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ELECTION OF JUDGES AS A METHOD OF GIVING THEM AUTHORITIES IN THE USA AND THE NEED TO IMPLEMENT THE SYSTEM OF JUDGES'S ELECTION IN UKRAINE

The method of empowering judges in Ukraine is defined in the article. The election system of judges on the example of the USA is analyzed. Its advantages and disadvantages, as well as the degree of necessity of introducing an election system of judges in Ukraine are identified.

Three types of judge election systems have been formed in the USA, which have more disadvantages than advantages, and therefore the model of judge election does not meet the needs of the Ukrainian judicial system.

Key words: *judges' election, judges' authorities, election system of "party" judges, election system of "non-party" judges, elections for extension of powers of judges.*

Target setting. There is no doubt about the need to improve the domestic judicial system and establish a fair court in Ukraine. The issues of judicial reform and improving the efficiency of justice have always been and remain relevant among scholars and government officials. The primary task in this direction is to restore trust in the judiciary, which definitely requires an increase in the quality of personnel of the judicial branch of government. Currently, the modernization of the judiciary, the need to expand the guarantees of the realization of the rights and legitimate interests of a person and a citizen in court, ensuring the principle of the rule of law requires the search for new approaches in the formation of the judicial corps. The idea of the possibility of electing judges

directly by the people deserves special attention. The choice between appointment and election of judges is often presented as a choice between judicial independence and accountability.

Actual scientific researches and issues analysis. Topical issues of national and foreign experience in the formation of the judicial corps, in particular on an elective basis, were the subject of research by such scholars as: H. B. Vlasova, V. V. Dolezhan, S. V. Kivalov, O. M. Korotun, M. I. Kleandrov, I. Ye. Marochkin, Yu. Ye. Polianskyi, S. V. Prylutskyi, D. M. Prytyka, B. O. Prokopenko, A. O. Selivanov, N. V. Sibilova, M. S. Strohovych, B. A. Futei, M. S. Shavarin, V. I. Shyshkin, et. al. Today, the issues of improving the procedure for forming the judicial corps and increasing the efficiency of justice require in-depth research.

The purpose of the article is to determine the method of empowering judges in Ukraine in accordance with the requirements of the Constitution, the analysis of the system of election of judges on the example of the USA, the determination of its advantages and disadvantages, as well as the degree of necessity of introducing a system of election of judges in Ukraine.

The statement of basic materials. Today, the Constitution of Ukraine provides exclusively for the appointed method of formation of the judicial corps. In accordance with the Basic Law, the appointment of a judge is carried out by the President of Ukraine at the request of the High Council of Justice in accordance with the procedure established by law (Part 1 of Article 128); the appointment to the position of a judge is carried out by competition, except for cases specified by law (Part 2 of Article 128); The President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine each appoint six judges of the Constitutional Court of Ukraine (Part 2 of Article 148); the selection of candidates for the post of judge of the Constitutional Court of Ukraine is carried out on a competitive basis in accordance with the procedure established by law (Part 3 of Article 148) [1].

In the study of the problems of granting the powers of judges, one should not limit oneself to the study of the institution of their appointment. Science and practice have long worked out an alternative way of granting them powers – the election of judges. It

is widespread, to a greater extent, in the countries of the Anglo-Saxon legal system, so for its research it is necessary to turn to foreign scientific sources.

Paraphrasing Winston Churchill's famous quote about democracy, former Oklahoma Supreme Court Justice Professor David K. DeWolf observes that electing judges is the worst way to empower them, to the exclusion of others [2].

As you know, this method of granting them powers has already been used in our country. During the existence of the Ukrainian Soviet Socialist Republic, from 1919 to 1991, legislation provided for direct democratic elections of district people's judges [3, p. 368, 436–438].

In our time, the most vivid example of countries where the system of election of judges is used, according to the authors of the article, is the USA (direct democratic elections of judges are held in more than 30 states). Three types of judge election systems were formed there:

- the system of elections of "partisan" judges (partisan elections), when a judge has a party affiliation and undertakes to carry out his activities in accordance with the political ideas and instructions of the party to which he belongs;

- system of elections of "non-partisan" judges (non-partisan elections);
- elections for extension of powers of judges (retention elections) [4, p. 214]. The latter, in our opinion, to a greater extent than other election systems, is able to ensure the independence of judges in the conditions of not only the Anglo-Saxon legal system, but also the Romano-Germanic one. According to this system, which operates in fourteen US states, the initial replacement of the position of judge is carried out by appointing judges by a special authorized body based on the selection of the most worthy candidates. Appointment takes place for a specified period (in different states – different periods). After the end of their term of office, national elections of judges are held, the peculiarity of which is that the voters do not choose one of several candidates, but vote for the extension of the powers of the current judge or for his removal from office. Usually, the election of a judge coincides with the election of representative or executive bodies by the population.

Such a system is to some extent a compromise between the appointment of judges and their election, absorbing, in our opinion, the positive features of both systems. On the one hand, candidates for the position of judge are selected by a professional body that has knowledge of the necessary professional and moral qualities of a future judge. On the other hand, thanks to the election of judges, public control over their activities is carried out. This system of elections also allows to avoid many problems faced by law enforcers in the process of holding elections of "party" and "non-party" judges, namely, pre-election debates of candidates (which can reduce the authority of the judiciary and raise doubts about its independence), the need to involve funds for the pre-election campaign of candidates. American researchers and law enforcers note that in those states where the systems of "party" and "non-party" election of judges are used, their election campaigns are often financed not only by bar associations and public associations, but also by large commercial organizations, which casts doubt on the possibility independent administration of justice by such candidates in case of their election as judges [4, p. 215].

As an example of support for this position, we will cite the results of a study by a group of American scholars, Brandice Canes-Wrone, Tom S. Clark and Jee-Kwang Park, who studied the influence of the election system of extending the powers of judges on their independence. The authors came to the conclusion that the politicization of the judge was significantly reduced thanks to such elections, while noting that the opinion of skeptics about the excessive influence of public opinion on the decisions made by the judge is not supported by any research in those states where such an election system has been used for a long time [4, p. 220].

Opponents of the election of judges, among other counter-arguments for the feasibility of introducing this institute, single out the peculiarities of the formation of public opinion and unprofessional evaluation of the activities of judges by citizens, as a result of which excessive dependence of the judge in his activities on public opinion is formed, which is often opposed to the norms of the law.

Another problem that may arise with the introduction of the institution of election of judges is a violation of the principle of their immutability.

For example, D. M. Shadrin believes that the election of judges does not directly contradict this principle. Their immutability extends to the term of their powers. Judges are immutable provided they are supported by the population [5, p. 228].

However, it should be noted that modern election campaigns, including the election of judges in the USA, are characterized by a greater influence of personal interest groups not only at the local and state levels, but also at the national level.

Another feature of modern election campaigns in the USA is the increase in their cost.

In general, the elections of judges begin to resemble more and more the elections for positions of power, taking into account the fact that the elections of judges coincide in time with the elections of the population of representative or executive authorities.

Election campaigns provide voters with the information presented by interest groups in a favorable light [4, p. 222]. And in this context, even elections for the extension of the powers of judges, which is based on the fact that the voters do not choose one of several candidates who were already initially endowed with their powers by appointment, but vote for the extension of the powers of the current judge or for his removal from office, may have more disadvantages than advantages.

We can agree with V. Dolezhan's opinion that:

– firstly, it seems doubtful that the voters can adequately assess the professional level of the judge and his qualifications;

– secondly, election does not guarantee strict accountability of the judge to the voters. The only way to put public pressure on the judges after the elections can only be the threat of early elections;

– thirdly, the implementation of public control over the activities of elected judges will not exclude, obviously, the need for the existence of certain levers of influence on them on the part of competent state bodies, which will have the right to dismiss them from their positions for gross violations of the law, regardless of the

opinion of the voters, which also puts under doubt the very idea of election [6, p. 37].

Conclusions. 1. Currently, the Constitution of Ukraine provides exclusively for the appointed method of formation of the judicial corps. In accordance with the Basic Law, the appointment of a judge is carried out by the President of Ukraine at the request of the High Council of Justice in accordance with the procedure established by law (Part 1 of Article 128); the appointment to the position of a judge is carried out by competition, except for cases specified by law (Part 2 of Article 128).

2. This method of empowering judges as electability is widespread, to a greater extent, in the countries of the Anglo-Saxon legal system, in particular in the USA and, as is known, was already used in our country during the existence of the Ukrainian Soviet Socialist Republic, from 1919 to 1991.

Three types of judge election systems have been formed in the USA:

- the system of elections of "partisan" judges (partisan elections), when a judge has a party affiliation and undertakes to carry out his activities in accordance with the political ideas and instructions of the party to which he belongs;

- system of elections of "non-partisan" judges (non-partisan elections);

- elections for the extension of the powers of judges (retention elections), the peculiarity of which is that the voters do not choose one of several candidates who have already been given their powers by appointment, but vote for the extension of the powers of the current judge or for his removal from office. Such a system is to a certain extent a compromise between the appointment of judges and their election, absorbing, in our opinion, the positive features of both systems and is able to ensure the independence of judges in the conditions of not only the Anglo-Saxon legal system, but also the Romano-Germanic one.

But according to the data of some other American researchers, modern election campaigns, including the elections of judges in the USA, are characterized, firstly, by a greater influence of personal interest groups, not only at the local and state levels, but also at the

national level, which provide voters with information in profitable for themselves, and secondly, the growth of their value.

3. The model for electing judges does not meet the needs of the Ukrainian judicial system for several reasons. First, it seems doubtful that voters can adequately assess the professional level of a judge and his qualifications. Secondly, the election does not guarantee strict accountability of the judge to the voters. The only way the public can put pressure on the judges after the elections can only be the threat of early elections. Thirdly, the implementation of public control over the activities of elected judges will not exclude, obviously, the need for the existence of certain levers of influence on them on the part of competent state bodies, which will have the right to dismiss them from their positions for gross violations of the law, regardless of the opinion of the voters, which also puts under doubt the very idea of election.

And finally, it is also doubtful that in the conditions of total corruption, including the electoral system, even in the elections for the extension of the powers of judges, attempts to bribe voters and other means of influencing them will not be used, which can ultimately undermine the independence of the Ukrainian judicial system.

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ВИБОРНІСТЬ СУДДІВ ЯК СПОСІБ НАДІЛЕННЯ ЇХ ПОВНОВАЖЕННЯМИ У США ТА НЕОБХІДНІСТЬ ЗАПРОВАДЖЕННЯ СИСТЕМИ ВИБОРНОСТІ СУДДІВ В УКРАЇНІ

На сьогодні Конституція України передбачає виключно призначуваний спосіб формування суддівського корпусу. Відповідно до Основного Закону призначення на посаду судді здійснюється Президентом України за поданням Вищої ради правосуддя в порядку, встановленому законом; призначення на посаду судді здійснюється за конкурсом, крім випадків, визначених законом.

У США сформувалися три типи систем виборів суддів:

- система виборів «партійних» суддів (partisan elections), коли суддя має партійну приналежність та зобов'язується здійснювати свою діяльність згідно з політичними ідеями й настановами партії, до якої він належить;*
- система виборів «безпартійних» суддів (non-partisan elections);*
- вибори за продовження повноважень суддів (retention elections). Особливість цих систем полягає в тому, що виборці не обирають одного з кількох кандидатів, які вже були наділені своїми повноваженнями шляхом призначення, а голосують за продовження повноважень чинного судді або за зміщення його з посади.*

Але, на думку деяких американських дослідників, сучасні кампанії з виборів суддів разом з іншими виборчими кампаніями у США характеризуються, поперше, більшим впливом груп особистих інтересів не лише на місцевому рівні та на рівні штатів, а й на національному рівні, що надають виборцям інформацію у вигідному для себе світлі, і, по-друге, зростанням їх вартості.

Модель, за якої судді обираються, не відповідає сучасним потребам української судової системи. Автори статті не впевнені, що в умовах тотальної корупційності, в тому числі й виборчої системи, навіть на виборах за продовження повноважень суддів, не будуть застосовуватися спроби підкупу виборців та інші засоби впливу на них, що може остаточно підірвати незалежність української судової системи.

Ключові слова: виборність суддів, повноваження суддів, система виборів «партійних» суддів, система виборів «безпартійних» суддів, вибори за продовження повноважень суддів.