UDC 351: 342:56

Liliya Olifirenko, Doctor of Public Administration
Chernigiv National Technological University, Chernigov, Ukraine

THE ANALYSIS OF JUDICIAL REFORM PROBLEMS IN UKRAINE

Л.Д. Оліфіренко, д-р. наук з держ. упр.
Чернігівський національний технологічний університет, м. Чернігів, Україна

АНАЛІЗ ПРОБЛЕМ РЕФОРМУВАННЯ СУДОВОЇ СИСТЕМИ УКРАЇНИ

Л.Д. Олифиренко, д-р наук по гос. упр.
Черниговский национальный технологический университет, г. Чернигов, Украина

АНАЛИЗ ПРОБЛЕМ РЕФОРМИРОВАНИЯ СУДОВОЙ СИСТЕМЫ УКРАИНЫ

The article analyzes systemic problems of judicial reform in Ukraine. Recommendations for fundamental reforms are presented, namely: adaptation of Ukrainian legislation to European standards; implementation of the justice system within European values; reform of the legal process institutions; the transition to the international standards of justice. The critical aspects of reforms are identified: the irresponsibility of the judiciary, social and economic risks of confidence loss in the administration, inefficient mechanisms of execution of court decisions, poor management and efficiency of the judicial administration*.*

Keywords: *judicial reform, conceptual and procedural principles of judicial reform.*

Проаналізовані системні проблеми реформування судової системи в Україні. Обґрунтовані рекомендації структурного характеру реформування, а саме: адаптації українського законодавства до європейського, впровадження у судовій системі європейських цінностей, реформування судово-процесуальних інституцій, перехід до міжнародних стандартів судочинства. Критичними аспектами реформування виявлені: безвідповідальність судової влади, соціальні та економічні ризики втрати довіри до судової влади, низька ефективність механізму виконання судових рішень, низька якість та оперативність судового адміністрування.

Ключові слова: *судова реформа, концептуальні та процесуальні засади реформування судової системи.*

Проанализированы системные проблемы реформирования судебной системы в Украине. Обоснованные рекомендации структурного характера реформирования, а именно: адаптации украинского законодательства к европейскому; внедрение в судебной системе европейских ценностей; реформирования судебно-процессуальных институтов; переход к международным стандартам судопроизводства. Критическими аспектами реформирования выявлено: безответственность судебной власти; социальные и экономические риски потери доверия к судебной власти; низкая эффективность механизмов исполнения судебных решений; низкое качество и оперативность судового администрирования.

Ключевые слова: *судебная реформа, концептуальные и процессуальные основы реформирования судебной системы.*
JEL Classification : K 39; K 40; K 41.

Statement of problem. The judiciary is an essential independent part of government of Ukraine, which is caused by the weight of its social role and specific functions. An important task of reforming the judiciary in Ukraine is directing the legal system to ensure the formation of a national court as the independent branch of government that protects the rights and interests of its citizens. Constitution of Ukraine secured all bases for the democratic and independent functioning of the judiciary which can realize the main principle of the constitutional state – the principle of the rule of law.

The activity of judicial authorities is a key element to determine the question whether the state is constitutional. Given the fact that justice is administered exclusively by the courts, an important task of the judiciary is monitoring their activities, diagnosis of problems inherent to this area, finding ways to solve them and improve the functioning of justice in Ukraine [1-3].

Analysis of recent researches and publications. The issue of judicial reform in Ukraine is constantly the subject of discussion and research for scientists and practitioners, including in particular: D. Prytyka V. Tat'kov, J. Romaniuk, I. Koliushko, V. Malyarenko, A. Osetynskiy, N. Kuznetsova [1-5].

Determination of the unsolved parts of the overall problem. One of the components of the judicial reform is changes to the national judiciary system. These changes are intended to ensure adequate legal process due to a delimitation of the jurisdiction of courts, implementation of

effective mechanisms to prevent abuse of procedural rights, observance of the stages of the legal proceedings, expanding and strengthening the role of alternative dispute resolution mechanisms that will reduce the burden on the judicial system. Ultimately - the items left on the agenda are the lack of systematic and consistent understanding of the subsequent implementation and finalization of legal reform.

The objective of the article is determination of the problems of judiciary reform in Ukraine as one of the components of public administration reform; search for efficient ways to solve them; improvement of the judicial system functioning and the development prospects. Based on the defined goals, the objectives of this study is to clarify the legal and regulatory framework to reform the justice system of Ukraine, implement the monitoring of the problems, suggest proposals for improving the functioning of the judiciary and court systems, suggest the prospects for further development of the justice system.

The main material. The system of justice in Ukraine is in a state of constant reform since its independence by today [5]. The strategy of reforming the judiciary and the legal institutions for the 2015-2020 sets the goal of judicial reform as the implementation of the right to a fair case processing by an independent professional and impartial court and providing legal institutions that guarantee and implement the rule of law in Ukraine. These objectives are achieved through the creation of mechanisms for clearing the judiciary from unprofessional, corrupt and politically biased judges; by reforming the existing judicial system and related legal institutions; by improving the legal culture of Ukrainian citizens.

According to the current legislation of Ukraine and the Constitution, the system of courts of general jurisdiction is based on the principles of territoriality, specialization and the chain of command. The system consists of local courts, appellate courts, and the Supreme Court of Ukraine [1]. A new adopted law [1] is aimed at simplifying the judiciary and its de-politicization; implementation of the new principles of judges selection; increasing their independence and responsibility, and increasing of public control and visibility over it.

The goal of judicial reform is to create conditions that ensure the maximum realization of the right to legal protection; provide accessible, efficient, fair justice and the actual enforcement of the rule of law. Therefore, the task of further reform should be elimination of significant barriers and constraints in access to justice; providing legal assistance to all sectors of the population; solving of the problem of the court loading and development of extrajudicial reconciliation of legal conflicts; unification of law enforcement practices; ensuring the independence of judges; improving procedures for the appointment of judges; implementation of public relations activities of the judiciary; preventing the possibility of committing direct or indirect pressure on the court and prevent unreasonable criticism during the administration of justice [1-3].

Speaking about the issue of perception of the court, it should be noted that respect for the court – a culture that is nurtured in the society. The authority of the court can't emerge by itself. Reputation is created by fair decisions, transparency, and independence of the judiciary; by judges observing the legal and ethical standards, and correct information policy that reports the good cases, and not only spreads the harmful information. It is obvious that the level of confidence in the court is affected by variety of factors, including disseminating subjective views on the operation of courts and judges by incontinence politicians, government officials, and the media. It is important to realize that the desire to enter the European community of democratic societies must start with our own actions. All of us, despite the position and role in society must be law-abiding, balanced and prudent in judgment. Currently, we are witnessing the opposite.

Also, in Ukraine the entire state apparatus, including judicial, is characterized by corruption component and only its volume is discussed. However, the restoration of trust is critical today, because the effectiveness of the justice system depends on the trust and respect for the judiciary. The legal issues that must be resolved, related to the reform, include the following [5]:

– public confidence in the judiciary and its authority in matters of morality, honesty, and integrity of the judiciary administration, which plays a pivotal role in a modern democratic society;

– the independence of the judiciary and the judges, which requires strengthening the constitutional guarantee of judicial independence as this is a fundamental principle of justice; as well as removal of parliament from the procedure of formation of legal contingent (election, detention, seizure);

– liability of judges: international standards require clear and specific grounds and procedures of responsibility of judges, since currently they are blurred and vague;

– ensuring uniform jurisprudence which is an implementation of the principle of legal certainty; if the case law is established, equal, understandable and known to the public, the judge loses the opportunity to make decision, contrary to the established jurisprudence, which in turn also reduces corruption;

– providing normalized load of courts because the pressure causes a significant reduction in the quality and efficiency of dispute resolution;

– the problem of efficient and timely implementation of adopted judicial decisions - a factor that has a substantial impact on the level of trust to the justice system; but which is not dependent of the operation of courts;

– the problem of access to Ukrainian courts: the physical, financial and procedural;

– staffing: training, continuous improvement, qualification improvement are necessary; this will facilitate the imposition of reasonable, legitimate, quality solutions and promote confidence in the courts and judges;

– financial support for the judicial system, the lack of which is a constant for many years, the courts fulfillment of the financial needs is low (no more than 50% of requirements);

– specialization: the idea of elimination of commercial courts, which over the years became not just a way to solve disputes and problems, but practically became a barometer of the economy problems that required rapid resolution; These institutions have the best performance in the system, the fastest adjudicate disputes, have the recommendations summarizing the results of the practice, the greatest uniformity in the interpretation of regulations, provide the most revenues to the state budget from payment of court fees;

– the involvement of legal judicial community to legislative work, the judicial authorities shall act as experts of relevant initiatives, their views need to be taken into account, as it happens in the worldwide judicial activity.

The analysis of the issues inherent in the judicial system, shows the need for its reform, as the system has not yet gained sufficient credibility in the society, and is not considered to be independent and impartial branch of government. Thus, the purpose of judicial reform should be recognized as the need to create conditions that ensure the maximum realization of the right to legal protection, provide accessible, practical, fair justice and the actual enforcement of the rule of law [6-9]. Therefore, the task of further reform should eliminate the primary obstacles to the access to justice, providing legal assistance in all sectors of the population; solving the problem of the courts load; and development of extrajudicial reconciliation of legal conflicts; unification of law enforcement practices; ensuring the independence of judges; improving procedures for the appointment of judges, raising public awareness of the judiciary, the inadmissibility of committing direct or indirect impact on the judges and unjustified criticism of the administration of justice [8; 9].

Critical conditions for successful promotion of the reform process should be recognized as the sequence of transformations; establishing effective cooperation with scientific institutions; estimation of proposals and changes only with sufficient scientific and financial background; the formation of the society idea of the inadmissibility of spreading insulting, degrading statements about the activities of the judiciary; increased compliance requirements of the moral and personal

qualities for professional members of the judicial community, understanding of the specifics and limitations related to their chosen profession [10].

The means of efficient and high-quality organization of the judiciary may be: the improvement of the work of courts, with improved control of its efficiency (administrative court); introduction of modern information technology to facilitate the work of judges, court staff and members of the judicial process; development of communication strategy and its implementation to inform the public about the courts and strengthen public confidence in the court (obtaining reliable information directly from courts, not distorted information from the media); evaluation of the judiciary (questionnaires, surveys). All of the above will contribute to the creation of appropriate conditions for the realization of citizens and legal entities' rights and freedoms [11].

The strategic objectives of the justice system should be: strengthening the independence and autonomy of the courts; improvement of the financial conditions; honesty and morality in the administration of justice; professionalism, the process of continuous improvement; access to justice; innovation; improving court procedures; public confidence [12; 13].

Conclusions and suggestions. In conclusion, it should again be emphasized that the problematic issues of the judiciary system must be addressed immediately to prevent the destruction of the state judiciary and its weakening as a separate branch of the government. If there are problems regarding the incorrect or criminal behavior of the court, it probably means that the other state institutions need reform. It is impossible to restore confidence in the judicial system in the absence of good faith in public institutions and other branches of government. A particular aspect of these processes is that the rapid administrative-required reform of the judicial system comes with an urgent need to complete the legal reform because prolonged exposure of the judiciary in a state of transformation does not contribute to the quality of justice. However, the change must be balanced, and needs to consider the legal traditions and legal culture of the worldwide community, not forgetting that the reform of the judicial system is a complex, complicated process that reflects the level of institutionalization and social development, and aims to effectively protect the human rights.

Список використаних джерел

1. *Про судоустрій* і статус суддів [Електронний ресурс]: Закон України №1402-VIII від 2 червня 2016 р.– Режим доступу : // http://zakon3.rada.gov.ua/laws/show/1402-19.

2. *Коліушко І.,* Куйбіда Р. Пріоритети судової реформи на сучасному етапі / І. Коліушко, Р. Куйбіда // Право України. – 2010. – № 5. – С. 55-63.

3. *Конституція* України : чинне законодавство станом на 3 берез. 2014 р. : [Офіц. текст]. – К. : Паливода А. В., 2014. – 64 с. (Закони України).

4. *Притика Д. М.* Окремі думки з приводу чергової судової реформи / Д. М. Притика // Вісник господарського судочинства. – 2014. – № 6. – С. 69-73.

5. *Оліфіренко Л. Д.* Гурська К.В. Проблемний моніторинг реформування судової системи України / Л.Д. Оліфіренко, К.В. Гурська // Ефективність державного управління : зб. наук. пр. Львівського регіонального інституту державного управління НАДУ Президентові України. – Вип. 45. – Львів : ЛРІДУ НАДУ, 2015. – С. 55-62.

6. *Судова* реформа в Україні: поточні результати та найближчі перспективи. Інформаційно-аналітичні матеріали до Фахової дискусії на тему: «Судова реформа 2010 р.: чи наближає вона правосуддя в Україні до європейських норм і стандартів?» 4 квітня 2013р. [Електронний ресурс]. – Режим доступу : http://www.razumkov.org.ua/upload/Sudova_reforma_2013.pdfhttp://www.razumkov.org.ua/upload/Sudova_reforma_2013.pdf

7. *Реформування* судової влади в Україні (інтерв'ю Голови Верховного Суду України Ярослава Романюка – головному редакторові "Право України" О. Святоцькому) // Право України. – 2014. – № 11. – С. 14-73.

8. *Рекомендації* учасників III Міжнародного судово-правового форуму «Судова реформа в Україні: європейський вектор» // Юридическая практика № 13 (901), 31 марта 2015 г. – С. 31.

9. *Реформування* судової системи: думки суддів // Вісник Асоціації правників України. – 10 (106) жовтень 2014р. – С. 7.

10. *Утвердження* європейської моделі судочинства і верховенства права – пріоритети судової реформи та відновлення суспільної довіри до судів в Україні: всеукраїнський форум учених-правознавців та суддів (інтерв'ю учасників форуму – журналу "Право України") // Право України. – 2014. – № 11. – С. 74-135.

11. *Круглий* стіл "Судова реформа в Україні – стан і перспективи: забезпечення належного доступу до правосуддя, ефективність судового захисту, підвищення авторитету судової влади та довіри громадян" // Вісник господарського судочинства. – 2014. – № 6. – С. 56-62.

12. *Стратегічний* план розвитку судової влади України на 2013-2015 рр., затверджений рішенням Ради суддів України від 21.12.2012 р. № 83 [Електронний ресурс]. – Режим доступу : http://court.gov.ua.

13. *Стратегія* розвитку судової системи в Україні на 2015–2020 роки [Електронний ресурс]. – Режим доступу : http://court.gov.ua.

References

1. Pro sudoustrii i status suddiv [Elektronnyi resurs]: Zakon Ukrainy №1402-VIII vid 2 chervnia 2016 r.– Rezhym dostupu : // http://zakon3.rada.gov.ua/laws/show/1402-19.

2. Koliushko I., Kuibida R. Priorytety sudovoi reformy na suchasnomu etapi / I. Koliushko, R. Kuibida // Pravo Ukrainy. – 2010. – № 5. – S. 55-63.

3. Konstytutsiia Ukrainy : chynne zakonodavstvo stanom na 3 berez. 2014 r. : [Ofits. tekst]. – K. : Palyvoda A. V., 2014. – 64 s. (Zakony Ukrainy).

4. Prytyka D. M. Okremi dumky z pryvodu cherhovoi sudovoi reformy / D. M. Prytyka // Visnyk hospodarskoho sudochynstva. – 2014. – № 6. – S. 69-73.

5. Olifirenko L. D. Hurska K.V. Problemnyi monitorynh reformuvannia sudovoi systemy Ukrainy / L.D. Olifirenko, K.V. Hurska // Efektyvnist derzhavnoho upravlinnia : zb. nauk. pr. Lvivskoho rehionalnoho instytutu derzhavnoho upravlinnia NADU Prezydentovi Ukrainy. – Vyp. 45. – Lviv : LRIDU NADU, 2015. – S. 55-62.

6. Sudova reforma v Ukraini: potochni rezultaty ta naiblyzhchi perspektyvy. Informatsiino-analitychni materialy do Fakhovoi dyskusii na temu: «Sudova reforma 2010 r.: chy nablyzhaie vona pravosuddia v Ukraini do yevropeiskykh norm i standartiv?» 4 kvitnia 2013r. [Elektronnyi resurs]. – Rezhym dostupu : http://www.razumkov.org.ua/upload/Sudova_reforma_2013.pdfhttp://www.razumkov.org.ua/upload/Sudova_reforma_2013.pdf

7. Reformuvannia sudovoi vlady v Ukraini (interviu Holovy Verkhovnoho Sudu Ukrainy Yaroslava Romaniuka – holovnomu redaktorovi "Pravo Ukrainy" O. Sviatotskomu) // Pravo Ukrainy. – 2014. – № 11. – S. 14-73.

8. Rekomendatsii uchasnykiv III Mizhnarodnoho sudovo-pravovoho forumu «Sudova reforma v Ukraini: yevropeiskyi vektor» // Yurydycheskaia praktyka № 13 (901), 31 marta 2015 h. – S. 31.

9. Reformuvannia sudovoi systemy: dumky suddiv // Visnyk Asotsiatsii pravnykiv Ukrainy. – 10 (106) zhovten 2014r. – S. 7.

10. Utverdzhennia yevropeiskoi modeli sudochynstva i verkhovenstva prava – priorytety sudovoi reformy ta vidnovlennia suspilnoi doviry do sudiv v Ukraini: vseukrainskyi forum uchenykh-pravoznavtsiv ta suddiv (interviu uchasnykiv forumu – zhurnalu "Pravo Ukrainy") // Pravo Ukrainy. – 2014. – № 11. – S. 74-135.

11. Kruhlyi stil "Sudova reforma v Ukraini – stan i perspektyvy: zabezpechennia nalezhnoho dostupu do pravosuddia, efektyvnist sudovoho zakhystu, pidvyshchennia avtorytetu sudovoi vlady ta doviry hromadian" // Visnyk hospodarskoho sudochynstva. – 2014. – № 6. – S. 56-62.

12. Stratehichnyi plan rozvytku sudovoi vlady Ukrainy na 2013-2015 rr., zatverdzhenyi rishenniam Rady suddiv Ukrainy vid 21.12.2012 r. № 83 [Elektronnyi resurs]. – Rezhym dostupu : http://court.gov.ua.

13. Stratehiia rozvytku sudovoi systemy v Ukraini na 2015–2020 roky [Elektronnyi resurs]. – Rezhym dostupu : http://court.gov.ua.