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REFORMING UKRAINE'S COURT SYSTEM IN MODERN CONDITIONS

РЕФОРМУВАННЯ СУДОВОЇ СИСТЕМИ УКРАЇНИ В СУЧАСНИХ УМОВАХ

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Ткач К.І., Граціотова Г.О., Брадул К.С. Реформування судової системи України в сучасних умовах. Оглядова стаття.
Проблема процесу реформування судової системи України на сьогодні є доволі актуальною і не сходить з ведучих позицій порядку денного правового та політичного дискурсу уже більше ніж два десятиліття. У статті визначено основну мету реформування судової гілки влади. Проаналізовано позитивні складові наявних результатів від початку реформи, а також наголошено безпосередньо на існуючих проблемах подальшого реформування. Деталізовано фактори, що мають найбільший вплив на успішність проведення судової реформи. Охарактеризовано показники рівня довіри громадян до суду, зазначено рівень корупції у судовій системі, надана характеристика «кадрового голоду» у системі судочинства. Проаналізовано рівень завантаженості українських суддів і здійснено порівняння показників з міжнародним стандартом.

Ключові слова: судова реформа, реформування судової системи, ефективна судова влада, суди, результативний судочинство

Tkach K.I., Hratiotova H.O., Bradul K.S. Reforming Ukraine's Court System in Modern Conditions. Review article.

Today the problem of the process of reforming Ukraine's court system is quite relevant and has not left the leading positions of the agenda of legal and political discourse for more than two decades. The article defines the main goal of reforming the judicial branch of power. The positive components of the existing results since the beginning of the reform have been analyzed, as well as the existing problems of further reform have been emphasized. The factors that have the greatest impact on the success of court reform are detailed. The indicators of public confidence level in the court have been characterized, the level of corruption in the court system is indicated, and the "personnel hunger" in the court system is described. The workload level of Ukrainian judges is analyzed and the indicators are compared with the international standard.

Keywords: court reform, court system reform, effective judicial power, courts, effective judiciary

The independence of the judicial branch of government is the main indicator of a law-based country. And especially in light of the European integration of our country, the importance of the state-legal regulation system is huge, because the quality of justice is the indicator that is specific in determining the country's image in the international arena. That is why, given the current situation in our country, the problem of reforming the court system requires much attention.

Analysis of recent researches and publications

Issues related to the very phenomenon of reforming the judicial branch of government have always been in the centre of scientists' attention. The scientific works of V. Botvynnyk [1], I. Koniev [2], I. Dynnyk [3], Yu. Holovko [4] should be noted among the studies on this issue. They not only theoretically substantiated the importance of effective reform of court system, but also defined the main principles of court reform in modern Ukraine, and also focused more attention on problematic issues of the court system.

Unsolved aspects of the problem

The problem of reforming Ukraine's court system in modern conditions is a subject of constant scientific interest and a matter of frequent discussions. Despite the large number of studies on this issue, a significant level of its relevance and importance requires further identification and additional development of the mechanisms for carrying out this reform, revealing the specifics of overcoming problems that reduce its effectiveness. As well as revealing the essence of social perception of changes in the judicial system as one of the indicators of improving

the judicial branch of government. Thus, a number of issues related to the peculiarities of the court reform stages currently require constant study and detailed analysis.

The aim of the article is to reveal the content and essence of concepts related to the court reform implementation in Ukraine, as well as familiarization with the already existing results of this reform and further problems identification of reforming the judicial branch of government in modern conditions. In addition, the article aims to analyze the main factors that directly affect the reform effectiveness in the field of justice, as well as to reveal the dynamics of indicators of public trust in the courts, the level of corruption in this field.

The main part

In general, the court reform has begun since the time of state independence, and it is clear that it has been modernized more than once. At different stages of this process, different directions and priorities of changes have been determined, different opinions and orientations have been expressed, views and planes of consideration of the main problems of the court reform have been alternated. However, the understanding of the need to carry out effective changes in the justice system was unshakable, despite the fact that there was a lack of a systemic approach and a holistic vision for the effective reform implementation.

Let's reveal the main goal of the process of reforming the judicial branch. Currently, in the general perspective of contemporary conditions, taking into account the European integration vector of our country, the intention to implement the reform of the court system is easily formed, which is characterized by the approval of regulatory acts based on international standards and European practice, which will become a solid basis for the further construction of an effective and fair justice

It should be emphasized that the judicial system, which would reproduce the historical development and traditions of our country in combination with international norms, has not yet been fully formed. Moreover, since Ukraine's independence, the court system has been in a state of uncertainty, instability and constant reformation. These words are evidenced by a number of laws of Ukraine adopted by the Verkhovna Rada in recent years (Table 1).

Table 1. The Court Reform Implementation during the Last 10 Years

The Law of Ukraine	Year	The main aim
1. "On Restoration of Trust in the Judicial Power in Ukraine" [5]	08.04.2014	Legal and organizational principles determination of conducting a special inspection of courts' judges of general jurisdiction as a temporary measure using the existing procedures for issues consideration of bringing judges to disciplinary responsibility and dismissal from office in connection with the violation of the oath in order to increase the authority of the judiciary of Ukraine
2. "On Lustration" [6]	16.09.2014	Legal and organizational basis determination for the purge of power (lustration) for the protection and affirmation of democratic values, the rule of law, and human rights in Ukraine
3. "On Ensuring the Right to a Fair Trial" [7]	12.02.2015	Raising the national standards of court structure and court procedure, and ensuring the right to a fair trial by an independent and impartial court
4. Strategy for Reforming the Court Structure, Court Procedure and Related Legal Institutions for 2015-2020 [8]	20.05.2015	Priorities determination for reforming the court system, the court procedure and related legal institutions for the practical implementation of the principle of the rule of law and ensuring the functioning of the judicial power, which meets public expectations for an independent and fair court, as well as European values and standards for human rights protection
5. "On the Judiciary and the Status of Judges" [9]	02.06.2016 (27.07.2022)	The organization of the judicial power and the administration of justice in Ukraine, which operates on the principles of the rule of law in accordance with European standards
6. "On the High Anti-Corruption Court" [10]	07.06.2018	Principles determination of organization and activity of the High Anti-Corruption Court, special requirements for this court's judges and their activity guarantees
7. Strategy for the Judicial System and Constitutional Justice Development for 2021-2023 [11]	11.06.2021	Main directions and priorities determination of further improvement of Ukraine's legislation on the judiciary, the status of judges and the judiciary in the relationship and interaction with other institutions of justice for the practical approval of the principle of the rule of law, effective and fair judiciary

Source: compiled by the authors on materials [5-11]

It should be emphasized that in general such continuous efforts to change, modernize and reform the court system, in particular its regulatory framework, only destroy the field of justice in the same way that the absence of stable functioning of the judicial power weakens its independence in general. However, it is worth noting the positive aspects of the process of reforming Ukraine's court system (Figure 1).

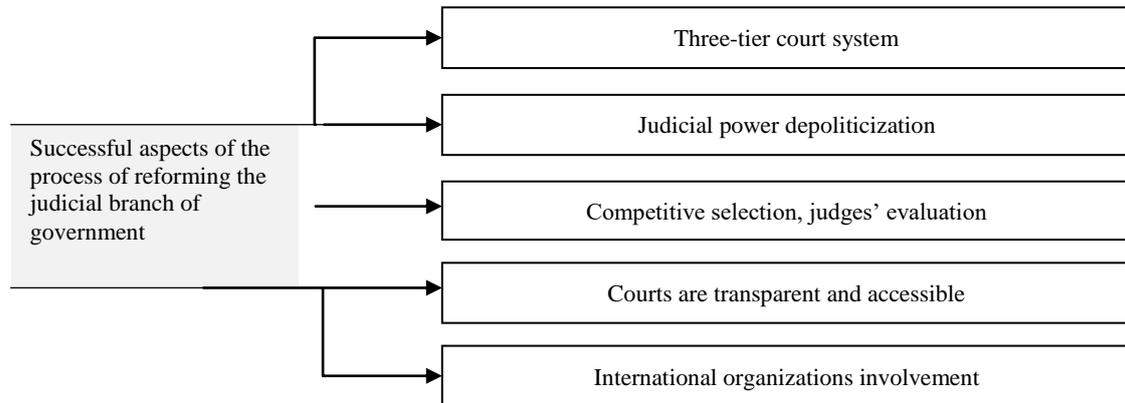


Figure 1. Positive Components of Reforming the Court System of Ukraine

Source: compiled by the authors on materials [11]

The judicial power, according to the separation theory of state power, is an autonomous and independent field of public power that performs the function of justice, which determines its role and place in the system of public power. Firstly, before the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges" in 2016, our country had a four-tier judicial system, but this approach did not really justify itself. The above-mentioned law provided for the transition to a more understandable and agreed-upon three-tier court system in more countries of the world. Currently, the second branch, where the High Courts of Ukraine used to function (the High Economic Court, the High Administrative Court and the High Specialized Court) has been liquidated in general. It should also be noted that during the transition to a three-tier system, the fourth tier has been consolidated, that is, district courts in cities, city-district and inter-district courts, city and district courts merged into district courts. Due to this, the efficiency of the courts and the optimization of budget expenditures were made. In addition, new courts were formed: the High Anti-Corruption Court and the High Court on Intellectual Property [1]. Such changes in the court system were very necessary

Secondly, it should be emphasized that due to the reboot of the court system after the Revolution of Dignity in Ukraine, the judiciary theoretically becomes independent from politicians. That is, the Verkhovna Rada and the President of Ukraine have lost their authority to form a contingent of judges, which greatly hinders the lobbying of their interests. This has become an important push for the independence of the judiciary.

The changes related to the qualification assessment of all judges without exception to check the level of competence, professional ethics and integrity also need attention. In order to carry out such a comprehensive assessment, the Higher Qualification Commission of Judges was formed during the reform, whose mandate includes the candidates' qualification check for judges' position. Scientists note that for the first time in the history of Ukraine, at the stage of reforming the judicial branch of power, in addition to judges, lawyers who have never worked in the court system – scientists with ten years of experience and lawyers – were given the right to participate in the competition for the highest judicial position. By the way, at the moment, every fourth person in the new court is like that [12].

The result of these changes was the renewal of human resources of the Supreme Court. It should be noted that these actions precede the next successful reform process, namely the courts are becoming more transparent and closer to the public. That is, due to the innovations described above, there is a desire to increase the level of transparency in the comprehensive reform of the judicial branch of government with a focus on citizens.

However, it is important to emphasize the significant support of international organizations and their help regarding the issues of recharging the personnel provision of the judicial branch of government and bringing the judicial system closer to European standards. Undoubted confirmation of this thesis is the adoption by the Council of Europe and the EU of the court reform strategy "On the Strategy for Reforming the Court Structure, Court Procedure and Related Legal Institutions for 2015-2020" [8], currently the "Strategy for the Judicial System and Constitutional Justice Development for 2021-2023" was approved by decree of the President of Ukraine [11].

It is clear from the conducted research that during the formation and reformation of the legal authority, the court system has gone through a difficult path of development. However, even now, the judicial branch of the government in Ukraine is in the condition of transition. Despite the sufficient number of positive changes listed and described above, there is a certain list of shortcomings and problems of further reforming the court system in modern conditions (Figure 2).

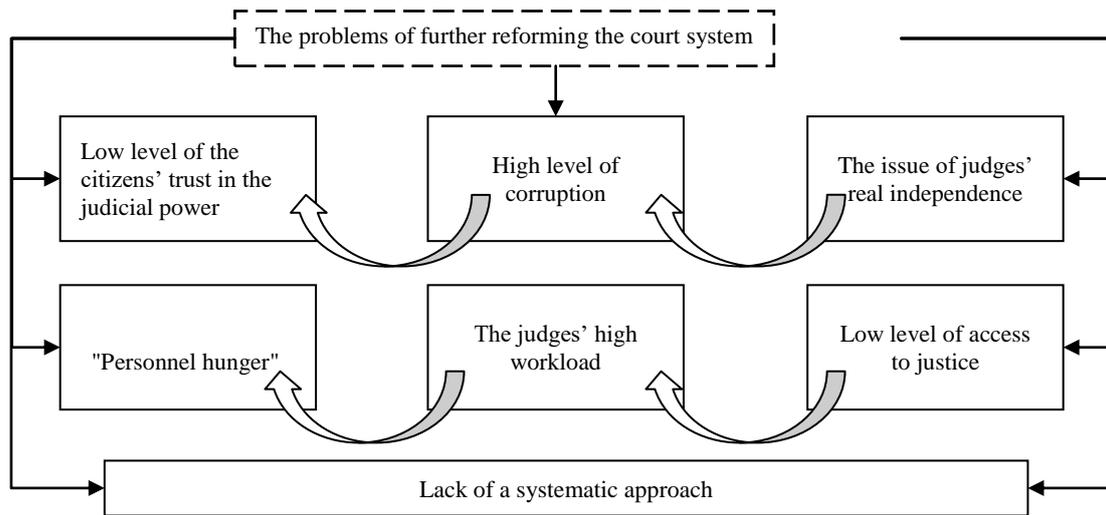


Figure 2. The problems of further reforming the court system
 Source: compiled by the authors on materials [3]

Undoubtedly, not all the measures of the court reform brought the expected result, some have even opened new problems indicated in Figure 3. An integral component of development in our country is an effective and authoritative judicial branch of the government, but, unfortunately, indicators of the level of public trust to the field of the judiciary in recent years are quite disappointing. If we analyze modern sociological surveys, it can be stated that a fairly small percentage of citizens trust judges and courts in general. According to the statistical data of the survey of citizens' opinions conducted by the USAID project "Fair Justice", only 28.3% of citizens trusted the courts in Ukraine by the end of 2021 (Table 2).

Table 2. The Trend of the Public Trust Level in the Judicial Branch, %

	2016		2017		2018		2019		2021	
Community	10	69	12	65	16	59	17	56	10	59
Court services users	13	67	28	50	34	39	d/t	d/t	35	35
Lawayers	d/t	d/t	38	18	41	16	44	16	40	21

*note:

	- don't trust at all/rather don't trust
	- fully trust/trust

Source: compiled by the authors on materials [13]

On the basis of Table 2, it can be stated that, in general, there is a positive trend in the level of trust from 2016 to 2019, but a significant decrease in this indicator occurs in the period 2019-2021. Attention should also be paid to the fact that the level of citizens' trust in the courts varies depending on whether the respondents had the opportunity to be participants in the trial. However, it should be noted that Ukrainians' general trust in various institutions is approximately at the same level as the trust in the courts as a whole. Factors that have influenced the decrease in the level of confidence in the judicial branch of government include: low efficiency in court activities, insufficient human resources, delays caused by the COVID-19 pandemic, low level of public awareness, high level of corruption among judicial bodies.

An equally important problem of further reforming the court system is the need to reduce the level of corruption in the court system, which is the main factor affecting the level of trust in the authorities. Using the report prepared based on the results of a sociological survey on corruption in Ukraine, approved in 2021 by the order of the National Agency for the Prevention of Corruption, the following indicators were identified (Figure 3).

It should be emphasized that when answering a direct question about whether they encountered corruption, 15.7% of the respondents chose the answer "Yes", but 19.0% of the respondents confidently answered about the presence of corruption experience based on self-evaluation. However, 27.8% of respondents reported being in specific corruption situations, which is 1.7 times more than the percentage of those who have dealt with corruption in the court system, and 1.5 times more than the percentage of respondents who had corruption experience. It is obvious that part of the experience is not perceived by the respondents as potentially corrupt.

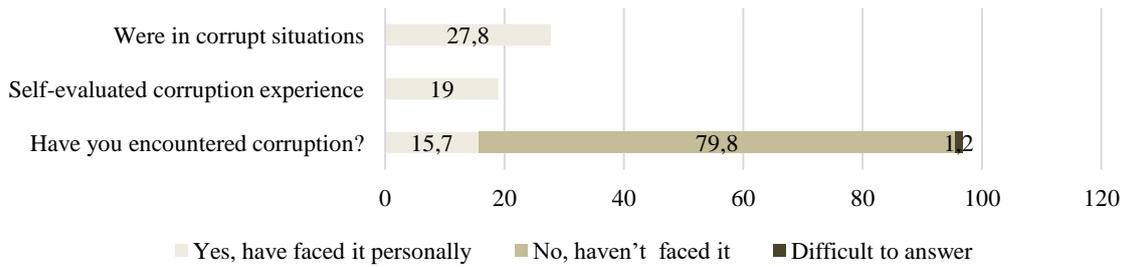


Figure 3. Ukrainians' Corruption Experience in the Judicial Field in General
 Source: compiled by the authors on materials [14]

The next problem of reforming the court system in Ukraine, which follows from the above and is one of the unresolved problems, remains to ensure the judges' real independence. At the beginning, it was stated that during reforming the judicial branch of power, it was depoliticized, which should eliminate attempts to interfere in trials. However, it is worth emphasizing that not only political structures can influence the judges' activities (Figure 4).

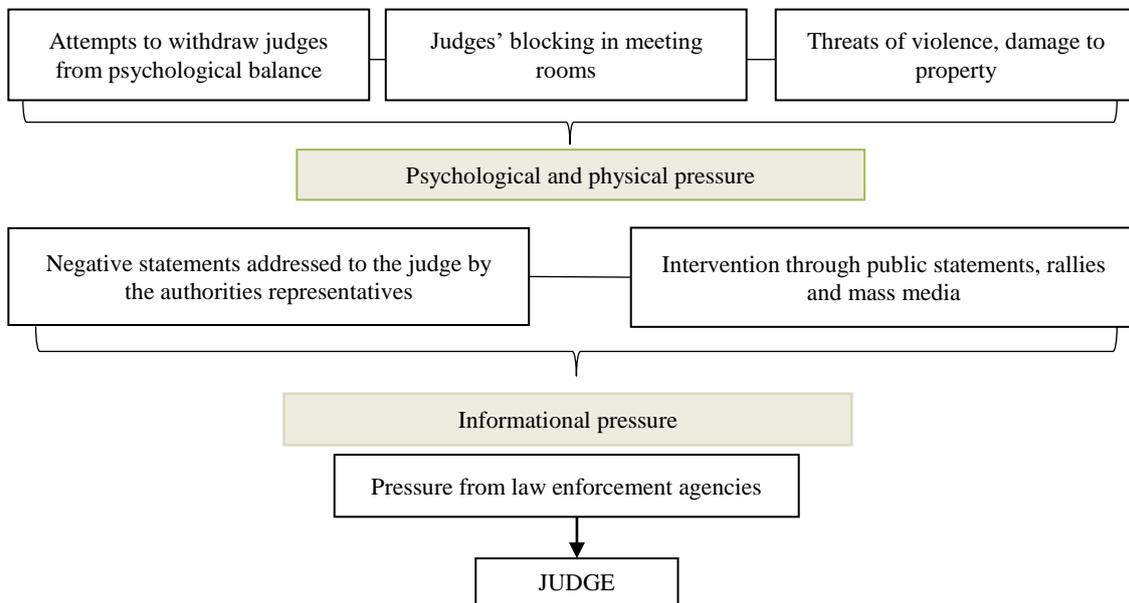


Figure 4. Factors Violating the Ukrainian justice Independence
 Source: compiled by the authors on materials [15]

Ensuring the judges' independence remains one of the judiciary problems even today, although quite a lot of regulations have been written and adopted to solve this issue. In general, the documents state that independence is not a privilege granted to satisfy the judges' interests. It is provided in the interests of the rule of law and people who expect fair justice. But it is obvious that justice cannot be independent if the judges themselves are not independent.

An extremely important problem of reforming the court system, which needs an immediate solution, is the so-called "personnel hunger" in the courts. Unfortunately, in recent years, the situation with personnel support for judges has significantly worsened. The problem prerequisites of "personnel hunger" include the COVID-19 pandemic with all its consequences in the form of quarantine measures, currently military operations on the territory of Ukraine, because a very large number of courts in the occupied territories were forced to suspend their activities

The actual number of judges in Ukraine's courts at the end of 2021 was 5234, with a specified number of 7304. 4862 judges have the authority to administer justice. That is, in general, the shortage of judicial personnel is 2070 judges [15]. Figure 5 shows statistics on staffing of Ukraine's appeal courts, where the situation can be called the worst.

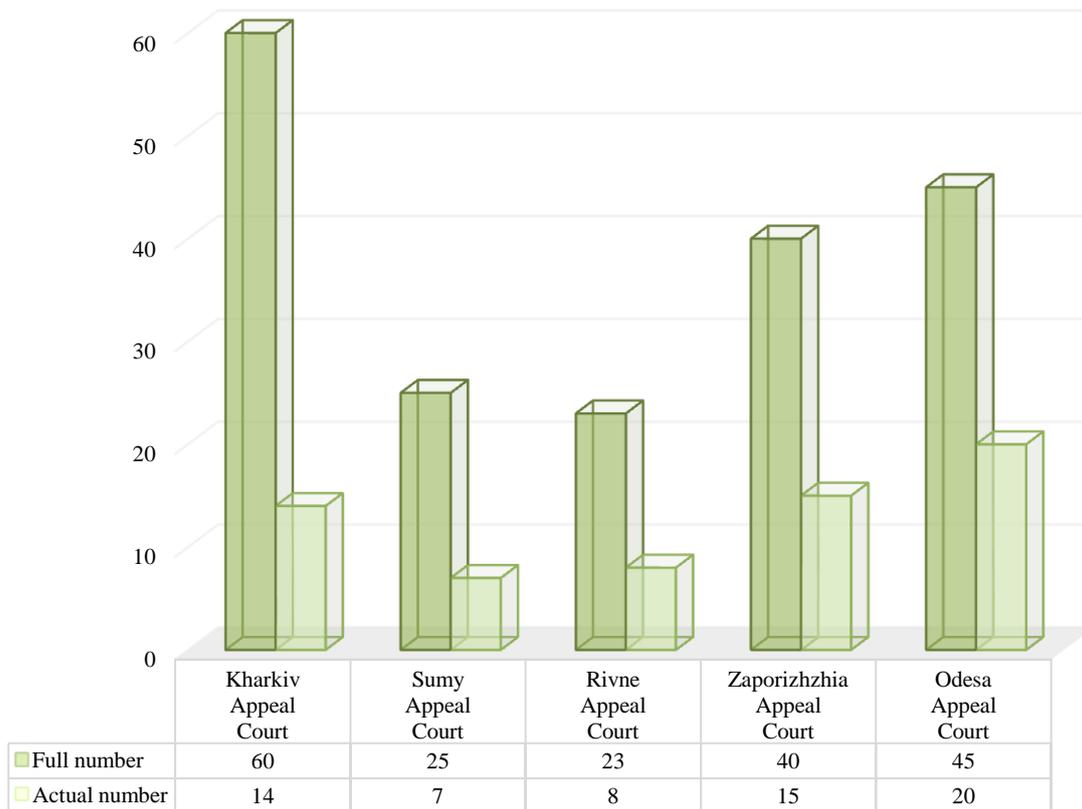


Figure 5. Structural Characteristics of the "Personnel Hunger" of Ukraine's Appeal Courts

Source: compiled by the authors on materials [15]

Based on the data shown in Figure 6, it can be concluded that the worst personnel situation is in Kharkiv Appeal Court, because the actual number of judges is only 14, which is 4.3 times less than the full number. It should be emphasized that in two courts (Talniv District Court of Cherkasy oblast and Avdiyiv City Court of Donetsk oblast) justice is not carried out at all due to the lack of judges. In recent years, the tendency to resign among judges has also increased. The main reason for this mass phenomenon is legal uncertainty, that is, highly qualified judges with the necessary work experience to retire do not see prospects in remaining in office. Because of this, we are losing experienced judges because often highly qualified, knowledgeable and honest personnel retire.

Due to the current staffing situation in the court system, the next, no less important problem of further reforming the judicial branch of government in modern conditions emerges the judges' high workload. Due to the lack of personnel, judges have to work irregularly, which directly affects the quality of the justice implementation, as the judge is unable to devote sufficient attention and time to each case. As a result, the citizens are again dissatisfied with the court system effectiveness and a low level of trust in the court. That is, it is necessary to emphasize that the personnel hunger of the court system is a problem that is much more serious than it seems at first glance. At the end of 2021, Kharkiv Appeal Court, which was listed as the court with the most critical personnel situation, is not coincidentally the court with the highest level of judicial workload in Ukraine. According to statistical data, there are 146 cases per month per judge in Kharkiv Appeal Court. In order to understand whether this indicator is high, it is necessary to note that according to European standards, the judge's workload should be 200 cases per year, while in Ukraine the judge's average workload per month almost reaches this value [4].

Accessibility is one of the main principles of building an effective court system. Unfortunately, at this stage, given the terrible events taking place on Ukraine's territory, it is also necessary to focus attention on the level of access to justice. Currently, approximately 119 courts don't function due to the Russian Federation's aggression: courts are shelled, premises are destroyed, parties cannot come to court, employees are in danger. In the issue of the court services availability, the aspect of trial digitization also remains important in this period. Today, the procedural legislation allows to participate in the court session online, and this is currently a very necessary opportunity for Ukrainian citizens.

It should be noted that creating an effective, accessible and transparent judicial branch of government depends on a number of factors, in addition to the corps judges' activities. One of the most important factors is the constant uncertainty of the court system. The judiciary of Ukraine is constantly in the process of changes

throughout the entire history of the creation of our statehood. This is confirmed by the activity of each new political force, each of which chooses a new direction in the reforming the court system in its own way, resulting in attempts to "subjugate" the judiciary. Although, ideally, court reformation should be carried out on the basis of a clearly defined scientifically based strategy. It should be noted that it is the court practice of sustainability, unity in reforming the court system in general, the clarity of regulatory legal acts and their uniform application that will allow to improve the quality of the administration of justice in Ukraine. Regarding constant reform, it is worth noting that the subjects of power need to understand that it is possible to reform and improve *ad infinitum*, but it is necessary to be guided by the principle of sufficiency and optimality in making certain decisions. According to many scientists' opinion, the foundations of the court system and the status of judges defined by the Constitution of Ukraine are sufficient for an effective court system development, it is only necessary to correctly direct the available resources.

Conclusions

Based on the analysis results of the successes and failures of the largest justice reform in the entire history of Ukraine's independence, it can be concluded that currently, in general, the court reform cannot be defined as successful. However, the possibility today to systematize and modernize the justice system in Ukraine in accordance with European standards indicates the correctness of the chosen path of development of the judicial branch of government. During the years of Ukraine's independence, measures to reform the judicial branch of government were carried out more than once. However, an effective judiciary system has not yet been formed, and therefore the issue of modernizing the judicial branch of government is quite acute. During these times, many changes were made, it is clear that not all changes brought positive results, but it is necessary to highlight the main changes that met expectations: the three-level judicial system formation, which brought our court system closer to European standards; the judicial power depoliticization, which made it possible to free the judicial power from the influence of political forces; competitive selection introduction and the judge's evaluation; courts have become more transparent and accessible to citizens due to competitive evaluation events; the reform of the judicial power to bring it closer to European standards has increased the level of involvement of international organizations. However, it was determined that currently there are many problems in the court system formation in modern conditions. The following can be attributed to them: a high level of distrust among citizens in courts, a high level of corruption, "personnel hunger" of judicial institutions, the judges' high workload, the problem of judges' independence, inaccessibility to justice for citizens, lack of a systematic approach to the reform of the judicial branch of government in general. The issue of final determination of the modernization vector of the judicial branch of government requires due attention since the base developed during the years of independence allows to complete the creation of an effective court system taking into account European standards. Therefore, at this stage, it is necessary to focus on the created scientifically based strategies for completing the existing court system.

Abstract

Justice has played an important role in the formation of a human-centered rule of law since the beginning of the first states. The independence of the judiciary is the main indicator of the rule of law. That is why, given the current situation in our country, the problem of reforming the judicial system requires great attention.

The aim of the article is to reveal the content and essence of concepts related to the court reform implementation in Ukraine, as well as familiarization with the already existing results of this reform and further problems identification of reforming the judicial branch of government in modern conditions. In addition, the article aims to analyze the main factors that directly affect the reform effectiveness in the field of justice, as well as to reveal the dynamics of indicators of public trust in the courts, and the level of corruption in this field. Building the court system that would reflect the historical development and traditions of our country in combination with international norms has not yet been fully formed. However, it is worth noting the positive aspects of the process of reforming the judicial system of Ukraine: three-tier court system, depoliticization of the judicial system, competitive selection of judges, and transparent courts. Despite a sufficient number of the above-mentioned and described positive changes, there is a certain list of shortcomings and problems of further reform of the court system in modern conditions: low level of trust in the courts, high level of corruption, "personnel shortage", the judges' high workload, lack of a systematic approach.

Regarding continuous reform, it should be noted that the authorities need to understand that it is possible to reform and improve indefinitely, but it is necessary to be guided by the principle of sufficiency and optimality in making certain decisions. According to many scholars, the foundations of the court system and judges' status defined by the Constitution of Ukraine are sufficient for the development of an effective system of courts, it is only necessary to properly direct the available resources.

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