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## KEY AREAS FOR IMPROVING THE PROFESSIONAL SELECTION OF JUDGES IN UKRAINE

*The article analyses and suggests the main directions of improvement of professional selection of judges in Ukraine.*

*It is proved that the main directions of improvement of the procedure of appointment and selection of judges in Ukraine can be applied comprehensively or refer to individual elements of its mechanism. As a result of the scientific analysis of the international experience in improving the procedure of appointing judges and the general approach to the reform of the judicial system in Ukraine, the following recommendations are made: to establish the independence of the judiciary from any political influence; to ensure transparency and maximum publicity of the judicial selection process; to establish a clear, specific, professional standard for judges, which should specify and define the necessary skills, knowledge and moral qualities, experience, which are mandatory for candidates for the position of judge; taking into account best international practices, provide professional training for candidates for the judiciary, including internships and training programmes; ensure compliance with the principle of non-discrimination among judges, as well as in the High Judicial Council and the High Qualification Commission of Judges of Ukraine; take clear and concrete anti-corruption measures leading to the introduction of mechanisms for vetting candidates for the absence of corrupt links; provide legal guarantees for the establishment of objective and independent judicial bodies; monitoring and evaluation of the quality of judges' work on an ongoing basis to ensure that the judicial system functions at a high level; involvement of international organisations and experts in the process of selecting judges, which will help to introduce international standards and best practices into the judicial system of Ukraine.*

**Keywords:** *judiciary, court, justice, authority of the judiciary, judge, selection of candidates for the position of judge, ethical standards of judicial conduct, appointment of judges, judicial reform, lustration, competence, integrity, efficiency of the justice system, competition for the position of judge, professional training of judges.*

**Чудик Н.**

### **Основні напрями вдосконалення професійного добору суддів в Україні**

*У статті здійснено аналіз та запропоновано основні напрями вдосконалення професійного добору суддів в Україні.*

*Доведено, що основні напрями вдосконалення процедури призначення та добору суддів в Україні можуть застосовуватися комплексно або стосуватися окремих елементів його механізму. В результаті проведеного наукового аналізу міжнародного досвіду удосконалення процедури призначення суддів та загального підходу до реформування судової системи в Україні, надано наступні рекомендації: встановлення незалежності суддівського корпусу від будь-якого політичного впливу; забезпечення прозорості та максимальної публічності процесу відбору суддів; встановлення чіткого, конкретного, професійного стандарту для суддів, який має передбачати та визначати необхідні навички, знання та моральні якості, досвід, що є обов'язковими для кандидата на посаду судді, а також з огляду на науково-технічний прогрес постійне удосконалення даних вимог; оскільки фізичні та психологічні здібності кандидатів, безпосередньо впливають на їх здатність виконувати суддівські обов'язки тому потрібно здійснювати належну їх оцінку; з огляду на найкращі світові практики здійснити професійне забезпечення підготовки для кандидатів на посаду судді, включаючи стажування та навчальні програми; забезпечення дотримання принципу дискримінації серед суддів, а також Вищій раді правосуддя та у Вищій кваліфікаційній комісії суддів України; впровадження чітких та конкретних антикорупційних заходів, в результаті застосування яких будуть впроваджені механізми перевірки кандидатів на відсутність будь-яких корупційних зв'язків; нормативно-правові гарантії створення об'єктивних та незалежних комісій з добору суддів, участь в яких будуть брати представники громадськості та інші експерти з різних сфер життя; проведення на постійній основі моніторингу та оцінки якості роботи суддів, задля здійснення забезпечення функціонування судової системи на високому рівні; залучення міжнародних організацій та експертів до про-*

*цесу добору суддів, завдяки чому відбудеться впровадження міжнародних стандартів та найкращих світових практик у судову систему України.*

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

**Statement of the problem.** The study of international and European standards for the selection and appointment of judges, as well as the analysis of experiences with the selection of judges in foreign countries, demonstrates the importance of this procedure for the formation of an independent, objective and competent judiciary. Awareness of the value of European standards in the judiciary has been mentioned in many national legal acts, legal doctrines, etc., as it can help Ukraine to become a strong, independent, democratic country that successfully fights corruption in the judiciary, strengthens the foundations of the rule of law, ensures fair trials and legitimate court decisions. Adhering to international and European standards in the selection and appointment of judges will not only allow us to implement best practices and standards to improve the efficiency and reliability of the judicial system, but will also once again demonstrate our commitment to shared values and support for international cooperation and relations with the EU.

**The state of research of the problem.** The following experts were involved in the study of certain issues of personnel processes in the judiciary M.I. Chycherska, V.A. Goshovska, L.D. Olifirenko, T.M. Viktor, T.E. Kahanovska, M.G. Melnyk and others. However, scholars have not developed a comprehensive view of the system of competitive procedures in the judiciary.

**Presentation of the main research material.** Analysis of the experience of foreign countries shows that the selection and appointment of judges must comply with certain rules of national legislation and international standards. This suggests that the most important component of administrative and legal support for the professional selection of judges in Ukraine is high-quality legislation in line with international principles of judicial selection. Another important component is the issue of commissions established and empowered to conduct the competition and selection of candidates for judicial positions. International and national legislation prescribe requirements for the members of such commissions, as it is quite logical that they should be composed of both representatives of the judiciary and other competent members (these may be experienced lawyers, members of the public, etc.). An analysis of the rules of foreign countries on the selection of judges shows that it is important that the members of the selection commission are Judges were competent and professional and therefore able to assess judicial candidates in a fair, impartial and professional manner. In order to ensure full transparency and publicity of the judicial selection process, it is important to establish clear selection criteria that reflect the rules of international and European standards and ensure compliance with the ethical norms and standards of conduct of judges (the provisions used to determine the suitability of candidates for judicial positions, the procedure for conducting the competition, interviews, assessments and other selection procedures should be clearly defined). Last but not least, and perhaps no less important for ensuring fairness in the judiciary, is the establishment of rules to ensure continuous monitoring and evaluation of the quality of judges' work after their appointment.

Thus, the administrative and legal support for the professional selection of judges in Ukraine should be understood as a comprehensive system of legal and organisational measures and procedures regulating the process of selection and appointment of judges in order to ensure their independence, objectivity, high qualification and moral integrity. It is the specific procedure for the election or appointment and dismissal of judges that serves as a reliable basis for ensuring the independence of judges and the judiciary as a whole. The European Court of Human Rights has repeatedly noted this when considering the issue of fair trial, pointing out that the manner in which the members of such a body are appointed, the determination of their term of office and the existence of guarantees against external pressure affect the perception of such a court as independent [1]. A similar provision is also contained in the national legislation on the procedure for the selection of judges, which provides that the independence of a judge is ensured by a special procedure for his or her appointment, prosecution, dismissal and termination of his or her powers (Part 5 of Article 48 of the Law of Ukraine «On the Judiciary and the Status of Judges») [2].

After the amendments to Article 128 of the Constitution of Ukraine, which provided for the appointment of a professional judge for a 5-year term by the President of Ukraine, and all other judges (except for judges of the Constitutional Court of Ukraine) were elected by the Verkhovna Rada of Ukraine for life [3], the procedure for appointment of judges was significantly simplified and brought closer to European standards. Today, Article 128 of the Constitution of Ukraine provides that the appointment of judges is made by the President of Ukraine upon

the proposal of the High Council of Justice in accordance with the procedure established by law [4]. The Opinion of the Venice Commission of 15 June 2013 stated that in order to limit political influence and party pressure on the judiciary, judges should be appointed by the President on the basis of a proposal from the High Council of Justice [5]. Such changes are related to the need to comply with the rules of selection of judges provided for by international and, in particular, European standards, as well as detailed study and adoption of positive experience of European countries [6, p. 49].

Formally, the procedure of selection and appointment of judges in Ukraine meets the requirements of international and European standards. Article 80 of the Law of Ukraine «On the Judiciary and the Status of Judges» stipulates that the very stage of appointment of a judge by the President of Ukraine is basically formal, based on the possibility of appointing judges to positions upon the proposal of the High Council of Justice, without verifying the compliance of candidates with the requirements established by law and without carrying out a selection or assessment of candidates' qualifications [2]. However, as the experience of foreign countries shows, no matter how perfect the procedure for selecting and appointing judges is, further reforms can pave the way for a fairer, more independent and efficient judicial system in the country. Moreover, the quality of selection procedures is assessed after monitoring the quality of judges' work, which takes time. Therefore, it is clear from the experience of foreign countries that the ways to improve the selection and appointment of judges may include improving certain elements of its mechanism.

For example, the problem of the judicial selection process in all the analysed countries and in Ukraine in particular is the need to limit the political influence of the executive authorities on the processes of appointment, transfer, disciplinary action and dismissal of judges. The need to depoliticize the process of appointment of judges has been repeatedly pointed out by the Venice Commission when it drew attention to the need to eliminate political motives in Opinion No. 588/2010, warning that the involvement of the parliament in the process of appointment of judges may lead to politicization of this process, which obviously will not contribute to strengthening their absolute independence in the performance of their judicial duties. Interestingly, the Opinion of the Consultative Council of European Judges (CCJE) No. 18 (2015) «The position of the judiciary and its relationship with the other branches of government in a modern democracy» emphasises that the independence of the judiciary serves as a means of guaranteeing the impartiality of judges, since judicial independence is not a privilege or an exclusive right, since it is not granted to them to protect their own interests, but is necessary to ensure the rule of law and fair trial in the interests of all who seek and expect justice. Paragraph 44 of the Opinion also states that the appointment or term of office of judges who have been duly appointed should not be questioned by a new parliamentary majority or government [7].

Similar recommendations are also contained in the conclusions of the Group of States against Corruption (GRECO), in which GRECO recommends strengthening the role of the judiciary in the procedures for the appointment, promotion and dismissal of judges, reducing the role of the head of state and requiring written reasons for his decisions, as well as ensuring that any decisions in these procedures can be appealed to the courts. Looking deeper into the issue, GRECO emphasises the need to ensure a genuine separation of powers, excluding the possibility of one branch of government influencing the other.

Restrictions on the power of politicians in the selection of judges are more effective in more established democracies, as both internal (constitutional separation of powers between the central government and regional districts, democratically elected president, elected local authorities, adoption of laws by majority in both chambers of the bicameral parliament (the existence of supranational organisations that impose significant restrictions on the ability of the majority in each country to pass laws at their own discretion on a wide range of issues, including human rights) [8].

As the experience of foreign countries shows, in most of them, including Ukraine, the executive branch of power is involved in the process of appointment of judges. At the same time, constitutional guarantees against political influence on the appointment of judges can be assessed as relatively weak. The emphasis in this case is on the formation and development of a legal culture that respects the independence of judges and ensuring the proper legal status of judges (the possibility of holding office for life, prohibition of dismissal of judges by representatives of the executive or legislative branches), which are even more important for ensuring judicial independence. As noted by the Venice Commission in its 2010 report on judicial independence, the system of judicial appointment in old democracies where the executive branch has a decisive influence can function well in practice and allow for an independent judiciary, as this power is limited by legal culture and tradition. In contrast, in new democracies without these legal traditions, it is important to establish a judicial council with decisive influence over the appointment of judges (where the majority of members are elected by the judges themselves) [9]. Obviously, judges who

are accustomed to independence from political interference may be more active in their orientations. Therefore, it is very important to maintain not only a balance in the system of distribution of state power, but also to guarantee the highest standards of judicial independence as an indicator of democracy.

To ensure judicial independence, it is not only the method of appointment that is important, but also other guarantees and procedures. Since courts should be apolitical institutions, the appointment of judges that is predominantly driven by political motives should also be absolutely excluded. Judges should be appointed on the basis of specific qualification requirements. This, in turn, once again demonstrates the fundamental importance of the approaches to the formation of the High Qualification Commission of Judges of Ukraine and the High Council of Justice, which should play a key role in the appointment process.

Therefore, it is extremely important to establish independent and objective selection commissions with the participation of experts from various fields, including representatives of the public and international organizations. The model of judicial selection that focuses on professional selection of judges and actually ensures decisive influence of professionals on the appointment of judges is also impressive. For example, in Denmark, a judge cannot be appointed to the Supreme Court without the support of a professional committee; and in Estonia, the President of the Supreme Court has the exclusive right to propose candidates to the Supreme Court to the Parliament [8]. Importantly, in almost every country, the law stipulates that appointments must be made on the basis of professional considerations. That is why it is very important to have professional vetting commissions or advisory committees composed of competent persons in the judiciary. Experience has shown that in countries where it is customary to consult the legal profession, it is (almost) never the case that political authorities make decisions on judicial appointments against professional advice. In almost all of these countries, professional considerations, not political beliefs, are the decisive factor in the appointment of judges.

In this context, it is important to ensure that, along with judges, the members of the High Qualification Commission of Judges of Ukraine also include prominent lawyers, attorneys, academics, representatives of human rights and other NGOs active in the field of law. In addition, the experience of countries that involve in the selection of judges not only citizens who are experts in certain areas of legal science, but also in the field of management or IT technologies is positive. This would have a positive impact, since today's time dictates high requirements for judges, which include knowledge not only of law but also of technology, for example. This issue is especially relevant given the active introduction of Artificial Intelligence (AI) in the judiciary and active rulemaking to regulate the introduction of AI in justice (for example, the Charter of Ethical Principles for the Use of Artificial Intelligence in Judicial Systems adopted by the European Commission on the Efficiency of Justice of the Council of Europe on 3-4 December 2018). Today, AI is an effective tool in the field of justice and can contribute to improving the efficiency and quality of judicial proceedings.

It seems that the quality of the composition of the High Qualification Commission of Judges will contribute to strengthening public confidence in its independence and integrity by ensuring a competitive, inclusive and transparent process of appointing its members based on clearly defined objective criteria.

As regards the composition of the High Council of Justice, Article 5 of the Law of Ukraine «On the High Council of Justice» provides that this constitutional body of state power and judicial governance consists of twenty-one members, of whom the Congress of Judges of Ukraine elects ten from among judges or retired judges, two are appointed by the President of Ukraine, two are elected by the Verkhovna Rada of Ukraine, two by the Congress of Advocates of Ukraine, two by the All-Ukrainian Conference of Prosecutors, and two by the Congress of Representatives of Law Schools and Research Institutions. The Chief Justice of the Supreme Court is an ex officio member of the High Council of Justice. All members of the High Council of Justice are elected (appointed) for a term of four years. It should be noted that in order to maintain balance and avoid politicization of the appointment process by the Verkhovna Rada of Ukraine, it would be advisable to adopt the experience of foreign countries where not only the coalition but also the opposition has the opportunity to propose candidates for appointment to the High Council of Justice. For Ukraine, which claims to be a democracy, the need for such a solution is linked to several important principles and benefits for democracy and the legal system as a whole. Firstly, such a decision will ensure the representation of diverse views, as ensuring the participation of the opposition in the elections to the High Council of Justice guarantees a broader representation of different views, ideologies and opinions in the justice system. This, in turn, will contribute to a more objective and balanced decision-making system. Secondly, the participation of the opposition in the possibility of submitting nominations to the High Council of Justice will increase the legitimacy of this body and increase public trust in justice. Thirdly, the possibility to propose candidates to the High Council of Justice creates a stable basis for strengthening the independence of the judiciary from political pressure. Fourthly, the diversity of views and experience within the High Council of Justice can contribute

to more informed and competent decision-making, which affects the efficiency and quality of the judiciary. Finally, fifthly, the legal provision for active involvement of the opposition in the process of selecting members of the High Council of Justice reflects democratic values such as transparency, openness and civic participation in the formation of key state institutions.

In addition, it is important to pay attention to the provisions of both international standards and the law of certain foreign countries, which, in addition to qualitative indicators for the selection of representatives to judicial councils, also stipulate the need to maintain gender balance to ensure equal representation of men and women among judges and in commissions that select judges. It appears that maintaining a gender balance in the judiciary and in judicial selection commissions is important in terms of ensuring equal representation of men and women. Enshrining the provision on gender balance in the High Council of Justice, the High Qualification Commission and in the selection of judges will help ensure justice and equality before the law for all citizens, regardless of their gender. It is obvious that equal representation of men and women will additionally indicate openness and inclusiveness, which will make the judiciary more legitimate in the eyes of citizens. At the same time, it should be stipulated that the main criterion still relates to the professional competence of the candidates, their skills, experience and moral qualities.

**Conclusions.** To sum up, it should be noted that the administrative and legal support for the professional selection of judges in Ukraine is constantly being improved to ensure independence, objectivity and high level of competence of judges. In addition, the analysis of the experience of other countries in the field of judicial selection and ensuring the independence of the judiciary in general has revealed positive aspects that could be adapted into Ukrainian legislation. Improvements to the procedure for appointing judges in Ukraine, taking into account international experience and within the framework of a comprehensive approach to reforming the judiciary, could include the following recommendations to improve this procedure: ensuring maximum publicity and transparency of the judicial selection process (full disclosure of information on vacancies, requirements for candidates, composition of commissions, and results of the selection, etc.); establishing the independence of the judiciary from political influence; establishing a clear professional standard for judges that defines the necessary skills, experience, knowledge and moral qualities that are mandatory for judges, as well as continuous improvement of these requirements in view of scientific and technological progress (for example, regulatory provisions on mandatory training of judges on the functioning of Artificial Intelligence within the judicial system); ensuring proper training for judicial candidates, including curricula and internships based on international best practices; proper assessment of candidates' psychological and physical abilities, as this directly affects their ability to perform judicial duties; ensuring equal representation of men and women among judges, as well as in the High Qualification Commission of Judges of Ukraine and the High Council of Justice.

These provisions should serve as a starting point for outlining areas for improving the administrative and legal support for the professional selection of judges in Ukraine. At the same time, they should contribute to the establishment of the rule of law and the creation of a fair, efficient and independent judiciary. It seems that it is at the stage of appointment of judges that the legitimacy of the judiciary should be properly ensured so that court cases are decided by judges who are legally elected. In this sense, the legitimacy of the judiciary is mainly based on the constitutional legitimacy of the system of judicial appointment in a democratic society.

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