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THE RELATIONSHIP OF THE PRINCIPLE OF INDEPENDENCE OF JUDGE AND THE PROCEDURE OF ELECTION (APPOINTMENT) TO POSITIONS MEMBERS OF THE HIGH COUNCIL OF JUSTICE

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Abstract. The purpose of the scientific article is to establish the relationship between the principle of independence of a judge and the procedure for the election (appointment) of members of the High Council of Justice. The methodological basis of the study was the method of legal science as a system of means of learning law. The conceptual and methodological basis of the work was a comparative legal and comprehensive approach. It was emphasized that a judge has the inherent freedom to impartially and impartially perform his professional duties without political interference. It is substantiated that, based on the fact that constitutional power in Ukraine should be exercised on the basis of continuity and integrity.

Key words: independence of judges, continuity, rule of law, High Council of Justice, re-evaluation, removal, incompetence.

Introduction. Freedom is a fundamental constitutional value of independent Ukraine, which originates from human dignity, finds its expression in the spirituality of society, its culture, and therefore in law. Without a doubt, freedom as a human attribute is an indispensable condition for social stability and social progress and determines democracy. The task of finding and ensuring a balance between the values of individual freedom and the common good rests with the state. And the cornerstone in the problem of relations between the state and the individual is the determination of the degree of freedom of a person, including the degree of freedom of a judge.

The independence of a judge is guaranteed by the Constitution and laws of Ukraine, and influencing a judge in any way is prohibited (parts one and two of Article 126 of the Constitution of Ukraine). The independence of a judge is a constitutional principle and an interdisciplinary principle of the judiciary, which is enshrined in Articles 126, 129 of the Constitution and Articles 1, 6, 7, 48, 126, 128, 133 of the Law of Ukraine «On the Judiciary and the Status of Judges» No. 1402-VIII of June 2, 2016, as well as in Articles 6 and 21 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law No. 475/97-BP of July 17, 1997.

Article 126 of the Basic Law enshrines a system of guarantees to ensure the independence and inviolability of judges, which are an integral part of their status, constitutional principles of the organization and functioning of courts and the professional activity of judges. And the guarantees of independence of courts are: administration of justice exclusively by courts; a special procedure for appointing, electing, prosecuting and dismissing judges; administration of justice in accordance with the procedure established by law; the secrecy of the adoption of a court decision and the prohibition of its disclosure; the binding nature of the court decision; inadmissibility of interfering with the administration of justice, influencing the court or judges in any way, contempt of court and establishing responsibility for such actions; proper material and social security of judges, etc.

International standards do not provide clear guidance on which public authority should have the authority to appoint judges or what the appropriate procedure should be. However, any appointment procedure must guarantee both institutional and individual independence of the court, as well as objective and subjective impartiality. This requirement arises from the principle of separation of powers and the principle of checks and balances, which constitute the most important protection mechanism in this case.

The purpose of the article is to establish the relationship between the principle of independence of a judge and the procedure for the election (appointment) of members of the High Council of Justice and to find out whether there are signs of interference with the independence of judges by the legally regulated procedure of removal from office or termination of the powers of a member of the High Council of Justice, taking into account paragraphs two, six paragraph 4 of chapter II «Final and transitional provisions» of Law No. 1635-IX in systematic connection with the prescriptions of Article 18 of Law No. 1798-VIII.

Research materials and methods. In order to distinguish modern approaches to the understanding of the principle of independence of a judge, to check whether the principle of the rule of law and the principle of independence of the judiciary are violated by the legislative consolidation of the procedure for the dismissal of members of the High Council of Justice (paragraphs five to eleven of clause 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX) etc., a number of research methods were used. The methodological basis of the study was the method of legal science as a system of means of learning law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; research methods and techniques. The conceptual and methodological basis of the work was the historical, operational, comparative-legal and comprehensive approach.

Results and discussion. According to the Constitution of Ukraine, guarantees of independence of a judge are appropriate means of minimizing and eliminating negative influences on a judge during the exercise of powers. A component of the guarantee of the independence of judges is ensuring the continuity and inviolability of the functional constitutional balance in dynamics, in real social life, which, in turn, involves preventing the so-called alienation of the Constitution from real life.

The independence of the judiciary is undoubtedly an essential part of the principle of the rule of law and is designed to ensure that every person has the right to a fair trial, and therefore it is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, which ensures confidence in the justice system (Council of Europe, 2010).

According to Article 1 of the Universal Charter of the Judge (adopted on November 17, 1999, by the Central Council of the International Association of Judges in Taipei (Taiwan)), «the independence of a judge is an important condition for an impartial judiciary that meets the requirements of the law. It is indivisible. Any institutions or authorities, both national and international, must respect, protect and safeguard this independence» (International Association of Judges, 1999).

The independence and inviolability of the judge, guaranteed by the Constitution of Ukraine and the laws of Ukraine, is aimed primarily at the unhindered performance of professional duties by him in the administration of justice, and thus creates the necessary prerequisites for achieving a substantively just result of the judicial proceedings – a balance of constitutional values and interests, without fear or favoring anyone from the point of view of the contextual perspective, and also, despite the probable (un)popularity of the final decision. Thus, the independence of a judge is determined by the degree of freedom and responsibility.

The guarantee of objective independence (that is, the impenetrability of the judiciary in relation to other branches of government) in itself does not imply the individual independence of judges. Independent judges can exist in institutional structures that are independent according to the standards established by European jurisprudence. Models of judicial power, which provide for separation from

other branches of power, do not always ensure the independence of judges. Even very complex models of institutional independence can work in practice in such a way that the independence of individual judges is undermined by internal dependence in the judicial system. Despite the fact that these aspects are different, the guarantee of judicial independence requires an adequate, consistent and simultaneous approach to their configuration in legislation and in practice, as they are deeply interconnected (Gisbert, 2022: 619-620).

Continuity (sustainability) means the ability of the High Council of Justice to continue (maintain) its key activities for a long time. The independence of a judge follows from the content of this concept and, at the same time, can be interpreted as a way of thinking, status and attitude towards others, in particular towards the executive branch of government, which is based on objective conditions or guarantees. Ways and means of ensuring the independence of judges are interconnected with the implementation of constitutional norms in real social relations.

According to the first initial provision laid down in the Bangalore Principles of judicial conduct (Approved by UN Economic and Social Council Resolution No. 2006/23 of July 27, 2006), the independence of judges is a mandatory prerequisite for the rule of law and the main guarantee of a fair trial. Therefore, the judge must in every way support and demonstrate judicial independence both at the personal and institutional level (United Nations Office on Drugs and Crime, 2018: 8).

In order to ensure the competence, independence and impartiality that every person legitimately expects when applying to a court and every judge to protect his rights, the European Charter on the Law «On the Status of Judges» recommends that judges be elected by their peers or by a body independent of the executive and legislative power. For example, the European Charter on the statute for judges enshrines the following: «For any decision prejudicial to the selection, recruitment, appointment, service or termination of a judge's mandate, the statute provides for the intervention of a body independent of the executive and legislative powers, consisting of not less than half of the judges elected by the same judges in an order that guarantees the widest representation of judges' (Council of Europe, 1998).

«The independence of the judiciary is the main condition for ensuring the rule of law and the fundamental guarantee of a fair trial. Judges are entrusted with the duty to make the final decision on issues of life and death, freedom, rights, duties and property of citizens (as stipulated in the introduction to the Basic Principles of the United Nations (995_201), reflected in the Beijing Declaration (995_507), and also in articles 5 and 6 of the European Convention on Human Rights) (995_004). The independence of the courts is a prerogative or a privilege granted not for the benefit of the judges' own interests, but for the benefit of ensuring supremacy in accordance with Article 131 of the Basic Law, an independent constitutional, collegial body of state power and judicial governance operates in Ukraine – the High Council of Justice. The law may provide for additional requirements for a member of the Supreme Administrative Court, and bodies and institutions may be formed in the justice system to ensure the selection of judges, their professional training, evaluation, consideration of cases regarding their disciplinary responsibility, etc. (parts one, eight, nine of Article 131 of the Constitution of Ukraine). The Constitution of Ukraine (parts two and three of Article 131) determines the composition of the High Council of Justice and the subjects of appointment of its members; the order of their election (appointment) is determined by law (Verhovna Rada Ukrai'ny, 1996).

The High Council of Justice «<...> acts on a permanent basis to ensure the independence of the judiciary, it's functioning on the basis of responsibility, accountability to society, the formation of an honest and highly professional corps of judges, compliance with the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors» (Article 1 of the Law of Ukraine «On the High Council of Justice» of December 21, 2016, No. 1798-VIII) (Verhovna Rada Ukrai'ny, 2017).

Due to its status defined by the Constitution of Ukraine, the High Council of Justice should consist of highly qualified and honest persons who must meet the criterion of professional ethics. In order to assist the bodies that elect (appoint) members of the High Council of Justice in establishing the compliance of a candidate for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity, the Ethics Council is formed (Article 91 of Law No. 1798-VIII) (Verhovna Rada Ukrainy, 2017).

On July 14, 2021, Law No. 1635-IX (entered into force on August 5, 2021) was adopted with the aim of improving the procedure for election (appointment) to the positions of members of the High Council of Justice for the practical implementation of the principle of the Rule of Law, ensuring the compliance of candidates for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity, etc. (Verhovna Rada Ukrainy, 2021).

The High Council of Justice, by decision No. 1822/0/15-21 dated August 12, 2021, decided to apply to the Supreme Court as a subject of the right to a constitutional submission regarding the need to apply to the Constitutional Court of Ukraine (hereinafter – CCU) regarding the verification of compliance with the Constitution of Ukraine of certain provisions of laws No. 1798–VIII, No. 1635–IX. At the meeting of the Plenum of the Supreme Court on October 8, 2021, the Supreme Court considered the issue of the need to submit a constitutional submission to the CCU and on October 13, 2021, sent a constitutional submission to the Constitutional Court of Ukraine, in which it asks to check compliance with Articles 8, 19, 126, 131 of the Constitution of Ukraine paragraph thirteen of clause 231 of chapter III «Final and transitional provisions» of Law No. 1798-VIII, paragraphs one, six and eleven of clause 4 of chapter II «Final and transitional provisions» of Law No. 1635-IX.

The subject of the appeal believes that the disputed provisions of Laws Nos. 1798-VIII, 1635-IX allow for the one-time suspension of the High Council of Justice, which poses real and significant threats to the principle of continuous functioning of the state authority; provide for re-evaluation of members of the High Council of Justice who are judges and have already undergone evaluation for compliance with the criteria of professional ethics and integrity; provide for the procedure for the dismissal of members of the High Council of Justice, which does not comply with the principle of the rule of law; nullify the established order of formation of the relevant body, which in turn violates the principle of independence of judges.

Constitutional proceedings in the case were opened by the decision of the board of judges of the CCU. The case is being considered by the Grand Chamber of the Court.

In the transitional provisions of Law No. 1798-VIII, it is established that the Ethics Council, within six months from the date of approval of its personnel, shall conduct a one-time assessment of the suitability of members of the Supreme Court (except for the Chairman of the Supreme Court) who were elected (appointed) to the position of a member of the High Council of Justice before the entry into force of this Law , criteria of professional ethics and integrity for holding the position of a member of the High Council of Justice (paragraph one of clause 4 of section II of Law No. 1635-IX). That is, the parliament has given the Ethics Council the authority to evaluate members of the High Council of Justice (Verhovna Rada Ukrainy, 2017). The second paragraph of the fourth part of Section II «Final and Transitional Provisions» of Law No. 1635-IX provides for the protection of the quorum: «The order and sequence of assessing the compliance of current members and candidates for membership of the High Council of Justice to the criteria of professional ethics and integrity are determined by the Ethics Council, taking into account the possibility of exercising the powers of the High Council by the Council of Justice in accordance with the Constitution of Ukraine» (Verhovna Rada Ukrainy, 2021).

The detailing of this legal norm in the Regulation of the Ethics Council, approved by its decision No. 1 dated December 1, 2021, provides, in particular, that the Ethics Council primarily evaluates candidates for vacant positions of members of the High Council of Justice. After the completion

of the relevant competitions, it immediately evaluates the current members of the High Council of Justice. Further evaluation by the Ethics Council of the acting members of the High Council of Justice is carried out after the existing vacant positions of its members are filled (clause 1.2.2) (Etychna rada, 2021).

A provision of the law cannot be considered unconstitutional just because it can be invalidated as a result of, as the Supreme Court suggests, theoretically possible circumstances under which all 17 members of the current composition of the High Council of Justice would probably deserve the recommendation of the Ethics Council to be fired. The authorized bodies will simultaneously select new members of the High Council of Justice, as there are currently four vacant positions in the High Council of Justice. The selection of new members will balance (theoretically possible later) the dismissal of current members of the High Council of Justice.

Based on the meaning of the normative prescription of paragraph six, point 4 of section II «Final and transitional provisions» of Law No 1635-IX, which is in a systemic connection with Article 91 of Law No. 1798-VIII, in the process of evaluation and decision-making on submission to the relevant body of a reasoned recommendation for the dismissal of a member of the Board of Directors, resulting in the latter's removal from office, the Ethics Council has a legally defined obligation to organize its activities so that the Board of Directors has the opportunity to exercise its powers.

The removal from office of members of the High Council of Justice depends on the actions and acts of the Ethics Council, which is limited by legislative provisions on the obligation to take into account the possibility of the High Council of Justice. In connection with the above, the disputed provisions do not contradict the argument stated by the Supreme Court.

The provisions of paragraph six, point 4 of Chapter II «Final and Transitional Provisions» of Law No 1635-IX regulate the issue of removal from office of a member of the High Council of Justice, in respect of which the Ethics Council, which is designated by the Parliament as competent in evaluating members of the High Council of Justice, adopted a recommendation for dismissal due to discrepancy.

A decision to introduce a reasoned recommendation for dismissal, which has the effect of removing a member of the High Council of Justice from office until the relevant body makes a decision, may be adopted by the Ethics Council on the grounds specified in clauses 3–5 of the first part of Article 24 of Law No 1798-VIII. The specified items stipulate the following: «1. Grounds for the dismissal of a member of the High Council of Justice from the position: <...> 3) gross or systematic neglect of duties, which is incompatible with the status of a member of the High Council of Justice or revealed his inadequacy for the position held, acceptance of other behavior that undermines the authority and public trust of justice and the judiciary, including non-compliance with the ethical standards of a judge as a component of the professional ethics of a member of the High Council of Justice; 4) finding the validity of the existing circumstances regarding his non-compliance with the requirements specified in Article 6 of this Law [requirements and restrictions for members of the High Council of Justice]; 5) a significant violation of the requirements established by the legislation in the field of corruption prevention» (Verhovna Rada Ukrai'ny, 2017).

Let's take into account the urgent joint opinion of the Venice Commission and the General Directorate for Human Rights and the Rule of Law of the Council of Europe regarding draft law No. 5068 dated May 5, 2021, No 1029/2021. The document emphasizes that the verification of the members of the High Council of Justice by the Ethics Council in accordance with the criteria of professional ethics and integrity can be considered acceptable only as a one-time, exceptional measure. Removal from the position of a member of the High Council of Justice on the recommendation of the Ethics Council guarantees that such a member cannot participate in its activities until the final decision is made by the body that elected (appointed) this member. Such removal from office is intended to «freeze» the situation; it does not in any way encroach on the competence of the bodies appointing members of the High Council of Justice to dismiss (or not) the corresponding member (paragraphs 58–60

of the Conclusion). (Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudy ny i verhovenstva prava Rady Jevropy, 2021). At the same time, paragraph 3.b.1 of Annex I to the Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Creditor, ratified by the Law of Ukraine dated August 25, 2020, No. 825-IX, provides that state authorities will strengthen the independence, integrity and effective functioning of the judiciary authorities, taking into account the conclusions of the Venice Commission, including by introducing legislative amendments to ensure the establishment of an Ethics Commission with international participation, which would have the authority to conduct a one-time assessment of the integrity and ethics of the members of the High Council of Justice and recommend their dismissal to the electoral authorities (appointment) in cases of non-compliance of the members of the High Council of Justice with the standards (Verhovna Rada Ukrainy, 2020).

Thus, the provision in the legislation of the institute of temporary suspension from the performance of duties of a member of the High Council of Justice who received a negative assessment corresponds to these obligations of Ukraine.

The given arguments give grounds for the conclusion that the exercise of powers by persons in respect of whom, in accordance with the procedure prescribed by law, reasonable doubts have been established regarding their compliance with the criteria of professional ethics and integrity, undermines trust in the High Council of Justice and the legitimacy of its decisions. Therefore, giving the opportunity to exercise powers to persons for whom there is reasonable doubt as to compliance with the criteria established by the Law and for whom a reasoned recommendation for dismissal has been adopted cannot be justified in connection with the assumption of temporary incapacity of the High Council of Justice.

The concept of a one-time evaluation of the compliance of members of the High Council of Justice is sufficiently clear, understandable and unambiguous and does not attract arbitrary interpretation, and therefore does not contradict Article 8 of the Constitution of Ukraine. And the subject of constitutional control – the sixth paragraph of item 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX – agrees with Articles 8, 126, 131 of the Constitution of Ukraine, international standards and legal positions formed on their basis.

The Verkhovna Rada of Ukraine, as the only body of legislative power in Ukraine (Article 75 of the Constitution of Ukraine), has determined the Ethics Council to be competent in assessing the members of the High Council of Justice according to the criteria of professional ethics and integrity. At the same time, the Ethics Council is guided by the fact that non-compliance with the candidate's established indicators is possible only in the case of proving the non-compliance or the existence of reasonable doubts about compliance (Clause 2 of Part Eighteen, Article 9-1 of Law No. 1798-VIII) (Verhovna Rada Ukrainy, 2017).

We draw attention to the clarification set out in the Preamble to the Bangalore Principles of judicial conduct regarding public trust in the judicial system, as well as the authority of the judicial system in matters of morality, integrity and incorruptibility of judicial bodies, which is of prime importance in a modern democratic society. The commentary to this provision states that it is public confidence in the independence of courts, the integrity of judges, the impartiality and effectiveness of processes that underpins the country's judicial system (The UN Economic and Social Council, 2006).

In view of the above, the activity of the Ethics Council and the institution of possible removal of a member of the High Council of Justice from the position are conditioned by the need to exercise high powers only by those persons who meet the legal requirements. The presence of a decision of the Ethics Council, which proved or affirmed a reasonable doubt regarding the non-compliance of a member of the High Council of Justice with the criteria of professional ethics and integrity, provides reasoned grounds for the conclusion that it is impossible for such persons to exercise powers of constitutional importance.

Developing the constitutional provisions set forth in Article 131 of the Basic Law and with the aim of forming an honest and highly professional body of judges, the provisions of Clause 4 of Chapter II «Final and Transitional Provisions» of Law No 1635-IX establish the possibility of a one-time verification of the relevant persons against the criteria necessary for taking up positions members of the High Council of Justice, and not any other state authority. Although some active members of the High Council of Justice passed the qualification evaluation of judges, the need to reform this body of state power also lies in the evaluation of the relevant persons based, in particular, on their already existing activities as members of the High Council of Justice, not judges. Allowing the very possibility of conducting a one-time check of members of the High Council of Justice, the subject of the right to a constitutional submission does not take into account that the earlier qualification assessment by some persons for the position of judge cannot be considered a one-time evaluation of a person as a member of the High Council of Justice who exercised the relevant powers. The legislator regulated the procedure according to which the Ethics Council will once-check compliance with the criteria of integrity and professional ethics of all active members of the High Council of Justice, who were elected (appointed) before the entry into force of Law No 1635-IX.

In paragraph 58 of the Conclusion of the Venice Commission No 1029/2021, (2021) CDL-PI (2021)004 is specifically about checking the integrity of members of the High Council of Justice, and not about any other check of persons who have held any position in the past. As the Venice Commission notes, only one person – the head of the Supreme Court – is exempt from the integrity check to be conducted by the Ethics Council (Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudyny i verhovenstva prava Rady Jevropy, 2021).

It should be noted that such temporary mechanisms, such as a one-time check by the Ethics Council of members of the High Council of Justice in accordance with the criteria of professional ethics and integrity, are quite effective for countries in which the level of public trust in the justice system is low, in particular due to widespread trends of dishonesty. At the same time, the Venice Commission recognizes such temporary procedures as not only justified, but also necessary in the case of a high level of corruption in the justice system and does not see in them a violation of the standards of independence of judges or any other violations.

According to paragraphs five to eleven of paragraph 4 of the transitional provisions of Law No 1635-IX, the conclusion of the Ethics Council regarding members of the High Council of Justice is submitted in the form of a reasoned recommendation for dismissal and has the effect of removal from office and suspension of powers, with a simultaneous referral to the subject of appointment to resolve the issue of dismissal or resignation. That is, the legislator determined that the subject of the decision on the dismissal of a member of the High Council of Justice based on the results of consideration of the reasoned recommendation of the Ethics Council is the very body that elected (appointed) him (Verhovna Rada Ukrai'ny, 2021).

However, if the relevant body did not make a decision to dismiss a member of the Board of Directors or to reject the recommendation of the Ethics Council, then after the expiration of the three-month period, such member of the Board of Directors is considered dismissed from his position.

Therefore, the evaluation procedure proposed by the legislator allows considering two possible options for the actual behavior of the subject of appointing members of the High Council of Justice: 1) active (taking actions) – meeting or rejecting the recommendation to dismiss a member of the High Council of Justice (paragraph ten of clause 4); 2) passive (refrain from taking actions).

The justification of the proposed model is related to the need to minimize the period of time during which the High Council of Justice may experience risks to its work due to the fact that, according to the decision of the Ethics Council, a member of the High Council of Justice is removed from office, does not participate in the work of the state body and its meetings, but at the same time compliance with the criteria of professional ethics and integrity has not been confirmed by the appointing authority.

This approach fully corresponds to the logic of the constitution maker regarding the activity of the High Council of Justice and is due to the goal of preventing the artificial creation of conditions of uncertainty of the status of its members. Since the Constitution of Ukraine does not determine the procedure and grounds for the dismissal of members of the High Council of Justice, and also does not prohibit providing at the legislative level several ways of such dismissal, there are no grounds to assert the unconstitutionality of the version of the dismissal of a member of the High Council of Justice proposed by the contested norm.

By passing Law No 1635-IX, the Ukrainian legislator sought to achieve a legitimate goal – to prevent a stalemate situation in which a member of the Ukrainian National Assembly is removed from office, but not dismissed. The default release mechanism is applied only after the «deadlock» has lasted for a relatively long time. Therefore, this mechanism is a proper implementation of the legislator's discretionary powers in terms of choosing the appropriate tools to eliminate this risk.

Therefore, the Ethics Council is not a body that resolves the issue of disciplinary responsibility. It only provides recommendations to other bodies, which make decisions that may lead to dismissal.

Conclusions. Based on the fact that the constitutional power in Ukraine should be exercised on the basis of continuity and integrity, a model for increasing the institutional capacity of the High Council of Justice and the level of public trust in the bodies of judicial management, in particular, and the judiciary, has been established at the legislative level. This model excludes probable cases of suspension of the High Council of Justice in performance of constitutional functions and exercise of powers.

Legislative regulation of the one-time verification of the relevant persons by the criteria is necessary precisely for the occupation of the positions of the members of the High Council of Justice, and not for any other body of state power. The need to reform this body of state power also lies in the evaluation of the relevant persons based on, in particular, their existing activities as members of the Public Prosecutor's Office, and not as judges. Thus, the one-time evaluation of each person who is a judge and has passed the qualification evaluation is not carried out for the second time as a judge, but for the first time and once as a member of the High Council of Justice.

The transitional model of the composition of the Ethics Council and, accordingly, voting by its members, proposed by the parliament, is primarily aimed at a one-time evaluation of valid members of the High Council of Justice according to the criteria of professional ethics and integrity, which precisely contributes to the proper functioning of the High Council of Justice in Ukraine, which is responsible for taking measures to ensure the independence of judges. The Venice Commission recognizes such temporary procedures as not only justified, but also necessary in the case of a high level of corruption in the justice system, and does not see in them a violation of the standards of independence of judges or any other violations.

There are no signs of interference with the independence of judges by the provisions of the thirteenth paragraph of Clause 231 of Chapter III «Final and Transitional Provisions» of Law No. 1798-VIII, Paragraphs one, six and eleven of Clause 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX, since the decision dismissal is decided by the body that elected the relevant member of the High Council of Justice. A judge who is elected to the High Council of Justice has the duty not only of a judge, but also of a member of the High Council of Justice. Therefore, voluntary admission to the relevant position carries with it additional burdens, in particular, regarding the need to pass an assessment for compliance with the criteria of professional ethics and integrity, not only as a candidate for the position of judge, but also as a member of the High Council of Justice. The risks of creating artificial obstacles to the functioning of an effective judiciary and, in some cases, the realization of everyone's right to access to justice as a requirement of the principle of the rule of law have been minimized.

References:

1. International Association of Judges (1999). The Universal Charter of the Judge. Adopted in Taipei (Taiwan) on November 17, 1999. URL: <https://www.iaj-uim.org/universal-charter-of-the-judges/>
2. United Nations Office on Drugs and Crime (2018). The Bangalore Principles of judicial conduct. Approved by Resolution No. 2006/23 of July 27, 2006]. Retrieved from: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>
3. Etychna rada (2021). Rishennja №1 vid 01.12.2021 «Pro zatverdzhennja I, II Rozdilu Reglamentu Etychnoi' rady» [Decision No. 1 dated 01.12.2021 «On the approval of Section I, II of the Regulations of the Ethics Council»]. Retrieved from: https://ec.court.gov.ua/userfiles/media/new_folder_for_uploads/ec/rishenna_er_%201_01_12_21.pdf [in Ukrainian].
4. Gisbert R. B. (2022). Judicial Independence in European Constitutional Law. *European Constitutional Law Review*, 18, 591–620. DOI:10.1017/S1574019622000347
5. Council of Europe (2010). Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. Retrieved from: <https://www.icj.org/wp-content/uploads/2014/06/CMRec201012E.pdf>
6. Consultative Council of European Judges (2001). Opinion No 1 (2001) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of judiciary and the irremovability of judges (Recommendation No. R (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problem in these fields. Retrieved from: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/OPINION_No_1_eng_2001.pdf
7. Council of Europe (1998). European Charter on the statute for judges. (Strasbourg, 8–10 July 1998). Retrieved from: <https://rm.coe.int/16807473ef>
8. Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudyjny i verhovenstva prava Rady Jevropy (2021). Terminovyj spil'nyj Vysnovok shhodo zakonoproektu № 5068 vid 5 travnja 2021 roku № 1029/2021 [Urgent Joint Opinion on Draft Law No. 5068 dated May 5, 2021 No. 1029/2021]. Retrieved from: <https://rm.coe.int/urgent-joint-opinion-of-the-vc-and-the-dg-of-human-rights-and-the-rule/1680a3ce1b> [in Ukrainian].
9. Verhovna Rada Ukrai'ny (1996). Konstytucija Ukrai'ny [The Constitution of Ukraine]. *Vidomosti Verhovnoi' Rady Ukrai'ny (VVR)*, 1996, № 30, st. 141 [in Ukrainian].
10. Verhovna Rada Ukrai'ny (2016). Zakon Ukrai'ny «Pro Vyshhu radu pravosuddja» vid 21 grudnja 2016 roku № 1798-VIII [Law of Ukraine «On the High Council of Justice» of December 21, 2016 No. 1798-VIII. *Vidomosti Verhovnoi' Rady (VVR)*, 2017, № 7-8, st. 50. [in Ukrainian].
11. Verhovna Rada Ukrai'ny (2020). Memorandum pro vzajemorozuminnja mizh Ukrai'noju jak Pozychal'nykom ta Jevropejs'kym Sojuzom jak Kredytorom, ratyfikovanyj Zakonom Ukrai'ny vid 25 serpnja 2020 roku № 825-I [Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Lender, ratified by the Law of Ukraine dated August 25, 2020 No. 825-IX]. Retrieved from: https://zakon.rada.gov.ua/laws/show/984_004-20#n29 [in Ukrainian].
12. Verhovna Rada Ukrai'ny (2021). Zakon Ukrai'ny «Pro vnesennja zmin do dejakyh zakonodavchyh aktiv Ukrai'ny shhodo porjadku obrannja (pryznachennja) na posady chleniv Vyshhoi' rady pravosuddja ta dijaj'nosti dyscyplinarnyh inspektoriv Vyshhoi' rady pravosuddja» vid 14 lypnja 2021 roku № 1635-IX [Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice» dated July 14, 2021 No. 1635-IX.]. *Vidomosti Verhovnoi' Rady (VVR)*, 2021, № 38, st. 320. [in Ukrainian].