THE CONCEPT OF STAFFING COURTS IN UKRAINE

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Abstract. The article is devoted to the formulation of the general definition of government authority and officials whose activities are aimed at staffing the courts, on this basis, proposals are given to improve the current administrative legislation. The research was performed using a systematic approach to staffing activities, taking into account the subject-object relationships that occur in the implementation of relevant activities. The characteristics of the objects of managerial influence as means of clarifying the competence of courts staffing subjects through the disclosure of their activity’s tasks. The essence and significance of the relevant connections in the implementation of courts staffing have been studied. Based on the peculiarities of the administrative and legal regulation of the staffing of the judiciary in connection with the characteristics of the subject of public administration, the general and specific features of a subject of courts staffing are identified. The specific features of these entities, due to the peculiarities of the judiciary as a sphere of their activities, include: staffing of courts, as a rule, is not the main direction of their activities (except for the HCJC of Ukraine and the National School of Judges of Ukraine); staffing of the court is carried out mainly by entities that are not included in the staff list of a particular court, and therefore has an external nature to the court (GRP, HCJC of Ukraine, President of Ukraine, SJA of Ukraine, National School of Judges of Ukraine, judicial self-government and others authorized entities); mostly collegial principles of decision-making. The definition of a subject of courts staffing is an authorized body of state power or its official, whose activities are aimed at ensuring the proper professional level of court officials, ensuring the ability of courts to effectively perform their tasks. The expediency of consideration of a subject of courts staffing in the narrow and broad senses is substantiated. It is pointed out that the current wording of item 6.2 of the Regulations on the procedure for election to and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of judicial chambers of the Court of Appeal of 12.10.2001 is inconsistent with the current norms of Part 4 of Art. 20 of the Law of Ukraine “On the Judiciary and the Status of Judges” of 02.06.2016 № 1402-VIII, in connection with which proposals for amendments to the said Law.

Keywords: court, judiciary, staffing, subject of law, authority, professionalism.

INTRODUCTION

The characteristic of subjects of courts staffing involves taking into account the systemic nature of the activities of staffing. The substantive aspect of the system involves the characteristic of its elements, such as purpose, elements, and relationships between them (Kagan, 2006). The administrative nature of the activities related to courts staffing means the presence of managerial influence in its implementation. In such circumstances, it is
necessary to take into account the subject-object relationships that occur in carrying out the relevant activities. The characteristics of the objects of managerial influence will clarify the competence of the subjects of personnel support of the courts, as it will reveal the tasks of their activities. In addition, it is necessary to identify the nature and significance of the relevant links in the implementation of courts staffing, the identify of specific subjects of such activities, and describe of the forms of decisions they make.

Some issues of administrative and legal principles of staffing the functioning of courts have recently received direct coverage in the works of such scientists as: O. M. Lagnyuk, (2014); V. S. Dekalenko, (2017); O. V. Ulyanovskayaa, (2019); A. V. Shevchenko, (2020) and some others. At the same time, the relevant works in such spheres as the activity of public administration authority (Evdokimov, 2020), the activity of local self-government authority (Kirichenko, 2019) are subject to consideration, (2019)) and some others. Some of the results of these works, despite their different sectoral focus, are generic concerning this study.

The object of the study is administrative legal relations that arise in connection with the staffing of the courts. The subject of the research is the concept of a subject of courts staffing. The purpose of the article is to provide the concept of a subject of courts staffing, on this basis to formulate proposals for improving the current administrative legislation.

**MATERIALS AND METHODS**

The normative-legal acts in the sphere of the judicial system concerning the personnel support of the activity of courts are analyzed, the practice of their application is studied. The research was performed with a combination of general and special legal methods of scientific knowledge, taking into account the general criteria of scientific objectivity. The research strategy was determined with the help of the system method. Using the formal-logical method, the characteristics of a subject of courts staffing are determined. Using the method of synthesis in combination with the formal-logical method, the concept of the subject of personnel support of courts is formulated. With the help of the formal-dogmatic method, proposals for changes to the current administrative legislation have been formulated. With the help of the dialectical method in combination with the system method, the directions of further scientific research are substantiated.

**RESULTS AND DISCUSSION**

Administrative activities related to courts staffing involve the impact on a significant number of facilities. So, revealing the essence of courts staffing of general jurisdiction as an administrative and legal category, O. M. Lagniuk defines the following goals of such support: staffing of courts with appropriate professional level, which includes their selection, appointment, training, education, dismissal, and other staffing of courts of general jurisdiction (Lagniuk, 2015). Due to the definition of V. S. Dekalenko, who explores the problems of administrative and legal support for the formation of human resources for the courts of Ukraine, the purpose of staffing the courts of Ukraine is to ensure the functioning of courts (Dekalenko, 2017). A. V. Shevchenko, in the context of the study of personnel procedures in personnel work in the judicial system of Ukraine, points to such objects of
management decisions as appointment, certification, the establishment of qualification classes, dismissal (Shevchenko, 2020). O. V. Ulyanovskaya, in the context of the study of administrative and legal principles of the right to judicial protection, identifies the following objects of administrative relations that arise in the implementation of courts staffing: forecasting and planning, recruitment, training, training, career development, and others (Ulyanovskaya, 2019). M. G. Melnyk, researching the category of courts staffing, connects it primarily with ensuring the proper professional level of judges and other court officials (Melnyk, 2011). Summing up, we note that despite the differences in the issues addressed, the only priority is to ensure courts staffing: ensuring the proper professional level of court staff and the ability of courts to perform their functions. This correlates with scientific achievements in other areas of public administration.

That is, P. V. Evdokimov, based on the results of the study of the essence of administrative and legal staffing regulation in public administration, concludes on such priorities of staffing as ensuring the appropriate professional level of staff, ensuring their motivation to work effectively, effective use of their potential, ensuring their professional and social development and protection (Evdokimov, 2020). Thus, the goals of staffing the activities of public authorities are unitary: to ensure the proper professional level of employees and to ensure the ability to perform their functions effectively. To summarize this, a significant number of areas of personnel activities are implemented, which necessitates the further development of the systematization of the subjects of personnel support of the courts according to the criteria of the implemented areas of staffing.

Thus, an integral element of the system of courts staffing is the subject of staffing.

The science of public administration there are distinguished the characteristics of a subject of management as a subsystem that has a managerial nature: is a government authority or other separate organization; acts based on state powers; make management decisions as a way to exercise managerial or regulatory influence on the objects of management (Nagaev, 2018). The administrative legal personality of a subject of administrative law determines the performance of its functions of public administration, coordination of administrative and supervisory powers in the field of public administration. Such functions can be clarified taking into account the characteristics of public service: the activities of officials; these persons hold positions in public authorities; the focus of such activities on the performance of state or local government functions; these persons receive wages exclusively from the state or local budget, respectively (Bityak, 2020).

In the modern doctrine of administrative law, the position of O. L. Sokolenko on the following features of the subject of power as one of the types of subjects of administrative law: the exercise of power management functions and delegated management powers; the specified functions and powers are carried out with strict observance of requirements of legality; the main purpose of their implementation is to fulfill the main tasks of the state and ensure the rule of law (Sokolenko, 2020). The subject of staffing of a public authority is considered in the legal literature based on subject-object interaction of the management and control system. So, P. V. Evdokimov, exploring the essence of the subject of staffing of public administration authority, proceeds from the presence of such a subject defining feature: the presence of competence and power, which through the will of the subject of management...
are embodied in statutory forms of management decisions. The scientist identifies other distinctive features of the subject of management: the presence of structurally defined governing authority; purposeful nature of the impact on the object of management; is an element of the management system; the presence of state-authoritative competence; forms of decisions are management teams or other binding decisions; specific direction of leadership (Evdokimov, 2020). V. V. Tereshchuk, examining the characteristics of a subject of public administration, identifies the following features: is a subject of administrative law; the exclusive field of activity is administrative and legal relations; are created in the order provided by the current legislation; is part of a broader system of public administration; availability of managerial, intervening, providing functions, as well as assistance functions; the legal regime of activity is defined by part 2 of Art. 19 of the Constitution of Ukraine; the public goal of activity (Tereshchuk, 2020). V. V. Dokalenko, elaborating on the essence of civil society institutions as objects of government, points to the prospects of the interaction of these institutions with public authorities based on partnership, where the public authority should retain, mainly, control over the legality of civil society institutions. The researcher comes to this conclusion not only based on current provisions on the interaction of civil society institutions and authorities but also models of this interaction: paternalistic, liberal, participatory (Dokalenko, 2020).

Taking into account the results of generalization of the outlined scientific approaches provides an opportunity to form a systematic view of the characteristics of the subject of power in the modern doctrine of administrative law, as well as through comparative research to identify and characterize specific features of personnel in a specific area – the judiciary.

Staffing of public administration authority is carried out on a professional basis (Evdokimov, 2020). At the same time, staffing of courts is usually not the main activity of public authorities in the judiciary. For example, among the tasks of the GRP in the first place is to ensure the independence of the judiciary, and the formation of a virtuous and highly professional corps of judges is determined in one of the last places (Part 1 of Article 1 of the Law of Ukraine “On the High Council of Justice» of 21.12.2016 № 1798-VIII (hereinafter – the Law “On the High Council of Justice”) (On the High Council of Justice, 2016)). The exception is the HCJC of Ukraine, the vast majority of whose powers are directly related to the staffing of courts (Part 1 of Article 93 of the Law of Ukraine “On Judiciary and Status of Judges” of 02.06.2016 № 1402-VIII (hereinafter – the Law “On Judiciary and Status judges”) (On the Judiciary and the Status of Judges, 2016)). Training of highly qualified personnel for the justice system is defined as the main (but not the only) task of the National School of Judges of Ukraine (Part 1 of Article 104 of the Law “On the Judiciary and the Status of Judges”). Other personnel of the courts, which belong to the judiciary, provide such support, along with other areas of their activities. For example, such are the meeting of judges (Part 5 of Article 128 of the Law “On the Judiciary and the Status of Judges”), the chairman of the local court (Part 1 of Article 24 of this Law), etc. This way of organizing courts staffing is due to the current state of development of the judicial system. However, it is necessary to agree with the provisions set out in the Strategy for the Development of the Justice and Constitutional Judiciary for 2021–2023 regarding functional imperfections of authorized entities in the field of the judiciary, including judicial self-government and judicial governance; excessive complexity
of procedures for filling the position of a judge (competition to fill a vacant position of a judge, the procedure for passing the qualifying exam); insufficient effectiveness of procedures for bringing judges to disciplinary responsibility, etc. (Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023, 2021). The above creates a basis for further reform of administrative procedures for staffing the courts.

The most common subject of personnel work in public authorities, enterprises, institutions, organizations are their relevant structural units, in particular the personnel service, which tasks include: the formation of facilities and management structures; calculation of staffing needs, both current and future (Bandurka, 2020). Instead, the subjects of courts staffing are external to the court. Thus, the subjects of court staffing as persons administering justice are the HCJC of Ukraine, the GRP, the President of Ukraine. The subjects of appointment and dismissal of the head of the court staff and his deputy are the relevant officials of the SJA of Ukraine (its territorial offices). The outlined specifics of the organization of courts staffing are well-established, have proven their effectiveness in the practical context, and are not disputed in the documents on reforming the organization of the judiciary, especially in the Strategy for Justice and Constitutional Justice for 2021–2023. At the same time, this specificity actualizes the review of individual scientific achievements.

So, O. V. Ulyanovskaya, characterizing the civil service relations in the field of justice, points to their internal organizational nature as those aimed at implementing the tasks and functions of the state (in particular, the administration of justice) and related to the status of (public) civil servants, including a number of judges. Thus, the scientist proceeds from available scientific developments in the field of administrative law (Ulyanovskaya, 2019). While positively assessing the soundness and logic of the scientific analysis carried out by the scientist, it is necessary to point out the external nature of the activities of courts staffing subjects. Therefore, the internal organizational nature of civil service relations should be stated, first of all, within the judiciary. In the context of a specific subject of public authority, it is important to consider these relations as external.

The collegial nature of decision-making is quite common among courts staffing subjects. This applies, first of all, to the authority of judicial self-government (Shevchenko, 2020), (Yashchenko, 2020). However, following Part 1 of Art. 1, art. 18 of the Law “On the High Council of Justice” GRP is also a collegial authority. The only condition for the GRP’s authority is the election (appointment) of at least fifteen members and their swearing-in. Following Part 1 of Art. 92, part 1 of Art. 101 of the Law “On the Judiciary and the Status of Judges” High Qualification Committee of Ukraine is a collegial authority, whose decisions are taken exclusively collegially. The exclusively collegial nature of decision-making by this authority is due to the specifics of the judiciary and the need to ensure the representation of the interests of judges in their work, as rightly pointed out by I. Ye. Marochkin, citing international standards of personnel activities for the service of judges (Moskvich et al., 2013).

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The staffing of the judiciary is carried out exclusively by the subjects provided by law: authorized public authorities or their officials. Their activities are aimed at providing the judiciary with professional staff to ensure that the judiciary fulfills its tasks. In this case, following paragraph 1 of Part 2 of Art. According to the Law on the Judiciary and the Status of Judges, budget funding for the judiciary should ensure full and independent administration of justice following the law.

Taking into account the above features of the administrative and legal regulation of the staffing of the judiciary in conjunction with the characteristics of the subject of public administration allows you to identify general and specific features of the subject of staffing of the courts.

The general characteristics of the subjects of staffing of the courts include: is a authority of state power or an official of such a authority; activities aimed solely at performing state functions; financing of the activities of these entities is carried out exclusively from the state budget.
Specific features of courts staffing subjects reflect the specifics of these entities, due to the peculiarities of the organization of the judiciary as their sphere of activity: staffing of courts, as a rule, is not the main direction of their activities (except High Qualification Committee of Ukraine and National School of Judges); staffing of the court is carried out mainly by entities that are not included in the staff list of a particular court, and therefore has an external nature to the court (GRP, HCJC of Ukraine, President of Ukraine, SJA of Ukraine, National School of Judges of Ukraine, judicial self-government and other authorized entities); mostly collegial principles of decision-making. The study of administrative and legal regulation of powers for appointment to and dismissal from administrative positions draws attention to some of its shortcomings.

Thus, according to the current legislation, the Council of Judges of Ukraine is the subject of resolving the issue of dismissal of judges from administrative positions in the courts of appeal. In particular, following paragraph 6.2 of the Regulations on the procedure for election to and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of judicial chambers of the Court of Appeal of 12.10.2001 (Regulations on the procedure for election and dismissal of the chairman, first Deputy, Deputy Chairmen and Chairmen of the Judicial Chambers of the Court of Appeal, 2001) The Council of Judges of Ukraine considers and decides on the termination of the powers of the Chairperson and his deputies in the Court of Appeal. It is necessary to agree with the position of the GRP, expressed in its Advisory Opinion on Bill № 5778, that the only subject of termination of powers of persons holding administrative positions of the chairman of the court and his deputy may be the meeting of judges of the court. After all, such positions are elective, and the resolution of relevant issues belongs to the competence of these meetings. The only subject of early dismissal from an administrative position is the appointing entity (On providing an advisory opinion on the draft law No. 5778, 2021), (On limiting the influence of judges holding administrative positions, 2021), which is a meeting of judges of the relevant court, not Council of Judges of Ukraine.

The administrative nature of the administrative position involves the implementation of administrative, organizational functions. Despite the provision on the independence of judges in the conduct of their procedural activities, judicial administration is necessary to ensure the effective administration of justice (Dudchenko, 2020). Therefore, the concentration of powers to terminate the powers of persons holding administrative positions in the court in the competence of a public entity other than the appointing entity will create a basis for outside influence on the chairman of the court and his deputy. The need to ensure the unity of the system of guarantees for the activities of persons holding administrative positions follows from the provisions formulated by A. V. Shevchenko, which refers to these persons as civil servants (Shevchenko, 2020).

The disadvantage of this regulation is that it does not correspond to the current version of Part 4 of Art. 20 of the Law “On the Judiciary and the Status of Judges”, according to which the initiative group to resolve the issue of dismissal of the chairman of the court and his deputy must include at least one-third of judges. And not two-thirds of judges, as defined in paragraph 6.2 of this Regulation.
CONCLUSIONS

The subject of courts staffing is the authorized body of state power or its official, whose activities are aimed at ensuring the proper professional level of court officials, ensuring the ability of courts to perform their tasks effectively. The subjects of courts staffing should be considered in a narrow and broad sense. In a narrow sense, they are the subjects of court staffing in its administrative and legal context (staffing of courts, appointments, and dismissals). In a broad sense, they are the subjects of all areas of staffing of the courts, including staffing needs, staffing, motivation of employees, support of their service, and others.

To bring the content of paragraph 6.2 of the Regulations on the procedure for election and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of the judicial chambers of the Court of Appeal following competence of judicial self-government (assembly of judges of the Court of Appeal content of Part 4 of Art. 20 of the Law “On the Judiciary and the Status of Judges” should be amended to read as follows: and chairmen of the courts of appeal.

Identifying the nature and importance of relevant links in the implementation of courts staffing, the selection of specific subjects of such activities, describing decisions forms they make is the prospect of further research.

REFERENCES


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