

COMPARATIVE ANALYSIS OF THE REQUIREMENTS FOR CANDIDATES FOR THE POSITION OF A JUDGE IN UKRAINE AND THE REPUBLIC OF POLAND

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Abstract. Qualification requirements for candidates for the position of judges are a system of requirements and conditions for admission to the position of a judge and a kind of guarantor of high-quality justice, high moral and professional level of holders of judicial power. Usually, the system of general requirements for candidates for the position of judge in different states is represented by the criteria of citizenship, higher legal education, minimum or maximum age requirements, practical work experience, high business and professional qualities. The system of special requirements differs in aspects of specialized judicial training or completion of the required internship. In the article, the authors conclude that today it is necessary to improve the system of selection of judicial personnel in Ukraine.

Keywords: justice; judiciary; judge; court of general jurisdiction; court of appeal; Supreme Court

INTRODUCTION

Professional judges are persons appointed and elected in accordance with the Constitution of Ukraine to administer justice on a professional basis. According to Article 52 of the Law of Ukraine “On the Judiciary and the Status of Judges” all judges in Ukraine have the same status, regardless of the location of the court in the system of courts of general jurisdiction or the administrative position held by the judge in the court. Judges are government officials who are constitutionally empowered to administer justice and professionally perform their duties in the judicial system of Ukraine.

In recent years, significant work has been carried out in Ukraine to improve the organization and activity of judicial review bodies, to optimize

their structure and legal framework in accordance with the recommendations of the Council of Europe. To date, the procedure for selecting judges has been established, which is one of the guarantees of the independence of the judge, and therefore, the provision of every citizen's right to a fair trial in an independent and impartial court. This procedure provides, first of all, the introduction of a unified system for the selection of judges.

The generally recognized principles of staffing of the judicial corps are as follows: 1) impossibility of forming a corps of professional judges with any discrimination of self-expression of a person (the exception is belonging to the citizenship of the state); 2) the existence of a special body of state power that makes decisions on the selection of candidates for the position of judge, the majority of members of this body must be already working professional judges; 3) high level of legal culture, legal awareness of the candidate for the position of judge; 4) ensuring equal rights regardless of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics; 5) appropriate level of moral and personal qualities of candidates for the post of judge, etc.

The legal status of a judge is regulated by the current legislation of both Poland and Ukraine. In particular, in Poland, the Constitution of the Republic of Poland, the Law of the Republic of Poland "On the Organization of Courts of General Jurisdiction", the Law of the Republic of Poland "On the Supreme Court" act as the main legislative acts regarding the legal status of judges. In connection with the ongoing European integration processes in Ukraine, the question of comparing various institutions of civil society arises, in particular in the sphere of justice. Therefore, it is important to analyze the requirements for the position of a judge in Ukraine and the Republic of Poland.

1. COMPARATIVE ANALYSIS OF REQUIREMENTS FOR CANDIDATES FOR THE POSITION OF JUDGES OF THE FIRST INSTANCE

In accordance with Article 61 of the Law of the Republic of Poland "On the Organization of Courts of General Jurisdiction", a person who meets the following requirements may be appointed to the position of a judge of a district/district court in Poland: 1) has Polish citizenship and fully enjoys civil and public rights and has not been legally (lawfully) convicted of a mental crime, public harassment or intentional tax (fiscal) offense; 2) has an impeccable character; 3) obtained a higher legal education in the Republic of Poland and received a master's degree or received a foreign legal education recognized in the Republic of Poland; 4) is fit to perform the duties of a

judge in terms of health; 5) has reached the age of 29; 6) passed the judge's or prosecutor's exam; 7) held the position of an assessor, performed the duties of a judge for at least three years.

From this rule, the legislator provided certain exceptions in terms of passing the judge's or prosecutor's exam and occupying the position of *ase-sor sądowy* and performing the duties of a judge for at least three years.

In particular, this applies to cases when a person: 1) held the position of a judge of an administrative court or a military court; 2) held the position of prosecutor; 3) worked at a Polish university, the Polish Academy of Sciences, a research institute or other research institution and holds the academic title of professor, or holds a doctorate in law; 4) worked as a lawyer, legal consultant or notary for at least three years; 5) held the position of president, vice-president, advisor of the General Prosecutor's Office of Poland for at least three years.

According to Article 69 of the Law of Ukraine "On the Judiciary and the Status of Judges", a citizen of Ukraine, not younger than thirty and not older than sixty-five years of age, who has a higher legal education and professional experience in the field of law for at least five years, may be appointed to the position of judge. five years old, is competent, honest and speaks the state language in accordance with the level determined by the National Commission on State Language Standards.

A person who, according to the law, is prohibited from holding the relevant position and who was previously dismissed from the position of a judge for committing a significant disciplinary offense, gross or systematic neglect of duties, which is incompatible with the status of a judge or has shown his incompatibility, cannot apply for the position of judge. held position, violation of requirements regarding incompatibility, violation of the obligation to confirm the legality of the source of origin of the property or in connection with the entry into force of a guilty verdict against such a person, except in cases where the decision to dismiss on these grounds is recognized as illegal in a court of law or the court's guilty verdict is annulled. Also, in Ukraine, a person who was previously dismissed from the position of a judge based on the results of a qualification assessment cannot apply for the position of judge.

Comparing the requirements for the positions of judges of the first main branches of the judicial system in Ukraine and Poland, it can be seen that in Ukraine there are somewhat stricter requirements for an applicant for the position of a judge, namely: 1) the minimum age for holding the position of a judge in Ukraine has been increased by 1 year, compared to an applicant in the Republic of Poland; 2) experience of professional activity in Ukraine is at least 5 years (at that time in Poland, experience can be at least 3 years); 3) the Ukrainian applicant is obliged to speak the state language in

accordance with the level determined by the National Commission for State Language Standards (according to Article 9 of the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as the State Language”); 4) but the judge’s exam must be passed by all applicants without exception.

In our opinion, the Ukrainian legislator should take into account the provisions of the fifth paragraph of Article 61 of the Law of the Republic of Poland “On the Organization of Courts of General Jurisdiction”, which states that a person may be appointed to the vacant position of a district court judge if he held one of the positions specified in § 2 clauses 2-4, within five years after the completion of the judge’s mandate.

Analyzing the requirements for the post of courts of the next level in Ukraine and Poland, certain differences are also visible. Thus, in accordance with Article 63 of the Law of the Republic of Poland “On the Organization of Courts of General Jurisdiction”, the following may be appointed to the position of regional/provincial court judge: 1) a judge of a district court or a military garrison court, who held the post for at least four years; 2) a judge of a district court or a military district or a prosecutor; 3) a person who held the position of prosecutor or judge for at least four years; 4) a person who has worked as a lawyer, legal consultant or notary for at least 6 years; 5) a person who held the position of president, vice-president, advisor of the General Prosecutor’s Office of Poland for at least six years; 6) a person who worked at a Polish university, the Polish Academy of Sciences, a research institute or other scientific institution and has the academic title of professor, or has a doctorate in legal sciences; 7) the person was a judge of an administrative court or a military regional court.

2. COMPARATIVE ANALYSIS OF REQUIREMENTS FOR CANDIDATES FOR THE POSITION OF APPELLATE JUDGES

According to Article 28 of the Law of Ukraine “On the Judiciary and the Status of Judges”, an appellate court judge can be a person who meets the requirements for candidates for the position of judge, who, based on the results of a qualification assessment, has confirmed the ability to administer justice in the appellate court, and also meets one of the following requirements: 1) has at least five years of experience as a judge; 2) has a scientific degree in the field of law and experience of scientific work in the field of law for at least seven years; 3) has at least seven years of professional experience as a lawyer, including representation in court and/or defense against criminal charges; 4) has a cumulative work experience (professional activity) in accordance with the requirements specified in clauses 1-3 of this part, at least seven years.

Analyzing the above-listed requirements for positions in Ukraine and Poland, it can be seen that the requirements for an applicant for the position of a judge in the Republic of Poland are somewhat stricter. In particular, this concerns the length of work experience (in Ukraine – 7 years, and in Poland – 10 years). At the same time, we note that the legislator has not established a certain length of service for researchers (professors and doctors of legal sciences).

Also, the Ukrainian legislator should take into account in the legislation the requirements regarding the fitness of a person to perform the duties of a judge.

In accordance with Article 64 of the Law of the Republic of Poland “On the Organization of Courts of General Jurisdiction”, the following can apply for the position of judge of the Court of Appeal: 1) a person who worked as a judge of a court of general jurisdiction or a military court for at least 10 years, as a judge or prosecutor; 2) a person who has worked as a lawyer, legal adviser or notary for at least 10 years; 3) held the position of prosecutor for at least 10 years; 4) a person who has worked at a Polish university, the Polish Academy of Sciences, a research institute or other research institution and has the academic title of professor or a doctor of law degree; 5) a person who was a judge of an administrative court.

3. COMPARATIVE ANALYSIS OF REQUIREMENTS FOR CANDIDATES FOR THE POSITION OF JUDGES OF THE SUPREME COURT

A person who: 1) has Polish citizenship and fully enjoys civil and public rights; 2) has an impeccable reputation; 3) obtained a higher legal education in the Republic of Poland and received a master’s degree or received a foreign legal education recognized in the Republic of Poland; 4) has a high level of knowledge in the field of law; 5) fit to perform the duties of a judge in terms of health; 6) has at least 10 years of work experience as a judge, prosecutor, president, vice president, adviser to the General Prosecutor’s Office and has worked as a lawyer, legal adviser or notary.

At the same time, the above requirements do not apply to a person who worked at a Polish university, the Polish Academy of Sciences, a research institute or other scientific institution and has the academic title of professor or a doctor of legal sciences degree.

According to Article 38 of the Law of Ukraine “On the Judiciary and the Status of Judges”, a person who meets the requirements for candidates for the position of judge, has confirmed the ability to administer justice in the Supreme Court based on the results of a qualification assessment, and

also meets one of the following requirements can be a judge of the Supreme Court: 1) has at least ten years of experience as a judge; 2) has a scientific degree in the field of law and experience of scientific work in the field of law for at least ten years; 3) has at least ten years of professional experience as a lawyer, including representation in court and/or defense against criminal charges; 4) has at least ten years of cumulative experience (experience) of work (professional activity) in accordance with the requirements specified in clauses 1-3 of this part.

Analyzing the above listed requirements for positions in Ukraine and Poland, it can be seen that the requirements for an applicant for the position of a judge of the Supreme Court in the Republic of Poland are similar in many respects.

We also consider it necessary for the Ukrainian legislator to take into account the requirements for an applicant for the position of judge of the Supreme Court in Ukraine: 1) a scientific degree in the field of law and experience of scientific work in the field of law for at least ten years; 2) fitness to perform the duties of a judge.

It is worth noting that in Ukraine the requirements for the position of a judge of the Supreme Court on Intellectual Property and the Supreme Anti-Corruption Court are established, in particular, in accordance with Article 33 of the Law of Ukraine "On the Judiciary and the Status of Judges", a judge of the Supreme Court on Intellectual Property can be a person who meets the requirements for candidates for the position of judge, based on the results of the qualification assessment, has confirmed the ability to administer justice in the Supreme Court on intellectual property issues, and also meets one of the following requirements: 1) has at least three years of experience as a judge; 2) has at least five years of professional experience as a representative in intellectual property matters (patent attorney); 3) has at least five years of professional experience as a lawyer in court representation in cases related to the protection of intellectual property rights; 4) has at least five years of cumulative experience (experience) of work (professional activity) in accordance with the requirements specified in clauses 1-3 of this part.

A judge of the High Anti-Corruption Court can be a person who meets the requirements for candidates for the position of judge, who, based on the results of a qualification assessment, has confirmed the ability to administer justice in the High Anti-Corruption Court, and also meets other requirements established by law.

Also, the Ukrainian legislator should take into account in the legislation the requirements regarding the fitness of a person to perform the duties of a judge.

4. CODE OF JUDICIAL ETHICS AS A STANDARD OF JUDICIAL BEHAVIOR

Separately, it is worth paying attention to the fact that the Code of Judicial Ethics was developed and is in force in Ukraine, approved by the 11th Regular Congress of Judges of Ukraine on February 22, 2013. It meets international standards of judicial behavior, ensures greater accountability of the judge, and its adoption was an important step to increase citizens' trust in the judicial branch of government in Ukraine. In the Code, attention is paid to such important issues as the regulation of the judge's behavior during the administration of justice, the prohibition of extra-procedural communication of the judge with the parties in the case, the declaration of financial interests of the judge and his family members, the recusal of the judge, relations with the media and the behavior of the judge outside of working hours. The ethical provisions specified in the Code play a twofold role: firstly, they enable judges to evaluate their actions in everyday life and during the administration of justice, to compare them with the requirements of the high prestige of their profession, and secondly, they should serve as a unified system criteria for evaluating various aspects of a judge's behavior by the authorized bodies in the case of contesting the judge's actions as violating the Oath.

No less important category of evaluation and selection of judges is "integrity" as one of the most controversial categories not only regarding judges. A. Kladchenko calls integrity "a strong and effective desire to act in accordance with the principles of correctness and humanity. People who have this quality choose or advise others only the right way out of the situation, having familiarized themselves with and considered all the priorities of the relevant issue. The basis of this philosophy is the ability to self-sacrifice, that is, a person can both sacrifice his interests to another person and recommend to act as he would do. There is no trace of a selfish motive, betrayal or any other negative phenomenon in this chain" [Kladchenko 2016, 9]. In addition, the legislator pays attention to the special training of candidates for the position of judge, including the strengthening of the connection between the systems of initial training and the appointment of judges.

According to T.V. Pustovoi: "an important factor contributing to ensuring the independence of judges is the existence of an optimal model for the formation of a corps of professional judges. In fact, the method of selection and appointment of judges, the specifics of the exercise of the judicial function significantly affect the independence of the judiciary. In this aspect, the researcher quite rightly observes that «the process of openness and collegiality in the consideration of future candidates for the post of judge is the only way to democratization and independence of the judiciary». The researcher

defines the key tasks of judges as preventing unscrupulous persons from conducting judicial proceedings and supporting competent specialists with fundamental virtues. Undoubtedly, in this context, the value-ethical component of building an effective judicial system in the state, which will meet the criteria of Article 1 of the Constitution of Ukraine” [Pustovoit 2016, 12].

Compared to our country, the demands placed on judges in foreign countries are quite high. The legislator of most states puts the professional qualities of the candidate and his moral and ethical characteristics in the same line. Thus, in Great Britain, a person who possesses impeccable moral qualities and has worked as a barrister for at least 7 years (for county courts) or 3-5 years (for magistrates) can be appointed to the position of judge. In some countries, exemplary behavior in everyday life is required (Article 4 of the US Code of Judicial Ethics) and an impeccable reputation (Article 6 of the Law on the Judiciary of the Republic of Romania). This emphasizes the special importance of the authority of the court for the effective administration of justice. In general, the study of the peculiarities of the formation of the corps of professional judges in France, Germany, Poland, Switzerland, Georgia, Italy, the Netherlands, Croatia, Japan, the USA and Great Britain revealed that there is no typical or standard procedure for the formation of the corps of professional judges. The methods of selection and appointment of judges vary depending on legal traditions and types of legal systems. They can also be different within the same legal family.

In foreign countries, the formation of the corps of professional judges is carried out mainly by appointment, but in some countries judges are elected (for example, in some US states and some cantons of Switzerland).

Therefore, a person who wishes to acquire the status of a candidate for the position of judge and plans a judicial career in the future, after the announcement by the Higher Qualification Commission of Judges of Ukraine about the selection of candidates for the position of judge, must apply to the Higher Qualification Commission of Judges of Ukraine with a corresponding application and provide documents that confirm the compliance of her candidacy with the requirements established by law.

After the expiration of the specified period for submitting the necessary documents, the Higher Qualification Commission of Judges of Ukraine carries out a special check of these persons regarding their compliance with the established requirements for a candidate for the position of judge. Persons who have successfully passed such a special check are allowed to take the exam, which is conducted in the form of anonymous testing and the purpose of which is to identify the level of general theoretical knowledge of the applicants.

Persons who have successfully passed the exam before the Higher Qualification Commission of Judges of Ukraine acquire the status of a candidate

for the position of judge and are sent to undergo a special training course. Special training is organized by the National School of Judges of Ukraine. Candidates who have successfully completed a special training course are sent to the Higher Qualification Commission of Judges of Ukraine to take a qualification exam – certification of a person who has undergone special training and expressed a desire to be recommended for appointment to the position of judge. It consists in identifying the appropriate theoretical knowledge and level of professional training of the candidate for the position of judge, the degree of his readiness to administer justice in matters of jurisdiction of the relevant court, as well as the personal and moral qualities of the candidate. The results of the qualification exam are valid for three years. A person who has not passed a qualifying exam may be allowed to take such an exam again no earlier than a year later. A person who has not passed the qualifying exam again may be admitted to the next exam no earlier than two years later.

CONCLUSION

The formation of a highly professional judicial corps is not only a problem of the national level, but also an issue that worries the international community and requires constant improvement. It is possible to state the existence of significant changes and positive results of reforms in this area in our country, which aims to approach generally recognized European standards. However, in this context, it must be recognized that the general process of reforming the judicial authorities of our country is rather complicated.

When developing the further course of judicial reform in Ukraine, it is necessary to consider the judiciary and the judicial system as an integral part of state power, which depends on structural and functional changes in the state mechanism, the direction of state development. The development of the concept of judicial reform should declare the parity of the judiciary and take into account domestic development processes and international trends. During the development of the action plan for its further reform, one should take into account not only the comments of the institutions of the Council of Europe, but also the advantages of modern European judicial systems and take into account the shortcomings, on the elimination of which the member states do not stop working.

The general characteristics of the qualification requirements for the position of a judge in Ukraine characterize it as a developing country. We believe that at the stage of appointing a judge to a position, the system and mechanisms for researching information about a candidate for the position of judge from the point of view of integrity and other qualities and reviewing

the requirements for age and professional experience for candidates for the position of judge should be strengthened.

It is necessary to update the system of appointing judges, to simplify it, and at the same time to increase the requirements for candidates' knowledge of procedural codes, legislation and judicial practice and the practice of the European Court of Human Rights. At the same time, strict specialization should be introduced in the courts and the influence of the subjective factor on the evaluation of the results of the judicial examination should be excluded.

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