THE PROCEDURE FOR HOLDING THE POSITION OF JUDGE IN CERTAIN FOREIGN COUNTRIES

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The article describes the procedure for holding the position of a judge in certain foreign countries.

Today, many countries are constantly improving their judicial systems and legislation on the appointment of judges, so it is important for reformers and legal scholars to study current approaches and innovations in other countries to improve their own judicial system. The study of the judicial appointment system in different countries allows for a comparative analysis and clarification of how these systems affect the functioning of the judiciary and judicial independence, which helps to identify the advantages and disadvantages of different approaches and allows for the use of this information to improve the domestic judicial system. In addition, with the transformation of approaches to the administration of justice, the risks to judicial independence, which is the foundation of the judicial system, also increase. Therefore, studying and analysing the system of judicial appointment in different countries helps to identify best practices and mechanisms that ensure judicial independence and strengthen guarantees of judicial independence. By examining the content of international standards, it also becomes apparent that the procedure for appointing judges directly affects the judicial process and court decisions relating to civil rights and freedoms. In this context, studying the system of judicial appointment can help protect the rights of citizens.

Thus, researching the legislation and regulatory environment governing the appointment of judges helps to understand the legal context of different countries, which can be useful for developing or reforming one's own judicial system. It can also help to identify innovations and best practices that can be implemented in one's own system to improve the selection and appointment of judges. Therefore, studying the judicial appointment system in other countries can be useful for increasing knowledge, improving the judicial system and ensuring judicial independence.

Key words: judicial system, legal status of judges, qualifications, competence, training of candidates for the position of judge, advanced training of judges, international standards of the judiciary.

Statement of the problem

Given modern globalisation and the constant development of technologies that affect all processes taking place in the state, including those related to ensuring accessibility and fairness of justice, not only specific approaches to solving non-standard issues, but also the very principles of organisation and development of international standards governing certain judicial procedures are undergoing certain transformations. In this context, the study of the procedure for holding the position of a judge in certain foreign countries is a particularly relevant task, as it contributes to the improvement of judicial systems and ensuring the implementation of the highest quality standards for certain procedures that generally affect the judiciary and justice in the country.

The state of research of the problem

The consistent reform of the judicial system in Ukraine has contributed to the adoption of specific recommendations regarding the competence of judges as a set of their pro-

fessional qualities, knowledge, skills and skills. Separate studies in this area were conducted by Zolotarova Ya., Ivanochko I., Prokopenko B., Sopilnyk R. and others. However, at the conceptual level, comprehensive cross-cutting studies of international standards for establishing the principles and necessary elements of the organizational and legal mechanism for forming and developing the competency of a judge have been practically conducted.

Methodology

The methodological basis of the article is the dialectical method of cognition of social relations, phenomena and processes, which consists in identifying the specific features of international legal standards for the professional training and selection of judges. The author also uses the method of system analysis, the historical method, and the comparative legal method.

Presentation of the main research material

When analysing the problems faced by different countries in carrying out judicial reforms, one of the most obvious and difficult was probably the problem of defining the procedure for selecting and appointing judges. The main dilemma was how to ensure the independence of the judiciary and judges from the influence of the executive branch, which in many countries still has some significant powers in the selection and appointment of judges. In many countries, even in the most established democracies such as the United States, the executive branch tries to influence the judiciary by appointing judges with particular political views. Often, once appointed, a judge chooses his or her own path, but there are other cases when judges defend the interests of certain political forces that brought them to office rather than the law. In this regard, there was once a well-known story in the United States when a journalist interviewing President Dwight D. Eisenhower asked him whether he had made any mistakes as president. Eisenhower answered in the affirmative, saying "both of his mistakes are sitting on the Supreme Court", referring to the appointments of Chief Justice Earl Warren and Justice William Brennan, who turned out to be more liberal than conservative [1].

In general, the process of appointing federal judges and justices in the United States seems to be a highly political process, as all federal judges are appointed rather than elected.According to the US Constitution, they are nominated by the President and must be approved by the US Senate by a majority vote, and after approval, the President finally appoints judges for life [2].

In general, there is no formal method of selecting judicial candidates in the United States, but in practice there are extensive safeguards in place to promote the appointment of qualified judges.Members of their state Senate play an important role in selecting candidates for district courts and courts of appeals by forming selection committees comprised of prominent lawyers, state or federal judges, or law professors. The Department of Justice reviews the legal qualifications of the nominees, the American Bar Association (ABA) advises on the qualifications of the nominees, and the Senate Judiciary Committee carefully considers the qualifications and experience of the nominees. Thus, the procedure for appointing federal judges in the United States is under the control of politicians, in accordance with the US Constitution [1].

The way judicial nominees are selected for the US district and appellate courts has evolved over the years and has gradually become more formal and institutionalised.As Jake Cobrick notes, political and ideological issues have always played a role in the selection of candidates, and when no formal institutional apparatus existed to evaluate potential judges, personal connections between nominees and the president, cabinet members, or senators were also important.The lasting political influence resulted in thorough vetting and investigations to ensure that there was nothing in the biography of judicial candidates that could be an obstacle to appointment [3, p. 142].

In general, the US Constitution does not specify how the President and the Senate should carry out their delegated responsibilities for judicial appointments.The result has been that presidents have taken different approaches to selecting nominees depending on

their own preferences and political circumstances.As the selection process became more bureaucratic and institutionalised, a large governmental apparatus developed to manage the selection of federal judges. As history shows, the Senate has also varied its procedures for processing judicial nominations depending on political circumstances, as well as its own internal rules, customs and practices, particularly in the Judiciary Committee. In general, despite the improvements in the US judicial selection process and the transformation of selection and appointment methods, politics has always played a significant role in shaping the judicial appointment process.

However, a 2017 report by the GRECO (Group of States Against Corruption) working group on the judiciary in the United States suggests that those appointed as federal judges are candidates of the highest integrity, outstanding legal professionals and fully qualified to serve as judges in all respects.In this report, GRECO emphasises that there are additional strong safeguards for judicial independence, such as life tenure and other robust guarantees [4].Therefore, although political influence is quite significant in the US judicial appointment process, a well-developed system of checks and balances is an important feature of this appointment process.

As for the European countries, the analysis of European standards on recruitment and appointment of judges showed a variety of approaches to the appointment of judges, which in fact indicates the absence of a typical or standard procedure for the appointment of judges.European standards on the appointment of judges contain not procedural but general organisational aspects of the methods of selection and appointment of judges at different levels of the judicial system. As a result, in each European country, the methods of selection and appointment of judges vary according to different legal traditions and legal systems. Moreover, they may also differ even within the same legal system (e.g., the procedures for the appointment of judges to lower courts may be quite different from those to the Supreme Court or the Constitutional Court).

In general, in a large number of European countries, the executive or legislature plays an important and decisive role in the appointment of judges.This procedure usually involves the government or the president, sometimes jointly with the parliament, formally appointing judges.However, in most European countries, there is a tradition of not appointing judges on the basis of political criteria, but on the basis of objective criteria that judicial candidates must meet in order to be appointed. At the same time, courts or other judicial bodies (e.g. judicial councils, which play an important role in the selection and appointment of judges) often make decisive recommendations on the appointment of judges in EU countries.There are also European countries in which judges are appointed by the courts themselves, mainly in lower courts (e.g. Switzerland).

It is important to analyse the experience of individual European countries in order to understand the specifics of the election and appointment of judges.For example, in the UK, there are statutory criteria for judges, defined in the Courts and Legal Services Act (1990) and the Magistrates' Courts Act (1997). Judges are appointed by the Judicial Appointments Committee, which consists of 15 members responsible for the selection of candidates (12 members are selected by the Ministry of Justice, 3 members are selected from the Judicial Council). The Lord Chancellor, a member of the government, also has the power to appoint judges - he can accept the selected candidate or reject him if the candidate is not suitable for the position of judge. Some senior appointments are made by the King on the advice of the Lord Chancellor or the Prime Minister [5]. It is worth noting that the Lord Chancellor has a great influence on the state of the judiciary in the UK, as he actually combines all three branches of government in his functions. For example, the Lords of the Court of Appeal in the House of Lords are appointed by the Queen on the recommendation of the Prime Minister or with the opinion of the Lord Chancellor [6]. The statutory qualifications for a candidate for the position of Lord Justice of the Court of Appeal in the House of Lords are that the candidate must have at least two years' experience as a judge in one of the higher courts in England and Wales, Scotland or Northern Ireland (higher courts being the

Court of Session in Scotland, the Supreme Court and Court of Appeal in Northern Ireland, and the Supreme Court and Court of Appeal in England);or the candidate must have at least 15 years of Supreme Court qualification (Supreme Court qualification means the right to appear in all proceedings before the Supreme Court of England and Wales, which is structurally composed of the Court of Appeal, the Supreme Court and the Royal Court); be a barrister in Scotland, or a barrister entitled to appear before the Court of Session or the Supreme Court of Justice, or a practising member of the Bar in Northern Ireland [7].

There are three independent judicial appointments commissions in the UK:The Judicial Appointments Commissions of England and Wales, Northern Ireland and Scotland (also known as regional judicial appointments commissions). They operate as permanent statutory bodies responsible for appointments to the higher and lower courts and are composed exclusively of judges, lawyers and lay persons (no political appointments are made). For higher judicial positions, separate temporary appointment commissions are convened - composed according to established statutory criteria and requirements for the vacancy. For example, the procedure for the appointment of Supreme Court judges provides for the establishment of a new five-member selection commission for each separate process of selecting Supreme Court judges. The chair of this commission is always the current President of the Court, the second member is the Deputy President of the Court, and the other positions are held by members of each regional standing commission (selected by the chair of the respective commission). As part of the selection procedure, the selective ad hoc committee is required to consult on the merits of possible candidates for the Supreme Court and to carefully assess whether the candidates have knowledge and experience of the law of each part of the United Kingdom.Once the commission has selected one name for the vacancy, this information is passed to the Lord Chancellor, who must conduct another round of consultation with the same individuals as set out in the law. The Lord Chancellor then has a limited veto power and can reject once the name proposed by the panel (but is then bound by their second choice).This veto power is entirely negative in nature (i.e. it does not allow the Lord Chancellor to point to a preferred candidate) [8].

There is no Council of Judges in Germany. Federal judges in Germany are appointed by the Federal President (Bundespräsident) after being elected. Judges are elected for life by the Judicial Selection Committee (Richterwahlausschuss), which consists of 16 Länder ministers and 16 members elected by the German Parliament (Bundestag). The committee reviews the qualifications of candidates and makes a proposal for appointment. The president (Bundespräsident) formally appoints the judge, but the federal minister is responsible for the decision. In general, the judiciary in Germany is represented by professional judges and judges elected on a voluntary basis. According to the Law on Judges, federal judges in Germany are appointed on a permanent basis, and in Hesse - temporarily. Interestingly, the degree and academic background have an impact on the possibility of being appointed as a judge.

In Germany, at both federal and state level, judicial appointment committees may issue written opinions on the appropriateness of appointing or promoting judicial candidates. These opinions, while not binding, can be important and the recording of detailed reasons can be seen as a positive practice as it provides a fuller understanding of the criteria against which judicial candidates are assessed and allows for greater transparency and justification in judicial appointment decisions.

The German judicial appointment process is not without political influence and has been criticised in the past.Nevertheless, important safeguards are in place to ensure that decisions are based on objective criteria. There are checks and balances in the composition of the Judicial Selection Committee (Land Ministers), and there is effective judicial control over the appointment of judges (appeal procedure). And, perhaps most importantly, Germany has a legal culture that respects the independence of judges [1].

As for the Federal Constitutional Court, its judges are also elected: half of them are elected by the German Parliament (Bundestag) and half by the Federal Council (Bundesrat) [8].

In France, judges are selected on a competitive basis and appointed by the President of the Republic.The Judicial Service Commission (Conseil Supérieur de la Magistrature) makes proposals and advises on candidates for judicial office.The Commission is composed of the President of the Court of Cassation, twelve judges and eight additional members, two of whom are nominated by the President, two by the President of the National Assembly, two by the President of the Senate, one by the Bar Association and one by the Council of State (Conseil d'Etat).The recommendations of this commission on the appointment of lower court judges are binding [9]. All other judges working in commercial tribunals, insurance tribunals, maritime trade tribunals, land lease tribunals and others are not appointed but elected by citizens. A person wishing to become a judge must have a higher legal education, which he or she receives after graduating from a specialised law academy.

Competence in the training of professional judges in France is vested in the National School of Magistracy, which conducts both initial training and in-service training programmes.For example, in order to be appointed as a judge in France, one must graduate from the National School of Magistracy of France and receive a diploma and recommendation.Usually, applicants to this school are graduates of law universities with basic legal education, as well as representatives of certain categories of civil servants [10].

There are countries that provide for the possibility of appointment as a judge only after special training.For example, in Belgium, judges are appointed after completing special judicial training for the position of a judge. They are appointed by the Royal authorities (the King and his ministers) for an indefinite period (mostly until retirement on the basis of a justified request from the High Council of Justice). The Judicial Council has 44 members who are appointed for a four-year term and, typical for Belgium, it is divided into two sections of 22 members each: one French-speaking section and one Dutch-speaking section. Each section has 11 judges or prosecutors and 11 members of the public appointed by the Parliament to the Senate by a two-thirds vote. The creation of the Judicial Council was introduced in 2000, partly due to the politicisation of the appointment process [1].

According to GRECO (Group of Countries Against Corruption) in its assessment report on the judiciary in Belgium, appointments to senior positions in the judiciary are still seen as primarily the result of the ability to create connections and the right contacts, rather than qualifications and merit [11].This demonstrates, among other things, that even in a system where the judicial council is involved in the appointment process, there are no guarantees to exclude political considerations in appointments.

The Netherlands has a programme of training and selection of judges, and an independent commission for the selection of judges. Dutch law provides that judges are appointed for life by royal decree (by the King and the Minister of Justice and Security) upon the prior recommendation of the courts, which are crucial in the appointment process.A candidate for the position of judge must have several years of professional experience, a law degree and Dutch citizenship.A judge is appointed to administer justice in a particular court if such appointment is made on the basis of a recommendation from the relevant court. These conditions are aimed at maximising the objectivity of the appointment system [12].

The Netherlands has a judicial council, but it does not have a decisive role in the appointment process, which allows for political influence.The Judicial Council in the Netherlands does not meet the standards of the European Commission, it is not independent, and its members are not elected by judges [1]. The procedure for the appointment of judges in Croatia is determined by the Constitution and detailed in the Law on Courts (Zakon o sudovima) and the Law on the State Judicial Council (Zakon o Državnom sudbenom vijeću). In Croatia, a person who has graduated from the State School for Judicial Officials (Državna škola za pravosudne dužnosnike) or is already performing judicial duties can be appointed as a judge of a municipal court (općinski sud), commercial court (trgovački sud) or administrative court (upravni sud).Only a person who is a Croatian citizen can be appointed as a

judge.In addition, there is a seniority requirement (e.g., a person who has worked as a court official for at least 10 years can be appointed as a judge of a regional court (županijski sud); for a candidate for the position of a Supreme Court judge, the requirement is 15 years) [14].

The State Judicial Council has the primary responsibility for the appointment of judges. The State Judicial Council has eleven members and is composed of seven judges, two university professors of law and two members of parliament, one of whom is from the opposition. The members of the State Judicial Council are elected for a four-year term, but no more than twice.The members of the State Judicial Council elect a president from among themselves, who presides over its meetings.Importantly, court presidents cannot be elected as members of the State Judicial Council [14].

According to the Constitution and the Law on the State Judicial Council, the State Judicial Council independently decides on the appointment, promotion, transfer, dismissal and disciplinary liability of judges and presidents of courts, except for the President of the Supreme Court of the Republic of Croatia. Such decisions are taken by the State Judicial Council impartially, based on criteria defined by law. In addition, the State Judicial Council is involved in the training of judges and other judicial officers. Interestingly, the State Judicial Council also participates in the training and professional development of judges and judicial employees, approves the Methodology for the evaluation of judges, is responsible for maintaining personal registers of judges, grants permission to perform other services or work during the performance of judicial duties, and performs functions of managing and controlling the property cards of judges [15].

Interestingly, although Article 4 of the Croatian Constitution provides for the principle of separation of powers, it further states that this includes «all forms of mutual co-operation and control in relation to the authorities». This wording does not exclude political influence on the appointment of judges or their promotion.

The experience of Poland, which reformed the process of selection of judges, which resulted in a crisis around the appointment of judges to ordinary courts, administrative courts, military courts and the Supreme Court, is also worthy of attention.According to the Constitution of Poland, judges are appointed at the request of the National Council of Justice (the National Council of Justice has the exclusive competence to request the President to appoint judges). However, after the reforms carried out in 2017, this body actually lost its independence from politicians, which was emphasised by the European Court of Human Rights (ECtHR) in its judgments, indicating that the appointment of Supreme Court judges was made at the request of the politicised National Council of Justice. The law that changed the procedure and rules for the election of members of the National Council of Justice [16] effectively deprived this body of its independence [17]. According to the reforms, the legislature and the executive gained decisive influence on the composition of the National Council of Justice, and thus the ability to directly or indirectly influence the procedure of appointment of judges. Taking this into account, as well as the absence of any appeal procedure that would allow "review and correction" of the violations in the appointment of judges hearing the applicant's case, the ECtHR found a violation of the right to a "court established by law" guaranteed by Article 1 § 6.

However, appointed judges (there are more than 2,000 of them in various courts) administer justice, and the ECtHR has repeatedly pointed out that the participation of illegally appointed judges in individual cases may lead to a violation of a person's right to access to justice.

While in its judgments the ECtHR did not give a specific answer to the question of how to solve the problem of unlawful appointment of judges, the Decision of the Committee of Ministers issued in December 2022 contains clearer guidelines for the implementation of ECtHR judgments.The Committee called on the Polish authorities "to introduce legislation that would guarantee the right of the Polish judiciary to elect judges to the National Council of Justice, thus ensuring its independence.The second issue was the need to regulate the status of all judges appointed under improper procedures at the request of the National Council of

Justice established after March 2018 and the decisions made with their participation" [18]. However, to date, this issue has not been resolved due to the complexity of this issue and, possibly, the ignoring of this problem by the Polish authorities.

In Lithuania, all judges are professional judges and are independent of any influence from other branches of government. The general principles of the judiciary are set out in the Constitution and in the parliamentary act regulating the courts. The courts have self-governing bodies to which they belong: The General Assembly of Judges (Visuotinis teisėjų susirinkimas), the Judicial Council (Teisėjų taryba) and the Court of Honour of Judges (Teisėjų garbės teismas) [19].

The Judicial Council is an executive body of judicial autonomy that ensures the independence of courts and judges and consists of 17 members elected from among judges for a four-year term. The powers of the Judicial Council in relation to the election of judges include providing informed advice to the President of the Republic on the appointment of judges, their promotion, transfer and dismissal; the ability to form an examination commission for candidates for the position of judge and approve the examination programme; approve the procedure for including candidates in the list of vacancies of judges in district courts and the procedure for including candidates in the register of persons seeking promotion to the position of judge; form permanent and temporary commissions and approve their regulations; and [20].

The selection of judges and judicial candidates is carried out in stages through the Office of the President of the Republic, which publishes information on the selection of judges on the website of the National Judicial Administration.After the deadline for compiling the list of persons who intend to participate in the selection process, the National Judicial Administration shall submit to the Office of the President of the Republic the lists of persons who intend to participate in the selection process. Upon receipt of the list of persons intending to participate in the selection process and requests from persons who, in accordance with the provisions of the Law on the Judiciary, may be appointed as judges of the respective court indiscriminately, the Office of the President of the Republic shall have the right to: suspend the selection procedure; apply to the National Judicial Administration and the Selection Commission for Judicial Candidates to organise further selection; announce a new selection. The decision of the meeting of the Competition Commission of Judicial Candidates and the conclusions of the Commission shall be submitted to the President of the Republic. Persons who participated in the selection process and disagree with the conclusion of the Competition Commission for the Selection of Judicial Candidates have the right to file a complaint with the Supreme Court of Lithuania regarding significant procedural violations that could have affected the objective assessment of the applicants involved [21].

Conclusions

The study of the organisation of the selection and appointment of judges in different countries shows that there are different approaches, which are primarily related to the legal traditions of the respective countries.The main problem is to ensure independence and transparency in the procedures for selecting judges not only at the level of law, but also in practice.Perhaps the biggest challenge in the selection of judges in the countries analysed is to ensure that these procedures are independent of political influence.However, there are also countries where direct political influence on the judicial appointment process is enshrined in the constitution.Even in countries that provide for the election of judges by the public or parliament (Switzerland, Germany, Italy), thus democratising the judicial selection procedures, it is not always possible to exclude the presence of political influence. The same applies to cases where a country has a separate body responsible for the process of election or promotion of judges. This may be partly due to the fact that some bodies recommend candidates for appointment as judges, while others (usually the President) make the decision on appointment.

In general, most European countries have established a body independent of other branches of government that plays a key

role in the appointment of judges (however, there are also countries where the decisions of the Council of Judges are advisory).To ensure the independence of this body, it should be composed of judges and representatives of the executive branch, and it is positive that it has a veto power.For countries where democratic institutions are not sufficiently developed to ensure that the system of checks and balances is functioning properly (by ensuring proper oversight), it seems important that such councils have substantial judicial representation.

There is also a tendency in continental law countries to place great emphasis on the professional component and the results of examinations taken by judicial candidates when selecting and appointing judges.In contrast, in Anglo-American countries, considerable attention is paid to the practical experience of judicial candidates.Each of these appointment models has its advantages and disadvantages. For example, when conducting competitive examinations, it is important to pay considerable attention to the candidates' personal qualities and ability to gain practical experience. For this reason, it is important that candidates are thoroughly prepared before the exams, as this will help to assess their ability to perceive and learn. In contrast, when it comes to focusing solely on the practical experience of candidates, the selection panel should be aware of the candidate's experience and consult with them to verify their knowledge.

Clear procedures for the selection and appointment of judges are necessary to prevent the possibility of certain personal recommendations and political pressure.It is important that the criteria for the selection of judges are objective and are reflected in detail in the legislation of the state, where the main principles of judicial selection should be professional and moral qualities, qualifications, merit, experience, efficiency, etc.Therefore, the bodies responsible for the selection of judges should pay special attention to this and rely on practicality rather than the moral authority of judicial councils or similar bodies in different countries.At the same time, fair criteria and methodologies for the selection of judges will encourage public authorities with the competence to appoint judges to behave in a manner consistent with the law.

Issues related to ensuring equal representation of men and women as judges at different levels of courts are also important (in the UK and Austria, for example, this provision is regulated in detail). However, it is important that the candidate's abilities are not overshadowed by the issue of ensuring equal representation of different genders in the judiciary.

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ПОРЯДОК ЗАЙНЯТТЯ ПОСАДИ СУДДІ В ОКРЕМИХ ЗАРУБІЖНИХ КРАЇНАХ

У статті розкрито порядок зайняття посади судді в окремих зарубіжних країнах.

На сьогодні безліч країн постійно вдосконалюють свої судові системи та національне законодавство щодо призначення суддів, тому для правознавців і реформаторів важливо вивчати актуальні підходи та інновації в зарубіжних країнах для удосконалення власної національної судової системи. Дослідження системи призначення суддів у зарубіжних країнах дозволяє з'ясувати і провести порівняльний аналіз, як ці системи впливають на функціонування судових органів і суддівську незалежність, що сприяє виокремленню переваг та недоліків різних підходів та дає змогу використовувати цю інформацію для вдосконалення власної судової системи. Крім того, з трансформацією підходів до здійснення правосуддя, збільшуються ризики і для суддівської незалежності, яка є основою судової системи. Тому вивчення та аналіз системи призначення суддів у різних країнах допомагає виявити найкращі практики та механізми, що забезпечують незалежність суддів та посилюють гарантії судової незалежності. Досліджуючи зміст міжародних стандартів, стає очевидно і те, що порядок зайняття посади суддів безпосередньо впливає на судовий процес та рішення суду, які стосуються громадянських прав і свобод. В у цьому контексті вивчення системи призначення суддів може допомогти захищати права громадян.

Таким чином, доцільність дослідження законодавства і нормативного середовища, що регулює призначення суддів, допомагає зрозуміти правовий контекст різних країн, що може бути корисним для розробки або реформування власної судової системи. Крім того, це може допомогти виявити інновації та кращі практики, які можна впровадити у власну систему задля вдосконалення процесів відбору та призначення суддів. Тому вивчення системи призначення суддів в інших країнах може бути корисним для розширення знань, покращення судової системи та забезпечення суддівської незалежності.

Ключові слова: судова система, правовий статус суддів, кваліфікація, компетентність, підготовка кандидатів на посаду судді, підвищення кваліфікації суддів, міжнародні стандарти судочинства.