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IMPARTIAL COURT WITHIN THE CONTEXT OF INTERNATIONAL STANDARDS

The article is devoted to the topical issues, because judicial reform in Ukraine requires critical reflection of current legislation which regulates the judicial system and legal proceedings, in order to improve it and bring it in line with international standards of judicial power. Impartiality of the court according to international standards, which found a reflection in numerous international legal acts is studied by the author. The article emphasizes the importance of impartiality for the democratic organization and functioning of national courts. Attention is paid to the need for the implementation of international standards in national law and judicial practice in the conditions of judicial system reforming.

Keywords: human rights, judicial process, judicial power, impartiality of court, neutrality of court, international standard, implementation of international legal standards.

Within the conditions of Ukraine's modern development which main trend is to streamline the Ukrainian legal system to the European and world standards, the issue has become relevant as to implementation of the international standards into the national legislation and the activities of public authorities, judicial authorities, local authorities and their officials. The Ukraine's European integration plans attach conditions for the need to revise its legal policy in the light of ensuring the principles of a legal and democratic state. The European vector of the Ukraine's foreign policy orientation determines the need to accomplish a range of global tasks, among those one can distinguish: establishment and implementation of the rule of law principles, ensuring inviolability of fundamental rights and freedoms, that in return lead to the need for radical enhancement of the role and importance of the courts in protection of human rights and freedoms as well as development and improvement of

international cooperation in the area of ensuring the right to a fair and impartial trial.

Judicial and legal reform in Ukraine requires a critical re-evaluation of the current legislation that regulates judiciary and judicial procedures with a view to improve and to bring them in line with the international standards of judicial power.

As stated in the Decree of the President of Ukraine «On Strategy for Sustainable Development Ukraine 2020», the objective of judicial reform is restructuring of judiciary, judicial procedures and related legal institutions to implement in practice the principles of the rule of law and to provide everyone with the right to a fair trial by an independent and impartial court. The reform should ensure functioning of the judicial power that meets public expectations related to an independent and fair trial as well as the European system of values and human rights protection standards [1].

At the same time, it should be noted that the main line of the State activity is to ensure protection of human rights and freedoms. In this State the court resolves conflicts in all areas of social relations when executing justice on the principles of legality, fairness and impartiality. Thus, establishment of a judicial branch of the government that could correspond to the letter of law is an important task which is faced by any state. In this respect, independent and impartial justice executed by professional and independent judges is a prerequisite for existence of a democratic society.

One of the lines of the judicial system reform in the Ukrainian Judiciary Development Strategy 2015–2020 highlights the provisions, on which the work was focused, i.e. ensuring independence, fairness and impartiality of the courts [2].

In light of this, definition of such international standards as impartiality of the courts, research of their role and place within the judicial system of Ukraine becomes relevant.

The problem of international standards of judicial power, their introduction and implementation in the national legislation is not unique. Famous scholars have been studying this issue for many years in different areas of law. It should be noted that scholars paid their special attention to research and implementation of international standards in the area of human rights and in the activities of courts.

The issue related to definition of the international legal standards of judiciary was studied by such scholars as V. Brintseva, D. Holosnichenko, V. Horodovenko, Y. Groshovy, S. Holubka,

M. Koziubra, I. Marochkina, L. Moskvich, I. Nazarov, O. Ovcharenko, S. Serdiuk, V. Smarodinsky, etc.

These scholars' research is relevant both for theory and practice. Most of the authors indicated above focus on the regulatory aspect of the issue related to independence, impartiality, legality and fairness in the course of judicial proceedings, highlighting deficiencies in legal regulation of these principles of judicial power and safeguards of their ensuring. At the same time, this has led to limitation and incompleteness of theoretical development of the international standards of judiciary and their implementation into the national legislation and judicial practice. The issues related to definition of impartiality of judges, its role and place in operation of the courts, as well as relation of impartiality to the other standards in the context of international legal acts remain insufficiently developed. As of today, there is no comprehensive approach to this issue in theory of state and law.

When reforming the judicial branch in our country, the international standards for administration of justice, public demands, as well as the existing best quality models of judicial power organization that proved their effectiveness and efficiency should be taken into consideration.

The purpose of our article is to summarize the global experience as to establishment of the standards for judicial branch functioning, study of the international standards of impartiality of the courts aimed at development of a theoretical basis for their implementation into the domestic judicial practice, reform of the national judiciary system and further development of the system to ensure protection of human rights in Ukraine.

Regardless of overall importance of the international standards issue, as well as declaration of their observance and application within the national legislation, it should be stated that the «international standards» concept is not developed sufficiently either in the area of judicial branch or in other branches of legal sciences.

Thus, in the scientific literature, there are different viewpoints regarding international standards, some authors define them as the norms and others – as the principles of international law.

For example, V. Nagrybelny presents «international legal standards in protection of human rights and freedoms» in the form of the norms of international law. Noting that «such standards» should be interpreted as generally recognized norms of conduct of states

that are executed by the latter in law and in practice as to the citizens and other individuals under their jurisdiction. Such norms are contained in the international treaties that set forth the for general and multiple application, the principles or characteristics related to activity or its results with a view to achieve optimal degree of normalization in the certain branch [3, p. 614].

In addition, this term is equivocal, in particular: a) the principles and the rules that govern activity are formulated; b) the regulation that formalizes these principles and rules [4, p. 4].

Thus, it can be conceived that the standard is a specific pattern (sample, benchmark, model) taken as a basis, a source for comparison with other similar objects or phenomena in the certain branch and reflected in the document.

In the scientific literature there is still a «legal standard» concept». We agree with the viewpoint of L. Lutz who states that since introduction of standard forms in law is carried out to develop the uniform principles (rules) for the subjects of law, then it makes sense to define legal standards as a set of the uniform, typical principles and the rules of conduct for the subjects of law set forth in basic regulatory legal acts and other sources of law [5, p. 112].

P. Rabinovich defines international standards of human rights as corresponding principles and norms of international law [6, p. 114].

We also adhere to this viewpoint and doctrine of domestic law defining international legal standards as the norms and the principles of international law recognized by the states and standardized in the documents of international organizations.

With due regard to the European integration processes in Ukraine international standards attract specific interest. Impartiality in operation of courts is one of the international standards reflected in many international as well as domestic regulatory legal acts.

Considering impartiality as an international standard of judiciary it is necessary to determine the list of the documents where it is set forth and to give it a general description.

In this context, first we should note fundamental documents in the area of ensuring standards of justice: 1) The Universal Declaration of Human Rights (United Nations General Assembly, as of the 10th of December 1948); 2) International Covenant on Civil and Political Rights (United Nations General Assembly, as of the 16th of December 1966); 3) Bangalore Principles of Judicial Conduct (The Hague, as of the 26th of November 2002), approved by the United

Nations Economic and Social Council resolution as of the 27th of July 2006; 4) Basic Principles of the Independence of the Judiciary adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 26 August – 5 September 1985; 5) United Nations General Assembly Resolution 60/159 «Human Rights in the Administration of Justice» as the 16th of December 2005; 6) Resolution of the United Nations Commission on Human Rights 2004/32 «Judicial Integrity» as of the 19th of 2004; 7) European Convention on Protection of Human Rights and Fundamental Freedoms (Council of Europe, as of the 4th of November, Ukraine joined the Convention of the 17th of July 1997); 8) Charter of Fundamental Rights of the European (European Parliament, Council of Europe, European Commission, Nice, the 12th of July 2000); 9) European Charter on the Statute for Judges as of the 10th of July 1998; 10) The Universal Charter of the Judge, adopted on the 17th of November 1999 by Central Council of the International Association of Judges in Taipei (Taiwan); 11) Montreal Universal Declaration on the Independence of Justice (Montreal, 1983); 12) Statement of Principles of the Independence of the Judiciary, adopted by the Conference of Chiefs Justices of Central and Eastern Europe (Brijuni, Croatia, the 14th of October 2015); 13) The Council of Europe Action Plan on Strengthening Judicial Independence and Impartiality, approved at the 1253rd meeting of the Deputy Ministers of the Council of Europe (as of the 13th of April 2016).

In Universal Declaration of Human Rights as of the 10th of December 1948, Art. 10 [7], Convention for Protection of Human Rights and Fundamental Freedoms as of the 4th of November 1950, Art. 6 [8] it is stated that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

According to the European Court of Human Rights practice, while considering the cases related to failure to comply with the requirements of Paragraph 1, Article 6, Convention for Protection of Human Rights and Fundamental Freedoms, the so-called «right to a trial» is applied, which includes such element as «competent court» that is a court established in accordance with the law and it must meet a set of requirements provided for in Paragraph 1, Art. 6 of the Convention above that are developed by the case-law of the European Court of Human Rights (hereinafter – the ECtHR), in particular, to be independent and impartial. The nature of the right to

independent and impartial court established under the law is disclosed in the decisions of «Posokhov against Russia», «Piersack against the Kingdom of Belgium», «Findlay against he Majesty's Advocate». It is noted that as to the requirements of «impartiality» the ECtHR has highlighted two aspects. First, the relevant authority must be impartial subjectively, that is, none of its members should have any personal interest or bias; it is considered that the judge is impartial if there is no evidence that could give evidence of the opposite. Second, such authority must also be impartial from the objective point of view, that is, it must provide the safeguards that could exclude any legitimate doubts for that matter [9, p. 288].

The ECtHR has developed criteria under which the specific judicial authority can be evaluated as independent for the purposes of Paragraph 1, Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms as of 1950. In particular, independence of the court is indicated, among other things, by the following criteria: 1) safeguards against external influence, 2) external attributes.

«Safeguards against external pressure» provision a few aspects. First, judges must be free of external pressure on the part of other officers of the court. The ECtHR stipulates that independence and impartiality of the court, from an objective point of view, requires every individual judge to be free of undue influence, not only of outside, but also on the part of the court system itself. Second, a judge must also be free of external pressure on the part of the other branches of government, since such actions do not correspond to «independent and impartial court» concept. When executive and legislative branches of state power exert interference, they demonstrate thereby lack of respect for judiciary in general and give grounds for fears of the applicant as to shortage of independence and impartiality in courts.

In its practice, the ECtHR notes that «independence» and «objective impartiality» concepts are very close. It is sometimes difficult to distinguish one concept from another since frequently the same facts give evidence of the same requirements violation, and therefore, in most cases, it is reasonable to consider them as one. Impartiality of the court is also one of the requirements that are laid down to the judicial authorities for the purposes of Paragraph 1, Art. 6, European Convention on Human Rights. Analysis of the practice of the ECtHR allows for statement of the binary nature of

impartiality of the court, since the ECtHR distinguishes the subjective and objective criterion of the last one.

Subjective impartiality is connected with the personality of the judge, with his personal convictions. In that respect, judges must be free of their personal prejudicial treatment of the parties.

Objective impartiality refers to structural issues of the organization of the court composition and lies in absence of any legitimate doubts that it is ensured and safeguarded by the court. To check objective impartiality, it is necessary to identify if there are the facts that do not depend on conduct of the judge that may cast doubt on his partiality. It is about the trust that courts in a democratic society should bring participants to the trial. This means that the administration of justice process from the point of view of external observer should be perceived as impartial [10].

K. Ekstein identifies subjective, organizational and institutional circumstances of the court partiality. He qualifies subjective circumstances as follows: a) if the judge is a party to the proceedings or he has his own immediate interest in the result of a trial; b) joint residence, relations with close relatives and in law relation, friendship, hostility or other specifically close relations of one of the parties that can show the judge as a biased person; c) conduct of the judge itself may cast reasonable doubts as to his partiality if he is directly related to the specific proceeding. The organizational and institutional circumstances of partiality of the judge may also be connected with his previous activity, performance of the certain functions when holding the previous positions. In particular, K. Ekstein identifies the types as follows: a) interpersonal relations of the investigator and the judge who delivers a judgement; b) interpersonal relations between judges, one of who issued the order to impose a fine, while the other one made the decisions in the case that became effective after statement of the objections against the order to impose that fine [11, p. 316].

In Basic Principles on the Independence of the Judiciary, adopted by the 7th United Nations Congress on Crime Prevention and Treatment of Offenders, 26 August – 5 September approved by the United Nations General Assembly Resolutions as of the 29th of November 1985 Ref. No. 40/32 and as of the 13th of December 1985 Ref. No. 40/146 it is stated: «2. Judicial authorities decide the cases that were transferred to them impartially on the basis of the facts and in accordance with the law ... 8. ... judges must always act in such a

way as to ensure respect for their office and preserve impartiality and independence of the judiciary» [12].

On the 10th of July 1998, European Charter on the Statute for Judges was adopted at a Multilateral Meeting on the Statute of Judges organized by the Council of Europe [13]. This document codifies the human right to independent and impartial trial, it defines the conditions for proper functioning of the judiciary. Adoption of this Charter was driven by the need to have the official document intended for all European states that would lay down the provisions aimed at ensuring the utmost safeguards of competence, independence and impartiality of judges.

After studying the provisions of the European Charter on the Statute for Judges G. Murashyn pointed out that it was an important document for organization and functioning of the judicial branch in the European countries. The provisions contained in the Charter safeguard complete realization of the status of judges [14, p. 187].

Admitting the statement of G. Murashyn, we can state with confidence that the European Charter is an extremely important document for organization and functioning of the judiciary, it is aimed to ensure competence, independence and impartiality of the courts that protect human rights and freedoms at the national level. This document, in our opinion, is central and main for research and study of international legal standards related to the status of judges and mandatory for implementation into the national legislation.

On the 13th of April 2016, at the 1235th Meeting of the Deputy Ministers, the Committee of the Ministers of the Council of Europe adopted «Action Plan on Strengthening Judicial Independence and Impartiality». It provides for the measures to be taken, first, to improve or to establish, if unavailable, formal legal safeguards of independence and impartiality of the judiciary; second, to establish or to introduce mechanism, principles and practices to ensure compliance with those safeguards and their positive impact on functioning of the judicial system in a democratic society based on respect for human rights and the rule of law.

Given the interdisciplinary nature of impartiality of judges, the last should be considered specifically from the perspective of the status of judges. The literature distinguishes impartiality of the judge's personality in relation to the specific trial participant and impartiality under the outcomes of the case with the judge who is in contractual, financial, family or other relations with one of the parties.

Partiality may be manifested through the certain types of bribery unnecessarily to be performed directly.

This results from the provisions of the European Charter on the Statute for Judges where it is indicated that the statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights [13].

Noting the importance of the impartiality categories, it should be stated that it reflects the most important aspects of organization and functioning of not only the entire judiciary, but it also defines the content of intricate interrelations within the court system itself. The impartiality should affect every judge and it should be manifested through its direct actions in the course of administration of justice.

Thus, the impartiality of the judiciary has long been recognized as one of the main world standards.

The right for independent and impartial trial is exercised due to absence of influence on it by the legislative and executive branches of government, public organizations and individuals from within of the judicial system.

In summary, impartiality of judges is an essential prerequisite of the regulatory character, the standard of international law for functioning of judiciary.

For further research of the safeguarded mechanism to ensure impartiality of the judiciary, the following provisions should be taken into account:

1) impartiality of the judiciary is an essential prerequisite for the court to deliver true judgment and to restore violated rights and legitimate interests of the individual, the society, and the state;

2) impartiality category should be studied on the system level, through connection with other categories, e.g., neutrality, objectivity, fairness of the court;

3) in the context of the legal status of judges, their impartiality is not just an element of this status, but also a fundamental provision defining and shaping the legal status of judges.

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Неупереджений суд у контексті міжнародних стандартів

Досліджено неупередженість суду як один із міжнародних стандартів, відображений у низці міжнародно-правових актів. Обґрунтовано значущість неупередженості для демократичної організації та функціонування національних судів. Увагу акцентовано на необхідності імплементації міжнародних стандартів у національне законодавство та судову практику в умовах реформування судової системи.

Ключові слова: права людини, судочинство, судова влада, неупередженість суду, безсторонність суду, міжнародний стандарт, імплементація міжнародно-правових стандартів.