

3. Юридичні аспекти сурогатного материнства [Електронний ресурс]. – 2016. – Режим доступу до ресурсу: [https://protocol.ua/ua/yuridichni\\_aspekti\\_surogatno\\_materinstva/](https://protocol.ua/ua/yuridichni_aspekti_surogatno_materinstva/).
4. Сурогатне материнство [Електронний ресурс] – Режим доступу до ресурсу: [https://uk.wikipedia.org/wiki/%D0%A1%D1%83%D1%80%D0%BE%D0%B3%D0%B0%D1%82%D0%BD%D0%B5\\_%D0%BC%D0%B0%D1%82%D0%B5%D1%80%D0%B8%D0%BD%D1%81%D1%82%D0%B2%D0%BE](https://uk.wikipedia.org/wiki/%D0%A1%D1%83%D1%80%D0%BE%D0%B3%D0%B0%D1%82%D0%BD%D0%B5_%D0%BC%D0%B0%D1%82%D0%B5%D1%80%D0%B8%D0%BD%D1%81%D1%82%D0%B2%D0%BE).
5. Правові аспекти сурогатного материнства: Україна і США [Електронний ресурс] // Матеріали II Всеукраїнської науково-практичної конференції. – 2008. – Режим доступу до ресурсу: [http://medicallaw.org.ua/uploads/media/02\\_314\\_01.pdf](http://medicallaw.org.ua/uploads/media/02_314_01.pdf).
6. Сурогатне материнство в Україні [Електронний ресурс] – Режим доступу до ресурсу: <http://legalweekly.com.ua/index.php?id=16061&show=news&newsid>.
7. Сурогатне материнство [Електронний ресурс] – Режим доступу до ресурсу: [https://pidruchniki.com/81464/pravo/surogatne\\_materinstvo](https://pidruchniki.com/81464/pravo/surogatne_materinstvo).
8. Англо-український словник [Електронний ресурс] – Режим доступу до ресурсу: <https://uk.glosbe.com/en/uk>.

**Olga Mydel**

Research supervisor: Olena Boryslavska

Doctor of Law Science, Associate Professor

Language tutor: Natalia Hrynya

Candidate of Philological Sciences, Associate Professor

Ivan Franko National University of Lviv

## **THE GUARANTEES OF INDEPENDENCE OF THE CONSTITUTIONAL COURT OF UKRAINE**

An integral part of a democratic, legal state is the implementation of constitutional justice, the task of which is to ensure the rule of law and constitution, the protection of constitutional human and civil rights and freedoms, verification of the constitutionality of acts of law, the official interpretation of the constitution.

The sole body of constitutional jurisdiction in Ukraine is the Constitutional Court of Ukraine (further – the CCU). After the renewal of independence of Ukraine, adoption of the Constitution and the law «On the Constitutional Court of Ukraine» this body launched its practical activity.

Under the Constitution, work of the CCU is based on the principles of law such as rule of law, independence, validity of decisions. Therefore, the effective system of justice and guarantees of its independence are absolutely necessary.

The purpose of this work is to analyse the main aspects of the independent activity of the CCU: a) the procedure for the appointment of judges; b) the procedure of dismissal of judges; c) material provision of judges.

Among the factors that substantially influence independence of judges of the CCU, the procedure of selecting candidates and appointing them to the position of a judge of the CCU is important.

The President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine each appoint six judges to the CCU. Requirements to the judge of the Constitutional Court are mentioned in Article 11 of the law "On Constitutional Court of Ukraine". A citizen of Ukraine who has attained the age of forty on the day of appointment, has a higher legal education and professional experience of no less than fifteen years, has resided in Ukraine for the last twenty years, has command of the state language, has high moral qualities, has recognised level of competence, may be a judge of the Constitutional Court of Ukraine.

A judge cannot belong to the political party, trade unions, publicly identify favour to them, participate in any political activity, to occupy any other payable position except, perform remunerative work, except scientific, teaching and creative work.

Due to the constitutional reform in 2016, political influence on the appointment of judges of the CCU decreased by the establishment a preliminary competitive selection of candidates for the position of judges in accordance with the procedure established by the law. However, this raises the question of the procedure of conducting the competitive selection. The competitive selection of candidates is carried out by three competition commissions established by the President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine.

Comments on the competitive selection of candidates for the judges of the CCU contains the Opinion of the Venice Commission No.870 / 2016 of 12 December 2016, which criticizes the absence of the established quantitative composition of the commission. The Venice Commission

points out that there is a danger that individuals may be chosen by other considerations than the professional competence of judges. The Venice Commission noted that there is the risk of futility of the competitive selection, because it is unclear whether the subject is obliged to appoint only candidates, who are recommended by the commission or the subject may ignore such recommendations.

The sustainable method of pressure on the CCU was a dismissal or threat of dismissal of judges. Illegal influence on judges by the representatives of political forces and state authorities, including dismissal from positions of capricious reasons, blocks the impartial and fair activity of the CCU. A clear example of such actions is the judge of the CCU Volodymyr Ivaschenko. During 2007, V. Ivashchenko was dismissed for three different reasons, namely, on the basis of violation of an oath, in connection with submission of the resignation and the impossibility to fulfil his powers with regard to health. It demonstrates the political reasons for the dismissal.

The Parliament and the President used their powers to dismiss the judges of the CCU, often abusing unregulated procedure of dismissal based on «violation of an oath». Constitutional reform in the area of justice has changed the procedure of the dismissal of the judges of the Constitutional Court. Thus, the bodies of appointment of the judges of the CCU (the Parliament, the President and the Congress of Judges) are not authorized to dismiss the judges. This right is transferred to the Constitutional Court itself.

The grounds for dismissal a judge of the CCU from post are:

- 1) an inability to perform their authority on the grounds of health;
- 2) a violation of incompatibility requirements;
- 3) a commitment of a substantial disciplinary misconduct, serious or systematic neglect of duties, which is incompatible with the status of a judge of the Court or has identified his inconsistency with his position;
- 4) a submission of the resignation of their own free will.

The decision on dismissal of a judge of the CCU shall be taken by the Court by at least two-thirds of its constitutional composition.

The positive consequence of judicial reform was the fact that it releases judges from the pressure of the legislative and executive branches, what is enshrined in Article 6 of the Constitution of Ukraine. But it should be noted

that the disadvantage of reform lies in the manifestation of "corporate solidarity" when judges will not dismiss their "ones", even if there are obvious reasons for this. However, the Venice Commission notes that the condition of dismissal of a judge by two-thirds of the CCU is positive and should be supported.

The point of the independence of the Constitutional Court is the creation of the appropriate conditions by the state to fulfill its powers, including full satisfaction of material and financial needs. Otherwise, a judge may become vulnerable to corruption, which is unacceptable for a democratic state. The obligation to provide a judge with decent material support is explained by the importance of the functions performed by the judge.

The financial and legal guarantees of the independence of a judge include the appropriate payment of work, remuneration, provision of official needs, the judge's monthly life maintenance in retirement or a pension.

Summing up all the above mentioned, we can draw the following conclusions. The guarantees of the independence of the CCU are the procedure of the appointment of courts, the procedure of the dismissal, and the material provision of judges. Such guarantees are obligatory in a democratic state, because they ensure fairness and impartiality of judges' decisions. The independence of the CCU is a prerequisite for trust in it, the authority of the judiciary and the successful administration of justice.

#### ***References:***

1. Конституція України від 28.06.1996 №254к/96-ВР (Редакція від 30.09.2016) / Офіційний портал Верховної Ради України. URL: <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
2. Закон України «Про Конституційний Суд України» від 13.07.2017 № 2136-VIII (Редакція від 05.08.2018) / Офіційний портал Верховної Ради України. URL: <http://zakon.rada.gov.ua/laws/show/2136-19#n582>
3. Висновок Венеціанської комісії № 870/2016 від 12 грудня 2016 року [https://supreme.court.gov.ua/userfiles/870\\_2016\\_2016\\_12\\_12.pdf](https://supreme.court.gov.ua/userfiles/870_2016_2016_12_12.pdf)