

# STAFFING OF COURTS: EUROPEAN EXPERIENCE AND THE CURRENT SITUATION IN UKRAINE

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## ABSTRACT

*The authors have investigated the current state of staffing of courts in Ukraine and the features of European experience in resolving this issue. Based on the analysis of the provisions of the European Charter on the statute for judges and Recommendation CM/Rec (2010) 12 on judges: independence, efficiency and responsibilities, general and distinctive features have been identified for regulating the staffing of courts, in particular, the issues of selecting judicial candidates, career growth, incentives, advanced training, and the like. The content of the norms of the current Ukrainian legislation, which regulates personnel issues in the formation of the judiciary, is disclosed. The essence of the judicial reform stipulated by the Strategy is determined sustainable development "Ukraine - 2020." Particular attention is paid to the special training of judicial candidates in the formation of the judiciary in Ukraine, as well as the characterization of existing models of such training in European countries. The article defines a set of issues that have an important impact on quality indicators of staffing of courts.*

**Keywords:** Court, Justice, High Qualifications Commission of Judges of Ukraine, National School of Judges of Ukraine.

## INTRODUCTION

The formation of a highly professional judicial corps is one of the factors that has a significant impact on the efficiency and effectiveness of the functioning of the judiciary in any country. In this context, research into the human resources of the courts is crucial. At present, there are no uniform international standards in the field of litigation with the definition of general requirements for the personnel support of the courts. At the same time, most of them are among the main aspects of the corps and functioning of the judicial corps: the selection of judges, their appointments, training, professional ethics and conduct of judges, and responsibility.

The reform of the judicial branch of power among the priority areas should not only involve reforming the organizational structure of the judiciary but also be oriented to the staffing of the courts.

The staffing of the judicial corps requires consideration of the specifics of the judicial system. The latter also influences the peculiarities of the selection procedure, the construction of a career of a judge, the improvement of its qualification, and the activities of the staff of the court apparatus. The fairness of justice and the level of trust in the court are directly dependent on the state of the judicial system. The observance of the principles of the independence of judges, protection against interference with their activities, strengthening the formation and unity of functioning of the judicial corps, and the like are also important. The effectiveness of any institution depends on its staff. The judiciary is no exception. Therefore, it is relevant to study the current state of staffing of courts in Ukraine and to study European experience in the context of this issue.

## LITERATURE REVIEW

Staffing of the judicial branch of power should be characterized by the unity of purpose, goals, tasks, principles, forms, and methods of working with personnel at all levels of the organizational structure, cover the whole staffing corps, all staffing processes regardless of the mechanism and the degree of state influence on them (Inozemtseva, 2019). Therefore, in order to investigate the current state of staffing of courts in Ukraine, it is first of all advisable to highlight some European standards in the field of litigation, including the staffing of courts.

It should be noted that the activity of the Council of Europe for many years on the organization of justice in a democratic state, governed by the rule of law has allowed repeatedly to resolve various aspects of the issue of the status of judges. In 1998, the European Charter on the Statute of Judges was adopted, whose legal action is not binding but is a definite guideline for the development and improvement of the country's justice system (Mastracci, 2019).

As to the staffing of courts, paragraph 1.3 of the European Charter on the Statute of Judges (hereinafter-the Charter) is important. Thus, for every decision concerning the selection, hiring, appointment, career advancement or dismissal of a judge, the Statute provides for interventions independent of the executive and legislative power of the body. From the content of paragraph 1.3, such a body should consist of judges, of which at least half should be selected by their peers. A separate section of the Charter regulates the selection of judicial candidates and their training.

When selecting judicial candidates, which is conducted by a panel or an independent body, its ability to freely, impartially evaluate legal issues and the ability to correctly apply the rules of law to address the latter plays an important role. Exclusion from the list of candidates on the basis of gender, ethnic or social origin, philosophical or political opinions, and religious beliefs is not allowed. The preparation of elected candidates for the effective discharge of their judicial duties is at the expense of the state. The decision to appoint an elected judicial candidate and to appoint it to the tribunal is taken by an independent body (paragraph 1.3) either on its proposal, or on its recommendation, or with its consent or upon its conclusion (European Charter on the statute for judges, 1998).

Another important document governing the issue of staffing of courts is Recommendation CM/Rec (Council of Europe, 2010) 12 on judges: independence, efficiency, and responsibilities (hereinafter-Recommendations CM/Rec (2010) 12) approved by the Council of Europe on 17 November 2010. The provisions of Chapter VI are devoted to determining the

status of judges, which includes the issues of selection of judicial candidates, career advancement, tenure of office, and remuneration. As to the selection of judicial candidates, Recommendations CM/Rec(2010)12 stipulate that the selection and career decisions of judges should be based on objective criteria established by law or by the competent authorities. Objective criteria include qualification; skills and ability to handle cases with the application of the rules of the law and respecting human dignity. Discrimination against judges or candidates for this post shall not be permissible regardless of gender, race, color, language, religion, political or another opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or another status. However, the requirement that a judge or candidate for judicial office should be a national of the state concerned should not be considered discriminatory (Recommendation CM/Rec (Council of Europe, 2010) 12 on judges: independence, efficiency and responsibilities, 2010).

An analysis of the provisions of the Charter and the Recommendations of CM/Rec(2010)12 allows highlighting some general and distinctive features in the regulation of staffing of courts:

1. The prohibition of discrimination against judges and candidates for this position: general-provided for in both the Charter and Recommendations CM/Rec(2010)12; excellent-the list of non-discriminatory circumstances is concise in the Charter and more clear and complete in the Recommendations CM/Rec(2010)12;
2. The independence of the body, which makes a decision for the selection of judicial candidates and decides the career issues of judges from the executive and legislative branches: general-in the Charter and Recommendations CM/Rec(2010)12, the independence of such a body is guaranteed by the specialty of its composition (at least half of the members of the body should be judges elected by their peers); excellent-in Recommendation CM/Rec (Council of Europe, 2010) 12, when an independent body decides on the selection of judicial candidates or the decision of career matters, the recommendations of the head of state, government, or legislature in this regard are additionally taken into account;
3. The candidate's right to the post of the judge has not been selected for one reason or another, to appeal against such a decision or at least the procedure by which it was decided: excellent-only provided in Recommendations CM/Rec(2010)12;
4. The terms of office of judges: general-in the Charter and Recommendations CM/Rec(2010)12, the reasons for the resignation of judges include retirement, age restriction, availability of a medical certificate of physical disability, expiration of statutory term, or dismissal; excellent-Recommendations CM/Rec(2010)12 additionally provide for the possibility of early release of a judge at its request or on medical grounds, as well as the termination of the judge's activity in cases of serious violations of disciplinary or criminal provisions;
5. Remuneration for the performance of the judge's powers: general-the correspondence of the amount of remuneration to the professional level of the judge and the duties performed in such a way as to exclude any unauthorized influence on the judge's decision in the case, as well as the existence of guarantees of retention of reasonable remuneration in case of illness, disability, or parental leave, payment of years of service; excellent-the Charter additionally provides for the possibility of changing remuneration depending on the length of service, the nature of duties, and the importance of tasks;
6. Preparation of judicial candidates and training of judges (internship): general-the Charter and Recommendations CM/Rec(2010)12 provides for preparation of judicial candidates for the effective performance of judicial duties, training (internship) ) of judges also occurs at the expense of the state.

## METHODOLOGY

Investigation of the current state of staffing of courts in Ukraine and features of European experience in the settlement of this issue is performed using comparative legal, formal legal and systemic-structural methods. The analysis of the provisions of the European Charter on the Statute for Judges and Recommendation CM/Rec (Council of Europe, 2010) 12 on judges: independence, efficiency, and responsibilities, is performed by means of a comparative legal method and highlighted the common and distinctive features of the regulation of staffing of courts, in particular, issues of selection of judicial candidates, career advancement, rewards, advanced training, and the like. The formal-legal method allowed revealing the content of the norms of the current Ukrainian legislation, which regulates personnel issues of the formation of the judicial corps. Using a system-structural method, a set of issues is identified, which has an important influence on the qualitative indicators of staffing of courts.

## FINDINGS AND DISCUSSIONS

As a result of the ratification of the Association Agreement between Ukraine and the European Union, the Decree of the President of Ukraine dated January 12, 2015 under No. 5/2015 approved the Sustainable Development Strategy "Ukraine 2020". Among many reforms it predicted was the reform of the judiciary. The purpose of judicial reform was to reform the judiciary, the litigation, and related legal institutions in order to put into practice the principles of the rule of law and to guarantee everyone the right to a fair trial by an independent and impartial tribunal. The reform is focused on ensuring the functioning of the judiciary, meeting public expectations of an independent and fair court, as well as the European system of values and standards for the protection of human rights (Sustainable Development Strategy, 2015).

In the judicial system of Ukraine, the High Qualifications Commission of Judges of Ukraine is the body that plays an important role in the implementation of judicial reform. Within the framework of judicial reform, including on staffing of courts, an important event was the adoption of the Law of Ukraine "*On Amendments to the Law of Ukraine On Judiciary and Status of Judges*" and Some Laws of Ukraine Regarding the Activity of Judicial Authorities dated October 16, 2019 under No.193-IX. The law introduced a new procedure for the formation of the High Qualifications Commission of Judges. The High Qualifications Commission of Judges of Ukraine consists of twelve members appointed by the High Council of Justice on the results of the competition for a term of four years. Requirements for candidates for the post of member of the High Qualification Commission of Judges of Ukraine are also defined. These include:

1. The presence of Ukrainian citizenship;
2. Knowledge of the state language;
3. The presence of higher legal education;
4. Experience of professional activity in the field of law must be at least fifteen years;
5. Belonging to the legal profession;
6. Compliance with the criterion of political neutrality (Law of Ukraine, 2019).

Formation of judicial corps occurs through competitive selection, which is carried out by the High Qualifications Commission of Judges of Ukraine according to the Law of Ukraine "*On Judiciary and Status of Judges*" dated June 2, 2016 under No. 1402-VIII. Judicial candidates undergo a special examination, after which the High Qualification Commission of Judges decides on the special training at the National School of Judges of Ukraine. Only after such preparation, a qualification examination is taken. The Higher Qualifications Commission of Judges holds competitions for the vacant posts of judges of the local court, court of appeal or judges of the Supreme Court (cassation court), and the highest specialized court. Then, according to the results of competitive selection, the High Qualifications Commission of Judges of Ukraine sends to the High Council of Justice in accordance with the number of vacant posts of judges recommendations on the appointment of candidates as judges (Law of Ukraine, 2016). The very appointment of a judge is made by the President of Ukraine upon the submission of the High Council of Justice (Constitution of Ukraine, 1996).

Separately, we should focus on the features of the special training of potential judicial candidates. On February 12, 2018, the decision of the Higher Qualification Commission of Judges of Ukraine under No.19/зп-18 approved the procedure for special training of judicial candidates. Special training for a period of 12 months includes theoretical and practical training of judicial candidates and consists in the formation of professional skills and high professional culture, psychological adaptation to the profession of judge. The special training of judicial candidates aims to help the judicial candidates to develop personal qualities and to acquire the professional skills and competences necessary for the qualitative fulfillment of the duties of a judge, respecting the participants of the trial, ensuring the protection of human rights and fundamental freedoms, respect for ethics and awareness of the high importance of the court in a democratic society, ensuring impartiality and fair public hearing within a reasonable time (Council of Europe, 2018).

Determining the importance of the special training of judicial candidates in the formation of judicial corps, it is also necessary to establish the features of such training in European countries. It should be noted that in many European states, the formation of judicial corps involves the passing of special training by the judicial candidates. Such training is mandatory in countries such as Germany, France, Spain, and Portugal, in particular. In these countries, there are two models for the preparation of judicial candidates, namely: modular and combined. The essence of modular training lies in the order of training in court and practical training in the centers of training of judges, which is carried out over a period of time, the duration of which can sometimes exceed a year. Modular training provides students with the opportunity to improve their skills both directly during their practice in the courts and, optionally, in other government agencies. In turn, the combined training simultaneously involves practical work as a judge and group training under the guidance of experienced and highly qualified judges. The effectiveness of the combined model is explained by the candidates' ability to master the system of knowledge and skills required for the judicial profession in the practical aspect (European Parliament's Committee, 2017).

In Ukraine, the training of highly qualified personnel for the justice system is of national importance and is a key to improving the quality of justice. To this end and in accordance with the requirements of the Law of Ukraine "*On Judiciary and Status of Judges*", on December 21, 2010, the National School of Judges of Ukraine, a state institution with a special status in the

justice system (The National School of Judges of Ukraine, 2010), was created. Based on the content of Art. 105 of the Law, in the context of resolving the issues of staffing of courts by highly qualified personnel, the National School of Judges not only provides candidates with the special training for the post of the judge. This government agency also provides training for judges (including those elected to administrative positions in the courts); periodic training of judges to improve their qualifications; conducting training courses determined by a qualifying or disciplinary body to improve the qualification of judges, who are temporarily suspended from justice (Law of Ukraine, 2016).

## RECOMMENDATIONS

Summarizing the study, we believe that the qualitative indicators of staffing of courts depend on the settlement of a whole set of issues: the selection of potential judicial candidates and their training, career growth, tenure of office, remuneration of judges and the like. Proper regulation at the legislative level of the preparation of judicial candidates as future professional staff (judges) is the key to the implementation of justice by an impartial and fair court. The effectiveness of the staffing of courts depends on the perspective and flexibility of personnel policy, which today requires the identification of new priority strategic areas in the context of judicial reform.

## CONCLUSION

The development of Ukraine as a democratic, social state on the path of European integration requires an adequate level of realization of national interests. The provision of state bodies of all branches of government with qualified personnel, which also includes the judiciary, is one of the aspects of such a process. To date, the Supreme Qualifications Commission of Judges, the National School of Judges of Ukraine, and the High Council of Justice have been involved in the process of forming judicial corps, depending on their competence. In this case, the appointment of a judge is carried out by the President of Ukraine upon the submission of the High Council of Justice.

Training of highly qualified personnel for the justice system is of national importance and is a key to improving the quality of justice. In the context of resolving the issues of staffing of courts with highly qualified personnel, the National School of Judges not only prepares judicial candidates but also provides training for judges; periodic training for judges in order to improve their skills; conducting training courses to improve the qualification of judges, who are temporarily suspended from the administration of justice, etc.

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