

КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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PECULIARITIES OF ESTABLISHMENT OF THE INSTITUTE OF CITIZENSHIP IN UKRAINE AND CERTAIN FOREIGN COUNTRIES

The article examines the main historical stages of the formation of a national institute of citizenship and, accordingly, in certain foreign countries. The author made a historical excursion on the legal status of citizenship in Ancient Rome and Greece in the context of a distinction between the related concepts of citizenship and the institution of citizenship. In addition, the present study examines the features of its legislative consolidation, in particular the peculiarities of this process during the period of antiquity and the bourgeois revolution in Western Europe. The author also discloses the relationship between the process of becoming a research institute in foreign countries through the prism of gradual expansion of the scope of citizens' rights. The author draws attention to the characteristic tendency of the development of the concept of citizenship institute, namely the extension of it to new social categories of that time, including women, displaced persons, migrants, foreigners. The article presents the doctrinal visions of foreign scientists on the characteristic features of periodization of becoming a citizenship institute. The study analyzed the first constitutions and laws on citizenship in foreign countries, namely the United States, France, Germany. Emphasis is placed on the significant role of historical and political events in the process of formation of the institution of citizenship in different states and directly its normative fixing. The historical and legal aspect of the process of formation of the citizenship institute on the Ukrainian lands is considered, the main stages of its development in the era of national liberation competitions are determined. The author notes that the establishment of a citizenship institute in Ukraine began much later than in the countries represented in the study. First of all, the author determines this fact by the historical and political peculiarities of the formation of the Ukrainian statehood and nation.

Key words: legal institute, citizenship, becoming of citizenship institute, Ukrainian revolution.

Трошкіна К.Є. ОСОБЛИВОСТІ СТАНОВЛЕННЯ ІНСТИТУТУ ГРОМАДЯНСТВА В УКРАЇНІ ТА ОКРЕМИХ ЗАРУБІЖНИХ КРАЇНАХ

У статті досліджуються основні історичні етапи формування національного інституту громадянства та відповідно в окремих зарубіжних країнах. Автором здійснено історичний екскурс правового статусу громадянства в Стародавньому Римі та Греції в контексті розмежування пов'язаних понять громадянства та інституту громадянства. Окрім того, у представленому дослідженні вивчаються особливості його законодавчого закріплення, зокрема зауважені особливості цього процесу в період античності та буржуазної революції в Західній Європі. Також автором розкрито взаємозв'язок процесу становлення досліджуваного інституту в зарубіжних країнах крізь призму поетапного розширення обсягу прав громадян. Автором звертається увага на характерну тенденцію розвитку поняття інституту громадянства, а саме поширення його на нові для тогочасного суспільства соціальні категорії, включаючи жінок, переселенців, мігрантів, іноземців. У статті представлені доктринальні бачення іноземних науковців щодо характерних ознак періодизації становлення інституту громадянства. Зауважено, що етапи становлення інституту громадянства загальноприйнято класифікувати саме за відповідними нормативно-правовими актами. У ході дослідження проаналізовано перші конституції та закони про громадянство в зарубіжних країнах, а саме США, Франції, Німеччині. Акцентовано увагу на значній ролі історико-політичних подій на процес формування інституту громадянства в різних державах та безпосередньо його нормативного закріплення. Розглянуто історико-правовий аспект процесу формування інституту громадянства на українських землях, визначено основні етапи його розвитку в добу національно-визвольних змагань. Автором наголошується, що становлення інституту громадянства в Україні розпочалося значно пізніше, ніж у представлених у дослідженні країнах. Насамперед автор обумовлює зазначений факт історико-політичними особливостями формування української державності та нації.

Ключові слова: правовий інститут, громадянство, становлення інституту громадянства, Українська революція.

Formulation of the problem. Citizenship is one of the important legal institutions in the country. This

institute plays an important role in every state. Ukraine is not an exception, as in the current conditions of development of the Ukrainian state there are new problems related to this institute. Some neighboring countries seek to limit the sovereignty of our country by extending foreign citizenship to the Ukrainian territory. Such activity, first, testifies to a gross violation of international law in the sphere of independence and independence of state entities, while at the same time encroaching on the sovereignty of Ukraine, and secondly, the relevance of studying and researching doctrinal views on the establishment and development of the institution of citizenship.

Analysis of recent research and publications. The concept and formation of the Institute of Citizenship in Ukraine is being studied quite actively by Ukrainian scientists (R.Bedriy, P.Velikorechanin, V.Lazarev, N.Levytska, I.Sofinskaya, M.Surzhynskiy, V.Pogorilko, Y.Todyka, O.Tregub, O. Fritsky, N. Shuklin) and foreign scientists (F.Artmann, M.Baglay, M.Buchakova, A.Vinokurov, L.Voyvodin, R.Izmailov, E.Kozlova, E.Lukasheva, O.Mironov, Y.Gabermas, B. Turner, R. Falk).

The purpose of our study is to analyze the legal analysis of the emergence and formation of the institution of citizenship in certain foreign countries and the process of its formation on Ukrainian lands.

The main material of the research. One of the most important legal institutions is the institution of citizenship, which is difficult to be universally defined due to the diversity of manifestations, functional and legal phenomena [1, p. 30]. The emergence of citizenship and the institution of citizenship should be distinguished. Citizenship was recognized in ancient Rome and Greece, Sparta, where the question of constitutional acts at that time did not arise. The first approaches to understanding citizenship and its relationship with the state were implemented by Aristotle, Epicurus. Thus, Aristotle indicated that in practice, a citizen is one whose parents are both father and mother are citizens, not one of them [2, p. 447]. The teachings of other thinkers of Ancient Rome and Greece on the definition of citizenship, the nature of its legal status, and enforcement are well known.

The ways of obtaining citizenship differed in Athens, Sparta, Rome, which was connected with their socio-political system, peculiarities of the state system and government. However, in our view, it is a misconception that citizenship in the ancient states was a privileged state, extended to the affluent sections of the population, and was a sign of a person's involvement in state power [3, p. 32]. The fact that citizenship, especially in ancient Rome, had the character of privilege, is an indisputable fact, at the same time Roman society at the initial stage of development consisted mainly of patricians (indigenous Roman inhabitants who were descended from 100 patriarchs-founders of the city), and plebeians, who also had civil rights, although they were not of such origin and did not belong to government officials.

During the ancient period, successively emerging and for some time the existing models of statehood and citizenship were formed: 1) citizenship in a polis - a closed in space and time formations, limited by the statehood of the city, but at the same time ruling over the district; 2) imperial citizenship, which was transformed into a nationality characteristic of the late Roman Empire [4, p. 107]. A. Meshcheryakov rightly points out that the existence of the concept of citizenship in this historical period is not proof of the existence of a state-legal institute of citizenship in the ancient republics. In these states, citizenship issues did not have legal regulation, there were no legal relations about citizenship at the time, and the legal institute of ancient citizenship was absent [5].

The birth of the institution of citizenship in the modern sense occurred during the period of bourgeois revolutions in Western Europe. Different aspects of citizenship are reflected in the teachings of T. Hobbs, J.-J. Rousseau, D. Diderot and other prominent philosophers of the period. In particular, J.-J. Rousseau, proclaiming the idea of forming a new political community under a social contract, stated that its member is a citizen, namely: "under the Social Treaty, a person loses his natural freedom and unlimited right to what attracts him and what he can take possession; He also acquires civil liberty and ownership of all that he possesses. In order not to be mistaken in determining this compensation, one must accurately distinguish between natural freedom, beyond which there is only the physical strength of the individual, and civil liberty, which is limited by the universal will" [6, c. 28].

It was during the period of bourgeois revolutions that constitutional acts were first adopted in Europe. On this legal basis, an institution of citizenship was formed and basic human and citizen rights were determined. That is why I. Wallerstein's view, which defines the first period of the establishment of citizenship from the French Revolution to the end of the 19th century (the most active in this period is political citizenship - the right to choose and be elected) is considered to be reasonably justified; the second period defines the interval between the October Revolution and the end of the Cold War (during this period the problems of social citizenship - pension, insurance, education and health) are updated; the third period is defined from the beginning of the 90-ies of the twentieth century and continues to the present day (characteristic of it is the actualization of global, transnational citizenship) [7].

The stages of becoming a citizenship institute are generally classified according to the relevant legal acts. From this point of view, the establishment of a two-state institute will be considered in relation to this practice in foreign countries. Not only citizenship legislation, but also constitutional acts, which to a greater extent establish the legal status of citizens and disclose the scope of their rights, should be based on classification.

This statement is justified by the analysis of the first constitutional acts in different countries of the world, namely: in the USA - the Constitution of the United States of America (1787), the Bill of Rights (1791); in France, the Declaration of Human and Citizen Rights (1789), the French Constitution of 1791; in Germany - the Constitution of the German Empire (1871), the Weimar Constitution of 1919 and others.

The Constitution of the United States of America, adopted on September 17, 1787 by the Constituent

Convention and declared ratified on July 2, 1788, established equality of the right of a citizen of each state to all those privileges and immunities enjoyed by citizens of other states [8, p. 338]. The personal rights of citizens were set out in the Bill of Rights ratified in 1791 (first ten amendments to the Constitution), in 1865 the XIII Amendment prohibited slavery and slave labor, except in cases of punishment for crime; in 1868, the XIV Amendment established conditions for equal access to American citizenship

On the European continent, following the adoption by the French National Assembly on 26.09.1789 of the Declaration of Human and Citizen Rights, the term "citizenship" became one of the manifestations of the principle of freedom and equality of all members of society in natural and inalienable rights. Such rights were called freedom, property, security and resistance to oppression. In particular, "freedom is the ability to do anything that does no harm to another: thus, the enjoyment of each person's natural rights has only those limits that ensure that other members of society enjoy the same rights. These limits can only be defined by law. " The declaration proclaimed the equality of man and citizen before the law: "the law is an expression of the universal will. All citizens have the right to participate in person or through their representatives in its creation. " "All citizens, on the basis of their equality before the law, are open equally to the path to public positions, places and services in accordance with their abilities and without any differences, except due to their charity and abilities." The Declaration proclaimed the freedom (not limited) of a person and a citizen in expressing their opinions; inviolability and sanctity of private property [9, p.70-71]. The revolutionary decrees of 3.11.1789 and 22.12.1789 regulated the issue of the acquisition and loss of French citizenship [10, p.232].

The constitution of France in 1791, in the second chapter, considered certain aspects of citizenship. In particular, it was noted that French citizens are: persons who were born in France and chose the kingdom as their place of residence; persons born abroad of a French father returned to France and sworn in; Persons who were born abroad, in any number of generations from a French or French woman, left their homeland on the basis of belief, but returned to France and took the oath of office. The oath provided for an oath of allegiance to the nation, the law, and the king. The constitution proclaimed some social rights of citizens: it declared the introduction of general and partially free public education, the establishment of a special department of public care for the upbringing of abandoned children, for facilitating the participation of the needy poor and for finding work for the healthy poor who would become unemployed. [11, p.116 – 120]. All French constitutions, adopted at the end of the nineteenth century, regulated the conditions of naturalization and grounds for loss of citizenship. Most of them set out the requirements for recognizing a person as a citizen. Each new constitution made adjustments to regulate these issues, but they were experimental and situational, which does not allow to mark the regularities [12]. In the nineteenth century in France, several constitutions (1848, 1852) and the constitutional laws of 1875, which were linked to the political regime, were changed, regulating only the organization of public institutions and the activity of state power. The basic elements of the concept of citizenship were developed: establishment of legal differences between citizens and foreigners, conditionality of citizenship by state sovereignty, identification of specific persons as citizens according to clearly defined conditions, declaration of equality of citizens, recognition only by citizens of political rights [13].

A new stage in the development of French citizenship legislation, according to T. Tokarev, was the adoption of the Civil Code of Napoleon in 1804. After its entry into force, political aspects of citizenship were referred to the subject of constitutional regulation, and the last issues were regulated by the Civil Code. Citizenship by birth has changed significantly: the concept of citizenship defined in the Constitution was based on the principle of soil law, while the Civil Code favored family ties [12].

In the era of the French Revolution, points out V. Hessen, citizenship was recognized as follows: a citizen is one who is a subject of a certain category of public rights, namely political; of all public rights in the eighteenth century. only political rights were known, the rights of liberty (personal rights) belonged to a person both inside and outside the state [14, c. 116-117].

Note the peculiarity of defining German citizenship and its rights. At the beginning of the XIX century some German states established citizenship in their territories: the Kingdom of Bavaria in 1818, the Kingdom of Württemberg in 1819, the Grand Duchy of Hesse in 1820.

Bavaria, Saxony, Hesse and other German lands had such a well-defined and complete citizenship that a citizen of Bavaria did not have political rights in Prussia, Saxony and other local states; required a complicated procedure for the transition from one nationality to another, in particular from Bavarian - to Hesse. Not every Bavarian could acquire Saxony citizenship [13]. The Law on the Acquisition and Loss of Federality and Nationality of 1870 stated that German citizenship was acquired and lost in the federal state by the following rules: by origin, by law, by marriage, by naturalization, including for foreigners [15].

After the creation of a single German empire in 1871, each state that belonged to it retained its own nationality. Reich Citizenship Law (22.06.1913) established the concept of "German citizen" [16]. Citizenship in a federal state was acquired: by birth; legitimately; in the case of marriage; through the admission of a foreigner into public service and through naturalization. The instruction on the acquisition of German citizenship by origin, stated the fact of the principle of "blood right". This principle, says M. Heimbuch, is also the second family law method of acquiring citizenship, namely, adoption by a German father of a child of a foreign citizen. The "soil right" principle applies in Germany only to children whose parents are unknown [17, p.77]. At the same time, Section Three of the Law established the direct citizenship of the Reich. It could be obtained by: 1) foreigners who settled in areas

protected by the empire or natives of the protected area; 2) Former Germans and their sons, who had no civil status.

The Weimar Constitution of 1919 decreed that German citizenship and the citizenship of its individual lands were acquired and lost in accordance with the general law. Every citizen of an individual land is simultaneously a citizen of all of Germany. Every German in every country within the entire state has the same rights and obligations as a citizen of that land. The Weimar Constitution greatly expanded the rights and duties of the Germans. An analysis of her articles highlights the Germans' personal, political rights and responsibilities.

The personal rights of German citizens include: equality of all Germans (men and women) before the law; the abolition of public-law privileges due to birth or status; freedom of movement; protecting citizens both within and outside the empire; personal integrity; protection of housing, secrecy of correspondence, free expression of their thoughts; to political: the right to peaceful assembly, the formation of unions, the guarantee of freedom and secrecy of elections, the right to petition in writing with requests or complaints to the relevant authorities or to the people's representation, the right to hold public office, to exercise the right of self-government, etc. [18].

It must be noted that if amendment XIV to the US Constitution states that all persons born or naturalized in the United States and subject to their jurisdiction are citizens of the United States and the state in which they reside; no state shall promulgate or enforce laws restricting the privileges and privileges of United States citizens; French nationality was established as one for all persons who could acquire or obtain it; then, in imperial Germany, every state that belonged to it retained its own citizenship, in addition, the direct citizenship of the Reich was established.

In Ukraine, the citizenship institute was formed much later, due to the peculiarities of the formation of the Ukrainian state and nation under conditions of the Lithuanian-Polish era and being part of the Russian and Austro-Hungarian empires.

The Institute of Citizenship in Ukraine was formed during the Ukrainian Revolution of 1917-1921. It is conditioned by the creation of Ukrainian national bodies of state power; Ukrainian legislation, including the adoption of citizenship laws, which first introduced legal regulation of the relationship between the individual and the state.

We will name the main stages of formation and development of citizenship in Ukraine. According to M. Surzhinsky, there were three of them:

- 1) the first stage (1917-1921) - the institute of citizenship for the development of Ukrainian statehood;
- 2) the second stage (1922-1990) - the institute of citizenship of the Soviet state;
- 3) the third stage (since 1990) is the institute of citizenship of the sovereign Ukrainian state [19, p.29].

Establishment of citizenship institute in the days of the Ukrainian Revolution, we can classify as follows:

- 1) establishment and development of the Institute of Citizenship in the UPR;
- 2) formation and development of the citizenship institute during the period of the Ukrainian State;
- 3) the establishment and development of the Institute of Citizenship under the UPR Directory;
- 4) formation and development of the Institute of Citizenship in ZUNR.

It was at this time that its structural components such as the conditions and ways of acquiring, receiving, accepting, processing, changing, termination, refusal, legal status of a citizen were developed. They were reflected in the bills and laws of the period.

Conclusion. Thus, the establishment of the Institute of Citizenship in the countries of the world went by extension of the scope of citizens' rights, which took place in three stages: the first stage was the creation of legal acts regulating this area; the second stage is related to the increased participation of citizens in socio-political affairs; in the third stage of development of the Institute of Citizenship is the provision of social rights of citizens: the living wage, in education, medicine. At the same time, citizenship extended to new categories of population, especially women and the poorest, as well as displaced persons, migrants and foreigners. This tendency is characteristic of the development of the concept of the institution of citizenship in all states, the legislator always prefers to protect the rights of its citizens, and only with the passage of time the rights of foreigners and persons equal to them expand. In Ukraine, the citizenship institute was formed much later, due to the peculiarities of the formation of the Ukrainian state and nation in the conditions, and had its peculiarities.

СПИСОК ВИКОРИСТАНОЇ ЛІТЕРАТУРИ:

1. Бучакова М.А. Философско-правовые подходы к определению гражданства. *Психопедагогика в правоохранительных органах*. 2003. № 2 (20). С. 30–32. Аристотель. Политика // Соч.: в 4 т. М., 1983. Т.4. 830 с.
2. Кулабухова А. В. Становлення інституту громадянства Європейського Союзу. *Наук. вісн. Херсон. держ. ун-ту. Серія «Юридичні науки»*. 2016. № 1. С. 31–35.
3. Фан И.Б. Античные модели гражданства. *Научный ежегодник ИФилиП УрО РАН*. 2002. Вып. 3. С. 92–107.
4. Мещеряков А.В. Институт гражданства: возникновение, содержание, типы. *Право и политика*. 2003. № 4. С. 24 – 29.
5. Жан-Жак Руссо. Про суспільний договір чи принципи політичного права // Нечаєв В.Д., Філіппов А.В. Вся політика. Хрестоматія. К., 2006. 440 с.
6. Головка В.М., Фісун О.А. Концепція громадянства Іммануїла Валлерстайна. *Гілея. Історичні науки. Філософські науки. Політичні науки* : Наук. вісник : зб. наук. праць. 2011. Вип. 55 (№ 12). С. 566–572.

7. Конституція Сполучених Штатів Америки / Конституції зарубіжних країн. Навчальний посібник. Харків, 2009. 664 с.
8. Декларація прав людини і громадянина / Конституції зарубіжних країн. Навчальний посібник. Харків, 2009. 664 с.
9. Конституции и законодательные акты буржуазных государств (XVII-XIX вв.). М. : Юрид. лит., 1957. 587 с.
10. Документы истории Великой французской революции. Т.1. / Отв. ред. А.В. Адо. М.: Изд-во Московского университета, 1990. 528 с.
11. Токарева Т.С. Становление и развитие института гражданства во Франции : автореф. диссертации на соискание научной степени кандидата юридических наук : 12.00.02. М., 2013. 26 с.
12. Історія держави і права зарубіжних країн та правові системи світу URL: <http://zen.in.ua/novij-chas/franc%D1%96ya/konstituc%D1%96jn%D1%96-zakoni-1875> (дата звернення: 20.12.2019).
13. Кутафин О.Е. Российское гражданство. Монография. М. : Юрист, 2003. 587 с.
14. Гессен В.М. Подданство, его возникновение и прекращение. Т. 1 / В.М.Гессен. СПб.: Тип. Правда, 1909. 448 с.
15. Закон о приобретении и утрате федерализации и натурализации. 1 июня 1870 р. URL: http://www.documentarchiv.de/nzjh/ndbd/bundes-staatsangehoerigkeit_ges.html (дата звернення: 20.12.2020).
16. Закон о гражданстве Рейха. 22 июля 1913 URL: <http://www.documentarchiv.de/ksr/1913/reichs-staatsangehoerigkeitgesetz.html> (дата звернення: 20.12.2019).
17. Геймбух Н.Г. Институт гражданства ФРГ в контексте европейского права. *Вестник Томского государственного университета. Право*. 2013. № 4 (10). С.74 – 80.
18. Конституція Німецької імперії (Веймарська Конституція) 11 серпня 1919 року URL: [http://hai-puzhnyk.in.ua/doc2/1919\(08\)11.reich.php](http://hai-puzhnyk.in.ua/doc2/1919(08)11.reich.php) (дата звернення: 20.12.2019).
19. Суржинський М.І. Інститут громадянства України: конституційно-правовий аспект : монографія / НАН України, Ін-т держави і права ім. В.М. Корецького. К. : Наук. Думка, 2011. 214 с.

REFERENCES:

1. Buchakova, M. (2003). *Filosofsko-pravovyye podkhody k opredeleniyu grazhdanstva. Psikhopedaogika v pravookhranitel'nykh organakh – Psychopedagogy in law enforcement*, 2(20), 30-32. [in Russian].
2. Kulabukhova, A. (2016). Stanovlennya instytutu hromadyanstva Yevropeys'koho Soyuzu. *Naukovyy visnyk Kherson's'koho derzhavnoho universytetu. Seriya «Yurydychni nauky» - Scientific Bulletin of Kherson State University. Legal Sciences Series*, 1,31-35. [in Ukrainian].
3. Fan, I. (2002). ntichniye modeli grazhdanstva. *Nauchnyy yezhegodnik IFiP UrO RAN – Scientific Yearbook of IFiP Ural Branch of RAS*, 3, 92-107. [in Russian].
4. Meshcheryakov, A.(2003). Institut grazhdanstva: vznikoveniye, sodержaniye, tipy. *Pravo i politika - Law and politics*, 4, 24-29. [in Russian].
5. Nechaev, V., & Filippov, A.(Ed.). (2006). Jean-Jacques Rousseau. Pro suspil'nyy dohovir chy pryntsyppu politychnoho prava. It's all politics. Reader. Kyiv. [in Ukrainian].
6. Holovko, V., & Fisun O. (2011). Kontseptsiya hromadyanstva Immanuyila Vallerstayna. Hileya. *Istorychni nauky. Filosofs'ki nauky. Politychni nauky : Naukovyy visnyk : zbirnyk naukovykh prats' - Historical sciences. Philosophical Sciences. Political Science: Scientific Bulletin: Collection of Scientific Papers*, 55(12), 566-572. [in Ukrainian].
7. Konstytutsiya Spoluchenykh Shtativ Ameryky. Konstytutsiyi zarubizhnykh krayin. Navchal'nyy posibnyk – Constitution of the United States of America. Constitution of foreign countries. Tutorial. Kharkiv. [in Ukrainian].
8. Deklaratsiya prav lyudyny i hromadyanyna. Konstytutsiyi zarubizhnykh krayin. Navchal'nyy posibnyk – Declaration of Human and Citizen's Rights. Constitution of Foreign Countries. Tutorial. Kharkiv. [in Ukrainian].
9. Konstitutsii i zakonodatel'nyye akty burzhuaznykh gosudarstv (XVII-XIXvv.) – Constitutions and legislative acts of bourgeois states (XVII-XIX centuries). Moscow: Legal literature. [in Russian].
10. Ado, A. (Ed.), (1990). Dokumenty istorii Velikoy frantsuzskoy revolyutsii. (Vol. 1). Moscow: Moscow University Publishing House. [in Russian].
11. Tokareva, T. (2013). *Stanovleniye i razvitiye instituta grazhdanstva vo Frantsii* [Formation and development of the institution of citizenship in France] (Extended abstract of Candidate's thesis). Moscow. [in Russian].
12. Istoriya derzhavy i prava zarubizhnykh krayin ta pravovi systemy svitu – History of the state and law of foreign countries and legal systems of the world. Retrieved from <http://zen.in.ua/novij-chas/franc%D1%96ya/konstituc%D1%96jn%D1%96-zakoni-1875> (accessed: 20.12. 2019). [in Ukrainian].
13. Kutafin, O. (2003). Rossiyskoye grazhdanstvo. Monografiya. Moscow: Lawyer. [in Russian].
14. Gessen, V. (1909). Poddanstvo, yego vznikoveniye i prekrashcheniye. (Vol. 1). St. Petersburg True. [in Russian].
15. Zakon o priobretanii i utrate federalizatsii i naturalizatsii. 1 iyunya 1870 g. – The law on the acquisition and loss of federalization and naturalization. June 1, 1870. Retrieved from

http://www.documentarchiv.de/nzjh/ndbd/bundes-staatsangehoerigkeit_ges.html (accessed: 20.12.2019). [in Russian].

16. Zakon o grazhdanstve Reykha. 22 iyulya 1913 – The Reich Citizenship Act. July 22, 1913. Retrieved from <http://www.documentarchiv.de/ksr/1913/reichs-staatsangehoerigkeitgesetz.html> (accessed: 20.12.2019). [in Russian].

17. Geymbukh, N.(2013). Institut grazhdanstva FRG v kontekste yevropeyskogo prava. *Vestnik Tomskogo gosudarstvennogo universiteta. Pravo – Bulletin of Tomsk State University. Right*, 4(10), 74-80. [in Russian].

18. Konstytutsiya Nimets'koyi imperiyi (Veymars'ka Konstytutsiya) 11 serpnya 1919 roku – Constitution of the German Empire (Weimar Constitution), 11 August 1919. Retrieved from : [http://hai-nyzhnyk.in.ua/doc2/1919\(08\)11.reich.php](http://hai-nyzhnyk.in.ua/doc2/1919(08)11.reich.php) (accessed: 20.12.2019). [in Ukrainian].

19. Surzhynskyy, M (2011). Instytut hromadyanstva Ukrainy: konstytutsiyno-pravovy aspekt : monohrafiya. NAS of Ukraine, V.M. Koretsky. Kyiv: Scientific Thought. [in Ukrainian].

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ПРАВОВИЙ СТАТУС ГОЛОВИ СУДУ: ЗАРУБІЖНИЙ ДОСВІД

Стаття присвячена аналізу зарубіжного досвіду правового регулювання статусу голови суду в контексті вивчення його позитивних та ефективних практик в цій сфері для української судової системи та реформи, що відбувається в ній. У статті автором проаналізовано положення Конституцій та нормативно-правових актів деяких сусідніх держав, а саме Білорусії, Молдови, Польщі.

У статті зауважено, що в кожній країні є ряд суттєвих переваг та недоліків правового регулювання правового статусу голови суду. Автором вказується, що потрібно в будь-якому випадку враховувати особливості історичного та соціального розвитку як держави, так суспільства, рівень правосвідомості, правової культури населення тощо. Також у дослідженні наголошується на суттєвому «прориві» українського законодавця у сфері комплексного врегулювання досліджуваних питань, тобто в Україні більш повно та якісно виписано коло аспектів, які неповною мірою або ж зовсім не згадані в законодавствах зарубіжних країн. Зокрема, серед них автор акцентує увагу на дисциплінарній відповідальності голови суду, повноваженнях голови суду кожного рівня судової системи, виборності голів судів судьями відповідного суду з числа суддів цього ж суду, значно менших термінах головування на посаді тощо. Тому автором констатується необхідність вкрай виваженого підходу до імплементації досвіду інших країн, принаймні щодо адміністративного статусу голови суду. Відтак, на відміну від інших правоохоронних органів або органів кримінальної юстиції, чи публічної адміністрації, судові інституції практично позбавлені зовнішньоорієнтованих функцій (адже їх основою функцією виступає правосуддя в країні), саме тому управлінські повноваження голови суду носять в першу чергу внутрішньо-організаційний зміст і спрямовані здебільшого на упорядкування процесів, що відбуваються безпосередньо в самому суді. Зроблено висновок, що у зарубіжних країнах має місце якісна регламентація досліджуваного аспекту судової діяльності.

Ключові слова: правовий статус, повноваження, функції, адміністративно-правовий статус, суддя, голова суду.

Girsky B. LEGAL STATUS OF THE COURT CHAIRMAN: FOREIGN EXPERIENCE

The article is devoted to the analysis of the foreign experience of legal regulation of the status of the chairman of the court in the context of studying his positive and effective practices in this field for the Ukrainian judicial system and the reform in it. The article analyzes the provisions of the Constitutions and regulations of some neighboring states, namely Belarus, Moldova, and Poland.

The article points out that in each country there are a number of significant advantages and disadvantages of legal regulation of the legal status of the presiding judge. The author states that in any case it is necessary to take into account the peculiarities of historical and social development of both the state and society, the level of justice, the legal culture of the population, etc. The study also emphasizes the significant “breakthrough” of the Ukrainian legislator in the sphere of complex settlement of the investigated issues, that is, in Ukraine more fully and qualitatively outlines a number of aspects that are not fully or completely mentioned in the laws of foreign countries. In particular, the author emphasizes on the disciplinary responsibility of the presiding judge, the powers of the presiding judge at each level of the judicial system, the election of presidents of the judges by the judges of the respective court from among the judges of the same court, significantly shorter terms of presidency, etc. Therefore, the author states the need for a very balanced approach to the implementation of the experience of other countries, at least regarding the administrative status of the presiding judge. Therefore, unlike other law enforcement or criminal justice bodies, or public administration, judicial institutions are virtually devoid of externally-oriented functions (because their function