

Digest

Current legal challenges in Dnipro region

Dnipro Regional Justice Sector Reform Council

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In autumn 2018, EU Project "Pravo-Justice" started active work in the regions in the framework of supporting the implementation of reforms in justice sector in regions. In particular, in December 2018, **Dnipro Regional Justice Reform Council** was established in Dnipro to implement bottom-up reform by bringing across region-specific challenges and their solutions to the central level and organizing a better exchange of information on sector reforms from the centre to the regions and at the interregional level. The task of the Council is to identify problematic issues that arise in the process of judicial reform and to prepare generalized proposals for their solution. The functioning of the Regional Council should become a solid basis for establishing a permanent professional dialogue between the regions and the centre. Today, Regional Justice Reform Councils operate in six regions of Ukraine.

These contributions on challenges related to the legal sphere during quarantine were prepared by Dnipro Regional Justice Reform Council members.

1. Justice during quarantine and in occupied territories.

Challenge: Restrictions on the exercise of the right to access to courts because of quarantine restrictions and the fact that citizens live in the temporarily occupied territories. The challenges for those living in occupied territories are not exclusive issues of Donetsk or Luhansk regions. These challenges are important for the whole country. Because of the spread of coronavirus disease, many courts introduce (by orders, orders of court chairpersons, decisions of the relevant court meetings) restrictions on access to court premises. In addition, a significant part of Ukraine's population is now in temporarily occupied territories. These circumstances restrict the rights of individuals to participate in court hearings. Notwithstanding these force majeure circumstances, vulnerable groups, such as persons with disabilities, are limited in their ability to appear in court.

At the beginning of 2020, procedural codes were amended and later the State Judicial Administration of Ukraine developed a procedure allowing participants in proceedings take part in case consideration by videoconference outside courts.

However, these regulations are not sufficiently translated into life.

First, out-of-court videoconferencing is not provided for in many categories of cases (it does not apply in criminal cases as well as in cases where a witness must be questioned).

Secondly, ignorance of the court staff, government officials and citizens leads to refusal to use such a tool of cases consideration.

Expected outcome: To enable videoconferencing outside the courtroom in a greater number of cases. Raising citizens' awareness of the possibility to participate in court proceedings "without leaving home".

Ways to implement: Conducting trainings for judges, authorities and lawyers. Drafting amendments to regulations to determine the procedure for witnesses questioning via videoconference and conducting court hearings by videoconference outside court in criminal cases and administrative offenses cases.

Challenge: Citizens have limited access to court because UJITS is not in place. Because of introducing restricted access in courts, the right of persons to trial was significantly restricted. In addition, persons with disabilities and citizens residing in temporarily occupied territories are also restricted in their right to judicial protection. The problem could be solved by a full-fledged launch of the Unified Judicial Information and Telecommunication System (hereinafter - UJITS). At the same time, modules of this system are not in working order.

Technological standards of development and implementation of electronic services do not contain respective terms of reference and user story.

Citizens' rights to access the court (filing a lawsuit, obtaining information as to trial, reviewing the case file and receiving court summons) can be exercised via using appropriate software.

However, due to the lack of relevant UJITS modules and regulations, many courts do not accept documents via e-Court system as they will have to be printed out and resources are scarce.

Expected outcome: Accelerate the implementation of UJITS modules which would allow for litigation via electronic services and, consequently, providing information for vulnerable persons. Reduction in expenses

for printing documents received through "E-Court". "Paperless" exchange of documents and data between court and the parties to the proceedings. Access to court for vulnerable groups.

Ways to implement: For stakeholders to discuss UJITS requirements. Drafting terms of reference and user story for UJITS modules. Developing concept parties' notification via e-tools. Drafting amendments to by-laws (e.g., court records) to eliminate case files in paper form.

2. Public hearings and participation of members of territorial communities in the decision-making process.

Challenge: Exacerbation of social tension in society because of local governments' decisions as to disposal of municipal property. Local governments in the region take numerous decisions on liquidation of educational establishments, enter into contracts for the provision of services that resonate in society. This resonance is very often due to the lack of transparency in spending local community budgets and the lack of an effective mechanism for citizens' participation in the decision-making process.

Current legislation provides a mechanism for citizens' participation in the decision-making process via public hearings. However, this mechanism is ineffective, and in some cases it is not possible to apply it at all (for example: public hearings are not provided for regional and district councils).

In addition, there is no procedure for holding public hearings for local governments.

In some cases, initiative and the list of issues for public hearings belong to the local government itself.

For example, in 2019 in Dnipro public hearings were held on 13 issues and 6 of them concerned streets renaming. At the same time, liquidation of educational establishments or conclusion of agreements that had a public resonance are not included into agendas of such hearings.

Public hearings are usually scheduled during working hours, and therefore most working residents are deprived of the opportunity to participate in public hearings.

Current legislation also does not provide for significant consequences for disagreement of residents expressed at public hearings. That is, even if residents disagree with the results of the hearings held, local government may take a decision.

Expected outcome: Involve more local community residents in the decision-making process, which, in turn, will help establish a dialogue between society and local governments.

Ways to implement: Drafting a standard procedure for holding public hearings for local governments and legislative changes. Defining a list of issues (for example: issues that do not require special knowledge) on which public hearings are mandatory. Changing the concept of public discussions from "declarative" to "conciliatory" through introducing blocking of decisions taken on issues on which public hearings were scheduled and with which citizens disagree. Introducing possibility of participating in public hearings with the help of digital services and "Diya" application.

3. Legal protection of business in Ukraine.

Challenge: Ukrainian legislation is out of whack from the needs of small and medium-sized businesses.

1. Too many new laws have been adopted in Ukraine recently, and now not only citizens and organizations, but also professional lawyers are not keeping up with the new changes. Current legislation is often changed without the participation of and coordination with individuals (unions and associations) whose interests are affected by new legislation.
2. Trust to the judiciary and the legal system in country is very weak and the population and opinion leaders less and less perceive court as an effective tool to protect their rights.
3. According to "Research of Legal Needs of Small and Medium-Sized Businesses in Ukraine" conducted by the Centre for Democracy and the Rule of Law in partnership with the Hague Institute for Innovation of Law, within EU Project "Pravo-Justice" with financial support from the European Union, the following risks were identified:
 - "Raiding" - seizure of property which in Ukraine is often sold with the involvement of government agencies and using the shortcomings of the legal system;
 - Problems with public authorities - first of all entrepreneurs name tax authorities (non-refund of VAT, blocking invoices, etc.) and other conflicts with other public authorities, including those related to pressure in criminal proceedings;
 - Frequent non-enforcement of obligations by contractors under contracts. Entrepreneurs do not see the judiciary as an effective tool to enforce debt repayment.
4. Business and its associations in Ukraine do not have the opportunity to influence legislative process and often do not understand logic behind certain changes. This leads to opposition from business and corruption if business is prosecuted.

NB: At the end of 2020, the above problems became even more relevant after the scandal with the Constitutional Court and changes in the taxation of private entrepreneurs (introduction of mandatory payment transactions recorder), etc.

Expected outcome:

Make RJRCs an effective platform for discussing reforms really relevant to the society and business really and their further advancement.

Involvement of business representatives in drafting legislative changes and developing opportunities for lawyers, members of Regional Councils and other partners of EU Project "Pravo-Justice" to get feedback from "consumers" of Ukrainian legal system and judiciary.

Ways to implement:

Establishing cooperation with business associations that are looking for GR means, protection and lobbying interests of their members. Such organizations include European Business Association, Union of Ukrainian Entrepreneurs, Chambers of Commerce and Industry and others.

- Researching the causes of challenges and risks of SMEs;
- Drafting "terms of reference" of the necessary reforms with the involvement of representatives of Ukrainian business, RJRCs and international experts;
- Joint development of legal means to overcome the risks identified by SMEs and lobby for the necessary reforms;
- Improving the legal culture of business in Ukraine;
- Increasing the level of confidence of Ukrainian business and investors to the legal system and the judiciary.