



## THE FOREIGN EXPERIENCE OF LEGALIZATION MAIN LEGAL PROFESSIONS

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### Summary

This article is dedicated to the legalization of the main legal professions. To which we include judges, prosecutors, lawyers and notaries. Consider a foreign experience for admission to the profession in Russia, Poland, Italy, China, Cuba, Latvia, France, Bulgaria, Georgia, Japan and other developed countries. Analysis of the legalization of the main legal profession in Ukraine, as well as the prospects of Ukrainian legislation on the stage adaptation of the legislation of the European Union. Explained the procedures for admission to the profession as a hierarchical system of recruitment, their high moral and ethical level of high social status in order to protect the rights and freedoms and legitimate interests of individuals and legal entities.

**Key words:** lawyer, admission to the profession, legalization, notary, attorney, judge.

### Аннотация

Данная статья посвящена легализации основных юридических профессий, к которым мы относим судей, прокуроров, адвокатов и нотариусов. Рассмотрим зарубежный опыт для допуска к профессии в России, Польше, Италии, Китае, Кубе, Латвии, Франции, Болгарии, Грузии, Японии и других развитых странах. Проведен анализ легализации основных юридических профессий в Украине, а также намечены перспективы законодательства Украины на этапе адаптации к законодательству Европейского Союза. Исследуются процедуры допуска к профессии, как иерархическая система комплектования, их высокий моральный и этический уровень высокого социального статуса с целью защиты прав и свобод и законных интересов физических и юридических лиц.

**Ключевые слова:** адвокат, допуск к адвокатской деятельности, легализация, нотариус, адвокат, судья.

**F**ormulation of the problem. The importance to develop legal state and the role of lawyers in our society is in the peculiarities of admission specialists with a law degree, to the profession, such as judges, prosecutors, attorneys and notaries.

**Therefore, granting permission** to commence operations involves additional procedures related to the legalization of a certain specialty, for the passage defined by law. A foreign experience is constantly updating, improving, and this study is relevant and has both theoretical and practical importances to distinguish positive elements and identify ways how apply it in our country for Ukraine.

**The condition of research.** The study is based on work of such Ukrainian scientists as: V. Averyanov, O. Bandurko, Bytyaka Y., A. Berlacha, V. Bevzenko, V. Halunka, A. Komzyuka, V. Komzyuka, T. Kolomoysya, W. Malyarenko, V. Olefir, J. Shemshuchenko, S. Fursy. But international experience has not been analyzed.

**The main material.** Status of judges determined in almost all major laws where legislators support the principle of appointment. Note that the act of appointment – a reasoned decision of the authorities, which is built on the legally regulated procedure of professional selection, preceded vocational training and strict rules passage levels judicial

career. In Italy and France, in particular, is performed on a constitutional basis.

In any case, the process of forming the judicial corps has two stages: the previous and the immediate. The first step is the selection of judicial candidates. Note that almost in all countries are very high requirements that apply to the professional development and training, education, age and the high moral character of applicants. For example, the Constitution of the Russian Federation (Article 119), put forward following requirements to candidates for judicial office: nationality, higher legal education, professional experience in the legal profession for at least five years, reaching 25 years of age. In Germany, mentioned law provides to add two exams at availability of legal education and passing a special legal training (Section 1, § 5). More high demands to the persons, who claim for positions in the higher courts. For example, in Germany for the election of judges of the Federal Constitutional Court candidate must attain 40 years of age, have the right to be elected to the Bundestag, pass qualifying exams. In Russia, a candidate for a similar position should possess a higher qualification in law. Availability of academic degree facilitates access to position of the judge.

The right and duty of selecting candidates, as a rule, belongs to body of magistracy (Spain, Italy, Poland, Romania and France) or the Ministry of Justice and a

special qualification commission (Austria, Russia, the USA, Hungary, Germany, etc.) or proper judicial authorities (in the UK judicial candidates recommended Lord Chancellor's office, Japan judges of lower courts are chosen by the Supreme Court).

The second stage involves the procedures of direct appointment or direct election of judges. In most of the developed democracies judges are appointed. The importance attached assembly appointment, evidenced by the fact that in many countries, such as Austria and France, this act within the competence of the President. In the United States federal judges appointed by the President with the consent of the Senate. Polish Constitution provides that judges are appointed by the President on the proposal of National Polish Judicial Council (Article 179). In Germany, the bulk of federal judges and judges appointed by the Land Ministry of Justice. In Japan, judges are mostly appointed by the government, and justices of the peace (non-professional) are appointed by the Lord Chancellor in the UK.

Quite common is the formation of judges' collegiums through elections (Bulgaria, Czech Republic, etc.). In addition, (albeit in different ways), the members of the jury, courts and people's assessors are also elected.

The constitutions and specific laws in foreign countries are often indicated in such terms as the period of appointment.



For example, in Georgia's and Japan's appointment is for 10 years, Moldova – initially for a fixed term, and then – indefinite [1].

In the considered countries procedure of legalization judges is by appointment, which has two stages: preliminary and immediate. In the Ukrainian context on a post of judge the appointment too. But the appointment of judges for the first time to the President of Ukraine for 5 years and the appointment to a permanent post shall Verkhovna Rada of Ukraine. This procedure appointment is highly formalized, making it difficult admission to professional judges.

In Latvia, the legal profession regulated by law, which takes the Saeima (Parliament) of Latvia. Except in the Law on the Bar, there are also laws on courts and notaries. Lawyers who have legal practice, licensed by the Ministry of Justice of Latvia, with some limitations of rights. General principles of activities of attorney Advocacy Act regulate professional activities and organizational activities of lawyers. Activities of attorney – an integral part of the justice of the state. Lawyer – Professional and independent of its representative who provides legal assistance to individuals involved in court proceedings and the preliminary investigation, and performs other legal actions. Only lawyers who took the oath and their assistants are allowed authorized to act in court as lawyers. Law on Advocacy provides to become attorneys must: – be a citizen of the Republic of Latvia – reach the age of 25, to get a law degree at the University of Latvia or any other higher institution that is equivalent to it – be fluent in the state language – for at least 5 years work out as a judge, investigator, prosecutor or Tutor at the Faculty of law of the University of Latvia, or a lawyer in public office or local authorities, or other organizations, agencies, or in private industry and gain practical experience in the application of legal knowledge or assistant attorneys and to the court a sufficient number of cases and pass examinations offered by council attorneys, and reveal to them their knowledge and skills. Persons wishing to be admitted to the jury lawyers must submit an application for Council and other documents which indicate that there are no barriers to adoption. According to the procedure should be clarified official

activity attorney and his moral character. List of persons who have submitted the documents sent to all coaches practicing attorneys in each judicial region. If the test ended with a positive outcome for the applicant, the council by secret majority vote decides. Council Decision attorneys to reject an application for membership for procedural reasons may be appealed to the court in accordance with the procedure established by law on the Bar. If the applicant has been denied for a substantial reason, so the board's decision is not appealable.

By law, the legal profession is defined as a liberal and independent. This definition creates a right to specific organizational forms of professional activity, legitimate and separate from the state, which is an effective means of municipality and security. To become a lawyer, you must either have French nationality or citizenship of one of the common market under conditions of mutual recognition of diplomas. Foreigners must meet a number of specific requirements and pass the test. A person claiming to be a lawyer, cannot be convicted for acts that are incompatible with the dignity and integrity, as well as serious disciplinary or administrative offenses or penalties in connection with the bankruptcy, it cannot be engaged in activities that are incompatible with the legal profession (for example, to be an entrepreneur). Candidate for must: have a law degree (Master's degree right), pass the entrance exams (two written and one oral) in regional training centers that operate under the auspices of the advocacy and the High School, there burring year learn theoretical course and learn undergo practical probation, pass exams (one written and three oral). When observing these conditions, a young lawyer received the Order Association (Board) and recites the oath as follows: «I swear, as a lawyer, to function with dignity, honesty, regardless, honestly and humanely». Then a young lawyer has to have a two-year internship in the specialty and receiving certificates. Only after that his name is listed as a full member of the Order. Bar Association are making great efforts to organize high-quality theoretical training (one year), training (two years), and then the training of lawyers that practice.

Becoming a lawyer can each Italian citizen who has a law degree. After submission of candidate statements

include it in the register trainees and he begins to work under the guidance of an experienced lawyer – a mentor who introduces him to litigation and other matters. After a year of internship trainee receives a certificate that allows him to work independently, usually in simple categories of cases.

Successfully worked for a year, the person can pass the exams to be the prosecutor, giving him the opportunity to practice in the appellate courts of the judicial district in general where the person resides, and only after six years of experience and success in exams prosecutor receives the status rights lawyer working throughout the country.

Note that the overall organization of legal education and training of lawyers – future lawyers and judges in Italy has been the Supreme Council of Magistracy (it – the highest judicial body), which is subordinate to the Ministry of Justice [2].

In Ukraine admission access to the profession of lawyer is providing qualification commission of advocates that check compliance with laws that apply to lawyers. It holds a qualifying exam (which consists of a written and oral exam) and check out the hands-on experience of legal practice through an internship with a practicing lawyer. This greatly complicated the procedure of admission to the Bar and at the same time puts high professional requirements for persons wishing to become lawyers.

In Ukraine access to profession of lawyer is providing qualification commission of advocates that check compliance with the requirements of individuals who are law to lawyers. It holds a qualifying exam (which consists of a written and oral exam) and check out the hands-on experience of profession of lawyer through an internship with a practicing lawyer. This greatly complicated the procedure of admission to the Bar and at the same time puts high professional requirements for persons wishing to become lawyers.

The term "prosecution" (from the Latin. Rrocuro – take care to manage) means the state agency that oversees the precise execution of the laws, rule of law and to bring offenders to justice.

In some countries, prosecutors operating within the executive (Denmark, Egypt, Italy) and the judiciary (Hruziya. Lithuania and SH.) Acts as a body that



is accountable to and controlled by a highly collective state and party organs of the state (China, Cuba, North Korea), or non-existent (Vatican, Qatar, Kuwait). Yet in most countries, as in Ukraine, prosecution does not apply to the legislative, executive or judicial power. In the scientific and academic literature it is sometimes referred to as an independent branch of government, including control and supervision, although this assertion requires further study [3].

Prosecutors in France – a centralized system of which is headed by the Minister of Justice. Each court of appeal is headed by the Attorney General and his assistants, the chief of which is the title of general counsel.

The Prosecutor General is supported by the prosecutors in the general court and jury. Prosecutors formally involved in civil proceedings in the courts of any jurisdiction. Functions of the prosecutor of Court of Cassation limited his appearances in this court.

Official's prosecutors are similar to judicial corps: they both called as the magistrates, they receive the same training and during career move in according to prosecutors to judges and vice versa.

Future judges, prosecutors, lawyers and notaries are required to pass a total of 4 years of training after passing the final exams they become licensees of law.

Anyone who wants to be a magistrate must take the exam committee, after which he was permitted to study at the National School of Magistracy in Bordeaux (annually received up to 200 students). They receive state grants for 2 year course. During the training, they also probation in court and prosecutor's office. After passing the final exam graduates (aged less than 27 years old) holding public office. Based on assessment by the distribution of selected positions. Career judges heavily depend on the decision of the central committee, which deals with promotion. In the committee includes representatives of the Ministry of Justice, judges who hold high positions [4].

The system of organs of prosecution of Ukraine is territorial and specialized organs of prosecution. Which carry out the indictment, representative control and supervisory functions in the state. Therefore, there are some special requirements for persons wishing to work in varying public prosecutor's offices.

Development of notary activities in Ukraine generally meets the trend towards adaptation of Ukraine to the European Union, and therefore cannot be isolated from the European and world community. The experience of foreign colleagues notaries Ukraine should be considered in the context of solving two important national goals: First – the construction and development of an effective system of protection and enforcement of private notaries public in Ukraine, and secondly to ensure the safety and protection of the rights of citizens of Ukraine abroad. That's why the national notaries, as indicated by O. Loboda, should be aware of major trends and changes in the notary's practice of European countries [5].

In their researches, O. Loboda analyzed the organization and notarial practice of European countries like Austria, Germany, Belgium, Netherlands, Greece, Spain, Italy, France and Switzerland [6].

So, an applicant for the post of Austrian notary must have a law degree and 7 years of professional experience in the specialty. Replacement vacant position of notary public by the Ministry of Justice on the recommendation of the Chamber of Notaries and on the results of the contest. Once approved as a notary is automatically included in the Chamber of Notaries, Notary that integrates several areas, control their activities. Rewards notaries in Austria is also strictly controlled and defined in relation to the value of the object agreement. Besides the basic functions – attestation acts of legal significance. Austrian notaries act as a court commissioner – are heirs in court and prepare for trial hereditary cause.

German practice of admission to the notarial profession is more liberal. Candidate for the post of notary has must over 7 semesters to get a law degree and pass the first state exam (in Ukraine is a bachelor's degree), two years of legal practice and make a second state exam [7]. Otherwise, the organization of notarial activities in Austria and Germany are the same.

More liberal should be recognized for admission to practice a profession in Belgium. So, a candidate for notarial activities in Belgium must obtain a law degree within 5 years (Ukraine this specialty's degree) and a notary education within 1 year (Ukraine is a master's

degree), pass a three-year probation after which the Belgian king appoints a lawyer the position of a notary without competition.

A striking example of administrative regulation notarial activity is Italy. Thus, the professional organization of notaries includes the National Council of Notaries (higher level) and district council notary. Notary activities controlled by the public, notarial district councils, prosecution, Tribunal National archival management, cost notary services strictly regulated tariffs and so on. The candidate notary must verify not only the qualification (two years training at the notary's office, the victory in the annual national competition, etc.), but also their own financial stability (entrance fee to the money or property, to open their own notary office, register notary activity, get seal of notary). Retirement age notary set to 75 years, but as early as age 65 if 20 years of work of the notary in Italy could receive a pension from the National Notary Service.

A candidate for a notary in Spain should make separate exams in civil, commercial, collateral (real estate), notary, administrative law and process. Each exam includes both theoretical and practical tests. After a successful exam candidate to notary public is allowed to participate in the competition and if he wins, he gets diploma notary on behalf of the King of Spain. Significant organizational and structural differences Notary Spain is different, as in other European countries created central notaries – National Council of Spanish notaries with the relevant authorities and the regional Chamber of Notaries.

The Notary of France has one significant difference from other European countries – Notary position can be inherited. In another administrative regulation notary activity meets the basic principles of access to the profession of notary.

In Ukraine to determine the level of professional training of individuals who intend to engage in notarial activities, the Ministry of Justice of Ukraine formed the High Qualifications Commission of Notaries. Also, there are specifics about the exercise of private notary activity.

**Conclusions.** Thus, the analysis of the legislation of the Russian Federation, the Federal Republic of Germany, Spain, Italy, Poland, France, Bulgaria, Georgia,



Japan, Great Britain, Latvia, China, Cuba, Vatican, Belgium, Greece, Switzerland with respect to features access to basic legal specialties: judges, prosecutors, lawyers and notaries, at the stage adaptation of Ukraine to the European Union.

Here are observed the procedures for admission to the profession, forming a hierarchical system of recruitment, their high moral and ethical level of high social status on purpose the rights, freedoms and lawful interests of individuals and legal entities.

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## О ДИСПОЗИТИВНОСТИ ПРАВОВЫХ НОРМ

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#### Summary

The article is devoted to the optionality of legal norms in its broadest sense. Every law, like any legal norm, contains its disposition as an instruction how to proceed in terms of the hypothesis and its provision. Due to the form of fixing the desired behavior of the subjects of the law we consider a special kind of norms which is optional. The article pays attention to the broader meaning of the terms «disposition», «optionality», which refers to the measurement of the degree of feasibility and legal empowerment. In this broader understanding each norm of law not only contains optional part but generally is optional. The author believes that without considering the optionality of legal norms and behavior of the subjects of law, effective law-making and effective enforcement are impossible.

**Key words:** disposition, optionality, opportunity, victimhood.

#### Аннотация

Статья посвящена исследованию диспозитивности правовых норм в ее широком понимании. Каждый закон, как и любая правовая норма, содержит свою диспозицию – предписание о том, как следует поступать в условиях, предусмотренных в гипотезе данной нормы. По форме закрепления желаемого поведения субъектов права выделяют специальный вид нормы – диспозитивный. В статье обращается внимание на более широкий смысл терминов «диспозиция», «диспозитивность», который касается измерения степени осуществимости правовых возможностей. В этом широком понимании каждая норма права в целом диспозитивна, а не только содержит диспозитивную часть. Автор считает, что без учета диспозитивности, как самих правовых норм, так и поведения субъектов права, невозможно эффективное правоприменение.

**Ключевые слова:** диспозиция, диспозитивность, возможность, виктимность.

**Постановка проблемы.** Часто возникают ситуации, в частности, на стадии законотворчества, когда чрезвычайно важно определить, какова же вероятность осуществимости правовой возможности, заложенной в том или ином законопроекте. Казалось бы, принятие закона – это и есть осуществление правовой возможности, ее «материализация». Однако дальнейшая судьба принятой законодателем нормы может быть разной: она может успешно функционировать, может оказаться недействующей, а может порождать такие возможности, которые не были предусмотрены законодателем.

**Актуальность темы** обосновывается неисследованностью темы, так как вопрос о диспозитивности правовых норм не рассмотрен. В философии права понятие диспозиции также не было предметом специального исследования и остается непроясненным.

**Состояние исследования.** Обращались к изучению понятия диспозиции такие ученые, как К. Поппер, Н. Гудмен, Д.М. Армстронг. Также следует отметить значимость исследований П.К. Гречко, который рассмотрел вопросы о реальности, действительности

диспозиций, а также степень их влияния на научную картину мира в целом.

**Целью и задачей** настоящей статьи является рассмотрение вопроса о диспозитивности правовых норм, а также диспозиции поведения субъектов правоотношений, что будет способствовать правильному и эффективному правоприменению.

#### Изложение основного материала.

Каждый закон, как и любая правовая норма, содержит свою диспозицию – предписание о том, как следует поступать в условиях, предусмотренных в гипотезе данной нормы, то есть это та часть нормы, в которой указывается само правило поведения, юридически выражающее юридические права и обязанности.

Но есть и более узкое понимание диспозитивности. По форме закрепления желаемого поведения субъектов права выделяют специальный вид нормы – диспозитивный. Под диспозитивными нормами права понимаются нормы, в которых указывается на определенный вариант поведения, но допускают и другой вариант: они позволяют сторонам регулируемых отношений самим определять права и обязанности