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THE PROCEDURE FOR THE SELECTION OF JUDGES OF CONSTITUTIONAL JURISDICTION IN UKRAINE AND ROMANIA: COMPARATIVE LEGAL ANALYSIS

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Shcherbaniuk O.V., Bzova L.G. Procedure for the selection of judges of constitutional jurisdiction in Ukraine and Romania: comparative legal analysis.

It is indicated that over time, the institution of bodies of constitutional jurisdiction has gained increasing importance and spread. This has occurred as a result of the evolution from the concept of a legal state to the model of a constitutional state of law, where the Constitution has been established as the highest legal norm of the state system.

The selection of judges of the Constitutional Court is a process governed by strict requirements and is a key element in maintaining our democracy and respect for the Constitution. The process of selecting judges to the Constitutional Court should be based on the principles of transparency, independence, and objectivity as pillars that equip judges with the integrity and commitment necessary to protect democratic values and fundamental rights. In establishing a constitutional court, it is important to reconcile and balance two potentially opposing needs, namely, the independence of the constitutional body from interference by state authorities and the professional standards and integrity of the constitutional judges.

The Constitutional Court plays a fundamental role in protecting the rights of citizens and overseeing the legality of legal acts. The importance of this body has led to the election of its members becoming a matter of public interest, emphasizing transparency and the suitability of candidates.

Evaluating candidates for the Constitutional Court is notable for its thoroughness and rigour. The selection stages include a professional career review, experience assessment, personal interview, and ethics assessment. This multidimensional approach aims to ensure that those holding these positions are trained, ethical individuals committed to the defence of constitutional principles. This emphasis on competence and experience is essential to ensure that those who hold these positions have the ability and knowledge necessary to interpret and apply the Constitution impartially and effectively.

However, the process is not without criticism. Some sectors argue that there are still gaps in transparency. The need to strengthen the evaluation mechanisms to ensure the integrity of those occupying such transcendent positions was also highlighted.

Key words: judge, constitutional guarantees, competitive procedure, constitutional courts.

Щербанюк О.В., Бзова Л.Г. Процедура добору суддів органів конституційної юрисдикції в Україні та Румунії: порівняльно-правовий аналіз.

Вказується, протягом часу інститут органів конституційної юрисдикції здобував все більшого значення та поширення. Це відбулося внаслідок еволюції від концепції правової держави до моделі конституційної держави права, де Конституція утвердилася як найвища правова норма державного устрою.

Процедура добору суддів Конституційного Суду – це процес, який регулюється жорсткими вимогами, він є ключовим елементом у підтримці нашої демократії та поваги до Конституції. Процес відбору суддів Конституційного Суду має ґрунтуватися на принципах прозорості, незалежності та об'єктивності як стовпів, що складаються з суддів, які мають чесність та відданість, необхідні для захисту демократичних цінностей та основних прав. При формуванні конституційного суду важливо узгодити та збалансувати дві потенційно протилежні потреби, а саме: незалежність органу конституційної юрисдикції від втручання органів державної влади та забезпечити професійні стандарти й доброчесність судді органів конституційної юрисдикції.

Конституційний Суд відіграє основоположну роль у захисті прав громадян і нагляді за законністю нормативно-правових актів. Важливість цього органу призвела до того, що обрання його членів стало питанням суспільного інтересу, з акцентом на прозорість та придатність кандидатів.

Процес оцінювання кандидатів до Конституційного Суду відзначається скрупульозністю та строгістю. Етапи відбору включають огляд професійної кар'єри, оцінку досвіду, особисту співбесіду та оцінку етики. Цей багатовимірний підхід спрямований на забезпечення того, щоб ті, хто обіймає ці посади, були підготовленими, етичними особами, відданими захисту конституційних принципів. Цей акцент на компетентності та досвіді має важливе значення для забезпечення того, щоб ті, хто обіймає ці посади, мали здатність та знання, необхідні для неупередженого та ефективного тлумачення та застосування Конституції.

Однак процес не обходиться без критики. Деякі сектори стверджують, що все ще існують прогалини в прозорості. Також було наголошено на необхідності посилення механізмів оцінювання для гарантування доброчесності тих, хто займатиме такі трансцендентні посади.

Ключові слова: суддя, конституційні гарантії, конкурсна процедура, конституційні суди.

Urgency of the problem. Over the years, the figure of bodies of constitutional jurisdiction has gained more and more popularity. This happened in connection with the transition from the legal state of Law to the constitutional state of Law, where the figure of the Constitution took the position of the supreme norm of the state. In the current context, we are in a constitutional legal state with two fundamental features, the first of which is what has been said above and refers to the figure of the Constitution and its supremacy. Another fundamental feature that is the subject of research in this article is the presence of an autonomous body that is the guarantor of the Constitution, i.e., the Constitutional Court.

The article aims to study the procedure for selecting judges of constitutional jurisdiction in Ukraine and Romania.

Degree of scientific research. The issue of the selection of judges of the Constitutional Court of Ukraine was covered in the monitoring report on the results of the competitive selection for the position of judge of the Constitutional Court of Ukraine under the new procedure as of November 28, 2024. The competitive procedure for selecting judges by the legislation of Romania was covered in the works of the following scientists: Zegrian A., Toader T., in the work «The Constitutional Court of Romania».

Summary of the primary materials of the study. Reforming the procedure for appointing judges of the Constitutional Court of Ukraine is necessary not only to bring the Ukrainian model in line with the rules and practices of European systems for the selection of judges of constitutional or supreme courts, in particular Germany, Lithuania, Spain, the United States, or Estonia. This is because the judges of the Constitutional Court of Ukraine face a significant, unique task of «protecting the Constitution of Ukraine» in the face of possible encroachments by various authorities, including the legislature. Constitutional «justice» cannot be improvised, and the apparent incompetence of judges can be reflected

in the decisions of the body of constitutional jurisdiction, which must be based on solid argumentation and a standard position of the Court within the time limits determined by the Law and the rules of procedure [4].

By Article 101 of the Law of Ukraine «On the Constitutional Court of Ukraine», the selection of candidates for the position of judge of the Constitutional Court is carried out on a competitive basis in the manner established by this Law [5].

The selection of candidates for the position of judge of the Constitutional Court on a competitive basis for persons appointed by the President of Ukraine is carried out by a competition commission created by the President of Ukraine [5].

The composition of the competition commission formed by the President of Ukraine is formed from among lawyers with a recognized level of competence who do not participate in the competitive selection for the position of judge of the Constitutional Court [5].

The President of Ukraine approves the regulations on the competitive selection of candidates for the position of judge of the Constitutional Court regarding persons appointed by the President of Ukraine [5].

The preparation of the issue of consideration on a competitive basis of candidates for the position of a judge of the Constitutional Court in the Verkhovna Rada of Ukraine is carried out by the Committee, which is responsible for the issues of the legal status of the Constitutional Court of Ukraine (hereinafter referred to as the Committee), in the manner determined by the Rules of Procedure of the Verkhovna Rada of Ukraine, taking into account the provisions of this Law [5].

The Council of Judges of Ukraine prepares the issue of consideration of candidates for the position of a judge of the Constitutional Court on a competitive basis by the Congress of Judges of Ukraine [5].

During the competitive selection, it is not allowed to participate and be involved in any form, citizens of the state recognized by Law as an occupying state and/or an aggressor state about Ukraine, as well as public associations founded by such persons [5].

During the competitive selection, the competition commission, the Committee, and the Council of Judges of Ukraine comply with the requirements determined by the Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men»[5].

The duration of the tender procedures varies. The process of studying and analyzing the candidates' documents and conducting interviews with them should be no more than 4 months from the date of receipt by the Advisory Group from the Commission, the Committee, and the Council of Judges of all documents submitted by candidates for the position of judge of the Constitutional Court of Ukraine. After the interviews, the assessment of candidates according to the relevant criterion should be carried out within 15 days. On the other hand, the Law also allocates 15 days from the date of adoption of the decision by the Advisory Group on the previous criterion to assess the level of competence in the field of Law. The Law does not determine how long after all competitive procedures have been carried out by the Advisory Group to form a general list of evaluated candidates and carry out their rating voting [2].

Analyzing the competitive procedures of the subjects of selection, there is a tendency to reduce the number of persons who intend to take part in the competitive selection for the position of judge of the Constitutional Court of Ukraine.

The Constitution of Romania devotes a separate title to the Constitutional Court (Chapter V – Articles 142–147, in their revised form), which includes provisions concerning: the role of the Court, its structure, the term of office of its members, the ways of appointing judges and electing the President of the Court, the conditions for holding the office of judge, incompatibility, independence and security of possession, the jurisdiction of the Court and the consequences of the decisions it takes. Based on constitutional reference texts, on May 18, 1992, the Parliament adopted Law No. 47/1992 on the organization and functioning of the Constitutional Court [6].

Thus, the Constitutional Court of Romania consists of nine judges appointed for a nine-year term, which cannot be extended. Three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania. According to Article 143 of the Constitution, the following conditions must be met for appointment as a member of the Constitutional Court: higher legal education, high professional competence, and eighteen years of experience in legal activity or higher legal education. The Constitution, as well as the Law on the Organization and Functioning of the Constitutional Court, establishes important principles and guarantees of the independence and neutrality of the judges of the Court in order for them to be able to implement the judgments objectively. The Court itself is, according

to Law No. 47/1992, «independent of any other public authority» and is subject only to the Constitution and the provisions of the Law on its organization and to the provisions of the Law on its organization and to its functioning.

The jurisdiction of the Constitutional Court is established by the provisions of the Constitution (Art. 146) and Law No. 47/1992. Thus, the Constitutional Court verifies the constitutionality of organic or customary laws – before their promulgation (Article 146 (a), first part of the sentence) or after they enter into force (Article 146 (d)) – treaties or other international agreements – before their ratification by Parliament (Article 146 (b) of the Constitution and Article 24 of Law No. 47/1992) or after their ratification (Article 146 (d) in conjunction with Article 147 (3) of the Constitution and Article 26 (3) of Law No. 47/1992) –, Rules of Procedure of Parliament (Article 146 (c)), as well as government orders (Article 146 (d)). About the procedure for amending the Constitution (including constitutional laws), the Constitutional Court issues ex officio decisions on initiatives to amend the Constitution (Article 146 (a), second part of the sentence), as well as on constitutional laws after they have been adopted by Parliament (Article 146 (l) of the Constitution in conjunction with Article 23 of Law No. 47/1992). In addition to the powers to review the constitutionality of the above-mentioned acts, the Constitutional Court of Romania issues decisions on legal conflicts of a constitutional nature between public authorities (Article 146(e)); ensures compliance with the procedure for the election of the President of Romania and confirms the results of the vote (Art. 146 (f)); establishes the existence of circumstances justifying the provisional performance of the duties of the President of Romania and communicates its findings to the Parliament and the Government (Article 146 (g)); provides advisory opinions on the proposal to remove the President of Romania from office (Article 146 (h)); ensures compliance with the procedure for organizing and conducting the referendum and confirms its results (Article 146 (i)); checks whether the conditions for the implementation of legislative initiative by citizens are met (Art. 146 (j)); resolves disputes concerning the constitutionality of a political party (Article 146 (k)); ensures the review of the constitutionality of resolutions of the Plenary Assembly of the Chamber of Deputies, resolutions of the Plenary Assembly of the Senate and resolutions of the Plenary Assembly of both Houses of Parliament together (Article 146 (l) of the Constitution in conjunction with Article 27 of Law No. 47/1992).

Parliamentary groups, deputies, and senators can submit nominations to the Legal Committee. Each candidate submits a «curriculum vitae» and documents proving that they meet the conditions stipulated in the Constitution. The commission will hear nominations.

The report of the Legal Committee will concern, in a reasoned manner, all candidates, by Law No. 47/1992 on the organization and functioning of the Constitutional Court (art. 5).

Judges of the Constitutional Court must have higher legal training, high professional competence, and at least 18 years of legal experience or higher legal education.

The position of a judge of the Constitutional Court is incompatible with any other public or private position, except for teaching positions in higher legal education (Articles 143 and 144 of the Constitution).

Each chamber of the Parliament appoints, on the proposal of the Permanent Bureau and based on the recommendation of the Legal Committee, as a judge a person who received the vote of a majority of the members present [3]. Parliamentary groups, deputies, and senators can submit nominations to the Legal Committee. Each candidate submits a «curriculum vitae» and documents proving that they meet the conditions stipulated in the Constitution. The Committee and the plenary session of the House will hear nominations. The report of the Legal Commission will concern, in a reasoned manner, all candidates, by Law No. 47/1992 on the organization and functioning of the Constitutional Court (art. 5).

According to Article 67 of the CCP Law, the powers of a judge of the Constitutional Court expire at the end of the term for which he was appointed or in other situations such as resignation, loss of voting rights, exclusion, death, etc.

Three months before the expiry of the term of office of each judge, the President of the Court shall notify the President of the House of Parliament who appointed the judge or, as the case may be, the President of Romania with a request to appoint another judge in his place; The appointment must be made no later than one month before the expiration of the powers of the previous judge [1].

The President of the Constitutional Court shall be elected by secret ballot for 3 years by a majority of judges' votes within 5 days from the date of renewal of the Court's work. The term of office of the President may be extended. For the election of the President, each group of judges appointed by the Chamber of Deputies, the Senate, and the President of Romania may nominate only one candidate. If no candidate wins a majority of votes in the first round of voting, then the second round of voting is held

between the first two candidates with the highest number of votes, if all candidates receive the same number of votes. Presidential elections are held by the most senior judge [1].

Judges shall be independent in exercising their powers and unchanged during their term. After their appointment, they take the oath of allegiance to the President of Romania and the Presidents of the two Chambers of Parliament. From this time, the implementation of their mandate begins. The first Court took this oath on June 6, 1992. The last swearing-in occurred on June 9 and 15, 2010, respectively.

The office of the Constitutional Court judge is incompatible with any other public or private office, except for teaching positions in higher legal education. Judges are prohibited from belonging to political parties. By Law, judges of the Court are required to perform their duties impartially and in accordance with the Constitution and to refrain from any activity or manifestation contrary to their office's independence and dignity.

They enjoy immunity and cannot be held liable for their opinions and votes when adopting decisions.

Judges of the Court may not be arrested or sent to criminal proceedings except with the consent of the Permanent Bureau of the Chamber that appointed them or of the President of Romania, as the case may be. The President of the Constitutional Court is equated in rank with the President of the High Court of Cassation and Judiciary, and the other judges are equated in rank with the Deputy President of the High Court of Cassation and Judiciary.

The judges of the Court may not be arrested or sent to criminal proceedings except with the consent of the Permanent Bureau of the chamber that appointed them, or of the President of Romania, as the case may be. The President of the Constitutional Court is equated in rank to the President of the High Court of Cassation and Judiciary, and the other judges to the Deputy President of the High Court of Cassation and Judiciary.

Conclusions. In the process of integration, despite the constitutional rule of Law being the basic model for building a European constitution, it has entered into crisis as a paradigm of the unitary configuration of the rule of Law in pluralistic democracies. We are in a clear transition period, when the European legal order is not yet original, and national legal systems are no longer so. In the process of selecting judges of constitutional jurisdiction, it is important to take into account the following factors: the independence of the judiciary from the executive and legislative powers; ensuring the representativeness and inclusiveness of judges, especially about gender, status, ethnicity or origin; ensuring that judges are of sufficient quality and qualified to exercise their powers. When forming a constitutional court, it is important to reconcile and balance two potentially conflicting needs: the independence of the body of constitutional jurisdiction from interference by state authorities and ensuring professional standards and the integrity of the judges.

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