

UDC 342.565:347.99

DOI: 10.56215/naia-chasopis/1.2024.40

Modernisation of the constitutional and legal status of judges in Ukraine

Oleksandr Amelin*

PhD in Law, Associate Professor

Prosecutor General's Office

01001, 13/15 Riznytska Str., Kyiv, Ukraine

Interregional Academy of Personnel Management

03039, 2 Frometivska Str., Kyiv, Ukraine

<https://orcid.org/0000-0002-0933-2111>

Abstract

The research relevance is determined by the need to reform public authorities, in particular, the judiciary, in the context of martial law and European integration processes. The study aims to analyse the legal framework in the context of determining the constitutional and legal status of judges in Ukraine. The following methods were used: logical analysis, formal legal analysis, dogmatic analysis, legal hermeneutics, deduction, induction, and synthesis, which were used to identify the main principles of regulation of the constitutional and legal status of judges in Ukraine. The study states that the current constitutional and legal status of judges is determined by the updated version of the Constitution, the Law of Ukraine "On the Judiciary and the Status of Judges" and other legislative acts. It is noted that one of the main problems of the judicial system of Ukraine is the understaffing of courts. Following the reforms which have been implemented since 2 June 2016 and have amended several provisions, the author makes a comparative legal analysis of the status of judges before and after the innovations. The study determined that judges used to have absolute immunity, and now they have functional immunity, which protects them from prosecution for their actions. These reforms were implemented to ensure the independence of judges and protect them from political pressure. The author examines the experience of such countries as Italy, Germany, Japan, and the USA in the context of ensuring the principle of judicial independence. It is argued that this principle can be implemented in various forms. The importance of rebranding of state institutions is also substantiated

Keywords:

judge; legal status; unchangeability of judges; immunity of judges; independence of judges; judiciary; jurisdiction

Article's History:

Received: 09.11.2023

Revised: 28.01.2024

Accepted: 27.02.2024

Suggest Citation:

Amelin, O. (2024). Modernisation of the constitutional and legal status of judges in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 14(1), 40-49. doi: 10.56215/naia-chasopis/1.2024.40.

*Corresponding author



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

Introduction

The improvement of the judicial system and Ukraine's progressive movement towards European integration require the state to focus on solving the problem of ensuring fair working conditions for judges in Ukraine. This is becoming important as judges are the key to the democratic regime in the country, being responsible for the accessibility of dialogue between citizens and the authorities and unimpeded access to defence provided to applicants without prejudice. Despite the prominent role of judges, to date, the state has not resolved many of the pressing issues related to the performance of the special labour function by judges. This situation challenges the legislator's ability to fulfil the tasks of Ukraine's European integration and respond to the country's European ambitions. This is possible only in the case of building a true state based on the rule of law with an independent judiciary. Improving the legal regulation of judges is one of the key tasks of judicial reform. This process should be based on an appropriate analysis that will identify existing problems and suggest ways to solve them.

According to S.V. Vinnikov (2021), independent and objective judges help implement and protect the rule of law in the country, rendering them an important element in the construction of a rule-of-law democratic state and an effective component of the functioning of all state bodies aimed at protecting human rights as the highest value. I. Lisna & T.Ye. Mykhailiv (2019), in turn, note that the peculiarity of the work of judges is that the right to access justice and judicial protection is possible only through their professional activities. Thus, judges perform special socially useful and necessary functions in ensuring the primacy of law, democracy, and the rule of law.

Following H. Huk (2020), the basis for the functioning of a democratic, social, and legal state is the effective protection of human rights. This is explicitly provided for by the Constitution of Ukraine¹, Article 3, which proclaims that a person, life and health, honour and dignity, inviolability and security are the highest social value, and the establishment and enforcement of human rights and freedoms is the main duty of the state. The activities of the Constitutional Court of Ukraine (CCU) play an important role in this regard. The CCU is the only body that provides legal protection of the Basic Law and ensures its supremacy in the territory of the state. By exercising its powers, this institution promotes the realisation and protection of those rights of individuals that are enshrined in

the relevant provisions, as highlighted by S. Bezugliy (2020).

The amendments to the Constitution of Ukraine on justice introduced by the Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)"² established a new constitutional framework for the judiciary in Ukraine. They envisage reform in line with international standards, with the leading role assigned to courts and their judges, who are legal experts. According to O.S. Perederiy (2022), the level of protection of the enshrined rights of individuals depends on their activities and their quality.

O.Yu. Amelin (2021) addresses the topical issue of implementing international standards of conduct for prosecutors on Ukraine's path to European integration. As Ukraine seeks to adapt its laws and institutions to European norms, improving the effectiveness of the prosecution service and bringing it in line with European principles is crucial. The researcher therefore assesses Ukraine's progress in meeting international standards related to prosecutorial supervision, the effectiveness of punishment and crime reduction in comparison to selected European countries such as France, Germany, and Spain.

Thus, the study aims to analyse the current legal status of judges in Ukraine. The study goal sets several tasks, namely, to identify the legislative provisions in this area, and to determine the main problems and ways to overcome them.

Materials and Methods

This study was carried out using various types of analysis methods. The method of functional analysis was used to characterise the concept of the "judicial system", and to identify its inherent features, functions, and role in ensuring the rights of citizens. The method of logical analysis was used to assess the effectiveness of the current mechanism of the constitutional and legal status of judges and also to identify ways to modernise and improve its efficiency. The State Security Service of Ukraine (2023) data was used to study the current state of efficiency of the judicial system.

The formal legal method was used to determine the essential characteristics of the rules regulated in the current legal framework on the status of judges. For instance, the Law of Ukraine's "On the Judiciary and the Status of Judges"³, Law of Ukraine "On State Protection of Court Employees and Law Enforcement Bodies"⁴, Law of Ukraine "On the Supreme Council of

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/main/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.

³ Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

⁴ Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3781-12#Text>.

Justice¹ and Law of Ukraine “On the Higher Anti-Corruption Court”² were used. This method employs the systematic study of their text, determination of the structure, terminology, sequence of presentation, internal connections, and other aspects, which helped to identify how specific provisions regulate a particular area of activity, including the constitutional and legal status of judges in Ukraine. The dogmatic method was also used to understand and interpret the legislation, which consisted of studying the text of the law, analysing its content to determine the rules and principles of law contained therein, and identifying its structure and logic. This method was used to analyse the status of judges and to determine it within the framework of the established provisions. The method of legal hermeneutics was used to identify and understand legal texts and norms, to study the logical structure of the text and the links between its various parts, the context and interrelationship with other norms and rules, and to establish the legislator’s goals. The method of comparative legal analysis was used to identify the specifics of approaches to regulating the status of judges in the context of the 2016 reform in Ukrainian legal acts. This method was used to identify common features and differences in legal regulation and to compare it with the status of judges before the 2016 reform and after its implementation. In this context, the analogy method was also used to identify the peculiarities of the functioning of the status of judges before and after the 2016 reform. The abstraction method was used to address judicial immunity and to determine its

peculiarities in the context of the status of judges in the context of legislative reforms. This method was also used to focus on the rebranding of state institutions. This revealed the concept and essence of “rebranding”, and identified the inherent features, principles of implementation and the role of this phenomenon in the context of increasing public trust and the efficiency of judicial institutions.

The deduction method was used to describe the constitutional and legal status of judges based on their characteristic features, principles, and specifics of implementation. In addition, the induction method was used to determine the characteristics of the status of judges based on the analysis of the current legislation of Ukraine. The synthesis method was applied to combine the results obtained to develop specific recommendations.

Results

In June 2016, amendments to the Basic Law³ were introduced to the Constitution, which established new constitutional principles for the exercise of judicial power⁴. In this context, the main aspects are to restore and further increase public confidence in the judiciary, as well as to carry out reforms in line with international standards. Since the level of protection of the rights and freedoms of subjects depends on the quality of exercise of the powers granted to judges, it is worth considering the statistical data on the number of judges in 2022 in the context of the full-scale aggression of the Russian Federation on the territory of Ukraine (Table 1).

Table 1. The impact of emotional intelligence on professionalism Number of judges of local and appellate courts in 2022

Judge type	As per the orders of the State Judicial Administration	With powers as of 31.12.2022	Staff shortage, units	Staff shortage, %
Local overall	3751	2690	1061	28.29
Appellate court	843	487	356	42.23
District administrative courts	616	491	125	20.29
Appellate administrative courts	257	173	84	32.68
Commercial courts	593	451	142	23.95
Appellate commercial courts	218	142	76	34.86

Source: The State Security Service of Ukraine (2023)

This data shows that, on average, the number of judges of local and appellate courts has a staffing deficit of 30.4%. It is also worth considering the statistics on the dynamics of general indicators of the administration of justice in the period 2021-2022. (Table 2). Based on

these figures, in 2022, local and appellate courts handled most of the cases they received despite the difficult conditions. According to court statistics, in 2022, these courts received 2.8 million cases and materials and considered 2.9 million, which is 103.8% of the total.

¹ Law of Ukraine No. 1798-VIII “On the Supreme Council of Justice”. (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

² Law of Ukraine No. 2447-VIII “On the Higher Anti-Corruption Court”. (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

³ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/main/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁴ Law of Ukraine No. 1401-VIII “On Amendments to the Constitution of Ukraine (Regarding Justice)”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.

Table 2. Dynamics of general indicators of the administration of justice by local and appellate courts in 2021-2022 (excluding data from 169 courts whose jurisdiction has been changed)

	Cases and materials under consideration	Cases and materials filed	Cases and materials considered	Remainder of unprocessed cases and materials
2021	4952979	4250562	4079617	873362
Year 2022	3582668	2791764	2898032	684636
Dynamics of 2021/2022	-27.67%	-34.82%	-28.96%	-21.61%

Source: The State Security Service of Ukraine (2023)

Other indices of the dynamics of case consideration in 2021-2022 are worth considering (Table 3). These indices conclude that despite numerous challenges asso-

ciated with the full-scale invasion, judges and staff of local and appellate courts ensured that they fulfilled their functions and obligations to ensure the right to justice.

Table 3. Dynamics of consideration of cases and materials by local and appellate courts in 2021-2022

	Local overall	Appellate court	District administrative courts	Appellate administrative courts	Commercial courts	Appellate commercial courts
Filed	2018303	215046	361838	100437	78959	17181
Consideration	2071925	213717	416544	99653	78681	17512
Dynamics	102.66%	99.38%	115.12%	99.22%	99.65%	101.93%

Source: The State Security Service of Ukraine (2023)

The current status of judges of constitutional and legal nature of courts of general jurisdiction is determined by the updated version of the Basic Law, the updated versions of Law of Ukraine "On the Judiciary and the Status of Judges"¹, Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies"² and other laws. Constitutional amendments clarify and strengthen guarantees of judicial independence and immunity. In particular, it is prohibited to influence a judge in any way, to hold a judge liable for a court decision with certain exceptions, etc. (Constitution of Ukraine, 1996).

It is worth noting that Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges"³ further develops the above provisions. In administering justice, the authorised person is independent of any influence, pressure, or unlawful interference. In case of interference in the activities of a judge, there is an obligation to report to the High Council of Justice and the Prosecutor General. The amendments to the Constitution of Ukraine and other laws on the judiciary are an important step towards ensuring the independence and impartiality of judges and restoring public confidence in the judiciary. Specific amendments include: the independence of judges has been strengthened by prohibiting any influence on their activities and the impossibility of holding judges liable for their judgements; judges

must be guided by the rule of law and administer justice based on the legal framework.

In addition, in 2016, changes were made to judicial immunity. Previously, judges had absolute immunity, which meant that they could not be held liable for any actions. After the amendments, they have functional immunity, which means they are protected from prosecution for their actions only if they are committed within the scope of their duties. Thus, absolute immunity was narrowed to functional immunity, limited to the performance of professional duties. Changing the absolute immunity of judges to functional immunity in Ukraine is an important step towards reforming the judicial system, as absolute immunity was often used as a tool to put pressure on judges and allowed them to enjoy impunity in case of offences. By granting judges immunity only when administering justice, functional immunity significantly strengthens their independence from political influence. At the same time, the possibility of holding judges accountable for abuses or corruption offences ensures greater transparency and accountability of the judiciary and helps to restore public trust in the courts. While functional immunity does not guarantee the complete eradication of corruption in the courts, it does make it more difficult for abuses to go unpunished and creates the preconditions for further reform and efficiency of Ukraine's judicial system. Thus, changing the

¹ Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

² Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3781-12#Text>.

³ Ibidem, 2016.

rules of judicial immunity is a solution that ensures the independence and fairness of the courts.

It should be noted that one of the key changes is the increased role of the High Council of Justice, which is now the responsible body for the formation of the judiciary¹. It is comprised of representatives of various branches of government and civil society responsible for the appointment, dismissal, disciplinary action, and other issues related to judges. Another important change is the introduction of a competition for the position of a judge, which should ensure the selection of the most qualified and honest candidates for this position². As part of the fight against corruption, the High Anti-Corruption Court was also established in Ukraine³. The judges of this court have additional security guarantees, such as round-the-clock security, and are provided with official housing if necessary. These changes are an important step towards reforming the judiciary in Ukraine.

The Law of Ukraine “On the Judiciary and the Status of Judges” strengthens public control over judges, as they are now required to submit declarations of family ties and integrity, which must be publicly available, and judges may be disciplined for late submission. In addition, Article 87 of the Law establishes the Public Integrity Council, which is to assist the High Qualification Commission of Judges of Ukraine in conducting qualification assessments of judges⁴.

The main goal of these changes is to ensure transparent judgment and fight corruption. However, some of the innovations may not be effective in practice. Firstly, judges have been submitting asset and income declarations, including those of their family members, for a long time, which are publicly available and subject to verification by the competent authorities. Secondly, the High Qualification Commission of Judges of Ukraine is already an independent body responsible for the appointment, transfer, dismissal of judges and consideration of disciplinary cases. It is composed of civil society representatives, and its work is transparent and public. Therefore, the need to create a separate public body to control judges is questionable. The changes made are a positive step towards increasing the transparency and efficiency of the judiciary. However, to achieve greater results, these innovations must be properly implemented.

One of the most important steps in reforming the judiciary is the removal of judges’ full immunity. Judges can now be disciplined, dismissed, or even detained

by the High Council of Justice. In addition, judges are required to submit three declarations: on income and property, on family ties, and integrity. The latter declaration must contain a denial of any corruption allegations and confirmation of the faithful fulfilment of the oath. All judges would also have to undergo a qualification assessment to verify their competence, professional ethics, and integrity; those who fail or refuse to pass the assessment would be dismissed. Thus, the reform of the judicial system aims to increase its efficiency and transparency, as well as to ensure the right to judicial protection and access to justice for all citizens.

Ukraine has introduced a three-tier judicial system, which is common in most countries. The new Supreme Court consists of cassation courts: administrative, commercial, civil, and criminal. The Grand Chamber of the Supreme Court was also created, which is responsible for ensuring the unity of judicial practice. This means that the Supreme Court’s decisions are a guideline for lower courts, ensuring unity and predictability of legal positions in all jurisdictions. Among the innovations is the fact that not only judges but also lawyers without prior experience in the judicial system, such as attorneys and academics with ten years of experience, can be appointed to the highest court. As for local courts, they are being merged into district courts, which makes it possible to increase the efficiency of courts and optimise budget expenses⁵. For district courts to operate effectively, it is important to set requirements for the personal characteristics of court staff. They must be honest, decent, fair, have a high sense of duty, critical and self-critical, principled, and incorruptible. Equally important is the issue of the selection of court staff. Their moral qualities should be considered during the selection process. It is also necessary to introduce control over their activities and behaviour and to impose severe penalties for violations of public morality (e.g. warnings, reprimands, demotion, dismissal). It is also important to introduce procedures for integrity checks and lifestyle monitoring of court staff to identify and prevent corruption risks. They should be regularly trained and educated on ethical behaviour and conflict of interest prevention. If facts of unethical or unlawful behaviour are revealed, such persons should be subject to disciplinary or administrative liability. Only a comprehensive approach to the formation of a highly professional and integrity-based court staff will contribute to the proper functioning and authority of district courts. In addition, the work on court staffing should

¹ Law of Ukraine No. 1798-VIII “On the Supreme Council of Justice”. (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

² Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

³ Law of Ukraine No. 2447-VIII “On the Higher Anti-Corruption Court”. (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

⁴ *Ibidem*, 2016.

⁵ *Ibidem*, 2016.

include the use of individual abilities of the staff, as well as training and mastering of the latest technologies.

The principle of judicial unchangeability means that judges are appointed for a fixed term or indefinitely and cannot be dismissed or removed from office without good reason. This principle is enshrined in the constitutions of many countries, including Italy, Ukraine, Germany, and Japan (Spano, 2021). In some countries, such as Germany, judges can be transferred to another court or dismissed in case of changes in the judicial system in the district (Krajewski & Ziółkowski, 2020). In Ukraine, the grounds for dismissal of a judge are defined by the Constitution and the law. They include cases such as mental or physical disabilities that make a judge incapable of performing their duties, as well as when a judge reaches the age of 65. In addition, Ukraine has an institution of judicial resignation, which allows judges to voluntarily leave office for various reasons, including health, job dissatisfaction or financial considerations. The resignation of judges guarantees the preservation of their judicial independence even after the termination of their powers.

The principle of judicial independence is one of the most important elements of the constitutional status of judges in democratic states. It is enshrined in the constitutions of many countries, including Italy, Germany, Japan, and Ukraine (Chandranegara, 2019). This principle means that judges are subject only to the law and are not subject to political or other pressure, which ensures fair trial and protection of human rights. In the legislation of other countries, the principle of judicial independence is implemented through such guarantees as immunity and immunity of judges, which protect judges from political or other pressure; special procedure for bringing judges to justice, which complicates political interference in the work of courts; prohibition of interference in the administration of justice, which ensures that judges can make decisions without outside influence; liability for contempt of court or judge; financial independence of judges, which ensures that judges are not dependent on other branches of government. In addition, the principle of judicial independence is also guaranteed by international treaties, in particular the Beijing Theses on the Principles of Judicial Independence (Navrotska, 2020). It is worth noting that the principle of judicial independence is one of the key elements of a democratic society. It ensures fair trial and protection of human rights and promotes the rule of law. For example, in Germany, judges are appointed for life, which ensures their independence from political pressure; in Japan, judges can be prosecuted only for serious crimes, which also contributes to their independence; however, in the United States, judges have the right to resign at will, which is an important guarantee of their financial independence (Iqbal *et al.*, 2019). These examples demonstrate that the principle of judicial independence can be implemented in different

forms, but its importance for a democratic society remains unchanged.

Thus, the guarantees of the constitutional status of judges are essential for ensuring fair justice and the rule of law. They are designed to protect judges from political pressure and other external influences so that they can make decisions impartially and independently. All these safeguards are interrelated and mutually reinforcing. They are essential components of an effective judicial system, which is the key to fair justice and the rule of law.

Discussion

The judiciary is the foundation of civil society. It ensures personal freedom and the possibility of exercising rights, and therefore has always had an important place in the system of state power. According to the Constitution of Ukraine, the judiciary is a system of independent courts that administer justice; it is exclusively a court of law, and no delegation of court functions is allowed.

The judiciary has an important role in society - conflict and dispute resolution. This is a vital function as it helps people resolve their problems and restore justice. According to J.A. Roth (2021), the court is a “non-historical phenomenon” as it has existed in every society, even before the advent of the state. It is worth agreeing with this, as there are always conflicts in society that need to be resolved. Scientists G. Appleby & H. Roberts (2023) also note that the judiciary is “the power of wisdom, prudence, and justice”. Based on this position, it is a counterweight to the “power of force” and helps people to coexist in harmony. According to E.R. Collins (2020), the court ensures the right of everyone to fair justice and respect for other rights and freedoms. In other words, the author notes that the court should resolve conflicts and disputes impartially and based on the law.

In a state governed by the rule of law, the court plays an important role in protecting the rights of employees, including civil servants (McIntyre, 2019). This is determined by the court being an independent body that must act by the law. In the field of labour, the court can consider disputes between employees and employers, as well as between employees and the state, as highlighted by B.M. Barry (2020). However, it should be noted concerning the author’s position that in the case of civil servants, the court may consider disputes regarding working conditions, labour relations, as well as discriminatory working conditions. In turn, D.M. Smith (2023) believes that the role of the court in protecting the rights of civil servants will increase in the future. The statement is valid as the legislation regulating civil servant labour is constantly expanding.

The essence of justice is a complex and controversial issue. Legal researcher provide different definitions of this term, but the most common is that justice is a function of the judiciary, which consists of hearing and deciding cases based on the law to protect the rights and

interests of citizens, as noted by T.M. Stewart (2021). It is worth adding to the author's position that the social essence of the court is that it is a judicial authority that administers justice. Following J. Waldron (2021), the judiciary is an independent and autonomous body that is subject only to the law. Based on this position, it functions based on powers granted on behalf of society. The main features of the judiciary are independence and autonomy (the court cannot depend on other branches of government), compliance with the law (it acts based on regulated norms), structural design (the system must ensure its independence and autonomy), functioning on behalf of society and forms of implementation (it must exercise its powers in forms that correspond to its essence) (Prendergast, 2019).

Thus, the judiciary is one of the key characteristics of a state based on the rule of law, provided that it functions as an independent and objective mediator between the state and society, guided by the rule of law. The main task of the court is to determine the limits of individual freedom and restrictions on public power, which is crucial in a rule-of-law democratic state.

The essence and importance of justice for society are reflected in the legal status of judges. According to the Law of Ukraine "On the Judiciary and the Status of Judges", the judiciary is represented by judges, and in certain cases by juries, through the administration of justice in the framework of the relevant court procedures. Appeals and cassation proceedings are conducted only by professional judges, who are the holders of judicial power in Ukraine. This is particularly important as the judiciary is formed on a professional basis, not a political one, unlike other branches of government in Ukraine and many other countries. It is also worth noting the opinion of N. Varsava (2021) that the judiciary is a social authority with an apolitical character, different from political authorities. Based on this statement, represents the power of all generations of society that contributed to the formation of the rules of coexistence and national law. The main idea of the judiciary is the primacy of law and its influence on the social organism. This objective circumstance means that judges are independent and impartial mediators between civil society and the state. This determines the significance and role of judges in the state in the social aspect and outlines the boundaries of their social and professional status, as outlined by C. Mak *et al.* (2020). It is worth noting that for a full understanding of the status of a judge and allocated duties, it is necessary to consider them also in the context of labour law. This is determined by judges being special subjects who are in an employment relationship with the "employer" (the state). Thus, it is also advisable to consider the status of judges in the context of all branches of law that regulate their activities.

R. Ippoliti & G. Tria (2020) note that judges are employees in the sense of labour law. It should be added to the author's position that their labour activity has the

following peculiarities: they are appointed or elected to the position following the established procedure determined by the current legislation and meet the requirements for the legal personality of the labour nature of this category of employees. It is worth noting that representatives of the judiciary as subjects of labour relations have both general and specific rights and obligations regulated by a specialised legislative doctrine. Thus, judges are in an employment relationship, have general and special duties, and are responsible to the state, society, and the individual at a higher level. This leads to the conclusion that the status of judges is a rather complex and multifaceted system, the key aspects of which are influenced by various branches of law. In this context, it is worth mentioning the interdisciplinary mode of operation of the court. Given the specifics of the legal status of a judge, it is possible to argue that the activities of this category of entities are responsible, special, and comprehensive. It should be noted that in a broader sense, overcoming social problems through justice, which is possible only in a state based on the rule of law, determines the importance and role of judges' activities in the social and legal aspects.

It should be noted that the issue of rebranding the judiciary and law enforcement agencies deserves particular consideration, which is due not only to the reformers' desire to change the image of these structures but also to their preventive function. Thus, O.Yu. Amelin (2022a) highlights that a properly formed image of law enforcement and justice agencies can influence the resolve of potential offenders. According to the author, if citizens perceive these institutions as effective and fair, they will be less likely to commit crimes. The author also concludes that a rational rebranding of the prosecutor's office and other justice system bodies and institutions can help to increase their effectiveness and ensure effective prevention of criminal offences.

Thus, the perception of a prosecutor is a complex concept that includes two aspects: professional and personal. The professional image of a prosecutor is perceived as a specialist capable of performing allocated duties effectively. The personal image is how a person is perceived as an individual who has certain physiological and psychological characteristics, emotional manifestations, cultural level, and moral values. The image of the prosecutor's office is a general perception of it that is formed both by its employees and the public based on information about the activities of the prosecutor's office, its functions, mission, values, etc. O.Yu. Amelin (2022a) notes that the proper image of the prosecutor and the prosecutor's office is an important factor in their successful operation. Thus, in the modern information society, the image of organisations and institutions plays an increasingly important role. This is because people receive information about these organisations and institutions through various channels, including social media, mass media and personal

contacts. For state institutions such as the judiciary and prosecutors, developing a positive image is particularly important, as they are among the key institutions responsible for protecting the rights of citizens. Creating a positive image requires awareness of this need and the development of an effective image strategy. The necessary components in this case are ensuring transparency and openness of these institutions, effective communication with the public, and compliance with the principles of the rule of law and justice. This is an important part of their reform, which will help to increase public confidence and the effective performance of their functions.

Furthermore, O.Yu. Amelin (2022b) notes that one of the main problems of the judicial system of Ukraine is the understaffing of courts, which is caused by the protracted judicial reform and the reform of the bodies responsible for the selection of judges. Ineffective selection of judges and chronic lack of the required number of courts, especially first-instance courts, leads to paralysis of the judicial system and inability to protect violated rights of citizens. The author notes that another significant problem is the low level of public trust in judges, which is caused by widespread corruption in the judiciary, political bias of individual judges and their lack of professionalism. Unlike in European countries, where the judiciary enjoys the highest level of public trust, in Ukraine, citizens are more inclined to trust other state authorities. O. Amelin notes that the solution to these problems is seen in the speedy reform and professionalisation of the judicial system, and elimination of its dependence on political and other external influences, as only an independent and professional court can make fair and objective decisions, which is the key to the authority of the judiciary and public trust in it.

Based on the abovementioned, judicial conduct reflects its legal status. This means that judges are governed by the current legislation and have certain peculiarities arising from their role in the state. It is aimed at administering justice, namely, at resolving disputes between parties based on law. In addition, the functioning of a judge aims to achieve indirect objectives, such as the protection of human rights and freedoms, and the rule of law and legality. This definition is consistent with the aforementioned definition of judges' labour activity. Based on this, the work of judges is a type of behaviour of authorised persons related to the exercise of functions and powers vested in them. This activity

has clear limits established by law, as a result of which judges perform special socially useful and necessary functions to ensure the rule of law and legality.

Conclusions

This study was conducted to determine the constitutional and legal status of judges in Ukraine and ways to modernise it. The study determined that the amendments to the Constitution of Ukraine on justice adopted on 2 June 2016 were an important step in reforming the judiciary in Ukraine. Courts and judges play a key role in implementing these innovations. A statistical analysis of data on the number of judges of local and appellate courts in the context of full-scale aggression was conducted, which revealed an average staffing deficit of 30.4%.

An important aspect of the study was the analysis of the status of judges before and after the aforementioned 2016 reform. This was used to highlight several key aspects: judges currently enjoy functional immunity, which helps ensure the immunity and independence of authorised persons and protect them from potential political pressure. The study determined that the current version of the Law of Ukraine "On the Judiciary and the Status of Judges" strengthens public control over judges. This is reflected in the obligation imposed on judges to submit declarations that will be publicly available, and their late submission will result in disciplinary action. One of the innovations is the establishment of the Public Integrity Council. Its functions include assisting the High Qualification Commission of Judges of Ukraine in conducting judicial evaluations. The rebranding of state institutions was also considered, which provides an opportunity to increase the level of public trust.

The study highlighted that these innovations aim to ensure the transparency of judges and fight corruption, but some of them may be ineffective. In this regard, some recommendations were offered to help improve lawmaking and implementation in practice. Further research will be aimed at conducting a detailed analysis of the issue of rebranding state institutions in Ukraine.

Acknowledgements

None.

Conflict of Interest

None.

References

- [1] Amelin, O.Yu. (2021). International legal standards of prosecutorial activity and status of prosecutors: Implementation in Ukraine and in individual member states of the European Union. *Legal Horizons*, 14(3-4), 25-34. doi: [10.54477/legalhorizons.2021.14\(3-4\).25-34](https://doi.org/10.54477/legalhorizons.2021.14(3-4).25-34).
- [2] Amelin, O.Yu. (2022a). Image of prosecutors and the prosecutor's office in Ukraine: A modern concept. *Rule of Law*, 47, 8-20. doi: [10.18524/2411-2054.2022.47.265275](https://doi.org/10.18524/2411-2054.2022.47.265275).
- [3] Amelin, O.Yu. (2022b). Features of the formation of the judiciary: national and international experience. *Law Journal of the National Academy of Internal Affairs*, 12(3), 62-75. doi: [10.56215/04221203.62](https://doi.org/10.56215/04221203.62).

- [4] Appleby, G., & Roberts, H. (2023). Studying judges: The role of the Chief Justice, and other institutional actors. *Oñati Socio-Legal Series*, 13(1), 80-101. doi: [10.35295/osls.iisl.1713](https://doi.org/10.35295/osls.iisl.1713).
- [5] Barry, B.M. (2020). *How judges judge: Empirical insights into judicial decision-making*. London: Routledge.
- [6] Bezugliy, S.A. (2020). *Guarantees of the activity of judges as a legal foundation of the independent judicial system of Ukraine*. Zaporizhzhia: Zaporizhzhia National University.
- [7] Chandranegara, I.S. (2019). Defining judicial independence and accountability post political transition. *Constitutional Review*, 5(2), 294-329. doi: [10.31078/consrev525](https://doi.org/10.31078/consrev525).
- [8] Collins, E.R. (2020). *The problem of problem-solving courts*. *UC Davis Law Review*, 54, 1573-1629.
- [9] Huk, N. (2020). Professionalization of judges as a basis for democratization of the judicial system of Ukraine: Organizational and legal measures. *Bulletin of the Lviv Polytechnic National University. Series: Legal Sciences*, 28(4), 39-46. doi: [10.23939/law2020.28.039](https://doi.org/10.23939/law2020.28.039).
- [10] Ippoliti, R., & Tria, G. (2020). Efficiency of judicial systems: model definition and output estimation. *Journal of Applied Economics*, 23(1), 385-408. doi: [10.1080/15140326.2020.1776977](https://doi.org/10.1080/15140326.2020.1776977).
- [11] Iqbal, M.I., Susanto, S., & Sutoro, M. (2019). Functionalization of e-court system in eradicating judicial corruption at the level of administrative management. *Jurnal Dinamika Hukum*, 19(2), 370-388. doi: [10.20884/1.jdh.2019.19.2.2510](https://doi.org/10.20884/1.jdh.2019.19.2.2510).
- [12] Krajewski, M., & Ziółkowski, M. (2020). *A. Court of Justice: EU judicial independence decentralized: AK*. *Common Market Law Review*, 57(4), 1107-1138.
- [13] Lisna, I.S., & Mykhailiv, T.Ye. (2019). *Application of experience of foreign judiciary systems during judiciary reform in Ukraine*. *Carpathian Legal Bulletin*, 1, 14-18.
- [14] Mak, C., Van Duin, J., & Burgers, L. (2020). Judges in utopia the transformative role of the judiciary in European private law. *European Review of Private Law*, 28(4), 865-883. doi: [10.54648/erpl2020052](https://doi.org/10.54648/erpl2020052).
- [15] McIntyre, J. (2019). *The judicial function*. Singapore: Springer. doi: [10.1007/978-981-32-9115-7](https://doi.org/10.1007/978-981-32-9115-7).
- [16] Navrotska, V. (2020). Interrogation bench members' examination on their advisement in criminal proceedings. *Social and Legal Studios*, 3(1), 93-99. doi: [10.32518/2617-4162-2020-1-93-99](https://doi.org/10.32518/2617-4162-2020-1-93-99).
- [17] Perederiy, O.S. (2022). Problems of reforming the domestic judicial system in the conditions of activation of European integration of Ukraine (theoretical and legal aspect). *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 1, 61-66. doi: [10.24144/2307-3322.2022.72.10](https://doi.org/10.24144/2307-3322.2022.72.10).
- [18] Prendergast, D. (2019). The judicial role in protecting democracy from populism. *German Law Journal*, 20(2), 245-262. doi: [10.1017/glj.2019.15](https://doi.org/10.1017/glj.2019.15).
- [19] Roth, J.A. (2021). Jack Weinstein: Reimagining the role of the district court judge. *Federal Sentencing Reporter*, 33(3), 163-167. doi: [10.1525/fsr.2021.33.3.163](https://doi.org/10.1525/fsr.2021.33.3.163).
- [20] Smith, D.M. (2023). Judges as lawyers. SSRN. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4567406.
- [21] Spano, R. (2021). The rule of law as the lodestar of the European Convention on Human Rights: The Strasbourg Court and the independence of the judiciary. *European Law Journal*, 27(1-3), 211-227. doi: [10.1111/eulj.12377](https://doi.org/10.1111/eulj.12377).
- [22] Stewart, T.M. (2021). *Judicial words matter*. *The Journal of Appellate Practice and Process*, 21(2), 433-454.
- [23] The State Security Service of Ukraine published statistics on the state of administration of justice in 2022 under martial law. (2023). Retrieved from <https://dsa.court.gov.ua/dsa/pres-centr/news/1384015/>
- [24] Varsava, N. (2021). *Professional irresponsibility and judicial opinions*. *Houston Law Review*, 59(1), 103-173.
- [25] Vinnikov, S.V. (2021). Improving the organizational and legal framework for stimulating the work of judges as an important condition for reforming the judicial system of Ukraine. *Scientific Bulletin of Public and Private Law*, 4, 212-216. doi: [10.32844/2618-1258.2021.4.37](https://doi.org/10.32844/2618-1258.2021.4.37).
- [26] Waldron, J. (2021). The rule of law and the role of courts. *Global Constitutionalism*, 10(1), 91-105. doi: [10.1017/S2045381720000283](https://doi.org/10.1017/S2045381720000283).

Модернізація конституційно-правового статусу суддів в Україні

Олександр Амелін

Кандидат юридичних наук, доцент

Офіс Генерального прокурора

01001, вул. Різницька, 13/15, м. Київ, Україна

Міжрегіональна Академія управління персоналом

03039, вул. Фрометівська, 2, м. Київ, Україна

<https://orcid.org/0000-0002-0933-2111>

Анотація

Актуальність дослідження обумовлена тим, що в умовах воєнного стану та процесів євроінтеграції важливим стає питання реформування органів державної влади, зокрема органів й установ системи правосуддя. Метою роботи є здійснення аналізу законодавчої бази в контексті визначення конституційно-правового статусу суддів в Україні. Для цього було використано такі методи: логічний аналіз, формально-юридичний, догматичний, юридичної герменевтики, дедукції, індукції, синтезу, що надали можливість виокремити основні засади регламентації конституційно-правового статусу суддів в Україні. У межах дослідження констатовано, що сучасний конституційно-правовий статус суддів визначається оновленою редакцією Конституції, Законом України «Про судоустрій і статус суддів» та іншими законодавчими актами. Зазначено, що однією з головних проблем судової системи України залишається кадрова неуповноваженість судів. Відповідно до реформ, які проведені з 2 червня 2016 року та внесли зміни в низку норм, здійснено порівняльно-правовий аналіз статусу суддів до та після нововведень. Виявлено, що раніше судді мали абсолютну недоторканність, нині – функціональний імунітет, який захищає від переслідування за їхні дії. Ці реформи реалізовано для того, щоб забезпечити незалежність суддів і захистити їх від політичного тиску. Досліджено досвід таких країн, як Італія, Німеччина, Японія, США, у контексті забезпечення принципу незалежності суддів. Аргументовано, що цей принцип можна реалізувати в різних формах. Також обґрунтовано важливість питання ребрендингу державних установ

Ключові слова:

суддя; правовий статус; незмінюваність суддів; імунітет суддів; незалежність суддів; судова влада; юрисдикція