UDC 347.97/.99
DOI: 10.56215/04221203.62

Features of the formation of the judiciary: national and international experience

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Abstract

The relevance of the article lies in the need to conduct a comparative study of the peculiarities of the formation of the judicial corps in Ukraine and in the leading countries of the world in order to clarify the effectiveness of the existing national judicial system and its improvement in the future. The purpose of the study is to analyze the peculiarities of the procedure for forming the judicial corps and selection for the position of a judge in Ukraine, European countries, as well as in Great Britain and the USA. The basis of the methodological base, which was used for the study of this material, is the methods of deduction and induction, systemic, logical, dialectical, formal-legal, comparative-legal, historical, systemic-structural, statistical, sociological methods. The work examines the history of the creation of the first courts and the formation of the judicial system of independent Ukraine; a number of concepts are defined, including "judge", "judge corps", "judge corps formation"; the stages of selection for the position of a judge have been established and the requirements for judges in various judicial bodies have been disclosed; a comparison of selection for the post of judge and prosecutor was made; the international experience of forming the judicial corps in such countries as Switzerland, Austria, Germany, France, Belgium, Poland, Great Britain, and the United States was studied; the problems that arise in the judicial system of Ukraine, especially when filling vacant judicial positions, are clarified. The results of the study, obtained in a combination of the study of advanced world and domestic practice in the formation of the judicial corps, can be valuable and useful both for persons who wish to become judges and for all practical employees of the justice system

Keywords:

judge; candidate for the position of judge; procedure for selection of judges; reformation; requirements for judges; training of judges

Article's History:
Received: 18.07.2022
Revised: 29.08.2022
Accepted: 16.09.2022

Suggest Citation:
Amelin, O.Yu. (2022). Features of the formation of the judiciary: national and international experience. *Law Journal of the National Academy of Internal Affairs*, 12(3), 62-75. https://doi.org/10.56215/04221203.62.

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Introduction

The democratic development of any country requires the implementation and consolidation of the principle of the rule of law and all its components. The implementation of this principle requires state and judicial authorities to provide conditions for the effective protection of the violated rights and interests of each person. To ensure the proper exercise of the protection of rights, each individual is guaranteed access to a court and an effective and fair trial by professional and qualified judges [1]. Since the creation of the first courts or bodies authorised to resolve disputes, and throughout the historical development of state legal systems, people have had an understanding of the inevitable punishment for wrongdoing. The judicial system is the basis for establishing democracy in the country [2]. For the efficient functioning of the judicial system, it is necessary to create a judicial corps whose activities are aimed at protecting human rights [3]. The formation of a qualified and independent judiciary is a prerequisite and basis for the effective administration of justice. The reason is that only a highly qualified, experienced, and highly moral judiciary can fully protect violated human rights and interests.

The Constitution of Ukraine[1] establishes the division of power in Ukraine into executive, judicial and legislative. The judicial branch of government occupies a special place in the functioning of the state. The Basic Law of Ukraine[2] stipulates that justice in Ukraine shall be administered only by courts, i.e., only courts may hear and decide court cases. Therefore, the formation of an effective and qualified judiciary is necessary for the normal functioning of the court system.

After Ukraine gained independence in 1991, the reform of the branches of power and the judicial system, in particular, has been launched. The reforms affected not only the administration of justice but also the selection and appointment of judges, funding, etc. [4]. Since Ukraine has embarked on the European integration course, it has become important to reform the judicial sphere and, accordingly, to improve the judiciary, and therefore to select candidates for the position of judges in detail. The reform of the judicial sphere and the implementation of effective formation of the judicial corps will allow for a fair and high-quality judicial process and protection of violated human rights.

Within the framework of cooperation between Ukraine and the European Union, considerable attention is paid to improving the judicial system and implementing a number of reforms. The Association Agreement between Ukraine and the European Union[3] of 2014 initiated the renewal and reform of the entire judicial system of Ukraine.

The issue of judicial recruitment in Ukraine has always been relevant, and the current time is no exception. The relevance of this topic is reflected in a number of scientific works, including the works by V. Potapenko [5] & B. Prokopenko [6]. The efficiency, legitimacy and legality of justice depend on the proper and professional judiciary.

The main objectives of this study are:

– defining concepts that reveal the essence of the subject;

– research on the history of the judicial system, including that of independent Ukraine;

– establishing the basic requirements and stages of formation of the judiciary in Ukraine and in leading foreign countries;

– identification of the main models of the formation of the judiciary;

– comparing the processes of recruitment of judges and prosecutors;

– identifying problems that arise in the judicial system of Ukraine, primarily when filling vacant judicial positions, and suggesting ways to solve them.

Materials and Methods

For an effective and comprehensive study of the subject of this article, a number of general and special methods of cognition were used. Dialectical, logical, and formal-legal methods of scientific cognition became the main means of substantiating the author's argumentation and the results of the research. Thus, using the dialectical method, the stages of selection for the position of judge and the requirements for these candidates were analysed. The logical method and its means are used to justify a particular position of the researcher. The formal legal method was used to determine the main models of the formation of the judiciary.

By using the methods of induction and deduction, analysis, and synthesis, it was possible to study the problems arising during the election and appointment of judges, to identify the problems of administrative-territorial reform and its impact on the activities of local courts. An important role in the study was played by the synthesis method, which analysed international experience in the selection of judges and prosecutors. The use of the systematic method allowed to determine the features of the formation of the judiciary in Ukraine and in foreign countries. The modelling method made it possible to identify areas for improvement in the judicial system of Ukraine and the judicial recruitment process. Using the logical and semantic method, the conceptual apparatus was expanded.

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text
[2]*Ibidem*, 1996.
[3]Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and Their Member States, of the Other Part. (2014, November). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.

The historical method was an effective tool of research, used to determine the establishment of the first courts in the world and the formation of the judicial system in general, and to investigate the formation of the judiciary in Ukraine, in particular, after its independence. The comparative legal method is used to compare the selection process for judges and prosecutors, establish their common features and differences. This method was also used to study and compare the formation of the judiciary in Ukraine and in leading foreign countries. The system-structural approach allowed to study the main issues that arise during the filling of vacant positions of judges and to propose ways to solve them.

Statistical and sociological methods were used to establish basic general requirements for candidates for judicial positions, and separate requirements for judges of various judicial bodies. An important role in the study was played by the hermeneutic method, which was used to interpret and justify the application of the main models of the formation of the judiciary. The method of system analysis was used to present the conclusions based on the results of the study. The method of argumentation is used to substantiate the truth of the judgments indicated in the work.

Results and Discussion

1. The concept and necessity of formation of the judiciary. To carry out an effective study of this subject of the article and to fulfil the set goals and objectives, it is necessary to define the concepts of "judge", "judiciary" and "formation of the judiciary". In a general sense, the term "judge" means a person whose authority is to administer justice. In each country of the world, there are different definitions of the term "judge". According to the Law of Ukraine "On the Judicial System and Status of Judges"[1], a judge is a citizen of Ukraine who is elected and appointed to a vacant judicial position and administers justice in accordance with the legislation of Ukraine on a professional basis. The term "judiciary" shall be understood as a set of existing judges of all instances, as well as jurors, people's assessors, and retired judges. The term "formation of the judiciary", in turn, should be understood as the process of selection for the position of judge in the judiciary, and the mechanisms for the exercise of judges' powers [7].

The institution of formation of the judiciary exists and functions in many countries of the world. These countries have formed and enshrined certain requirements that must be met by a person who has expressed a desire to take up the position, adopted a legal framework regulating the procedure for entering the position, and provided special training and internships in the judiciary.

The basis of this study is to establish the specifics of the procedure and models of appointment or election of judges, and the characteristics of the selection process for the position of judge. Thus, Professor of the Radboud University of Nijmegen – Paul Bovend'Eert spoke about the appointment of judges in Europe [8]: "There is no common or standard procedure for the appointment of judges in Europe. In fact, there are no real European standards for this procedure. The methods of appointing judges vary depending on different legal traditions and legal systems. They may also differ within the legal system. For example, the appointment of judges to lower courts may differ significantly from the appointment to the Supreme Court or the Constitutional Court".

Reflections on Impartiality and Independence by Emma Hakala-Manninen & Suvi Niemelä [9] emphasised: "Independent courts are a defence against the exercise of authoritarian power, and they protect the fundamental rights and freedoms of individuals". It is difficult to disagree with this statement, as professional and independent judges are the guarantors of human rights observance and protection. The prerequisite for this is an effective and high-quality process of formation of the judiciary.

Regarding the issue of the legality of the formation of the judiciary as the basis for the independence of judges, other foreign authors have also expressed the following: "The independence of the judiciary is a guarantee and prerequisite for the formation of a democratic country, as well as the basis for the observance of human rights. In turn, a lawful and fair process of appointment of judges is a prerequisite for their independence" [10].

2. History of the formation of the world judicial system. The origin of judicial dispute resolution and the functioning of the first courts in the world has a long history. It is impossible to establish the exact date of the creation of the first court in the world for two reasons: first, it does not have accurate historical data, and secondly, since ancient civilisations, the consideration of disputes as such has already existed, in the form of a public forum or hearing by the most influential representative of a particular people [11].

The formation of conflict resolution by the legal method took place in the Ancient East since this is where the first signs of civilisation began to emerge, law was formed, and the first procedural forms and procedures appeared. Thus, legal proceedings in some respects were present in Ancient Egypt [12]. From the limited historical documents and monuments that have been preserved in our time, it can be argued that the chief judge and the person who ruled on disputes was Pharaoh. However, in most cases, he handled individual cases and appeals.

Thus, Ancient Egypt did not have criminal, civil or administrative proceedings, but already in those days, there was a step-by-step consideration of the case. The following stages of court proceedings in Ancient Egypt can be distinguished:

[1]Law of Ukraine 1402-VIII "On the Judiciary and the Status of Judges". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.

1. The stage of case initiation. Thus, the court case was initiated by filing a complaint, which is now a lawsuit, to the members of "kenbet" [13]. Members of "kenbet" visited and investigated the crime scene. This stage was concluded with the identification of the committed crime.

2. The stage of establishing the circumstances of the case and consideration of the case itself. At this stage, evidence was presented, and participants in the case and witnesses were interrogated. Thus, the interrogation took place through questions from the members of the kenbet and answers given by the participants and witnesses. These testimonies were recorded by scribes.

3. The stage of decision-making and adjudication. This stage has common features with the previous one since the essence of the process clarified in the second stage was also reported and the claim was read out [14].

4. The stage of execution of the court decision. The decisions were made by authorised persons and were subject to mandatory execution. Thus, the decision was set out in writing, and the person accused of committing a crime took an oath to comply with the sentence.

Besides the existence of official (at the country level) judicial bodies in Ancient Egypt, temple courts also existed to resolve disputes.

Medieval Europe was characterised by the concentration of power and governance of the country in the king. It became a well-established practice to subordinate all state institutions to the king, and the judiciary was no exception. The royal authorities tried to limit the so-called "court fights", instead introducing severe punishments for crimes against the king and the kingdom, against the church and religion [15]. Thus, the Royal Judges heard cases that had previously been the responsibility of the deputies, town courts, workshops, local judges, relatives and even cases brought by victims. The courts in the Middle Ages were characterised by a period of arbitrariness, as judges allowed themselves deliberate intimidation and the adoption of severe punishments, sometimes disproportionate to the committed illegal act.

In France, for example, during the Middle Ages, there was a transition from barbaric customs to the territorial legal system of individual regions. Starting from the 12th century, royal courts became important in resolving disputes. With each subsequent year, the courts become an increasingly authoritative and established institution, since representatives of every social class, starting from the clergy and ending with the townspeople, had their own court. Peasants were judged by feudal lords or judges elected by them.

The study of the formation of the judiciary is impossible without clarifying the essence and purpose of the reform of 1864, which was of great importance for the Ukrainian judiciary. During the implementation of the judicial reform of 1864, a prominent place was given to the formation of the judiciary. In particular, this reform should address the following issues: taking office and covering the procedure; establishing the legal status of a judge; guarantees of judicial activity, etc. Thus, four methods and approaches to holding the position of a judge were distinguished:

– election of a judge to the position by the judicial body which has a vacancy;

– election of judges by the population or their representatives;

– a judge was appointed by the government;

– election of a judge by drawing lots from among the persons who met the established requirements.

The Statute of the establishment of judicial institutions[1] stated that the chairmen, members of the court chambers, heads of existing departments and others were appointed to positions by the king.

3. Creation and functioning of the judicial system on the territory of Ukraine. Regarding the establishment of courts and the formation of the judicial system in Ukraine, it should be noted that dispute resolution existed in Kyivan Rus. For a long time, the courts and the judicial system were under the rule of Poland, the Russian Empire, Romania, the Soviet Union, and the Austro-Hungarian Empire. A large-scale attempt to form an independent judicial system on the territory of Ukraine took place in 1918-1921. During these years, it was not possible to form an independent and autonomous judicial system, as in the early 1920s the formation of the Soviet judicial system began[2].

In the early 1980s, Ukraine had election of judges, and the selected judges were directly accountable to the population. However, already in the late 80s, electability was replaced by the election and appointment of judges by representative local authorities, which as a result led to the dependence of judges on the decisions of these bodies. Today, the procedure of formthe ation of the judiciary in Ukraine is totally different. The process of election and appointment of judges may involve the President of Ukraine, the High Council of Justice, the Verkhovna Rada of Ukraine, the High Qualification Commission of Judges, and the Verkhovna Rada Committee on Legal Policy[3].

The Declaration of State Sovereignty of Ukraine adopted in 1990 initiated the creation of a new system and procedure for the formation of the judiciary[4]. Also, the adoption of the Act of Independence of Ukraine in 1991 implemented the provisions enshrined in the Declaration of State Sovereignty of Ukraine[5]. After the adoption of the above acts, the formation of national public authorities began, including the creation and establishment of the justice system.

[1]Declaration of State Sovereignty of Ukraine No. 55-XII. (1990, July). Retrieved from https://zakon.rada.gov.ua/laws/show/55-12#Text.
[2]Decree Verkhovna Rada of the Ukrainian RSR No. 1427-XII "Act of Independence of Ukraine". (1991, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1427-12#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]Declaration of State Sovereignty of Ukraine No. 55-XII, op. cit.
[5]Decree Verkhovna Rada of the Ukrainian RSR No. 1427-XII, op. cit.

After the declaration of independence, Ukraine inherited an understanding of the judiciary from the Soviet Union. The ideology of the judicial system of the Soviet times was the limitlessness of Soviet power, in which the court acted only as a tool for the implementation of socialist national power. A judge, holding a position in the Soviet Union, had to be a member of the Communist Party. Before the proclamation of independence of Ukraine, the judicial system of the Ukrainian SSR consisted of: the Supreme Court of the Ukrainian SSR, Kyiv City Court, judges of the regions and city people's courts [16].

After gaining independence, Ukraine initiated the operation of three independent branches of power: legislative, executive, and judicial. The process of reforming the judicial system has been launched. The concept of improving the judicial system was approved by the president of Ukraine[1] In 2006, it provided for three areas of reform, namely:

– improving the forms of legal proceedings and the entire judicial system;

– law enforcement reform;

– updating the procedural legislation.

The relevant reforms took place in several stages: 1) amendments to regulatory legal acts; 2) creation of new judicial bodies, namely administrative courts; 3) improvement of the judiciary and conducting a study of the effectiveness of judicial reform. During the 30 years of independence of Ukraine, an extensive regulatory framework has been created regarding the activities of courts and the status of judges and the functioning of the judicial system as a whole, along with the constitutional framework for appeal and cassation proceedings [2].

The establishment and application of a certain model of formation of the judiciary require research of legislation and legal thought After gaining independence, Ukraine began the process of searching for a model of judicial power formation and effective administration of justice. This process continues today through the improvement of the legislative framework, the implementation of a number of reforms, the deepening of legal thought and the implementation of modern international experience[2].

The choice of a moderate model of judicial office, namely the election of judges by the public, is not effective, as the professional skills and experience of the candidate are not fully assessed. Another reason for the ineffectiveness of this model is the lack of accountability to the public, as there is no defined procedure and responsibility for the lack of reporting on the performance of judges. Also, there is no clear procedure for exercising public control over the activities of judges.

The Council of Europe expert Rosa H.M. Jansen addressed this issue [17], noting that in general, the election of judges is not common in European systems. She is not keen on the procedure of electing judges because there is a very high risk of certain politicians influencing this process. Also, according to H.M. Jansen [17], it is not recommended to use the system of election of judges for the formation of the judiciary in Ukraine, as the country is in the process of establishing democracy. Thus, this model of formation of the judiciary is ineffective for the judicial system of Ukraine, since the self-nomination of judges and their election by citizens will not guarantee independence, professionalism, and qualification of the court staff.

It is not common in the world, but it is used in European countries, the model of forming the judicial Corps, in which judges themselves elect judges to the relevant courts. The main idea of allowing judges to appoint judges is that they become responsible for the authority of the judiciary, the legality of their decisions and the effectiveness of the judicial system as a whole.

4. Reforming the judicial system in Ukraine and the institute of judicial selection. After choosing the European integration course, Ukraine initiated a number of reforms, including in the judicial sphere [18]. The reforms covered not only the judicial system and the administration of justice in Ukraine but also the appointment of judges. The implementation of judicial reform in Ukraine is primarily due to the lack of independence of judges, outside influence on judges, the issuance of clearly illegal decisions by some judges, the imperfect procedure for the formation of the judiciary, the unsatisfactory level of professionalism of judges, non-enforcement of court decisions and much more [19].

However, despite the existing problems in the judicial system, the protection of violated rights continues to be carried out incessantly. The above is confirmed by the summary statistics provided on the website of the judiciary of Ukraine for all courts of different instances [20].

The Decree of the President of Ukraine No. 231/2021 of 06/11/2021 approved the "Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023"[3] (hereinafter – the Strategy), which defines the main steps towards the development and improvement of the judicial system and the recruitment procedure in accordance with the best international standards. The main goal of the Strategy[4] is to further improve the judiciary and the judicial recruitment process to establish and guarantee the rule of law and human rights. The Strategy[5] also outlines a number of key issues, the solution of which will increase

[1]Decree of the President of Ukraine No. 361/2006 "On the Concept of Improving the Judiciary to Establish a Fair Court in Ukraine in Accordance with European Standards". (2006, May). Retrieved from https://zakon.rada.gov.ua/laws/show/361/2006#Text.

[2]Law of Ukraine No. 3911-XII "On Qualification Commissions, Qualification Attestation and Disciplinary Responsibility of Judges of Courts of Ukraine". (1994, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3911-12#Text.

[3]Decree of the President of Ukraine No. 231/2021 "On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/231/2021#Text.

[4]*Ibidem*, 2021.

[5]*Ibidem*, 2021.

the efficiency of the justice system, including the workload of judges and their shortage in the courts of first instance and appellate courts, which in turn leads to untimely and inefficient consideration of cases; dishonesty of judges and the existence of corruption in the judiciary of various instances; complicated procedure for selecting judges and filling a vacancy; incomplete reform of the prosecution bodies; imperfect and inefficient system of local courts; low level of public trust in the courts; etc.

To improve the efficiency and effectiveness of the work of the High Qualification Commission of Judges and the High Council of Justice, a number of legal acts were amended and finalised, in particular, the Law of Ukraine On Amendments to the Law of Ukraine "On the Judicial System and Status of Judges" was adopted[1]. One of the changes contained in the abovementioned Law was the new requirement for the election of the members of the Commission by means of a competition to be held with the participation of international experts . The changes also affected the high justice, namely, the Ethics Council provides for the implementation of an assessment by members of the High Council of Justice of compliance with professional ethics and integrity criteria[2].

In 2020, the Verkhovna Rada of Ukraine adopted Resolution No. 807-IX "On the Formation and Liquidation of Districts"[3]. According to this resolution, there was a change in the administrative-territorial structure of Ukraine, namely, 136 of the 490 existing districts were formed[4]. As a result of these changes, the issue of changing the existing system and network of courts, in particular local ones, has become necessary and urgent.

To resolve the issue of territorial jurisdiction of local courts and to adjust the number of courts to the number of existing districts, the Law of Ukraine on Amendments to the Law of Ukraine "On the Judicial System and Status of Judges" was adopted[5], which was to be in force until the adoption of a normative act regulating the change of the system of local courts in Ukraine in connection with the formation (liquidation) of districts. According to the provisions of the above-mentioned Law, local courts can exercise their powers and perform the functions assigned to them within the previously existing jurisdiction, but not later than January 1, 2022. The Law of Ukraine On Amendments to the Law of Ukraine "On the Judicial System and Status of Judges"[6] regarding the territorial jurisdiction of local courts in Ukraine until the adoption of the law on changing the system of local courts related to the formation (liquidation) of districts[7] stipulated that the term of local courts within the existing territorial jurisdiction was extended for 1 year. The High Council of Justice provided clarification on the continuation of the current territorial jurisdiction of local courts, which states that the courts of general jurisdiction were located mainly in district centres, but after the changes in the administrative-territorial structure of Ukraine, the district centres became those settlements in which, for the most part, there were no judicial bodies[8]. This in turn led to the need to create new courts or relocate existing ones. Therefore, as the work on the process of creating a new network of courts continues, until its approval by January 1, 2023, the territorial jurisdiction existing before the adoption by the Parliament of the resolution on the formation and liquidation of districts will remain in force [21].

5. The process and features of the formation of the judiciary in Ukraine. With regard to the system and process of formation of the judiciary in Ukraine at the present stage, the following should be noted. The judicial system of Ukraine consists of: local courts; courts of appeal; the Supreme Court (the highest judicial body) and higher specialised courts[9]. Each person who has expressed a desire to become a judge of one of these courts is subject to certain requirements.

The Law of Ukraine "On the Judicial System and Status of Judges"[10] stipulates that a person wishing to take up a vacant position of a judge must meet the following requirements: to have Ukrainian citizenship; to be proficient in the state language; to be of appropriate age; to have a legal education; to have experience in the

[1]Law of Ukraine 1402-VIII "On the Judiciary and the Status of Judges". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[2]Law of Ukraine No. 1629-IX "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Some Laws of Ukraine on the Resumption of the High Qualifications Commission of Judges of Ukraine". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1629-20#Text.
[3]Decree Verkhovna Rada of Ukraine No. 807-IX "On the Formation and Liquidation of Districts". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/807-20#Text.
[4]*Ibidem*, 2020.
[5]Draft Law No. 7565 "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' on Territorial Jurisdiction of Local Courts on the Territory of Ukraine Prior to the Adoption of the Law on Changing the System of Local Courts on the Territory of Ukraine in Connection with Liquidation". (2020, August). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69731.
[6]*Ibidem*, 2020.
[7]Law of Ukraine 950-IX "On Amendments to the Law of Ukraine 'On Judiciary and Status of Judges' on Territorial Jurisdiction of Local Courts in Ukraine. Prior to Adoption of the Law on Changing the System of Local Courts in Ukraine in Connection with the Formation of (Liquidation) Districts". (2020, November). Retrieved from https://www.rada.gov.ua/news/Novyny/216383.html.
[8]Law of Ukraine No. 1635-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1635-20#Text.
[9]Law of Ukraine 1402-VIII, op. cit.
[10]*Ibidem*, 2016.

field of law; to be honest and competent. Along with the requirements for the position of a judge, the Law also specifies the grounds according to which a person cannot apply for the position, namely: the presence of an illness that prevents the exercise of powers; recognition of a candidate for the position of a judge as incapacitated or partially incapacitated; has an unexpunged criminal record; a person who was previously dismissed from the position of a judge for committing a disciplinary offence or a conviction against such a person has entered into force.

Regarding the requirements and procedure for the appointment of judges of various courts, it should be noted that the requirements for candidates for the position of judge in the judicial bodies of various courts are specified in the Law of Ukraine "On the Judicial System and Status of Judges"[1]. Thus, for example, a candidate for the position of a judge of the court of appeal must have at least 5 years of experience as a judge, have a degree or experience in scientific activity in the field of law, meet the general requirements for holding the position of a judge, have experience in advocacy, etc. Also, Ukraine has another independent judicial body – the Constitutional Court of Ukraine (hereinafter – the Constitutional Court). According to the Law of Ukraine "On the Constitutional Court of Ukraine"[2], a person wishing to become a judge of the Constitutional Court must be a citizen of Ukraine, be at least 40 years old, have 15 years of experience in the legal field, speak the state language, have a higher legal education and high moral qualities. The Constitutional Court consists of 18 judges elected by the President, the Congress of Judges of Ukraine, and the Verkhovna Rada of Ukraine. The selection for the position of a judge of the Constitutional Court, to be appointed by the President of Ukraine, is carried out by a competition commission. To participate in the competitive selection for the position of judge, a candidate wishing to enter this position must provide an application and the following documents: autobiography, motivation letter, documents confirming the experience of professional activity in the field of law, documents confirming the identity and citizenship of Ukraine, a copy of the diploma of higher legal education (with appendices), a declaration of the person, written consent to the processing of personal data, etc[3].

Thus, the appointment of a judge consists of several stages and contains a number of requirements, which allows for a more objective and efficient selection of independent and professional judges who will resolve court cases with maximum efficiency and in compliance with the law, protect and guarantee human rights and freedoms. At the beginning of 2020, Ukraine's courts of the first instance lacked approximately 1500 judges. Such a large number of vacant positions led to the overloading of judges, as there were too many cases per one servant of Themis, which in turn led to delays and deterioration of the quality of their consideration, and therefore failure to fully protect human rights. The lack of judges creates a catastrophic situation for the judicial system of Ukraine. Despite the sufficient number of candidates for the position of judge, the courts still remain understaffed. Thus, as early as in 2017, the selection of candidates for the position of judge began, dividing them into two categories. The first category of candidates consisted of assistant judges who passed the necessary tests and received recommendations from the High Qualification Commission of judges of Ukraine. However, the High Council of justice delayed the consideration of candidates, and in some cases even blocked them. The second category of candidates are lawyers who have practical experience in jurisprudence and who have passed all stages of the verification and were waiting for the results from the High Qualification Commission of Judges of Ukraine.

On August 29, 2019, the President of Ukraine submitted the Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Activities of Judicial Governance Bodies"[4] (Reg. No. 1008, hereinafter – Draft Law No. 1008) to the Verkhovna Rada of Ukraine This draft law proposed to improve the work of the High Qualification Commission of Judges of Ukraine and the High Council of Justice. Thus, it was proposed to approve a new procedure for the election and appointment of persons to vacant positions in these bodies. During the consideration of draft law No. 1008, a number of negative criticisms were expressed, in particular from national judicial authorities and international partners and experts[5]. However, already on October 16, 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and some laws of Ukraine on the activities of judicial governance bodies"[6], which entered into force on 11/07/2019. Since that date, the powers of the members of the High Qualification Commission of Judges of Ukraine have been terminated and its new composition has not been appointed yet, which leads to the delay in the formation of the judiciary and the administration of quality justice. A crisis in the formation of courts, related to the implementation of judicial reform, was also present in 2012-2013 [5].

[1]Law of Ukraine 1402-VIII "On the Judiciary and the Status of Judges". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[2]Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.
[3]*Ibidem*, 2017.
[4]Draft Law No. 1008 "On Amendments to Certain Laws of Ukraine Regarding the Activities of Judicial Governance Bodies". (2019, August). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1008&skl=10.
[5]*Ibidem*, 2019.
[6]Law of Ukraine No. 193-IX "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Some Laws of Ukraine Regarding the Activities of Judicial Governance Bodies". (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/193-20#Text.

6. International experience in the formation of the judiciary. Ukraine has chosen the path to European integration, and therefore it is also important to clarify and establish the specific features of the formation of the judiciary in the leading countries of the world, especially the European Union (hereinafter – the EU). According to M. Bobek [22]: "In recent years and even decades, the judicial systems of European countries have changed dramatically, in particular, the ways of selecting judges to the European Court of Human Rights and the Court of Justice of the European Union". The constituent documents of the European Union established the "Court of Justice of the European Union", which consolidates the EU judicial system and includes a number of judicial bodies, namely: General Court, Court of Justice and specialized judicial chambers [23]. Often, the totality of EU judicial bodies is referred to as the "Court of Justice of the European Union". At the same time, there is no specific hierarchy, and each judicial body is equal and independent. The functioning of the EU judicial bodies and the formation of the judiciary are governed by the provisions of the EU founding documents, the EU Charter, the Rules of the General Court, and the Court of Justice.

Effective recruitment of judges and raising the level of qualification and professionalism of judges requires the study of international experience in the formation of the judiciary. In European countries, the practice of electing judges is not common, with Switzerland being an exception. Thus, in Switzerland, each canton has its own judicial system, which allows for the existence of its own procedures for the election of judges. At the cantonal level, judges are elected by popular vote with the right to re-election or appointed by the supreme court or parliament. Judges of the Federal Criminal Court, the Federal Patent Court, and the Federal Administrative Court are elected by the existing Federal Assembly [3]. The procedure for electing judges is also typical for Japan and the United States of America.

There are views among scholars that a candidate for the position of a judge should not only have a sufficient professional level but also have moral and psychological qualities. A. Martsinkevych [24] spoke on this issue, noting that the existing domestic system of formation of the judiciary should provide not only the necessary prerequisites for the appointment of the most qualified lawyers with a certain life experience and age but also persons with high moral qualities, since in Ukraine, at present, the business qualities of persons for the position of judge, their mental characteristics, behaviour, communication and organisational skills are not fully studied and investigated.

In *Austria*, a person who is a citizen of the country, has full legal capacity and impeccable reputation, higher legal education, i.e., has completed a full law course at the university and received a diploma, has practical judicial experience, and has received a characterization from three practising judges can hold the position of a judge.

Germany is considered to be one of the countries where the independence of judges and the rule of law are respected at the highest level. Thus, there are 16 federal states electing judges [25]. As for the appointment of federal judges, the German constitution establishes the principle of "selecting the best candidate"[1]. There are five major federal courts in Germany: The Federal Social Court, the Federal Supreme Court, the Administrative Court, the Federal Labour Court and the Financial Court, whose judges are selected and appointed by the Judicial Selection Committee. This committee consists of 32 members, and judges are appointed by secret ballot by a majority vote. The selection committee of judges consists of 16 experts appointed by the Bundestag and 16 ministers of Justice [26].

However, the formation of the judiciary in Germany is also criticised. The process of selecting judges for the Federal Constitutional Court receives the most criticism. Judges of the Federal Constitutional Court are elected by a body of 12 deputies. The process of electing these judges is non-public, it is not supported not only by citizens and lawyers but also by the judges of the Federal Constitutional Court themselves, noting that "this rule is rightly called unconstitutional in much of the professional literature" [25]. In 2012, the president of the Bundestag noted that he considers it strange that the requirements for judges of the Constitutional Court and their selection process are lower than in the case of, for example, the election of a commissioner for the protection of personal data [26].

The Constitution of the *French Republic*[2] states that "the judiciary must remain independent to ensure respect for the freedoms as enshrined in the preamble to the Constitution[3] of 1946 and in the Declaration of Human Rights". The training of qualified specialists in the judicial sphere in France is a guarantee of the independence of the judicial system and falls within the competence of the National School of Magistracy (hereinafter – the School), the main purpose of which is to train judges [27]. Initial training involves two stages and a total of 31 months:

– 24 months are allocated for theoretical training and internship in a court, gendarmerie or law office;

– the rest of the time is devoted to theoretical training in Bordeaux, and internship (5 months) [28].

Only persons who have studied at the National School of Magistracy and have obtained a diploma there can hold the position of a judge in France. However, persons who already have higher education in the field of law and have received legal training, or certain

[1]Basic Law of the Federal Republic of Germany. (1949, May). Retrieved from http://www.gesetze-im-internet.de/gg/BJNR000010949.html.
[2]Constitution of the French Republic. (1958, May). Retrieved from https://www.constituteproject.org/constitution/France_2008.pdf?lang=en.
[3]*Ibidem*, 1958.

categories of civil servants are eligible to study at the National School of Magistracy. The professional level of judges is improved through their practical and theoretical training. One of the features of training judges is also the historically established interaction of judicial and law enforcement agencies. In particular, educational programmes for improving the professional level of judges are also the same for prosecutors. Regarding such joint educational programs, the researcher of the international experience of judicial training S.V. Stepanov [29] noted that the advanced training of judges and their professional development should take place independently and without any influence from public authorities.

The experience of advanced training of judges in the *Republic of Poland* is also quite interesting. In Poland, professional training of persons willing to fill the vacancy of a judge is carried out by the National School of Judiciary and Prosecutor's Office. The training of judicial candidates consists of two stages: general and professional training. The general training of future judges involves attending lectures, practical classes for 12 months along with internships in the judiciary. In turn, the professional training lasts 48 months. Only after passing all stages of training and verification, a candidate for the position of a judge can apply for a vacant position of a judge.

In *Belgium*, judges are appointed after completing a judicial training program or are appointed directly to a permanent position. They are appointed by The Crown (The King and his ministers) indefinitely until retirement, based on a reasoned request from the 44-member High Council of Justice. The creation of this council began in 2000, partly due to the politicisation of the appointment process. According to the GRECO report on the assessment of the judiciary in Belgium [11], apart from the initial recruitment, appointments to responsible judicial positions are still seen primarily as a result of the ability to develop connections and the right contacts rather than merit. Therefore, it can be stated that despite the presence of the High Council of Justice, which is involved in the process of appointment of judges, there is also a certain political influence on the formation of the judiciary.

In *Great Britain*, which has left the European Union in 2020, judges are appointed to the post. There are statutory qualification criteria for judges, according to which the 15-member Judicial Appointment Commission selects candidates for the position of judge. The Lord Chancellor, a member of the government, has the right to appoint judges. They can either approve the candidacy of the elected person or reject them if the candidate is not suitable for the position. Certain high-ranking appointments are made by the Queen on the advice of the Lord Chancellor or prime minister [11].

Approaches to the formation of the judiciary in the *United States of America* (hereinafter – the USA) are fundamentally different from the European experience. A special feature of the US judicial system is manifested in the fact that the judicial systems of 50 American states and autonomies, as well as the federal judicial system and the judicial system of the Federal District of Columbia, exist and function effectively at the same time [15]. To become a judge in the United States, you must be 21 years old, have a law degree, speak English, and reside in one of these states for more than a year [30]. The difference between the formation of the judiciary in the USA and European countries is that a candidate for the position of a judge in America, despite having no work experience, can get a position of a judge in any court. Therefore, it all depends on qualifications and mental abilities, because even without practical experience one can get a position of a judge in the highest judicial body.

According to K.F. Gutsenko [31], a candidate for the position of a federal court judge must necessarily be an outstanding and qualified lawyer, and his/her professional and personal reputation must be impeccable. Also, the candidate for the position of federal court judge is subject to inspection by the Federal Bureau of Investigation. D.H. Armstead [32], a former professor at the U.S. Naval War College, argues that even with a federal system, each state has autonomy in the formation of the judiciary, for example, in South Carolina judges are appointed by the executive branch.

7. The process of selection of judges and prosecutors. To highlight similarities and differences in the formation of the judicial and prosecutorial corps, this study compares the process of selecting candidates for the position of judge and prosecutor. The procedure for holding the position of prosecutor is regulated by the Law of Ukraine "On Prosecutor's Office"[1] and other legal acts. According to the Law of Ukraine "On Prosecutor's Office"[2], the prosecution system consists of the Prosecutor General's Office, regional prosecutor's offices, district prosecutor's offices and the Specialised Anti-Corruption Prosecutor's Office. To fill a vacant position in each of the above-mentioned prosecutor's offices, a separate procedure is provided, and certain requirements are put forward:

– a person who is a citizen of Ukraine, has a higher legal education, speaks the state language and has at least 5 years of experience in the field of law may be elected as a prosecutor of the Prosecutor General's Office;

– a person who is a citizen of Ukraine, has at least 2 years of experience in the legal field, is proficient in the state language, and also has a higher legal education can be elected a prosecutor of the district prosecutor's office;

– a person who has a higher legal education, is a citizen of Ukraine, has at least 3 years of work experience in the field of law, and also speaks the state language can become a prosecutor of the regional prosecutor's office[3].

– a person who has a higher legal education, at least 5 years of work experience and is proficient in the

[1]Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text.
[2]*Ibidem*, 2015.
[3]*Ibidem*, 2015.

state language can become a prosecutor of a specialized anti-corruption prosecutor's office.

As for the experience of foreign countries in the selection, training and appointment of prosecutors, the experience of such European countries as Germany, France and Austria has been analysed. In *Germany*, the prosecutor's office functions under the judicial authorities. In the Federal Court, the functions of the prosecutor's office and the activities of the prosecutor are performed by the Prosecutor General of the Federation and subordinate prosecutors. In the Supreme Courts of the Länder, the functions of the prosecutor's office are performed by the Prosecutor General and his subordinate prosecutors, and in the courts of the first instance – through the Chief Prosecutor and his subordinate prosecutors [33]. The Federal Attorney General is appointed by the President of Germany and the Bundestag gives its consent to the appointment. Prosecutors of higher land courts and District Courts report to the Ministry of Justice of each land [33]. One of the main requirements for a person wishing to hold the position of a prosecutor in Germany is the mandatory presence of German citizenship, as well as higher education with a period of study of at least 4 years. A candidate for the position of the prosecutor must pass two state exams. The candidate's inspection procedure and direct interview are held in a rather harsh and strict form to determine the level of confidence, stress resistance and commitment to perform the powers provided for the position of the prosecutor. Also, between passing the exams, future prosecutors undergo a two-year internship in a court or in a similar instance.

In *France*, where the prosecutor's office is part of the Ministry of Justice, the officials of the prosecution authorities work closely with the judicial authorities (both referred to as magistrates. The training of judges and prosecutors in France is similar, and therefore the practice of transferring prosecutors to the position of Judge and vice versa is well established. The opportunity and practice of moving from one position to another is a source of enriching professional experience. The training of magistrates (prosecutors and judges) in France is carried out by the National School of Magistracy. A candidate for the position of the prosecutor must meet the following requirements: have French citizenship, higher education, a positive moral characteristic, comply with the duties established by the National Service Code, and be physically fit [34]. Prosecutors in France are appointed by Presidential Decree on the recommendation of the Higher Judicial Council.

In *Austria*, the prosecutor's office is institutionally included in the Ministry of Justice but operates within the judicial system. Prosecutors and judges receive the same basic education there. After graduation, they receive a master's or doctoral degree and undergo an internship in the judiciary. Only after the internship and considering the opinion of the judge with whom young specialists trained, their recommendations, passing several oral and written exams and passing a psychological test, the issue of their future specialisation is decided. To be appointed as a prosecutor, a candidate must be a judge or have at least one year of judicial experience or have completed a "one-year practice as a prosecutor" [34]. In case of a vacant position, the appointment is made by the Federal Minister of Justice.

Comparing the process and features of the formation of the judicial and prosecutorial corps, the following can be noted. The judicial system of Ukraine consists of courts of general jurisdiction of different levels and areas of specialisation and the Constitutional Court of Ukraine, equally as the prosecution bodies of Ukraine constitute a certain hierarchical system. At the same time, certain requirements are put forward for each candidate for the position of judge or prosecutor of a particular court or prosecutor's office, and the higher the level of the court or prosecutor's office in these systems, the more serious the requirements for candidates for positions in them. Regarding the similarity in the selection process for the position of judge and prosecutor in European countries, it can be noted that in almost all European countries, persons wishing to take these positions undergo training, practice and internship in certain educational institutions and bodies.

8. Courts staffing issue in Ukraine. Attention should be paid to some problems of the judicial system of Ukraine, especially those related to the formation of the judiciary.

One of the main problems is understaffing of courts. As already noted, judicial reform continues in Ukraine, including the reform and improvement of the bodies responsible for the selection process for the position of judges. The ineffective election of judges and the lack of courts in Ukraine, especially courts of first instance, leads to a crisis in the judicial system and ineffective protection of violated rights. The delay in the procedure of renewal of the High Council of Justice and the High Qualification Commission of Judges of Ukraine in turn entails the failure to fill vacant judicial positions and, accordingly, negative consequences for the state and the population, as the society has repeatedly insisted on an effective personnel policy and quality filling of courts not only of the first instance but also of all other instances.

Another significant problem is the public distrust of judges, the main reasons for which are corruption, dependence on politicians and low professional level of the number of judges. Distrust in the judiciary is to some extent driven by the fact that the population trusts other public authorities more This approach is radically different from European countries, where the judiciary has more authority than other state bodies. The solution to this problem could be an open, efficient, professional and at the same time rather rapid formation of the judiciary by filling all available vacancies.

The dependence of judges on other institutions or bodies remains a significant problem. In European countries, such dependence is absent or is at a very low level. Thus, in Germany and Denmark, political or other influence on the judiciary is minimised, and the independence and integrity of judges are at a high level. Therefore, the experience of these countries in this respect will be relevant for Ukraine. According to the United States Institute of Peace [35]: "Judges who are dependent on government agencies or others cannot make neutral, quality decisions and thus undermine the legitimacy of the law and the judicial system as a whole".

Conclusions

The institution of judicial selection and formation of the judiciary is of great importance for implementing and strengthening the key principles of the democratic world – the rule of law, legality, access to justice, and fair resolution of judicial disputes. The notion of "formation of the judiciary" should be understood as the process of selection to the judiciary and the mechanisms for acquiring and terminating judges' powers.

The article examines the history of the formation and development of the judicial system in the world, starting from Ancient Egypt. The judicial system on the territory of Ukraine has been forming over a long period of time, as the country was part of different empires and states throughout its history. After Ukraine gained independence, it started building an independent and effective judicial system, which is currently formed by the courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction consist of local courts, courts of appeal and the Supreme Court. There are also higher specialised courts in the judicial system of Ukraine to consider certain categories of cases.

The paper outlines the general requirements for candidates for the position of judge, namely: citizenship of Ukraine, reaching a certain age, higher legal education, professional experience in the field of law, competence, integrity, proficiency in the state language, legal capacity, absence of an unexpunged criminal record. However, the requirements for courts of different levels and specialisations differ slightly in terms of age and work experience. Domestic legislation provides for a complex and multi-stage procedure for selecting candidates for the position of judge, but it also does not ensure a high level of professionalism of judges and public confidence in them.

There are several models of the formation of the judiciary, one of which is the election of judges. It is shown that such a model is not effective, since it does not fully assess the professional skills and experience of candidates for the position of judge, elected judges are influenced, and therefore their activities are not always effective.

The article analyses the international experience of selecting, appointing, and training judges on the example of leading European countries, Great Britain, and the United States. In the context of continuing the judicial reform in Ukraine, it is necessary to consider some positive aspects of foreign experience.

The study compares different approaches to forming judicial and prosecutorial corps, identifying their common features and differences. It was found that the experience of selection and training of future prosecutors in some countries of the European Union can be useful when considering the issue of improving the system of selection and training of prosecutors in Ukraine.

The key issues of the judicial system of Ukraine, primarily those related to the formation of the judiciary, are outlined, and possible solutions are suggested.

Prospects for further research in this area are an in-depth study of the best international experience to promote democratic values in Ukraine and its accession to the European Union.

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Особливості формування суддівського корпусу: національний і міжнародний досвід

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Анотація
Актуальність статті полягає в необхідності проведення порівняльного дослідження процесу й особливостей формування суддівського корпусу в Україні та в провідних країнах світу заради з'ясування ефективності чинної національної судової системи та її удосконалення в майбутньому. Метою дослідження є проведення аналізу особливостей процедури формування суддівського корпусу та здійснення добору на посаду судді в Україні, країнах Європи, а також у Великій Британії та США. Основу методологічної бази, що була використана для дослідження зазначеного матеріалу, становлять методи дедукції та індукції, системний, логічний, діалектичний, формально-юридичний, порівняльно-правовий, історичний, системно-структурний, статистичний, соціологічний методи. У роботі досліджено історію створення перших судів і становлення судової системи незалежної України; запропоновано визначення низки понять, серед яких «суддя», «суддівський корпус», «формування суддівського корпусу»; встановлено етапи здійснення добору на посаду судді та розкрито вимоги до суддів у різні судові органи; здійснено порівняння добору на посаду судді та прокурора; досліджено міжнародний досвід формування суддівського корпусу у Швейцарії, Австрії, Франції, Бельгії, Німеччині, Польщі, Великій Британії, США; з'ясовано проблеми, що виникають у судовій системі України, передусім під час заповнення вакантних суддівських посад. Результати дослідження, отримані в поєднанні з вивченням прогресивної світової та вітчизняної практики формування суддівського корпусу, можуть бути цінними й корисними як для осіб, які бажають стати суддями, так і для всіх практичних працівників системи правосуддя

Ключові слова: суддя; кандидат на посаду судді; порядок добору суддів; реформування; вимоги до суддів; підготовка суддів