

## **EUROPEAN STANDARDS FOR PROFESSIONAL TRAINING AND SELECTION OF JUDGES**

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Also important for the analysis are the provisions of European standards for the appointment of judges, which Ukraine needs to adhere to as a candidate for membership in the European Union in order to establish the principles on which it is built.

First of all, it is worth mentioning the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which refers to the right of everyone to a fair hearing by an independent and impartial tribunal established by law [1]. This article actually emphasises the role of each individual judge and the judiciary as a whole in ensuring the independent, effective, fair and professional administration of justice. To ensure this goal, Recommendation No. 94(12) on the Independence, Efficiency and Role of Judges (1994) was developed, which contains specific standards for the selection of judges. It specifies the requirements for the body empowered to make decisions on the selection of personnel for judicial positions. First of all, such a body should be independent of any state bodies, and its composition should be formed according to clearly established rules from among judges. In addition, to ensure independence and impartiality, this body should prescribe procedures for the selection of judges" [2]. The requirements for the professional career of judges should be based on their qualifications, virtues, abilities and performance.

In addition, these Recommendations state that "where the constitution, legislation or tradition permit the government to participate in the appointment of judges, safeguards should be in place to ensure that such appointment procedures are not influenced by motives other than those related to the objective criteria set out above; safeguards may include: a special independent and competent body from which the government receives advice and implements it; the right of an individual to appeal to an independent body to challenge a decision; the authority that decides on [2].

In addition, the European Charter on the Law on the Status of Judges establishes the rule that in the performance of their duties, judges must take care to maintain a high level of competence required for the adjudication of cases, as this is essential for the protection of human rights [3]. Each judge must ensure competence, impartiality and independence in the consideration of a case, so he or she must have the appropriate level of professional qualifications, which will be determined in the selection of judges by a body independent of the executive and legislative branches from among professional judges (at least half of the members of such a body must be judges). Interestingly, this Charter provides for the possibility of training a candidate for

the position of a judge at public expense and sets minimum requirements for the necessary level of skills and abilities for the position of a judge (openness, broad outlook, competence, impartiality). Unfortunately, there are no details on the mechanism for implementing this provision, which obviously does not contribute to its proper implementation in practice by countries.

In addition, paragraph 2 of the European Charter on the Status of Judges states that "the rules for the selection and appointment of judges by an independent body or commission shall require that candidates be selected on the basis of their ability to deal freely and objectively with the cases brought before them and to apply the law with respect for human dignity". The possibility of refusing to appoint a person to a position on the grounds of sex, ethnic or social origin, philosophical or political opinions or religious beliefs should be excluded [3].

In analysing the provisions of this Charter, the following main aspects should be noted. Firstly, since the body responsible for the selection of judges should consist of at least half of the judges elected by their peers, it emphasises the importance of judges' participation in the process of appointment of judges. Such an approach guarantees greater independence and objectivity in decision-making on judges, and creates a basis for a professional assessment of the suitability of a candidate for the position of judge. Secondly, to ensure equality and non-discrimination in the process of appointing judges, the Law provides that no one may be denied a judicial position on the grounds of gender, ethnic or social origin, philosophical or political beliefs, or religious beliefs.

The analysed provisions on the selection of judges are generally in line with the provisions set out in the Explanatory Note to the European Charter on the Law on the Status of Judges of 10 July 1998, which defines the content of the status of judges in terms of the objectives of justice. In particular, it emphasises the need to ensure the competence, independence and impartiality of each judge, since these indicators can directly affect the observance of the guarantee of citizens' rights related to the competence of a judge in judicial qualification [4]. The Explanatory Note additionally justifies the expediency of establishing a separate independent body for the selection of judges and emphasises the importance of the ability of a candidate for the position of a judge to provide an independent assessment of cases considered by judges. Candidates for the position of a judge must not only demonstrate knowledge of the law, but also the ability to apply the law in practice.

The provisions set out in the Opinions of the Consultative Council of European Judges to the Committee of Ministers of the Council of Europe on standards of judicial independence and the security of tenure of judges are also important in formulating rules and procedures for the selection of judges. For example, in the Opinion No. 1 (2001) of the CCJE to the Committee of Ministers of the Council of Europe on standards of judicial independence and the irremovability of judges, it is stated that independence is used as a guarantee of impartiality, so that the independence of a judge affects almost all aspects of his or her career. In this aspect, judicial independence means complete impartiality on the part of judges. In addition, this Opinion refers to:

the appointment of judges only on the basis of ability and knowledge by an independent body; the need to maintain a reasonable balance between providing the process of appointment of judges with a certain direct democratic basis (when judges are elected by the parliament) and the risk of political influence on this procedure; the need to ensure equal rights for men and women in the appointment of judges (for example, in Austria, when there are two candidates with equal qualifications, it is provided that the candidate of the gender that is underrepresented will be appointed), indicating that seniority is not a prerequisite for the promotion of judges (based on the experience of the supreme courts in India and Japan) [5].

The issue of ethics and qualifications is also closely intertwined in the provisions of the CCJE Opinion No. 3 on the principles and rules governing the professional conduct of judges, which states that judges should have a high level of professional awareness, as this directly affects the efficiency of the judicial system [6]. This document states that judges can ensure proper qualification through basic training and further education.

However, it should be borne in mind that the concept of competence is much broader and includes not only knowledge of law. The close link between judicial competence and the independence of the judiciary is evident in the CCJE's Opinion No. 4. This document states that the independence of the judiciary confers rights on judges at all levels and jurisdictions, but also imposes ethical obligations on them, which include the obligation to perform judicial work professionally and diligently on the basis of a high level of professional qualifications, which should be obtained, maintained and improved through training. Therefore, judges have an obligation to undergo training and improve their knowledge and skills. Conclusion No. 4 also states that it is important for judges to receive both a full legal education and detailed, in-depth and varied training to be able to perform their professional duties properly [7].

Interestingly, despite the emphasis in a number of international documents on the requirements for judicial competence, the issue of professional university education of judges is hardly addressed. However, in paragraphs 43-44 of CMR No. 4, there is a clear indication that "whatever the nature of their duties, no judge may ignore European law... because they are required to apply such sources directly to the cases before them" [8]. That is why the main emphasis is placed on the integration of the study of the Convention on Human Rights and the analysis of previous decisions of the European Court of Human Rights into university education and training programmes.

More detailed provisions on the procedure for the appointment of judges are contained in Opinion No. 10 (2007) of the Consultative Council of European Judges "The Judicial Council at the Service of Society", where paragraph 48 explicitly recommends that the appointment and promotion of judges should be independent and not be carried out by the parliament or the executive, but should be the responsibility of the Judicial Council or an equivalent body. If the appointment or promotion of judges is provided for by an official act of the head of state, it is important that the Judicial Council submit

proposals for appointment [9]. Also noteworthy is the provision on professional assessment of judges, which stipulates that it is advisable to take into account not only experience, willingness and ability to learn and improve, communication skills, etc.

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