

МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ
СУМСЬКИЙ ДЕРЖАВНИЙ УНІВЕРСИТЕТ
НАВЧАЛЬНО-НАУКОВИЙ ІНСТИТУТ ПРАВА

Правові горизонти



Legal horizons

ВИПУСК 26 (39)

Суми – 2021

**SECTION 7
JUDICIARY; LAW ENFORCEMENT AGENCIES;
PROSECUTOR AND LEGAL OFFICE**

**СЕКЦІЯ 7
СУДОУСТРІЙ, ПРОКУРАТУРА Й АДВОКАТУРА**

DOI: <http://www.doi.org/10.21272/legalhorizons.2021.i26.p107>

GENERAL PRINCIPLES OF ORGANIZATION AND ACTIVITY OF JUDGES IN UKRAINE



Гаруст Юрій Віталійович,
*доктор юридичних наук, доцент,
завідувач кафедри адміністративного, господарського права
та фінансово-економічної безпеки,
Навчально-науковий інститут права,
Сумський державний університет*



Миргород-Карпова Валерія Валеріївна,
*кандидат юридичних наук,
викладач кафедри адміністративного, господарського
права та фінансово-економічної безпеки,
Навчально-науковий інститут права,
Сумський державний університет*

In the conditions of active development and improvement of the system of public administration in the world, the role of public service as a defining feature of a democratic and legal state is strengthening. Since the signing of the Association Agreement with the European Union by Ukraine, it has become necessary to introduce and enshrine in national legislation such an institution as a public service. This became a lever that launched the process of reforming the government system in the country and determined the right vector for the development of public service in Ukraine.

Given the current indicators of public confidence in the judiciary, it can be argued that the institution of public service in the judiciary is purely formal, and therefore this issue is relevant and needs to be addressed as soon as possible. In view of this, we believe that the introduction of the new Concept, which will consolidate the legal status of a judge as a public servant of a court of general jurisdiction, will be the beginning of the real functioning of a judge of a court of general jurisdiction on the basis of public administration. The study revealed the general principles of organization and activity of judges of general jurisdiction courts in Ukraine. The legal status of judges is outlined and the key features of such status are identified. The existence of the “judge-public servant” model is substantiated.

The study emphasizes that judges of courts of general jurisdiction directly implement the basic functions of justice, and the level of their legal status depends on the authority of the judiciary and the efficiency of justice in Ukraine. Courts of general jurisdiction are the main link of specialized courts for civil, administrative and criminal cases and are the closest to the population, and therefore, a clear definition of their legal status is now essential. It is suggested that under the public service in the judiciary of Ukraine, first of all, one should see politically neutral, professional activity of a judge in courts, judicial authorities and other state bodies of the justice system and institutions for organizing and ensuring the activities of courts and judges.

Гаруст Ю.В., Миргород-Карпова В.В. Загальні засади організації та діяльності суддів в Україні. В умовах активного розвитку та вдосконалення системи публічного управління у світі посилюється роль публічної служби як визначальної ознаки демократичної та правової держави. З моменту підписання Україною Угоди про асоціацію з Європейським Союзом виникла необхідність впровадження та закріплення в національному законодавстві такої інституції як публічна служба. Це стало важелем, який запусив процес реформування системи управління в державі та визначив правильний вектор розвитку публічної служби в Україні.

Враховуючи нинішні показники довіри населення до судової гілки влади, можна стверджувати, що інститут публічної служби в органах судової системи має суто формальний характер, а тому це питання є актуальним та потребує якнайшвидшого вирішення. З огляду на це, ми вважаємо, що впровадження нової Концепції, яка закріпить правовий статус судді як публічного службовця суду загальної юрисдикції, стане початком реального функціонування професійної діяльності судді суду загальної юрисдикції на засадах публічного управління. В ході дослідження розкрито загальні засади організації і діяльності суддів судів загальної юрисдикції в Україні. Окреслено правовий статус суддів та визначені ключові особливості такого статусу. Обґрунтовано існування моделі «суддя-публічний службовець».

В рамках дослідження акцентовано, що саме судді судів загальної юрисдикції безпосередньо реалізують основні функції правосуддя, і від рівня їхнього правового статусу залежить авторитет судової влади та ефективність здійснення правосуддя в Україні. Суді загальної юрисдикції є основною ланкою спеціалізованих судів із розгляду цивільних, адміністративних і кримінальних справ та є найбільш наближеними до населення, а тому, чітке визначення їх правового статусу наразі є вкрай необхідним. Запропоновано, що під публічною службою в органах судової влади України, в першу чергу, варто вбачати політично-нейтральну, професійну діяльність судді в судах, органах суддівського врядування та інших державних органах системи правосуддя та установах з організації та забезпечення діяльності судів і суддів.

Ключові слова: суддя, судоустрій, правовий статус суддів, публічний службовець.

Since Ukraine's declaration of independence, the legislator has begun the process of modernizing the judicative authority by reforming the judiciary. The main purpose of the political and legal transformations mentioned above is to create an independent judiciary that meets modern international standards of fair justice, and the courts would become real defenders of the rights of citizens for whom the public interest is a fundamental value.

However, the reform process, which has been going on for more than 28 years, is still unfinished, and an analysis of judicial practice shows that the sphere of organization of the judiciary in Ukraine has numerous shortcomings. The ineffectiveness of judicial reform is also indicated by the results of the opinion poll by the Razumkov Centre. In particular, the level of trust in the courts is one of the lowest in society. Thus, 77.7% of respondents reported their distrust of the judiciary as a whole. 69.7% of respondents do not trust the courts of general jurisdiction [1].

Therefore, the legislative improvement of the judicial system and the status of judges of general jurisdiction courts in the context of public service reform in Ukraine is one of the prerequisites for the further development of our country as a legal and democratic state.

Reforming the public service in Ukraine will contribute to the formation of a fundamentally new judicial system. At the same time, the implementation of this policy implies the need to study the legal status of judges of general jurisdiction courts in Ukraine.

It should be noted that the current legislation of Ukraine does not contain a clear definition of the term "legal status of a judge of a general jurisdiction court". Having analysed the regulations containing the definition of "judge of the general court" and the relevant research of scholars, we can conclude that the concepts of judges and the legal status of judges of general jurisdiction courts are radically different. In particular, the legal status of judges of general jurisdiction includes the notion of a judge, but is a more complex and multifaceted legal definition.

The essence and content of the activities of judges of courts of general jurisdiction is determined by a set of relevant legal elements that are part of the structure of their legal status. These include: the legal personality of the judge, his rights and responsibilities, functions, principles, legal liability and guarantees of activity [2].

The legal personality of judges of the general jurisdiction court lies in the ability of individuals to be holders of subjective rights and legal obligations of professional judges. It should be noted that legal

personality is a necessary condition for the full legal status of judges of general jurisdiction courts. The current Law of Ukraine “On the Judiciary and the Status of Judges” provides for certain restrictions on persons who may be judges and, accordingly, acquire the full range of rights and obligations to carry out their professional activities.

In addition, the above mentioned law establishes an exhaustive list of the rights of judges of general jurisdiction courts, which, in our opinion, would be appropriate to divide into three main categories:

- rights that enshrine the special legal status of judges of general jurisdiction courts and are aimed at ensuring its protection. This group of rights is aimed at embodying the legal status of judges, with an indication of its legal protection and increase the scope of its powers;

- rights that help to perform professional functions and duties;

- rights that ensure the exercise by judges of constitutional rights, freedoms and the possibility of enjoying social benefits. This list of rights enshrines certain judicial advantages and guarantees, which indicate a special increased state protection of judges.

The execution of justice tasks performed exclusively by courts is the main function of the judicial system of Ukraine. Judges of general jurisdiction courts should undoubtedly be considered the main link in the legal mechanism for implementing the system of functions of general jurisdiction courts. It is their legal status that focuses on improving the efficiency of general jurisdiction courts of the judiciary as a whole.

When it comes to the principles of judges’ activity, it should be noted that in the context of public service reform in Ukraine, international standards are becoming important, the implementation of which significantly contributes to the European integration process in Ukraine. In particular, the conduct of judges of general jurisdiction courts should be based on the Bangalore Principles of Judicial Conduct, which contain 6 main indicators (principles): independence, objectivity, honesty and purity, ethics, equality, competence and diligence [3]. It is the implementation of the principles mentioned above that aims to increase the level of public confidence in the judiciary in general.

It is important that all judges in Ukraine have the same status, regardless of the place of the court in the system of general jurisdiction courts or the position held by the judge. This means that all judges are equally liable.

At the same time, judges of general jurisdiction courts are endowed with a whole list of specific features that distinguish them from other holders of state power. In particular, the main ones are the

independence of judges, judicial immunity, the immutability of judges, the inviolability of judges, the special nature of disciplinary liability of judges, as well as a number of guarantees of their activities.

By guaranteeing the immunity of judges, the legislator primarily aimed to protect judges from unlawful influence and pressure, thus creating the appropriate conditions for them to make an impartial and objective decision in court cases. However, in practice, guarantees of judicial immunity are increasingly being abused by dishonest judges. Thus, more and more often judges, under the guise of immunity, prevent police officers from properly processing the materials of criminal proceedings, deliberately refuse a personal inspection, inspection of things and vehicles, deliberately evade appearing for a criminal case, and sometimes even carry out malicious disobedience and active resistance to law enforcement officers.

Thus, having analysed the essence of the legal status of judges of general jurisdiction courts, we can conclude that judges of general jurisdiction courts directly implement the basic functions of justice, and the authority and efficiency of justice in Ukraine depends on the level of their legal status.

The general jurisdiction courts are the main link of specialized courts for civil, administrative and criminal cases and are the closest to the population, and therefore, a clear definition of their legal status is now essential.

The formation of Ukraine as a legal, democratic state, for which the rights and freedoms of citizens are the highest social value, is impossible without the creation of an independent, objective, honest and authoritative judiciary. Achieving these goals is possible not only by improving the general principles of the judiciary in Ukraine, but also by implementing a comprehensive reform of the public service. An effective system of public service, which would meet the national standards of developed European countries, is one of the main conditions for the functioning of independent and highly authoritative judges of general jurisdiction courts.

Public service in the judiciary of Ukraine, first of all, should be seen as politically neutral, professional activity of judges in courts, judicial authorities and other state bodies of the judiciary and institutions for the organization and maintenance of courts and judges [4].

The taking of the oath by a judge of a court of general jurisdiction is the beginning of his / her public service, which continues until he / she is dismissed from the post of judge by the body that elected or appointed him / her.

In Art. 3 of the Law of Ukraine “On Civil Service” dated 10.12.2015 № 889-VIII the legislator emphasizes

that "... the effect of this law does not apply to judges..." [5].

Thus, the Law mentioned above does not in fact refer to the positions of judges of general jurisdiction courts to either political or civil servants.

Instead, Art. 2 of the Law of Ukraine "On the Judiciary and the Status of Judges" dated 02.06.2016 № 1402-VIII enshrines the provision that judges are officials of the judiciary [6]. However, taking into account the nature of changes that have taken place in the modern social, political and economic life of our country, given the adoption of the Law of Ukraine "On Judiciary and the Status of Judges", we can state the urgent need to legislate the status of judges of general jurisdiction courts as a fundamentally separate and distinct type of public service.

The list of functions of judges of general jurisdiction courts does not include any functions of a political nature. Their main responsibility is to resolve the issue of law through the administration of impartial and fair justice. Judges carry out their activities independently, subject only to the requirements of the Constitution of Ukraine and guided by current legislation and personal legal awareness.

Although judges of general jurisdiction courts hold public office, they do not and cannot have the status of civil servants.

According to its legal definition, the activity of civil servants presupposes the possibility of certain hierarchical connections, accountability, dependence and controllability. The implementation of the functions of justice directly by the civil service would be contrary to the generally accepted constitutional principles of the organization of independent local judicial bodies of general jurisdiction. According to its lexical meaning and interpretation, justice cannot be subordinated to anything or anyone, except for the task of protecting the legal rights, freedoms and interests of individuals and legal entities. However, judges of general jurisdiction courts are part of the public service system of Ukraine and are therefore public servants.

Strategic issues of improving the professionalism, efficiency of judges of general jurisdiction courts and restoring the confidence of citizens are defined by the Ukraine Judiciary Strategy 2015-2020 [7].

In the process of achieving the goals mentioned above, we must not forget about the general specifics of the professional activities of public servants. Therefore, it is necessary to pay special attention to the moral foundations of judges of general jurisdiction courts. One of the main regulators that determines the direct actions and specific behaviour of a person is his

/ her individual moral orientation. It is this circumstance that determines the objective need to take into account the moral factor, along with the professionalism of a judge of a general jurisdiction court.

Honesty, adherence to principle, service to public duty and other moral qualities are one of the main values for judges of general jurisdiction courts in the performance of their professional duties as public servants, as the activities of the judiciary should be focused on the implementation of basic principles of the Constitution of Ukraine and other normative legal acts.

Morality or immorality of general jurisdiction courts judges's actions should be assessed not only by the final results of their activities, but also, and in particular, taking into account the level of their objective attitude to assessing the legality of certain actions during the preparation of specific draft decisions. Thus, the personal requirements for judges of general jurisdiction courts as public servants, which play a particularly important role, include: fairness, honesty, objectivity, impartiality, decency, attentiveness to the performance of their professional duties, a high level of demanding of others and personal standards, critical thinking, perseverance and patience in achieving the goal, etc.

The activity of judges of general jurisdiction courts as public servants is characterized by the following features: judges of general jurisdiction courts hold public positions in state judicial authorities, without belonging to the category of political or civil servants; special procedure for appointment and passing of judicial service; judges of courts of general jurisdiction in their activities are independent and subject only to the law; labor remuneration of judges of general jurisdiction courts is carried out at the expense of the state budget [8].

Thus, having analysed the peculiarities of the service of judges of general jurisdiction courts in the judicial system of Ukraine, in order to form a fundamentally new organization of their activities as public service entities, it is necessary to emphasize a number of circumstances and current trends, in particular: strengthening the vertical of state power, including ensuring an appropriate combination of centralization and decentralization; consistent adherence to the principles of the rule of law. When managing the development of public service in courts of general jurisdiction, it is also necessary to take into account the specifics of the tasks of the judiciary in general.

Література:

1. Razumkov Center. Attitudes of Ukrainian citizens to the judicial system. URL:<http://razumkov.org.ua/napriamky/sotsiologichnidoslidzhennia/stavlennia-gromadian-ukrainy-do-sudovoi-systemy>.
2. Fedorenko V.L. Constitutional and legal status of judges of general jurisdiction courts. Law Review of Kyiv University of Law. 2005. № 3. P. 63-69.
3. On the Judiciary and the Status of Judges: Law of Ukraine dated 02.06.2016. № 1402-VIII. URL:<https://zakon.rada.gov.ua/laws/show/1402-19>.
4. Bangalore Principles of Judicial Conduct dated 19.05.2006. № 995_j67. URL:https://zakon.rada.gov.ua/laws/show/995_j67.
5. On Civil Service: Law of Ukraine dated 10.12.2015. № 889-VIII. URL:<https://zakon.rada.gov.ua/laws/show/889-19>.
6. On the Strategy for Reforming the Judiciary and Related Legal Institutions 2015-2020: Decree of the President of Ukraine dated 20.05.2015. № 276/2015. URL:<https://zakon.rada.gov.ua/laws/show/276/2015>.
7. Syniavyna M. Public administration and public service as a result of democratization of public administration. URL: http://nbuv.gov.ua/UJRN/spa_2014_1_21.
8. Honcharuk N. T. Modernization of the civil service of Ukraine at the present stage of development. Law and public administration. Zaporizhzhia : Classic Private University, 2017. № 4, Part 2. 191-198 p.