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FOREIGN EXPERIENCE OF INTERACTION BETWEEN BODIES OF JUDICIAL AUTHORITY AND CIVIL SOCIETY INSTITUTIONS: PROBLEMS OF THEORY AND PRACTICE

Наливайко Л., Олійник В. ЗАРУБІЖНИЙ ДОСВІД ВЗАЄМОДІЇ ОРГАНІВ СУДОВОЇ ВЛАДИ ТА ІНСТИТУТІВ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА: ПРОБЛЕМИ ТЕОРІЇ ТА ПРАКТИКИ.У статті проаналізовано зарубіжний досвід взаємодії органів судової влади та інститутів громадянського суспільства.Підкреслено, що необхідною умовою удосконалення діяльності органів судової влади будь-якої демократичної держави є забезпечення їх діяльності на засадах принципів відкритості, прозорості та гласності. Проблема взаємодії органів судової влади з інститутами громадянського суспільства має багатоаспектний характер. Зроблено висновок, що формування в Україні відкритого суспільства потребує модернізації державної політики відносно комунікації суду та громадськості, поєднуючи національні особливості та позитивний зарубіжний досвід.

Акцентовано, що досвід демократичних держав світу свідчить, що саме взаємодія дозволяє досягти більшої ефективності у багатьох сферах суспільного життя. Проаналізовано міжнародні договори та європейські стандарти у сфері діяльності суду. Акцентовано увагу на значенні рішень Європейського суду з прав людини у сфері забезпечення відкритої діяльності судової влади. Сформульовано пропозиції до вітчизняного законодавства з метою підвищення ефективності взаємодії суду та громадськості. Зазначено, що враховуючи досвід США, свобода обговорення повинна мати якнайширший діапазон з урахуванням обмежень щодо відкритості судового процесу в межах чинного законодавства. Враховуючи те, що журналісти не завжди обізнані із специфічними правилами висвітлення судової проблематики та браку в українських медіа журналістів належної кваліфікації та знань, які потрібні для висвітлення судової тематики доречно, було б розробити не лише Положення про взаємодію судів із засобами масової інформації та журналістами, практика реалізації яких існує в Україні, а й Правила роботи в залах судових засідань фото- і кінозйомки, теле-, відео-, звукозапису та інших електронних медіа й запропоновано їх можливу структуру.

Ключові слова: *громадянське суспільство, органи судової влади, взаємодія суду та громадськості, міжнародні стандарти, Європейський суд з прав людини.*

Formulation of the problem. At the present stage, the priority vector of the Ukrainian state development is the improvement of democratic procedures, which envisages, in particular, the interaction of judicial authorities with civil society institutions, as well as informing the population about the activities of the courts.

Thus, the obstacles that need to be addressed are still on the way to establishing an effective dialogue, which in turn requires the study of the experience of other states, and based on the analysis and rethinking of this experience it is possible to find their own ways of improving the relationship between courts and civil society taking into account national legisla-

tion. This suggests that re-thinking of the essence and content of the judiciary in Ukraine is only at an early stage.

Analysis of the latest publications that initiated the solution to this problem. In publications and scientific works, the issue of interaction between the judiciary and civil society institutions has attracted the attention of such researchers as D. Baronin, M. Vilgushynskyi, L. Vinokurova, V. Gorodovenko, R. Gryniuk, S. Denysiuk, P. Kablak, M. Kobylianskyi, A. Kolodii, I. Kostenko, V. Kravchuk, M. Latsyba, V. Maliarenko, I. Nazarov, S. Praskova, S. Prylutskyi, A. Selivanov, V. Spivak, S. Tymchenko, V. Shapoval, Yu. Shemuchenko, S. Shtogun and others. However, the study of the experience of foreign countries regarding the interaction between judicial authorities and civil society institutions has not been sufficiently reflected in publications and scientific works.

The objective of the article. Thus, the investigation and analysis of the basic conditions and principles of effective and efficient interaction between the judiciary and civil society institutions in foreign countries and their adaptation in Ukraine at the present stage of its development is one of the important tasks.

Basic content. Comprehensive social changes in the era of transition from industrial to information society are characterized, in particular, by the intensification and globalization of information communication and the growth of social significance of information in all spheres of life [1, p. 57]. Access to public information can facilitate an open and transparent discussion of all existing problems through dialogue between government and civil society [2, p. 28]. In the context of this, the issue of ensuring an adequate level of communication between the state and its citizens is extremely important [3, p. 97]. Thus, a prerequisite for improving the activities of public authorities, in particular the judiciary, is to ensure their activity on the principles of openness, transparency and publicity. However, the information secrecy of the judicial authorities violates or impedes the realization of the right of citizens to access to public information regulated by the Constitution of Ukraine, other normative legal acts and international acts ratified by the Verkhovna Rada of Ukraine.

In a state governed by the rule of law, the judiciary must be based on such principles which, in the first place, ensure its independence between the state and man, as this is, first of all, the manifestation and achievement of civil society. Therefore, the study of foreign experience in the interaction of civil society institutes with the judiciary, in particular where the court is not an integral part of the state apparatus and administration, but is an independent and impartial mediator between civil society and the state, is a topical issue in the context of the development of a rule-of-law state [4, p. 241-249].

In accordance with Part 2 of Article 5, Part 1 of Article 38 and Part 4 of Article 124 of the Constitution of Ukraine, the people that constitute the content of the category «civil society» have the right to participate in the implementation of state power, in particular the judicial authorities, in any way with the exception of those expressly prohibited by law. However, the understanding of the role of judicial authorities in democratic countries is different and depends, for example, on their socio-economic conditions of development.

To provide access to court information modern European countries use documents developed by the United Nations, the Council of Europe and others which are based on the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights in its affairs.

It should be noted that in the implementation of the aforementioned international legal acts the decisions of the European Court of Human Rights (hereinafter – the Court) take one of the central places. Thus, for example, the concept of openness and publicity of judicial proceedings is given an expanded description in the judgment of the Court of Human Rights of December 08, 1983 in the case of Pretto and others v. Italy [5, p. 215] the public nature of the proceedings referred to in point 1 of Article 6 protects the plaintiffs from the secrecy of the administration of justice beyond the public control; it serves as one of the ways to lend credibility to both higher and lower courts. By making the administration of justice transparent, it contributes to the achievement of the objectives of point 1 of Article 6, namely the fairness of a trial, the guarantee of which is one of the fundamental principles of any democratic society. In another judgment (Ekbatani v. Sweden of May 26, 1988 [6, p. 123]), the Court expressed even more clarity ... as far as publicity is concerned, all materials of the case must be accessible to the general public.

At the same time, the Court expresses a position stating that the factual circumstances of the case should be considered only in the presence of the parties to the case and other interested

parties. At the same time, from the standpoint of the Court the discussion of the court issues of law is also possible in the absence of the parties to the case, in particular Engel (Engel) and others v. The Netherlands – a judgment of 08 June 1976, Lingens v. Austria – a judgment of July 08, 1986, Bowman v. the United Kingdom – a judgment of February 19, 1998, etc.

From the standpoint of the interaction of courts with the public and mass media, the US experience is interesting because of the legal system of the USA, which consists of 50 separate state legal systems and the federal law system, and is based on precedent. Since the middle of the 20th century the access of television cameras to the courtroom has been limited, largely in response to a significant resonance over the murder trial of Sam Sheppard. In this case, the opinion of the Supreme Court of America reduced to the fact that the main disadvantage of the case was the failure of the judge, who was in the process, to keep the situation in the courtroom under proper control. The judge did not consider carefully the possibility of taking other measures to reduce the volume of media materials, which provoked bias, and to protect the jury from external influences. Moreover, he completely neglected the warnings of the defense counsel and, in fact, allowed the media to lead the process. The judge should have prohibited the officials from making confidential statements in the press as well. The Supreme Court of the United States came to the conclusion that the trial of the accused was not objective, and pointed out the various means by which the judge could have restricted the resonance. In the end, the US Supreme Court ruled that the judge had not fulfilled his duty to protect the defendant from the resonance that the whole community was concerned about, which naturally provoked bias, and had not been able to keep the destructive forces in the courtroom [7, p. 165].

In 1990, the Conference of Judges approved the report of the special committee on broadcasting in the courtroom, which contained a recommendation for a pilot program, in which electronic media would be allowed to cover the progress of civil litigation processes in six district and two appellate courts. The conference also criticized the prohibition contained in the Code of Conduct and adopted a broadcasting policy as set out in the Judicial Policies and Procedures Directives which state: «A judge may grant permission for radio broadcasting, television broadcasting, recording and photographing in the courtroom court and adjoining premises during investment, naturalization and other ceremonial procedures. A judge may grant permission for such actions in the courtroom or adjoining rooms during other court sessions or between such meetings only in the following cases: for the submission of evidence, for fixing the course of the trial, for security purposes, for other purposes of judicial administration, and in accordance with the pilot programs approved by the Conference of Judges of the United States of America» [8; 490, p. 31].

In 1994, the Conference of Judges did not support the recommendations of the committee on expanding the practice of covering the course of civil hearings with the use of filming. Subsequently, the Conference of Judges strongly encouraged District Courts to issue an order reflecting the decision of the Conference on the Prohibition of Photographing and Illumination on Radio and Television of Hearings in US District Courts. In this regard, in order to settle the issue in the district courts they issued a permanent order, instructions and directives on taking photographs, recording the broadcasting of hearings in the courtroom [9]. Thus, one of the areas of interconnection between the judiciary and civil society institutions is to ensure openness of justice, but in practice restrictions on the openness of the judicial process are justified and must be within the limits of the current legislation.

The duty of publishing declarations of judges on property, income, expenses and financial obligations is a means of social control over the integrity of the judiciary, and therefore one of the mechanisms of its legitimation. But, apart from the primary mechanism for such disclosure (publication of the declarations of all judges on the Internet), it is necessary to consider declaration not only of incomes but also of expenses. It is this practice that is used in the United States, Germany and many other countries and is more effective in terms of the purpose of its introduction. Such proposals will not in any way violate the judge's right to privacy because, on the one hand, a person in judicial power must understand the need for self-restraint of certain of his rights, which is conditional on the publicity of his office, and on the other hand, as S. Pashyn correctly pointed out, the judge should consider himself not part of the national elite, which seeks to ensure a high standard of living, but as one who bears the burden of public service of a highly-qualified citizen representative, a protector of their interest to live under the protection of legal safeguards [10, p. 58].

The development of the information society makes actual the electronic version of justice, which contains, firstly, the automation of judicial procedures, and, secondly, the simplifi-

cation of informing interested persons through the Internet, mass media, and others like that. The European Program «Justice Program» and «Right, Equality and Citizenship Program 2014-2020» [11] can be considered as an example of the practical implementation of the regional rules of justice. The general objective of the e-court has been to create a genuinely European area of justice based on mutual trust, as well as to facilitate judicial cooperation in civil and criminal cases, assistance in seminars for judges, prosecutors and other lawyers. According to Article 6 of the Rights, Equality and Citizenship Program the further development and funding of the e-Justice portal is supported. In fact, the introduction of the e-court has become a significant achievement in the development of e-justice [12, p. 223].

At the level of the draft Strategy for European e-Justice 2014-2018, the implementation of the main objectives of e-justice has been detailed: the European e-Justice portal, interaction, legislative aspects, the European legal semantic network, interoperability of registries, networks, cooperation between users of the relevant portals in the system of European e-justice, translation, rights and obligations in the field of e-justice, personnel upgrading, financing, external relations, Multiannual action plan on e-Justice 2014-2018 [13].

The Estonian electronic file system integrates police databases (MIS), prosecutors (ProxIS), courts (KIS), prison services (VangIS) that interact with each other. The established base has a strong force in the following categories: electronic certificate, electronic signature and e-justice services. The formation of the Estonian model of electronic court is similar to the Ukrainian realities. In particular, in 2002-2005 within KOLA court decisions started to be published on the Internet (statistics were also provided). In return, in the years 2006-2013/2014, within the framework of KIS (compatibility – X-ROAD), implementation of the main functions of the document management system was ensured. Henceforth, Estonia continued to develop an electronic court system. Since 2008, payment orders have been processed electronically. In 2013/2014 the system KIS2 (compatibility – E-FILE) – the modern system of document circulation for courts – began. At the same time, the Supreme Court has had a separate system with the first and second instances until 2014 [14, p. 67].

The unique aspect of functioning of the Estonian model of the electronic justice system was the use of an electronic ID-card – an integrated tool when designing electronic services. Thus, there works a web-based public e-File information system that allows parties and their representatives to participate in civil, administrative, criminal proceedings and the process for the consideration and resolution of electronic misconduct cases [14, p. 67-68]. Entering this portal, an Estonian can see all documents delivered to him in any court proceeding. The Public e-File user can determine the e-mail they want to use to receive messages. Each Estonian has an email address @ eesti.ee. The message contains a link to a document and a note (to access the portal, you must log in using the national e-mail message of the person). Processing of payment orders is an entirely electronic implementation; the only channel that can be used to file a case or communicate with a court is Public e-File. Public e-File is also used for other applications, but there are alternative ways available (correspondence, etc.).

Consequently, taking into account foreign experience, it would be appropriate to develop not only the Regulations on the interaction of courts with the media and journalists, but also the rules for work of photography and film, television, video, audio and other electronic media in the courtrooms.

In 2010, a Polish-based Forensic Research Foundation was set up in the Republic of Poland, which initiated a specially-developed methodology for assessing the activity of a judge by ordinary citizens during a trial [15]. A questionnaire consisting of 22 questions was developed and fitted on a sheet of A4 format. Ordinary citizens without legal education were able to provide an answer for most questions. For example, «Was the hearing scheduled? If not, what was the reason for this and how was it reported? Indicate the scheduled and actual start of the meeting. If the meeting started later, please indicate what caused it. Who was late? Did the person apologise for the delinquency of the case?» and so on. The questionnaires were conducted by volunteers, the results of questionnaires became the driving force, to a greater extent, not for the analysis of judicial activity, but for the improvement of the latter.

In Kazakhstan, there is an experience of litigation monitoring. Thus, monitoring was conducted in the following forms: the general, when observers attended any court sessions, and the full one in which observers chose one criminal case from the newly appointed and traced it from the first session to the sentence. Within the framework of full monitoring, observers attended meetings from 53 criminal cases, whereas 332 cases were covered by general monitoring. In total, observers attended trial sessions under the leadership of 122 judges [16].

The monitoring allowed to reveal a number of problems in the implementation of criminal justice in the courts of Kazakhstan. For example, compliance with the rules of adherence to judicial ethics was not always followed; there were recorded cases of illegal restriction of access to observers directly by judges or court personnel; access to observers at open court sessions was sometimes limited; some court sessions were held in places not suited for conducting court trials. Quite often there was a lack of a schedule for dealing with cases, which became a significant barrier for observers. Half of court sessions took place with a delay of more than 15 minutes, which is unacceptable, since the lawyer is, first of all, a representative of the society's elite, a model for an example. And it is no coincidence that a logical question arises: do I want to match this «model»? The answer is obvious ... Somewhere the judge did not explain the defendant's right not to testify against himself; in almost half of the cases the right to an interpreter was violated. The monitoring also revealed other violations of international standards of fair criminal justice [17].

The monitoring of litigation in Kazakhstan is interesting for Ukraine, considering that for its conduct a qualitative questionnaire was developed that can be adapted to the criminal proceedings of Ukraine. Also, in Kazakh monitoring there are special observer meetings at a certain stage of the implementation of the monitoring program, where each observer shares his own experience of monitoring open court sessions. The results of such discussions were amended and supplemented. Kazakh monitoring reports give the reader the opportunity to find out the essence of the problem discovered, even in the absence of special legal education, which is the emergence of an active civic position.

A similar monitoring of court sessions was held in Kyrgyzstan, which mainly concerned cases relating to the protection of electoral rights of citizens and other participants in the electoral process [18].

Summing up the aforementioned, it can be concluded that the problem of cooperation between judicial authorities and civil society institutions has a multifaceted nature. The interaction of these entities on the basis of partnership is necessary for the development of Ukraine as a democratic, social and legal state. The experience of democratic states of the world shows that it is the interaction that allows achieving greater efficiency in many spheres of public life. The formation of an open society in Ukraine requires the modernization of state policy regarding the communication of the court and the public, combining national features and positive foreign experience.

Conclusions. As a result of the conducted research, positive experience of foreign countries in the context of optimizing the effectiveness of interaction between judicial authorities and civil society institutions is analysed, namely:

1. The bodies of the judiciary transmitting the abstract public benefit of laws into the area of specific private interests are close to the people. Publicity of the process is perceived, firstly, as officiality, and secondly, as the ability of the court to equally defend the rights and freedoms of man and citizen – but not solely of the powerful – which must be carefully clarified, weighed and taken into account. Thus, this is the social openness of the judiciary to civil society institutions.

2. In view of the informatization of public and state development in Ukraine, there is a need for a social modernization of the administration of justice. Introduction of information technologies in courts is a way to transparency in the activities of courts, one of the elements of ensuring access to justice, etc. It should be noted that a special law that would regulate exclusively the issue of informatization of the judicial system in Ukraine today does not exist, but separate legal norms are contained, for example, in the Law of Ukraine «On the Judiciary and the Status of Judges» (Part 2, Part 3, Article 11; Part 2 of Article 72, Part 1 of Article 73, point 2 of Part 2 of Article 76, Part 3 of Article 97, Part 4 of Article 100, Part 5 of Article 100, Part 5 of Article 103, point 8 of Article 105, point 8 of Part 1 of/ Article 149), the Law of Ukraine «On the Basic Principles of the Development of the Information Society in Ukraine for 2007-2015» (point 1 of Section I, points 1, 5, 7, 9 of Section III, point 1 of Section IV), etc.

3. Relations between the judiciary and the media require the creation of an effective system of interaction, which in turn can be recognized as one of the priority directions of democratization of modern Ukraine. An analysis of the experience of foreign countries in the sphere of cooperation between judicial authorities and civil society institutions suggests that the development and improvement of relations with the media is important, first of all, for the judicial system itself, as the public receives a large amount of information precisely through the media. Given the US experience, freedom of discussion should have the widest range, taking

into account restrictions on the openness of the court process within the framework of the current legislation. Taking into account that journalists are not always aware of the specific rules of the litigation coverage and that the Ukrainian media lack journalists who would have the proper qualifications and knowledge necessary to cover judicial issues, it would be appropriate to develop not only the Provisions on the interaction between the courts and the media and journalists the practice of which exists in Ukraine, but also the Rules of work of photography and film, television, video, audio and other electronic media in the courtrooms that can be structured as such way: 1. General provisions; 2. The rights and duties of journalists; 3. The rights and duties of a judge-speaker, a spokesperson or other person who carries out the functions of interaction ensuring media relations; 4. Access to court premises; 5. Access to court sessions; 6. Photographic and video shooting in the courtroom; 7. Other issues of fixing information, holding photo-video outside court and in court corridors; 8. Photographing and video recording outside the court session.

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Summary

The article analyses the foreign experience of interaction between judicial authorities and civil society institutions. It is emphasised that the necessary condition for improving the activity of the judicial

authorities of any democratic state is to ensure their activity based on principles of openness, transparency and publicity. The international treaties and European standards in the field of court activity are analysed. The emphasis is placed on the significance of the decisions of the European Court of Human Rights in the field of ensuring the open activity of the judiciary. Proposals to domestic legislation are formulated in order to increase the effectiveness of interaction between the court and the public.

Keywords: *civil society, judicial authorities, court and public interaction, international standards, European Court of Human Rights.*

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ENSURING THE ELECTORAL RIGHTS OF INTERNALLY DISPLACED PERSONS AT LOCAL ELECTIONS: PROBLEMS OF THEORY AND PRACTICE

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Зроблено висновок, що прийняття парламентом України законопроекту № 6240 про внесення змін до деяких законів України (щодо виборчих прав внутрішньо переміщених осіб та інших мобільних всередині країни громадян) з відповідними змінами та доповненнями сприятиме дотриманню конституційних виборчих прав внутрішньо переміщених осіб та інших мобільних груп громадян. Зволікання парламенту із внесенням відповідних змін до чинних нормативно-правових актів стримує процес демократизації. З урахуванням цього, на сучасному етапі практично єдиним шляхом вирішення розглядуваної проблеми є внесення відповідних змін парламентом України до законодавства, й зволікання Верховною Радою стає свідченням про невідповідність міжнародним стандартам у цій сфері та сприяє обмеженню прав громадян.

Ключові слова: *виборче право, внутрішньо переміщені особи, переселенці, мобільні групи, правова держава, міжнародні стандарти.*

Formulation of the problem. Over a four-year period, a large number of citizens (according to the official data of the Ministry of Social Policy as of May 2018 – 1 502 019 people) left their places of permanent residence due to events in the Donbas and Crimea and received the status of internally displaced persons. Unfortunately, some of these people continue to live in difficult social and economic conditions on other territories of Ukraine. This is usually due to the inability to get a job with proper wages and working conditions, lack of own housing and