

postanova Kabinetu Ministriv Ukrainy [On the approval of the Standard Regulation on the Center for Social and Psychological Rehabilitation of Children: Resolution of the Cabinet of Ministers of Ukraine] vid 28 sichnia 2004 r. N 87. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/87-2004-%D0%BF#Text>

14. Ofitsiyni sait Ministerstva z pytan reintehratsii tymchasovo okupovanykh terytorii Ukrainy [The official website of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine]. (in Ukrainian) URL: <https://minre.gov.ua/>

15. Pro zabezpechennia prav i svobod vnutrishno peremishchenykh osib: Zakon Ukrainy [On ensuring the rights and freedoms of internally displaced persons: Law of Ukraine] vid 20 zhovtnia 2014 roku. № 1706-VII. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/1706-18#Text>

16. Pro zatverdzhennia Poriadku pryiomu na navchannia dlia zdobuttia vyshchoi osvity v 2023 rotsi: nakaz Ministerstva osvity i nauky Ukrainy [On the approval of the Procedure for admission to higher education in 2023: order of the Ministry of Education and Science of Ukraine] vid 15.03.2023 № 276. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/z0519-23#Text>

17. Pro zatverdzhennia Poriadku pryiomu dlia zdobuttia vyshchoi, fakhovoi peredvyshchoi ta profesiinoi (profesiino-tekhnichnoi) osvity osib, yaki prozhyvaiut na tymchasovo okupovanii Rosiiskoiu Federatsiieiu terytorii Ukrainy: nakaz Ministerstva osvity i nauky Ukrainy [On the approval of the Admission Procedure for obtaining higher, professional pre-higher and professional (vocational and technical) education of persons living in the territory of Ukraine temporarily occupied by the Russian Federation: order of the Ministry of Education and Science of Ukraine] vid 01 bereznia 2021 roku № 271. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/z0505-21#Text>

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FORMATION OF THE JUDICIARY IN UKRAINE: ADMINISTRATIVE AND LEGAL ASPECT

The article analyses and suggests the main areas for improvement of the administrative and legal aspect of formation of the judiciary in Ukraine.

From the scientific and practical aspects, the author analyses the key and fundamental legislative acts regulating the process of appointment of judges to their posts. This process should be viewed as a complex legal mechanism that includes provisions of various branches of legislation. Following the amendments to the legislation on the judicial system and the status of judges, a clear procedure for the appointment of judges has been established in Ukraine. The author proves that this appointment procedure is an important component of the legal status of judges. It is proposed to divide the appointment process into formal and qualification stages. The formal stages include the activities of the High Qualification Commission of Judges of Ukraine on the procedural aspect of appointment. The qualification stages include the verification and identification of various skills required to perform judicial duties. These stages include the passing of selection examinations, special training and qualification examinations.

Key words: justice, judiciary, court, authority of the judiciary, judge, ethical standards of judicial behaviour, selection of judicial candidates, judicial reform, appointment of judges, competence, lustration, integrity, judicial competition, efficiency of the justice system, professional training of judges.

Чудик Н. ФОРМУВАННЯ СУДДІВСЬКОГО КОРПУСУ В УКРАЇНІ: АДМІНІСТРАТИВНО-ПРАВОВИЙ АСПЕКТ

У статті проаналізовано та запропоновано основні напрями вдосконалення адміністративно-правового аспекту формування судівського корпусу в Україні.

З наукового та практичного аспектів здійснено аналіз ключових та основоположних законодавчих актів, які регулюють процес призначення суддів на посади. Цей процес слід розглядати як складний правовий механізм, що включає в себе положення різних галузей законодавства. Після внесення змін до законодавства про судову систему та статус суддів в Україні встановлено чітку процедуру призначення суддів. Доведено, що цей порядок призначення є важливою складовою правового статусу суддів. Запропоновано розділити процес призначення на формальні та кваліфікаційні стадії. До формальних відноситься діяльність Вищої кваліфікаційної комісії суддів України з питань процедурного аспекту призначення. Кваліфікаційні етапи включають перевірку та виявлення різних необхідних навичок для здійснення судівських обов'язків. Ці етапи включають складання відбіркових іспитів, спеціальну підготовку та проходження кваліфікаційних іспитів.

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Ключові слова: правосуддя, судова влада, суд, авторитет судової влади, суддя, етичні стандарти поведінки судді, добір кандидатів на посаду судді, судова реформа, призначення на посаду судді, компетентність, очищення влади, добросовісність, конкурс на посаду судді, ефективність системи правосуддя, професійна підготовка суддів.

Statement of the problem. Following the events of the Revolution of Dignity, Ukraine has paid considerable attention to reforming its judiciary. To achieve this goal, various methods have been proposed to renew the composition of the judiciary, weeding out unprofessionalism and dishonesty in the judiciary as part of the process of cleansing the government. The legal status of judges directly depends on the person holding the position of a judge, so special attention should be paid to the issues of appointment to the position of a judge.

The state of research of the problem. The procedure for appointment to the position of a judge has long been the subject of scientific research by many national scholars, in particular: O. Bandurka, R. Barannik, V. Boyko, V. Bryntsev, O. Zhukovskiyi, M. Kosiuta, V. Kravchuk, I. Marochkin, L. Moskvych, V. Patlachuk, Y. Polianskiyi, L. Skomorokha, V. Teremetskiyi, O. Zubov and others.

The general purpose of this article is to analyse and disclose the administrative and legal aspect of the formation of the judiciary in Ukraine

Presentation of the main research material. Unfortunately, the judicial power in Ukraine is still considered one of the institutions that have the least trust in society. At the time of the war beginning, Ukraine was on the verge of completing the fundamental judicial reform (2020-2022), which would lead to systemic changes, if fully implemented. The key aspects of the new judicial reform are laid down in the comprehensive Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023. However, first the coronavirus pandemic, and later the Russian aggression against Ukraine caused a slowdown and even an indefinite postponement of the reformation processes in the sphere of judicial system and many other spheres of public life [1, p. 13].

As V. Kravchuk rightly notes, the constitutional and legal means of renewing the composition of the judicial community involve the use of appointment and election mechanisms [2, p. 18].

The procedure for appointment of a judge is reflected in a number of international legal acts. The Montreal Universal Declaration on the Independence of Justice, adopted by the First World Conference on the Independence of Justice in 1983, is an important document regulating the appointment of a judge to office. In the context of the appointment of a judge, the Declaration, in particular, states the following: there is no single correct way to elect judges; the only requirement is that the method of election should ensure that judges are not appointed for unfair reasons [3].

Paragraph 1.3. of the European Charter of Judges states that in respect of each decision related to the recruitment, selection, appointment and promotion or termination of a judge, the law shall provide for the intervention of a body independent of the executive and legislative branches, in which at least half of the members are judges elected by the same judges in a manner that guarantees the widest possible representation of judges [4].

According to Art. 9 of the General Charter of Judges, the election of a judge to office must meet objective and transparent criteria and be based solely on his or her professional qualifications. If the election to office is not otherwise carried out in accordance with an established and deeply rooted tradition, then such election should be carried out by an independent body including a sufficient number of representatives of the judiciary [5].

Another document that establishes the procedure for the appointment of a judge is the Latimer House Recommendations on Parliamentarism and Judicial Independence in Common Law Countries, adopted at a meeting of representatives of the Parliamentary Association, the Association of Magistrates and Judges, the Bar Association and the Common Law Education Association on 19 July 1998. The document emphasises the following points: 1) the process of appointment of judges should be independent; 2) the process of appointment should be carried out in such a way as to guarantee independence and proper intellectual level of candidates selected for appointment of judges at all levels; 3) appointment of judges at all levels should be based on progressive principles of equality on the basis of gender or other grounds that may be the basis for discrimination; 4) judges should be appointed on a permanent basis [6].

As V. Kravchuk rightly argues, constitutional and legal means of renewing the composition of the judicial community are a defining element of the legal status of judges and involve the use of appointment and election mechanisms. In Ukraine, after the amendments to the legislation on the judiciary and the status of judges, only the procedure of appointment to the positions of judges is provided for [7 p. 391].

According to L. Skomorokha, both the fate of the judiciary itself and the fate of the entire state will depend on how clearly and legally competently the legislator sets out the legal position on the appointment of judges [8, p. 18].

S. Prylutskiyi considers the formation of the corps of professional judges of Ukraine as a dynamic phenomenon, and defines the formation of the corps of professional judges of Ukraine as an orderly process of staffing the judiciary, including legal mechanisms for the acquisition and termination of powers by judges [9, p. 18].

Studying the procedure and organisation of the process of formation of the judiciary, L. Skomorokha understands the mechanism of implementation of the formation of the judiciary as the organisational and legal activities of the relevant bodies to ensure the creation of a professional judiciary of Ukraine, which includes legally established forms, means, conditions of selection, training of candidates for judges, appointment and retraining and advanced training of judges [8, p. 43]. At the same time, the researcher considers it expedient to take measures to

standardise and develop common approaches and methods of formation of the judiciary in the procedure of appointment of judges [10, p. 44].

The procedure for holding the position of a judge is regulated in detail in Section 4 of the Law on the Judiciary and the Status of Judges, as amended, which made a significant step towards streamlining the selection and appointment of judges. A citizen of Ukraine who has expressed a desire to become a judge must meet the requirements of the current legislation for candidates for the position of a professional judge [11].

According to Article 70 of the Law on the Judiciary and Status of Judges, the selection and appointment of judges is carried out in accordance with the established procedure and consists of the following stages 1) the decision of the High Qualification Commission of Judges of Ukraine to announce the selection of candidates for the position of judge, taking into account the projected number of vacant positions of judges; 2) the High Qualification Commission of Judges of Ukraine to publish on its official website an announcement on the selection of candidates for the position of judge. The announcement shall specify the deadline for submission of documents to the High Qualification Commission of Judges of Ukraine, which may not be less than 30 days from the date of the announcement, as well as the projected number of vacant judicial positions for the next year; 3) submission of an application and documents required by the Law to the High Qualification Commission of Judges of Ukraine by persons who have expressed their intention to become a judge; 4) verification by the High Qualification Commission of Judges of Ukraine of compliance of persons who have applied for participation in the selection with the requirements established by the Law; 5) admission by the High Qualifications Commission of Judges of Ukraine of persons who, based on the results of the examination, meet the requirements for a candidate for the position of a judge established by the Law, to participate in the selection and take the qualification examination; 6) passing the qualification examination by a person admitted to participate in the selection; 7) determination by the High Qualification Commission of Judges of Ukraine of the results of the qualification examination and their publication on the official website of the High Qualification Commission of Judges of Ukraine; 8) conducting a special inspection of persons who have successfully passed the qualification examination in accordance with the procedure established by the legislation on prevention of corruption, taking into account the peculiarities determined by the Law; 9) candidates who have successfully passed the qualification exam and undergone special training; obtaining a certificate of special training; 10) candidates who have passed the special training take the qualification exam and determine its results; 11) the High Qualification Commission of Judges of Ukraine enrolls candidates for the position of judge based on the results of the qualification exam to the reserve for filling vacant positions of judges, determines their rating, publishes the list of candidates for the position of judge, including; 12) announcement by the High Qualification Commission of Judges of Ukraine of a competition to fill such positions in accordance with the number of vacant judicial positions in local courts; 13) holding by the High Qualification Commission of Judges of Ukraine of a competition to fill a vacant judicial position based on the ranking of candidates who participated in such competition and making a recommendation to the High Council of Justice on the appointment of a candidate for the position of a judge; 14) consideration by the High Council of Justice of the recommendation of the High Qualification Commission of Judges of Ukraine and making a decision on the candidate for the position of a judge.

Conclusions. Thus, most of the above stages should be considered formal, with the High Qualification Commission of Judges of Ukraine playing a decisive role, but one should not assume that everything depends solely on it. After all, the correctness of the documents submitted for the competition, the results of the qualifying exams, and compliance with the legislation on the prevention of corruption depend directly on the candidate for the position of a judge.

The qualification stages consist of testing and implementing various skills required for the performance of judicial functions by candidates for the position of a judge. The qualification stages include passing the selection exam by a person admitted to the selection process; passing special training by candidates who have successfully passed the selection exam and undergone special testing, obtaining a certificate of special training; passing a qualification exam by candidates who have undergone special training and determining its results. Therefore, the procedure for appointment of a judge is an important element of the legal status of a judge, as it precedes the actual emergence of legal personality of a judge[11].

REFERENCES:

1. Bandurka O., Teremetskyi V., Boiko V., Zubov O., Patlachuk V. Suchasnyy stan sudovoyi reformy v Ukraini: problemy ta shlyakhy yikh vyrishennya [Current Situation of Judicial Reform in Ukraine: Problems and Ways of Their Solution]. *Lex Humana*. 2023. V. 15. № 4. P. 55–72. URL: <https://seer.ucp.br/seer/index.php/LexHumana/article/view/2700/3614>
2. Kravchuk, V.M. (2020). Teoretichni osnovi konstitucijno-pravovogo statusu suddiv v Ukraini [Theoretical foundations of the constitutional and legal status of judges in Ukraine]. Doctor's thesis. Uzhgorod [in Ukrainian].
3. Monreal's'ka universal'na deklaracija shhodo nezalezhnosti pravosuddja [Montreal Universal Declaration on the Independence of Justice]. vkksu.gov.ua Retrieved from: vkksu.gov.ua/userfiles/doc/perelik-dokumentiv/monreal-universal-declar.doc [in Ukrainian].
4. Evropejs'ka hartija shhodo statusu suddiv [European Charter on the Status of Judges]. (n.d). zakon3.rada.gov.ua Retrieved from http://zakon3.rada.gov.ua/laws/show/994_236 [in Ukrainian].

5. Zagal'na (Universal'na) hartija suddi [General (Universal) Charter of Judges].(n.d). zakon3.rada.gov.ua Retrieved from [http:// zakon3.rada.gov.ua/laws/show/995_j63](http://zakon3.rada.gov.ua/laws/show/995_j63) [in Ukrainian].
6. Rekomendacii Latimer Haus shhodo parlamentarizmu ta nezalezhnosti suddivstva v kraïnah zagal'nogo prava, prijnjati na zustrichi predstavnikiv parlaments'koï asociacii, asociacii magistrativ ta suddiv, asociacii advokativ ta osvith'oï juridichnoï asociacii kraïn zagal'nogo prava 19 lipnja 1998 roku [Recommendations of the Latimer House on Parliamentarism and Independence of the Judiciary in Common Law Countries, adopted at a meeting of representatives of the Parliamentary Association, the Association of Magistrates and Judges, the Bar Association and the Educational Legal Association of Common Law Countries July 19, 1998]. vkksu. gov.ua Retrieved from <https://vkksu.gov.ua/doc/perelik-dokumentiv/rekomendacii-lat> [in Ukrainian].
7. Kravchuk, V.M. (2019). Konstitucijni osnovi pravovogo statusu suddiv v Ukraïni [Constitutional bases of legal status of judges in Ukraine]. Kiïv: Vidavnicтво Lira-K [in Ukrainian].
8. Skomoroha, L.V. (2010). Konstitucijnopravovi aspekti formuvannja profesijnogo suddivs'kogo korpusu v Ukraïni: sutnist', mehanizm realizacii [Constitutional and legal aspects of the formation of the professional judiciary in Ukraine: essence, implementation mechanism]. Candidate's thesis. Kiïv [in Ukrainian].
9. Priluc'kij, S.V. (2003). Formuvannja korpusu profesijnih suddiv Ukraïni [Formation of the corps of professional judges of Ukraine]. Candidate's thesis. Kiïv [in Ukrainian].
10. Skomoroha, L.V. (2010). Konceptual'ni pidhodi shhodo otrimannja vsebichnoï ta povnoï informacii stosovno osob, jaki pretendujut' na zajnjattja posadi suddi [Conceptual approaches to obtaining comprehensive and complete information about persons applying for the position of a judge]. Visnik Vishhoï radi justicii – Bulletin of the High Council of Justice, 2, 44-51[in Ukrainian].
11. Zakon Ukraïni "Pro sudoustrij i status suddiv" [The Law of Ukraine "On the Judiciary and the Status of Judges"].(n.d). zakon3.rada.gov.ua Retrieved from: [http:// zakon3.rada.gov.ua/laws/show/1402-19/print1465331835457898](http://zakon3.rada.gov.ua/laws/show/1402-19/print1465331835457898) [in Ukrainian].

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ОРГАНІЗАЦІЙНО-ПРАВОВІ ЗАСАДИ ДІЯЛЬНОСТІ СУДІВ УКРАЇНИ В УМОВАХ ВОЄННОГО СТАНУ

Розглянуто питання організації діяльності суду в умовах воєнного стану. Важливість та актуальність дослідженої у статті проблематики, пов'язано з необхідністю перебудови діяльності судів задля продовження виконання своїх функцій під час збройної агресії РФ проти України. Аналіз поточної ситуації довів, що сучасна українська система судустрою не була належним чином підготовлена до війни. Доказом цього стала відсутність будь-яких заздалегідь розроблених планів і програм функціонування суду в умовах воєнного та/чи надзвичайного стану. Вказано, що досвід роботи судів в умовах російсько-української війни може бути корисним для інших країн.

Охарактеризовано чинне законодавство, яке регулює діяльність судів в умовах воєнного стану. Розглянуто чинники, що забезпечують безперерйне функціонування судової системи та виявлено недоліки, які цьому заважають. Аналіз реформативних процесів у сфері судочинства, які відбувалися в останні роки в Україні, довів, що до вирішення існуючих проблем із забезпечення справедливого судочинства у відносно мирний час, додалися чимало викликів, спричинених війною. Тому перед Україною постало декілька основних завдань, а саме: забезпечити функціонування судової системи в умовах воєнного стану, а також продовжити ті реформи, які Україна як держава зобов'язалася виконувати з метою вступу до Європейського Союзу. Розглянуто проблеми запровадження дистанційних форм роботи суду, переходу на електронну форму судочинства та доступу до електронного кабінету судді в умовах воєнного стану. Виявлено основні проблеми організації діяльності суду в умовах воєнного стану, а також запропоновано авторське бачення можливих шляхів їх вирішення. Зроблено висновок, що судова система України, незважаючи на наявність багатьох викликів, спричинених війною, загалом продовжує своє належне функціонування.

Ключові слова: воєнний стан, судова система, організація діяльності суду, судова реформа, судочинство, суд.

Morozova K. ORGANIZATIONAL AND LEGAL PRINCIPLES OF THE ACTIVITIES OF COURTS IN UKRAINE DURING THE CONDITIONS OF MARITAL STATE

The issue of organizing the court's activities during a state of war is considered. The importance and relevance of the problem explored in the article are associated with the necessity of restructuring the courts' activities to continue performing their