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THEORETICAL AND LEGAL ANALYSIS OF THE "ENSURING FULL AND INDEPENDENT JUSTICE" CONCEPT

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Adequate organizational support for justice is a condition for fulfilling Ukraine's international obligations to respect the right to a fair trial. Despite the reforms in the judiciary of Ukraine, the issues of organizational support of the judiciary are often relegated to the background, which negatively affects the quality, speed, and efficiency of the courts. The shortcomings in the organizational support of justice are based on the weakness of the theoretical justification of the content of the concept of ensuring the full and independent administration of justice. The corresponding concept appears in the current version of the Law of Ukraine "On the Judiciary and the Status of Judges", but its unambiguous interpretation is not presented in the Law or by-laws. Given the significant potential for the application of appropriate wording in the development of a strategy to improve the organizational support of justice, the precise definition of its content is extremely important at this stage. Nevertheless, scientific sources have so far not provided a comprehensive view of the definition of full and independent administration of justice. According to the results of the research, the author proposes a new definition of the concept of "ensuring the full and independent administration of justice" based on the theoretical and legal analysis of its content.

Keywords: *justice, judiciary, organizational support, independent justice, full justice.*

ТЕОРЕТИКО-ПРАВОВОЙ АНАЛИЗ ПОНЯТИЯ «ОБЕСПЕЧЕНИЕ ПОЛНОГО И НЕЗАВИСИМОГО ПРАВОСУДИЯ»

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Надлежащее организационное обеспечение правосудия является условием выполнения взятых на себя Украиной международных обязательств по соблюдению права на справедливый суд. Несмотря на проведенные реформы в судоустройстве Украины, вопросы организационного обеспечения судебной власти достаточно часто отодвигаются на второй план, что отрицательно сказывается на качестве, скорости и эффективности функционирования судов. Недостатки в организационном обеспечении правосудия имеют в своем основании слабость теоретического обоснования содержания понятия обеспечения полного и независимого осуществления правосудия. Соответствующее понятие фигурирует в действующей редакции Закона Украины «О судоустройстве и статусе судей», однако однозначное его толкование не представлено ни в Законе, ни в подзаконных актах. Учитывая значительный потенциал применения соответствующей формулировки при разработке стратегии совершенствования организационного обеспечения правосудия, точное определение его содержания является крайне важным на данном этапе. Не смотря на это, в научных источниках до сих пор не было представлено комплексного взгляда на определение понятия обеспечения полного и независимого осуществления правосудия. По результатам проведенных исследований обоснованно новое определение понятия «обеспечение полного и независимого осуществления правосудия» на основе теоретико-правового анализа его содержания.

Ключевые слова: *правосудие, судебная власть, организационное обеспечение, независимое правосудие, полное правосудия.*

ANALIZA TEORETICĂ ȘI JURIDICĂ A CONCEPTULUI „ASIGURAREA UNEI JUSTIȚII DEPLINE ȘI INDEPENDENTE”

Prevederea organizațională adecvată a justiției este o condiție pentru îndeplinirea obligațiilor internaționale ale Ucrainei de a respecta dreptul la un proces echitabil. În ciuda reformelor efectuate în sistemul judiciar al Ucrainei, aspectele legate de sprijinul organizatoric al sistemului judiciar sunt adesea retrogradate pe plan secundar, ceea ce afectează negativ calitatea, rapiditatea și eficiența funcționării instanțelor. Deficiențele în asigurarea justiției organizaționale se bazează pe slăbiciunea fundamentării teoretice a conținutului conceptului de asigurare a administrării depline și independente a justiției. Conceptul corespunzător apare în ediția curentă a Legii Ucrainei „Cu privire la sistemul judiciar și statutul judecătorilor”, dar interpretarea sa fără ambiguități nu este prezentată nici în lege, nici în statut. Având în vedere potențialul semnificativ al utilizării formulării adecvate atunci când se dezvoltă o strategie pentru îmbunătățirea sprijinului organizațional al justiției, definirea precisă a conținutului său este extrem de importantă în această etapă. În ciuda acestui fapt, sursele științifice nu au prezentat încă o viziune cuprinzătoare asupra definiției conceptului de asigurare a administrării depline și independente a justiției. Pe baza rezultatelor cercetării, o nouă definiție a conceptului de „asigurare a administrării depline și independente a justiției” este fundamentată pe baza unei analize teoretice și juridice a conținutului său.

Cuvinte-cheie: *justiție, justiție, sprijin organizațional, justiție independentă, dreptate deplină.*

Introduction

Formulation of the problem. Adequate organizational support for justice is a condition for Ukraine's fulfillment of its international obligations to respect the right to a fair trial. Despite the reforms in the judiciary of Ukraine, the issue of organizational support of the judiciary is often relegated to the background, which negatively affects the quality, speed, and efficiency of the courts.

The relevance of the research topic. The shortcomings in the organizational provision of justice are based on the weakness of the theoretical substantiation of the content of the concept of ensuring the full and independent administration of justice. The relevant concept appears in the current version of the Law of Ukraine "On the Judiciary and the Status of Judges", but its unambiguous interpretation is not presented in the Law or in bylaws. Given the significant potential for the use of appropriate wording in the development of strategies for improving the organizational support of justice, the precise definition of its content is essential at this stage.

The state of the study. The issue of organizational support of justice was partially considered by Bernaziuk Ya., Bulkat M., Havrik R., Hren N., Mamnytskyi V., Selivanov A., Turkina I., Shymanovych O. and etc. However, scientific sources have not yet provided a comprehensive view of the definition of full and independent administration of justice.

The purpose and objective of the article. The purpose of the article is to substantiate the new definition of the concept of "ensuring full and independent administration of justice" on the basis of theoretical and legal analysis of its content.

Statement of the main material

According to paragraph 1 of Article 124 of the Constitution of Ukraine, justice in Ukraine is administered exclusively by courts. This constitutional provision is expanded in Part 1 of Article 5 of the Law of Ukraine "On the Judiciary and the Status of Judges", according to which justice in Ukraine is administered exclusively by courts and in accordance with the procedures of justice provided by law. The administration of justice is a process in which the law imposes numerous requirements in accordance with the principle of the rule of law, the requirements of international legal acts, and the provisions of the doctrine of the judiciary. One of the key requirements is the completeness and independence of the administration of justice.

The Constitution of Ukraine places the duty of independence on the judge. Thus, Article 126 of the Constitution establishes a number of legal guarantees of a judge's independence, in particular, the prohibition of influencing a judge, elements of judicial immunity, indefiniteness, etc., and Article 129 defines independence as an element of a judge's legal status in the administration of justice. It should be noted that the concept of "ensuring the independent administration of justice" is not provided in the Constitution.

Article 6 of the Law of Ukraine "On the Judiciary and the Status of Judges" already deals with the independence of courts. Thus, according to Part 1, the courts are independent of any unlawful influence, and in the following parts of this article establish additional guarantees of the independence of the judiciary. Article 48 of the Law of Ukraine "On the Judiciary and the Status of Judges" is devoted to independence as an element of a judge's legal status. Part 5 of this article contains a list of guarantees of a judge's independence, for which the general wording "Judge's independence is ensured" has been used. From the content of the list, we see that some of the guarantees related to the person of the judge, while others - to the court. In particular, paragraphs 1-3, 8, 10-11 relate directly to the judge. Paragraph 7 establishes a guarantee for the operation of the court. Paragraphs 4-6 and 9 may be referred to both the court and the judge.

Attention should be paid to part 2 of Article 126 of the Law of Ukraine "On the Judiciary and the Status of Judges", which also combines the organizational and legal support of the independence of the court and judges: "…normal activity of courts and judges, to affirm the independence of the court, to ensure the protection of judges from interference in their activities…". Although we are talking about a certain "normal activity" of courts and judges, it is obvious that the defining feature of normalcy, in this CAPe, is independence. Already in paragraph 1 of part 8 of Article 133, one of the powers of the Council of Judges of Ukraine as the highest body of judicial self-government is to develop and implement measures "to ensure the independence of courts and judges, improve the organizational support of courts".

A clear division of organizational support into the provision of courts and judges is observed in Article 146 of the Law of Ukraine "On the Judiciary and the Status of Judges". The part first of this article states that "the state provides funding and appropriate conditions for the functioning of courts and the activities of judges", and secondly, paragraph 2 of part 2 establishes a legislative guarantee of full and timely funding of courts, and paragraph 3 - guaranteeing a sufficient level of social security for judges. Reference should also be made to the provisions of paragraph 1 of part 2 of this article, which stipulates that the maintenance of courts should be financed from the State Budget of Ukraine at a level that ensures the possibility of full and independent administration of justice in accordance with the law. On the one hand, the latter provision helps to establish logical connections between aspects of the organizational support of the judiciary and its independence. However, on the other hand, this provision narrows the role of organizational support in the independence of courts and judges, leading it to a purely financial significance. We cannot agree with this for the following reasons.

Article 147 of the Law of Ukraine "On the Judiciary and the Status of Judges" describes a single system for ensuring the functioning of the judiciary, which includes, in particular, the High Council of Justice, the High Qualifications Commission of Judges of Ukraine, the State Judicial Administration of Ukraine and the National School of Judges of Ukraine. It is also established that other public authorities and local governments participate in the organizational support of the courts in the CAPes and in the manner prescribed by this and other laws. Turning to Article 151, which establishes the legal status of the State Judicial Administration, we see that the latter is a state body in the justice system, which provides organizational and financial support to the judiciary within the powers established by law and subordinate to the High Council of Justice. The High Council of Justice is, according to Part 1 of Article 1 of the Law of Ukraine "On the High Council of Justice", a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary and is functioning on the basis of responsibility.

In order to form scientifically sound recommendations concerning the dissemination of the principle of ensuring the full and independent administration of justice, the relevant concept should be further explored. A review of scientific sources shows that the content of this concept has not been given enough attention.

First, we note that the process of ensuring the full and independent administration of justice has an organizational and legal nature, which means its separation and ancillary nature in relation to the judiciary. Analyzing the legislation and bylaws, we see that for the administration of justice, in fact, a necessary condition is only the presence of basic features of meaningful courts that allow us to talk about fair justice, namely - the establishment of the court by law, its independence, reasonable time, publicity. However, the CAPe-law of the European Court of Human Rights proves the existence of numerous nuances related to the somewhat idealistic wording of the right to a fair trial in the European Convention. The fundamental issue in this context is, without a doubt, the financing of the courts. The court can be formed by law, ie legitimized by the exercise of legislative power, and hence - the will of the majority provided the democratic nature of the formation of the legislature. But maintaining the proper functioning of the court is impossible without organizational support, even if there is a complete regulatory description of the procedures. This is the paradox of legislative idealism and reality, which can be solved by establishing additional institutions that, based on the rule of law, can ensure the proper functioning of the judiciary. The ancillary nature of the process under study does not indicate its secondary nature, but follows from the laws of logic - the administration of justice is possible (even hypothetically) without organizational support, but organizational support in itself without a statutory court will not allow justice.

Secondly, the notion of ensuring the full and independent administration of justice in its search for its correct definition will certainly fall under the influence of concepts denoted by identical terms,

which we will consider later. In this context, emphasis should be placed on the red line separating the notion of ensuring the full and independent administration of justice and other terms, in particular the completeness of the proceedings or the independence of the court or judge. Such a line should be considered the organizational and legal nature of the process, which was substantiated above. At the level of the legislative regulation of public relations related to the administration of justice, it is practically impossible to cover all the possible nuances that arise in the course of justice and may affect its completeness and independence. Legislative consolidation of the completeness and independence of the judiciary only establishes general principles, based on which we can study certain processes or phenomena in view of their favorableness to achieve the completeness and independence of justice.

Third, the concept under study is multicomponent, it includes the terms "provision", "completeness", "independence" and "justice", and therefore, to establish its content it is necessary to clarify all the above terms that are part of it, to achieve the harmony and consistency in the designation of processes and phenomena, the relationship with which forms this concept.

Fourth, additional justification is required for the exclusion from the content of this concept of certain terms, which are also traditionally used to assess justice. Such terms include, first of all, "efficiency" and, consequently, "accessibility", "trust", "authority" and others, which should become the target for the characterization of fair justice. In our study, we proceed from the principle of sufficiency. If the above-mentioned features are sufficient for the establishment of a fair court, and for the exercise of the right to a fair trial - their observance in the course of justice, then, in our opinion, the concept of ensuring full and independent administration of justice should not be artificially overloaded achieving perfection.

In the absence of theoretical foundations for defining the concept of ensuring full and independent administration of justice, we pay attention to related concepts. Let's start with the term "completeness". Within the science of judicial law, the term "completeness" is used primarily in a specific sense to describe the quality of a court decision. At the conceptual level, this term is applied to the completeness of the judiciary or judicial competence.

Mamnytskyi V. notes that the fullness of the judiciary is a genetic feature of the latter and is the availability of justice for all members of society, their equality before the law and the court, as well as the possibility of participation of a person in his CAPe in court [1, P. 203]. According to Bulkat M., the completeness of the judiciary is determined by the content of the competence of its bodies, the finality of decisions made by the judiciary, their binding on government agencies and officials [2, P. 108]. Thus, the use of the term "completeness" in relation to the judiciary characterizes the latter as a complex system that meets the demands of modern civil society, built on the principles of the rule of law, and contributes to effective and fair protection of human and civil rights. These definitions can be obtained both by analyzing the provisions of theoretical and legal research and on the basis of a review of international standards of the judiciary and the judiciary, which set requirements for the completeness of the judiciary. This definition of completeness is highly generalized and may be completed in future studies of the nature of the judiciary.

A somewhat more specific aspect of the use of the term "completeness" is its use in the context of characterizing the competence of the judiciary or court, the exclusive authority to administer justice. Hren N. argues that a necessary aspect of ensuring the right to a fair trial is the full power of the judiciary - the right to make binding decisions that cannot be changed by the judiciary to the detriment of the parties is an inalienable right of the court and an integral component of its independence [3, P. 248]. As Turkina I. emphasizes, the judiciary is an independent branch of state power created for the administration of justice and the exercise of other functions by constitutionally established bodies - courts with full judicial competence, exercise power on the basis of current legislation in compliance with established procedural forms [4, P. 42]. Selivanov A. concludes that the completeness of judicial competence is that the application of jurisdictional powers in the order of normative control should not provide for the filling of decisions of the Constitutional Court (legal positions) gaps in the legislation [5, P. 121].

At the most specific level, we can talk about the completeness of the court decision. As Havrik R. notes, the completeness of the court's decision is that the court must provide a comprehensive legal assessment of all the above circumstances, give answers to all questions that were submitted to the court in the courtroom; the completeness of the court decision presupposes its comprehensiveness, in the absence of which the court session may be considered incomplete [6, P. 6]. Bernaziuk Ya. points out that a court decision is justified if it is made by a court on the basis of circumstances in

the court CAPe, which are fully and comprehensively clarified on the basis of evidence examined by the court [7]. Shymanovych O. concludes that, along with the requirements of legality and reasonableness, the court decision must meet the requirements that ensure the completeness of the decision - it must contain a response to all claims filed by the plaintiff and considered by the court and objections against them, and incompleteness of the decision its cancellation or, in exceptional CAPes, the adoption of an additional decision [8, P. 59]. Thus, the completeness of the judgment is the final result of a full trial. The notion of the incomplete trial is reflected in the procedural codes.

The incompleteness of the trial, according to paragraph 1 of Part 1 of Art. 409 of the Criminal procedure code, is the basis for cancellation or change of the court decision at the consideration of the CAPe in a court of appellate instance. The characteristic of incompleteness is given to judicial consideration on the basis of the performance of conditions of Art. 410, in particular, the relevant concept is interpreted in Part 1 of this article: "Incomplete is considered a trial during which the circumstances remained unexplored, the clarification of which may be essential for a lawful, reasonable and fair court decision."

The completeness is determined by the criterion of the possibility of combining in one proceeding the materials of pre-trial investigations into a criminal offense and a crime. Such association is limited under Part 2 of Art. 217 of the CPC, in particular, is admissible if its non-compliance "may adversely affect the completeness of the pre-trial investigation and trial". Similarly, as be noted in paragraph 4 of Art. 217 of the CPC, it is established that the materials of the pre-trial investigation may not be allocated to a separate proceeding, if this may adversely affect the completeness of the pre-trial investigation and trial. One of the criteria for the possibility of a special pre-trial investigation of crimes specified in Part 2 of Art. 2971 has a negative impact on the completeness of the trial of the allocation of materials on them.

In the Civil Procedure Code, the term incompleteness is used not only in relation to the proceedings, in particular, in Part 10 of Art. 10 of the CPC prohibit the refusal to consider the CAPe on the grounds of absence, incompleteness, ambiguity, the inconsistency of the legislation governing the disputed relationship. As for the actual trial, the right to submit comments on the incompleteness of the minutes of the hearing, the recording of the hearing by technical means is established by paragraph 4 part 1 of Art. 43 CPC. Similar provisions are contained in the Code of Administrative Procedure.

The tool for correcting the incompleteness of a court decision is the adoption of an additional decision, the procedure for which is established by Articles 270 of the CPC, 252 of the CAP, 244 of the CPC. At the same time, these articles do not directly indicate the incompleteness of the court decision as a basis for additional, but among the conditions are "in respect of a particular claim, on which the parties submitted evidence and gave explanations, no decision" (paragraph 1, part 1 of Art. 270 of the CPC and paragraph 1 of Part 1 of Article 244 of the Code of Civil Procedure), "in respect of one of the claims, in respect of which the evidence was examined, or one of the petitions was not decided" (paragraph 1 of Part 1 of Article 252 CAP).

Thus, the analysis of procedural legislation brings the legislator's extremely limited attention to the issue of completeness or incompleteness of court proceedings and court decisions compared to ensuring the right to a fair trial, which is devoted not only to Articles 5-15 of the Law of Ukraine "On Judiciary and Status of Judges". articles of Chapter 2 of the CPC, Chapter 1 of the CPC and Chapter 1 of the CAP. Obviously, in the course of judicial reform, which resulted in the implementation of international standards and norms of the European Convention in the judicial and procedural law of Ukraine, the legal basis for ensuring the right to a fair trial was taken into account, while organizational ones were secondary. Confirmation of this can be found by performing the ascent from the specific (completeness of the court decision) to the general (completeness of the judiciary).

The completeness of a court decision, which is a condition of its fairness, is achieved by a comprehensive consideration of the CAP by the court, i.e. it depends directly on the quality of the judge's performance of his duties and correlates with the independence of the judge. The fullness of the judiciary is achieved at the constitutional level by consolidating its independence and exclusive competence in resolving legal disputes. Between these two levels, as follows from the previous analysis of the system of organizational support of the judiciary, there is a third, which has a normative basis in the Constitution of Ukraine and the Law of Ukraine "On the Judiciary and the Status of Judges" and directly affects the justice. It is natural to assume that any circumstances that prevented the adoption of a lawful, reasonable, and fair court decision should be considered as having led to the incompleteness of the trial.

If such circumstances arose as a result of the purposeful, volitional influence of a person or a certain circle of persons, we can speak of a violation of the principle of independence of justice. In the organizational and legal dimension, the violation of independence may be inaction, non-fulfillment by the bodies that make up the infrastructure of the judiciary of their powers or their implementation that does not contribute to full and independent justice.

Conclusions

As a result of the study, we believe that the narrow interpretation of the conditions for full and independent justice as the financial security of the courts, as indicated in paragraph 1 of Part 2 of Art. 146 of the Law of Ukraine "On the Judiciary and the Status of Judges" should be improved as follows: ensuring full and independent justice – is an activity of organizational and legal nature, performed by the subjects of the judiciary on the basis of powers established by the Constitution of Ukraine and the Law of Ukraine "On the Judiciary and the Status of Judges", corresponds to the legal framework of the judiciary and aims to provide organizational support for the implementation of the court's tasks, in particular, prevention of possible violations of the right to a fair trial and effective remedies. inadequate organizational support for justice.

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