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Guarantees of an independent tribunal in administrative proceedings in the context of the implementation of the human right to a fair trial

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Abstract

The purpose of the article was to identify problem areas to ensure an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial. The research was conducted using general scientific (induction, analysis, synthesis) and special legal (formal-logical, dogmatic, comparative-legal) methods. The authors have determined relevant areas of court staffing, such as: providing judicial power; providing administrative positions for the court and judicial staffing. It is stated that the improvement of legislation in the judicial sphere must be carried out from the inadmissibility of its exclusively positivist interpretation. It is concluded that, in order to guarantee the immunity of a judge in a broad context, it is important to prevent cases of unjustified disciplinary proceedings against judges. An important guarantee of the legality of the disciplinary liability of a judge is the observance by the subject of disciplinary liability of the due process established by law. It is emphasized that this is an assessment by the administrative court of the circumstances on which the plaintiff bases his claims in cases of appeal against these acts of the High Council of Justice.

Keywords: human rights; right to a fair trial; administrative proceedings; independent tribunal; immunity.

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Garantías de un tribunal independiente en los procedimientos administrativos en el contexto de la implementación del derecho humano a un juicio justo

Resumen

El propósito del artículo fue identificar áreas problemáticas para garantizar un tribunal independiente en procedimientos administrativos en el contexto de la implementación del derecho humano a un juicio justo. La investigación se llevó a cabo utilizando métodos científicos generales (inducción, análisis, síntesis) y jurídicos especiales (lógico-formal, dogmático, jurídico-comparativo). Los autores han determinado áreas relevantes de dotación de personal de los tribunales, tales como: proporcionar el poder judicial; proveer puestos administrativos para la corte y dotación de personal judicial. Se afirma que el perfeccionamiento de la legislación en el ámbito judicial debe realizarse desde la inadmisibilidad de su interpretación exclusivamente positivista. Se concluye que, para garantizar la inmunidad de un juez en un contexto amplio, es importante prevenir casos de procesos disciplinarios injustificados contra jueces. Una garantía importante de la legalidad de la responsabilidad disciplinaria de un juez es la observancia por parte del sujeto de la responsabilidad disciplinaria de los debidos procedimientos establecidos por la ley. Se destaca que se trata de una apreciación por parte del tribunal administrativo de las circunstancias en que el actor fundamenta sus pretensiones en los casos de apelación contra estos actos del Consejo Superior de Justicia.

Palabras clave: derechos humanos; derecho a un juicio justo; procedimiento administrativo; tribunal independiente; inmunidad.

Introduction

Ensuring an independent court is a necessary condition for exercising the right to a fair trial in accordance with paragraph 1 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 ETS No 005 (European Convention on Human Rights, 1950: 6). The peculiarities of the current stage of development of the national justice system dictate the specifics of the measures needed to ensure an independent judiciary.

Therefore, the selection of relevant areas of an independent judiciary in administrative proceedings in the context of the implementation of the human right to a fair trial in view of the legal status of judges as a subject of the judicial power, as well as its functions, is the scientific task of this article.

The results of this study correlate with the areas of improvement of the justice system, defined in the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023: “ensuring the independence of the judiciary through the development of guarantees of legality and validity of judicial acts; development of provisions on the immunity of a judge in the context of bringing him to justice and some other areas”.

As a result of this study, both the categories of the general part of administrative law and process (administrative procedure, subject of public administration) and individual institutions of the special part (staffing of public authorities, public administration in the field of justice) are developed. Therefore, this study develops the conceptual and categorical apparatus of the theory of administrative law and process, as well as strengthens the links between the institutions of administrative law and administrative process.

In the science of administrative law and procedure, the following issues remain unresolved: staffing of the court in a broad sense (training, placement, etc.), features of staffing certain categories of administrative court positions (e.g., court clerk, judicial protection staff), immunity ratio and immunity of a judge. These problems are related to the subject.

1. Methodology of the study

The normative-legal regulation of legal relations in the field of the judicial system on ensuring an independent court in the context of the implementation of the human right to a fair trial has been worked out. The research was performed using both general scientific and special legal methods of scientific knowledge, as well as in accordance with the requirements of scientific objectivity.

The application of a systematic approach in the study allowed to study of the administrative-legal relations regarding the subject of research as a system, which in turn became the basis for establishing its elements and links between them (immunity of the judge, court staff, etc.). Using the formal-logical method, the key concepts of work were developed and applied: “immunity of a judge”, “staffing”, “an administrative procedure”, etc.

At the same time, the application of the synthesis method allowed to generalize the current issues of ensuring an independent court and to create a basis for determining measures to address them. The application of the formal-dogmatic method made it possible to strictly adhere to the terminological meaning of the developed and obtained categories and concepts. The application of the dialectical method allowed to take into

account the general principles of construction and development of the judicial system.

The normative basis of this study is the regulations in the field of the judiciary. Materials of judicial practice of consideration of disputes arising from administrative-legal relations in the field of ensuring an independent court have been worked out. A survey of 15 respondents was conducted among employees of the Territorial Departments of the State Judicial Administration of Ukraine (Kyiv, Chernivtsi, Khmelnytskyi regions) and employees of some other subjects of plenary power whose competence includes administrative-legal relations on the organization of the judiciary.

2. Results and Discussion

2.1. Ensuring an independent court in administrative proceedings and Ukraine's international obligations

Global political, economic, social, and legal transformations that are taking place in Ukraine against the background of numerous reforms in all spheres of the society, directly affect the entire national legal system (Denysyuk, *et al.*, 2021). At the same time, the legal issues are often embedded in a cluster of other problems that can affect many areas of life, including housing, employment, education, health and access to justice. This makes it very important to address these problems as early as possible (Teremetskyi *et al.*, 2021). Besides, the European integration aspirations of state development chosen by Ukraine requiring the introduction and application of European values into various spheres of human activities, in particular in the sphere of justice, also facilitate this (Teremetskyi *et al.*, 2020).

The development of legal means of regulating the judiciary is one of the main activities of the judiciary in cooperation with other branches of public authority. The activities of the judiciary are directly related to all processes of public administration. Therefore, ensuring the sustainable development of the state in a democratic direction is impossible without the effective operation of the judiciary.

Disclosing the content of the right to a competent, independent, and impartial tribunal established by law, the Office for Democratic Institutions and Human Rights notes that "competence" usually presupposes compliance with the following three requirements: the competence of individual judges; jurisdiction of the court to make legally binding decisions and jurisdictional jurisdiction of the court (Kovalchuk *et al.*, 2021: 961).

International standards for the organization of the judiciary indicate the importance of staffing not only for judges but also for support staff represented by administrative positions, as well as positions of the judiciary. In particular, in the Supplementary Agreement No 1 between the Government of Ukraine and the European Commission, acting on behalf of the European Union, on amendments to the Financing Agreement for the program “Support to Reforms in the Rule of Law in Ukraine (LAW)” (ENI / 2016 / 039-835 & ENI / 2020 / 042-827) dated 02.09.2020, training of court staff is recognized as an important area of budget allocations to ensure the efficiency of the judiciary, as well as their independence and efficiency (Official Gazette Of Ukraine, 2021).

In the context of judicial reform in the formation of the judiciary, important changes have been made to the Constitution of Ukraine on the procedure for appointment (election) to the position of a judge. Previously, the first appointment to the position of professional judge for a term of 5 years was made by the President of Ukraine. All other judges, except for judges of the Constitutional Court of Ukraine, were elected by the Verkhovna Rada of Ukraine indefinitely, in accordance with the procedure established by law (Article 128 of the Constitution of Ukraine).

Now the procedure for appointing a judge has been significantly simplified and brought closer to European standards. According to Art. 128 of the Constitution, the appointment of a judge is made by the President of Ukraine on the proposal of the Supreme Council of Justice in the manner prescribed by law. Such an appointment is made by competition. As for the Head of the Supreme Court, he is still elected and dismissed by secret ballot by the Plenum of the Supreme Court in the manner prescribed by the law.

Thus, in the context of judicial reform, the Decree of the President of Ukraine “On the Strategy for Reforming the Judiciary, Judiciary and Related Legal Institutions for 2015-2020” an action plan to reform the judiciary was approved. This Strategy identifies priorities for reforming the judicial system, judicial proceedings, and related legal institutions in order to implement the rule of law and ensure the functioning of the judiciary in line with public expectations of an independent and fair judiciary and European values and human rights standards.

Undoubtedly, the partial deprivation of political influence on the formation of the judiciary should be considered a positive development in the reform of the justice system. The outlined priorities were implemented in the further reform of the judiciary, which was reflected in the provisions of the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023.

However, the catastrophic shortage of judges remains a problematic issue today. Thus, in the Kharkiv Court of Appeal with 60 full-time judges,

only 14 judges actually work, and this court is the largest among the appellate general courts in terms of workload (Judicial and Legal Newspaper, 2021).

The shortage of staff is currently due to factors of both general and specific nature. Thus, a general factor is the presence of gaps in the legislative regulation of the principles of staffing the courts. This is largely due to the lack of elaboration on this topic in the scientific literature, and insufficient consideration of the international experience in determining the principles of staffing courts in national research.

In particular, A.V. Shevchenko, based on the results of foreign experience of personnel work in the field of justice, evaluates the advantages and disadvantages of the electoral model of forming the judicial corps. As for the principles of staffing the courts, the coverage is only the principle of independence of the judiciary as a starting point for the development of labor legislation in the field of personnel work in court (Shevchenko, 2020: 84-85).

2.2. The administrative-legal content of ensuring an independent court in administrative proceedings

Taking into account Ukraine's international obligations in rule-making work today is axiomatic. However, the mentioned above position of S.P. Holovatyi on the prevalence of positivist principles of legal understanding in the science of administrative law, which creates a limited perception of the values of the rule of law, developed by the world community, continues to be relevant.

This, in turn, creates significant gaps and conflicts in the administrative-legal regulation of legal procedures for staffing courts. Therefore, the provisions set out by the Venice Commission on the criteria of the rule of law, in particular on the rule of law, have to be recognized as system-forming for the further development of the rule of law as a principle of staffing the courts.

Factors such as the re-launch of the HCJC of Ukraine, which is still closed, the "ceremonial function of the President in appointing judges" should be identified, as there are cases of unjustified failure to issue decrees by the President for a long time, unjustified and unexplained return from the Presidential Administration of Ukraine submits materials of the High Council of Justice on the appointment of judges.

Another category of positions in the court, without which it is impossible to imagine the administration of justice, are administrative positions: a chairman of the court, a deputy chairman of the court, and a secretary of the court chamber. The administrative-legal principles of the relevant activities have not received much attention in the pages of scientific literature.

One of the most detailed studies that reveal this issue is the work of O.V. Ul'ianovska, devoted to the development of administrative-legal bases for the implementation of the right to judicial protection in the national legal system. Within the subject of the research, the scientist deals in particular with the issue of the essence of staffing the courts in the context of ensuring the exercise of the right to judicial protection.

Especially, the author's concept of state-service relations in the field of justice, the definition of administrative position in court, and its features. Thus, state-service relations in the field of the judiciary are defined as internal organizational relations by nature, arising in connection with their parties' professional activities in accordance with the law and aimed at implementing the tasks and functions of the state in the field of justice. Such relations are governed by the rules of administrative law, both substantive and procedural (Ul'ianovska, 2019: 230-231).

This position of the author is based on the development of an established understanding of state-service relations in administrative law as those that are part of the regulation of administrative law, both substantive and procedural, can be regulated by acts of both legislative and bylaw and arise in connection with public service (public) officers. The value of the scientific position of O.V. Ul'ianovska is in proving the expediency of extending the general principles of state-service relations to internal organizational relations arising in connection with the activities of the judiciary.

An administrative position in a court is defined as a structural unit of a specific judicial body, determined by its staff list, which according to the law is entrusted with a certain area of administrative (organizational-administrative and advisory) powers. A person appointed to such a position receives remuneration exclusively from the state budget.

Signs of an administrative position are:

A type of public service; functions of consulting and advisory and organizational and administrative nature; the procedure for holding a position provides for the election procedure, but the basis for holding an administrative position is the issuance of an administrative act of an individual nature; may be combined with the functions of the administration of justice by an official; is marked by the state-authoritative nature of powers and their focus on the organization of justice; the official receives a salary exclusively at the expense of the State budget (Ul'ianovska, 2019: 230-231).

Outlined conclusions O.V. Ul'ianovska (2019) are consistent with current national legislation in the field of justice, the practice of its application, as well as current international standards for the organization and operation of the judiciary. In addition, the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023 states the expediency of

introducing an alternative procedure for staffing these positions, if due to various circumstances the usual procedure (election by the relevant court) is not effective.

Especially, the subject of appointment to such positions should be the High Council of Justice, which will make appointments from among the candidates considered at the meeting of judges of the relevant court (paragraph 4.2.1).

The outlined provisions are consistent with the provisions expressed by O.V. Ul'ianovska (2019). In particular, limiting the number of candidates from which the High Council of Justice will appoint only judges who have been elected corresponds to the organizational-administrative nature of the position, as the chairman of the court must be able to effectively manage the work of a particular court.

On the positive side, the definition of both the subject of appointment and the additional nature of the relevant procedure, in general, should be noted. Therefore, the scientific positions expressed by O.V. Ul'ianovska (2019) lays the foundations for further improvement of the administrative-legal status of officials in administrative positions of the court.

Staffing of courts in a broad sense involves the implementation of a significant number of functions of personnel work: recruitment; analytical work on preservation, strengthening, placement, selection of personnel; personnel needs planning; formation of the structure of a particular judicial institution; monitoring the implementation of personnel decisions.

Attributes of the functions of personnel work within the judiciary are: objective (dependence on the needs of society as a system of higher-order and the judiciary in particular); managerial nature, as carried out in the order of implementation of management activities; subjective, as the subjects of execution are public officers; targeted, as they are aimed exclusively at fulfilling the tasks of the judiciary; continuous nature.

The role of personnel work in the judiciary is reflected in the broad limits of its legal regulation: from the Constitution of Ukraine as an act of direct action to bylaws, including acts of judicial self-government and local regulations. This view is defended by A.V. Shevchenko based on the results of a study of administrative-legal guarantees of the quality of court staff as an element of personnel work.

At the same time, the scientist proceeds from the established concept of function as a combination of the external form of manifestation of a certain phenomenon and its target orientation, consistently exploring the categorical series of “judicial power functions”, “public administration personnel functions” (Shevchenko, 2020: 107-143-144).

This scientific approach deserves to be supported. Acquisition of positions in courts, appointments, and dismissals are the key to the proper functioning of courts in particular and the judiciary in general. Therefore, the scientific approach of A.V. Shevchenko, despite the fact that it does not refer to the staffing of courts, but to the staffing of the judiciary as a complex phenomenon, should be used as a basis for this work to reveal ways to optimize current legislation in the field of staffing of courts.

A broad understanding of the staffing of the courts involves the performance of such a function as staffing: the distribution of available staff according to the functions that can be performed most effectively by specific employees. In this context, the position expressed in Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe to member states on measures to prevent and reduce excessive workload in the courts remains relevant.

This position concerns the need to avoid, if possible, the performance of functions not related to the judiciary by judges: holding wedding ceremonies; concluding agreements related to family property; resolving issues related to the promulgation of prohibitions imposed on marriage, and some others. In particular, non-judicial functions include the collection of court fees (Supreme Economic Court of Ukraine, 2014).

Analysis of the provisions of the current legislation, both in the field of justice and procedural law shows that these requirements are generally implemented in national law and implemented in practice. At the same time, the approach to the collection of court fees by judges is well-established.

In accordance with Art. 8, 9 of the Law of Ukraine "On Judicial Fee" of 08.07.2011 No 3674-VI (Law of Ukraine, 2011) can be distinguished the following functions of a judge to pay court fees: postponement or installment payment of the court fee, reduction of its amount or release from the obligation to pay it, taking into account the property status of the party; verification of the fact of crediting the paid court fee to the special fund of the State Budget of Ukraine before opening (initiating) proceedings in the case.

Resolving issues of postponement, installment, reduction of the amount, and exemption from the obligation to pay court fees involves a comprehensive assessment of the circumstances of the case according to the evaluation criteria, which can be performed only by the court. But verifying the fact of crediting the amount of court fees paid by appointment is a technical action that is not directly related to the administration of justice in the case. Given the current workload on judges, it is important to transfer this power to the competence of other court officials.

A broad understanding of the staffing of courts involves the performance of such functions as training, motivation of public officers, and some others.

Therefore, an important condition for proper staffing of the court staff is the financial support of its activity.

2.3. Judges' disciplinary liability institute development as a direction of ensuring an independent court in administrative proceedings

Judicial disciplinary liability is understood as a type of legal liability, which is manifested in the imposition of disciplinary sanctions on a judge in connection with his violation of the law, including the Code of Judicial Ethics (The Great Ukrainian Legal Encyclopedia, 2016). Nowadays, there is a significant practice of bringing judges to disciplinary responsibility in general and with the application of this type of disciplinary action in particular. Moreover, in 2020 there is a significant decrease in the number of judges subject to such disciplinary liability as to the application for dismissal of a judge (53 judges in 2019 and 14 judges in 2020) (Information and analytical report, 2021).

The specifics of a judge's disciplinary liability are determined by: the field in which the judge operates; the special status of a judge as a subject of disciplinary liability.

The disciplinary responsibility of a judge is aimed at ensuring that judges perform their duties properly, thus ensuring the right to a court. Disciplinary proceedings are the only form in which the issue of bringing a judge to disciplinary liability is resolved. Disciplinary proceedings are defined as a procedure for consideration by an authorized body of an appeal that contains data on a judge's violation of requirements due to his status; his job responsibilities; the oath of a judge.

At the same time, the immanent features of disciplinary proceedings should be considered: confidential (at the initial stage) consideration of a disciplinary complaint; the right of a judge to independently review a decision in a disciplinary case; special procedure for forming a board of persons who will make decisions on the merits in a disciplinary case; availability of appeals on the initiation of disciplinary proceedings for each person (Marochkin *et al.*, 2013).

The essence of disciplinary liability is "the obligation of the offender to provide a report on their own wrongdoing and, at the same time, the authority of the authorized entity to require such a report, to enforce their duties" (Minka *et al.*, 2017: 212). On the other hand, one of the principles of independence of a judge is the provisions of Part 3 of Art. 48 of the Law "On the Judiciary and the Status of Judges", according to which a judge is not obliged to provide explanations on the merits of cases that are in his proceedings. "A judge is not obliged to give explanations in the cases already considered" (Marochkin *et al.*, 2013: 54).

In view of the above, the decisions made by the judge on the merits of the case cannot be a direct basis for disciplinary liability of the judge. The grounds for disciplinary liability of judges may be, in accordance with Part 1 of Art. Of the Law “On the Judiciary and the Status of Judges” only certain acts of a procedural nature, or failure of a judge to perform duties related to his status.

In this case, the application of disciplinary liability in the form of a petition for dismissal of a judge may take place only in those specified in Part 8 of Art. Of the Law “On the Judiciary and the Status of Judges” in the following cases: 1) materiality of disciplinary misconduct, rudeness, or systematic neglect of duties, provided that this is incompatible with the status of a judge or inconsistent with the judge’s position; 2) violation of the obligation to confirm the legality of the source of property.

The procedure for conducting disciplinary proceedings against a judge is characterized by certain specifics because the stage of initiation (opening) of disciplinary proceedings is preceded by the stage of verification of data on the existence of factual grounds for bringing a judge to disciplinary responsibility. This view is defended by A.V. Shevchenko on the basis of a study conducted in 2013 on the implementation of disciplinary liability of judges (Shevchenko, 2013).

An analysis of the current provisions on the procedure of disciplinary proceedings against a judge (Chapter 4, Article 2 of the Law on the High Council of Justice) shows, in general, the preservation of the relevance of such a staged division, with one exception. Thus, two more must be added to these stages: appeal against the decision of the Disciplinary Chamber to the High Council of Justice (Part 1 of Article 51 of this Law); appeal against the decision of the High Council of Justice, adopted as a result of the complaint, to the court (parts 1, 2 of Article 52 of this Law).

Guarantees against unjustified prosecution of judges are an important element of the system of guarantees of judicial independence. Under current national law, bringing a judge to disciplinary responsibility is not covered by the notion of the immunity of a judge.

At the same time, the category of a judge’s immunity can be considered in a broader context, as unjustified disciplinary action against a judge directly affects his or her legal status, which can worsen the quality of a judge’s administration of justice. An important guarantee of the legality of bringing a judge to disciplinary liability is the subject’s disciplinary compliance with the procedures established by the legislation.

Jurisdictional administrative procedures for ensuring the immunity of a judge (consideration of complaints and other appeals of a judge) are characterized by all general principles of administrative procedures, such as: legality; equality of subjects of the administrative procedure before the law; the proper purpose of the exercise of authority and others.

At the same time, certain specific features of individual procedures make it possible to highlight the specifics of the composition and content of the principles of such procedures. For example, the formal nature of the grounds for revoking the High Councils of Justice decision to temporarily remove a judge from justice or the decision to extend the judge's temporary suspension from the administration of justice in connection with criminal prosecution (Article 65 of the Law on the High Council of Justice) that the presence of the judge in respect of whom the relevant issue is being considered is not mandatory.

On the other hand, the principle of the rule of law in disciplinary proceedings against a judge is particularly relevant for further research, given both the special status of judges as subjects of these proceedings and the lack of a clear definition in the Law on the Judiciary and the Status of Judges of certain grounds of disciplinary liability for the judge.

Detailed regulation of administrative and judicial forms of protection of the rights of judges in the legislation, and many years of experience in their application cannot protect against the unequal practice in this area, which is the subject of discussion. Thus, in the Annual Report for 2020 "On the state of ensuring the independence of judges in Ukraine" the High Council of Justice states the existence of case law when in order to resolve a lawsuit to appeal the High Council of Justice decision to dismiss a judge for violating the oath of a judge, the court determines the presence or absence of disciplinary misconduct in the actions of judges, contrary to the provisions of the legislation (Annual Report, 2020: 101).

At the same time, in such cases, there are other approaches of the administrative court that are the assessment of the disputed decision of the High Council of Justice only within the limits provided for in Part 1 of Art. 52 of the Law "On the High Council of Justice": the powers of the High Council of Justice; signing of the decision by all the High Council of Justice staff; notification of the judge about the High Council of Justice meeting; the existence of references to the statutory grounds for disciplinary liability of judges and the reasons on which the High Council of Justice reached the relevant conclusions.

In this case, the court assumed that the assessment of the legality of the decision of the High Council of Justice Disciplinary Chamber in the material context was already provided during the resolution of the plaintiff's complaints, pre-trial, and therefore the court cannot assess it a second time and is limited to assessing the to satisfy the claim (Supreme Court: Decision of 13.09.2021 No 9901/79/21, 2021).

Thus, in the first case, the judicial review includes both substantive and procedural aspects of the contested decision, and in the second it includes only procedural ones. In accordance with Part 2 of Art. 124 of the

Constitution of Ukraine, “the jurisdiction of the courts extends to any legal dispute”. The element of public law dispute as a subject of the jurisdiction of the administrative court is its ground as a set of legal facts that indicate, in particular, the existence of reasonable claims of one of the parties to the dispute (Kataieva, 2016: 15). Therefore, the subject of consideration of the administrative court inherently includes the assessment of the circumstances in which the plaintiff substantiates his claims.

In accordance with paragraph 3 of Part 2 of Art. 2 of the Code of Administrative Proceedings of Ukraine one of the principles of administrative proceedings in cases of appeal against acts of subjects of power is the assessment of the administrative court, in particular, the validity of these acts, *id Est* their implementation taking into account all important circumstances for the adoption of the act. According to the Venice Commission, “judges should have the opportunity to appeal disciplinary action to an independent court” (Venice Commission, 2015: 40).

In view of the mentioned above, the option of full judicial control over the High Council of Justice decisions on the application of disciplinary sanctions in the form of dismissal of a judge appears promising.

As a general rule, the decision of the subject of power enters into force immediately after its adoption (Halunko *et al.*, 2020). However, in some cases, this situation may cause unjustified complications for both the complainant and the authorities. We believe that one such case is the exceptional significance of the final decision for the complainant. It is an unacceptable situation when a decision has been made, has entered into force, and has already been implemented, but after all these stages it is revoked.

One cannot disagree with O.M. Ovcharenko, who considers the disciplinary liability of a judge as an element of his legal status, which reflects his position as a holder of judicial power. The scholar distinguishes two types of disciplinary liability of a judge according to the criterion of grounds and consequences: “ordinary (a judge continues to perform his duties, he is a subject to only certain restrictions); incompatible with the high rank of the judge, which makes it impossible for him to submit to the post” (The Great Ukrainian Legal Encyclopedia, 2016: 171-173).

Norms of Part 1 of Art. 35, part 2 of Art. 52 of the Law “On the High Council of Justice” establishes the right of a judge to appeal the court decisions of the High Council of Justice. In this case, in accordance with Part 3 of Art. 35 of the said Law, an appeal against the High Councils of Justice decision does not suspend its execution, except in cases specified by law.

Analysis of the practice of application of these norms shows that the High Council of Justice has decided to refuse to satisfy the judge’s

complaint against the decision of the Disciplinary Chamber to bring him to disciplinary responsibility, and dismisses the judge without clarifying whether its decision is appealed to the Grand Chamber of the Supreme Court and what decision would be made by it. And this is despite the fact that there are repeated cases of cancellation of the High Council of Justice decisions by the Grand Chamber of the Supreme Court.

Thus, according to the results of the analysis of the activity of the Grand Chamber of the Supreme Court in 2020, out of 66 complaints against the High Council of Justice decisions in terms of its disciplinary powers, 4 decisions were revoked (Judiciary of Ukraine, 2020).

In addition, there is another problem that is a long time of consideration of these complaints in the Grand Chamber of the Supreme Court. Thus, the decision of the High Council of Justice on July 4, 2019, to leave the judge's complaint against the decision of the Disciplinary Chamber of the High Council of Justice was rejected without satisfaction by the Grand Chamber of the Supreme Court only on November 21, 2019 (Supreme Court: Decision of 24.06.2021, No 11-777sap19, 2021).

In another case, the complaint was filed on March 3, 2021, and the decision was made on September 9, 2021 (Grand Chamber of the Supreme Court: Decree of 09.09.2021. No 11-85sap21, 2021). This does not contribute to the certainty of the legal status of the judge.

In accordance with the provisions of Part 2 of Art. 35, part 1 of Art. 52 of the Law "On the High Council of Justice" the Grand Chamber of the Supreme Court cannot assess the circumstances of a disciplinary misdemeanor, and the subject of revision is only the High Council of Justice's compliance with certain procedural requirements: consideration of the judge's time and place, proper composition of the High Council of Justice references to the statutory grounds for disciplinary action against a judge and the reasons for applying these grounds, the High Council of Justice decision was signed by all the High Council of Justice members. Therefore, we consider the actual deadlines for consideration of complaints of judges of the Grand Chamber of the Supreme Court to be unreasonably long.

The key nature of the legal status of judges of these decisions of the High Council of Justice and Grand Chamber of the Supreme Court, the real possibility of ensuring prompt consideration of the Supreme Court's complaints of judges against the High Councils of Justice decisions in disciplinary cases determine the relevance of changes to current legislation to increase the immunity of judges in disciplinary proceedings dismissal of him from office, consisting in the suspension of the High Councils of Justice decision until the relevant complaint of Grand Chamber of the Supreme Court.

To this end, it is necessary to amend Article 52 of the Law “On the High Council of Justice”, supplementing it with part 2-1 of the following content: “Appealing the decision of the High Council of Justice stops its execution”. It is also necessary to take measures to actually reduce the time for consideration of relevant complaints by the Grand Chamber of the Supreme Court.

Conclusions

Nowadays, the following are problematic areas of ensuring an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial: staffing of courts; ensuring the immunity of a judge in a broad context.

Current areas of staffing of courts in its administrative-legal dimension are: providing the judiciary; providing administrative positions for the court; staffing the court staff. Staffing of courts in modern conditions can be considered in a broad sense: recruitment; analytical work on preservation, strengthening, placement, and selection of personnel; personnel needs planning; formation of the structure of a particular judicial institution; monitoring of the implementation of personnel decisions, etc.

In the context of providing the judiciary, it is urgent to fill vacant positions of judges in courts of all specializations. At the same time, the improvement of national legislation in the field of the judiciary should be carried out taking into account the position of S.P. Holovatyii about the inadmissibility of his exclusively positivist interpretation, the need to develop the principles of the rule of law in this area.

In the context of providing administrative positions for the court, it is worth mentioning the need to increase the role of the High Council of Justice in staffing such positions, in particular, in the appointment to these positions.

An important condition for the proper staffing of the court staff is the financial support of its activity.

To ensure the immunity of a judge in a broad context, it is important to prevent cases of unjustified disciplinary action against judges. An important guarantee of the legality of bringing a judge to disciplinary liability is the observance by the subject of disciplinary action of the proper procedures established by the law.

In order to ensure the stability of the legal status of judges in matters of disciplinary action, it is necessary to: reduce the time of consideration of judges' complaints against relevant acts of the High Council of Justice,

prevent the entry into force of relevant acts until the decision on complaints against them.

The introduction of full judicial control over the High Council of Justice decisions on the application of disciplinary sanctions in the form of dismissal of a judge is promising. This involves an assessment by the administrative court of the circumstances in which the plaintiff substantiates his claims in cases of appeal against these acts of the High Council of Justice.

Prospects for further research are the development of specific measures necessary for the implementation of these areas.

The results of this paper are of scientific interest (development of the theoretical basis for ensuring an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial). Some results are of interest to practitioners (officials responsible for the administrative relations that are the object of this study).

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