiciary, do not participate in the administration of justice. It is noteworthy that most of the new constitutions of democracies in Central and Eastern

Europe contain rules governing the legal status of these bodies. Therefore, the process of «constitutionality» of the legal status of these bodies tends to spread, and this trend is gradually becoming global.

Another aspect that should be noted in the continuation of the previous generalizations. Analysis of the constitutions of foreign countries makes it possible to identify two main ways to regulate the legal status of the Councils we are considering. The first group includes countries that are an extended constitutional regulation of the legal status of the respective judicial councils. These include the constitutions of countries such as Belgium (art. 151), Greece (art. 88), the Slovak Republic (art. 141a), Turkey (art. 159), France (art. 65), and Moldova (art. 122-123), Macedonia (art. 104-105), Cyprus (Articles 157), Italy (art. 104-105). The constitutions of these countries define quite thoroughly the status of the relevant bodies, which may include the place and role in the judiciary, the set of powers, composition, terms of office, responsibilities of members of judicial councils and other components of their status.

Another group includes the constitutions of countries where the legal status of the judicial councils in question is very succinctly defined. These are the constitutions of countries such as Romania (art. 132), Slovenia (art. 131), Croatia (art. 121), Portugal (art. 218), Poland (art. 186-187), Spain (art. 122.1) and some others.

Ukraine set out to establish the High Council of Justice as a body with constitutional status only in the post-Soviet period. During this period there is a legal registration of institutional bases of judicial power and the legal status of its holders, fixing of guarantees of their independence and autonomy of judges. The basic principles of the independence of the judiciary in terms of its formation and functioning, which are directly related to the selection of candidates for judges, their appointment and dismissal are laid down taking into account a number of international instruments and relevant foreign experience.

Thus, the European Community proposes to introduce into the legal space a model of organization of the judiciary through the establishment of appropriate bodies that are endowed with organizational and operational independence from other branches of government. In addition, the determining tool for ensuring the independence of the High Council of Justice and the relevant judicial councils in foreign countries is the consolidation at the legislative level of their legal status: either in the constitution or in the relevant law (Decision high council of justice. On the provision of the Advisory Opinion on the Draft Law).

The key role of judicial councils is to be independent guarantors of the independence of the judiciary. However, this does not mean that such councils are bodies of judicial «self-government». To avoid corporatism

and politicization, the judiciary should be monitored through non-judicial members of the judiciary. Only a balanced method of appointing members of these bodies can guarantee the independence of the judiciary. Corporatism must be balanced by the membership of other legal professions, «users» of the judiciary, that is, lawyers, prosecutors, notaries, scholars, and civil society. Involvement of other branches of government should not pose a threat of undue pressure on members of the High Council of Justice and the judiciary.

According to some lawyers, unfortunately, in the course of judicial reform in Ukraine, certain risks were realized: members of the High Council of Justice, appointed by a quota of judges, cover their influential colleagues; representatives of the parliament and the President lobby the interests of political circles; some members of the High Council of Justice are generally appointed illegally; there is no question of renewing and cleansing the judiciary from dishonest people at all (What are the «european standards» of judiciary and how should they be applied?).

Thus, there is no standard of «judges elected by judges» that would be mandatory or even desirable for Ukraine. On the contrary, it is appropriate to talk about the recent formation of another standard for countries in transition democracies, in which non-judicial representatives play a significant or even decisive role in the judiciary: the public, representatives of other legal professions or international experts.

In general, it should be recognized that the integration of international human rights law into Ukrainian law is a complex procedure that requires special doctrinal understanding (Yakovlev, 2009). The adoption of the Law of Ukraine «On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights» of 23 February 2006 №3477-IV helped to determine the grounds and procedure for the application of its decisions and practice by the courts of Ukraine. However, the Law did not eliminate the most difficult issues related to determining the place of international treaties of Ukraine in the legal system of Ukraine, with the relationship of the European Court of Human Rights with the rules of universal human rights treaties, which «remain» part of Ukrainian law.

The law does not provide a clear answer to a number of legal issues, obviously applying a general approach – the law cannot regulate the specifics of the application of judicial practice by courts, it can only legalize the very possibility of application. It is the Ukrainian courts that must develop approaches to the application of the decisions of the European Court of Human Rights.

Conclusions

The study of the peculiarities of the administration of justice in Ukraine as a condition for the implementation of the European integration course made it possible to draw the appropriate conclusions, which are presented below in the form of abstracts.

Reforming Ukraine's judicial system requires a comprehensive overhaul of the three bodies - the bar, the law enforcement system and the courts themselves, as they work together. The judiciary should gain independence and act self-governingly with the involvement of international experts and members of the public in certain procedures.

The strategy for the development of the judiciary and the constitutional judiciary is designed for 2021-2023, but it will not be possible to implement it in such a short time, not to mention that the implementation of some of its provisions requires a clear understanding of the sequence missing in the document.

The conditions for the effective administration of justice in Ukraine are: renewal of the High Council of Justice and the High Qualifications Commission with the participation of international experts; cleaning and renewal of ships; creation of a new court to replace the District Court of Appeal of Kyiv, which will consider key decisions of state bodies; ensuring the fair composition of the Constitutional Court. These changes should take place against the background of public confidence in the judiciary and law enforcement system.

The basic principles of the independence of the judiciary in terms of its formation and functioning, which are directly related to the selection of candidates for judges, their appointment and dismissal are laid down taking into account a number of international instruments and relevant foreign experience. The determining tool for ensuring the independence of the High Council of Justice and the relevant judicial councils in foreign countries is the consolidation at the legislative level of their legal status: either in the constitution or in the relevant law. It is important in the process of reforming the High Council of Justice to find a compromise between non-interference in the activities of the Council, its components, and ensuring the transparency and effectiveness of its decisions.

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UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 Nº 72

Esta revista fue editada en formato digital y publicada en enero de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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