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THE ROLE OF THE INSTITUTE OF THE STATE SERVICE IN ORGANIZATIONAL PROVIDING ACTIVITIES OF UKRAINIAN JUDICIAL AUTHORITIES

The article analyzes and defines the role of the civil service institute in organizing the activities of the judiciary. The common and distinctive features of «justice» and «judicial system» are presented. The analysis of the definition of «organizational provision of courts» was carried out. In the course of the study, the indicators of the quality of the work of a civil servant are outlined. In order to update the staffing of civil servants in courts, the necessity of using the levers of a new, functional and effective civil service in the system of judicial bodies is determined. Possible ways of transformation of civil service for the purpose to increase its efficiency and effectiveness in organizational providing of activity of bodies of the judicial power are substantiated.

Key words: *institute of civil service, organizational support of activity, judicial authorities, justice, efficiency.*

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РОЛЬ ІНСТИТУТУ ДЕРЖАВНОЇ СЛУЖБИ В ОРГАНІЗАЦІЙНОМУ ЗАБЕЗПЕЧЕННІ ДІЯЛЬНОСТІ ОРГАНІВ СУДОВОЇ ВЛАДИ УКРАЇНИ

У статті здійснено аналіз та визначено роль інституту державної служби в організаційному забезпеченні діяльності органів судової влади. Окреслено перелік органів та осіб, які належать до системи правосуддя. Наведено спільні та відмінні риси таких понять, як «правосуддя» та «судова система».

Виходячи з аналізу наукових джерел, зосереджених на вивченні управлінських відносин в системі органів судової влади, здійснено аналіз дефініції «організаційне забезпечення судів», з точки зору реалізації дій щодо задоволення потреб судової системи та з огляду на те, що завдання організаційного забезпечення судової діяльності має загальнодержавний характер.

У статті відокремлено суб'єкти організаційного забезпечення діяльності судової влади: апарат суду, Державну судову адміністрацію України, Вищу раду правосуддя України, Вищу кваліфікаційну комісію суддів України – та обґрунтовано функціональне призначення посадових осіб вказаних органів судової влади, правовий статус яких урегульований Законом України «Про державну службу».

На підставі проведеного аналізу, з огляду на нестачу кваліфікованих кадрів на посадах державної служби в судах, запропоновано використання нових методик професійної перепідготовки кадрів та забезпечення визначення оптимальної чисельності державних службовців з урахуванням функцій та організаційної структури органів судової влади на локальному рівні, що може позитивно вплинути на підвищення якості надання судових послуг та оновлення кадрового складу інституту державної служби в системі органів судової влади. Визначені показники якості роботи державного службовця, які складаються з таких критеріїв, як виконання обов'язків і завдань, професійна компетентність та етика поведінки, та запропоновано доповнити зазначений перелік таким критерієм, як рівень продуктивності праці з урахуванням оптимізації кадрового складу державних службовців.

У відповідності до Стратегії сталого розвитку «Україна – 2020», з метою досягнення такого ключового показника, як оновлення кадрового складу державних службовців у судах, інших державних органах на 70 відсотків, в рамках проведення судової реформи та реформи державної служби, вкрай необхідним є застосування важелів нової, функціональної та результативної державної служби в системі органів судової влади, що стане визначним кроком в процесі сучасних модифікацій, оскільки здійснення правосуддя неможливе без результативного функціонування державних службовців органів судової влади.

З огляду на це, обґрунтовано можливі шляхи трансформації державної служби для підвищення її результативності та ефективності в організаційному забезпеченні діяльності органів судової влади шляхом застосування в якості управлінських процесів евристичних методів для отримання експертних оцінок та генерування, аналізу, вибору альтернатив і розв'язання проблеми.

Ключові слова: *інститут державної служби, організаційне забезпечення діяльності, органи судової влади, правосуддя, ефективність.*

Постановка
проблеми

The consistent and effective implementation of the Association Agreement between Ukraine and the EU, approved on June 27 and ratified on September 16, 2014, should create a solid basis for the further sustainable political and economic development of our country. It becomes the basis for the reform of all key areas of public administration and the implementation of European standards in order to improve the quality of citizens' life.

The obligation to reform public administration (in particular the civil service) as a matter of urgency, enshrined in the Ukraine-2020 Sustainable Development Strategy and the Program of Action of the Cabinet of Ministers of Ukraine [10].

The implementation of this Strategy, aimed at introducing European standards of life in Ukraine and Ukraine's emergence of leading positions in the world, provide the achievement of a key indicator that assesses progress, in particular, the judicial reform and civil service reform, as the upgrading of civil service personnel in the courts and other state bodies by 70 percent [15].

The use of the levers of a new, functional and effective civil service in the judicial system is a significant step in the process of modern modifications.

Indeed, an efficient public service decides everything and serves the competitive advantage of a modern state in the global market. For Ukraine's rapid growth, it is not enough to work productively as effective management processes must operate [21].

Аналіз
останніх
досліджень
і публікацій

An analysis of recent scientific studies and publications shows that the problems of civil service in Ukraine are actively covered in the works of such Ukrainian scholars as Yu. P. Bytiak, S. D. Dubenko, M. M. Izha, Yu. V. Kovbasyuk, A. M. Mikhnenko, D. V. Neilpa, N. R. Nyzhnik, O. Yu. Obolensky, T. I. Pakhomova, S. M. Seryogin. The works of such scientists as R. I. Kirilyuk [6], I.E. Marochkin [12], A. Strizhak [19] and others touch upon the study of the issues related to the organizational support of the activities of courts.

However, the issue of the modern mechanism and organizational support for passing the civil service in the system of judicial authorities, in particular, the role of this institution in the organizational provision of their activities, remains poorly studied.

Мета

The purpose of the article is to determine the ways of transformation of the civil service institute into the organizational maintenance of the judicial authorities as one of the directions in increasing its effectiveness and efficiency; to develop the approaches in implementing the obtained scientific results into the practice of the civil service of the judicial authorities of Ukraine.

Виклад
основного
матеріалу

The system of judicial power of Ukraine is a system of judicial authorities created by the state, established by the state in accordance with the current legislation, which have the same tasks and functions and operates on the basis of uniform constitutional principles, initiated by the state.

After analyzing Section VIII «Justice» of the Constitution of Ukraine [7], we have the opportunity to determine the list of bodies and persons belonging to the justice system, namely: courts, professional judges, jurors, judicial self-government, the High Council of Justice, prosecutors and lawyers.

According to S.G. Shtogun [22], justice is just one of the functions of the judiciary, which is carried out by special subjects of the judiciary, that is by the courts. But the judiciary carries out a number of other functions, such as judicial control, permissive functions, etc. The researcher notes that by replacing the section of the Constitution that actually regulates the structure and powers of the judicial system authorities with the concept of «justice», the legislator for some reason, placed in this section such entities of the judiciary power which do not only carry out the functions of justice and are unable to carry it out according to its legal nature (in particular the High Council of Justice, the constitutional Court, judicial authorities, prosecutors, the legal profession).

L. M. Moskvich argues that in the state-organized society, the judiciary appears in the form of a system of bodies (officials) that solve legal cases having legal consequences [9, p. 76].

In our opinion, the concept of «justice» and «judicial system» have both common and distinctive features. According to the provisions of the Basic Law, justice in Ukraine is carried out exclusively by the courts [7]. At the same time, according to art. 3 of the Law of Ukraine «On the Judiciary and Status of Judges» [16], the courts of Ukraine form a unified system of judicial system. According to the definition provided by the scientists, the judicial system: 1) a set of norms defining the tasks and the basic principles of organization and activities, the structure and competence of courts and bodies equivalent to them; 2) directly organizational development of the justice system, including the bodies and institutions that serve it [17, p. 174]. Taking into account art. 17 of the above Law, the system of judicial organization consists of: 1) local courts; 2) appell courts; 3) the Supreme Court [16].

However, unlike the court system, the judicial system of Ukraine consists of courts of general jurisdiction and a court of constitutional jurisdiction, which is the Constitutional Court of Ukraine. The main forms of legal proceedings include the constitutional, civil, administrative, criminal and economic proceedings. Thus, the totality of courts, built in accordance with jurisdiction and forms of justice, is a judicial system. Instead, justice, in our opinion, should be considered through the prism of one of the functions of the judiciary.

In addition, we believe that we should agree with S. G. Shtogun, who, taking into account the provisions of the Law of Ukraine «On the Judiciary and Status of Judges» raises the relevant questions: «...And is the judiciary exercised only by such subjects of the judiciary as courts? And what about the other actors of the judiciary, which are enshrined in the law – the High Council of justice, High qualification Commission, judicial authorities, the national school of judges, the new subject of the judiciary, which are identified by this Law – the Public Council of integrity? All these entities implement the relevant functions of the judiciary, in addition to the functions of justice, or as the authors of the law write that is they exercise judicial power» [22].

Being based on the analysis of scientific sources and being focused on the study of managerial relations in the system of judicial authorities, one can find the following wording, such as «organizational provision of courts». This notion is also regulated by section XI «Organizational support for the activity of courts» of the Law of Ukraine «On the Judiciary and Status of Judges» [16].

As A. Stryzhak has rightfully stressed, organizational support for the courts is the implementation of actions to meet the needs of the judicial system, providing it with sufficient material resources to carry out the functions of sending full and independent justice in the state [19, p.29]. According to R. I. Kirilyuk, the task of organizational support for the activity of courts is national and its solution is an integral part of the state policy in the field of the judicial system [6, p. 42].

The legislator, in particular, separates such entities from the organizational support of the activity of the judiciary as the court apparatus, the State Judicial Administration of Ukraine, the High Council of Justice of Ukraine, the High Qualification Commission of Judges of Ukraine, whose place in the judicial system, as already mentioned above, was not defined at the legislative level.

It should be noted that the courts, the State Judicial Administration of Ukraine (hereinafter - SJA), the High Qualification Commission of Judges of Ukraine (hereinafter - the HCJ), the High Council of Justice of Ukraine (hereinafter - HCJ) unite, to a large extent, the civil service institute, as the apparatus of court institutions is consisted mostly of civil servants. The legal status of SJA officials and its territorial departments, the secretariats of the HCJ and the HCJ are determined by the Law of Ukraine «On Civil Service», namely: regarding the appointment of civil servants, remuneration and social guarantees of employees of local, appellate, supreme specialized courts, the Supreme Court apparatus, the secretariats of the High Council for Justice and the High Qualifications Commission of Judges of Ukraine, the State Judicial Administration of Ukraine are regulated by the norms of the civil service legislation, taking into account the specificity of civil service, defined by the Law of Ukraine «On the Judiciary and Status of Judges» [16].

Considering the issue of organizing the work of courts of general jurisdiction in Ukraine, I. Ye. Marochkin emphasized that the apparatus of courts carries out the direct organizational support for the work of the court, aimed at both the implementation of justice, the creation of the necessary conditions for the implementation of the rights and duties of participants in the judicial process, and to ensure the functioning of the court as a state institution and legal entity and maintaining the proper conditions for the stay and work in the court of its employees and citizens [12 p. 67].

S.V. Glushchenko stressed that the powers of the court apparatus are much wider and complex, having an external expression of ensuring the work of the court in procedural and non-procedural aspects [5, p. 288].

Consequently, in our opinion, attention should be paid to the analysis of the organizational and legal support of the work of civil servants of the court apparatus as the main component of the organizational provision of judicial activity in general.

The court apparatus carries out an important function of organizing the work of the court, aimed at both the

implementation of justice, the creation of the necessary conditions for the implementation of the rights and obligations of the participants in the court process, and ensuring the functioning of the court as a state institution and legal entity, and maintaining appropriate conditions for stay and work in court of its employees and citizens.

In the local court the court staff conducts records management. It receives, considers and records judicial proceedings, statements of claim and complaints, correspondence and letters, provides registration and submission of outgoing correspondence, court cases, and also exercises control over the flow of documents and court cases, compliance with the legislation or the order of their timeframe and solutions. The court apparatus is responsible for the direct maintenance of primary documents of statistical registration, e.g. registration in magazines, computer accounting, keeping statistics cards for litigation, claims, complaints, etc., as well as control and making and proper referral of documents for the execution of court decisions, the production of copies of documents, ensuring familiarization of the parties with the case files. In addition, the court apparatus is entrusted with ensuring the organization of the trial process: timely and correct communication of the participants of the process and the persons called upon, about the day, time and place of hearing of the case; checking appearance of persons in a court session; compliance with the requirements of the legislation on the impossibility of influencing witnesses, experts, etc.; maintaining order in the courtroom and court; keeping a record of the court session, fixing it with technical means, etc.

The court apparatus takes measures to maintain a court room in a state suitable for its proper functioning, to create safe and comfortable conditions for employees and persons in court, ensuring the availability of necessary resources (paper, letterhead, stamps, office supplies, etc.) and office equipment and its uninterrupted functioning; proper keeping of archives, codification and library business, as well as planning, economic and accounting work, servicing of accounts in bank institutions.

The apparatuses of appellate courts, in addition to these powers, are involved in the execution of the tasks of the relevant court in the analysis of judicial statistics, the generalization of judicial practice, the development of materials on the provision of methodical assistance to local courts in the application of legislation, training and advanced training of employees of the local courts, ensure the work of the presidium of these courts [20].

It should be noted that the number of employees of the courts of appellate and local courts as of January 1, 2018 amounted to 28852 posts, 25232 posts of which are actually occupied. The number of vacant posts amounted to 3620, which is 12% of the total number of employees of the vehicles of these courts. As of January 1, 2017, there were actually 25093 positions occupied. The number of vacant posts is 3759, or 13% of the number of staff members of the vehicles of these courts [4]. The aforementioned indicators of the staffing of the courts do not include patronage staff (assistants of judges) who, after 01.05.2016, are deprived of the status of civil servants, however, they can now, simultaneously with their activity in a court, obtain membership in a political party, engage in other paid, for example, legal activities, thus serving the interests of the parties in a litigation that may potentially

be considered by its «patron». Again, there is the risk of involving assistants of judges in corruption, which is very contradictory to judicial reform.

By comparison, by 01.01.2004, the number of staff members of the court apparatus was as follows: general (with military) courts - 17213 employees; general appellate courts (with military) - 2524 employees; local economic courts - 2687 employees; Appeal economic courts - 1065 employees. In total - 23489 employees [14], taking into account the assistants of judges in the status of civil servants and without the inclusion of employees of the apparatuses of the district administrative courts that were not functioning at that time.

In addition, from the analysis of accounting and statistical work in the Lutsk City District Court of Volyn region for 2012, it is obvious that the accounting and statistical work in court is at an appropriate level, although minor mistakes and drawbacks are allowed, which can only be explained by the turnover of staff, the appointment of the secretaries of the court, in particular in the civil and criminal office, as well as persons who did not have experience in court procedures [2]. The same fact testifies the corresponding analysis in the state judicial administration and general courts in 2010, which states that the problem of staffing of the court apparatus remains. It has an impact and a high rate of personnel turnover in the courts [1].

Consequently, there has recently been a lack of qualified staffing in the civil service in the courts. The main factors that, in our opinion, affect the efficiency and professionalism of civil servants of the judiciary are labor overload and lack of experience. Therefore, we believe that the local provision of the definition of the optimal number of civil servants, taking into account the functions and organizational structure of the judiciary and the use of new methods of retraining personnel, can positively affect the growth and development of the personnel of the civil service institute in this area. It is worth noting that the cases of numerous threats, moral pressure, both on judges and on employees of court apparatuses, which also affect the efficiency of civil servants in the courts, are not unique.

V.Ya. Malinovsky refers to the definition of the effectiveness of the civil service as an organizational and functional principle, which means the necessity of functioning of the civil service institute in the mode of achievement of the set goals with the minimum possible expenses of material and financial resources. The main element of the concept of the effectiveness of civil service is the assessment of the indicators. The assessment of the performance of the civil service and its effectiveness depend on the criteria and indicators of the quality of evaluation, which are divided into general and special ones. The general criteria and indicators of the quality of civil servant are the indicators of the annual evaluation of civil servants assigned duties and tasks which are common to all civil servants, and are associated with their specific activities and expected results. The general criteria and indicators of quality of work of the civil servant consists of such criteria: 1) performance of duties and tasks; 2) professional competence; 3) ethical behavior [8, p. 32-33].

In our view, this list should be supplemented by such a criterion as the level of labor productivity, taking into account the optimization of the staffing of civil service.

At the same time, it is advisable to concentrate at the work of civil servants in other bodies of the judiciary. Thus, according to V. I. Andreetsev, in the structure of the judicial system, in addition to the courts, the High Council of Justice and other subsidiary bodies occupy an exclusive place. [3, p. 20]. In order to carry out such tasks of the HCJ as ensuring the independence of the judiciary, its functioning on the basis of responsibility, accountability to society, the formation of a faithful and highly professional corps of judges, adherence to the norms of the Constitution and laws of Ukraine, as well as professional ethics in the work of judges and prosecutors in its composition is very important. The functions of a secretariat include organizational, informational and other support for the activities of the High Council for Justice and its bodies. Moreover, at the High Council of Justice, the Commission on the issues of the higher civil service in the justice system, was formed in accordance with the law [13].

It is important to distinguish, among other things, that the civil service in the system of judicial authorities is different from the civil service of other bodies. These are the peculiarities of holding competitions for appointment to civil servants in courts, bodies and institutions of the justice system, which are determined by the Regulations approved by the High Council of Justice by submission of SJA.

Also, the organizational and financial support of the activity of the judicial authorities within their powers is exercised by SJA of Ukraine, whose officials have the status of civil servants. Taking into account the provisions of article 152 of the Law of Ukraine «On the Judiciary and Status of Judges» [16] the powers of the SJA, in particular, include: representation of the courts in relations with the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine during the preparation of the draft law on the State Budget of Ukraine for the relevant year; provision of proper conditions for the activity of courts, the HQCS of Ukraine, the National School of Judges of Ukraine and bodies of judicial self-government; study of personnel issues of the court apparatus; provision of the necessary conditions for the improvement of the skills of the staff of the court apparatus, the establishment of a system of advanced training; preparation of a budget request; organization of computerization of courts for the conduct of legal proceedings; ensuring the implementation of the electronic court and the Unified State Register of court decisions and the Register of electronic addresses of state authorities, their officials and officers, ensures the functioning of the videoconferencing system for the participation of persons in the court session in the video conferencing mode; control over the activities of the Judicial Protection Service, etc. In addition, Obrusna S. drew attention to the cooperation of the State Judicial Administration of Ukraine or its territorial administration with the relevant court apparatus on a specific issue, such as the decision on the appointment of the head of the court apparatus and his/her deputy [11, p. 60].

Determining the role of the civil service institution in the judicial system will not be complete without the functional purpose of the secretariat of such a government body in the justice system of Ukraine, as the High Qualification Commission of Judges of Ukraine. Organizational support

of the activities of the HQCJ, among other things, includes provision of the qualification assessment of judges, selection and qualification examinations; provision of handling and storage of judicial dossier; collection of quantified data on the positions of judges in courts of general jurisdiction; preparation of the materials regarding selection of candidates for appointment to the post of a judge for the first time, the organization of the competition for the vacant position of a judge; provision of the special testing of candidates for a judge position and verification of information about judges; performance of the processing of applications and documents for election to the position of a judge indefinitely and transfer of judges to another court; organizational support for the transfer of judges without competition in cases of reorganization, liquidation or termination of the court in which the judge holds office; interaction with international organizations and judicial authorities of foreign States, as well as other no less important tasks of the judicial system. The Secretariat also provides legal, analytical, human, documentary, informational, material-technical, financial-economic, economic and other activity of the High Qualification Commission of Judges of Ukraine [18].

Within the framework of the development vector, the Strategy for Sustainable Development «Ukraine-2020» [15] provides for the implementation of the reform of the civil service and the optimization of the system of state bodies; according to the security vector - the implementation of judicial reform. The symbiosis of the two reforms mentioned above contributes to faster achievement of European standards of living. After all, the implementation of justice is impossible without the effective functioning of civil servants of the judiciary.

Therefore, in order to determine the ways of transformation of the civil service institute into the organizational provision of the activities of the judiciary, it is expedient to apply, as management processes, heuristic methods for obtaining expert assessments and generating, analyzing, selecting alternatives and solving the problem, namely:

- an analog method in the form of study of foreign experience of the effective work of the civil service in the system of judicial authorities, aiming to increase their professional level and, as a consequence, obtaining an updated staffing of civil servants in courts and other state bodies;
- game theory for optimal solutions in situations of conflict, that is, in the collision of two parties with different interests; citizens who need services and civil servants in the system of the judiciary who seek to serve the people, to enjoy their work and have a sense of confidence in security for their life and health.

Висновки

The Civil Service Institute plays a prominent role in providing organizational support to the Ukrainian judiciary. After all, since the receiving of the statement of claim by the court and before sending the copies of the court decision to the parties of the proceedings and the passing of the writ of execution to the executor, the court and its visitors are dependent on the work of civil servants of the judicial system. In addition, the work of the civil service of the HQCJ, the HCJ and the SJA affects the promotion of the effective and qualitative

qualification of judges, the formation of the body of judges, ensuring the functioning of the judiciary in general, financial support for the activities of courts, etc. Therefore, the effective functioning of professional civil service is an integral part of the existence and establishment of a fair trial in Ukraine in accordance with European standards. The introduction of transformational measures in the organization of the civil service through the application of heuristic management methods requires the introduction of amendments to the existing regulatory framework on civil service, in particular, in the system of judicial bodies.

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