UDC: 347. 9(477)

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DOI https://doi.org/10.31618/vadnd.v1i13.145

SECOND STAGE OF JUDICIARY REFORM IN UKRAINE

Abstract. The paper shows changes in the judiciary, in connection with the liquidation and creation of local courts in Ukraine. The necessity of creating more convenient access to the cases through the Internet is described, so that they will be solved more quickly, and the burden on the court specialists will be reduced. The positive changes and changes were analyzed, with the beginning of the second stage of judicial reform in 2018. The urgency of creating a separate electronic cabinet, for each case, where the court and participants in the trial process will be able to review all documents at any time, is substantiated. This minimizes the probability of delaying the cases when the parties challenge all decisions of the courts without exception.

It has been determined that judicial reform involves the need for access to cases through the Internet. In the same way, different documents must be translated to higher authorities. Due to electronic circulation, they will be solved more quickly, the burden on the court experts will be reduced, and public money will be saved. In order for this innovation to work in full, amendments will be made to the legislation.

It is noted that an important step forward: a court session can be held in a video conference. For example, the lawyer, from his e-office, can represent the interests of the company: send documents, get video communications during meetings. It is substantiated that a separate electronic cabinet should be created for each case, where the court and trial participants will be able to review all documents at any time. Of course, to use this technology, you need to register in the system email and digital signature. This minimizes the probability of delaying cases when the parties challenge all, without exception, court decisions. Now the electronic review will be not only possible, but also mandatory. If, within five days, the court will not be able to provide electronic proceedings, documents will be translated into paper form. In order for these provisions to work, the State Judicial Administration should publish an instruction on the website of the Verkhovna Rada, solve the issue of setting up electronic cabinets, registering electronic addresses and video fixing.

Keywords: judicial system, judicial reform, reorganization of local courts, increase of remuneration of employees, reformatting of the Supreme Court, electronic courts, review of sentences, costs for lawsuits, procedural sabotage.

ДРУГИЙ ЕТАП СУДОВОЇ РЕФОРМИ В УКРАЇНІ

Анотація. Показано зміни в судовій системі у зв'язку з ліквідацією та створенням місцевих судів в Україні. Схарактеризовано необхідність у формуванні зручнішого доступу до справ через Інтернет, завдяки чому вони вирішуватимуться скоріше, а навантаження на спеціалістів суду зменшиться. Проаналізовано позитивні зрушення та зміни з початком другого етапу судової реформи у 2018 р. Обґрунтовано актуальність створення окремого електронного кабінету, для кожної справи, де суд і учасники судового процесу зможуть, у будь-який момент, переглянути усі документи. Це мінімізує ймовірність затягування розгляду справ, коли сторони оскаржують усі без винятку рішення судів.

Визначено, що судова реформа передбачає необхідність доступу до справ через Інтернет. Таким самим шляхом різні документи мають переводитися до вищих інстанцій. Завдяки електронному обігу вони вирішуватимуться скоріше, навантаження на спеціалістів суду зменшиться, економитимуться державні кошти. Аби це нововведення запрацювало в повному обсязі, ще прийматимуться поправки до законодавства.

Відзначено, що важливий крок уперед: судове засідання можна проводити в режимі відеоконференції. Наприклад, адвокат зі свого електронного кабінету може представляти інтереси підприємства: надіслати документи,

вийти на відеозв'язок під час засідань. Обґрунтовано, що має бути створено окремий електронний кабінет для кожної справи, де суд і учасники судового процесу зможуть, у будь-який момент, переглянути всі документи. Зрозуміло, щоб скористатися цією технологією, потрібно зареєструвати в системі електронну адресу і цифровий підпис. Це мінімізує ймовірність затягування розгляду справ, коли сторони оскаржують усі, без винятку, рішення судів. Тепер електронний розгляд буде не тільки можливим, але й обов'язковим. У разі якщо, протягом п'яти днів, суд не зможе забезпечити електронне провадження, документи переводять у паперову форму. Щоб ці положення запрацювали, Державна судова адміністрація повинна опублікувати на сайті Верховної Ради України інструкцію, вирішити питання створення електронних кабінетів, реєстрації електронних адрес і проведення відеофіксації.

Ключові слова: судова система, судова реформа, реорганізація місцевих судів, підвищення оплати праці працівникам, переформатування складу Верховного Суду, електронні суди, перегляд вироків, витрати на судові позови, процесуальні диверсії.

ВТОРОЙ ЭТАП СУДЕБНОЙ РЕФОРМЫ В УКРАИНЕ

Аннотация. Показаны изменения в судебной системе в связи с ликвидацией и созданием местных судов в Украине. Охарактеризована необходимость формирования удобного доступа к делам через Интернет, благодаря чему они будут решаться быстрее, а нагрузка на специалистов суда уменьшится. Проанализированы положительные сдвиги и изменения с началом второго этапа судебной реформы в 2018 г. Обоснована актуальность создания отдельного электронного кабинета, для каждого дела, где суд и участники судебного процесса смогут, в любой момент, пересмотреть все документы. Это минимизирует вероятность затягивания рассмотрения дел, когда стороны оспаривают все без исключения решения судов.

Определено, что судебная реформа предусматривает необходимость доступа к делам через Интернет. Таким же путем различные документы должны переводиться в вышестоящие инстанции. Благодаря электронному обращению они будут решаться скорее, нагрузка на специалистов суда уменьшится, экономятся государственные средства. Чтобы это нововведение заработало в полном объеме, еще будут приниматься поправки в законодательство.

Отмечено, что важный шаг вперед: судебное заседание можно проводить в режиме видеоконференции. Например, адвокат со своего электронного кабинета может представлять интересы предприятия: прислать документы, выйти на видеосвязь во время заседаний. Обосновано, что должен быть создан отдельный электронный кабинет для каждого дела, где суд и участники судебного процесса смогут, в любой момент, просмотреть все документы. Разумеется, чтобы воспользоваться этой технологией, нужно зарегистрировать в системе электронной почты и цифровой подписи. Это минимизирует вероятность затягивания рассмотрения дел, когда стороны оспаривают все без

исключения решения судов. Теперь электронное рассмотрение будет не только возможным, но и обязательным. В случае если в течение пяти дней, суд не сможет обеспечить электронное производство, документы переводят в бумажную форму. Чтобы эти положения заработали, Государственная судебная администрация должна опубликовать на сайте Верховной Рады инструкцию, решить вопрос создания электронных кабинетов, регистрации электронных адресов и проведение видеофиксации.

Ключевые слова: судебная система, судебная реформа, реорганизация местных судов, повышение оплаты труда работникам, переформатирование состава Верховного Суда, электронные суды, пересмотр приговоров, расходы на судебные иски, процессуальные диверсии.

Challenge problem. The revolution of dignity has become a powerful catalyst for the introduction of priority emergency measures that would ensure the necessary improvements and changes in the functioning of judiciary and law enforcement agencies of our state. With the aim of setting priorities and streamlining of this process by the presidential decree of Ukraine from may 20, 2015, the Strategy of reforming the judicial system, legal proceedings and related legal institutions for 2015–2020 was approved [1]. The strategy included the implementation of the reform in two stages. The first is to update the legislation aimed at restoring confidence in the judiciary and related legal institutions, and the second — on the system changes to the Constitution of Ukraine and the complex construction of institutional capacities of relevant legal institutions.

Original run of changes in the judicial system can be considered the amendments to the "Justice" of the Constitution in June 2016 and the adoption of the Law of Ukraine "On judicial system and status of judges" [2] and "On the High Council of justice" [3]. The act provided for changes not only in the judiciary but also radically changed the approaches to the appointment of judges. Final and transitional provisions of the law have become a road map of further changes in the judicial system, implementation of which occurred during 2017.

Analysis of recent researches and publications. The adoption by the President of Ukraine in December 2017 a series of Decrees gave at the beginning of 2018, the start of the second stage of judicial reform, which resulted in a reduction of courts and judges, improved their financial situation, has introduced a remote procedure, has strengthened the responsibility of lawyers and applicants, etc. Because since the start it took only a few months, there are no deep publications of known lawyers on this subject.

The purpose of this article is to describe the Decrees of the President about dissolution and creation of local courts in Ukraine, to analyze the main directions of the second stage of the judicial reform in Ukraine.

Presentation of the basic material. 29 December 2017, the president Petro

Poroshenko, in the presence of the Deputy Head of the presidential administration of Ukraine Oleksiy Filatov and the Chairman of the High Council of justice Igor Benedisuk signed Decrees on the elimination and creation of local courts in Ukraine and on the reorganization of the local courts, and urged legal scholars and lawyers to actively participate in competitions for posts as judges. "In fact, this is the second phase of judicial reform. The first stage is completed, as I promised, the formation of a new Supreme Court, which was created through an unprecedented transparent competition, thanks to the great work of the High qualification Commission of judges High Council of justice and with the active participation of the public", the President said.

"Today is the second stage, which aims at two very distinct positions: we need to bring the courts and justice to the people. We could not have districts with no courts and courts without judges", — said Petro Poroshenko. The head of state stressed that there is a big problem, which occurs in humans — "find the truth and protect their rights". He expressed the hope that those Decrees, which came to him for signature, give the answer to these questions [4].

29 December 2017 the President of Ukraine signed a decree on the reorganization of the local courts [5–11]. In the tests of these decrees is determined that they are accepted in accordance with subparagraph 6 of paragraph 16-1 of section XV "Transitional provisions" of the Constitution, part three of article 19, article 21, paragraph 40 of section XII "Final and transitional provisions" law of Ukraine "On judicial system and status of judges". The paragraph 6 of the paragraph 16-1 of the section XV "Transitional provisions" of the Constitution of Ukraine established that the implementation of the new administrative-territorial structure of Ukraine according to the amendments to the Constitution of Ukraine concerning decentralization of power, but not longer than until 31 December 2017, the establishment, reorganization and liquidation of courts is vested by the President of Ukraine on the basis and in the manner established by law. According to the transitional provisions of the Constitution of Ukraine, these powers belong to the Parliament from 1 January 2018.

The courts of General jurisdiction, as well as economic, appeal, administrative appeal and appeal economic courts are fallen within the scope of the Decrees of the President.

Liquidation of courts of General jurisdiction. According to the State judicial administration, the country is now operating by 663 courts of General jurisdiction. And now there will be 280, and they will be called district courts. In Kiev now, only 6 district courts from 10 will operate: The first district court of Kiev The second district court of Kiev The third district court of Kiev also. The reorganization through consolidation. For example, the courts of Desnyanskiy and the Dneprovskiy districts unite in the First district court of Kiev.

Liquidation of the economic courts. As in the case of courts of general jurisdiction, all economic courts will now have the prefix "district". But their number remains the same — 27 district economic courts.

Liquidation of the appeal courts. All 27 regional courts of appeal, including the courts of appeal of Kiev and Sevastopol will be liquidated, and instead of it, the appeal courts in appellate districts will be created. But now it will be 26, because the court of appeal of Kiev region and Kiev unite together in one court of appeal of Kiev in the appellate district.

Administrative courts of appeal. It will remain 8 administrative courts of appeal instead of 9. They will be numbered from 1 to 8. For example, the third administrative court of appeal in the appellate district will include the Dnepropetrovsk, Zaporozhye and Kirovograd regions.

Economic courts of appeal. It will remain 7 economic courts of appeal instead of 8. But in this case will not be binding either to the territorial jurisdiction of the region, nor the number, nor the name. Appellate economic courts will be called on the principle of the cardinal points. For example, there will be the southwest economic court of appeal in the appellate district, which will include the Vinnytsia, Volyn, Zhytomyr, Rivne and Khmelnytsky regions.

Rise of wages. According to the law a large number of courts will cease to exist. Instead of them, the new posts that will be given to those professionals who pass certification and will be selected on a competitive basis will be created. The reorganization of institutions provides not only for evaluation of the qualification, but also a significant increase wages for their employees. In the local body, the wage of judge will be equal to 30 minimum income, in the high court is 50, in the Supreme court — 75.

In addition, these professionals will receive raises. Such a raising of wages will be implement on the step by step manner. The process started in 2017 and will continue in the future. As well as accreditation. The budget of the Supreme body, in which only two hundred experts will work, will be one billion hryvnias per year.

Experience of specialist in the judge position, who will confirm qualification is not required. The exception is only for those that will deal with appeals cases. Candidate may be a person who graduated from higher educational institutions of law and worked for 5 years in the profession. Age of the candidate has limitations and begins with 30 and ends with 65 years. But now the judges, who are elected by competition, will not have any probation period.

Supreme court. Earlier we had four cassation instance, which had existed separately. Now there is a single Supreme Court with separate chambers. It is under the scrutiny of professionals and civil society.

The Supreme Court was significantly reformatted. First of all, only 60 % of the judges of the Supreme Court had previously held positions. That is 40 % — a new person in judicial system, and this is optimistic. Second, judges became less. If in one only Supreme economic court worked 70 people, even more in the higher specialized courts and the Supreme administrative court, now the membership of each chamber — 30 people. In the near future promise to get about 80 person, in other words, there will be about 50 judges in each chamber, which is significantly less than it was.

New Supreme court should consist of not only specialists of this profile, it is allowed for scientists and lawyers who possess the necessary category to apply for posts. Verification of candidates included in the competence of the board of integrity, which was organized by renowned public associations. Its findings are considered by the members of Higher qualification commission.

The law on judicial reform in 2018 pinned great hopes, because the Supreme authority should ensure decent performance standards throughout the system, using the appeal authority, not only to replace existing and to abolish the courts that specialize in certain industries. Then decisions will be made sooner, because they will not need to attend all four instances, which existed prior to the start of the reform, which is very important for society.

If only the Supreme body did not handle cases which were previously reported in the three highest courts, and began to work with a new appellate cases, the planned adoption of amendments to the law.

According to the amendments of the Constitution, there will be assessment of the judges. It foresees verification of qualifications, ethics and integrity. Not compliance of one of these criteria is grounds to dismiss such a specialist.

The number of professionals who hold such positions, is large, so the process will take years. In 2017 and 2018 will evaluate only those employees who have been appointed on a 5-year period, will be tested in court, doing appellate cases. These professionals must prove that the property in their ownership, was obtain by legitimate means. The results of the procedure should be available to the public.

Judicial reform in 2018 in Ukraine aims to oblige the courts to apply not only to the Declaration about personal income, but to indicate the conditions of the family members.

E-courts. Now, it is possible to pay different fees online, the questioner received a letter and copies of the decisions not by regular mail, which is very inconvenient, but on e-mail, by the help of SMS messages, a video conference from the boardroom is conducted.

However, judicial reform involves the need for access to cases via the Internet. In the same way, various documents must be transmitted to the supreme body. Thanks to the electronic treatment they will be resolved quickly, the load on the experts of the court will decrease, the public funds will be saved. To make this innovation earned in full, it is needed to make amendments to the legislation.

An important step forward: the hearing may be held in the video conference. For example, the lawyer from your electronic account, can represent the interests of enterprises: send the documents, come on the video conferencing during meetings.

A separate electronic cabinet for each case, where the court and the participants in the trial will be able at any time to view all documents should be created. Of course, to use this technology, it is needed to register the e-mail and the digital signature in the system.

This minimizes the chance of delaying consideration of cases, where the parties are contesting without exception, all the decisions of the courts.

Now, e-consideration is not only possible, but mandatory. But if within five days the court will not be able to provide electronic implementation, documents are transferred in paper form. In order these provisions have earned, the State court administration shall post a manual on the website of the Verkhovna Rada, to solve questions of creation of electronic offices, check e-mail addresses and conducting video surveillance.

Revision of sentences. According to lawyers, in Ukraine there are dozens, if not hundreds of people who are deprived of freedom for crimes they did not commit. The courts made decisions based on improper evidence or confessions were obtained under torture. The acquittals are not submitted almost.

The contents of the judicial reform in Ukraine of 2018 year still be interpreted in more detail. But now there is a need to introduce a new mechanism to review the cases on the persons who received a sentence for a long time, despite the fact that some are no longer in this world. They did not wait for justice, receiving an acquittal.

The costs of lawsuits will grow. At the level of first instance, in principle, nothing will change. For filing a statement of claim of property character, the legal entity, as before, will pay the court fee of 1,5 % of the amount, but not less than 1762 hryvnias and no more than 616 700 hryvnias. (previously, the upper threshold did not exist); private person — 1 % of the size of the claim but not less than 704,80 hryvnias and not more than 8810 hryvnias.

The appeal and cassation will be more expensive. The earlier for appeal we had to pay 110 % of the amount of court fees in first instance, now is 150 %; for cassation was 120 %, become 200 %. That is, the applicant need to think twice, to go to court or not. On the one hand, this is good, because there will be no general appeal, but it's bad because of difficult access to justice. There is one positive moment: if the dispute will be resolved peacefully, a half fee can be returned to the applicant.

Reimbursement of costs, now is not necessarily the responsibility of the losing party. If there were cases of delay in the proceedings, obstruction of justice, the court is entitled to divide the duty, and impose it, in particular, on the side that won. This will encourage the parties to the settlement agreement.

Only the lawyer can represent the applicant before the court. Previously, anyone could represent the person in court, now — only a specialist with the status of lawyer. And from 2020 this rule will affect state agencies. In the cases provided by law, this assistance is provided free of charge. Everyone is free to choose the defender of its own rights"). However, both then and now, the man has a right to represent yourself in court itself.

The introduction of monopoly of advocate will lead to the fact that lawyers in large quantities will go to obtain the lawyer's testimony. And that's fine. For example, in Germany there are 150 thousand lawyers. But we only have about 30 thousand.

A category of cases where there is no need in license of lawyer — the labor and the so-called minor disputes, when the amount of the claim does not exceed 10 living wages. Because of this,

all qualified lawyers can find place in the new reformed system.

The procedural diversion will be fined. The concept of "abuse of right" is entered into circulation. Earlier, to delay the case, a party to a dispute may submit baseless petitions for disqualification and appeals (even if they are not feeding on these or other definitions), and the court was obliged to refer the case to the court of appeals. The month has passed. Then there was the court of cassation — another month has passed. And such actions could be repeated several times.

Now, if the court will interpret the petition as an abuse of rights, it is entitled to leave it without consideration. For such procedural diversions it is possible to prosecute and impose penalties. Thanks to this innovation on some of the hearings, the terms of consideration may be reduced by two to three years.

Introduce the concept of "exemplary cases". Another important innovation — exemplary or typical cases. Now during the appearance of a series of such cases, one of them will be considered by the Supreme Court. When it makes a decision, the Grand chamber will announce the case as exemplary, and on its basis will instantly make a decision in all other similar cases.

If decisions will be well written by the Supreme Court and will become mandatory to use, this is improve the entire judicial system. But I will make a reservation: it is important that cases which require full consideration will not subsequently fall under "exemplary cases" [12, 13].

Conclusions. Adopted decrees by the President of Ukraine on 29 December 2017 on the elimination and creation of local courts in Ukraine and on the reorganization of local courts have launched a second phase of judicial reform in Ukraine. The positive shifts and changes in the organization of proceedings, which began in 2018 was analyzed.

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