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FEATURES OF JUDICIAL SELF-GOVERNMENT FUNCTIONING IN FOREIGN COUNTRIES

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SUMMARY

The article analyzes the foreign practice of judicial self-government bodies in the aspect of international and European standards. The experience of creation, functioning and reforming of the bodies of judicial self-government as well as a scientific and theoretical basis for the need for the existence of this institution in the matter of ensuring the independence and self-sufficiency of the judiciary power are considered. The views of domestic and foreign scientists on the effectiveness of borrowing approbation of foreign models of judicial self-government are examined.

Key words: judicial self-government, international standards, European standards, trends, functioning of judicial self-government bodies.

ОСОБЕННОСТИ ФУНКЦИОНИРОВАНИЯ СУДЕБНОГО САМОУПРАВЛЕНИЯ В ЗАРУБЕЖНЫХ СТРАНАХ

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АННОТАЦИЯ

В статье проводится анализ зарубежной практики деятельности органов судейского самоуправления в аспекте международных и европейский стандартов. Рассматривается опыт создания, функционирования и реформирования органов судейского самоуправления, а также научно-теоретическое обоснование необходимости существования данного института в вопросе обеспечения независимости и самостоятельности судебной власти. Исследованы мнения отечественных и зарубежных ученых по вопросу эффективности заимствования апробации зарубежных моделей судейского самоуправления.

Ключевые слова: судейское самоуправление, международные стандарты, европейские стандарты, тенденции, функционирование органов судейского самоуправления.

REZUMAT

Articolul analizează practica străină a organelor de autogovernare judiciară în ceea ce privește standardele internaționale și europene. Ei consideră experiența creării, funcționării și reformării organelor de autogovernare judiciară, precum și fundamentarea științifică și teoretică a necesității existenței acestui intuitiv în problema asigurării independenței și independenței sistemului judiciar. Punctele de vedere ale oamenilor de știință din țară și străinătate privind eficacitatea aprobării împrumuturilor de modele străine ale autogovernării judiciare sunt examinate.

Cuvinte cheie: autogovernarea judiciară, standarde internaționale, standarde europene, tendințe, funcționarea organismelor de autogovernare judiciară.

Formulation of the problem. The bodies of judicial self-government are an important component in the mechanism for ensuring the independence and self-sufficiency of the judiciary power, which currently operate in most countries of Europe, North and South America, and Africa. In different countries, such bodies have different names, constitutional and legal characteristics, formation procedures, functional powers. The development of judicial self-government bodies is recognized in the world as the development of independence and self-sufficiency of the judiciary power. This is a priority

direction of judicial reforms.

The purpose of this article is to study the international aspect of the creation and functioning of judicial self-government bodies, the study of typical models of the functioning of judicial self-government in foreign countries, the analysis of the legal status, organizational and legal guarantees of the activities of judicial self-government and its impact on ensuring the independence of the judiciary power.

Studies of international and foreign experience on relevant issues involved domestic specialists: V.D. Brintsev, V.V. Krivenko, I.E. Marochkin, L.V. Moskvich, I.V. Nazarov, S.Yu. Obrusna, P.F. Pilipchuk, D.M. Pr-

ityka, S.V. Prilutsky, S.I. Shtogun, as well as foreign scientists-lawyers M.I. Kleandrov, A.V. Burdin and others. At the same time, today there are no special comprehensive studies on the study of typical models of judicial self-government and the definition of priority of the international legal standards in the field of justice, which are regarded as promising legal sources of national law for enhancing the effectiveness of the legal regulation of judicial self-government.

Main material. Judicial self-government is one of the manifestations of judicial democracy, it allows, by involving judges in managing their own affairs, to improve its quality and effectiveness, and



to guarantee the implementation of the foundations of the judiciary power. The creation of a judicial self-government body with broad powers is supported at the level of relevant international and European organizations. The importance and role of judicial self-government bodies is steadily growing.

Researchers at the Institute of Judicial Self-Government, argue that judicial self-government exists in all democratic states and is an integral part of an independent judiciary power, but in spite of this, the scope and structure of judicial self-government is marked by considerable heterogeneity [7, p. 53].

Despite the wide variety of foreign models of judicial self-government bodies, the reference materials note their considerable authority for appointment, training, career growth of judges, bringing judges to disciplinary responsibility as well as their authority to finance and administer the judiciary power [15, p. 39]. After analyzing international documents, we understand that the European doctrine gives the following authorities to the judiciary self-government: selection and appointment of judges; promotion of judges; assessment of judges; disciplinary and ethical issues; training; control and management of an individual budget; administration and management of courts; protection of the image of judges; provision of findings in other public authorities; responsibility to the public: transparency, accountability [17].

Investigating foreign experience in this area, I.V. Nazarov notes the tendency to strengthen the system of judicial self-government, contributes to the creation of a system of special bodies of judicial self-government with competence in the field of justice management. In most constitutions of European states, judiciary self-government bodies are fixed as institutions of judicial self-government and are included in the number of bodies, although not endowed with judicial functions, but are part of this branch of power: the Superior Council of Magistracy in France, Italy, Portugal, Moldova; The High Council of Justice (Justice) – in Albania and Belgium; the General Council of the Judiciary power in Spain; The Supreme Council of Judges and Prosecutors in Turkey; The Highest Judicial Council in Bulgaria; The State Court Hearing in Croatia; National Council of Justice in

Hungary, etc. [16, p. 11].

The place and role of judicial self-government in the structure of the judiciary power is determined by the national, historical traditions of a particular country. As noted by Hans-Otto Bartels, President of the Court of the Federal State of Lower Saxony, Aurich German, «the judicial system as the one providing justice in the state has a long tradition and a long history of formation. Its experience can be useful for young democracies, to which Ukraine belongs. This experience confirms, in particular, the universally recognized thesis that the independence of the judiciary power is the key to justice in a state governed by the rule of law; it is first of all realized in the independence of judges» [2, p. 109–112].

The analysis of the national legislation of various countries shows that in national legal systems the issue of the legal status of the bodies of the judicial community is solved differently. As a rule, judicial self-government bodies are considered within the judicial system. In some countries, the norms on judicial councils as the supreme bodies of the magistracy are contained in the constitutions in the section on the judiciary power, while the detailed legal regulation of judicial self-government bodies is contained in other legislative acts on the judiciary power. In many European countries, the judicial councils are represented as the sole supreme body of judicial self-government bodies, next to which other bodies of judicial self-government may act and perform the functions of self-government [10, p. 414].

In some countries there are several higher independent structures of judicial self-government that create a unified system, in particular: the Congress of Judges and the Council of Judges (Ukraine); Council of Judges, Judicial Ethics Committee, Judicial Conference, Judicial Qualification Board (Latvia) General Meeting of Judges, Judicial Council, Judicial Honor Court (Lithuania) Congress of Judges, Republican Council of Judges, Judicial Conferences, Qualification Collegium of Judges (Republic of Belarus) All-Russian Congress of Judges, The Council of Judges of the Russian Federation, the Higher Qualifications Collegium of Judges, the Higher Examination Commission for the Admission of the Qualification Exam (Russia); Congress of Judges,

Council of Judges (Kyrgyz Republic).

In the United States, judges themselves are responsible for administration and administration in the courts, but, as a rule, judges hand over day-to-day work on the management of professional judicial personnel appointed and accountable to the judges. Along with administrative units, the system of court management today includes various national organizations in support of improving the judicial system. The administrative function is carried out by a number of judicial self-government bodies, including the Conference of US Judges and District Councils of Judges, which monitor the administrative independence of the judiciary, determine the policy in the field of court management, coordinate a wide range of issues related to the organization of courts. Established in 1922, the Conference of Judges of the United States of America is the main directive body of federal courts and expresses the opinion of the federal judiciary. The Chief Justice of the United States presides over the Judicial Conference, which consists of 26 members: the Chief Justices from each of the 12 District Appeals Courts, one District Judge from each county, and the Chief Judge of the International Trade Court.

The Conference of Judges acts on the basis of the reports and recommendations of its 24 committees, organized on a thematic basis, on national policies and legislation on all aspects of the federal judiciary. The main responsibilities of the Conference of Judges are: approval of the annual budget of the judicial system; making proposals, reviewing and giving recommendations on legislation issues that are relevant to the cases and procedures of various courts; implementation of judicial activity in accordance with federal rules, guidelines and laws; the supervision and direction of the activities of the Administrative Office for Human Resources, Accounting and Finance, Automation and Technology, Statistics and Administrative Support; drafting and amending general rules of judicial practice and procedures used in trials in federal courts, which must be approved by the US Supreme Court; assistance in unifying judicial procedures and expediting legal proceedings; supervision of compliance with the code of professional conduct, ethics and judicial discipline; giving recommendations to the Congress on additional judicial positions; consideration of the is-



sues of premises and necessary equipment.

District Councils of Judges are bodies of judicial self-government, formed at the level of judicial districts. The duty of the district council of judges is to ensure the proper management of the courts located in the district. Each council of judges consists of the presiding district judge, who is the chairman, and an equal number of district (appeal courts) and district (first instance) judges. Each council of judges appoints a manager of the judicial district, who works in close contact with the presiding judge of the district to coordinate a wide range of administrative issues arising in the district. The district council meets twice a year. Each district court council appoints a district executive committee.

The National Council of Justice of Brazil, in accordance with the Constitution of this country, is a body of the judiciary power and is considered in the system of Brazil's courts, along with the Federal Supreme Court, the High Court of Justice, federal and state courts, as well as specialized courts and judges, but does not exercise justice. In the Netherlands, the Judicial System Council (Raad voor de rechtspraak) is part of the judiciary power, but has no authority to administer justice [6].

Article 151 of the Belgian Constitution, as amended on November 20, 1998, establishes the Supreme Council of Justice, consisting of an equal number of magistrates of the judiciary and the prosecutor's office, on the one hand, and the representatives of civil society appointed by the Senate on the other one [3]. The Supreme Council of Justice is beyond parliament, beyond government and beyond the judiciary power [9, pp. 57].

According to Article 76 of the Constitution of Japan, adopted on November 3, 1946, all the fullness of judicial power belongs to the Supreme Court and such lower courts that are established by law. In accordance with Article 77 of the Constitution of Japan, the Supreme Court is empowered to establish rules of procedure for judicial proceedings, the work of lawyers, internal procedures in the courts, as well as rules for the management of court cases. The Supreme Court may delegate to the lower courts the right to establish rules for their work [7, p. 374].

The independence of the judiciary power in France is based on Article 64 of

the Constitution, which determines that the President of the Republic is the guarantor of the independence of the judiciary power. He is assisted by the Higher Council of Magistracy [8, p. 294]. In accordance with Article 64 of the French Constitution, The Supreme Council of the Magistracy is authorized to assist the President as a guarantor of an independent judiciary, but in fact the Council of the Magistracy of France administers the courts [11, pp. 122–128].

The current status of the Superior Council of the Magistracy of France is conditioned by the reform of 1993, which was introduced in the process of the transition of France to the period of the Fifth Republic. According to the constitutional reform of 1993 and the Organic (Constitutional) law of 1994, the legal status of the Council has undergone significant changes, in particular, the procedures for appointing judges and prosecutors are delineated [14, pp. 121].

According to Articles 104 to 108 of the Constitution of the Italian Republic, the exercise of authority for appointment, promotion and supervision of judges is entrusted to the Superior Council of the Magistracy, which in its activities is governed by the Law on the Superior Council of Magistracy No. 195 of March 24, 1958, issued in their development and addition [13, pp. 90].

According to Article 186 of the Constitution of the Republic of Poland of April 2, 1997, the All-Polish Judicial Council protects the independence of courts and judges [4]. Its powers include: consideration of candidacies for the positions of judges, who subsequently submit to the President for their appointment; making decisions on the movement of judges; determination of the quantitative composition of disciplinary courts; giving consent for the continuation of the work of a particular judge (who reached the age of sixty) deciding on the professional ethics of judges; the implementation of advisory powers relating to the judiciary and personnel policy in the judicial system.

In the Netherlands, since 2002, the Council of the Judiciary power has been created and is functioning, while until this time the courts did not have their own management systems [18]. The Council of the Judiciary power (Raad voor de rechtspraak) is part of the judicial system, but does not administer justice. The Council is given the responsibility for solving a number of

tasks previously solved by the Ministry of Justice. We should note the authority of the Council in the organization of continuous training of judges and consultants, second employees of the judiciary, and in the conduct of scientific research. The exchange with the University and Higher Education Institutions Hoger Raad der Nederlanden (Supreme Court of the Netherlands) is significantly increased [8].

In accordance with the Law of the Republic of Moldova «On the Supreme Council of the Magistracy», the Superior Council of the Magistracy is an independent body established for the organization and functioning of the judicial system and serves as a guarantor of the independence of the judiciary power. The Supreme Council of the Magistracy exercises its judicial self-government [6].

In accordance with Article 16 of the Bulgarian Law «On Judicial Power», the Supreme Judicial Council is an acting body which represents the judicial system and ensures its independence. It determines the composition and organization of the judicial system, management of the activities of the courts without prejudice to the independence of the judiciary power. It is an independent body that implements the function of self-government of the judiciary power [6].

According to Article 1, 4 of the Law of the Azerbaijan Republic «On Judicial-Legal Council», the latter is the body that, within its competence, ensures the organization and functioning of the judicial system; organizes the selection of candidates who are not judges for vacant judicial positions; assesses the performance of judges; solves questions of promotion of judges in a career, brings judges to disciplinary responsibility, as well as performs other issues related to courts and judges, implements the functions of self-management of the judiciary power [6].

According to the Constitution of the Federal Republic of Brazil, the National Council of Justice is responsible for monitoring the administrative and financial acts of the judiciary power and the judges' performance of various functions established by the status of the magistracy. In accordance with Article 89 of the Constitution of the Principality of Andorra, the Supreme Council of Justice, as the body of representation, leadership and administration of the judicial system, exercises control over the independence and normal



functioning of justice [6].

According to the Constitution of Hungary of August 18, 1949, the administration of courts is performed by the State Council of Justice, and judicial self-government bodies also cooperate in administrative management. According to Part 2 of Article 122 of the Constitution of the Kingdom of Spain of December 27, 1978, the Main Council of the Judiciary power is its governing body. According to Article 267 of the Constitution of Venezuela, the supreme body of judicial self-government administers and administrates the judiciary power [6].

Conclusions. The upgrading of the domestic justice is of paramount importance for Ukraine as for the state which has opted for democratic principles of development [10, p. 100]. The development of international relations testifies to the need to revise the theoretical concepts of legal proceedings in order to adapt the newest trends of coexistence in the international legal field and, in particular, to integrate Ukraine into the European Community. At the same time, the organizational and legal structure, functions and composition of bodies of judicial self-government differs from country to country, and therefore the creation of any ideal universal model is considered as impossible. In most foreign countries, judicial self-government bodies act as independent ones both in relation to the legislative and executive power as well as in relation to the bodies of the judiciary power.

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