

Volodymyr Kistianyk

Advocate, Ph.D.

THE ROLE OF JUDICIAL ARGUMENTATION IN REFORMING OF UKRAINE'S JUDICIARY: EU MEMBERSHIP PERSPECTIVES

Abstract

The article reflects the impact of judicial argumentation on the process of reforming the judicial system of Ukraine during Ukraine's integration into the European Union. In addition, the article points out some structural elements of the influence of judicial argumentation in the course of Ukraine's EU-integration.

This paper emphasizes the essential participation of European institutions in raising the quality level of judicial argumentation in Ukraine. These institutions can be divided in two big groups: EU-based organizations (European Commission, Eurobarometer, European Commission for the efficiency of justice (CEPEJ), Court of Justice of the European Union) and the organizations in the Council of Europe (European Court of Human Rights, the Venice Commission and the Consultative Council of European Judges (CCJE)). Moreover, the author gives examples when Ukrainian judicial institutions raise the need to enhance the quality of judicial argumentation.

Key Words

Judicial Argumentation, EU integration, The Judicial System of Ukraine, The European Union, Legal Reasoning, International Obligations

Introduction

For a better understanding of the reasons why judicial argumentation is of great importance to Ukraine's integration into the EU, it is necessary first to characterize the concept of judicial argumentation.

Judicial argumentation is a type of legal argumentation, determined by the essence and purpose of the court, its place in the settlement of conflicts and other issues, the features of which depend on the role of the participant in the judicial process.¹ Argumentation in court can be considered through various aspects. We can use argumentation as an art of persuasion when we address the audience. Judicial argumentation might also be during the finding of reasons to make the judgement qualitative. In this case, the purpose of judicial argumentation is to build a framework of legal principles contained in the judicial decision. Therefore, judicial argumentation relates to the activity of different participants of the court process: judges, advocates, prosecutors, jury, etc.

Judicial argumentation has long been the object of close attention, both from the side of scholars and from the side of legal practitioners. In particular, due to the increase of the quality of judicial argumentation, judicial institutions are being reformed.

Since independence in 1991, Ukraine has undergone a constant process of judicial reforms, aimed at improving the quality of the administration of justice. These efforts at reforms have been haphazard and in the main did not have a significant effect on the quality of judicial administration, evidenced by the negative attitude of the people of Ukraine on the slow pace of reforms of the judicial system of Ukraine.

As seen in one of the recent findings on the judicial system conducted by the Razumkov Center, only 2 % of respondents believe that the judicial reform in Ukraine is almost complete and all basic changes have been made. Only 12 % of respondents polled by a nationwide sample noticed changes in the justice system implemented in Ukraine in recent years.²

¹ Kistianyk, Volodymyr. *Sudova arhumentatsiia: osoblyvosti, porivnialnyi analiz ta vitchyzniana i zarubizhna praktyka* [Judicial argumentation: features, comparative analysis, domestic and foreign practice]: dys. ... kand. yuryd. nauk/ Kistianyk Volodymyr Ivanovych ; nauk. kerivnyk Shevchuk S. V.; M-vo osvity i nauky Ukrainy, Nats. un-t «Kyievo-Mohylianska akademiia» (Kyiv, 2021), 14.

² Zvit za rezultatamy doslidzhennia «Stavlennia hromadian Ukrainy do sudovoi systemy [Attitude of Ukrainian Citizens to the Judicial System]». *Hromadska orhanizatsiya Ukrainyskyi tsentr ekonomichnykh i politychnykh doslidzhen imeni Oleksandra Razumkova* (Kyiv, 2020), accessed August 30, 2022, <https://rm.coe.int/zvitsud2020/1680a0c2d7>, 5.

In this context, gaging of public opinion is a important tool, used also in countries of the European Union. This gaging is extremely important in measuring the success, or lack thereof, of judicial reforms. For example, the «Eurobarometer» is an organization that operates in the European Union and is the polling instrument used by the European Commission, the European Parliament and other EU institutions and agencies to monitor regularly the state of public opinion in Europe on issues related to the European Union, as well as attitudes on subjects of political or social nature. Eurobarometer provides quality and relevant data for experts in public opinion, researchers, media and the public.³

The matter of credibility to the judiciary in Ukraine among the population is significant to the EU. This fact is confirmed in the 2022 opinion of the European Commission titled «Commission Opinion on Ukraine's application for membership of the European Union» which stated the following: «At present, the judiciary continues to be regarded as one of the least trusted and credible institutions».⁴

Nevertheless, despite these negative perceptions and the slow pace of reforms, transformational and inevitable changes are taking place in Ukraine, which are connected with the integration processes in the international community, in particular, in the European Union. The people of Ukraine during the fight against the aggression of the Russian Federation in Ukraine proved their willingness to be part of the EU family. Ukraine has paid an enormously high price, measured in the lives of its people to defend peace and security in Europe. With their defence of their country and Europe from Russia's aggression, the Ukrainian people have proven their commitment to the values of democracy, liberty and human rights, which the EU purports to stand for.

One of the decisions that is significant in this regard is the European Council conclusions on Ukraine on the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, dated on 23 June 2022,⁵ by which Ukraine received the status of a candidate for EU-membership.

³ About Eurobarometer. Public opinion in the European Union, accessed August 10, 2022, <https://europa.eu/eurobarometer/about/eurobarometer>.

⁴European Commission. *Communication from the commission to the European Parliament, the European Council and the Council* (Brussels 17.06.2022), accessed August 13, 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en, 8.

⁵European Council. *Conclusions. Special meeting of the European 30-31.05.2022*, accessed August 15, 2022, <https://www.consilium.europa.eu/media/56562/2022-05-30-31-euco-conclusions.pdf>

At the same time, the Commission Opinion on Ukraine's application for membership of the European Union, Brussels, 17.06.2022 COM (2022) 407 final, underlined the steps Ukraine must take in order to become a member of the EU.⁶ A large part of this opinion is devoted to the need to comply with the Copenhagen Criteria. Clause 1.1. of this conclusion is relevant in this regard, which addresses political criteria, particularly the rule of law. Clause «a» of p.1.3. deserves special attention, where the Judiciary is noted.

The question of the effectiveness of the judiciary in Ukraine is raised. It is noted here the following: «Regarding the efficiency of the justice system the picture is mixed, with a positive trend in civil and commercial proceedings and a negative trend in administrative proceedings. The biggest issue is the backlog of overall 578.750 cases (in 2018), which is particularly a problem with regard to the Supreme Court (currently backlog of 24.000 cases). The disposition time in civil and commercial litigious cases decreased to 122 days in 2020, compared to 129 days in 2018 which corresponds to a standard level of efficiency. The clearance rate increased to 98 % (97 % in 2018). The 2018 overall budget was 632.1 million (0.56 % of GDP). Although 78 % of courts budget is spent on salaries and compensations, very limited funds were allocated to investment needs (0.2 %) and training (0.004 %). Ukraine has 13 judges and 21 prosecutors per 100 000 inhabitants, compared with a European average of 21 judges and 12 prosecutors per 100 000 inhabitants».⁷

The above circumstances demonstrate a situation in which the judicial system of Ukraine is cumbersome and requires urgent improvements. Moreover, such problems are the reason for the low level of judicial argumentation by participants of the judicial process. Court argumentation is always a planned strategy of finding a way to convince the audience of the legitimacy of one's position. This level of structuring cannot be ensured due to the workload of cases, lack of judicial staff and other obstructive processes that occur in the judiciary of Ukraine. Due to the mentioned causes, Ukraine remains one of the leaders among the states against which complaints are submitted to the European Court of Human Rights.

The lack of an appropriate level of judicial argumentation affects the fulfillment of international obligations, in terms of EU integration. Historically, in the previous judicial practice of Ukraine, the European Court of Human Rights noted the critically low level of judicial argumentation in decisions of Ukrainian judiciary. For example, in case of Seryavin and others v. Ukraine, the ECHR noted that a further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords

⁶European Commission. *Communication from the commission to the European Parliament, the European Council and the Council* (Brussels 17.06.2022), accessed August 13, 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en.

⁷European Commission. *Communication from the commission to the European Parliament, the European Council and the Council* (Brussels 17.06.2022), accessed August 13, 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en, 8-9.

a party the opportunity to appeal against it, as well as the opportunity to have the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice.⁸ In another case of *Kryvitska and Kryvitsky v. Ukraine*, the ECHR stated that to protect a person against arbitrariness it is not sufficient to provide a formal possibility of bringing adversarial proceedings to contest the application of a legal provision to his or her case. Where a resulting judicial decision lacks reasoning or an evidentiary basis, ensuing interference with a Convention right may become unforeseeable and consequently fall short of the lawfulness requirement.⁹

At the same time, along with the importance of fulfilling obligations within the framework of the Council of Europe, (the ECHR is part of this institution), today the issue has become much more acute, as the issue of full integration into the European Union has arisen. The European Union in its conclusion emphasized that the key aspects of the new reforms are embedded in a new comprehensive Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023.¹⁰ This Strategy approved by the Decree of the President of Ukraine dated June 11, 2021.¹¹ This document demonstrated a considerable number of problems associated with the effectiveness of the judiciary in Ukraine. The totality of these factors may have negative consequences for the level of judicial argumentation, which should be part of the reform of the judiciary of Ukraine.

To date, the role of judicial argumentation in the reform of the judicial system is actualized in legal research and scholarship. This component is so large that the volume of one article is unlikely to be enough to list all outstanding scholars who made their theoretical contribution to the process of judicial reform. Among the most prominent such scholars, the following can be noted: R. Alexy, R. Dworkin, E. T. Feteris, C. Perelman, D. Walton are only some.

The doctrine, which can also become the theoretical basis of judicial argumentation,

⁸ Case of *Seryavin and others v. Ukraine* (Strasbourg 10 February 2011), accessed August 11, 2022, <https://hudoc.echr.coe.int/eng?i=001-103279>.

⁹ Case of *Kryvitska and Kryvitsky v. Ukraine* (Strasbourg 2 December 2010), accessed September 08, 2022, <https://hudoc.echr.coe.int/eng?i=001-101978>.

¹⁰ European Commission. *Communication from the commission to the European Parliament, the European Council and the Council* (Brussels 17.06.2022), accessed August 13, 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en, 8.

¹¹ Ukaz Prezidenta Ukrainy «Pro Stratehiiu rozvytku systemy pravosuddia ta konstytutsiinoho sudochynstva na 2021-2023 roky [On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023]». (Kyiv 11 chervnia 2021 roku No 231/2021), accessed September 08, 2022, <https://zakon.rada.gov.ua/laws/show/231/2021/conv#Text>.

was also derived by judges based on a large volume of judicial practice and, specific case law. Amid these judges, the following can be singled out: A. Barak, W. Blackstone, A. Sajo, A. Scalia etc.

With perspective and optimism, one can look at the analysis of the problems of judicial argumentation, which studied by domestic scholars. Among them, the following can be distinguished: T. Dudash, I. Zvieriev, A. Khvorostyankina, M. Koziubra, V. Lemak, P. Rabinovych, M. Savchyn, S. Shevchuk and others.

Additionally, a very important role is played by the Constitutional Court of Ukraine. The jurisprudence of the Constitutional Court of Ukraine formulates an important doctrinal contribution in the context of the role of judicial argumentation during the reform of the judicial system of Ukraine. This is judicial institution, which carries out constitutional control. Therefore, the various models of argumentation are used in its decision.

We should not ignore the fact that theoretical developments on the issues of judicial argumentation are also based on the research, opinions of such institutions as European Commission for Democracy through Law (the Venice Commission), the European Court of Human Rights, the Consultative Council of European Judges, European Commission for the efficiency of justice (CEPEJ) etc.

The Role of Judicial Argumentation in the Judicial System of Ukraine

The crucial and final element of the most effective application of argumentation in the judicial practice of Ukraine is the quality of the court decision. The quality of a court decision is not only a legal concept, but also a complex substance that structures in the whole legal system.

This is due to the fact that social, economic, political and other important factors are intertwined in the judgement. A court decision should not only be the subject of a lawyer's research, but should also be understandable for other groups of people. In particular, the Supreme Court defends this position.

In this regard, we highlight the importance of the position of the Grand Chamber of the Supreme Court, which is described in the Resolution of November 28, 2019 in case No 261/0/15-18. In this decision, the Supreme Court indicated that in Opinion No 11 (2008) of the Advisory Council of European Judges was applied, which stated the following: "Clear reasoning and analysis are basic requirements in judicial decisions and an important aspect of the right to fair trial. A high quality judicial to the judge allows – and does so fairly, speedily, clearly and

definitively».¹²

The quality of court decision research by educational institutions of judiciary, specifically by the National school of judges of Ukraine. These institutions produce different research and educational guidelines. Among these works we highlight: «The guide to writing court decisions».¹³

Judicial argumentation has more a systematic dimension than quantitative content. This is confirmed by one of the positions of the Supreme Court, which is set out in the Resolution dated June 26, 2018 in case No 127/3429/16-ц, where the Supreme Court emphasized that the European Court of Human Rights indicated that according to its established practice, which reflects the principle that connected with the proper administration of justice, the grounds on which they are based must be properly indicated in the decisions of courts and other dispute resolution bodies. Although paragraph 1 of Article 6 of the Convention obliges courts to give reasons for their decisions, it cannot be interpreted as requiring a detailed response to each argument. The extent to which the court must fulfill the obligation to justify the decision may be different depending on the nature of the decision (case *Seryavin v. Ukraine*, § 58, decision of February 10, 2010).¹⁴ Certain positions were also stated in other court decisions. At the same time, in most cases, in Ukraine we can observe a low level of judicial argumentation in the court system. The reasons for this are quite diverse. These reasons can be conditionally divided into reasons of an objective and subjective nature.

Granting Ukraine the status of a candidate for joining the EU will facilitate and increase the pace of inevitable changes that will take place in the judicial system. These changes will not have a facultative or, so to speak, optional (non-mandatory) content. These are international obligations to which Ukraine has committed itself within EU integration framework.

It should be noted that today in the context of judicial argumentation, which will complement the reform of the judiciary, «the synergy» of the bodies of the judicial system of Ukraine, the Parliament of Ukraine and the academic community is needed. This is due to the need to find a systematic approach and method of implementation in the application of argu-

¹² Postanova Velykoi Palaty Verkhovnoho Sudu u spravi No 261/0/15-18. Yedynyi derzhavnyi reistr sudovykh rishen (28.11.2019), accessed August 23, 2022, <https://reyestr.court.gov.ua/Review/86435732>.

¹³ Kuibida, Roman; Syroid, Oksana. Posibnyk iz napysannia sudovykh rishen [Guide to writing of court decisions]. (Kyiv, 2016).

¹⁴ Postanova Verkhovnoho Sudu u spravi No 127/3429/16-ц. Yedynyi derzhavnyi reistr sudovykh rishen (26.06.2018), accessed August 23, 2022, <https://reyestr.court.gov.ua/Review/75524117>.

mentation in the judicial practice of Ukraine. As an example of the absence of the specified model, the legislator, adopting the Civil Procedure Code of Ukraine, which notes, in p.1 of Article 263 of this normative legal act, that the court decision must be based on the principles of the rule of law, be legal and justified.¹⁵

Meanwhile, representatives of the judicial system also repeatedly noted the necessity to provide argumentation for court decisions. As an example, it is worth noting the position of the Supreme Court, which is set forth in the Resolution of September 4, 2018 in case No 821/1903/17, where it is noted that the reasoning of the court decision is manifested in providing legal arguments, ensuring the persuasiveness of the court decision, which is achieved through analysis of factual and legal grounds for making a decision, giving an assessment to each specific, separate and relevant argument and counterargument.¹⁶

In addition to the above, the issue of judicial argumentation is also raised in the academic community of Ukraine. Particularly, significant work has been done in this regard by the Department of General Theory of Law and Public Law of the National University of Kyiv-Mohyla Academy. Also, a significant role place by academic research on legal argumentation of the Kharkiv School of Law and the Lviv School of Law.

In this case, there is a need for cooperation between the academic community, the Parliament and the judicial branch of government in the context of the implementation and development of the ideas of judicial argumentation during the reform of the judiciary of Ukraine.

Western European academic legal science includes, among other things, academic approaches used by argumentation schools in Europe. This affects both on academic and doctrinal positions, as well on the adoption of legislation and the level of judicial practice in general in the countries of the European Union. In this context, it is critically important for Ukraine to take account of these experiences as the country seeks to harmonise with European Union member states legal aquis (or practice) when relevant. For example, we can pay our attention to the famous Dutch school of legal argumentation, including such scholars as E. T. Feteris, J. Hage, H. Kloosterhuis, B. Verheij.

¹⁵ Tsyvilnyi protsesualnyy kodeks Ukrayiny [Civil procedure code of Ukraine]: Redaktsiya vid 07.08.2022/Verkhovna Rada Ukrayiny, accessed August 27, 2022, <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

¹⁶ Postanova Verkhovnoho Sudu u spravi No 821/1903/17. Yedynyi derzhavnyi reiestr sudovykh rishen (04.09.2018), accessed August 23, 2022, <https://reyestr.court.gov.ua/Review/76271565>.

For a long period of time, European institutions provided an assessment of the judicial system of Ukraine. A significant part of practical conclusions regarding the judicial system of Ukraine were provided by such an institution as the European Commission for Democracy through Law (The Venice Commission). Claire Bazy-Malaurie, President of the European Commission «For Democracy through Law» (The Venice Commission), noted in her recent speech that the process of joining the European Union will give a new impetus to reforms and allow a critical eye to look at those areas in which reforms have not yet been made. Work with the Council of Europe will continue on the basis of the parameters established by its monitoring bodies and its advisory bodies, including the Venice Commission. In the past, the Venice Commission provided many conclusions for Ukraine. You are one of our best «customers» so to speak. Since 1995, the Venice Commission has provided Ukraine with 96 conclusions, which constitutes a significant part of its work.¹⁷ This position demonstrates substantial attention to the matter of Ukrainian judiciary by the EU high-ranking officials.

The European Court of Human Rights plays an equally important role in assessing the quality of the judicial system of Ukraine from the point of view of European institutions. Along with the academic and doctrinal positions developed in this court, in the course of its judicial practice regarding the judicial system of Ukraine, the evaluation of the quality of court decisions takes place in accordance with the imperative requirements of the Law of Ukraine «On the Enforcement of Decisions and Application of the Practice of the European Court of Human Rights», where in Article 17 it is noted that when considering cases the courts apply the Convention and the practice of the Court as a source of law.¹⁸ Both according to the positions of scholars and according to the positions of experts and judicial institutions of Europe, the issue of proper judicial argumentation during judicial proceedings is of great importance.

This requirement is not just another desire to make the decision more appealing rhetorically. Instead, this requirement is more closely related to the issue of the criteria of the rule of law, which are detailed by the Venice Commission, and which are detailed in the practice of the European Court of Human Rights. Moreover, a significant part of the procedural codes of Ukraine is imbued with provisions that the rule of law should be considered from the point of view of the practice of the European Court of Human Rights, for example, according to p.2 of Article 6 of the Code of Administrative Procedure of Ukraine, the court applies the

¹⁷ Vystup Claire Bazy-Malaurie, Prezydentky Yevropeiskoi Komisii «Za demokratiu cherez pravo» (Venetsiiska Komisiia), na Mizhnarodnii konferentsii, accessed August 27, 2022, <https://ccu.gov.ua/novyna/vystup-kler-bazimalori-prezydentky-yevropeyskoyi-komisiyi-za-demokratiyu-cherez-pravo>.

¹⁸ Zakon Ukrainy «Pro vykonannya rishen ta zastosuvannya praktyky Yevropeiskoho sudu z prav liudyny [On the Enforcement of Decisions and Application of the Practice of the European Court of Human Rights]»: Redaktsiia vid 02.12.2012, accessed August 30, 2022, <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

principle of the rule of law taking into account case law of the European Court of Human Rights.¹⁹

The Rule of Law Checklist of the Venice Commission is significant in this respect. This checklist asks the following question: «Are judgments well- reasoned?». In more detail, this checklist provides an explanation from the practice of the European Court of Human Rights, namely the following: «Article 6 § 1 (Article 6-1) obliges the courts to give reasons for their judgments»: ECHR *Hiro Balani v. Spain*, 18064/91, 9 September 1994, § 27; *Jokela v. Finland*, 28856/95, 21 May 2002, § 72; see also *Taxquet v. Belgium*, 926/05, 16 November 2010, § 83ff. Under the title «Right to good administration», Article 41.2.c of the Charter of Fundamental Rights of the European Union provides for «the obligation of the administration to give reasons for its decision».²⁰

However, in this regard, judicial argumentation from the point of view of pro-European standards should not be equated only with the criteria for compliance with the rule of law. Ukraine should adopt the European experience of judicial argumentation, also from the point of view of the art of persuasion. Therefore, in the context of adopting best practices, persons involved in the process of judicial argumentation need to strengthen cooperation with academic and expert institutions that research and implement the specified subject.

Legal argumentation in the judicial system and the conclusion of the European Commission regarding the application of Ukraine's membership in the European Union

One of the important aspects in the issues of judicial argumentation given in the opinion of the European Commission is the point where it is noted that, the key aspects of the new reforms are embedded in a new comprehensive Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023.²¹ In this case, it is necessary to dwell separately on the problems that take place in the modern judiciary of Ukraine and that affect the level of judicial argumentation. There are many concerns that are highlighted in this strategy. Directly or indirectly, these problems have influence on the quality of judicial argumentation in judicial argumentation proceedings in Ukraine. The following are the most

¹⁹ Kodeks administratyvnoho sudochynstva Ukrainy [Code of Administrative Procedure of Ukraine]: Redaktsiia vid 27.07.2022, accessed August 21, 2022, <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

²⁰ European Commission for democracy through law (Venice Commission). Rule of law checklist. *Venice Commission at its 106th Plenary Session* (Venice 11-12 March 2016), accessed August 17, 2022, <https://rm.coe.int/1680700a8f>, 26, 51.

²¹ European Commission. *Communication from the commission to the European Parliament, the European Council and the Council* (Brussels 17.06.2022), accessed August 13, 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en, 8.

significant problems in this respect: dishonesty of individual judges, employees of judicial authorities and institutions, cases of toleration of corruption; imperfection of the system of judicial authorities, the organization of their activities, including financial, logistical and other support of courts of all levels; shortage of judges in local and appellate courts, excessive workload on judges in courts of all levels; insufficient level of implementation of digital technologies in the administration of justice; lack of proper communication policy in courts.

Such an appeal by the European Commission to the mentioned problems is fully justified, primarily on the grounds that they are of a systemic nature. And in such conditions, the quality of judicial argumentation decreases. As a result, in the system of judicial decisions of Ukraine, there are decisions that have been criticized by the civic activists, international organizations and scholars, in particular, because of the lack of argumentation.

Argumentation, which is used in the judiciary of Ukraine, has a set of social, economic, educational, political and other aspects. This indicates that it is correlated to such a characteristic of law as «dynamism». In this aspect, we have to emphasize «the school of free law», which was supervised by scholar Eugene Ehrlich. Also, the school of legal realism should be singled out, in particular its representatives such as Roscoe Pound.

Taking into account the above positions, in order to fully complete so-called «homework» that is, fulfillment of obligations to which Ukraine agreed – from the European Union in the part of the judicial system, users of judicial argumentation should follow the work of the leading scholars in the field of justice and the doctrinal provisions given in the judicial decisions of the relevant court. In this context, in terms of the proper level of argumentation, the cooperation of Ukrainian government institutions with the Council of Europe, European Commission for the efficiency of justice (CEPEJ) is critical.

A good example of this issue, in the context of the mentioned problems of the Ukrainian judicial system, is that at one time European Commission for the efficiency of justice (CEPEJ) adopted the European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment, which is devoted to a considerable number of issues of building legal argumentation.

In addition, judicial argumentation in the context of Ukraine's integration into the European Union is also a matter of legal culture. In support of the previously stated positions, it should be noted about the understanding of legal culture expressed by the scholar Ralph Christian Michaels, who indicated the next thing:

«Talk of legal culture can be helpful insofar as it sensitises us for important factors beyond legal rules and institutions: values, judicial knowledge, practices, etc. The term legal culture may sometimes be useful to refer to the aggregation of these factors, when the rela-

tionship between them is irrelevant».²² That is why it is possible to develop legal argumentation by developing the legal culture of the citizens.

Again, it is worth emphasizing that legal culture is one of the main factors of Ukraine's integration into the European Union. No changes at the level of political and legal regulation will be able to bring European integration processes to Ukraine, unless the legal culture is changed, which has a much wider scope than just various legal documents. Understanding the legal culture in the EU should be dynamic and keep up with the times. As J. H. H. Weiler noted, in his article: «Culture, including political and legal culture, is never static».²³

It can be concluded from this that proper argumentation in the court process should become part of the legal culture in the context of the European integration of Ukraine. In this case, it can be noted that the reform of the judicial system in Ukraine will take place by regular methods, and not by coercion of the European institutions.

European Union institutions and the citizens of Ukraine understand that the quality and level of legal argumentation during judicial proceedings in Ukraine should be at a much higher level than it is now. Despite the abovementioned negative trends that persist in the judicial system of Ukraine, future prospects for improvement are seen in the fact that the level of judicial argumentation of the participants in the legal process in Ukraine will increase.

A significant number of the population of Ukraine already speak English and other foreign languages (particularly among the younger population, which is coming into positions of authority), which gives reasons to believe that when preparing cases for court proceeding, various models of judicial argumentation, which are used in the legal structures of the European Union, will be used in the Ukrainian judiciary.

A separate important aspect during the impact of judicial argumentation on the reform of the judicial system will be the fact that the Parliament of Ukraine is increasingly directing its efforts in the preparation of draft laws of European integration content. Reforming the judicial system, through increasing the level of judicial argumentation, constitutes a significant part of the process of Ukraine's cooperation with the European institutions.

Legal argumentation including judicial argumentation is the art of persuasion, which should have more and more meaning in the activities of the participants in the legal process. The lack of examples of the application of judicial argumentation will move away judicial sys-

²² Michaels, Ralf Christian. *Legal Culture* (January 2011), accessed August 25, 2022, https://www.researchgate.net/publication/294445084_Legal_Culture, 6.

²³ Weiler, Joseph Halevi Horowitz. *The political and legal culture of European integration: An exploratory essay*. *International Journal of Constitutional Law*, Volume 9, Issue 3-4, October 2011, 678.

tem of Ukraine from the standards of judicial proceedings in the EU.

Despite the fact that Ukraine is currently not a member of the European Union, Ukraine must apply the principles on which the EU-judicial system is built. Case law of the Court of Justice of the European Union pays special attention in this matter. In this regard, the position expressed in the Resolution of the Grand Chamber of the Supreme Court of August 3, 2022 in case No 910/9627/20 is significant in this regard, where it is noted that the decision of the Court of Justice of the European Union should be considered as such, which allows establishing the content of the provisions of the legislation of the European Union specified in Article 2 of the Law on «On the electric energy market». Similar to the practice of applying ECHR decisions, the principles derived from its decisions on similar issues are to be taken into account, even if they concern other states.²⁴

Prospects for improving judicial argumentation in the court system of Ukraine

So far, the issue of the application of argumentation lies more in the issue of a law application process than in the issue of the need to adopt new normative legal acts or the need for new judicial practice. The requirement of argumentation is based on the procedural legislation, which is the basis for administration of judicial proceedings in Ukraine.

Participants of the judicial process, whether advocates, judges or prosecutors have access to numerous examples of worthwhile judicial practice where argumentation is used. Such bases are: the practice of the European Court of Human Rights, the practice of the US Supreme Court and other countries. The activity of European institutions in Ukraine makes it possible to borrow the best experience from the EU, which will be an important aspect of Ukraine's integration into the European community.

The tragic events that Ukraine is experiencing are an incentive to improve the legal culture in order to be a member of the civilized world. Part of the country's defense capability will also be related from overcoming the negative phenomena in the judiciary, which were mentioned above. In the foreground, along with judicial argumentation, the principles of law, which have a fundamental meaning in legal relations, should come to the fore.

Relevant in this regard is the position of V. Butkevych, a retired judge of the European Court of Human Rights, who notes that the principles of law prevent a judge from performing the functions of a «fisherman». Each state has tens of thousands of legal acts in its national register. An unscrupulous judge can always «catch» from them the act that is more in line with

²⁴ Postanova Velykoi Palaty Verkhovnoho Sudu u spravi No 910/9627/20. Yedynyi derzhavnyi reiestr sudovykh rishen (03.08.2022), accessed September 08, 2022, <https://reyestr.court.gov.ua/Review/105852859>.

his or her plan or the plan of those who pressure him or her.²⁵

In the context of judicial argumentation, it is necessary to outline the parameters of what this legal substance means. For this, it is important to hold educational events and training sessions, not only for students, but also for advocates, judges, prosecutors and other participants of the judicial process. No matter how straightforward and banal it sounds, however, judicial argumentation is the need to form arguments.

In connection with the European integration of Ukraine, there is a need to implement judicial practice from countries of the European Union, which would correspond to the principle of its activity.

Conclusion

The conducted research shows that judicial argumentation is an integral part of reforming the judicial system in Ukraine. In developed civilized countries with established democratic principles, it is an indispensable part of the judicial process. Mostly, judicial argumentation is a part of such a process, not because of coercion, but because of the high level of legal culture that is present. The integration of Ukraine into the European Union is another opportunity to accept the culture of the developed world with established legal traditions.

Studies of the judicial system of Ukraine by European institutions have shown that Ukraine has a significant number of problems related to negative phenomena in the judiciary. It is these factors that influence the fact that, instead of judicial argumentation, there are quasi-argumentative phenomena, which at first glance may have an argumentative content. However, in general, this is not argumentation.

Judicial argumentation is, among other things, a constituent part of general theoretical legal studies developed by various legal schools. The use of the best practices of these studies will contribute to the fact that the judicial system will be reformed according to the necessary standards and will lead to Ukraine's approach to the European Union.

Moreover, judicial argumentation should become a unifying factor of research on the part of the participants in the judicial process, the academic community and the legislative body. Such a balanced approach is the key to faster integration into the EU, thanks to the reform of the judicial system.

²⁵ Butkevych, Volodymyr. *Evolutsiia kryteriiv reformuvannia Yevropeiskoho Sudu z prav liudyny (zdobutky i vtraty)* [Evolution of criteria of reforming of the European Court of Human Rights (achievements and casualties)]: zb. nauk. ct. Mizhnar. nauk.--prakt. konf. (Odesa, 15 veresnia 2012 r.) / za red. S. V. Kivalova; NU «OYUA». – Odesa : Feniks, 2012, 51.

The development of judicial argumentation during the integration of Ukraine into the EU is carried out by specialized institutions that related directly to the EU, in particular (CEPEJ), the European Commission. Also, such organizations as the Council of Europe, the Consultative Council of European Judges and the Venice Commission provide assistance during the development of judicial argumentation in Ukraine. A special role in the latter plan is played by the case law of the European Court of Human Rights, because the decision made by the ECHR concerns a significant part of the style of argumentation provided in the judgements of the European Court of Human Rights. At the same time, the quality of argumentation in judicial decisions of Ukraine's judiciary will be higher if the participants of judicial process will be more follow the reasons applied by the Court of Justice of the European Union as well.

Step by step, Ukraine needs to change its legal culture, which concerns the use of judicial argumentation in judicial proceedings. This will contribute to the fact that the argumentation process will go much faster. Therefore, Ukraine's integration into the European Union will have more practical measurements.

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Volodymyr Kistianyk is an advocate and PhD at the National University of Kyiv-Mohyla Academy. As an advocate, he practices law in the following areas: criminal law and family law. Also, he practices law in other areas. His academic interests are: legal argumentation, judicial argumentation, critical thinking, theory of legal reasoning, etc. Volodymyr Kistianyk participates in various events on civic and professional initiatives related to law.

Володимир Кістяник

Адвокат, кандидат юридичних наук

РОЛЬ СУДОВОЇ АРГУМЕНТАЦІЇ В РЕФОРМУВАННІ УКРАЇНСЬКОЇ СУДОВОЇ СИСТЕМИ: ПЕРСПЕКТИВИ ВСТУПУ ДО ЄС

Стаття присвячена огляду впливу судової аргументації на процес реформування судової системи України в процесі вступу України до Європейського Союзу. Додатково, стаття визначає окремі структурні елементи впливу судової аргументації на процес інтеграції України до ЄС.

У цій статті описано важливу роль європейських інституцій у підвищенні якісного рівня судової аргументації в Україні. Ці інституції можна поділити на дві групи: організації ЄС (Європейська комісія, Євробарометр, Європейська комісія з питань ефективності правосуддя, Суд справедливості ЄС) та організації Ради Європи (Європейський суд з прав людини, Венеційська комісія та Консультативна Рада Європейських Суддів). Автор наводить приклади коли українські судові інституції піднімають питання з'ясування якості судової аргументації.

Ключові слова

судова аргументація, інтеграція в ЄС, судова система України, Європейський Союз, юридичне обґрунтування, міжнародні зобов'язання