

INTERNATIONAL LEGAL STANDARDS FOR PROFESSIONAL TRAINING AND SELECTION OF JUDGES

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Original article

Abstract. *The process of establishing an independent judiciary has been accompanied by reforms and continuous improvement of the formation of the judiciary and raising the professional level of judges. International standards that set strict professional and ethical requirements for the position of a judge have always been a reliable support in this process, being by their very nature an instrument that contributes to the independence of the judiciary and the objectivity of judges, as well as ensuring the highest level of professional competence of judges. Their importance in the professional selection of judges cannot be overestimated, as they affect vital indicators for the judicial system, in particular: independence and objectivity (international standards establish principles that help ensure independence of courts from external interference and any political pressure, and prevent any form of discrimination in the work of courts at the regulatory level); continuous improvement of professional competence of judges (by establishing minimum requirements for the organisation of education and training of judges), ensuring respect for human rights in the administration of justice (international standards offer a significant tool for the protection of human rights, establishing at the normative level the content of the right to a fair trial, the right to defence and the right to effective and accessible legal aid). In addition, international standards in the field of judicial selection create a basis for joint activities and cooperation between countries, setting benchmarks for improving the functioning of the judiciary in countries that are reforming their judicial systems. Today, it can be confidently stated that international standards of professional training and selection of judges, which relate to the competence of judges as a set of their professional qualities, knowledge, skills and abilities, are the basis for ensuring the functioning of fair and effective judicial systems around the world. Methodology. The methodological basis of the article is the dialectical method of cognition of social relations, phenomena and processes, which consists in identifying the specific features of international legal standards for the professional training and selection of judges. The author also uses the method of system analysis, the historical method, and the comparative legal method.*

Key words: judicial system, legal status of judges, qualifications, competence, training of candidates for the position of judge, advanced training of judges, international standards of the judiciary.

1. Introduction

The formation of a highly professional judiciary is one of the central tasks of the judicial system development, as it will help to maintain the authority of the judiciary, achieving not only the goal of fairness of justice, but also gaining public trust. At the same time, the diversity of judicial systems in the world and different approaches to the formation of the judiciary do not give grounds to speak of absolute unity in understanding the most advanced methods of forming a composition of highly professional judges. However, certain unifications in approaches to the formation of the judiciary do exist, and their analysis is of particular scientific interest in the period of urgent need for real reform of the judicial system of Ukraine.

2. Review of the literature

The consistent reform of the judicial system in Ukraine has contributed to the adoption of specific recommendations

regarding the competence of judges as a set of their professional qualities, knowledge, skills and skills. Separate studies in this area were conducted by Zolotarova Ya., Ivanochko I., Prokopenko B., Sopilnyk R. and others. However, at the conceptual level, comprehensive cross-cutting studies of international standards for establishing the principles and necessary elements of the organizational and legal mechanism for forming and developing the competency of a judge have been practically conducted.

3. Research purpose and objectives

The purpose of the article is to identify the central conceptual provisions contained in international standards for the organisation and functioning of the judiciary, which relate to the professional training and competence of a judge. To achieve this goal, it is necessary to solve the following tasks: to analyse international legal standards of professional training and selection of judges.

4. Scientific novelty of the research

The purpose of the article is to identify the central conceptual provisions contained in international standards for the organisation and functioning of the judiciary, which relate to the professional training and competence of a judge. To achieve this goal, it is necessary to solve the following tasks: to analyse international legal standards of professional training and selection of judges.

5. Results

First of all, it should be noted that there is no consensus in the literature on the understanding of the concept and role of international standards in the formation of the judicial system of a country. For example, B. Poschwa notes that international standards establish minimum requirements that all states must comply with [1], as they set out standardised rules for the conduct of legal proceedings and the organisation of the judiciary. We should agree with the opinion of E. Ovcharenko, who emphasises the expediency of studying and implementing international standards for the organisation of the judicial profession, since unity in legal approaches to the formation of the judicial system is a necessary component of successful integration into the European family. Moreover, for Ukraine, which is actively moving towards the adoption of European standards in its legal system, the introduction of appropriate norms on the legal status of judges is considered one of the key tasks of judicial reform [2]. It is quite obvious that ensuring proper organisation of the of the judiciary should be considered in conjunction with the improvement and rethinking of the understanding of the legal and social status of a judge not only as an individual, but also as a representative of the state authorities and a member of society. Therefore, the establishment of the right to a fair trial requires the formation of a highly professional judiciary, which is reflected in international standards.

Karpushova O. agrees that international legal standards in the field of judges' labour reveal the peculiarities of international legal regulation of judges' work, being the basic principles on which the rules on the organisation and administration of justice, guarantees of protection and defence of labour and professional rights of judges, and ensuring an appropriate level of their social and legal status are based, which are enshrined in the rules of international law of general and special nature. In addition, this researcher classifies international standards on the work of judges, dividing them into two groups: 1) legal requirements for judges and 2) guarantees of judges' activities [3].

O. Salenko proposes a broader classification of international standards of judicial activity, dividing them according to the hierarchy into: 1) universal international standards (they are enshrined in the fundamental documents defining the standards of the rule of law, the functioning and role of the judiciary, guarantees of judicial independence, etc.); 2) sectoral international

standards for the work of judges (relating to the work of judges in the performance of their duties as judges); 3) the practice of international jurisdictional bodies on the work of judges (reflecting the principles of work of judges arising from the practice of the European Court of Human Rights and precedents of the Court of Justice of the European Union) [4].

According to V. Martynenko, the process of forming the judiciary in Ukraine should be based on the idea of following international and, in particular, European standards, completely exclude any influence of other branches of power and state bodies, and be transparent and open [5]. Therefore, we consider it appropriate to analyse both international and European standards for the selection of judges, including the case law of the ECHR.

Romaniuk R. has identified a somewhat similar system of international standards that provide for the process of formation of the judiciary, which provides for the possibility of adopting international standards at the universal level by the United Nations and the International Association of Judges and European standards at the level of EU member states, which are adopted by the European Association of Judges and the European Council. [6]. In this aspect, the study conducted by Potylchak O., which examines the European standards for the formation of the judiciary and clearly outlines the system of principles on the basis of which the legal status of judges is determined and regulated (the procedure for appointing candidates for the position of judge and dismissal, the basic principles of career advancement of judges, the term of their powers, the peculiarities and principles of bringing judges to legal responsibility, the peculiarities of remuneration, etc [7].

The classification of international standards proposed by V. Hudyma is also worthy of special attention. In his opinion, international standards governing the formation of the judiciary and aimed at ensuring guarantees of independence of courts and judges can be divided into the following categories: 1) international standards defining the procedure for selecting candidates for the position of a judge; 2) international standards defining the requirements for candidates applying for the position of a judge; 3) international standards defining the specifics of judicial training; 4) international standards establishing guarantees during the performance of judges' duties [8]. The classification of international standards for the formation of the judiciary proposed by V. Hudyma is of great scientific value, since it allows structuring various aspects of the formation of the judiciary and groups them in a logical order. In addition, it creates the basis for building a structure for reforming the procedure for selecting judges and ensuring high standards of independence of judges and the judicial system as a whole. We consider this classification to be the most complete.

Naturally, every country undergoing democratic transformation wants to ensure that the procedures for appointing judges meet institutional standards of judicial independence for the sake of internal and external legitimacy. It is not easy to achieve such high standards as independence and competence of judges, so international standards, including those related to the selection of judges,

are a benchmark for such state transformations. Theoretically, the process of selection of judges is absorbed into the broader category of judicial independence, so to some extent international standards on selection and appointment of judges also refer to those international standards that are intended to create a basis for judicial independence, professionalism and competence of judges. Such standards for the appointment of judges and ensuring their independence can be divided into two groups: international standards and European standards.

In general, the international standards that serve as a basis for the appointment of judges include the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Basic Principles on the Independence of the Judiciary (1985), the Montreal Universal Declaration on the Independence of Justice (1983), the Bangalore Principles of Judicial Conduct (2006), the Universal Charter of the Judge (1999), the Beijing Theses on Principles of Judicial Independence of the Law Association of Asia and the Pacific (LAWASIA) (2001).

European standards include the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Recommendation No. (94) 12 on the Independence, Efficiency and Role of the Judiciary (1994), the European Charter on the Statute of Judges (1998) and the Explanatory Memorandum to the European Charter on the Statute of Judges, opinions of the Consultative Council of European Judges, the Latimer House Handbook on the Rule of Law and the Independence of the Judiciary (1998), and the case law of the ECtHR.

Based on the general norms reflected in the provisions of the Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Civil and Political Rights of 16 December 1966, which provide, inter alia, that everyone has the right to a fair and impartial hearing by an independent and impartial tribunal in accordance with all the requirements of justice and law [9; 10], it can be argued that the key idea of judicial professionalism is the principle of selecting judges solely on the basis of the law without the possibility of delegating the function of administering justice. That is, the professionalism and competence of judges as the main elements of the legal status of a judge is one of the most important components of ensuring the fairness of judicial proceedings. In addition, proper professional training of judges is seen as a guarantee of their independence and impartiality in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Basic Principles on the Independence of the Judiciary emphasise that the independence of the judiciary is guaranteed by the state and enshrined in the constitution or laws of the country. The independence of the judiciary is ensured, inter alia, through a competent, independent and objective court. Thus, paragraph 10 of the Basic Principles on the Independence of the Judiciary states that candidates for the position of judge must have high moral integrity and qualifications in law. In the

selection of judges, there should be no form of discrimination based on race, colour, sex, religion, political or other beliefs, national or social origin, property or other characteristics (the requirement that a candidate be a citizen of the country concerned should not be considered a form of discrimination) [11]. Thus, the Basic Principles on the Independence of Justice emphasise the need to ensure high competence of persons holding judicial office. It is interesting that the issue of competence is considered in conjunction with the ethical qualities of a judge, where, along with the necessary professional qualifications in the field of law, a judge must also have high moral and ethical qualities and abilities.

The Montreal Universal Declaration on the Independence of Justice focuses on the purpose and functions of judges, which, in particular, include the objective administration of justice between citizens and between the citizen and the state; the promotion and achievement of the principle of human rights protection; and the guarantee of security of life for all people and the rule of law [12]. The Declaration also states that judges shall be independent of the executive and legislative organs of the State, as well as fully independent of their judicial colleagues and superior officials, since no hierarchical structure in the judicial system and no distinction in rank or category of judges may limit their ability to render judgments freely. In addition to the guarantees of judicial independence, the Montreal Declaration also contains provisions on the requirements for judicial candidates, which include both moral qualities (in particular, integrity) and intellectual qualities (ability and knowledge of the law). The process and criteria for selecting judges should be fair and avoid discrimination. Interestingly, the Montreal Declaration also provides for provisions relating to the involvement of the executive and legislative bodies in the appointment of judges. In particular, their participation should be consistent with the principle of independence of justice, when such appointment of a judge is made in consultation with members of the judiciary and other lawyers or organisations in which members of the judiciary and other lawyers are represented [12].

The Bangalore Principles of Judicial Conduct also address the issue of judicial competence as one of the key requirements for a candidate for the position of a judge, where the sixth indicator "Competence and Diligence" states that competence and diligence are necessary conditions for a judge to perform his or her duties [13]. This principle establishes a direct obligation for judges to improve their knowledge, expand their practical experience and enhance their personal qualities. In addition, a judge must have the necessary knowledge to be able to administer justice reasonably, fairly and efficiently (quickly enough).

The Universal Charter of the Judiciary proclaims that judicial independence is an essential condition for the impartiality of the judiciary, and in this sense they are indivisible (Article 1). In addition to the requirement of independence, the Charter also contains provisions on

impartiality and restraint, efficiency, and competence. Article 9 contains provisions on the election of judges to office, stating that the election process must meet objective and transparent criteria and be based solely on their professional qualifications. There are two ways to elect a judge to office: appointment according to an established and deeply rooted tradition or election by an independent body including a sufficient number of representatives of the judiciary [14].

The Opinion of the First Expert Commission of the International Association of Judges "Appointment and Social Status of Judges" considered the issue of the weight of moral qualities in the appointment of a judge (if, for example, a person has committed immoral behaviour - has been accused of fraud or committed a crime). The experts concluded that when considering moral qualities, the main criterion should be the extent to which it may affect the credibility of the judge (i.e. the respect that the judge should command from the parties to the case) and whether the authority of justice and public confidence in it will be jeopardised [15].

In addition, the Opinions paid special attention to the method of selection of judges and the appointment of judges to positions, which have a number of peculiarities in different countries. In particular, several approaches to the selection of judges were analysed, including: 1) appointment of judges based on the results of competitions or examinations for the selection of judges; 2) taking into account the practical experience of lawyers or internships in courts; 3) special education - studying in specialised educational institutions for the training of judges; 4) competitive selection with further training in special schools or internships in courts. As for the procedure for appointment to the position of a judge, there are also certain specifics. For example, there are several types of existing models of judicial appointment: 1) the existence of bodies, that decide on the appointment of judges (government, commission or council based on recommendations of the judiciary); 2) judges are elected by the people or parliament; 3) the winner of the competition for the position of a judge is guaranteed to become a judge. Each of the proposed systems is not without its drawbacks, as most of the analysed options have a high risk of political influence on the appointment of judges. Therefore, in this Opinion, the experts consider it possible to allow judges or a judicial body consisting of judges to advise on the appointment of judges, while leaving the appointment to the government, but obliging the latter to explain its decisions if they contradict the recommendations of the judiciary [15].

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etc. This made it possible to group the knowledge and skills required for a professional judge to administer justice into the following groups: 1) legal education; 2) specialised knowledge; 3) knowledge of socially important issues. In general, the Opinion identifies two approaches to the selection of judges: 1) selection for the first position and allowing to build only a career as a judge (aimed at relatively young candidates); 2) selection for a second career (aimed at candidates who have already gained full and extensive professional experience before being appointed as a judge) [16]. The Opinion also emphasises that when the selection process becomes more technically complex, it poses an additional challenge and requires specific training and competence of those responsible for the selection. A separate paragraph covers the following issues appointment and states that the best option is to appoint judges by an independent body formed from among judges.

Thus, there is a close interrelation between the requirements of international standards regarding both the competence of judges and international standards for the selection of judges. In this context, the provisions contained in the Beijing Theses on the Principles of Judicial Independence, adopted in 2021 by LAWASIA (the Law Association of Asia and Pacific States), are important, as they state that in order to achieve their objectives and perform their duties, judges must be selected on the basis of competence, independence and without prejudice. In addition, the selection of judges should ensure that the most qualified candidate for the position is selected, avoiding any form of discrimination [17]. The Beijing Theses also emphasise that all countries should adopt appropriate procedures to guarantee the fair and transparent appointment of judges, and the appointment procedure should be transparent and open to public understanding. In addition, for promotion, a judge should be fully assessed in terms of the integrity and independence of his or her decisions, professional competence and experience.

The analysed international standards on the appointment of judges show that the main requirements, which are closely related to each other, are independence and competence of the judicial candidate. The understanding of judicial independence is directly related to the understanding of judicial independence, which is broader in scope but directly dependent on judicial independence. These provisions are important for Ukraine, as without proper and real reform of the judiciary, and especially the procedure for selecting judges, it will be extremely difficult to establish and develop the principles of democracy.

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The analysis of international norms - benchmarks and standards in regulating the qualification and selection of judicial candidates - has made it possible to study a number of principles and provisions of both conceptual and recommendatory nature. Being developed in close cooperation and imbued with the idea of independence of the judiciary and each judge in particular, these provisions reflect: the relationship between independence of the judiciary and independence and competence of judges; ensuring public trust in the judiciary through the selection of qualified judges; ensuring that judges are selected by an independent body independent of the legislative and executive branches; transparency and openness of the selection procedures with clear requirements that a candidate for the position of judge must meet; the obligation of each judge to conduct a fair

and impartial judicial examination. These provisions should serve as guidelines for the selection of methods and rules for the election of judges as reflecting the best rules and practices in international practice.

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