

# The supreme council of justice in the context of the implementation of the judicial and legal reform

## Вища рада правосуддя в контексті реалізації положень судово-правової реформи

Serhiy Kivalov

### Key words:

*Supreme Council of Justice, Judicial and Legal Reform, European Standards, Judicial Power, Status of Judges, Guarantees of Activities.*

### Ключові слова:

*Вища рада правосуддя, судово-правова реформа, європейські стандарти, судова влада, статус суддів, гарантії діяльності.*

The functioning of the judiciary and adjacent institutes has not been beyond legislator's concern since the very moment when Ukraine became independent. At that time, in the Concept of judicial reform in Ukraine, the adopted by the Verkhovna Rada of Ukraine on April 28, 1992, it was pointed out that "the need for judicial reform is due to the fact that the courts ... are experiencing a deep crisis caused by many factors that negatively affected their activities. ... The court had no power, and the authorities used the court uncontrollably. The judicial reform must bring the judicial system, as well as all branches of law, in line with socio-economic and political changes that have taken place in society"<sup>1</sup>. Since then, the judicial reform has undergone several stages, several laws on the judiciary and status of judges have changed, while the relevance of scientific research in this area has been steadily increasing.

In the scientific literature, the issues of the functioning of the High Council of Justice (HCJ), its legal status, the exercise of powers, and the formation of its composition have been thoroughly investigated, however, the problems of the introduction of the Supreme Council of Justice (SCJ) have not yet been examined. This is absolutely natural, since the introduction of this state body was provided only with the introduction of amendments to the Constitution of Ukraine in the summer of 2016.

On January 12, 2015, the President of Ukraine approved the Strategy for Sustainable Development "Ukraine 2020", which proclaimed the need for judicial reform in order to "reform the judicial system, judicial proceeding and related legal institutions for the practical implementation of the principles of the rule of law and ensuring everyone the right for a fair trial carried out by independent and impartial court. The reform should ensure the functioning of the judiciary, which meets the public expectations of an independent and fair court, as well as the European system of values and standards of human rights protection"<sup>2</sup>. The goal of the Strategy, which is largely in line with the objectives of the reform, was formulated in the 1992 Concept of Judicial Reform in Ukraine.

The year of 2016 was also marked by the implementation of the next stage of the reform of the judicial system, judicial proceeding and related legal institutes, since in early June 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Constitution of Ukraine in the Implementation of Justice" and the new Law of Ukraine "On the Judiciary and the Status of Judges", which came into force on September 30, 2016.

The indicated above legislative acts play a key role in the implementation of judicial and legal reform as they envisage the following fundamental changes in the judicial system: the withdrawal of the Constitutional Court of Ukraine from the judicial system, the dissolution of the Supreme Specialized Court of Ukraine for the

<sup>1</sup> Kontseptsiya sudovo-pravovoyi reformy v Ukrayini : Skhvalena Postanovoyu Verkhovnoyi Rady Ukrayiny vid 28 kvitnya 1992 roku № 2296-XII [Concept of judicial reform in Ukraine: approved by the Verkhovna Rada of Ukraine on April 28, 1992, № 2296-XII] // Vidomosti Verkhovnoyi Rady Ukrayiny. – 1992. – № 30. – St. 426.

<sup>2</sup> Stratehiya staloho rozvytku "Ukrayina – 2020" : Skhvaleno Ukazom Prezydenta Ukrayiny vid 12 sichnya 2015 roku № 5/2015 [Sustainable Development Strategy "Ukraine – 2020": approved by the Decree of the President of Ukraine dated January 12, 2015, № 5/2015] // Ofitsiynyy visnyk Ukrayiny. – 2015. – № 4. – St. 67.

consideration of civil and criminal cases, the Supreme Economic Court of Ukraine and the Supreme Administrative Court Ukraine, the so-called “reformatting” of the Supreme Court, which includes the creation of four cassation courts and the Grand Chamber, formation of the Supreme Anti-corruption Court and the Supreme Court on Intellectual Property, making changes in the requirements for judges and powers of judicial self-government bodies, and much more.

One of the important directions of judicial reform envisaged by the mentioned laws is the improvement of approaches to the formation of the judiciary corps. The reform of the bodies responsible for the selection of judges has been proclaimed, in particular, the Supreme Council of Justice was formed instead of the High Council of Justice.

The political principles of the formation of the High Council of Justice and the unambiguously formulated grounds for bringing the carriers of the judiciary to disciplinary responsibility, as stated in the Principles of State Anti-corruption Policy in Ukraine (Anti-corruption Strategy) for 2014–2017, led to the fact that judges have actually lost the guarantees of independence of their activities. The mechanism of selecting judges was characterized by abuses made by the authorities responsible for this procedure<sup>3</sup>.

The Article 131 of the Constitution of Ukraine defined the composition and powers of the Supreme Council of Justice. At the same time, it should be noted that its qualitative composition is fundamentally different from the composition of the High Council of Justice, since the SCJ consists of twenty one members, of which ten are elected by the congress of judges of Ukraine from judges or judges in retirement; two are appointed by the President of Ukraine; two are elected by the Verkhovna Rada of Ukraine; two are elected by a congress of lawyers of Ukraine; two are elected by the all-Ukrainian conference of prosecutors; two are elected by the congress of representatives of higher legal educational institutions and scientific institutions. It was concluded by the Venice Commission in the Joint Opinion on the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Prevent Abuse of the Right to Appeal” № 588/2010 dated October 7, 2010 (CDL (2010) 098) that “the composition of the HCJ does not correspond to the European standards, since out of the 20 members of the HCJ, only 3 are judges elected by the judges themselves. Together with the Minister of Justice and the Attorney General, 50% of the members of the HCJ belong to or elected by the executive or the legislative branches. In this regard, the composition of the HCJ cannot be considered as a council that includes a large part of the judges. The actual composition of the High Council of Justice may allow the interaction of parliamentary majority and prevent the pressure from the executive branch, but it cannot overcome the structural deficit of its composition. This body cannot be free from any subordination to political influence” (paragraphs 29, 30).

In this context, we should be very positive about the fact that during developing and adopting amendments to the Constitution of Ukraine, Ukrainian legislators took into account the conclusions of the Venice Commission, since most of the SCJ consists now of judges.

In order to put into practice the constitutional provisions on the SCJ on September 23, 2016, the President of Ukraine submitted to the Verkhovna Rada of Ukraine a Draft Law on the Supreme Council of Justice № 5180<sup>4</sup>, which was already adopted on October 3 in the first reading, on December 21 was in the final version<sup>5</sup>, and on January 5, 2017 came into force. Then the process of formation of the SCJ started by means of the reorganization of the HCJ, proceeding from the provisions of Section 16<sup>1</sup>, Section XV “Transitional Provisions” of the Constitution of Ukraine (sub-section 1). Finally, the reorganization process was completed on March 15, 2017, with the state registration of the SCJ<sup>6</sup>.

<sup>3</sup> Zasady derzhavnoyi antykoruptsiynoyi polityky v Ukrayini (Antykoruptsiyna stratehiya) na 2014–2017 roky : Zatverdzheno Zakonom Ukrayiny vid 14 zhovtnya 2014 roku № 1699-VII [Principles of State Anti-Corruption Policy in Ukraine (Anticorruption Strategy) for 2014–2017 : approved by the Law of Ukraine № 1699-VII dated October 14, 2014] // Vidomosti Verkhovnoyi Rady Ukrayiny. – 2014. – № 46. – St. 2047.

<sup>4</sup> Proekt Zakonu Ukrayiny “Pro Vyshchu radu pravosuddya”: vnesenyy do Verkhovnoyi Rady Ukrayiny Prezydentom Ukrayiny P.Poroshenko 23 veresnya 2016 roku (reyestratsiynny nomer 5180) [Online] // Ofitsiynny sayt Verkhovnoyi Rady Ukrayiny. – Available : <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=400725>.

<sup>5</sup> Pro Vyshchu radu pravosuddya: Zakon Ukrayiny vid 21 hrudnya 2016 roku № 1798-VIII [On the Supreme Council of Justice: the Law of Ukraine dated December 21, 2016, № 1798-VIII] // Holos Ukrayiny. – 2017. – № 1. – 4 sichnya.

<sup>6</sup> Zdiysneno derzhavnu reyestratsiyu Vyshchoyi rady pravosuddya // Ofitsiynny sayt Vyshchoyi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2111> (21.03.2017).

In the course of further deployment of the SCJ, on January 24, 2017, its Rules of Procedure were approved<sup>7</sup>, and on March 23, 2017 the staff of 321 full-time units and staffing in 2017 were approved<sup>8</sup>.

The Law, on December 21, 2016, No. 1798-VIII defines the legal status of the SCJ as a collegiate, independent constitutional body of state power and judicial administration, which operates in the system of justice of Ukraine on a permanent basis; the procedure for the election (appointment) of the members of the SCJ and the grounds for their dismissal and termination of authority; the procedure for exercising the powers of the SCJ is established, regarding the formation of the judiciary and the exercise of disciplinary powers, as well as resolving many other important issues.

In general, the stated Law on SCJ makes a positive impression, since it contains a number of advantages compared to the Law "On the High Council of Justice". Thus, in the Venice Commission's Opinion № 588/2010 of 7 October 2010, "On the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Prevent Abuse of the Right to Appeal", among other things, the provisions concerning the powers of the High Council of Justice were analyzed. In accordance with part 2 of Article 25 ("The authority of the HCJ for the verification of cases") in the current version in force at the time (in 2010) it was established that the HCJ "may demand and receive from the courts copies of litigations, proceedings which are not completed, with the exception of Cases dealt with in a closed mode ... Claiming and obtaining copies of judicial documents by the HCJ does not prevent the continuation of their trial" (part 3 Article 25). The norm, which provided the HCJ with the right to receive from the courts copies of cases which were still pending before the competent court, aroused serious concern about judicial independence (paragraph 35 of the decision of the Venice Commission). Paragraph 38 of the decision also stated: "This provision is not safe because it can undermine the independence of judges. The submission of case files which are being processed can be considered as a notification of how the case should be dealt with. One of the basic principles of judicial independence is that each judge, when considering a case, obeys only the law and must be free from any influence when applying the law".

The provisions of part 3 of Article 25 of the Law of Ukraine "On the High Council of Justice" regarding the right of the HCJ to request from the courts copies of judicial cases, which have not been finished, were subsequently found not to comply with the Constitution of Ukraine (unconstitutional) by the decision of the Constitutional Court of Ukraine of March 11, 2011 № 2-rp/201.

In this regard, it is extremely positive to evaluate part 6 of Article 31 of the Law, which takes into account the position of the Venice Commission, states the decision of the Constitutional Court and indicates that "the materials of the court case (copies thereof), explanations obtained from judges or prosecutors regarding judicial proceedings may be provided at the request of the Supreme Council of Justice or its authority only in relation to those cases, the consideration of which are completed. A member of the Supreme Council of Justice has no right to claim the materials of litigation, the consideration of which has not been completed". The only exception to this rule, in accordance with the Law, may be the request of a member of the SCJ copies of materials of the court case in the event of filing a disciplinary complaint on the grounds envisaged by paragraph 2 of the first part of Article 106 of the Law of Ukraine "On the judicial system and the status of judges – groundless delay or non-use by the judge measures as to consideration of an application, complaint or case within the time period prescribed by law, delay in the production of a motivated judicial decision, untimely provision of a copy of a court decision to the judge for its introduction to Single State Register of court decisions.

The clarification of the SCJ powers was an important aspect of reforming. In particular, it is advisable to evaluate such powers that were not endowed with the HCJ, as the possibility of adopting resolutions on dismissal of judges by the SCJ, granting consent to the detention of a judge or keeping him/her in custody or arrest, approving decisions on the temporary removal of a judge from the administration of justice. These powers are conditioned by the need to ensure that decisions are taken promptly, since in practice a situation often arises in case where, for a certain time, such decisions have not been taken for various reasons, for example, when the Verkhovna Rada of Ukraine did not hold the holidays or during the voting it was not possible to collect the required amount of voices as a result of disputes between different political forces.

<sup>7</sup> Rehlament Vyshchoyi rady pravosuddya : Zatverdzheno rishennyam Vyshchoyi rady pravosuddya vid 24 sichnya 2017 roku № 52/0/15-17 (vneseno zminy rishennyam Vyshchoyi rady pravosuddya vid 7 lyutoho 2017 roku № 189/0/15-17 // Ofitsiyyny sayt Vyshchoyi rady pravosuddya [Online]. – Available : [http://www.vru.gov.ua/content/docs/Reglament\\_07022017.doc](http://www.vru.gov.ua/content/docs/Reglament_07022017.doc) (21.03.2017).

<sup>8</sup> Zatverdzheno strukturu ta shtatnyu rozpyts Vyshchoyi rady pravosuddya: Novyny ta povidomlennya vid 23.03.2017 roku // Ofitsiyyny sayt Vischoi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2124> (21.03.2017).

It should be noted that these powers of the SCJ have already been actively implemented. In particular, during the meeting on March 23, 2017, the SCJ considered the issues and decided on the dismissal of thirty-three judges for a material disciplinary offense, gross or systematic neglect of duties that was incompatible with the status of a judge or revealed his inconsistency with his position, including significant amount of the judges, who for a long time were absent at work without decent reason, contributed to the activities of the terrorist organization LPR, in particular, as judges of Ukraine, carried out justice on behalf of self-proclaimed Republic<sup>9</sup>. For the first time, the authority to consent to the detention or arrest of a judge was used on March 12, 2017, when the SCJ approved the submission of the First Deputy of the Prosecutor General of Ukraine, Storozhuk D.A. and the consent was given to the detainment of Bobovsky K.Yu, the judge of the Suvorovsky District Court of Odesa<sup>10</sup>. On March 20, 2017, the Supreme Council of Justice, in accordance with part 7 of Article 49 of the Law of Ukraine "On the Judiciary and Status of Judges" and part 2 of Article 62 of the Law of Ukraine "On the Supreme Council of Justice", taking into account the decision adopted by the Second Disciplinary Chamber of the SCJ on March 20, 2017, a judge of the Dniprovsky District Court of Kyiv was temporarily suspended from exercising justice<sup>11</sup>.

At the same time, certain remarks should be made regarding particular provisions of the Law № 1798-VIII of December 21, 2016.

According to part 1 of Article 1 of the Law, the Supreme Council of Justice is a collegial, independent constitutional body of state power and judiciary governing in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning on the basis of responsibility, accountability to society, the formation of a virtuous and highly professional judge corps, observance of the norms of the Constitution and laws of Ukraine, as well as professional ethics in the work of judges and prosecutors.

The attention is drawn on the term "judiciary body of governance" used in the Law on the SCJ and the Law of Ukraine "On the Judiciary and Status of Judges", which content requires a more in-depth analysis. As indicated in the encyclopedic literature on public administration, the term "governance" has a short history of application, since it was introduced into the scientific vocabulary only in the second half of the 1990s as a reflection of the need to make essential changes in the system of social development management in the context of the deployment of democratic reforms in the country<sup>12</sup>. As indicated by Yu. Gumen, governance is the process of independent solution of the issues of life in accordance with their sovereign will, made by the people or individual representatives<sup>13</sup>. Furthermore, according to the scholar, the term "governance" is conceptually similar to the concept of "self-government", which is based on the self-organization, self-regulation and self-activity of participants in social relations<sup>14</sup>.

Based on these positions, it should be necessary to support the opinion expressed in the Conclusion of the Main Scientific and Expert Board on the draft Law of Ukraine "On the Supreme Council of Justice" of October 17, 2016 stating that specification of the SCJ as "the body of judiciary governance" generates a number of theoretical and practical misunderstandings. According to the content of the article there is an impression that the SCJ is a body of professional judicial self-government, but the way of formation of the SCJ, the nature of its functions and powers is not entirely consistent with the nature of the body that could be called the "judiciary governance" body. In the opinion of the Main Directorate, the SCJ is the body of

<sup>9</sup> 33 suddiv zvil'нено z posad za vchynennya istotnoho dystsyplinarnoho prostupku Ofitsiyyny sayt Vyshchoyi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2113> (21.03.2017).

<sup>10</sup> Vyshcha rada pravosuddya nadala z-hodu na zastosuvannya do suddi zapobizhnoho zakhodu u vydi utrymannya pid vartoyu [Online]. – Available : <http://www.vru.gov.ua/news/2075> (21.03.2017).

<sup>11</sup> Dystsyplinarna palata VRP tymchasovo vidstoronyla vid zdiysnennya pravosuddya suddyu Dniprovs'koho rayonnoho sudu mista Kyieva Ivaninu Y. // Ofitsiyyny sayt Vyshchoyi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2111> (21.03.2017).

<sup>12</sup> Entsyklopediya derzhavnoho upravlinnya. T. 8 : Publichne vryaduvannya [Encyclopedia of Public Administration. T. 8 : Public Governance / Sciences] / nauk. red. kol.: V.S. Zahors'kyy (holova), S.O. Teleshun (spivholova) [ta in.]; L'vivs'kyy rehional'nyy instytut derzhavnoho upravlinnya Natsional'na akademiya derzhavnoho upravlinnya pry Prezydentovi Ukrayiny. – L'viv : LRIDU NADU, 2011. – 630 s.

<sup>13</sup> Humen Y. Demokratychno vryaduvannya v konteksti ukraiyins'koho derzhavotvorennya: istoryko-metodolohichnyy analiz [Online] / Y. Humen // Teoriya ta praktyka derzhavnoho upravlinnya i mistsevoho samovryaduvannya. – 2015. – № 2. – Available : [http://nbuv.gov.ua/UJRN/Ttpdu\\_2015\\_2\\_30](http://nbuv.gov.ua/UJRN/Ttpdu_2015_2_30).

<sup>14</sup> Ibid.

state power, the main function of which is to form judicial authorities as an independent “branch” of state power, in accordance with the procedure established by the Constitution and laws of Ukraine<sup>15</sup>.

Written sources contain another interpretation of the term “governance” when it is considered as a category of public administration. Based on this understanding of “governance”, it turns out that the Law of Ukraine “On the Judiciary and Status of Judges” referred to the governing bodies of not only the SCJ, but also the High Qualification Commission of Judges of Ukraine. At the same time, these bodies can hardly be attributed to the bodies of the administration of the justice system, based on their legal nature.

In this regard, the definition of the HCJ, which according to the branch law of Ukraine is defined as a collegial, permanent, independent body (Article 1), appeared to be more successful. Consequently, we can propose to formulate part 1 of Article 1 of the Law on the High Council of Justice as follows: “The High Council of Justice is a body of state power the main task of which is to ensure the independence of the judiciary in accordance with the Constitution and laws of Ukraine, its functioning on the principles of responsibility, accountability to society, the formation of a virtuous and highly professional body of judges, as well as observance of the norms of the Constitution, laws Ukraine and professional ethics in the work of judges and prosecutors” and make appropriate correspondent changes to the Law of Ukraine “On the Judiciary and Status of Judges”. Such a proposal was made by us to the Verkhovna Rada of Ukraine and was partly taken into account when formulating the final version of part 1 of Article 1 of the Law on SCJ<sup>16</sup>.

Article 2 of the Law on the SCJ is entitled “The legal and regulatory framework for the work of the Supreme Council of Justice”, while the first part immediately states that “The status, authority, principles of the *organization* (italicized by us) and the procedure for the work of the Supreme Council of Justice are determined by the Constitution of Ukraine, this Law And the Law of Ukraine “On the Judiciary and the Status of Judges”. As it can be seen from the cited law, its content is wider than the name, since it does not regulate the issue of activity of the SCJ but also organizational aspects; therefore, the following title of this article would be more appropriate: “The legal and regulatory framework of the organization and the work of the Supreme Council of Justice”.

The attention should be drawn to the fact that the range of legal acts that can determine the status, powers, principles of organization and procedure of activity of the SCJ are also limited only by the Basic Law, the Law on the SCJ and “On the Judicial System and the Status of Judges”, which is unlikely to be admitted. The analysis of legislation suggests that most likely this norm of the Law on the SCJ was formulated in accordance with the model of Article 2 of the Law of Ukraine “On the Supreme Council of Justice”, but an important role in the functioning of the modern Ukrainian state is played by international legal acts, the consent of which is binding on the Verkhovna Rada of Ukraine, especially in the context of the implementation of the European integration course of our state.

In this regard, we consider it expedient to propose to state part 1 of Article 2 in the following edition: “1. The status, authority, principles of organization and procedure of the Supreme Council of Justice are determined by the Constitution of Ukraine, this Law and the Law of Ukraine “On the Judiciary and Status of Judges”, the current international treaties, the consent of which is binding by the Verkhovna Rada of Ukraine”. The trueness of this ground is prompted by the fact nowadays that the legal principles of the prosecutor's office, the State Investigation Bureau, the National Anti-Corruption Bureau of Ukraine, the National Police of Ukraine and other state bodies, the laws of which were adopted in recent years, are determined in the same way.

The introduction of these changes corresponds to the provisions of the Preamble of the Law of Ukraine “On the Judiciary and Status of Judges”, which states the following: “This Law defines the organization of judicial power and the administration of justice in Ukraine, which functions on the principles of the rule of law *in accordance with European standards* (italicized by us) and ensures the right of everyone to a fair trial”, and the implementation of these standards is impossible without complying with the requirements of international treaties.

The important aspect of the functioning of the SCJ is to ensure its independence, to create a mechanism for protection against unlawful influence, which is provided for bodies of this kind by international legal acts. In

<sup>15</sup> Vysnovok Holovnoho naukovo-ekspertnoho upravlinnya na proekt Zakonu Ukrayiny «Pro Vyshchu radu pravosuddya» № vid 17 zhovtnya 2016 roku [Online] // Ofitsiynyy sayt Verkhovnoyi Rady Ukrayiny Available: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=403291>

<sup>16</sup> Porivnyal'na tablytsya do druhoho chytannya do proektu Zakonu Ukrayiny “Pro Vyshchu radu pravosuddya” (Reyestratsiynyy № 5180) vid 20 hrudnya 2016 roku [Online] // Ofitsiynyy sayt Verkhovnoyi Rady Ukrayiny. – Available : <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=410784>.

particular, according to the European Charter on the Status of Judges adopted by the Council of Europe on July 10, 1998, the issue of selection, appointment, promotion or termination of a judge's position should be decided by an autonomic body independent of the executive or the legislature branch (paragraph 1.3). The development of these provisions in Article 21 of the Law on the SCJ suggests rather a general rule that "a member of the Supreme Council of Justice in his/her activities is independent of any unlawful influence, pressure or interference" (part 4). Certain guarantees of SCJ activities are stated in the Criminal Code of Ukraine, which establishes liability for the following: attempt on life of the chairman or member of the SCJ (Article 112), interference with their activities (Article 344), threat or violence against them (346), interference with SCJ activity (Article 3512) and stated in the Code of Ukraine on Administrative Offenses: failure to comply with the lawful requirements of the Supreme Council of Justice, its body or a member of the Supreme Council of Justice (Article 188<sup>32</sup>).

However, the general provision stipulated in Part 4 of Article 21 of the Law on the SCJ, hardly should be considered sufficient. In the process of further development of legislative proposals regarding the improvement of guarantees of activities that will contribute to the real guarantee of independence of members of the SCJ in the performance of their duties, they can be used as a model of the Law of Ukraine "On the Judiciary and Status of Judges", which provides guarantees of independence for judges. In particular, the Law on the SCJ should be supplemented with the norm of the following content: "Independence of a member of the SCJ is ensured by the following: the prohibition of illegal influence, pressure or interference in the activities of the SCJ; responsibility for disrespect for the SCJ and its members; a separate procedure for financing and organizational support of activities established by law; proper material and social support of members of the SCJ; legal means for ensuring personal security of a member of the SCJ, members of his family, property, as well as other means of their legal protection", etc. The last of the guarantees offered is extremely important, especially in the light of the events when on March 17, 2017, the Speaker of the Verkhovna Rada Igor Benediyuk, became the subject of unlawful actions by persons with hidden faces that threatened him and his family with physical harassment and property damage. In order to defend himself, he was forced to make a warning shot in the air from personal weapons<sup>17</sup>.

Thereby, the Law of Ukraine "On the Supreme Council of Justice" has already come into force, but requires a thorough scientific analysis. The question has been raised about the effectiveness of the SCJ, on which the implementation of the next steps in the implementation of judicial reform depends. The generalization of the first practical experience of the functioning of the SCJ will undoubtedly become the basis for further research, identification of ways to improve its organization and activities.

## Summary

In this article the reform of the authorities responsible for the selection of judges in Ukraine is investigated. In particular, the author analyzes the status of the Supreme Council of Justice. The judicial and legal reform in Ukraine must ensure the functioning of the judiciary that meets public expectations regarding the independent and fair trial and the European system of values and standards of human rights. One of the important areas of reform is to improve the approaches to the development of the judiciary. In this direction the High Council of Justice was reorganized into the Supreme Council of Justice. It is a new constitutional body established in accordance with the transitional provisions on justice to the Constitution of Ukraine, the transitional provisions to the Law "On the judicial system and the status of judges" as well as with the transitional provisions to the Law "On the Supreme Council of Justice". Basing on the analysis of the Law "On the Supreme Council of Justice" there was concluded that some of its provisions need to be improved. The definition of the Supreme Council of Justice has been proposed as a public authority whose main task is to ensure in the manner determined by the Constitution and laws of Ukraine independence of the judiciary, functioning on the principles of responsibility, accountability to the public, forming a virtuous and highly professional corps of judges, as well as compliance with rules Constitution, laws of Ukraine and professional ethics in the work of judges and prosecutors "and make appropriate the corresponding amendments to the Law of Ukraine "On the judicial system and status of judges". Article 2 of the Law entitled "Legal bases of the Supreme Council of Justice", but its meaning is broader than the title, because it regulated also the organizational aspects. In this regard, proposed the name of the article, as "Legal principles of organization and functioning of the Supreme

<sup>17</sup> Skoyeno napad na Holovu Vyshchoyi rady pravosuddya Ihorya Benedysyuka: Novyny ta povidomlennya vid 18 bereznya 2017 roku // Ofitsiynny sayt Vyshchoyi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2107> (21.03.2017).

Council of Justice". The legal acts which determine the status, powers, principles of organization and functioning of the Supreme Council of Justice should include also international treaties, agreed to be binding by the Verkhovna Rada of Ukraine, as a part of the national legislation of Ukraine. An important aspect of the functioning of the Supreme Council of Justice is to ensure its independence, establishing a mechanism to protect against undue influence. In particular, the author proposes the Law "On the Supreme Council of Justice" advisable to supplement the rule as follows: "Independence of member of the Supreme Council of Justice is provided: the prohibition of illegal influence, pressure or interference in the Supreme Council of Justice; Liability for contempt of the Supreme Council of Justice and its members; individually funding and organizational support of established law; adequate material and social security of the Supreme Council of Justice members; legally defined means of personal safety the Supreme Council of Justice member, his family, property, and other means of legal protection". Synthesis of the first practical experience of the Supreme Council of Justice is certainly a basis for further research, determine ways to improve its organization and activities.

### Анотація

У статті досліджуються проблемні питання щодо запровадження Вищої ради правосуддя з позицій подальшої реалізації судово-правової реформи в Україні. На підставі системного аналізу норм чинного законодавства висуваються пропозиції щодо вдосконалення окремих положень Закону України «Про Вищу раду правосуддя», зокрема стосовно визначення її природи, правової основи організації та діяльності тощо.

### Literature:

1. Kontseptsiya sudovo-pravovoyi reformy v Ukrayini: Skhvalena Postanovoyu Verkhovnoyi Rady Ukrayiny vid 28 kvitnya 1992 roku № 2296-XII [Concept of judicial reform in Ukraine: approved by the Verkhovna Rada of Ukraine dated April 28, 1992, № 2296-XII] // Vidomosti Verkhovnoyi Rady Ukrayiny. – 1992. – № 30. – St. 426.
2. Stratehiya staloho rozvytku "Ukrayina – 2020": Skhvaleno Ukazom Prezydenta Ukrayiny vid 12 sichnya 2015 roku № 5/2015 [Sustainable Development Strategy "Ukraine – 2020": approved by the Decree of the President of Ukraine dated January 12, 2015, № 5/2015] // Ofitsiynny visnyk Ukrayiny. – 2015. – № 4. – St. 67.
3. Zasady derzhavnoyi antykoruptsiynoyi polityky v Ukrayini (Antykoruptsiyna stratehiya) na 2014–2017 roky : Zatverdzheno Zakonom Ukrayiny vid 14 zhovtnya 2014 roku № 1699-VII [Principles of State Anti-Corruption Policy in Ukraine (Anticorruption Strategy) for 2014–2017: approved by the Law of Ukraine № 1699-VII dated October 14, 2014] // Vidomosti Verkhovnoyi Rady Ukrayiny. – 2014. – № 46. – St. 2047.
4. Proekt Zakonu Ukrayiny "Pro Vyshchu radu pravosudiv": vneseny do Verkhovnoyi Rady Ukrayiny Prezydentom Ukrayiny P.Poroshenko 23 veresnya 2016 roku (reyestratsiynny nomer 5180) [Online] // Ofitsiynny sayt Verkhovnoyi Rady Ukrayiny. – Available : <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=400725>.
5. Pro Vyshchu radu pravosudiv: Zakon Ukrayiny vid 21 hrudnya 2016 roku № 1798-VIII [On the Supreme Council of Justice: the Law of Ukraine dated December 21, 2016, № 1798-VIII] // Holos Ukrayiny. – 2017. – № 1. – 4 sichnya.
6. Zdiysneno derzhavnu reyestratsiyu Vyshchoyi rady pravosudiv // Ofitsiynny sayt Vyshchoyi rady pravosudiv [Online]. – Available : <http://www.vru.gov.ua/news/2111> (21.03.2017).
7. Rehlament Vyshchoyi rady pravosudiv : Zatverdzheno rishennyam Vyshchoyi rady pravosudiv vid 24 sichnya 2017 roku № 52/0/15-17 (vneseno zminy rishennyam Vyshchoyi rady pravosudiv vid 7 lyutoho 2017 roku № 189/0/15-17 // Ofitsiynny sayt Vyshchoyi rady pravosudiv [Online]. – Available : [http://www.vru.gov.ua/content/docs/Reglament\\_07022017.doc](http://www.vru.gov.ua/content/docs/Reglament_07022017.doc) (21.03.2017).
8. Zatverdzheno strukturu ta shtatnyy rozpyis Vyshchoyi rady pravosudiv : Novyny ta povidomlennya vid 23.03.2017 roku // Ofitsiynnyy сайт Вищої ради правосуддя [Online]. – Available : <http://www.vru.gov.ua/news/2124> (21.03.2017)
9. 33 suddiv zvil'нено z posad za vchynennya istotnoho dystsyplinarnoho prostupku Ofitsiynny sayt Vyshchoyi rady pravosudiv [Online]. – Available : <http://www.vru.gov.ua/news/2113> (21.03.2017).
10. Vyshcha rada pravosudiv nadala z-hodu na zastosuvannya do suddi zapobizhnoho zakhodu u vydi utrymannya pid vartoyu [Online]. – Available : <http://www.vru.gov.ua/news/2075> (21.03.2017).
11. Dystsyplinarna palata VPR tymchasovo vidstoronyla vid zdiysnennya pravosudivy sudu Dniprovs'koho rayonnoho sudu mista Kyueva Ivaninu Y. // Ofitsiynny sayt Vyshchoyi rady pravosudiv [Online]. – Available : <http://www.vru.gov.ua/news/2111> (21.03.2017).
12. Entsyklopediya derzhavnoho upravlinnya. T. 8 : Publichne vryaduvannya [Encyclopedia of Public Administration. T. 8 : Public Governance / Sciences] / nauk. red. kol.: V.S. Zahors'kyi (holova), S.O. Teleshun (spivholova) [ta in.] ; L'vivs'kyi rehional'nyy

instytut derzhavnoho upravlinnya Natsional'na akademiya derzhavnoho upravlinnya pry Prezydentovi Ukrainy. – L'viv : LRIDU NADU, 2011. – 630 s.

13. Humen Y. Demokratychne vryaduvannya v konteksti ukrayins'koho derzhavotvorennya: istoryko-metodolohichnyy analiz [Online] / Y. Humen. // Teoriya ta praktyka derzhavnoho upravlinnya i mistsevoho samovryaduvannya. – 2015. – № 2. – Available : [http://nbuv.gov.ua/UJRN/Ttpdu\\_2015\\_2\\_30](http://nbuv.gov.ua/UJRN/Ttpdu_2015_2_30).
14. Vysnovok Holovnoho naukovy-ekspertnoho upravlinnya na proekt Zakonu Ukrainy "Pro Vyshchu radu pravosuddya" № vid 17 zhovtnya 2016 roku [Online] // Ofitsiyyny sayt Verkhovnoyi Rady Ukrainy. – Available : <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=403291>.
15. Porivnyal'na tablytsya do druhoho chytannya do proektu Zakonu Ukrainy "Pro Vyshchu radu pravosuddya" (Reyestratsiyyny № 5180) vid 20 hrudnya 2016 roku [Online] // Ofitsiyyny sayt Verkhovnoyi Rady Ukrainy. – Available : <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=60102&pf35401=410784>.
16. Skoyeno napad na Holovu Vyshchoyi rady pravosuddya Ihorya Benedysyuka: Novyny ta povidomlennya vid 18 bereznya 2017 roku // Ofitsiyyny sayt Vyshchoyi rady pravosuddya [Online]. – Available : <http://www.vru.gov.ua/news/2107> (21.03.2017).

---

**Serhiy Kivalov,**

*Doctor of Law, Professor, academician of the Academy of Pedagogical Sciences of Ukraine,  
Honoured Lawyer of Ukraine, President of the National University "Odesa Law Academy"*