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JUDICIAL REFORM IN UKRAINE

Today Ukraine's judicial system is made up of courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction form the unified system of courts. The Constitutional Court of Ukraine is the single body of constitutional jurisdiction in Ukraine. The judicial system ensures access to justice for each individual according to the procedure established by the Constitution of Ukraine and Ukrainian laws. Establishment of emergency and special courts shall not be allowed. Exclusively courts shall administer Justice in Ukraine. It shall not be allowed to delegate the functions of courts, as well as appropriate these functions by other bodies or officials.

Court of the first, appeal and cassation instances shall operate in Ukraine for the purpose of ensuring comprehensive, complete and objective consideration of cases, and legality of court decisions. Nobody can be deprived of the right to participate in the consideration of his or her case according to the procedure determined by procedural law in a court of any level. Consideration of cases in courts shall be open, except for cases envisaged by procedural law.

Participants of a court consideration and other individuals present at an open court sitting shall have the right to take notes. Consideration of cases in a closed court sitting shall be allowed by a court decision in cases envisaged by procedural law. According to the Constitution of Ukraine, the system of courts of general jurisdiction is designed on the principles of territorial division and specialization. The system of courts of general jurisdiction is made up from: local courts; courts of appeal and the Court of Appeals of Ukraine; the Court of Cassation of Ukraine; highest specialized courts; the Supreme Court of Ukraine.

The first-instance administrative courts are district courts, which have analogy to commercial ones. Unspecialized appeal courts are analogous to those district courts plus military courts for military districts and the Appeal Naval Court of Ukraine. The systems of appellate commercial and administrative courts are organized according to similar court districts. For instance: Odessa Appeal Court District consists of Odeska oblast, Khersonska oblast, Nikolaievskia oblast and Autonomous Republic of Crimea. The High Commercial Court of Ukraine and High Administrative

Court of Ukraine act the part of a court of review. To draw the conclusion, Ukraine is rather arbitration-unfriendly country, but the development during the years of independence suggests that the world standards of international arbitration may be pave the way for realization of the legal principles of the global game in Ukraine.

As the country is developed and players become familiar with the rules of the game, the practice of international arbitration will grow and tendencies may perhaps change towards a friendlier approach not only in this field, but also in public justice as well.

The constitutional changes related to the judicial system have been in force in Ukraine already for two years. They were aimed at strengthening the independence of judges and laid a good legal basis for this purpose, as well as for cleaning up of the judicial manpower. However, in practice, achieving these goals turns to be unsuccessful. According to recent sociological surveys, 66% of citizens believe that since the Revolution of Dignity, the situation in the area of justice has worsened or did not change, and only 25% see positive changes.

The vast majority of citizens (73%) consider the progress of judicial reform to be unsuccessful (while 43% of them believe it to be a complete failure); and only 10% estimated this reform as successful.

The level of trust in courts is 7%. According to the European Business Association, for the third year in a row, corruption and distrust of courts in Ukraine are the main obstacles to foreign investments. Amendments to the Constitution of Ukraine and the new Law “On the Judiciary System and the Status of Judges” of 2016 provided an opportunity to: transfer from the four-tier to three-tier system of courts; launch competitions for judges’ positions, including the formation of a new Supreme Court on a competitive basis; restrict the judicial immunity; introduce an appointment of judges for unlimited term. Deprive political bodies of the powers of dismissal of judges.

All issues related to the selection, promotion and dismissal of judges became exclusive competence of judicial governance bodies – the High Qualifications Commission of Judges (HQC) and the High Council of Justice (HCJ). This meets the standard of the Council of Europe.

In order to clean the judicial system from unprofessional and corrupt judges, a one-time procedure for the evaluation of all current judges has been introduced according to criteria of competence, integrity and professional ethics.

In fact, Ukraine needs to restart the judicial reform. Under conditions of transformation, bodies for the selection of judges and bringing them to disciplinary responsibility should include the majority of representatives of the civil society, and not the judges themselves. The decision-making process

should be transparent and decisions well founded so that the fairness of the result is obvious.

A high level of loyalty should draw attention to a judge (candidate) from the point of view of his/her ability to be independent and not appreciated as an advantage. The behavior of a judge should be in line with the high expectations of society regarding integrity and ethics. In case of serious claims to a judge, the possibility of re-evaluation should be foreseen.

Today's judicial reform is by far the most comprehensive one in Ukraine, including amendments to the Constitution regarding judiciary and a number of implementation laws that provide for the creation of the new Supreme Court with competitive selection of candidates among sitting judges, practicing lawyers and legal scholars. However, the point of no return for justice reforms is not yet passed.

The prior attempts at reforms of 2014-2015 were only marginally effective, solving tactical objectives at times, but largely failing to address the major issues. This can be partially explained by the judges' resistance to reform and the reluctance of Ukrainian political elites (mainly the Presidential Administration) to implement decisive policy moves that would reduce their control over the judiciary and break the vicious circle of impunity. At the same time, the ownership of the reform by the President made it possible to change the Constitution.

Additionally, civil society's active promotion of an effective judicial reform agenda and the help of several active members of Parliament (both from opposition and the coalition) made it possible to incorporate bold steps in the reform, such as creating a new Supreme Court and strengthening the Public Integrity Council. Therefore, it is safe to conclude that at this stage, the reform is a result of a political compromise between different political actors and Ukraine's civil society. This in many ways defined the character of the reform – a set of very comprehensive and far-reaching legislative measures that incorporate many different ideas and have a broad range of possible outcomes.

The latter do not solely depend on the legislative framework. There are a lot of other important factors that contribute to the shape of the reform, including institutional capacity, mentality, training, professional ethics and cooperation with neighboring institutions such as investigative and prosecutorial bodies. What this implies is that the main ingredients of a successful judicial reform in Ukraine are strong political will and proper implementation.

Ukrainian political leadership and bureaucracy are usually lacking in both. This is why it is so important that the process of judicial reform in Ukraine is closely observed and supported by the international community. It

plays a key role in pushing the reform towards implementation of the European standards and in ensuring effectiveness of the reform measures. These two aspects do not always coincide (as in the case of Council of Europe's "majority of judges elected by judges" rule for judicial councils), and it gives Ukrainian political leadership an opportunity to "hide" behind the European standards and use them as the excuse to not adopt effective reform measures. This is why it is of outmost importance that Ukrainian judicial reform policymaking has effectiveness at its core, and the standards are applied with certain flexibility.

It is also crucial that the international community continues monitoring Ukrainian reforms and further steps of political elites who are still reluctant to implement effective reform measures without a significant nudge from the donors. At the same time, it is of outmost importance that the international community and Ukraine's civil society keep cooperating closely to find and promote the most effective solutions for judicial reform in Ukraine. One of the most challenging obstacles for future cooperation could be finding an alternative model for judicial councils in Ukraine, especially in the case of the High Council of Justice.

The latter already demonstrated its reluctance to reform and acts more as a judicial corporation rather than a disciplining body. Additionally, the resistance to establish independent anti-corruption courts with international experts playing a key role in the judges' selection procedure is expected to be extremely high. The officials of the Presidential Administration already expressed their position against international involvement in the selection procedure.

Список використаних джерел

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