Autonomy and Independence of the Judiciary as a Condition for Achieving the Balance between Public and Private Interests

The article reveals the role of justice in ensuring the balance between public and private interests. The article states that the court of public authority is a mean to ensure justice, defend human rights and freedoms, keep balance between public and private interests. Absolutely the delamination between the spheres of private and public interest is moving. It is defined as the level of socio-economic life and features of the society, is determined by the legislator depending on the needs of the state and social development. Determining this limit, along with the formation of interest through regulation, and the problem is software or a combination of balance public and private interests.

There are cases in jurisdiction of Ukraine, related to abuse of power, representing the public interest. Therefore, courts must work as opposed to power. However, true justice will not exist until the courts are hesitant: can they cancel the decision of the government or not? The delimation between the spheres of private and public interest is moving, defined as the level of socio-economic life and features of the society, is determined by the legislator depending on the needs of the state and social development. So, the problem of connection or balancing between public and private interests – is determination of this delimation, along with the formation of the intereststhrough the legal regulation. A special role in achieving this goal is given to the judicial bodies, which provide a mechanism of judicial control and a mechanism of eliminating disbalance in cases, where the legislator missed task, which balances interests. Therefore, the autonomy and independence should be provided in the process of modern reformation of the judicial bodies.
**Keywords:** justice authorities, the judiciary, court decision, public interest, private interest, balance between public and private interests.

**Issue.** Globalization of 21st century requires deeper integration efforts of the association to address the problem of protecting humanity from illegal summons.

Most of modern constitutions, including the Constitution of Ukraine accepted the generally recognized principles and norms of international law, international treaties as a component part of the legal system. Ukraine, as a member of the Council of Europe, has assumed certain obligations before the European community to implement standards of judicial and law enforcement inherent to democratic states. On June 27, 2014, the President of Ukraine signed an Association Agreement between Ukraine and the EU (further an Agreement) in Brussels. The parties have shown confidence in the need for Ukraine to implement political, social-economic and legal reforms in order to execute effectively this agreement. In accordance with paragraph E chap. 2, Art. 1 of Agreement: The objective of the association is “to strengthen cooperation in the area of justice, freedom and security to ensure the rule of law and respect of a human rights and fundamental freedoms”[1].

According to Art. 14 Section III «Justice, Freedom and Security» of Agreement: “Due cooperation on justice, freedom and security. The Parties shall pay special attention to the rule of law and strengthening institutions at all levels in the field and in the law-enforcement and judicial authorities. Cooperation is aimed at strengthening the judiciary, improving its efficiency, guaranteeing its independence and impartiality and the fight against corruption. Cooperation in the field of justice, freedom and security will be based on the principals of respect of human rights and fundamental freedoms” [1].

According to these processes, Ukrainian courts have also gained momentum as the expiry of legal enforcement activities and issues in the definition and development of their own status. Modern problems of legal development of national law were the reason for Ukrainian courts to face difficult and responsible task of implementation of European law into the national legal system, which aims to protect human rights and freedoms. National judiciary and any judge in its organization and activities should be guided by international and European standards that are the products humanity and different systems of justice.

**Analysis of recent research and publications.** The study of the judicial bodies has been carried out by domestic and foreign scientists, in particular V. Boyko, V. Bryntsev, T. Varfolomeyeva, Yu. Hroshevyy, V. Yevdokymov, M. Kozyubra, I. Koliushko, V. Kostytshkyv, V. Malyarenko, I. Marochkin, M. Melnyk, V. Onischuk, V. Onopenko, O. Pasenyuk, S. Prylutskyy, D. Prytyka, A. Selivanov, V. Serdyuk, N. Syza, M. Siryy, R. Uolker, B. Futey, V. Shyshkin and others. However, despite the significant contributions made by these scientists in the research of these issues, the problems of the judiciary still remain controversial and unsettled, which determines the urgency of the problem.

**The purpose** of the scientific article – is an analysis of the role of justice in ensuring public balance and private interests.

**The main body.** Efficiency of justice, as well as the achievement of its goals, is one of the construction indicators of the democratic state and depends on the performance of the judiciary. The main purpose of public authority is to protect human rights and freedoms. The main goal of people's power is in the public interest. What is the public interest? The legal phenomenon of the “interest” in constitutional law causes heated debate in the scientific community, furthermore, the mentioning of the interest can be found in the decisions of the constitutional jurisdiction body of Ukraine, which uses the category of “interest” and its various modifications: interests of citizens [2], interests of the people [3], interests of a person and citizen’s rights [4], rights and legal interests of legal entities, interests of the state [4], interests of society [5]. The variety of subjects, who are the carriers of interest, indicates a complex nature of their relationship. The interests of these subjects may conflict with each other, while the constitutional means of the resolving of the data discrepancies are not always effective. Problem of interest is the driving force of the legal sphere. The interest forms the legal regulations and gives standards to real life. In addition, the interests reflect subjective focus of the law rules and is an objective criterion for distinguishing between the private and public rules. Achievement of the balance...
between the public and private interests is very important for ensuring constitutional security, human rights.

In the theory of the civil procedural law, the positivity of the harmonious combination of private and public legal interests has been repeatedly questioned by a number of researchers in this field, in particular by V. Yarkova, who points out the trend of the civil jurisdiction development as the search for optimal balance of private and public interests in this area [6].

The principle of reasonable balance of public and private interests arising from Art. 1 of Protocol № 1(1952) of the European Convention on Human Rights and Fundamental Freedoms dated November 4, 1950, which establishes the need to respect requirements of a reasonable balance between public and private interests by state, while limiting or interfering in the ownership [7]. This requirement is one of the main principles underlying the European Convention on Human Rights.

It should be mentioned that the category “balance” is rather abstract and subjective. The balance between public and private interests is not always “a happy medium”. Sometimes priority should be given to the public interest, while private interests are subject of strict legislative restrictions with the aim of the inadmissibility of their violation.

State may follow the principle of special significance of public interest, while limiting a person in their rights and freedoms. Public interest unlike the private used on the one hand to ensure principles of state and society as a condition of their existence, on the other - to ensure satisfaction of private interests. This corresponds to the state p.1, art. 64 of the Constitution of Ukraine, which stipulates that the constitutional rights and freedoms of person and citizen cannot be restricted except for cases provided by the Constitution of Ukraine.

Court as a bearer of public authority is established to ensure justice, defend human rights and freedoms, keep balance of public and private interests. However, it should be noted that the protection and defense of subjective rights and legitimate interests are not an identical concepts. Protection of rights is the main task of justice. Professor V.V.Serdiuk notes: “implementation of state judicial function makes creating a system of judicial power, which is not identified with the system of courts. Purpose of the judiciary is to resolve legal disputes provided by law procedural forms and performing other actions directly or indirectly related to the administration of justice [8].

People should see court not just as a public authority, but also as a fair arbiter in disputes, including disputes with state. Since the state is endowed with essentially unlimited power and compared with the power of the state through its organs, person has nothing to oppose, in addition to the rights declared in the Constitution and legal acts.

Assessing the role of justice in ensuring balance between public and private interests, it should be recognized that the judicial authority acts as last resort to protect the rights of citizens’ interests and their associations. Review of each case is a solution for conflict of interest, so the judge departs from the principles of a comprehensive review of the case, objectivity and impartiality creates the circumstances in which the interests of one party will be limited or violated. Failure of the entity (when there is objective grounds) to make the decision not only undermines the authority of the judge, but the entire system of justice and law as well as the highest form of the right implementation.

The task of Courts is to compare the requirements of the state and society with the interests of a particular entity or person, to find a compromise, to avoid a situation where the public interest demands completely suppress private interest, and on the contrary - when the public interest is not taken into account by the court. In this regard, a judge has a great responsibility so as to assess the validity of the ratio of interest belongs to him.

One of the necessary conditions to achieve optimal balance public and private interests is autonomy and independence of the judiciary.

According to art. 10 of the Universal Declaration of Human Rights on December 10, 1948 independence of the judiciary shall be guaranteed by the State and enshrined in the country’s main legislative acts [9]. This means subordination of judges only to the law, inadmissibility of any undue interference in the judicial process, the inability to view and abolition of courts other than through judicial review and appropriate action by a higher court.

According to Art. 6 of the European Convention on Human Rights and Fundamental Freedoms dated November 4, 1950 “everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial
tribunal, established by law, which solves the dispute about civil rights and obligations or establishes the validity of any charges against the person in criminal prosecution. Judgment shall be pronounced publicly but the press and public may be excluded from the courtroom during the trial or in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties, or - to the extent that the court recognized strictly necessary – in special circumstances where publicity would prejudice the interests of justice” [10].

In a democratic state reasonable combination (balance) private and public interests in a particular field of relationships must be mixed.

In law enforcement practice the ratio of private and public foundations rather conventional, but the law does not know any rules for determining the value of public and private interests. In this regard, a significant role in the balance of private and public interests owned by the Constitutional Court of Ukraine, the Supreme Court of Ukraine and the European Court of Human Rights.

The decision of the Constitutional Court of Ukraine is a normative basis of the constitutional guarantee of safety. Only the Constitutional Court of Ukraine has state-of authority powers of a special nature, which accepts solutions that are compulsory. The Constitutional Court of Ukraine is the body which regulates the relation removal within the established constitutional procedures conflicts connected to including the imbalance of public and private interests.

It should be also noted that the role of constitutional jurisdiction in the protection of the interests which determine solutions by interpretation of constitutional norms of specific cases, does not use the balance between public and private interests.

Thus, according to the decision of the Constitutional Court of Ukraine in the constitutional appeal of Dziuba Galyna on the official interpretation of Article 55 of the Constitution of Ukraine and Article 248-2 of the Civil Procedural Code of Ukraine on November 25, 1997, a citizen of Ukraine, foreigner or stateless person is guaranteed the right to appeal in state court of law decision, act or omission of any public authority, local government officials and officers, if citizen of Ukraine, foreigner or stateless person consider that their decision, action or omission violate or infringe the rights and freedoms of citizens of Ukraine, foreigners, stateless or hinder their implementation, and therefore need legal protection in court.

Such complaints are immediately considered in the courts.

Appeal to the body of official higher level does not prevent these decisions, acts or omissions to be further appealed [11].

In order to implement the constitutional rights of everyone to challenge the decisions, actions or omissions of public authorities, local authorities, officers and employees, protection of voting rights, the right of access to public services, etc. administrative courts were established in Ukraine. In the meaning of Article 4 of the Code of Administrative Proceedings of Ukraine (hereinafter - CAS Ukraine) on July 6, 2005 No. 2747-IV of administrative courts jurisdiction extends to all public disputes, other than disputes for which the law established a different procedure for judicial resolution.

According to the Resolution of the Plenum of the Supreme Administrative Court of Ukraine No. 8 On Some Issues of Jurisdiction of Administrative Courts dated May 20, 2013, “the law does not define the term “public controversy” administrative court of arbitration should establish its public content (character). To clarify the nature of the dispute courts should take into account that the meaning is the opposite in private legal dispute.

It means that in the basis of dispute’s differentiation lies the division of law into public and private laws. Courts must consider generally theoretical and legislative criteria while solving questions of prescribing a legal rule to the public law and dispute to the private one. In particular according to the meaning of sec. 1 of the first chapter of article 3 of the Code of Administrative Proceedings of Ukraine as a rule, at least one party to the public dispute is an executive body, local authority body, their officers or administrative or other subject which exercises authoritative functions according to legislation including execution of delegated functions.

The dispute acquires features of public dispute not only with the existence of public body or officer of the body among dispute subjects but also the exercise of authoritative functions by these subjects.

For the purposes and tasks of administrative jurisdiction the authoritative function means the activity of all subjects with authoritative power due
to the performance of their tasks which are vested by the Constitution and statutes of Ukraine.

Solving questions about appreciation of administrative court jurisdiction according to deciding of administrative cases, courts must admit that the Code of Administrative Proceedings of Ukraine establishes such rules of separation of administrative jurisdiction from other ones: conceptually–functional, that is the definition of administrative case established in sec. 1 of the first chapter of article 3 of the Code of Administrative Proceedings of Ukraine; determination of the public relation species (ruling relations and relations connected to the public formulating of a subject with authoritative power) mentioned in chapter 1 of article 17 in the Code of Administrative Proceedings of Ukraine; installation of the list of public cases, which do not belong to administrative jurisdiction (chapter 2 of article 17 CAP of Ukraine) [12].

One should pay attention that according to sec. 5 of article 9 of CAP of Ukraine in case of doubt while deciding the dispute about statute or other legal act related to conformity with the Constitution of Ukraine, solving the question of constitutionality of which appertains to the jurisdiction of Constitutional Court of Ukraine, the court refers to the Supreme Court of Ukraine to bring in the presentation to the Constitutional Court about the constitutionality of certain statute or other legal act.

Therefore, the regulations of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea on their constitutionality cannot be appealed and revised. However, in cases of appeal against regulatory legal acts of other government entities, administrative court may verify their compliance with the Constitution of Ukraine, international treaties ratified by Ukraine, laws of Ukraine and other legal acts of higher legal force.

**Conclusions.** There are cases in jurisdiction of Ukraine, related to abuse of power, representing the public interest. Therefore, courts must work as opposed to power. However, true justice will not be until the courts are hesitant: can they cancel the decision of the government or not. The delimitation between the spheres of private and public interest is moving, defined as the level of socio-economic life and features of the society, is determined by the legislator depending on the needs of the state and social development. So, the problem of connection or balancing between public and private interests – is determination of this delimitation, along with the formation of the interests through the legal regulation. A special role in achieving this goal is given to the judicial bodies, which carry out judicial control and a mechanism of eliminating disbalance in cases, where the legislator missed task to balance interests. Therefore, the autonomy and independence should be provided in the process of modern reformation of the judicial body.

**References**


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